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Public Utilities Office
Department of Finance
469 Wellington Street
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Dear Sir/Madam

POSITION PAPER – CHANGING THE CONTRACTUAL RELATIONSHIP BETWEEN THE ELECTRICITY DISTRIBUTOR, CUSTOMERS AND RETAILERS

Synergy welcomes the opportunity to provide comment on the matters contained within the position paper regarding changing the contractual relationship between the electricity distributor, customers and retailers (**the position paper**). While Synergy and its customers stand to be impacted by the matters in the position paper, Synergy acknowledges that many of the proposals contained within the position paper are necessary to give effect to the government's decision to transition to the national framework.

Keeping this in mind, this submission is intended to assist the electricity market review and the state government to make informed decisions regarding the implementation of proposed changes to the electricity market within the South West Interconnected System (**SWIS**). Importantly, Synergy is keen to ensure that the transition to the new arrangements occurs in a structured and considered manner and that all of the cost, benefits and other consequences of the proposed changes are understood and accepted by decision makers.

The state government has an energy policy objective to introduce electricity retail competition supported by new technology and private investment. The electricity market review (**EMR**) has proposed to transfer SWIS network access regulation from the Economic Regulation Authority (**ERA**) to the Australian Energy Regulator (**AER**). In doing so, it has committed to adopting the contract model whereby the distributor contracts directly with customers for the provision of electricity network supply services (e.g. connection, transport and existing metering) while retailers and retail customers contract for the sale of electricity and retailers collect distributor charges on the distributor's behalf. This is known as the triangular contractual model.

Synergy is concerned that stakeholders have been asked to consider the triangular contractual model in a segmented fashion and not as a holistic reform package as further consultation on several complex and material elements of the reform is anticipated at a later stage. For example, the implications for existing network access contracts are discussed in the position paper, although a separate process is contemplated to deal with the sensitive topic of contract intervention. Accordingly, it is difficult to form views of how the triangular contract model should be implemented when material elements, such as how existing retail supply contracts are to be treated, is currently unknown.

Exposure to network access uncertainty

At this point, Synergy is uncertain about network access arrangements for retailers as there is no guarantee all existing network services will continue under the new access regime in substantially the same form or at the same costs. If material changes were to occur, the customer and retailer impacts may be significant in terms of price, withdrawal of transport service or lower level of transport service.

The position paper makes the assumption retailers can manage customer risks associated with the transition to the national access regime via retail contract change in law provisions. However, until the content of Western Power's RCP1 is known, this assessment cannot be made. Synergy believes the proposed transitional arrangements are insufficient to address the implementation risks or ensure the benefits of reform are fully captured.

Synergy notes that it is common requirement for major access reforms to be undertaken with rigorous transitional arrangements or side constraints in place to reduce implementation risk. We refer to the success of arrangements established to transition access under the *Electricity Corporations Act 2004*, *Electricity Transmission Regulations 1996* and *Electricity Distribution Regulations 1997* to the *Electricity Industry Act 2004*, *Electricity Transmission and Distribution Systems (Access) Act 1994* and *Electricity Industry Access Code 2004*.

The EMR needs to aware of derogations in the national electricity rules with respect to a number of jurisdiction specific provisions, savings and side constraints and just as importantly, the reasons why these were considered necessary. In Synergy's view comparable arrangements are required and capable of being implemented in Western Australia.

Loss of customer representation

In Synergy's view, a retail customer should have an express right to appoint another party to act on its behalf for the purposes of requesting or managing a network supply service. For example, the agent should be able to act on the customer's behalf in relation to a network billing or network liability dispute. Further provisions should be enacted to enable this to take effect through aggregation of retail customer's negotiating rights, conscious of provisions (such as confidentiality obligations between retail customers and distribution businesses) that may restrict the ability of appointees to negotiate on behalf of their retail customers, on an aggregated basis.

Retailers in Western Australia are best placed to undertake advocacy of this kind given the extent of their historical relationships with consumers in this state. In undertaking this retailer-led advocacy, Synergy has a number of rights under the existing access code, which are not replicated for retailers or retail customers in the national electricity rules, particularly in relation to negotiating non-reference services such as battery connection.

