



Our ref: 29631109

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Sarah Woenne
Assistant Director Customer Supply
Energy Policy Western Australia

Email: EPWA-Submissions@dmirs.wa.gov.au

Dear Sarah

Industry Amendment (Alternative Electricity Services) Bill 2023 - Consultation Draft and Paper

Synergy welcomes the opportunity to provide feedback to Energy Policy Western Australia (**EPWA**) in relation to the above and is pleased to provide the following comments to EPWA to support the drafting of the Electricity Industry Amendment (Alternative Electricity Services) Bill 2023 (**draft AES Bill**).

As an overarching comment Synergy supports EPWA's proposed model to regulate Western Australia's developing alternative electricity services industry. In that regard, Synergy has proposed a number of suggestions for EPWA's consideration to improve the proposed regulatory design as detailed in this submission. These suggestions are based on our experience in operationalising energy compliance frameworks over many years. Given the cost and business impact, it is in an energy market participant's interest to ensure (to the extent they can) that new regulatory frameworks are consistent with best regulatory practice, especially given compliance costs are ultimately borne by energy consumers.

Synergy as the State's largest electricity retailer is keen to ensure there is a relatively level playing field between regulation of a licensed retailer and an alternative electricity service provider (**AES provider**), wherever practical. Synergy would be concerned if a retailer licensed by the Economic Regulation Authority (**ERA**) to supply electricity to both small and large use customers was also required to obtain an AES registration as this would create a barrier to entry and regulatory duplication.

In relation to EPWA's request for feedback on the draft AES Bill and its consultation paper, Synergy provides the following:



Forrest Centre, 219 St Georges Terrace, Perth WA 6000. GPO Box F366, Perth WA 6841.

Question 1. Do you have any comments to make on the proposals to:

(a) Extend AES protections to large use customers

Synergy supports this proposal. Large use customers should have specific protections under the AES framework similar to those that have protections when supplied electricity via a covered network. For example, service standards relating to networks access, metering and network reliability and quality of supply.

(b) 'Fast track' registration applications

Synergy supports this proposal.

(c) Allow the AES Code of practice to include pricing control obligations

Synergy supports this proposal. Alternative electricity supply customers should have pricing protections similar to those that have protections when supplied electricity via a covered network. For example, in the case of Synergy's customers, protections include regulated retail tariffs, fees, charges, renewable energy and distributed energy buyback rates.

Question 2. Do you have any comments on:

(a) Establishing a requirement that the maximum time that a registration can remain in place or be renewed for must not exceed 15 years?

Synergy supports registrations being granted for a reasonable duration but notes the ERA will have the discretion to grant a registration for a period up to 15 years. Synergy considers this problematic if registrations covering the same or different alternative electricity services have markedly different durations depending on service type or location.

(b) The ability for the AES Code of Practice to make provisions relating to meter connections

Synergy supports the AES Code of Practice containing a head of power to include meter connections and services. It is essential for market confidence and customer protection that the AES Code of practice contains the ability to regulate metering types, standards and the validation of energy data used for billing. Further, Synergy supports the AES Code having the ability to prescribe arrangements for customers who seek a direct connection to a covered distribution network within the South West Interconnected System at their own cost.

(c) The ability for the AES Code of Practice to make provisions relating to access to net zero emission energy sources?

Synergy supports the AES Code of Practice containing the head of power for an AES provider to access electricity generated from renewable sources to supply their customers, where practical and at a reasonable cost.



Questions 3. Do you consider the enforceable undertaking provisions that have been based on the Education and Care Services National Law are suitable?

Synergy considers the enforceable undertaking provisions within the draft AES Bill are reasonable.

(a) If not could you please describe why this is the case.

Not applicable

(b) Do you consider that any other provisions related to enforceable undertakings are necessary?

No.

4. Do you consider that the Authority requires any additional powers to carry out its functions under the AES framework?

Please refer to Attachment 1 for Synergy's comments on specific aspects of the ERA's powers, roles and functions under the draft AES Bill.

