

Synergy Submission on DER Draft Guidance Statements – March 2016

Following is Synergy's comments on the following draft guidance statements:

1. Regulatory assessment framework
2. Environmental risk assessment framework; and
3. Regulatory controls

Synergy is Western Australia's largest provider of gas and electricity to more than one million residential, business and industry customers. We operate as an energy retailer in an area known as the South West Interconnected System (SWIS) that extends from Kalbarri in the north, east to Kalgoorlie-Boulder and south to Albany.

Synergy is also Western Australia's leading power generator with an extensive and diverse portfolio of power stations located around the state, including Collie, Kwinana, Cockburn and Pinjar. Synergy also generates electricity from renewable sources located at Albany, Bremer Bay, Coral Bay, Denham, Geraldton, Esperance, Kalbarri and Hopetoun.

Synergy is the holder of nine DER Environmental Licences covering a diverse range of facilities ranging from large coal fired power stations through medium sized highly efficient combined cycle gas turbines to small open cycled gas turbines.

1. Regulatory Reform

Synergy commends the overall process that the DER is seeking to implement with respect to environmental regulation in Western Australia, especially its focus on a risk based approach. Synergy also supports the consultation process that the DER is following, whilst noting that a large number of guidance documents are being released for comment in a short period of time and without a clear understanding on how the overall process will work and the way the guidelines interact with each other. It is suggested that a review of the overall process be conducted once all guidelines are released to allow for fine tuning of the overall process.

However, in a number of areas of the guidance statements, statements are left open ended or in the absence of further clarification appear to be at the DER's discretion. This is not a situation that is preferable due to the ambiguity and uncertainty that is introduced. This is especially of concern in light of the recent Supreme Court decision in relation to Roe 8.

2. Regulatory assessment framework

It is appropriate that such an assessment framework exists and Synergy supports the development of the guideline as it provides the overall definition of the regulatory process.

Following are specific comments on the guidance statement.

1. In clause 1(e) it is stated that the DER will refer applications to interested parties or persons which are considered to be directly affected by the proposal, however the guidance statement is not clear on what involvement the applicant will have, if any. The applicant should be given the opportunity to respond to these comments unlike what is alluded to in 1(f) where the DER appear to consider the responses without any involvement of the applicant.

2. Figure 1 describes the assessment process. This diagram appears to show that a renewal, amendment, transfer or surrender of existing works approval or licence will not be advertised which is contrary to current practice. The DER should clarify this situation and if the figure is revised then recirculate for additional comment on the final proposed diagram.
3. In clause 2(a)(i) it states that DER will specify the screening assessment. However there is no description of what this assessment is, the process involved or the requirements of the proponent. This results in ambiguity and uncertainty. If this assessment is in addition to the Part IV EPA approval process for new premises it is unclear why this is required and how it will interact with the Part IV process. Requirements will need to be clearly defined for both Part IV and Part V approval at the start of the process otherwise significant delay and expense will likely occur in gaining project approval.
4. Clause 3 - Decline to Deal states that DER will decline to deal with applications where the information is not otherwise publically available. This an ambiguous statement and it is not clear exactly what information is being referred to, some of which may be commercially sensitive. If this is the only guidance on this matter then it is uncertain exactly what is required of the proponent and will lead to varied interpretation and unnecessary delays.
5. Clause 4(b) – Decision to Refuse. The commitment to give the applicant opportunity to propose further mitigations prior to refusal is a sensible proposal and is commended.
6. Clause 7(e)(ii) - The commitment to give the applicant opportunity to propose alternatives or withdraw the application prior to finalisation is appropriate and is supported by Synergy.
7. Clause 8 - DER Initiated Assessment – This process appears to be instigated when the DER have some form of concern regarding the operations of a premises. However there is no real clarity on what level of risk to the environment would trigger the process. The guideline should make it clear to all that minor issues with low risk should not trigger an assessment and possible licence amendment.
8. Clause 9(a)(iii) – Applicant Amendments – For significant amendments the guidance states that basically the assessment process will restart. What is not clear is the scope of the assessment. The assessment should only focus on the proposed changes and should not reopen the entire licence to assessment including areas not affected by the amendment.

3. Environmental risk assessment framework

Synergy supports the DER's intention to employ a risk assessment approach to its regulatory function. Following are specific comments that apply to the guideline.

1. Throughout the guideline it is not clear at what stage the DER risk assessment process is applied leading to confusion regarding the application of the risk assessment. Discussions held with the DER have indicated that the DER assessment process is applied after the proponent has applied all proposed controls on the premises (in effect after completing their own risk assessment and mitigation process). In effect the DER risk assesses the residual risk from proponent's

undertakings for the premises. If this is not acceptable from a risk perspective then the DER imposes further controls. If this is the case then the guideline needs to explicitly state the case as at the moment this is not clear and open to interpretation.

