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Dear Paul

DRAFT INCIDENT REPORTING MANUAL FOR ELECTRICITY, GAS AND WATER LICENSEES

Thank you for the opportunity to comment on the Economic Regulation Authority's (**ERA**) draft Incident Reporting Manual for Electricity, Gas and Water Licensees dated February 2009 (**incident reporting regime**).

Synergy recognises the intent of the ERA's incident reporting regime is to enable the Authority to be reasonably and timely informed of material events which can impact the supply of electricity and gas to end use customers.

While Synergy appreciates the intent of incident reporting, we have unfortunately concluded that the proposal in its current form will have a material impact on our business and will require significant financial and human resources. These matters are detailed in Attachment 1.

The energy industry, as are a number of other industry sectors, is currently facing significant financial and other challenges, therefore any proposal which has the potential to increase the industry's cost structure or materially impact business operations needs to be clearly identified. In the absence of such evidence, we are concerned the incident reporting regime will divert resources from servicing customers to incident reporting.

Synergy asks the ERA to consider a more efficient and less resource intensive alternative that will deliver a workable outcome for both industry and the ERA, in the form of an incident reporting guideline.

Synergy advocates the ERA producing a guideline which requires a licensee to report an incident to the ERA which has had a material impact on the supply of energy to end use customers.

This is an outcome based approach, which provides a licensee with a degree of discretion and flexibility (but exercised consistent with the ERA's guideline) without the need for prescriptive regulation. By adopting this approach, a retailer can leverage from its existing internal reporting frameworks without incurring significant expense to build new systems to capture specific data in the manner and format proposed by the ERA.

In the event a market participant did not comply with the spirit or intent of the guideline then a more stringent regulatory approach could then be considered for that participant. However, in the first instance Synergy suggests it appropriate that the ERA specify the objective it wants i.e. timely advice on material events which affect the supply of utility services to customers, while providing industry with an element of discretion and flexibility on how best to deliver the ERA's requirement.

Synergy notes that a similar approach was successfully adopted by the ERA with respect to hardship management. In this instance, the ERA issued a guideline to assist retailers to formulate effective hardship policies. The ERA's objective to progressively reduce Western Australian disconnections is being achieved without the need for regulatory approval of hardship policies nor a requirement to prescribe in detail the content of those policies. Synergy proposes the ERA consider a similar outcome based approach for incident reporting.

Synergy suggests the ERA may wish to convene an industry forum of affected electricity, gas and water licensees to discuss the incident reporting regime, including alternative arrangements such as that proposed by Synergy. This will enable the ERA and industry to work collectively to develop an arrangement that delivers the ERA's information requirements while minimising business impacts.

Please do not hesitate to contact me should you wish to discuss any aspect of this submission.

Yours sincerely

SIMON THACKRAY
MANAGER RETAIL REGULATORY & COMPLIANCE

1. EXISTING LEVEL OF REGULATORY SCRUTINY IS EXTENSIVE

As the holder of an electricity retail licence and a gas trading licence, Synergy is currently the subject of a significant amount of oversight in its regulatory performance and reporting. Key licence requirements in this regard include:

- **Existing licence condition.** Clause 25.1(b) of our retail licence requires that we must report to the Authority:

"if the *licensee* experiences a significant change in the *licensee's* corporate, financial or technical circumstances upon which this *licence* was granted which may affect the *licensee's* ability to meet its obligations under this *licence* within 10 *business days* of the change occurring."
- **Performance reporting.** Under the Code of Conduct for the Supply of Electricity to Small Use Customers 2008 Synergy must produce and publish annually a report detailing more than 40 individual retail performance indicators. Copies of the reports must be provided to the Minister and the ERA prior to publication. In addition we are required to provide the same performance data to the ERA in accordance with the Authority's Performance Reporting Manual requirements.
- **Compliance reporting.** The ERA's Electricity Compliance Reporting Manual requires Synergy to report to the Authority Type 1 breaches, which require immediate reporting and Type 2 breaches, which require annual reporting. Although the proposed incident reporting regime states we do not need to report an incident if we have reported a Type 1 breach, there will be duplication of reporting in the event that an incident becomes a Type 2 breach. In this event, a licensee will be required to notify the ERA within 72 hours of the incident occurring and then again as part of the annual compliance report.
- **Performance audits.** Synergy is obliged under the Electricity Industry Act 2004 to undertake an independent performance audit once every two years. The independent auditor and the proposed audit plan must be approved by the ERA and the auditor, in conducting the work, must comply with the ERA's audit guidelines. The results from Synergy's audit, published in January 2009, did not support the need for an incident reporting regime.

