



Government of Western Australia
Department of Finance
Public Utilities Office

Consultation Paper – Proposed amendments to the Electricity Networks Access Code

Electricity Market Review

Department of Finance | Public Utilities Office
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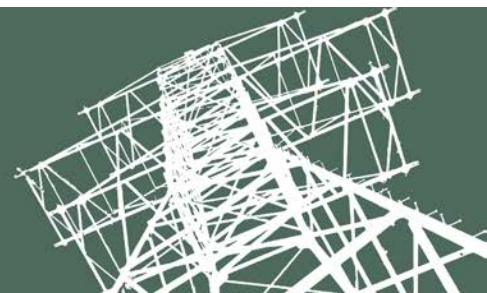


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Glossary

Term	Definition
AA3	Western Power's current access arrangement approved by the Economic Regulation Authority's further final decision dated 29 November 2012 (as varied by the Economic Regulation Authority on 4 June 2013, 3 April 2014 and 4 June 2015).
AA4	Western Power's access arrangement as next reviewed.
Network Regulation Reform Bills	The package of network regulation reform legislation progressing through Parliament as three cognate Bills. It comprises the National Electricity (Western Australia) Bill 2016, National Gas Access (WA) Amendment Bill 2016 and the Energy Legislation Amendment and Repeal Bill 2016.

1. Introduction

The Western Australian Government commenced a process to transfer the regulation of Western Power’s network to the national electricity regulatory framework through the Network Regulation Reform Bills.¹

It was intended that the Network Regulation Reform Bills would be passed by the Western Australian Parliament by late November 2016 to allow Western Power to commence its next regulatory period under the Australian Energy Regulator’s determination, and in accordance with the national regulatory framework from 1 July 2018. For a determination to be in place from 1 July 2018, various transitional regulatory instruments were to be made under the Network Regulation Reform Bills by December 2016 to allow Western Power and the Australian Energy Regulator to commence the necessary regulatory process.

It has become apparent the Government’s proposed timeframe to enact the Network Regulation Reform Bills cannot be met by the end 2016. This means the transfer of regulation of Western Power to the national regulatory framework cannot occur in December 2016 as planned. Despite this, Western Power will continue to meet its regulatory obligations under its current State-based regulatory framework in accordance with the Electricity Networks Access Code 2004 (Access Code).

In order to provide certainty for maintaining effective regulation of Western Power, the Minister for Energy is proposing to make amendments to the Access Code to continue regulation of Western Power under the existing Access Code regulatory framework.

This consultation paper has been prepared to facilitate public consultation on the proposed amendments, pursuant to the Minister for Energy’s obligations under section 108 of the *Electricity Industry Act 2004* (the Act)

1.1 Overview of the Access Code amendments

The proposed amendments will have minimal effect on the standard access arrangement review process under Chapter 4 of the Access Code. In maintaining regulation of Western Power under the Access Code framework, the aim is to ensure the continuation of suitable economic regulation for the next regulatory period with as few changes as possible to the existing regulatory process and framework. The amendments are therefore the minimum changes required to:

1. extend the time by which Western Power is required to submit its proposed revisions to its next access arrangement; and
2. balance the need for regulatory stability and certainty for the next regulatory review process against the need for reform to the regulatory framework as identified through the Electricity Market Review.

1.2 Invitation for submissions

In accordance with the requirements of the Act, the Minister for Energy is inviting public comment on the proposed amendments to the Access Code. The proposed amendments are shown in Appendix A.

¹ The Network Regulation Reform Bills is a collective term to refer to the three Bills that are progressing through Parliament as cognate Bills. They include National Electricity (Western Australia) Bill 2016, National Gas Access (WA) Amendment Bill 2016 and the Energy Legislation Amendment and Repeal Bill 2016.

Written submissions on the proposal may be made by any person and should be received no later than **12 December 2016**.

Email submissions are preferred and must be sent to the following email address:
electricitymarketreview@finance.wa.gov.au

Email submissions are to be titled 'Access Code Amendment Response – [name of the submitting company or individual]'.

Submissions may also be sent by post to:

Access Code Amendment Project Lead – Electricity Market Review
Public Utilities Office
Department of Finance
Locked Bag 11
CLOISTERS SQUARE WA 6850

1.3 Publication of submissions

Submissions will be published at www.finance.wa.gov.au/publicutilitiesoffice, unless you request otherwise.

Please indicate clearly on the front of your submission if you wish all or part of it to be treated as confidential. Contact information, other than your name and organisation (where applicable) will not be published.

