

Independent Competition and Regulatory Commission

INFORMATION PAPER:

**Utility Services Licences to Supply Electricity - Proposed
Amendments to Implement the GreenPower Offer Scheme**

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Introduction

The *Utilities Act 2000* (ACT) provides a regulatory framework for utilities in the ACT. Licensing of utilities is dealt with under Part 3 of the Act. In relation to licences, the Independent Competition and Regulatory Commission (the Commission) has responsibility particularly for:

- licensing of utilities, including granting, varying, transferring and revoking licences
- determining and monitoring compliance with licence conditions
- granting exemptions from compliance with licence conditions, and
- determination of licence fees.¹

Section 19 of the Act provides for the Minister to give the Commission a direction about the results it must achieve through licence conditions. A direction may be given generally or in relation to a particular matter.

The ACT GreenPower Scheme

On 22 January 2008, the Minister for Environment, Water and Climate Change, Mr Jon Stanhope, directed the Commission to give effect to the GreenPower Scheme through suitable variations to the licence conditions of electricity retailers issued under the Act.

The policy intent of this change to licence conditions is to increase the number of customers in the ACT who take up GreenPower, and to increase the total amount of GreenPower purchased in the ACT.

On commencement, the Scheme will require all licensed retailers to have access to an accredited green energy product. The product must be accredited through the National GreenPower Accreditation Program.

The product must be the first offering to new and reconnecting customers. The initial offering of the accredited product must constitute the full electricity supply of the customer. To ensure that a choice is being made, customers must be made aware at the same time that other product options are available.

The accredited green energy product must also be offered and made available to existing customers at their request.

All retailers must commence offering an accredited product to all classes of customer no later than **1 January 2009**. The instrument setting out the Minister's direction, an outline of the scheme, and an explanatory statement are attached. The direction and explanatory statement are also available on the ACT Legislation Register website at <http://www.legislation.act.gov.au/di/2008-10/default.asp>.

¹ Following amendment of the Utilities Act in 2007 to establish the energy industry levy, the chief executive officer of the Commission was appointed as levy administrator.

The Scheme is intended to promote ecologically sustainable development in the provision of utility services and implements one of the objectives of *Weathering the Change – The ACT Climate Change Strategy 2007-2025* which addresses the commitment to reduce the ACT's greenhouse gas emissions.² As stated in the Minister's direction, "[i]ncreasing the Territory's use of nil emission generated electricity is one means of promoting long-term sustainability".

*National GreenPower Accreditation Program*³

The New South Wales Government developed the *GreenPower Accreditation Program* in 1997 to facilitate the growth of 'green' electricity generated by renewable resources. The program's objective is to increase the installation of new GreenPower electricity generators through promoting consumer demand for, and confidence in, accredited GreenPower products.

The program was subsequently expanded through joint collaboration by participating state and territory government agencies in New South Wales, Victoria, Queensland, South Australia, the ACT and Western Australia, and renamed the *National GreenPower Accreditation Program*. The Program is governed by the National GreenPower Steering Group.⁴

The objectives of the Program are to:

- facilitate the installation of new renewable energy generators across Australia beyond mandatory renewable requirements
- encourage growth in consumer demand for renewable energy
- provide consumer choice for, and increase confidence in, credible renewable energy products
- increase consumer awareness of renewable energy and greenhouse issues, and
- decrease greenhouse gas emissions associated with electricity generation.

Most electricity providers in Australia now offer at least one accredited product. In the contestable markets of New South Wales, Victoria, South Australia, the ACT and Queensland, residential and commercial customers can purchase GreenPower products offered by any provider licensed in that jurisdiction.

² The Strategy and its companion document, Action Plan 1 2007-2011, are available on the website of the ACT Department of Territory and Municipal Services at www.tams.act.gov.au/live/sustainability/climate/weathering_the_change.

³ The information in this overview is sourced from National GreenPower Steering Group (2007) *National GreenPower Accreditation Program Annual Audit – Audit Period 1 January 2006 to 31 December 2006*. available at www.greenpower.gov.au/admin/file/content13/c6/Compliance%20Audit%20Final%20Report%202006%20final.pdf

⁴ Under its Charter, the Steering Group is responsible for the overall management of the Program. Oversight functions on behalf of the National GreenPower Steering Group are currently located in the NSW Department of Water and Energy (DWE) in 2007.

