



EnergyAustralia

LIGHT THE WAY

25 May 2022

Chairperson Kate Symons
Commissioner Sitesh Bhojani
Commissioner Rebecca Billings
Commissioner Simon Corden
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Dear Commissioners,

Variation of EnergyAustralia Pty Ltd 's electricity and gas retail licences and EnergyAustralia Yallourn Pty Ltd's electricity retail licence

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. EnergyAustralia owns, contracts, and operates a diversified energy generation portfolio that includes coal, gas, battery storage, demand response, solar, and wind assets. Combined, these assets comprise 4,500MW of generation capacity.

We refer to the Commission's three letters sent to EnergyAustralia on 27 April 2022 about its Further variation proposal, with the following email subject lines:

- ESC - Retail licence review - Variation of electricity licence – EnergyAustralia
- ESC - Retail licence review - Variation of electricity licence - EnergyAustralia Yallourn
- Subject line: ESC - Retail licence review - Variation of gas licence – Energy Australia

We appreciate that the Commission has made several changes in line with Retailer feedback, but we do not consent to the Further variation proposal due to one new change to the Revocation clause.

New Revocation of licence clause

We appreciate the changes in the Further variation proposal (Revised templates for electricity and gas retail licences) which provide Retailers an opportunity to respond to the matters that form the basis on which the Commission proposes to revoke a licence. Compared to the first proposal, this procedure does provide for some procedural fairness.

However, the Commission has now removed the prescribed set of circumstances in which the Commission may revoke a licence (listed in the first template (clause 6.2(i) – (vii)). E.g. the circumstances for licence revocation included breaches of any requirement of a Code of Practice.

The Commission explains that the legislation does not fetter its discretion and there is a risk in attempting to foreshadow all the circumstances in which it may revoke a licence. It therefore does not consider it should limit its discretion by listing the circumstances.

EnergyAustralia has concerns with this approach because:

- For us and other licensees on older versions of the licence this is a very significant change which substantially lowers the threshold for revocation. The change broadens the circumstances for licence revocation to potentially any circumstance, when our current licences limit revocation to where there is non-compliance with an enforcement order or an undertaking i.e. some prior enforcement action.
- While the Commission seeks to ensure that it has unfettered discretion, this comes at the expense of creating uncertainty for Retailers as to when the Commission may start the process to revoke the licence.
- As per our previous concerns, revocation is the most severe enforcement action that a regulator can take against a regulated entity. The licence should restrict licence revocation to circumstances that involve serious non-compliance.

We urge the Commission to revert to the first proposal and re-include clauses 6.2(i) – (vii) of the first template, along with the new procedure that improves procedural fairness. If the Commission were to decline to do this, then we ask the Commission to change clause 6.2 to add the italicised text below:

“The Commission may revoke this Licence:

- i. at any time at the request of, or with the consent of, the Licensee; or
- ii. in accordance with the Act *and the Commission’s Compliance and Enforcement Policy or any relevant guidance issued by the Commission.*”

To support the above change, we would expect that the Commission’s Compliance and Enforcement Policy or other relevant guidance will continue to provide some indication that the Commission will only revoke a licence in “the most severe cases or repeated instances of serious non-compliance” (as it currently states). This would not fetter the Commission’s discretion, but it will provide Retailers some certainty and some assurance that the Commission will not disregard its documented approach on licence revocation.

Lastly, please note that our email address for service is: Compliance@energyaustralia.com.au

If you have any questions in relation to this submission, please contact me (████████@energyaustralia.com.au or ██████████).

Yours sincerely,

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Regulatory Affairs Lead