

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

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Economic Regulation Authority

WESTERN AUSTRALIA

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1 Background

1.1 Scope and Purpose

In performing its functions, the Economic Regulation Authority (**ERA**) is required to have regard to “the need to promote transparent decision making processes that involve public consultation”.¹

This document intends to provide guidance to individuals and organisations regarding the process the ERA will follow when it undertakes public consultation, with regard to:

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

These guidelines have been developed by the ERA in accordance with applicable legislation.

1.2 Regulation of the WA Electricity, Gas & Water Industries

The ERA is responsible for the regulation of the electricity, gas and water industries in Western Australia and its functions are governed by the *Economic Regulation Authority Act 2003* (**ERA Act**). The regulatory framework for the licensing of electricity, gas and water services is administered by the ERA.

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

- meeting minimum performance standards (where relevant);
- maintaining regular reporting requirements; and
- adhering to prescribed operating areas.

The operation of the licensing framework for the provision of electricity services, gas supply and water supply is governed by:

- *Electricity Industry Act 2004 (WA)* (**Electricity Act**);
- *Energy Coordination Act 1994 (WA)* (**Gas Act**); and
- *Water Services Act 2012 (WA)* (**Water Act**).

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

¹ Section 26(1)(g) of the *Economic Regulation Authority Act 2003*.

The ERA's role includes a responsibility to:

- license suppliers of electricity, gas and water services in Western Australia, where these suppliers are required to hold a licence and are not otherwise exempt from this requirement;
- administer the electricity, gas and water supply licensing schemes in accordance with the Electricity Act, Gas Act and Water Act respectively;
- ensure compliance by licensees 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 standards or other conditions of its licence; and
- determine various customer protection arrangements and enforce those arrangements.

2 What will the ERA consider when making a decision?

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

2.1 *General matters the ERA will consider when making a decision*

The ERA Act (s26) provides that, in making decisions regarding the matters discussed within this document, the ERA 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 ERA has discretion as to the weight it gives to each of these matters in the performance of any particular function.

2.2 *Matters the ERA will consider when making a decision related specifically to licences*

In addition to the general matters the ERA must have regard to, the ERA 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 ERA considers the applicant's financial and technical ability and must establish that the decision is not contrary to the public interest.

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

A description of the information applicants should include in their application is contained within the *Licence Application Guidelines and Form - Electricity, Gas and Water Licences*, which are available on the ERA website.

Public consultation is undertaken to provide an opportunity for members of the public and interested parties to make comment. It is important that the ERA'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.

Electricity Act

The Electricity Act prescribes that the ERA is not to exercise its power with regard to electricity licence matters unless the ERA is satisfied that it would not be contrary to the public interest to do so. The Electricity Act² provides a non-exhaustive list of matters which the ERA **must** take into account. Without limiting the other matters that the ERA 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.

Gas Act

The Gas Act provides similar provisions to the Electricity Act, in that the ERA is not to exercise its power with regard to gas licence matters unless the ERA is satisfied that it would not be contrary to the public interest to do so. The Gas Act³ provides that the ERA **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 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;

² Section 9(2) in conjunction with 8(5) of the Electricity Act.

³ Section 11K(2) in conjunction with 11H(3) of the Gas Act.

- (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.

Water Act

The Water Act contains similar provisions to both the Gas Act and the Electricity Act in that it requires that the ERA is not to grant a licence unless the ERA is satisfied that it would not be contrary to the public interest to do so. The Water Act⁴ provides that, without limiting the things that the ERA may take into account, the following matters must be taken into account to the extent to which the ERA considers they are relevant to the particular case:

- (a) environmental considerations, including the value of ecologically sustainable development;
- (b) public health considerations relating to the provision of reliable water services.

2.3 Matters the ERA will consider when making a decision related specifically to standard form contracts

Electricity and Gas

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 licence, electricity integrated regional licence authorising a retail service or a gas trading licence) cannot occur unless the applicant's standard form contract has been approved by the ERA. The public consultation process for a standard form contract may occur prior to, or at the same time, as the public consultation process for a licence application.