Requests may be made under the *Freedom of Information Act 1992 (WA)* for any submissions marked confidential to be made available. Requests made in this manner will be determined in accordance with the provisions under that Act.

2. Amendments to the Access Code

The Minister for Energy is proposing amendments to the Access Code to principally provide for the next review of Western Power's access arrangement (known as AA4) on the following basis:

- Require that Western Power submit its proposed revisions on or before 2 October 2017 (this is an extension of the previous revisions submission date of 31 December 2016).
- Require the Economic Regulation Authority to take all reasonable steps to ensure that the revisions commencement date occurs on or before 1 July 2018.
- Set the target revisions commencement date for the following review of the access arrangement (known as AA5) to be 1 July 2020.

The proposed amendments to the Access Code are set out in Appendix A.

2.1 Rationale for the amendments

The Access Code requires Western Power to submit proposed revisions to its access arrangement to the Economic Regulation Authority for approval on a periodic basis. The approved access arrangement contains the allowed revenues and terms and conditions of access to Western Power's network, typically for a five-year period.

Western Power is currently operating under its AA3, which runs from 21 February 2013 to the next revisions commencement date (which was targeted for 1 July 2017).

Given the significant nature of the access arrangement and financial consequences for Western Power from its revenues being determined by an independent regulatory body, it is prudent to devote adequate time and resources in preparing forecast expenditure proposals and terms of access for the AA4 period well in advance of the revisions submission date.

In March 2015, when the Government launched Phase Two of the Electricity Market Review to (among other things) transfer the regulation of Western Power to the national regulatory framework from 1 July 2018, Western Power sought to defer the revisions submission date for the AA4 proposal by application to the Economic Regulation Authority, as allowed under the Access Code. The purpose of deferring the revisions submissions date for the AA4 proposal was to provide Western Power with greater certainty in directing its resources and effort in preparing for meeting its obligations under the national regulatory framework rather than focussing on preparing for the AA4 proposal.

On 4 June 2015, the Economic Regulation Authority approved Western Power's application to defer the revisions submission date to 31 December 2016, which was the latest date that it could be extended to, without amending the Access Code.

The Network Regulation Reform Bills were expected to have passed the Western Australian Parliament in November 2016, with transitional arrangements commencing from December 2016. The Government, Western Power and users of the Western Power network have been proceeding on the basis that the national regulatory framework would be in place within the timeframes contemplated by the Network Regulation Reform Bills.

However, the risk that the Network Regulation Reform Bills will not pass Parliament within the expected timeframe has now manifested. Therefore, amendments to the Access Code are required to allow Western Power sufficient time to prepare a regulatory proposal to the Economic Regulation Authority under the Access Code, instead of the expected submission to the Australian Energy Regulator under the national regulatory framework.

The proposed amendments to the Access Code mean that, in the absence of the Network Regulation Reform Bills passing Parliament in 2016, the current regulatory regime for Western Power's network will continue for the next regulatory period. Western Power will be required to submit its usual access arrangement regulatory proposal under the Access Code and the Economic Regulation Authority will make a full regulatory determination including a reset of Western Power's incentive mechanisms to provide suitable incentives for the three-year period. The AA4 determination would also include the normal ex-post review of capital expenditure from the previous regulatory period.

The proposed amendments extend Western Power's regulatory proposal submission date to 2 October 2017. This gives Western Power an additional nine months to prepare its AA4 proposal.

If Western Power is not given sufficient time to make a genuine submission to the Economic Regulation Authority (that is, Western Power is required to submit its AA4 proposal by 31 December 2016) then under the Access Code the Economic Regulation Authority would be required to draft and approve its own proposed revisions to the access arrangement. In this case, the Economic Regulation Authority would not have the benefit of the detailed information Western Power would provide in its regulatory proposal with its own proposed revisions. It is considered giving Western Power sufficient time to prepare a robust regulatory proposal is more likely to achieve the best result for consumers under the circumstances.

In order to give Western Power time to prepare a robust and compliant AA4 proposal, and for the Economic Regulation Authority to undertake the usual regulatory process, the regulatory determination will need to occur after the end of the AA3 regulatory period on 30 June 2017. The normal regulatory processes under the Access Code permits this and allows for the Economic Regulation Authority to adjust the forward looking revenue and price path over the remainder of the period to maintain the principle of financial capital maintenance.

The amendments prescribe a target revisions commencement date to be specified in the revised access arrangement as mid-2020, instead of the standard five-year period after the start of the access arrangement period. This is to provide regulatory certainty and stability for the period until mid-2020, while acknowledging that future reform to the regulatory framework is likely given the deficiencies identified in the framework as part of the Electricity Market Review. The shorter regulatory period is intended to provide regulatory certainty for the AA4 revision process, while minimising the likelihood that the regulatory period may need to be truncated to accommodate any future reforms.