Under the national electricity rules retailers have an opportunity to engage with distribution businesses in relation to their tariff structure development under the “tariff structure statement”. The rules do not provide an express right for retailers to advocate or act on behalf of their customers, except to the extent that is provided for in relation to a "market small generation aggregator".

In Synergy's view, the right for retailers in the SWIS to aggregate and act on behalf of retail customers should be preserved. This could be effected by making jurisdictional derogations to:

- expressly allow retailers to act on behalf of consumers in respect of the negotiations for "negotiated distribution services" in a manner similar to that allowed in respect of a "market small generation aggregator";[1] and

- require that the AER not approve, and Western Power not undertake, any express or implied restriction on a retailer agreeing or negotiating on behalf of its customers or prospective customers a negotiated distribution service. This is likely to require that Western Power is restrained in its "negotiating framework" and its "negotiated distribution service criteria" from imposing confidentiality or similar restrictions if they have or may have the effect of restricting aggregated negotiation rights.

Transition arrangements

To mitigate the above risks, Synergy recommends the EMR implement the following transitional arrangements to manage the shift from the state to the national access regime. This would include the following:

1. To assist retailers to manage retail supply contract transition with respect to removal of network supply services from those contracts retailers should be provided with a statutory limitation on liability by inserting a provision within each electricity supply contract that is in force prior to 1 July 2018 to the effect a retailer is not liable for a direct or indirect loss experienced by a customer under a retail supply contract in relation to a change network supply service on and from 1 July 2018 similar to that provided to Western Power under clause 30 of the *Energy Legislation Amendment and Repeal Bill 2016*.

2. To assist customers to manage network charge transition and to avoid price shock the government should follow the model South Australia adopted under clause 9.92.5 of the national electricity rules that precluded components of a network tariff from increasing by more than a specific amount in a regulatory

[1] See for example, the agent deeming provision set out at clause 5A.A.3 of the national electricity rules.

period. Likewise the government should impose a requirement under RCP1 that network supply services post 1 July 2018 must be largely representative (in terms of scope and price) of those reference and non-reference services that exist pre 1 July 2018. This change will provide for network service continuity to customers and address the risks faced by retailers as a result of any material changes to network services.

3. Where a distributor nominates a network supply service on behalf of a customer, it should be required to nominate the lowest cost regulated network tariff applicable to that customer. This requirement will address the difference in market power between the distributor and customer in terms of customers not being able to choose their network service or price. Further, given Synergy currently does not fully recover all network costs from customers this approach will also minimise the government subsidy we receive.

4. Recognising retailers will be obliged to recover network supply charges from customers on behalf of distributors under the triangular contract model, retailers should not be limited from passing through RCP1 charges once approved by the Australian Energy Regulator (AER). Importantly, this does not preclude the government offsetting these charges for customers through a subsidy, as is currently the case.

5. Deemed contracts between a distributor and customer should provide for customers to nominate an authorised representative to act of their behalf either individually or as a class of customers. This customer right will assist customers with little market knowledge to understand complex network matters for which they will now be directly responsible such as network liability for their electrical installations.

Synergy responses to specific questions within the position paper

Question 1: Should standard contracts be prescribed pursuant to regulation, or developed by the distributor for approval by the local regulator?

Network standard contracts should be prescribed in regulation consistent with the national model contained within schedule 1 of the national energy retail rules.

Question 2: Should the distributor be limited to large customers in the development of deemed class-specific contracts?

Yes. Deemed class specific contracts should be consistent with *National Energy Retail Law (South Australia) 2011*. Synergy is not aware of circumstances in the national electricity market that warrants small customer deemed class specific contracts.

Question 3: Is the negotiation framework under Chapter 5A suitable for negotiating ongoing supply contracts in the South West Interconnected System? If not, what amendments should be made?

Synergy considers retail customers, particularly small use customers, would benefit from retailers being able to negotiate network services on their behalf and on an aggregated basis. In Synergy's view, there is ample evidence for its role in non-

reference service development being for the benefit and in the long term interests of consumers.

