

Electricity Licence Review 2010 – Final Report

December 2010

Economic Regulation Authority



WESTERN AUSTRALIA

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Economic Regulation Authority
Perth, Western Australia
Phone: (08) 9213 1900

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Executive Summary

The *Electricity Industry Act 2004* (**Act**) governs the operation of the electricity licensing regime in Western Australia (**WA**) and defines the role and powers of the Economic Regulation Authority (**Authority**) with regard to licensing, monitoring and enforcement. The Authority is also responsible for these functions in the gas industry (under the *Energy Coordination Act 1994*) and the water industry (under the *Water Services Licensing Act 1995*).

Under the Act, participants in the electricity industry who intend to, or currently, generate, transmit, distribute or sell electricity must hold an electricity licence (unless otherwise exempt).

The Authority commenced the Electricity Licence Review 2010 in August 2010.

The scope of the review was to examine:

- the format of all electricity licences;
- the terms and conditions contained within all template electricity generation, transmission, distribution, retail and integrated regional licences;
- whether current deviations from the template licences should continue to exist; and
- whether further deviations from the template licences should be created, and, if so, in what circumstances.

The review did not include examination of:

- electricity legislation or subsidiary legislation; or
- licence exemptions.

The review objectives were to:

- reflect the current regulatory environment and promote consistent licence regulation across the utility sector;
- improve consistency between operating licences both within the electricity licence types and between electricity, gas and water licences;
- enhance consumer protection, including providing scope for improved compliance;
- reduce the regulatory burden on business, particularly by removing spent, redundant or inappropriate licence provisions and thereby reducing compliance costs; and
- utilise best practice principles of utility licensing.

These objectives are consistent with those approved by the Authority for the review of both water and gas licences.

The Electricity Licence Review 2010 Discussion Paper was released for public consultation on 23 August 2010. Five submissions were received by the closing date.

The Authority considered the issues addressed in the submissions and has made some changes to the recommendations for licence amendments as detailed in Parts 3 & 4 of this report.

Key instances of divergence from the recommendations contained in the Discussion Paper, or new recommendations as a result of consideration of the issues include:

- Deletion of the term “date of grant” and new definitions for the terms “commencement date” and “version date” to remove confusion between the terms “commencement date” and “date of grant” (Recommendation 3.5 – Licensee Details).
- Reversion to the existing licence condition regarding fees to limit coverage to those fees prescribed in the Regulations. The recommendation in the Discussion Paper proposed that the fees include all fees payable under the Act (Recommendation 3.14 – Fees).
- Amendments to the proposed licence surrender clause including the removal of the six month time period proposed in the Discussion Paper (Recommendation 3.17 – Surrender of Licence).
- A change in the number of days (from 2 to 5 business days) within which a licensee must notify the Authority regarding their asset management system (Recommendation 3.26 – Asset Management System).
- A change in the number of days (from 2 to 10 business days) within which a licensee must notify the Authority of a change to its name, address, ABN, description or length of distribution or transmission system, or description or nameplate capacity of generating works (Recommendation 3.27 – Reporting).
- Addition of a new amendment to clause 18.2(e) of all licences to include reference to Notice sent by “electronic means” which includes but is no longer limited to email (New Proposal 1 – Notices).
- Addition of new clauses within the distribution, retail and integrated regional licences which reflect the licence conditions currently included in the *Electricity Industry (Customer Contracts) Regulations 2005* (New Proposal 3 - Licence conditions specified in the Act or Regulations).
- Deletion of the proposal to include maps in the body of the licence (Recommendation 3.31 – Licence Area Map/s)

Key issues raised in submissions where the Authority has decided no further action will be taken include:

- Arguments presented that the definition of “Codes” and “Regulations” should not be amended to provide a comprehensive list of all codes and regulations. It was argued that by doing so the scope of the licence is extended inappropriately. In relation to this matter the Authority determined that the scope was not extended by this amendment as the codes or regulations only apply where they are made applicable to the licensee by the code, regulation, Act or other legislation. In this regard, clause 5 of the licence specifies that the licensee must comply with “applicable” legislation. The Authority has sought to further clarify this by amending the definition of “applicable legislation” in all licence templates. The Authority found that there was no substantive difference between the compliance clause in the current licence and the proposed amendments (Recommendation 3.9 – Definitions – Minor amendments).
- A proposal to classify Authority information requests under clause 16 of the licence as constituting a “reviewable decision” under clause 19 of the licence. The

submission argued Authority information requests can: have financial and operational impacts; be too broad; and that it is important that licensees have the ability to comment on the reasonableness of the request. The Authority determined that it is essential that, as an independent regulator, it has the power to seek information from licensees without the information being selectively provided by the licensee. The Authority determined that licensees already have the power to make comment regarding the reasonableness of the request when providing the requested information (New Proposal 2 – Reviewable decisions).

- A proposal to amend the requirement for reporting a change in circumstances to require reporting within 2 business days of the “licensee becoming aware” as opposed to “of the details being incorrect”. The Authority determined that the obligation should not rest upon the licensee’s level of awareness but on an objective and measurable fact, i.e. a date. (Recommendation 3.27 – Reporting)
- A proposal to change the term “substantial” with the term “material” in the clause related to the asset management system. The Authority determined that the term “substantial” should be retained as this is the term included in the Act (Recommendation 3.26 – Asset Management System).
- A proposal to define the term “materially” in the reporting clause. The Authority has rejected this proposal as such a definition would likely be circular (Recommendation 3.27 – Reporting).
- A proposal to only require a licensee to report on “changes which diminish the licensee’s ability to perform”. The Authority has rejected this proposal as this would require a (further) judgement call by the licensee (Recommendation 3.27 – Reporting)
- A proposal that statutory licence conditions be omitted from the licence, particularly the licensee specific conditions section. The Authority determined that it is important to include within the licence those conditions specified in the Act or subsidiary legislation as licence conditions (Recommendation 4.1 – Definitions).

The new electricity licence templates are included as appendices to this report.

Given the nature of the issues raised and the altered recommendations the Authority determined that a further round of public consultation was unnecessary.

