

Our reference: DMS #3728204
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Mr Alex Kroon
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Department of Finance
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Dear Alex,

Electricity Industry Customer Transfer Code 2004 (Code) - Draft recommendations report

Thank you for providing Synergy with the opportunity to comment on the review of the Code and the Public Utilities Office (**Office**) Draft Recommendations Report¹. We understand the objectives of this review are to address:

- inconsistencies of the Code with the Metering Code²;
- industry proposed amendments; and
- the suitability of the Code to meet its objectives.

In addition to the issues already identified by the Office, Synergy would like to provide, for consideration, the following additional comments on two key industry matters. Unless otherwise specified, words in *italics* in this submission have the same meaning as in the Code.

Rectifying an erroneous transfer

In considering Western Power's proposal it is important to first determine the root causes of an *erroneous transfer*. An *erroneous transfer* can only occur when the *incoming retailer* and *network operator* has effected a transfer without the *verifiable consent* of the *contestable customer*. There are only two fundamental root causes for such an outcome:

1. **Incoming retailer breach of warranty:** If the *incoming retailer* fails to obtain the *contestable customer's verifiable consent*; or
2. **Network operator standing data:** Western Power effects the transfer of a different *contestable customer* due Western Power's Standing Data³ and connection point data being incorrect.

¹ Public Utilities Office, Review of the Electricity Industry Customer Transfer Code 2004. Draft Recommendations Report, October 2014.

² Electricity Industry Metering Code 2012.

³ Under the Electricity Industry Metering Code 2012.

In addition, it is also important to note Western Power effects a transfer based on the warranties provided, under clause 4.6(1), by the *incoming retailer*. This warranty is not provided to an outgoing *retailer* therefore, only Western Power can act on a breach of this warranty by the *incoming retailer*.

Western Power's proposal appears to suggest *erroneous transfers* may be permitted or tolerated after a period of 3 months and that the *incoming retailer* and *network operator* may be relieved of any obligations to rectify the situation and protect the interests of the affected *contestable customer*.

In Synergy's view such an outcome is, fundamentally, contrary to the Code and its objectives. In particular, clauses 2.1 and 4.6. Further, under clause 4.6(4), such an outcome is also:

"4.6(4) A breach of a representation and warranty in clause 4.6(1) is a breach of this *Code*.

{Note: If this *Code* is being applied as a licence condition under sections 11 or 12 of the Act, a breach of this *Code* will be a breach of the relevant licence.}

{Note: In addition to any sanctions for breach of licence, a person who breaches the representation and warranty in clause 4.6(1) may be liable for misleading or deceptive conduct in breach of the *Trade Practices Act 1974*.}"

Clearly such an outcome is unlawful, creates regulatory and contractual uncertainty and does not protect the interests of the *contestable customer*. Consequently, that is why the Code provides for Clause 4.15 in order to give effect to and ensure the objectives, under clause 2.1, to protect the interests of *contestable customers* can be met.

The proposal appears to be contrary to the Code and its objectives and appears to seek to legitimise customer transfers that have been made contrary to the Code and potentially "...in breach of the *Trade Practices Act 1974*". Further, the proposed amendment does not address the root causes of an *incoming retailer* submitting a *CTR* without the necessary *verifiable consent*.

However, in Synergy's view, one of the, more common and likely, reasons for erroneous transfers to occur is due to Western Power's Standing Data being incorrect and leading to the wrong *contestable customer* being transferred. This type of erroneous transfer is not a breach of warranty under clause 4.6(4) and is not adequately contemplated by the Code because it assumes that Standing Data will always be accurate. Problems with incorrect Standing Data are not uncommon (given the amount of customer data being stored) and create a variety of issues for *retailers* including the wrong customer being disconnected or transferred. This is why the *Code of Conduct* has a service standard payment regime for disconnecting the wrong customer.

Therefore, it would appear Western Power is seeking to limit its liability under clause 4.15 due to an *erroneous transfer* that may be caused by incorrect Standing Data. Clause 4.15 requires all parties including the network operator to act in good faith to restore the rights and obligations of the affected contestable customer. This would include, with the cooperation of the *network operator* acting in good faith, the correct allocation and pass through of network charges under the affected contracts. Consequently, Synergy does not see how the regime would work or is in the public interest if Western Power is relieved of its obligations after 3 months of effecting an *erroneous transfer* caused by incorrect Standing Data.



In Synergy's view such an outcome is unreasonable and if Western Power is to be relieved of its obligation then *retailers* and the *independent market operator* should also similarly be relieved of their respective obligations. Clearly such an outcome is not practical or reasonable. Further, the proposal appears to seek to transfer the liability and consequences for erroneous transfers, due to incorrect Standing Data, to the outgoing *retailer*. In this circumstance the outgoing *retailer* would not have the power or legal ability to restore the rights and obligations of the contestable customer if Western Power is relieved of its obligations after 3 months of the *erroneous transfer*.

