

# Electricity Industry Act 2004

## **Electricity Networks Access Code 2004**

### **(Unofficial consolidated version)**

10 May 2024

This is an unofficial version of the Electricity Networks Access Code 2004, as originally Gazetted on 30 November 2004, including amendments made by:

- WAGG, No 207, 8 November 2005, Operational 8 November 2005;
- WAGG, No 59, 31 March 2006, Operational 1 April 2006;
- WAGG, No 152, 1 September 2006, Operational 1 September 2006;
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- WAGG, No 137, 29 June 2007; Operational 29 June 2007;
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- WAGG, No 13, 25 January 2008, Operational 25 January 2008;
- WAGG, No 180, 22 October 2008, Operational 22 October 2008;
- WAGG, No 182, 30 September 2011, Operational 30 September 2011;
- WAGG, No 61, 17 April 2012, Operational 17 April 2012;
- WAGG, No 183, 21 November 2014, Operational 21 November 2014;
- WAGG, No 231, 23 December 2016, Operational 23 December 2016;
- WAGG, No 108, 26 June 2020, Operational 26 June 2020;
- WAGG, No 157, 18 September 2020, Operational 18 September 2020;

- WAGG, No 118, 2 July 2021, Operational 2 July 2021;
- WAGG, No 134, 30 July 2021, Operational 30 July 2021;
- WAGG, No 122, 12 September 2023, Operational 12 September 2023; and
- WAGG, No 54, 10 May 2024, Operational 10 May 2024.

Footnotes and references to “[Heading not used]” and “[Not used]” are included for readability of this document only and do not form part of the Electricity Networks Access Code 2004.

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## **Approval by Minister**

I, ERIC RIPPER, Minister for Energy for the State of Western Australia, under section 104(1) of the *Electricity Industry Act 2004* hereby establish the Electricity Networks Access Code contained in this document.

In accordance with section 41 of the *Interpretation Act 1984*, this Code comes into operation on the day of its publication in the Gazette.

ERIC RIPPER

Dated at Perth this 29th day of November 2004.

# Contents

<b>Chapter 1 – Introductory</b> .....	<b>15</b>
Citation.....	15
Commencement .....	15
Definitions .....	15
Interpretation .....	44
<b>Chapter 2 – General Principles</b> .....	<b>46</b>
Code objective.....	46
Code objective with other objectives, requirements and factors etc .....	46
Freedom to contract .....	47
Service provider to use reasonable endeavours to provide access to covered services .....	49
Requirement to undertake work and funding of work.....	50
<b>Chapter 3 – Coverage</b> .....	<b>51</b>
<b>Subchapter 3.1 – Covered networks</b> .....	<b>51</b>
Western Power Network is covered .....	51
When coverage starts for Horizon Power’s Pilbara network .....	51
Other networks may be covered .....	52
<b>Subchapter 3.2 – Criteria for coverage</b> .....	<b>52</b>
Minister’s decision on coverage .....	52
Coverage criteria .....	52
Factors the Minister must have regard to .....	53
<b>Subchapter 3.3 – Coverage process</b> .....	<b>53</b>
Applications for coverage .....	53
Minister may dismiss a coverage application .....	53
Invitation for submissions and issues paper.....	53
First round public submissions .....	54
Draft coverage decision by the Minister .....	54
Second round public submissions .....	54
Final coverage decision by Minister .....	55
Final coverage decision has effect .....	55
Late submissions.....	55
Reasons.....	55
Service provider agrees to network coverage.....	55
Extensions of time under this Chapter .....	55
<b>Subchapter 3.4 – Revocation of coverage</b> .....	<b>56</b>
Revocation of coverage.....	56
<b>Subchapter 3.5 – Miscellaneous</b> .....	<b>57</b>
Advertising.....	57
Publishing .....	57
Automatic coverage.....	57
Notification of network modification .....	57
<b>Subchapter 3.6 – Transitional matters relating to form of regulation decision</b> .....	<b>58</b>
Contracts preserved .....	58
How applications and disputes in progress are managed.....	58
<b>Chapter 4 – Access Arrangements: Approvals and Review</b> .....	<b>61</b>
<b>Subchapter 4.1 – Approval process</b> .....	<b>64</b>
Submission of first access arrangement .....	64

Access arrangement information.....	64
Invitation for submissions and issues paper.....	65
First round public submissions .....	66
Draft decision by Authority.....	66
Second round public submissions .....	67
Revised proposed access arrangement.....	67
Final decision by Authority.....	67
[Heading not used] .....	68
[Heading not used] .....	68
[Heading not used] .....	68
Access arrangement start date .....	68
<b>Subchapter 4.2 – Criteria for approval.....</b>	<b>69</b>
[Heading not used] .....	69
Criteria for approval of a proposed access arrangement .....	69
Factors the Authority must have regard to .....	70
[Heading not used] .....	70
Access arrangement must not override prior contractual rights.....	70
Conditional approval – price lists.....	71
<b>Subchapter 4.3 – Revision and review .....</b>	<b>71</b>
Trigger events.....	71
Revision of price control or pricing methods during an access arrangement period .....	71
Revision of access arrangement if Code is amended.....	72
Other revisions during an access arrangement period .....	72
Mid-period revisions do not necessarily involve full review.....	73
Procedure for amendments under sections 4.41 and 4.41A.....	73
Review of access arrangement .....	73
<b>Subchapter 4.4 – Miscellaneous .....</b>	<b>74</b>
Late submissions.....	74
No confidentiality for certain documents .....	74
Authority drafting and approving own access arrangement if no access arrangement submitted .....	75
Interim access arrangement in the event of delay .....	75
Extensions of time under this Chapter 4 .....	76
Suspension of deadlines when Authority obtains information.....	77
Suspension of deadlines for judicial proceedings .....	77
Suspension of deadlines for Code amendment .....	78
[Heading not used] .....	78
[Heading not used] .....	79
“Review of access arrangement for the Western Power Network after first 2020 Code change ..	79
Amendments of model documents for Western Power Network.....	79
<b>Chapter 5 – Access Arrangement: Content .....</b>	<b>81</b>
Required contents of an access arrangement.....	81
Reference services.....	82
Standard access contract for each reference service .....	82
Service standards for each reference service .....	83
Applications and queuing policy .....	84
Contributions policy .....	87
Contributions for certain Western Power Network work.....	89
Headworks scheme .....	89
Efficiency and innovation benchmarks .....	91
Supplementary matters .....	91
Revisions submission .....	92
Trigger events.....	93
Multi-function asset policy .....	93
Assessment of model documents .....	94

<b>Chapter 6 – Price Control</b> .....	<b>95</b>
<b>Subchapter 6.1 – Target revenue</b> .....	<b>95</b>
Form of price control.....	95
Form of price control for first access arrangement.....	95
Price control objectives.....	95
Recovery of deferred revenue.....	97
Recovery of advanced metering communications infrastructure expenditure.....	97
Target revenue may be adjusted for unforeseen events.....	98
Target revenue may be adjusted for technical rule changes.....	99
‘Investment adjustment mechanism’ defined.....	99
Requirement for an investment adjustment mechanism.....	100
‘Gain sharing mechanism’ defined.....	100
Requirement for a gain sharing mechanism.....	100
Objectives for gain sharing mechanism.....	101
‘Surplus’ defined.....	101
‘Deficit’ defined.....	101
Prior surpluses may be retained.....	102
Determining the above-benchmark surplus or below-benchmark deficit.....	102
Determining the increase or decrease to the target revenue.....	102
‘Service standards adjustment mechanism’ defined.....	102
Requirement for service standards adjustment mechanism.....	103
Authority may make a determination of excluded services for a covered network.....	105
Tariff equalisation contributions may be added to target revenue.....	106
<b>Subchapter 6.2 – Calculation of Service provider’s Costs</b> .....	<b>106</b>
When this Subchapter 6.2 applies.....	106
Non-capital costs.....	107
Capital-related costs.....	108
Determining the capital base.....	108
Capital base for the start of the first access arrangement period.....	108
Capital base for the start of subsequent access arrangement periods.....	109
Capital base must not include forecast new facilities investment.....	109
Test for adding new facilities investment to the capital base.....	110
New facilities investment test.....	110
Authority must make guidelines.....	112
Recoverable portion.....	112
Speculative investment.....	112
Redundant capital.....	113
Calculating weighted average cost of capital.....	113
Authority may make a determination of a methodology for calculation of weighted average cost of capital.....	114
Depreciation.....	115
Consultation with AEMO.....	115
<b>Subchapter 6.3 – Service provider may seek approval for costs</b> .....	<b>115</b>
Approval for new facilities investment.....	115
Approval for non-capital costs.....	116
Approval for access reform costs.....	117
<b>Subchapter 6.4 – Multi-function assets</b> .....	<b>117</b>
<b>Chapter 6A – Alternative options</b> .....	<b>119</b>
Network Opportunity Map.....	119
Alternative options strategy and vendor register.....	121
Net Benefit Valuation Guidelines.....	122
Model alternative option service contract.....	123
<b>Chapter 7 – Pricing methods and tariff structure statements</b> .....	<b>125</b>
‘Pricing methods’ defined.....	125
Tariff structure statements.....	125

Form of pricing methods.....	126
Pricing objective .....	126
Application of the pricing principles .....	126
Pricing principles .....	127
[Heading not used] .....	129
[Heading not used] .....	129
Tariff components .....	129
Postage stamp charges in certain cases.....	129
‘Equivalent tariff’ defined .....	130
Prudent discounts .....	130
Discounts for distributed generating plant .....	130
Access arrangement must detail policies regarding discounts .....	130
Tariff equalisation contributions must be included as a tariff component for distribution network users .....	131
<b>Chapter 8 – Price lists.....</b>	<b>132</b>
Submission and approval of price lists if required .....	132
Contents of price list .....	134
Revision of reference tariff change forecast.....	135
Publication of information about tariffs .....	135
<b>Chapter 9 – Regulatory test .....</b>	<b>136</b>
<b>Subchapter 9.1 – Introductory .....</b>	<b>136</b>
Objectives of this Chapter 9 .....	136
No major augmentation without regulatory test determination.....	136
‘Regulatory test’ defined .....	137
‘Committed’ defined.....	137
Authority may make a determination that an augmentation is or is not a major augmentation ..	137
Service provider must make information available.....	138
<b>Subchapter 9.2 – Regulatory test process .....</b>	<b>138</b>
Regulatory test as part of access arrangement approval process .....	138
Regulatory test not as part of access arrangement approval process .....	139
Regulatory test may be expedited, otherwise modified or waived .....	140
Vexatious etc alternative options.....	141
<b>Subchapter 9.3 – Anti-avoidance provisions .....</b>	<b>141</b>
Anti-avoidance provisions.....	141
<b>Chapter 10 – Dispute Resolution .....</b>	<b>143</b>
<b>Subchapter 10.1 – Introduction .....</b>	<b>143</b>
Commercial Arbitration Act 2012 does not apply .....	143
Procedural rules .....	143
<b>Subchapter 10.2 – Access Disputes .....</b>	<b>143</b>
Notification of a dispute .....	143
Other parties joining .....	143
Conciliation and reference to arbitration.....	144
Authority not required to conciliate .....	144
Expedited hearing of disputes under applications and queuing policy .....	144
Factors which the arbitrator must have regard to.....	145
The arbitration .....	145
Arbitrated tariff to be guided by access arrangement and price list .....	145
Arbitrated tariffs for reference services .....	145
Arbitrated terms for reference services .....	146
Arbitrated tariffs for non-reference services .....	146
Award by the arbitrator .....	147
Restrictions on access awards.....	148
Arbitrated award requiring work to be undertaken .....	148

Effect of awards .....	148
Costs of arbitration .....	149
<b>Subchapter 10.3 – Application of the regulatory test in an arbitration .....</b>	<b>149</b>
Arbitrator must make proposed award if award would require major augmentation .....	149
Service provider must consult and submit major augmentation report .....	150
Service provider’s costs of compliance, if applicant withdraws .....	150
Authority must publish determination regarding major augmentation report .....	150
Arbitrator must have regard to Authority’s determination .....	151
<b>Subchapter 10.4 – Contractual Disputes .....</b>	<b>151</b>
Jurisdiction of arbitrator .....	151
Procedural rules .....	151
<b>Chapter 11 – Service standards .....</b>	<b>153</b>
Service provider must comply with service standards .....	153
Authority to monitor service standards .....	153
Penalties for breach of service standards .....	153
<b>Chapter 12 – Technical Rules .....</b>	<b>155</b>
Objectives of the technical rules .....	155
Persons bound by technical rules .....	155
Limited application of technical rules in respect of certain non-covered networks in an interconnected system .....	155
Technical rules prevail over contract .....	156
Covered networks must have technical rules .....	156
[Heading not used] .....	156
Approval process for technical rules – Covered network .....	157
[Heading not used] .....	158
Have regard to current regulation in case of deadlock .....	158
Commencement of technical rules .....	159
Technical rules committee .....	159
Recommendations from the technical rules committee .....	162
Authority may observe the technical rules committee .....	162
Scope and content of technical rules .....	162
Person applies to service provider for exemption from technical rules .....	162
Service provider applies to Authority for authorisation to grant exemption from technical rules .....	163
Amendments to technical rules .....	165
Notification of changes to technical laws .....	168
Review of technical rules .....	168
Coordination with other service providers in an interconnected system .....	168
[Heading not used] .....	169
[Heading not used] .....	169
[Heading not used] .....	169
[Heading not used] .....	169
Support services for technical rules committee .....	170
Reporting by the Authority .....	170
<b>Chapter 13 – Ringfencing .....</b>	<b>171</b>
Service provider must comply with ringfencing objectives and rules .....	171
Application of ringfencing objectives and rules to integrated providers .....	171
‘Ringfenced business’ defined .....	171
Other business must have deemed access contract .....	171
Associate contracts .....	172
Amendments to associate contracts and deemed access contracts .....	172
Ringfencing objectives .....	172
Factors the Authority must have regard to .....	174
Authority may approve ringfencing rules .....	174
Ringfencing rules and compliance procedures are not confidential .....	175
Additional ringfencing rules for an integrated provider .....	175



Service provider to procure compliance by its associates .....	175
Commencement time for ringfencing rules.....	176
Exemptions from ringfencing requirements.....	176
Compliance monitoring and compliance reporting .....	177
Breach of ringfencing requirements .....	177
Service provider to provide information to Authority and arbitrator .....	178
<b>Chapter 14 – Administration and Miscellaneous .....</b>	<b>179</b>
Service provider to provide information on access arrangements .....	179
Data collection regarding target revenue .....	179
Public register .....	179
Register of interested persons.....	181
Protection for the Authority .....	181
Treatment of confidential information .....	181
How this Code applies to multiple service providers .....	182
How this Code applies to successor service providers .....	183
Authority may seek advice.....	183
CPI adjustment .....	183
General process for public consultation .....	184
Detailed provisions regarding contributions for certain work on the Western Power Network ..	184
Guidelines by the Authority.....	184
<b>Chapter 15 – Transitional.....</b>	<b>186</b>
Minister may make determinations.....	186
Access arrangements for SWIS to be compatible with market .....	186
Access arrangements to be compatible with changes to contestability .....	186
Preservation of Western Power Network actions .....	186
[Heading not used] .....	187
Transitional arrangements for 2020 (No. 2) amendments .....	187
<b>Chapter 16 – Priority Projects.....</b>	<b>189</b>
Minister may make determinations.....	189
<b>Appendix 1 – Flowchart of access arrangement approval process .....</b>	<b>190</b>
<b>Appendix 2 – Model Applications and Queuing Policy .....</b>	<b>191</b>
<b>Subappendix 2.1 – Interpretation .....</b>	<b>191</b>
Definitions and Interpretation.....	191
Transition of prior applications.....	195
Negotiations in good faith .....	195
Classes of applications.....	195
<b>Subappendix 2.2 – The application.....</b>	<b>196</b>
Informal communications.....	196
Confidentiality .....	196
Costs of processing application.....	197
Lead times for applications.....	198
Access application.....	198
Errors or omissions in an application .....	200
Additional information .....	200
<b>Subappendix 2.3 – Capacity increase notices and customer transfer requests.....</b>	<b>200</b>
Capacity increase notice .....	200
Lodgement fees for capacity increase notices .....	201
Lead times for capacity increase notices .....	201
Form of capacity increase notices .....	201
Additional information .....	201
Customer transfer requests .....	202

<b>Subappendix 2.4 – The Queue</b> .....	<b>202</b>
Queuing rules apply only when there are competing applications .....	202
Queuing rules determine priority of applications .....	202
More than one queue .....	203
First come first served principle.....	203
Bypass .....	203
Applications in relation to tender projects etc.....	204
Reserve capacity auctions for SWIS .....	205
Processing of applications not affected.....	205
Exercising an option not affected .....	205
Priority of withdrawn applications .....	206
Provision of information about position in queue .....	206
<b>Subappendix 2.5 – Amendment and withdrawal of application</b> .....	<b>207</b>
Amendment to application .....	207
Amending application to address necessary work .....	207
Priority of amended applications .....	207
Withdrawal of application.....	208
Applications do not expire .....	208
<b>Subappendix 2.6 – Processing the application and making the <i>access offer</i></b> .....	<b>209</b>
Service provider must be expeditious and diligent .....	209
Conditions precedent permitted in access contract .....	209
Conditions precedent and determination of spare capacity .....	209
Security.....	209
Initial response .....	211
Preliminary assessment .....	212
Progress reporting.....	212
Service provider must make access offer .....	213
Extension of time to perform obligations .....	213
Terms of access offer – If application requests reference service .....	214
Terms of access offer – If application requests non-reference service.....	215
Arbitrator’s powers preserved .....	215
Access offer is not a contract .....	215
Applicant’s options on receipt of an access offer .....	215
If applicant accepts access offer .....	216
<b>Appendix 2A – Transitional Western Power Network Applications and Queuing Policy</b> .....	<b>217</b>
<b>Appendix 3 – Model Standard access contract</b> .....	<b>218</b>
Parties.....	219
Background .....	219
Definitions and interpretation.....	219
Interpretation .....	230
Duration .....	232
There must be both a capacity contract and a technical compliance contract.....	232
When the parts of this contract apply .....	233
Provision and use .....	233
Contracted capacity.....	233
Contracted maximum demand and declared sent-out capacity .....	233
Variation to contracted capacity .....	234
Relocation.....	234
Customer transfer .....	235
Provisions of access arrangement on supplementary matters apply.....	235
Curtailment .....	235
Title to electricity .....	236
Designated controllers.....	236
Tariff and charges.....	238
Invoicing and payment.....	240

Security .....	243
Good electricity industry practice .....	244
Cooperation .....	245
Directions from system operator .....	245
User must provide information .....	245
Technical rules .....	245
Actions of third parties causing user to breach technical rules .....	245
Tariff and charges.....	245
Invoicing and payment.....	246
Security.....	246
Service provider must comply with service standards .....	246
Representations and warranties.....	246
Liability and indemnity .....	248
Insurances .....	250
Force majeure .....	251
Default .....	252
Termination.....	253
Access to premises .....	254
Disputes.....	255
Set off .....	255
Transfer by user .....	256
Corporate restructuring of service provider .....	256
Confidentiality .....	257
Ring fencing.....	259
Miscellaneous.....	261
Schedule 1 to Appendix 3 – Access Contract Information .....	263
Schedule 2 to Appendix 3 – Services.....	263
Schedule 3 to Appendix 3 – Details of Connection Points and Metering Points.....	264
Schedule 4 to Appendix 3 - Tariffs .....	264
Schedule 5 to Appendix 3 - Contribution (Provision in Kind Contract or Payment Contract) ....	264
Schedule 6 to Appendix 3 – Service provider’s works .....	264
Schedule 7 to Appendix 3 – UserCo’s works .....	264
Schedule 8 to Appendix 3 – Insurances and Limitation of Liability .....	265
Schedule 9 to Appendix 3 – Notices .....	265
Schedule 10 to Appendix 3 - Electronic Communications Protocol .....	266
Schedule 11 to Appendix 3 - Guarantee .....	269
<b>Appendix 3A – Transitional Western Power Network standard access contract. 272</b>	
<b>Appendix 4 – Model Contributions Policy .....</b>	<b>273</b>
<b>Subappendix 4.1 – Introductory .....</b>	<b>273</b>
Definitions and interpretation.....	273
Application of this contributions policy.....	274
<b>Subappendix 4.2 – Contributions .....</b>	<b>274</b>
Contribution .....	274
Reasonable rate of return.....	275
Manner of contribution.....	275
Provision of contribution in kind.....	276
Provision of contribution by financial payment .....	277
Rebates and recoupment .....	277
<b>Subappendix 4.3 – [Not used] .....</b>	<b>278</b>
<b>Appendix 4A – Transitional Western Power Network Contributions Policy.....</b>	<b>279</b>
<b>Appendix 5 – Procedural Rules for Arbitration .....</b>	<b>280</b>
Application .....	280
Definitions.....	280
Informality and expedition.....	280
Arbitrator may request information .....	280

Hearing to be in private .....	280
Right to representation .....	281
Procedure .....	281
Particular powers of arbitrator .....	281
Determinations .....	282
Contempt .....	282
Disclosure of information .....	282
Power to take evidence on oath or affirmation .....	282
Failing to attend as a witness .....	283
Failing to answer questions etc. ....	283
Intimidation etc. ....	283
Party may request arbitrator to treat material as confidential.....	284
Costs.....	284
Appeal to Court.....	285
Copies of decisions to be given to the Authority .....	285
Effect of appointment of new arbitrator on evidence previously given and awards and determinations previously made.....	285
Decision of the Arbitrator .....	286
<b>Appendix 6 – Matters to be Addressed by Technical Rules .....</b>	<b>288</b>
<b>Appendix 7 – General process for public consultation .....</b>	<b>290</b>
Application of this Appendix 7 .....	290
Where the decision maker is not the Authority.....	290
Issues paper .....	290
Submissions from the service provider .....	291
First round public submissions .....	291
Draft decision by the Decision Maker.....	291
Second round public submissions (if applicable) .....	291
Final decision by decision maker .....	292
Publication of submissions .....	292
Late submissions.....	292
Additional consultation.....	292
Extension of deadlines .....	292
<b>Appendix 8 – Detailed provisions regarding contributions for certain work on the Western Power Network .....</b>	<b>294</b>
Definitions.....	294
Scope of Appendix 8 work to Western Power Network.....	295
General principles.....	296
Subdivisions .....	296
Pole to pillar connections.....	296
Development of buildings .....	297
Initiating or joining an SES .....	297
Contribution for applicant initiating a scheme.....	297
Contribution for applicant joining an existing scheme .....	298
Rebate to continuing scheme members.....	298
Rebates will not be paid after 10 years .....	298
Work in excess of standard requirements .....	298
Temporary connections .....	299
Streetlights, unmetered connections, relocations, undergrounding and some temporary connections .....	299
If required work comprises more than just Appendix 8 work.....	299
<b>Appendix 9 – [Appendix not used].....</b>	<b>300</b>
[Heading not used] .....	300
[Heading not used] .....	300
[Heading not used] .....	300
[Heading not used] .....	300
[Heading not used] .....	300

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[Heading not used] .....	301
[Heading not used] .....	301

## Introduction

{This Code is made by the Minister under Part 8 of the *Electricity Industry Act 2004* (“**Act**”).

The Code may be amended from time to time in accordance with the procedure set out in sections 108 to 110 of the Act and must be reviewed every 5 years under section 111 of the Act.

The Code aims to be, where appropriate given conditions prevailing in Western Australia:

- consistent with the National Electricity Code and National Gas Code; and
- capable of certification as an effective *access* regime under Part IIIA of the *Trade Practices Act 1974*.

This Code establishes a framework for third party *access* to electricity transmission and distribution networks with the objective of promoting the economically efficient investment in, and operation and use of, *networks* and *services of networks* in Western Australia in order to promote competition in markets upstream and downstream of the *networks*.

Regulations made under section 118 of the Act may prescribe penalties for failure to comply with certain provisions of this Code.}

## Chapter 1 – Introductory

### Citation

1.1 This Code may be cited as the Electricity Networks Access Code 2004.

### Commencement

1.2 This Code comes into operation on the date on which this Code is *published* in the Gazette.

### Definitions

1.3 In this Code, unless the contrary intention appears:

**"2020 (No. 2) amendments"** means the amendments made to this Code by the *Electricity Networks Access Code Amendments (No. 2) 2020*.

{Note: The *Electricity Networks Access Code Amendments (No. 2) 2020* were Gazetted on 18 September 2020.}<sup>1</sup>

**"above-benchmark surplus"** has the meaning given to it in section 6.25.<sup>2</sup>

**"access"**, in relation to *services*, has a meaning corresponding with the meaning that it has when used in that context in the *Competition and Consumer Act 2010* of the Commonwealth.<sup>3</sup>

**"access application"** means—

- (a) an application lodged with a *service provider* under an *access arrangement* to establish or modify an *access contract* or to modify any other *contract for services*<sup>4</sup>; and
- (b) a *prior application* and a *transitioned application*,

and includes any additional information provided by the *applicant* in relation to the *application*.

**"access arrangement"** means an arrangement for *access* to a *covered network* that has been approved by the *Authority* under this Code.

**"access arrangement information"**, in relation to an *access arrangement*, means the information submitted by the *service provider* under section 4.1 as described in

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<sup>1</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>2</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>3</sup> Section 1.3 amended by WAGG No 137, 29 June 2007; Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>4</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

sections 4.2 and 4.3, as amended from time to time, and is not part of the *access arrangement*.

“**access arrangement period**”, in relation to an *access arrangement*, means a period:

- (a) between the *access arrangement start date* and the first *revisions commencement date*; or
- (b) between a *revisions commencement date* and the next *revisions commencement date*.

“**access arrangement start date**” means the day on which an *access arrangement* (other than an *interim access arrangement*) takes effect, and is determined in accordance with 4.26.

{Note: See definition of “**review**” for *access arrangement review*.}

“**access contract**” has the same meaning as ‘access agreement’ does in Part 8 of the Act, and under section 13.4(d) includes a *deemed access contract*.

{Note: At the time this Code was made, the definition in section 103 of the Act was:

‘ “**access agreement**” means an agreement under the *Code* between a network *service provider* and another person (a “network user”) for that person to have *access to services*. ’}

“**access dispute**” means a dispute, in connection with an *access application*, between the *applicant* and the *service provider*, including a dispute in relation to any one or more of the following (and the paragraphs of this definition do not limit each other):<sup>5</sup>

- (a) whether the *applicant* or the *service provider* has complied with, or the manner in which the *applicant* or the *service provider* has purported to comply with, the *applications and queuing policy*; and
- (b) the terms and conditions, including *service standards*, on which the *applicant* should be permitted to acquire *covered services* from the *service provider*; and
- (c) whether *work* is *required work* and the terms and conditions applying, or proposed to apply, to any such *work*; and<sup>6</sup>
  - (ca) anything connected with or arising out of a proposed *contribution*; and<sup>7</sup>
  - (cb) a matter heard under section 15.7; and
  - (cc) anything connected with or arising out of Appendix 8; and

<sup>5</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>6</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>7</sup> Section 1.3 amended by WAGG No 180, 22 October 2008



- (cd) [not used]<sup>8</sup>
- (d) whether the *service provider* should grant the *applicant* an exemption to the *technical rules* under section 12.34; and
- (e) the arrangements which will apply in respect of a *supplementary matter* connected with the *access application*.

“**access reform costs**” means costs incurred by a *service provider* to undertake and deliver the *access reform work*, including costs incurred prior to the commencement of the *2020 (No. 2) amendments*.<sup>9</sup>

“**access reform work**” means the program of work undertaken by a *service provider* necessary to complete:

- (a) the development and provision of *network constraints information*; and
- (b) preparation of the initial *whole of system plan*.<sup>10</sup>

“**access rights**” means all or part of a *user’s* rights under a *contract for services* to obtain a *covered service*.<sup>11</sup>

“**additional revenue**”, when used in 6.41, has the meaning given to it in section 6.42.

<sup>12</sup>

“**AEMO**” or “**Australian Energy Market Operator**” means the Australian Energy Market Operator Limited (ACN 072 010 327).<sup>13</sup>

<sup>14</sup>

“**alternative option non-capital costs**” has the meaning given to it in section 6.41.<sup>15</sup>

“**alternative options**” means alternatives to part or all of a *major augmentation* or *new facilities investment*, including *stand-alone power systems*, *storage works*, demand-side management and *generation* solutions (such as distributed *generation*), either instead of or in combination with *network augmentation*.<sup>16</sup>

<sup>17</sup>

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<sup>8</sup> Section 1.3 amended by WAGG No 137, 29 June 2007; Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>9</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>10</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>11</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>12</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>13</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>14</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>15</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>16</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>17</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

18

“**alternative options strategy**” has the meaning given in section 6A.3.<sup>19</sup>

“**annual price list**” has the meaning given to it in section 8.1(b).<sup>20</sup>

“**anticipated incremental revenue**” for a *new facility* means:

(a) the present value (calculated at the *rate of return* over a reasonable period) of the increased income from *charges* (excluding any *contributions*)<sup>21</sup> reasonably anticipated to arise from the increased sale of *covered services* on the network to one or more *users* (where “increased sale of *covered services*” means sale of *covered services* which would not have occurred had the *new facility* not been commissioned),

minus

(b) the present value (calculated at the *rate of return* over the same period) of the best reasonable forecast of the increase in *non-capital costs* directly attributable to the increased sale of the *covered services* (being the *covered services* referred to in the expression “increased sale of *covered services*” in paragraph (a) of this definition),

where the “**rate of return**” is a rate of return determined by the *Authority* in accordance with the *Code objective* and in a manner consistent with Chapter 6, which may (but does not have to) be the rate of return most recently approved by the *Authority* for use in the *price control* for the *covered network* under Chapter 6.

“**Appendix 8 work**” means *work* in connection with the *Western Power Network* of a type specified in clause A8.2 of Appendix 8.<sup>22</sup>

“**applicant**” means—

(a) a person (who may be a *user*) who has lodged an *access application* under the *access arrangement* for a *covered network* to establish or modify a *contract for services*, and includes a prospective *applicant*; and

(b) a *prior applicant*.<sup>23</sup>

<sup>24</sup>“**applications and queuing policy**” means a policy in an *access arrangement* setting out the *access application* process under section 5.1(g).

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<sup>18</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>19</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>20</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>21</sup> Section 1.3 amended by WAGG No 152, 1 September 2006; Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>22</sup> Section 1.3 amended by WAGG No 137, 29 June 2007; Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>23</sup> Section 1.3 amended by WAGG No 137, 29 June 2007; Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>24</sup> Section 1.3 amended by WAGG No 137, 29 June 2007

“**approval**” of a *proposed access arrangement* or *proposed revisions* means *approval* by the *Authority* under Chapter 4.

“**approved extension and expansion policy**” has the meaning given to “approved policy” in section 60 of the Act.

{Note: At the time this definition was inserted in this Code, the definition of “approved policy” in section 60 of the Act was—

“ ‘**approved policy**’ means an extension and expansion policy approved under section 62 as amended from time to time and includes any replacement for the policy approved under section 63” }<sup>25</sup>

“**approved price list**” means a *price list* approved by the *Authority*.<sup>26</sup>

“**approved total costs**”, in relation to *covered services* provided by a *service provider* by means of a *covered network* for a period of time, means:

- (a) the *capital-related costs* determined in accordance with section 6.43; and
- (b) those *non-capital costs* which satisfy the test in (as applicable) section 6.40 or 6.41.<sup>27</sup>

“**arbitrator**” has the meaning given to that term in section 61 of the *Gas Pipelines Access (Western Australia) Act 1998*.

“**associate**”, in relation to a person and subject to section 13.2, has the meaning it would have under Division 2 of Part 1.2 of the *Corporations Act 2001* of the Commonwealth if sections 13<sup>28</sup>, 16(2) and 17 of that Act were repealed, except that a person will not be considered to be an *associate* of a *service provider* solely because that person proposes to enter, or has entered, into a contract, arrangement or understanding with the *service provider* for the provision of a *covered service*.

{Note: Reference must be made to the *Corporations Act 2001* (Cth) to determine whether one person is an associate of another person. At the *Code commencement date*, the following are examples of persons who are *associates* of a body corporate under the *Corporations Act 2001* (Cth):

- a director or secretary of the body corporate; and
- a *related body corporate* of the body corporate; and
- another body corporate that can control or influence the composition of the board or the conduct of the affairs of a body corporate.}

“**associate contract**” means any contract, arrangement or understanding by which a *service provider* provides *covered services* to an *associate* or a *related body corporate*.

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<sup>25</sup> Section 1.3 amended by WAGG No 206, 8 December 2006

<sup>26</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>27</sup> Section 1.3 amended by WAGG No 152, 1 September 2006; Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>28</sup> Section 1.3 amended by WAGG No 207, 8 November 2005

“**augmentation**”, in relation to a *covered network*, means an increase in the capability of the *covered network* to provide *covered services*.<sup>29</sup>

“**Authority**” means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003*.

“**average cost of service provision**”, in relation to a *customer* or group of *customers*, a *covered service* and a specified period of time, means that part of *approved total costs* that is associated with providing the *covered service* to the *customer* or group of *customers*, during the period of time.<sup>30</sup>

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“**bidirectional point**” means a point on a *covered network* identified as such in a *contract for services* at which, subject to the *contract for services*, electricity is expected to be, on a regular basis, both transferred into the *network* and transferred out of the *network*.<sup>32</sup>

“**bidirectional service**” means a *covered service* provided by a *service provider* at a *bidirectional point* under which the *user* may transfer electricity into and out of the *network* at the *bidirectional point*.<sup>33</sup>

“**business day**” means a day that is not a Saturday, Sunday or public holiday throughout Western Australia.

“**capital base**” for a *covered network* means the value of the *network assets* that are used to provide *covered services* on the *covered network* determined under sections 6.44 to 6.63.

“**capital contribution**” means a payment or *provision in kind* made, or to be made, by a *user* in respect of any *new facilities investment in required work*.<sup>34</sup>

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“**capital-related costs**”, in relation to *covered services* provided by a *service provider* by means of a *covered network* for a period of time, means:

- (a) a return on the *capital base* of the *covered network*; and
- (b) depreciation of the *capital base* of the *covered network*.

“**Chapter 9 objectives**” has the meaning given to it in section 9.1.

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<sup>29</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>30</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>31</sup> Section 1.3 amended by WAGG No 180, 22 October 2008; Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>32</sup> Section 1.3 amended by WAGG No 134, 30 July 2021

<sup>33</sup> Section 1.3 amended by WAGG No 134, 30 July 2021

<sup>34</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>35</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

“**charge**”, for a *user* for a *covered service*, means the amount that is payable by the *user* to the *service provider* for the *covered service*, calculated by applying the *tariff* for the *covered service*.

“**charging parameters**” means the constituent elements of a *reference tariff*.<sup>36</sup>

“**Code change**” means an amendment to this Code after the start of an *access arrangement period*.<sup>37</sup>

“**Code commencement date**” means the date on which this Code is *published* in the Gazette.

“**Code objective**” has the meaning given to it in section 2.1.

“**commercially sensitive information**” means all confidential or *commercially sensitive information* in relation to an *applicant*, *user* or *consumer* which is developed by or comes into the possession of a *service provider* including a *ringfenced business’s* past, present and future dealings with the *applicant*, *user* or *consumer*.

“**committed**”, in relation to a *proposed major augmentation*, has the meaning given to it in section 9.5 as limited by section 9.6.

“**common service**” means a *covered service* that is ancillary to the provision of one or more of *entry services*, *exit services* and network use of system *services* that ensures the reliability of a network or otherwise provides benefits to *users* of the network, the costs of which cannot reasonably be allocated to one or more particular *users* and so needs to be allocated across all *users*.

“**competing applications**”, subject to section 5.9A, exist where the provision of the *covered service* sought in one *access application* may impede the *service provider’s* ability to provide a *covered service* sought in one or more other *access applications*.<sup>38</sup>

“**compliance report**” means a report submitted by a *service provider* to the *Authority* under section 6.32H.<sup>39</sup>

“**confidential material**” means *relevant material* which the *disclosing person* advises the *recipient* is of a confidential or commercially sensitive nature.

“**connect**” means to form a physical link to or through a network.

“**connection assets**”, for a *connection point*, means all of the *network assets* that are used only in order to provide *covered services* at the *connection point*.

“**connection point**” means a point on a *covered network* identified in, or to be identified in, a *contract for services* as an *entry point*, *exit point* or *bidirectional point*.<sup>40</sup>

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<sup>36</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>37</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>38</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>39</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>40</sup> Section 1.3 amended by WAGG No 206, 8 December 2006; Section 1.3 amended by WAGG No 180, 22 October 2008; Section 1.3 amended by WAGG No 134, 30 July 2021

**“connection service”** means the right to *connect facilities and equipment* at a *connection point*.

{Note: A *connection service* is the right to physically *connect* to the network, and will regulate technical compliance etc. It is not the same thing as an *entry service* or *exit service*, which are the right to transfer electricity.}

**“constraint”** means a limitation on the capability of a *covered network* (including arising by reference to the technical limitations and configuration of the *covered network*) such that it is unsafe, inconsistent with the maintenance of the reliability and security of the *covered network* or otherwise unacceptable to transfer (including accept the transfer of electricity into or out of the *covered network* at a *connection point*) the level of electricity that would occur if the limitation was removed. Constraints affecting the *covered network* may change over time due to changes in *load* or generation connected to the *covered network*.<sup>41</sup>

**“consume”** means to consume electricity.

**“consumer”** means a person who consumes electricity.

{Note: A *consumer* may also be a *user*, if it acquires a *covered service* from a *service provider*.}

**“contestable”**, in relation to a *consumer*, means a *consumer* to whom the supply of electricity is not restricted under section 54 of the *Electricity Corporations Act 2005* or under another enactment dealing with the progressive introduction of *consumer contestability*.<sup>42</sup>

**“contract for services”** means an agreement between a *service provider* and another person for the person to have access to *services*, and includes an *access contract*.

{Note: The expression **“contract for services”** is broader than *“access contract”*, because it catches all such contracts and not merely those entered into under this Code. Hence it includes contracts entered into under the *Electricity Transmission Regulations 1996* and the *Electricity Distribution Regulations 1997*.}<sup>43</sup>

**“contractual dispute”** means a dispute between a *service provider* and a *user* that is not an *access dispute* and is referred to the *arbitrator* under a *contract for services*.<sup>44</sup>

**“contributing user”** means a *user* that is or may be required to make a *contribution*.<sup>45</sup>

**“contribution”** means a *capital contribution*, a *non-capital contribution* or a *headworks charge*.<sup>46</sup>

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<sup>41</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>42</sup> Section 1.3 amended by WAGG No 207, 8 November 2005; Section 1.3 amended by WAGG No 59, 31 March 2006; Section 1.3 amended by WAGG No 134, 30 July 2021

<sup>43</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>44</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>45</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>46</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

“**contributions policy**” means a policy in an *access arrangement* under section 5.1(h) dealing with *contributions by users*.<sup>47</sup>

“**Coordinator**” means the Coordinator of Energy referred to in section 4 of the *Energy Coordination Act 1994*.

“**coverage applicant**” means a person who lodges a *coverage application*.

“**coverage application**” means an application under section 3.8 requesting that the whole or part of a *network be covered*.

“**coverage decision**”, for a *coverage application for a network*, means either or both of the *draft coverage decision* under section 3.17 by the Minister and the *final coverage decision* under section 3.21 by the Minister.

“**covered**”, with regard to a *network*, means either:

- (a) that the *network* is referred to in section 3.1, and the coverage has not been revoked under Subchapter 3.4; or
- (b) that the Minister has made a *final coverage decision* that the *network* should be covered, and the coverage has not been revoked under Subchapter 3.4.