5. Do you have any other comments?

(a) Better regulation program

Synergy supports the proposal to regulate a service under the AES framework will be subject to an assessment under the State Government's Better Regulation program. Synergy also considers Project Eagle legislative and regulatory proposals should similarly be assessed under the Better Regulation Program.

(b) Electricity Review Board review

Given the significant regulatory regime that will become the AES framework and on the basis of procedural fairness, Synergy strongly advocates the draft AES Bill include provisions to extend the functions of the Electricity Review Board, under section 130(2) of the Electricity Industry Act 2004, to review a decision by the ERA to:

- refuse to grant or renew a registration
- refuse to approve the transfer of a registration
- refuse to amend a registration
- grant a registration or renewal that is less than the maximum of 15 years provided for under the draft AES Bill
- any registration term or condition
- amend a registration
- refuse to approve, amend or replace an AES customer contract, in the event the ERA has such powers conferred upon it under the AES Code of Practice.



(c) Draft AES Bill

Please refer to Attachment 1 for Synergy's comments on specific aspects of the draft AES Bill.

Please contact me should you have any queries in relation to this submission.

Yours sincerely

A black rectangular redaction box covering the signature of Simon Thackray.

SIMON THACKRAY
HEAD OF REGULATION AND COMPLIANCE



Forrest Centre, 219 St Georges Terrace, Perth WA 6000. GPO Box F366, Perth WA 6841.

Attachment 1 - Synergy comments on the draft AES Bill

Issue	Synergy response
1. Definition of AES customer contract - draft AES Bill clause 3(1)	Synergy notes the AES registration framework will apply to large use customers as well as small use customers. Given this Synergy queries whether the AES customer contract protections will apply to large use customers and if so, whether the current definition of “AES customer contract” is too narrow.
2. Classification of licences - draft AES Bill clause 4(3)	<p>The current licence classification proposal in the draft AES Bill is inconsistent with the following Better Regulation Program¹ principles:</p> <ul style="list-style-type: none"> • Principle 3: Provide clarity and certainty for affected parties. • Principle 4: Avoid duplication or conflict with other existing or proposed regulations. <p>Synergy notes under clause 4(3) a licence does not authorise the provision of an alternative electricity service unless the holder of a licence is exempt from the registration requirement. As a retail licence holder Synergy does not support the requirement to obtain a registration exemption. As a retail licence is a higher form of regulation relative to a registration there should be no additional requirement for a licensed retailer to obtain a registration exemption nor obtain a registration. The requirement for a licensed retailer to obtain a registration exemption results in regulatory uncertainty and cost. If a registration is required for a retail licence holder this will result in duplication and conflict with a retail licensee’s licensed operations and compliance systems as two markedly different regulatory frameworks will apply for covered network and behind the meter or embedded network supply.</p> <p>Refer also item 6.</p>
3. Registration framework - draft AES Bill clause 59B	Synergy notes Part 7 (electricity ombudsman scheme) of the Draft AES Bill is excluded from the definition of “registration framework”. Synergy queries whether this is intended.
4. Alternative electricity services - draft AES Bill clause 59C(4)(a)	Refer point 2 above.
5. Alternative electricity services - draft AES Bill clause 59C(4)	Synergy queries whether it was intentional that the on-selling of electricity behind the meter or within an embedded network was not specifically prescribed in clause 59C(4). For example a situation where a property owner or manager takes delivery of electricity at a connection point (master meter) from a covered network and then on-sells electricity to their tenants behind the meter. Synergy recommends on-selling is specifically mentioned in clause 59C(4).

¹ [Agency information paper - Better Regulation Program \(www.wa.gov.au\)](http://www.wa.gov.au)

