

Decision on gas trading licence application and standard form contract

AGL Sales Pty Limited

30 May 2017

Economic Regulation Authority

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Decision

1. Pursuant to section 11WF of the *Energy Coordination Act 1994 (Act)*, the Economic Regulation Authority (**ERA**) approves the [standard form contract](#) for the sale of gas to small use customers¹ submitted by AGL Sales Pty Limited (**AGL**).
2. Pursuant to sections 11K and 11S of the Act, the ERA has granted [Gas Trading Licence No. 14](#) to AGL.
3. Subject to its terms and conditions, the licence authorises AGL to sell gas transported through a distribution system² to small use customers for 10 years (the maximum period allowed by section 11O of the Act).
4. As required by section 11T of the Act, the ERA will publish a notice of the grant of licence in the Government Gazette as soon as practicable.

Reasons

5. On 2 February 2017, AGL [applied](#) for a gas trading licence to sell gas to small use customers within the Coastal Supply Area.³
6. Section 11G of the Act requires a person to hold a gas trading licence to sell gas to small use customers that is transported through a distribution system.

Grant of licence

7. Under section 11S(1) of the Act, the ERA must grant a licence if it is satisfied that AGL has and is likely to retain, or will acquire within a reasonable timeframe, and is then likely to retain, the financial and technical resources to undertake the activities authorised by the licence.
8. The ERA engaged financial and technical consultants to examine AGL's financial and technical resources to undertake the activities to be authorised by a licence. Following the assessment of the application:
 - The financial consultant concluded that AGL complies with the financial requirements under section 11S(1) of the Act; and
 - The technical consultant concluded that AGL complies with the technical requirements under section 11S(1) of the Act.
9. Section 11K of the Act requires that the ERA must not grant a licence unless it is satisfied that it would not be contrary to the public interest to do so. Section 11H(3) of the Act, without limitation, specifies the matters the ERA must consider.

¹ Customers who consume less than 1 terajoule of gas per year.

² 'Distribution system' is defined in section 3 of the Act and includes a system of pipelines, mains, and gas service pipes, designed to operate at a pressure of less than 1.9 megapascals, for the transportation of gas to customers.

³ The 'Coastal Supply Area' stretches from Geraldton to Augusta and includes the Perth metropolitan area. The boundaries of this area are defined in map ERA-GAS-014, which is part of the licence.

10. From 7 February 2017 to 1 March 2017, the ERA sought public comment on AGL's licence application in accordance with the ERA's [Public Consultation Guidelines – Electricity, Gas and Water Licences and Electricity & Gas Standard Form Contracts \(Consultation Guidelines\)](#). The ERA received no submissions.
11. The ERA has considered the matters set out in section 11H(3) of the Act, as required by section 11K. Having regard to this, and the assessments of AGL's financial and technical resources to undertake the activities to be authorised by the licence, the ERA is satisfied that granting a gas trading licence to AGL would not be contrary to the public interest.

Approval of standard form contract

12. Section 11WE of the Act provides that the ERA must not grant, renew or approve a transfer of a licence unless the applicant has submitted a draft standard form contract, and the ERA has approved the standard form contract under which the applicant will supply gas to customers pursuant to the licence.
13. AGL provided its draft standard form contract for the supply of gas to small use customers with its licence application. The ERA provided feedback to AGL about the contract. In response to this feedback, AGL amended the draft contract.
14. In accordance with the Consultation Guidelines, the ERA undertook public consultation on the proposed standard form contract from 21 April 2017 to 12 May 2017. The ERA received one [submission](#), from a member of the public, Mr Stephen Stockwell.
15. Mr Stockwell raised two points, concerning clauses 4.5 and 7 of AGL's standard form contract:
 - 15.1 Clause 4.5 of the standard form contract contemplates that it will be used for door-to-door marketing. Mr Stockwell suggested that to the extent that AGL makes unsolicited approaches to customers, the contract needs to comply with the unsolicited consumer agreement provisions in the Australian Consumer Law (**ACL**). Mr Stockwell suggested that the contract is missing a small amount of additional material to comply with these ACL provisions.
 - 15.2 Mr Stockwell suggested that clause 7 of the standard form contract could be made clearer in explaining that it does not exclude, limit or modify any consumer guarantees that may be available to the customer under the ACL.
16. AGL amended its standard form contract to address Mr Stockwell's suggestions, including removing the door-to-door marketing provisions from the contract, as it will not be offered as an unsolicited consumer agreement, and referring to the ACL in clause 7.
17. Under section 11WF of the Act, the ERA must not approve a standard form contract if it considers that the contract will not meet the requirements of the *Energy Coordination (Customer Contracts) Regulations 2004*, will be inconsistent with the Act or any other written law, or will be inconsistent with any term, condition or provision of the licence.
18. The ERA has considered AGL's proposed gas standard form contract and is satisfied that it meets the requirements of section 11WF of the Act.