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***PUBLIC CONSULTATION GUIDELINES
FOR - ELECTRICITY, GAS AND WATER
LICENCES; STANDARD FORM
CONTRACTS AND CUSTOMER SERVICE
CHARTERS***

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The summaries of the legislation, regulations or licence provisions in this document do not contain all material terms of those laws or obligations. No attempt has been made in the summaries, definitions or other material to exhaustively identify and describe the rights, obligations and liabilities of any person under those laws or licence provisions.

1 BACKGROUND

1.1 Scope and Purpose

The Economic Regulation Authority (Authority) has objectives of transparency and accountability when making decisions on matters that in the Authority's opinion represent significant public interest. The Authority considers that a standardised approach to the decision making process may be beneficial to existing and prospective electricity, gas and water licensees in providing consistency/surety for all concerned.

This document is intended to provide guidance to individuals and organisations on the process of public consultation procedures and public interest matters relating to:

- electricity generation / transmission / distribution / retail / integrated regional licensing;
- gas distribution/trading licensing;
- water services operating licensing;
- standard form contracts; and
- customer service charters (customer charter).

The document explains the public consultation procedures that apply on public interest matters when the Authority assesses the amending, granting, renewing, and transferring of electricity licences, gas supply licences and water services operating licences in Western Australia.

In addition this document provides an outline of the procedures the Authority will apply to approving and reviewing standard form contracts and customer charters.

The procedures have been developed by the Authority in accordance with reference to appropriate legislation.

1.2 Regulation of the WA Electricity, Gas & Water Industries

The Authority is responsible for the regulation of the electricity, gas and water service industries in Western Australia and its functions are governed by legislation.

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 (Water Act).*

Individuals and organisational licence applicants should make themselves familiar with the provisions of the Electricity Act, Gas Act and Water Act as they relate to licensing and a copy of these Acts may be obtained from www.slp.wa.gov.au.

The Authority's role, amongst other things, is to

- licence 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;
- enforce 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, such as standard form contracts, supplier of last resort etc and enforce those arrangements through the licence framework.

1.3 The Concept of Public Interest

The concept of public interest has been subject to comments by various regulators and policy makers, some of which are outlined below:

- subclause 1(3) of the *Competition Principles Policy Agreements 1995 (CPPA)* provide an informative and relevant list of criteria which include:
 - laws and policies relating to ecologically sustainable development;
 - social welfare and equity, including community service obligations;
 - laws and policies relating to matters such as occupational health and safety, industrial relations, access and equity;
 - economic and regional development, including employment and investment growth.;
 - the interests of customers generally or a class of customers;
 - the competitiveness of Australian business;
 - the efficient allocation of resources;

- the 'Public Interest Guidelines for Legislation Review' developed by the Department of Treasury and Finance of WA in 2001 (DTF List) provides a similar list to the CPPA of indicative factors. The CPPA & DTF list are open ended and non-prescriptive; and
- the 'Net Benefit to the Public' used by the Australian Competition and Consumer Commission (ACCC) under the *Trade Practices Act 1974* (Cwlth). While there is no legislative definition of net public benefit, the ACCC lists a wide variety of matters that could constitute a net public benefit involving the balance of positive and negative impacts of implementing a particular course of action.

The CPPA, the DTF List and the ACCC's 'net benefit to the public' all have broad conceptual similarities. All three require a cost-benefit analysis and each expect a wide range of factors to be taken into account when conducting such an analysis. These three sources may be taken into consideration by the Authority when determining the scope of public consultation procedure.

2 PUBLIC INTEREST

Under the *Economic Regulation Authority Act 2003* (ERA Act) s26(a), the Authority must have regard to the need to promote regulatory outcomes that are in the public interest.

When the Authority is issuing, renewing, transferring or amending a licence under the Electricity Act, Gas Act or the Water Act, the Authority must be satisfied that the grant, renewal, transfer or amendment of the licence is not contrary to the public interest.

The Electricity Act prescribes a non-exhaustive list of matters which the Authority must take into account in determining the public interest. On the other hand, the Water Act and the Gas Act prescribe a non-exhaustive list of matters which the Authority may take into account in determining the public interest.

