

3 May 2010

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

By email: AERInquiry@aer.gov.au

Dear Mr Leuner

Retailer authorisation guideline

Integral Energy welcomes the opportunity to comment on the draft retailer authorisation guideline (the Draft Guideline) and accompanying issues paper released by the AER in March 2010.

Integral Energy is the second largest state owned energy corporation in New South Wales, serving some of Australia's largest and fastest growing regional economies. It provides distribution network services to almost 860,000 customers or 2.1 million people in households and businesses spanning 24,500 kilometres in Greater Western Sydney, the Blue Mountains, the Illawarra and Southern Highlands.

Integral Energy notes that this preliminary consultation is based on the AER assuming responsibility for issuing and revoking retailer authorisations under the proposed National Energy Retail Law (NERL) and the National Energy Retail Rules (NERR) under the National Energy Customer Framework (NECF).

Integral Energy agrees that it is essential that the NECF contain effective mechanisms for:

- ensuring that prospective retailers have an adequate capacity to operate within the market — this includes their having appropriate suitability, organisational and technical capacity and financial resources to do so; and
- monitoring the risk of retailer failure and preventing or minimising any negative impact to customers, the market and other stakeholders should this occur — this should include withdrawing a retail authorisation promptly were this considered necessary in minimising that risk or impact.

In summary, Integral Energy supports the AER's proposal to conduct gateway reviews in relation to ensuring the former. However, it remains concerned that the NECF as a whole does not yet offer strong enough mechanisms regarding the latter.

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Financial capacity

In conducting gateway reviews, Integral Energy notes that it is important that the AER not only take into account AEMO's assessment of the applicant's ability to meet its wholesale trading financial obligations. It is also crucial that the AER assess the applicant's capacity to pay network charges and other retail operating costs.

Conducting a gateway test of a prospective retailer's capacity to pay network charges is complicated by the fact that, under the proposed Retail Support Rules, it will be up to distributors to decide whether to require credit support from particular retailers. It will therefore be important for the AER to find a way to assess those retailers whose distributors decide not to require such support from the outset.

The Draft Guideline proposes that the AER not conduct any ongoing monitoring of retailers' financial capacity to operate. At one level, this seems incongruous with the AER having an enforcement role under the National Electricity Law, National Electricity Rules and the proposed NERL and NERR. The key question is whether the combination of:

- AEMO's processes for ensuring that retailers maintain an ongoing financial capability in relation to their wholesale market exposure;
- the new credit support mechanisms proposed in the Retail Support Rules regarding retailers' ability to pay network charges; and
- the broader business regulatory regime (under the Corporations Act, for example),

are sufficient to protect customer, the market and other stakeholder (especially network business) interests.

Integral Energy submits that this is not an issue that the AER can answer alone. Rather, it should be addressed as part of finalising the broader NECF. For example, if the AER is not to conduct ongoing monitoring, this suggests that the credit support rules for the payment of network charges may need to be tightened in order to provide an appropriate level of confidence.

Importantly, whether retailer ongoing financial capacity is addressed via AER monitoring or other mechanisms, it remains essential that the AER has the ability to revoke retail authorisations swiftly should the circumstances make doing so appropriate. This is necessary to minimise the risk of a repetition of the recent default event concerning Jackgreen Energy for non-payment of network charges.

Surrender of retail authorisation

The Draft Guideline contemplates the potentially adverse consequences surrender of a retail authorisation could hold for retail customers. As such, it requires a retailer to demonstrate in its surrender application that there will be a continuity of supply for its customers and that they will not be otherwise adversely affected. A retailer can make this demonstration by showing that appropriate arrangements have been made for each customer including that they will be transferred to another retailer on the same or better terms and conditions as their contract with the retailer surrendering its retail authorisation.

Integral Energy notes that if a retailers' economic viability is deteriorating under the terms and conditions of its contracts with customers, it is unclear how transferring their customers to another retailer on better terms and conditions is achievable. This

concern is exacerbated by the proposal in the Draft Guideline that the date a surrender would have effect would be up to six months after the AER has decided to approve a surrender application. Should this be the case, a retailer could potentially become insolvent before the effective date of surrender and leave customers in a worse position.

Given the existence of full retail competition, it would appear unnecessary to require a retailer surrendering its retail authorisation to transfer their customers to another retailer on better terms and conditions. Accordingly, this requirement should be removed and the timeline for the surrender of a retail authorisation taking effect reduced.

Operational and technical capacity

Once a retail authorisation is granted, the retailer must be able to comply with the legislation, including reporting requirements prior to commencing business.

The Draft Guideline encourages potential applicants to have systems and processes in place that enable them to comply with all retailer obligations and monitor their performance and compliance. However, the Draft Guideline only requires the applicant to provide a compliance strategy rather than a compliance plan or systems at the time of its application for retail authorisation.

Having recognised that once authorised, a retailer must be able to comply with all retailer obligations and monitor their performance and compliance, it seems inconsistent that a retail authorisation be granted by the AER on the production of a compliance plan alone.

To ensure that an applicant doesn't incur unnecessary cost in its application for authorisation, Integral Energy submits that the AER include in retail authorisation, a condition that the retailer have in place a compliance plan and systems within a specified short period of its authorisation being granted.

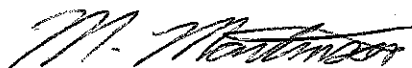
Transitional arrangements for existing retailers

Integral Energy notes that the Draft Guideline does not yet address the process of transitioning (the relevant provisions of) existing jurisdictional retail licences to national authorisations. It is assumed that this will be made clear in the Draft Guideline once the policy direction has been settled as part of the NECF. Integral Energy's preference is that there be a straightforward deeming process to ensure that existing retailers bear no additional costs or risks.

Integral Energy looks forward to participating in the further development of AER Guidelines under the National Energy Customer Framework for distribution and retail regulation.

If you have any questions with respect to this matter, please contact Mr Erik Beerden, Regulatory Affairs Manager, on telephone number (02) 9853 6904.

Yours faithfully



Michael Martinson
Manager Network Regulation