17th April 2013
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Mr David Leith

RE: Comment on the Electricity Retail Corporation's (t/a Synergy) proposed replacement standard form contract for the supply of electricity to small use customers.

The Western Australian Council of Social Service (the Council) would like to thank the Economic Regulatory Authority (the Authority) for the opportunity to comment on Synergy's proposed replacement standard form contract for the supply of electricity to small use customers.

The Council has commented on a number of proposed contract terms listed in the standard form contract. They relate specifically to the following:

- The proposed Standard Form Contract may not comply with *the Electricity Industry (Customer Contracts) Regulations 2005* or *Australian Consumer Law 2010*
- The ability to vary the charges and only providing notice on the next bill
- Changes in notice provided to customers for Synergy to enter a property
- New *Authorised Representatives* provisions
- Safeguards for debt collection fees
- Providing customer information to credit reporting agencies
- Ambiguity of confidentially clauses and unfair contract terms in Synergy's Privacy policy
- Whether the privacy policy should be governed by *the Electricity Industry (Customer Contracts) Regulations 2005* and *Australian Consumer Law 2010*, in addition to privacy laws.
- Whether the complaints section in the proposed Standard Form Contract is compliant with the *Electricity Industry (Customer Contracts) Regulations 2005*
- Customer interest earned on any security deposit provided
- Expectation to provide safe and unrestricted access to a former premises
- Opportunities for automatic verification of concession entitlements via the Department of Human Services *eServices*
- Release of a marked-up copy of any future Standard Form Contract during future consultation periods.

Please note that no part of this submission is confidential. Should you have any queries in relation to this or any other matter, please do not hesitate to contact Chris Twomey, Director of Social Policy on (08) 9420 7222 or chris@wacoss.org.au.

Yours Sincerely

Irina Cattalini
Chief Executive Officer
WACOSS

Compliance of the proposed Standard Form Contract with the *Electricity Industry (Customer Contracts) Regulations 2005* and *Australian Consumer Law 2010*

The introduction of the *Australian Consumer Law* (ACL) in 2010 has significant implications for the rights of consumers and the manner in which customer contracts should be written. As outlined below we believe their remains a number of outstanding areas where the Standard Form Contract needs to be amended for it to comply with ACL and the *Electricity Industry (Customer Contracts) Regulations 2005* which also governs Synergy's contracts.

The proposed Standard Form Contract is written in language that may make it difficult for most Synergy customers to understand, and as such it may be contrary to intent of *Part 2 clause 5* of the *Electricity Industry (Customer Contracts) Regulations 2005*, clause 5.1 and 5.2 in relation to the use of plain language.

> *5. Format and expression*
>
> *(1) A customer contract must be in a format that makes it easy to read.*
>
> *(2) A customer contract must be expressed in clear, simple and concise language.*

Many parts of the contract appear misleading, including *Section 14 Liability* where clause 14.1 and 14.2 suggest that Synergy cannot at all be held liable for any damages. To make this clear and concise clause 14.3 should be incorporated into clause 14.1 and 14.2 rather than having these clauses referring to clause 14.3 – which from a customer perspective is the most important clause in this section. In addition, the way in which this section is written might mean that the contract is not compliant with *Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010*, and in particular the unfair contract terms for standard form contracts,[1] especially clause *'(k) a term that limits, or has the effect of limiting, one party's right to sue another party.'*

On page 7 of the proposed Standard Form Contract it states that "*If you are a customer who consumes not more than 160 megawatt hours of electricity per annum, we will supply electricity to you under this contract in compliance with the code of conduct."* Many customers will be unaware what this amount actually equates to and therefore would not know if this contract applies to them, to make this clear a rough monetary amount and/or average amount for domestic consumption should be provided alongside the 160 megawatt hours figure. The same action could be undertaken in *Section 6.5 Billing data* and anywhere else in the contract where megawatt hours are referred to.

On page 3 under *Billing Frequency* the contract provides the option of 'Standard' or 'Group' without any explanation as to what these mean. It would be unclear to potential customers to know what these are and therefore know what they are signing onto.

Clause 12.5 *Disconnection due to your actions* clause (a) appears to be contradicted by clause 12.6 *Things we must do before disconnecting your electricity supply* (a), (b) and (c). To make this clear,

[1] See Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010 Schedule 1 Unfair contract terms Part 1, Examples of unfair terms, Cwth government. Page 7.

simple and concise clauses 12.6 (a), (b) and (c) should replace 12.5 (a). Furthermore there is no mention under clause 12.6 *Things we must do before disconnecting your electricity supply* that failure by Synergy to abide by this clause may entitle the customer to a service standard payment under Section 14.2 of *The Code of Conduct for the Supply of Electricity to Small Use Customers*.