The specific matters differ with each Act, however, broadly they may be summarised as:

- environmental considerations, including any environmental benefits which may result from the licence or work undertaken;
- social welfare and equity considerations; including community service obligations or benefits to the community;
- the effect of the licence on economic and regional development, including employment and investment growth;
- the interests of a class of customers or of customers generally including customer protection measures and benefits to consumers;
- the interests of any licensee, or applicant for a licence;
- the importance of competition, for example whether the licensee will provide new or vigorous competition in an area; and
- the policy objectives of the Government in relation to the particular industry.

Where, in the opinion of the Authority, there is a significant public interest impact on any or a combination of the above factors, a public consultation process will be undertaken. When determining the scope of the public interest procedure, the Authority may take into account a wide range of considerations including:

- laws and policies relating to ecologically sustainable development;
- social welfare and equity, including community service obligations;
- laws and policies relating to matters such as occupational health and safety, industrial relations, access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or a class of consumers;
- the competitiveness of Australian business; and
- the efficient allocation of resources.

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 research public interest issues and use a cost benefit procedure for evaluating these issues. The information provided should include the positive benefits which will occur if the licence is granted, renewed, transferred or amended.

In summary, the Authority considers a wide variety of matters that could constitute a net public benefit involving the balance of positive and negative impacts of implementing a particular course of action.

That is, the Authority is not to make a determination on a licence application for an amendment, grant, renewal or transfer unless the Authority is satisfied that it would not be contrary to the public interest to do so.

Additional provisions in relation to the Authority's responsibilities on licence applications for an amendment, grant, renewal or transfer are also mentioned under:

- the Electricity Act s19;
- the Gas Act s11(s); and
- the Water Act s23.

Under these sections, the Authority is required to assess the applicant's financial and technical ability as well as testing the public interest before amending, granting, renewing or transferring a licence.

When the Authority makes a final decision on a licence application it will generally:

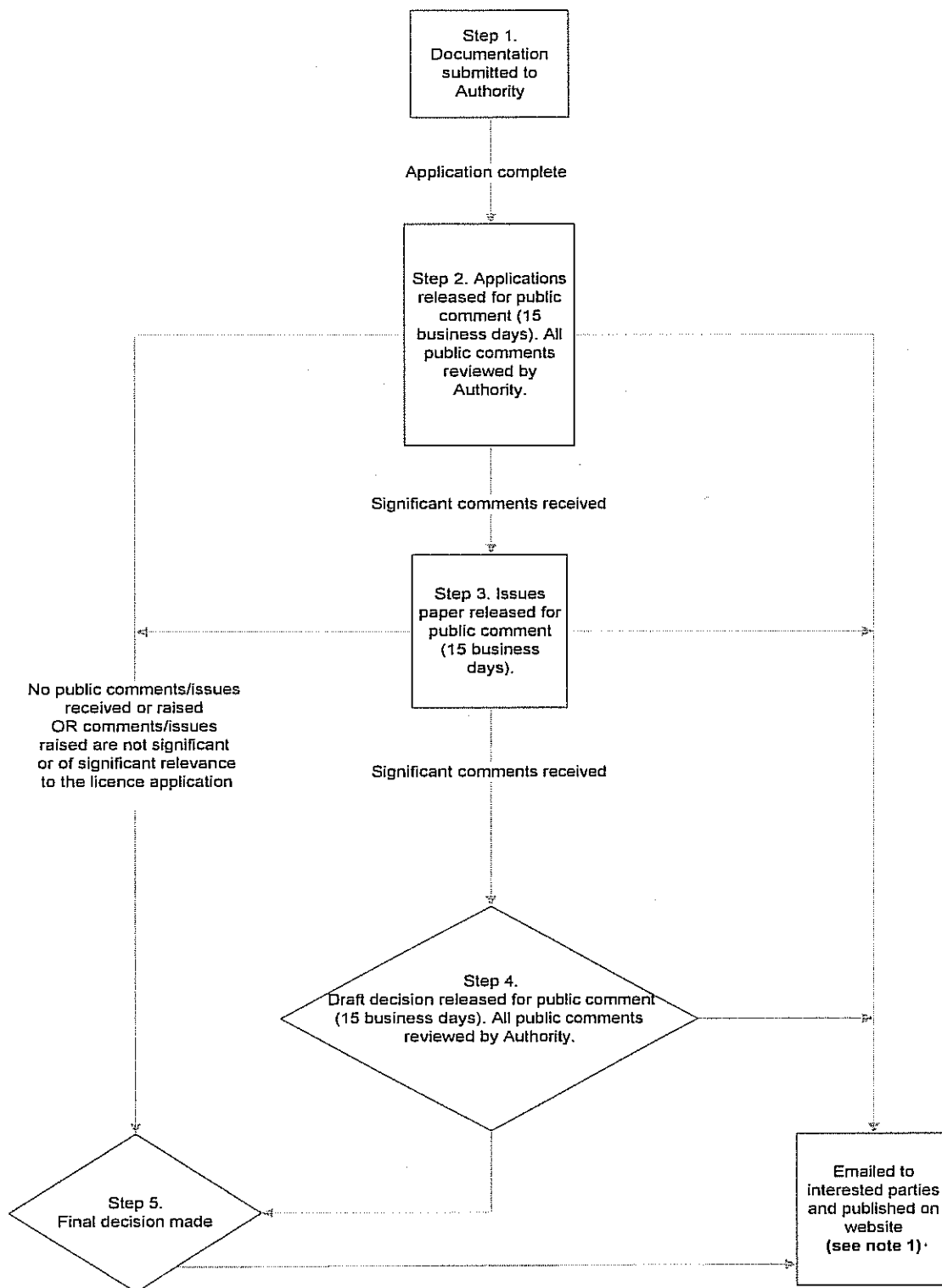
- prepare a statement of reasons for the decision;
- utilise any material in the decision that is considered relevant such as any issues papers or public submissions;
- provide a notice of the decision to each person who made a submission on the licence application (note: refer to the public consultation procedures described in section 3 of this document); and
- publish the decision and the statement of reasons on the Authority's website.