Issue	Synergy response
6. Requirement for registration - draft AES Bill clause 59D	<ul style="list-style-type: none"> • Refer point 2 above. Synergy understands the policy intent of registration of an alternative electricity service was to regulate these services behind the meter or within an embedded network. However, there is nothing in the draft AEC Bill that reflects this policy position. Under the current draft AES Bill, a registration is required (unless an exemption is obtained) for the provision of an alternative electricity service by a licensed retailer that sells electricity to the customer via a covered network. For example, Synergy’s community battery at Alkimos or its retail electricity supply to a stand-alone power system is potentially subject to clause 59D. The draft AEC bill should be amended to explicitly state that a registration does not apply to the provision of an alternative electricity service provided by a licensed retailer – this matter should not be left to subordinate legislation to clarify. If the draft AES Bill exempts a licensee from the requirement to obtain and administer a registration then Synergy considers it reasonable that draft clause 59D(4) should apply to that statutory exemption. • It is unclear when clause 59D applies. For example, if an alternative electricity service relates to storage is a registration required to construct and commission the storage facility or does the requirement to obtain a registration apply immediately prior to a storage alternative electricity service being provided to a customer? Synergy seeks for this matter to be clarified.
7. Authority to consider public interest - draft AES Bill clause 59F	<ul style="list-style-type: none"> • Synergy considers there is regulatory duplication and overlap between clause 59F and section 26(a),(b),(c),(d) and (f) of the Economic Regulation Act 2003 which is inconsistent with Principle 4 of the Better Regulation Program. Synergy also queries whether consideration was given to applying the proposed State Electricity Objective in lieu of draft AES Bill clause 59F(2). • If EPWA retains clause 59F(2) as currently drafted there should be a draft AES Bill obligation on the ERA to publish market guidance as to how the ERA will apply the public interest test to its registration decisions similar to what the Australian Energy Markets Commission does in relation to the national energy objective².
8. Registration application, renewal, amendment and transfer - draft AES Bill clauses 59G, 59H, 59I, 59J	Synergy queries whether registration surrender needs to be included in addition to these registration administrative matters.
9. Further information - draft AES Bill clause 59K	“reasonably” should be inserted between “may” and “require” for consistency with clause 59ZB(1).

² Refer [Guide to our decision making \(aemc.gov.au\)](http://aemc.gov.au)

Issue	Synergy response
10. Decision to grant, renew, approve or transfer a registration - AES clause 59M(1)	<ul style="list-style-type: none"> The ERA should also have an obligation to publish a decision to grant, renew, approve or transfer a registration within 90 days in addition to notifying an applicant of its decision under draft AES Bill clause 59S.
11. Registration is subject to terms and conditions - draft AES Bill clause 59O(2)	A materiality test needs to apply to this provision. Refer clause 4.4.1(b)(ii) of Synergy's electricity retail licence for guidance.
12. Registration and annual fees - draft AES Bill clause 59Q	The draft AES Bill should explicitly state the ERA must recover its "reasonable" costs of administering the registration framework consistent with clause 59ZC(4) requirements.
13. Other laws not affected - draft AES Bill clause 59R	Clause 59V(2) would be better dealt with under clause 59R or alternatively clause 59R should be referred to in clause 59V(2)
14. AES Code of practice - AES Clause 59U(3)	<ul style="list-style-type: none"> Additional matters that should be listed in clause 59U(3) are: <ul style="list-style-type: none"> - Life support equipment use - Family violence customer protections - Obligations to offer to supply - Obligations to offer to connect - Customer protections applicable to large use customers Clause 59U(3)(d) should be amended to include "the sale of electricity by customers to an AES provider". This amendment would provide an ability to regulate buyback arrangements between an AES provider and a customer similar to what exists for covered network supply under the distributed energy buyback and renewable energy buyback schemes.
15. Public consultation on issue, amendment or replacement of AES Code of Practice - clause 59W	Clause 59W should impose an obligation on the ERA to notify the holder of a registration that the AES code of practice has been amended including any amendments in accordance with clause 59W(2). This requirement is necessary to avoid the risk of a registration holder not being aware that the AES Code of Practice has been amended.
16. Annual report - clause 59ZA	Subclauses (1) and (3) should be time based for transparency and regulatory certainty.
17. Performance reporting and compliance monitoring - Division 6	Division 6 should impose an obligation on the ERA to publish market guidance as to how the ERA will govern and administer performance reporting and compliance monitoring.

Issue	Synergy response
18.Enforcement - Division 7	Division 7 should impose an obligation on the ERA to publish market guidance as to how the ERA will govern and administer the enforcement regime.