Synergy contends that the existing regulatory requirements are adequate for the ERA to assess a licensee's compliance culture and to identify issues that might indicate an increased risk of non-compliance by the licensee, without a need to impose a further level of prescriptive regulation on the electricity industry. As stated in our covering letter, we suggest that a self regulated approach which is delivered consistent with an ERA guideline should be established in the first instance.

2. THE COSTS AND BENEFITS OF THE PROPOSAL HAVE NOT BEEN ADEQUATELY SUBSTANTIATED

The ERA has not demonstrated that the benefits of the incident reporting regime, in its current format, will outweigh the costs. Before the incident reporting regime is established in its current format, it is recommended the ERA identifies alternative options (including non regulatory solutions) and assesses the merits and costs of each option. This approach is consistent with best practice regulation and the state government's commitment to the Council of Australian Governments to consider ways to minimise regulatory burden in this state.

We note that while the Tasmanian energy regulator has implemented an incident reporting regime, we also note that the industry regulators in Victoria, New South Wales and Victoria have not.

3. LEGISLATIVE ABILITY TO REQUIRE THE INFORMATION

With respect to the electricity industry, the ERA proposes to use the following retail licence condition to establish the incident reporting regime:

"The licensee must provide to the Authority any information that the Authority may require in connection with its functions under the Act in the time, manner and form specified by the Authority."

Synergy does not consider that the ERA has the legislative power to establish an incident reporting regime, nor the ability to request confidential information, in the manner and format proposed by the Authority, by virtue of the above licence condition.

Another concern associated with the proposed incident reporting regime, is that it may require disclosure of information which conflicts with confidentiality provisions contained in commercial agreements between a licensee and a third party. In the event it was determined that the incident reporting regime was not established with a sufficient head of power and information was disclosed by a licensee who, contravened commercial confidentiality, then this could generate or encourage contractual legal disputes.

We also note that the manner in which the ERA proposes to establish the incident reporting regime also denies a licensee the right to seek an independent review of the Authority's decision.

4. EXTENT AND USE OF INFORMATION

The Authority's stated purpose in collecting the information set out in the incident reporting regime is to monitor the operational performance of licensees in relation to the activities covered by the licence.

Synergy is concerned that the proposed incident reporting regime goes well beyond the intent of electricity licensing framework. For example, the ERA is seeking a licensee to report on incidents, related to the operation of the licence, which:

- have an adverse impact on the environment;
- involve a statutory obligation to notify another regulatory authority;
- must be notified to a responsible Minister of the State; or

- has the potential to, or has attracted, significant interest, from the media, other regulatory authorities or government agencies.

Synergy queries how these matters relate to the administration of the licence regime by the ERA under Part 2 of the *Electricity Industry Act 2004*, specifically how they are relevant to the operation or enforcement of the licence. Furthermore, we question why it is relevant to notify the ERA of an incident which is the subject of an independent regulatory body such as the IMO or REMCo.

The ERA proposes that incident reports provided to it will be treated as confidential. However, it reserves the right to use certain information to report on general matters related to the operational performance of particular groups of licensees, including the nature, type and quantity of reportable incidents notified to the Authority during a defined period of time. Given the size and structure of the Western Australian energy market it will be readily apparent to whom any published data applies.

Synergy is concerned at the open ended nature of the incident reporting regime and the extent of the information that can be required. Under the proposed framework, Synergy can be expected (in some instances) to submit a partial incident report, a fully completed incident report and respond to requests by the ERA for further information. Furthermore, the requirement to submit to the ERA Priority 1 Incident Reports within 24 hours and Priority 2 Incident Reports within 72 hours will divert scarce resources from attending to the incidents themselves.