The proposed amendment also does not address the root causes of the *erroneous transfer*, creates considerable regulatory uncertainty, could create an unintended incentive not to remedy *erroneous transfers* within 3 months and legitimises the unlawful transfer of customers due to the acts or omission of an *incoming retailer* or *network operator*. In these circumstances it is unreasonable for the outgoing *retailer* to solely bear the cost of rectifying the situation, especially when they did not or could not have caused the *erroneous transfer* in the first place.

Further Synergy does not agree with the premise, unless *retailers* implement substantial and costly system changes, that an outgoing *retailer's* billing process can identify an *erroneous transfer* due to incorrect Standing Data or an *incoming retailer* failing to obtain the necessary *verifiable consent*. If this were correct then it is more plausible that Western Power's system would be more capable of readily detecting an *erroneous transfer* that was caused by incorrect Standing Data. This is because a *retailer's* billing system only processes the data provided to it under the Metering Code and Communications Rules to issue a bill. Consequently, it is not clear how a *retailers* billing system could possibly detect an *erroneous transfer* if the *network operator's* system cannot.

Further Western Power has indicated the one request to rectify an erroneous transfer was received 573 days after the transfer occurred. In this case Synergy can only conclude that the outgoing *retailer*, *incoming retailer*, *contestable customer* and *network operator* systems have all, simultaneously, failed to detect the *erroneous transfer*. This would appear to be an exception opposed to the norm.

Retailers clearly have a very strong commercial and financial incentive to detect an *erroneous transfer* quickly and this requirement does not need to be legislated. However, the example provided by Western Power indicates that there are clearly some practical limitations and barriers to achieving this outcome⁴. Synergy supports the early detection of *erroneous transfers* and would support a reasonable proposal by the *network operator* to amend the Communications Rules to give effect to such a service.

Further, Synergy recommends it would benefit the industry if Western Power, as part of its performance report, publishes the number of *erroneous transfers*, duration and associated root cause that occur each year. In Synergy's view this information is necessary and reasonable to inform any decision to amend the Code and the nature of the proposed amendment is in the public interest.

⁴ For example, the quality of Standing Data.

Synergy is sympathetic that it is not always easy to maintain accurate Standing Data however, the proposal is contrary to ensuring good electricity industry practices and that *network operators* have an important role and incentive to maintain accurate data and protect the interests of *contestable customers*. In Synergy's view Western Power is best placed to ensure that its network configuration and the Standing Data it owns is correct and it is reasonable that Western Power share the responsibility, under clause 4.15, to restore the rights and obligations of a *contestable customer* subject to an *erroneous transfer*. Otherwise Synergy cannot see how *retailers* and the *independent market operator* can give effect to the Code objectives and clause 4.15 without the cooperation of the *network operator*⁵.

Objection relating to debt

Synergy, in its previous submission, proposed a retailer should be permitted to object to a transfer if the customer has an outstanding debt with the retailer. Synergy proposed a policy similar to the states of Victoria and Queensland be implemented under the Code.

It is widely accepted outstanding debts do increase the cost of electricity supply for other customers especially if the debts have to be written off for those who incurred them. Such an outcome does not support effective retail competition. Synergy agrees that there are legal and regulatory frameworks in place that entitle retailers to recover unpaid debt. However, in reality the cost and difficulty of receiving unpaid debt significantly increases once the customer has vacated the premises.

The key issue Synergy has highlighted is the Code is being used by some *contestable customers* as a shield to avoid paying for the use of electricity. This is because the Code ensures that *contestable customers* continue to be supplied with electricity and does not envisage that certain *contestable customers* may use this protection in order to avoid payment via churn.

This protection is provided by the Code to both small use customers⁶ and large use customers. In Synergy's view this is an unintended consequence of the Code's objective to protect contestable customers.

Once a *contestable customer* has transferred, to another *retailer*, the ability for the previous *retailer* to recover debt becomes a costly exercise and often *retailers* are required to write off these debts. The outgoing *retailer* bears the burden of recovering the unpaid debt while the *contestable customer* continues to enjoy the protection and benefits of ongoing electricity supply. Without this protection, supply to these customers would be terminated and the debt recovery process would be far quicker and cheaper for the affected *retailers*. In Synergy's view it is important that there is industry recognition of this issue and that the number of instances is likely to increase as it has in other states.

The Code is not intended to be used as mechanism for certain *contestable customers* to avoid paying for the electricity they have used. Therefore, Synergy believes it is reasonable that the Code should make transparent *contestable customers* seeking to transfer to another retailer with an unpaid debt and provide the affected retailers with sufficient time to, reasonably, recover this debt prior to effecting the transfer.

⁵ Irrespective of whether the *erroneous transfer* was caused by incorrect Standing Data or a breach of warranty.

⁶ Small use *contestable customers* are also entitled to further protections under the Energy Ombudsman Scheme.

Therefore, in these circumstances, Synergy is proposing that the Office consider amending the Code to allow the affected *retailer* to request the *network operator* to delay the *nominated transfer date* by 3 months on the grounds of a genuine debt (e.g. a debt threshold).

This approach is consistent with the Code objectives and does not prevent the transfer of the *contestable customer* from occurring but provides a reasonable period for the *retailer* to engage with the *contestable customer* and reach an agreement to settle the unpaid debt.

Yours sincerely

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