3 HOW DO PUBLIC CONSULTATION PROCEDURES WORK

The Authority may adopt varying procedures depending upon time constraints, legislative requirements and the extent of public interest specific to an application for the amendment, grant, transfer or variation of a licence and/or standard form contracts.

In addition the Authority intends to have specific guidelines for the development and review of customer charters.

The full process outlining the various steps and outcomes is shown in the following flow chart:



Note 1: After each step, the relevant licence application, draft decision or final decision will be placed on the Authority's website and emailed to interested parties

Licence Applications

Step 1. Applicants present documentation to the Authority:

- applicants can apply 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;
- 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>;
- applicants are required as part of their licence application to identify commercial or business information in their licence 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; and
- the Authority acknowledges the receipt of the licence application and checks the licence application for completeness.

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

- if the licence 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 also publish a notice which explains the nature of the licence application and provide the public with 15 business days to comment on the licence application;
- the Authority will also provide the notice of the licence application by e-mail to any persons who have registered an interest in licensing matters in either electricity, gas or water licensing matters on the Authority's website. For example, those persons registered for electricity will receive notices on electricity matters. The public can register an interest in either 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>;
- once the closing date for public comments has elapsed, the Authority will review those comments and determine whether the issues raised are not significant or of significant relevance to the licence application; and
- if no public comments have been received or the issues raised are not significant or of significant relevance to the licence application in the opinion of the Authority, the Authority will then proceed to step 5; or
- if significant issues are raised the Authority will then proceed to step 3.

Step 3. An issues paper is released for public comment if the issues raised are considered by the Authority to be significant to the licence application:

- the Authority will collate those public comments which it considers significant and of significant relevance to the licence application and prepare an issues paper;
- a public notice and an issues paper 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 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 on the issues raised;
- once the closing date for public comments has elapsed, the Authority will review those comments;
- if, after the release of the issues paper, no further public comments have been received or the issues raised are not significant or of significant relevance to the licence application in the opinion of the Authority, the Authority will proceed to step 5; or
- if, after the release of the issues paper, public comments have been received which are considered significant and of significant relevance to the licence application in the opinion of the Authority, the Authority may issue a draft decision.

Step 4. A draft decision is released for public comment

- a public notice and the Authority's draft 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 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; and
- once the closing date for public comments has elapsed, the Authority will review those comments and will proceed to step 5.

Step 5. A final decision is made

- without limiting the other matters that may be taken into account, the Authority will issue a final decision; and
- 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.

The only exception to this proposed procedure exists under *Energy Coordination Regulations 2004* (gas regulations) where the Authority must adopt a two stage public consultation process in all cases for gas licence applications received on or before the 31/03/2006. After this date the process outlined above will apply.

