



Licence Exemption Application

Origin Energy Retail No.2 Pty Ltd

Issues Paper

23 August 2018

Introduction

The *Electricity Reform Act* (ER Act) requires certain operations in the electricity supply industry to be licensed, this is administered by the Utilities Commission of the Northern Territory (Commission). Origin Energy Retail No.2 Pty Ltd (Origin) has applied to the Commission for an exemption from the requirement to be licensed for the generation and selling of electricity at two sites owned by Charles Darwin University (CDU)(Appendix A).

About the Utilities Commission

The Utilities Commission is an independent statutory body established by the *Utilities Commission Act* (UC Act) with defined roles and functions for economic regulation in the electricity, water and sewerage industries and declared ports in the Northern Territory.

The Commission is responsible for the economic regulatory framework for regulated industries that promotes and safeguards competition, as well as fair and efficient market conduct. In the absence of a competitive market, the Commission's aim is to promote the simulation of competitive market conduct and the prevention of the misuse of monopoly power.¹

The Commission has functions under various Acts (and associated regulations) including the *Utilities Commission Act*, *Electricity Reform Act*, *Water Supply and Sewerage Services Act* and the *Ports Management Act*.

Submissions

This Issues Paper identifies issues that the Commission believes should be considered as part of Origin's licence exemption application and seeks feedback from all stakeholders involved in the regulated electricity industries. All interested parties are invited to make submissions on the Issues Paper by **Monday noon 17 September 2018**, no late submissions will be accepted.

In the interest of transparency, the Commission will make submissions publicly available with the exception of any confidential information, which includes:

- information that could affect the competitive position of an entity or other person; or
- information that is commercially sensitive for some other reason.

Submissions must clearly specify the document (or part of it) that contains confidential information. A version of the submission suitable for publication (that is, with any confidential information removed) should also be submitted.

To facilitate publication, submissions should be provided electronically by email utilities.commission@nt.gov.au in Adobe Acrobat or Microsoft Word format.

Any questions regarding this Issues Paper or the licence exemption application should be directed to the Utilities Commission by telephone (08) 8999 5480 or email utilities.commission@nt.gov.au.

¹ Section 2 of the *Utilities Commission Act*.

Timetable

The essential dates for the exemption application are as follows:

Stage	Time
Issues Paper released	August 2018
Public consultation	August – September 2018
Commission paper presented to the Commission for a decision on the licence exemption	September 2018

Once a decision has been made, the final decision will be available on the Commission's website www.utilicom.nt.gov.au.

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Glossary

Term	Definition
Behind-the-meter	Electricity produced behind-the-meter, on-site, such as residential and commercial solar energy
CDU	Charles Darwin University
Commission	The Utilities Commission of the Northern Territory, as established under the <i>Utilities Commission Act</i>
Electricity supply industry	Industry involved in the generation, supply and sale of electricity or other operations of a kind prescribed by the Regulations
ER Act	<i>Electricity Reform Act</i>
Generation	Operation of any kind of electricity generating plant and all incidental and related operations, but does not include anything declared by Regulations not to be generation of electricity
Government	The Northern Territory Government
kW	Kilowatt, 1kW = 1 thousand watts
Minister	The Minister to whom the relevant section of the <i>Electricity Reform Act</i> is committed to
MW	Megawatt, 1MW = 1 million watts
Origin	Origin Energy Retail No.2 Pty Ltd
PV	Photovoltaic
Selling	Trading in electricity (including the selling of electricity to customers) but does not include an activity prescribed by the Regulations not to be selling of electricity
UC Act	<i>Utilities Commission Act</i>

Chapter 1: Licensing requirements in the Northern Territory

Legislation

- 1.1 A person must not carry on operations in the electricity supply industry for which a licence is required unless the person holds a licence according to Part 3 Section 14 of the *Electricity Reform Act* (ER Act), or an exemption as discussed in Para 1.4. The grant of an appropriate licence under Part 3 is the normal means by which specified electricity operations can be authorised in the Territory. The Commission is the licensing authority under Part 3.
- 1.2 The operations in the electricity supply industry for which a licence is required are:
- generation of electricity
 - owning or operating an electricity network
 - selling electricity
 - system control over a power system
 - other operations for which a licence is required by the Regulations.
- 1.3 A generation licence provides that the licensee can generate electricity for sale and sell electricity if stated in the licence or the ER Act to electricity entities holding licences authorising them to generate or sell electricity. A retail licence provides that the licensee can trade in electricity and retail electricity to customers.