Another clear example of inaccessible and potentially confusing language is shown in proposed changes to Section 7.2 *Undercharging and overcharging* is. The current Standard Form Contract states clearly that:

> *If we undercharge you for any reason (including where the meter has been found to be defective), we can require you to make a correcting payment and we will offer you the option to pay the correcting payment by instalments. In any event, we will only require you to make a correcting payment for amounts undercharged in the 12 months prior to the date that we advise you that you have been undercharged.*

While the proposed Standard Form Contract refers to the code of conduct:

> *If we undercharge you due to an error, defect or default for which we or Western Power Networks are responsible (including where the meter has been found to be defective), we can require you to make a correcting payment in accordance with clause 4.17 of the code of conduct.*

Customers should not have to refer to a third document to understand what the contract means, this creates unnecessary complexity. The statement in the original Standard Form Contract was more accessible and user-friendly, whereas the second formulation may mean that customers are not fully aware of their rights not to be charged beyond 12 months due to a metering fault. It is unclear what the rationale for this change is as, on the face of it, it only appears to muddy the waters. Including reference to the code of conduct is desirable, but reliance on it to understand the Standard Form Contract is not.

These are just a few of the examples of some readability challenges that can be found throughout the contract. The Council suggests that the ERA might wish to review the contract with '*the easy to read and expressed in clear, simple and concise language'* requirement from *the Electricity Industry (Customer Contracts) Regulations 2005* in mind, perhaps to make some recommendations for future contract improvements. The issue of compliance with the unfair contract terms for standard form contracts under *Australian Consumer Law 2010* is more pressing, and we believe there is a need to ensure that Synergy's contract is compliant with the Act prior to approval.

Ability to vary the charges and only providing notice on the next bill

Clause 4.2 states that *"If we change the standard prices, we will notify you of the changes in the standard prices by no later than your next bill."* This implies that the standard price can be changed and that a customer might be consuming electricity without the full knowledge of what they are being charged. The Council queries if this clause is compliant with *Australian Consumer Law 2010*. The Council suggests that to be compliant with ACL, at a minimum price changes should only take effect after a customer has been notified that the standard price has changed. We would suggest that there is a pressing need to look closer at this and other issues of ACL compliance prior to contract approval.

Changes in notice provided to customers for Synergy to enter a property

In the current Standard Form Contract there is a requirement that Synergy provides at least 5 business days' notice before they enter a customer's premises except in some stated circumstances. The proposed Standard Form Contract makes no mention that Synergy will provide any notice to a customer when they need to attend a customer's premises. The Council is unsure why there is a proposed change to *Section 10 Access to the premises* and on what basis this change has been made. We think that customers should be entitled to know, and to be given notice if Synergy or Western Power Networks are entering their property for any additional or extraordinary reasons that are beyond the already allowed for circumstances such as meter reads and in an emergency.

New *Authorised Representatives* provisions

The Council welcomes the new *Authorised Representatives* provisions allowing for households to more easily assign authority over to an authorised representative. This will assist many disadvantaged consumers who need to appoint an authorised representative to help take care of the household's affairs and Synergy should be commended for taking on board these measures.

The Council seeks clarification of the use of the term '*notice'* in the clauses that allows a customer to limit the matters the representative is authorised to perform, or to cease authority to the appointed authority. There is no definition of this term (in the definitions and interpretation section of the proposed Standard Form Contract) and no explanation as to what is intended by these provisions within the contract authorised representatives section.

As it stands, it is unclear whether a customer needs to produce written notice to alter or cease the authority previously given to an authorised representative, or if other ways of providing notice will be sufficient. If written notice is required there is a significant risk that certain types of disadvantaged customers (particularly those with a disability or facing language barriers) who have appointed someone to act as an authority may struggle to alter or cease that authority. The Council would therefore like to see this issue clarified, and safeguards introduced in the proposed Standard Form Contract to ensure that it is easy for customers to alter or cease the authority they have previously given to Synergy for someone to act as an authorised representative on their behalf as need be.

Safeguards for debt collection fees

The Council remains opposed in principle to the use of debt collection agencies. We are particularly concerned by the manner in which the use of debt collectors can adversely impact on households experiencing financial hardship, leading to an escalation of debt and of financial stress that may run counter to and undermine the intent of the utilities Financial Hardship policy.