Retailers have a number of rights under the Western Australian electricity networks access code that are not replicated for retailers or retail customers in the national electricity rules, particularly in relation to negotiated services.

While under the national electricity rules retailers have an opportunity to engage with distributors in relation to network tariff development under the 'tariff structure statement', the national electricity rules do not provide an express right for retailers to advocate or act on behalf of their customers, except to the extent that is provided for in relation to a "market small generation aggregator".

In Synergy's view, this current right for retailers to aggregate and act on behalf of retail customers should be preserved. Local regulations are needed to:

(a) expressly allow retailers to act on behalf of consumers in respect of the negotiations for "negotiated distribution services" in a manner similar to that allowed in respect of a "market small generation aggregator";[2] and/or

(b) require the AER not approve and Western Power not undertake, any express or implied restriction on a retailer agreeing or negotiating on behalf of its customers or prospective customers a negotiated distribution service. This is likely to require that Western Power is restrained in its "negotiating framework" and/or its "negotiated distribution service criteria" from imposing confidentiality or similar restrictions on agency and aggregation.

Question 4: Is there any reason why the high-level contractual provisions under r. 82 of the National Energy Retail Rules should not be adopted in the South West Interconnected System?

Given a distributor is subject to part 12 of the c*ode of conduct for the supply of electricity to small use customers 2014* (**small use code**) which deals with complaints and dispute resolution in greater detail. Synergy also assumes a provision similar to regulation 18 of the *Electricity Industry (Customer Contracts) Regulations 2005* will apply to negotiated connection contracts.

Question 5: Should the additional information provisions under the National Energy Retail Rules be included within local customer protection arrangements?

Yes. Similar customer rights and protections afforded by national energy retail rules 17 and 80 do not currently exist under the Western Australian electricity customer protection framework, it is therefore appropriate to include them within local arrangements.

[2] See for example, the agent deeming provision set out at clause 5A.A.3 of the national electricity rules.

Question 6: Should Western Power's liability to customers under the ongoing supply contract be limited? If so, why and in what ways?

No. Small use customers, because of their limited market power, should be afforded protection similar to section 120(2A) of the *National Electricity (South Australia) Act 1996* and national energy retail rule 83 in relation to network supply service contracts with a distributor.

Question 7: Should negotiated ongoing supply contracts grant full scope for the parties to agree to contract away from the default liability settings established under Section 120(1) of the National Electricity Law? Should the answer be different in the case of small use customers?

Yes for large customers but no for small use customers on the basis of differing customer market power. This approach is consistent with national energy retail rule 83 and is consistent with the national electricity objective of promoting investment in electricity services for the long term interests of consumers

Question 8: Should customer contractual liabilities to Western Power be limited? If so, why and in what ways?

Only to the extent it is consistent with the national framework. In Synergy's view this would be inconsistent with the national electricity objectives and would not be in the long term interest of consumers if users do not have an incentive to maintain compliance with technical requirements and their connection agreement. A customer should be liable for network damage due to its act or omission under a network connection contract consistent with the national framework. In the event customers receive a limited liability it may dilute the compliance with technical requirements.

The position paper indicates to the extent customer liability will be adequately dealt with under the new distributor customer contracts, then these matters should be removed from the retailer customer contract[3]. In contrast, the model terms and conditions for standard retail contracts within schedule 1 of the national energy retail rules (clause 7) considered it necessary to provide for retailer limited liability including the quality and reliability of electricity supply and loss or damage resulting from total or partial failure to supply in specific circumstances. Therefore, consistent with national arrangements, local retail contracts should provide for limited liability in specific supply circumstances.

Question 9: Should limits on customer contractual liabilities be defined differently for small-use and large customers?

Only to the extent it is consistent with the national framework. The national framework should apply as reflected in the model terms and conditions for deemed standard contracts under schedule 2 of the national energy retail rules. Synergy also notes customer liability arrangements may differ from the model terms and conditions if the customer and distributor elect to negotiate a contract under chapter 5A of the national electricity rules but subject to rule 83.

