Community Power Networks

Regulatory Roadmap -Frequently Asked Questions

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Advice to Street Coolers

www.streetcoolers.com.au

CLAYTON UTZ

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Important Notice: This guide is intended to provide commentary and general information. It should not be relied upon as legal advice. Formal legal advice should be sought in particular transactions or on matters of interest arising from this guide.

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Regulatory Roadmap - FAQs

1. Background

1.1 Question: I am planning to install a Solar PV System at a place in New South Wales that will supply power to more than just my own premises. The Solar PV System will have a rating of less than 100kW. I will be running wires from the location of the Solar PV System to other premises. What are the principal regulatory issues that I need to consider?

Answer: You need to consider:

- (a) regulation of generation activities;
- (b) regulation of power network operation;
- (c) regulation of power retailing;
- (d) grid connection rules;
- (e) metering rules;
- (f) power network safety and installation rules;
- (g) regulation of power installers;
- (h) planning permissions;
- (i) rights to use third party land;
- (j) rights to use Council streets or other property;
- (k) renewable energy certificates and obligations;
- (I) equipment ownership and title issues.

These issues are further addressed below.

2. Regulation of generation activities

2.1 Question: Do I need to consider registration as a "Generator" in the NEM?

Answer: The Solar PV System is a "generating unit" within the meaning of the National Electricity Law. Under the National Electricity Law, persons owning, operating or controlling a generating unit must be registered with AEMO as a "Generator". However, there is a standing exemption from registration as a "Generator" for units with less than 5MW nameplate capacity. Therefore, the owner, operator and controller of a Solar PV System of 100kW capacity is exempt from registration as a "Generator".

3. Regulation of power network operation

3.1 Question: What approvals do I need to distribute power from my premises to other premises?

Answer. Power lines that convey electric energy from one premises to another are called a "distribution system", and you need to consider both state and national legislation.

Under NSW state legislation, there is a general prohibition on operating a distribution system unless authorised by a distributor's licence.¹ However, there is also a standing exemption for any person other than TransGrid and the three government-owned distribution businesses.² Therefore, in NSW new distribution systems operated by private companies and individuals do not require a state distribution licence.

Under the National Electricity Law, a person must not operate a distribution system that is connected to the national grid unless the person is registered as a distribution network service provider with AEMO, or holds a derogation or is exempted by the AER.³

Unless the distribution system is large, the operator of a Solar PV System that wished to distribute or convey the electric energy to other premises would usually seek an exemption from the AER.

The AER NSP Registration Exemption Guideline is published by the Australian Energy Regulator and outlines which network activities are deemed exempt from the requirement to be register with AEMO, and which activities must be registered with the AER for exemption. It also sets the conditions for all the exemption classes pre-defined by the AER.

3.2 Question: What are the types of exemptions available to the Operator of a Solar PV System who wishes to distribute electricity using a privately owned network?

Answer: Currently there is no exemption class which is specific to solar powered networks. The AER NSP Registration Exemption Guideline outlines the types of exemptions available for people or businesses that distribute electricity using a privately owned network and the conditions which apply to those exemptions. There are three categories of exemption, deemed, registrable and individual. Some deemed or registrable exemptions could be applied in circumstances where the solar powered network operates within the boundaries of the site in which the System is located (for example a small commercial or residential building or a caravan park run on solar power). However, where there is no applicable deemed or registrable exemption, cor registrable exemption class, the Operator will need to apply for an individual exemption, or register with AEMO as a network service provider.

3.3 Question: What factors does the AER consider in assessing an application for individual exemption?

Answer: At a minimum, the AER will require an exempt person to:

- (a) ensure that their network is safe;
- (b) have a dispute resolution mechanism;
- (c) ensure that network pricing is in accordance with strict controls; and
- (d) ensure that electricity meters comply with *National Measurement Act* 1960 (Cth) requirements for electricity meters installed from 1 January 2013 and other applicable Australian standards.

3.4 Question: Will the individual exemption be subject to any conditions?

Answer. Yes. The AER NSP Registration Exemption Guidelines set out the specific conditions which must be met for each exemption class. Compliance with all the relevant conditions set out in Guideline is a mandatory requirement for a network service provider exemption to be valid. Non-compliance may result in penalties in accordance with the provisions of the NEL.

¹ s13 of the Electricity Supply Act

² Clause 14 of the Electricity Supply (General) Regulation

³ s11 of the National Electricity Law

4. Regulation of retailing activities

4.1 Question: If the system generates more power than is used by the Operator of the System, who can the surplus power from the system be supplied to?