The Authority will amend all electricity licences by substitution in accordance with the Act. Licensees will have 15 business days to lodge any objections to the licence amendments.

The Authority plans to conduct another review of electricity licences in 2013/14.

1 Background

1.1 WA electricity licensing regime

Commencing 1 January 2005, the Authority was given the role of licensing WA electricity supply services in accordance with the Act.

An electricity supply includes the means to generate electricity, transport electricity through a transmission or distribution system and sell electricity to customers.

After undertaking consultation throughout 2005, the Authority approved the final version of each template electricity licence in November 2005.

Electricity licences are categorised as follows:

- **Generation licences (EGL)** which authorise the construction and operation of generating works. Generating works under 30MW at each connection point are exempt (see *Electricity Industry Exemption Order 2005*).
- **Transmission licences (ETL)** which authorise the construction and operation of transmission systems to transport electricity at nominal voltages of 66kV or higher.
- **Distribution licences (EDL)** which authorise the construction and operation of distribution systems to transport electricity at nominal voltages of less than 66kV.
- **Retail licences (ERL)** which authorise the sale of electricity to customers.
- **Integrated regional licences (EIRL)** which authorise the construction and operation of any combination of generation, transmission, distribution and retail activities otherwise than through the South West Interconnected System (**SWIS**).

There are currently 50 electricity licences in the following categories:

- Generation = 22
- Transmission = 5
- Distribution = 5
- Retail = 14
- Integrated Regional = 4

The majority of these licences are identical to the relevant template licence. However, the specific circumstance of a small number of licensees requires deviation from the template. For example, the Western Power distribution licence contains a non-template provision requiring Western Power to operate a fault call management system and notify the Authority if it intends to outsource this function.

Section 11 of the Act provides the Authority with the power to determine any terms and conditions of the licence. Without limiting that power, Schedule 1 of the Act includes a list of items about which licence conditions can be made.

The Act allows a retail licence to be granted for up to 15 years whilst any other classification of an electricity licence may be granted for up to 30 years. A licence must be designated to apply to one or more areas of the State specified in the licence (see section 5 of the Act).

The Authority has published the *Electricity, Gas and Water Licences: Application Guideline and Forms (June 2008)* to assist licence applicants in preparing their licence application.

The Authority has the power to amend an electricity licence, either at its own initiative or as a result of a licensee's application for licence amendment.

The Authority has made one universal change to the electricity licences since their inception. In 2009, the Authority amended the definition of 'customer' to match the definition with that contained in the Act.

The Authority monitors and enforces a licensee's compliance with the licence through annual performance and compliance reports and performance audits conducted at least once every 24 months.

1.2 Jurisdictional overview

Significant licensing changes are proposed to occur in the National Electricity Market and in other State jurisdictions over the next 12 months. Given the fact that these changes are yet to be finalised it would be premature of the Authority to propose licence amendments to improve consistency with other jurisdictions at this stage. However, the Authority has provided this jurisdictional overview as part of general background information to inform stakeholders.

There are considerable differences between the licence conditions both within and between the State's licence types. Some of these variations may be explained by the specifics of the licensee's supply situation, or by the fact that some older licences have not been updated to reflect more recent changes to a State's licensing regime.

The Authority understands that the Ministerial Council on Energy has determined that the Australian Energy Regulator (**AER**) will be responsible for issuing retailer authorisations. It is proposed that the national retail authorisation regime will differ from existing jurisdictional licensing regimes in that it will not impose substantive obligations on retailers by means of the authorisation. Direct obligations on retailers will be imposed through the National Energy Retail Law (**NERL**) and National Energy Retail Rules (**NERR**). The enforcement regime will be based on compliance with these direct obligations rather than on compliance with a condition of a licence.

The Authority understands that the NERL and NERR also impose obligations on distributors. However, at this stage it is not proposed that the AER assume responsibility for licensing or authorising distributors. The Authority understands that distribution licensing and, where relevant, transmission and generation licensing will remain the responsibility of State jurisdictional regulators.

2 Review Process

The Electricity Licence Review 2010 Discussion Paper was released for public consultation on 23 August 2010. Submissions closed on 17 September 2010 and were received from:

- Alinta Sales
- Synergy

-
- Western Power
 - Landfill Gas & Power
 - Horizon Power

Copies of the submissions are available on the Authority's website.

The Authority considered the issues raised in submissions and has made some changes to the recommendations for licence amendments.

The new electricity licence templates are included as appendices to this report.

Given the nature of the issues raised and the altered recommendations the Authority determined that a further round of public consultation was unnecessary.

The Authority will amend all electricity licences by substitution in accordance with the Act. Licensees will have 15 business days to lodge any objections to the licence amendments.

3 Recommendations

This section lists: amendments originally proposed by the Authority; the Authority's decision regarding these amendments following consideration of submissions; and new amendments as a result of additional proposals.

3.1 Number formatting of licences

EGL, ETL, EDL, ERL & EIRL

The Authority issues licences using the licence template for each licence type. For a number of reasons deviations may be required from the applicable licence template. For example, the Authority has issued a retail licence to Clear Energy Pty Ltd which contains additional information disclosure requirements that are not usually contained in a retail licence.

Issuing licences with clauses that deviate from the licence template can cause problems when referring to conditions. For example, a requirement to comply with clause 12 of a distribution licence may refer to a different licence condition dependent upon whether there are deviations within a particular licence.

To rectify this situation the Authority proposed that each type of licence would contain a core template of consistent conditions and all licensee specific conditions will be contained in Schedule 2 of each specific licence.

Decision

Implement recommendation.

3.2 Restructure of the EIRL

EIRL

At present, all granted integrated regional licences authorise the licensee to undertake all four supply activities (generation, transmission, distribution and retail) – even if the licensee currently only undertakes one, two or three supply activities.

The Authority proposed to restructure these licences whereby a licence is only granted with respect to the activities undertaken by the licensee at the time of licence grant. If a licensee, at a future point in time, intends to expand its operations to include additional supply activities, it will have to apply to the Authority for a licence amendment.

