

Our ref: CJ:03398-Starcorp Energy Pty Ltd

30 September 2019

Attention: Sarah Proudfoot,
General Manager, Consumers and Markets Branch
By email: AERExemptions@aer.gov.au

Dear Ms Proudfoot,

Hi Surf CTS 11533 - application for an individual retail exemption

We act for Starcorp Energy Pty Ltd an authorised electricity retailer operating within embedded networks. On behalf of our client Starcorp Energy Pty Ltd, we make the following observations in relation to the individual exemption application by Hi Surf CTS 11533 (**'Application'**).

Mandatory considerations

We note that a decision to grant an individual exemption under the National Energy Retail Law (**'NERL'**) is an *AER exempt selling regulatory function or power*. Section 114 of the NERL sets out the policy principles that the AER must take into account when deciding whether to grant an individual exemption. The relevant subclauses of section 114 are extracted below.

- (1) *The AER must, in performing or exercising an AER exempt selling regulatory function or power, take into account the following policy principles ...*
 - (b) *exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable retail customers in the same jurisdiction have that right;*
 - (c) *exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and the Rules.*

Section 114(1)(b)

The applicant, in the public component of the Application, has failed to demonstrate that its customers will be afforded the same right to a choice of retailer as other customers in Queensland. The applicant states that 'Residents were informed of their legislative rights on information for Embedded Network Customers Power of Choice legislation and the availability to choose their own retailer at any time'. This merely states what prospective customers were told, and in no way demonstrates that the exempt customers will have the same options as to choice of retailer as on-market customers. Furthermore, despite the Power of Choice reforms, the Australian Energy Market Commission (**'AEMC'**) has since found that:

significant practical barriers to customers in embedded networks accessing retail market competition, despite earlier regulatory reforms that sought to put in place arrangements to allow for this. Currently, customers of exempt on-sellers in embedded networks are not included in AEMO's retail market systems, and so competing NEM retailers are unable to quote, transfer and bill customers using standard market

processes ... in practice, embedded network customers have limited ability to change supplier if they are unhappy with the price they are paying or the level of service they are receiving.¹

While the applicant has referenced rule changes implemented almost two years ago, it has failed to demonstrate that its prospective customers will be afforded the right to a choice of retailer in a practical sense.

Section 114(1)(c)

The applicant, in the public component of the Application, has failed to demonstrate that its customers will not be denied customer protections afforded to retail customers under the NERL and National Energy Retail Rules. Instead, components of the Application clearly show that this will not be the case.

In the Application, the applicant notes that 'It was clearly communicated by the Body Corporate that through the implementation of an embedded network, customers were not to be disadvantaged and that all protections, rebates, avenues for assistance and procedural fairness for residents would continue'. The applicant does not appear to understand that:

- consumers within an embedded network do not enjoy the same consumer protections under the National Energy Retail Rules as customers that are connected directly to the grid;² and
- consumers supplied by exempt sellers rather than authorised retailers also receive less consumer protections than grid connected customers.

In the Application, the applicant notes that 'Residents are provided a 4-business day turnaround on all queries.' This statement appears to indicate that the applicant will not prioritise complaints about supply continuity or hardship.

The applicant does not detail the measures it will have in place to manage safety and reliability of supply within the proposed embedded network. There is no mention of the risks associated with the safe operation of an embedded electrical network nor the controls that the applicant will apply to manage those risks. Indeed, the applicant notes that 'the susceptibility to power outages will remain as it currently is.' This statement appears to indicate that the applicant is unaware of the risk of internal faults and outages.

The applicant also notes that 'Where a scheduled power outage is to occur the Body Corporate via ERC will communicate to all residents by both email and hard copy to ensure all occupants are aware of any planned outage.' There is no mention of how much notice the applicant will give occupants nor of the applicant's arrangements to ensure continuity of supply for any residents who require life support. We note that there were recent changes to the life support rules and the AER has indicated that this is a compliance and enforcement priority.³

In the Application, the applicant notes that 'Reasonable payment plans will be offered to all residents who contact ERC' it is unclear what a 'reasonable payment plan' would be and whether it would be in any way consistent with payment plans established under the National Energy Retail Rules.

