

19 May 2005

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Mr Adam Phillips
Licence Monitoring and Customer Protection Division
Economic Regulatory Authority
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Dear Adam

Submission on Draft Retail Licence

WMC Resources Ltd ("WMC") welcomes the opportunity to respond and comment on the draft electricity "Retail Licence" and the associated guidelines "Electricity Industry Guideline: Information for Licence Applicants" that are to be issued and administered by the Economic Regulatory Authority (ERA). Our response shall, where possible, refer to each document separately.

Draft Retail Licence

We have two major concerns. The first relates to the concept of "supplier of last resort" which is embodied in Part 5 of the Electricity Industry Act 2004 (WA) ("the Act"). This concept may be acceptable where the sale of electricity is the core business of a company. However, as a mining and resources company the sale and supply of power to third parties in our area of operation is not a core business. As a result, we would find this requirement unacceptable if it was ever invoked. We presume that the operation of Part 5 of the Act is supposed to have limited application to a "supplier" of our nature. However, we find little comfort for that view either in the Act, the guidelines or the draft licences. We would like to see confirmation of the intended operation of Part 5 of the Act.

The second concern is the lack of defined performance criteria until two years after the commencement of operation and after selection and nomination of an independent expert auditor. The defined performance criteria and scope of work needs to be defined far earlier and could be an addendum to the licence.

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Clause	Comment
1	<p>There are a number of definitions for sections that have not yet come into operation. Some indication of when this might happen would be worthwhile.</p> <p><i>Supply</i> This term is not defined. It should be defined, in line with the Act, as to mean “sell”.</p>
10	<p>It is unclear if “Renewal of licence” is referring to an annual fee referred to in clause 5 of the guidelines or the renewal of a licence issued for a period up to 15 years</p> <p>The licensee should not be required to pay a renewal application fee on an annual basis.</p>
16.2 16.3	<p>The requirement to determine and provide the Authority with details of an independent expert to carry out the performance audit should be done after the Authority has defined the scope of work and proposed performance criteria. This would allow for selection of the most suitable candidate. In other words, the Authority should provide the licensee with the proposed scope of work and performance criteria information prior to identifying the independent expert.</p>
16.6	<p>The Authority should provide a reason if it disapproves a nominated independent expert.</p>
17	<p>As mentioned above, the concept of a “supplier of last resort” is a major concern.</p> <p>As a <u>mining and mineral resources company</u> we are not in the market as a commercial retailer of electricity. We would be applying for a licence primarily for activities associated with continuance of our business along with continued supply to local communities and local businesses that we determine it is essential to continue to support. We would also continue to make third party sales, primarily as a result of sale of sections of our mining operations to other mining companies.</p> <p>We would therefore not want to be called upon as a “supplier of last resort”. The mining and resources industry will often support the interests of the community in which they operate but it would be outside their business objectives and not in the interests of our shareholders to develop an electricity market for the community at large.</p> <p>Deregulation of the electricity supply industry is commendable but changes to the regulatory system should not lead to the regulation of another industry, or result in the re-classification of an industry so that it may be deemed to be an electricity supply industry in the broader sense.</p>

Draft Electricity Application Guidelines (“the Guidelines”)

The Guidelines detail a considerable amount of information that must be provided by applicants. It also provides that less information be supplied for lower value licences. WMC presumes that it would fall into the category of a “lower value licence”. However, the reduced requirements are not defined but are to be provided for in liaison with the Authority. WMC would prefer that this uncertainty is remedied as we believe that this may lead to misinterpretation or misunderstanding particularly over time and with staff changes.

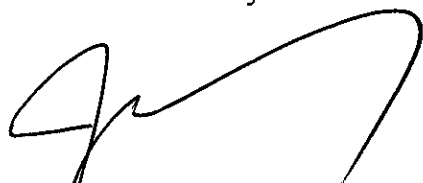
We are of the opinion that the details called for in the application are onerous .This is particularly so for a company that has a core business other than the electricity supply industry.

Clause	Comment
2	One of the roles of the Authority is to inform the Minister about any failures by a licensee to meet requirements of its licence. This is done by getting the licensee to arrange and pay for an independent performance audit. It is suggested that the audit should be carried out by the Authority.
5	An application fee is prescribed by the regulations for <u>renewal</u> of a licence. Clarification is sought if this is required on an annual basis, which seems unreasonable, or on expiry of the term of the licence which may be 15 years.
6	The extent of this information called for appears excessive. Some information falls under the jurisdiction of other Legislation and therefore seems superfluous.
6.1.8	The relevance of this is not clear.
6.1.9	This is an unacceptably broadly stated and onerous task. All licensees are likely to utilise another entity to provide staff and resources to a greater or lesser extent as the need arises. Such resources are likely to change regularly depending on the requirements, availability and performance.

We hope that this submission is of use to the Economic Regulatory Authority and look forward to discussing our submission for the draft retail licence and guidelines as they would apply to our circumstances and the broader industry.

Should you require clarification or any further information please contact Bill Head on (08) 94787209.

Yours faithfully



John Harvey
Principal Engineer – Energy Supply