

27 April 2010

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

By email: AERInquiry@aer.gov.au

Dear Mr Leuner

Re: Australian Energy Regulator Retailer Authorisation Guidelines Issues Paper

Thank you for the opportunity to provide comment on the Australian Energy Regulator (AER)'s *Retailer Authorisation Guidelines Issues Paper* (the Issues Paper).

Our comments address the entry criteria outlined in the *Draft Retailer Authorisation Guideline* and the 'Issues subsequent to the grant of a retailer authorisation' (point 5 of the Issues Paper).

Entry criteria

EWOV supports the AER's decision to maintain rigorous entry criteria for retailers applying for authorisation and is pleased that membership in a recognised energy industry ombudsman scheme plays an important role both under the organisational and the financial resources criteria.

Under section 408 of the National Energy Retail Law, membership of an energy ombudsman scheme is a requirement for both retailers and distributors and it is good to see that applicants have to include evidence of any steps taken to obtain such membership. The Essential Services Commission's *Guidance notes for applications for electricity licences and the transfer of existing electricity licences* have similar requirements and encourage applicants to consult with EWOV. EWOV is happy to assist applicants in obtaining their membership.

Issues subsequent to the grant of a retailer authorisation

One of the strengths of an authorisation scheme is that a participant who behaves inappropriately can be excluded from the market through the revocation of their authorisation. While revocation of a licence should be a last resort, EWOV supports failure to participate in the relevant energy ombudsman scheme as a ground for revocation, as the scheme can only fulfil its function efficiently and successfully with participation of the members.

In any transfer, surrender or revocation situation, the most important aspect from EWOV's perspective is how it will affect existing customers' rights and responsibilities and who will be responsible for dealing with complaints. Customers

can face various difficulties in the period after a transfer, surrender or revocation because they suddenly have to deal with a new retailer. For example, they might have been on a payment plan under the hardship program with the previous retailer and now find they are expected to pay in full or they might receive a final bill that they wish to dispute. It is crucial that customers in this situation still have access to an independent dispute resolution scheme.

The *Draft Retailer Authorisation Guideline* sets out that transfer applicants and surrender applicants must demonstrate that customers will not be adversely affected by these events. Customers may be negatively affected if it is not clear who will deal with current complaints, the transferor or transferee, the surrendering retailer or a new retailer. The draft suggests that the conditions which the AER can impose on an energy retailer in a revocation, transfer or surrender situation can include ‘*continue to abide by requirements of energy laws, including obligations associated with participation in state/territory ombudsman schemes*’. Given the difficulties existing customers may face in any of these events, EWOV suggests that the AER consider clarifying what exactly this entails and whether there should be a set timeframe for ongoing participation in an ombudsman scheme. Clause 10.1 of EWOV’s constitution allows members to withdraw from EWOV by giving not less than 12 months notice to that effect. This timeframe could also be appropriate in the event of the revocation or surrender of an authorisation.

If the surrendering retailer retains all customer information such as billing history it will be better placed to deal with existing complaints than the new retailer but this would also require the surrendering retailer to have staff to deal with the complaints. The same problem presents itself in the event a retailer’s authorisation is revoked. Customers will have to be transferred to a new retailer but who will deal with existing complaints? EWOV believes it would be useful for the AER to require applicants to develop procedures for customers to take action against them following the revocation or surrender of the retailer authorisation and to ensure that customers continue to have access to an external dispute resolution scheme.

Where an authorisation is transferred the situation may be different in that customer information would be made available to the transferee and the transferee would therefore be in a position to deal with complaints that arise. Clause 8.3 of EWOV’s constitution provides the option to transfer scheme membership where a licence has been transferred.

We trust the above comments are helpful. Should you require further information or have any queries, please contact Kerrie Milburn-Clark, Manager Public Affairs and Policy, on (03) 9649 7599 or at Kerrie.Milburn-Clark@ewov.com.au.

Yours sincerely



Fiona McLeod
Energy and Water Ombudsman (Victoria)