

Public Consultation Guidelines – For Electricity, Gas & Water Licences and Electricity & Gas Standard Form Contracts

July 2006

Economic Regulation Authority



WESTERN AUSTRALIA

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1 BACKGROUND

1.1 Scope and Purpose

The Economic Regulation Authority (Authority) is required, under its enabling legislation, to have regard to “the need to promote transparent decision making processes that involve public consultation”.

This document is intended to provide guidance to individuals and organisations regarding the process of public consultation that the Authority will undertake with regard to:

- the grant, renewal, amendment or transfer of: electricity generation, transmission, distribution, retail or integrated regional licences; gas distribution or trading licences and water services operating licences; and
- the review and approval of standard form contracts currently required in the electricity and gas area.

The procedures have been developed by the Authority in accordance with applicable legislation.

The Authority undertook public consultation in early 2006 regarding these guidelines. As a result, a number of minor amendments have been made to provide greater clarity regarding the matters the Authority is bound to consider under both the *Economic Regulation Authority Act 2003* (ERA Act) and various industry specific legislation.

1.2 Regulation of the WA Electricity, Gas & Water Industries

The Authority is responsible for the regulation of the electricity, gas and water industries in Western Australia and its functions are governed by the ERA Act. The regulatory framework surrounding the provision of electricity, gas and water services is undertaken primarily by way of a licensing scheme administered by the Authority.

Under the licensing scheme, providers of electricity, gas and water services must adhere to a range of conditions including:

- meeting minimum service standards;
- maintaining regular reporting requirements; and
- adhering to prescribed operating areas.

The licensing framework in the provision of electricity services, gas supply and water supply are governed by:

- *Electricity Industry Act 2004 (WA)* (Electricity Act);
- *Energy Coordination Act 2004 (WA)* (Gas Act); and
- *Water Services Licensing Act 1995 (WA)* (Water Act).

A copy of these Acts may be obtained from www.slp.wa.gov.au.

The Authority's role includes a responsibility to:

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- license suppliers of electricity, gas and water in Western Australia, where these suppliers are not otherwise exempted from the requirement to be licensed;
 - administer the electricity, gas and water supply licensing schemes in accordance with the Electricity Act, Gas Act and Water Act;
 - ensure compliance with licence obligations;
 - monitor and report to the responsible Minister(s) on the operation of the various licensing schemes;
 - inform the responsible Minister(s) about any failure by a licensee to meet performance criteria or other requirements of its licence; and
 - determine various customer protection arrangements and enforce those arrangements.

2 WHAT WILL THE AUTHORITY CONSIDER WHEN MAKING A DECISION?

The Authority's powers are governed by the ERA Act and a range of industry specific legislation which imposes limits on the Authority's decision making scope. Parties wishing to make submissions in response to public consultation opportunities provided by the Authority should be mindful of these decision making parameters.

2.1 General matters the Authority will consider when making a decision

The ERA Act (s26) provides that, in making decisions regarding the matters discussed within this document, the Authority must have regard to —

- (a) the need to promote regulatory outcomes that are in the public interest;
- (b) the long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets;
- (c) the need to encourage investment in relevant markets;
- (d) the legitimate business interests of investors and service providers in relevant markets;
- (e) the need to promote competitive and fair market conduct;
- (f) the need to prevent abuse of monopoly or market power;
- (g) the need to promote transparent decision-making processes that involve public consultation.

The Authority has discretion as to the weight it gives to each of these matters in the performance of any particular function.

2.2 Matters the Authority will consider when making a decision related specifically to Licences

In addition to the general matters the Authority must have regard to that are outlined above, the Authority is guided by industry-specific legislation which provides a framework specifically for matters concerning the grant, amendment, renewal or transfer of the licence. When assessing matters related to licences the Authority considers the applicant's financial and technical ability and must establish that the decision is not contrary to the public interest.

A description of application information requirements is contained within the Guidelines for Electricity Licence Applications and the Application Guide for a Water Services Operating Licences available on the Authority website¹.

Public consultation is undertaken to provide an opportunity for members of the public and interested parties to make comment. It is important that the Authority's decision making framework is clearly understood by all stakeholders. To this end, the public interest provisions in each of the industry Acts are outlined below.