As a result, the licences of all existing and new integrated regional providers would be tailored to reflect their specific supply situation. For example, the licence of an integrated regional provider who does not retail electricity to customers would no longer include provisions relating to standard form contracts or the ombudsman scheme.

Any licence conditions that do not apply to all supply activities were moved and are now included after the last clause that is relevant for all licence activities; clause 19. Licence conditions that do not apply to a licensee, by virtue of the licensee not undertaking the relevant supply activity, will be replaced with the words “NOT USED”.

By moving activity specific conditions after clause 19 and replacing them, where relevant, with the words “NOT USED”, the numbering for all licence templates will remain consistent (as discussed in Recommendation 3.1 above).

Decision

Implement recommendation.

3.3 Restructure of the EDL & ERL EDL & ERL

A number of clauses within the distribution and retail licences are proposed to be transferred after clause 19 of their respective licences. The clauses transferred contain conditions that only apply to distribution and/or retail licences. The transfer supports Recommendation 3.1 by ensuring consistent numbering throughout all licence templates.

Decision

Implement recommendation for all licence types.

One of the submissions suggested that the proposed restructure also be applied to the transmission licence template. The Authority agreed with this submission and notes that the draft licence templates, including the generation and transmission templates, attached to the Discussion Paper already provided for this restructure.

3.4 Title page EGL, ETL, EDL, ERL & EIRL

It is proposed that the title page be amended to ensure consistency with the new gas licence templates. As a result, the new text on the title page for (for example) retail licences will read:

Electricity Retail Licence
<Licensee Name>
ERL<X>, Version <X>, <Version Date>

Decision

Implement recommendation.

3.5 Licensee details

EGL, ETL, EDL, ERL & EIRL

It is proposed that page 2 of the electricity licence templates be amended consistent with the formatting used for the gas licence templates. This means that the following information would be included on page 2:

- licensee name
- date of grant
- version number
- version date

In addition, the following licensee details, which are currently included in Schedule 1 of the electricity licences, would be transferred to page 2:

- licensee address
- description of generating works
- nameplate capacity of generating works
- description of transmission system
- length of transmission system
- description of distribution system
- length of distribution system

The definition of “licence” included in clause 1.1 ensures that neither the titlepage nor page 2 form part of the licence. As a result, the Authority will be able to make any necessary changes to details included on these pages without following the licence amendment process.

Licence area information, including relevant map references, and the commencement date will be retained within Schedule 1. However, a short description of the licence area and information on the commencement date will also be included on page 2. Changes to the licence area details or commencement date, as included in Schedule 1, will continue to be subject to the licence amendment process.

All licence templates will include the following signature block:

Signed by a delegate;
Member; or
the Chairman of the Economic Regulation Authority
Dated this <Date> day <Month> <Year>

This is consistent with the approach adopted by the Authority for gas licence templates.

Decision

Implement recommendation with minor amendment to replace term “date of grant” with “commencement date”.

In addition, the term “commencement date” will be amended to provide additional clarity (see Recommendation 3.9). A new definition of “version date” will also be included in the definition section (see Recommendation 3.10).

3.6 Definitions – New entry paragraph

Clause 1 of the EGL, ETL, EDL, ERL & EIRL

For the purpose of legal clarity, the Authority proposed to add a sentence at the commencement of the definitions clause that reads:

In this licence, the following definitions apply unless the context otherwise requires:

The title of the section will also be amended to read “Definitions and Interpretation”. The addition “and Interpretation” reflects the addition of the new entry paragraph.

Decision

Implement recommendation.

3.7 Definitions – Reference to legislation

Clause 1 of the EGL, ETL, EDL, ERL & EIRL (as applicable)

The Authority proposed to remove the current definition statements of those terms that are already defined in superior legislation. The definition for each of these terms will be replaced with a statement that refers the reader to the relevant legislation, for example, “has the meaning given to that term in section 28 of the *Electricity Industry Act 2004*.”

This approach will reduce the risk of a term being incorrectly defined in the licence and improve clarity regarding the source of definitions in the licensing system.

The following definitions have been replaced with a statement referring to the definition in superior legislation:

- customer
- distribution system
- electricity
- generating works
- operate
- operation
- small use customer
- South West Interconnected System
- supply
- transmission system

Decision

Implement recommendation.

3.8 Definitions – Deletion of redundant definitions

Clause 1 of the EGL, ETL, EDL, ERL & EIRL

A number of definitions have become redundant due to legislative changes or proposed amendments to the licence templates and the Authority proposed that these be deleted. These include:

- **asset management system review** – Although a defined term, this definition was not used within the generation, transmission, distribution or integrated regional licences. The definition will therefore be deleted.
- **customer** – This definition was not used within the generation licence and will be deleted from the generation licence template. Due to amendments proposed to clause 2 of the transmission licence template, the definition of customer may also be removed from this licence type.
- **customer service charter** – This definition may be deleted from the retail, distribution and integrated regional licences following the Authority’s decision to remove the requirement for a customer service charter from the *Code of Conduct for the Supply of Electricity to Small Use Customers (Code of Conduct)*.
- **distribution system** – This definition may be deleted from the transmission licence template following amendments proposed to clause 2 of the transmission licence.
- **non-standard contract** – This definition was not used within the distribution licence and will be deleted from the distribution licence template.
- **review guidelines** – This definition may be removed as the requirement to review a customer service charter has been removed from the distribution, retail and integrated regional licences.
- **South West Interconnected System** – This definition has been deleted from the transmission and distribution licence templates. In these licences, the definition was only used to describe the transmission and distribution systems in Schedule 2. As these descriptions will be transferred to page 2 and no longer form part of the licence, a definition of the term is no longer required.
- **supply** – This definition was not used within the generation licence and may be removed. Similarly, the term is no longer used within the transmission licence and will be deleted.
- **transmission system** – This definition will be deleted from the distribution licence template following proposed amendments to clause 2 of the distribution licence.

Decision

Implement recommendation with two minor amendments.

The definition of “electricity licensing email address” will be deleted from all licence templates as a result of New Proposal 1. The definition of “South West Interconnected System” will be deleted from the retail licence template as it is not used within the licence.