[3] Ibid page 22.

Question 10: Are there other liabilities created by statute that should be considered for amendment as part of these reforms?

Yes. Under small use code clauses 4.17 and 4.19, a retailer cannot recover an undercharge or adjustment beyond 12 months due to the error, defect or default of the distributor. Consequently, the distributor's actions can result in a retailer being limited to recovering its charges for electricity consumed at the premises (as well as recovering transport charges) to 12 months.

Examples include meter data errors, faulty meters or where the distributor fails to obtain an actual meter reading once every 12 months. Given the new contract regime, it is appropriate under local regulations for: (a) the distributor to pay the retailer any energy sales beyond 12 months which the retailer cannot recover due to the error, defect or default of the distributor; and (b) the distributor not be permitted to recover network charges from shared customers via the retailer due to the error, defect or default of the distributor.

It is important to recognise where an obligation is imposed on a retailer to do something in respect of a connection point the retailer will be exposed to liability or the risk of being subject to legal action. For example, under the new regime retailers are expected to coordinate certain matters on behalf of the customer and network service provider, at no cost. Consequently, it is important that retailers are indemnified under these circumstances.

Local regulations should also provide for damages or compensation in situations where a retailer is not able to sell contracted energy to customers due to distributor negligence in relation to compliance with applicable regulatory requirements such as the provision of metering data or connections services.

Under the current regime retailers are exposed to a range of liabilities that are due to the actions or omissions of the network service provider. These include compliance issues in relation to the provision of metering data, activities under the application and queuing policy and supply reliability. Some of these issues are likely to continue under the new regime despite the triangular framework. Therefore, it is important retailers are indemnified by the distributor for the activities that occur under any arrangement between the network service provider and the customer.

Further, in Synergy's view retailers should not be liable for circumstances where there is an orphan connection point[4]. A retailer's liability to the distributor in relation to billing and invoicing arrangements should only apply to circumstances where the retailer has a contract with a customer at the point of supply and should not apply where there is no shared customer at the point of supply.

Question 11: Are there any circumstances under which specific intervention is needed to ensure contracts are updated to reflect the change in contracting arrangements?

Yes. As stated earlier Synergy has no visibility at this point in relation to RCP1 form, eligibility and pricing. Consequently, there is significant retail contract uncertainty as to how customers will react to the new distribution arrangements.

[4] A connection point which is not incorporated into any retailer's electricity transfer access contract.

Synergy considers there is real risk of contractual disputes if existing network services and tariff structure do not exist under comparable terms and conditions. Synergy notes the Public Utilities Office's view is that the transition to the new triangular contract arrangements should be able to be managed through a retailer's change in law provisions within their electricity supply contracts.

Synergy is unable to determine whether this is the case until it knows what RCP1 involves and contains. Consequently, Synergy remains of the view if parties are forced to terminate retail contracts or accept conditions causing them to be worse off, then retail contractual disputes are likely to arise especially as the retailer and not distributor will bill the customer for network supply services. The position paper does not reflect this risk.

Under clause 18 of the *Energy Legislation Amendment and Repeal Bill 2016* (Section 143) (**the Bill**) on and after commencement day (i.e. 1 July 2018), a contract between a distributor and a retailer does not have effect to the extent to which it provides for or in relation to the provision, on and after commencement day, of network supply services. Further, the distributor is not liable to the retailer for or in relation to the provision on and after the commencement day of a network supply service under the contract, and a failure by the retailer in relation to the provision of the service is not a breach of, or default under, the contract.

No similar limitation of liability provision exists under the Bill in relation to a contract between retailer and customer. However, Synergy notes that also under clause 18 (section 145) the Bill contains a regulation making power to address transitional matters. Synergy expects in the event retailers can demonstrate contractual risk as a result of the move to the national regime then a similar statutory limitation on liability provision will be afforded to them as is the case with clause 18 under the Bill.

Alternatively, we suggest that retailers be granted a full indemnity by distributors in respect of any losses, claims or liabilities that may be incurred by a retailer in respect of any liability it may have with respect to network supply services under a retail supply contract to a retail customer.