In the Application, the applicant notes that 'Should solar or other generation be available it will be accommodated where possible.' The meaning of this statement is unclear. However, it suggests there is a chance that the ability of the applicant's customers to benefit from new energy technology products, including behind the meter solar or battery storage, will be impacted.

¹ AEMC, Updating the regulatory frameworks for embedded networks, Final report, 20 June 2019, p iii

² Ibid

³ Refer to <https://www.aer.gov.au/about-us/compliance-enforcement-policy-priorities#2019-20-priorities>

The above statements illustrate that the applicant's customers will be denied several customer protections that they currently receive as retail customers. The weight of these factors, along with practical barriers to those customers having access to a retailer of their choice, unequivocally show that the approval of this Application would directly contradict the policy principles that the AER is required to consider under s 114.

Non-mandatory considerations

We understand the AER may take into account the exempt seller related factors and customer related factors in sections 115 and 116 of the NERL. We make brief observations on these factors below.

We accept that selling energy is not the core business of the body corporate, but it is arguably the core business of third-party manager being appointed.

We submit that the applicant has not shown that their circumstances demonstrate specific characteristics that warrant an exemption. Nor has it shown that the circumstances of its proposed customers demonstrate specific characteristics that warrant an exemption. It is unclear why the applicant is applying for an exemption and then outsourcing the majority of functions to a third party, when it could appoint an authorised retailer.

The applicant has stated that will not profit from the arrangement. We note that it is highly likely that any appointed third party will intend to make a profit and it is unclear on the information provided whether the third party's profit is directly linked to how much customers will be charged for electricity (i.e. is there any incentive for the third party to provide customers with reasonable electricity prices?).

We note that the AEMC published its final report on the regulation of embedded networks in June this year. Subject to the implementation of the new regulatory framework, we note that the circumstances in which exemptions will be granted will be significantly reduced. We submit that, given the AEMC's findings and the likelihood that a new framework will be in place next year, the applicant should provide more compelling reasons as to why a retail authorisation (as opposed to an individual exemption) is not appropriate.

We submit that the likely cost of the body corporate obtaining a retail authorisation is not relevant to this particular application as the applicant has demonstrated an intention to appoint a third party to manage the customer facing functions of selling electricity. If the applicant is appointing a third party that doesn't hold a retail authorisation, it should demonstrate that its customers will not be worse off than if they appointed a third party who is an authorised retailer.

Conversion process

Our client understands that while an embedded network conversion approval is distinct from a retail exemption application, where the retail exemption is for the sale of energy exclusively within a converted embedded network the two are intrinsically connected. In the Application, reference is made to consultation meetings, however the Application does not provide any detail on when those meetings occurred, nor how long residents were given to consider the proposed conversion. If the applicant intends on relying on these consultation meetings in support of its Application for an individual retail exemption, further detail should be made public to ensure that the submission process is fully informed.

Furthermore, if there was a failure to describe the loss of rights under the National Energy Retail Rules during the consultation process, then the Application should be refused. We say this as the applicant is obliged to ensure that information is 'clearly, fully and adequately disclosed',⁴ explaining both the positive and negative consequences of a

⁴ AER, Electricity Network Service Provider - Registration Exemption Guideline Version 6 March 2018

conversion of an existing site into an embedded electrical network. Should residents not be aware of the negative consequences of a conversion, then we fail to see how they would be able to make an informed decision. The statements extracted from the Application and discussed above, indicate that key information about the conversion may not have been adequately disclosed to the proposed customers.

Appropriate detail

Finally, we provide this submission on the Application with the general observation that the Application is lacking in detail. In the Application, the applicant makes various references to documentation provided to residents. The applicant has not attached any documentation to the Application available for public comment. We request that the following documents be made available for review:

- ERC Terms & Conditions
- ERC Hardship Policy
- ERC Peak Demand Identification Process
- ERC Query Procedure
- ERC Customer Disputes Resolution Procedure
- Hi- Surf Bulk Energy Savings Document
- ERC Information Provided for Embedded Network Customers

Once our client has reviewed the above documents it will be in a position to provide further comment.

Please contact me if you have any questions on the above.

Yours faithfully,



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