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Dear Sarah

PUBLIC SUBMISSION – 2017 REVIEW OF ENERGY CUSTOMER CONTRACT REGULATIONS

Synergy appreciates the opportunity to make a submission in relation to the Public Utilities Office's (PUO) issues paper dated July 2017.

Synergy compliments the PUO in relation to the format, quality and detail of the information presented in the issues paper.

Synergy's response to the issues paper is detailed in attachment 1. Synergy welcomes the opportunity to discuss our comments and recommendations with the PUO. Please do not hesitate to contact me in that regard.

Yours sincerely

SIMON THACKRAY
MANAGER REGULATION AND COMPLIANCE

8 August 2017

1. Is there any reason why the existing protections regarding disconnection for emergencies would not be sufficient to also cover disconnection for health and safety reasons?

Synergy considers the matter is adequately dealt with by the definition of “emergency” and clause 7.5 within the compendium of gas customer licence obligations (**gas compendium**). Accordingly, Synergy supports deletion of the reference to clause 5.1.4 of the AGA Code within the *Energy Coordination (Customer Contracts) Regulations 2004* (**gas regulations**).

2. Should the requirement for distributors to use best endeavours to minimise interruptions and restore supply as soon as practicable be retained within the regulatory framework?

Synergy supports deletion of the reference to clause 5.1.5 of the AGA Code within the gas regulations.

3. Does there need to be provision in the regulatory framework to allow gas retailers to disconnect customers for refusing to pay a security deposit, provided the retailer has given the customer written notice of its intention to disconnect?

Synergy supports the Public Utilities Office’s (**PUO**) preliminary recommendation to delete the references to clauses 5.1.7 and 4.4.6 of the AGA Code within the gas regulations and replace with equivalent provisions within the regulations themselves. Further, Synergy recommends the *Electricity Industry (Customer Contracts) Regulations 2005* (**electricity regulations**) be similarly amended for consistency and to avoid additional costs of retailers having to manage two separate security deposit regimes. In doing so, the PUO should also be mindful not all security takes the form of a refundable advance. For example r.12 of the electricity regulations is not relevant to a bank guarantee.

4. Do there need to be customer protections in the gas regulatory framework regarding when a retailer may use a customer’s security deposit to offset an amount owed, and the return of the balance of the security deposit to the customer?

Generally, no. The definition of “security deposit” and r.13(3) and (4) of the gas regulations adequately protects small use gas customers in relation to the use and return of a security deposit. However, the gas (and electricity) regulations could provide greater clarity as to the circumstances in which an applicable refundable advance / security deposit is to be repaid to the customer, if required.

5. It is proposed that a requirement for gas distributors to make supply available at new connections within 20 business days will be retained within the regulatory framework. What conditions should this requirement be subject to?

Synergy supports a distributor having a prescribed timeframe to make supply available to a small use customer at a new connection. Synergy considers the three draft requirements specified within the PUO’s issues paper to be reasonable. Further Synergy recommends the PUO also considers the connection requirements specified within the *Electricity Industry (Obligation to Connect) Regulations 2005*.

6. Does the *Energy Operators (Powers) Act 1979* provide sufficient customer protections regarding (a) a retailer and/or distributor giving notice prior to accessing the supply address; and (b) the retailer and/or distributor's representative carrying identification when seeking access to a customer's supply address?

Synergy is not aware of any problems or concerns relating to a distributor accessing a small use gas customer's premises that warrants further customer protection. Accordingly, Synergy considers the *Energy Operators (Powers) Act 1979* provides sufficient customer protections regarding access to a customer's premises for the purpose of supply under the gas regulations.

7. Should any part of regulation 27 of the Gas Regulations be retained, given that the Australian Consumer Law contains more comprehensive protections regarding unsolicited consumer agreements?

No. Regulatory duplication imposes unnecessary costs on market participants which are ultimately passed to customers. As a general principle if applicable laws provide adequate customer protection then any regulatory duplication within energy market specific laws should be removed.

8. Are there any other regulations within the Gas Regulations that create undue regulatory burden for retailers by duplicating or overlapping with requirements under the Australian Consumer Law?

The PUO should assess the gas regulations (and electricity regulations) against the *Competition and Consumer Act 2010* (Cth), *Fair Trading Act 2010* (WA), the *Spam Act 2003* (Cth), the *Spam Regulations 2004* (Cth), the *Do Not Call Register Act 2006* (Cth), the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* (Cth) and the *Privacy Act 1988* (Cth) consistent with the approach previously undertaken by the Economic Regulation Authority to remove applicable law within the *Code of Conduct for the Supply of Electricity to Small Use Customers 2016* and gas compendium.

