

25 June 2012

Ms Sarah Proudfoot
General Manager, Retail Markets Branch
Australian Energy Regulator

By email: AERInquiry@aer.gov.au

Dear Ms Proudfoot

WINenergy Retail Pty Ltd Application for Electricity Retailer Authorisation

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 provide a submission to the AER’s consideration of WINenergy Retail Pty Ltd’s Application for Electricity Retailer Authorisation (“Application”). We note that of late, there have been quite a number of applicants seeking retailer authorisation under the National Energy Retail Law (NERL), some of which are from exempt sellers of energy. With the delay in the implementation of the National Energy Customer Framework (NECF) in Victoria, we understand that a business seeking to retail energy in Victoria would need to obtain a licence from the Essential Services Commission (ESC).

CUAC has an interest in exempt selling and retailer authorisations; we have participated in the consultations involving the development of the AER Exempt Selling Guideline and Retailer Authorisation Guideline. From a consumer protection perspective, CUAC is of the view that it is appropriate that commercial businesses (particularly, specialist onsellors) selling energy obtain a retailer authorisation. This

would ensure that their small customers are covered by the provisions in the NERL, National Energy Retail Rules (NERR) and Regulations. We are not privy to the appendices to the Application; we have provided the comments below based on the document on the AER's website.

Nature and scope of operations proposed

We are of the view that section 1.7 of the Application is ambiguous as to whom WINenergy Retail intends to retail electricity. Section 1.7 states:

WINenergy Retail intends to retail electricity to large customers such as shopping centres, large commercial building or high rise towers. In some instance we will retail to buildings in which WINenergy operates an embedded electricity network.....We also intend to retail to franchised chain stores.

The first sentence in the above paragraph refers to "large customers". (There is also a reference to large customers in sections 2.14 and 2.17 of the Application). However, "shopping centres, commercial buildings and high rise towers", consist of a mix of residential and small business customers, as well as large customers. It is unclear whether WINenergy Retail's intent is to retail only to Owners Corporations of large buildings, instead of the small (individual) customers within these buildings. We think it is unlikely given the fact that there is a reference in the second sentence in the above paragraph to retailing to buildings "in which WINenergy operates an embedded network." We suggest that the AER clarify the specific intent of WINenergy Retail.

In the event that WINenergy Retail receives retailer authorisation, CUAC assumes that all small customers obtaining supply in "buildings in which WINenergy operates an embedded electricity network," would be protected by the NECF.

Details of other relevant retail experience

We have concerns as to whether WINenergy has relevant retail experience, for the reasons listed below:

1. Section 2.2 of the Application states that “WINenergy complies with all relevant state legislation, distribution codes and pricing policies as appropriate.....” We are not convinced that WINenergy is aware of what these are partly because their website lists codes and guidelines which are outdated. For example, the current Victorian Energy Retail Code is Version 10, May 2012; the current Victorian Electricity Distribution Code is Version 7, May 2012.
2. According to the Application, “customers are offered a broad range of payment options.” We note that WINenergy’s website does indicate a range of payment options.¹ However, CUAC has been in contact with two people who had no other option to pay except by direct debit. Also, one person mentioned that her bill was sent by email only though she would have preferred a hard copy.
3. Further the Application states that “customers are always offered choice and given the ability to opt out of the EN.” CUAC is aware, through a staff member that, customers may be informed about “choice” when they sign up with WINenergy, but it may be practically impossible to obtain supply from a licensed retailer. The staff member did not manage to switch as she was informed that it was not possible by the three large retailers she had contacted. WINenergy advised the staff member that she had to have her meter replaced and would still be billed network charges by WINenergy (and usage by the retailer of choice) if she switched. A complicated process discourages customers from switching.
4. In the Application, WINenergy stated that they “comply with industry disputation procedures”. It is unclear from the Application what this means. Do they, for example, comply with the Australian Standards on complaints handling?
5. We note that the Application states that “[p]ayment plans are provided for genuine hardship cases.” In our view, this is really the minimum form of

¹ <https://www.winenergy.com.au/payment>

assistance which anyone retailing energy should be providing to customers experiencing payment difficulties. The Application, however, does not address how WINenergy assesses “genuine hardship” or a customer’s capacity to pay in determining instalments amounts for payment plans.