2. Clauses 8 and 9 appear onerous to implement (especially for the DER) in all situations especially as the DER already have considerable discretion to review licences under the EP Act. Where the guidance statement currently states that the “DER will undertake...”, this should be replaced with the “DER will determine the need for... “. This gives the DER some discretion regarding minor incidents, non-compliances and complaints.
3. The wording in appendix 2 when defining likelihood and consequence is confusing and because of this it is not clear how the risk assessment process is meant to work. The usual definition of risk is $\text{risk} = \text{consequence} \times \text{likelihood}$ i.e. the likelihood of an event \times consequence of an event equates to the risk of the event. The terminology used in the likelihood table on page 6 of the guideline where event is part of the description seems to support the standard approach. However the definition given in footnote1 is that likelihood is the probability or likelihood of a consequence occurring, which is quite different to the likelihood of the event in the usual approach. To add to the uncertainty on the same page at the top of the Likelihood table the definition appears to be different again where reference is made to the likelihood of a risk/opportunity occurring. The varied definitions makes it extremely confusing and difficult to determine exactly what the DER intends. As this risk assessment process is a key component of the revised regulatory process Synergy suggests the DER rectify this by conducting workshops with key stakeholders to determine the preferred approach.
4. The table in appendix 3 states that all risks greater than those rated low will be subject to some form of control. Applying this approach to the risk matrix in Appendix 2 will see impacts with insignificant consequence subject to regulatory control. Consulting the DER’s definition of insignificant which states “no impact to health amenity of the environment”, indicates that regulatory controls may be applied to situations with no impact to health or the environment. This seems an overly conservative approach just because the likelihood is likely or almost certain. Synergy suggests the risk matrix be modified so that any impact with an insignificant consequence irrespective of likelihood has a low risk. This may necessitate other changes to sensibly align the matrix.
5. The language in appendix 3 dealing with risk treatment appears overly prescriptive and should be avoided if possible. The use of “will be subject to control” should instead be replaced by “may be subject to control”. This still allows the DER the ability to implement control without appearing to mandate control. This is especially true to risks that are rated as moderate.
6. The establishment of a range of criteria in the attached appendices to the guideline for assessment of emissions that impact on ambient air quality, water quality etc. offers clear benefits to industry and the community as the appropriate standards are clearly defined which in turn provides regulatory certainty, which is to be commended. However it is essential that they are set within a framework that clearly defines how the criteria are to be applied to ensure they are used in an appropriate

and consistent manner. The draft guidance statement in its current form does not provide the necessary unambiguous guidance to address these concerns.

Looking at the question of ambient air quality impacts a number of questions spring to mind:

- Where will the ambient air quality criteria be applied? At the premises boundary or the nearest sensitive receptor?;
- Are the criteria intended to be compared to ambient monitoring data and/or dispersion model predictions?;
- Will the criteria apply within buffer zones and inside DER recommended separation distance or outside these areas; and
- How will the criteria be applied in the event of process upsets and emergency releases?

Without providing guidance on these type of issues for all criteria that are provided the uncertainty will remain and lead to inconsistent application of the criteria. Synergy suggests the DER rectify this by conducting workshops with key stakeholders to determine the preferred approach as previously suggested.

4. Regulatory controls

Following are specific comment with respect to this guideline.

1. This guideline introduce new risk concepts that appear to contradict concepts presented in the risk assessment framework guideline. It is vitally important that this is clarified as it is difficult to understand what is proposed. Clause 1 introduces the terminology “emission risk” and “inherent risks of emission types” in the context of the Regulatory Controls Matrix. It is not clear how these concepts relate to the concept of risk in the risk assessment framework. Is it the same or different? The Regulatory Controls Matrix instead talks about emissions and potential impacts. It could be the DER really mean the “risks associated with the impacts from emissions”, which would be more consistent with the approach taken in the risk assessment framework, however it is difficult to determine the exact intention. Additionally the use of the term inherent risk appears different to the approach in the risk assessment framework (see Section 3 comment 1) where the DER risk assessment appears to apply after the controls that have been put in place by the proponent rather than the inherent risk of the emission.
2. Clause 3 of the guidance document appears to have incomplete wording i.e. “In assessing DER will”. It is not clear what the DER is assessing in this clause. This clause also states that the DER will use Table 1 of the Regulatory Controls Matrix to identify inherent risks of the premises. The table doesn’t list inherent risks of premises instead listing potential impacts. Inherent risks are not the same as potential impacts. To treat them as one and the same thing will potentially lead to excessive regulatory controls being imposed on premises with minimal real impacts on the environment and health.
3. The statement in clause 4(c) where it is stated that the regulatory controls matrix list that is provided is not exhaustive and additional risks may arise, brings into question the need for this entire guideline. It is not clear what this guideline is trying to

achieve and it is suggested that the DER should review the need for it. It is especially confusing where the concept of impacts and risks are mixed.

4. In appendix 1 table 2 the DER open up the possibility of imposing specified infrastructure requirements as secondary controls. Without further definition this is an ambiguous statement. For instance if the DER specifies an emission reduction approach that doesn't achieve the necessary reductions despite best intentions, how will this be handled. In effect the proponent has wasted time and money and still not achieved the necessary outcome. The application of this control needs to be further considered and additional guidance provided.



Geoff Park
Manager Environment
Synergy



Ph 