Answer: Power from the System that is not used by the Operator can be supplied to either:

- (a) a "Market Customer" (often called a retailer) that is registered as the financially responsible market participant for the connection point at which the System is connected to the Grid;
- (b) a "Market Small Generation Aggregator" that is registered as the financially responsible market participant for the connection point to the Grid;
- (c) AEMO, as the operator of the Grid, if the Operator of the System is itself registered as a "Market Small Generation Aggregator";
- (d) other third parties directly, if the Operator of the System holds a retailer authorisation from the Australian Energy Regulator (AER);
- (e) other third parties directly, if the Operator of the System fits within the standing or registrable exemptions from holding a retailer authorisation;
- (f) other third parties directly, if the Operator of the System obtains an individual exemption from the AER.

For most small Systems, if the supply of energy is directly to a third party outside the boundary of the site in which the System is located, it will be necessary to obtain an individual exemption from the AER.

4.2 Question: Are there any standing or registrable exemptions that could be used to support the retailing of power to third parties such as neighbours in the adjacent community?

Answer. If the energy is used within the same site as the site within which the System is located, then there are some standing or registrable exemptions that could be used, such as supply to occupants within the boundaries of a caravan park, residential park or retirement village that is owned by the Operator of the System. However, a sale beyond the boundaries of the site within which the System is located will usually not fit within the available standing or registrable exemption categories, and either a retailer authorisation or an individual exemption will be required to supply power directly to third party customers.

4.3 Question: Is there a specific exemption class which covers sales of energy from a Solar PV System?

Answer: No. There is currently no specific exemption class available for solar panel related sales of energy. Where a standing or registrable exemption class does not apply, the Operator will need to apply for an individual exemption or retailer authorisation.

4.4 Question: What are the types of factors that the AER will consider when assessing applications for individual exemptions for the sale of energy to residential customers?

Answer: The AER will consider a number of factors, including customer contract length. For example, whether it is a long term contract which locks customers in. It will also consider whether protections such as access to payment plans and disconnection arrangements are made available to small or vulnerable customers. Further, it is expected that any sale of energy to customers will be metered so that there is a direct relationship between a customer's consumption and the costs they are charged.

4.5 Question: Are there conditions which attach to a retail authorisation and/or an exemption?

Answer: Yes. Conditions attached to an individual exemption are generally applied in view of the type of customer that the authorisation or exemption holder is selling to. For example, if a person is proposing to sell to large industrial customers, the AER will likely impose less onerous or minimal conditions on the exemption, compared to small residential customers which require greater customer protections (for example, a requirement on the seller to offer hardship programs).

4.6 Question: Should I enter into a power purchase agreement with a customer?

Answer: Yes, it is advisable. A power purchase agreement (or PPA) entered into between the Operator and the person to whom it sells electric power governs the contractual rights of the parties to sell and to buy electricity. The terms of a PPA generally require the Operator to sell electric energy that it generates for a defined period of time (the contract term) with risk in the electric energy passing to the purchaser at the point at the supply point on the purchaser's premises. The purchaser will pay a charge for the supply of energy which it receives under the PPA and the charge will be based on the Operator's measurement of the purchaser's consumption of electric energy for the relevant period. The PPA will include provisions which address matters such as billing, late payments, permitted disconnection, default and termination, environmental credits (if applicable) and complaints and disputes processes.

4.7 Question: Are there any restrictions which apply to the sale of power to residents in a residential apartment building in New South Wales?

Answer. In circumstances where the Operator sells power to residents in a residential apartment building, the powers of the owners corporation and any residents to enter into a power purchase agreement with the operator will be governed by the by-laws of the owners corporation and by legislation. In New South Wales, there are certain restrictions which apply to a strata scheme during the period between the constitution of the owners corporation and ownership of the lots the subject of the strata scheme (referred to as the 'initial period'). For example, an owners corporation is not permitted to alter any common property or incur a debt, subject to certain parameters, during the initial period. It is necessary to consider whether the sale of energy to residents and the installation of the Solar PV System on common property might infringe these restrictions or require a special resolution of the owners corporation.

4.8 Question: What are my options if I wish to sell surplus energy into the Grid rather than directly to a third party?

Answer: You will need to either register as a Market Small Generation Aggregator or enter into a contract with a Retailer under which you sell electricity output from the System supply point to the Retailer who acts as the market customer for that supply point and on-sells the electricity output to the NEM.

