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Action Officer	PAUL REID

Dear Paul

**COMPLIANCE ENFORCEMENT POLICY – ELECTRICITY, GAS AND WATER LICENCES**

I refer to the “Draft Compliance Enforcement Policy – Electricity, Gas and Water Licences” (**compliance policy**) published by the Economic Regulation Authority (**Authority**) on 4 April 2011 for public comment.

Synergy considers the policy provides valuable guidance to licensees as to how the Authority will enforce the electricity and gas retail licence regimes it administers. Synergy welcomes the opportunity to provide comment on the compliance policy as follows:

**Purpose of the Policy (page 3)**

Synergy recognises the need for the Authority to be able to deviate from the general practices detailed in the compliance policy in situations where the Authority considers that circumstances dictate a different approach. However, Synergy considers the current disclaimer (first sentence last paragraph) creates market uncertainty that the policy may not be relied upon and therefore recommends it be deleted.

In circumstances where the Authority deviates from the approach specified within its compliance policy, the policy should require the Authority to notify affected licensees so that licensees are aware of any changes in compliance policy approach as this is fundamental to licence conduct.

**Enforcement principles (page 4)**

Synergy proposes two additional enforcement principles be included within the compliance policy:

- **Communication:** The Authority will communicate its compliance requirements and expectations to licensees in a timely manner to enable them to be aware of their obligations, understand and comply with them.
- **Materiality:** The Authority will undertake enforcement actions consistent with the materiality of the non-compliance.

**Enforcement aims (page 5)**

Dot point 5 states one of the of the Authority's aims in enforcing compliance is "where warranted, apply appropriate penalties". It would be beneficial to market participants for the Authority to provide guidance in the policy as to circumstances where penalty application is warranted.

**Complaints (page 8)**

The compliance policy states the Authority as a matter of practice will refer individual customer complaints it receives to the Energy Ombudsman for resolution. Synergy concurs with this proposal provided the customer has first contacted its energy retailer to resolve the complaint. In the event the customer has not contacted their energy retailer in the first instance the Authority should refer the customer to the relevant retailer.

**Prioritisation of action by the Authority (page 9)**

The compliance policy specifies situations where the Authority may decide not to take action in relation to a compliance referral. Synergy suggests inclusion of the following additional matter:

- Where a licensee has provided information to the Authority to substantiate no contravention has occurred.

**Determining whether a contravention has occurred (page 10)**

In situations where the Authority is investigating a suspected contravention and requires the licensee to provide information it is important that the Authority's information request and associated timeframe can be complied with.

It is recommended the compliance policy reflect where the Authority proposes to request detailed or substantial information / data from a licensee, the Authority consults with the affected licensee prior to issuing a formal request for advice so that the licensee can fully understand the proposed information request, ensure the response when submitted meets the Authority's information requirements and also comment on the reasonableness of the proposed timeframe.

#### **Meeting with the licensee (page 10)**

The compliance policy provides that if the Authority decides a contravention has occurred which requires enforcement action then the Authority may, in some cases, meet with the licensee to discuss the contravention.

The compliance policy also provides that in some cases such as following the receipt of a licence operational audit report or performance audit report, the Authority may decide that it already has sufficient information available to arrive at a decision about the enforcement action that it will take without meeting the licensee.

Synergy strongly advocates that the Authority consults with a licensee in all situations where the Authority proposes to undertake enforcement action prior to the Authority undertaking that action. This will enable the Authority to obtain further information about the cause(s) of the contravention and the impact of the contravention on customers, licensees and other stakeholders as well as providing an opportunity for the licensee to inform the Authority about the action that it has taken, or intends to take, to rectify the contravention and prevent future recurrence.

#### **Serving a notice of contravention (page 11)**

Consistent with the principle of fairness articulated on page 4 of the compliance policy, Synergy considers it appropriate for a licensee to be given an opportunity to respond to a proposed contravention notice prior to being served with that notice and that this matter should be reflected in the compliance policy.

Please contact me on 6212 1433 should you have any queries or comments with respect to the above comments.

Yours sincerely



**SIMON THACKRAY**  
**MANAGER RETAIL REGULATORY AND COMPLIANCE**