

# Electricity Licences Review 2015

Final Decision

30 June 2015

**Economic Regulation Authority**

WESTERN AUSTRALIA

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## Decision

1. The Economic Regulation Authority (**Authority**) approves the licence amendments in the electricity licence templates attached to this Final Decision (Appendices 1, 2, 3, 4 and 5).
2. In accordance with section 22 of the *Electricity Industry Act 2004* (**Act**), the Authority will issue new licences by substitution to all existing electricity licensees that incorporate the amendments in the licence templates relevant to the licensee.

## Background

3. The Act governs the operation of the electricity licensing regime in Western Australia and defines the functions and powers of the Authority with regard to administering licences, and monitoring and enforcing compliance.
4. Under the Act, participants in the electricity industry who construct and/or operate generating works, transmission systems or distribution systems, or sell electricity, must hold a licence (unless otherwise exempt).
5. The Authority commenced the Review in January 2015.
6. The scope of the Review was to examine:
  - the format of all electricity licence templates;
  - the terms and conditions applicable to all electricity generation, transmission, distribution, retail and integrated regional licence templates;
  - whether current deviations from the template licences should continue to exist; and
  - whether further deviations from the template licences should be created, and, if so, in what circumstances.

## Reasons

### *Review process*

7. The Authority:
  - published a [Discussion Paper](#) (released on 17 February 2015);
  - received and considered submissions on the Discussion Paper;
  - made decisions with regard to each of its original proposals contained within the Discussion Paper;
  - determined additional licence amendments that were not in the Discussion Paper, which were either suggested by licensees in their submissions, or determined by the Authority; and

- gave all licensees 15 business days to provide feedback on the Authority's final proposed licence amendments.

### *Submissions received on Discussion Paper*

8. The Authority received submissions on its Discussion Paper from:

- [Community Electricity](#);
- [Synergy](#);
- [TransAlta](#); and
- [Western Power](#).

The submissions are summarised below, with the Authority's response to the submissions set out in the 'Final Decision' section on pages 3-5.

9. Community Electricity was supportive of all but one of the Discussion Paper's proposals. It did not support the Discussion Paper's proposal that the Authority continue to require all licensees to comply with the *Electricity Industry (Metering) Code 2012 (Metering Code)*. Community Electricity suggested that individual licensee compliance with the Code be managed through the audit process.
10. Synergy supported the Discussion Paper's proposed licence amendments and identified two potential areas for additional amendment:
- Synergy expressed concern that the Authority's information gathering powers contained in clause 16.1 of electricity licences may be broader than permitted under the Act. This is because clause 16.1 allows the Authority to request information from licensees in connection with all its functions under the Act, some of which do not necessarily relate to licensing (for example, the Authority's wholesale electricity market functions).
  - Synergy noted that clause 28.1 refers to 'customer', whereas the correct term is 'small use customer'<sup>1</sup>.
11. Western Power supported the Discussion Paper's proposed licence amendments and suggested one additional licence amendment. Western Power asked that clause 15.1(c)(v) be removed from its transmission and distribution licences, which requires Western Power to report to the Authority changes to the length of its transmission or distribution system respectively within 10 business days of the change occurring.

Western Power noted that changes to the length of its transmission and distribution systems occur continually, as new sections of the network are energised, redundant lines are removed and overhead power lines are replaced with underground cables. Western Power considers that the administrative burden and associated costs of notifying the Authority of each change cannot be justified.

Additionally, Western Power noted that the lengths of its transmission and distribution systems will still be required to be reported to the Authority annually in order to calculate its quarterly standing charges under the *Economic Regulation Authority (Licensing*

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<sup>1</sup> A small use customer is a customer who consumes not more than 160 MWh of electricity per annum.

*Funding) Regulations 2014 (ERA Funding Regulations)*. Western Power suggested that this annual notification process is a suitable alternative to the current requirement in clause 15.1(c)(v).

12. TransAlta supported the proposed amendment to the licence condition that requires compliance with the *Electricity Industry Customer Transfer Code 2004*<sup>2</sup>, noting that several licence holders are companies that have in place power supply arrangements that deal with many of the concepts covered in the licensing regime.

### Final Decision

13. The Authority approves the licence amendments in the electricity licence templates attached to this Final Decision. The licence amendments include:
  - all the proposed licence amendments in the Authority's Discussion Paper;
  - amendments to licence clauses 16.1 and 28.1 to address Synergy's comments;
  - amendments to licence clause 15.1 to address Western Power's comments; and
  - additional licence amendments to require licensees to comply with the ERA Funding Regulations.
14. In relation to clause 16.1 of electricity licences, the Authority approves a licence amendment that limits the Authority's information gathering powers to "information relevant to the operation or enforcement of the licence, the operation of the licensing scheme provided for in Part 2 of the Act, or the performance of the Authority's functions under that Part". This will ensure electricity licences are consistent with the Act<sup>3</sup> and clearly indicate the information that the Authority may request in relation to its licensing functions. The amendment will also provide certainty to licensees and reflect the Authority's previous and intended use of its information gathering powers.
15. In relation to clause 28.1 in retail licences and integrated regional licences (with a retail service), the Authority approves changing the 'customer' references to 'small use customer'. This is because clause 28.1 relates to customers who are deemed to be supplied under the licensee's standard form contract in accordance with the *Electricity Industry (Customer Contracts) Regulations 2005*, which apply only to customers who consume not more than 160 MWh of electricity per annum (small use customers).
16. In relation to Western Power's request to amend clause 15.1(c)(v) of its transmission and distribution licences, the Authority agrees with Western Power that the requirement to notify the Authority of every change to the length/description of its transmission or distribution system is onerous, considering the many small changes made to its network.
17. The Authority considers that Western Power's proposal can be extended to remove the requirement from all generation, transmission, distribution and relevant integrated

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<sup>2</sup> The Discussion Paper proposed that transmission, distribution and retail licensees be exempt from the requirement to comply with the *Electricity Industry Customer Transfer Code 2004*, if there is only one retailer operating on the network (because customers are not able to transfer to another retailer).