There are three main types of GreenPower products:

- consumption-based – customers nominate the level of GreenPower purchased according to a nominated percentage of their total electricity consumption
- 'block'-based – residential customers purchase a kWh 'block' of GreenPower based on average household electricity consumption, and
- consumption-matched – customers continue to purchase electricity from their standard supplier and arrange to buy credits from a separate company. Customers' elected consumption is matched by the purchase and surrender of certificates from eligible generation sources by a GreenPower provider.⁵

The National GreenPower Steering Group conducts annual compliance audits of program participants including generators' operations and retailers' purchases and sales, and marketing materials.

New South Wales 10% GreenPower Scheme

The New South Wales Government has implemented a GreenPower 'opt-out' policy for electricity retailers with the making of the Electricity Supply (General) Amendment (Renewable Energy Sources) Regulation 2006. The Regulation commenced on 15 January 2007.

The New South Wales Regulation requires retail suppliers "to make offers to certain small retail customers that the equivalent of a minimum of 10 per cent of electricity supplied to the customer will be obtained from accredited renewable energy sources. The targeted customers are small retail customers who own or occupy residential premises and who enter into new customer supply contracts, either with their existing supplier or with another supplier. These customers are referred to as **new or moving customers**."⁶

The New South Wales Regulation provides creates a condition in the licences of electricity suppliers through which the policy is effected.

⁵ 'Consumption-matched' products are available nationally through websites. Companies offer carbon offsets on electricity use and other activities (e.g. flights or events). This type of product is outside the parameters the ACT's GreenPower Scheme which is targeted to the 'offers' of licensed electricity suppliers.

⁶ Explanatory note to Electricity Supply (General) Amendment (Renewable Energy Sources) Regulation 2006 (Gazette no.189 of 22 December 2006: p.11686).

Utilities Act 2000 (ACT) - Licensing Provisions

Subsection 21(1) of the Act prohibits a person from providing a utility service except in accordance with a licence. Licences are subject to a number of conditions with which utilities are required to comply. For example, section 25 of the Act requires all licensees to comply with:

- any requirements under the Act or a related law;
- any requirements under any other Territory law that apply to the utility in relation to the provision of a utility service;
- any relevant industry or technical codes; and
- any directions given by the Commission or by the chief executive under part 5 of the Act.⁷

Section 27 of the Act also imposes a number of special conditions on particular industries; for example, if the licence is for the supply of electricity, gas or water to franchise customers, the supply must be in accordance with the utility's standard customer contract.

The Commission also has discretion to impose licence conditions provided that they are not inconsistent with a requirement of, or under, the Act or any other ACT law. Proposed conditions will specify, for example, certain environmental requirements and additional reporting requirements.

Section 38 of the Act allows the Commission to vary a licence subject to certain conditions regarding consultation with the utility and the public. In the case of a ministerial direction, however, the Commission may vary a licence "on its own initiative" to give effect to the direction.

ACT GreenPower Scheme – Implementation Issues

The following discussion is intended to clarify a number of issues related to the detailed development of the new licence condition effecting the Scheme.

Who is a "new or reconnecting customer"?

The Minister's Direction states that the Scheme is aimed at new and reconnecting customers. The definition of a customer in the Utilities Act makes it clear that a customer cannot enter into a contract for the supply of an accredited green energy product by default. "Customer" is defined in section 17 of the Utilities Act as:

- (a) a person for whom the service is provided under a customer contract, or
- (b) a person who has applied, orally or in writing, to the relevant utility for the service to be provided under a customer contract.

"Customer contract" is defined in the Dictionary to the Utilities Act as either a standard customer contract or a negotiated customer contract.

⁷ Part 5 of the Act deals with technical regulation, responsibility for which is located in the ACT Planning and Land Authority.