Question 12: Are there any other reasons why intervention in contracts is necessary?

Refer to Synergy's response to Q.11.

Question 13: Is there any reason why local regulations regarding assistance and cooperation between retailers and distributors should be substantively different to the National Energy Customer Framework model set out in r. 94 of the National Energy Retail Rules?

Yes. National energy retail rule 94 does not contain any confidentiality or permitted disclosure obligations in relation to the provision of documents and information between a retailer and a distributor. Synergy is concerned sensitive commercial information may be requested by the distributor in relation to the supply of electricity without any confidentiality or permitted disclosure requirements applying. Synergy refers to Part 7 of the *Electricity Industry Metering Code 2015* for guidance in that regard.

In addition, rule 94 does not extend to ensuring that retailers are provided with all the necessary information from the network service provider, in a timely manner, to meet their specific obligations under the small use code.

This provision is currently addressed under clause 5.8 of the *Electricity Industry Metering Code 2015.* This is a necessary provision if the small use code is required to operate under the new regime and will ensure that a retailer can comply with its obligations under that code.

Question 14: Is there any reason why local regulations regarding provision of information between retailers and distributors should be substantively different to the National Energy Customer Framework model set out in rr.95-100 of the National Energy Retail Rules?

It is difficult to answer this question without visibility or an understanding of the proposed Western Australian electricity retail market procedures, ultimately administered by the Australian Energy Market Operator (**AEMO**). Although the subject matters specified under rules 95-100 appear reasonable, it is the uncertainty over the communication method (such as the provision of standing data) which is potentially material. Until the business to business and business to market operator system requirements and procedures are known, which will replace the current build packs and communication rules, Synergy cannot express a view on this matter, especially as the national energy retail rules provide for the exchange of information between retailer and distributor at no cost.

However, it is likely that both parties will need to invest in technology system changes to facilitate the efficient communication of information. Currently local arrangements that require the sharing of information are contained within metering agreements and access contracts between the retailers and the distributor. It is conceivable some of the information arrangements under these agreements could continue to operate under the new regime.

Further, other states considered it necessary to provide market certainty in relation to this issue by implementing use of system or coordination agreements between the retailers and network service providers. Therefore, this is a matter that local regulation could seek to address in order to provide more regulatory certainty.

Synergy notes the planned outage notification timeframes for life support equipment customers differs between the small use code and national energy retail rules. In addition, Synergy also understands that coordinating information in relation to child connection points, under chapter 7 of the rules, may not be required under the proposed new regime for the SWIS.

Question 15: Is there any reason why local regulations regarding classification and reclassification of customers should be substantively different to the National Energy Customer Framework model set out in rr.7-10 of the National Energy Retail Rules? Is the administrative burden associated with the classification and reclassification of customers reasonable?

The customer classification and reclassification arrangements seem reasonable and appear to provide a framework for Synergy to deal with customers who are part residential and part business for example a home business or farm with a homestead or not for profit organisations (i.e. K1, C1 and D1 retail tariff customers). However, materiality of implementation costs will be contingent on how the various customer classifications and reclassifications are required to be notified between market participants. For example whether these notices are system or manually generated.

Customer classification also raises the issue of who will determine and on what basis a customer is contestable and whether the current sub-classifications for a customer will continue to operate under the new regime. For example, some of the classifications currently being used include domestic, farm, industrial unmetered supply and commercial. This function is currently performed by Western Power but this is not appropriate to continue in the future as this should be the role of the market operator, not a market participant. In Synergy's view this matter should be prescribed under electricity retail market procedures administered by AEMO and will very likely require significant business to business notifications (**B2B**) system changes.

Question 16: Is there any reason why local regulations regarding referral of enquiries and complaints should be substantively different to the National Energy Customer Framework model set out in rr. 101-102 of the National Energy Retail Rules? Is the overlap between the Customer Code and the proposed provisions adequately resolved?

Synergy considers national energy retail rules 101-102 to be an improvement on clause 12.4 of the small use code if the arrangements are limited to small use customers only.

