

Our Ref: 57354  
Your Ref:  
Contact Officer: Tom Stevens-Downie  
Contact Phone: 03 9290 6984

28 August 2015

Ms Jasmin North  
Business Manager  
GPT Funds Management 2 Pty Limited  
Level 51, MLC Centre, 19 Martin Place, Sydney NSW 2000

Dear Ms North

**GPT Funds Management 2 Pty Limited application for an electricity individual exemption**

I refer to your application of 15 May 2015 for an individual exemption under the National Energy Retail Law (Retail Law) to sell electricity to retail and commercial premises at Rouse Hill Town Centre, Rouse Hill, NSW.

I am writing to inform you that that the Australian Energy Regulator (AER) has considered GPT Funds Management 2 Pty Limited's (GPTFM2) application for an individual exemption and that it decided, on 24 July 2015, to grant an individual exemption in accordance with s.110 of the Retail Law. On 28 August 2015, the AER decided to grant the individual exemption with revised conditions.

In accordance with the National Energy Retail Rules, the AER has published the application on its website, and sought submissions from interested parties.<sup>1</sup> The AER did not receive any submissions in response to GPTFM2's application.

The AER has considered the policy principles relating to exempt selling in s. 114 of the Retail Law, being:

- a) regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers,
- b) exempt customers, should, as far as practicable, be afforded the right to a choice of retailer in the same way comparable retail customers in the same jurisdiction have that right,

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<sup>1</sup> r. 155(3) and 156, National Energy Retail Rules.

- c) exempt customers, should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and Rules.

In making its decision, the AER is guided by the objective of the Retail Law<sup>2</sup>, the exempt seller factors,<sup>3</sup> the customer related factors,<sup>4</sup> and the assessment approach outlined in the AER's *Exempt Selling Guideline*.

The AER is satisfied that GPTFM2 should be exempt from the requirement to hold a national retailer authorisation, having regard to the considerations outlined above. This individual exemption is subject to your acceptance of the conditions<sup>5</sup> set out at Appendix A of the attached Instrument of Exemption.

We also note that for this application you have stated you are unlikely to obtain the consent of every existing market connected tenant for the conversion of the existing network to a private embedded network. Subject to your acceptance of the conditions set out in attachment A, the AER waives the requirement of condition 12 of the AER's *Electricity Network Service Provider Registration Exemption Guideline* that every tenant consent to the conversion to this application. This waiver is subject to GPTFM2 obtaining written consent to the conversion from 60% or more of tenants, measured by number of active tenants.

GPTFM2 must advise the AER in writing, by **4 September 2015**, whether it accepts these conditions.

If you have any further queries, or would like to discuss this further, please contact Tom Stevens-Downie on 03 9290 6984.

Yours sincerely



Sarah Proudfoot  
General Manager  
Retail Markets  
Australian Energy Regulator

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<sup>2</sup> The national energy retail objective is to "promote efficient investment in and efficient operation and use of energy services for the long term interests of energy consumers with respect to price, quality, safety, reliability and security of supply of energy". (s. 13, Retail Law)

<sup>3</sup> s. 115, Retail Law.

<sup>4</sup> s. 116, Retail Law.

<sup>5</sup> r. 158(1), Retail Rules.

## **Instrument of Exemption**

### **INDIVIDUAL EXEMPTION FROM THE REQUIREMENT TO HOLD A RETAILER AUTHORISATION**

**DATE OF ISSUE: 24 July 2015**

**FORM OF ENERGY: Electricity**

Pursuant to section 110 of the National Energy Retail Law, the Australian Energy Regulator on 24 July 2015 decided to grant GPT Funds Management 2 Pty Limited (ABN 72 115 026 536) an exemption from the requirement to hold a retailer authorisation under section 88 of the National Energy Retail Law, subject to certain conditions (see Appendix A). This exemption applies to the premises at Rouse Hill Town Centre, Corner of Windsor Road and White Hart Drive, Rouse Hill, NSW 2155 (see map at Appendix B).

## Appendix A

The following conditions as amended on 28 August 2015 apply under rule 153 of the National Energy Retail Rules to the sale of energy to exempt customers by exempt persons. These conditions are based on the retail customer protections provided under the National Energy Retail Law.

