



Our Reference: DMS# 3309243
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Dear Mr D'Coster

APPLICATION FOR AN ELECTRICITY RETAIL LICENCE: CLEAR ENERGY PTY LTD

The Economic Regulation Authority (Authority) has sought public comment on Clear Energy's application for an electricity retail licence.

Under Part 2 of the *Electricity Industry Act 2004* the Authority must not grant a licence unless the Authority is satisfied that it would not be contrary to the public interest. When considering the public interest, the Authority may take into account the following matters:

- environmental considerations;
- social welfare and equity considerations, including community service obligations;
- economic and regional development, including employment and investment growth;
- the interests of customers generally or of a class of customers;
- the interests of any licensee, or applicant for a licence, in respect of the area or areas to which the order, if made, would apply;
- the importance of competition in electricity industry markets; and
- the policy objectives of government in relation to the supply of electricity.

Synergy supports a competitive Western Australian energy sector and welcomes new entrants to that market. Naturally, new entrants should be subject to the same regulatory framework applicable to all licensed retailers.

Synergy is the designated by *Electricity Corporations Act 2005* as the sole retailer for the supply of electricity to franchise consumers (i.e. those who consume less than 50

MWh per annum) at a connection point on Western Power's electricity distribution network within the South West Interconnected System (**SWIS**).

In order to give effect to that designation, Synergy has a contractual right of access to each franchise consumer's connection point via an electricity transfer access contract with Western Power.

From the limited amount of information published with respect to the proponent's electricity retail licence application, it is unclear to Synergy how the proponent will effect the sale of electricity within SWIS, particularly to franchise consumers, consistent with the Western Australian regulatory framework.

In that regard, there are a number of matters that the Economic Regulation Authority will need to consider with respect to the proponent's retail licence application. Attachment 1 details the matters Synergy considers appropriate for the Authority to review.

Yours sincerely

SIMON THACKERAY
MANAGER REGULATORY

Attachment 1

Electricity Corporations Act 2005

Section 54(2) of the *Electricity Corporations Act 2005 (Act)* provides that a distribution licence does not authorise the Electricity Networks Corporation, or a subsidiary of that corporation, to supply services for the purpose of the supply of electricity to a prescribed customer by a person other than the Electricity Retail Corporation or a subsidiary of the Electricity Retail Corporation.

According to information published by the Authority in relation to the retail licence application it appears to be asserted that, in circumstances where the electricity sold is not transported by the Western Power network this restriction does not apply; for example, where electricity is generated on the premises and none is exported back into the SWIS.

However, information published by the Authority indicates that the applicant's electricity supply equipment will require Western Power to provide network services to facilitate network connection and possibly the export of electricity. For example:

- Clause 9.2(a) of the proponent's draft standard form contract states:
 - “(a) After the Electricity Supply Equipment is connected you may be able to sell any excess electricity generated by the Electricity Supply Equipment back to your Grid Retailer under their Renewable Energy Buyback Scheme.”
- Item 5 of the applicant's information sheet published by the Authority on 20 November 2009 states:
 - “5. Western Power authorised technician connects the Clear Energy meter to the Western Power network.”

It is important to note that the proposed arrangement appears to create commercial and technical risks for the customer. For example, it appears to place an onus on the customer to either:

1. ensure that they do not export electricity into the network; or
2. make alternative access and connection arrangements to export energy into the network, such as entering into a Renewable Energy Buyback Scheme¹.

In addition, section 54(2)(a) of the Act states a distribution licence does not authorise the Electricity Networks Corporation, or a subsidiary of that corporation, to supply services for the purpose of the supply of electricity to a prescribed customer by a person other than the Electricity Retail Corporation or a subsidiary of the Electricity Retail Corporation.

¹ The current Renewable Energy Buyback Scheme does not apply to a generation supply that is greater than 5 kW.

"Services" is defined under section 103 of the *Electricity Industry Act 2004* to mean:

- "(a) the conveyance of electricity and other services provided by means of network infrastructure facilities; and
- (b) services ancillary to such services."

