

26 March 2025

Economic Regulation Authority
4th Floor Albert Facey House
469 Wellington Street
Perth 6000

Dear Ms Lee,

Re: Expert Consumer Panel submission on 2024/25 ERA WA Review of Audit and Review Guidelines

The WA Expert Consumer Panel (ECP) appreciates the opportunity to provide feedback on the Economic Regulation Authority's review of the Audit and Review Guidelines (Guidelines). As a panel supported by the State Government's Western Australian Advocacy for Consumers of Energy (WA ACE) program, we are committed to improving consumer outcomes in the energy sector.

The licensing framework for electricity and gas retailers and networks is at the core of the governance of the Western Australian energy system, promoting the interests of household and business energy consumers by authorising energy sales, distribution and other activities, and ensuring services are safe, reliable, efficient. The audit and review process outlined in the Guidelines is a key accountability mechanism for licensees, helping identify and resolve service quality issues and in doing so secure and build consumer trust and confidence in the system.

ECP members support the sensible updates to the Guideline outlined in the consultation paper to support efficient and effective auditing and review processes, including by:

- Providing guidance to licensees and auditors about how to frame corrective actions in specific, measurable, achievable and time-bound (SMART) terms to support implementation and resolution;
- A process for resolving disagreements between auditors and licensees, and raising issues with the ERA;
- Guidance around sampling procedures (i.e., size);
- Updating the Guideline to reflect changes to relevant audit and review standards; and
- Amending the ratings framework to better capture instances where the licensee is not able to produce evidence to substantiate compliance.

We also agree with the ERA's draft position to reject some of the suggestions made by stakeholders consulted in the prior phase of the process - particularly about narrowing the scope of the audit and review of compliance with licence conditions. Even if it was possible under the legislation as currently drafted, we would have concerns about such

a shift. As the consultation paper notes, ‘risk’ is already built into the Guideline, with it open to the ERA to adjust the time between audits based on good compliance performance.

We are also mindful that in Western Australia, the licensee engages the auditor, rather than the ERA, in contrast to practice in some other jurisdictions where the engagement is led by the regulator.¹ Community trust and confidence in the auditing industry has been impacted by scandals in Australia and internationally, and there is a perception that auditors may shy away from making negative findings out of a fear that they may lose clients.² We therefore recommend the merits of the ERA appointing the auditor and managing payment be reconsidered to better align with community expectations.

Visibility about market-wide compliance trends

A noticeable gap in the discussion paper is a lack of any discussion about how licensees, in general, are performing against their obligations. Ultimately, the performance of the Guideline should be measured in terms of observed compliance outcomes, yet this is not apparent in the discussion. Two recent examples of Synergy billing errors impacting tens of thousands of Western Australians are a reminder of the potential for issues to arise and the importance of rigorous compliance systems.³ As it currently stands, Synergy’s last audit covered the 1 July 2019 to 30 June 2021 period, but the audit report was not published until late 2023 or early 2024,⁴ meaning the public and interested stakeholders were not aware of licence condition breaches that would have occurred in the 2019/20 financial year (first year of the review period) until three and a half years later.⁵

Furthermore, it is highly unlikely that consumer advocates and other stakeholders would be aware that audit reports for individual licensees are the documents to review to look for instances of non-compliance with licence conditions that have a detrimental impact on customers. This lack of visibility could result in these stakeholders overlooking crucial information that highlights detrimental impacts on consumers by the actions (or lack thereof in some instances) by licensees.

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<https://www.aer.gov.au/system/files/AER%20-%20Draft%20AER%20Practice%20Guide%20for%20Compliance%20Audits.pdf>

² See for example, Review of Governance, Culture and Accountability at PWC Australia, 2023 <https://www.pwc.com.au/about-us/commitments-to-change/independent-review-of-governance-culture-and-accountability-at-pwc-australia.pdf>

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<https://thewest.com.au/news/wa/synergy-debacle-repeats-energy-agency-forced-to-apologise-for-failing-to-take-power-bill-payments-again-c-18055323>

⁴ From reviewing the ERA’s audit report website on the [Wayback Machine](#), it can be determined that the audit report was published between November 2023 and March 2024.