### Condition 1 – Obligation to supply

1. An exempt person cannot refuse to sell energy to a customer within the site described by this exemption except in accordance with relevant disconnection provisions.
2. An exempt person cannot refuse to sell energy to a customer on the basis that the customer owes the exempt person outstanding amounts from a previous account. The exempt person can include in a new account any outstanding amounts owed on a previous account (except where the unpaid amounts are for other premises for which the customer has an ongoing contract with the exempt person).

### Condition 2 - Information provision

1. The exempt person must advise exempt customers, in writing, at the start of their electricity sales agreement of the following:
  - a. any right of the exempt customer, under state or territory laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice
  - b. that the exempt person is not subject to all the obligations of an authorised retailer, and the exempt customer will not receive the same protections as it would if they were purchasing from an authorised retailer
  - c. the exempt customer's rights in relation to dispute resolution including:
    - i. the exempt person's procedures for handling disputes and complaints, and
    - ii. any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located
  - d. the conditions applicable to the exemption that the exempt person is operating under
  - e. the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy
  - f. contact numbers in the event of a gas or electricity fault or emergency
  - g. contact details for account inquiries and complaints. Where a telephone number is provided, the charge for this call must be no more than the cost of a local call.

2. In addition to the requirement to provide the information at the commencement of the exempt customer's electricity sales agreement, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.
3. Once the determination comes into force, the information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable.

**Condition 2A – Information provision for fully informed consent**

1. An exempt person must provide notice of plans to convert a brownfield site to an embedded network to all tenants/leaseholders within the proposed site. The notice must provide information to assist potential exempt customers in providing their fully informed consent including:
  - a. the right to choose electricity providers (for those jurisdictions with this provision),
  - b. the details of any third party engaged by the exempt person to facilitate onselling,
  - c. the contact details of a representative who will address any concerns and queries,
  - d. a copy of the electricity sales agreement to be offered by the exempt seller, and
  - e. that should the tenant/leaseholder not choose the exempt seller as their electricity supplier:
    - i. the tenant/leaseholder will receive separate invoices for energy charges (from their retailer) and network charges (from the exempt seller/network owner), and
    - ii. network invoices issued by the exempt person will only seek to recover the costs of regulated network charges.

**Condition 3 - Billing**

1. An exempt person must ensure that bills are issued to each exempt customer at least once every three months.
2. An exempt person must include the following particulars in a bill for an exempt customer:
  - a. The name of the exempt customer.
  - b. The address of the exempt customer's premises.
  - c. Date that the account was issued.
  - d. The identifier of the meter for the exempt customer's premises.

- e. The pay-by date for the bill.
- f. Date of the current meter reading or estimate, as applicable.
- g. The dates to which the meter reading or estimate applies (billing period).
- h. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
- i. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
- j. The amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt hours. For gas, consumption must be shown in cubic metres and mega joules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).
- k. Tariffs, fees and charges applicable to the exempt customer.
- l. The basis on which tariffs, fees and charges are calculated.
- m. Details of the available payment methods.
- n. A telephone number for account inquiries and complaints.

**Condition 4 - Estimation as basis for bills**

1. An exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis, or apportioned, for any bill issued.
2. An exempt person cannot rely on an estimation of the meter value at the start of an energy supply arrangement with an exempt customer, or for the purpose of issuing a final bill to an exempt customer.
3. An exempt person may base an exempt customer's bill on an estimation of the exempt customer's consumption of energy where the exempt person is not able to reasonably or reliably base the bill on an actual meter reading.
4. Where an estimation is used as the basis for a exempt customer's bill, the estimation must be based on:
  - a. historical metering data for the exempt customer reasonably available to the exempt person, or
  - b. where this is not available, the average usage of energy by a comparable customer over the corresponding period.
5. If a customer's bill is based on an estimation, this must be clearly stated on the exempt customer's bill.

#### **Condition 5 - Pay-by date**

1. The pay-by date for a bill must not be less than 13 business days from the date on which the exempt person issues the bill.