4.9 Question: What does registration as a Market Small Generation Aggregator entitle me to?

Answer: A person who is registered as a "Market Small Generation Aggregator" will receive payment from AEMO for the spot price value of the energy exported from the small generating units that it registers. The NMI of the connection point for the small generating unit will be registered as representing generation contributed to the Grid by the Small Generation Aggregator.

4.10 Question: Do I need to pay any fees to register as a Market Small Generation Aggregator?

Answer: Yes. A Market Small Generation Aggregator is required to pay to AEMO an initial registration application fee, an annual registration fee, and also ancillary services charges in

the nature of those paid for larger generation units. It will also need to apply for and obtain Austraclear membership as AEMO makes payments via the Austraclear settlement system.

It would usually not be economic for the operator of a single Solar PV System to itself register as a Market Small Generation Aggregator, but a single Solar PV System operator could sell to a person that acted as a Market Small Generation Aggregator for multiple systems.

5. Grid Connection Rules

5.1 Question: What is the key regulatory provision which governs connection to the national grid?

Answer: Chapter 5 of the NER provides the regulatory framework for connection to a transmission network or a distribution network and access to the national grid. There is also state-based regulation which applies to the supply of electricity by a distribution network operator.

5.2 Question: Is there a particular section of the NER which deals with the connection of the Solar PV System to the Grid?

Answer: The connection of micro-embedded generation to the National Grid is regulated under Chapter 5A of the NER, in those jurisdictions which have adopted the National Energy Customer Framework (this includes NSW). Chapter 5A regulates the connection offer and acceptance process for micro-embedded generation between a network service provider and retail customers.

5.3 Question: How do I connect a micro-embedded generating unit under the NER?

Answer: There are various administrative, procedural and technical requirements to connect micro-embedded generation under the NER. An application to connect a micro-embedded generating unit (**micro EG unit**) to the network service provider's network must be in the appropriate form required by the relevant network service provider and may be made by a retail customer, retailer or person acting on behalf of the retail customer.

A network service provider must make a connection offer to a connection applicant within 10 business days after receiving a properly completed application for the service and any additional information reasonably required by the network service provider. The connection offer must be in accordance with the relevant model standing offer and must include the date of the offer, details of the connection service to be provided and a statement of the connection charges payable by the connection applicant. The connection offer must remain open for acceptance for 45 business days from the date of the offer.

6. Metering Rules

6.1 Question: What are the metering requirements for small solar PV generation that I should be aware of?

Answer: The NER require that, a metering installation for a small generating unit classified as a market generating unit must be a metering installation that is classified as a type 1, 2, 3 or 4 metering installation and be capable of recording interval energy data relevant to settlements. This will require that where the Operator has its own connection point and NMI, the metering installation must be capable of being remotely read (rather than visited by meter readers).

7. Network service and installation rules

7.1 Question: Are there industry standard rules which apply to the installation of the Solar PV System?

Answer: Yes. The Service and Installation Rules of New South Wales is the recognised industry standard outlining requirements of electrical distributors and best practice for customer electricity connection services and installations. The Service and Installation Rules outline requirements for the installation of small scale generation facilities which are connected to the distribution network via an inverter. The Service and Installation Rules also outline the requirements for installing alternative sources of supply including privately owned generating installations connected to the distribution system. Such installations are required to comply with all statutory and regulatory requirements specified in the Service and Installation Rules. The Service and Installation Rules state that the electricity distributor may disconnect the generating equipment if the equipment is dangerous to the integrity of the distribution system of adversely affects other customers.

7.2 Question: Is it lawful to disconnect from the local distributor's network?

Connection of premises to a distribution network is at the election of the occupant of the premises, and requires an application and agreement (usually in standard form) with the distribution network service provider.

If the premises require electric power for essential purposes such as lighting, mechanical ventilation and/or smoke detectors, then it may be necessary to demonstrate that electric power is available to the premises, before a certificate of occupancy can be issued for the premises.

Whilst connection of the premises to the local distributor's network is a common method of demonstrating the availability of electric power, for the purposes of obtaining the certificate of occupancy, demonstration of the adequacy of alternative electric power sources to provide those essential services is an alternative method of satisfying that requirement.

8. Regulation of power installers

8.1 Question: As the Operator, do I need to hold a building or electrical workers licence for the installation of the Solar PV System and associated electrical equipment to be carried out?

Answer. As a general statement, persons carrying out building works and electrical works are required to be licensed in New South Wales.

