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Dear Simon

***Position Paper on Changing the Contractual Relationship between the Electrical Distributor, Customers and Retailers***

Thank you for the opportunity to make comment on the change in relationship between retailers, customers and the distributor that will take place as part of the current electricity reform process. Perth Energy has a number of major concerns over the approaches proposed by the Public Utilities Office and offers a number of specific comments on those concerns.

In section 2.3.2 in reference to improving the allocation of technical risk there is comment that establishing a direct contractual arrangement between the distributor and the customer removes the current conflict of interest arising from a retailer's effective veto over a customer installing embedded generation. This change does, however, establish the opportunity for the distributor to establish connection charges that form an effective veto. Chapter 5A of the NEM Rules provides for a distributor to establish different connection services for customers with and without micro-embedded generators.

There has been considerable discussion within industry as to whether customers wishing to install solar systems should require their retailers' approval, and whether customers with existing solar systems should be charged on a different basis by Western Power. Note that Western Power already has separate tariffs for some of these customers though currently it has not exercised to impose those tariffs and has kept the charges the same.

Perth Energy prefers pricing structures that fully reflect accurately the cost of supply. We would strongly support Western Power structuring its distribution charges such that they appropriately reflect the balance between fixed and variable costs to the utility. The current retail tariffs as charged by Synergy in the franchise market for instance do not adequately reflect the fixed supply costs and this means that if a customer adds a solar system Synergy will lose money since it doesn't have flexibility to change the franchise tariffs such as the residential A1 Tariff. While Western Power may charge Synergy cost reflective network charges, Synergy's lack of ability or willingness to pass on such charges in its bundled tariffs to its retail customers ensures it loses money for every solar system installed. Synergy is not concerned about such losses because it receives up to \$500 million per year in Tariff Adjustment Payment subsidy. This is unsustainable and unfair to taxpayers, who are footing this huge TAP bill to Synergy.

In the contestable market, where retailers have had the ability to renegotiate the pricing structure when customers wish to install solar systems, such distortions are lessened (although in this market Synergy also seems to adopt a passive approach and accept losses, which are partly covered by the TAP<sup>1</sup>). As noted in the paper, currently Western Power requires a retailer's reference number to approve connection of a new solar system. This is seen as a retailer's right to veto. There has been suggestion that customers adding solar should be granted approval by the distributor and not the retailer. However, such suggestion is based on misperception.

When a retailer enters into a supply contract with a contestable customer, the contract carries obligations on both parties, supply obligations on the retailer's side and demand obligations on the customer's side. Neither party could unilaterally change such obligations. Installing solar systems potentially changes a customer's consumption profile materially and this change could only be done with the retailer's approval. Unilateral approval by Western Power for such connection would be unwarranted interference in commercial contractual arrangement between the retailer and customer.

If a customer wishes to retain flexibility to install a solar system, it should negotiate beforehand conditions for such event during the contract term. In fact, this is the prevalent case as most if not all supply contracts provision change of pricing upon material change in consumption (installation of solar system). There is therefore NO VETO in practice. There are only contract provisions for the parties to reprice when either supply or demand obligations change. These provisions are freely negotiable between the retailer and customer prior to the contract and during the term of the contract. Given that supply agreements are of 1-2 year term, and that acquiring a solar system would take about 6-9 months from the time a customer expressing interest, there is no particular disadvantage whatsoever to a customer adhering to the terms of the contract. If dissatisfied with a retailer, the customer will churn away at contract expiry. Western Power's requirement for a retailer's reference number is absolutely critical for the orderly operation of the contestable market. This avoids potentially messy legal disputes between the 3 parties – retailer, customer and Western Power. Perth Energy considers that the current reference framework must be retained to ensure smooth running of the tripartite relationship.

In section 3.3.5 it is noted that that the adoption of the National Electricity Law (NEL) and National Electricity Rules will have implications for the existing rights of market customers and market generators. It also notes that there will be separate consultation on these transition arrangements. This is an area of great concern for Perth Energy as it has the potential to significantly affect our financial position. This is especially true of market generator access where this may directly affect the level of certification, and hence capacity credit income, that may be received. We see this as a significant sovereign risk.

In section 4.2.1 the question is posed as to whether standard contracts should be prescribed pursuant to regulation or developed by the distributor for approval by the local regulator. The former is used in the NEM because there are multiple distributors and a common contractual arrangement is required. In Western Australia, if it is assumed that we will be staying with a single distributor and single retailer environment, then the current standard contracts as developed by ERA

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<sup>1</sup> For an analysis on TAP cross-subsidy in the contestable market refer to Perth Energy's January 2016 submission to the EMR on RCM Review Position Paper.

with industry input over the years, and used across the industry for small use customers, are more than adequate. Introducing new Western Power's standard contract varieties, based on NEM distributor structure, would be inappropriate for WEM operations.

On page 21 the question is posed as to whether supply contracts should allow parties to contract away from the default liability established under the NEL. Perth Energy notes that there are potentially unequal negotiating positions between Western Power and its customers and therefore we do not consider that contracting out of the NEL liabilities should be allowed.

Section 4.2.4 discusses liabilities under the distributor-customer contract. Western Power is part of the supply chain that comprises central generation, networks and retailers. Customers also have the option to self-generate a portion of their supply and, with batteries, may have the potential within a few years to rely solely on self-generation. As part of a competitive supply chain Western Power should now be taking its fair share of the commercial risk rather than expecting the retailer to carry all of this. In the event of a commercial customer failing to pay, due to liquidation of the business, Western Power should carry any loss arising in its distributor-customer contract. However, it must be noted that a distributor-customer contract in no way should override the retailer reference requirement discussed above but should incorporate this requirement in the contracting process.

In section 6.2.1 it is proposed that retailers and the distributor should use their best endeavours to provide or make available to the other (at no cost and in a timely manner) information or documentation that the other reasonably requires to carry out its obligations. Perth Energy notes that limitations have been placed on the number of meter data requests that Western Power will process each day. Limitations have also been placed on the number of churns and not allowing customers to churn if they are in debt to the incumbent retailer. It is critical that Western Power invests sufficient resources to meet this best endeavours obligation and that such limits are minimised.

Perth Energy would be happy to discuss any of these matters with representatives of the PUO should you wish to do so.

Yours faithfully

Andrew Rowe

Chief Executive Officer