Standard Form Contracts

The proposed public consultation procedure for standard form contracts mirrors the 5 steps described in this guide for licence applications.

Standard form contracts generally describe the terms and conditions under which licensees will supply electricity and gas to small use customers. In addition, some customer charters provide small use customers additional explanatory information relating to licence conditions and standard form contracts (note: refer section Customer Charters of this guide for more information).

The Electricity Act s50 and the Gas Act s11WE 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 Water Act s22(2) 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.

Some commonality in the provision of information exists between the legislative requirements for standard form contracts in the electricity, gas and water industries. This commonality of information may include for example:

- terms of the standard form contract;
- goods and services provided;
- fees and charges for services;
- billing;
- metering; and
- corporate details of the service provider.

It is a part of electricity and gas legislation that the Authority must not make a determination on a licence unless the standard form contract is approved by the Authority.

Under the water legislation, the Authority requires the terms and conditions of any proposed standard customer contract before it makes a determination on a licence application.

Accordingly, in line with the Authority's objectives of transparency and accountability, the Authority seeks public consultation on electricity, gas and water licence matters including standard form contracts to provide consistency of the decision making process.

The public consultation process for a standard form contract may occur prior to, or at the same time, as a licence application.

Customer Charters

The customer charter represents a mandatory condition of electricity retail and distribution licences, gas trading licences and via operating licences for the water industry. Currently in electricity and gas licensing, service providers must make available a copy of the customer charter to their customers and the Authority has no role in the approval of its content.

On the other hand in water licensing, the Authority has a requirement to approve and/or review these documents at least once every two or three years or a period as agreed by the Authority. In addition as no codes apply in water legislation, the customer charter represents a principle document.

The content of the customer charter is normally tailored to suit each service providers' circumstance and may contain details such as:

- relevant points for the consumer in relation to licence conditions;
- relevant points for the consumer in relation to the standard form contract; and
- other marketing information arrangements for the service provider where in some instances the information provided in the customer charter may go beyond terms in the licence and standard form contract.

The Authority is currently compiling new review guidelines¹ which may assist licensees in preparing customer charters. The Authority will review licensee's customer charters against the review guidelines and it is proposed that the following licence conditions be included in electricity retail and distribution licences:

- unless otherwise notified in writing by the Authority, service providers must review the customer charter at least once every 36 months from the grant of the licence and submit to the Authority the results of that review within 5 business days after it is completed;
- service providers may, at any time, review the customer charter and submit to the Authority the results of that review within 5 business days after it is completed;
- when the service provider has reviewed the customer charter, the Authority will examine the review pursuant to the review guidelines and consistent with clauses in the electricity, gas and water licences; and
- publish the review and the Authority's assessment of the review on the Authority's website within a reasonable time of receiving the review. Any review of the customer charter must comply with the review guidelines.

In addition electricity suppliers may amend the customer charter at any time by submitting to the Authority:

- an amendment to the customer charter; or
- a substituted customer charter.

¹ As at the date of this publication, the Authority is in the process of developing the review guidelines called 'Review of Customer Service Charters.'

The Authority may examine the amendment and publish the Authority's assessment of the amendment on the Authority's website within a reasonable time of receiving the amendment.

Public submissions

Submissions on the draft public consultation guidelines are invited from all interested parties. Submissions should be addressed to:

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197 St Georges Terrace
PERTH WA 6000

Telephone: (08) 9213 1900
Fax: (08) 9213 1999

Email: enquiry@era.wa.gov.au

Submissions may be provided in hard-copy or electronic form and must be received by the Authority by the close of business on Friday, 3 March 2006.

Should you require further information, please contact Mark Dominkovich on 92131900.

Confidentiality

In general, all submissions from interested parties will be treated as in the public domain and placed on the Authority's website. The receipt and publication of any submission lodged for the purposes of this public consultation shall not be taken as indicating that the Authority has formed an opinion as to whether or not any particular submission contains any information of a confidential nature.

Where an interested party wishes to make a submission in confidence, it should clearly indicate the parts of the submission for which it is claiming confidentiality, and specify in reasonable detail the basis upon which the claim is made. The treatment of information provided in submissions, including confidential information, will be considered in accordance with the provisions of the ERA Act.

4 FURTHER INFORMATION

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

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