Submission on DER Proposed New Licence Documents & Process

Provided by Electricity Generation and Retail Corporation trading as Synergy.

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 risked 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. It is fair to say that it is difficult to review the current documents as what is proposed relies heavily on the content of documents not yet released.

In the case of the proposed new licence documents and process, comment on this largely depends on the risk assessment framework not yet released. Synergy strongly recommends that once all documents have been released then a further opportunity for review and comment be provided.

Synergy also recommends that the DER consider stakeholder workshops to develop some of the more challenging guidelines prior to release and to review all the guidelines once released. This will go part of the way to addressing the issues highlighted above.

2. Licence Documentation – General

2.1. The potentially retrospective nature of what is proposed is of concern to Synergy. Whilst understanding the continuous improvement regulatory focus for new facilities, the application of similar standards to existing facilities is problematical. The retrofit of significant emission management and reduction is often not practicable for older facilities. Even if it is, then it takes considerable time and resources to undertake the modifications. What is currently being proposed by the DER does not appear to allow for such situations, seemingly taking the same approach for new and existing facilities.

Synergy recommends that separate process be developed one for new proposals and one for existing facilities to allow for the problems highlighted above.

2.2. Similar to the issue raised above it appears that what amounts to a full works approval process is required every time a licence is amended or renewed. This is because despite what changes are occurring, the full form would need to be completed. That would be inconsistent with DER's otherwise stated intention to streamline the process for works approval and licence amendments, for example in the draft Guidance statement on licence and works approval processes. This would be an overly arduous requirement and will drain the resources of not only the proponent but also the DER. A full works approval approach should only be reserved for the most major of amendments to the licence arising from substantial new evidence of impact or significant expansions to operations. Standard renewals and minor modifications should be dealt with through a streamlined process whilst still ensuring the appropriate level of environmental protection. Some of the information required in the application form is excessive and would already be in the possession of the DER. There should not be a requirement to submit the same information repeatedly. The form should allow for an update of previous information.

The DER should adopt a tiered approach to licence approval and associated documentation depending on whether the application is for a new licence, a significant change, minor amendment or routine renewal.

2.3. The other confusing requirement is to specify all activities that will be undertaken on the premises that constitute activities within the categories of prescribed premises under Schedule 1 to the EP Regulations. The level of detail that is required is not clear. By way of example a power station may have a large number of minor ancillary activities occurring on site that do not approach triggering a threshold in the EP Regulations in their own right. For example sewerage disposal, canteen operations, gardening duties to name a few. There doesn't seem to be any obvious reason why the DER would need knowledge or control of these activities. Further it is arguably beyond power of the DER to require information outside of matters that DER regulates under Part V. Yet the licence form seems to require it. If one is not identified then the licensee could be prosecuted. If a new minor process is required then a licence amendment would seem to be required?

2.4. The DER also states in the Licence Documentation consultation paper that "Emissions that relate to the activities but which do not constitute offences under the EP Act are now expressly authorised". The intent of this is not clear, whether it is to:

- Only give a defence for emissions from above threshold activities; or
- Also give a defence for emissions from below threshold activities.

It appears to be the first, as Licence emissions condition 5 only refers to the 'authorised activities'. That is defined to be the activities within the relevant category of prescribed premises, as specified in Schedule 1 to the EP Regulations and hence would only be above threshold activities (even if the category of below threshold activities was listed on the licence). Hence condition 5 would only apply to the above threshold activities and not any other activities identified in the application. If that is the case then there should be no requirement to specify activities in the form that will not be licensed. If the intent is to give a defence to emissions from below threshold activities, then greater consideration should be given to how that will work and be addressed through the licence form and assessment process and in emissions condition 5.

2.5. The decision to remove the annual reporting requirement is a positive one and will reduce the administrative burden whilst still allowing the DER the ability to obtain information and reports when required. This is an appropriate method of dealing

with the issue and this approach should be followed for the other proposal as detailed above.

The DER needs to clarify the level of detail required when it states "specify all activities that will be undertaken" as the current documentation is unclear. To require information on "all activities" would be an excessive burden on industry and appears to be an attempt to regulate everything no matter how small and insignificant. If minor amendments are required then this will trigger the new complicated licence amendment process, which is overkill. This approach is not appropriate nor required for good environmental protection. Further consideration should be given to how the emissions that a defence is provided for, relates to the layout of the application form.

