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12 April 2016

Mr Stewart Jackson
Legal Counsel
Arc Energy Group Pty Ltd
Level 1, 120 Sussex Street
Sydney NSW 2000

By email: swjackson@iinet.net.au

Dear Mr Jackson

Arc Energy Group Pty Ltd application for individual exemption

I refer to Arc Energy Group Pty Ltd's (Arc Energy's) application of 27 January 2016 for an individual exemption under the National Energy Retail Law (Retail Law) to sell electricity to commercial, retail and residential premises at 11-15 Deane St and 20 George St, Burwood NSW (GM Tower site).

I am writing to inform you that that the Australian Energy Regulator (AER) has considered Arc Energy's application for an individual exemption and decided, on 8 April 2016, to grant the individual exemption in accordance with s. 110 of the Retail Law.

In accordance with the National Energy Retail Rules, the AER has published the applications on its website, and sought submissions from interested parties.¹ The AER did not receive any submissions in response to Arc Energy's application.

The AER has considered the policy principles relating to exempt selling in s. 114 of the Retail Law, being:

- regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers,
- exempt customers, should, as far as practicable, be afforded the right to a choice of retailer in the same way comparable retail customers in the same jurisdiction have that right, and
- exempt customers, should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and Rules.

¹ r. 155(3) and 156, National Energy Retail Rules (Retail Rules).

In making its decision, the AER is guided by the objective of the Retail Law,² the exempt seller factors,³ the customer related factors,⁴ and the assessment approach outlined in the AER's Exempt Selling Guideline.

The AER is satisfied that Arc Energy should be exempt from the requirement to hold a national retailer authorisation for the GM Tower site, having regard to the considerations outlined above. Arc Energy must contact the AER if it wishes to change its energy selling activities (including extending the sale of electricity to customers outside the GM Tower site), as it may not be covered by this exemption and may need to apply for an authorisation. Please also note that if Arc Energy is granted an authorisation, this exemption will no longer be valid.

Please note that the exemption is subject to your acceptance of the conditions set out at Appendix A of the attached Instrument of Exemption. Arc Energy must advise the AER in writing by **9 May 2016** whether it accepts these conditions.

If you have any further queries, or would like to discuss this further, please contact Susan Faulbaum on (08) 8213 3463 or Danielle Lettieri on (03) 9290 1449.

Yours sincerely



Sarah Proudfoot
General Manager, Retail Markets

² The national energy retail objective is to 'promote efficient investment in and efficient operation and use of energy services for the long term interests of energy consumers with respect to price, quality, safety, reliability and security of supply of energy' (s. 13, National Energy Retail Law (Retail Law)).

³ s. 115, Retail Law.

⁴ s. 116, Retail Law.

Instrument of Exemption

INDIVIDUAL EXEMPTION FROM THE REQUIREMENT TO HOLD A RETAILER AUTHORISATION

DATE OF ISSUE: 8 April 2016

FORM OF ENERGY: Electricity

Pursuant to section 110 of the National Energy Retail Law, the Australian Energy Regulator (AER) on 8 April 2016 decided to grant Arc Energy Group Pty Ltd (ABN 11 607 749 397) an exemption from the requirement to hold a retailer authorisation under section 88 of the National Energy Retail Law, subject to certain conditions (see Appendix A). This exemption applies only to the sale of electricity to the premises at 11-15 Deane St and 20 George St, Burwood NSW (GM Tower site).

Appendix A – Conditions

The following conditions apply under rule 153 of the National Energy Retail Rules to the sale of energy to exempt customers by exempt persons. These conditions are based on the retail customer protections provided under the National Energy Retail Law. Please note the following conditions apply to the sale of energy by the exempt seller to both residential and commercial customers unless indicated otherwise.

Condition 1 – Obligation to supply

- 1 An exempt person cannot refuse to sell energy to a customer who meets the criteria for this exemption class, except in accordance with relevant disconnection provisions.
- 2 Subject to condition 10, an exempt person can refuse to sell energy to an exempt customer where:
 - a. the outstanding amounts are owed under the exempt customer's ongoing energy account
 - b. the exempt customer's premises have been disconnected by the exempt person for a reason other than the failure to pay a bill and the exempt customer has not within 10 business days of disconnection rectified the matter that gave rise to the disconnection.

The exempt person must reconnect the premises and offer to sell energy once the matter is rectified.