The Electricity Act prescribes that the Authority is not to exercise its power with regard to electricity licence matters unless the Authority is satisfied that it would not be contrary to the public interest to do so. The Electricity Act provides a non-exhaustive list of matters which the Authority **must** take into account. Without limiting the other matters that the Authority can consider, the following matters are listed in the Electricity Act:

- (a) environmental considerations;
- (b) social welfare and equity considerations, including community service obligations;
- (c) economic and regional development, including employment and investment growth;
- (d) the interests of customers generally or of a class of customers;
- (e) the interests of any licensee, or applicant for a licence, in respect of the area or areas to which the order, if made, would apply;
- (f) the importance of competition in electricity industry markets;
- (g) the policy objectives of government in relation to the supply of electricity.

The Authority publishes Guidelines for Electricity Licence Applications. Within these guidelines the Authority explicitly indicates:

The applicant should provide sufficient information for the Authority to determine whether it is not contrary to the public interest to issue the proposed licence.

Applicants are encouraged to consider public interest issues and use a cost benefit analysis for evaluating these issues. In this regard, the applicant may wish to refer to the references supplied in the bibliography.

As part of the Authority's assessment of the public interest, the Authority may conduct a consultative process. This may include providing information relating to the application to the public for comment. Applicants should provide evidence of any public consultation carried out by the applicant. The type of process used by the Authority, including whether it will conduct a consultative process, will vary from case to case depending on the extent of each licence application.

Given the complexity associated with determining the public interest, the Authority will adopt an independent, transparent, and rigorous process when considering these matters. This is essential to maintain community confidence that public interest considerations have been adequately and objectively examined.

The Gas Act provides similar provisions to the Electricity Act, in that the Authority is not to exercise its power with regard to gas licence matters unless the Authority is satisfied that it would not be contrary to the public interest to do so. The Gas Act provides a list of matters that the Authority **may** take into account. The Authority may take into account one or more of the following matters:

- (a) environmental considerations;

¹ At the time of printing, the Authority is currently producing a single guide for all licence applications.

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- (b) social welfare and equity considerations, including community service obligations;
 - (c) economic and regional development, including employment and investment growth;
 - (d) the interests of gas customers generally or of a class of gas customers;
 - (e) the interests of any licensee, or applicant for a licence, in respect of the supply area or part of a supply area to which the order, if made, would apply;
 - (f) the importance of competition in gas industry markets;
 - (fa) the policy objectives of government in relation to the supply of gas;
 - (g) any other matter that he or she considers relevant.

The Water Act contains similar provisions to both the Gas Act and the Electricity Act in that it requires that the Authority is not to grant a licence unless the Authority is satisfied that it would not be contrary to the public interest to do so. The Water Act provides that the Authority **may** take into account one or more of the following matters:

- (a) environmental considerations;
- (b) social welfare and equity considerations, including community service obligations;
- (c) economic and regional development, including employment and investment growth;
- (d) the interests of water services customers generally or of a class of water services customers;
- (e) the interests of any licensee, or applicant for a licence, in respect of the controlled area or part of a controlled area to which the order, if made, would apply;
- (f) the importance of competition in water services industry markets;
- (g) public health considerations in relation to the provision of a safe drinking water supply;
- (h) the policy objectives of government in relation to water services;
- (i) any other matter that he or she considers relevant.

In undertaking its assessment as to whether the matter is not contrary to the public interest, the Authority will take into consideration the information provided by the applicant, submissions received during the public consultation period and its own independent research where required.

2.3 Matters the Authority will consider when making a decision related specifically to Standard Form Contracts

Standard form contracts generally describe the terms and conditions under which licensees will supply electricity and gas to small use customers.

Section 50 of the Electricity Act and section 11WE of the Gas Act both specify that the grant, renewal or transfer of a licence (electricity retail/integrated regional and gas trading) cannot occur unless the standard form contract is approved by the Authority. The public consultation process for a standard form contract may occur prior to, or at the same time, as a licence application.

Section 22(2) of the Water Act differs from the Electricity and Gas Acts in that an applicant for a licence must inform the Authority of the terms and conditions of any proposed standard customer contract between the applicant and any purchaser of water services from the applicant for a licence. The standard customer contract is not approved by the Authority and is instead submitted for noting, if such a contract exists.

The *Electricity Industry (Customer Contracts) Regulations 2004* and the *Energy Coordination (Customer Contracts) Regulations 2004* provide information regarding the required content of Electricity and Gas Standard Form Contracts.