Therefore, the Authority will need to be satisfied that the applicant's proposal is not dependant upon the provision of services by Western Power including:

- Connection services in relation to a physical connection to Western Power's distribution network, such as connecting generation works or meters to the network for the purposes of selling electricity.
- Entry or exit services in relation to the transfer of electricity to and from Western Power's distribution network.
- Use of system services.
- Common services, including standard metering services.

***Code of Conduct for the Supply of Electricity to Small Use Customers 2008
(Customer Service Code)***

The Authority will need to be satisfied that the applicant's supply arrangements (including the standard contract) comply with the Customer Service Code requirements. These include:

- Clause 4.2 shortened billing cycle.
- Clause 4.5 billing information.
- Clause 4.6 issue of a bill based on a distributor's (or its agents) reading of the bill.
- Clause 4.7 frequency of meter readings in accordance with clause 4.6(1)(a).
- Clause 4.11 meter testing.
- Clause 5.2 minimum payment methods.
- Clause 5.6 late payment fees.
- Clause 6.10 requirement for a hardship policy.

- Clause 7.7 life support.
- Clause 8.1 reconnection by a retailer.
- Clause 13.2 record keeping.

Electricity Industry (Customer Contract) Regulations 2005

The Authority will need to be satisfied that the applicant's standard contract complies with the regulations including regulation 10 - interference with network equipment and the liability of the parties thereof.

Electricity Networks Access Code 2004 (Access Code)

The Authority will need to be satisfied the applicant's supply arrangements are not inconsistent with, nor prejudice existing retailers' rights under their electricity transfer access contract with Western Power, made pursuant to the Access Code. Considerations in that regard include:

- Synergy's right of access to a franchise consumer's connection point within the SWIS. It would appear from published information that the proponent's electricity supply proposal involves connecting equipment to Western Power's network and hence to a connection point on Synergy's electricity transfer access contract. The regime does not currently allow multiple retailers on a single connection point.
- It is unclear how the proponent will facilitate a connection application under the Applications and Queuing Policy to connect equipment to a connection point that is not the subject of an electricity transfer access contract between it and Western Power.
- It is unclear whether the proponent will be subject to the Technical Rule obligations made pursuant to the Access Code. In addition, it is not clear whether it will be the proponent or its customer that will be liable for any damage that may be caused to network due to the operation of generation equipment nor how this liability will be enforced.

Electricity Industry Metering Code 2005 (Metering Code)

The Authority will need to be satisfied the applicant's supply arrangements are not inconsistent with the Metering Code. These include:

- Clause 1.7 - It is unclear how obligations applying to multiple users in respect of a connection point will be fulfilled.
- Clause 4.5 - Code participants must keep the registry accurate.

- Clause 5.1(3) - How will metering services be provided to the proponent that is consistent with the Access Code.
- Clause 5.3 - network operator must read the meters on its network in accordance with the model service level agreement (SLA).
- Clause 5.6 - network operator must provide energy data to the user after reading in accordance with the SLA.
- Clause 5.16 - providing data to the network operator data in accordance with the Communication Rules.
- Clause 5.17 - providing customers, in accordance with the code, with validated, estimated or substituted energy data including standing data.
- Clause 5.18 - notification to the network operator of a change in the energisation status of the metering point in accordance with the communication rules.
- Clause 5.19(1), (2), (3) - maintaining a record of address attributes, site attributes and customer attributes and notify the network operator of any changes.
- Clause 5.19(4) - notifying the network operator if there is a sensitive load at a customer's site.
- Clause 5.19(6) - notification of change in attributes due to standing data.
- Clause 5.21(6) - Code participant must not make a test or audit request that is inconsistent with any access arrangement or agreement.
- Clause 6.1(2) - a user must comply with specified rules, procedures and agreements associated with the access contract.
- Clause 7.5 - use energy data for the purpose for which it was disclosed or another purpose contemplated by the code.