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Synergy is concerned that stakeholders have been asked to consider the triangular contractual model in a segmented fashion and not as a holistic reform package as further consultation on several complex and material elements of the reform is anticipated at a later stage. For example, the implications for existing network access contracts are discussed in the position paper, although a separate process is contemplated to deal with the sensitive topic of contract intervention. Accordingly, it is difficult to form views of how the triangular contract model should be implemented when material elements, such as how existing retail supply contracts are to be treated, is currently unknown.

Exposure to network access uncertainty

At this point, Synergy is uncertain about network access arrangements for retailers as there is no guarantee all existing network services will continue under the new access regime in substantially the same form or at the same costs. If material changes were to occur, the customer and retailer impacts may be significant in terms of price, withdrawal of transport service or lower level of transport service.

The position paper makes the assumption retailers can manage customer risks associated with the transition to the national access regime via retail contract change in law provisions. However, until the content of Western Power's RCP1 is known, this assessment cannot be made. Synergy believes the proposed transitional arrangements are insufficient to address the implementation risks or ensure the benefits of reform are fully captured.

Synergy notes that it is common requirement for major access reforms to be undertaken with rigorous transitional arrangements or side constraints in place to reduce implementation risk. We refer to the success of arrangements established to transition access under the Electricity Corporations Act 2004, Electricity Transmission Regulations 1996

period. Likewise the government should impose a requirement under RCP1

reference service development being for the benefit and in the long term interests of consumers.

Retailers have a number of rights under the Western Australian electricity networks access code that are not replicated for retailers or retail customers in the national electricity rules, particularly in relation to negotiated services.

While under the national electricity rules retailers have an opportunity to engage with distributors in relation to network tariff development under the 'tariff structure statement', the national electricity rules do not provide an express right for retailers to advocate or act on behalf of their customers, except to the extent that is provided for in relation to a "market small generation aggregator".

In Synergy's view, this current right for retailers to aggregate and act on behalf of retail customers should be preserved. Local regulations are needed to:

- (a) expressly allow retailers to act on behalf of consumers in respect of the negotiations for "negotiated distribution services" in a manner similar to that

Question 6: Should Western Power's liability to customers under the ongoing supply contract be limited? If

Question 10: Are there other liabilities created by statute that should be considered for amendment as part of these reforms?

Yes. Under small use code clauses 4.17 and 4.19, a retailer cannot recover an undercharge or adjustment beyond 12 months due to the error, defect or default of the distributor. Consequently, the distributor's actions can result in a retailer being limited to recovering its charges for electricity consumed at the premises (as well as recovering transport charges) to 12 months.

Examples include meter data errors, faulty meters or where the distributor fails to obtain an actual meter reading once every 12 months. Given the new contract regime, it is appropriate under local regulations for: (a) the distributor to pay the retailer any energy sales beyond 12 months which the retailer cannot recover due to the error, defect or default of the distributor; and (b) the distributor not be permitted to recover network charges from shared customers via the retailer due to the error, defect or default of the distributor.

It is important to recognise where an obligation is imposed on a retailer to do something in respect of a connection point the retailer will be exposed to liability or the risk of being subject to legal action. For example, under the new regime retailers are expected to coordinate certain matte

Synergy considers there is real risk of contractual disputes if existing network services and tariff structure do not exist under comparable terms and conditions. Synergy notes the Public Utilities Office's view is that the transition to the new triangular contract arrangements should be able to be managed through a retailer's change in law provisions within their electricity supply contracts.

Synergy is unable to determine whether this is the case until it knows what RCP1 involves and contains. Consequently, Synergy remains of the view if parties are forced to terminate retail contracts or accept conditions causing them to be worse off, then retail contractual disputes are likely to arise especially as the retailer and not distributor will bill the customer for network supply services. The position paper does not reflect this risk.

