
From: Rod Woolley [REDACTED]
Sent: Monday, 14 September 2020 4:34 PM
To: Adjudication
Subject: FW: AA1000514 – Clean Energy Council – submission

ATTN: Ms Miriam Kolacz
Senior Analyst – Adjudication
Merger and Authorisation Review, ACCC

Dear Miriam,

Further to the initial submission below by Solar SG Pty Ltd (Solar SG) with respect to the ACCC's Draft Determination on the application for re-authorisation by the Clean Energy Council Ltd (CEC), our company wishes to make the following submission on the CEC's subsequent response to your Draft Determination.

Solar SG strongly supports the Commission's draft determination that the CEC Code should be re-authorised for no longer than two years to allow sufficient time to transition to the new jointly administered NETCC, and submits that the current anti-competitive arrangements favouring the CEC should be maintained no longer than absolutely necessary. In our view based on recent professional experience, a one-year transition would be more than sufficient to enable the required new arrangements and certainly not three years as sought by the CEC to extend its exclusive benefits.

On the question of a new appeals mechanism, Solar SG strongly opposes the CEC's most recent proposal, which broadly replicates its current unsatisfactory 'Code Review Panel' and fails to satisfy the Commission's draft determination for a genuinely independent adjudicator for industry participants seeking relief from (often arbitrary) decisions by the CEC. The CEC proposal also does not make clear that the mechanism would ensure not only that applicants are not inappropriately rejected from becoming signatories but also to *ensure that existing signatories are not inappropriately sanctioned as a result of alleged breaches*.

A key characteristic of any appeals body is that, as well as in practical effect, it must be perceived by industry to be genuinely independent of the administrative decision-maker. This key characteristic does not appear to be satisfied in the case of the CEC Code Review Panel, whose current chair is a prominent consumer rights activist. Consumer rights activism has its place in a just society, but not sitting in judgment on matters of appeal. We note that the Code Review Panel chair is also CEO of an organisation that made a submission to the Commission supporting the CEC's in this current inquiry. So much for 'independence'.

Two matters of detail in the CEC's submission are also unclear. It is not clear why the CEC seeks to reduce, from the current one month to 'within fifteen (15) days of the original Code Administrator decision,' the period within which an appellant must lodge an appeal (proposed clause 4.2.3). Decisions on appeal can be and often are matters of complex commercial law, open to interpretation and therefore misinterpretation by the code administrator, so a submission period of at least one month should remain.

The CEC proposal avoids mention of any requirement for the Code Review Panel to conduct hearings in person in the case of appeals, only that it will respond in writing to an appeal lodged in writing (proposed clause 4.2.4). Again, as matters on appeal typically can involve complex legal issues, in-person hearings should be given, in particular as the CEC also seeks to restrict the right of appeal (proposed clause 4.2.5) and exercise the power that '[a]ll decisions by the Code Review Panel are binding and there is no further right of appeal' (proposed clause 4.2.6).

It is also unclear how the CEC has quantified its proposed \$750 non-refundable fee in order to lodge an appeal,

other than that it 'has consulted with the Code Review Panel regarding an appropriate appeals mechanism' and 'the need to cover its costs as the fees for signatories have not increased since 2015' (CEC submission to draft determination, 3 September 2020, p.2). We note that an individual currently can lodge an appeal to the Victorian Civil and Administrative Tribunal for a fee of \$200.

Solar SG notes that the Commission's public consultation on the draft determination includes provision for a conference. Should such a conference be called, we would welcome the opportunity to provide further verbal submission.

Yours sincerely,

SOLAR SERVICE GROUP

Rod Woolley | Chairman

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From: Rod Woolley

Sent: Friday, 4 September 2020 4:52 PM

To: adjudication@acc.gov.au

Subject: AA1000514 – Clean Energy Council – submission

Importance: High

ATTN: Commissioner Stephen Ridgeway, ACCC.

Dear Commissioner Ridgeway,

Thank you for this opportunity to provide a brief submission supporting the ACCC's Draft Determination in respect of the application for re-authorisation lodged by the Clean Energy Council Limited (CEC).

Solar Service Group (Solar SG) companies are market leaders involved in the research and development, manufacture, wholesale and retail, and installation of residential solar energy storage and management systems across Australia. Trading inter alia as Sunbank Solar and SouthAus Solar, we are an Approved Solar Retailer under the CEC Code of Conduct and operate in all jurisdictions, including those whose government-sponsored schemes mandate CEC approval in order to participate. Solar SG's senior management have a combined 30 years' experience in the renewable energy industry.

At a personal level, for nine years I administered a similar industry accreditation and product approval regime on behalf of the Victorian Government, so bring some experience and relevant insights to the process.

Solar SG is a senior member of the Smart Energy Council (SEC), the most effective and broadly representative peak body of the solar and energy storage industry in Australia, and supports that body's separate submission in respect of your Draft Determination. Solar SG is not a member of the CEC.

Solar SG supports a voluntary code of conduct for industry participants, broadly to support the ongoing viability, safety and sustainability of the solar and storage industry, but submits that the CEC Code, in its current application, has become blatantly anti-competitive and not fit for its original purpose. Solar SG thus welcomes the advent of the New Energy Technology Consumer Code (NETCC) to be administered jointly by representatives from across the industry, including the SEC, and urges that the NETCC be introduced as soon as practicable.

A major failing of the CEC Code, as identified by the ACCC, is the absence in the code of a genuinely independent appeals process available to industry participants seeking relief from decisions (often of an arbitrary nature) by the CEC. This lack of natural justice, which would never be permitted in a government-administered accreditation process and should not continue to be permitted here, needs to be remedied not just to ensure that applicants are not inappropriately rejected from becoming signatories but also to *ensure that existing signatories are not inappropriately sanctioned as a result of alleged breaches of the code.*

In effect, and in contradiction of competition principles, the CEC is currently free to operate as ‘judge, jury and executioner’ in administering its code, with no equitable relief for injured parties, some of whom report being forced to devote considerable sums in legal protection that must be passed on to consumers to no public benefit, indeed to public detriment. For these reasons, Solar SG supports the ACCC’s draft determination that temporary re-authorisation of the CEC Code should be conditional on inclusion of an independent appeals process, and that the re-authorisation should be for a maximum of no more than two years to allow for orderly transition to the NETCC.

Should you seek further information from Solar SG in support of this submission, including information about potential independent appeals mechanisms, please do not hesitate to contact the company as below.

Yours sincerely,

SOLAR SERVICE GROUP

Rod Woolley | Chairman

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