Under section 92(1) of the Utilities Act, the terms of a standard customer contract will apply if a person applies to the utility for the service under the terms of that contract, or when the service is provided to the person in the absence of an application by the person. A standard customer contract will be the default contract in the event that an application is not made and electricity is provided to the premises.⁸

By definition, a “new” customer must be a person *who has applied*, orally or in writing, to an electricity retailer for electricity to be provided under a customer contract. It does not include a person who has not applied for a service but who—for whatever reason—has been provided electricity under the standard customer contract.

A “reconnecting customer” means a person who previously has been provided a service under a customer contract *and who has applied*, orally or in writing, to an electricity retailer for electricity to be provided under a customer contract. A reconnecting customer can include a customer who has moved or who has changed retailers.

A reconnecting customer does not include:

- a customer whose terms and conditions have been amended under the terms of an existing contract, for example when fees and charges are amended, or when an existing contract has been ‘rolled over’, or
- a customer whose electricity supply has been reconnected under the terms of an existing contract when it has been disconnected for some reason such as non-payment of a debt or expiration of credit in a prepaid meter⁹, or
- a customer who has, under retailer-of-last-resort arrangements, been placed on a standard contract and has made no election.

What is meant by ‘full supply’?

The Minister’s Direction states that “the initial offering of the accredited product must constitute the full electricity supply of the customer”. The Government’s intention is that the accredited green energy product represents 100 per cent of the electricity that the retailer is providing as a percentage of the customer’s consumption.

The *National GreenPower Accreditation Program* has established rules on what language can be used to describe GreenPower accredited products. Among other things, the rules state that “[t]he term 100% accredited must only be used in relation to products that are equivalent to 100% of the customer’s

⁸ Division 6.2 of the *Utilities Act 2000* sets out provisions for standard customer contracts. These contracts are approved by the Commission along with the schedule of charges for standard retail electricity supply consistent with relevant Commission pricing decisions in relation to transitional franchise tariffs.

⁹ See *Utilities Act, Prepayment Meter System Code* (July 2006) (Disallowable Instrument 2006-182)

electricity consumption or equivalent to the Australian average household electricity consumption as defined by GreenPower".¹⁰

To whom must the 'first offer' be made?

The Minister's Direction requires that a 100 per cent accredited green energy product be first offered to *all* classes of customers, residential to business, regardless of size.

What is a "first offer"?

The Minister's Direction requires that the choice of the 100 per cent accredited green energy product be the *first* offer the new or reconnecting customer receives, and that the customer must be given the opportunity to accept or refuse the offer. How this first offer is made may vary, depending on utilities' marketing strategies. The Commission does not wish to mandate rules that elaborate on the manner in which the offer is made, but notes that it will require evidence that the utility has complied with the intent of the Direction as it is effected through the varied licence condition.

What are the rights of prospective customers?

The Minister's Direction sets out the rights of prospective customers under the Scheme. All prospective customers have the right to a first offer of a 100 per cent accredited green energy product.

Prospective customers also have a right to be made aware that other product options are available to them. Making potential customers aware that there are other product options will be important in protecting financially disadvantaged customers from inadvertently selecting a product that does not suit their circumstances.

Prospective customers may reject the initial offering and consider other product options. As a corollary, prospective customers must actively agree (i.e., apply, orally or in writing), to enter into a contract for supply of a 100 per cent accredited green energy product or alternative products.

Customers have a right to be fully informed of the cost of the "first offer" and alternative products in making their purchase decisions. Utilities are also subject to the requirements set out in section 12.1 (Information about charges) of the Consumer Protection Code.

In addition to prospective customers, the accredited green energy product must be offered to and made available to existing customers at their request.

¹⁰ NSW Department of Water and Energy *for the* National GreenPower Steering Group (NGPSG) *GreenPower Marketing Guidelines 2007/2008*, 2007: section 2.2. (The Guidelines are available on the GreenPower website at www.greenpower.gov.au/greenpower-marketing-guidelines.aspx).

Proposed Amendments to Licence Conditions

The proposed variations to licensing provisions are set out in the Attachment. The variations will take effect from 1 January 2009.

This attachment is a template document. It is noted that the numbering could vary for individual licences where these contain utility-specific provisions.