#### **Condition 6 - Receipts**

1. An exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by:
  - a. direct debit or any other form of electronic transfer of funds, or
  - b. credit card over the phone and the customer is provided with a receipt number.
2. An exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a rent payment but has not been separately identified on the rent receipt.

#### **Condition 7 - Pricing**

1. An exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity, or estimated quantity, of energy directly to the premises of the exempt customer.
2. An exempt person must provide notice to the exempt customer of any change in the exempt customer tariff as soon as practicable, and no later than the exempt customer's next bill.
3. An exempt person must not impose any charge on an exempt customer that could not be charged by the relevant local area retailer for new connections under a standard retail contract.
4. An exempt person must limit any fee charged to a customer for late payment to a recovery of reasonably incurred costs by the exempt person as a result of the customer's late payment.
5. The requirements in paragraphs 1–4 do not apply where alternative pricing requirements apply under applicable state or territory legislation.
6. This condition applies only to small customers (as defined by the Retail Law).<sup>6</sup>

#### **Condition 8 – Undercharging and overcharging**

1. Where an exempt customer has been undercharged, an exempt person can recover the amount undercharged subject to the following:
  - a. Where the undercharging was not the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to recovering the amount

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<sup>6</sup> Section 5, Schedule – National Energy Retail Law (South Australia) Act 2011

undercharged in the 9 months before the date on which the customer is notified of the undercharging.

- b. The exempt person cannot charge interest on the undercharged amount.
  - c. The exempt person must offer the exempt customer time to pay the undercharged amount by instalments, over a period nominated by the customer (up to 12 months, but no longer than the period of the undercharging).
2. Where an exempt customer has been overcharged, an exempt person must inform the customer within 10 business days after becoming aware of the overcharging and repay the amount overcharged subject to the following:
- a. Where the amount overcharged is \$25 or more, the exempt person must refund the amount to the exempt customer if requested, or if no such request is made, credit the amount to the exempt customer's next bill. Where the exempt customer no longer purchases energy from the exempt person, the exempt person must use best endeavours to refund the amount within 10 business days.
  - b. Where the amount overcharged is less than \$25, the exempt person must credit that amount to the exempt customer's next bill.
  - c. No interest is payable on the overcharged amount.
  - d. Where the overcharging was the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to repaying the amount overcharged in the 12 months before the date on which the error was discovered.

**Condition 9 - Disconnection or cessation of supply**

1. Subject to Condition 10, an exempt person must not proceed with disconnection or cessation of energy supply to an exempt customer unless the following requirements have been met:
  - a. the exempt customer has requested disconnection, or
  - b. continuity of supply to the premises would be unsafe, or
  - c. the exempt customer's tenancy/residency/agreement has ended and the exempt customer is vacating the premises.
2. Where an exempt customer is disconnected in accordance with paragraph 1(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer in person or by telephone prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
3. This condition does not apply where state or territory tenancy legislation sets out the process and requirements for the disconnection or cessation of energy supply by the exempt person on the basis that they are a landlord.



### **Condition 10 - When disconnection or cessation of supply is prohibited**

1. An exempt person must not disconnect or cease energy supply to an exempt customer's premises where:
  - a. the exempt customer has made a complaint directly related to the proposed reason for disconnection or cessation of supply, to the exempt person, the energy Ombudsman or another relevant external dispute resolution body and the complaint remains unresolved, or
  - b. the disconnection or cessation of supply would occur on:
    - i. a business day before 8am or after 3pm, or
    - ii. a Friday or the day before a public holiday, or
    - iii. a weekend or a public holiday, or
    - iv. the days between 20 December and 31 December (inclusive) in any year.
2. For electricity, the exempt person must contact its distributor to ask whether disconnection of a retail customer in the relevant jurisdiction would be prohibited on that day due to extreme weather conditions. Where the distributor confirms that the disconnection of a retail customer would be prohibited on that day, the exempt person must not disconnect the exempt customer's premises.
3. This condition does not apply where:
  - a. the exempt customer has requested disconnection
  - b. state or territory legislation sets out the process and requirements for the disconnection or cessation of energy supply by the exempt person on the basis that they are a landlord
  - c. the energy supply agreement between the exempt person and exempt customer has been terminated.

