Government of Western Australia
Department of Finance

MLN:

Our Ref: 2012/00661 (00426931)

MINISTERIAL | **FEED-IN TARIFF SCHEME CHANGES**

MINISTER FOR ENERGY

Purpose

To provide advice regarding changes to the Feed-in Tariff Scheme as agreed by Cabinet and to seek your approval on Scheme operational matters.

Recommendation

- You note that:
  - legal risks have been identified by the State Solicitor's Office regarding reductions to the Scheme rate;
  - estimates regarding system payback duration should be treated with caution if used as rationale for the reduction in the Scheme rate;
  - a ministerial direction is still required to be issued to Synergy and tabled in Parliament in order for Synergy to absorb Feed-in Tariff costs above those outlined in the 2012-13 Budget, as decided by Cabinet on 19 April 2012 (48-00028);
  - the audit of applications for compliance with the installation deadline is no longer relevant due to changes in the Scheme rate as approved by Cabinet on 8 July 2013; and
  - the Department's Public Utilities Office will not propose to pursue applicants for over-payments as a result of non-compliance with the installation deadline.
- That you approve:
  - messages to be used in the development of a consistent communication package between the Public Utilities Office, Synergy and Horizon Power regarding the changes to the Scheme (Attachment 1);
  - the formal closure of the Scheme, as per Cabinet's decision of April 2011;
  - access to the Scheme for around 240 applicants who purchased a system prior to its suspension, but did not successfully apply to the Scheme before the closure of the application period;
  - continuation of Scheme contracts for participants who demolish their home and rebuild on the same property, and the extension of the contract length where the property was destroyed by fire or accident; and
  - the processing by Synergy of applications for system expansions and the rejection of applications for inverter increases.

Issues

- The reduction in the Scheme rate is likely to result in significant public criticism. Additionally, the State Solicitor's Office has identified legal risks associated with reducing the Scheme rate.
  - Estimates of system payback periods should not be used as rationale for the reduction as this is likely to further increase criticism from the general public.

- The changes to the Scheme rate and duration provide an opportunity to resolve outstanding administrative matters, including its formal closure.
- While the reduction in the rate will reduce the overall cost of the Scheme, Synergy will still be required to absorb some Scheme costs further to the April 2012 Cabinet decision (48-00028).
  - The Minister for Energy must provide the formal direction to Synergy and table the ministerial directions in both Houses of Parliament in order to give effect to Cabinet's decision.

Background Information

Decision to reduce rate

- On 24 June 2013, the Economic and Expenditure Reform Committee (EERC) endorsed the Treasurer's proposal to reduce the Scheme rate for customers receiving the 40 cent rate to 30 cents per kilowatt hour (cents/kWh) on 1 October 2013 and 20 cents/kWh on 1 July 2014.
- On 8 July 2013, Cabinet further endorsed the proposal as part of the 2013-14 State Budget and extended the Scheme by two years (from 10 to 12 years).
  - Cabinet's decision also requested that the Minister for Energy undertake a review of the Scheme, providing a report to the EERC as part of the 2014-15 State Budget process.
- Clause 17.1 (d) of the Scheme's terms and conditions (attached) appear to allow for changes to the Scheme criteria, including the rate.

Result of similar Scheme changes in New South Wales

- A similar decision to reduce the payment rate for existing Scheme participants in New South Wales resulted in considerable community criticism and was later reversed by the State Government.
  - On this basis, it is likely that the decision to reduce the rate will result in widespread community criticism in Western Australia.

Payback duration and key messages for Scheme participants

- The Public Utilities Office has worked with Synergy and the Department of Treasury to agree to assumptions for a model that advises on the system payback duration for applicants based on the estimated date of system purchase.
- The model estimates that:
  - less than 40 per cent, or around 31,000 Scheme recipients may have already recovered their system costs as of 30 June 2013; and
  - with changes to the Scheme from 1 October 2013, it is likely that several thousand customers may still have not recovered system costs after 10 years.
- Customer who purchased systems prior to the commencement of the Scheme are likely to have received less of a payback on their initial capital investment due to the higher cost of systems at that time.