6. The Application mentions that “[t]here is a formal disconnection procedure for non-payment.” However, we are not convinced that they currently understand what their disconnection obligations are from the information we have sighted. In writing this submission, we tried to access WINenergy’s Customer Charter on their website. We were, however, “denied access” to the relevant page on their website.² According to a previous version of their Customer Charter (Version 1.02, 2 February 2006) which we sighted around July 2011, the disconnection provisions therein do not, adhere to the Victorian Energy Retail Code even though it is stated that it does “follow the rules set out in the Energy Retail Code.” This suggests to us that, they will not be in a position to comply with the NERL disconnection provisions.
7. The Application provides that WINenergy “offer[s] customers a discount to the published tariffs of the local default retailer” and that they will “endeavour to beat the next genuine offer that the customer can get from a retailer.” We have previously mentioned the difficulty customers experience in obtaining an alternative offer from an authorised retailer. In light of this, the sentence about endeavouring to beat the next genuine offer is not very meaningful.

Many customers will generally not know what the published tariff of the local default retailer is or where to source this information or assess what may be an appropriate offer. The actual tariff needs to be published on WINenergy’s website so that customers can understand how much they will be paying with the discount and how they can compare this offer to establish a genuine 10% discount.

We are also concerned with misleading statements about prices. For example, there was a reference to “4% government charges” in a WINenergy customer

² <https://www.winenergy.com.au/node/50>

brochure that had been sent to residents in a residential development last year. The “4% government charges” constituted part of what a customer had to pay towards supply.

Compliance strategy

Understanding of obligations

Section 2.11.1 of the Application provides that “[t]here may be slight jurisdictional variations to the SA legislation that are yet to be formulated, but they will not impact on the core obligations.” CUAC disagrees with the statement. In Victoria, for example, a number of substantial derogations have been incorporated in the National Energy Retail Law (Victoria) Bill 2012, to ensure that Victorian consumers are not worse off in terms of customer protections in the transition to the National Energy Customer Framework. These derogations include: the smart meter related ones; inclusion of wrongful disconnection compensation; prohibition of late payment fees; continuation of the existing Victorian requirement for a hardship policy to have energy efficiency assistance options for hardship customers (i.e. free or subsidised home energy consumption audits and flexible options for purchase or supply of energy efficient appliances); a ban of disconnection for non payment of bills during extreme weather events etc.

The fact that WINenergy has stated that jurisdictional variations would not impact their core obligations is worrying. In CUAC’s view, it may demonstrate a lack of adequate understanding of the “Australian energy regulatory regime” and the protections extended to customers. Thus, we question whether WINenergy has the required “experience and knowledge” (referred to under section 2.11.2 of the Application). We are of the view that WINenergy and WINenergy Retail need to be aware of derogations in the jurisdictions in which they operate.

Approach to meeting obligations

With regard to billing systems, in particular, the reference to email bills and the “numerous payment options”, please refer to our comments above.

Conclusion

Currently small customers obtaining electricity supply from an exempt seller do not enjoy the same level of customer protections as customers obtaining supply from an authorised retailer. As a matter of principle, CUAC is keen for small customers obtaining supply in premises with an exempt network, to be covered by the whole suite of customer protections authorised retailers are obliged to offer.

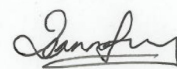
Our concern with the Application in its current form, is that WINenergy Retail has not demonstrated a comprehensive understanding of the NERL framework and the derogations (i.e. the jurisdiction-specific customer protections) that would apply to each jurisdiction in which it would be operating. Given this, we are not confident in the ability of WINenergy Retail to comply with the NERL. Prior to granting retailer authorisation, the AER needs to satisfy itself that WINenergy Retail is able to meet all the obligations which a retailer operating in the various jurisdictions is required to comply with.

Thank you for the opportunity to participate in the AER's consultation. If you have any queries on this submission, please contact the undersigned at (03) 9639 7600.

Yours sincerely,



Jo Benvenuti
Executive Officer



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