The section in the contract concerning debt collection is clause 6.4, which states the following:

> *(b) If you do not pay the total amount payable for any bill after we send a disconnection warning to you, then we can refer your debt to a debt collection agency for collection and if we do so, you must pay any costs that we incur in*

connection with the recovery of the unpaid bill (including the agency's fees and legal fees).

In general third party debt collector's act as either:

- mercantile agents—where a business is acting as agent for the original creditor, collecting the debt on their behalf (contingent debts)
- debt purchasers—where a business purchases the right to collect the debt at a discount from the face value of the outstanding debt.[2]

The Council is concerned that Synergy could enter into debt purchaser arrangement with a debt collection agency that offers the lowest discount from the face value of the debt, as this may be the best commercial arrangement. Such an arrangement is likely to be detrimental to the consumer. For this reason, the Council recommends that provisions are made to include safeguards that ensure that customer's whom default on bills are only liable for 'reasonable' debt collection fees.

Providing customer information to credit reporting agencies

Under *Section 6.4 If you do not pay your bill* clause (d) of the proposed Standard Form Contract concerning passing information onto credit reporting agencies there is no mention of: dispute resolution; whom the information will be provided to; and if customers will be made aware that their information has been forwarded on.

As of March 2014 amendments to the *Privacy Act 1988 (Cth)* new rules governing credit reporting come into effect. The Office of the Australian Information Commissioner states that:

> *When a credit provider collects your RHI [repayment history information] it should notify you [their customer] of certain matters, including the name and contact details of any credit reporting body to whom it is likely to disclose the information*[3].

With these new changes commencing in less than a year (ie. within the life of the proposed standard form contract) the Council would like provisions included in the new contract so that Synergy will be meeting is obligation to be compliant with the new law when introduced, and to ensure customers are aware of their rights. This would include stating in the Standard Form Contract that if Synergy passes on any of its customer's details then it will need to provide the name and contact details of the credit reporting body that it has passed the information on to the customer. Furthermore, in line with the new privacy provisions, as of March 2014 customers who default owing less $150 should not have the default recorded against them.

In addition, clause 6.4 (d) (i) of the proposed Standard Form Contract would allow Synergy to disclose the following identity details of their customers: name, sex, address (previous two addresses), date of birth, name of employer and drivers licence number. Passing on this information to a credit reporting body is, in the Council's view, counter to Principle 3 of the new Privacy laws.

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[2] ACCC Debt collection practices in Australia - Summary of stakeholder consultation, May 2009

[3] OAIC, Privacy fact sheet 16 – Credit reporting: repayment history information, December 2012,

The fact sheet states that *"the collection of the information [~~does~~ should] not intrude to an unreasonable extent upon the personal affairs of the individual concerned".*[4] Passing on details of the customer's two previous addresses and name of employer may not be required for the credit reporting agency to identify the individual concerned and could be unlawful with the new Privacy laws. The Council would like to have Synergy's proposed Stand Form Contract evaluated against all of current and the soon to come into force privacy laws to ensure that it is compliant with them.

Ambiguity of confidentially clauses and unfair contract terms in Synergy's Privacy policy

Under the section '*Confidentiality of Your Information,'* Synergy are allowed to use the information in accordance with their privacy policy, which includes business purposes.

> *Unless we are permitted to do otherwise under this contract, we will use and otherwise deal with your information and keep it confidential, subject to and consistent with our privacy policy. In particular, but without limiting the above, we will keep your information confidential unless: …*
>
> *'(vi) we use the information for business purposes'*

The exception of *business purposes* in this manner effectively allows Synergy to use customer's information at will. The Council contends that *business purposes* is an ambiguous and undefined term which could potentially allow Synergy to sell their customers information on to third parties or to undertake any activity that might provide a financial return or improve their business relationship with other companies. In fact, their privacy policy states under the '*Direct marketing and your privacy'* that a customer may be contacted directly *'with related energy news, information, and special offers from Synergy and other businesses.'* The Council believes that this may be determined to be an unfair contract term under the standard form contract section of *Australian Consumer Law 2010* and suggests that further consideration is given or advice sought on compliance with the ACL.

Privacy policy is an extension of the Standard Form Contract and therefore should be governed by the *Electricity Industry (Customer Contracts) Regulations 2005* and Australian Consumer Law, in addition to privacy laws.

As the Privacy Policy is stated in the contract and the customer must consent to the Privacy Policy, it might be considered in effect to be a contract condition. As such the Council believes that the same obligations that are applied to Synergy's Standard Form Contract under the *Electricity Industry (Customer Contracts) Regulations 2005* and Australian Consumer Law might also apply to their Privacy Policy. We would welcome clarification or confirmation from the ERA as to whether these obligations in fact apply to the Privacy Policy, so it is clear if any issues are raised about their Privacy Policy in the future.

