

Decision on Standard Form Contract and Electricity Retail Licence Application

A-Star Electricity Pty Ltd

Economic Regulation Authority

WESTERN AUSTRALIA

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Decision

1. Pursuant to section 51 of the *Electricity Industry Act 2004 (Act)*, the Economic Regulation Authority (**Authority**) approves the standard form contract for the supply of electricity to small use business customers as submitted by A-Star Electricity Pty Ltd (**Applicant**).
2. Pursuant to sections 9 and 19 of the Act, the Authority approves the grant of an electricity retail licence to the Applicant to sell electricity to contestable customers (those who consume more than 50MWh of electricity per annum), subject to, and in accordance with, the terms set out in the retail licence for a period of 15 years.
3. As required by section 23(1) of the Act, the Authority will publish a notice of the grant of licence in the Government Gazette as soon as practicable.

Reasons

4. On 5 December 2013, the Applicant submitted a licence application to the Authority to obtain an electricity retail licence for the South West interconnected system. The applicant is intending to sell electricity to contestable customers, excluding small use residential customers. A small use customer consumes not more than 160MWh of electricity per annum.

Standard form contract

5. Section 50 of the Act provides that the Authority must not grant a retail licence unless the applicant has submitted a draft standard form contract, and the Authority has approved the standard form contract under which the applicant will supply electricity to small use customers pursuant to the licence.
6. The Applicant provided its draft standard form contract for the supply of electricity to small use customers shortly after its licence application. Feedback was provided to the Applicant regarding the contract. In response to this feedback, the Applicant amended the contract.
7. The Applicant has advised that it will only supply electricity to business customers and does not object to a limitation in the scope of the licence to business customers only.
8. Clause 1(a) of the standard form contract provides that the Applicant will only sell electricity, under the contract, to business customers. Although the relevant legislation does not specifically anticipate the application of a standard form contract to be limited to a particular class of small use customers, the Authority may restrict the class of customers a licensee may supply under its retail licence.
9. The Authority has decided to restrict the class of small use customers the Applicant may sell to under its retail licence to business customers only. That is, the Applicant is authorised to supply electricity to customers excluding small use residential customers.
10. Accordingly, the Authority has inserted the following clause into Schedule 2 of the licence:

Should the *licensee* wish to sell electricity to *small use customers* who are *residential customers* after the commencement of this *licence*, the *licensee* must apply to the *Authority* to amend the *licence* and submit with that application an amended *standard form contract* for the *Authority's* approval.

11. The Authority has also inserted a corresponding definition of 'residential customer' into clause 1.1 of the licence to clearly define the scope of the licence given this limitation:
residential customer means a customer who consumes electricity solely for domestic use.
12. The two additional licence clauses set out in paragraphs 10 and 11 above address the issue of the standard form contract only applying to small use business customers.
13. In accordance with the Authority's *Public Consultation Guidelines – For Electricity, Gas & Water Licences and Electricity & Gas Standard Form Contracts (July 2006)*, the Authority undertook public consultation on the proposed standard form contract from 30 July to 20 August 2014. No submissions were received.
14. Under the Act, the Authority must not approve a standard form contract if it considers that the contract will not meet the requirements of the contract regulations, will be inconsistent with the Act or any other written law, or will be inconsistent with any term, condition or provision of the licence concerned.
15. The Authority has considered the Applicant's proposed electricity standard form contract as limited to small use business customers. The Authority is satisfied that the contract meets the requirements of the Act, subject to the licence limiting the Applicant's supply to small use customers to small use business customers only (for the purpose of the standard form contract). This does not prevent the Applicant from supplying large use customers.
16. As evident by the addition of the clauses set out in paragraphs 10 and 11 above, the Applicant would need to apply for a licence amendment if it were to wish to sell to small use residential customers in the future.

Grant of licence

17. Under section 19(1) of the Act the Authority must grant a licence if it is satisfied that the applicant has and is likely to retain, or will acquire within a reasonable timeframe and is likely to retain, the financial and technical resources to undertake the activities authorised by the licence.
18. The Authority engaged a financial consultant to examine the financial capacity of the Applicant to undertake the activities authorised by the retail licence. Following the assessment, the consultant concluded that the Applicant has and will likely retain the financial resources to undertake the activities authorised by the licence.
19. The Authority engaged a technical consultant to examine the technical capacity of the Applicant to undertake the activities authorised by the retail licence. Following the assessment, the consultant concluded that the Applicant has and is likely to retain the technical resources to undertake the activities authorised by the licence.
20. The Authority has considered the retail licence application, including the consultants' assessments conducted for the purpose of the retail licence application, and is satisfied that the Applicant meets the requirements of section 19(1) of the Act.
21. Section 9 of the Act requires that the Authority must not grant an electricity licence unless it is satisfied that it would not be contrary to the public interest to do so. Section 8(5) of the Act, without limitation, specifies the matters to be considered by the Authority in this regard.
22. A notice seeking public submissions on the licence application was published on 23 December 2013 and the submission period closed on 17 January 2014. No submissions were received.

23. Section 100 of the Act provides that the Authority is not to grant a retail licence to a person who proposes to supply electricity to small use customers unless it is satisfied that the licensee is, or will be if the licence is granted, a member of the Energy & Water Ombudsman Scheme.
24. The Applicant has stated in its application that on grant of the licence, it will join the ombudsman scheme and be bound by the Ombudsman's decisions and directions. The Authority is satisfied that the Applicant will, upon grant of the licence, become a member of the ombudsman scheme.
25. In its consideration of the Application, the Authority considered the public interest, including all of the matters set out in section 8(5) of the Act as required by section 9(2) and the Applicant's capacity to undertake the activities authorised by the licence as required by section 19 of the Act. The Authority is satisfied that approval of an electricity retail licence to the Applicant would not be contrary to the public interest.
26. The Authority notes that the Applicant applied for the SWIS as the operating area. However, further to the Authority's decision on 19 September 2012 to remove the reference to the SWIS in the description of the operating area for all licences, the approved operating area for this licence reflects the operating area for Western Power's distribution system.