

Decision on Clear Energy's Standard Form Contract

4 May 2010

Economic Regulation Authority

 WESTERN AUSTRALIA

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For further information, contact:

Economic Regulation Authority
Perth, Western Australia
Phone: (08) 9213 1900

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DECISION

1. Pursuant to section 51 of the *Electricity Industry Act 2004 (Act)*, the Economic Regulation Authority (**Authority**) approves the standard form contract for the supply of electricity to small use customers as submitted by Clear Energy on 5 February 2010.

BACKGROUND

2. On 6 August 2009, Clear Energy submitted to the Authority an application for an electricity retail licence. Pursuant to section 49 of the Act, Clear Energy also submitted as part of its licence application, a draft of the standard form contract under which it proposed to sell electricity to small use customers. This decision only relates to the standard form contract.
3. Clear Energy's business model involves the installation of a renewable energy generator at a customer's premises. The renewable energy generator is supplied by, and remains the property of, Clear Energy. Clear Energy will sell any electricity generated by the renewable energy generator to the customer. The customer must pay Clear Energy for all the electricity generated, and may sell any excess electricity on to their Grid Retailer under the Renewable Energy Buyback Scheme (**REBS**).
4. Clear Energy's initial target customer base will be residential customers. Clear Energy has argued that it should be allowed to supply residential customers as electricity generated by its equipment is not transported by the Western Power network, but fed directly into the customer's home. The decision as to whether Clear Energy is entitled to supply electricity to prescribed customers is one that the Authority will consider as part of its licence approval process, not as part of this standard form contract approval process.
5. The standard form contract was made available for public consultation from 6 to 23 November 2009. Upon request of some interested parties, the Authority extended the public consultation deadline until 30 November 2009. The Authority received submissions from the following four stakeholders:
 - Office of Energy
 - Synergy
 - Western Australian Council of Social Service Inc
 - Landfill Gas and Power Pty Ltd
6. Many of the concerns raised by interested parties have been addressed by Clear Energy in the amended standard form contract.
7. The amended standard form contract was released for a second round of public consultation on 19 February 2010. The consultation period closed on 15 March 2010. The Authority received one submission from the Office of Energy.

REASONS

8. A number of interested parties expressed concern regarding the business model and associated standard form contract as proposed by Clear Energy. Those concerns primarily related to:
 - the absence of comprehensive pricing information in the contract;
 - a requirement that the customer purchases all electricity generated by Clear Energy's equipment;
 - concerns that eligibility criteria for schemes paying money to customers for excess electricity fed into the grid may change over time; and
 - the contractual ramifications for a customer when moving house.
9. Some of these concerns may be more appropriately addressed by way of licence conditions that would ensure disclosure of the relevant information to the customer before any contract is entered into.
10. Any decision to impose a licence condition, and the exact content of the licence condition, will be made as part of the Authority's consideration regarding the grant or refusal of an applicant's licence application. Therefore, this decision to approve Clear Energy's standard form contract does not address the potential imposition of licence conditions.
11. The Authority notes that interested parties raised two other issues that have not been addressed in the revised standard form contract. These issues relate to the imposition of interest charges and late payment fees; and the extent of the licensee's liability.
12. WACOSS has argued that Clear Energy should not be allowed to charge a customer interest in addition to a late payment fee in the event the customer does not pay a bill by the due date. The Authority is mindful that interest is a separate charge from a late payment fee. Interest is generally charged to reflect the time value of money, while late payment fees are charged to cover a provider's administrative costs associated with recovering the amount due.
13. The Office of Energy commented on the limits imposed on Clear Energy's liability in the standard form contract. As the *Electricity Industry (Customer Contracts) Regulations 2005* do not provide any guidance on issues of liability, the Authority has refrained from requiring the applicant to make any changes to its standard form contract.
14. The Authority finds that the standard form contract meets the requirements of the *Electricity Industry (Customer Contracts) Regulations 2005*, and is not inconsistent with other regulatory instruments such as the *Code of Conduct for the Supply of Electricity to Small Use Customers*.
15. The Authority approves the standard form contract as submitted by Clear Energy on 5 February 2010.

LYNDON ROWE
CHAIRMAN