The Council is concerned that the Complaints section in the proposed Standard Form Contract may not be compliant with the *Electricity Industry (Customer Contracts) Regulations 2005*.

[4] Office of the Australian Information Commissioner, Privacy fact sheet 1. July 2011

Section 18 of the *Electricity Industry (Customer Contracts) Regulations 2005* states:

> *18. Complaints*
>
> > *A customer contract must describe the procedures to be followed by the retailer in responding to a complaint made by the customer.*

The proposed Standard Form Contract does not outline and describe the procedures to be followed by the retailer, rather it just states that Synergy will comply with the *Australian Standard on Complaints Handling [AS ISO 10002:2006]* and their complaints policy which can be found elsewhere (their website). Furthermore, there is no mention of the Energy Ombudsman in this section which from a customer's perspective would be the natural body they would turn to if they had a complaint which they cannot resolve with their electricity retailer. We suggest that this is an important area in which the Standard Form Contract can and should be improved.

No mention that a customer earns interest any on Security deposit provided

Part 2 clause 12 of the Electricity Industry (Customer Contracts) Regulations 2005 states that:

> *A customer contract must require the retailer —*
>
> *(a) to pay to the customer interest on any security deposit at the bank bill rate; and*
>
> *(b) to advise the customer of the bank bill rate if requested to do so.*

There is no mention of this in the proposed Standard Form Contract under Section 19 Security for payment of bills which should be included if the proposed Standard Form Contract is to be compliant with the Electricity Industry (Customer Contracts) Regulations 2005. Please note that the Council is aware that Synergy does not ask any of its residential customers for security deposits, however the Council will like this provision to clearly state that interest will be earned on any security deposits as there is nothing legally stopping Synergy from asking for such deposits at present and in the future.

Unreasonable to expect people who have moved to provide safe and unrestricted access to their former premises

Clause 18.4 *What happens after a contract ends* states the following:

> *(d) We can remove the electricity supply equipment at any time and you must let us have safe and unrestricted access to the premises to allow us to do so.*

This clause does not take into account that people move away from a premises when they discontinue to rent or sale the property. Once this occurs access to the property is beyond the control of the former customer. As such the Council maintains that it is unreasonable to hold former customer's to account for the *"…safe and unrestricted access to … [their former] premises…"*

In addition the Council thinks that using the term 'us' (which would be taken to refer to Synergy and not necessarily including the network operator) might be an oversight in this clause.

Provisions should be included that allow for the automatic verification of concession entitlements via the Department of Human Services *eServices*

Recently all Victorian Water Retailers and Corporations have proposed to Centrelink that an automated concession verification process should take place.[5] They have proposed to trial a process where all of their customers are automatically check via Centrelink's Confirmation *eServices* database for concession entitlements, rather than relying on them having to directly apply (or reapply on a change of address). Such a scheme would remove 3 of the major reasons why people do not receive concessions that they are eligible for:

1. a lack of awareness about available assistance
2. the complexity of claim forms and procedures
3. the stigma perceived to be attached to claiming assistance payments and concession benefits.[6]

If this trial goes ahead and is successful the Council suggests that Western Australian utilities should consider introducing the same processes and procedures. To enable this to take place the Council suggests that, if such data sharing is not already allowed under the provisions of clause '*15 Confidentiality of your information'*, or clause '*17.2 You must provide us with information (b)*' that Synergy and other utilities consider adding in provisions to the new Standard Form Contract to allow them to upload and batch check all of their clients for concession entitlements, unless a customer explicitly opts out of such a practise.

We believe that concessions matching provides a great opportunity for all Western Australian utilities to progress their commitment to their disadvantaged and vulnerable customers in line with the efforts they have made under their hardship policies and credit management practices. While we expect that over time such practices are likely to become standard, we think that there is a great opportunity at this point in time for utilities to show leadership in this area of social responsibility, and note that it will have added benefits for the utilities in ensuring that customers are more likely to be able to pay their bills as a result – reducing demand on credit management services.

A marked-up copy of any future Standard Form Contract should be released at the start of any future consultation period.

To assist interested parties to easily and effectively consider future contract changes, the Council requests that the ERA consider releasing a marked-up copy of the proposed changes at the start of any future consultation period.

[5] All Victorian Water retailers and Water Corporations have recently signed off on the Concession Validation Amendment Proposal which they have submitted to Centrelink.

[6] *Missing out: Unclaimed government assistance and concession benefits* Policy Brief No. 14 May 2010 ISSN 1836-9014, David Baker.