- The model does not examine or estimate the financial effects of the change in the Scheme rate on different types of customers, for instance, those on concessions.
  - However, assuming that customers living on lower incomes were less likely to have bought more expensive systems, it is possible that these customers may be less affected by Scheme changes than those that were able to afford more expensive systems.
- Synergy has estimated that the average Scheme recipient currently receives around $700 per year in Scheme payments for system exports.
  - This number differs from that included in a recent briefing provided by Synergy to the Minister for Energy. The previous briefing was based on Synergy's model, which excluded many customers who installed their systems prior to the commencement of the Scheme.
  - The amount customers receive on individual bills will vary due to changes in system generation and energy use throughout the year.
- This estimate is consistent with publicly available information from the Clean Energy Council on annual system generation in the Perth area and reasonable assumptions regarding system export volumes.
  - The changes to the Scheme will reduce the average annual income from the Scheme to around $570 in 2013-14 and $350 in 2014-15, assuming export behaviour does not change over that time.
  - Assuming that an 'average' customer received payments from the commencement of the Scheme and did not change their export behaviour, the Scheme changes would result in an approximately $1,530 loss for that customer over the lifetime of the Scheme (12 years).
- The model outcomes are very sensitive to the assumptions used for system costs.
  - The Government does not collect information on system costs from Scheme participants. Hence, the model relies on external data, of which there is considerable variation.
- The Public Utilities Office recommends that all estimates of system payback be treated with caution and not be used to justify the decision to reduce the Feed-in Tariff rate for the following reasons.
  - The model indicates that most customers have not yet achieved payback on their initial investment.
  - The model is sensitive to the assumptions used for system cost. The Public Utilities Office is not aware of the system costs paid by consumers. As such, the estimates provided by the model cannot be confirmed.
  - Past experience with Scheme applicants indicates that they are not generally concerned with the concept of payback duration. Many applicants who contact the Public Utilities Office are of the view that their sole benefit of system installation is the payment amount itemised on their bill. This may result in more customers believing that they have not achieved system payback than is actually the case.

- Through the operation of the Scheme, the Premier and the Minister for Energy have made statements to consumers (through ministerial correspondence) that the payback duration is between 4-6 years, with the Feed-in Tariff payments. Providing conflicting messages is likely to result in public criticism.

- The Public Utilities Office is working with Synergy and Horizon Power to develop an agreed communication package for consumers. The package will include:
  - a letter to all Feed-in Tariff recipients advising of the rate change;
  - website materials;
  - fact sheets for consumers;
  - standard responses to common ministerial letters; and
  - call centre standard responses to common questions.
- *Attachment A* provides the key messages on which this communication package will be developed.

Legal implications of Scheme changes

- In advice dated 9 February 2012, the State Solicitor's Office (SSO) identified legal risks associated with reducing the payment rate for existing Scheme participants.
- The SSO noted that negligent misstatement may exist in circumstances where the State:
  - knew that members of the public were relying on its statements in relation to the Scheme, which the SSO notes is "clearly the case"; and
  - where the State failed to take steps to properly monitor the Scheme and knew, or ought to have known, that the Scheme had reached the capacity cap and would not be able to be continued according to its terms, but did not take steps to correct its earlier representations.
- It is understood that, in drafting the advice, the SSO had not been informed that:
  - the then Minister for Energy was advised, prior to the Scheme reaching its capacity cap, that it was about to reach its capacity cap; and
  - at the time the cap was exceeded, in June 2011, the then Minister for Energy was made aware of this and did not suspend the Scheme until 1 August 2011.
- In its advice, the SSO implies that it may be quite difficult for a claimant to demonstrate negligent misstatement in relation to policy matters due to the nature of policy being dynamic.
- However, irrespective of the above the SSO stated that:

  "[If it is considered] reasonable for people to assume that the Scheme would continue to be applied according to its terms in the future...then it is likely that a duty of care would arise on the part of the State...".