Condition 2 – Information provision

- 1 The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency/agreement of the following:
 - a. any right of the exempt customer, under state or territory laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice
 - b. that the exempt person is not subject to all the obligations of an authorised retailer, and the exempt customer will not receive the same protections as it would if they were purchasing from an authorised retailer
 - c. the exempt customer's rights in relation to dispute resolution including:
 - i. the exempt person's procedures for handling disputes and complaints, and
 - ii. any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located
 - d. the conditions applicable to the exemption that the exempt person is operating under
 - e. the availability of relevant government or non-government energy rebates, concessions and relief schemes (this applies to residential customers only)
 - f. the forms of assistance available if the exempt customer is unable to pay energy bills due to financial difficulty, as well as the process the exempt customer should follow to seek these forms of assistance (this applies to residential customers only)
 - g. the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy
 - h. the flexible payment options that are available to the exempt customer in relation to the sale of energy, such as arrangements for payment by periodic instalments (bill smoothing) (this applies to residential customers only)
 - i. contact numbers in the event of a gas or electricity fault or emergency.

- 2 In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/residency/agreement, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.

Condition 3 - Billing and payment arrangements

- 1 An exempt person must ensure that bills are issued to each exempt customer at least once every three months.
- 2 An exempt person must offer at least two payment methods to an exempt customer. However, if an exempt person offers direct debit as one payment method, they must also offer at least two other payment methods to an exempt customer (that is, at least three methods in total). In each case, at least one of the payment methods offered must be able to be effected without internet access. For example:
 - a. in person
 - b. by telephone
 - c. by mail
 - d. by direct deposit into a bank account.
- 3 An exempt person must offer flexible energy payment options to an exempt customer who has identified themselves as being in financial difficulty. Flexible payment options may include arrangements for payment by periodic instalments having regard to:
 - a. the customer's capacity to pay,
 - b. any arrears owing by the customer, and
 - c. the customer's expected energy consumption needs over the following 12 month period, or the duration of their tenancy/residency/agreement if the tenancy/residency/agreement is less than 12 months.

(Condition 3.3. applies to residential customers only)

- 4 The requirements in paragraph 3 do not apply where the exempt customer has:
 - a. had two flexible payment arrangements cancelled by the exempt person in the previous 12 months due to non-payment, or
 - b. been convicted of an offence involving illegal use of energy in the previous two years.

(Condition 3.4 applies to residential customers only)

- 5 An exempt person must include the following particulars in a bill for an exempt customer:
 - a. The name of the exempt customer.
 - b. The address of the exempt customer's premises.
 - c. Date that the account was issued.
 - d. The identifier of the meter for the exempt customer's premises.
 - e. The pay-by date for the bill.
 - f. Date of the current meter reading or estimate, as applicable.

- g. The dates to which the meter reading or estimate applies (billing period).
- h. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
- i. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
- j. The amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt hours. For gas, consumption must be shown in cubic metres and mega joules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).
- k. Tariffs, fees and charges applicable to the exempt customer.
- l. The basis on which tariffs, fees and charges are calculated.
- m. Any amount deducted, credited or received under a government or non-government funded energy charge rebate, concession or relief scheme or under a payment arrangement (this applies to residential customers only)
- n. Details of the available payment methods.
- o. A telephone number for account inquiries and complaints.

Condition 4 - Estimation as basis for bills

- 1 An exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis, or apportioned, for any bill issued.
- 2 An exempt person cannot rely on an estimation of the meter value at the start of an energy supply arrangement with an exempt customer, or for the purpose of issuing a final bill to an exempt customer.
- 3 An exempt person may base an exempt customer's bill on an estimation of the exempt customer's consumption of energy where the exempt person is not able to reasonably or reliably base the bill on an actual meter reading.
- 4 Where an estimation is used as the basis for a exempt customer's bill, the estimation must be based on:
 - a. historical metering data for the exempt customer reasonably available to the exempt person, or
 - b. where this is not available, the average usage of energy by a comparable customer over the corresponding period.
- 5 If a customer's bill is based on an estimation, this must be clearly stated on the exempt customer's bill.

Condition 5 - Pay-by date

- 1 The pay-by date for a bill must not be less than 13 business days from the date on which the exempt person issues the bill.

Condition 6 - Receipts

- 1 An exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by:

- a. direct debit, or
 - b. credit card over the phone and the customer is provided with a receipt number.
- 2 An exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a rent payment but has not been separately identified on the rent receipt.

