

# Decision on Electricity Retail Licence Application - Clear Energy Pty Ltd

26 May 2010

Economic Regulation Authority



WESTERN AUSTRALIA

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## DECISION

1. Pursuant to sections 9 and 19 of the *Electricity Industry Act 2004 (Act)*, the Authority approves the grant of a retail licence to Clear Energy Pty Ltd (**Applicant**) to supply electricity, subject to, and in accordance with, the terms set out in the retail licence for a period of 15 years commencing 26 May 2010.
2. Under section 11 of the Act, the Authority may determine licence terms and conditions. The Authority has decided that, in addition to the standard retail licence terms and conditions, it will include the following clause in the Applicant's electricity retail licence (ERL14):

### **28 Information to be provided to prospective customers**

- 28.1 Prior to entering into a *standard form contract* or a *non standard contract* with a *customer*, the *licensee* must:
- (a) disclose to the *customer* any applicable tariffs, fees and charges associated with the *supply* of *electricity* authorised by this *licence*;
  - (b) advise the *customer* of the amount of *electricity* that is likely to be supplied to the *customer* by the *licensee*, and the likely cost of *supply* to the *customer* of that *electricity*;
  - (c) advise the *customer* that the obligation on the Electricity Retail Corporation (Synergy) to purchase *electricity supplied* to the *customer* by the *licensee* may be amended or removed at any time, and that this is likely to have financial implications for the *customer*; and
  - (d) advise the *customer* of any restrictions on the *customer's* ability to transfer the *supply* of *electricity* where the *customer* moves premises (including any applicable fees payable).
- 28.2 The information referred to in clause 28.1 must be provided to the *customer* both verbally and in writing.

## Background

On 6 August 2009, the Applicant submitted a licence application to the Authority to retail electricity to customers in the South West Interconnected System (**SWIS**) in Western Australia.

The licence application was subject to an initial public consultation period from 5 October 2009 to 26 October 2009. This was extended to 30 November 2009 following receipt of additional information from the Applicant to the Authority regarding the nature of the retail service.

Under the Act, the Authority cannot grant a retail licence until it approves a standard form contract. The Applicant's standard form contract was subject to a number of revisions by the Applicant as well as a public consultation process. This delayed the consideration of the Applicant's licence application. The Applicant's standard form contract was approved by the Authority on 4 May 2010.

## Preliminary Issue

A small use customer is defined in the Act as a customer who consumes not more than 160 MWh of electricity per annum. There are two categories of customers in this group – non-contestable and contestable market customers.

Section 54(2) of the *Electricity Corporations Act 2005* provides a restriction on the Electricity Networks Corporation (Western Power) from providing services for the purpose of the supply of electricity to a “prescribed customer” by a person other than the Electricity Retail Corporation (**Synergy**) or a subsidiary of the Electricity Retail Corporation. The effect of this prohibition is that a “prescribed customer” is a non-contestable customer.

The *Electricity Corporations (Prescribed Customers) Order 2007* defines a prescribed customer as a customer who consumes not more than 50MWh per annum, at each exit point, through which electricity is supplied to that customer. As such, the contestable market consists of customers who consume over 50MWh per annum.

The Applicant proposes to sell electricity to small use customers, both residential and small business, in the non-contestable market within the SWIS.

The Applicant proposes to supply a customer directly through a photovoltaic generator located on the roof of the customer’s house. The nature of this arrangement means that the Applicant does not rely on services from Western Power to supply electricity from the photovoltaic generator to the customer. If any additional electricity is required by the customer, the customer would be supplied by Synergy (who would require services from Western Power to supply electricity to the customer).

The nature of the supply arrangements, and the particular prohibition in the *Electricity Corporations Act 2005*, mean that the Applicant is not prohibited from supplying to a “prescribed customer”.

## REASONS

1. The retail licence application was made pursuant to section 10 of the Act.
2. The Authority engaged the Paxon Consulting Group to examine the financial capacity of the Applicant to undertake the activities authorised by the electricity retail licence. Following the assessment, the Paxon Consulting Group concluded that the Applicant has, and is likely to retain, the financial resources to undertake the activities to be authorised by the licence.
3. The Authority engaged Geoff Brown and Associates to examine the technical capacity of the Applicant to undertake activities authorised by the electricity retail licence. Following the assessment, Geoff Brown and Associates concluded that the Applicant has, and is likely to retain, the technical resources to undertake the activities authorised by the licence.
4. The Authority has considered the electricity retail licence application including the consultants’ assessments conducted for the purpose of the retail licence application and is satisfied that the Applicant meets the requirements of section 19(1) of the Act.
5. Section 9 of the Act states that the Authority must not exercise a power conferred by Division 3 of the Act (general licensing provisions) unless the Authority is satisfied

that it would not be contrary to the public interest to do so. In its consideration of the Application, the Authority considered the matters set out in section 8(5) of the Act as required by section 9(2).