{Note: Among other things, coverage of a network means that the *service provider* must submit a *proposed access arrangement* under section 4.1.}<sup>48</sup>

“**covered network**” means a *network* that is covered.

{Note: The term *covered network* is defined more narrowly in this Code than in the Act, and therefore the definitions of the term are not identical.}<sup>49</sup>

“**covered Pilbara network**” has the meaning in the Act.

{Note: At the time this definition was inserted, the definition in section 3(1) of the Act was –

“**covered Pilbara network**” means a covered network that is located wholly or partly in the Pilbara region;”<sup>50</sup>

“**covered service**” means a *service* provided by means of a *covered network*, including:<sup>51</sup>

- (a) a *connection service*; or
- (b) an *entry service*, *exit service* or *bidirectional service*; or
- (c) a *network use of system service*; or

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<sup>47</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>48</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>49</sup> Section 1.3 amended by WAGG No 134, 30 July 2021

<sup>50</sup> Section 1.3 amended by WAGG No 118, 2 July 2021

<sup>51</sup> Section 1.3 amended by WAGG No 180, 22 October 2008; Section 1.3 amended by WAGG No 134, 30 July 2021

- (d) a *common service*; or
- (e) a *service* ancillary to a service listed in paragraphs (a) to (d) above, but does not include an *excluded service*.

{Note: This Code uses the expression *covered service* to describe what is sometimes called a 'regulated service'. It can be distinguished from an *excluded service*.

*Covered services* subdivide into *reference services* and *non-reference services*.)

**"CPI"** means the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities most recently *published* by the Australian Bureau of Statistics or, if the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities ceases to be *published*, such alternative index as the *Authority* may reasonably determine, and in all cases the *CPI* figure is to be adjusted to correct for any effects of a change in the rate of *GST* as defined in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

**"CPI adjusted"** has the meaning given to it in section 14.26.

**"customer"** means a:

- (a) *user*, or
- (b) *end-use customer* in the *end-use customer's* capacity as indirect customer for *covered services*.<sup>52</sup>

**"customer transfer code"** means a code made under section 39(1) or section 39(2a) of the Act in respect of the matter referred to in section 39(2)(b) of the Act.

**"deadlock"**, in Chapter 12, means circumstances in which the members of a *technical rules committee* cannot reach consensus on a matter on which the *technical rules committee* has been requested to, or one or more of its members wishes to, provide advice to the *Authority*.<sup>53</sup>

**"decision maker"**, in Appendix 7, means a person who, under this Code, is obliged or chooses to consult the public under Appendix 7 on a *matter for consultation*.

**"deemed access contract"** means the full terms and conditions of the arrangement by which a *network business* is to provide *covered services* to an *other business*.

**"demand management innovation allowance guidelines"** means the guidelines *published* by the *Authority* under section 6.32D.<sup>54</sup>

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<sup>52</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>53</sup> Section 1.3 amended by WAGG No 180, 22 October 2008; Section 1.3 amended by WAGG No 183, 21 November 2014

<sup>54</sup> Section 1.3 amended by WAGG No 157, 18 September 2020



“**demand management innovation allowance mechanism**” means the mechanism developed and *published* by the *Authority* in accordance with section 6.32D.<sup>55</sup>

“**demand management innovation allowance objective**” has the meaning given to it in section 6.32C.<sup>56</sup>

“**designated date**” means the date by which a *service provider* must submit *proposed revisions* to the *Authority* after a *trigger event* has occurred and is either:

- (a) specified in the *access arrangement*, or
- (b) able to be determined, after the *trigger event* has occurred, using a method specified in the *access arrangement*.

“**Director of Energy Safety**” means the Director of Energy Safety appointed under section 5 of the *Energy Coordination Act 1994*.

“**disclosing person**” means a person who provides *relevant material* to a *recipient* under the *Code*.

“**discount**” means a discount referred to in section 7.9 or 7.10, as the case may be.

“**distributed generating plant**” means a *generating plant* with an *entry point* to a *network* at a nominal voltage of less than 66 kV and no *entry point* to a *network* at a nominal voltage of 66 kV or higher.

“**distribution reference tariff**” means a *reference tariff* applicable to a *reference service* provided by way of, or in respect of a *connection point* on, a *distribution system*.<sup>57</sup>

“**distribution system**” means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of less than 66 kV.

“**distribution system target revenue**” for a *network* for an *access arrangement period* means either:

- (a) if the *access arrangement* or *access arrangement information* apportion part or all of the *target revenue* for the *access arrangement period* to the *distribution system* — the amount so apportioned; or
- (b) otherwise — a percentage of the *target revenue* for the *access arrangement period* calculated by determining the part of the *capital base* which is attributable to the *distribution system* and then dividing it by the *capital base*, with the quotient expressed as a percentage.<sup>58</sup>

“**DORC**” has the meaning given to it in section 6.46.

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<sup>55</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>56</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>57</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>58</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

**“draft coverage decision”**, for a *coverage application* for a *network*, means a draft decision under section 3.17 by the Minister on the *coverage application* that the *network be covered* or not be covered.

**“draft decision”** means a draft decision by the *Authority* under section 4.12 either to *approve a service provider’s proposed access arrangement* or to not *approve the proposed access arrangement*.

**“draft revocation decision”**, for a *revocation application* for a *network*, means a draft decision under section 3.17 (as modified under section 3.31) by the Minister on a *revocation application* that a *network be covered* or not be covered.

**“efficiency and innovation benchmarks”** means efficiency and innovation benchmarks in an *access arrangement* under section 5.1(j).

**“efficiently minimising costs”**, in relation to a *service provider*, means the *service provider* incurring no more costs than would be incurred by a prudent *service provider*, acting efficiently, in accordance with *good electricity industry practice*, seeking to achieve the lowest sustainable cost of delivering *covered services* and without reducing *service standards below the service standard benchmarks* set for each *covered service* in the *access arrangement* or *contract for services*.<sup>59</sup>

**“electronic form”**, in relation to the *public register*, means that the *public register* is kept on an internet website which is *accessible to the public* and from which information may be downloaded.

**“end-use customer”** means a *consumer* who obtains the benefit of *covered services* through a *user*.<sup>60</sup>

**“entry point”** means a point on a *covered network* identified as such in a *contract for services* at which, subject to the *contract for services*, electricity is more likely to be transferred into the *network* than transferred out of the *network*.<sup>61</sup>

**“entry service”** means a *covered service* provided by a *service provider* at an *entry point* under which the *user* may transfer electricity into the *network* at the *entry point*.

**“entry service component”** means the component of a *bidirectional service* relating to the transfer of electricity by the *user* into the *network* at the *bidirectional point*.<sup>62</sup>

**“excluded service”** means a *service* provided by means of a *covered network*, including:<sup>63</sup>

- (a) a *connection service*; or
- (b) an *entry service*, *-exit service* or *bidirectional service*; or
- (c) a *network use of system service*; or

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<sup>59</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>60</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>61</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>62</sup> Section 1.3 amended by WAGG No 134, 30 July 2021

<sup>63</sup> Section 1.3 amended by WAGG No 180, 22 October 2008; Section 1.3 amended by WAGG No 134, 30 July 2021

- (d) a *common service*, or
- (e) a *service* ancillary to the *services* listed in paragraphs (a) to (d) above,

which meets the following criteria:

- (f) the supply of the *service* is subject to effective competition; and
- (g) the cost of the *service* is able to be excluded from consideration for *price control* purposes without departing from the *Code objective*.

**“exclusive license”** means an exclusive license granted under regulations made under section 26(1) of the Act.

**“exclusivity right”** means a contractual right which by its terms either:

- (a) expressly prevents a *service provider* supplying *covered services* to persons who are not parties to the contract; or
- (b) expressly places a limitation on the *service provider’s* ability to supply *covered services* to persons who are not parties to the contract,

but does not include a *user’s* contractual right to obtain a certain volume of *covered services*.

**“exit point”** means a point on a *covered network* identified as such in a *contract for services* at which, subject to the *contract for services*, electricity is more likely to be transferred out of the *network* than transferred into the *network*.<sup>64</sup>

**“exit service”** means a *covered service* provided by a *service provider* at an *exit point* under which the *user* may transfer electricity out of the *network* at the *exit point*.

**“exit service component”** means the component of a *bidirectional service* relating to the transfer of electricity by the *user* out of the *network* at the *bidirectional point*.<sup>65</sup>

**“facilities and equipment”**, in relation to a *connection point*, means the apparatus, equipment, plant and buildings used for or in connection with *generating, consuming* and *transporting* electricity at the *connection point*.

**“final coverage decision”**, for a *coverage application* for a *network*, means a final decision under section 3.21 by the Minister on the *coverage application* that the *network* be *covered* or not be *covered*.

**“final decision”** means a final decision by the *Authority* under section 4.17 either to *approve* the *service provider’s proposed access arrangement* or to not *approve* the *service provider’s proposed access arrangement*.

**“final report”** means a final report provided by the Chair of the *technical rules committee* to the *Authority* under section 12.11(b)(ii) setting out the *technical rules committee’s* progress in performing its functions under section 12.23, and in the case of deadlock, advice in accordance with section 12.25.

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<sup>64</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>65</sup> Section 1.3 amended by WAGG No 134, 30 July 2021

**“final revocation decision”**, for a *revocation application* for a *network*, means a final decision by the Minister on a *revocation application* under section 3.21 (as modified under section 3.31 that a network be covered or not be covered).

**“first access arrangement”**, for a *covered network*, means the first *access arrangement* approved (or if no *access arrangement* has been approved, to be approved) for the *covered network* under this Code.

**“first access arrangement period”**, for a *covered network*, means the *access arrangement period* for the *first access arrangement*.

**“force majeure”**, operating on a person, means a fact or circumstance beyond the person’s control and which a *reasonable and prudent person* would not be able to prevent or overcome.

**“forecast new facilities investment”**, for a *covered network*, means the capital costs forecast to be incurred in developing, constructing and acquiring new *network assets* for the *covered network*.

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**“form of regulation decision”** has the meaning in the *Pilbara Networks Access Code*.

{Note: At the time this definition was inserted, the definition in section 5 of the *PNAC* was—

“**form of regulation decision**” means a decision by the Minister as to whether a covered Pilbara network is to be fully regulated or lighted regulated.”<sup>67</sup>

**“framework and approach”** means a document prepared and issued by the *Authority* under section 4.A1.<sup>68</sup>

**“fully regulated”** has the meaning in the *Pilbara Networks Access Code*.

{Note: At the time this definition was inserted, the definition in section 5 of the *PNAC* was –

“**fully regulated**” in relation to a network, means that the work is a full regulation network.”<sup>69</sup>

**“gain sharing mechanism”** is defined in section 6.19.

**“generate”** means to produce electricity.

**“generating plant”**, in relation to a *connection point*, means all equipment involved in *generating electricity*.

**“generator”** means a person who *generates* electricity.

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<sup>66</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>67</sup> Section 1.3 amended by WAGG No 118, 2 July 2021

<sup>68</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>69</sup> Section 1.3 amended by WAGG No 118, 2 July 2021

**“good electricity industry practice”** means the exercise of that degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably and ordinarily exercise under comparable conditions and circumstances consistent with applicable *written laws* and *statutory instruments* and applicable recognised codes, standards and guidelines.

**“headworks”**, in respect of a *headworks scheme*, means the class of *works* identified under section 5.17D(a) as the class in respect of which the *headworks scheme* applies.<sup>70</sup>

**“headworks charge”**, in respect of a *headworks scheme*, means a payment made, or to be made, by a *user* under the *headworks scheme* in respect of a *connection point*.<sup>71</sup>

**“headworks scheme”** means a scheme under section 5.17C.<sup>72</sup>

**“Horizon Power coastal network”** has the meaning in the *Pilbara Networks Access Code*.

{Note: At the time this definition was inserted, the definition in section 5 of the *PNAC* was –

**“Horizon Power coastal network”** means the *network* comprising—

- (a) the *network* which became a *covered network* as a result of the Minister’s final coverage decision of 2 February 2018 under the ENAC; and
- (b) any other *network* owned by Regional Power Corporation and *interconnected* as at the *code commencement date* with the *network* in paragraph (a); and
- (c) any *augmentation* as at the *code commencement date* of a *network* in paragraph (a) or (b); and
- (d) any *augmentation* of the *network* which forms part of the *network* under section 4(1).<sup>73</sup>

**“incoming user”** has the meaning given to it in section 5.7(f).

**“incremental cost of service provision”**, in relation to a *user* or group of *users*, a *covered service* and a specified period of time, means that part of *approved total costs* that would be avoided by the *service provider* during the specified period of time if it were not to provide the *covered service* to the *user* or group of *users*.

**“information package”** means an information package established and *maintained* by a *service provider* in relation to *covered network* which complies with section 14.1.

**“initial price list”** has the meaning given in section 8.1(a).<sup>74</sup>

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<sup>70</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>71</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>72</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>73</sup> Section 1.3 amended by WAGG No 118, 2 July 2021

<sup>74</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

**“integrated provider”** means:

- (a) [deleted]<sup>75</sup>
- (b) a *service provider* which, under section 13.31, has been given an exemption from section 13.11(a).

**“interconnected”** has the meaning in the *Pilbara Networks Access Code*.

{Note: At the time this definition was inserted, the definition in section 5 of the *PNAC* was—

“**interconnected**” means a state in which two *networks* are or become *connected*, such that electricity can be transferred between them.”<sup>76</sup>

**“interconnected network”**, in relation to a *network*, means another *network* which is part of the same *interconnected system* as the first *network*.

**“interconnected system”** means an electricity system comprising two or more *networks* interconnected with each other, and in relation to a particular *network* means an *interconnected system* of which the *network* is a part.

**“interested person”**, for a *network*, means a person who is registered under section 14.8 in respect of that *network*.

**“interim access arrangement”**, for a *covered network*, means an *access arrangement* drafted and approved by the *Authority* under section 4.59.

**“interim access arrangement period”**, for an *interim access arrangement*, means the period from the date of *approval* of the *interim access arrangement* until the *access arrangement start date* for the *covered network*.

**“investment adjustment mechanism”** has the meaning given to it in section 6.13.

**“investment difference”** has the meaning given to it in section 6.13.

**“judicial proceedings”** has the meaning given to it in section 4.69.

**“lightly regulated”** has the meaning in the *Pilbara Networks Access Code*.

{Note: At the time this definition was inserted, the definition in section 5 of the *PNAC* was—

“**lightly regulated**” in relation to a *network*, means that the *network* is a light regulation *network*.”<sup>77</sup>

**“light regulation network”** has the meaning in the *Pilbara Networks Access Code*.

{Note: At the time this definition was inserted, the definition in section 5 of the *PNAC* was—

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<sup>75</sup> Section 1.3 amended by WAGG No 59, 31 March 2006

<sup>76</sup> Section 1.3 amended by WAGG No 118, 2 July 2021

<sup>77</sup> Section 1.3 amended by WAGG No 118, 2 July 2021

“**light regulation network**” means a covered Pilbara network which is regulated by Part 8A of the Act.<sup>78</sup>

“**load**” means the amount of electrical power transferred out of a *network* at a *connection point* at a specified time.

“**maintain**” includes (as necessary and as applicable) renew, replace or update.

“**major augmentation**” means an *augmentation* for which the *new facilities investment* for the *shared assets*:

- (a) exceeds \$10 million (*CPI adjusted*), where the *network assets* comprising the *augmentation* are, or are to be, part of a *distribution system*; and
- (b) exceeds \$30 million (*CPI adjusted*), where the *network assets* comprising the *augmentation* are, or are to be, part of:
  - (i) a *transmission system*; or
  - (ii) both a *distribution system* and a *transmission system*.<sup>79</sup>

“**major augmentation proposal**” means a proposal in respect of one or more *proposed major augmentations* submitted by a *service provider* under sections 9.10 and 9.11, or under sections 9.15 and 9.16, as applicable.

“**major augmentation report**” has the meaning given to it in section 10.41(b).

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“**marketing staff**” means servants, consultants, independent contractors or agents directly involved in sales, sale provision or advertising (whether or not they are also involved in other functions) but does not include servants, consultants, independent contractors or agents:

- (a) who are *senior staff*; or
- (b) involved only in technical, administrative, accounting or service functions.

“**matter for consultation**” means a document, determination or decision that under this Code is required to be or may be the subject of public consultation under Appendix 7.

“**model alternative option service contract**” means the model alternative option service contract approved by the *Authority* under section 6A.7.<sup>81</sup>

“**model applications and queuing policy**” means the model *applications and queuing policy* in Appendix 2.

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<sup>78</sup> Section 1.3 amended by WAGG No 118, 2 July 2021

<sup>79</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>80</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>81</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

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“**model contributions policy**” means the model *contributions policy* in Appendix 4.<sup>83</sup>

“**model standard access contract**” means the model *standard access contract* in Appendix 3.

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“**modified test**” means one or more modified tests set out in an *access arrangement* for the purposes of section 6.52(b)(i)B in respect of *new facilities investment* below one or more *test application thresholds*.

“**multi-function asset**” has the meaning given in section 6.84.<sup>85</sup>

“**multi-function asset guidelines**” means the guidelines *published* by the *Authority* under section 6.88.<sup>86</sup>

“**multi-function asset policy**” means a policy in an *access arrangement* under section 5.1(m).<sup>87</sup>

“**multi-function asset principles**” means the principles under section 6.86.<sup>88</sup>

“**net benefit**” means a net benefit (measured in present value terms to the extent that it is possible to do so) to those who *generate, transport and consume* electricity in (as the case may be):

- (a) the *covered network*, or
- (b) the *covered network* and any *interconnected system*.

“**net benefit after considering alternative options**” is defined in section 9.4.

“**net incremental revenue**” means, in relation to a *multi-function asset*, the revenue from all payments received by a *service provider* in excess of the revenue it would receive if the asset only provided *covered services*, for a *pricing year*.<sup>89</sup>

“**network**” has the meaning given to “network infrastructure facilities” in the Act.

{Note: As at the date of the 2020 (No. 2) amendments, the definition in section 103 of the Act was:

“network infrastructure facilities” –

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<sup>82</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>83</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>84</sup> Section 1.3 amended by WAGG No 180, 22 October 2008; Section 1.3 amended by WAGG No 183, 21 November 2014

<sup>85</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>86</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>87</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>88</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>89</sup> Section 1.3 amended by WAGG No 157, 18 September 2020



- (a) means electricity infrastructure used, or to be used, for the purpose of transporting electricity from generators of electricity to other electricity infrastructure or to end users of electricity; and
- (b) includes stand-alone power systems, or storage works, used, or to be used, as an adjunct to electricity infrastructure.<sup>90</sup>

**“network assets”**, in relation to a *network*, means the apparatus, equipment, plant and buildings used to provide or in connection with providing *covered services* on the *network*, which assets are either *connection assets* or *shared assets*.

**“network business”** means the part of an *integrated provider’s* business and functions which are responsible for the operation and maintenance of a *covered network* and the provision of *covered services* by means of the *covered network*.

**“network constraints information”** means the information relating to limits of the *Western Power Network* to transfer and/or convey electricity that a *service provider* must establish, maintain and/or provide to *AEMO* in accordance with its functions under sections 1.32, 2.27A, 2.27B and 2.27C of the *WEM Rules*.<sup>91</sup>

**“network modification”**, when used in sections 3.36 to 3.37, means, in respect of a *covered network*, either:

- (a) the commissioning of an *augmentation* to the *covered network*; or
- (b) a disposal or decommissioning of *network assets* of the *covered network*.

**“network persons”**, means the *service provider*, *applicants*, *users* and controllers of a *covered network* where the *service provider* of the *covered network* has applied to the *Authority* for an exemption from one or more requirements of the *technical rules* applying to the *covered network*.

**“new facilities investment”**, for a *new facility*, means the capital costs incurred in developing, constructing and acquiring the *new facility*.

**“new facilities investment test”**, in respect of a *covered network*, means the test set out in section 6.52.

**“new facility”** means any capital asset developed, constructed or acquired to enable the *service provider* to provide *covered services* and to avoid doubt, including *stand-alone power systems*, *storage works* or other assets required for the purpose of facilitating competition in retail markets for electricity.<sup>92</sup>

**“non-capital contribution”**, means a payment or *provision in kind* made, or to be made, by a *user* in respect of any *non-capital costs* of *required work*.<sup>93</sup>

**“non-capital costs”**, in relation to *covered services* provided by a *service provider* by means of a *covered network* for a period of time, means all costs incurred in providing the *covered services* for the period of time which are not *new facilities investment* or

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<sup>90</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>91</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>92</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>93</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

*capital-related costs*, including those operating, *maintenance* and administrative costs which are not *new facilities investment* or *capital-related costs*.<sup>94</sup>

{Note: Because of the differences in how capital costs and non-capital costs can be treated in this Code, the expression “non-capital costs” is sometimes juxtaposed against “new facilities investment” (for example in Chapter 5) and sometimes against “*capital-related costs*” (for example in Chapter 6).}<sup>95</sup>

“**non-covered network**” means a *network* that is not a *covered network*.

“**non-reference service**” means a *covered service* that is not a *reference service*.

“**notification threshold**” has the meaning given to it in section 3.37.

“**ODV**” has the meaning given to it in section 6.46.

“**other business**” means the part or parts of an *integrated provider’s* business which are not the *network business*, and includes any part or parts of the *integrated provider’s* business and functions which acquire *covered services* from the *network business*.

“**other service provider**”, in relation to a *service provider* that operates a *network* in an *interconnected system*, has the meaning given to it in section 12.59.

“**outgoing user**” has the meaning given to it in section 5.7(h).

“**participant**”, when used in sections 14.16 to 14.21, has the meaning given in section 4.17.

“**Pilbara network**” has the meaning in the Act.

{Note: At the time this definition was inserted, the definition in section 3(1) of the Act was—

“**Pilbara network**” means network infrastructure facilities that are located wholly or partly in the Pilbara region;”<sup>96</sup>

“**Pilbara Network Access Code**” or “**PNAC**” means the *Pilbara Networks Access Code 2021*.<sup>97</sup>

“**preliminary report**” means a preliminary report provided by the Chair of the *technical rules committee* to the *Authority* under section 12.11(b)(i) setting out the *technical rules committee’s* progress in performing its functions under section 12.23, and in the case of *deadlock*, advice in accordance with section 12.25.

“**previous regime**” means the *previous regulations* and sections 90 and 91 and Schedules 5 and 6 of the *Electricity Transmission and Distribution Systems (Access) Act 1994* as in effect immediately before 1 July 2007.<sup>98</sup>

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<sup>94</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>95</sup> Section 1.3, note to definition of “non-capital costs” inserted by WAGG No 180, 22 October 2008

<sup>96</sup> Section 1.3 amended by WAGG No 118, 2 July 2021

<sup>97</sup> Section 1.3 amended by WAGG No 118, 2 July 2021

<sup>98</sup> Section 1.3 amended by WAGG No 137, 29 June 2007

**“previous regulations”** means the *Electricity Transmission Regulations 1996*, the *Electricity Distribution Regulations 1997* and the *Electricity Referee and Dispute Resolution Regulations 1997*, as in effect immediately before 1 July 2007.<sup>99</sup>

**“price control”** means the provisions in an *access arrangement* under section 5.1(d) and Chapter 6 which determine *target revenue*.

{Note: *Price control* can consist of direct or indirect limits, and consists of a limit on the **level** of *tariffs* through the control of overall revenue. The **structure** of *tariffs* is dealt with by the *pricing methods* in Chapter 7.}

**“price control methodology”** means a methodology included in an *access arrangement* as part of *price control*.

{Examples of the things that might comprise *price control methodologies* are: the means for determining a suitable return on investment; the means of forecasting *load*; and calculation of the X factor if CPI-X is used.}

**“price list”** means the schedule of *reference tariffs* in effect in an *access arrangement* under Chapter 8 for a *covered network*.<sup>100</sup>

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**“pricing methods”** means the structure of *reference tariffs* in an *access arrangement* as defined in section 7.1.

**“pricing objective”** has the meaning given in section 7.3.<sup>102</sup>

**“pricing principles”** means the requirements set out in sections 7.3D to 7.3J.<sup>103</sup>

**“pricing years”** for an *access arrangement* are periods of no longer than one year, the start and end dates of which are set out in the *access arrangement*, which together account for the entire *access arrangement period* and in respect of which a *price list* must be submitted to the *Authority* under section 8.1.<sup>104</sup>

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**“priority”** means, in relation to—

- (a) an “access application” under the *PNAC*, the priority that the “applicant” has, as against any other “applicant” with a competing “access application” to

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<sup>99</sup> Section 1.3 amended by WAGG No 137, 29 June 2007

<sup>100</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>101</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>102</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>103</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>104</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>105</sup> Section 1.3 amended by WAGG No 137, 29 June 2007; Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>106</sup> Section 1.3 amended by WAGG No 137, 29 June 2007; Section 1.3 amended by WAGG No 157, 18 September 2020

obtain “access” to “covered services” as determined in accordance with the “user access guide” (as each of those terms are defined in the *PNAC*); or

- (b) an *access application*, the priority that the *applicant* has, as against any other *applicant* with a competing *access application*, to obtain access to covered services as determined by the *applications and queuing policy* for the covered Pilbara network.<sup>107</sup>

“**priority project**” means:

- (a) a project specified as a priority project in a *whole of system plan*; or<sup>108</sup>
- (b) a project specified as a priority project in a *priority project determination*.<sup>109</sup>

“**priority project determination**” means a determination made by the Minister under section 16.1.<sup>110</sup>

“**proceedings**”, when used in Chapter 10 and Appendix 5, means any proceedings before the *arbitrator* under this Code whether final or interlocutory, and includes any application in connection with and at any stage of proceedings, and includes the making of an award.

“**processing**” an *access application* means the performance of all requirements under an *applications and queuing policy* necessary for the making of an *access offer* including engaging in discussions, preparing an *initial response* and carrying out a *preliminary assessment* and making an *access offer*.

“**proposed access arrangement**” means a proposed *access arrangement* that has been submitted by a *service provider* with the *Authority* for approval under this Code, but which has not been approved.

“**proposed award**”, in respect of an arbitration under Chapter 10 which is subject to Subchapter 10.3, means a document provided to the parties to the arbitration under section 10.40(a) which describes in reasonable detail the nature of the *major augmentation* that the *arbitrator* anticipates it will require the *service provider* to undertake in its award.

“**proposed generator performance standard**” has the meaning given to the term “Proposed Generator Performance Standard” in the *WEM Rules*.<sup>111</sup>

“**proposed major augmentation**” means a *major augmentation* detailed in a *major augmentation* proposal under section 9.11(a) or 9.16(a), as applicable.

“**proposed revisions**” means *proposed revisions* to an *access arrangement* that, under section 4.37 or 4.48, have been submitted by a *service provider* to the *Authority* for approval under Chapter 4.

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<sup>107</sup> Section 1.3 amended by WAGG No 118, 2 July 2021

<sup>108</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>109</sup> Section 1.3 amended by WAGG No 122, 12 September 2023

<sup>110</sup> Section 1.3 amended by WAGG No 122, 12 September 2023; section 1.3 amended by WAGG No 54, 10 May 2024

<sup>111</sup> Section 1.3 amended by WAGG No 134, 30 July 2021

“**public register**” means the register established and *maintained* by the *Authority* under section 14.5.

“**publish**” means:

- (a) where the Minister is required to *publish* a thing — that the Minister must:
  - (i) provide the thing to the Coordinator; and
  - (ii) procure the Coordinator to place the thing on an internet website which is under the Coordinator’s control;
- (b) where the *Authority* is required to *publish* a thing — that the *Authority* must:
  - (i) place the thing on its internet website; or
  - (ii) if relevant, place the thing on the *public register*,<sup>112</sup> and send a notice to each person listed on the *register of interested persons maintained* under section 14.8 in respect of the network to which the thing relates advising the person that the thing has been placed on the *public register*,and
- (c) where a *service provider* is required to *publish* a thing — that the *service provider* must place the thing on its internet website.<sup>112</sup>

“**queuing dispute**” has the meaning given to it in section 10.13.

“**reasonable and prudent person**” means a person acting in good faith and in accordance with *good electricity industry practice*.

“**reasons**”, in relation to a decision or other determination, means a statement of the decision-maker’s *reasons* for deciding including, as applicable:

- (a) findings on material questions of fact relied on by the decision-maker in reaching the decision;
- (b) reference to the evidence on which findings of fact are based; and
- (c) identification of the steps in the decision-making process, explanation of the link between the findings of fact and the final decision and a description of the role of policy or guidelines in the decision-making process.

“**recipient**” means, the *Authority* or a *service provider*, as applicable, when provided with *relevant material*.<sup>113</sup>

“**recoverable portion**”, for *new facilities investment* for a *covered network*, has the meaning given to it in section 6.57.

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<sup>112</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>113</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

“**redundant capital**”, for a *covered network*, means an amount determined under section 6.61 to be removed from the *capital base* of the *covered network*.

“**referee**” has the meaning given to it in the *Electricity Referee and Dispute Resolution Regulations 1997*, as in effect immediately before 1 July 2007.<sup>114</sup>

“**reference service**” means a *covered service* provided to a *user* and designated as a *reference service* in an *access arrangement* under section 5.1(a) for which there is a *reference tariff*, a *standard access contract* and *service standard benchmarks*.<sup>115</sup>

“**reference tariff**” means the *tariff* specified in a *price list* for a *reference service*.

{Note: Under section 10.20 an *arbitrator's* award cannot require an *applicant* to pay more than the *reference tariff* for a *reference service*, or the *service provider* to accept less than the *reference tariff* for a *reference service*.}

“**reference tariff change forecast**” means, for a *service provider*, the forecast of price changes as referred to in section 7.1D.<sup>116</sup>

“**Regional Power Corporation**” means the body established by the *Electricity Corporations Act 2005* section 4(1)(d).<sup>117</sup>

“**register of interested persons**” means the register or registers *maintained* by the *Authority* under section 14.8.

“**registered generator performance standard**” has the meaning given to the term “Registered Generator Performance Standard” in the *WEM Rules*.<sup>118</sup>

“**regulatory test**” is defined in section 9.3.

“**related body corporate**” and “**related company**”, in relation to a body corporate, mean a body corporate that is related to the first-mentioned body corporate under the *Corporations Act 2001* of the Commonwealth.

“**related business**” means the business of generating, purchasing or selling electricity, but does not include generating, purchasing or selling electricity to the extent necessary:

- (a) for the safe and reliable operation of a *covered network*; or
- (b) to enable a *service provider* to provide balancing and ancillary *services* in connection with a *covered network*; or
- (c) to comply with an obligation under Part 9 of the Act.

{Note: Part 9 of the Act deals with the wholesale market.}

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<sup>114</sup> Section 1.3 amended by WAGG No 137, 29 June 2007

<sup>115</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>116</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>117</sup> Section 1.3 amended by WAGG No 118, 2 July 2021

<sup>118</sup> Section 1.3 amended by WAGG No 134, 30 July 2021

**“relevant material”** means information or a document provided to a *recipient* under the *Code*.

119

**“required work”** means *work* which is necessary in order to provide a *covered service* sought in an *access application*.<sup>120</sup>

**“review”** of an *access arrangement* means the process set out in sections 4.46 to 4.52.

**“revisions commencement date”** means a date on which revisions to an *access arrangement* which have been approved by the *Authority* commence under section 4.46 (as modified under section 4.52).

**“revisions submission date”** is the date specified in an *access arrangement* under section 5.29(a) as the date by which the *service provider* must submit its *proposed revisions* to the *access arrangement* to the *Authority* under section 4.48.

**“revocation applicant”** means a person who applies to the Minister for the Minister to revoke coverage of a *covered network* as described in section 3.30.

**“revocation application”** means an application for revocation of coverage made under section 3.8<sup>121</sup> (as modified under section 3.31).

**“revocation decision”**, for a *revocation application* for a network, means either or both of the draft *revocation decision* under section 3.17 (as modified under section 3.31) by the Minister and the final *revocation decision* under section 3.21 by the Minister.

**“ringfenced business”** is defined in section 13.3.

**“ringfencing compliance procedures”** means procedures established and *maintained* by a *service provider* as required by section 13.37(a) to ensure and monitor a *service providers* compliance with section 13.1.

**“ringfencing objectives”** means the objectives in section 13.11 (as added to under section 13.23 if applicable).

**“ringfencing rules”** means rules drafted and approved by the *Authority* under section 13.14 as varied from time to time under section 13.18.

**“senior staff”** means servants, consultants, independent contractors or agents involved strategic decision making, including directors and the executive officer or officers to whom marketing staff report either directly or indirectly.

122

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<sup>119</sup> Section 1.3 amended by WAGG No 180, 22 October 2008; Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>120</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>121</sup> Section 1.3 amended by WAGG No 207, 8 November 2005

<sup>122</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

“**service provider**”, in relation to a *network*, means a person who owns or operates the *network*.

“**services**” has the meaning given to that term in Part 8 of the Act, and “**service**” has a corresponding meaning.

{Note: At the time the *Electricity Networks Access Code Amendments (No 2) 2008* were made, the definition in section 103 of the Act was:

“**services**” means –

- (a) the conveyance of electricity and other *services* provided by means of network infrastructure facilities; and
- (b) *services* ancillary to such *services*’.<sup>123</sup>

“**service standard benchmarks**” means the benchmarks for *service standards* for a *reference service* in an *access arrangement* under section 5.1(c).

“**service standard performance report**” means a report provided by a *service provider* to the *Authority* under section 11.3.

“**service standards**” means either or both of the technical standard, and reliability, of delivered electricity.

“**service standards adjustment mechanism**” has the meaning given to it in section 6.29.

“**shared assets**” mean those *network assets* which are not *connection assets*.

“**specific criterion**” means an objective, requirement or factor specified in this Code in relation to a thing (including the making of any decision or the doing, or not doing, of any act), and “**specific criteria**” means any two or more such objectives, requirements or factors specified under this Code in relation to such a thing, whether or not all specified in one provision.

“**speculative investment amount**”, for a *new facility* (if any), is determined under section 6.58.

“**stand-alone cost of service provision**”, in relation to a *customer* or group of *customers*, a *covered service* and a specified period of time, means that part of *approved total costs* that the *service provider* would incur in providing the *covered service* to the *customer* or group of *customers*, for the period of time if the *covered service* was the sole *covered service* provided by the *service provider* and the *customer* or group of *customers* was the sole *customer* or group of *customers* supplied by the *service provider* during the specified period of time.<sup>124</sup>

“**stand-alone power system**” has the meaning given to it in the Act.<sup>125</sup>

<sup>123</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>124</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>125</sup> Section 1.3 amended by WAGG No 157, 18 September 2020



“**standard access contract**” means the terms and conditions for a *reference service* in an *access arrangement* under section 5.1(b).

“**standard tariff exit point**”, in section 7.7, means an *exit point* in respect of which the *contracted maximum demand* under a *contract for services* is less than 1 MVA.<sup>126</sup>

“**standard tariff user**”, in section 7.7, means a *user* who transfers electricity out of a network at a *standard tariff exit point*.

“**statutory instruments**” means all relevant instruments made under a *written law* including all directions, notices, orders and other instruments given or made under a *written law* and includes, as existing from time to time:

- (a) orders made under section 8 of the Act; and
- (b) licences granted, renewed or transferred under section 19 of the Act; and
- (c) standard form contracts approved under section 51 of the Act; and
- (d) orders made under section 181(3) of the *Electricity Corporations Act 2005*;<sup>127</sup> and
- (e) approved policies as defined in section 60 of the Act<sup>128</sup>; and
- (f) last resort supply plans approved under section 73 of the Act as amended under sections 74 and 75 of the Act; and
- (g) the *WEM Rules*.<sup>129</sup>

“**storage works**” has the meaning given to it in the Act.<sup>130</sup>

“**submission deadline**”, in relation to a *service provider’s* submission of a *proposed access arrangement* for a *covered network*, means the date which is six months after the network becomes *covered*.

“**supplementary matter**” has the meaning given to it in section 5.27 and *supplementary matters* must be dealt with in an *access arrangement* under section 5.1(k).

“**surplus**”, for a *covered network* for an *access arrangement period*, arises when the conditions described in section 6.23 are satisfied.<sup>131</sup>

<sup>132</sup>

“**SWIS**” means the “South West interconnected system” as defined in the Act.

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<sup>126</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>127</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>128</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>129</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>130</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>131</sup> Section 1.3 amended by WAGG No 137, 29 June 2007 and WAGG No 180, 22 October 2008

<sup>132</sup> Section 1.3 amended by WAGG No 137, 29 June 2007 and WAGG No 180, 22 October 2008

{Note: Some parts of the SWIS are owned by the Western Power Corporation and some are privately owned.

As at the date of this Code the definition in the Act was:

‘ the interconnected transmission and distribution systems, generating works and associated works –

- (a) located in the South West of the State and extending generally between Kalbarri, Albany and Kalgoorlie; and
- (b) into which electricity is supplied by –
  - (i) one or more of the electricity generation plants at Kwinana, Muja, Collie and Pinjar; or
  - (ii) any prescribed electricity generation plant. ’}

“**target revenue**”, for a *covered network* for an *access arrangement period*, is determined in accordance with section 6.4(a).

“**target revisions commencement date**” is the date specified in an *access arrangement* under section 5.29(b) as the target date for the *revisions commencement date*.

“**tariff**”, for a *covered service*, means the criteria that determine the *charge* that is payable by a *user* to the *service provider*.

“**tariff structure statement**” means, for a *service provider*, the *tariff structure statement* referred to in section 7.1A that has been approved by the *Authority* for that *service provider*.<sup>133</sup>

“**technical rules**”, for a *covered network*, means the *technical rules* (if any) approved for the *covered network* under Chapter 12.<sup>134</sup>

“**technical rules committee**”, in relation to a *covered network* or *interconnected system*, means the current committee, if any, established under section 12.16 for the *covered network* or *interconnected system*.<sup>135</sup>

“**technical rules start date**” for the *technical rules* for a *covered*<sup>136</sup> *network* is the date on which the *technical rules* take effect and is specified by the *Authority* under section 12.15.

“**test application threshold**”, for a modified test in an *access arrangement*, means the threshold for *new facilities investment* below which the modified test applies.

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<sup>133</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>134</sup> Section 1.3 amended by WAGG No 180, 22 October 2008; Section 1.3 amended by WAGG No 183, 21 November 2014

<sup>135</sup> Section 1.3 amended by WAGG No 183, 21 November 2014

<sup>136</sup> Section 1.3 amended by WAGG No 183, 21 November 2014

“**transfer**” refers to a novation of all or part of a *user’s* rights and obligations under an *access contract*.<sup>137</sup>

“**transfer and relocation policy**” means the provisions of an *applications and queuing policy* that relate to a *user’s* rights to *transfer* its *access rights* to another person.<sup>138</sup>

139

“**transmission connected generating system**” has the meaning given to the term “Transmission Connected Generating System” in the *WEM Rules*.<sup>140</sup>

“**transmission system**” means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of 66 kV or higher.

“**transport**” includes transmit and distribute.

“**trigger event**” is a set of one or more circumstances specified in an *access arrangement* under section 5.1(l)(ii), the occurrence of which requires a *service provider* to submit *proposed revisions* to the *Authority* under section 4.37.

“**user**” means a person, including a generator or a *consumer*, who is party to a *contract for services* with a *service provider*, and under section 13.4(e) includes an *other business* as a party to a deemed *access contract*.<sup>141</sup>

“**weighted average cost of capital**”, in relation to a *covered network*, is expressed as a percentage and means a weighted average of the cost of debt and the cost of equity as calculated under section 6.64.

“**WEM Rules**” means the market rules referred to in section 123(1) of the *Electricity Industry Act 2004 (WA)*.<sup>142</sup>

“**Western Power Network**” means the *covered network* that is *covered* under section 3.1.