Any amendment to a standard form contract must also be approved by the ERA.

The *Electricity Industry (Customer Contracts) Regulations 2004* and the *Energy Coordination (Customer Contracts) Regulations 2004* specify the required content of electricity and gas standard form contracts.

In addition to the general matters the ERA must have regard to under the ERA Act, the ERA 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 ERA is not to approve a standard form contract if it considers that the contract will not meet the requirements of the regulations, or will be inconsistent with the Act, any written law or any licence term or condition.

Water

Under each water licence, the licensee must, if directed by the ERA, submit a draft customer contract for the ERA's approval. The licensee must comply with any customer contract guidelines applicable to the licensee.

To date, the ERA has not directed any licensee to submit a draft customer contract, nor has it established customer contract guidelines. If, at a future date, the ERA directs one or more

⁴ Section 46 of the Water Act.

licensees to submit a draft customer contract, it will ensure public consultation is undertaken on those contracts.

3 How does the public consultation process work?

The ERA 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 ERA to undertake the public consultation process. Therefore, if, in the ERA'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 ERA will not generally engage in public consultation.

The ERA has designed a four stage public consultation process for licences and standard form contracts. This process is outlined in detail below and represented diagrammatically through the flow chart on page 7.

Step 1 - Applicant submits documentation to the ERA

- Applicant submits to the ERA the proposed (amended) standard form contract or the application for the amendment, grant, renewal or transfer of an electricity, gas or water licence (**licence application**) in accordance with the Electricity Act, Gas Act or Water Act.
- *Licence applications only*: Licence applications must be in the ERA approved format which is available, along with the relevant licence application guidelines, on the ERA website. The licence application must identify any commercial or business information. Under the *Freedom of Information Act 1992 (WA)* (**FOI Act**) the ERA will not release to the public any material which the ERA considers commercial and business information as defined in clause 4 of Schedule 1 of the FOI Act.
- The ERA will acknowledge the receipt of the proposed (amended) standard form contract or licence application and will check the (amended) standard form contract or licence application for completeness.

If, in the ERA'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 ERA will not engage in public consultation and will go directly to step 4.

Step 2 - The licence application or proposed standard form contract is released for public comment

- The ERA will publish any relevant information on the ERA website, with the exception of information which meets the requirements of clause 4 of Schedule 1 of the FOI Act.
- The ERA will publish a notice calling for submissions on the licence application or proposed standard form contract and provide the public with at least 15 business days to comment.
- The ERA will notify any person who has [subscribed](#) to receive updates on licensing matters in electricity, gas or water, of the public consultation period.

- All public submissions will be published on the ERA website as soon as is practicable after the closing date.
- Once the closing date for public submissions has elapsed, the ERA will review the submissions and determine whether the issues raised are of significant relevance to the licence application or proposed standard form contract. 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 ERA will amend, grant, renew or transfer the licence or approve the standard form contract.

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

If no public comments have been received or the issues raised are not considered by the ERA to be of significant relevance to the licence application or proposed standard form contract, the ERA will proceed directly to step 4.