6. A notice seeking public submissions on the retail licence application was published on the Authority's website on 5 October 2009. The period for submissions closed on 26 October 2009 and no submissions were received. On 6 November 2009, the Authority published an additional notice seeking public submissions on the licence application, as the Applicant had provided additional information regarding its proposed services. The period for submissions was due to close on 23 November 2009, but a notice published on 20 November 2009 provided an extension until 30 November 2009. During the second round of consultation, the Authority received four submissions.
7. The Applicant will be supplying electricity in the non-contestable market. To date, prescribed customers have not been supplied with electricity by a retailer other than Synergy or Horizon Power. Further, the State Government is yet to make a decision regarding full retail contestability in the non-contestable market. The current regulatory framework has not been thoroughly examined in terms of the customer protection provisions that would be required if the currently non-contestable market were to become contestable. As a result of this, the Authority is not satisfied that the grant of a retail licence with the standard terms and conditions would not be contrary to the public interest. The Authority has accordingly determined that some additional customer protection provisions are required.
8. The State Government regulates retail tariffs, fees and charges for non-contestable customers supplied by Synergy and Horizon Power. Tariffs, fees and charges of the Applicant will not be regulated by the State Government. The Authority does not have the power to regulate these tariffs, fees and charges. The *Code of Conduct for the Supply of Electricity to Small Use Customers (Code)* requires that information about tariffs, fees and charges be supplied at the time, or soon after, the contract is entered into. Given the absence of regulation of these costs, the Authority has determined that a licence condition be added that requires the Applicant to disclose to prospective customers any applicable tariffs, fees and charges prior to entering into a standard form or non-standard contract.
9. The Applicant will require that the customer purchase all of the electricity generated by the photovoltaic generator. Ordinarily a customer would only purchase the amount of electricity consumed at the property. Therefore, the cost to the customer may be significantly higher than the usual electricity consumption bill. The Authority has determined that a licence condition be included that requires that, prior to entering into a standard form or non-standard contract, the Applicant advise the customer of the amount of electricity that is likely to be generated by the renewable energy generator, and the likely associated costs, to ensure the customer is aware of the financial implication of the contract.
10. A customer generating electricity through a photovoltaic generator can sell excess electricity into the network. Regulation 6 of the *Electricity Industry (Licence Conditions) Regulations 2005*, requires that it is a condition of every retail licence and integrated regional licence held by a relevant corporation that the corporation must offer to purchase renewable source electricity, under an approved contract, from an eligible customer who wishes to sell such electricity to the corporation. As a customer is required to purchase all electricity generated by the Applicant's photovoltaic generator (regardless whether the customer consumes the electricity), it is likely to be a relevant consideration for a customer in determining whether to

enter into a contract with the Applicant, that Synergy is required to purchase from the customer the excess electricity generated by the photovoltaic generator. Given the risk that this type of scheme could be subject to change in the future, the Authority has determined that a licence condition be included requiring the Applicant to advise the customer that Synergy's obligation to purchase excess electricity may be amended or removed at any point in time, and the financial implications this may have for the customer.

11. A customer of the Applicant may not transfer a contract to new premises if the customer decides to relocate. The Applicant will impose significant costs on a customer for ending a contract. These costs will depend upon the number of years the contract has been in place. Given the model of service delivery, and the fact that these types of costs are significant, the Authority has determined that an additional licence condition be added requiring that the Applicant advise a customer that they cannot transfer their contract between premises and, in the event of a relocation, may be liable to pay any applicable termination fees.
12. The Code requires that retailers provide certain prescribed information to customers no later than or with the customer's first bill. The Code also provides some level of flexibility as to whether information is provided in writing or verbally. Given the significance of the additional licence conditions, the Authority requires that the additional information referred to above should be provided, by the Applicant, both verbally and in writing.
13. The Authority is satisfied that approval of an electricity retail licence to the Applicant, with the additional clause 28, would not be contrary to the public interest.