{Note:

- The SWIS is the South-West interconnected system including generation plant and *associated* equipment.
- The term “SWIN” is not used in this Code, but is commonly used to describe the network portion of the SWIS.

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<sup>137</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>138</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>139</sup> Section 1.3 amended by WAGG No 137, 29 June 2007; Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>140</sup> Section 1.3 amended by WAGG No 134, 30 July 2021

<sup>141</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>142</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

- The “Western Power Network” is the portion of the SWIN that is owned by the Electricity Networks Corporation.<sup>143</sup>

“**Western Power Network access arrangement**” means the *access arrangement* approved for the Western Power Network by the *Authority’s* Further Final Decision dated 26 April 2007.<sup>144</sup>

“**Wholesale Electricity Market**” means the market referred to in section 122(1) of the *Electricity Industry Act 2004 (WA)*.<sup>145</sup>

“**whole of system plan**” means the document *published* by the Minister from time to time as the Whole of System Plan for the efficient development of the SWIS over a 20 year period.<sup>146</sup>

“**work**” means any activity or undertaking in connection with the *covered network*, whether of a capital or non-capital nature, including the planning, designing, development, *approval*, construction, acquisition and commissioning of *new facilities* and new *network assets* and the procurement or provision of any good or service.<sup>147</sup>

“**workers**” of a person means the directors, officers, servants, employees, agents, sub-contractors and consultants of the person.

“**written law**” means:

- (a) all Western Australian Acts and all Western Australian subsidiary legislation for the time being in force; and
- (b) all Commonwealth Acts and all Commonwealth subsidiary legislation for the time being in force, where the term “subsidiary legislation” has the meaning given to it under the *Interpretation Act 1984*, if “Commonwealth Act” were substituted for “written law”.

## Interpretation

1.4 This Code is a written law under the *Electricity Industry Act 2004*, and unless the contrary intention is apparent the *Interpretation Act 1984* applies to it.

1.5 In this Code, unless the contrary intention is apparent:

- (a) “**including**” and similar expressions are not words of limitation; and
- (b) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
- (c) a reference to a *law* includes any amendment or re-enactment of it that is for the time being in force, and includes all *laws* made under it from time to time; and

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<sup>143</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>144</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

<sup>145</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>146</sup> Section 1.3 amended by WAGG No 157, 18 September 2020

<sup>147</sup> Section 1.3 amended by WAGG No 180, 22 October 2008

- (d) where italic typeface has been applied to some words and expressions, it is solely to indicate that those words or expressions may be defined in section 1.3 or elsewhere, and in interpreting this Code the fact that italic typeface has or has not been applied to a word or expression is to be disregarded, to avoid doubt, nothing in this section 1.5(d) limits the application of section 1.3; and
- (e) where information in this Code (excluding the Appendices to this Code)<sup>148</sup> is set out in braces (namely “{” and “}”), whether or not preceded by the expression “Note”, “Outline” or “Example”, the information:
  - (i) is provided for information only and does not form part of this Code; and
  - (ii) is to be disregarded in interpreting this Code; and
  - (iii) might not reflect amendments to this Code or other documents or *written laws*,and
- (ea) where information in the Appendices to this Code is set out in braces (namely “{” and “}”), whether or not preceded by the expression “Note”, “Outline” or “Example”, the information—
  - (i) is provided to assist readers; and
  - (ii) is to be regarded accordingly in interpreting this Code;and<sup>149</sup>
- (f) a reference to:
  - (i) this Code includes any Appendix to this Code; and
  - (ii) a section, Chapter or Appendix is a reference to a section of, Chapter of or Appendix to this Code, and
  - (iii) a clause is a reference to a clause in an Appendix to this Code; and
- (g) without limiting section 1.4:
  - (i) where in this Code the word “may” is used in conferring a power, such word shall be interpreted to imply that the power may be exercised or not, at discretion<sup>150</sup>;
  - (ii) where in this Code the word “must” is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed.

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<sup>148</sup> Section 1.5 amended by WAGG No 207, 8 November 2005

<sup>149</sup> Section 1.5 amended by WAGG No 207, 8 November 2005

<sup>150</sup> Section 1.5 amended by WAGG No 180, 22 October 2008

## Chapter 2 – General Principles

### Code objective

2.1 The objective of this Code (“**Code objective**”) is to promote efficient investment in, and efficient operation and use of, *services of networks* in Western Australia for the long-term interests of *consumers* in relation to:

- (a) price, quality, safety, reliability and security of supply of electricity;
- (b) the safety, reliability and security of *covered networks*; and
- (c) the environmental consequences of energy supply and consumption, including reducing greenhouse gas emissions, considering land use and biodiversity impacts, and encouraging energy efficiency and demand management.

{Note: *Consumers* in the context of the *Code objective* has the meaning in this Code being “a person who consumes electricity”.}<sup>151</sup>

2.2 The Minister, the *Authority* and the *arbitrator* must have regard to the *Code objective* when performing a function under this Code whether or not the provision refers expressly to the *Code objective*.

### Code objective with other objectives, requirements and factors etc

2.3 Where this Code specifies one or more *specific criteria* in relation to a thing (including the making of any decision or the doing, or not doing, of any act), then:

- (a) subject to section 2.3(b), the *specific criteria* and the *Code objective* all apply in relation to the thing; and
- (b) subject to section 2.4, to the extent that a *specific criterion* and the *Code objective* conflict in relation to the thing, then:
  - (i) the *specific criterion* prevails over the *Code objective* in relation to the thing; and
  - (ii) to the extent that the *specific criterion* conflicts with one or more other *specific criteria* in relation to the thing, the *Code objective* applies in determining how the *specific criteria* can best be reconciled and which of them should prevail.

2.4 If the *Code objective* is specified in a provision of this Code as a *specific criterion*, then the *Code objective* is to be treated as being also a *specific criterion* for the purposes of section 2.3, but to the extent that the *Code objective* conflicts with one or more other *specific criteria* the *Code objective* prevails.

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<sup>151</sup> Section 2.1 amended by WAGG No 157, 18 September 2020

## Freedom to contract

2.4A Subject to this Code (including without limitation section 2.4C) and to—

- (a) an *applications and queuing policy* in an *access arrangement*; and
- (b) the *ringfencing objectives* and any *ringfencing rules* approved for a network by the *Authority* under Chapter 13; and
- (c) any applicable *technical rules*,

a *service provider* (including Electricity Networks Corporation) and a *user* or *applicant* may negotiate regarding, and may make and implement, an *access contract* for access to any service (including a service which differs from a *reference service*) on any terms (including terms which differ from a *standard access contract*).

{Note: This provision confirms the Code's central emphasis on negotiated outcomes. The express reference to Electricity Networks Corporation confirms that such negotiation and agreement is within its functions under section 41(b) of the *Electricity Corporations Act 2005*.} <sup>152</sup>

2.4B Section 2.4A does not—

- (a) permit a *service provider*, *user* or *applicant* to do anything which a *written law* prohibits; or
- (b) by implication limit the rights, powers or obligations of a *service provider*, *user* or *applicant*. <sup>153</sup>

2.4C The *service provider* for the *Western Power Network* may not enter into an *access contract* which does not permit a *user's* export of electricity into the *Western Power Network* to be interrupted or curtailed in either of the following circumstances:

- (a) in circumstances where *constraints* are created by other *users* of the *Western Power Network* (including *users* that connected to the *Western Power Network* after the date of the relevant *access contract*); or
- (b) in connection with the operation of security constrained economic dispatch,

provided that this section 2.4C does not affect any agreements entered into by the *service provider* prior to the date of the *2020 (No. 2) amendments*.

{Note: The *2020 (No. 2) amendments* came into effect on 18 September 2020.} <sup>154</sup>

2.4D Nothing in section 2.4C prevents the inclusion of other interruption or curtailment rights in an *access contract* or the *standard access contract* including, without limitation, rights to curtail or interrupt for *force majeure*, maintenance, in emergencies, or as required by law. <sup>155</sup>

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<sup>152</sup> Section 2.4A inserted by WAGG No 176, 29 August 2007; Section 2.4A amended by WAGG No 157, 18 September 2020

<sup>153</sup> Section 2.4B inserted by WAGG No 176, 29 August 2007

<sup>154</sup> Section 2.4C inserted by WAGG No 157, 18 September 2020

<sup>155</sup> Section 2.4D inserted by WAGG No 157, 18 September 2020

- 2.4E The *Authority* must not make any determination or decision under this Code inconsistent with section 2.4C.<sup>156</sup>
- 2.4F An *arbitrator* acting under this Code must not make any award, determination or decision inconsistent with section 2.4C.<sup>157</sup>
- 2.5 Nothing in this Code except:
- (a) an *applications and queuing policy* in an *access arrangement*, and
  - (b) the *ringfencing objectives* and any *ringfencing rules* approved for a network by the *Authority* under Chapter 13; and
  - (ba) section 2.4C; and<sup>158</sup>
  - (c) any applicable *technical rules*,
- limits:
- (d) the *services* a *service provider* may agree to provide to a *user* or *applicant*, or
  - (e) the terms for, or connected with, the provision of *services* which may be agreed between a *service provider* and a *user* or *applicant*, or
  - (f) the *covered services* which may be the subject of an *access dispute* or award under Chapter 10; or
  - (g) the terms for, or connected with, the provision of *covered services* which may be the subject of an *access dispute* or award under Chapter 10.
- 2.6 Nothing in this Code or an *access arrangement* prevails over or modifies the provisions of a *contract for services*, except for:<sup>159</sup>
- (a) if an *access arrangement* is in effect for the network — the *applications and queuing policy*, and
  - (b) the *ringfencing objectives*, to the extent that they apply to the network, and any *ringfencing rules* in effect for the network; and
  - (c) any provisions of the *technical rules* which by this Code are expressed to prevail over such a contract; and
- {Note: See section 12.5.}
- (d) subject to section 10.32(a), an award by the *arbitrator*.

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<sup>156</sup> Section 2.4E inserted by WAGG No 157, 18 September 2020

<sup>157</sup> Section 2.4F inserted by WAGG No 157, 18 September 2020

<sup>158</sup> Section 2.5 amended by WAGG No 157, 18 September 2020

<sup>159</sup> Section 2.6 amended by WAGG No 180, 22 October 2008



**Service provider to use reasonable endeavours to provide access to covered services**

- 2.7 Subject to section 2.4C, a *service provider* for a *covered network* must use all reasonable endeavours to accommodate an *applicant's*:<sup>160</sup>
- (a) requirement to obtain *covered services*; and
  - (b) requirements in connection with the negotiation of an *access contract*.
- 2.8 Without limiting section 2.7, a *service provider* must:
- (a) comply with the *access arrangement* for its *covered network* and must expeditiously and diligently process *access applications*; and
  - (b) negotiate in good faith with an *applicant* regarding the terms for an *access contract*, and
  - (c) to the extent reasonably practicable in accordance with *good electricity industry practice*, permit an *applicant* to acquire a *covered service* containing only those elements of the *covered service* which the *applicant* wishes to acquire; and
  - (d) to the extent reasonably practicable, specify a separate *tariff* for an element of a *covered service* if requested by an *applicant*, which *tariff* must be determined in accordance with sections 10.23 and 10.24; and
  - (e) when forming a view as to whether all or part of any proposed *new facilities investment* meets the test in section 6.51A, form that view as a *reasonable and prudent person*.<sup>161</sup>
- 2.8A Nothing in section 2.7 affects the fact *registered generator performance standards* for a *transmission connected generating system* will be determined in accordance with the *WEM Rules* including that the *service provider's* obligation to accept *proposed generator performance standards* is determined in accordance with the provisions of the *WEM Rules* and not the procedures in this Code.<sup>162</sup>
- 2.8B An *arbitrator* acting under this Code may not, as part of any award, decision or determination, determine *registered generator performance standards* for a *transmission connected generating system*.<sup>163</sup>
- 2.9 [not used]<sup>164</sup>
- 2.9A [not used]<sup>165</sup>

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<sup>160</sup> Section 2.7 amended by WAGG No 157, 18 September 2020

<sup>161</sup> Section 2.8 amended by WAGG No 180, 22 October 2008

<sup>162</sup> Section 2.8A inserted by WAGG No 134, 30 July 2021

<sup>163</sup> Section 2.8B inserted by WAGG No 134, 30 July 2021

<sup>164</sup> Section 2.9 amended by WAGG No 206, 8 December 2006; Section 2.9 amended by WAGG No 137, 29 June 2007; Section 2.9 deleted by WAGG No 180, 22 October 2008

<sup>165</sup> Section 2.9A inserted by WAGG No 206, 8 December 2006; Section 2.9A deleted by WAGG No 137, 29 June 2007

**Requirement to undertake work and funding of work<sup>166</sup>**

2.10 Subject to section 2.11, the *service provider* must undertake and fund any *required work*.<sup>167</sup>

2.11 If one or more *contributions* are required to be made under the *contributions policy* or under section 5.17A in respect of *required work*, then the *service provider* may refuse to undertake and fund any relevant *required work* under section 2.10 until either:

- (a) the *applicant* provides the *contributions*; or
- (b) the *applicant* and the *service provider* reach agreement on, or the *arbitrator* determines, the terms on which the *applicant* will make the *contributions*.<sup>168</sup>

2.12 If *work*:

- (a) is of a class which is or has been identified as *headworks* under any current or past *headworks scheme*; and
- (b) is necessary in accordance with *good electricity industry practice*,

then the *service provider* must undertake and fund the *work*, despite section 2.11 and whether or not the *work* is *required work*.<sup>169</sup>

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<sup>166</sup> Heading to section 2.10 inserted by WAGG No 180, 22 October 2008

<sup>167</sup> Section 2.10 inserted by WAGG No 180, 22 October 2008

<sup>168</sup> Section 2.11 inserted by WAGG No 180, 22 October 2008

<sup>169</sup> Section 2.12 inserted by WAGG No 180, 22 October 2008

## Chapter 3 – Coverage

{Note: This Chapter 3 deals with the two ways by which networks located anywhere in Western Australia can become covered, namely—

- by prescription as in Subchapter 3.1; or
- by Ministerial decision under Subchapter 3.2.

For *Pilbara networks*, there are two other ways a network can become covered, namely—

- by prescription in the *PNAC* (see section 120B(a) of the Act and Subchapter 3.1 of the *PNAC*); or
- by a *service provider* opting under the *PNAC* for the *Pilbara network* to be regulated under Part 8A of the Act (see Subchapter 3.3 of the *PNAC*).

All four classes of *covered network* may apply under this Code for revocation of coverage under section 3.30 (see section 104A(1)(b) of the Act).

If the Minister makes a *final coverage decision* that a *Pilbara network* be covered, then the Minister must concurrently make a *form of regulation decision* under the *PNAC*.

Under section 104A(2) of the Act this Code applies to regulate only *covered networks* that are regulated under Part 8 of the Act. The *PNAC* applies to regulate only *covered Pilbara networks* that are regulated under Part 8A of the Act (that is, *light regulation networks*.)<sup>170</sup>

### Subchapter 3.1 – Covered networks

#### Western Power Network is covered<sup>171</sup>

3.1 The portions of the *SWIS* which are owned by Electricity Networks Corporation are a *covered network* from the *Code commencement date*, unless coverage has subsequently been revoked under section 3.30.<sup>172</sup>

#### When coverage starts for Horizon Power's Pilbara network<sup>173</sup>

3.1A Despite the date specified for this purpose in the Minister's final coverage decision dated 2 February 2018 and entitled "Coverage of the Horizon Power electricity network in the North West Interconnected System", that decision will have effect on 1 July 2021.

{Note: The Minister's final coverage decision applies to those parts of the *Horizon Power coastal network* which were in existence on 2 February 2018. Section 17 of the *PNAC* then prescribes those parts, plus the balance of the *Horizon Power coastal network* as at 1 July 2021, to be *lightly regulated* under Part 8A of the Act. The combined effect is that the whole of the *Horizon Power coastal network* is a

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<sup>170</sup> Note to Chapter 3 inserted by WAGG No 118, 2 July 2021

<sup>171</sup> Heading to section 3.1 amended by WAGG No 180, 22 October 2008

<sup>172</sup> Section 3.1 amended by WAGG No 180, 22 October 2008

<sup>173</sup> Heading to section 3.1A inserted by WAGG No 108, 26 June 2020

*covered network* from 1 July 2021. The Minister may make further decisions under section 3.1B of this Code extending the scope of that *covered network*.)<sup>174</sup>

- 3.1B The Minister may decide under section 104A(1)(a) of the Act that any *network* owned by *Regional Power Corporation* and *interconnected* with the *Horizon Power coastal network* is to be part of that *covered network*.<sup>175</sup>
- 3.1C The Minister must *publish* a decision made under section 3.1B but Subchapters 3.2 and 3.3 do not apply to the making of that decision.<sup>176</sup>

#### **Other networks may be covered**

- 3.2 A network other than the Western Power Network may become *covered* after the *Code commencement date* where a person makes a *coverage application* in respect of the network and the Minister decides under section 3.21(a) that the *network* should be *covered*.<sup>177</sup>
- 3.2A *Pilbara network* that is deemed to be a *light regulation network* under section 31(4) of the *PNAC* can only be the subject of a *coverage application* as provided for in section 31(5) of the *PNAC*.<sup>178</sup>

### **Subchapter 3.2– Criteria for coverage**

#### **Minister’s decision on coverage**

- 3.3 [not used]<sup>179</sup>
- 3.4 If a *coverage decision* is that a network be *covered*, the *coverage decision* may cover the network to a greater or lesser extent than requested in the *coverage application* if, having regard to the part of the network that is necessary to provide *covered services* that *applicants* may seek, the Minister considers that doing so is consistent with the *Code objective*.

#### **Coverage criteria**

- 3.5 A *coverage decision* must be that a network be *covered* if the Minister determines an affirmative answer to each of the following questions:
- (a) Would *access* (or increased *access*) to *covered services* provided by means of the network promote a material increase in competition in at least one market (whether or not in Western Australia) other than the market for the *covered services* provided by means of the network?

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<sup>174</sup> Section 3.1A inserted by WAGG No 108, 26 June 2020; note to section 3.1A amended by WAGG No 118, 2 July 2021

<sup>175</sup> Section 3.1B inserted by WAGG No 118, 2 July 2021

<sup>176</sup> Section 3.1C inserted by WAGG No 118, 2 July 2021

<sup>177</sup> Section 3.2 amended by WAGG No 180, 22 October 2008

<sup>178</sup> Section 3.2A inserted by WAGG No 118, 2 July 2021

<sup>179</sup> Section 3.3 deleted by WAGG No 180, 22 October 2008

- (b) Would it be uneconomic for anyone to develop another network to provide the *covered services* provided by means of the network?
- (c) Would *access* (or increased *access*) to the *covered services* provided by means of the network not be contrary to the public interest?

### **Factors the Minister must have regard to**

- 3.6 The Minister must when exercising the Minister's functions under this Chapter 3 have regard to the geographical location of the network and the extent (if any) to which the network is interconnected with other networks.
- 3.7 Section 3.6 does not limit the factors to which the Minister may have regard.

## **Subchapter 3.3 – Coverage process**

### **Applications for coverage**

- 3.8 A *coverage applicant* may make a *coverage application* to the Minister requesting that the whole or any part of a network be *covered*.
- 3.9 A *coverage applicant* may withdraw its *coverage application* by notice to the Minister at any time before the Minister makes a *final coverage decision*.
- 3.10 A *coverage application* must be made in accordance with any guidelines which may be developed and *published* by the Minister concerning the form and content of *coverage applications* and specifying the amount of any fee to be paid on the making of a *coverage application*.
- 3.11 Within 10 *business days* after receipt of the *coverage application* inform the *service provider* and each other person known to the Minister whom the Minister believes has a sufficient interest in the matter that the Minister has received the *coverage application*.

### **Minister may dismiss a coverage application<sup>180</sup>**

- 3.12 If the Minister receives a *coverage application* which the Minister considers to have been made on trivial or vexatious grounds, then, without further consideration, the Minister may dismiss the *coverage application*, in which case sections 3.13 to 3.29 do not apply to the *coverage application*.<sup>181</sup>

### **Invitation for submissions and issues paper**

- 3.13 The Minister must *publish*:<sup>182</sup>
  - (a) a *coverage application*, stating how copies of the *coverage application* may be obtained; and

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<sup>180</sup> New heading inserted by WAGG No 207, 8 November 2005

<sup>181</sup> Section 3.12 amended by WAGG No 207, 8 November 2005; Section 3.12 amended by WAGG No 180, 22 October 2008

<sup>182</sup> Section 3.13 amended by WAGG No 157, 18 September 2020

(b) an invitation for submissions on the *coverage application*,

as soon as practicable and in any event within 10 *business days* after the *coverage application* is received by the Minister.

3.14 The Minister may produce and *publish* an issues paper examining the issues raised in connection with a *coverage application* within 20 *business days* after the invitation for submissions on the *coverage application* is *published* under section 3.13(b).<sup>183</sup>

3.15 The Minister must arrange to provide a copy of a *coverage application* to any person who requests a copy within 5 *business days* after the person makes the request and pays any reasonable fee required by the Minister.

### **First round public submissions**

3.16 A person may make a submission to the Minister on a *coverage application* within the later of:

(a) 15 *business days* after an invitation for submissions on the *coverage application* is *published* under section 3.13(b); and<sup>184</sup>

(b) 10 *business days* after an issues paper is *published* in respect of the *coverage application* under section 3.14.

### **Draft coverage decision by the Minister**

3.17 Subject to section 3.24, the Minister must consider any submissions made under section 3.16 on a *coverage application* and must make a *draft coverage decision* either:

(a) that the *network* be *covered*; or

(b) that the *network* not be *covered*.

3.18 The Minister must, within 15 *business days* (but not earlier than 10 *business days*) after the due date for submissions under section 3.16, *publish* the *draft coverage decision* and provide a copy of the *draft coverage decision* and *reasons* to the *coverage applicant* and the *service provider*.<sup>185</sup>

3.19 The Minister must *publish* an invitation for submissions on a *draft coverage decision* at the same time as the Minister *publishes* the *draft coverage decision*.<sup>186</sup>

### **Second round public submissions**

3.20 A person may make a submission to the Minister on a *draft coverage decision* within 15 *business days* after the invitation for submissions on the *draft coverage decision* is *published* under section 3.19.<sup>187</sup>

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<sup>183</sup> Section 3.14 amended by WAGG No 157, 18 September 2020

<sup>184</sup> Section 3.16 amended by WAGG No 157, 18 September 2020

<sup>185</sup> Section 3.18 amended by WAGG No 157, 18 September 2020

<sup>186</sup> Section 3.19 amended by WAGG No 157, 18 September 2020

<sup>187</sup> Section 3.20 amended by WAGG No 157, 18 September 2020

### **Final coverage decision by Minister**

- 3.21 Subject to section 3.24, the Minister must consider any submissions made under section 3.20 on a *draft coverage decision* and must make a *final coverage decision* either:
- (a) that the *network* be covered; or
  - (b) that the *network* not be covered.
- 3.22 The Minister must, within 15 *business days* (but not earlier than 10 *business days*) after the due date for submissions under section 3.20, *publish* the *final coverage decision* and provide a copy of the *final coverage decision* and *reasons* to the *coverage applicant* and the *service provider*.<sup>188</sup>

### **Final coverage decision has effect**

- 3.23 The Minister must specify a date in the *final coverage decision* on which the *final coverage decision* will have effect, which date must not be earlier than 10 *business days* after the day the *final coverage decision* is made.

### **Late submissions**

- 3.24 The Minister may consider any submission received pursuant to an invitation for submissions after the time for making the submission has expired.

### **Reasons**

- 3.25 At the time of *publishing* a *coverage decision* the Minister must also *publish* the *reasons* for the *coverage decision*.<sup>189</sup>

### **Service provider agrees to network coverage**

- 3.26 At any time prior to the Minister making a *final coverage decision* for a network, the *service provider* may notify the Minister that it agrees to coverage of the network to the same extent as specified in the *coverage application*, in which case the Minister may then make a *final coverage decision* that the *network* be covered to the same extent as specified in the *coverage application* and if the Minister does so:
- (a) the Minister is not required to consider the matters set out in sections 3.5 to 3.6; and
  - (b) the Minister is not required to comply with the process in sections 3.13 to 3.22.

### **Extensions of time under this Chapter**

- 3.27 Subject to section 3.28, the Minister may extend any deadline, or provide for stages in the making of a *coverage decision* in addition to those provided for, in this Chapter 3, but only if, and only to the extent that, the Minister first determines that:

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<sup>188</sup> Section 3.22 amended by WAGG No 157, 18 September 2020

<sup>189</sup> Section 3.25 amended by WAGG No 157, 18 September 2020

- (a) a longer period of time is essential for due consideration of all the matters under consideration or satisfactory performance of the relevant obligation, or both; and
- (b) the Minister has taken all reasonable steps to fully utilise the times and processes provided for in this Chapter 3.

3.28 The Minister:

- (a) must not exercise the power in section 3.27 to extend any deadline unless, before the day on which the time would otherwise have expired, the Minister *publishes* the Minister's decision to extend the deadline; and<sup>190</sup>
- (b) may (subject to section 3.29) exercise the power in section 3.27 to extend a deadline on more than one occasion but the total time for the extension of a deadline cannot exceed the period originally specified in this Chapter 3 for the relevant deadline.

3.29 The Minister must not extend the deadline specified in section 3.15.

### **Subchapter 3.4 – Revocation of coverage**

#### **Revocation of coverage**

3.30 A *covered network* ceases to be *covered* if a *revocation applicant* makes a *revocation application* to the Minister for coverage of the *covered network* to be revoked and the Minister makes a final *revocation decision* that the network not be *covered*.

3.31 The process for the Minister to decide on revocation of coverage is the same as the process for a decision on coverage outlined in sections 3.4<sup>191</sup> to 3.29, with appropriate modifications including replacing a reference to:

- (a) “*coverage application*” with a reference to “*revocation application*”; and
- (b) “*coverage decision*” with a reference to “*revocation decision*”; and
- (c) “*draft coverage decision*” with a reference to *draft revocation decision*; and
- (d) “*final coverage decision*” with a reference to “*final revocation decision*”; and
- (e) “*coverage*” with a reference to “*revocation of coverage*”; and
- (f) “*coverage applicant*” with a reference to “*revocation applicant*”.

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<sup>190</sup> Section 3.28 amended by WAGG No 157, 18 September 2020

<sup>191</sup> Section 3.31 amended by WAGG No 180, 22 October 2008



## Subchapter 3.5 – Miscellaneous

### Advertising

3.32 Where the Minister is required to *publish* a thing under this Chapter 3, the thing *published* must contain a description of the network the subject of the *publication*.<sup>192</sup>

### Publishing

3.33 The Minister must *publish* all submissions made in connection with a *coverage application* or *revocation application*.<sup>193</sup>

### Automatic coverage<sup>194</sup>

3.34 An *augmentation* of a *covered network* is part of the *covered network* from the time the *augmentation* is commissioned.

3.34A A *stand-alone power system* provided by a *service provider* is treated as part of the *covered network* to which it is an adjunct if it:

- (a) replaces part of the *covered network*; or
- (b) is required to be provided by the *service provider* pursuant to a *written law* or *statutory instrument*.<sup>195</sup>

3.35 Sections 3.34 and 3.34A do not limit section 3.30.<sup>196</sup>

### Notification of network modification

3.36 A *service provider* must:

- (a) as soon as practicable after a network modification which meets the notification threshold has occurred, notify the *Authority* of the details of the network modification; and
- (b) within 30 *business days* after receiving a request from the *Authority*, and within 30 *business days* after the end of a year, provide the *Authority* with an updated description of the *covered network*, identifying all significant network modifications (whether or not they meet the notification threshold) that have occurred since the last description,

and the *Authority* must promptly after notification amend the description of the *covered network* on the *public register* to reflect the network modification or network modifications.

{Note: The *Authority* is required to establish and *maintain* a *public register* under section 14.15.}

<sup>192</sup> Section 3.32 amended by WAGG No 157, 18 September 2020

<sup>193</sup> Note to section 3.33 deleted by WAGG No 180, 22 October 2008

<sup>194</sup> Heading to section 3.34 amended by WAGG No 157, 18 September 2020

<sup>195</sup> Section 3.34A inserted by WAGG No WAGG No 157, 18 September 2020

<sup>196</sup> Section 3.35 amended by WAGG No 157, 18 September 2020

- 3.37 For the purposes of section 3.36, the notification threshold for a network modification is:
- (a) for an *augmentation* — an *augmentation* requiring *new facilities investment* of more than \$15 million (*CPI adjusted*); or
  - (b) for a disposal or decommissioning — a disposal or decommissioning involving *network assets* that are valued by the *service provider* as a *reasonable and prudent person* at more than \$15 million (*CPI adjusted*).

### **Subchapter 3.6 – Transitional matters relating to form of regulation decision<sup>197</sup>**

#### **Contracts preserved**

- 3.38 If the Minister makes a *form of regulation decision* under the *PNAC* that a *Pilbara network* which was previously *fully regulated* is to be *lightly regulated*, then any existing *contracts for services* in respect of the *Pilbara network* will continue in accordance with their terms, including for the duration of any option periods provided for in any such contracts (subject to any variations the parties may agree from time to time).
- 3.39 If a contract which is continued under section 3.38 depends upon a regulated outcome under this Code (for example, because it adopts a regulated tariff from time to time) then the arbitrator under the *PNAC* has jurisdiction to hear an access dispute in respect of the relevant contract and the provisions of Chapter 7 of the *PNAC* will apply to such dispute.
- 3.40 Section 3.39 applies in addition to any other dispute resolution mechanism included in a contract, and the arbitrator under the *PNAC* has jurisdiction to determine the effect of section 3.39.
- 3.41 If the Minister makes a *form of regulation decision* under the *PNAC* that a *Pilbara network* which was previously *lightly regulated* is to be *fully regulated*, then any existing “contracts for services” (as defined in the *PNAC*) in respect of the *Pilbara network* will continue in accordance with their terms, including for the duration of any option periods provided for in any such contracts (subject to any variations the parties may agree from time to time).

#### **How applications and disputes in progress are managed**

- 3.42 Following a form of regulation decision under the *PNAC* that a *Pilbara network* be lightly regulated—
- (a) any *access application* made before the date of the *form of regulation decision* is to be transitioned to being *lightly regulated* under the *PNAC*; and
  - (b) the *access application’s priority* will remain the same under the *PNAC* as its *priority* under this Code;

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<sup>197</sup> Subchapter 3.6 inserted by WAGG No 118, 2 July 2021

- (c) the *applicant* and the *service provider* must meet expeditiously and negotiate in good faith with a view to agreeing any amendments or additional information needed in respect of the *access application* as a result of the transition, and failing agreement the question may be the subject of an access dispute under the *PNAC* but not an *access dispute* under this Code; and
- (d) any *access dispute* notified in the *Authority* before the date of the *form of regulation decision* is to be transitioned to be determined by arbitration under the *PNAC*, in which case the *arbitrator* may make such orders as the *arbitrator* deems necessary in respect of the transition.

{Note: This gives the *arbitrator* the power to make orders to deal with the transition of an *access dispute* to be determined by arbitration under the *PNAC*. Similar powers also exist under the *PNAC*. The combined effect is that the arbitrators under both this Code and the *PNAC* can make the necessary orders to transition an *access dispute*.}

- 3.43 If the Minister makes a *form of regulation decision* under the *PNAC* that a *Pilbara network* which was previously *lightly regulated* is to be *fully regulated*, the *service provider* must submit to the *Authority*, as applicable, either—
- (a) if the *Pilbara network* has not previously had an *access arrangement*—a proposed *access arrangement* and *access arrangement information* under section 4.1; or
  - (b) if the *Pilbara network* has previously had an *access arrangement*—proposed revisions to the *access arrangement* and proposed revised *access arrangement information* under section 4.48.
- 3.44 The *form of regulation decision* that a *Pilbara network* is *fully regulated* does not take effect until, as applicable, the *access arrangement start date* or *revisions commencement date* in respect of the submission referred to in section 3.43.
- 3.45 Following a *form of regulation decision* that a *Pilbara network* which was previously *lightly regulated* is to be *fully regulated*—
- (a) any access application made under the *PNAC* before the date of the *form of regulation decision*, is to be transitioned to be determined under this Code; and
  - (b) the access application has effect for the purposes of this Code as though it was an *access application* lodged under the *service provider's access arrangement*; and
  - (c) the *access application's priority* will remain the same under this Code as its *priority* under the *PNAC*; and
  - (d) the *applicant* and the *service provider* must meet expeditiously and negotiate in good faith with a view to agreeing any amendments or additional information needed in respect of the *access application* as a result of the transition, and failing agreement the question may be the subject of an *access dispute* under this Code but not an access dispute under the *PNAC*; and

- (e) any access dispute under the *PNAC* notified to the *Authority* before the date of the *form of regulation decision*, is to be transitioned to be determined as an *access dispute* under this Code, in which case the *arbitrator* may make such orders as the *arbitrator* deems necessary in respect of the transition.

{Note: This gives the *arbitrator* the power to make orders to deal with the transition of an access dispute under the *PNAC* to be determined as an *access dispute* under this Code. Similar powers also exist under the *PNAC*. The combined effect is that the arbitrators under both this Code and the *PNAC* can make the necessary orders to transition an *access dispute* under the *PNAC*.}

## Chapter 4 – Access Arrangements: Approvals and Review

### Subchapter 4.A – Framework and approach<sup>198</sup>

- 4.A1 The *Authority* must make and *publish* a document (“**framework and approach**”) that is consistent with the *Code objective*, and applies to the *service provider* in respect of a *proposed access arrangement* for a matter listed in section 4.A2 in accordance with this section.<sup>199</sup>
- 4.A2 The *framework and approach* must set out the *Authority’s* decision (including its *reasons* for the decision) for the purposes of the next *access arrangement review*, on the following matters:
- (a) the *investment adjustment mechanism* that will apply to the *service provider*; and
  - (b) the *gain sharing mechanism* that will apply to the *service provider*; and
  - (c) the *service standards adjustment mechanism* that will apply to the *service provider*; and
  - (d) the *demand management innovation allowance mechanism* that will apply to the *service provider*; and
  - (e) the form of *price control*, having regard to the objectives in section 6.4; and
  - (f) a list of and classification of *services* including whether *services* are *reference services* or *non-reference services*, the eligibility criteria for each *reference service*, the structure and *charging parameters* for each *distribution reference tariff* and a description of the approach to setting each *distribution reference tariff* in accordance with sections 7.2 to 7.12; and
  - (g) the method for setting the *service standard benchmarks* for each *reference service*.<sup>200</sup>
- 4.A3 If there is no *access arrangement* that applies in respect of a *service provider*, the *Authority* must *publish* the *framework and approach* that will apply to the first *access arrangement* by no later than 3 months prior to the *submission deadline*.<sup>201</sup>
- 4.A4 By no later than 31 months prior to the *target revisions commencement date*, the *Authority* must *publish*:

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<sup>198</sup> Heading inserted by WAGG No 157, 18 September 2020

<sup>199</sup> Section 4.A1 inserted by WAGG No 157, 18 September 2020

<sup>200</sup> Section 4.A2 inserted by WAGG No 157, 18 September 2020

<sup>201</sup> Section 4.A3 inserted by WAGG No 157, 18 September 2020

- (a) an issues paper on:
  - (i) if there is a *framework and approach* that applies in respect of the *service provider*, whether it is necessary or desirable to amend or replace the *framework and approach*; or
  - (ii) if there is no *framework and approach* that applies in respect of the *service provider*, the *framework and approach* that will apply to the next *access arrangement*,
- (b) an invitation for submissions on the issues paper referred to in section 4.A3(a); and
- (c) an indicative timetable setting out the *Authority's* proposed timeline with respect to the milestones for the *framework and approach* and *access arrangement* revision process to apply to the next *access arrangement review*.<sup>202</sup>

4A.5 A person may make a submission to the *Authority* on the issues paper within 20 *business days* (or such longer period as specified by the *Authority*) after the invitation for submissions on the *framework and approach* is *published* under section 4.A3.

{Note: Under section 14.5(d)(iii), the *Authority* must place each submission made under section 4.A5 on the *public register*.}

{Note: A person may state that a submission or part of a submission is confidential in which case sections 14.12 to 14.15 apply.}<sup>203</sup>

4.A6 The *Authority* must consider any submissions made under section 4.A5 (and information provided pursuant to section 4.A14, if applicable) and must make and *publish*:

- (a) the *Authority's* decision (including its *reasons* for the decision) for making, amending or replacing the *framework and approach*;
- (b) the draft *framework and approach* (as amended or replaced, if applicable); and
- (c) an invitation for submissions on the draft *framework and approach*.<sup>204</sup>

4.A7 A person may make a submission to the *Authority* on a draft *framework and approach* within 20 *business days* (or such longer period as specified by the *Authority*) after the invitation for submissions on the draft *framework and approach* is *published* under section 4.A3.

{Note: Under section 14.5(d)(iii), the *Authority* must place each submission made under section 4.A7 on the *public register*.}

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<sup>202</sup> Section 4.A4 inserted by WAGG No 157, 18 September 2020

<sup>203</sup> Section 4.A5 inserted by WAGG No 157, 18 September 2020

<sup>204</sup> Section 4.A6 inserted by WAGG No 157, 18 September 2020

{Note: A person may state that a submission or part of a submission is confidential in which case sections 14.12 to 14.15 apply.}<sup>205</sup>

4.A8 The *service provider* may, within 15 *business days* after the due date for submissions under section 4.A7, make a submission on the draft *framework and approach*.

{Note: Under section 14.5(d)(iii), the *Authority* must place each submission made under section 4.A8 on the *public register*.}

{Note: A person may state that a submission or part of a submission is confidential in which case sections 14.12 to 14.15 apply.}<sup>206</sup>

4.A9 By no later than 23 months prior to the *target revisions commencement date*, the *Authority* must:

- (a) consider any submissions made under sections 4.A7 and 4.A8 (and information provided pursuant to section 4.A14, if applicable) on the draft *framework and approach*; and
- (b) make and *publish* a final *framework and approach* (including its *reasons* for the final *framework and approach*).<sup>207</sup>

4.A10 The *framework and approach* is not binding on the *Authority* and the *service provider*.<sup>208</sup>

4.A11 Any *proposed access arrangement* or *proposed revisions* submitted by a *service provider* to the *Authority* must be consistent with the *framework and approach* that applies to it. The *service provider* may propose departures from the *framework and approach* if there has been a material change in circumstances in which case it must provide reasons for the departure.<sup>209</sup>

4.A12 The *Authority* must not *approve* a *proposed access arrangement* or *proposed revisions* that departs from the *framework and approach* unless there has been a material change in circumstances, in which case it must provide *reasons* for the departure.<sup>210</sup>

4.A13 The *Authority* may make and *publish* a *framework and approach* that applies in respect of an *access arrangement* for a matter that is not listed in section 4.A2 and, if it does so, sections 4.A1 to 4.A12 apply as if that matter were listed in section 4.A2.<sup>211</sup>

4.A14 A submission made under section 4.A5, 4.A7 or 4.A8 that proposes the introduction of a new *reference service* must include information which justifies and supports the basis on which the party making the submission considers the relevant *reference service* is likely to be sought by either or both of:

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<sup>205</sup> Section 4.A7 inserted by WAGG No 157, 18 September 2020

<sup>206</sup> Section 4.A8 inserted by WAGG No 157, 18 September 2020

<sup>207</sup> Section 4.A9 inserted by WAGG No 157, 18 September 2020

<sup>208</sup> Section 4.A10 inserted by WAGG No 157, 18 September 2020

<sup>209</sup> Section 4.A11 inserted by WAGG No 157, 18 September 2020

<sup>210</sup> Section 4.A12 inserted by WAGG No 157, 18 September 2020

<sup>211</sup> Section 4.A13 inserted by WAGG No 157, 18 September 2020

- (a) a significant number of *customers* and *applicants*; or
- (b) a substantial proportion of the market for *services* in the *covered network*.<sup>212</sup>

### **Subchapter 4.1— Approval process**

{Note: Appendix 1 contains a flowchart which provides an outline of the *access arrangement approval* process.}

#### **Submission of first access arrangement**

4.1 The *service provider* of a *covered network* must submit a *proposed access arrangement* and *access arrangement information* to the *Authority* by the *submission deadline*.