Under clause 18 of the Energy Legislation Amendment and Repeal Bill 2016 (Section 143) (the Bill) on and after commencement day (i.e. 1 July 2018), a contract between a distributor and a retailer does not have effect to the extent to which it provides for or in relation to the provision, on and after commencement day, of network supply services. Further, the distributor is not liable to the retailer for or in relation to the provision on and after the commencement day of a network supply service under the contract, and a failure by the retailer in relation to the provision of the service is not a breach of, or default under, the contract.

No similar limitation of liability provision exists under the Bill in relation to a contract between retailer and customer. However, Synergy notes that also under clause 18 (section 145) the Bill contains a regulation making power to address transitional matters. Synergy expects in the event retailers can demonstrate contractual risk as a result of the move to the national regime then a similar statutory limitation on liability provision will be afforded to them as is the case with clause 18 under the Bill.

Alternatively, we suggest that retailers be granted a full indemnity by distributors in respect of any losses, claims or liabilities that may be incurred by a retailer in respect of any liability it may have with respect to network supply services under a retail supply contract to a retail customer.

Question 12: Are there any other reasons why intervention in contracts is necessary?

Refer to Synergy's response to Q.11.

Question 13: Is there any reason why local regulations regarding assistance and cooperation between retailers and distributors should be substantively different to the National Energy Customer Framework model set out in r. 94 of the National Energy Retail Rules?

Yes. National energy retail rule 94 does not contain any confidentiality or permitted disclosure obligations in relation to the provision of documents and information between a retailer and a distributor. Synergy is concerned sensitive commercial information may be requested by the distributor in relation to the supply of electricity without any confidentiality or permitted disclosure requirements applying. Synergy

This provision is currently addressed under clause 5.8 of the Electricity Industry Metering Code 2015. This is a necessary provision if the small use code is required to operate under the new regime and will ensure that a retailer can comply with its obligations under that code.

Question 14: Is there any reason why local regulations regarding provision of information between retailers and distributors should be substantively different to the National Energy Customer Framework model set out in rr.95-100 of the National Energy Retail Rules?

It is difficult to answer this question without visibility or an understanding of the proposed Western Australian electricity retail market procedures, ultimately administered by the Australian Energy Market Operator (AEMO). Although the subject matters specified under rules 95-100 appear reasonable, it is the uncertainty over the communication method (such as the provision of standing data) which is potentially material. Until the business to business and business to market operator system requirements and procedures are known, which will replace the current build packs and communication rules, Synergy cannot express a view on this matter, especially as the national energy retail rules provide for the exchange of information between retailer and distributor at no cost.

However, it is likely that both parties will need to invest in technology system changes to facilitate the efficient communication of information. Currently local arrangements that require the sharing of information are contained within metering agreements and access contracts between the retailers and the distributor. It is conceivable some of the information arrangements under these agreements could continue to operate under the new regime.

Further, other states considered it necessary to provide market certainty in relation to this issue by implementing use of system or coordination agreements between the retailers and network service providers. Therefore, this is a matter that local regulation could seek to address in order to provide more regulatory certainty.

Synergy notes the planned outage notification timeframes for life support equipment customers differs between the small use code and national energy retail rules. In addition, Synergy also understands that coordinating information in relation to child connection points, under chapter 7 of the rules, may not be required under the proposed new regime for the SWIS.

Question 15: Is there any reason why local regulations regarding classification and reclassification of customers should be substantively different to the National Energy Customer Framework model set out in rr.7-10 of the National Energy Retail Rules? Is the administrative burden associated with the

Question 17: Is there any reason why local regulations regarding coordination of service standard payments should be substantively different to the National Energy Customer Framework model set out in r.84 of the National Energy Retail Rules?

Adoption of national energy retail rule 84 will necessitate deletion of clause 10.3A of the small use code given the triangular contract model. In

while the contractual link between distributor and retailer in respect of network supply services has been severed, no such work is done by the Energy Legislation Amendment Bill 2016 with regard to network supply services as between retailer and retail customer. This gap may result in some circumstances where a retailer retains an obligation with respect to network s

Question 22: Is there any reason why local regulations regarding the administrative framework for credit support should be substantively different to the National Energy Customer Framework model set out in Rule 6B.B2.1,

