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Dear Mick

DRAFT GAS LAST RESORT SUPPLY ARRANGEMENTS: GUIDELINES AND TEMPLATE PLAN

The Economic Regulation Authority (**ERA**) released for public comment on 28 May 2008 the *Draft Gas Last Resort Supply Arrangements: Guidelines and Template Plan* (**Guideline**) to provide guidance to the designated supplier of last resort, licensees and stakeholders on the matters that should be addressed in a last resort supply plan.

Part 2A, Division 6A of the *Energy Coordination Act 1994* (**Act**) establishes the legislative framework for the implementation of a last resort supply plan to ensure small use customers receive continued gas supply in the event that a retailer has exited the market due to their gas trading licence being cancelled, surrendered or having expired.

Under section 11ZAB of the Act, the ERA must ensure that, for each supply area in which there are small use customers, there exists at all times a last resort supply plan. The plan must, under section 11ZAC, set out the arrangements necessary for the supply of gas to small use customers and make provision for any matter or circumstance that is prescribed.

Under section 11ZAG, the ERA may approve a draft plan or request that it be amended and approve it in an amended form.

Synergy was granted a gas trading licence on 26 June 2007. However, Synergy is currently restricted from supplying gas to small use customers who consume < 180 GJ by way of Ministerial direction.

Synergy welcomes the opportunity to provide comment on the draft Guideline. Please find attached our submission in that regard.

If you have any queries regarding the attached submission please do not hesitate to contact me on 6212 1433.

Yours sincerely,



SIMON THACKRAY
MANAGER REGULATORY RETAIL AND COMPLIANCE

**DRAFT GAS LAST RESORT SUPPLY ARRANGEMENTS:
GUIDELINES AND TEMPLATE PLAN**

COMMENTS

As an overarching comment Synergy considers the ERA's Guideline to be a useful reference in assisting the designated Supplier of Last Resort (**SOLR**) to develop a last resort plan.

PART 1 – INTRODUCTION

The status of the Guideline is unclear i.e. whether it is mandatory or voluntary. For example, does the designated SOLR have any discretion or flexibility when determining its Plan to vary from the Guideline?

PART 2 – BACKGROUND

The Guideline provides no certainty, under the *Energy Coordination Act 1994 (Act)* and the *Energy Coordination (Last Resort Supply) Regulations 2005 (Regulations)*, how the ERA will designate the SOLR. Synergy considers it appropriate for the Guideline to address this matter.

Although the Guideline specifies the objectives of the SOLR scheme it also provides no guidance to licensees as to how the ERA will take into account the matters specified within Regulation 4(2) when exercising its discretion to approve or determine a SOLR plan.

Such guidance by the ERA is important to gas trading licensees because of the uncertainty and risk that will exist at the time of a SOLR event, in terms of:

- Availability of wholesale gas supply.
- Availability of gas transmission and distribution capacity.
- The market price of gas relative to regulated gas tariffs.
- Energy settlement.
- Customer transfer.
- Treatment of existing contractual rights and obligations.
- Confidentiality of commercial information.
- SOLR performance being contingent on the performance of affected participants (as defined under the Regulations) who are not obliged to comply with the SOLR Plan.
- The financial impact on the SOLR undertaking the role and the adequacy of the SOLR fee to recover SOLR costs.

Accordingly, Synergy considers the ERA should include a general description within the Guideline as to how it will exercise its discretion to determine a SOLR plan.

PART 3 & APPENDIX A – GUIDELINES FOR DEVELOPMENT OF LAST RESORT PLAN & TEMPLATE PLAN

- 1 In the event the Guideline is mandatory, Synergy considers Part 3 of the Guideline to be overly prescriptive. Synergy considers that the Guideline should be just that – guidelines to assist the designated SOLR in formulating its plan for submission to ERA. The designated SOLR should possess discretion and flexibility in developing its Plan consistent with the Act and Regulations, while taking into account Guideline requirements.
- 2 The Guideline specifies the matters the SOLR must address, in its last resort supply plan (section 3.2). However, some of the matters listed are not legislated under the Act nor Regulations. For example the requirement to assure transferred customers that they will receive a gas supply for at least 3 months from the transfer date.

Consequently, we question the ability for the Guideline to prescribe this matter. Furthermore, this requirement appears unnecessary given Regulation 11 which requires a customer to be transferred to the SOLR under a standard form contract, which is typically evergreen. Another issue with this requirement is the inference that the customer's contract cannot be terminated by the SOLR within the 3 month period for example, in the event of customer default such as non-payment. Is this the ERA's intent?

- 3 Section 3.3 of the Guideline indicates, consistent with the Regulations, that a last resort supply plan must contain a general description of any contractual arrangements entered into by the SOLR. The Template Plan outlines contracts for supply, distribution, metering and billing arrangements in some detail. Energy retailers consider many of their contracts to be highly confidential in nature. Additionally, contracts for the supply and transportation of additional gas during a SOLR event may not be entered into until a SOLR event is triggered. Synergy queries how the ERA will address these matters.
- 4 Synergy notes the preference in section 3.4 for the SOLR to attach a draft customer notification letter similar to that in Appendix B of the Template Plan. Synergy observes that retailers will have a preference for tailoring this letter when SOLR is invoked as the climate at the time will influence the context of such a letter. Again, it is uncertain whether the letter is mandatory or simply serves as guidance to the matters the SOLR must address in communications with affected customers. Synergy considers the SOLR must have flexibility in how it communicates with customers.
- 5 Synergy believes that an outcomes-based approach should be adopted by the ERA when assessing a last resort supply plan; a SOLR needs some flexibility to diverge from its submitted plan when a last resort supply incident arises. For example, should a SOLR event arise during, or as a

direct result of, the current (winter 2008) gas supply crisis the SOLR may have great difficulty procuring additional gas supply to cater for transferred customers under its existing contracts and may need to procure gas in an atypical manner. The ERA also needs to give some thought as to how a SOLR's obligation is to be fulfilled if the SOLR simply cannot procure additional gas supply or transport capacity for affected customers.

- 6 Under the Regulations, a last resort supply plan may make provision for a last resort supply fee. This fee must enable the SOLR to recover its costs as well as ensure that prices paid by customers are equitable.

In approving the SOLR fee Synergy urges the ERA to consider that a SOLR could be financially exposed when a SOLR event is triggered. Wholesale gas costs for the duration of a SOLR event could well be higher than the regulated tariffs which transferred customers are to be supplied under. As such, Synergy considers that there should be some flexibility in setting the last resort supply fee, as conceivably it could be an on-going fee opposed to a once off payment by the customer. The fee amount will be dependent on a number of factors unique to each particular SOLR event and as such should not be pre-determined, but could be addressed by a formulae type approach.