

Our Ref: D61850

17 February 2011

Mr James Mitchell
Managing Director
Electricity Retail Corporation trading as Synergy
GPO Box K851
PERTH WA 6842

Dear Mr Mitchell

**SECTION 32 - ELECTRICITY INDUSTRY ACT 2004
NOTICE OF FAILURE TO COMPLY WITH LICENCE**

Reference is made to the document titled Synergy Electricity Retail Licence Performance Audit Report ("the Report") submitted to the Economic Regulation Authority ("the Authority") on 18 January 2011.

Based on its assessment of the Report, the Authority has formed the opinion that the Electricity Retail Corporation trading as Synergy ("the Corporation") has contravened Electricity Retail Licence ERL1.

In accordance with section 32(1) of the *Electricity Industry Act 2004*, the Authority hereby serves the attached Notice on the Corporation. The Notice requires the Corporation to rectify the contraventions set out in the Notice ("the Contraventions") by the dates shown in the attachment to the Notice.

Yours sincerely

LYNDON ROWE
CHAIRMAN

cc Minister for Energy
Treasurer

Section 32
Electricity Industry Act 2004
NOTICE

TO: Electricity Retail Corporation, trading as Synergy
228 Adelaide Terrace
PERTH WA 6000

TAKE NOTICE that pursuant to section 32(1) of the *Electricity Industry Act 2004* ("the Act"), that by no later than 31 December 2011, you are hereby required to rectify the contraventions of Electricity Retail Licence ERL1 set out in the Schedule attached to this Notice and marked with the letter "A".

You are hereby notified that if you do not comply with this Notice, then in accordance with section 32(2) of the *Electricity Industry Act 2004* the Economic Regulation Authority ("the Authority") may take one or more of the following actions:

- a. serve the Corporation with a letter of reprimand;
- b. subject to section 33 of the Act, order the Corporation to pay a monetary penalty fixed by the Authority but not exceeding \$100,000; and/or
- c. subject to section 33 of the Act, cause any or all of the contraventions to be rectified to the satisfaction of the Authority at the expense of the Corporation.

The Common Seal of the Economic Regulation Authority was hereto duly affixed by the Chairman of the Economic Regulation Authority on 15 February 2011:

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In the presence of:

Member: _____

Member: _____

Attachment: Schedule of Contraventions

"A"

Schedule of Contraventions

1. Contravention of clause 5.1 of Electricity Retail Licence ERL1 ("ERL1")

Clause 5.1 of ERL1 states:

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

In the Economic Regulation Authority's opinion, the Corporation has contravened clause 5.1 of ERL1 as follows:

- 2.1 Regulation 5(2) of the *Electricity Industry (Licence Conditions) Regulations 2005* and clause 3.4(1) of the *Electricity Industry Customer Transfer Code 2004* require a retailer, unless otherwise agreed, to submit a data request electronically and not submit more than a prescribed number of standing or historical data requests in a business day. The Synergy Electricity Retail Licence Performance Audit Report ("**the Report**") discloses that there was an instance when the number of requests submitted exceeded the maximum number prescribed (page 60).

The Authority requires the Corporation to:

- by 30 April 2011, implement a process to reconcile the number of data request submitted to the number of verifiable consents obtained on a daily basis and ensure that a supervisory review is undertaken on a daily basis over the manual records of the data request history; and
- by 30 June 2011, update the Networks Processes and Procedures Manual ("the Manual") to reflect the current staff responsible for updating, managing and reviewing the document. Further, the Manual must make reference to the current information system and be consolidated with the "Churn-In Process – Electricity" (DMS# 3304495v1) and "Churn out process" (DMS# 3302899v1) documents.

- 2.2 Clause 2.4(2) of the *Code of Conduct for the Supply of Electricity to Small Use Customers* ("**the Code of Conduct**") requires that, where the customer has entered into a new contractual relationship with a retailer, a retailer or marketing representative must give the information specified to the customer. The Report discloses an instance where the customer was not provided the information specified in clause 2.4(2) of the Code of Conduct before entering into the contract (page 62).