⁵ <https://www.erawa.com.au/cproot/23885/2/Notice-Publication-of-2023-audit-ERL001-Synergy.pdf>

As a step towards better visibility of a market-wide compliance focus, ECP Members recommend that the ERA publish a regular (annual) market-wide (rather than just separately for each licensee) compliance and enforcement update on various retail licence requirements that impact customers, similar to the Australian Energy Regulator's compliance and enforcement reporting regime.⁶ A set of the licence requirements that should be prioritised for regular reporting are set out in Appendix 1.

Thank you for considering this submission, and please do not hesitate to contact us to discuss it further.

Sincerely,

Chris Alexander

On behalf of the WA Expert Consumer Panel

⁶ See for example AER Compliance and Enforcement updates
<https://www.aer.gov.au/documents/aer-compliance-and-enforcement-update-report-july-december-2024>

Appendix 1

Legislative Obligation Number	Obligation	Source	Potential name for reporting / comments
45	A previous retailer must not bill a contestable customer for charges incurred after the transfer time, except in the case of an erroneous transfer.	Electricity Industry Customer Transfer Code, clause 4.17	Wrongfully billing a previous customer.
130	A retailer or electricity marketing agent must ensure that standard form contracts, which are not unsolicited consumer agreements, are entered into according to the manner set out, and the contract is provided as specified, in clause 2.2(1).	Electricity Industry Act, section 82 Code of Conduct, clause 2.2(1) Retail Licence, condition 6.3.1	Ensuring contracts abide by the Code of Conduct
144	Unless the customer agrees otherwise, a retailer must forward the customer's request for the connection to the relevant distributor that same day, if the request is received before 3pm on a business day; or the next business day if the request is received after 3pm or on a weekend or public holiday.	Code of Conduct, clause 3.1(2)	Not arranging connection in required timeframes
145	A retailer must issue a bill no more than once a month and at least once every 3 months, except for the circumstances specified in subclause 4.1.	Code of Conduct, clause 4.1	Not billing customers within the required billing period. The 2021 audit figures demonstrate that this is a major issue.

154	A retailer must issue a bill to a customer at the customer's supply address, unless the customer has nominated another address or an electronic address.	Code of Conduct, clause 4.4	Sending a bill to the wrong address.
155	A retailer must include the minimum prescribed information in subclause 4.5(1) on a customer's bill, unless the customer agrees otherwise.	Code of Conduct, clause 4.5(1)	Not including all of the required information on a bill. Note: this seems to have been a major issue in FY 2019/20.
156	If a retailer identifies and wishes to bill a customer for a historical debt, the retailer must advise the customer of the amount of the historical debt and its basis, before, with, or on the customer's next bill.	Code of Conduct, clause 4.5(3)	Not correctly advising a customer of their previous debt.
166	If a retailer offers alternative tariffs and a customer applies to receive an alternate tariff and demonstrates to the retailer that they satisfy the conditions of eligibility, a retailer must change the customer to an alternate tariff within 10 business days of the customer satisfying those conditions.	Code of Conduct, clause 4.12(1)	Not adhering to a customer request to change tariffs within 10 business days.
169	Subject to subclause 4.14(3), if a customer's account is in credit at the time of account closure, a retailer must, in accordance with the customer's instructions, transfer the amount of credit to another account that the customer has with the retailer or a bank account nominated by the customer, within 12 business days or other agreed time.	Code of Conduct, clause 4.14(2)	Not correctly issuing credit back to an account holder when closing an account or the account holder changes address.

176	If a retailer proposes to recover an amount undercharged as a result of an error, defect, or default for which the retailer or distributor is responsible (including where a meter has been found to be defective), a retailer must do so in the manner specified.	Code of Conduct, clause 4.17(2)	Attempting to recover money from a customer for fees or charges that are over 12 months old when the fees or charges are due to retailer or distributor error.
187	The due date on a bill must be at least 12 business days from the dispatch date of that bill unless otherwise agreed with a customer.	Code of Conduct, clause 5.1	Minimum due date period not being adhered to.
189	Prior to commencing a direct debit facility, a retailer must obtain a customer's verifiable consent and agree with the customer the date of commencement of the facility and the frequency of the direct debits.	Code of Conduct, clause 5.3	Not obtaining the appropriate customer consent for setting up direct debt billing.
192	A retailer must not charge a residential customer a late payment fee in the circumstances specified in subclause 5.6(1).	Code of Conduct, clause 5.6(1)	Incorrectly charging a late payment fee
196	If a residential customer has been assessed as being in financial hardship, a retailer must retrospectively waive any late payment fee charged to this customer's last bill prior to the assessment being made.	Code of Conduct, clause 5.6(5)	Not waiving late payment fees when required to do so.
197	A retailer must not require a customer, who has vacated a supply address, to pay for electricity consumed at the customer's supply address in the circumstances specified in subclause 5.7(1).	Code of Conduct, clause 5.7(1)	Incorrectly charging customers who have provided the 5 day notice that they have vacated the property.