Based on our practical experience in dealing with external complaints the regulatory framework should define "a complaint relating to a distribution system or customer connection services" and a "complaint relating to the sale of energy". Synergy has incurred external ombudsman costs unnecessarily when customer complaints arising from network issues such as outages or energy data quality have been characterised by customers as high bills and therefore subject to a dispute between retailer and customer.

Synergy disagrees with the position paper's assertion that new regulatory requirements relating to complaints management can co-exist. There should be no overlap between existing and proposed new arrangements as regulatory duplication will exist imposing additional costs such as having to audit the same matter twice. The ERA correctly addressed regulatory duplication under the small use code and applicable laws relating fair trading, spam, privacy, do not call registers etc with consequent amendments to the code to remove any duplication with applicable laws.

In Synergy's view best practice regulation requires regulation should only be made when demonstrable evidence exists to justify it. In that regard we do not agree it is appropriate that obligations to respond to complaints from large use customers be regulated as part of the implementation of the triangular contract model, citing the absence of regulated large use complaint procedures since 2004 without market failure as reasons why it is not necessary. Regulating this activity to large customers who do not require regulatory protection will unnecessarily increase regulatory costs ultimately borne by customers or taxpayers.

Question 17: Is there any reason why local regulations regarding coordination of service standard payments should be substantively different to the National Energy Customer Framework model set out in r.84 of the National Energy Retail Rules?

Adoption of national energy retail rule *84* will necessitate deletion of clause 10.3A of the small use code given the triangular contract model. In that regard Synergy notes the guaranteed service level scheme is dealt with under clause 5.4 of the model deemed standard connection contract specified under schedule 2 of the national energy retail rules.

Further, Synergy does not agree retailers should be obliged to manage service standard payments to shared customers on behalf of the distributor in all instances and at no cost. Whilst it is correct that retailers have a mandated obligation to arrange distributor service standard payments to small use customers in limited circumstances, clause 14.1(2) of the small use code provides the distributor must compensate the retailer for the payment. In addition, clause 22 of the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* requires distributors to make service standard payments directly to customers unless there is an arrangement between retailer and distributor for the retailer to make the payment to the customer on the distributor's behalf.

The local arrangements are considered to be a better regulatory model compared to the national energy retail rules as they provide for retailer compensation when making distributor service standard payments or provide for a negotiated outcome between retailer and distributor in relation network quality and reliability service standard payments.

Question 18: Is there any reason why local regulations regarding coordination of de-energisations and re-energisations should be substantively different to the National Energy Customer Framework model set out in rr.103-106 of the National Energy Retail Rules?

Similar to earlier questions (Q14) regarding B2B, a definitive view cannot be formed at this point in time until Synergy has clarity as to how customer de-energisation and re-energisation notifications are to be communicated between businesses and what B2B protocols will need to be implemented to support these transactions.

In considering the matter of local regulations it is important to also give regard to how Western Australia energy safety regulations will procedurally operate in relation to energisations and de-energisations.

Synergy also notes rule 106 is a civil penalty provision. At this stage there has been no industry engagement in terms of how compliance with the local regulations will be enforced which requires EMR clarification.

Question 19: Is there any reason why local regulations regarding mutual indemnification should be substantively different to the National Energy Customer Framework model set out in s.317 of the National Energy Retail Law?

The circumstances of the transition from a linear model to a triangular model, in accordance with the EMR proposal, is likely to mean that the mutual indemnification mechanism in the National Energy Retail Law is insufficient. A gap will exist because

while the contractual link between distributor and retailer in respect of network supply services has been severed, no such work is done by the *Energy Legislation Amendment Bill 2016* with regard to network supply services as between retailer and retail customer. This gap may result in some circumstances where a retailer retains an obligation with respect to network supply services without the commensurate capacity to provide these services. Synergy considers this retail commercial exposure to be an unintended outcome of the legislation and is not consistent with the EMR's objectives.