3.9 Definitions – Minor amendments

Clause 1 of the EGL, ETL, EDL, ERL & EIRL; Clause 20, 22, 23 & 24 of the EIRL

Minor amendments were proposed to the following definitions to provide clarity:

- **asset management system** – This definition will be amended within the integrated regional licence template by replacing reference to “*generating works, distribution system and transmission system*” with “*licensee’s assets*”. In turn,

“licensee’s assets” will be defined to mean “the licensee’s distribution system, transmission system or generating works (as the case may be)”. The amendment reflects that not all holders of an integrated regional licence will operate all three works or systems.

- **Code** – The definition of Code will include a list of all codes issued under the Act.
- **electricity marketing agent** – This definition now refers to section 78 of the Act.
- **licence** – This definition has been amended to clarify that the title page and page 2 of the document do not form part of the licence. In addition, reference to “Schedule 1” has been replaced with “any Schedules to this document” to reflect the fact that all licences will include more than one Schedule.
- **licensee** – This definition now reads “means < Licensee Name> <ABN/ACN>” in all licences.
- **non-standard contract** – This definition now refers to section 47 of the Act.
- **Regulations** – The definition of Regulations will include a list of all regulations made under the Act.
- **related body corporate** – The phrase “given to that term” has been added to this definition to ensure consistency with other definitions that refer to higher legislation.
- **reviewable decision** – This definition contained a number of incorrect clause references. Any incorrect references have been rectified.
- **standard form contract** – This definition now refers to section 47 of the Act.

Decision

Implement recommendation with a few minor amendments to the definitions of “commencement date” (see Recommendation 3.5), “Code” (subclause (a) only) and “supplier of last resort”. These definitions will now read:

commencement date means the date the *licence* was first granted by the *Authority* being the date specified in Schedule 1.

Code means:

- (a) the *Code of Conduct for the Supply of Electricity to Small Use Customers* or any such replacement Code approved pursuant to section 79 of the *Act*.

supplier of last resort has the meaning given to that term in section 69(1) of the *Act*.

Two submissions raised concerns regarding the amended definitions of “Code” and “Regulations”. These respondents argued that by expanding the definitions to include all codes and regulations under the Act the Authority was inappropriately broadening the scope of the licence.

In relation to this matter the Authority determined that the scope was not extended by this amendment as the codes or regulations only apply where they are made applicable to the licensee by the code, regulation, Act or other legislation.

Clause 5 of the licence specifies that the licensee must comply with “applicable” legislation.

The Authority has sought to further clarify this by amending the definition of “applicable legislation” in all licence templates to read:

applicable legislation means:

- (a) the *Act*, and
- (b) the *Regulations* and the *Codes* that apply to the licensee

3.10 Definitions – New definitions

Clause 1 of the EDL; Clause 20 of the EIRL

The Authority proposes to add definitions of “small use customer” and “supply” to the distribution licence template as reference is made to these terms in clause 14 [now 21]. The definitions are identical to those used in the retail and integrated regional licence templates.

As discussed above, clause 20.8 of the integrated regional licence includes a new definition of “licensee’s assets”.

Decision

Implement recommendation.

In addition, new definitions of “electronic means” and “version date” have been included in all licence templates (see New Proposal 1 and Recommendation 3.5). These definitions read:

electronic means means:

- (a) the internet;
 - (b) email, being:
 - (i) in relation to the *Authority*, the *Authority’s* email address as notified to the *licensee*; and
 - (ii) in relation to the *licensee*, the email address specified in the *licence* application or other such email address as notified in writing to the *Authority*; or
 - (c) any other similar means,
- but does not include facsimile or telephone.

version date means the date on which the *licence* was last amended pursuant to clause 10 or clause 11.

New definitions of “connection point” and “default supplier” have furthermore been added to the distribution, retail and integrated regional licences (see New Proposal 3). These definitions read:

connection point has the meaning given to that term in regulation 35 of the *Electricity Industry (Customer Contracts) Regulations 2005*.

default supplier has the meaning given to that term in regulation 35 of the *Electricity Industry (Customer Contracts) Regulations 2005*.

3.11 Definitions – Transfer to individual clauses

Clause 1 of the EIRL

For the integrated regional licence template, it was proposed that a number of definitions be transferred from clause 1.1 to the individual clauses they relate to. Rationale for the transfer is that these clauses can now be deleted from those integrated regional licences to which they are extraneous without having to delete the relevant definitions from clause 1.1.

The definitions of “approved scheme” and “small use customer” have been transferred to clause 21. Clause 23 now includes the definition of “electricity marketing agent”, while clause 24 and 25 include the definition of “standard form contract”. The definition of “non-standard contract” has been moved to clause 24.

Decision

Implement recommendation with the following minor amendments. The definitions of “asset management system review”, “small use customer” and “supplier of last resort” have been transferred to clause 20 (asset management system), 24 (customer contracts) and 27 (supplier or last resort) respectively.

3.12 Definitions – Modification of legislation

Clause 1 of the EGL, ETL, EDL, ERL & EIRL

The Authority proposed that a new clause be added to all licences to read:

A reference in this *licence* to any *applicable legislation* includes, unless the context otherwise requires, any statutory modification, amendment or re-enactment of that *applicable legislation*.

The clause was proposed to be added to provide legal clarity.

Decision

Implement recommendation.

3.13 Grant of Licence

Clause 2 of the ETL, EDL & EIRL

The Authority proposed that clause 2.1(a) of the transmission and distribution licence templates be amended to read: “The *licensee* is granted a *licence* for the *licence* area to construct and *operate* a new [*distribution system / transmission system*] or *operate* an existing [*distribution system / transmission system*] in accordance with the terms and conditions of this *licence*”.

It was proposed that clauses 2.1(b) and (c) of the transmission and distribution licence templates be deleted to streamline the licence.

It was proposed that clause 2.1 of the integrated regional licence template be replaced with the following:

The licensee is granted a licence for the licence area to carry out the activities described in Schedule 1 in accordance with the terms and conditions of this licence.

The amendment was proposed to ensure that an integrated regional licensee is only authorised to carry out the activities described in Schedule 1.

Decision

Implement recommendation.