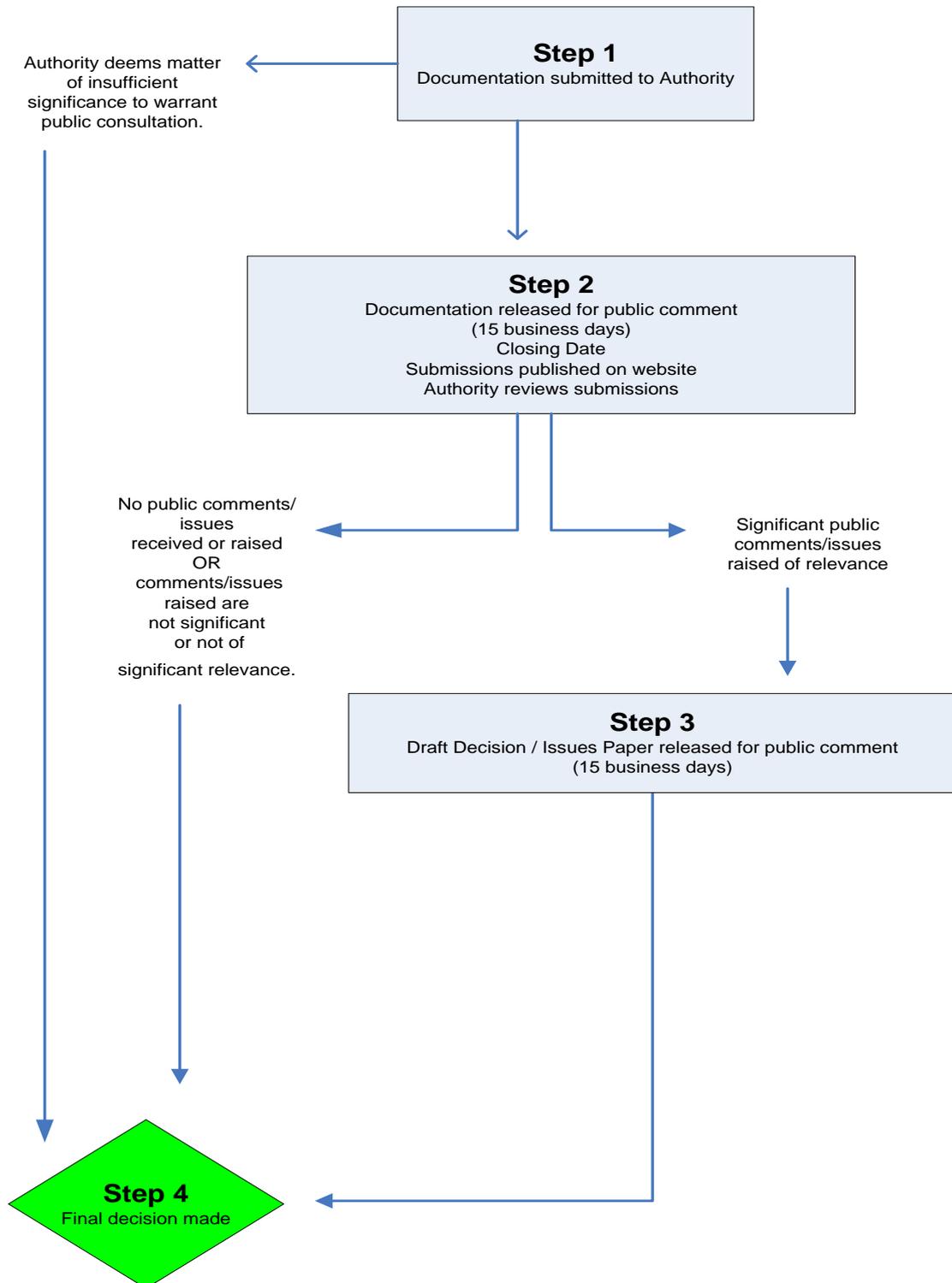
Step 3 - A Draft Decision or an Issues Paper is released for public comment

- The ERA will collate those public comments which it considers of significant relevance to the licence application or proposed standard form contract and prepare either a Draft Decision or an Issues Paper.
- A notice and the Draft Decision or Issues Paper will be released on the ERA website. At the same time, the ERA will notify all interested parties who have [subscribed](#) to receive updates on licensing matters in electricity, gas or water. A public comment period of at least 15 business days will be provided.
- All public submissions will be published on the ERA website. In general, the ERA will publish submissions as soon as is practicable after the closing date.
- Following the closing date for public submissions, the ERA will review comments received.

Step 4 - A Final Decision is made

- The ERA will issue a Final Decision.
- A notice and the ERA's Final Decision will be released on the ERA website. The ERA will notify all interested parties who have subscribed to receive updates on the relevant industry.

Public Consultation Process for Licences and Standard Form Contracts



4 Further Information

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

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