We also note that the ERA intends to respond to all incident reports it receives from a licensee. However, it is unclear as to how the Authority will respond and within what timeframes.

5. INCIDENTS TO BE REPORTED BY ALL LICENSEES

The incident reporting regime requires all licensees to notify the Authority of any incident or event, related to the operation of a licence, which the licensee is required to report to a responsible Minister; or a government regulatory agency.

As stated in section 4, Synergy does not believe this requirement to be within power and considers it inappropriate for the ERA to seek to extend its jurisdiction on energy supply matters that are already the subject of independent regulatory scrutiny.

6. ELECTRICITY AND GAS RETAIL INCIDENTS

The table below outlines the specific types of technology and system events that a retailer must report.

Table 6: Incidents to be reported by Electricity Retailers

Type of Incident	Description	Priority
Incidents affecting a retailers customer billing system	1) Systematically issuing customer bills that have been incorrectly calculated, or that contain material errors.	2
	2) Failure to issue customer bills more than 5 business days after the due date.	2
Incidents affecting a retailers customer service centre Note: this obligation only applies to retailers that operate customer call centres based on CTI technology.	1) Customer telephone service is unavailable for more than 30 minutes continuously during normal business hours.	1
	2) Customer telephone service is unavailable for more than 1 hour in aggregate during normal business hours.	1
	3) Unplanned outage of the customer information system ¹⁰ for more than 1 hour in aggregate during normal business hours. Note: Obligations 1 and 2 relate to the infrastructure and systems, including those operated by a third party, that is used to handle calls to an customer service number published by the licensee.	1

It is important to highlight that Synergy transmits, through its meter-to-cash systems and processes, thousands of transactions each day and about 6 million energy transactions each year. In addition, these meter-to-cash systems are also integrated into Synergy's communication and service centre systems. These systems have architectures that are highly specialised and are dedicated to efficiently process and share large volumes of transactions in real time or near real time.

The requirements in Table 6 would require Synergy to design and develop an integrated hardware and software monitoring system to intercept and report on elements of transactions, especially to meet the aggregated requirements. This would be a significant and costly system integration challenge.

In addition, the effect of such integration will be to reduce the efficiency of transaction processing. For example, reporting on incidents affecting a retailer's customer service centre would require system polling or monitoring to be conducted in time intervals of less than a minute in order to record when an outage exceeds 1 hour in aggregate.

In addition, any monitoring system implemented will only produce exceptions based on a generic set of business rules. Consequently, these exceptions will need be manually reviewed and processed by an analyst in order to meet the reporting criteria defined in Table 6. Synergy anticipates, based on the transactions going through the market gateway, that it will need an additional 5 FTEs to perform this data extraction, analysis and reporting. Synergy estimates its establishment costs (system modification, software, labour etc) would be in excess of \$500,000 to comply with incident reporting requirements as currently proposed. This does not include on-going operational costs.

This type of development will clearly create a significant technology development and ongoing operational cost for retailers and will undoubtedly be perceived as a barrier to entry by new entrants. Synergy anticipates that it could take in the vicinity of 12 months to develop these requirements and may also require the ERA to make changes to Communication Rules and Build Pack in order to facilitate the implementation of these requirements.

The following incident is unique to a gas trading licence:

Termination of agreement to supply gas	<p>Notice is given by a gas supplier or distributor regarding the proposed termination of an agreement to supply gas to the trader's customers that will, or have the potential to, result in an interruption to customer supply.</p> <p>Note: this obligation excludes terminations due to the expiry of, or mutual termination of, customer contracts.</p>	1
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Synergy notes that in addition to reporting the above incident to the ERA as part of the incident reporting regime, Synergy would also be required to report the matter to the ERA under clause 24(1)(b) of our gas trading licence.

We also note that the requirement to notify the ERA of this matter may have ramifications in terms of disclosure of confidential contractual information.