In addition to the general matters the Authority must have regard to under the ERA Act, the Authority is guided by industry-specific legislation which provides further instruction regarding the approval of standard form contracts in the gas and electricity industries. Both the Gas Act and Electricity Act require that the Authority is not to approve a standard form contract if it considers that the contract will not meet the requirements of the regulations, the Acts, any written law or any licence term or condition.

The Authority will undertake public consultation with regard to the approval of standard form contracts for electricity and gas licensees. There will be no public consultation process with regard to standard customer contracts within the water industry given that the Authority has no decision making role in this area.

3 HOW DO THE PUBLIC CONSULTATION PROCEDURES WORK

The Authority views public consultation as an essential component of the decision making process and as such, will ensure that generally, whenever decisions affecting licences or standard form contracts are required, a public consultation process will be undertaken.

However, there may be cases where the proposed amendment of the licence or standard form contract is so minor that it will be unnecessary for the Authority to undertake the public consultation process. Therefore, if, in the Authority's view, an amendment to a licence or standard form contract is minor (such as correcting a typographical error, changing the name of a licensee etc), subject to its legislative obligations, the Authority will not generally engage in public consultation.

The Authority has designed a four stage public consultation process with regard to licences and standard form contracts. This process is outlined in detail below and represented diagrammatically through the flow chart on page 11.

Step 1 - Applicant presents documentation to the Authority

- Applicant submits the proposed standard form contract, proposed amendment to the standard form contract or an application to the Authority for the amendment, grant, renewal or variation of an electricity, gas or water licence (licence application) in accordance with the Electricity Act, Gas Act or Water Act.
- Generally licence applicants must provide the Authority with a licence application in the approved format which is available, along with the relevant licence application guidelines, on the Authority's website at <http://www.era.wa.gov.au>. However, applicants proposing an amendment to a licence need only provide the suggested amendment and the rationale for the proposed amendment.
- Licence applicants are required, as part of the application, to identify commercial or business information in the application. Under the *Freedom of Information Act 1992* (WA) (FOI Act) the Authority will not release to the public any material which the Authority considers commercial and business information as defined in clause 4 of Schedule 1 of the FOI Act.
- The Authority will acknowledge the receipt of the application and will check the application for completeness.

If, in the Authority's view, an amendment to a licence or a standard form contract is minor (such as correcting an error, changing the name of a licensee etc), subject to its legislative obligations, the Authority will not engage in public consultation and will go directly to step 4.

Step 2 - The licence application is released for public comment:

- If the application is complete, the Authority will publish any relevant information on the Authority's website. The Authority will not release any information that is identified as commercial and business information.
- The Authority will publish a notice which explains the nature of the application and provide the public with 15 business days to comment on the application.
- The Authority will provide the notice of the application by e-mail to any persons who have registered an interest in licensing matters in electricity, gas or water on the Authority's website. The public can register an interest in electricity, gas or water matters at <http://www.era.wa.gov.au>.
- All public comments provided to the Authority, will be published on the Authority's website at <http://www.era.wa.gov.au> as soon as is practicable after the closing date.
- Once the closing date for public comments has elapsed, the Authority will review submissions and determine whether the issues raised are either not significant or of significant relevance to the licence application. Whether an issue is significant will depend on the individual circumstances, but broadly it will be an issue that may have a material impact on whether the Authority will amend, grant, renew or vary the licence or approve the standard form contract.

If significant issues are raised the Authority will then proceed to step 3.

If no public comments have been received or the issues raised are not significant or of significant relevance to the application in the opinion of the Authority, the Authority will then proceed directly to step 4.