3.14 Fees

Clause 4 of the EGL, ETL, EDL, ERL & EIRL

The Authority proposed to amend the clause to remove the term “the Regulations” and replace it with “any applicable legislation” to provide legal clarity.

Decision

Reject recommendation.

One submission was received expressing concern that the proposal inappropriately extended the scope of this clause to create a situation of a licence breach where, for example, a retail licensee failed to pay fees to the Independent Market Operator as part of its obligations under the Wholesale Electricity Market.

The Authority agreed that it was appropriate to revert to the existing clause which referred to fees payable under “the Regulations”. As present, only the *Electricity Industry (Licensing Fees) Regulations 2005* prescribe ‘fees’ to be paid by licensees.

3.15 Compliance

Clause 5.1 of the ETL, EDL, ERL & EIRL

It was proposed that clause 5.1 be amended to read:

Subject to any modifications or exemptions granted pursuant to the *Act*, the *licensee* must comply with any *applicable legislation*.

Reference to specific Codes would be deleted as reference to these Codes is already included indirectly through use of the defined term ‘applicable legislation’.

Decision

Implement recommendation.

3.16 Compliance

Clause 5.2 of the EGL, ETL, EDL, ERL & EIRL

The Authority proposed to delete clause 5.2 as the Authority’s powers with regard to enforcement are already defined in the Act.

Decision

Implement recommendation.

3.17 Surrender of Licence

Clause 8 of the EGL, ETL, EDL & ERL; Clause 9 of the EIRL

The Authority proposed to replace clause 8 [clause 9 - EIRL] with the following:

-
- 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 - such date to be no less than 6 months from the date of the *notice*; and
 - (b) set out the reasons why it wishes to surrender the *licence*.
- 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*.

The amendment was proposed to provide further detail and clarity regarding the licence surrender process.

The Authority provided 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.

Decision

Amend recommendation.

One submission raised concerns regarding the proposed introduction of a six month timeframe. The stakeholder argued that the six month time period may be unnecessary and/or unreasonable and that under the proposed clause the Authority already had discretion to determine the date the surrender would take effect. The stakeholder also suggested that the clause be amended to provide additional guidance to licensees as to the reasons that should be provided for the surrender.

The Authority agreed with the issues raised in the submission and has amended the clause accordingly.

3.18 Amendment of the Licence by the Authority

Clause 11 of the EGL, ETL & EDL; Clause 12 of the ERL & EIRL

The Authority proposed that the final sub-clause be amended to improve clarity of the clause. The clause would read:

For avoidance of doubt, the *licensee* will not have to pay a fee for amendments under clause 12 [or 11, as applicable].

Decision

Implement recommendation.

3.19 Customer Contracts

Clause 13 of the ERL

The Authority proposed that clause 13.1(b) be amended to read:

a non-standard contract that complies with the Act.

The new wording is consistent with Section 54(1) of the Act.

Decision

Implement recommendation. The amendment has also been made to clause 23.1(b) of the integrated regional licence template.

3.20 Customer Service Charter

Clause 12 of the EDL; Clause 15 of the ERL & EIRL

Following the 2009 statutory review of the Code of Conduct by the Electricity Code Consultative Committee, the Authority agreed to remove the Code provisions requiring that retailers and distributors produce a customer service charter (charter).

Given the fact that retailers and distributors are no longer required to produce a charter, the Authority proposed that provisions related to charters be removed from the licence. Commensurate provisions have already been removed from all gas licences.

Decision

Implement recommendation.

3.21 Amending the Customer Service Charter

Clause 13 of the EDL; Clause 16 of the ERL & EIRL

For the reasons outlined in Recommendation 3.20, the Authority proposed that this clause be removed from the distribution, retail and integrated regional licences.

Decision

Implement recommendation.

3.22 Expansion or Reduction of [Generating Works, Transmission System, Distribution System]

Clause 12 of the EGL & ETL; Clause 15 of the EDL; Clause 20 of the EIRL

It was proposed that this clause be deleted as the Authority believes that these responsibilities are adequately covered in section 14 of the Act.

Decision

Implement recommendation.

3.23 Accounting Records

Clause 13 of the EGL & ETL; Clause 16 of the EDL; Clause 20 of the ERL; Clause 21 of the EIRL

The Authority proposed that the reference to the “Australian Accounting Standard Boards Standard” be replaced with “Australian Auditing and Assurance Standards Board” as this is the correct reference.

Decision

Amend recommendation.

One submission was received proposing that the original clause, referring to the “Australian Accounting Standard Board” be retained as the correct reference.

The Authority has confirmed that the correct reference should be the “(Australian) Auditing and Assurance Standards Board” and has amended the clause accordingly.

3.24 Individual Performance Standards

Clause 14 of the EGL & ETL; Clause 17 of the EDL; Clause 21 of the ERL; Clause 22 of the EIRL

The Authority proposed that sub-clause 2 of this section be amended for clarity. The proposed clause now reads:

The Authority may prescribe *individual performance standards* applying to the *licensee* in respect of the *licensee’s* obligations under this *licence* or the *applicable legislation*.

It was proposed that sub-clause 4 be amended to include the word “individual” before “performance standards”.

Decision

Implement recommendation.

3.25 Performance Audit

Clause 15 of the EGL & ETL; Clause 18 of the EDL; Clause 22 of the ERL; Clause 23 of the EIRL

The Authority proposed that sub-clause 2 be amended to read:

The *licensee* must comply, and must require the *licensee’s* auditor to comply, with the *Authority’s* standard audit guidelines.

This amendment was proposed to streamline the licence.

The Authority proposed that sub-clause 4 be amended to read:

The *performance audit* must be conducted by an independent auditor approved by the *Authority*. If the *licensee* fails to nominate an auditor within one month of the date that the

performance audit was due, or the auditor nominated by the *licensee* is rejected on two successive occasions by the *Authority*, the *Authority* may choose an independent auditor to conduct the *performance audit*.

This amendment was proposed to ensure clarity.

Decision

Implement recommendation.

