



14 August 2015

Richard Webster
Manager Regulatory Reporting
Essential Services Commission of South Australia
GPO Box 2605
Adelaide SA 5001

By email: escosa@escosa.sa.gov.au

Dear Mr Webster

RE: Review of the REES Guideline – Draft Decision

ERM Business Energy welcomes the opportunity to respond to the Essential Services Commission of South Australia (the Commission) Draft Decision on the Retailer Energy Efficiency Scheme (REES) Guideline.

About ERM Business Energy

ERM Power Retail Pty Ltd, which trades as ERM Business Energy, is a subsidiary of ERM Power Limited, an Australian energy company that operates generation and electricity sales businesses. Since launching in 2007, ERM Business Energy has grown to become the fourth largest electricity retailer by load in Australia, with operations in every state and the Australian Capital Territory. ERM Business Energy is now the second largest electricity retailer to the large business market by load,¹ with increasing success in the small business market.

Annualising customer energy purchases

ERM Business Energy has been engaging closely with both the Commission and the Department of State Development (the Department) throughout 2014 and 2015 to contribute to the smooth expansion of the REES to the small-to-medium business sector. A particular focus area was the definition of large customers, who are excluded from accessing the benefits of REES and therefore should not bare REES costs. Of particular importance to us was that the approach to excluding these customers would be competitively neutral, so the REES would not interfere with customers' retail contracting decisions.

The Draft Decision outlines ERM Business Energy's proposal regarding those customers who enter into a new contract during the preceding financial year used. We suggested identifying those customers as exempt from REES by using prorated 12-month consumption, but still reporting designated sales based on those customers' actual sales during the preceding financial year. This would have provided certainty to these customers that their exemption would not be impacted by changes to their retail contract, and would ensure there was no double counting across retailers. The Commission's legal advice was that this

¹ Based on ERM Power analysis of latest published financial information.

approach could not be implemented under the restraints of the current Regulations² and Gazette³ which define designated sales.

ERM Business Energy's own legal advice has recently confirmed this position. Because the Regulations refer to the retailer's wholesale purchases relating to its customer contracts, rather than referring to the customer more directly, we could not find a means of classifying a customer as exempt by amendment of the Guideline alone.

We are disappointed that this issue cannot be resolved under the current regulatory framework, and encourage both ESCSOA and the Department to take future opportunities to correct this to minimise market distortions in the future. Below we have also identified another opportunity to improve the operation of the scheme through Regulation amendment, and we hope that together these justify an amendment in the near future.

Revisions to retailers' obligations

Recent correspondence in relation to an error in data reported under the Guideline by one retailer has brought into question all retailers' REES targets late in the compliance year. While we are hopeful that amendments to the Guideline and past experience may reduce the likelihood of this situation reoccurring in the future, we believe it is prudent for the Commission to use this review to clarify its approach to such situations.

Retailers rely on the Commission's notification of REES targets both to allow it to procure activities, and to allow it to determine its approach to cost recovery. It is important that once notified, retailers can act on those targets without risk of future alteration. Any additional risk increases the costs of ensuring compliance, which are ultimately borne by customers.

Ideally, the target setting process would allow an annual true-up, such that any variation in a retailer's target following notification of REES targets by the Commission would be accounted for in the following compliance year. However, we understand that establishing such a process may require a change to the Regulations, and therefore may be outside the scope of this review. If that is the case, we recommend the Commission requests a change to the Regulations. The Commission should also provide interim clarity through its Guideline by specifying that where an error is identified following target notification, other retailers' targets will not be altered.

Confidentiality

The Draft Decision proposes to amend clause 1.3 of the Guideline to require retailers to identify confidential information reported to the Commission, and that this information will not be publically released except with agreement from the retailer. This implies that any reported information that is *not* clearly identified as confidential *could* be publically released. However, clause 1.2.2 states that information collected under the Guideline will only be used to determine the retailer's obligations under the REES: a confidential process. If the Commission does not seek to use this data for other purposes, such as inclusion in a public report, then it is not clear why retailers should be required to specify which pieces of information should be treated confidentially.

Data relating to designated sales is highly sensitive information, and as such, it is important that retailers can report this data to the Commission in confidence. ERM Business Energy does not believe it is

² Electricity (General) Regulations 2012 and Gas Regulations 2012.

³ South Australian Gazette, published on 11 December 2014.

appropriate to place to onus on the retailer to identify that this should be treated confidentially. If reported data is only to be used to calculate retailers' REES obligations, than the Guideline should state that all reported information will be treated confidentially. If the Commission seeks to use some pieces of data for another purpose, the Guideline should be amended to specify those pieces of data, the proposed use of this data, and how this data would be presented (i.e. aggregated, de-identified, or with reference to a retailer). The Guideline should then state that all other information reported by retailers will be treated confidentially.

Please contact me if you would like to discuss this submission further.

Yours sincerely,

[signed]

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