<sup>3</sup> Schedule 1(m) of the Act.

regional licences for the licensee to notify the Authority of a change to the licensee's assets, as set out in clause 15.1(c).

18. The Authority notes that licensees will still be required to provide this information annually to allow for the calculation of the licensee's quarterly standing charge under the ERA Funding Regulations.
19. The Authority approves the following amendments to clause 15.1 of its electricity licences:

15.1 The *licensee* must report to the *Authority*:

(c) if the:

- (i) licensee's name;
- (ii) licensee's ABN; or
- (iii) licensee's address;
- ~~(iv) nameplate capacity of the generating works;~~
- ~~(v) description of generating works;~~
- ~~(vi) description of the transmission system;~~
- ~~(vii) length of the transmission system;~~
- ~~(viii) description of the distribution system; or~~
- ~~(ix) length of the distribution system;~~

changes, within 10 *business days* of the change occurring.

20. In response to Community Electricity's objection to maintaining the existing licence condition that requires all licensees to comply with the Metering Code, the Authority recognises that ideally each licence would reflect only the obligations that the licensee is required to comply with. However, in some circumstances this becomes too onerous to administer.

As outlined in the Discussion Paper, determining which licensee should comply with the Metering Code (or specific provisions of the Metering Code) through individual licence conditions represents an administratively complex approach. The Authority's experience is that the existing process of monitoring compliance through the audit process works well.

Non applicable Metering Code obligations are generally identified at the audit planning stage and excluded from the audit (therefore imposing a relatively minor burden on the licensee). Given that the alternative is to amend individual electricity licences to reflect whether that licensee must comply with the Metering Code, or specific provisions of the Metering Code, the Authority considers that the audit process is a more efficient method of dealing with licensee compliance with the Metering Code.

21. The Authority approves one additional licence amendment that was not proposed in its Discussion Paper, or in licensees' submissions. Clause 4 of the Authority's electricity licences requires licensees to pay the applicable fees in accordance with the *Electricity Industry (Licensing Fees) Regulations 2005* (**Licensing Fees Regulations**).

On 1 January 2015, the Licensing Fees Regulations were repealed by the State Government and replaced with the ERA Funding Regulations.

The Authority's Discussion Paper proposed removing the requirement to comply with the repealed Licensing Fees Regulations from electricity licensees, but did not propose replacing that requirement with an obligation to comply with the ERA Funding Regulations. After further consideration, the Authority has decided to include compliance with the ERA Funding Regulations as a licence condition.

The Authority considers that continuing to make it a licence condition to pay licence fees and charges ensures licences are consistent with the ERA Funding Regulations and a licensee's obligation to pay fees and charges is clear.

Including a licence condition requiring compliance with the ERA Funding Regulations will also give the Authority greater flexibility to recover unpaid amounts. The Authority will be able to use its licence compliance enforcement powers under the Act to recover unpaid amounts in the first instance, only proceeding to court where compliance cannot be enforced through the licence compliance enforcement process (the only means of recovering unpaid amounts under the ERA Funding Regulations is through the courts).

No new obligation will be imposed on licensees with this licence amendment. The amendment reflects the State Government's changes to the licensing funding regime through the repeal of the Licensing Fees Regulations and the implementation of the ERA Funding Regulations.

The ERA Funding Regulations will be included in the definition of 'Regulations' in electricity licences and clause 4.1 will be amended as follows:

4.1 The *licensee* must pay the applicable fees and charges in accordance with the *Regulations*.

An amendment to clause 4.1 is necessary, as the ERA Funding Regulations require licensees to pay charges (the repealed Licensing Fees Regulations required the payment of fees, not charges).

### *Licensee consultation*

22. Clause 11.2 of electricity licences requires the Authority to allow 15 business days for the licensee to make submissions on licence amendments initiated by the Authority. Accordingly, on 25 May 2015, the Authority notified existing electricity licensees of the amendments it proposes to make to electricity licences and provided 15 business days for licensees to respond.
23. The consultation with licensees was not a public process. While the Authority received a small number of submissions from licensees, no matters were raised that required material amendments to the licence templates (one minor typographical error was identified in the Integrated Regional Licence Template). The Authority liaised directly with licensees on their submissions.
24. The Authority is satisfied that the amendment of electricity licences by substitution will not be contrary to the public interest.

## Appendices

## **Appendix 1 – Electricity Generation Licence Template**

## **Appendix 2 – Electricity Transmission Licence Template**

## **Appendix 3 – Electricity Distribution Licence Template**

## Appendix 4 – Electricity Retail Licence Template

## **Appendix 5 – Electricity Integrated Regional Licence Template**