In circumstances where the Operator:

- (a) engages contractors to perform the installation work at premises in New South Wales; and
- (b) does not promise to undertake, coordinate or supervise works to install electrical equipment,

it will not be required to hold a licence on the basis that the contractor performing the works holds an endorsed contractor's licence, or a qualified supervisor certificate for the category of electrical wiring work required.

9. Planning permissions

9.1 Question: Do I need an environmental protection licence to generate, sell and distribute electricity from a solar power unit under 100kW?

Answer: No. The Operator is not required to hold an environmental protection licence for the Project as solar power is excluded by law as a scheduled activity.

9.2 Question: What planning permissions are required for small scale solar energy generation and distribution?

Answer: There is a distinction between development for the purpose of electricity generating works and solar energy systems on the one hand and electricity transmission and distribution on the other. Development for the purpose of an electricity transmission or distribution network may be carried out by or on behalf of an "*electricity supply authority*" or public authority "*without consent*" on any land. An electricity supply authority includes:

- (a) an "*energy services corporation*" within the meaning of the Energy Services Corporations Act 1995, and
- (b) a "transmission operator" or "distribution network service provider" (in each case within the meaning of the Electricity Supply Act 1995);

There are limited exceptions which may make certain small scale development for the purposes of a solar energy system, exempt or complying development. This will depend on the circumstances of the relevant Project and would need to be assessed on a case by case basis.

10. Rights to use third party land

10.1 Question: What type of arrangement do I need to have in place to install and access the System on third party owned land?

Answer: If some or all of the Equipment (wires, or panels and inverter) needs to be installed on Land which is not owned by the Operator, the Operator will enter into a contract with each relevant landowner to install the Equipment on the Land for a term. This contract, often referred to as an Access Agreement or AA, will be in the form of a licence to enter the Land, install the panels or other equipment (such as inverter, metering equipment and wiring), enter onto the Land to repair and maintain the Solar PV System, and enter onto the Land to remove the Solar PV System on termination of the AA. The AA should also allow the Operator rights of compensation or other damages for breach by the landowner of the Operator's right to use to the Land. Depending on the circumstances, there may or may not be a licence fee payable to use the Land.

11. Rights to use Council streets or other property

11.1 Question: How do I obtain access to Council streets and Council owned property to install and operate my private electricity network?

Answer: Local councils derive their powers from a range of local and state-based laws. The first step is to ensure that the relevant local Council has the power to grant access to the Operator for the purposes of installing and operating a private electricity network on Council owned land. Community land is used and managed in accordance with the plan of management applying to the land, any law permitting the use of the land for a specified purpose and the *Local Government Act 1993* (NSW). The core objectives which govern the management of community land will depend on how the community land is categorised (eg. sportsground, natural area, watercourse etc). Councils also have certain functions conferred upon it as a statutory corporation including the power to do all other things that bodies corporate may, by law, do and suffer that are necessary for, or incidental to, the exercise of its

functions. Furthermore, the installation of any service, (including an underground service) for the purposes of conveying electricity will be subject to the Service and Installation Rules of New South Wales.

11.2 Question: Can I use the power poles of the local network operator to run my wires?

Answer: Not without the requisite authorisation. A person is not permitted to interfere with the electrical poles and wires (electricity works) owned by a network operator or a retailer unless it is authorised to do so by the network operator or retailer concerned. Interference with electricity works is an indictable offence, so the Operator will need to ensure that it has authorisation from the relevant network operator or retailer to hang its wires from the electricity works.

12. Renewable energy certificates and obligations

12.1 Question: Will I be liable under the Renewable Energy Scheme to surrender certificates?

Answer: The Operator will most likely be a liable entity under the Commonwealth's Renewable Energy Scheme where it generates and sells electricity (even if the electricity is renewable) to an end user and the end user is not registered under the National Electricity Rules. In this scenario, the Operator will need to calculate its large-scale generation shortfall and its small-scale technology shortfall in accordance with the REC Act in order to determine its liability under the Scheme. Where the electricity purchased by the Occupier of the generation, in order to calculate the amount of electricity purchased by the Occupier of the premises, the amount of energy acquired is deemed to be the amount of metered electricity at the point on which the contractual arrangement is based.

12.2 Question: Can I create RECs from the operation of the System?

Answer: Most likely, yes. SRECs may be created in relation to small generation units installed on or after 1 April 2001 provided the generation unit has a kW rating of no more than 100kW and generates no more than 250MWh of electricity each year. The owner of the small generation unit at the time that the right to create a certificate or certificates arises in relation to the small generation unit is entitled to create the certificate or certificates.

