

Our Ref: 60457

Contact Officer: Susan Faulbaum

Contact Phone: 08 8213 3463

24 January 2017

Dear Mr Hague

Re: Ultium Energy Pty Ltd application for electricity retailer authorisation

I refer to your application of 8 November 2016 for an electricity retailer authorisation under the National Energy Retail Law (**Retail Law**) for Ultium Energy Pty Ltd (ACN 611 028 230) (**Ultium**).

On 24 January 2017, in accordance with section 92 of the Retail Law, the Australian Energy Regulator (**AER**) considered Ultium's application and decided to refuse it because it does not satisfy the entry criteria in section 90(1). Section 97(1) of the Retail Law states that if the AER decides to refuse an application for a retailer authorisation, it must, as soon as practicable, give the applicant a notice stating the decision, the reasons for the decision and indicating whether, and (if so), how the entry criteria were not satisfied or will not be satisfied. Accordingly, this correspondence is the AER's notice for the purposes of section 97(1) of the Retail Law.

**Background**

In July 2016 Ultium submitted an application for a retailer authorisation. After providing feedback and seeking further information, the AER published the application on 25 October 2016. Three days after publishing Ultium's application and commencing the public consultation, Ultium advised the AER that its directorship had changed. The AER considered this was a material change and asked Ultium to withdraw the application and submit a new application detailing the revised ownership structure. Ultium submitted a revised application on 7 November 2016 which the AER published the next day.

AER staff also requested Ultium provide or resubmit certain information because its revised application did not provide all information required by the AER's Retailer Authorisation Guideline (**the Guideline**). Ultium failed to provide information to the AER to demonstrate to the AER that it satisfies the entry criteria as required by section 90(2) of the Retail Law.

During the consultation process, the AER received several submissions in support of Ultium's application. The submissions did not provide any information that would demonstrate to the AER that Ultium satisfied the entry criteria. The AER also received a submission from Gadens Lawyers, on behalf of Locality Planning Energy (**LPE**), detailing why Ultium's application should be refused. On 8 December 2016, AER staff provided Ultium with an opportunity to respond to LPE's submission and to provide any further information in support of its application. Ultium responded on 16 December 2016. The AER published LPE's submission and Ultium's response on its website.

LPE's submission made some allegations (to which Ultium responded) that are not relevant to the AER's assessment of Ultium's application against the entry criteria. Accordingly, while the AER has had regard to all submissions received, it has not needed to consider the merits of all claims made in those submissions.

**Reasons for decision**

As required by section 92(1) of the Retail Law, the AER refused Ultium's application for a retailer authorisation because it is not satisfied the application satisfies the three entry criteria in section 90(1) of the Retail Law:

1. the organisational and technical capacity criterion;
2. the financial and resources criterion;
3. the suitability criterion.

**Organisational and technical capacity**

This criterion goes to the applicant’s industry experience, operational systems and staff expertise. Applicants should demonstrate their ability to comply with regulatory obligations under the energy laws and their ability to operate as an authorised retailer. Applicants’ risk management strategies and compliance strategies must be subject to an external assurance process.

According to Ultium's application, CEO Jason Hague has some energy market experience but his background is mostly town planning. Director Scott Juniper has no energy market experience. The application indicates that Ultium will bring in senior staff with relevant skills and expertise once it has been authorised, but does not explain how it will do so.

The AER considered the information Ultium provided on its compliance and risk management failed to demonstrate an awareness of, and ability to manage, all of the relevant risks and obligations associated with being an authorised electricity retailer.

The compliance strategy does not identify specific obligations or processes and the risk management strategy, while detailing certain risks, does not explain how they are identified, measured, evaluated, monitored, reported, controlled or mitigated.

Ultium did not provide evidence to show these strategies had been subject to an external assurance process, and it did not provide the required information in relation to third parties, such as functions to be outsourced and the knowledge and technical capacity of those third parties. The Guideline requires applicants to provide this evidence.

The AER is not satisfied therefore that Ultium's application fully meets the organisational and technical capacity criterion.

**Financial resources**

Under this criterion the AER considers whether applicants have (or have access to) adequate financial capacity to support their planned retail operations. Applicants must be able to demonstrate they have adequate finances. The AER's assessment is informed by an applicant’s business plan and approach to managing financial risk.

In its application, Ultium did not provide evidence to support its claims that it has access to adequate capital or evidence as to its current financial position. Nor did it provide a written declaration by the CFO, CEO or director, as required by the Guideline, that the company is a going concern and that the officer is unaware of any factor that would impede the applicant’s ability to finance its energy retailer activities for the next 12 months.

Because these details were not included in either Ultium's initial or resubmitted application, AER staff sought declarations from Ultium about its financial position and record of bankruptcy. However, Ultium did not provide this information.

Accordingly, the AER cannot be satisfied that Ultium's application satisfies the financial capacity criterion.

**Suitability**

The suitability criterion is intended to establish whether the applicant is a ‘fit and proper’ person. Section 90(4) of the Retail Law permits the AER, in considering the suitability criterion, to take into consideration such matters as it thinks relevant, including previous commercial dealings of the applicant and its associates, and the standard of honesty and integrity shown in these dealings.

Ulltium failed, in its application, to inform the AER that sole Director Scott Juniper had entered into a personal insolvency agreement under the Bankruptcy Act 1966 (Cth). Ultium then failed to provide a satisfactory explanation for this omission when asked by AER staff. Further, Ultium did not provide written declarations from the CFO or CEO about the record of bankruptcy of management as required by the Guideline.

The AER is therefore not satisfied that Ultium's application satisfies the suitability criterion.

**Notice**

As per section 97(2) of the Retail Law, the AER will publish this notice on its website.

Should Ultium consider submitting any future retailer authorisation application, the AER will assess it in accordance with the Retail Law.

Yours sincerely,



Paula Conboy

Chair

AER