3.26 Asset Management System

Clause 16 of the EGL & ETL; Clause 19 of the EDL; Clause 24 of the EIRL

A number of amendments were proposed to this clause which is contained in all licence templates with the exception of the retail licence template.

Sub-clause 1 was proposed to be split into two separate clauses.

Sub-clause 1 now reads:

The *licensee* must provide for an *asset management system* in respect of the *licensee's* assets.

New sub-clause 2 reads:

The *licensee* must notify the *Authority* of the details of the *asset management system* within 2 *business days* from the later of:

- (a) the *commencement date*; or
- (b) the completion of construction of the [*distribution system, transmission system or generating works*].

Sub-clause 2 [now 3] was proposed to be amended to replace the term “material change” with “substantial change”.

Sub-clause 3 [now 4] was proposed to be amended to read:

The *licensee* must provide the *Authority* with a report by an independent expert, acceptable to the *Authority*, as to the effectiveness of the *asset management system* not less than once in every period of 24 months calculated from the *commencement date* (or any longer period that the *Authority* allows by notice in writing).

Sub-clause 4 [now 5] was proposed to be amended to read:

The *licensee* must comply, and must require the *licensee's* expert to comply, with the *Authority's* standard audit guidelines.

Sub-clause 5 [now 6] was proposed to be amended to insert the word “audit” between “standard” and “guidelines”.

Sub-clause 6 [now 7] was proposed to be amended to read:

The review of the *asset management system* must be conducted by an independent expert approved by the *Authority*. If the *licensee* fails to nominate an independent expert within one month of the date that the review of the *asset management system* was due, or the independent expert nominated by the *licensee* is rejected on two successive occasions by

the *Authority*, the *Authority* may choose an independent expert to conduct the review of the *asset management system*.”

These amendments were proposed to improve clarity and accuracy.

Decision

Amend recommendation.

One submission was received requesting that the reference to the term “substantial” be replaced with the term “material”. The Authority has rejected this proposal as the term “substantial” reflects the wording of the statutory condition in section 14 of the Act.

One stakeholder argued that the two day period within which a licensee must notify the Authority of the details of the asset management system is too onerous. The Authority agreed to amend this time period to five business days.

3.27 Reporting

Clause 17 of the EGL & ETL; Clause 20 of the EDL; Clause 23 of the ERL; Clause 25 of the EIRL

The title of this clause was proposed to be amended to read: “Reporting a Change in Circumstances” as this more accurately reflects the content of the clause.

Sub-clause 1(a) was proposed to be amended by inserting the words “of such external administration occurring;” at the end of the clause.

The wording of sub-clause 1(b) was proposed to be amended and the clause has been split into two clauses. The sub-clause now reads:

If the *licensee*:

- (a) experiences a change in the *licensee*’s corporate, financial or technical circumstances upon which this *licence* was granted; and
- (b) the change may materially affect the *licensee*’s ability to perform its obligations under this licence,

within 10 business days of the change occurring; or

Both amendments were proposed to improve clarity and accuracy.

A new sub-clause (c) was proposed to be added which reads:

- (c) if the details of the:
 - (i) *licensee*’s name;
 - (ii) *licensee*’s ABN; or
 - (iii) *licensee*’s address,

as set out in page 2 of this document are incorrect, within 2 business days of such details being incorrect.

For the distribution licence template, sub-clause (c) also includes reference to “the description of the distribution system” and “the length of the distribution system”. Similarly, for the transmission licence template, sub-clause (c) refers to “the description of the transmission system” and “the length of the transmission system”.

The generation licence template requires the licensee to report on “the description of the generating works” and “the nameplate capacity of the generating works”.

Clause 15.1(c) of the integrated regional licence includes reference to generating works, transmission systems and distribution systems. For licensees who do not engage in all three activities, the licence will only include reference to those activities they do engage in.

This new reporting requirement was added to ensure that the Authority is informed of any changes to the licensee’s supply activities. As page 2 does not form part of the licence, any new information received by the Authority will not require a licence amendment.

Decision

Amend recommendation.

One submission was received proposing that this provision only apply where the licensee “becomes aware” of the incorrect information. The Authority rejected this recommendation as the provision is better based on an objective change in details than a licensee’s level of awareness.

One submission proposed that the term “materially” be defined. The Authority has not accepted this recommendation as any definition would likely be circular. However, further guidance on this clause is contained below.

One submission requested further guidance from the Authority regarding the type of matters that a licensee should report on. The Authority has determined that matters to be reported will depend on the particular circumstances and will vary from licensee to licensee as a change must only be reported if it “materially” affects the individual licensee’s ability to perform its obligations under the licence.

As a general guide, such matters would likely include (but are not limited to):

- deregistration from the Wholesale Electricity Market;
- suspension from the Wholesale Electricity Market;
- loss of key contracts which are necessary to perform the functions under the licence (for example a gas fired generator’s wholesale gas supply contract expiring or being terminated with no replacement contract (or likely replacement contract));
- a prolonged event of force majeure;
- a financial event which does not make the entity insolvent but impairs its ability to perform its obligations under the licence; or
- where the licensee relies on an entity to perform the day to day operations of the business (for example, under an asset management agreement), the termination of that contract with no replacement contract (or likely replacement contract).

One submission proposed minor amendments to the wording of subclause 15.1(c) to replace the words “incorrect” with the words “changing”. The Authority has agreed that this amendment provides clarity and has amended the clause accordingly.

One stakeholder suggested that a change in circumstances should only have to be reported if the change diminishes the licensee's ability to perform its functions under the licence. The Authority rejected this recommendation as this would require the licensee to judge whether the change 'diminishes' its ability to perform.

Finally, one stakeholder argued that the two day period within which a licensee must notify the Authority of a change in details under sub-clause (c) is too onerous. The Authority agreed to amend this time period to ten business days, consistent with the time period prescribed under sub-clause (b).

3.28 Publishing Information

Clause 19 of the EGL & ETL; Clause 22 of the EDL; Clause 25 of the ERL; Clause 27 of the EIRL

To improve clarity, sub-clause 1 was proposed to be re-phrased to read:

The *Authority* may direct the *licensee* to publish, within a specified timeframe, any information it considers [...].