The Authority requires the Corporation to:

- by 30 April 2011, provide training to Corporation personnel within the Retail Sales Team, and any other Corporation staff engaged in activities that result in the Corporation entering into contracts with customers covered by the Code of Conduct, to ensure that those staff are aware of the requirement to provide the information specified in clause 2.4(2) of the Code of Conduct to each of those customers; and
- by 30 June 2011, implement a process to ensure that all relevant records needed to demonstrate compliance with clause 2.4(2) of the Code of Conduct are retained for at least two years as required by clause 13.1 of the Code of Conduct.

- 2.3 Clause 4.1 of the Code of Conduct requires a retailer to issue a bill no more than once a month and at least once every three months unless the circumstances specified exist. The Report discloses that over the audit period April 2008 to June 2010 the Corporation issued approximately 12.7 million bills of which 116,000 bills were for a period greater than 90 days. Of the 116,000 bills issued greater than 90 days, approximately 93% of these occurred in the period September 2009 to June 2010 (page 69).

The Authority requires the Corporation to:

- by 30 April 2011, implement a process that prevents Corporation staff from removing bill blocks that will result in a customer receiving a bill at a frequency greater than the one month interval prescribed in clause 4.1 of the Code of Conduct; and
 - by 31 July 2011, implement the processes necessary to ensure that transactions for which the SAP billing system cannot automatically produce a bill are detected, rectified and the resultant bill issued to the customer in a timeframe that complies with clause 4.1 of the Code of Conduct.
- 2.4 Clause 4.3(2) of the Code of Conduct requires that, if a retailer provides a customer with estimated bills under a bill smoothing arrangement, the retailer must ensure that the conditions specified are met. The Report discloses that the Corporation is unable to provide customers with an accurate estimation under the bill smoothing arrangement due to the incorrect set up of the business rules within SAP (page 73).

The Authority requires the Corporation to, by 30 April 2011, implement a process to ensure compliance with clause 4.3(2) of the Code of Conduct.

- 2.5 Clause 4.12(1) of the Code of Conduct requires a retailer to change the customer to an alternate tariff within the period specified if the customer applies to receive an alternate tariff and demonstrates to the retailer that they satisfy the conditions of eligibility. The Report discloses that the Corporation is unable to change a customer to an alternative tariff within 10 business days (clause 4.12(1)(b) of the Code of Conduct) on the current SAP billing system (page 80).

The Authority requires the Corporation to, by 30 June 2011, implement a process to ensure customer tariff change requests are dealt with in a timeframe that complies with clause 4.12(1) of the Code of Conduct.

- 2.6 Clause 4.17(2) of the Code of Conduct requires a retailer to inform the customer of the outcome of the review of a bill as soon as practicable, but, in any event, within 20 business days from the date of receipt of the request for review. The Report discloses that sampling has revealed instances where customers have not been provided with an outcome of a review within 20 business days from the date of the request for review (page 84).

The Authority requires the Corporation to, by 30 June 2011, implement a process to ensure a customer is provided with the outcome of a review of a bill within 20 business days from the date of receipt of the request for a review of that bill.

2.7 Clause 5.3 of the Code of Conduct requires a retailer to, prior to commencing a direct debit, obtain the customer's verifiable consent and agree to the specified conditions for the direct debit. The Report discloses that:

- for customers with historical debts linked to the current account, the direct debit would automatically clear all debts notwithstanding that the direct debit setup was intended for payment of future consumption;
- customers were not informed by the Customer Service Representative on the effect of the direct debit clearing out historical debt attached to their current account; and
- the direct debit information does not articulate that the establishment process for direct debit will clear all debt balances linked to the customer's account prior to entering into a direct debit arrangement (page 89).

The Authority requires the Corporation to, by 30 April 2011, implement a process to ensure that the amounts collected from a customer by direct debit comply with clause 5.3 of the Code of Conduct.