{Note: Sections 4.16 to 4.21 apply where there are two *service providers* for a *covered network*, for example because one person owns it and another operates it.}

{Note: If a *service provider* does not submit a *proposed access arrangement* for the *first access arrangement period* by the *submission deadline* sections 4.55 to 4.58 will apply.}

{Note: Section 4.48 requires a *service provider* who has an existing *access arrangement* to submit *proposed revisions* by no later than 17 months prior to the *target revisions commencement date* in the *access arrangement*.<sup>213</sup>}

{Note: A *service provider* that submits an *access arrangement* and *access arrangement information* under section 4.1 must also submit proposed *technical rules* under Chapter 12 to be processed in parallel with the *access arrangement*.}

#### **Access arrangement information**

4.2 *Access arrangement information* must enable the *Authority*, *users* and *applicants* to:

- (a) understand how the *service provider* derived the elements of the *proposed access arrangement*; and
- (b) form an opinion as to whether the *proposed access arrangement* complies with the *Code*.

4.3 *Access arrangement information* must include:

- (a) information detailing and supporting the *price control* in the *access arrangement*; and
- (b) information detailing and supporting the *pricing methods* in the *access arrangement*, including:

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<sup>212</sup> Section 4.A14 inserted by WAGG No 157, 18 September 2020

<sup>213</sup> Note to section 4.1 inserted by WAGG No 157, 18 September 2020



- (i) a description (with supporting materials) of how the proposed *tariff structure statement* complies with the *pricing principles* including:
    - A. a description of where there has been any departure from the pricing principles set out in sections 7.3D to 7.3H; and
    - B. an explanation of how that departure complies with section 7.3B; and
  - (ii) a description of how the *service provider* has engaged with *users* and *end-use customers* in developing the proposed *tariff structure statement* and has sought to address any relevant concerns identified as a result of that engagement; and
  - (c) if applicable, information detailing and supporting the measurement of the components of *approved total costs* in the *access arrangement*; and
  - (d) information detailing and supporting the *service provider's* system capacity and volume assumptions; and
  - (e) any other information specified in the guidelines made under section 4.5.<sup>214</sup>
- 4.4 If a *service provider* submits a revised *proposed access arrangement* under section 4.16, the *service provider* must at the same time submit appropriately amended *access arrangement information*.<sup>215</sup>
- 4.5 The *Authority* may from time to time *publish* guidelines setting out in further detail what information must be included in *access arrangement information* in order for the *access arrangement information* to comply with sections 4.2 and 4.3, either generally or in relation to a particular matter or circumstance.
- 4.6 Subject to sections 4.2 and 4.3, *access arrangement information* submitted more than six months after guidelines are *published* under section 4.5<sup>216</sup> must comply with the guidelines.
- 4.7 [Not used]<sup>217</sup>
- 4.8 The *Authority* may, to the extent necessary to make *access arrangement information* comply with sections 4.2 and 4.3, require the *service provider* to amend and resubmit *access arrangement information* to the *Authority* within a reasonable time specified by the *Authority*, which time must not exceed 5 *business days*.

#### **Invitation for submissions and issues paper**

- 4.9 As soon as practicable after the *proposed access arrangement* is submitted to the *Authority*, the *Authority* must *publish*:

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<sup>214</sup> Section 4.3 amended by WAGG No 157, 18 September 2020

<sup>215</sup> Section 4.4 amended by WAGG No 157, 18 September 2020

<sup>216</sup> Section 4.6 amended by WAGG No 207, 8 November 2005; Section 4.6 amended by WAGG No 157, 18 September 2020

<sup>217</sup> Section 4.7 deleted by WAGG No 157, 18 September 2020

- (a) a *proposed access arrangement* and the *access arrangement information* submitted to it; and
- (b) an invitation for submissions on the *proposed access arrangement*; and
- (c) an invitation to attend a public forum on the issues paper referred to in section 4.10.<sup>218</sup>

4.10 The *Authority* must:

- (a) produce and *publish* an issues paper examining the issues raised in connection with the *proposed access arrangement* after the invitation for submissions on the *proposed access arrangement* is *published* under section 4.9(b); and
- (b) hold a public forum on the issues paper.<sup>219</sup>

### **First round public submissions**

4.11 A person may make a submission to the *Authority* on the *proposed access arrangement* within 30 *business days* (or such longer period as specified by the *Authority*) after the publication of the issues paper under section 4.10(a).<sup>220</sup>

{Note: Under section 14.5(d)(iii), the *Authority* must place each submission made under section 4.11 on the *public register*.}

{Note: A person may state that a submission or part of a submission is confidential in which case sections 14.12 to 14.15 apply.}

4.11A The *service provider* may submit further *access arrangement information* on the *proposed access arrangement* to the *Authority* within 20 *business days* after the due date for submissions under section 4.11.<sup>221</sup>

### **Draft decision by Authority**

4.12 The *Authority* must consider any submissions made under section 4.11 and any further *access arrangement information* submitted under section 4.11A on a *proposed access arrangement* and must make a *draft decision* either:<sup>222</sup>

- (a) to *approve* the *proposed access arrangement*; or
- (b) to not *approve* the *proposed access arrangement*, in which case the *Authority* must in its *reasons* provide details of the amendments required to the *proposed access arrangement* before the *Authority* will approve it.

4.13 The *Authority* must, as soon as practicable after the due date for submission of further *access arrangement information* under section 4.11A, *publish*:

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<sup>218</sup> Section 4.9 amended by WAGG No 157, 18 September 2020

<sup>219</sup> Section 4.10 amended by WAGG No 157, 18 September 2020

<sup>220</sup> Section 4.11 amended by WAGG No 157, 18 September 2020

<sup>221</sup> Section 4.11A inserted by WAGG No 157, 18 September 2020

<sup>222</sup> Section 4.12 amended by WAGG No 157, 18 September 2020

- (a) the *draft decision*;
- (b) *reasons* for the *draft decision*;
- (c) an invitation for submissions on a *draft decision*; and
- (d) notice of a predetermination conference, which must include the time, date and place of the predetermination conference.<sup>223</sup>

4.14 The *Authority* must hold the predetermination conference at the time, date and place specified in the notice under section 4.13 and in any event, within 15 *business days* of the notice for the purpose of explaining the *draft decision*.<sup>224</sup>

### **Second round public submissions**

4.15 A person may make a submission to the *Authority* on a *draft decision* within 45 *business days* (or such longer period as specified by the *Authority*) after the invitation for submissions on the *draft decision* is *published* under section 4.13.<sup>225</sup>

{Note: Under section 14.5(d)(iii), the *Authority* must place each submission made under section 4.15 on the *public register*.}

{Note: A person may state that a submission or part of a submission is confidential in which case sections 14.12 to 14.15 apply.}

### **Revised proposed access arrangement**

4.16 The *service provider* must, within 45 *business days* after the *draft decision* is *published* under section 4.13, submit a revised *proposed access arrangement*, and if so, a reference in this Code to a “*proposed access arrangement*” is to be read as though it was a reference to a “revised *proposed access arrangement*”.<sup>226</sup>

4.16A The *service provider* may submit further *access arrangement information* on the revised *proposed access arrangement* to the *Authority* within 20 *business days* after the due date for submissions under section 4.15.<sup>227</sup>

### **Final decision by Authority**

4.17 The *Authority* must consider any submissions made under sections 4.15 to 4.16A on the *draft decision* and must:

- (a) make a *final decision* either:
  - (i) to approve the proposed access arrangement; or
  - (ii) to not approve the *proposed access arrangement*; and
- (b) *publish* the *final decision*; and

<sup>223</sup> Section 4.13 amended by WAGG No 157, 18 September 2020

<sup>224</sup> Section 4.14 amended by WAGG No 157, 18 September 2020

<sup>225</sup> Section 4.15 amended by WAGG No 157, 18 September 2020

<sup>226</sup> Section 4.16 amended by WAGG No 157, 18 September 2020

<sup>227</sup> Section 4.16A inserted by WAGG No 157, 18 September 2020

(c) provide and *publish reasons* for the *final decision*.<sup>228</sup>

4.18 If the *Authority's final decision* is not to approve a *service provider's proposed access arrangement*, then the *Authority* must draft, approve and *publish* its own *access arrangement*, which must be:

(a) based on the *proposed access arrangement*, and

(b) amended from the basis in section 4.18(a) only to the extent necessary to satisfy the criteria for *approval* in section 4.28.<sup>229</sup>

4.18A The *Authority* must comply with sections 4.17 and 4.18 as soon as practicable after the due date for submission of further *access arrangement information* under section 4.16A and in any event by no later than 3 months prior to the *target revisions commencement date*.<sup>230</sup>

**[Heading not used]<sup>231</sup>**

4.19 [Not used]<sup>232</sup>

4.20 [Not used]<sup>233</sup>

**[Heading not used]<sup>234</sup>**

4.21 [Not used]<sup>235</sup>

4.22 [Not used]<sup>236</sup>

4.23 [Not used]<sup>237</sup>

**[Heading not used]<sup>238</sup>**

4.24 [Not used]<sup>239</sup>

4.25 [Not used]<sup>240</sup>

**Access arrangement start date**

4.26 When the *Authority*:

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<sup>228</sup> Section 4.17 amended by WAGG No 157, 18 September 2020

<sup>229</sup> Section 4.18 amended by WAGG No 157, 18 September 2020

<sup>230</sup> Section 4.18A inserted by WAGG No 157, 18 September 2020

<sup>231</sup> Heading to section 4.19 deleted by WAGG No 157, 18 September 2020

<sup>232</sup> Section 4.19 deleted by WAGG No 157, 18 September 2020

<sup>233</sup> Section 4.20 deleted by WAGG No 157, 18 September 2020

<sup>234</sup> Heading to section 4.21 deleted by WAGG No 157, 18 September 2020

<sup>235</sup> Section 4.21 deleted by WAGG No 157, 18 September 2020

<sup>236</sup> Section 4.22 deleted by WAGG No 157, 18 September 2020

<sup>237</sup> Section 4.23 deleted by WAGG No 157, 18 September 2020

<sup>238</sup> Heading to section 4.24 deleted by WAGG No 157, 18 September 2020

<sup>239</sup> Section 4.24 deleted by WAGG No 157, 18 September 2020

<sup>240</sup> Section 4.25 deleted by WAGG No 157, 18 September 2020

- (a) makes a *final decision* to approve a *proposed access arrangement*; or
  - (b) approves its own *access arrangement* under section 4.18,
- the *Authority* must specify an *access arrangement start date* which must:
- (c) be consistent with the *Code objective*; and
  - (d) be at least 2 months after the later of the *final decision* or the *Authority's* own *access arrangement* under section 4.18 being *published*.<sup>241</sup>

## Subchapter 4.2 – Criteria for approval

### [Heading not used]<sup>242</sup>

4.27 [Not used]<sup>243</sup>

### Criteria for approval of a proposed access arrangement

4.28 Subject to section 4.32, when making a *draft decision* or *final decision*, the *Authority* must determine whether a *proposed access arrangement* meets the *Code objective* and the requirements set out in Chapter 5 (and Chapter 9, if applicable) and:<sup>244</sup>

- (a) if the *Authority* considers that:
  - (i) the *Code objective* and the requirements set out in Chapter 5 (and Chapter 9, if applicable) are satisfied — it must approve the *proposed access arrangement*; and
  - (ii) the *Code objective* or a requirement set out in Chapter 5 (or Chapter 9, if applicable) is not satisfied — it must not approve the *proposed access arrangement*;

and

- (b) to avoid doubt, if the *Authority* considers that the *Code objective* and the requirements set out in Chapter 5 (and Chapter 9, if applicable) are satisfied, it must not refuse to approve the *proposed access arrangement* on the ground that another form of *access arrangement* might better or more effectively satisfy the *Code objective* and the requirements set out in Chapter 5 (and Chapter 9, if applicable).

{Note: The effect of section 4.28 is to make the *Authority's* decision in relation to a *proposed access arrangement* a “pass or fail” assessment. The intention is that, if a *proposed access arrangement* meets the *Code objective* and the requirements set out in Chapter 5 (and Chapter 9, if applicable), the *Authority* should not refuse to approve it simply because the *Authority* considers that some other form of *access arrangement* might be even better, or more effective,

<sup>241</sup> Section 4.26 amended by WAGG No 157, 18 September 2020

<sup>242</sup> Heading to section 4.27 deleted by WAGG No 157, 18 September 2020

<sup>243</sup> Section 4.27 deleted by WAGG No 157, 18 September 2020

<sup>244</sup> Section 4.28 amended by WAGG No 157, 18 September 2020

at meeting the *Code objective* and the requirements set out in Chapter 5 (and Chapter 9, if applicable).}

4.29 The *Authority*:

- (a) must not approve a *proposed access arrangement* which omits something listed in section 5.1; and
- (b) may in its discretion approve a *proposed access arrangement* containing something not listed in section 5.1; and
- (c) must not refuse to approve a *proposed access arrangement* on the ground that it omits something not listed in section 5.1.

**Factors the Authority must have regard to**

4.30 In determining whether to approve a *proposed access arrangement*, the *Authority* must have regard to following:

- (a) the geographical location of the network and the extent (if any) to which the network is interconnected with other networks; and
- (b) contractual obligations of the *service provider* or other persons (or both) already using the network; and
- (c) the operational and technical requirements necessary for the safe and reliable operation of the network; and
- (d) to the extent relevant — *written laws* and *statutory instruments*.

4.31 Section 4.30 does not limit the factors the *Authority* may have regard to.

4.32 The *Authority* must not approve a *proposed access arrangement* which would, if approved, require the *service provider* or another person to engage in an act or omit to engage in an act which would contravene a *written law* or a *statutory instrument*.

**[Heading not used]<sup>245</sup>**

4.33 [Not used]<sup>246</sup>

**Access arrangement must not override prior contractual rights**

4.34 Subject to section 4.35, the *Authority* must not approve a *proposed access arrangement* which would, if approved, have the effect of depriving a person of a contractual right that existed prior to the earlier of the *submission deadline* for the *proposed access arrangement* and the date on which the *proposed access arrangement* was submitted.

4.35 Section 4.34 does not apply to protect:

- (a) an exclusivity right which arose on or after 30 March 1995; or

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<sup>245</sup> Heading to section 4.33 deleted by WAGG No 157, 18 September 2020

<sup>246</sup> Section 4.33 deleted by WAGG No 157, 18 September 2020

- (b) contractual rights that arose before the date of the 2020 (No. 2) amendments and that are inconsistent with provisions of a *proposed access arrangement* that have been implemented to reflect the introduction or operation of security constrained economic dispatch in the *Wholesale Electricity Market*.<sup>247</sup>

### **Conditional approval – price lists**

- 4.36 The *Authority* must, as a condition of *approval* of a *proposed access arrangement*, require a *service provider* to submit each *price list* under the *access arrangement* to the *Authority* under section 8.1 for *approval*, if:
- (a) the *service provider* requests such a condition; or
  - (b) the *Authority* considers that the submission of *price lists* under the *access arrangement* to the *Authority* under section 8.1 for *approval* would improve the operation of the *access arrangement*.

## **Subchapter 4.3 – Revision and review**

### **Trigger events**

- 4.37 If an *access arrangement*:
- (a) specifies one or more *trigger events*; and
  - (b) the conditions of a *trigger event* are satisfied, then:
  - (c) as soon as practicable, the *service provider* must notify the *Authority* that the conditions of the *trigger event* are satisfied; and
  - (d) the *service provider* must submit *proposed revisions* to the *Authority* by the *designated date*; and
  - (e) the *Authority* must consider the *proposed revisions* in accordance with sections 4.46 to 4.52.

### **Revision of price control or pricing methods during an access arrangement period<sup>248</sup>**

- 4.38 The *Authority* may by notice to a *service provider* vary the *price control* or *pricing methods* in an *access arrangement* before the next *revisions commencement date*, but only if the *Authority* determines that:
- (a) its *approval* of the *access arrangement* was based on materially false, misleading or deceptive information provided to it by the *service provider*, and the *Authority* considers that the impact of the materially false, misleading or deceptive information is of a sufficient magnitude to warrant making the variation before the end of the *access arrangement period*; or

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<sup>247</sup> Section 4.35 amended by WAGG No 157, 18 September 2020

<sup>248</sup> Heading to section 4.38 amended by WAGG No 180, 22 October 2008

- (b) either:
- (i) its *approval* of the *access arrangement* contains a material error or was based on materially false, misleading or deceptive information provided to it by a person other than the *service provider*; or
  - (ii) significant unforeseen developments have occurred that are:
    - A. outside the control of the *service provider*; and
    - B. not something that the *service provider*, acting in accordance with *good electricity industry practice*, should have been able to prevent or overcome,

and the impact of the error, materially false, misleading or deceptive information or unforeseen developments is so substantial that the *Authority* considers that the advantages of making the variation before the end of the *access arrangement period* outweigh the disadvantages, having regard to the impact of the variation on regulatory certainty.

4.39 Before giving a notice under section 4.38, the *Authority* must consult the public in accordance with Appendix 7.

4.40 The *Authority* must *publish* a notice given under section 4.38.

#### **Revision of access arrangement if Code is amended<sup>249</sup>**

4.41 Subject to section 4.42, if there is a *Code change*, the *Authority* may by notice to a *service provider* vary its *access arrangement* in one or more of the following ways:

- (a) if the *access arrangement* incorporates some or all of the terms of the *model applications and queuing policy* — to incorporate any relevant amendments to Appendix 2 made by the *Code change*; and
- (b) if the *access arrangement* incorporates some or all of the terms of the *model standard access contract* — to incorporate any relevant amendments to Appendix 3 made by the *Code change*; and
- (c) if the *access arrangement* incorporates some or all of the terms of the *model contributions policy* — to incorporate any relevant amendments to Appendix 4 made by the *Code change*; and
- (d) otherwise — as a consequence of any other relevant amendments to this Code made by the *Code change*.<sup>250</sup>

#### **Other revisions during an access arrangement period<sup>251</sup>**

4.41A Subject to section 4.42, if the *service provider* proposes revisions other than when it is required to do so under this Code and in circumstances where sections 4.38 and

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<sup>249</sup> Heading to section 4.41 amended by WAGG No 180, 22 October 2008

<sup>250</sup> Section 4.41 amended by WAGG No 180, 22 October 2008

<sup>251</sup> Heading to section 4.41A inserted by WAGG No 180, 22 October 2008



4.41 do not apply, the *Authority* may by notice to a *service provider* vary its *access arrangement* in accordance with the *proposed revisions*.<sup>252</sup>

**Mid-period revisions do not necessarily involve full review**<sup>253</sup>

4.41B In considering and implementing revisions under sections 4.38, 4.41 or 4.41A, the *Authority* is not obliged to undertake a complete *review* of the proposed revised *access arrangement* such as would occur under section 4.52.<sup>254</sup>

**Procedure for amendments under sections 4.41 and 4.41A**<sup>255</sup>

4.42 Before giving a notice under section 4.41 or 4.41A, the *Authority* must determine whether the advantages of varying the *access arrangement* under section 4.41 or 4.41A (as applicable) outweigh the disadvantages, in particular the disadvantages associated with decreased regulatory certainty and increased regulatory cost and delay.<sup>256</sup>

4.43 Before giving a notice under section 4.41 or 4.41A, the *Authority*:

(a) must consult the public under Appendix 7, unless, in the *Authority's* opinion, the proposed variations are not material and will not result in a material change to a *reference tariff*, a *reference service*, a *standard access contract* or the rights of any *applicant*, in which case the *Authority* may consult the public under Appendix 7; and

(b) must consult the *service provider*.<sup>257</sup>

4.44 The *Authority* must *publish* a notice given under section 4.41 or 4.41A.<sup>258</sup>

4.45 Nothing in section 4.41 or 4.41A limits the matters which may be specified as *trigger events* in an *access arrangement*.<sup>259</sup>

**Review of access arrangement**

4.46 An *access arrangement* continues in effect from the *access arrangement start date* until the network ceases to be a *covered network*.

{Note: The revision of an *access arrangement* does not create a new *access arrangement* but operates as an amendment to the *access arrangement*. Accordingly, in a subsequent *access arrangement period* the original *access arrangement* continues to have effect, but in a revised form.}

4.47 An *access arrangement* may only be amended in accordance with this Chapter 4.

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<sup>252</sup> Section 4.41A inserted by WAGG No 180, 22 October 2008

<sup>253</sup> Heading to section 4.41B inserted by WAGG No 180, 22 October 2008

<sup>254</sup> Section 4.41B inserted by WAGG No 180, 22 October 2008

<sup>255</sup> Heading to section 4.42 inserted by WAGG No 180, 22 October 2008

<sup>256</sup> Section 4.42 amended by WAGG No 180, 22 October 2008

<sup>257</sup> Section 4.43 amended by WAGG No 180, 22 October 2008

<sup>258</sup> Section 4.44 amended by WAGG No 180, 22 October 2008

<sup>259</sup> Section 4.45 amended by WAGG No 180, 22 October 2008

- 4.48 The *service provider* of a *covered network* must submit *proposed revisions* and revised *access arrangement information* to the *Authority* by no later than 17 months prior to the *target revisions commencement date*.<sup>260</sup>
- 4.49 If a *service provider* has failed to submit *proposed revisions* to the *Authority* by the *revisions submissions date* then the *Authority* may *publish* a notice stating that if, by a specified time, the *service provider* has not submitted *proposed revisions* to the *Authority*, the *Authority* will draft, approve and *publish* its own *proposed revisions* for the *covered network*.<sup>261</sup>
- 4.50 If a *service provider* has not submitted *proposed revisions* to the *Authority* by the time specified in a notice under section 4.49, the *Authority* may draft, approve and *publish* its own *proposed revisions* for the *covered network*.<sup>262</sup>
- 4.51 The *Authority* must consult the public under Appendix 7 before approving its own *proposed revisions* under section 4.50.
- 4.52 Sections 4.2 to 4.36 apply to the *Authority's* consideration of *proposed revisions* submitted by a *service provider* under sections 4.37 and 4.48 with appropriate modifications including replacing a reference to:<sup>263</sup>
- (a) “*proposed access arrangement*” with a reference to “*proposed revisions*”; and
  - (b) [not used]<sup>264</sup>
  - (b) “*access arrangement start date*” with a reference to “*revisions commencement date*”.

## **Subchapter 4.4– Miscellaneous**

### **Late submissions**

- 4.53 The *Authority* may consider any submission made pursuant to an invitation for submissions after the time for making the submission has expired.

### **No confidentiality for certain documents**

- 4.54 Where this Code requires the *Authority* to *publish*:
- (a) a *proposed access arrangement*, a revised *proposed access arrangement*, an *approved access arrangement* or an *access arrangement*; or
  - (b) *proposed revisions*; or
  - (c) *access arrangement information*,

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<sup>260</sup> Section 4.48 amended by WAGG No 157, 18 September 2020

<sup>261</sup> Section 4.49 amended by WAGG No 157, 18 September 2020

<sup>262</sup> Section 4.50 amended by WAGG No 157, 18 September 2020

<sup>263</sup> Section 4.52 amended by WAGG No 180, 22 October 2008

<sup>264</sup> Section 4.52 amended by WAGG No 157, 18 September 2020

(each of which is a “**relevant document**”) then the *Authority* must *publish a relevant document* despite any claim of confidentiality made to the *Authority* in respect of the *relevant document*.<sup>265</sup>

#### **Authority drafting and approving own access arrangement if no access arrangement submitted**

- 4.55 If, for the *first access arrangement period*, a *service provider* has failed to submit a *proposed access arrangement* to the *Authority* by the *submission deadline* then the *Authority* must *publish* a notice stating that if, within 20 *business days* the *service provider* has not submitted a *proposed access arrangement* to the *Authority*, the *Authority* will draft, approve and *publish* its own *access arrangement* for the *covered network*.<sup>266</sup>
- 4.56 If a *service provider* has not submitted a *proposed access arrangement* to the *Authority* within 20 *business days* of the *publishing* of a notice under section 4.55, the *Authority* must, within 12 months after the *submission deadline*, draft, approve and *publish* its own *access arrangement* for the *covered network*.<sup>267</sup>
- 4.57 The *Authority* must consult the public under Appendix 7 before drafting, approving and *publishing* its own *access arrangement* under section 4.56.<sup>268</sup>
- 4.58 If the *Authority* drafts, approves and *publishes* its own *access arrangement* for a *covered network* under section 4.56, it must also draft, approve and *publish access arrangement information* for the *covered network*.<sup>269</sup>

#### **Interim access arrangement in the event of delay**

- 4.59 If, for the *first access arrangement period*:
- (a) a *service provider* has submitted a *proposed access arrangement*, but
  - (b) by 12 months after the *submission deadline* no *access arrangement* has been approved under this Chapter 4,
- then, as soon as practicable and in any event within 18 months after the *submission deadline*, the *Authority* must draft, approve and *publish* an “**interim access arrangement**” to take effect for the *interim access arrangement period*.<sup>270</sup>
- 4.60 Unless a *user* requests otherwise, an *access contract* entered into under an *interim access arrangement* is deemed to provide that at the end of the *interim access arrangement period*:
- (a) the *tariff* payable under the *access contract* is varied from the end of the *interim access arrangement period* to be the *tariff* payable for an equivalent service under the *access arrangement*; and

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<sup>265</sup> Section 4.54 amended by WAGG No 157, 18 September 2020

<sup>266</sup> Section 4.55 amended by WAGG No 157, 18 September 2020

<sup>267</sup> Section 4.56 amended by WAGG No 157, 18 September 2020

<sup>268</sup> Section 4.57 amended by WAGG No 157, 18 September 2020

<sup>269</sup> Section 4.58 amended by WAGG No 157, 18 September 2020

<sup>270</sup> Section 4.59 amended by WAGG No 157, 18 September 2020

- (b) the difference between:
  - (i) the *charges* paid between the commencement date of the *access contract* and the end of the *interim access arrangement period* based on the *access contract tariffs*; and
  - (ii) the *charges* that would have been payable under the *access contract* had the *access arrangement* been in effect during the *interim access arrangement period* and the *access arrangement tariffs* had applied to the *access contract* (which are to be calculated using the *user's* actual use of *services* during the period, without allowing for any possible variation in the *user's* use of *services* arising from the different *tariffs*),

must be treated as an underpayment or overpayment, as appropriate, under the *access contract* and must be paid by or paid to, as applicable, the *user*.

4.61 For the purposes of section 4.60:

- (a) the date of underpayment or overpayment, as appropriate, is deemed to be the *approval* date of the subsequent *access arrangement*; and
- (b) either party may give notice to the other of an underpayment or overpayment under the *access contract* and section 4.60.

4.62 To assist with the determination of:

- (a) the underpayment or overpayment amount under section 4.60(b); and
- (b) the *access contract* variation under section 4.60(a),

the *Authority* must not approve an *access arrangement* which does not:

- (c) designate, for each *reference service* under the *interim access arrangement*, an equivalent *covered service* in the *access arrangement*; and
- (d) specify a *tariff* for each equivalent *covered service* designated under section 4.62(c); and
- (e) provide for suitable provisions to deal with the underpayment or overpayment, as appropriate, under section 4.60.

4.63 Nothing in section 4.62 obliges a *service provider* to, after the end of the *interim access arrangement period*, enter into an *access contract* to provide, or to provide at a particular *tariff*, a *covered service* which was a *reference service* under an *interim access arrangement* but is not a *reference service* under the *access arrangement*.

#### **Extensions of time under this Chapter 4**

4.64 Subject to section 4.65, the *Authority* may extend any deadline specified in this Chapter 4 but only if, and only to the extent that, the *Authority* first determines as a *reasonable and prudent person* that:

- (a) a longer period of time is essential for due consideration of all the matters under consideration or satisfactory performance of the relevant obligation, or both; and
  - (b) the *Authority* or the *service provider*, as applicable, has taken all reasonable steps to fully utilise the times and processes provided for in this Chapter 4.<sup>271</sup>
- 4.65 The *Authority* must not exercise the power in section 4.64 to extend any deadline unless, before the day on which the time would otherwise have expired, it *publishes* notice of, and *reasons* for, its decision to extend the deadline.<sup>272</sup>
- 4.66 A decision (however described) made by the *Authority* under this Code after the expiry of the period of time specified in this Code for the making of that decision is not to be taken to be an invalid decision only because the decision is not made within the specified period of time.<sup>273</sup>
- 4.67 [Not used]<sup>274</sup>

### **Suspension of deadlines when Authority obtains information**

- 4.68 Despite anything else in this Code, if the *Authority* exercises its power to obtain information and documents under section 51 of the *Economic Regulation Authority Act 2003* in respect of an *access arrangement*, then:
- (a) the *Authority* may, by *publishing* a notice, suspend the operation of the deadline for the issue of a *draft decision* under section 4.12, a *final decision* under section 4.17 or an *interim access arrangement* under section 4.59, if the *Authority* considers that such a suspension is essential for due consideration of all the matters relevant to the decision; and
  - (b) if the *Authority* suspends a deadline under section 4.68(a) — time ceases to run in respect of the relevant deadline until the suspension is ended by the *Authority publishing* a notice, which it must *publish* no later than 10 *business days* after it receives the information or documents but may *publish* at any earlier time.

### **Suspension of deadlines for judicial proceedings**

- 4.69 Despite anything else in this Code, if judicial proceedings commence with respect to an *access arrangement* or a matter of interpretation or *application* of this Code which is likely to affect the *approval* of an *access arrangement* (“**judicial proceedings**”), then:
- (a) the *Authority* may, by *publishing* a notice, suspend the operation of the deadline for the issue of a *draft decision* under section 4.12 or a *final decision* under section 4.17, if the *Authority* considers that it is essential that the *judicial proceedings* be resolved in order for the *Authority* in its *draft decision*

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<sup>271</sup> Section 4.64 amended by WAGG No 157, 18 September 2020

<sup>272</sup> Section 4.65 amended by WAGG No 157, 18 September 2020

<sup>273</sup> Section 4.66 amended by WAGG No 157, 18 September 2020

<sup>274</sup> Section 4.67 deleted by WAGG No 157, 18 September 2020

or *final decision*, as applicable, to give due consideration to the matters raised in the *judicial proceedings*; and<sup>275</sup>

- (b) if the *Authority* suspends a deadline under section 4.69(a) — time ceases to run in respect of the relevant deadline until the suspension is ended by the *Authority publishing* a notice, which it must *publish* no later than 10 *business days* after the *judicial proceedings* have been determined or discontinued but may *publish* at any earlier time.

### **Suspension of deadlines for Code amendment**

4.70 In section 4.71, “notice of proposed amendment” means a written notice, expressed to be given under this section 4.70, from the Coordinator to the *Authority* in respect of a proposed amendment to, or repeal and replacement of, this Code.

4.71 Despite anything else in this Code, if the Coordinator gives the *Authority* a notice of proposed amendment, then—

- (a) the *Authority* may, by *publishing* a notice, suspend the operation of the deadline for the issue of a *draft decision* under section 4.12, a *final decision* under section 4.17 or an *interim access arrangement* under section 4.59, if the *Authority* reasonably considers that the proposed amendment, or repeal and replacement, would, if made, materially affect the *Authority’s* determination of the *draft decision*, *final decision* or *interim access arrangement*; and
- (b) if the *Authority* suspends a deadline under section 4.71(a) — time ceases to run in respect of the relevant deadline until the suspension is ended by the *Authority publishing* a notice, which it must *publish* no later than 10 *business days* after the earlier of—
  - (i) the date the amendment, or repeal and replacement, takes effect; and
  - (ii) the date the Coordinator gives the *Authority* written notice withdrawing the notice of proposed amendment.<sup>276</sup>

### **[Heading not used]<sup>277</sup>**

4.72 [Not used]<sup>278</sup>

4.73 [Not used]<sup>279</sup>

4.74 [Not used]<sup>280</sup>

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<sup>275</sup> Section 4.69 amended by WAGG No 157, 18 September 2020

<sup>276</sup> Sections 4.70 and 4.71 inserted by WAGG No 152, 1 September 2006

<sup>277</sup> Heading to section 4.72 deleted by WAGG No 157, 18 September 2020

<sup>278</sup> Section 4.72 deleted by WAGG No 157, 18 September 2020

<sup>279</sup> Section 4.73 deleted by WAGG No 157, 18 September 2020

<sup>280</sup> Section 4.74 deleted by WAGG No 157, 18 September 2020

4.75 [Not used]<sup>281</sup>

4.76 [Not used]<sup>282</sup>

**[Heading not used]<sup>283</sup>**

4.77 [Not used]<sup>284</sup>

4.78 [Not used]<sup>285</sup>

4.79 [Not used]<sup>286</sup>

**“Review of access arrangement for the Western Power Network after first 2020 Code change<sup>287</sup>”**

4.80 Sections 4.81 to 4.82 apply only in respect of the *application* of the next *review* of the *access arrangement* for the Western Power Network after the 2020 (No. 1) amendments and not any subsequent reviews.<sup>288</sup>

4.81 In sections 4.80 to 4.82—

“**2020 (No. 1) amendments**” means the amendments to this Code made by the *Electricity Networks Access Code Amendments (No.1) 2020*.

{Note: The *Electricity Networks Access Code Amendments (No.1) 2020* were Gazetted on 26 June 2020.}<sup>289</sup>

4.82 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 1 February 2022.<sup>290</sup>

**Amendments of model documents for Western Power Network<sup>291</sup>**

4.83 Section 4.84 to 4.85 apply only in respect of the *access arrangement* for the *Western Power Network* in force as at the time the 2021 amendments come into force, and not to any subsequent *reviews* of that *access arrangement*.<sup>292</sup>

4.84 In sections 4.83 to 4.85—

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<sup>281</sup> Section 4.75 deleted by WAGG No 157, 18 September 2020

<sup>282</sup> Section 4.76 deleted by WAGG No 157, 18 September 2020

<sup>283</sup> Heading to section 4.77 deleted by WAGG No 157, 18 September 2020

<sup>284</sup> Section 4.77 deleted by WAGG No 157, 18 September 2020

<sup>285</sup> Section 4.78 deleted by WAGG No 157, 18 September 2020

<sup>286</sup> Section 4.79 deleted by WAGG No 157, 18 September 2020

<sup>287</sup> Heading to section 4.80 inserted by WAGG No 108, 26 June 2020

<sup>288</sup> Section 4.80 inserted by WAGG No 108, 26 June 2020

<sup>289</sup> Section 4.81 inserted by WAGG No 108, 26 June 2020

<sup>290</sup> Section 4.82 inserted by WAGG No 108, 26 June 2020

<sup>291</sup> Heading to section 4.83 inserted by WAGG No 134, 30 July 2021

<sup>292</sup> Section 4.83 inserted by WAGG No 134, 30 July 2021

“**2021 amendments**” means the amendments to this Code made by the *Electricity Networks Access Code Amendments 2021*.

{Note: The *Electricity Networks Access Code Amendments 2021* were Gazetted on 30 July 2021.}<sup>293</sup>

- 4.85 Notwithstanding anything else in this Code or the *access arrangement* for the Western Power Network:
- (a) the *applications and queuing policy* and *transfer and relocation policy* applicable under the *access arrangement* for the *Western Power Network* are deemed to be in the form set out in Appendix 2A;
  - (b) the *standard access contract* applicable under the *access arrangement* for the *Western Power Network* is deemed to be in the form set out in Appendix 3A; and
  - (c) the *contributions policy* applicable under the *access arrangement* for the *Western Power Network* is deemed to be in the form set out in Appendix 4A.<sup>294</sup>

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<sup>293</sup> Section 4.84 inserted by WAGG No 134, 30 July 2021

<sup>294</sup> Section 4.85 inserted by WAGG No 134, 30 July 2021



## Chapter 5 – Access Arrangement: Content

### Required contents of an access arrangement

5.1 An *access arrangement* must:

- (a) specify one or more *reference services* under section 5.2; and
- (b) include a *standard access contract* under sections 5.3 to 5.5 for each *reference service*; and

{Note: An *access arrangement* may contain a single *standard access contract* in which the majority of terms and conditions apply to all *reference services* and the other terms and conditions apply only to specified *reference services*.}

- (c) include *service standard benchmarks* under section 5.6 for each *reference service*; and
- (d) include *price control* under Chapter 6; and
- (e) include a *tariff structure statement* and *reference tariff change forecast* under Chapter 7; and
- (f) include<sup>295</sup> a description of the *pricing years* for the *access arrangement*; and
- (g) include an *applications and queuing policy* under sections 5.7 to 5.11; and
- (h) include a *contributions policy* under sections 5.12 to 5.17D;<sup>296</sup> and
- (i) [not used]
- (j) if required under section 5.25, include *efficiency and innovation benchmarks* under section 5.26; and
- (k) include provisions dealing with *supplementary matters* under sections 5.27 and 5.28; and
- (l) include provisions dealing with:
  - (i) the submission of *proposed revisions* under sections 5.29 to 5.33; and
  - (ii) *trigger events* under sections 5.34 to 5.36; and

{Note: At the same time as an *access arrangement* is submitted, *access arrangement information* must be submitted under section 4.1 and *technical rules* must be submitted under

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<sup>295</sup> Section 5.1 amended by WAGG No 207, 8 November 2005

<sup>296</sup> Section 5.1 amended by WAGG No 180, 22 October 2008

section 12.10. Neither the *access arrangement information* nor the *technical rules* are part of the *access arrangement*.)

- (m) include a *multi-function asset policy* under section 5.37.<sup>297</sup>

### Reference services

5.2 An *access arrangement* must:

- (a) specify at least one *reference service*; and
- (b) specify a *reference service* for each *covered service* that is likely to be sought by (or the benefit of which is likely to be sought by) either or both of:
  - (i) a significant number of *customers* and *applicants*; or
  - (ii) a substantial proportion of the market for *services* in the *covered network*;and<sup>298</sup>
- (c) to the extent reasonably practicable, specify *reference services* in such a manner that a *user* or *applicant* is able to acquire by way of one or more *reference services* only those elements of a *covered service* that the *user* or *applicant* wishes to acquire; and
- (d) for the *Western Power Network*<sup>299</sup>— specify one or more *reference services* such that there is both:
  - (i) a *reference service* which enables a *user* or *applicant* to acquire an *entry service* at a *connection point* without a need to acquire a corresponding *exit service* at another *connection point*; and
  - (ii) a *reference service* which enables a *user* or *applicant* to acquire an *exit service* at a *connection point* without a need to acquire a corresponding *entry service* at another *connection point*.

5.2A In determining whether an *access arrangement* complies with section 5.2(b), the *Authority* must have regard to any information provided by a person pursuant to section 4.A14.<sup>300</sup>

### Standard access contract for each reference service

5.3 A *standard access contract* must be:

- (a) reasonable; and
- (b) sufficiently detailed and complete to:

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<sup>297</sup> Section 5.1 amended by WAGG No 157, 18 September 2020

<sup>298</sup> Section 5.2 amended by WAGG No 157, 18 September 2020

<sup>299</sup> Section 5.2 amended by WAGG No 180, 22 October 2008

<sup>300</sup> Section 5.2A inserted by WAGG No 157, 18 September 2020

- (i) form the basis of a commercially workable *access contract*; and
- (ii) enable a *user* or *applicant* to determine the value represented by the *reference service* at the *reference tariff*.