Decision

Implement recommendation.

3.29 Review of the Authority's decisions

Clause 21.1(c) of the EGL

Clause 21.1(c) was incorrectly labelled a subclause of clause 21.1. To fix this error, the clause will be renumbered to 21.2.

Decision

Implement recommendation.

3.30 Licensee Details

Schedule 1 of the EGL, ETL, EDL, ERL & EIRL

The Authority proposed to amend the title of the schedule to read "Licence Details" as this more accurately reflects the content of the schedule.

The name and address of the licensee were proposed for deletion as this information is contained at the front of the licence. For the same reason, any information relating to the licensee's distribution system, transmission system and/or generating works were proposed to be removed from Schedule 1.

Information on the licensee's operating area and the commencement and expiry date of the licence were proposed to continue to be included in Schedule 1.

A new clause was proposed to be included within Schedule 1 of the integrated regional licence. The clause lists the supply activities which the licensee is authorised to undertake. Any supply activities that are not listed in respect of an individual licensee may not be performed by that licensee, unless the licensee applies for an amendment to Schedule 1.

Decision

Implement recommendation.

3.31 Licence Area Map/s

Schedule 3 of the EGL, ETL, EDL, ERL & EIRL

A new schedule was proposed to be added to all licence templates which will include one or more maps of the licensee's relevant operating area(s).

This approach is consistent with the format of the new gas licence templates.

Decision

Reject recommendation.

One submission proposed that it was unnecessary for a map to be included with each licence. The Authority recognises that for licensees with multiple licence areas, it is not practical to include maps in the body of their licence. The Authority has therefore decided to include map references in the licence and publish the maps separately on its website.

3.32 General

Some individual licences contain formatting or grammatical errors. For example, some of the retail licences do not contain a space between the definitions for 'individual performance standards' and 'licence'. As a result, they appear to form the one definition.

All formatting and grammatical errors were corrected in the new licences as applicable.

Decision

Implement recommendation.

3.33 New Proposal 1 – Notices

Clause 18 of the EGL, ETL, EDL, ERL & EIRL

One submission proposed that the provision allowing a notice to be sent by email be expanded to refer to “electronic means” and a new definition of “electronic means” be added to the definitions section.

Decision

Implement proposal.

The Authority has agreed that this proposal provides for emerging technology and has amended the provision and definitions section accordingly. Also see Recommendation 3.10 (new definition of “electronic means”).

As a result of the proposal, the definition of “electricity licensing email address” is no longer required and has been deleted (see Recommendation 3.8).

3.34 New Proposal 2 – Reviewable Decisions

Clause 16 of the EGL, ETL, EDL, ERL & EIRL

One submission recommended that the scope of matters that can be reviewed include the provision of information under clause 16.

The Authority determined that it is essential that, as an independent regulator, it has the power to seek information from licensees without the information being selectively provided by the licensee. The Authority determined that licensees already have the power to make comment regarding the reasonableness of the request when providing the requested information.

3.35 New Proposal 3 – Licence conditions specified in the Act or Regulations

Clause 16 of the EGL, ETL, EDL, ERL & EIRL

As discussed below (4.1 – Definitions), the Authority has determined that any statutory licence obligations should be included in the licence.

At present, the distribution, retail and integrated regional licence templates do not include reference to the licence conditions prescribed in the *Electricity Industry (Customer Contracts) Regulations 2005*. Regulation 36(3) and 38 of these regulations specify licence conditions relating to deemed contracts for default suppliers.

The Authority will include these conditions within the distribution, retail and integrated regional licence templates.

4 Deviations

A number of individual licences contain clauses that are specific to the licensee. This only occurs where the deviation is necessary due to the nature of the licensee's operations. As discussed in Recommendation 3.1, these clauses will be included in Schedule 2 of the licensee's licence.

The following sections provide a brief overview of clauses specific to the licensee.

4.1 Definitions

Clause 1 of the ETL, EDL & EIRL

It was proposed that a number of licences include definitions that are not included in the relevant licence template. Relevant definitions to be included in the clauses that refer to them are:

- **Coordinator** – This definition is used in Western Power's transmission and distribution licence as its extension and expansion policy requires the Coordinator's approval. The definition is furthermore used in Synergy's retail licence and Horizon Power's integrated regional licence in relation to the approval of their renewable source electricity contracts by the Coordinator.
- **extension and expansion policy** – Section 65 of the Act limits the application of Part 4 of the Act (Extension and expansion policies for certain corporations) to Western Power and Horizon Power. A definition of 'extension and expansion policy' is therefore only required in their distribution, transmission and integrated regional licences.

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- **renewable source electricity** – Conditions in relation to the development of renewable source electricity contracts, as contained in regulation 8 of the *Electricity Industry (Licence Conditions) Regulations 2005*, only apply to Synergy and Horizon Power. These conditions, and their related definitions, will therefore only be included in their licences.
 - **renewable source electricity contract** – As for “renewable source electricity” above.
 - **renewable source electricity customer** – As for “renewable source electricity” above.
 - **small renewable energy system** – As for “renewable source electricity” above.

Decision

Implement recommendation.

One submission was received arguing that the recommendation would expose the licensee to regulatory risk as the regulations may change rendering the licence conditions in conflict with the Regulations.

The Authority has determined that statutory licence obligations should be included in the licence.

The Authority notes that these conditions do not reflect new licence obligations. Rather, the listing of these licence obligations provides stakeholders with clarity regarding all licence conditions.

If the Regulations are amended the Authority will amend the licence accordingly to align with the statutory licence condition.

The Authority notes that the *Compendium of Gas Customer Licence Obligations (Gas Customer Code)*, cited as an example in the submission referred to above, has been crafted carefully to take into consideration existing provisions within relevant Regulations.

4.2 Customer Contracts

Clause 13.4 of Horizon Power’s EIRL; New clause within Synergy’s ERL

Clause 13.4 of Horizon Power’s integrated regional licence requires Horizon Power to offer to supply electricity under a standard form contract to a small use customer who requests supply. The clause reflects Horizon Power’s obligations under regulation 40 of the *Electricity Industry (Customer Contracts) Regulations 2005*.