- *Additionally, the SSO noted that:*

  "Whilst we do not consider that any action based upon negligent misrepresentation would certainly succeed, on the facts before us, such claims do not appear entirely without some merit. Further, irrespective of the ultimate likelihood of success of a claim against the State based on negligent misstatement, it would seem quite likely that a claim or claims of this nature would be made against the State. That in itself obviously carries some risk and the potential for costs to be incurred in the process irrespective of the ultimate outcome."

- The SSO stated in its advice that the maximum loss that any Scheme participant could suffer is limited to the cost of their initial capital investment and any financing costs associated with it, less any costs saved by virtue of having made the investment in the system.

- A participant would not be entitled to recoup the amount of the Feed-in Tariff for the entirety of the Scheme as announced. Therefore, any losses under a successful claim against the State are likely to be relatively small.

Synergy absorption of Scheme costs

- On 19 April 2012, Cabinet decided that Synergy should absorb all Scheme costs above the amounts allocated in the 2012-13 and subsequent State Budgets.
  - In 2012, Feed-in Tariff costs were around $53 million, exceeding the 2012-13 Budget by around $23 million.
- Ministerial directions under *sections 95, 104* and *111* of the *Electricity Corporations Act 2005* (the Act) have previously been prepared to enable implementation of this decision (48-00028).
  - Under the Act, the Minister is required to table the ministerial directions in both Houses of Parliament within 14 days after the ministerial direction is given.
- The changes to the Feed-in Tariff Scheme to reduce the rate to 20 cents/kWh from 1 July 2014 are anticipated to reduce the Scheme's funding requirements by around $6.4 million in 2013-13, increasing to around $21.7 million from 2015-16 onwards.
  - The ministerial direction is required irrespective of the changes to the Scheme rate. Synergy will be required to absorb significant costs between 2012-13 and 2015-16, with ongoing costs of around $2 million per annum thereafter.

Installation deadline and contractual commitment audits

- In October 2012, the Public Utilities Office finalised an audit of around 13,189 Scheme customers who were subject to an installation deadline of 30 September 2011.
  - The audit identified around 800 applicants who did not install their system prior to the installation deadline and therefore would need to have their rate reduced to 20 cents/kWh.
  - The Public Utilities Office has not received endorsement of the installation deadline audit. However, a decision on the installation deadline audit is no longer required due to the recent decision to reduce the rate for all existing Scheme participants to 20 cents/kWh from 1 July 2014.

- The approximately 800 applicants identified through the audit have now received the full rate of 40 cents/kWh for around two years. Given the potential administrative costs involved, the Public Utilities Office does not propose that the additional payments to these applicants be recouped.

Formal Scheme Closure

- The Scheme was suspended on 1 August 2011 after exceeding the 150 megawatt capacity cap approved by Cabinet in April 2011. The application process for customers with a prior commitment to purchase a system was closed on 17 November 2011.
- Following the closure of the application period, the Public Utilities Office received numerous legitimate claims from customers seeking access to the Scheme. It manages these claims through an appeals process.
  - The Scheme has not yet been formally closed and customers continue to apply through the appeals process.
- Following decision on this matter, the web pages of Synergy, Horizon Power and the Public Utilities Office will be modified. It is proposed that the Office will also close the appeals process to new claimants.

Eligibility of outstanding customers through the appeals process

- Through the appeals process, the Public Utilities Office has identified around 240 requests for access to the Scheme where the customer claims to have contracted to purchase a system prior to the Scheme's suspension on 1 August 2011, but did not apply before the closure of the application period.
  - Currently, these customers cannot access the Scheme under the Public Utilities Office's appeals process criteria because they have not made a documented attempt to access the Scheme prior to the closure of the application period.
  - In many cases, the customer was not aware that an application for the Scheme was required, believing that the lodgement of their application to connect the system with Western Power was adequate.
  - In some cases, the customer's supplier committed to send the application to Synergy, but the application was not subsequently received by Synergy.
- The Public Utilities Office is of the view that it is fair and reasonable to allow access to the Scheme where an applicant's purchase was made prior to the Scheme's suspension on 1 August 2011 and the applicant has approached the Public Utilities Office's Scheme appeals process prior to the announcement of the reduction in the Scheme rate.
  - The resolution of all applications currently being considered through the appeals process is necessary to facilitate the orderly formal closure of the Scheme.