13. Equipment ownership and title issues

13.1 Question: What is the most appropriate form of tenure to protect my proprietary interests in the System where it is located on third party owned land?

Answer: The most appropriate form of tenure for installation, access to and maintenance of a System which is situated on third party owned land or buildings is by licence. This is the most practical solution and the approach which is likely to find the greatest level of market acceptance. A licence will readily provide for a means of access to land and installation and maintenance of equipment on that land. There is no prescribed form of a licence.

A disadvantage is that a licence is not an interest in land, is not registrable on title to land and is not capable of supporting a caveat. It therefore is not binding on future owners, or other persons with an interest in the land such as mortgagees or lessees. If the ownership or possession of the land changed from the person that granted the licence, a new licence will need to be obtained from the new owner or occupant, and if that is refused the equipment will need to be removed.

Whilst it is possible to take a lease of land, which is registrable and enforceable against future owners and mortgagees, there are restrictions on the length of the lease of part of a block of land, unless it is part of a subdivision approved by the local council.

Care needs to be taken with third party land, because components which are affixed to the land or buildings (such as panel racks) can become part of the land and the operator can lose title to them. Also, if equipment is placed on third party land you may need to register a personal property interest in the equipment, or otherwise title to the equipment can be lost.

14. Glossary

AER means the Australian Energy Regulator.

AEMO means the Australian Energy Markets Operator Limited.

DNSP means a Distribution Network Service Provider who operates a power distribution network.

Financially Responsible Market Participant or **FRMP** means a person who is a registered participant in the NEM in relation to a connection point, and is financially liable to pay to AEMO the spot price and market charges for energy consumed from the NEM at that connection point, or receive from AEMO payments for energy exported into the NEM at that connection point.

Equipment means all of those parts of the Solar PV System which are not fixtures, such as solar photo-voltaic panels, inverters to convert the DC output of the panels to AC power for use in the Premises or Grid, and metering systems, assuming that each of these are readily removable.

Grid Arrangements means the National Electricity Rules (made under the National Electricity Law) and the Grid Connection Agreements.

Grid Connection Agreement means the agreement between the Operator and the person responsible for the network or connection point to which the System is connected.

Installation and Access Agreement or **IAA** means the Installation & Access Agreement between the Operator and the Landowner.

Land means the land and buildings on which the System is installed.

Landowner means the person that owns the Land upon which the System is installed.

Market Small Generation Aggregator or **MSGA** means a category of registration with the National Electricity Market that allows the registered participant to nominate small generation units (identified by NMI) for which the registered participant is credited with the payments for generation exported to the NEM.

National Energy Customer Framework or **NECF** means the national laws regulating the retailing and distribution of electricity and gas, which commenced in New South Wales on 1 July 2013)

National Electricity Law means the National Electricity Law set out in the Schedule to the National Electricity (South Australia) Act 1996, as adopted by the National Electricity (New South Wales) Act 1997 and known as the "National Electricity (NSW) Law".

National Grid or **Grid** means the interconnected power transmission and distribution networks in the jurisdictions in which the National Electricity Market operates.

NEM means the National Electricity Market, which operates in the participating jurisdictions of New South Wales, Victoria, Queensland, South Australia, Tasmania and the Australian Capital Territory.

NER means the National Electricity Rules (made under the National Electricity Law).

NMI means a National Metering Identifier, which is a unique number allocated by the relevant DNSP to each connection point on the distribution networks that make up the National Grid on which the NEM operates.

Occupier means the occupier of the Premises to which the Operator supplies power from the System.

Operator means the person that owns and operates the System.

Power Purchase Agreement or **PPA** means the power purchase agreement between the Operator and the Occupier, under which the Operator provides to the Occupier electric energy from the System.

Premises means the building or buildings occupied by the Occupier to which the Operator supplies power from the System.

Retailer means the person who on-sells to the Customer that power which is imported from the Grid (when the System is not generating sufficient power to meet all the needs of the Customer), and is financially responsible to the NEM for the power imported from the Grid.

Solar PV System or System means the Equipment as installed on the Land and, where the context requires, the System Documents for the Land.

Supply Documents means the agreements under which suppliers provide the Equipment, install the Equipment, and provide services such as metering.

System Documents means the IAA, the PPA, the Supply Documents, and the documents for the Grid Arrangements.