5.4 A *standard access contract* may:

- (a) be based in whole or in part upon the *model standard access contract*, in which case, to the extent that it is based on the *model standard access contract*, any matter which in the *model standard access contract* is left to be completed in the *access arrangement*, must be completed in a manner consistent with:
  - (i) any instructions in relation to the matter contained in the *model standard access contract*; and
  - (ii) section 5.3;
  - (iii) the *Code objective*; and
- (b) be formulated without any reference to the *model standard access contract* and is not required to reproduce, in whole or in part, the *model standard access contract*.

{Note: The intention of this section 5.4(b) is to ensure that the *service provider* is free to formulate its own *standard access contract* which complies with section 5.3 but is not based on the *model standard access contract*.}

5.5 The *Authority*:

- (a) must determine that a *standard access contract* is consistent with section 5.3 and the *Code objective* to the extent that it reproduces without material omission or variation the *model standard access contract*; and
- (b) subject to section 5.38, otherwise must have regard to the *model standard access contract* in determining whether the *standard access contract* is consistent with section 5.3 and the *Code objective*.<sup>301</sup>

### **Service standards for each reference service**

5.6 A *service standard benchmark* for a *reference service* must be:

- (a) reasonable; and
- (b) sufficiently detailed and complete to enable a *user* or *applicant* to determine the value represented by the *reference service* at the *reference tariff*.

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<sup>301</sup> Section 5.5 amended by WAGG No 134, 30 July 2021

## Applications and queuing policy

5.7 An *applications and queuing policy* must:

- (a) to the extent reasonably practicable, accommodate the interests of the *service provider* and of *users* and *applicants*; and
- (b) be sufficiently detailed to enable *users* and *applicants* to understand in advance how the *applications and queuing policy* will operate; and
- (c) set out a reasonable timeline for the commencement, progressing and finalisation of *access contract* negotiations between the *service provider* and an *applicant*, and oblige the *service provider* and *applicants* to use reasonable endeavours to adhere to the timeline; and
- (d) oblige the *service provider*, subject to any reasonable confidentiality requirements in respect of *competing applications*, to provide to an *applicant* all commercial and technical information reasonably requested by the *applicant* to enable the *applicant* to apply for, and engage in effective negotiation with the *service provider* regarding, the terms for an *access contract* for a *covered service* including:
  - (i) information in respect of the availability of *covered services* on the *covered network*; and
  - (ii) if there is any *required work*:<sup>302</sup>
    - A. operational and technical details of the *required work*<sup>303</sup>; and
    - B. commercial information regarding the likely cost of the *required work*<sup>304</sup>;and
- (e) set out the procedure for determining the *priority* that an *applicant* has, as against another *applicant*, to obtain *access* to *covered services*, where the *applicants' access applications* are *competing applications*; and
- (f) to the extent that *contestable consumers* are connected at *exit points* on the *covered network*, contain provisions dealing with the *transfer* of capacity associated with a *contestable consumer* from the *user* currently supplying the *contestable consumer* (“**outgoing user**”) to another *user* or an *applicant* (“**incoming user**”) which, to the extent that it is applicable, are consistent with and facilitate the operation of any *customer transfer code*; and
- (g) establish arrangements to enable a *user* who is:
  - (i) a ‘supplier of last resort’ as defined in section 67 of the Act to comply with its obligations under Part 5 of the Act; and

<sup>302</sup> Section 5.7 amended by WAGG No 180, 22 October 2008

<sup>303</sup> Section 5.7 amended by WAGG No 180, 22 October 2008

<sup>304</sup> Section 5.7 amended by WAGG No 180, 22 October 2008

- (ii) a 'default supplier' under regulations made in respect of section 59 of the Act to comply with its obligations under section 59 of the Act and the regulations; and
- (h) facilitate the operation of Part 9 of the Act, any enactment under Part 9 of the Act and the *WEM Rules*; and
- (i) if applicable, contain provisions setting out how *access applications* (or other requests for *access* to the *covered network*) lodged before the start of the relevant *access arrangement period* are to be dealt with; and
- (j) set out the *transfer and relocation policy*, which policy will set out the circumstances in which the *service provider* is obliged to agree to a *user transferring* all of its rights and obligations under an *access contract* to another person or part of its rights and obligations under an *access contract* to another person.<sup>305</sup>

{Note: For the *first access arrangement period* section 5.7(i) would apply in respect of *access applications* or requests for *access* lodged under any prior *access* regime such as the regimes established under the *Electricity Transmission Regulations 1996 (WA)* and *Electricity Distribution Regulations 1997 (WA)*. For subsequent *access arrangement periods* it would apply in respect of *access applications* lodged in a prior *access arrangement period*.}

5.8 The paragraphs of section 5.7 do not limit each other.

5.8A The *transfer and relocation policy* must:

- (a) require the *service provider* not to unreasonably withhold its consent to a *transfer* by a *user* of all of its rights and obligations under an *access contract*; and
- (b) require the *service provider* not to unreasonably withhold its consent to a *transfer* by a *user* of parts of its rights or obligations under an *access contract* provided the rights and obligations being *transferred* are of a nature such that they can be meaningfully severed from the remainder of the *access contract*.<sup>306</sup>

5.9 Under section 5.7(e), the *applications and queuing policy* may:

- (a) provide that if there are *competing applications*, then *priority* between the *access applications* is to be determined by reference to the time at which the *access applications* were lodged with the *service provider*, but if so the *applications and queuing policy* must:
  - (i) provide for departures from that principle where necessary to achieve the *Code objective*; and

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<sup>305</sup> Section 5.7 amended by WAGG No 157, 18 September 2020

<sup>306</sup> Section 5.8A inserted by WAGG No 157, 18 September 2020

- (ii) contain provisions entitling an *applicant*, subject to compliance with any reasonable conditions, to:
  - A. current information regarding its position in the *queue*; and
  - B. information in reasonable detail regarding the aggregated capacity requirements sought in *competing applications* ahead of its *access application* in the *queue*; and
  - C. information in reasonable detail regarding the likely time at which the *access application* will be satisfied;

and

- (b) oblige the *service provider*, if it is of the opinion that an *access application* relates to a particular project or development:
  - (i) which is the subject of an invitation to tender; and
  - (ii) in respect of which other *access applications* have been lodged with the *service provider*,

(“**project applications**”) to, treat the *project applications*, for the purposes of determining their *priority*, as if each of them had been lodged on the date that the *service provider* becomes aware that the invitation to tender was announced.

5.9A If:

- (a) an *access application* (the “**first application**”) seeks modifications to a *contract for services*; and
- (b) the modifications, if implemented, would not materially impede the *service provider’s* ability to provide a *covered service* sought in one or more other *access applications* (each an “**other application**”) compared with what the position would be if the modifications were not implemented,

then the *first application* is not, by reason only of seeking the modifications, a *competing application* with the *other applications*.<sup>307</sup>

5.10 An *applications and queuing policy* may:

- (a) be based in whole or in part upon the *model applications and queuing policy*, in which case, to the extent that it is based on the *model applications and queuing policy*, any matter which in the *model applications and queuing policy* is left to be completed in the *access arrangement*, must be completed in a manner consistent with:
  - (i) any instructions in relation to the matter contained in the *model applications and queuing policy*; and
  - (ii) sections 5.7 to 5.9;

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<sup>307</sup> Section 5.9A inserted by WAGG No 180, 22 October 2008

- (iii) the *Code objective*; and
- (b) be formulated without any reference to the *model applications and queuing policy* and is not required to reproduce, in whole or in part, the *model applications and queuing policy*.

{Note: The intention of this section 5.10(b) is to ensure that the *service provider* is free to formulate its own *applications and queuing policy* which complies with sections 5.7 to 5.9 but is not based on the *model applications and queuing policy*.}

5.11 The *Authority*:

- (a) must determine that an *applications and queuing policy* is consistent with sections 5.7 to 5.9 and the *Code objective* to the extent that it reproduces without material omission or variation the *model applications and queuing policy*; and
- (b) subject to section 5.38, otherwise must have regard to the *model applications and queuing policy* in determining whether the *applications and queuing policy* is consistent with sections 5.7 to 5.9 and the *Code objective*.<sup>308</sup>

**Contributions policy**<sup>309</sup>

5.12 The objectives for a *contributions policy* must be that:

- (a) it strikes a balance between the interests of:
  - (i) *contributing users*; and
  - (ii) *other users*; and
  - (iii) *consumers*; and
- (b) it does not constitute an inappropriate barrier to entry.<sup>310</sup>

5.13 A *contributions policy* must facilitate the operation of this Code, including:

- (a) sections 2.10 to 2.12; and
- (b) the test in section 6.51A; and
- (a) sections 5.14 and 5.17D; and
- (c) the *regulatory test*.<sup>311</sup>

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<sup>308</sup> Section 5.11 amended by WAGG No 134, 30 July 2021

<sup>309</sup> Heading to section 5.12 amended by WAGG No 180, 22 October 2008

<sup>310</sup> Section 5.12 amended by WAGG No 180, 22 October 2008

<sup>311</sup> Section 5.13 amended by WAGG No 180, 22 October 2008

- 5.14 Subject to section 5.17A and a *headworks scheme*, a *contributions policy*:
- (a) must not require a *user* to make a *contribution* in respect of any part of *new facilities investment* which meets the *new facilities investment test*; and
  - (b) must not require a *user* to make a *contribution* in respect of any part of *non-capital costs* which would not be incurred by a *service provider efficiently minimising costs*; and
  - (c) may only require a *user* to make a *contribution* in respect of *required work*; and
  - (d) without limiting sections 5.14(a) and 5.14(b), must contain a mechanism designed to ensure that there is no double recovery of *new facilities investment* or *non-capital costs*.<sup>312</sup>
- 5.14A [not used]<sup>313</sup>
- 5.15 A *contributions policy* must set out:
- (a) the circumstances in which a *contributing user* may be required to make a *contribution*; and
  - (b) the method for calculating any *contribution* a *contributing user* may be required to make; and
  - (c) for any *contribution*:
    - (i) the terms on which a *contributing user* must make the *contribution*; or
    - (ii) a description of how the terms on which a *contributing user* must make the *contribution* are to be determined.<sup>314</sup>
- 5.16 A *contributions policy* may:
- (a) be based in whole or in part upon the *model contributions policy*, in which case, to the extent that it is based on the *model contributions policy*, any matter which in the *model contributions policy* is left to be completed in the *access arrangement*, must be completed in a manner consistent with:
    - (i) any instructions in relation to the matter contained in the *model contributions policy*; and
    - (ii) sections 5.12 to 5.15; and
    - (iii) the *Code objective*; and

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<sup>312</sup> Section 5.14 amended by WAGG No 137, 29 June 2007; Section 5.14 amended by WAGG No 206, 8 December 2006; Section 5.14 amended by WAGG No 180, 22 October 2008

<sup>313</sup> Section 5.14A inserted by WAGG No 206, 8 December 2006; Section 5.14A deleted by WAGG No 137, 29 June 2007

<sup>314</sup> Section 5.15 amended by WAGG No 180, 22 October 2008



- (b) be formulated without any reference to the model *contributions policy* and is not required to reproduce, in whole or in part, the model *contributions policy*.<sup>315</sup>

{Note: The intention of this section 5.16(b) is to ensure that the *service provider* is free to formulate its own *contributions policy* which complies with sections 5.12 to 5.15 but is not based on the model *contributions policy*.}<sup>316</sup>

5.17 The *Authority*:

- (a) must determine that a *contributions policy* is consistent with sections 5.12 to 5.15 and the *Code objective* to the extent that it reproduces without material omission or variation the *model contributions policy*; and
- (b) subject to section 5.38, otherwise must have regard to the *model contributions policy* in determining whether the *contributions policy* is consistent with sections 5.12 to 5.15 and the *Code objective*.<sup>317</sup>

**Contributions for certain Western Power Network work<sup>318</sup>**

5.17A Despite section 5.14, Electricity Networks Corporation may require a *contribution* for Appendix 8 work of up to the maximum amount determined under Appendix 8 for the relevant type of Appendix 8 work.<sup>319</sup>

5.17B From 1 July 2007 until the first *revisions commencement date* for the Western Power Network *access arrangement*, section 5.17A prevails over any inconsistent provision of the Western Power Network *access arrangement*.<sup>320</sup>

**Headworks scheme<sup>321</sup>**

5.17C Despite section 5.14, the *Authority* may approve a *contributions policy* that includes a “**headworks scheme**” which requires a *user* to make a payment to the *service provider* in respect of the *user’s* capacity at a *connection point* on a distribution system because the *user* is a member of a class, whether or not there is any *required work* in respect of the *user*.

{Example: In 2008 Electricity Networks Corporation adopted a headworks scheme under which new *users* in certain rural parts of the SWIS who *connect* more than 25 km along the wires from a zone substation, were required to pay a headworks *charge* in respect of reinforcement of the 3 phase HV distribution

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<sup>315</sup> Section 5.16 amended by WAGG No 180, 22 October 2008

<sup>316</sup> Note to section 5.16 amended by WAGG No 180, 22 October 2008

<sup>317</sup> Section 5.17 amended by WAGG No 180, 22 October 2008; Section 5.17 amended by WAGG No 134, 30 July 2021

<sup>318</sup> Heading to section 5.17A amended by WAGG No 180, 22 October 2008

<sup>319</sup> Section 5.17A inserted by WAGG No 137, 29 June 2007; Section 5.17A amended by WAGG No 180, 22 October 2008

<sup>320</sup> Section 5.17B inserted by WAGG No 137, 29 June 2007; Section 5.17B amended by WAGG No 180, 22 October 2008

<sup>321</sup> Heading to section 5.17C inserted by WAGG No 180, 22 October 2008

network, whether or not the *user's* connection made any such reinforcement necessary.)<sup>322</sup>

5.17D A headworks scheme must:

- (a) identify the class of *works* in respect of which the scheme applies, which must not include any *works* on a *transmission system* or any *works* which effect a geographic extension of a *network*; and
- (b) not seek to recover *headworks charges* in an *access arrangement period* which in aggregate exceed 4% of the *distribution system target revenue* for the *access arrangement period*; and
- (c) identify the class of *users* who must make a payment under the scheme; and
- (d) set out the method for calculating the *headworks charge*, which method:
  - (i) must have the objective that *headworks charges* under the *headworks scheme* will, in the long term, and when applied across all *users* in the class referred to in section 5.17D(c), recover no more than the *service provider's* costs (such as would be incurred by a *service provider* efficiently *minimising costs*) of any *headworks*; and
  - (ii) must have the objective that the *headworks charge* payable by one *user* will differ from that payable by another *user* as a result of material differences in the *users' capacities* and the locations of their *connection points*, unless the *Authority* considers that a different approach would better achieve the *Code objective*; and
  - (iii) may use estimates and forecasts (including long term estimates and forecasts) of loads and costs; and
  - (iv) must contain a mechanism designed to ensure that there is no double recovery of costs in all the circumstances, including the manner of calculation of other *contributions* and *tariffs*; and
  - (v) may exclude a rebate mechanism (of the type contemplated by clauses A4.13(d) or A4.14(c)(ii) of Appendix 4) and may exclude a mechanism for retrospective adjustments to account for the

**[Heading not used]**<sup>323</sup>

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<sup>322</sup> Section 5.17C and example inserted by WAGG No 180, 22 October 2008

<sup>323</sup> Heading to section 5.18 deleted by WAGG No 157, 18 September 2020

5.18 [Not used]<sup>324</sup>

5.19 [Not used]<sup>325</sup>

5.20 [Not used]<sup>326</sup>

5.21 [Not used]<sup>327</sup>

5.22 [Not used]<sup>328</sup>

5.23 [Not used]<sup>329</sup>

5.24 [Not used]<sup>330</sup>

### **Efficiency and innovation benchmarks**

5.25 An *access arrangement* which contains a *gain sharing mechanism* must, and an *access arrangement* which does not contain a *gain sharing mechanism* may, contain *efficiency and innovation benchmarks*.

5.26 *Efficiency and innovation benchmarks* must:

- (a) if the *access arrangement* contains a *gain sharing mechanism*, be sufficiently detailed and complete to permit the *Authority* to make a determination under section 6.25 at the next *access arrangement review*; and
- (b) provide an objective standard for assessing the *service provider's* efficiency and innovation during the *access arrangement period*; and
- (c) be reasonable.

### **Supplementary matters**

5.27 Each of the following matters is a “**supplementary matter**”:

- (a) balancing; and
- (b) line losses; and
- (c) metering; and
- (d) ancillary *services*; and
- (e) stand-by; and
- (f) trading; and

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<sup>324</sup> Section 5.18 deleted by WAGG No 157, 18 September 2020

<sup>325</sup> Section 5.19 deleted by WAGG No 157, 18 September 2020

<sup>326</sup> Section 5.20 deleted by WAGG No 157, 18 September 2020

<sup>327</sup> Section 5.21 deleted by WAGG No 157, 18 September 2020

<sup>328</sup> Section 5.22 deleted by WAGG No 157, 18 September 2020

<sup>329</sup> Section 5.23 deleted by WAGG No 157, 18 September 2020

<sup>330</sup> Section 5.24 deleted by WAGG No 157, 18 September 2020

- (g) settlement; and
- (h) any other matter in respect of which arrangements must exist between a *user* and a *service provider* to enable the efficient operation of the *covered network* and to facilitate access to *services*, in accordance with the *Code objective*.

5.28 An *access arrangement* must deal with a *supplementary matter* in a manner which:

- (a) to the extent that the *supplementary matter* is dealt with in:
  - (i) an enactment under Part 9 of the Act; or
  - (ii) the *WEM Rules*,  
applying to the *covered network* — is consistent with and facilitates the treatment of the *supplementary matter* in the enactment or *WEM Rules*; and<sup>331</sup>
- (b) to the extent that the *supplementary matter* is dealt with:
  - (i) in a *written law* other than as contemplated under section 5.28(a); and
  - (ii) in a manner which is not inconsistent with the requirement under section 5.28(a) to the extent that it applies to the *covered network*,  
is consistent with and facilitates the treatment of the *supplementary matter* in the *written law*; and
- (c) otherwise — in accordance with the *technical rules* applying to the *covered network* and the *Code objective*.

### **Revisions submission**

5.29 An *access arrangement* must specify:

- (a) a *revisions submission date*; and
- (b) a *target revisions commencement date*.

5.30 For the *first access arrangement*:

- (a) the *revisions submission date* must be at least 6 months before the *target revisions commencement date* under section 5.30(b); and
- (b) the *target revisions commencement date* must be no more than 3 years after the *access arrangement start date*.

5.31 Subject to section 5.32, for *access arrangements* other than the *first access arrangement*:

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<sup>331</sup> Section 5.28 amended by WAGG No 157, 18 September 2020

- (a) the *revisions submission date* must be at least 17 months before the *target revisions commencement date*; and<sup>332</sup>
- (b) the *target revisions commencement date* must be 5 years after the start of the *access arrangement period*, unless a different date is proposed by the *service provider* and the different date is consistent with the *Code objective*.

5.32 The *Authority*:

- (a) in determining whether an *access arrangement period* of longer than 5 years is consistent with the *Code objective* must have regard to:
  - (i) the likely advantages of the *approval* (including by way of reduced regulatory costs); and
  - (ii) the likely disadvantages of the *approval*; and
- (b) if it determines that an *access arrangement period* of longer than 5 years is consistent with the *Code objective*, must consider whether to require under section 5.34 that the *access arrangement* include one or more *trigger events*.

5.33 Section 5.32(a) does not limit the matters to which the *Authority* may have regard.

**Trigger events**

5.34 If it is consistent with the *Code objective* an *access arrangement* may specify one or more *trigger events*.

5.35 To avoid doubt, under section 5.34, an *access arrangement* may specify a *trigger event* which was not proposed by the *service provider*.

5.36 Before determining whether a *trigger event* is consistent with the *Code objective* the *Authority* must consider:

- (a) whether the advantages of including the *trigger event* outweigh the disadvantages of doing so, in particular the disadvantages associated with decreased regulatory certainty; and
- (b) whether the *trigger event* should be balanced by one or more other *trigger events*.

{Example: The *service provider* may wish to include a *trigger event* allowing it to reopen the *access arrangement* if actual *covered service* consumption is more than x% below forecast. However, if the *Authority* were minded to allow such a *trigger event*, it may also require the inclusion of a complementary *trigger event* requiring the *service provider* to reopen the *access arrangement* if *covered service* consumption is more than y% above forecast.}

**Multi-function asset policy**

5.37 A *multi-function asset policy* must:

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<sup>332</sup> Section 5.31 amended by WAGG No 157, 18 September 2020

- (a) to the extent reasonably practicable, accommodate the interests of the *service provider* and of *users* and *applicants*; and
- (b) be sufficiently detailed to enable *users* and *applicants* to understand in advance how the *multi-function asset policy* will operate; and
- (c) set out the method for determining *net incremental revenue*; and
- (d) be consistent with the *multi-function asset guidelines*.<sup>333</sup>

**Assessment of model documents**<sup>334</sup>

5.38 Notwithstanding sections 5.5(b), 5.11(b) and 5.17(b), when determining whether the *standard access contract, applications and queuing policy* or *contributions policy* (as applicable) included in an *access arrangement* is consistent with the *Code objective* and sections 5.3, 5.7 to 5.9, or 5.12 to 5.15 (as applicable), the *Authority* must not have regard to any provisions of the *model standard access contract, model applications and queuing policy* or *model contributions policy* (as applicable) that are inconsistent with section 2.4C or otherwise inconsistent with the operation of security constrained economic dispatch in the *Wholesale Electricity Market*.<sup>335</sup>

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<sup>333</sup> Section 5.37 inserted by WAGG No 157, 18 September 2020

<sup>334</sup> Heading to section 5.38 inserted by WAGG No 134, 30 July 2021

<sup>335</sup> Section 5.38 inserted by WAGG No 134, 30 July 2021

## Chapter 6 – Price Control

### Subchapter 6.1 – Target revenue

#### Form of price control

- 6.1 Subject to section 6.3, an *access arrangement* may contain any form of *price control* provided it meets the objectives set out in section 6.4 and otherwise complies with this Chapter 6.
- 6.2 Without limiting the forms of *price control* that may be adopted, *price control* may set *target revenue*:
- (a) by reference to the *service provider's approved total costs*; or  
  
{Note: This includes “revenue cap” *price controls* based on controlling total revenue, average revenue or revenue yield and “price cap” *price controls* based on cost of service.}
  - (b) by setting *tariffs* with reference to:
    - (i) *tariffs* in previous *access arrangement periods*; and
    - (ii) changes to costs and productivity growth in the electricity industry;  
  
{Note: This includes “price cap” *price controls* based on controlling the weighted average of *tariffs* or individual *tariffs*.}
- or
- (c) using a combination of the methods described in sections 6.2(a) and 6.2(b).

#### Form of price control for first access arrangement

- 6.3 The *first access arrangement* must contain the form of *price control* described in section 6.2(a).

#### Price control objectives

- 6.4 The *price control* in an *access arrangement* must have the objectives of:
- (a) giving the *service provider* an opportunity to earn revenue (“**target revenue**”) for the *access arrangement period* from the provision of *covered services* as follows:
    - (i) an amount that meets the forward-looking and efficient costs of providing *covered services*, including a return on investment commensurate with the commercial risks involved;

plus:

- (ii) for *access arrangements* other than the *first access arrangement*, an amount in excess of the revenue referred to in section 6.4(a)(i), to the extent necessary to reward the *service provider* for efficiency gains and innovation beyond the *efficiency and innovation benchmarks* in a previous *access arrangement* or to penalise the *service provider* for efficiency losses derived from a failure to meet the *efficiency and innovation benchmarks* in a previous *access arrangement*;

{Note: The presence of section 6.4(a)(ii) provides incentive to a *service provider* during an *access arrangement period* to pursue efficiency gains and innovation beyond the *efficiency and innovation benchmarks* in the *access arrangement*, because the *service provider* may be rewarded in the calculation of the *target revenue* for subsequent *access arrangement periods*.}

plus:

- (iiA) an amount (if any) determined under sections 6.5A to 6.5E; plus: <sup>336</sup>
- (iiB) an amount (if any) determined under sections 6.5F to 6.5J; plus
- (iii) an amount (if any) determined under section 6.6; plus:
- (iv) an amount (if any) determined under section 6.9; plus:
- (v) an amount (if any) determined under an *investment adjustment mechanism* (see sections 6.13 to 6.18);

plus:

- (vi) an amount (if any) determined under a *service standards adjustment mechanism* (see sections 6.29 to 6.32);

plus —

- (vii) an amount (if any) determined under section 6.37A; <sup>337</sup>

and

- (b) enabling a *user* to predict the likely annual changes in *target revenue* during the *access arrangement period*; and
- (c) minimising, as far as reasonably possible, variance between expected revenue for the last *pricing year* in the *access arrangement period* and the *target revenue* for that last *pricing year*.<sup>338</sup>

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<sup>336</sup> Section 6.4 amended by WAGG No 182, 30 September 2011

<sup>337</sup> Section 6.4(a)(vii) inserted by WAGG No 207, 8 November 2005

<sup>338</sup> Section 6.4 amended by WAGG No 157, 18 September 2020



6.5 The amount determined in seeking to achieve the objective specified in section 6.4(a)(i) is a target, not a ceiling or a floor.

### **Recovery of deferred revenue**

6.5A In this Chapter, “deferred revenue” means the amounts referred to in paragraphs 5.37A and 5.48A of the Amended *Proposed revisions* dated 24 December 2009 to the Western Power Network *access arrangement*, as approved by the *Authority’s* further final decision dated 19 January 2010, expressed in present value terms as at 30 June 2009 and in real dollar values as at 30 June 2009, being respectively:

- (a) \$64.5 million; and
- (b) \$484.2 million.<sup>339</sup>

6.5B An amount in respect of deferred revenue must be added to the *target revenue* for the Western Power Network for one or more *access arrangement periods* until the aggregate amount referred to in section 6.5A has been added.<sup>340</sup>

6.5C An amount added to the *target revenue* under section 6.5B must include an adjustment so that the deferral of the deferred revenue is financially neutral for the Electricity Networks Corporation, taking into account:

- (a) the time value of money; and
- (b) inflation.<sup>341</sup>

6.5D The *Authority* must determine the amount to be added under section 6.5B in a given *access arrangement period*, provided that the *Authority* must approve an amount proposed to be added by the *Electricity Networks Corporation* in its *proposed revisions* if the amount to be recovered will not result in the forecast weighted average annual price change across all *reference tariffs* (as determined based on the *reference tariff change forecast* included in the *proposed revisions*, in nominal terms) being greater than zero for any *pricing year* of the *access arrangement period*.<sup>342</sup>

6.5E The total of all amounts added under section 6.5B (aggregated over all *access arrangement periods* for which such amounts are added) must equal:

- (a) the total amount of the deferred revenue; plus:
- (b) the sum of all adjustments under section 6.5C.<sup>343</sup>

### **Recovery of advanced metering communications infrastructure expenditure<sup>344</sup>**

6.5F In this Chapter:

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<sup>339</sup> Section 6.5A inserted by WAGG No 182, 30 September 2011

<sup>340</sup> Section 6.5B inserted by WAGG No 182, 30 September 2011

<sup>341</sup> Section 6.5C inserted by WAGG No 182, 30 September 2011

<sup>342</sup> Section 6.5D inserted by WAGG No 182, 30 September 2011; Section 6.5D amended by WAGG No 134, 30 July 2021

<sup>343</sup> Section 6.5E inserted by WAGG No 182, 30 September 2011

<sup>344</sup> Heading to section 6.5F inserted by WAGG No 157, 18 September 2020

- (a) “AMI communications expenditure” means all expenditure incurred prior to 30 June 2022 on and in relation to communications equipment (such as communication access points, modems and network interface cards), information technology systems and supporting equipment and services that are required to enable advanced metering functionality. For the purposes of this section, AMI communications expenditure is \$115.36 million (expressed in real dollar values as at 30 June 2017); and
- (b) “AMI recovery period” means a period of 10 years commencing on the next *revisions commencement date* following the date of the 2020 (No. 2) amendments.

{Note: The 2020 (No. 2) amendments came into effect on 18 September 2020.}<sup>345</sup>

- 6.5G An amount in respect of AMI communications expenditure must be added to the *target revenue* for the *Western Power Network* for each *access arrangement period* in the AMI recovery period until the full amount referred to in section 6.5F(a) (subject to any adjustments under section 6.5H) has been added.<sup>346</sup>
- 6.5H An amount added to the *target revenue* under section 6.5G must include an adjustment so that the deferral of the recovery of the AMI communications expenditure is financially neutral for the Electricity Networks Corporation, taking into account:
  - (a) the time value of money; and
  - (b) inflation.<sup>347</sup>
- 6.5I Subject to section 6.5J, the *Authority* must determine the amount to be added under section 6.5G in a given *access arrangement period* in the AMI recovery period.<sup>348</sup>
- 6.5J The total of all amounts added under section 6.5G over the AMI recovery period must equal:
  - (a) the total amount of the AMI communications expenditure; plus:
  - (b) the sum of all adjustments under section 6.5H.<sup>349</sup>

### **Target revenue may be adjusted for unforeseen events**

- 6.6 If:
  - (a) during the previous *access arrangement period*, a *service provider* incurred *capital-related costs* or *non-capital costs* as a result of a *force majeure event*; and
  - (b) the *service provider* was unable to, or is unlikely to be able to, recover some or all of the costs (“**unrecovered costs**”) under its insurance policies; and

<sup>345</sup> Section 6.5F inserted by WAGG No 157, 18 September 2020

<sup>346</sup> Section 6.5G inserted by WAGG No 157, 18 September 2020

<sup>347</sup> Section 6.5H inserted by WAGG No 157, 18 September 2020

<sup>348</sup> Section 6.5I inserted by WAGG No 157, 18 September 2020

<sup>349</sup> Section 6.5J inserted by WAGG No 157, 18 September 2020

- (c) at the time of the *force majeure event* the *service provider* had insurance to the standard of a *reasonable and prudent person* (as to the insurers and the type and level of insurance),

then subject to section 6.8 an amount may be added to the *target revenue* for the *covered network* for the next *access arrangement period* in respect of the unrecovered costs.

- 6.7 Nothing in section 6.6 requires the amount added under section 6.6 in respect of unrecovered costs to be equal to the amount of unrecovered costs.
- 6.8 An amount must not be added under section 6.6 in respect of *capital-related costs* or *non-capital costs*, to the extent that they exceed the costs which would have been incurred by a *service provider efficiently minimising costs*.

### **Target revenue may be adjusted for technical rule changes**

- 6.9 If, during the previous *access arrangement period*, the *technical rules* for the *covered network* were amended under section 12.53 with the result that the *service provider*, in complying with the amended *technical rules*:

- (a) incurred *capital-related costs* or *non-capital costs*:
- (i) for which no allowance was made in the *access arrangement*; and
- (ii) which the *service provider* could not have reasonably foreseen at the time of the *approval* of the previous *access arrangement*;

and

- (b) did not incur *capital-related costs* or *non-capital costs* for which allowance was made in the *access arrangement*,

then subject to sections 6.10 to 6.12 an amount may be added to the *target revenue* for the *covered network* for the next *access arrangement period* in respect of the costs.

- 6.10 The amount (if any) to be added under section 6.9(a) must be positive, and the amount (if any) to be added under section 6.9(b) must be negative.
- 6.11 A positive amount must not be added under section 6.9(a) in respect of capital-related costs or *non-capital costs*, to the extent that they exceed the costs which would have been incurred by a *service provider efficiently minimising costs*.
- 6.12 A negative amount added under section 6.9(b) must have regard to the savings that would have been made by a *service provider efficiently minimising costs* even if the *service provider* did not actually achieve that level of savings.

### **'Investment adjustment mechanism' defined**

- 6.13 An "**investment adjustment mechanism**" is a mechanism in an *access arrangement* detailing how any investment difference for the *access arrangement period* is to be treated by the *Authority* at the next *access arrangement review*.
- 6.14 In sections 6.13 and 6.16, "**investment difference**" for an *access arrangement period* is to be determined at the end of the *access arrangement period* by comparing:

- (a) the nature (including amount and timing) of actual *new facilities investment* which occurred during the *access arrangement period*;
- with
- (b) the nature (including amount and timing) of *forecast new facilities investment* which at the start of the *access arrangement period* was forecast to occur during the *access arrangement period*.

### **Requirement for an investment adjustment mechanism**

- 6.15 If an *access arrangement* uses the form of *price control* described in section 6.2(a), then the *access arrangement* must contain an *investment adjustment mechanism*.
- 6.16 Without limiting the types of *investment adjustment mechanism* which may be contained in an *access arrangement*, an *investment adjustment mechanism* may provide that:
- (a) adjustments are to be made to the *target revenue* for the next *access arrangement* in respect of the full extent of any investment difference; or
  - (b) no adjustment is to be made to the *target revenue* for the next *access arrangement* in respect of any investment difference.
- 6.17 An *investment adjustment mechanism* must be:
- (a) sufficiently detailed and complete to enable the *Authority* to apply the *investment adjustment mechanism* at the next *access arrangement review*; and
  - (b) without limiting this Code, consistent with the *gain sharing mechanism* (if any) in the *access arrangement*;
  - (c) consistent with the *Code objective*.
- 6.18 An *investment adjustment mechanism* in an *access arrangement* applies at the next *access arrangement review*.

### **'Gain sharing mechanism' defined**

- 6.19 A "gain sharing mechanism" is a mechanism:
- (a) in an *access arrangement* which the *Authority* must apply at the next *access arrangement review* to determine an amount to be included in the *target revenue* for one or more of the following *access arrangement periods*; and
  - (b) which operates as set out in sections 6.20 to 6.28.

### **Requirement for a gain sharing mechanism**

- 6.20 An *access arrangement* must contain a *gain sharing mechanism* unless the *Authority* determines that a *gain sharing mechanism* is not necessary to achieve the objective in section 6.4(a)(ii).

### **Objectives for gain sharing mechanism**

6.21 A *gain sharing mechanism* must have the objective of:

- (a) achieving an equitable allocation over time between *users* and the *service provider* of innovation and efficiency gains or losses relative to *efficiency and innovation benchmarks*; and
- (b) being objective, transparent, easy to administer and replicable from one *access arrangement* to the next; and
- (c) giving the *service provider* an incentive to reduce costs or otherwise improve productivity in a way that is neutral in its effect on the timing of such initiatives; and

{For example, a *service provider* should not have an artificial incentive to defer an innovation until after an *access arrangement review*.}

- (d) minimising the effects of the mechanism on incentives for the implementation of *alternative options*.<sup>350</sup>

6.22 A *gain sharing mechanism* must be sufficiently detailed and complete to enable the *Authority* to apply the *gain sharing mechanism* at the next *access arrangement review*, including by prescribing the basis on which returns are to be determined for the purposes of section 6.23 and the basis on which losses are to be determined for the purposes of section 6.23A.<sup>351</sup>

### **'Surplus' defined**

6.23 A "**surplus**" has arisen to the extent that:

- (a) returns actually achieved by the *service provider* from the sale of *covered services* during the previous *access arrangement period*;  
exceeded:
- (b) the level of returns from the sale of *covered services* which at the start of the *access arrangement period* was forecast to occur during the *access arrangement period*.<sup>352</sup>

### **'Deficit' defined<sup>353</sup>**

6.23A A "**deficit**" has arisen to the extent that:

- (a) returns actually achieved by the *service provider* from the sale of *covered services* during the previous *access arrangement period*;  
are less than:

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<sup>350</sup> Section 6.21 amended by WAGG No 157, 18 September 2020

<sup>351</sup> Section 6.22 amended by WAGG No 157, 18 September 2020

<sup>352</sup> Section 6.23 amended by WAGG No 157, 18 September 2020

<sup>353</sup> Heading to section 6.23A inserted by WAGG No 157, 18 September 2020

- (b) the level of returns from the sale of *covered services* which at the start of the *access arrangement period* was forecast to occur during the *access arrangement period*.<sup>354</sup>

### **Prior surpluses may be retained**

- 6.24 Subject to the provisions of any *investment adjustment mechanism*, the *service provider* may retain all of the *surplus* achieved in the previous *access arrangement period*, and accordingly, the *Authority* must not make an adjustment in order to recover the *surplus* achieved in the previous *access arrangement period* when approving the *price control* in a subsequent *access arrangement*.

### **Determining the above-benchmark surplus or below-benchmark deficit<sup>355</sup>**

- 6.25 The *Authority* must determine how much (if any) of the *surplus* results from efficiency gains or innovation by the *service provider* in excess of the *efficiency and innovation benchmarks* in the previous *access arrangement* (“**above-benchmark surplus**”) or how much of the *deficit* results from a failure of the *service provider* to meet the *efficiency and innovation benchmarks* in the previous *access arrangement* (“**below-benchmark deficit**”).<sup>356</sup>

- 6.26 [Not used]<sup>357</sup>

### **Determining the increase or decrease to the target revenue<sup>358</sup>**

- 6.27 The *Authority* must apply the *gain sharing mechanism* to determine how much (if anything) is to be added to or removed from the *target revenue* for one or more coming *access arrangement periods* under section 6.4(a)(ii) in order to enable the *service provider* to continue to share in the benefits of the efficiency gains or innovations which gave rise to the *above-benchmark surplus* or to penalise the *service provider* for the failure to meet the *efficiency and innovation benchmarks* which gave rise to the *below-benchmark deficit*.<sup>359</sup>
- 6.28 If the *Authority* makes a determination under section 6.27 to add or remove an amount to the *target revenue* in more than one *access arrangement period*, that determination binds the *Authority* when undertaking the *access arrangement review* at the beginning of each such *access arrangement period*.<sup>360</sup>

### **‘Service standards adjustment mechanism’ defined**

- 6.29 A “*service standards adjustment mechanism*” is a mechanism in an *access arrangement* detailing how the *service provider’s* performance during the *access arrangement period* against the *service standard benchmarks* is to be treated by the *Authority* at the next *access arrangement review*.

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<sup>354</sup> Section 6.23A inserted by WAGG No 157, 18 September 2020

<sup>355</sup> Heading to section 6.25 amended by WAGG No 157, 18 September 2020

<sup>356</sup> Section 6.25 amended by WAGG No 157, 18 September 2020

<sup>357</sup> Section 6.26 deleted by WAGG No 157, 18 September 2020

<sup>358</sup> Heading to section 6.27 amended by WAGG No 157, 18 September 2020

<sup>359</sup> Section 6.27 amended by WAGG No 157, 18 September 2020

<sup>360</sup> Section 6.28 amended by WAGG No 157, 18 September 2020

### **Requirement for service standards adjustment mechanism**

- 6.30 An *access arrangement* must contain a *service standards adjustment mechanism*.
- 6.31 A *service standards adjustment mechanism* must be:
- (a) sufficiently detailed and complete to enable the *Authority* to apply the *service standards adjustment mechanism* at the next *access arrangement review*; and
  - (b) consistent with the *Code objective*.
- 6.32 A *service standards adjustment mechanism* in an *access arrangement* applies at the next *access arrangement review*.