Condition 7 - Pricing

- 1 An exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity, or estimated quantity, of energy directly to the premises of the exempt customer.
- 2 An exempt person must provide notice to the exempt customer of any change in the exempt customer tariff as soon as practicable, and no later than the exempt customer's next bill.
- 3 An exempt person must not impose any charge on an exempt customer that could not be charged by the relevant local area retailer for new connections under a standard retail contract.⁵
- 4 An exempt person must limit any fee charged to a customer for late payment to a recovery of reasonably incurred costs by the exempt person as a result of the customer's late payment.⁶

Condition 8 – Undercharging and overcharging

- 1 Where an exempt customer has been undercharged, an exempt person can recover the amount undercharged subject to the following:
 - a. Where the undercharging was not the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to recovering the amount undercharged in the 9 months before the date on which the customer is notified of the undercharging.
 - b. The exempt person cannot charge interest on the undercharged amount.
 - c. The exempt person must offer the exempt customer time to pay the undercharged amount by instalments, over a period nominated by the customer (up to 12 months, but no longer than the period of the undercharging).
- 2 Where an exempt customer has been overcharged, an exempt person must inform the customer within 10 business days after becoming aware of the overcharging and repay the amount overcharged subject to the following:
 - a. Where the amount overcharged is \$25 or more, the exempt person must refund the amount to the exempt customer if requested, or if no such request is made, credit the amount to the exempt customer's next bill. Where the exempt customer no longer purchases energy from the exempt person, the exempt person must use best endeavours to refund the amount within 10 business days.
 - b. Where the amount overcharged is less than \$25, the exempt person must credit that amount to the exempt customer's next bill.

⁵ For clarification, a "charge" includes, but is not limited to, account establishment fees, late payment fees, debt collection fees, service charges, and security deposits. The fees and charges allowable under a standard retail contract are governed by Division 6 of the National Energy Retail Rules (which sets out the requirements for charging a security deposit under a standard retail contract) and may also be governed by jurisdictional legislation.

⁶ For clarification, a late payment fee can only be charged where it has not been excluded by jurisdictional legislation.

- c. No interest is payable on the overcharged amount.
- d. Where the overcharging was the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to repaying the amount overcharged in the 12 months before the date on which the error was discovered.

Condition 9 - Payment difficulties and disconnection or cessation of supply

- 1 Where an exempt customer informs the exempt person that it is unable to pay energy bills due to financial difficulty, the exempt person must:
 - a. direct the exempt customer to the Australian government energy efficiency website or another information resource with energy efficiency advice, and
 - b. ensure that the exempt customer is aware of relevant government or non-government energy rebates, concessions and relief schemes, and
 - c. not charge the exempt customer a late payment fee, and
 - d. not charge the exempt customer a security deposit.

(Condition 9.1 applies to residential customers only).

- 2 Subject to Condition 10, an exempt person must not proceed with disconnection or cessation of energy supply to an exempt customer unless the following requirements have been met:
 - a. the exempt customer has requested disconnection, or
 - b. continuity of supply to the premises would be unsafe, or
 - c. the exempt customer's tenancy/residency/agreement has ended and the exempt customer is vacating the premises, or
 - d. the exempt customer has not paid a bill by the pay-by date or has not adhered to the terms of a payment plan, and:
 - i. following non-payment by the pay-by date, the exempt person has given the exempt customer a reminder notice requesting payment by a date at least 6 business days from the date of issue of the reminder notice, has offered the exempt customer more flexible payment terms to pay any amount outstanding and has restated the forms of assistance available if the non-payment is due to financial difficulty, and
 - ii. following non-payment by the date specified in the reminder notice, or the establishment of more flexible payment terms, the exempt person has given the exempt customer a disconnection warning notice informing the exempt customer that disconnection may occur if payment of the outstanding bill is not made by a date at least 6 business days from the date of issue of the warning notice, and
 - iii. the exempt person has, after issuing the disconnection warning notice, used its best endeavours to contact the customer in person or by telephone in connection with the failure to pay, and
 - iv. the exempt customer has, by the date specified in the disconnection warning notice, refused or failed to take any reasonable action towards settling the debt.

(Condition 9.2(d) applies to residential customers only).

- 3 Where an exempt customer is disconnected in accordance with paragraph 2(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer in person or by telephone prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.

- 4 This condition does not apply where state or territory tenancy legislation sets out the process and requirements for the disconnection or cessation of energy supply by the exempt person on the basis that they are a landlord.

Condition 10 - When disconnection or cessation of supply is prohibited

- 1 An exempt person must not disconnect or cease energy supply to an exempt customer's premises where:
 - a. a person residing at the exempt customer's premises requires life support equipment that depends on energy for its operation, or
 - b. an application has been made by or on behalf of the exempt customer for assistance to an organisation responsible for a rebate, concession or relief available under any government or non-government funded energy charge rebate, concession or relief scheme and a decision on the application has not been made, or
 - c. the exempt customer has made a complaint directly related to the proposed reason for disconnection or cessation of supply, to the exempt person, the energy Ombudsman or another relevant external dispute resolution body and the complaint remains unresolved, or
 - d. the disconnection or cessation of supply would occur on:
 - i. a business day before 8am or after 3pm, or
 - ii. a Friday or the day before a public holiday, or
 - iii. a weekend or a public holiday, or
 - iv. the days between 20 December and 31 December (inclusive) in any year.
- 2 For electricity, the exempt person must contact its distributor to ask whether disconnection of a retail customer in the relevant jurisdiction would be prohibited on that day due to extreme weather conditions. Where the distributor confirms that the disconnection of a retail customer would be prohibited on that day, the exempt person must not disconnect the exempt customer's premises.
- 3 This condition does not apply where the exempt customer has requested disconnection.
- 4 This condition does not apply where the energy supply agreement between the exempt person and exempt customer has been terminated.