Demolished and destroyed properties

- Synergy's billing system does not allow automatic continuation of Scheme payments for customers who demolish their home and re-build on the same property (with the same system).
  - Synergy has previously declined to manually intervene to allow these customers access to the Scheme without first being advised to do so by the Government.
- Following a decision on this matter, the Public Utilities Office will advise Synergy to allow these customers continued access to the Scheme.
  - Where the property is demolished by choice, Scheme payments will continue and will not be suspended for the duration of the new property re-build. This means that those who demolish their home by choice will not be credited during the re-build phase, unless the system is exporting energy to the grid.
  - Where the property is destroyed by natural disaster, Scheme payments will be suspended whilst the new home is re-built. Payments will recommence when the house is built, and will be made for the remainder of the Scheme's 10-year contract period. The Public Utilities Office views this as a fair and reasonable measure as the homeowner did not make an active decision to demolish the property.
- The Scheme's terms and conditions, which are currently silent on the matter, will be amended following a decision to ensure future clarity.

Inverter expansions

- Synergy has received around 200 applications from Scheme participants to increase inverter capacity. It has also received an additional 400 system change applications, some of which may request inverter increases.
  - Synergy has advised that it will not process these applications without approval from the Government, despite inverter expansions not being permitted under the Scheme's terms and conditions.
- Following a decision on this matter, Synergy will send letters to all Scheme participants reminding them that inverter increases are not allowed under the Scheme's terms and conditions.

Approved / Not Approved

Ray Challen
DEPUTY DIRECTOR GENERAL

19 July 2013

DR MIKE NAHAN MLA
MINISTER FOR ENERGY; FINANCE

Date: ....

Att.

Attachment A

COMMUNICATING CHANGES TO THE FEED-IN TARIFF SCHEME

To be used in website information, fact sheets and direct community correspondence, as relevant

- There are currently around 78,000 Scheme participants.
- There are around 164 megawatts of panel capacity and around 192 megawatts of inverter capacity subscribed to the Scheme.
- Rate adjustments will be made to Scheme participants currently receiving the 40 cents per kilowatt hour rate (kWh). These adjustments are as follows:
  - from 40 cents/kWh to 30 cents/kWh from 1 October 2013; and
  - from 30 cents/kWh to 20 cents/kWh from 1 July 2014
- There are no intended rate changes for Scheme participants currently receiving the 20 cent/kWh rate.
- The payment duration for all Scheme participants has been extended from 10 years to 12 years.

To be used only in direct community correspondence

- Many community needs, such as health, policing and education, compete for a limited budget.
- The decision to reduce the Scheme rate was necessary to ensure that the Government can continue to expand and improve these services and meet the growing needs of the community at a time when the Budget is under pressure.
- The decision to extend the Scheme duration from 10 to 12 years will partly off-set the effects of the rate reduction, while ensuring that immediate funding priorities are addressed.

PUBLIC UTILITIES OFFICE

MINISTERIAL ACTION SHEET

Date Received at PUO: —

Ministerial TRIM File No: —

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ACTION REQUIRED: Signed by ...Min....

- Draft ☐
- Advice ☒
- Attention ☐
- Direct ☐
- Comment ☐
- File ☐
- Briefing Notes/Speech Notes/Events Summary ☐

Response due with
Deputy Director General/Director: —

Response due at DG office: —

Response due at Minister's Office: —

KPI

☒ Task

☐ Project

← **HAVE YOU TICKED THE KPI BOX**

		Name	Sign Off	Date Completed
1	Deputy DG	Ray Challen	[signature]	19/7/13
2	Director			
3	Assistant Director	Helen Barker	[signature]	16/7/13
4	Actioning Officer	Mena Gilchrist	[signature]	16/7/13
5	Actioning Officer			

COMMENTS:

Completed 19.7.13.