The provisions of section 317 of the national energy retail law would offer no comfort to retailers seeking to mitigate or transfer this risk to another party, while Synergy suggests the above retailers should be granted a release in relation to this risk, we consider distributors should provide to retailers a full indemnity in relation to claims, losses and similar that are suffered by retailers in connection with retail supply services under retail supply contracts. Synergy also suggests the EMR should consider a limitation on liability n immunity of the kind provided for in section 316 of the National Energy Retail Law for application in Western Australia.

Question 20: Is there any reason why local regulations regarding billing arrangements should be substantively different to the National Energy Customer Framework model set out in Part A of Chapter 6B of the National Electricity Rules?

One of the key issues that need to be considered is the cost of changing procedures and systems. Therefore, local regulations may be required to give effect to certain arrangements and agreements currently in operation.

As discussed in Q14 billing, reconciling and invoicing arrangements between retailers and the network service operator in the SWIS are currently governed by access contracts, metering agreements and B2B specifications and systems. Synergy understands that in some states arrangements between the retailer and distributor are described as use of system and coordination agreements. In addition, these agreements also make reference to the B2B arrangements that will apply between the parties. For example, such as the “B2B Process Specification Network Billing NSW and ACT” currently published on the AEMO’s web site.

Synergy notes a similar procedure is currently in operation in the SWIS however there are some material differences. From Synergy’s electricity transfer access contract experience these are very complex matters that can involve significant financial and human resources to establish and manage. Before government makes a decision on this issue, the relevant EMR working groups should be engaged including a cost benefit analysis being undertaken to determine whether existing retailer/distributor billing arrangements should be changed to accommodate national electricity rule billing and payment requirements.

Question 22: Is there any reason why local regulations regarding the administrative framework for credit support should be substantively different to the National Energy Customer Framework model set out in Rule 6B.B2.1, Divisions 1, 4 and 5[5] of Part B of Chapter 6B and Schedule 6B.2 of the National Electricity Rules?

Yes. The applicable national electricity rules relating to credit support do not require a distributor to provide evidence to a retailer that a material credit risk exists prior to requiring credit support from that retailer. The existing Western Australian credit support model contained in the ERA approved AA3 electricity transfer access contract is more sophisticated than the national electricity rules as it specifies the circumstances in which Western Power can and cannot request credit support and provides a test as to whether a material credit risk exists.

Question 23: Do you consider that the Commercial Arbitration Act is a suitable framework for managing disputes regarding billing and credit support?

As discussed in Q.14, retailers and distributors have agreements that detail how disputes and breaches in contracts are dealt with. Synergy understands that there are similar provisions in the use of system agreements between retailers and distributors in other states.

The various energy legislation and agreements in Western Australia between retailers and network service providers currently have a dispute resolution process based on a series of mediation steps before the parties may commence an action to resolve the matter through litigation or the *Energy Arbitration and Review Act 1998*.

Synergy supports a model in which the parties must follow a reasonable process to negotiate and mediate a resolution to a dispute, with litigation or arbitration being the last resort.

Other matters

The position paper states the scope of part 7 of the Electricity Industry Act 2004 may need to be clarified to ensure that the electricity ombudsman scheme applies to contracts between distributor and customer. Synergy strongly recommends this occurs for the reasons set out in its response to question 16.

With regard to supplier of last resort provisions, the position paper states consultation on potentially strengthening the local supplier of last resort arrangements will be undertaken later in 2016. Synergy understands the delay in establishing the required arrangements is due to the necessary regulations required to support the scheme not being concluded. A substantiative draft of the Electricity Industry (Last Resort Supply) Regulations 2010 was previously progressed by the state government but not finalised. In Synergy's view this work could be reasonably concluded within six months and well in advance of 1 July 2018. Rather than creating a new supplier of last resort framework, Synergy advocates the work previously undertaken be concluded.

Synergy looks forward to further engagement with the electricity market review program office, the PUO and other industry participants to ensure the transition to

[5] Rule reference does not appear to be correct.

the triangular contracting model is conducted in a responsible and considered manner with any changes to existing rights and obligations appropriately considered and addressed.

Yours faithfully

Will Bargmann
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