Section 87 Exemptions

- 1.4 A licence is not required for the above operations if the entity has been exempted under section 87 of the ER Act. Section 87 allows the Commission, with the approval of the Minister, to grant an exemption from the requirements of Part 3, or specified provisions of those requirements on terms and conditions that the Commission considers appropriate. A list of the mandatory and additional provisions that can be imposed on a licensee under Part 3 are included in Appendix B. The Commission has a broad discretion as to the provisions that it might apply to a specific exemption. Section 87 thus provides an alternative (though arguably exceptional) means by which electricity operations can be authorised in the Territory.
- 1.5 Section 87 of the ER Act states that an exemption, except where otherwise specified in an exemption, may be varied or revoked by the Commission by notice in writing. An exemption does not mean that the exempt entity is immune from all obligations arising from the ER Act. For example, section 90(1) of the ER Act provides the system controller with powers to direct the operations of an exempted generator in some circumstances.
- 1.6 In assessing whether an entity should be exempt from the Part 3 licensing requirements of the ER Act, the Commission considers a number of factors. Firstly is there sufficient justification for an exemption while still promoting the objectives of the ER Act and the general objectives of the UC Act. In a similar approach to considering a licence application, the Commission would also consider whether the entity is a suitable person to carry out operations in the electricity supply industry.
- 1.7 In considering whether someone is a suitable person, the Commission would consider the following criteria:

- the applicant's previous commercial and other dealings and the standard of honesty and integrity shown in those dealings
- the financial, technical and human resources available to the applicant
- the officers and, if applicable, major shareholders of the applicant and their previous commercial and other dealings and the standard of honesty and integrity shown in those dealings (including breaches of statutory and other legal obligations)
- other matters prescribed by the Regulations.

1.8 The Commission believes that the licence exemption application provides information relating to whether Origin is a suitable person.

Current Section 87 Exemptions

- 1.9 There have been three exemptions granted by the Commission under section 87 since the ER Act commenced in 2000, all of which are still currently on issue. Two relate to individual operations and one is a class exemption.
- 1.10 In 2005, Alcan-Gove Pty Ltd was issued with an individual exemption (Appendix C) from the requirement to hold a licence for the generation and sale of electricity, and the owning and operating of an electricity network in the location of Nhulunbuy.
- 1.11 In 2014, GPT and Innogen Australia Pty Ltd were jointly issued with an individual exemption (Appendix D). GPT is the property owner, which also installed and owns the photovoltaic (PV) system. Innogen a wholly owned subsidiary of GPT, operates the PV system.
- 1.12 The exemption is from the requirement for Innogen to hold a licence for the generation and sale of electricity, and for GPT from the requirement to hold a licence for the generation of electricity. The exemption applies to a behind-the-meter PV system (around 1.2 MW) located at the Casuarina Square shopping centre, which is connected to the Darwin-Katherine system.
- 1.13 The wording of the exemption is similar to that of the *Small Scale Renewable Energy Operations exemption* (refer para 1.13) but specifically names the entities and what they are exempt from. The exemption requires that the maximum operating capacity of the system is to be no more than 2 megawatts (MW), with the electricity primarily for on-site use. Any excess electricity is to be sold into the distribution network under contract to a licensed electricity retailer.
- 1.14 Origin Energy Retail No.2 Pty Ltd has asserted in its application that the proposed operation for which an exemption is being sought is consistent with the operations that were the subject of the 2014 GPT exemption. While there are some similarities between the operation proposed by Origin and that for which GPT and Innogen were granted an exemption, in the latter case Innogen is a wholly owned subsidiary of GPT.
- 1.15 The *Small Scale Renewable Energy Operations exemption* (Appendix E) was issued in 2007 and exempts an entity from the requirement to be licensed to generate and sell electricity. The system is required to have a generating capacity no greater than 2 MW, based on a renewable energy source, and is to be primarily for on-site use. Any excess electricity may be sold into the distribution network under contract with a licensed retailer.
- 1.16 This is a class exemption in the sense that any person conducting electricity operations that satisfy such conditions is automatically exempted from the requirement to hold a generation or retail licence under Part 3 of the ER Act. It was granted at a time when the

Commonwealth Government's solar cities program was being rolled out in the Territory (specifically in Alice Springs) and it was necessary to ensure that a strict application of the licensing requirements of Part 3 of the ER Act did not impede the program. The current environment in the Territory is very different, with a much wider application of renewable energy based electricity generation now underway, and the Government seeking to implement a 50 per cent renewable energy target by 2030. The view of the Commission at the time the *Small Scale Renewable Energy Operations* exemption was issued was that it was an interim measure, and that it should eventually be replaced by an appropriate legislative instrument (e.g. regulation) since the exemption from the licensing requirements of Part 3 of an entire class of participants in the electricity industry was a policy matter. The Commission believes that this may be a policy matter for consideration by the Territory Government.

Other Exemptions

- 1.17 There are also several exemptions for certain activities in the electricity supply industry in the *Electricity Reform (Administration) Regulations*. These include regulations such as 3A *Exclusion from Act of certain types of electricity generation*, 3B *Exclusion from Act of certain sales of electricity*, and 14 *Exemptions for on-suppliers*. Origin has not made reference in its application to the exemptions under the above regulations.

