



10 January 2013

Ms Sarah Proudfoot  
General Manager, Retail Markets Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

By email: AERInquiry@aer.gov.au

Dear Ms Proudfoot

### **AER Revised Exempt Selling Guideline: November 2012 ('Revised Guideline')**

WINenergy Pty Ltd ('WINenergy', 'Company') currently operates as an agent for organisations who on-sell electricity within an embedded network ('EN') under the AER's guidelines for exempt selling. In this capacity we do endeavour to comply with applicable retail electricity codes and rules within the jurisdictions of Victoria, NSW and Qld.

On 24 December 2012 WINenergy became an approved market participant of the NEM, which together with our retail electricity licence in NSW, now qualifies the Company as a licensed retailer of electricity in the NSW market. In addition to this, we currently have an application with the Victorian Essential Services Commission ('ESC') whereby we are seeking authorisation to hold a Victorian retail electricity licence. Our expectation is that this authorisation will be granted by end February 2013.

As a current operator within the exempt selling market, WINenergy has in-depth operational knowledge of the on-selling market and welcomes the opportunity to comment on the AER's Revised Exempt Selling Guideline. WINenergy has participated in the AER's previous consultations on the exempt selling guideline.

### **Energy Retail Code (Victoria) ('Retail Code')**

Currently, a business that sells electricity in Victoria is required to be licensed or hold a valid exemption from this requirement. The regulatory jurisdiction on these licensed businesses rests with the ESC.

With respect to electricity on-selling, re-sellers are generally exempt from the ESC retail licensing requirements provided specific conditions are fulfilled. One of these conditions is that electricity re-sellers 'observe all applicable provisions' of the Retail Code.

As such, all exempt re-sellers are required to comply, to the extent applicable, with the same provisions of the Retail Code as any other licensed energy retailer. This is particularly important to note in that the same set of consumer protections are afforded to customers of exempt re-sellers as is provided for licensed retail customers.

Whilst there is some degree of ambiguity around the wording of the re-seller's obligations by the use of the words 'observe all applicable' rules under the Retail Code, WINenergy **strongly encourages and recommends** that the ESC take a stronger enforcement view as we believe it would be very hard for any re-seller to argue that the provision of basic customers protections as prescribed under the Retail Code would not be applicable to them.

As such, until the rollout of the National Energy Retail Law ('NERL') in Victoria, embedded network ('EN') or exempt seller's customers would benefit greatly from the ESC being more active in enforcing and monitoring the activities of exempt sellers in respect of their compliance with the Retail Code.

### **Rights to Consumer Protection**

WINenergy supports the AER's principle approach to consumer protections. There are obvious deficiencies under the current regime, whereby re-sellers are not members of the Energy and Water Ombudsman (Victoria) ('EWOV') scheme. This has an undesirable effect for consumers when it comes to dispute resolution, with customers forced to take unresolved issues with their re-sellers to the Victorian Civil and Administrative Tribunal ('VCAT') at their own cost, whilst EWOV is a free service for energy retailer's customers.

Equally, as energy retailers are required to be members of the EWOV scheme, WINenergy **supports and recommends** the extension of the EWOV scheme to consumers of re-sellers. To this end, we propose that exempt re-sellers pay a one-off registration fee to EWOV so that consumers can access the scheme. Such a cost recovery structure will need to balance the need to ensure EWOV's costs are covered and the capacity of exempt sellers to pay such fees given the diversity of exempt sellers. In order to facilitate the extension of the scheme to include exempt sellers WINenergy believes a study should be undertaken to determine the appropriate cost recovery model and fee structure.

Access to EWOV is a basic consumer protection facility which affords consumers an important safeguard in instances where they are financially vulnerable and / or facing the possibility of being disconnected due to an unresolved matter with their re-seller. We believe the expertise EWOV has gained in conciliating disputes on behalf of licensed retail energy customers and the types of issues also makes it suitably qualified to take on this additional function rather than the current avenue of VCAT.

### **Identification of Specialist Exempt Sellers vs. Specialist Service Providers**

WINenergy strongly encourages possible amendments to the Exempt Selling Guideline which go towards addressing potential loop holes associated with an exemption holder who engage a 'specialist service provider' who is, in reality, the party which engages and delivers services to end consumers of electricity.

It is the specialist service provider of the exempt holder which customers contact for assistance with account enquiries, payment difficulties, complaints, connections and disconnections.

In this instance the specialist service provider is not the exemption holder and therefore not legally bound to fulfil the conditions of the exemption or abide by the Retail Code. In effect, these specialist service providers remain outside the auspice of the regulators, be it, the ESC or the AER under NERL.

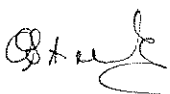
WINenergy **recommends** that the AER should be identifying exempt sellers as the entity which:

- Reads the meters;
- Issues bills;
- Collects cash from customers;
- Provides customer service support; and
- Connects and disconnects energy from customer sites.

rather than the entity which pays the gate meter bill, i.e., specialist buyer and not the specialist seller.

We trust the above comments are helpful. If you require further information or have any queries regarding our submission, please contact the undersigned at (03) 9832 0016.

Kind regards



Andrea Steele  
Regulatory & Compliance Manager