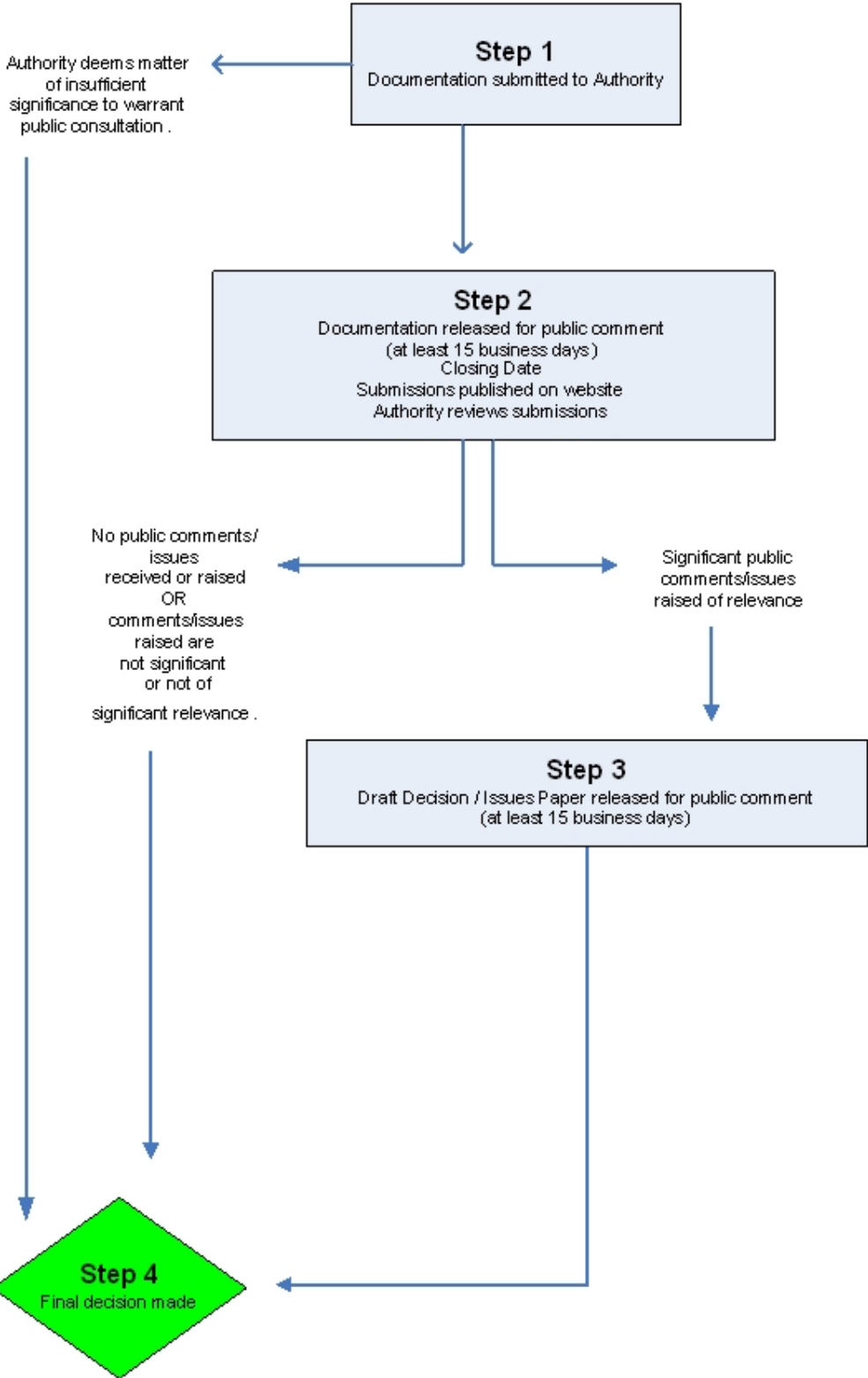
Step 3 - A Draft Decision or an Issues Paper is released for public comment

- The Authority will collate those public comments which it considers significant or of significant relevance to the application and prepare either a Draft Decision or an Issues Paper.
- A notice and the Draft Decision or Issues Paper will be released on the Authority's website and at the same time the Authority will provide a copy of the notice to all interested parties who have registered an interest in the relevant industry. A public comment period of at least 15 business days will be provided from the date of the notice inviting public comment.
- All submissions provided to the Authority, will be published on the Authority's website at <http://www.era.wa.gov.au>. In general, the Authority will publish the comments as soon as is practicable after the closing date.
- Following the closing date for public comments, the Authority will review comments received.

Step 4 - A final decision is made

- The Authority will issue a final decision.
- A public notice and the Authority's final decision will be released on the Authority's website and at the same time the Authority will provide a copy of the public notice to all interested parties who have registered an expression of interest in the relevant industry.

Diagram 1: Public Consultation Process for Licences and Standard Form Contracts



4 FURTHER INFORMATION

If further information regarding public consultation procedures is required, please contact the Authority, as follows:

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