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Dear Paul

COMPLIANCE ENFORCEMENT POLICY – ELECTRICITY, GAS AND WATER LICENCES

I refer to the invitation to comment on the draft Compliance Enforcement Policy (the Policy) for electricity, gas and water licences, which was published by the Economic Regulation Authority (the Authority) on 4 April 2011.

As you are aware, subsidiaries of Alinta Pty Ltd, being Alinta Sales Pty Ltd, Alinta Cogeneration (Pinjarra) Pty Ltd and Alinta Cogeneration (Wagerup) Pty Ltd (collectively Alinta), hold electricity and gas licences granted by the Authority. Consequently, Alinta welcomes the development of a policy by the Authority to inform licensees, consumers and other stakeholders about its approach to compliance and compliance enforcement.

While generally supportive of the draft Policy, there are a number of issues that Alinta considers should be amended and/or considered further by the Authority. These are summarised below.

Purpose of this policy (p.3)

Alinta agrees that the Authority should retain discretion to deviate from the general practices outlined in the draft Policy where circumstances dictate that a different approach would better achieve its compliance enforcement objectives. However, it also appears reasonable that licensees should be able to assume that in ordinary circumstances the Authority would act in accordance with the approach set out in the draft Policy.

So as to avoid the perception that the Policy cannot be relied on at all by licensees, consumers and other stakeholders, Alinta suggests that the paragraph immediately under the dot points in the heading should simply be amended as follows.

This policy is not binding on the Authority ~~and should not be relied upon or taken as an expectation that the Authority will act in a particular way.~~ The Authority may, in certain circumstances, depart from the procedures in this policy where the Authority considers that circumstances dictate that a different approach, within the scope of its legislative mandate, would better achieve the Authority's compliance enforcement objectives.

Enforcement (p.4)

The Draft Policy indicates that one of the principles governing the Authority's enforcement policy is 'confidentiality', and that:

...the Authority will not comment on matters that it is investigating until a decision has been made.

Alinta would be concerned if it was the Authority's intention not to alert a licensee to the fact that it was investigating a potential breach and/or to not make any comment to the licensee until after it had made a decision on whether or not to take enforcement action, and the type of action to take. In the 'compliance enforcement approach' (p.10), the Draft Policy also indicates that the Authority may take enforcement action without meeting the licensee, and that only in some cases would it meet with the licensee.

Alinta considers that the principles of procedural fairness require that the evidential basis for any conclusion drawn by the Authority supporting the taking of enforcement action should be made available to the affected licensee. This would provide the licensee with an opportunity to ensure that the Authority was fully informed of any further relevant information and/or circumstances that might not already have been available to the Authority.

Complaints (p.8)

The draft Policy indicates that:

As a matter of practice, the Authority will generally refer individual customer complaints regarding energy to the EOWA and complaints regarding water to the relevant service provider. If, in the opinion of the Authority, the complaint relates to licence contraventions that are significant or systemic in nature then the Authority may investigate the matter further.

Alinta is concerned that the draft Policy may result in the Authority referring complaints to the Energy Ombudsman of Western Australia (EOWA) in instances where the customer has not first approached the energy retailer to try to solve the problem.

If a complaint were referred by the Authority to the EOWA in these circumstances, the EOWA's normal process is to request that the customer first try to resolve the problem with their electricity or gas provider, and to contact the EOWA again if this does not resolve the matter to the customer's satisfaction.



In order to both ensure that the relevant energy retailer has an opportunity to resolve the problem, as well as to avoid the EOWA directing to customer back to the energy retailer, Alinta considers that the Authority's practise, and the referenced paragraph, should be amended as follows;

As a matter of practice ~~Where complaints are received from residential or small business customers,~~ the Authority will generally refer individual customer complaints ~~regarding energy to the EOWA and complaints regarding water~~ to the relevant service provider. Where complaints relate to energy and the customer has already tried to resolve the complaint with their electricity or gas provider, the Authority will refer the complaint to the EOWA. If, in the opinion of the Authority, the complaint relates to licence contraventions that are significant or systemic in nature then the Authority may investigate the matter further.

Prioritisation of action by the Authority (p.9)

Alinta notes that the first dot point of the second series of dot points indicates that the Authority may decide not to take action in relation to certain matters "*...where there is insufficient information available to continue the investigation.*"

However, as noted on the following page of the draft Policy, the Authority has the ability to obtain information. Alinta suggests that the Authority may consider amending this dot point as follows.

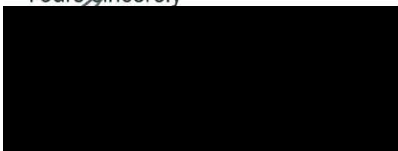
Where there is insufficient the information provided to the Authority, or able to be obtained by it, is insufficient available to continue the investigation.

Meeting the licensee (p.10)

As noted earlier, Alinta considers that the principles of procedural fairness require that the evidential basis for any conclusion drawn by the Authority supporting the taking of enforcement action should be made available to the affected licensee. This would provide the licensee with an opportunity to ensure that the Authority was fully informed of any further relevant information and/or circumstances that might not already have been available to the Authority.

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
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Alinta Pty Ltd