Chapter 2: Proposed project

System

- 2.1 Origin is proposing to install a PV system at two sites owned by Charles Darwin University. This includes a 1.1 MW system at CDU Casuarina and a 325 kilowatt (kW) system at CDU Alice Springs; the systems will connect to the Darwin-Katherine and Alice Springs networks respectively, but will not export electricity to the grid.

Financial arrangement

- 2.2 Under a Solar Power Purchase Agreement (Solar PPA) Origin will install, own and operate the systems at the CDU sites for a 20-year period. Origin will generate and sell the electricity to CDU. The electricity is for on-site use only with a zero export barrier installed.
- 2.3 The proposed project would only involve one customer, CDU. Origin's application only requests exemption for this project (and customer). Any future broadening of this scope would require reconsideration. This is a commercial agreement between two large organisations that may not require the same customer protections as smaller entities.

Credentials

- 2.4 Origin has extensive experience nationally in the type of operation that is being proposed in the Territory, with over 80,000 behind-the-meter solar installations of various capacities across Australia. Origin (and various related companies) hold numerous licences and exemptions nationally for electricity generation and retail activities.

Chapter 3: Proposed exemption

- 3.1 Origin has applied to the Commission for an exemption under Section 87 from the Part 3 requirement to be licensed for the generation and selling of electricity. The exemption is for the activities listed in Chapter 2 at two CDU sites.
- 3.2 The exemption applied for is from the 1 October 2018 for a period of 20 years.
- 3.3 Origin has stated its application that it believes that licensing in Territory is structured for traditional large generators and retailers with the majority of the requirements in the applicable codes not relevant to the proposed operation. Origin also suggest that the reporting and auditing requirements of licensed entities is extensive for a small operation. Origin has suggested that its proposed operation most closely aligns to the exemption given jointly to GPT and Innogen under section 87 of the ER Act in 2014.

Generation

- 3.4 The Commission believes that the generation of electricity by Origin is covered under the current section 87 *Small Scale Renewable Energy Operations* exemption. Therefore, the Commission only intends to consider Origin's proposal for an exemption from the requirement to be licensed to sell electricity.

Provisions

- 3.5 The Commission has flexibility to amend existing licences, or to include certain provisions in exemptions, noting that licences have various mandatory provisions (Appendix B). For example, if an exemption was given, the Commission might make the exemption subject to certain provisions, consistent with a retail licence.

Licence

- 3.6 The Commission also intends to consider the suitability of Origin for a licence to sell electricity during the licence exemption consultation process. This is to streamline any subsequent process should the exemption application be unsuccessful and an alternative approach be required.
- 3.7 Due to the Commission having the flexibility to vary licence provisions, it is possible to vary the current retail licence to suit the proposed operations. For example, if the Commission formed the view that certain codes were not applicable to the operation proposed by Origin, the licence would reflect that reality. Similarly, reporting and auditing requirements for a licensee could be tailored to fit the scale of the operation.

Licensing Regime

- 3.8 The Commission has identified that the current licensing regime for electricity entities may require updating to take into account current industry conditions. The Commission intends to shortly start a broader consultation on licensing. The Commission welcomes any general comments on the current licensing regime. However, the current application for an exemption will be considered under the current licensing regime.
- 3.9 It is likely that over the next few years the current regime could undergo significant amendment and hence previously issued exemptions may need to be revoked or varied, and previously issued licences varied.

Chapter 4: Considerations

Issue 1: Licence to sell electricity exemption

- 4.1 Origin has applied for a Section 87 exemption from the requirement under Part 3 of the ER Act to be licensed to sell electricity for the operations proposed in Chapter 2.

Q 1: Is there any reason why Origin should or should not be granted an exemption from the requirement to be licensed to sell electricity?

Issue 2: Exemption provisions

- 4.2 The Commission has the authority, with the approval of the Minister, to exempt Origin from the Part 3 licensing requirements, or specified provisions of Part 3 of the ER Act.

Q 2: Should Origin be granted an exemption, what provisions should or should not Origin be exempt from?

Issue 3: Structure of the arrangement

- 4.3 The licence exemption application is for a commercial arrangement between two large organisations.

Q 3: Should the size and number of entities involved in the operation have an influence on the decision regarding providing an exemption?

Issue 4: Suitability to be licensed

- 4.4 The Commission may consider that a licence is more applicable than an exemption.

Q 4: Should the Commission decide that a licence is more applicable for the proposed operation, is Origin a suitable person to hold a licence to sell electricity?

Issue 5: Licensing Regime

- 4.5 The Commission on the conclusion of this licence exemption application will commence a review of the current licensing regime.

Q 5: Stakeholders are welcome to provide general feedback, outline issues and suggestions on the current regime.

Chapter 5: Appendices

Appendix A: Origin Energy Retail No.2 Pty Ltd exemption application

Appendix B: Part 3 Licence provisions

Appendix C: Alcan-Gove Pty Ltd exemption

Appendix D: GPT and Innogen Australia Pty Ltd exemption

Appendix E: Small Scale Renewable Energy Operations exemption