

17 September 2010

Ms Lanie Chopping  
Assistant Director, Customer Protection  
Economic Regulation Authority  
PO Box 8469  
PERTH BC WA 6849



Alinta Sales Pty Ltd  
ABN 92 089 531 984

12-14 The Esplanade  
Perth WA 6000  
PO Box 8348  
Perth BC WA 6849

T 08 9486 3000  
F 08 9221 9128

[www.alinta.net.au](http://www.alinta.net.au)

Dear Lanie

## ELECTRICITY LICENCE REVIEW 2010 – DISCUSSION PAPER

I refer to the invitation to comment on the Electricity Licence Review 2010 Discussion Paper, which was published by the Economic Regulation Authority (the Authority) on 23 August 2010.

At this time, Alinta Sales Pty Ltd (Alinta) has commented only on certain issues arising from the Authority's Discussion paper. The absence of a comment on any specific issue should not be taken to indicate that Alinta supports, or does not support, that particular aspect of the proposed amendments to the electricity industry licensing templates.

### 3.17 Surrender of licence

Clauses 29(b) and 70(1)(c) of the *Electricity Industry Act 2004* contemplate that a licensee may surrender an electricity industry licence. The only further reference to surrendering a licence occurs in clause (l) of Schedule 1 to the Act, which states that a licence may include provisions specifying procedures for surrender of the licence.

Currently, clause 8 of electricity industry licences granted by the Authority states that the licence may be surrendered at any time by written notice to the Authority, although the surrender only takes effect on the day that the Authority publishes a notice of the surrender in the Gazette.

The Authority is proposing that this clause be amended so that the notice required to be given by the licensee to the Authority:

1. must specify the date that the licensee wishes the surrender of the licence to be effect;
2. must be given at least six months prior to the date that the licensee wishes the surrender of the licence to be effect; and
3. sets out reasons why the licensee wishes to surrender the licence.

The Discussion Paper indicates that the Authority "...provided for the six month timeframe to prevent customers and other stakeholders suffering detriment as a result of the surrender and to ensure that where appropriate, alternative supply arrangements can be established."

Alinta does not support the amendments to clause 8 for the following reasons.

- The existing clause 8 already provides the Authority with the sole discretion to determine the date at which the surrender of the licence takes effect. Consequently, the Authority is already able to ensure that the timing of the licence surrender does not result in customers and other stakeholders suffering detriment.
- The reason for the six month timeframe specified in the proposed amended clause 8 is unclear.
  - In some cases, the six month timeframe specified in the proposed amended clause 8 may be unnecessary and/or unreasonable.

For example, a number of transmission licences were surrendered following the making of the *Electricity Industry Exemption Amendment Order 2009*. In that case, it appears it was recognised that the requirement to hold a transmission licence in certain circumstances imposed an unreasonable compliance burden and cost on industry participants that was unable to be justified, and that it was unlikely that the exemption from the requirement to hold a transmission licence would detrimentally impact on customers and/or other stakeholders.

- At the same time, given the extent and complexity of the activities covered by some licences, it also cannot be established with any certainty that the six month timeframe specified in the proposed amended clause 8 would be a sufficient length of time in which to establish alternative arrangements in all situations should that become necessary.
- In any event, the date the surrender of the licence would take effect would continue to be at the sole discretion of the Authority as the surrender would still not be effective until the Authority published a notice of the surrender in the Government Gazette.

Nevertheless, the inclusion of the six month timeframe in the proposed amended clause 8 risks creating an expectation on the part of licensees that the surrender will take effect on the date it specifies where such a date is at least six months from the date it gives notice to the Authority of its wish to surrender its licence.

- The reason for requiring licensees to set out reasons for the surrender of a licence under the proposed amended clause 8 is unclear.
  - While the terms and conditions to which a licence may be subject may be determined by the Authority, and are not limited by the provisions relating to any matter provided for by Schedule 1, it would appear that the *Electricity Industry Act 2004* does not contemplate providing the Authority with the power to prevent a licensee from surrendering a licence.

