

3 December 2010

Mr Tom Leuner  
General Manager, Markets Branch  
Australian Energy Regulator GPO Box 520  
Melbourne VIC 3000

By email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

Dear Mr Leuner,

**AER Retail Authorisation Guideline (November 2010), Consultation Paper and Response to Submissions (November 2010)**

The Consumer Utilities Advocacy Centre Ltd (CUAC) is an independent consumer advocacy organisation. It was established to ensure the representation of Victorian consumers in policy and regulatory debates on electricity, gas and water. In informing these debates, CUAC monitors grass roots consumer utilities issues with particular regard to low income, disadvantaged and rural consumers.

We welcome the opportunity to respond to the AER's Retail Authorisation Guideline November 2010 ("Guideline") and the Consultation Paper and Response to Submissions November 2010 ("Consultation Paper"). We are pleased to see that the AER has incorporated in its Guideline and Consultation Paper, suggestions which CUAC had made in its submission to the March 2010 Retail Authorisation Guideline ("March Guideline") and Issues Paper ("Issues Paper"). There are, however, two areas which we wish to comment on further.

**Jurisdictional or technical regulation**

The AER's inability to assess whether an applicant for retailer authorisation, is able to comply with jurisdictional obligations, is a serious flaw of the National Energy Customer Framework (NECF). An applicant should be assessed on its ability to meet national as well as jurisdictional obligations in the supply of an essential service. The AER has stated it would seek confirmation from jurisdictional and technical regulators that an applicant is able to meet jurisdictional and technical requirements, and obtain feedback from them about the applicant's compliance history. We are, nevertheless, concerned

that this process would result in inappropriate applicants being issued with authorisations. In situations, for example, where the applicant is “new” to the retail energy market, there would not be any compliance history to examine.

CUAC will raise this issue with the Victorian government during the consultation process for the implementation of the NECF. We will also raise the need to ensure that there is effective ongoing enforcement of jurisdictional obligations. The AER has no enforcement role over matters administered by jurisdictional regulators. Therefore, jurisdictional regulators need to continue to perform their monitoring and compliance roles effectively in relation to jurisdictional obligations and be adequately resourced to do so.

### **Suitability criterion**

Under the Guideline, an applicant has to provide details of “any material failure to comply with regulatory requirements, laws or other obligations over the previous 10 years, including all circumstances that resulted in an infringement notice or other enforcement action (including undertakings).”<sup>1</sup> The wording is different from the March Guideline which referred to “any failure to comply...” and “Details of any enforcement action or enforceable undertaking.”<sup>2</sup>

We recommend that the AER provide guidance as to what it means by “material failure to comply with regulatory requirements.” In its 2009 regulatory audit of AGL, the Essential Services Commission of Victoria (ESCV) found that AGL was not in compliance with its licence obligation to report performance indicators both accurately and reliably and that AGL was in significant non-compliance with one obligation in each of its Retail Licences, six obligations in the Energy Retail Code, four in the Marketing Code of Conduct and one in the Energy Price and Product Disclosure Guideline. AGL had to provide an undertaking to the ESCV in response to the regulatory audit.<sup>3</sup> Would the AER, for instance, consider this as a “material failure to comply with regulatory requirements”?

### **Typo-errors**

There appears to be missing words at the bottom of pages 12 and 16 of the Guideline.

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<sup>1</sup> AER, retailer Authorisation guideline (November 2010), at 19 (clause 1.1).

<sup>2</sup> AER, Retailer Authorisation Guideline (March 2010), at 18-19 (clause 1).

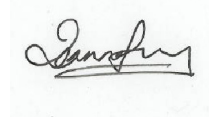
<sup>3</sup> See documents on the ESC’s website:

<http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Audit+Reports/Summary+audit+report+-+AGL+Energy+Limited/Summary+audit+report+-+AGL+Energy+Limited.htm>

Thank you for the opportunity to comment on the Guideline and Consultation Paper. If you have any queries, please contact the undersigned.



Jo Benvenuti  
Executive Officer



Deanna Foong  
Senior Policy Officer

cc: Ms Anne Pearson, Senior Director, Australian Energy Market Commission