

30 April 2010

Mr Tom Leuner  
General Manager  
Markets Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

[AERinquiry@aer.gov.au](mailto:AERinquiry@aer.gov.au)



Dear Mr Leuner

**Re: Retailer Authorisation Guideline**

ENERGEX Limited (ENERGEX) welcomes the opportunity to respond to the AER's Issues Paper and Draft Retailer Authorisation Guideline (Draft Guideline) released as part of the AER's preliminary consultation process in the lead up to the introduction of the National Energy Customer Framework (NECF). ENERGEX provides this response as a Distribution Network Service Provider (DNSP) operating in South East Queensland.

*Conditions*

The Guidelines provide that if the AER grants an application the AER may impose conditions on a retailer authorisation relating to the satisfaction of the entry criteria. ENERGEX strongly supports the use of conditions and in particular, the precondition that a retailer is only authorised to sell energy to customers if credit support obligations under Chapter 6B of the National Energy Rules have been met. This precondition should be imposed across the board to all retailers and not just retailers with a certain credit rating.

Queensland has recently passed amendments to the *Electricity Act* to specifically include credit support as a condition of a retail authority, hence such a condition under the NECF regime would not be new to most retailers.

*Financial Resources Entry Criterion*

ENERGEX as a DNSP is especially interested in the AER's assessment of a retailer's satisfaction of financial resources entry criterion. In particular, one of the most important criteria which ENERGEX believes the AER should consider when assessing adequate financial resources is whether the retailer can demonstrate compliance with the credit support rules under the proposed Chapter 6B.

ENERGEX considers that the provision of credit support in favour of the relevant distributor is just as important as AEMO prudential requirements as

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ENERGEX considers that the provision of credit support in favour of the relevant distributor is just as important as AEMO prudential requirements as both contribute to the secure and reliable operation of the National Electricity Market.

As such, the Guideline should require that a retailer applying for authorisation has provided adequate credit support as per the credit support rules as a precondition to the authorisation being granted. By requiring initial credit support prior to a retailer authorisation being granted, the AER can be confident that the retailer has the ability to pay distribution use of system charges.

However, the following comments, raised by the AER in the Guideline, are of significant concern to ENERGEX:

*Our assessment of financial viability is a one-off entry test designed to satisfy us that an applicant's retailer authorisation application should be approved. It should not be relied upon as an indication of a retailer's ongoing financial viability or profitability.*

*It is not the AER's role to make ongoing financial assessments of a retailer's financial viability or provide comfort about the financial capacity of retailers that have commenced operations. Ongoing prudential assessments are undertaken by AEMO to ensure retailers have sufficient financial capacity to operate in the relevant **wholesale** markets.<sup>1</sup> [emphasis added]*

ENERGEX's concern has been fuelled by the recent retailer of last resort event and the inability of distributors to mitigate their losses together with the inadequate ongoing financial assessment of retailers. To avoid any such future disruption to customers and the market, ENERGEX strongly believes that it is the role of the AER, as part of its licensing role, to continually assess a retailer's financial viability, or at least address concerns raised by market participants.

ENERGEX disagrees with the AER's comment that AEMO will undertake ongoing prudential assessments. This is because AEMO's focus is on the wholesale market settlements only and does not include financial considerations outside of energy settlements (e.g. network charges). The ongoing financial viability of a retailer and its ability to fund network charges is a concern for distributors and any changes to the undiversifiable risks facing distributors would need to be reflected in its regulatory cost of capital.

#### *Revocation, transfer and surrender*

An application to transfer a retailer authority should be accompanied by a public notification process to ensure that impacted parties are appropriately notified and provided with an opportunity to respond to the proposed management of customers and settlement of accrued and prospective obligations (e.g. outstanding network charges).

The Guideline notes that the AER may revoke a retailer authorisation if the retailer has materially failed to meet the obligations of being a retailer under applicable energy legislation, and the AER has a reasonable apprehension that the retailer will not be able to meet the obligations of a retailer in the future.<sup>2</sup>

<sup>1</sup> Draft Retailer Authorisation Guideline – page 15

<sup>2</sup> Draft Retailer Authorisation Guideline – page 22



ENERGEX notes that the only way that the AER can reasonably determine that a retailer has materially failed to pay network charges or meet credit support obligations, is if a distributor notifies the AER of such a situation. This is particularly so if the AER will not be undertaking ongoing financial assessments of a retailer's viability. Therefore, to protect distributors and other market participants, ENERGEX requests that the AER provide guidance on how and when market participants can approach the AER with concerns over a retailer's ability to meet their obligations under applicable energy legislation.

And finally, ENERGEX believes that once the AER has commenced the revocation process that the retailer should be prevented from acquiring and transferring new customers. This could be facilitated by:

- Notification by the AER to the relevant distributor/s that a revocation process has commenced; and
- The AER authorises the distributor/s to commence objecting to customer transfers by the retailer, supported by appropriate objection codes in MSATs.

ENERGEX looks forward to further participating in future consultations around the development of the AER's Retailer Authorisation Guideline, but in the meantime should you have any questions regarding this submission, please do not hesitate to contact Mick Ryan, Regulation Manager, Operations on (07) 3223 1788.

Yours sincerely



Kevin Kehl  
Executive General Manager Strategy & Regulation