As the clause is specific to Horizon Power, it was proposed that the clause be transferred to Schedule 2 of the licence.

An identical clause was proposed to be included in Schedule 2 of Synergy’s retail licence as the obligation also applies to Synergy.

Decision

Implement recommendation.

See Authority's rationale in Part 4.1.

4.3 Extension and expansion

Clause 12 of Western Power's ETL; Clause 15 of Western Power's EDL; Clause 22 of Horizon Power's EIRL

The 'Extension and expansion' clause included in the Western Power and Horizon Power licences was proposed to be retained as it is a mandatory licence condition under section 65 of the Act that these licensees comply with a direction given by the Coordinator of Energy to submit an extension and expansion policy.

As currently drafted, the Western Power clauses are an amalgamation of the "Extension and expansion plan" clause and "Expansion or reduction of [generating works / transmission system / distribution system]" clause. As discussed in Recommendation 3.22, the Authority proposed to delete the "Expansion or reduction of ..." clause from all licences.

Deletion of the "Expansion or reduction of ..." elements from the "Extension and expansion" clause will ensure that this clause only reflects the requirements of section 65 of the Act.

Clause 22.4 of Horizon Power's licence was proposed to be deleted as it is not relevant to the requirements of section 65 of the Act.

The proposed clause now reads:

1. The *licensee* must submit to the *Coordinator* a draft *extension and expansion policy* within three months after a written request by the *Coordinator* or other such time as allowed by the *Coordinator*.
2. The *licensee* must comply with any direction given to the *licensee* by the *Coordinator* to:
 - (a) amend the draft *extension and expansion policy*, or
 - (b) submit an amendment to the approved *extension and expansion policy*,within the time specified by the *Coordinator*.
3. The *licensee* must implement the arrangements set out in the *extension and expansion policy* that has been approved by the *Coordinator* in accordance with the *Act*.

Decision

Implement recommendation.

See Authority's rationale in Part 4.1.

4.4 Trouble call fault management plan

Clause 22 of Western Power's ETL; Clause 25 of Western Power's EDL

An amended version of this clause was originally included in Western Power's transmission and distribution licences requiring Western Power to have in place an

approved trouble call fault management plan covering its transmission and distribution systems.

Western Power's trouble call fault management system became operational in March 2009. Consequently, the clause was amended to require Western Power to continue to operate and maintain the system, and to notify the Authority if it intends to outsource the system.

The Authority intended to continue to include the provision in Western Power's transmission and distribution licences. The Authority proposed that the reference to "plan" in the heading be replaced with "system" to more accurately reflect the contents of the clause.

Decision

Implement recommendation.

4.5 Renewable source electricity contract

Clause 20 of Horizon Power's EIRL; New clause within Synergy's ERL

Horizon Power's licence contains a clause reflecting the requirements of regulation 8 of the *Electricity Industry (Licence Conditions) Regulations 2005*.

As regulation 8 also applies to Synergy, the Authority proposed to include this clause in Synergy's retail licence as well. The proposed clause reads as follows:

- 1 The *licensee* must submit to the *Coordinator* a draft *renewable source electricity contract* by the time specified in the *Act* or by the *Coordinator*.
- 2 The *Coordinator* will:
 - (a) approve the draft *renewable source electricity contract*; or
 - (b) specify the amendments the *licensee* must make to the draft *renewable source electricity contract* before the *Coordinator* will amend the draft *renewable source electricity contract*,and notify the *licensee* of its decision within a reasonable time.
- 3 The *licensee* may amend the *renewable source electricity contract* at any time by submitting to the *Coordinator*:
 - (a) an amendment to the *renewable source electricity contract*; or
 - (b) a substituted *renewable source electricity contract*.
- 4 The *Coordinator* will:
 - (a) approve the amendment to the *renewable source electricity contract* or substituted *renewable source electricity contract*; or
 - (b) specify the amendments the *licensee* must make to the amended or substituted *renewable source electricity contract* before the *Coordinator* will amend the *renewable source electricity contract*,and notify the *licensee* of its decision within a reasonable time.

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- 5 The *Coordinator* may at any time direct the *licensee* to submit an amendment to the *renewable source electricity contract* and specify the time by which the *licensee* must submit that amendment.
 - 6 The *licensee* must comply with a direction given by the *Coordinator* under clause 5.

Decision

Implement recommendation.

See Authority's rationale in Part 4.1.

4.6 Renewable source electricity

Clause 21 of Horizon Power's EIRL; New clause within Synergy's ERL

Clause 21 of Horizon Power's licence reflects the requirements of regulations 6 and 7 of the *Electricity Industry (Licence Conditions) Regulations 2005*.

As regulations 6 and 7 also apply to Synergy, the Authority proposed to include this clause in Synergy's retail licence as well. The proposed clause reads as follows:

- 1 The *licensee* must offer to purchase *renewable source electricity* from a *renewable source electricity customer* who wishes to sell *electricity* to the *licensee*.
- 2 The offer to purchase *electricity* in sub-clause 1 must be in the form of a *renewable source electricity contract* approved by the *Coordinator* in accordance with clause [20 – *renewable source electricity contract*].
- 3 The *licensee* must submit to the *Coordinator* a written report detailing:
 - (a) the amount of *renewable source electricity* purchased by the *licensee*; and
 - (b) the cost of purchasing that *renewable source electricity*,as soon as practicable at the end of each financial year.

Decision

Implement recommendation.

See Authority's rationale in Part 4.1.

4.7 Information to be provided to prospective customers

Clause 28 of Clear Energy's ERL

Clear Energy's retail licence contains a clause which requires it to provide certain information to customers prior to entering into a standard form or non-standard contract. The clause takes account of the specific nature of Clear Energy's supply situation, and is therefore only included in Clear Energy's retail licence.

Decision

Implement recommendation.

Appendices

Appendix 1 New Electricity Generation Licence

Appendix 2 New Electricity Transmission Licence

Appendix 3 New Electricity Distribution Licence

Appendix 4 New Electricity Retail Licence Template

Appendix 5 New Electricity Integrated Regional Licence