Condition 11 - Reconnection of supply

- 1 Where an exempt person has arranged for the disconnection of an exempt customer's premises and the exempt customer has within 10 business days of the disconnection:
 - a. if relevant, rectified the matter that led to the disconnection, and
 - b. made a request for reconnection, and
 - c. paid any charge for reconnection,the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable, and no later than two days from when the request was made.

Condition 12 - Concessions and rebates

- 1 Where an exempt customer is eligible to receive a government or non-government energy rebate, concession or assistance under a relief scheme, the exempt person must not hinder an exempt customer's attempts to establish eligibility.
- 2 If the government or non-government energy rebate, concession or assistance under a relief scheme can only be claimed by the exempt person on behalf of the eligible exempt customer, then, assuming there is no legal impediment, the exempt person must make

that claim and, if successful, must apply the rebate, concession or assistance to the exempt customer's bill.

Condition 13 - Choice of retailer

- 1 Where an exempt customer is eligible under state or territory legislation to purchase energy from a retailer of their choice, the exempt person must not do anything to discourage or prevent them from exercising this choice, whether by:
 - a. requiring the exempt customer to waive their ability to choose a retailer;
 - b. unreasonably hindering their efforts to find another retailer; or
 - c. unreasonably hindering any metering or network changes required to enable choice of retailer.

Condition 13A – Metering arrangements

1. The exempt person must ensure that the metering arrangements of the embedded network are configured in a manner that allows the exempt customer to change their energy retailer and/or metering provider without infrastructure cost to the customer.

Condition 14 - Contact details

- 1 An exempt person must provide a means of contact for account inquiries and complaints that can be readily accessed by exempt customers. Where a telephone number is provided, the charge for this call must be no more than the cost of a local call.

Condition 15 - Dispute resolution

- 1 In the event of a dispute concerning the sale of energy to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal if the customer is a tenant, the exempt person must:
 - a. make reasonable endeavours to resolve the dispute, and
 - b. advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located, if applicable.

Condition 16 - Life support customers

(Condition 16 applies to residential customers only)

- 1 Where an exempt customer provides an exempt person with confirmation from a registered medical practitioner that a person residing at the exempt customer's premises requires life support equipment, the exempt person must:
 - a. advise the person whose embedded distribution network the sale of energy is occurring within (if different from the exempt person) that a person residing at the premises requires life support equipment, and
 - b. advise the exempt person's authorised retailer and distributor that a person residing at the premises requires life support equipment, and
 - c. provide the exempt person's authorised retailer and distributor with any relevant information about the premises for the purposes of updating their records and registers.
- 2 An exempt person must maintain records of any exempt customers who have life support equipment that depends on energy for its operation on their premises.

Condition 17 - Continuity of supply

- 1 An exempt person must notify the exempt customers and the AER immediately if they are (or expect to be) disconnected, or there is any likelihood that they will be unable to continue selling energy.

Condition 18 – Termination of energy supply agreement

- 1 An energy supply agreement between the exempt person and an exempt customer will terminate:
 - a. on a date agreed by the exempt person and exempt customer, or
 - b. five business days (or a different time agreed by the exempt person and exempt customer) from the date when the exempt customer gives the exempt person a termination notice, or
 - c. at the conclusion of the exempt customer's lease for, or occupancy of, the premises to which the energy is supplied, or
 - d. when the exempt customer starts receiving energy retail services from a different retailer or exempt person, or
 - e. when a different exempt customer starts receiving customer retail services for the premises, or
 - f. at the end of a period of 10 business days commencing on the day the exempt customer's premises are disconnected, where the conditions for reconnection have not been met.
- 2 Termination of an arrangement to supply energy does not affect any rights or obligations that have already accrued under the agreement.

Condition 19 - Maintaining records

- 1 An exempt person must maintain records of the following for each of its exempt customers:
 - a. The name of the exempt customer.
 - b. The address of the exempt customer's premises.
 - c. The identifier of the meter for the exempt customer's premises (if applicable).
 - d. The date that the customer account was created.
 - e. Copies of any bills issued for the previous 12 months.
 - f. The date of the most recent meter read for the customer (if applicable).
 - g. The basis for determining any estimates of consumption for the purpose of billing where a meter read could not be obtained.