### **Demand management innovation allowance mechanism<sup>361</sup>**

- 6.32A An *access arrangement* must contain a *demand management innovation allowance mechanism*.<sup>362</sup>
- 6.32B The demand management innovation allowance is an annual, ex-ante allowance provided to *service providers* in the form of a fixed amount of additional revenue at the commencement of each *pricing year* of an *access arrangement period*.<sup>363</sup>
- 6.32C The objective of the *demand management innovation allowance mechanism* is to provide *service providers* with funding for research and development in demand management projects that have the potential to reduce long term network costs (“**demand management innovation allowance objective**”).<sup>364</sup>
- 6.32D The *Authority* must make and *publish* guidelines which must include a *demand management innovation allowance mechanism* consistent with the *demand management innovation allowance objective* and the information specified in section 6.32J.<sup>365</sup>
- 6.32E The *Authority* must determine the maximum amount of the allowance under the *demand management innovation allowance mechanism* for an *access arrangement period*, which must be calculated for each *pricing year in the access arrangement period*.<sup>366</sup>
- 6.32F Any amount of allowance not used by the *service provider* or not approved by the *Authority* over the *access arrangement period* must not be carried over into the subsequent *access arrangement period* or reduce the amount of the allowance for the subsequent *access arrangement period*.<sup>367</sup>

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<sup>361</sup> Heading to section 6.32A inserted by WAGG No 157, 18 September 2020

<sup>362</sup> Section 6.32A inserted by WAGG No 157, 18 September 2020

<sup>363</sup> Section 6.32B inserted by WAGG No 157, 18 September 2020

<sup>364</sup> Section 6.32C inserted by WAGG No 157, 18 September 2020

<sup>365</sup> Section 6.32D inserted by WAGG No 157, 18 September 2020

<sup>366</sup> Section 6.32E inserted by WAGG No 157, 18 September 2020

<sup>367</sup> Section 6.32F inserted by WAGG No 157, 18 September 2020

- 6.32G In developing and applying any *demand management innovation allowance mechanism*, the *Authority* must take into account the following:
- (a) the mechanism should be applied in a manner that contributes to the achievement of the *demand management innovation allowance objective*;
  - (b) projects the subject of the allowance should:
    - (i) have the potential to reduce long term network costs; and
    - (ii) be innovative and not otherwise efficient and prudent *alternative options* that a *service provider* should have provided for in its *proposed access arrangement*; and
    - (iii) comply with the *demand management innovation allowance guidelines*
  - (c) the level of the allowance:
    - (i) should be reasonable, considering the long term benefit to *consumers*; and
    - (ii) should only provide funding that is not available from any other source; and
    - (iii) may vary over time; and
  - (d) the allowance may fund projects which occur over a period longer than an *access arrangement period*.<sup>368</sup>
- 6.32H A *service provider* must submit a *compliance report* to the *Authority* in accordance with the *demand management innovation allowance guidelines*.<sup>369</sup>
- 6.32I The *Authority* must *publish* the *compliance report*.<sup>370</sup>
- 6.32J The *demand management innovation allowance guidelines* must include the following:
- (a) the eligibility criteria to be applied by the *Authority* in determining whether a project is entitled to receive the allowance;
  - (b) the process, manner and form by which a *service provider* may apply to the *Authority* for up-front consideration of a project;
  - (c) the information required to be included in a *compliance report* which must include:
    - (i) the amount of the allowance:
      - A. incurred by the *service provider* to date as at the end of that *pricing year*;

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<sup>368</sup> Section 6.32G inserted by WAGG No 157, 18 September 2020

<sup>369</sup> Section 6.32H inserted by WAGG No 157, 18 September 2020

<sup>370</sup> Section 6.32I inserted by WAGG No 157, 18 September 2020



- B. incurred by the *service provider* in that *pricing year*, and
  - C. expected to be incurred by the *service provider* in total over the duration of the eligible project;
- (ii) a list and description of each project on which the allowance was spent;
  - (iii) a summary of how and why each project complies with the eligibility criteria;
  - (iv) the results of each project; and
- (d) any requirements for the preparation, lodgement and form of a *compliance report*.<sup>371</sup>

6.32K The *Authority* must consult the public in accordance with Appendix 7 before making and *publishing* the *demand management innovation allowance guidelines*.<sup>372</sup>

**Authority may make a determination of excluded services for a covered network**

6.33 The *Authority* may from time to time make and *publish* a determination (which subject to section 6.37 has effect for a specified *covered network*) of which *services* being provided by means of the *covered network* are *excluded services*.

6.34 If a determination has effect under section 6.33, then despite any existing *framework and approach*, the determination is binding in respect of the *approval* or *review* of *price control* in an *access arrangement* for the *covered network*.<sup>373</sup>

6.35 Without limiting section 6.33, a *service provider* or a *user* may at any time request the *Authority* to determine under section 6.33 that one or more *services* provided by means of the *service provider's covered network* are *excluded services*.<sup>374</sup>

6.36 Before making a determination under section 6.33, the *Authority* must consult the public in accordance with Appendix 7.

6.37 A determination under section 6.33:

- (a) may be revoked or amended by a further determination under section 6.33; and
- (b) has effect until revoked by a further determination; and
- (c) does not have effect in relation to the *approval* or *review*, as applicable, of an *access arrangement* if the determination is *published* less than 3 months before the *submission deadline* or *revisions submission date*, as applicable.<sup>375</sup>

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<sup>371</sup> Section 6.32J inserted by WAGG No 157, 18 September 2020

<sup>372</sup> Section 6.32K inserted by WAGG No 157, 18 September 2020

<sup>373</sup> Section 6.34 amended by WAGG No 157, 18 September 2020

<sup>374</sup> Section 6.35 amended by WAGG No 157, 18 September 2020

<sup>375</sup> Section 6.37 amended by WAGG No 157, 18 September 2020

{Note: The intention of section 6.37(c) is to ensure that the goalposts are not set or shifted too late in the process.}

### **Tariff equalisation contributions may be added to target revenue<sup>376</sup>**

6.37A If the *service provider* for the *Western Power Network* is or will be required, by a notice made under section 129D(2) of the Act, to pay a tariff equalization contribution into the Tariff Equalization Fund during an *access arrangement period*, then an amount may be added to the *target revenue* for the *covered network* for the *access arrangement period*, which amount—

- (a) must not exceed the total of the tariff equalisation contributions which are or will be required to be paid under the notice, including any amount that was payable or paid before the commencement of the *access arrangement period*; and
- (b) must be separately identified as being under this section 6.37A.<sup>377</sup>

{Note: Section 7.12 deals with how the amount added under this section 6.37A is to be allocated as *tariff* components.}<sup>378</sup>

## **Subchapter 6.2 – Calculation of Service provider’s Costs**

### **When this Subchapter 6.2 applies**

6.38 The following provisions, namely:

- (a) sections 6.40 to 6.42 (*non-capital costs*); and
- (b) sections 6.43 to 6.70 (*capital-related costs*),

apply in relation to an *access arrangement* only to the extent that, in determining *target revenue*, it is necessary to calculate part or all of the relevant component of the *service provider’s approved total costs*.

6.39 Nothing in section 6.38:

- (a) limits the operation of a section of this Code or a provision of an *access arrangement* which refers to a provision of this Subchapter 6.2 for a purpose other than calculating the *service provider’s approved total costs*; or
- (b) requires an *access arrangement* to determine *target revenue* in a manner which requires the calculation of, or of any component of, the *service provider’s approved total costs*.

{Note: Each element of the *price control*, as with each other component of an *access arrangement*, must be proposed by a

<sup>376</sup> Heading to section 6.37A inserted by WAGG No 207, 8 November 2005

<sup>377</sup> Section 6.37A amended by WAGG No 206, 8 December 2006; Section 6.37A amended by WAGG No 180, 22 October 2008; Section 6.37A amended by WAGG No 206, 8 December 2006; Section 6.37A amended by WAGG No 180, 22 October 2008

<sup>378</sup> Note to section 6.37A inserted by WAGG No 207, 8 November 2005

*service provider* in its *proposed access arrangement* submitted under section 4.1. Under section 4.28, the *Authority* must approve the *access arrangement*, including the *price control*, if the *Authority* considers that it meets the applicable objectives.}

### **Non-capital costs**

6.40 Subject to section 6.41, the *non-capital costs* component of *approved total costs* for a *covered network* must include only those *non-capital costs* which would be incurred by a *service provider* *efficiently minimising costs*.

6.41 Where, in order to maximise the *net benefit after considering alternative options*, a *service provider* pursues an *alternative option* in order to provide *covered services*, the *non-capital costs* component of *approved total costs* for a *covered network* may include *non-capital costs* incurred in relation to the *alternative option* (“**alternative option non-capital costs**”) if:

- (a) the *alternative option non-capital costs* do not exceed the amount of *alternative option non-capital costs* that would be incurred by a *service provider* *efficiently minimising costs*; and
- (b) at least one of the following conditions is satisfied:
  - (i) the *additional revenue* for the *alternative option* is expected to at least recover the *alternative option non-capital costs*; or
  - (ii) the *alternative option* provides a *net benefit* in the *covered network* over a reasonable period of time that justifies higher *reference tariffs*; or
  - (iii) the *alternative option* is necessary to maintain the safety or reliability of the *covered network* or its ability to provide contracted *covered services*.<sup>379</sup>

{Note: The *service provider* may adopt an *alternative option* either due to the operation of the *regulatory test*, or due to the *service provider*’s own processes in advance of the *regulatory test*.}

6.42 For the purposes of section 6.41(b)(i) “**additional revenue**” for an *alternative option* means:

- (a) the present value (calculated at the *rate of return* over a reasonable period) of the increased *tariff* income reasonably anticipated to arise from the increased sale of *covered services* on the network to one or more *users* (where “increased sale of *covered services*” means sale of *covered services* which would not have occurred had the *alternative option* not been undertaken);

minus

- (b) the present value (calculated at the *rate of return* over the same period) of the best reasonable forecast of the increase in *non-capital costs* (other than

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<sup>379</sup> Section 6.41 amended by WAGG No 180, 22 October 2008

*alternative option non-capital costs*) directly attributable to the increased sale of the *covered services* (being the *covered services* referred to in the expression “increased sale of *covered services*” in section 6.42(a)),<sup>380</sup>

where the “**rate of return**” is a rate of return determined by the *Authority* in accordance with the *Code objective* and in a manner consistent with this Chapter 6, which may be the rate of return most recently approved by the *Authority* for use in the *price control* for the *covered network* under this Chapter 6.

### **Capital-related costs**

6.43 The *capital-related costs* component of *approved total costs* for a *covered network* must be calculated by:

- (a) determining a *capital base* under sections 6.44 to 6.63; and
- (b) calculating a return on the *capital base* of the *covered network* by applying the *weighted average cost of capital* calculated under section 6.64 to the *capital base*; and
- (c) calculating the depreciation of the *capital base* under section 6.70.

### **Determining the capital base**

6.44 The *capital base* for the *covered network*:

- (a) must be determined at the start of each *access arrangement period*; and
- (b) may be determined from time to time by the *service provider* during an *access arrangement period*.

6.45 If the *service provider* determines the *capital base* under section 6.44(b) during an *access arrangement period*, then:

- (a) the determination does not affect a subsequent determination under section 6.44(a); and
- (b) the determination does not affect the *target revenue* or the determination of *tariffs* for the *access arrangement period*.

### **Capital base for the start of the first access arrangement period**

6.46 For the start of the *first access arrangement period*, the *capital base* for a *covered network* must be determined using one of the following asset valuation methodologies:

- (a) depreciated optimised replacement cost (“**DORC**”); or
- (b) optimised deprival value (“**ODV**”).

6.47 If under section 6.46 the ODV asset valuation methodology is used to determine the *capital base* at the start of the *first access arrangement period* for the *Western Power Network*, the valuation must utilise, to the extent possible, any ministerial valuation

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<sup>380</sup> Section 6.42 amended by WAGG No 180, 22 October 2008

under section 119 of the Act of the *network assets* which comprise the *covered network*.<sup>381</sup>

{Note: Under section 119 of the Act the Minister may commission a DORC valuation of existing network facilities, and if the Minister does so, in certain circumstances, the valuation provided to the Minister is taken to be the DORC valuation of the facilities.}

### **Capital base for the start of subsequent access arrangement periods**

6.48 For the start of each *access arrangement period* other than the *first access arrangement period*, the *capital base* for a *covered network* must be determined in a manner which is consistent with the *Code objective*.

{Note: A number of options are available in relation to the determination of the *capital base* at the start of an *access arrangement period*, including:

- rolling forward the *capital base* from the previous *access arrangement period* applying benchmark indexation such as the *consumer price index* or an asset specific index, plus *new facilities investment* incurred during the previous *access arrangement period*, less depreciation and *redundant capital* etc; and
- valuation or revaluation of the *capital base* using an appropriate methodology such as the Depreciated Optimised Replacement Cost or Optimised Deprival Value methodology.}

### **Capital base must not include forecast new facilities investment**

6.49 Subject to section 6.50, the *capital base* for a *covered network* must not include any amount in respect of *forecast new facilities investment*.

6.50 For the start of each *access arrangement period*, the *capital base* for a *covered network* may include *forecast new facilities investment* which:

- (a) has not yet occurred but is forecast to occur before the *access arrangement start date*; and
- (b) at the time of inclusion is reasonably expected to satisfy the test in section 6.51A when made.<sup>382</sup>

{Note: *Forecast new facilities investment* in a *proposed access arrangement* may actually have occurred by the time of the *access arrangement start date*. Under section 6.50, such *new facilities investment* may be included in the *capital base* for a *covered network*.}

6.51 For the purposes of section 6.4(a)(i) and subject to section 6.49, the forward-looking and efficient costs of providing *covered services* may include costs in relation to *forecast new facilities investment* for the *access arrangement period* which at the time

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<sup>381</sup> Section 6.47 amended by WAGG No 180, 22 October 2008

<sup>382</sup> Section 6.50 amended by WAGG No 152, 1 September 2006; Section 6.50 amended by WAGG No 180, 22 October 2008

of inclusion is reasonably expected to satisfy the test in section 6.51A when the *forecast new facilities investment* is forecast to be made.<sup>383</sup>

**Test for adding new facilities investment to the capital base<sup>384</sup>**

6.51A *New facilities investment* may be added to the *capital base* if:

- (a) it satisfies the *new facilities investment test*, or
- (b) the *Authority* otherwise approves it being added to the *capital base* if:
  - (i) it has been, or is expected to be, the subject of a *contribution*; and
  - (ii) it meets the requirements of section 6.52(a); and
  - (iii) the *access arrangement* contains a mechanism designed to ensure that there is no double recovery of costs as a result of the addition.<sup>385</sup>

**New facilities investment test**

[not used]<sup>386</sup>

6.52 *New facilities investment* satisfies the *new facilities investment test* if:<sup>387</sup>

- (a) the *new facilities investment* does not exceed the amount that would be invested by a *service provider efficiently minimising costs*, having regard, without limitation, to:
  - (i) whether the *new facility* exhibits economies of scale or scope and the increments in which capacity can be added; and
  - (ii) whether the lowest sustainable cost of providing the *covered services* forecast to be sold over a reasonable period may require the installation of a *new facility* with capacity sufficient to meet the forecast sales; and
  - (iii) if it is not a *priority project*, *alternative options* to the *new facility* (including the capital costs and *non-capital costs* that would be incurred in respect of that *alternative option*);

and

- (b) one or more of the following conditions is satisfied:
  - (i) either:

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<sup>383</sup> Section 6.51 amended by WAGG No 152, 1 September 2006; Section 6.51 amended by WAGG No 180, 22 October 2008

<sup>384</sup> Heading to section 6.51A inserted by WAGG No 180, 22 October 2008

<sup>385</sup> Section 6.51A inserted by WAGG No 180, 22 October 2008

<sup>386</sup> Note before section 6.52 inserted by WAGG No 152, 1 September 2006; Note before section 6.52 deleted by WAGG No 180, 22 October 2008

<sup>387</sup> Section 6.52 amended by WAGG No 180, 22 October 2008

- A. the *anticipated incremental revenue* for the *new facility* is expected to at least recover the *new facilities investment*; or
  - B. if a *modified test* has been approved under section 6.53 and the *new facilities investment* is below the *test application threshold* – the *modified test* is satisfied;
- or
- (ii) the *new facility* provides a *net benefit* in the *covered network* over a reasonable period of time that justifies the *approval* of higher *reference tariffs*; or
  - (iii) the *new facility* is necessary to maintain the safety or reliability of the *covered network* or its ability to provide contracted *covered services*; or
  - (iv) the *new facility* is in respect of a *priority project*.<sup>388</sup>
- 6.53 The *Authority* may, in an *access arrangement*, approve a “**modified test**” for the purposes of section 6.52(b)(i)B to apply to a *covered network* in respect of *new facilities investment* below the *test application threshold* where:
- (a) the *service provider* has proposed a *modified test* to apply in respect of new facilities investment below a proposed *test application threshold*; and
  - (b) the *Authority* determines that approving the *access arrangement* with the proposed *modified test*:
    - (i) would be efficient in that the advantages of approving the proposed *modified test* would outweigh the disadvantages; and
    - (ii) would promote the achievement of the *Code objective*.
- 6.54 In making a determination under section 6.52 the *Authority* must have regard to:
- (a) if the *new facilities investment* is in respect of a *priority project*, for the purposes of considering the amount invested or recovered under section 6.52(a), the unit costs of the *service provider’s actual new facilities investment* only; and<sup>389</sup>
  - (b) whether the *new facilities investment* was required by a *written law* or a *statutory instrument*.
- 6.55 Section 6.54 does not limit the matters to which regard must or may be had in making a determination under section 6.52.
- 6.55A If the *Authority* makes a determination under section 6.52, it must provide *reasons* for its determination in its *draft decision* and *final decision*, and such *reasons* must

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<sup>388</sup> Section 6.52 amended by WAGG No 157, 18 September 2020

<sup>389</sup> Section 6.54 amended by WAGG No 157, 18 September 2020

provide detail on how the *Authority* applied the guidelines referred to in section 6.56 in making its determination.<sup>390</sup>

**Authority must make guidelines<sup>391</sup>**

6.56 The *Authority* must make and *publish* guidelines that provide guidance as to the factors the *Authority* proposes to consider in making a determination under section 6.52 and must consult the public in accordance with Appendix 7 before making and *publishing* any guidelines under this section.<sup>392</sup>

**Recoverable portion**

6.57 If only part of any *new facilities investment* satisfies the *new facilities investment test*, that part ("**recoverable portion**") may be added to the *capital base*.

**Speculative investment**

6.58 The "**speculative investment amount**" (if any) for a *new facility* at any time is equal to:

- (a) the *new facilities investment*, minus
- (b) any *recoverable portion*; minus:
- (c) any amount for which a *contribution* has been, or is to be, provided to the *service provider*,<sup>393</sup>

minus:

- (d) any part of the *speculative investment amount* for the *new facility* previously added to the *capital base* under section 6.60.

6.59 If the calculation in section 6.58 produces a negative result, the *speculative investment amount* is zero.

6.60 If:

- (a) a *speculative investment amount* was created for a *new facility* at a time; and
- (b) a determination is being made under section 6.44 at a later time,

then any part of the *speculative investment amount* which satisfies the *new facilities investment test* at the later time may be added to the *capital base*.

{Note: *Reasons* for the investment satisfying the *new facilities investment test* at the later time could include a change in the type or volume of *covered*

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<sup>390</sup> Section 6.55A inserted by WAGG No 157, 18 September 2020

<sup>391</sup> Heading to section 6.56 deleted by WAGG No 207, 8 November 2005; Heading to section 6.56 inserted by WAGG No 152, 1 September 2006; Heading to section 6.56 deleted by WAGG No 180, 22 October 2008; Heading to section 6.56 inserted by WAGG No 157, 18 September 2020

<sup>392</sup> Section 6.56 deleted by WAGG No 207, 8 November 2005; Section 6.56 inserted by WAGG No 152, 1 September 2006; Section 6.56 deleted by WAGG No 180, 22 October 2008; Section 6.56 inserted by WAGG No 157, 18 September 2020

<sup>393</sup> Section 6.58 amended by WAGG No 180, 22 October 2008



*services provided using the new facility from the circumstances prevailing at the original time.* }

### **Redundant capital**

6.61 Subject to section 6.62, the *Authority* may in relation to a determination under section 6.44(a) require an amount (“**redundant capital**”) to be removed from the *capital base* to the extent (if any) necessary to ensure that *network assets* which have ceased to contribute in any material way to the provision of *covered services* are not included in the *capital base*.

6.62 Before requiring a removal under section 6.61, the *Authority* must have regard to:

- (a) whether the *service provider* was *efficiently minimising costs* when it developed, constructed or acquired the *network assets*; and
- (b) the uncertainty such a removal may cause and the effect which any such uncertainty may have on the *service provider, users* and *applicants*; and
- (c) whether the cause of the *network assets* ceasing to contribute in any material way to the provision of *covered services* was the *application* of a *written law* or a *statutory instrument*; and
- (d) whether the *service provider* was compelled to develop, construct or acquire the *network assets*:
  - (i) by an award by the *arbitrator*; or
  - (ii) because of the *application* of a *written law* or a *statutory instrument*; and
- (e) whether the depreciation of the *network assets* should be accelerated instead of or in addition to a *redundant capital* amount being removed from the *capital base* under section 6.61.

6.63 If the *Authority* requires a removal under section 6.61, then when making other determinations under this Chapter 6 the *Authority* may have regard to the removal.

{Examples of such other determinations include approving a *weighted average cost of capital* and assessing the economic life of assets.}

### **Calculating weighted average cost of capital**

6.64 An *access arrangement* must set out the *weighted average cost of capital* for a *covered network*, which:

- (a) if a determination has effect under section 6.65:
  - (i) for the *first access arrangement* for the *Western Power Network*<sup>394</sup>— may use any methodology (which may be formulated without any reference to the determination under section 6.65) but, in determining whether the methodology used is consistent with this

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<sup>394</sup> Section 6.64 amended by WAGG No 180, 22 October 2008

Chapter 6 and the *Code objective*, regard must be had to the determination under section 6.65; and

- (ii) otherwise — must use the methodology in the determination under section 6.65 unless the *service provider* can demonstrate that an *access arrangement* containing an alternative methodology would better achieve the objectives set out in section 6.64 and the *Code objective*,

and

- (b) if a determination does not have effect under section 6.65 – must be calculated in a manner consistent with section 6.66.

**Authority may make a determination of a methodology for calculation of weighted average cost of capital**

6.65 The *Authority* may from time to time make and *publish* a determination (which subject to section 6.68 has effect for all *covered networks* under this Code) of the preferred methodology for calculating the *weighted average cost of capital* in *access arrangements*.

6.66 A determination under section 6.65:

- (a) must represent an effective means of achieving the *Code objective* and the objectives in section 6.4; and
- (b) must be based on an accepted financial model such as the Capital Asset Pricing Model.

6.67 Before making a determination under section 6.65, the *Authority* must consult the public in accordance with Appendix 7.

6.68 A determination under section 6.65:

- (a) may be revoked or amended by a further determination under section 6.65; and
- (b) has effect for the period specified in the determination, which must not be more than 5 years, unless earlier revoked by a further determination; and
- (c) subject to section 6.69, does not have effect in relation to the *approval* or *review*, as applicable, of an *access arrangement* if the determination is *published* less than 6 months before the *submission deadline* or *revisions submission date*, as applicable.<sup>395</sup>

{Note: The intention of section 6.68(c) is to ensure that the goalposts are not set or shifted too late in the process.}

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<sup>395</sup> Section 6.68 amended by WAGG No 157, 18 September 2020

- 6.69 For the *Western Power Network*, a determination under section 6.65 has effect in relation to the *approval* of the *first access arrangement* if it is *published* at least 3 months before the *submission deadline*.<sup>396</sup>

### **Depreciation**

- 6.70 An *access arrangement* must provide for the depreciation of the *network assets* comprising the *capital base*, including the economic lives of each *network asset* or group of *network assets*, the depreciation method to be applied to each *network asset* or group of *network assets* and the circumstances in which the depreciation of a *network asset* may be accelerated.

### **Consultation with AEMO<sup>397</sup>**

- 6.70A Where a *service provider* is required under this Code to consider changes in costs and benefits for participants in the *Wholesale Electricity Market* (including where required to do so pursuant to the *guidelines* published under section 6A.6(a)), the *service provider* must consult with *AEMO* in good faith in respect of such changes in costs and benefits.<sup>398</sup>
- 6.70B Clause 6.70A only applies in respect of the *SWIS*.<sup>399</sup>

## **Subchapter 6.3 – Service provider may seek approval for costs**

### **Approval for new facilities investment**

- 6.71 A *service provider* may at any time apply to the *Authority* for the *Authority* to determine whether:
- (a) actual *new facilities investment* made by the *service provider* meets the test in section 6.51A; or
  - (b) *forecast new facilities investment* proposed by the *service provider* is forecast to meet the test in section 6.51A.<sup>400</sup>
- 6.72 If an *application* is made to the *Authority* under section 6.71, then subject to section 6.75 the *Authority* must make and *publish* a determination (subject to such conditions as the *Authority* may consider appropriate) within a reasonable time.
- 6.73 Before making a determination under section 6.72, the *Authority* must consult the public in accordance with Appendix 7.
- 6.74 The effect of a determination under section 6.72 is to bind the *Authority* when it approves *proposed revisions*, but in the case of *forecast new facilities investment* under section 6.71(b) the *Authority* is only bound if the *new facilities investment* has proceeded as proposed.

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<sup>396</sup> Section 6.69 amended by WAGG No 180, 22 October 2008

<sup>397</sup> Heading to section 6.70A inserted by WAGG No 157, 18 September 2020

<sup>398</sup> Section 6.70A inserted by WAGG No 157, 18 September 2020

<sup>399</sup> Section 6.70B inserted by WAGG No 157, 18 September 2020

<sup>400</sup> Section 6.71 amended by WAGG No 180, 22 October 2008

- 6.75 The *Authority*:
- (a) must make a determination under section 6.72 if the actual or *forecast new facilities investment* is equal to or greater than the amount of \$15 million (*CPI adjusted*); and
  - (b) may make a determination under section 6.72 if the actual or *forecast new facilities investment* is less than the amount of \$15 million (*CPI adjusted*).

**Approval for non-capital costs**

- 6.76 A *service provider* may at any time apply to the *Authority* for the *Authority* to determine whether:
- (a) actual *non-capital costs* incurred by the *service provider* meet the requirements of section 6.40; or
  - (b) forecast *non-capital costs* proposed to be incurred by the *service provider* is forecast to meet the requirements of section 6.40.<sup>401</sup>
- 6.77 If an *application* is made to the *Authority* under section 6.76, then subject to section 6.80 the *Authority* must make and *publish* a determination (subject to such conditions as the *Authority* may consider appropriate) within 70 *business days*.<sup>402</sup>
- 6.77A The *Authority* may extend the deadline in section 6.77 if, before the day on which the time would otherwise have expired, it *publishes* notice of, and *reasons* for, its decision to extend the deadline.<sup>403</sup>
- 6.78 Before making any determination under section 6.77, the *Authority* must consult the public.<sup>404</sup>
- 6.79 The effect of a determination under section 6.77 is to bind the *Authority* when it approves *proposed revisions*, but in the case of forecast *non-capital costs* under section 6.76(b) the *Authority* is only bound if the actual *non-capital costs* incurred are within 5% of the forecast *non-capital costs* proposed to be incurred.<sup>405</sup>
- 6.80 The *Authority*:
- (a) must make a determination under section 6.77 if the actual or forecast *non-capital costs* are equal to or greater than the amount of \$1.5 million (*CPI adjusted*); and
  - (b) may make a determination under section 6.77 if the actual or forecast *non-capital costs* are less than the amount of \$1.5 million (*CPI adjusted*).

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<sup>401</sup> Section 6.76 amended by WAGG No 180, 22 October 2008

<sup>402</sup> Section 6.77 amended by WAGG No 157, 18 September 2020

<sup>403</sup> Section 6.77A inserted by WAGG No 157, 18 September 2020

<sup>404</sup> Section 6.78 amended by WAGG No 157, 18 September 2020

<sup>405</sup> Section 6.79 amended by WAGG No 157, 18 September 2020

### **Approval for access reform costs<sup>406</sup>**

- 6.81 A *service provider* may apply to the *Authority* for the *Authority* to determine the amount that the *service provider* may recover in respect of *access reform costs* incurred by the *service provider*.<sup>407</sup>
- 6.82 The *Authority* must determine that the *service provider* may recover the total *access reform costs* incurred by the *service provider* except to the extent that it considers that any *access reform costs* incurred by the *service provider* have not been incurred by the *service provider* acting efficiently.<sup>408</sup>
- 6.83 Any amount determined by the *Authority* under section 6.81 is deemed to be added to the *non-capital costs* component of *approved total costs* for a *covered network* in the relevant *access arrangement*.<sup>409</sup>

### **Subchapter 6.4 – Multi-function assets<sup>410</sup>**

- 6.84 If a *network asset* is used to provide *services* other than *covered services* (a “**multi-function asset**”), the *Authority* must, in accordance with the *multi-function asset principles*, in an *access arrangement* for an *access arrangement period*, reduce the *target revenue* for the *service provider* for a *pricing year* within that *access arrangement period* by an amount equal to 30% of the *net incremental revenue*.<sup>411</sup>
- 6.85 In making a decision under section 6.84, the *Authority* must have regard to the *multi-function asset policy* and the *multi-function asset guidelines*.<sup>412</sup>
- 6.86 The *multi-function asset principles* are as follows:
- (a) the *service provider* should be encouraged to use assets that provide *covered services* for the provision of other kinds of *services* where that use is efficient and does not materially prejudice the provision of *covered services*;
  - (b) a *multi-function asset* revenue reduction should not be dependent on the *service provider* deriving a positive commercial outcome from the use of the asset other than for *covered services*;
  - (c) a *multi-function asset* revenue reduction should be applied where the use of the asset other than for *covered services* is material;
  - (d) regard should be had to the manner in which costs of *multi-function assets* have been recovered or revenues of *multi-function assets* have been reduced in respect of the relevant asset in the past and the *reasons* for adopting that manner of reduction; and

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<sup>406</sup> Heading to section 6.81 inserted by WAGG No 157, 18 September 2020

<sup>407</sup> Section 6.81 inserted by WAGG No 157, 18 September 2020

<sup>408</sup> Section 6.82 inserted by WAGG No 157, 18 September 2020

<sup>409</sup> Section 6.83 inserted by WAGG No 157, 18 September 2020

<sup>410</sup> Heading to section 6.84 inserted by WAGG No 157, 18 September 2020

<sup>411</sup> Section 6.84 inserted by WAGG No 157, 18 September 2020

<sup>412</sup> Section 6.85 inserted by WAGG No 157, 18 September 2020

- (e) any reduction effected under section 6.84 should be compatible with other incentives provided under this Code.<sup>413</sup>
- 6.87 For the purpose of section 6.86(c), the use of a *multi-function asset* other than for *covered services* is material if the *net incremental revenue* derived from the use of all *multi-function assets* in a *pricing year* is greater than \$1 million (*CPI adjusted*).<sup>414</sup>
- 6.88 The *Authority* must make and *publish* guidelines setting out the approach the *Authority* proposes to take in applying the *multi-function asset principles* (which may include a methodology that the *Authority* proposes to use to determine reductions for the purposes of section 6.84) and must consult the public in accordance with Appendix 7 before making and *publishing* the *multi-function asset guidelines*.<sup>415</sup>

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<sup>413</sup> Section 6.86 inserted by WAGG No 157, 18 September 2020

<sup>414</sup> Section 6.87 inserted by WAGG No 157, 18 September 2020

<sup>415</sup> Section 6.88 inserted by WAGG No 157, 18 September 2020

## Chapter 6A — Alternative options<sup>416</sup>

### Network Opportunity Map<sup>417</sup>

- 6A.1 A *service provider* must *publish* and update a network opportunity map (“**network opportunity map**”) by no later than 1 October each year.<sup>418</sup>
- 6A.2 A *network opportunity map* must include:
- (a) a description of the *service provider’s network*;
  - (b) a description of its operating environment;
  - (c) the methodologies used in preparing the *network opportunity map*, including methodologies used to identify transmission and distribution system *constraints* and any assumptions applied;
  - (d) analysis and explanation of any aspects of forecasts and information provided in the *network opportunity map* that have changed significantly from previous forecasts and information provided in the preceding year;
  - (e) forecasts for the 5 year forward planning period, including at least:
    - (i) a description of the forecasting methodology used, sources of input information, and the assumptions applied; and
    - (ii) load forecasts for zone substations;
    - (iii) to the extent practicable, primary distribution feeders, having regard to:
      - A. the number of customer connections;
      - B. energy consumption; and
      - C. estimated total output of known embedded generating units,including, where applicable, for each item any capacity or voltage constraints on distribution feeders where applicable including estimated constraint periods; and
  - (f) forecasts of future zone sub-stations including:
    - (i) location;

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<sup>416</sup> Heading inserted by WAGG No 157, 18 September 2020

<sup>417</sup> Heading to section 6A.1 inserted by WAGG No 157, 18 September 2020

<sup>418</sup> Section 6A.1 inserted by WAGG No 157, 18 September 2020

- (ii) future level of output, consumption or power flow (in MW) of a *generating plant or load*; and
  - (iii) proposed commissioning time (estimate of month and year);
- (g) a description of any factors that may have a material impact on the *service provider's network*, including factors affecting:
  - (i) fault levels;
  - (ii) voltage levels;
  - (iii) power system security requirements; and
  - (iv) the quality of supply to other *users* (if relevant);
- (h) the annual deferred value for *augmentations* for the next 5 years;
- (i) for all *network asset* retirements and for all *network asset* de-ratings that, in each case, would result in transmission and distribution system *constraints*, that are planned over the forward planning period, the following information in sufficient detail relative to the size or significance of the *network asset*:
  - (i) a description of the *network asset*, including location;
  - (ii) the reasons, including methodologies and assumptions used by the *service provider*, for deciding that it is necessary or prudent for the *network asset* to be retired or de-rated, taking into account factors such as the condition of the *network asset*;
  - (iii) the date from which the *service provider* proposes that the *network asset* will be retired or de-rated; and
  - (iv) if the date to retire or de-rate the *network asset* has changed since the previous *network opportunity map*, an explanation of why this has occurred;
- (j) a high-level summary of each:
  - (i) *major augmentation* for which the *regulatory test* has been completed in the preceding year or is in progress; and
  - (ii) *priority project*;
- (k) a summary of all *committed* investments to be carried out within the forward planning period with an estimated capital cost of \$2 million or more that are to address a *network* issue, including:
  - (i) a brief description of the investment, including its purpose, its location, the estimated capital cost of the investment and an estimate of the date (month and year) the investment is expected to become operational;
  - (ii) where there are reasonable *alternative options* to that investment, a brief description of the *alternative options* considered by the *service*



*provider* in deciding on the preferred investment, including an explanation of the ranking of these options to the investment;

- (l) information on the *service provider's* asset management approach, including:
  - (i) a summary of any asset management strategy employed by the *service provider*;
  - (ii) an explanation of how the *service provider* takes into account the cost of line losses when developing and implementing its asset management and investment strategy;
  - (iii) a summary of any issues that may impact on the transmission and distribution system *constraints* identified in the *network opportunity map* that has been identified through carrying out asset management;
  - (iv) information about where further information on the asset management strategy and methodology adopted by the *service provider* may be obtained.<sup>419</sup>

#### **Alternative options strategy and vendor register<sup>420</sup>**

6A.3 The *service provider* must develop a strategy (“**alternative options strategy**”) for:

- (a) engaging with providers of *alternative options*; and
- (b) considering *alternative options*.<sup>421</sup>

6A.4 The *service provider* must:

- (a) engage with providers of *alternative options* and consider *alternative options* for addressing transmission and distribution system *constraints* in accordance with its *alternative options strategy*;
- (b) document its *alternative options strategy* which must include the information specified in section 6A.5;
- (c) review and *publish* a revised *alternative options strategy* by no later than 1 October, which must be updated at least once every 2 years;
- (d) establish and maintain a vendor register by which parties can register their interest in being notified of developments relating to *network* planning and expansion; and
- (e) negotiate in good faith with a provider of *alternative options* regarding the terms for an alternative option service contract based on the *model alternative option service contract*.<sup>422</sup>

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<sup>419</sup> Section 6A.2 inserted by WAGG No 157, 18 September 2020

<sup>420</sup> Heading to section 6A.3 inserted by WAGG No 157, 18 September 2020

<sup>421</sup> Section 6A.3 inserted by WAGG No 157, 18 September 2020

<sup>422</sup> Section 6A.4 inserted by WAGG No 157, 18 September 2020

- 6A.5 The *service provider's alternative options strategy* must include the following information:
- (a) a description of how the *service provider* will investigate, develop, assess and report on potential *alternative options* including references to the *network opportunity map* (if relevant);
  - (b) a description of the *service provider's* process to engage and consult with potential providers of *alternative options* to determine their level of interest and ability to participate in the development process for potential *alternative options*;
  - (c) an outline of the process followed by the *service provider* when negotiating with providers of *alternative options* to further develop potential *alternative options*;
  - (d) an outline of the information a provider of *alternative options* is to include in a proposal for *alternative options*, including, where possible, an example of a best practice *alternative options* proposal;
  - (e) an outline of the criteria that will be applied by the *service provider* in evaluating *alternative options* proposals including by reference to the *network opportunity map* (if relevant);
  - (f) an outline of the principles that the *service provider* considers in developing the payment levels for *alternative options*;
  - (g) a reference to any applicable incentive schemes for the implementation of *alternative options* and whether any specific criteria is applied by the *service provider* in its application and assessment of the scheme;
  - (h) worked examples to support the description of how the *service provider* will assess potential *alternative options* in accordance with paragraph (a) above;
  - (i) a hyperlink to any relevant, publicly available information produced by the *service provider*;
  - (j) a *model alternative option service contract* that provides a framework agreement for the *service provider* to negotiate *alternative options*;
  - (k) the amount of *alternative options* costs incurred since publishing the previous *alternative options strategy*;
  - (l) a description of how parties may be listed on the vendor register; and
  - (m) the *service provider's* contact details.<sup>423</sup>

### **Net Benefit Valuation Guidelines<sup>424</sup>**

- 6A.6 The *Authority* must:

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<sup>423</sup> Section 6A.5 inserted by WAGG No 157, 18 September 2020

<sup>424</sup> Heading to section 6A.6 inserted by WAGG No 157, 18 September 2020

- (a) make and *publish* guidelines that provide guidance as to acceptable methodologies for valuing *net benefits* by a *service provider*, which methodologies must include, but are not limited to, for the *SWIS*, consideration of changes in costs and benefits for participants in the *Wholesale Electricity Market*; and
- (b) consult the public in accordance with Appendix 7 before making and *publishing* any guidelines under section 6A.6(a).<sup>425</sup>

**Model alternative option service contract**<sup>426</sup>

6A.7 The *model alternative option service contract* forming part of the *service provider's alternative options strategy* under section 6A.5(j) must:

- (c) be reasonable; and
- (d) be sufficiently detailed and complete to enable the *alternative options provider* to understand in advance how the *model alternative option service contract* will be applied; and
- (e) contain provisions that can be utilised to specify the rights and obligations agreed between the *service provider* and the *alternative options provider* in respect to at least the following matters:
  - (i) scope and standard of the *alternative option*;
  - (ii) security;
  - (iii) technical compliance requirements;
  - (iv) testing and maintenance;
  - (v) record keeping, audits and inspection;
  - (vi) confidentiality and privacy;
  - (vii) invoicing and payments;
  - (viii) liability and indemnities;
  - (ix) insurance;
  - (x) suspension and *force majeure*;
  - (xi) default and termination;
  - (xii) assignment and sub-contracting;
  - (xiii) dispute resolution; and

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<sup>425</sup> Section 6A.6 inserted by WAGG No 157, 18 September 2020

<sup>426</sup> Heading to section 6A.7 inserted by WAGG No 157, 18 September 2020

(xiv) warranties.<sup>427</sup>

- 6A.8 The *Authority* must approve a *model alternative option service contract* if it is reasonably satisfied that it complies with section 6A.7.<sup>428</sup>
- 6A.9 If the *Authority* does not approve a *model alternative option service contract*, the *Authority* must notify the *service provider* of the changes required for it to be approved.<sup>429</sup>
- 6A.10 The *Authority* may consult the public before making a decision to approve or not approve a *model alternative option service contract*.<sup>430</sup>

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<sup>427</sup> Section 6A.7 inserted by WAGG No 157, 18 September 2020

<sup>428</sup> Section 6A.8 inserted by WAGG No 157, 18 September 2020

<sup>429</sup> Section 6A.9 inserted by WAGG No 157, 18 September 2020

<sup>430</sup> Section 6A.10 inserted by WAGG No 157, 18 September 2020

## Chapter 7 – Pricing methods and tariff structure statements<sup>431</sup>

### 'Pricing methods' defined

7.1 In this Code “**pricing methods**” means the structure of *reference tariffs* included in a *tariff structure statement* under this Chapter 7, which determines how *target revenue* is allocated across and within *reference services*.<sup>432</sup>

### Tariff structure statements<sup>433</sup>

7.1A A *tariff structure statement* of a *service provider* of a *covered network* must set out the *service provider's pricing methods*, and must include the following elements:

- (a) the structures for each proposed *distribution reference tariff*,
- (b) the *charging parameters* for each proposed *distribution reference tariff*, and
- (c) a description of the approach that the *service provider* will take in setting each *distribution reference tariff* in each *price list* of the *service provider* during the relevant *access arrangement period* in accordance with sections 7.2 to 7.12.<sup>434</sup>

7.1B A *tariff structure statement* must comply with:

- (a) the *pricing principles*; and
- (b) any applicable *framework and approach*.<sup>435</sup>

7.1C A *network service provider* must comply with the *tariff structure statement* approved by the *Authority* and any other applicable requirements in this Code when the *service provider* is setting the *reference tariffs* for *reference services*.<sup>436</sup>

7.1D A *tariff structure statement* must be accompanied by a *reference tariff change forecast* which sets out, for each *reference tariff*, the *service provider's* forecast of the weighted average annual price change for that *reference tariff* for each *pricing year* of the *access arrangement period*.<sup>437</sup>

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<sup>431</sup> Heading amended by WAGG No 157, 18 September 2020

<sup>432</sup> Section 7.1 amended by WAGG No 157, 18 September 2020

<sup>433</sup> Heading to section 7.1A inserted by WAGG No 157, 18 September 2020

<sup>434</sup> Section 7.1A inserted by WAGG No 157, 18 September 2020

<sup>435</sup> Section 7.1B inserted by WAGG No 157, 18 September 2020

<sup>436</sup> Section 7.1C inserted by WAGG No 157, 18 September 2020

<sup>437</sup> Section 7.1D inserted by WAGG No 157, 18 September 2020

## Form of pricing methods

7.2 A *tariff structure statement* may contain any *pricing methods* provided they collectively meet the objectives set out in sections 7.3 and 7.4 and otherwise comply with this Chapter 7.<sup>438</sup>

{Examples:

- The *pricing methods* may result in *tariffs* which distinguish between:
  - voltage levels; and
  - classes of *users* or *users* by reference to their *end-use customers*.
- The *pricing methods* may result in *tariffs* which relate to specific *connection points*, and may result in *tariffs* which involve a combination of fixed and variable amounts related to one or more of the following elements:
  - demand levels (maximum kW or kVA per period);
  - energy quantities involved (kWh or kVAh per period); and
  - time of use.
- If the *pricing methods* use quantities in determining *tariffs*, they may use minimum, maximum or actual quantities.<sup>439</sup>

## Pricing objective<sup>440</sup>

7.3 Subject to sections 7.3K, 7.7 and 7.12<sup>441</sup>, the *pricing methods* in a *tariff structure statement* must have the objective (the “**pricing objective**”) that the *reference tariffs* that a *service provider* charges in respect of its provision of *reference services* should reflect the *service provider’s* efficient costs of providing those *reference services*.<sup>442</sup>

## Application of the pricing principles<sup>443</sup>

7.3A Subject to sections 7.3B, 7.3K, 7.7 and 7.12, a *service provider’s reference tariffs* must comply with the *pricing principles* set out in sections 7.3D to 7.3J.<sup>444</sup>

7.3B Subject to section 7.3K, a *service provider’s reference tariffs* may not vary from the *reference tariffs* that would result from complying with the *pricing principles* set out in

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<sup>438</sup> Section 7.2 amended by WAGG No 157, 18 September 2020

<sup>439</sup> Note to section 7.2 amended by WAGG No 157, 18 September 2020

<sup>440</sup> Heading to section 7.3 amended by WAGG No 157, 18 September 2020

<sup>441</sup> Section 7.3 amended by WAGG No 207, 8 November 2005

<sup>442</sup> Section 7.3 amended by WAGG No 157, 18 September 2020; Section 7.3 amended by WAGG No 134, 30 July 2021

<sup>443</sup> Heading to section 7.3A inserted by WAGG No 157, 18 September 2020

<sup>444</sup> Section 7.3A inserted by WAGG No 157, 18 September 2020; Section 7.3A amended by WAGG No 134, 30 July 2021

sections 7.3D to 7.3H, except to the extent necessary to give effect to the *pricing principles* set out in sections 7.3I to 7.3J.<sup>445</sup>

7.3C A *service provider* must comply with section 7.3A in a manner that will contribute to the achievement of the *pricing objective*.<sup>446</sup>

**Pricing principles**<sup>447</sup>

7.3D For each *reference tariff*, the revenue expected to be recovered must lie on or between:

- (a) an upper bound representing the *stand-alone cost of service provision for customers* to whom or in respect of whom that *reference tariff* applies; and
- (b) a lower bound representing the avoidable cost of not serving the *customers* to whom or in respect of whom that *reference tariff* applies.<sup>448</sup>

7.3E The *charges* paid by, or in respect of, different *customers* of a *reference service* may differ only to the extent necessary to reflect differences in the *average cost of service provision* to the *customers*.