### **Condition 11 - Reconnection of supply**

1. Where an exempt person has arranged for the disconnection of an exempt customer's premises and the exempt customer has within 10 business days of the disconnection:
  - a. if relevant, rectified the matter that led to the disconnection, and
  - b. made a request for reconnection, and
  - c. paid any charge for reconnection,the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable.

#### **Condition 12 - Choice of retailer**

1. Where an exempt customer is eligible under state or territory legislation to purchase energy from a retailer of their choice, the exempt person must not do anything to discourage or prevent them from exercising this choice, whether by:
  - a. requiring the exempt customer to waive their ability to choose a retailer;
  - b. unreasonably hindering their efforts to find another retailer; or
  - c. unreasonably hindering any metering or network changes required to enable choice of retailer.

#### **Condition 12A – Choice of retailer – Metering and wiring alterations**

1. An exempt person must ensure that a tenant/leaseholder's access to a choice of retailer is not impeded by any network conversion. Metering arrangements must allow for a change of energy provider.
2. The costs of any changes to metering and other network alterations that take place in the course of the conversion of a brownfield site to an embedded network must be borne by the exempt seller. The costs for any metering changes required after the conversion for a tenant/leaseholder to access a preferred energy retailer need not be borne by the exempt seller

#### **Condition 13 - Dispute resolution**

1. In the event of a dispute concerning the sale of energy to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal if the customer is a tenant, the exempt person must:
  - a. make reasonable endeavours to resolve the dispute, and
  - b. advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located, if applicable.

#### **Condition 14 - Continuity of supply**

1. An exempt person must notify the exempt customers and the AER immediately if they are (or expect to be) disconnected, or there is any likelihood that they will be unable to continue selling energy.

#### **Condition 15– Termination of energy supply agreement**

1. An energy supply agreement between the exempt person and an exempt customer will terminate:
  - a. on a date agreed by the exempt person and exempt customer, or

- b. five business days (or a different time agreed by the exempt person and exempt customer) from the date when the exempt customer gives the exempt person a termination notice, or
  - c. at the conclusion of the exempt customer's lease for, or occupancy of, the premises to which the energy is supplied, or
  - d. when the exempt customer starts receiving energy retail services from a different retailer or exempt person, or
  - e. when a different exempt customer moves in and starts receiving customer retail services for the premises, or
  - f. at the end of a period of 10 business days commencing on the day the exempt customer's premises are disconnected, where the conditions for reconnection have not been met.
2. Termination of an arrangement to supply energy does not affect any rights or obligations that have already accrued under the agreement.

**Condition 16 - Maintaining records**

1. An exempt person must maintain records of the following for each of its exempt customers:
  - a. The name of the exempt customer.
  - b. The address of the exempt customer's premises.
  - c. The identifier of the meter for the exempt customer's premises (if applicable).
  - d. The date that the customer account was created.
  - e. Copies of any bills issued for the previous 12 months.
  - f. The date of the most recent meter read for the customer (if applicable).
  - g. The basis for determining any estimates of consumption for the purpose of billing where a meter read could not be obtained.

**Condition 17 – Offer matching**

1. An exempt person must match any genuine price offered specifically to a tenant/leaseholder by an authorised retailer for the supply of electricity to the premises if the tenant/leaseholder is a small electricity customer.
2. To the extent that the tenant/leaseholder rejects the matched price, the exempt person must pay the cost of removing the embedded network electricity meter and installing a market electricity meter.

3. Paragraphs 1 and 2 of this condition will only apply in respect of an exempt customer's lease that is in place at the time the brownfield embedded network is created. The exempt seller's obligations under condition 17 end when the lease term current at the date of the creation of the embedded network expires.

**Condition 18 – Duplication of network charges**

1. An exempt person must take all reasonable steps to ensure the avoidance of the double payment of network charges by tenants/leaseholders who choose to purchase energy from an authorised retailer. All reasonable steps include:
  - a. seeking written authorisation from the tenant/leaseholder to access their meter data to accurately invoice for network charges, or
  - b. seeking to recover network charges directly from the tenant/leaseholder's energy retailer.

## Appendix B – Map of Rouse Hill Town Centre