The amendments to the Access Code place an obligation on the Economic Regulation Authority to take reasonable steps to ensure that the AA4 revisions commencement date occurs on or before 1 July 2018. This is considered to be the earliest feasible time by which the approval process can be undertaken.

The shorter the time between the target revisions commencement date of 1 July 2017 and the actual revisions commencement date, the lower the likelihood of price shock from the adjustment to the price path. A revisions commencement date on or before 1 July 2018 would limit this time to one year, with the price path of the two years of the access arrangement period adjusted to account for the continuation of the 2016-17 Price List prior to the revisions commencement date.

2.2 Explanation of specific amendments

Section 4.77

The amendments in sections 4.78 to 4.82 will apply to alter the next access arrangement review process following the date the proposed amendments come into effect only. All subsequent reviews of Western Power’s access arrangement will occur in accordance with the process set out in Chapter 4 of the Access Code.

Section 4.78

This new definition for the ‘2016 amendments’ is required due to the rolling nature of Western Power’s access arrangement under the Access Code. To ensure the amendments apply to the next review only, it is necessary to peg these amendments to a particular point in time. This is consistent with the approach taken for transitional amendments to the Chapter 4 process in the past.

Section 4.79

This amendment extends the deadline for Western Power to submit its proposed revisions to its access arrangement and the access arrangement information.

If Western Power fails to submit its proposed revisions by the revised deadline, then the Economic Regulation Authority will still be able to propose its own revisions to the access arrangement as per the process in sections 4.49 to 4.51 of the Access Code.

Section 4.80

This amendment imposes an aspirational date of 1 July 2018 for the ‘revisions commencement date’ that is to be specified by the Economic Regulation Authority in accordance with Chapter 4. As this date is aspirational only, the Economic Regulation Authority will not be in breach of the Access Code if the ‘revisions commencement date’ occurs after 1 July 2018.

Section 4.81

This amendment requires the Economic Regulation Authority to provide reasons if:

- it determines that it will not be able to specify a revisions commencement date on or before 1 July 2018;
- it specifies a revisions commencement date after 1 July 2018; or
- it has not specified a revisions commencement date by 1 July 2018.

This is intended to provide substantiation that the Economic Regulation Authority has taken reasonable steps to meet the aspirational ‘revisions commencement date’.

Section 4.82

This amendment hardcodes the next ‘target revisions commencement date’ (to be specified in AA4) as being 1 July 2020.

3. Disclaimer

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- (a) make no representation or warranty as to the accuracy, reliability, completeness or currency of the information, representations or statements in this publication (including, but not limited to, information which has been provided by third parties); and
- (b) shall not be liable, in negligence or otherwise, to any person for any loss, liability or damage arising out of any act or failure to act by any person in using or relying on any information, representation or statement contained in this publication.

Appendix A : Proposed Access Code amendments

After section 4.76 insert the following new heading and sections:

“

Review of access arrangement for the Western Power Network after 2016 Code change

4.77 Sections 4.78-4.82 apply only in respect of the application of the next *review* of the *access arrangement* for the *Western Power Network* after the *2016 amendments* and not any subsequent *reviews*.

4.78 In sections 4.77 to 4.82—

“**2016 amendments**” means the amendments to this *Code* made by the *Electricity Networks Access Code Amendments 2016*.

4.79 Despite anything else in this *Code* or the *access arrangement* for the *Western Power Network*, the *revisions submission date* by which the Electricity Networks Corporation must submit its *proposed revisions* to the *access arrangement* for the *Western Power Network* and revised *access arrangement information* to the *Authority* is deemed to be 2 October 2017.

4.80 The *Authority* must take all reasonable steps to ensure that the *revisions commencement date* occurs on or before 1 July 2018.

4.81 If, for any reason the *Authority*—

(a) determines that it will not be able to specify a *revisions commencement date* in the time contemplated by section 4.80; or

(b) has not specified a *revisions commencement date* by 1 July 2018,

the *Authority* must *publish* a notice within 5 *business days* after the earlier of 1 July 2018 and the date on which the *Authority* makes its determination under section 4.81(a), stating the reasons for that determination or non-specification.

4.82 Despite anything else in this *Code* including section 5.31(b), the *target revisions commencement date* to be specified in the revised *access arrangement* for the *Western Power Network* in accordance with the *review* referred to in section 4.77 is 1 July 2020.