{Examples of factors which may result in the *charges* paid by different *customers* of a *reference service* differing from each other, include:

- the quantities of *reference service* supplied or to be supplied; or
- a *customer's* time pattern of *network* usage; or
- the technical characteristics or requirements of the *facilities and equipment* at the relevant *connection point*; or
- the nature of the plant or equipment required to provide the *reference service*; or
- the periods for which the *reference service* is to be supplied; or
- subject to section 7.7, a *customer's* location.<sup>449</sup>

7.3F The structure of *reference tariffs* must, so far as is consistent with the *Code objective*, accommodate the reasonable requirements of *users* collectively and *end-use customers* collectively.

{Example: *Customers* may prefer more of the *average cost of service provision* to be recovered using *tariff* components that vary

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<sup>445</sup> Section 7.3B inserted by WAGG No 157, 18 September 2020; Section 7.3B amended by WAGG No 134, 30 July 2021

<sup>446</sup> Section 7.3C inserted by WAGG No 157, 18 September 2020

<sup>447</sup> Heading to section 7.3D inserted by WAGG No 157, 18 September 2020

<sup>448</sup> Section 7.3D inserted by WAGG No 157, 18 September 2020

<sup>449</sup> Section 7.3E inserted by WAGG No 157, 18 September 2020

with usage or demand than might otherwise be the case under section 7.6.)<sup>450</sup>

- 7.3G Each *reference tariff* must be based on the forward-looking efficient costs of providing the *reference service* to which it relates to the *customers* currently on that *reference tariff* with the method of calculating such cost and the manner in which that method is applied to be determined having regard to:
- (a) the additional costs likely to be associated with meeting demand from *end-use customers* that are currently on that *reference tariff* at times of greatest utilisation of the relevant part of the *service provider's network*; and
  - (b) the location of *end-use customers* that are currently on that *reference tariff* and the extent to which costs vary between different locations in the *service provider's network*.<sup>451</sup>
- 7.3H The revenue expected to be recovered from each *reference tariff* must:
- (a) reflect the *service provider's* total efficient costs of serving the *customers* that are currently on that *reference tariff*;
  - (b) when summed with the revenue expected to be received from all other *reference tariffs*, permit the *service provider* to recover the expected revenue for the *reference services* in accordance with the *service provider's access arrangement*; and
  - (c) comply with sections 7.3H(a) and 7.3H(b) in a way that minimises distortions to the price signals for efficient usage that would result from *reference tariffs* that comply with the *pricing principle* set out in section 7.3G.<sup>452</sup>
- 7.3I The structure of each *reference tariff* must be reasonably capable of being understood by *customers* that are currently on that *reference tariff*, including enabling a *customer* to predict the likely annual changes in *reference tariffs* during the *access arrangement period*, having regard to:
- (a) the type and nature of those *customers*;
  - (b) the information provided to, and the consultation undertaken with, those *customers*.<sup>453</sup>
- 7.3J A *reference tariff* must comply with this Code and all relevant *written laws* and *statutory instruments*.<sup>454</sup>
- 7.3K Despite sections 7.3D to 7.3H, a *reference tariff* may include a component, applicable where a *user* exceeds its contractual entitlements to transfer electricity into or out of the *network* at a *connection point*, which component is not set by reference to the *service provider's* costs, but instead is set at a level to act as a disincentive to the *user*

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<sup>450</sup> Section 7.3F inserted by WAGG No 157, 18 September 2020

<sup>451</sup> Section 7.3G inserted by WAGG No 157, 18 September 2020

<sup>452</sup> Section 7.3H inserted by WAGG No 157, 18 September 2020

<sup>453</sup> Section 7.3I inserted by WAGG No 157, 18 September 2020

<sup>454</sup> Section 7.3J inserted by WAGG No 157, 18 September 2020



exceeding its contractual entitlements. Such component should be determined having regard to the following principles:

- (a) the component must be set at a level which provides a material disincentive to the *user* transferring into or out of the *network* quantities of electricity above its contractual entitlements; and
- (b) in determining that level, regard is to be had to the potential adverse impact on the *network*, other *customers* and *generators*, and the *service provider* of the *user* transferring into or out of the *network* quantities of electricity above its contractual entitlements.<sup>455</sup>

7.3L Unless otherwise determined by the *Authority*, section 7.3K does not apply to *connection points* servicing *end use customers* with a contract maximum demand not exceeding 1 MVA or *end use customers* with solar photovoltaic *generating plant* not exceeding 1 MVA in capacity.<sup>456</sup>

**[Heading not used]**<sup>457</sup>

7.4 [Not used]<sup>458</sup>

**[Heading not used]**<sup>459</sup>

7.5 [Not used]<sup>460</sup>

**Tariff components**

7.6 Unless a *tariff structure statement* containing alternative *pricing methods* would better achieve the *Code objective*, and subject to section 7.3K, for a *reference service*.<sup>461</sup>

- (a) the incremental cost of service provision should be recovered by *tariff* components that vary with usage or demand; and
- (b) any amount in excess of the incremental cost of service provision should be recovered by *tariff* components that do not vary with usage or demand.

**Postage stamp charges in certain cases**

7.7 The *tariff* applying to a *standard tariff user* in respect of a *standard tariff exit point* must not differ from the *tariff* applying to any other *standard tariff user* in respect of a *standard tariff exit point* as a result of differences in the geographic locations of the *standard tariff exit points*.

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<sup>455</sup> Section 7.3K inserted by WAGG No 134, 30 July 2021

<sup>456</sup> Section 7.3L inserted by WAGG No 134, 30 July 2021

<sup>457</sup> Heading to section 7.4 deleted by WAGG No 157, 18 September 2020

<sup>458</sup> Section 7.4 deleted by WAGG No 157, 18 September 2020

<sup>459</sup> Heading to section 7.5 deleted by WAGG No 157, 18 September 2020

<sup>460</sup> Section 7.5 deleted by WAGG No 157, 18 September 2020

<sup>461</sup> Section 7.6 amended by WAGG No 157, 18 September 2020; Section 7.6 amended by WAGG No 134, 30 July 2021

### **‘Equivalent tariff’ defined**

7.8 In sections 7.9 and 7.10, “**equivalent tariff**” means:

- (a) for a *reference service* — the *reference tariff*; and
- (b) for a *non-reference service* — the *tariff* that it is reasonably likely would have been set as the *reference tariff* had the *non-reference service* been a *reference service*.

### **Prudent discounts**

7.9 If a *user* seeks to implement initiatives to promote the economically efficient investment in and operation of the *covered network*, a *service provider* must reflect in the *user’s tariff*, by way of a discount, a share of any reductions in either or both of the *service provider’s capital-related costs* or *non-capital costs* which arise in relation to the initiative by:<sup>462</sup>

- (a) by entering into an agreement with a *user* to apply a discount to the equivalent *tariff* to be paid by the *user* for a *covered service*; and
- (b) then, recovering the amount of the discount from other *users* of *reference services* through *reference tariffs*.

### **Discounts for distributed generating plant**

7.10 If a *user* seeks to *connect distributed generating plant* to a *covered network*, a *service provider* must reflect in the *user’s tariff*, by way of a discount, a share of any reductions in either or both of the *service provider’s capital-related costs* or *non-capital costs* which arise as a result of the *entry point* for *distributed generating plant* being located in a particular part of the *covered network* by:

- (a) entering into an agreement with a *user* to apply a discount to the equivalent *tariff* to be paid by the *user* for a *covered service*; and
- (b) then, recovering the amount of the discount from other *users* of *reference services* through *reference tariffs*.

### **Access arrangement must detail policies regarding discounts**

7.11 An *access arrangement* must contain a detailed policy setting out how the *service provider* will implement:

- (a) if the *service provider* so chooses – section 7.9; and
- (b) section 7.10,

including a detailed mechanism for determining when a *user* will be entitled to receive a discount and for calculating the discount to which the *user* will be entitled.

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<sup>462</sup> Section 7.9 amended by WAGG No 157, 18 September 2020

**Tariff equalisation contributions must be included as a tariff component for distribution network users**

- 7.12 If an amount is added to the *target revenue* under section 6.37A and is intended to be recovered from *users of reference services* through one or more *reference tariffs*, then the recovery must have the objective of<sup>463</sup>:
- (a) applying only to *users of reference services* provided in respect of *exit points* on the *distribution system*; and
  - (b) being equitable in its effect as between the *users* referred to in section 7.12(a); and
  - (c) otherwise being consistent with the *Code objective*.<sup>464</sup>

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<sup>463</sup> Section 7.12 amended by WAGG No 206, 8 December 2006

<sup>464</sup> Section 7.12 further amended by WAGG No 206, 8 December 2006

## Chapter 8 – Price lists

### Submission and approval of price lists if required<sup>465</sup>

8.1 A service provider must:

- (a) submit to the *Authority*, as soon as practicable, and in any case within 15 *business days*, after the *Authority* publishes its *final decision* under section 4.17, a *price list* (the “**initial price list**”) for the first *pricing year* of the *access arrangement period*; and
- (b) submit to the *Authority*, at least 3 months before the commencement of the second and each subsequent *pricing year* of the *access arrangement period*, a further *price list* (an “**annual price list**”) for the relevant *pricing year*.<sup>466</sup>

8.1A If a service provider’s access arrangement:

- (a) requires it to submit *price lists* to the *Authority* for approval, the process set out in sections 8.2 to 8.7 will apply upon the *service provider* submitting its *price list* under section 8.1; or
- (b) does not require it to submit *price lists* to the *Authority* for approval, the *Authority* must *publish* the *price list* within 5 *business days* after the *service provider* submits the *price list* under section 8.1, and that *price list* will be deemed to be an *approved price list*.<sup>467</sup>

8.2 The *Authority* must approve a *price list* if the *Authority* is satisfied that:

- (a) the *price list* complies with Chapter 7 and this Chapter 8 and the *service provider’s access arrangement*, including any applicable *tariff structure statement*; and
- (b) all forecasts associated with the *price list* are reasonable.<sup>468</sup>

8.3 If the *Authority* determines that a *price list* is deficient:

- (a) the *Authority* may require the *service provider*, within 10 *business days* after receiving notice of the determination, to re-submit the *price list* with the amendments necessary to correct the deficiencies identified in the determination and (unless the *Authority* permits further amendment) no further amendment; or

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<sup>465</sup> Heading to section 8.1 amended by WAGG No 157, 18 September 2020

<sup>466</sup> Section 8.1 amended by WAGG No 157, 18 September 2020

<sup>467</sup> Section 8.1A inserted by WAGG No 157, 18 September 2020

<sup>468</sup> Section 8.2 amended by WAGG No 157, 18 September 2020

- (b) the *Authority* may itself make the amendments necessary to correct the deficiencies.<sup>469</sup>
- 8.4 If the *service provider* fails to comply with a requirement under section 8.3, or the resubmitted *price list* fails to correct the deficiencies in the former *price list*, the *Authority* may itself amend the *price list* to bring it into conformity with the requirements of this Chapter 8, the *service provider's access arrangement* and the *service provider's tariff structure statement* for the relevant *access arrangement period*.<sup>470</sup>
- 8.5 For the purposes of amending a *price list* under section 8.3(b) or section 8.4, the *Authority* may have regard to the forecast price changes for the relevant *pricing year* as set out in any applicable *reference tariff change forecast*.<sup>471</sup>
- 8.6 The *Authority* must, within 15 *business days* from the date of submission of an *initial price list* by a *service provider* under section 8.1(a), *publish* an *approved price list* (including any amendments made by the *Authority* under section 8.3(b) or section 8.4) with respect to that *initial price list*.<sup>472</sup>
- 473
- 8.7 The *Authority* must, within 30 *business days* from the date of submission of an *annual price list* by a *service provider* under section 8.1(b), *publish* an *approved price list* (including any amendments made by the *Authority* under section 8.3(b) or section 8.4) with respect to that *annual price list*.<sup>474</sup>
- 8.8 If the *Authority* does not *publish* an *approved price list* by the date specified in section 8.6 or 8.7 (as applicable), the *approved price list* most recently in effect continues in effect until the *Authority publishes* a revised *approved price list* in accordance with section 8.6 or 8.7 (as applicable) and that revised *approved price list* takes effect in accordance with section 8.11.<sup>475</sup>
- 8.9 If the *Authority* does not *publish* its *final decision* under section 4.17 by the date specified in section 4.18A, the *approved price list* most recently in effect continues in effect until:
- (a) the *Authority publishes* its *final decision* under section 4.17; and
  - (b) the *service provider* submits its *initial price list* under section 8.1(a); and
  - (c) the *Authority publishes* an *approved price list* with respect to that *initial price list* in accordance with section 8.1A or 8.6 (as applicable); and

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<sup>469</sup> Section 8.3 amended by WAGG No 157, 18 September 2020

<sup>470</sup> Section 8.4 amended by WAGG No 157, 18 September 2020

<sup>471</sup> Section 8.5 amended by WAGG No 157, 18 September 2020

<sup>472</sup> Section 8.6 amended by WAGG No 157, 18 September 2020

<sup>473</sup> Heading to section 8.7 deleted by WAGG No 157, 18 September 2020

<sup>474</sup> Section 8.7 amended by WAGG No 157, 18 September 2020

<sup>475</sup> Section 8.8 amended by WAGG No 157, 18 September 2020

- (d) that *approved price list* takes effect in accordance with section 8.10(a) or 8.11 (as applicable).<sup>476</sup>

8.10 An *approved price list published* under section 8.1A(b) takes effect:

- (a) in the case of an *initial price list* – at the commencement of the first *pricing year* of the relevant *access arrangement period*; and
- (b) in the case of an *annual price list* – at the commencement of the *pricing year* to which the *price list* relates.<sup>477</sup>

8.11 An *approved price list published* under section 8.6 or 8.7 takes effect from a date specified by the *Authority*, provided that the date specified by the *Authority* must be the date set out in section 8.10(a) or 8.10(b) (as applicable) unless the *Authority* considers there are circumstances which reasonably justify a departure from such date.

{Note: an example of circumstances which would reasonably justify the *Authority* departing from the date set out in section 8.10(a) or 8.10(b) would be where the previous *approved price list* has continued to have effect pursuant to section 8.8 and a new *pricing year* has commenced, in which case the *Authority* could specify that the revised *approved price list* will take effect from the date it is *published*.}<sup>478</sup>

### **Contents of price list<sup>479</sup>**

8.12 A *price list* must:

- (a) set out the proposed *reference tariffs* for the relevant *access arrangement period*;
- (b) set out, for each proposed *reference tariff*, the *charging parameters* and the elements of service to which each *charging parameter* relates;
- (c) set out the nature of any variation or adjustment to the *reference tariff* that could occur during the course of the *pricing year* and the basis on which it could occur;
- (d) demonstrate compliance with this Code and the *service provider's access arrangement*, including the *service provider's tariff structure statement* for the relevant *access arrangement period*;
- (e) for any *pricing year* other than the first *pricing year* in an *access arrangement period*, demonstrate how each proposed *reference tariff* is consistent with the corresponding forecast price change for that *reference tariff* for the relevant *pricing year* as set out in the relevant *reference tariff change forecast*, or explain any material differences between them; and

<sup>476</sup> Section 8.9 inserted by WAGG No 157, 18 September 2020

<sup>477</sup> Section 8.10 inserted by WAGG No 157, 18 September 2020

<sup>478</sup> Section 8.11 inserted by WAGG No 157, 18 September 2020

<sup>479</sup> Heading to section 8.12 inserted by WAGG No 157, 18 September 2020

- (f) describe the nature and extent of change from the previous *pricing year* and demonstrate that the changes comply with this Code and the *service provider's access arrangement*.<sup>480</sup>

**Revision of reference tariff change forecast<sup>481</sup>**

- 8.13 At the same time as a *service provider* submits a *price list* under section 8.1, the *service provider* must submit to the *Authority* a revised *reference tariff change forecast* which sets out, for each *reference tariff*, the *service provider's* forecast of the weighted average annual price change for that *reference tariff* for each remaining *pricing year* of the *access arrangement period*, and updated so as to take into account that *price list*.<sup>482</sup>

**Publication of information about tariffs<sup>483</sup>**

- 8.14 A *service provider* must maintain on its website:
- (a) its current *tariff structure statement*;
  - (b) its current *reference tariff change forecast*; and
  - (c) its current *approved price list*.<sup>484</sup>
- 8.15 A *service provider* must, within 5 *business days* from the date the *Authority* publishes its *final decision* under section 4.17 for that *service provider's access arrangement*, publish the *tariff structure statement* approved or contained in the approved *access arrangement* and the accompanying *reference tariff change forecast*.<sup>485</sup>
- 8.16 A *service provider* must publish the information referred to in section 8.14 within 5 *business days* from the date the *Authority* publishes an *approved price list* under section 8.1A, section 8.6 or section 8.7 (as applicable) for that *service provider*.<sup>486</sup>

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<sup>480</sup> Section 8.12 inserted by WAGG No 157, 18 September 2020

<sup>481</sup> Heading to section 8.13 inserted by WAGG No 157, 18 September 2020

<sup>482</sup> Section 8.13 inserted by WAGG No 157, 18 September 2020

<sup>483</sup> Heading to section 8.14 inserted by WAGG No 157, 18 September 2020

<sup>484</sup> Section 8.14 inserted by WAGG No 157, 18 September 2020

<sup>485</sup> Section 8.15 inserted by WAGG No 157, 18 September 2020

<sup>486</sup> Section 8.16 inserted by WAGG No 157, 18 September 2020

## Chapter 9 – Regulatory test

{Note: The *regulatory test* applies only to *proposed major augmentations*. It applies to a *proposed major augmentation* whether the *service provider* proposes to undertake the *proposed major augmentation*:

- (a) in order to provide *covered services*, but not specifically in relation any particular project; or
- (b) in relation to a project involving the *generation* of or consumption of electricity.

The *regulatory test* cannot require a project involving the *generation* or consumption of electricity to be located in a particular place or to be altered in any other way. The *regulatory test* can only affect what network *augmentations* are undertaken in order to accommodate the project.}

### Subchapter 9.1 – Introductory

#### Objectives of this Chapter 9

9.1 The objectives of this Chapter 9 (“**Chapter 9 objectives**”) are:

- (a) to ensure that before a *service provider* commits to a *proposed major augmentation* to a *covered network*, the *major augmentation* is properly assessed to determine whether it maximises the *net benefit after considering alternative options*; and
- (b) to provide an incentive to a *service provider*, when considering *augmentation* to a *covered network*, to select the option (which may involve a *major augmentation* or may involve not proceeding with an *augmentation* at all) which maximises the *net benefit after considering alternative options*; and
- (c) to minimise:
  - (i) delay to projects and other developments; and
  - (ii) administrative and regulatory costs; and
  - (iii) any other barriers to the entry of *generators* and *consumers* into the electricity market,

arising from the *application* of the *regulatory test*.

#### No major augmentation without regulatory test determination

9.2 A *service provider* must not commit to a *major augmentation* before the *Authority* determines, or is deemed to determine, under section 9.13 or 9.18, as applicable, that the test in section 9.14 or 9.20, as applicable, is satisfied.



**‘Regulatory test’ defined**

9.3 The “**regulatory test**” is an assessment under this Chapter 9 of whether a *proposed major augmentation* to a *covered network* maximises the *net benefit after considering alternative options*.

9.4 A “**net benefit after considering alternative options**” means a net benefit (measured in present value terms to the extent that it is possible to do so) to those who *generate, transport and consume* electricity in the *covered network* and any *interconnected system*, having regard to all reasonable *alternative options*, including the likelihood of each *alternative option* proceeding.

**‘Committed’ defined**

9.5 Subject to section 9.6, a *service provider* has “**committed**” to a *major augmentation* when the *service provider*, intending to undertake the *major augmentation*, begins to put its intention into effect by doing an act which is more than merely preparatory to undertaking the *major augmentation*, including by:

(a) making a substantial financial commitment in respect of the *major augmentation*, such as committing to:

(i) a significant obligation which is legally binding; or

(ii) an obligation which would have significant commercial repercussions if cancelled, discontinued or dishonoured;

or

(b) commencing, or procuring the commencement of, construction of the *major augmentation*.

9.6 A *service provider* will not be considered to have *committed* to undertaking a *major augmentation* merely because the *service provider* has:

(a) undertaken preparatory system or other studies in respect of the *major augmentation*; or

(b) engaged in preparatory planning, design or costing activities in respect of the *major augmentation*; or

(c) obtained an approval in respect of the *major augmentation*, unless the approval comes within the description in section 9.5(a) or 9.5(b).

**Authority may make a determination that an augmentation is or is not a major augmentation**

9.7 A *service provider* may request the *Authority*, as part of or prior to a decision under sections 9.13 or 9.18 (as applicable), having regard to the *forecast new facilities investment* for a proposed *augmentation*, to determine whether or not the proposed *augmentation* is a *major augmentation*.

9.8 A determination by the *Authority* under section 9.7 is conclusive evidence of whether the proposed *augmentation* is a *major augmentation*.

### **Service provider must make information available**

- 9.9 A *service provider* must use its reasonable endeavours to ensure that it makes sufficient information available in a timely manner in respect of a *proposed major augmentation* to maximise the opportunity for potential *alternative options* to be viable.

## **Subchapter 9.2 – Regulatory test process**

### **Regulatory test as part of access arrangement approval process**

- 9.10 A *service provider* may submit a *major augmentation proposal* as part of its *proposed access arrangement*, in which case sections 9.11 to 9.14 apply.
- 9.11 A *major augmentation proposal* submitted under section 9.10:
- (a) must describe in detail each *major augmentation* to which the *major augmentation proposal* relates; and
  - (b) must state that, in the *service provider's* view, each *proposed major augmentation* maximises the *net benefit after considering alternative options*; and
  - (c) may be amended in a revised *proposed access arrangement* submitted under section 4.16; and
  - (d) may rely on information from the *whole of system plan* if relevant to the *major augmentation proposal*.<sup>487</sup>
- 9.12 The invitation under section 4.9 for submissions on the *proposed access arrangement* must invite submissions on the *service provider's* statement under section 9.11(b), including submissions on reasonable *alternative options* to each *proposed major augmentation*.
- 9.13 The *Authority's final decision* under section 4.17 must state whether the test in section 9.14 is satisfied or is not satisfied.<sup>488</sup>
- 9.14 The test in this section 9.14 is satisfied if the *Authority* is satisfied that:
- (a) the *service provider's* statement under section 9.11(b) is defensible; and
  - (b) the *service provider* has applied the *regulatory test* properly to each *proposed major augmentation*:
    - (i) using reasonable market development scenarios which incorporate varying levels of demand growth at relevant places; and
    - (ii) using reasonable timings, and testing alternative timings, for project commissioning dates and construction timetables for the *major augmentation* and for *alternative options*;

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<sup>487</sup> Section 9.11 amended by WAGG No 157, 18 September 2020

<sup>488</sup> Section 9.13 amended by WAGG No 157, 18 September 2020

### **Regulatory test not as part of access arrangement approval process**

- 9.15 A *service provider* may submit a *major augmentation proposal* other than as part of the *access arrangement approval process*, in which case sections 9.16 to 9.22 apply.
- 9.16 A *major augmentation proposal* submitted under section 9.15:
- (a) must describe in detail each *major augmentation* to which the *major augmentation proposal* relates; and
  - (b) must state that, in the *service provider's* view, each *proposed major augmentation* maximises the *net benefit after considering alternative options*; and
  - (c) must demonstrate that the *service provider* has conducted a consultation process in respect of each *proposed major augmentation* which:
    - (i) included public consultation under Appendix 7; and
    - (ii) gave all *interested persons* a reasonable opportunity to state their views and to propose *alternative options* to the *proposed major augmentations*, and that the *service provider* had regard to those views and *alternative options*; and
    - (iii) involved the *service provider* giving reasonable consideration to any information obtained under sections 9.16(c)(i) and 9.16(c)(ii) when forming its view under section 9.16(b);and
  - (d) must comply with the current requirements *published* under section 9.17.
  - (e) may include a request that the *Authority* give prior approval under section 6.72 in respect of the *new facilities investment* for one or more *proposed major augmentations*; and
  - (f) may include information from the *whole of system plan* if relevant to the *major augmentation proposal*.<sup>489</sup>
- 9.17 The *Authority* must *publish*, and may from time to time *publish* variations to, its requirements for a *major augmentation proposal* submitted under section 9.16, which requirements must be directed to ensuring that the *Authority* receives sufficient information in a suitable form to enable it to efficiently and effectively apply the test in section 9.20.
- 9.18 The *Authority* must in respect of a *major augmentation proposal* submitted under section 9.15 make and *publish* a determination whether the test in section 9.20 is satisfied or is not satisfied, and must do so:
- (a) if the *Authority* has consulted the public under section 9.19 — within 45 *business days*; and

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<sup>489</sup> Section 9.16 amended by WAGG No 157, 18 September 2020

- (b) otherwise — within 25 *business days*,  
after receiving the *major augmentation proposal*.
- 9.19 The *Authority* may consult the public under Appendix 7 before making a determination under section 9.18.
- 9.20 The test in this section 9.20 is satisfied if the *Authority* is satisfied that:
- (a) the *service provider's* statement under section 9.16(b) is defensible; and
  - (b) the *service provider* has applied the *regulatory test* properly to each *proposed major augmentation*:
    - (i) using reasonable market development scenarios which incorporate varying levels of demand growth at relevant places; and
    - (ii) using reasonable timings, and testing alternative timings, for project commissioning dates and construction timetables for the *major augmentation* and for *alternative options*;
- and
- (c) the consultation process conducted by the *service provider* meets the criteria in section 9.16(c).
- 9.21 If the *Authority* is unable to determine whether the test set out in section 9.20 is satisfied or is not satisfied because the *service provider* has not provided adequate information (despite the *Authority* having notified the *service provider* of this fact and given the *service provider* a reasonable opportunity, having regard to the time periods specified in section 9.18, to provide adequate information), then the *Authority* may determine that the test in section 9.20 is not satisfied.
- 9.22 If the *Authority* has not *published* a determination under section 9.18 within the time limits specified in that section, then the *Authority* is deemed to have determined that the test in section 9.20 is satisfied.

**Regulatory test may be expedited, otherwise modified or waived**

- 9.23 If the *Authority* forms the view that the application of the *regulatory test* under sections 9.10 to 9.14 or sections 9.15 to 9.22 in respect of a *proposed major augmentation* would be contrary to the Chapter 9 objectives, including because:
- (a) there are no, or it is unlikely that there are any, viable *alternative options* to the *proposed major augmentation*; or
  - (b) the nature of the *proposed major augmentation* is such that significant advance planning is required and no *alternative options* exist; or
  - (c) the nature of the *proposed major augmentation*, or part of it, is such that it should be submitted to *AEMO*; or<sup>490</sup>

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<sup>490</sup> Section 9.23 amended by WAGG No 157, 18 September 2020

- (d) the nature of the funding of the *proposed major augmentation* means that the *proposed major augmentation* will not cause a net cost (measured in present value terms to the extent that it is possible to do so) to those who *generate, transport and consume* electricity in the *covered network* and any *interconnected system*,

then the *Authority* may, by *publishing* a notice:

- (e) expedite or otherwise modify the *application* of the *regulatory test* in respect of the *major augmentation* to the extent the *Authority* considers necessary to meet the *Chapter 9 objectives*; or
- (f) waive the application of the *regulatory test* in respect of the *major augmentation* if the *Authority* considers it necessary to do so to meet the *Chapter 9 objectives*.

9.24 Without limiting the circumstances in which the *Authority* may *publish* a notice under section 9.23, if a person requests the *Authority* to form a view under section 9.23 in respect of a *proposed major augmentation* which is described to the *Authority* in reasonable detail then the *Authority* must as soon as practicable form a view and either:

- (a) *publish* a notice under section 9.23; or
- (b) notify the person that the *Authority* does not propose to *publish* a notice under section 9.23.

9.24A If a person requests the *Authority* to form a view under section 9.23, the *Authority* may take into account any information obtained from the preparation of, or set out in the *whole of system plan*.<sup>491</sup>

9.24B To avoid doubt, a *priority project* is not subject to the *regulatory test*.<sup>492</sup>

### **Vexatious etc alternative options**

9.25 Neither the *service provider* nor the *Authority* is required by this Chapter 9 to have regard to an *alternative option* which is misconceived or is proposed on vexatious grounds.

## **Subchapter 9.3 – Anti-avoidance provisions**

### **Anti-avoidance provisions**

9.26 Section 9.27 applies if the *Authority* determines that a *service provider* has engaged in conduct with the purpose of avoiding or frustrating the objective in section 9.1(a).

9.27 The *Authority* may by notice to the *service provider* deem:

- (a) any two or more *augmentations* to constitute a single *augmentation*; or

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<sup>491</sup> Section 9.24A inserted by WAGG No 157, 18 September 2020

<sup>492</sup> Section 9.24B inserted by WAGG No 157, 18 September 2020

- (b) any *augmentation* to constitute any two or more *augmentations*; or
- (c) any activity which has been attributed to an *augmentation* to be attributed to a different *augmentation*; or
- (d) any combination of sections 9.27(a), 9.27(b), or 9.27(c),

in which case the deeming has conclusive effect for the purposes of this Chapter 9.

9.28 A notice under section 9.27 must set out *reasons* for the *Authority's* decision under section 9.27.

9.29 A deeming under section 9.27 may:

- (a) relate to two or more *augmentations* whether or not they occur at the same time; and
- (b) relate to one or more *augmentations* whether or not they have been completed; and
- (c) specify the time at which a deemed thing occurred or will occur.

9.30 To avoid doubt, each reference in sections 9.27 and 9.29 to "*augmentation*" includes a *major augmentation* and an *augmentation* previously deemed under sections 9.27 and 9.29.

## Chapter 10 – Dispute Resolution

### Subchapter 10.1 – Introduction

#### **Commercial Arbitration Act 2012 does not apply<sup>493</sup>**

10.1 A proceeding under this Chapter 10 is not an arbitration within the meaning of the *Commercial Arbitration Act 2012*.<sup>494</sup>

#### **Procedural rules**

10.2 Appendix 5 applies in respect of an *access dispute*.

### Subchapter 10.2 – Access Disputes

#### **Notification of a dispute**

10.3 An *applicant* or a *service provider* may notify the *Authority* in writing that an *access dispute* exists.

10.4 On receiving a notification under section 10.3, the *Authority* must give notice in writing of the *access dispute* to the other parties to the dispute.

10.5 An *applicant* or *service provider* who has given notice of an *access dispute* under section 10.3 may withdraw notification of the *access dispute* at any time by written notice to the *Authority* and all other parties to the *access dispute*.

10.6 If the notification of an *access dispute* is withdrawn under section 10.5, it is taken for the purposes of this Chapter 10 to never have been given.

#### **Other parties joining**

10.7 A person, other than a party to a dispute, may apply to the *arbitrator* to join and be heard in the *proceedings*.

10.8 The *arbitrator*:

- (a) must allow a person applying under section 10.7 to join the *proceedings* if the person is affected by the *proceedings* unless the *arbitrator* determines that doing otherwise is necessary to justly dispose of the issues in the *proceedings*; and

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<sup>493</sup> Heading to section 10.1 amended by WAGG No 157, 18 September 2020

<sup>494</sup> Section 10.1 amended by WAGG No 157, 18 September 2020

- (b) may make such orders concerning the joinder as the *arbitrator* considers appropriate.

10.9 The *arbitrator* may on its own initiative:

- (a) direct a party to a dispute to provide it with sufficient information to enable it to identify other persons who might wish to apply under section 10.7 to join and be heard in the *proceedings*;

{Note: This may include information as to any (or any other) *applicants* and details of each *applicant's access application*.}

- (b) notify any person identified by it under section 10.9(a) that the dispute exists and the parties to the dispute.

10.10 The parties to a dispute must promptly comply with a direction under section 10.9(a).

### **Conciliation and reference to arbitration**

10.11 On receiving a request to refer an *access dispute* to arbitration, the *Authority* must:

- (a) subject to section 10.12 and if the parties to the dispute agree, attempt to settle the dispute by conciliation; or
- (b) if the *Authority* does not attempt to settle the dispute by conciliation or conciliation fails to settle the dispute, refer the dispute to the *arbitrator*.

### **Authority not required to conciliate**

10.12 The *Authority* is not obliged to attempt to settle the dispute by conciliation if the *Authority* is satisfied, on the application of a party to the *access dispute*, that there are good *reasons* why the dispute should not be settled by conciliation.

### **Expedited hearing of disputes under applications and queuing policy**

10.13 Section 10.14 applies in respect of an *access dispute* ("**queuing dispute**") relating to an interim or procedural matter under an *applications and queuing policy*, in respect of which either:

- (a) the *service provider* and the *applicant* agree in writing to have the matter heard as a *queuing dispute*;
- (b) where the *arbitrator* determines (on application by either party) that a speedy resolution of the *queuing dispute* may permit the *access application* to be further progressed and an *access offer* made without the parties having to resort to a lengthy, full-scale *access dispute*.

10.14 Unless the *arbitrator* considers that the *Code objective* or the just resolution of the *queuing dispute* require a *queuing dispute* to be dealt with in another way, when hearing a *queuing dispute*:

- (a) the parties are to be restricted to one round of written submissions and one round of written submissions in reply (which may not be amended except by leave of the *arbitrator*); and



- (b) the hearing is to be conducted without legal representation (but parties may obtain legal advice in preparing the written submission); and
- (c) the *arbitrator* is to treat the objective of informality and expedition as paramount; and
- (d) the *arbitrator* and the parties must endeavour to ensure that the *queuing dispute* is determined within 10 *business days* after notice of the *queuing dispute* is given.

**Factors which the arbitrator must have regard to**

10.15 In exercising its functions under this Chapter 10 the *arbitrator* must have regard to:

{Note: Section 2.2 requires the *arbitrator* to have regard to the *Code objective* when exercising its functions under this Chapter 10.}

- (a) the geographical location of the network and the extent (if any) to which the network is interconnected with other networks; and
- (b) contractual obligations of the *service provider* or other persons already using the *covered network* (or both); and
- (c) the operational and technical requirements necessary for the safe and reliable operation of the *covered network*.