3. Application form: works approval/licence

Comments on this form relates to the previous general comment that all the information required is not really relevant for renewals and minor amendments. There needs to be a tiered approach to the licence application form which will be achievable especially if completing this form is an electronic process as is the norm in this day and age. If you tick the works approval or the concurrent works approval and licence box, you get the full form to complete. If it is an amendment or renewal then you get a modified version focussing on information that would not previously be held by the DER from previous licence applications and reports.

Additionally, some of the questions in the form are framed is such a way and at a very low level that will provide the DER with little real information by which to make a decision on the application. The questions regarding risk from emissions to air and water are good examples. Everything has a risk even if the risk is infinitesimal. The DER really need to critically review the focus and content of all questions in this form to ensure that they are obtaining the information they truly require and not also capturing totally irrelevant information that will overly complicate the licencing process. There will be virtually no applicant that can answer that there is no risk from emissions to air if truthful. If there was no risk then it is unlikely to be a prescribed premises in the first place. What the DER are probably trying to ascertain is the significance of the risk, which is assumed to be determined by the DER's risk management framework yet to be released. The question in the form need to be framed so the level of risk is provided, this is information that the DER can then utilise to make a real and valid assessment. At the moment the information provided in the current form will not aid that process.

3.1. **Part 5. Fit and competent operator** – This information should already be in the possession of the DER for an existing operator as they are known to the DER. This information would be available in the numerous AERs and AACRs that the operator has provided as well as incident reports previously submitted. Requiring this information for every licence renewal and application is an excess that will not serve to further environmental protection. These requirements will turn every licence application and renewal into a legal minefield due to the acknowledgement from the CEO that is required. Surely this is not what the DER intend.

The last requirement in section 5 needing each company director to complete as an individual for every amendment and renewal is also excessive. This may be needed for small companies with a poor or non-existent track record in environmental management or for a new facility with operators not previously known to the DER, but requiring this of larger existing companies with a good track record and for renewals

and amendments is excessive. This should only be a requirement in special circumstances where the company is new or not known to the DER.

3.2. **Part 6 Public health and environmental risks** – Please see previous comment regarding questions that require a yes/no answer to risk from air/water/land emissions. This question needs to be rephrased to align with the DER risk management framework. If there is no risk then the facility is unlikely to require a licence in the first place. The question should be reframed to whether there is a significant inherent risk and whether the risk can be managed to reduce the residual risk to acceptable levels.

4. Licence

Environmental Compliance Condition1– This condition seems to state that you must comply with certain parts of the EP Act that is law. Whilst not being a burden it is an odd thing to see as a condition of licence. This is especially so as the DER have recently released guidelines to counteract similar conditions of licence introduced during the Refire process. Such a duplicative and unnecessary condition appears to contradict the regulatory principles of risk-based regulation and appropriate conditions.

It also:

- Likely constrains the due diligence defence under section 74 of the EP Act. Such a condition is likely to be legally invalid, as a licence condition issued under the Act as it cannot constrain a section of the overriding Act; and
- Give rise to a risk of 'double jeopardy', by making a licensee liable for offences under both the EP Act sections and this condition. This is the worst kind of double jeopardy, because it is not only double exposure for the same circumstances, but for the same legal offence elements.

Condition1 should be removed.

Premises Condition 2 – This clause relating to authorised activities and the relationship to all activities described in the licence application form is particularly problematical and difficult to understand. Does an applicant need to specify all activities in order for them to become authorised activities and thus have a defence against prosecution under section 74A of the EP Act for emissions from unauthorised activities? This whole area is particularly confusing. However it does appear as if the DER are attempting to regulate everything that occurs on a site no matter how insignificant. If the activity does not have any significant environmental impacts then why seek to define it in the licence. The definition of authorised activities at the back of the document does not make it any easier to interpret the DER's requirement.

Infrastructure Condition 4 – The wording in this clause "designed and constructed" appears to be that for an approval rather than a licence for an existing operation. If the intent is to say the description of the approved operation is as follows then the wording needs to be reviewed.

Emissions Condition 5 – The DER make the claim in the licence documentation consultation paper that "Emissions that relate to the activities but do not constitute offences under the EP Act are now expressly authorised". From the wording in condition 5 that statement seems hard to justify. The wording simply says "it may be a defence if prosecuted. As noted in 2.4 above the intent of condition 5 is unclear. The DER should ensure the condition is clear that as to what emissions are authorised and there should be

no requirement in the form to provide details of activities for which emissions will not be authorised.

Geoff Park

Manager Environment

Synergy

[redacted]

Ph [redacted]