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Adam Phillips  
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Economic Regulation Authority  
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Dear Adam

**BEST PRACTICE UTILITY LICENSING**

Thank you for the opportunity to comment on the Economic Regulation Authority's (**Authority**) consultation paper entitled "Best Practice Utility Licensing".

Synergy is pleased to contribute to the Authority's consideration of the matter

Synergy's comments are detailed in Attachment A.

Please contact me if you wish to discuss the matters raised in the submission.

Yours sincerely

A handwritten signature in black ink, appearing to read "G. Draper".

**GRANT DRAPER  
HEAD OF STRATEGIC BUSINESS**

## **BEST PRACTICE UTILITY LICENSING**

### **Summary**

- If regulation is not imposed effectively or efficiently, it can result in significant costs to market participants and customers as well as being a barrier to new market entry, goods or services.
- It is essential that policy makers, regulators and market participants engage and communicate in order to ensure that the ramifications of proposed regulatory actions are clearly understood prior to enactment.
- To date, the Economic Regulation Authority (Authority) has demonstrated a strong commitment to transparency and consultation with respect to licensing matters.
- It is essential that regulatory frameworks be periodically reviewed to ensure relevance and appropriateness as utility markets mature over time.
- Policy makers and Regulators should be prepared to reduce regulation as competition develops or where regulation becomes redundant, spent or inappropriate.
- The Authority has demonstrated a preparedness to reduce regulation where demonstrable reasons exist based on its reviews of the Gas Marketing Code and gas trading and distribution licences to date. Synergy considers this to be consistent with best practice regulation.

### **Licensing Objectives**

- Synergy supports the licensing objectives contained in the draft consultation paper, specifically the comment that licensing regulation should be used to address clearly identified market failure and where benefits outweigh the costs.
- In Synergy's view, licensing regulation should be used when demonstrable reasons for such regulation exist. In situations, where the use of regulation cannot be reasonably substantiated, exclusions should be permitted. Examples in the Western Australian regulatory framework include the licence exemption for electricity generators with a capacity of less than 30MW and of a gas trading licence which is required to supply < 1 TJ customers.
- As a potential gas trader, Synergy considers consistency between electricity and gas retail/trading licences is desirable and potential exists to similarly reduce an electricity retail licence in scope.

### **Characteristics of an Effective Licensor**

- Synergy is aware of the rationale for distinguishing between policy maker and regulator in terms of independent decision making.
- Synergy supports the concept that Government establishes the policy framework, principally through enactment of legislation and the regulator administers and enforces that framework. An independent regulator is an essential pre-requisite in this regard.
- In reality, regulators are also policy makers to a degree given their broad licensing powers (imposition of terms, conditions and guidelines) and the ability to establish and amend industry codes of practice.

- This is a situation faced by all regulators, which possess broad regulatory powers. From a retailer's perspective, it is essential that the delineation of responsibility between Government and regulator be clearly articulated for specific matters, given the overlap of regulatory powers that exist between the two. However, in terms of Western Australia, Synergy notes that the Authority has sought to define what it considers to be regulation management opposed to regulatory policy, which is supported.
- Synergy considers it appropriate that an independent regulator is responsible for licensing decisions on the basis of independence and accountability and that the Government retains overall responsibility for establishing and maintaining regulatory frameworks.
- Of critical importance is accountability. Industry must have the ability to seek a review of regulatory decisions. Synergy considers that this is an area that could be improved, specifically for instruments extrinsic to but subject of a licence condition. Examples include establishment and amendment of industry codes, mandatory guidelines and information provision.

## **Characteristics of an Effective Licensing**

### ***Maintaining service standards***

- Synergy is of the view that the role of the regulator is to maintain base service standards in situations where demonstrable reasons exist for regulating market participant behaviour. Once the base is determined, industry should strive to exceed the base in order to secure customers and attain competitive advantage.
- However, it is not the role of the regulator to be overly prescriptive in terms of determining service standards that customers consider desirable opposed to essential. For example, in the case of utility payment options, the Regulator should determine a minimum standard to protect customers. It should not prescribe a wide range of mandatory payment options. This is the role of the market. For competition to be effective, industry must have the ability to differentiate product delivery in order to compete for customers.

### ***Minimising regulatory risk***

- In order to minimise regulatory risk, Synergy supports licensing decisions being predictable, consistent timely, transparent and based on public consultation.
- In addition, Synergy considers that regulatory decisions should also be explicit i.e. regulatory obligations should be narrowly defined. Synergy does not support applicable law type provisions, which requires a licensee to comply with other laws as a condition of licence.
- In the event that existing laws do not contain enforcement or penalty provisions, it is inappropriate to fill any perceived gaps by making such law a condition of licence. Furthermore, unintended consequences may arise in terms of making compliance with a particular statute(s) given the broad nature of energy statutes that deal with a range of matters beyond industry licensing.
- Transparency and consultation is essential for minimising regulatory risk. To date, the Authority has demonstrated a high commitment to both on licensing matters.
- Synergy suggests that the Authority may also want to consider providing greater feedback to stakeholders in response to their submissions.

### ***Minimising compliance costs***

- Synergy supports the Authority's position in order to minimise regulatory risk, licensing decisions should be predictable, consistent timely, transparent and based on public consultation.
- Synergy suggests that compliance costs should be a standard matter addressed in any proposed regulatory decision be in draft licence condition, industry code or licence condition. It would be useful for industry, if the Authority sought to articulate the estimated impact on licensees as a result of any material regulatory initiative. This would enable industry to provide feedback as to whether the regulator's perceived compliance cost impacts are consistent with those of industry and other stakeholders.