Schedule 1 of the standard utility services licence to supply electricity sets out the specific obligations for the supply of electricity from an electricity network to premises for consumption.¹¹

The following amendments to Schedule 1 are intended to implement the GreenPower Scheme as outlined in the Minister's Direction. In addition, it is proposed to update the reference to the National Electricity Code, and to clarify or correct a number of reporting requirements of licensees.

Schedule 1, clause 1 (National Electricity Market Registration)

The out-of-date reference to "any registration required under the **National Electricity Code** granted by **NEMMCO**" is updated by a reference to "any registration required under the **National Electricity Rules** granted by **NEMMCO**". The amendment also makes provision for the establishment of the Australian Energy Market Operator as the body which will succeed NEMMCO.

Schedule 1, clause 2 (Requirements under the Electricity (Greenhouse Gas Emissions) Act 2004)

Subclause 2.2 has been added to clarify that the obligation to report on compliance with the *Electricity (Greenhouse Gas Emissions) Act 2004* is through the Annual Benchmark Statement and not the general performance and compliance reporting. The change corrects a confusion which came about due to an incorrect internal reference in the reporting requirements set out in subclause 3.3.

Schedule 1, subclause 3.3 (Annual reporting requirements)

The clause requires the licensee to report annually on its compliance with the strategies for promoting energy efficiency, demand management and sustainable energy sourcing it has developed under subclause 3.1. The amendment corrects an incorrect cross-reference in the existing document which followed introduction of the new Greenhouse Gas Abatement Scheme and insertion of a new clause 2.

Schedule 1, subclause 3.4 (Minimum content of annual report)

A new paragraph (4) has been added to require the licensee to include information on its GreenPower products in its annual report to the Commission, and on the number of customers taking up the "first offer" of a 100% accredited green energy product.

¹¹ Section 6, *Utilities Act 2000*.

Schedule 1, new clause 4 (GreenPower Scheme)

A new clause 4 has been added to effect the Ministerial Direction. The clause requires a licensee which supplies, or offers to supply, electricity in the ACT to make the first product it offers to a potential new or re-connecting customer a product that has been accredited under the National GreenPower Accreditation Program as specified under the Program's current Rules and Guidelines.

At the same time, the licensee is required to make the customer or potential customer aware that other product options are available to them.

New subclause 4.1 sets out new definitions for "accredited product", "accredited renewable energy source", "full electricity supply", "National GreenPower Accreditation Program", "new and reconnecting customers", and "potential new or reconnecting customer". These definitions apply to clause 4 (GreenPower Scheme).

New subclause 4.2 establishes the essential elements of the GreenPower Scheme. The requirements are that from 1 January 2009:

- the first product offered to each potential new or reconnecting customer of the supplier would be obtained from an accredited renewable energy source
- the accredited product offered would constitute the full supply of the customer
- the offer includes a statement as to whether the contract for the supply is either a standard customer contract or a negotiated customer contract
- the offer must include information on the tariffs and charges that would apply
- the supplier also offers the potential new or reconnecting customer alternative products which may include varying components or percentages of a product obtained from an accredited renewable energy source
- the alternative offerings must include information on the tariffs and charges that would apply, and
- the potential new or reconnecting customer must refuse the first offer before accepting an alternative product offer.

In addition, the first product must be offered to and made available to existing customers at their request.

Schedule 2 (Variations to the Licence)

Licences which have not been previously varied, will have a new schedule 2 added and will provide a summary of the variations. Others will have schedule 2 amended to provide a summary of the variations.

Dictionary

The reference to “**National Electricity Code**” is removed and replaced with a reference to “**National Electricity Law**” along with a new definition.

Implementation Monitoring and Review

The Commission will be closely monitoring the operation of the new GreenPower Scheme. Monitoring will form part of the Commission’s normal compliance oversight and will be included in the annual *Licensed Electricity, Gas, Water and Sewerage Utilities Compliance Report*.

Following a suitable period of operation, the Commission will seek the views of licensed electricity supply utilities and other interested parties on the practical consequences of the licence variations, including any difficulties or uncertainties that may have emerged.