9. Should any part of regulation 22 of the Electricity Regulations be retained, given that the Australian Consumer Law contains more comprehensive protections regarding unsolicited consumer agreements?

Refer Q.7 above.

10. Are there any other regulations within the Electricity Regulations that create undue regulatory burden for retailers by duplicating or overlapping with requirements under the Australian Consumer Law?

Refer Q.8 above.

11. Are there any further amendments to either the Gas Regulations or the Electricity Regulations that should be considered by the Public Utilities Office?

Yes. Synergy has four recommendations in relation to the electricity regulations.

Recommendation 1

R.37 of the electricity regulations stipulates when electricity supply is deemed to be taken under a standard form contract. Synergy notes the current drafting does not provide for a situation where an active connection point exists but consumption does not occur (i.e. the premises are connected to the network but de-energised). In these situations the retailer is liable to pay the network operator's supply charges but cannot recover these costs from the customer under the deemed contract provisions. To allow for recovery of fixed network costs by the retailer Synergy recommends r. 37 be amended as follows.

37. Supply under deemed contract with default supplier

If a customer –

- (a) commences to take a supply of electricity; or
(b) is capable of taking supply of electricity,

at a connection point without entering into a contract for the supply with a retail licensee, the electricity customer is deemed to be supplied under the standard form contract of the default supplier for the connection point ~~in respect of those premises.~~

Recommendation 2

R. 40(1) of the electricity regulations specifies Synergy's obligation to offer supply of electricity under a standard form contract. Synergy's view is the current drafting is no longer appropriate and changes should be made to align the regulations with the *Electricity Corporations (Prescribed Customers) Order 2007*; i.e. Synergy's obligation to offer to supply should apply solely to customers who consume < 50MWh per annum at each connection point. Our rationale is:

- The obligation has been in existence for 12 years and during that time there has been significant retail market activity, new retailer entry and churn; and
- Synergy is the only retailer in the contestable electricity market in the SWIS that has an obligation to offer to supply under an electricity standard form contract. Given the level of market maturity and to provide for a level playing field between Synergy and its competitors the obligation should be removed.
- Based on ERA data¹ the percentage of Synergy's contestable small use customers within the SWIS relative to the total amount has changed from 90% in 2007/08 to 66% in 2015/16.
- The Electricity Reform Task Force² original recommendation for the obligation to supply was the obligation should be applied to all licensed retailers who supply tariff customers. However, the obligation ultimately implemented only applied to Synergy within the SWIS.

¹ Refer ERA annual performance reports - electricity retailers 2007/08 and 2016.

² Refer Electricity reform task Force "Electricity Reform in Western Australia" page 52.

Therefore, the obligation should apply equally to all retailers who supply small use customers or should be removed from Synergy. (The latter is Synergy's preference).

Recommendation 3

R. 40(2) and (3) specify limitations on Synergy's obligation to offer supply. Amendments are required to reduce Synergy's financial risk from customers taking a supply of electricity but not paying for it. Synergy submits it is reasonable and prudent to suspend Synergy's obligation to offer to supply under a standard form contract when a customer declines to provide the following:

- (a) a security deposit; or
- (b) identification necessary to establish a contract for the supply of electricity.

Recommendation 4

Synergy notes that the electricity regulations do not currently explicitly refer to a retailer being able to contract with multiple parties. Unfortunately the current obligation to offer to supply is subject to abuse in situations where multiple persons reside at the same property but the contract is held in a single name. For example, party A will terminate their contract and not pay their final account. Almost immediately party B will establish a new contract at the same premises (with party A still residing at the premises). Party B will then terminate their contract and not pay their final account. Party C will then establish a new account at the same premises (with party A and B still residing at the premises). As a consequence the premises cannot be disconnected for non-payment and Synergy is left with multiple arrears from multiple persons residing at the same premises. The ability to enter joint and several contracts would assist Synergy to mitigate this risk.

12. Other matters

Synergy supports references in the AGA code in the gas regulations regarding:

- the notification of tariffs and tariff variations;
- payment difficulties;
- equipment installation and maintenance;
- existing connections;
- customer leaving supply address,

being deleted from the gas regulations without replicating in other regulatory instruments.

Synergy supports the gas regulations being aligned with the r.14 (billing) and r.18 (complaints) of the electricity regulations.