199	Notwithstanding subclauses 5.7(1) and (2), a retailer must not require a previous customer to pay for electricity consumed at the customer's supply address in the circumstances specified in subclause 5.7(1).	Code of Conduct, clause 5.7(1)	Incorrectly charging a customer for electricity after a new account has been made for the same supply address.
201	A retailer must not recover, or attempt to recover, a debt from a person relating to a supply address other than the customer who the retailer has, or had, entered into a contract for the supply of electricity to that supply address.	Electricity Industry Act, section 82, Code of Conduct, clause 5.8(2)	Wrongfully asking a non-account holder to pay the debt of an account holder
201A	A retailer may transfer one customer's debt to another customer if requested by the customer owing the debt, providing the retailer obtains the other customer's verifiable consent to the transfer.	Distribution Licence, condition 4.1.1, Integrated Regional Licence, condition 4.1.1, Transmission Licence, condition 4.1.1, Code of Conduct, clause 5.8(3)	Wrongly transferring debt to another customer's account.
202	If a residential customer informs a retailer that the residential customer is experiencing payment problems, a retailer must assess whether the residential customer is experiencing payment difficulties or financial hardship within 5 business days; or, if the retailer cannot make the assessment within 5 business days, refer that customer to a relevant consumer representative to make the assessment.	Electricity Industry Act, section 82, Code of Conduct, clause 6.1(1)	Failing to conduct a review within 5 business days to determine if a customer should be considered as experiencing payment difficulties or in financial

			hardship after being informed of the customer's payment problems.
206	A retailer must place a temporary suspension of actions on a customer's account if the customer is experiencing payment difficulties or financial hardship.	Code of Conduct, clause 6.2(1)	Not temporarily suspending actions if a customer is experiencing payment difficulties or financial hardship.
213	A retailer must confirm the terms of an instalment plan in writing within 10 business days of the plan being agreed.	Code of Conduct, clause 6.4(1)	Not informing the customer the terms of a payment plan within 10 business days.
229	A retailer must not disconnect a customer's supply for non-payment if the customer has an active complaint or is experiencing financial hardship.	Code of Conduct, clause 7.1(1)	Wrongfully disconnecting a customer.
236	A retailer must register new addresses for life support customers and notify Western Power of changes in life support registration details within the prescribed timeframes.	Code of Conduct, clause 7.2(1)	Not registering a new address for life support customers within the required timeframes
243	A retailer must forward reconnection service notifications to Western Power within the prescribed timeframes.	Code of Conduct, clause 7.3(1)	Not requesting a reconnection notice to Western Power

			within the required timeframes.
300	A retailer must advise customers in accordance with subclause 12.1(3).	Code of Conduct, clause 12.1(3)	Not adhering to the standard complaints and dispute resolution procedures
301	A retailer must acknowledge a written complaint within 10 business days.	Code of Conduct, clause 12.2(1)	Not acknowledging a complaint within 10 business days.
302	A retailer must distinguish customer queries from complaints and handle them accordingly.	Code of Conduct, clause 12.3(1)	Not currently distinguishing customer queries from complaints.
402	A user must provide standing data and validated, and where necessary substituted or estimated, energy data to the user's customer to which that information relates where the user is required by an enactment or an agreement to do so for billing purposes or for the purpose of providing metering services to the customer.	Electricity Industry Metering Code, clause 5.17(1)	Failing to provide the customer with accurate usage data or appropriate estimated usage data when required
408	Subject to subclauses 5.19(3A) and 5.19(6), the user must, within 1 business day after becoming aware of any change in an attribute described in subclause 5.19(2), notify the network operator of the change.	Electricity Industry Metering Code, clause 5.19(3)	Not informing Western Power of a change of customer details.
496	Subject to specified exceptions, the licensee must offer to supply electricity under a	Electricity Industry (Customer	Not offering to supply the customer under

	standard form contract to a customer who requests it.	Contracts) Regulations, regulation 40	the standard form contract when required to do so.
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