Alinta suggests it would be reasonable for clause 8 to be amended so that it was clear that irrespective of the date on which a licensee provided a written notice to the Authority indicating it wished to surrender its licence, the date on which the Authority ultimately publishes a notice of the surrender in the Gazette of the surrender (i.e. the date the surrender of the licence takes effect) will depend on the length of time required for the Authority to assure itself that the surrender of the licence would not be contrary to the public interest. This would be consistent with the obligation imposed on the Authority by clause 9(1) of the *Electricity Industry Act 2004*, and the intent stated in the Discussion Paper for amending clause 8.

For example, the amended clause 8 could be worded as follows.

- 8.1 The *licensee* may only surrender the *licence* pursuant to this clause 8.
- 8.2 If the *licensee* intends to surrender the *licence* the *licensee* must, by *notice* in writing to the *Authority*:
  - (a) set out the date that the *licensee* wishes the surrender of the *licence* to be effective; and
  - (b) set out the reasons why it would not be contrary to the public interest for the surrender of the *licence* to be effective on the date set out in the *notice*.
- 8.3 Upon receipt of the *notice* from the *licensee* pursuant to clause 8.2, the *Authority* will publish the *notice*.
- 8.4 Notwithstanding clause 8.2, the surrender of the *licence* will only take effect on the later of the day that:
  - (a) the *Authority* publishes a *notice* of the surrender in the Western Australian Government Gazette, such date to be at the discretion of the *Authority*; and
  - (b) the *licensee* hands back the *licence* to the *Authority*.
- 8.5 The *licensee* will not be entitled to a refund of any fees by the *Authority*.

### 3.27 Reporting

The Authority is proposing to add a new sub-clause (c) that would require a licensee to 'report' to the Authority within two business days of the licensee's name, ABN or address 'being incorrect'.

Alinta expects that the Authority would verify that the name, ABN and address provided on the application for the grant of a licence or the renewal of a licence are correct as part of the process of granting or renewing a licence. As a result, it would appear that a licensee's name, ABN or address could only become 'incorrect' if any of these changed after the grant or renewal of the licence.

If, as it appears, the intent of new sub-clause (c) is simply to require that where a licensee's name, ABN or address changes after a licence is granted or renewed, the licensee advise the Authority of the new name, ABN or address, Alinta suggests that the new sub-clause (c) may be better worded as follows.

- 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,

change, within 2 business days of the details as set out on page 2 changing.

## Definitions

The existing definition of 'Regulations' in the licences includes a 'catch-all' clause being "...any regulations in force from time to time made pursuant to the Act." It appears that the definition of 'Regulations' has been updated to include all regulations that have been made under the *Electricity Industry Act 2004*, which has resulted in the Authority is proposing that the following regulations be added to the definition.

- *Electricity Industry (Access Code Enforcement) Regulations 2005*
- *Electricity Industry (Arbitrator and Board Funding) Regulations 2009*
- *Electricity Industry (Customer Contract) Regulations 2005*
- *Electricity Industry (Independent Market Operator) Regulations 2004*
- *Electricity Industry (Wholesale Electricity Market) Regulations 2006*

Alinta is concerned that the inclusion of a 'catch-all' clause, and the resultant broad scope of the regulations captured by the definition of 'applicable legislation' with which the licensee must comply, has the potential to significantly increase the compliance burden and cost incurred by licensees.

In many cases, regulations made under the *Electricity Industry Act 2004* do not impose any specific obligations on the holders of licences granted by the Authority. Further, where specific obligations may be imposed on persons that are also the holders of licences granted by the Authority, compliance with these obligations is often a matter for another party (e.g. the Courts, the Electricity Industry Board or the Independent Market Operator).

Alinta suggests that the following regulations should not be included in the definition of Regulations in the licences.

- *Electricity Industry (Access Code Enforcement) Regulations 2005*
- *Electricity Industry (Arbitrator and Board Funding) Regulations 2009*
- *Electricity Industry (Independent Market Operator) Regulations 2004*
- *Electricity Industry (Wholesale Electricity Market) Regulations 2006*

In addition, Alinta suggests it would be appropriate for the 'catch-all' clause in the definition of 'Regulation' being amended to instead refer to "...any regulations in force from time to time made pursuant to the Act and that apply to a licence of the type granted to the licensee."



Should the Authority require further information, or wish to discuss any aspect of the above comments, I can be contacted on 9486 3749.

Yours sincerely

**Corey Dykstra**  
Manager Regulatory Affairs  
Alinta Sales Pty Ltd