10.16 Section 10.15 does not limit the matters to which the *arbitrator* may have regard.

**The arbitration**

10.17 The *arbitrator* must make a decision on the matters the subject of the *access dispute* following the procedure prescribed in Appendix 5.

10.18 The *arbitrator* may at any time terminate an arbitration (without making a decision) if the *arbitrator* considers that:

- (a) the subject matter of the *access dispute* is trivial, misconceived or lacking in substance; or
- (b) the notification of the *access dispute* was vexatious; or
- (c) the party who notified the *access dispute* has not negotiated in good faith or has notified the *access dispute* prematurely or unreasonably.

**Arbitrated tariff to be guided by access arrangement and price list**

10.19 Subject to section 10.20, if an *access dispute* relates to the *tariff* that should apply to a *covered service*, the *arbitrator* must set the *tariff* payable by the *applicant* under the award having regard to the *access arrangement* and *price list* and Chapter 7.

**Arbitrated tariffs for reference services**

10.20 If an *access dispute* relates to the *tariff* that should apply to a *reference service*, then an award must not:

- (a) require the *applicant* to pay more than the *reference tariff* for the *reference service*, or
- (b) require the *service provider* to accept less than the *reference tariff* for the *reference service*.

**Arbitrated terms for reference services**

10.21 Subject to section 10.22, the *arbitrator* must not make an award specifying the terms of an *access contract* for a *reference service* that is inconsistent with the *standard access contract* for the *reference service* set out in the *service provider's access arrangement*.

10.22 The *arbitrator* must, in an award specifying the terms of an *access contract* for a *reference service*, deal with each matter which in the *standard access contract* for the *reference service* in the *access arrangement* is left to be agreed by the parties or determined by the *arbitrator* in a manner which:

- (a) has regard to the factors contained in section 10.15; and
- (b) is consistent with:
  - (i) any instructions about the matter contained in the *access arrangement*; and
  - (ii) the *Code objective*.

**Arbitrated tariffs for non-reference services**

10.23 Where the *arbitrator* is setting the *tariff* payable by the *applicant* for a *non-reference service*, the award should endeavour to achieve the following objectives:

- (a) when the awarded *tariff* is compared with the *reference tariff* for a comparable *reference service* (if any):
  - (i) if the *non-reference service* involves the provision of *services* to a higher standard, the differential between the awarded *tariff* and the *reference tariff* should reflect the increase in the *service provider's* incremental cost of service provision as a result of the provision of *services* to that higher standard;and
  - (ii) if the *non-reference service* involves the provision of *services* to a lower standard, the differential between the awarded *tariff* and the *reference tariff* should reflect the amount of the *service provider's* avoided cost of service provision as a result of the provision of *services* to that lower standard;and
- (b) subject to the discount provisions in the *service provider's access arrangement*, other *users* should not pay individual *reference tariffs* for *reference services* that are higher as a result of the differential referred to in section 10.23(a).

10.24 Where the *arbitrator* is awarding the *tariff* payable by the *applicant* for a *non-reference service*, the award must have regard to Chapter 7 and the *service provider's access arrangement* including the *standard access contract* contained in the *service provider's access arrangement*.<sup>495</sup>

10.25 Section 10.24 does not limit the matters to which the *arbitrator* must or may have regard.

### **Award by the arbitrator**

10.26 The *arbitrator* must make a written award on *access* to the network by the *applicant*.

10.27 The award referred to in section 10.26:

- (a) must deal with the matter that was the basis for the notification of the dispute; and
- (b) may, subject to section 10.28, deal with any other matter which a party has requested the *arbitrator* to deal with that the *arbitrator* considers expedient to justly dispose of any *proceedings* before it.

10.28 The *arbitrator* cannot make an award under section 10.26 that deals with a matter that is, by agreement between the parties, no longer a matter which is in dispute.

10.29 Without limiting the generality of section 10.24 and subject to section 10.32, the award may, without limitation, do any one or more of the following:

- (a) specify the manner in which a party must comply with the *applications and queuing policy*; or
- (b) deal with the costs, timing or performance of functions in relation to the undertaking of proposed work, and may require a party to undertake any such function in a specified manner; or
- (c) require the *service provider* to provide *access* to a *covered service* requested by the *applicant*; or
- (d) subject to section 10.35, require the *applicant* to accept, and pay for, *access* to a service; or
- (e) specify the terms of the *access contract* including the discount to the *reference tariff* to which the *user* is entitled (if any) and the amount of any *contribution* and the terms on which it is to be provided; or
- (f) require the *service provider* to undertake and fund any *required work* including to augment the network; or
- (g) specify the extent to which the award overrides an earlier award or *contract for services*; or

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<sup>495</sup> Section 10.24 amended by WAGG No 157, 18 September 2020

- (h) make an “immunity determination” under the *Electricity Industry (Pilbara Networks) Regulations 2021*.<sup>496</sup>

10.29B The paragraphs of section 10.29 do not limit each other.<sup>497</sup>

10.30 Before making an award, the *arbitrator* must give a draft award to the parties to the arbitration and may have regard to representations that any of them may make on the *proposed award*.

10.31 When the *arbitrator* makes an award, the *arbitrator* must give the parties to the arbitration written *reasons* for the award.

### **Restrictions on access awards**

10.32 The *arbitrator* cannot make an award that:

- (a) would impede the right of a *user* under a *contract for services* to obtain *services* unless the *user* agrees or the *arbitrator* is satisfied that the *user* is or will be compensated on just terms for in respect of the impeded right; or
- (b) is inconsistent with the *access arrangement* for the *covered network*; or
- (c) requires the *service provider* to provide *access* to a service designated as an *excluded service* in the *access arrangement*; or
- (d) affects an area of the State that is the subject of the exclusive license of another *service provider*; or
- (e) requires the *service provider* or another person to engage in an act or omit to engage in an act which would contravene a *written law* or a *statutory instrument*.<sup>498</sup>

### **Arbitrated award requiring work to be undertaken<sup>499</sup>**

10.33 The *arbitrator* may make an award that would have the effect of requiring the *service provider* to undertake *work* only where the *arbitrator* is satisfied that:

- (a) the *work* is technically and economically feasible and consistent with the safe and reliable operation of the network; and
- (b) in the case of a *major augmentation*, sections 10.40 to 10.43 have been complied with.<sup>500</sup>

### **Effect of awards**

10.34 Subject to section 10.35, an award is binding on the parties to the arbitration in which it is made.

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<sup>496</sup> Section 10.29 amended by WAGG No 180, 22 October 2008; section 10.29 amended by WAGG No 118, 2 July 2021

<sup>497</sup> Section 10.29A inserted by WAGG No 180, 22 October 2008

<sup>498</sup> Section 10.32(a) amended by WAGG No 180, 22 October 2008

<sup>499</sup> Heading to section 10.33 amended by WAGG No 180, 22 October 2008

<sup>500</sup> Section 10.33 amended by WAGG No 180, 22 October 2008

- 10.35 An *applicant* may, within 5 *business days* after an award is made which orders the parties to enter into an *access contract*, elect not to enter into an *access contract* as specified by the award by giving written notice of the election to the *arbitrator* and the *service provider*, in which case (subject to any *applications and queuing policy* provisions about lapse of *access applications* due to passage of time) the *applicant's access application* remains in effect.
- 10.36 Unless the *applicant* elects not to be bound by an award in accordance with section 10.35, if the award orders the parties to enter into an *access contract* then the *service provider* and *applicant* must enter into an *access contract* in the form specified in the award within 15 *business days* after it is made.

### **Costs of arbitration**

- 10.37 Subject to sections 10.38 and 10.39, the costs of an arbitration (including the fees and costs of the *arbitrator*, if the parties are required to pay the fees and costs) are to be determined in the discretion of the *arbitrator* who may:
- (a) direct to and by whom and in what manner the whole or any part of the costs is to be paid; and
  - (b) fix or settle the amount of costs to be so paid or any part of the costs; and
  - (c) award costs to be fixed or settled as between party and party or as between solicitor and client; and
  - (d) award costs by reference to the Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002 as amended or substituted from time to time.
- 10.38 The costs of complying with Subchapter 10.3 are to be borne equally by the parties unless the *arbitrator* considers there are compelling *reasons* to order otherwise.
- 10.39 If an award is made substantially in the form sought by an *applicant*, and the *applicant* elects under section 10.35 not to be bound by the award, then the fees and costs of the *arbitrator*, to the extent the parties are required to pay the fees and costs, are to be borne by the *applicant* unless the *arbitrator* considers there are compelling *reasons* to order otherwise.

## **Subchapter 10.3 – Application of the regulatory test in an arbitration**

### **Arbitrator must make proposed award if award would require major augmentation**

- 10.40 Before making an award under section 10.33 that would require a *service provider* to undertake a *major augmentation*, the *arbitrator* must:
- (a) make and provide to the parties to the dispute a *proposed award*; and
  - (b) direct the *service provider* to apply the process outlined in section 10.41 in relation to the *major augmentation* in the *proposed award* and specify a time by which the *service provider* must complete each step in the process.

**Service provider must consult and submit major augmentation report**

10.41 The *service provider* must, within the time specified by the *arbitrator*:

- (a) conduct a consultation process in respect of the *major augmentation* in the *proposed award* which complies with section 9.16(c); and
- (b) then, submit a *major augmentation report* to the *Authority* that:
  - (i) demonstrates compliance with section 10.41(a); and
  - (ii) states whether, in the *service provider's* view, the *major augmentation* in the *proposed award* maximises the *net benefit after considering alternative options*.

10.42 The *service provider* must use its best endeavours to ensure that there are no unnecessary or unreasonable costs or delays in complying with section 10.41.

**Service provider's costs of compliance, if applicant withdraws**

10.43 If an *applicant* withdraws its notice of an *access dispute* under section 10.5 and the *service provider*:

- (a) has complied with sections 10.41 and 10.42; or
- (b) is in the process of complying with section 10.41 and 10.42,

then the *applicant* must indemnify the *service provider* for the *service provider's* costs of complying with sections 10.41 and 10.42 up to the date that the *service provider* receives the withdrawal notice.

**Authority must publish determination regarding major augmentation report**

10.44 The *Authority* must in respect of a *major augmentation* report make and *publish* a determination whether the test in section 10.46 is satisfied or is not satisfied, and must do so:

- (a) if the *Authority* has consulted the public under section 10.45 — within 45 *business days*; and
- (b) otherwise — within 25 *business days*,

after receiving the *major augmentation proposal*.

10.45 The *Authority* may consult the public under Appendix 7 before making a determination under section 10.44.

10.46 The test in this section 10.46 is satisfied if the *Authority* is satisfied that:

- (a) the *service provider's* statement under section 10.41(b)(ii) is defensible; and
- (b) the *service provider* has applied the *regulatory test* properly to the *major augmentation* in the *proposed award*.

- (i) using reasonable market development scenarios which incorporate varying levels of demand growth at relevant places; and
- (ii) using reasonable timings, and testing alternative timings, for project commissioning dates and construction timetables for the *major augmentation* and for *alternative options*;

and

- (c) the consultation process conducted by the *service provider* under section 10.41(a) meets the criteria in section 9.16(c).

10.47 The *Authority* must make a determination under section 10.44 on the basis of all the material before it and must have regard to, but is not bound by, the *service provider's* view under section 10.41(b)(ii).

10.48 The *Authority* must give the *arbitrator* and the parties to the dispute a copy of its determination under section 10.44.

10.49 If the *Authority* is unable to make a determination under section 10.44 because the *service provider* has not provided adequate information (despite the *Authority's* having notified the *service provider* of this fact and given the *service provider* a reasonable opportunity, having regard to the time periods specified in section 10.44, to provide adequate information), then the *Authority*:

- (a) must notify the *arbitrator* and the parties to the dispute of the fact and provide a description of the circumstances; and
- (b) is not required to make a determination under section 10.44 in relation to the *major augmentation* in the *proposed award*.

#### **Arbitrator must have regard to Authority's determination**

10.50 In determining whether to make an award that would have the effect of requiring the *service provider* to undertake the *major augmentation* described in the *proposed award* or an *augmentation* of a different nature (whether a *major augmentation* or not) the *arbitrator* must have regard to, but is not bound by, the *Authority's* determination under section 10.44.

10.51 For the purposes of section 10.50, without limiting the matters to which the *arbitrator* must or may have regard, the *arbitrator* may have regard to the manner in which the *service provider* complied with sections 10.41 and 10.42.

### **Subchapter 10.4 – Contractual Disputes**

#### **Jurisdiction of arbitrator**

10.52 The *arbitrator* has jurisdiction to hear a *contractual dispute*.

#### **Procedural rules**

10.53 Except to the extent that the *contract for services* provides otherwise, sections 10.3 to 10.6 and Appendix 5 apply to the *arbitrator's* hearing of a *contractual dispute*, with

appropriate modifications including the substitution of “*contractual dispute*” for all references to “*access dispute*”.<sup>501</sup>

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<sup>501</sup> Section 10.53 amended by WAGG No 180, 22 October 2008



## Chapter 11 – Service standards

### Service provider must comply with service standards

- 11.1 A *service provider* must provide *reference services* at a service standard at least equivalent to the *service standard benchmarks* set out in the *access arrangement* and must provide *non-reference services* to a service standard at least equivalent to the service standard in the *access contract*.

### Authority to monitor service standards

- 11.2 The *Authority* must monitor and, at least once each year, *publish* a *service provider's* actual service standard performance against the *service standard benchmarks*.
- 11.3 The *Authority* may, acting reasonably, request a “**service standard performance report**” from a *service provider* for the purposes of monitoring the *service provider's* actual service standard performance and the *service provider* must provide the *Authority* with a *service standard performance report* within the time specified by the *Authority* in its request, which time must not be less than 20 *business days*.
- 11.4 In a request under section 11.3 the *Authority* may specify:
- (a) a period of time which must be covered in the *service standard performance report*; and
  - (b) criteria to be addressed in the *service standard performance report*; and
  - (c) the format required for the *service standard performance report*, and the *service provider* must comply with the *Authority's* specifications.
- 11.5 The *Authority* may from time to time, for the purposes of monitoring a *service provider's* actual service standard performance:
- (a) consult with *users* of the *service provider's* network; and
  - (b) *publish* a request for submissions from *consumers* supplied using the network.<sup>502</sup>

### Penalties for breach of service standards

- 11.6 If a *service provider* does not comply with section 11.1, then in order to minimise the likelihood of the *service provider* being excessively penalised for its failure to comply with section 11.1, the *Authority* must have regard to:
- (a) any remedies awarded (or likely to be awarded) against the *service provider* under contracts for *services* in relation to the act or omission which resulted in the *service provider* not complying with section 11.1; and

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<sup>502</sup> Section 11.5 amended by WAGG No 157, 18 September 2020

(b) the *service standards adjustment mechanism*,

before determining whether to impose a civil penalty under regulations made under section 118(2) of the Act.

## Chapter 12– Technical Rules

### Objectives of the technical rules

- 12.1 The objectives for *technical rules* are that they:
- (a) are reasonable; and
  - (b) do not impose inappropriate barriers to entry to a market; and
  - (c) are consistent with *good electricity industry practice*; and
  - (d) are consistent with relevant *written laws* and *statutory instruments*.
- 12.2 The *Authority* must not approve *technical rules* for a network unless it determines that the *technical rules*:
- (a) if the network is part of an *interconnected system* — work in an integrated fashion with the *technical rules* governing all interconnected networks; and
  - (b) reasonably accommodate the interconnection of further networks in the future.
- 12.3 The *Authority* must not approve *technical rules* for a network which would, if approved, require the *service provider* or another person to engage in an act or omit to engage in an act which would contravene a *written law* or a *statutory instrument*.

### Persons bound by technical rules

- 12.4 Subject to section 12.4A and any exemptions granted under sections 12.34 and 12.41, the *service provider* and *users* of a network must comply with the *technical rules*.<sup>503</sup>

### Limited application of technical rules in respect of certain non-covered networks in an interconnected system<sup>504</sup>

- 12.4A A *user* referred to in section 12.4 is a *service provider* of a *non-covered network* that connects to a *covered network* at a point (“**point of interconnection**”) then —
- (a) subject to section 12.4A(b), the *user* is not obliged to comply with the *covered network's technical rules* generally in respect of its operations and maintenance of the *non-covered network*, or to procure compliance with the *technical rules* by other persons; but
  - (b) the *user* must —
    - (i) ensure that its performance at the point of interconnection (as measured at the point of interconnection or, where appropriate,

<sup>503</sup> Section 12.4 amended by WAGG No 183, 21 November 2014

<sup>504</sup> Heading to section 12.4A inserted by WAGG No 183, 21 November 2014

elsewhere on the *covered network*) complies with the *technical rules*; and

- (ii) procure that its *users* and any other person with whom it has a contract for the provision of any good or service in relation to the *non-covered network*, operate in such a way as to allow it to comply with the obligation in section 12.4A(b)(i).<sup>505</sup>

### **Technical rules prevail over contract**

12.5 If the provisions of a *contract for services* provided by means of a *covered network* are inconsistent with the *technical rules* for the network, then the contract is by force of this section amended from time to time to the extent necessary to comply with the *technical rules* except to the extent that section 12.4A, or an exemption to the *technical rules* granted under section 12.34 or 12.41, affects the contract.<sup>506</sup>

### **Covered networks must have technical rules<sup>507</sup>**

12.6 Subject to this Chapter 12, a *covered network* must have *technical rules*.<sup>508</sup>

### **[Heading not used]<sup>509</sup>**

12.6A [not used]<sup>510</sup>

12.7 [not used]<sup>511</sup>

12.8 [not used]<sup>512</sup>

12.8A [not used]<sup>513</sup>

12.8B [not used]<sup>514</sup>

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<sup>505</sup> Section 12.4A inserted by WAGG No 183, 21 November 2014

<sup>506</sup> Section 12.5 amended by WAGG No 180, 22 October 2008; Section 12.5 amended by WAGG No 183, 21 November 2014

<sup>507</sup> Heading to section 12.6 amended by WAGG No 183, 21 November 2014

<sup>508</sup> Section 12.6 amended by WAGG No 180, 22 October 2008; Note to section 12.6 deleted by WAGG No 180, 22 October 2008; Section 12.6 amended by WAGG No 183, 21 November 2014

<sup>509</sup> Heading to section 12.6A inserted by WAGG No 180, 22 October 2008; Heading to section 12.6A deleted by WAGG No 183, 21 November 2014

<sup>510</sup> Section 12.6A inserted by WAGG No 180, 22 October 2008; Section 12.6A deleted by WAGG No 183, 21 November 2014

<sup>511</sup> Section 12.7 amended by WAGG No 180, 22 October 2008; Section 12.7 deleted by WAGG No 183, 21 November 2014

<sup>512</sup> Section 12.8 amended by WAGG No 180, 22 October 2008; Section 12.8 deleted by WAGG No 183, 21 November 2014

<sup>513</sup> Section 12.8A inserted by WAGG No 13, 25 January 2008; Section 12.8A deleted by WAGG No 180, 22 October 2008

<sup>514</sup> Section 12.8B inserted by WAGG No 180, 22 October 2008; Section 12.8B deleted by WAGG No 183, 21 November 2014

12.9 [not used]<sup>515</sup>

12.9A [not used]<sup>516</sup>

**Approval process for technical rules – Covered network**

12.10 The *service provider* of a *covered network* must, at the same time as the *service provider* submits its *first access arrangement* under section 4.1, submit proposed *technical rules* to the *Authority*.

12.11 The approval process for *technical rules* submitted by the *service provider* of a *covered network* under section 12.10 is as follows:

- (a) subject to this section 12.11<sup>517</sup>, the *technical rules* are, to the extent possible, to be processed in parallel with the *access arrangement*; and
- (b) the Chair of the *technical rules committee* must:
  - (i) within 20 *business days* before the last day by which the *Authority* must make its *draft decision* under section 4.12 — provide a *preliminary report* to the *Authority*; and
  - (ii) within 30 *business days* before the last day by which the *Authority* must make its *final decision* under section 4.18A — provide a *final report* to the *Authority*;<sup>518</sup>

and

- (c) the *Authority* must within 15 *business days* after it makes a *draft decision* on the *proposed access arrangement* under section 4.12 *publish draft technical rules* which:
  - (i) if the *service provider's* proposed *technical rules* comply with this Chapter 12 and the *Code objective* — must be the *service provider's* proposed *technical rules*; and
  - (ii) otherwise — must be drafted by the *Authority* and based on the *service provider's* proposed *technical rules* and amended only to the extent necessary to comply with this Chapter 12 and the *Code objective*,

and at the same time the *Authority* must *publish* an invitation for submissions on the draft *technical rules*; and

- (d) a person may make a submission to the *Authority* on the draft *technical rules* within 15 *business days* after the invitation is *published* under section 12.11(c); and

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<sup>515</sup> Section 12.9 amended by WAGG No 180, 22 October 2008; Section 12.9 deleted by WAGG No 183, 21 November 2014

<sup>516</sup> Section 12.9A inserted by WAGG No 180, 22 October 2008; Section 12.9A deleted by WAGG No 183, 21 November 2014

<sup>517</sup> Section 12.11 amended by WAGG No 207, 8 November 2005

<sup>518</sup> Section 12.11 amended by WAGG No 157, 18 September 2020

- (e) the *Authority* must consider any submissions on the draft *technical rules* made under section 12.11(d) and must, at the same time as it approves an *access arrangement* under section 4.17 or section 4.18, as applicable, approve and *publish* final *technical rules* which must be based on the draft *technical rules* and amended only to the extent necessary to comply with this Chapter 12 and the *Code objective*.<sup>519</sup>
- 12.12 If the *Authority* drafts and approves an *interim access arrangement* under section 4.59 for a *covered network*:
- (a) the *Authority* must not draft, approve, or *publish technical rules* for the *covered network*; and
  - (b) any existing technical regulation continues to apply to the *covered network* until such time as an *access arrangement* is subsequently approved under Chapter 4.
- 12.13 If the *Authority* drafts and approves its own *access arrangement* under section 4.55 for a *covered network*, when the *Authority* consults the public under Appendix 7, the *Authority* must:
- (a) if it makes a draft decision under Appendix 7:
    - (i) draft and *publish* draft *technical rules* at the same time as it makes its draft decision; and
    - (ii) *publish* an invitation for submissions on the draft *technical rules* at the same time that it *publishes* an invitation for submissions on its draft decision under Appendix 7;
  - and
  - (b) consider any submissions and draft, approve and *publish* final *technical rules* at the same time it makes and *publishes* its final decision under Appendix 7.

**[Heading not used]**<sup>520</sup>

12.13A [not used]<sup>521</sup>

12.13B [not used]<sup>522</sup>

**Have regard to current regulation in case of deadlock**

12.14 Where —

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<sup>519</sup> Section 12.11 amended by WAGG No 134, 30 July 2021

<sup>520</sup> Heading to section 12.13A inserted by WAGG No 180, 22 October 2008; Heading to section 12.13A deleted by WAGG No 183, 21 November 2014

<sup>521</sup> Section 12.13A inserted by WAGG No 180, 22 October 2008; Section 12.3A deleted by WAGG No 183, 21 November 2014

<sup>522</sup> Section 12.13B inserted by WAGG No 180, 22 October 2008; Section 12.13B deleted by WAGG No 183, 21 November 2014

- (a) the *Authority* is required under this Chapter 12 to draft or approve *technical rules* for a *covered network*; and
- (b) the *technical rules committee* is in *deadlock* in relation to a matter on which it is required to provide advice to the *Authority*,

then the *Authority*, when drafting and approving *technical rules* for the *covered network*, must have regard to whether the current treatment of the matter referred to in section 12.14(b) under another instrument should be replicated in the *technical rules* but may permit replication only to the extent that the treatment of that matter in that instrument is not contrary to the *Code objective*.<sup>523</sup>

### **Commencement of technical rules**

12.15 When the *Authority* approves *technical rules* for a *covered network*, it must specify a *technical rules start date* for the *technical rules*, which must be:

- (a) consistent with the *Code objective*; and
- (b) at least 30 *business days* after the approval is *published*.<sup>524</sup>

### **Technical rules committee**

12.16 Subject to this Chapter 12, the *Authority* may, at any time and from time to time, establish a *technical rules committee* for a *covered network* or an *interconnected system*.<sup>525</sup>

12.17 The *Authority* must establish a *technical rules committee* for a *covered network* or the *interconnected system* of which the *covered network* is a part to perform the functions described in section 12.23 for the first *technical rules* for a *covered network*:

- (a) if the *covered network* is part of an *interconnected system*; or
- (b) if the *service provider* of the *covered network* requests the *Authority* to establish a *technical rules committee* for the *covered network* or *interconnected system*.

12.18 A *technical rules committee* established under section 12.17 must be established in sufficient time for the *technical rules committee* to perform the functions described in section 12.23 for the first *technical rules* for the *covered network*.

12.19 A *technical rules committee*:

- (a) must consist of at least:
  - (i) a representative of the *service provider*; and
  - (ii) [not used]; and

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<sup>523</sup> Section 12.14 amended by WAGG No 180, 22 October 2008; Section 12.14 amended by WAGG No 183, 21 November 2014

<sup>524</sup> Section 12.15 amended by WAGG No 183, November 2014

<sup>525</sup> Section 12.16 amended by WAGG No 183, 21 November 2014

- (iii) at least one person representing users of the network; and
    - (iv) a representative of the Coordinator; and
    - (v) a representative of *AEMO*;
  - and
  - (b) may consist of any other person that the *Authority* considers appropriate, and a person on a *technical rules committee* is a “**member**” of the *technical rules committee*.<sup>526</sup>
- 12.19A The *Authority* may determine that a member of a *technical rules committee* is to receive remuneration or an allowance and the *Authority* may fix the amount of that remuneration or allowance.<sup>527</sup>
- 12.19B Subject to section 12.19C, when establishing a *technical rules committee*, the *Authority* must set the terms of reference for a *technical rules committee* which must include, at a minimum, requirements in respect of:
- (a) frequency of meetings; and
  - (b) meeting procedures.<sup>528</sup>
- 12.19C The terms of reference for a *technical rules committee* must provide:
- (a) that, notwithstanding that the *Authority* may require additional members, the quorum of a *technical rules committee* will consist of the representatives in section 12.19(a)(i), 12.19(a)(iv) and 12.19(a)(v); and
  - (b) that the *technical rules committee* may establish one or more subcommittees in the performance of its duties but only with the prior consent of the *Authority*.<sup>529</sup>
- 12.20 The Chair of a *technical rules committee* is the person who, at that time, is the member of the *technical rules committee* that is the representative of the *Coordinator*.<sup>530</sup>
- 12.21 Any communication to the *Authority* from a *technical rules committee* must be provided to the *Authority* by the Chair of the *technical rules committee* and not by any other member.
- 12.22 A person who is represented on, or is a member of, a *technical rules committee* is not precluded from making submissions to the *Authority* in relation to proposed *technical rules* in a capacity other than as a person who is represented on, or is a member of, the *technical rules committee*.

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<sup>526</sup> Section 12.19 amended by WAGG No 157, 18 September 2020

<sup>527</sup> Section 12.19A inserted by WAGG No 157, 18 September 2020

<sup>528</sup> Section 12.19B inserted by WAGG No 157, 18 September 2020

<sup>529</sup> Section 12.19C inserted by WAGG No 157, 18 September 2020

<sup>530</sup> Section 12.20 amended by WAGG No 157, 18 September 2020



- 12.23 A *technical rules committee*, in performing its functions under section 12.11(b) and 12.51B and if otherwise requested:
- (a) [not used]
  - (b) [not used]
  - (c) must, when requested by the *Authority*, advise the *Authority* on any matter connected with the *approval* of, or decision not to approve, *technical rules* or draft or proposed *technical rules* or a proposal to amend *technical rules*; and
  - (d) must, when requested by the *Authority*, conduct a *review* of the operation of:
    - (i) technical rules or a part of technical rules; or[not used]
    - (ii) this Chapter 12 or a part of this Chapter 12,and advise the *Authority* of the outcome of the *review*; and<sup>531</sup>
  - (e) must, when requested by the *Authority*:
    - (i) assist a person to comply with the processes and procedures developed and published under section 12.50A; and
    - (ii) request further information from a person in respect of a proposal to amend *technical rules* in accordance with section 12.50F.<sup>532</sup>
- 12.24 A *technical rules committee* must perform the functions described in section 12.23 in accordance with the objectives in section 12.1.
- 12.25 In the case of *deadlock*, the Chair of the *technical rules committee* must advise the *Authority* of:
- (a) the details of the *deadlock*; and
  - (b) the position held by each member of the *technical rules committee* on the matter the subject of the *deadlock*.
- 12.26 If the *Authority* is advised of a *deadlock* under section 12.25, it must form a view on the matter the subject of the *deadlock* and advise the *technical rules committee* of its view, and the *technical rules committee* must proceed on the basis of the view advised to it.
- 12.27 The *Authority* may:
- (a) from time to time, subject to section 12.19C, amend any terms of reference for a *technical rules committee* or provide directions to a *technical rules committee* in relation to:

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<sup>531</sup> Section 12.23 amended by WAGG No 180, 22 October 2008; Section 12.23 amended by WAGG No 183, 21 November 2014

<sup>532</sup> Section 12.23 amended by WAGG No 157, 18 September 2020

- (i) the procedures it must follow in performing its functions; and
  - (ii) the manner in which it must perform its functions; and
- (b) dissolve, alter or reconstitute a *technical rules committee*.<sup>533</sup>

### **Recommendations from the technical rules committee**

12.28 The *Authority* must have regard to any advice provided by the *technical rules committee* under section 12.23.<sup>534</sup>

- (a) in deciding whether to approve or not approve proposed *technical rules* for a network; and
- (b) in deciding whether to approve or not approve a proposal to amend *technical rules* for a network; and<sup>535</sup>
- (c) in drafting its own *technical rules* for a network.

12.29 Section 12.28 does not limit the matters to which the *Authority* must or may have regard.

### **Authority may observe the technical rules committee**

12.30 Subject to section 12.31, the *Authority* may appoint a representative to observe any aspect of the operation of the *technical rules committee*, including by:

- (a) attending any meeting of the *technical rules committee*; and
- (b) inspecting any documents (including working papers) provided to or by the *technical rules committee* in the performance of its functions.

12.31 A representative of the *Authority* under section 12.30 must not participate in any decision making process of the *technical rules committee*.

### **Scope and content of technical rules**

12.32 Unless a different form of *technical rules* will better achieve the *Code objective* or the objectives set out in section 12.1, the *technical rules* must address the matters listed in Appendix 6.

### **Person applies to service provider for exemption from technical rules**

12.33 A *user*, *applicant* or controller may apply to a *service provider* for an exemption from one or more requirements of *technical rules*.

12.34 A *service provider* must as soon as practicable determine an application under section 12.33:

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<sup>533</sup> Section 12.27 amended by WAGG No 157, 18 September 2020

<sup>534</sup> Section 12.28 amended by WAGG No 180, 22 October 2008

<sup>535</sup> Section 12.28 amended by WAGG No 157, 18 September 2020

- (a) as a *reasonable and prudent person* on reasonable technical and operational grounds; and
- (b) having regard to the effect the proposed exemption will, if granted, have on the *service providers* and *users* of the *covered network* and any interconnected network,<sup>536</sup>

and must grant the exemption if the *service provider* determines that in all the circumstances the disadvantages of requiring the person applying for the exemption to comply with the requirement are likely to exceed the advantages.

12.35 An exemption under section 12.34:

- (a) may be granted for a specified period or indefinitely; and
- (b) may be subject to any reasonable conditions the *service provider* considers fit, in which case the person granted the exemption must comply with the conditions, or may be unconditional; and
- (c) may be varied or revoked by the *service provider* after reasonable notice to the person granted the exemption.

12.36 A *service provider* must notify a person applying for an exemption of its determination under section 12.33 as soon as practicable after making the determination.

12.37 A person may apply to a *service provider* for an exemption granted to a person under section 12.34 to be revoked and the *service provider* must consider the application and within a reasonable time advise the person of the *service provider's* determination in relation to the application.

12.38 A *service provider* must provide to the *Authority* a notice giving details of any grant, revocation or variation of an exemption under section 12.34 or 12.35(c) and the *Authority* must place the notice on the *public register*.

12.39 Without limiting the generality of the type of exemptions that may be granted under section 12.34, exemptions to *technical rules* may be transitional in nature and may include provisions allowing a person time to comply with the *technical rules*.

### **Service provider applies to Authority for authorisation to grant exemption from technical rules**

12.40 A *service provider* may apply to the *Authority* for an exemption from one or more requirements of *technical rules* for the *service provider* and all *applicants*, *users* and controllers of the *covered network* (“**network persons**”).

12.41 The *Authority* must as soon as practicable determine an application under section 12.40:

- (a) as a *reasonable and prudent person* on reasonable technical and operational grounds; and

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<sup>536</sup> Section 12.34 amended by WAGG No 183, 21 November 2014

- (b) having regard to the effect the proposed exemption will, if granted, have on the *service providers* and *users* of the *covered network* and any interconnected network,<sup>537</sup>

and must grant the exemption if the *Authority* determines that in all the circumstances the disadvantages of requiring the network persons to comply with the requirement are likely to exceed the advantages.

12.42 The *Authority* may refer a *service provider's* application under section 12.40 to the *technical rules committee* and request the *technical rules committee's* advice on the application and must, subject to complying with the time limit under section 12.44, have regard to the advice of the *technical rules committee* in making its determination under section 12.41.

12.43 An exemption under section 12.41:

- (a) may be granted for a specified period or indefinitely; and
- (b) may be subject to any reasonable conditions the *service provider* considers fit, in which case the network persons must comply with the conditions, or may be unconditional; and
- (c) may be varied or revoked by the *service provider* after reasonable notice to the network persons.

12.44 The *Authority* must notify the *service provider* of its determination under section 12.41:

- (a) where the *Authority* has consulted the public in accordance with Appendix 7 — within 45 *business days* of receiving the application under section 12.40; or
- (b) where the *Authority* has not consulted the public in accordance with Appendix 7 — within 25 *business days* of receiving the application under section 12.40.<sup>538</sup>

12.45 A person may apply to the *Authority* for an exemption granted in respect of a *covered network* under section 12.41 to be revoked and the *Authority* must consider the application and within a reasonable time advise the person of the *Authority's* determination in relation to the application.<sup>539</sup>

12.46 Before granting, varying or revoking an exemption under section 12.41, the *Authority* may consult the public in accordance with Appendix 7.

12.47 The *Authority* must *publish* a notice giving details of any grant, revocation or variation of an exemption under section 12.41.

12.48 Without limiting the generality of the type of exemptions that may be granted under section 12.41, exemptions to *technical rules* may be transitional in nature and may include provisions allowing network persons time to comply with *technical rules*.

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<sup>537</sup> Section 12.41(b) amended by WAGG No 183, 21 November 2014

<sup>538</sup> Section 12.44(b) amended by WAGG No 180, 22 October 2008

<sup>539</sup> Section 12.45 amended by WAGG No 183, 21 November 2014

12.49 If the *Authority* grants an exemption under section 12.41, then the *arbitrator* may have regard to the waiver in making an award in any *access dispute* relating to the *covered network*.<sup>540</sup>

### **Amendments to technical rules**

12.50 A proposal to amend *technical rules* may be submitted to the *Authority* at any time by any interested person and must be placed on the *public register*.<sup>541</sup>

12.50A The *Authority* may develop and *publish* processes and procedures outlining the requirements for proposals to amend *technical rules* which must be adhered to by any interested person submitting a proposal to amend *technical rules*.<sup>542</sup>

12.50B The *Authority* may amend any processes and procedures developed and published under section 12.50A by *publishing* a new process or procedure or by *publishing* amendments to existing processes and procedures.<sup>543</sup>

12.50C The *Authority* may, but is not obliged to:

- (a) assist a person to comply with the processes and procedures developed and published under section 12.50A; or
- (b) request the *technical rules committee* to assist a person to comply with the processes and procedures developed and published under section 12.50A.<sup>544</sup>

12.50D A proposal to amend *technical rules* will only be deemed to be submitted once the *Authority* considers that it is complete and meets the requirements of any processes and procedures developed and published by the *Authority* under section 12.50A.<sup>545</sup>

12.50E The *Authority* must place a proposal to amend *technical rules* on the *public register* once it is deemed to be submitted in accordance with section 12.50D.<sup>546</sup>

12.50F The *Authority*, or the *technical rules committee* if requested by the *Authority*, may, after a proposal to amend *technical rules* is deemed to be submitted to the *Authority* in accordance with section 12.50D, request further information from the person who submitted the proposal to amend *technical rules*.<sup>547</sup>

12.51 The *Authority*, by *publishing* a notice, may reject a proposal to amend *technical rules* if, in the *Authority's* opinion, the proposal:

- (a) is misconceived or lacking in substance; or
- (b) has been made on trivial or vexatious grounds; or

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<sup>540</sup> Section 12.49 amended by WAGG No 183, 21 November 2014

<sup>541</sup> Section 12.50 amended by WAGG No 157, 18 September 2020

<sup>542</sup> Section 12.50A inserted by WAGG No 157, 18 September 2020

<sup>543</sup> Section 12.50B inserted by WAGG No 157, 18 September 2020

<sup>544</sup> Section 12.50C inserted by WAGG No 157, 18 September 2020

<sup>545</sup> Section 12.50D inserted by WAGG No 157, 18 September 2020

<sup>546</sup> Section 12.50E inserted by WAGG No 157, 18 September 2020

<sup>547</sup> Section 12.50F inserted by WAGG No 157, 18 September 2020

- (c) has not been developed in accordance with the processes and procedures developed and published by the *Authority* under section 12.50A; or
- (d) is materially similar to, or seeks to address the same or similar issues or provisions in *technical rules*:
  - (i) currently being considered by the *Authority* under an alternative proposal to amend *technical rules*; or
  - (ii) which have been considered by the *Authority* in the previous 12 months.<sup>548</sup>

12.51A The *Authority*:

- (a) may at the same time and as part of the same assessment process, consider multiple proposals to amend *technical rules* that are similar or seek to address the same or similar issues or provisions of the *technical rules*; and
- (b) is not required to consider proposals to amend *technical rules* in the order in which they are received by the *Authority*.<sup>549</sup>

12.51B The *Authority* must request the advice of the *technical rules committee* in respect of any proposals to substantially amend *technical rules* that the *Authority* does not reject in accordance with section 12.51.<sup>550</sup>

12.51C The *Authority* must provide the *technical rules committee* with a time by which to provide the advice requested under section 12.51B, which must take into account the scope and complexity of the proposal to amend the *technical rules*, and be not less than 15 *business days*.<sup>551</sup>

12.51D The *technical rules committee* may request the *Authority* to provide additional time to consider the proposal to amend *technical rules* and the *Authority* must act reasonably in considering any request for additional time.<sup>552</sup>

12.51E The *Authority* may, acting reasonably, make a decision on a proposal to amend *technical rules* without the advice of the *technical rules committee* if the *technical rules committee* does not provide the advice requested under section 12.51B within the required timeframe, including any additional time provided in accordance with section 12.51D.<sup>553</sup>

12.51F The *Authority* is required to place on the *public register*:

- (a) any advice received from the *technical rules committee* in respect of any proposals to amend *technical rules* requested under section 12.51B;

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<sup>548</sup> Section 12.51 amended by WAGG No 157, 18 September 2020

<sup>549</sup> Section 12.51A inserted by WAGG No 157, 18 September 2020

<sup>550</sup> Section 12.51B inserted by WAGG No 157, 18 September 2020

<sup>551</sup> Section 12.51C inserted by WAGG No 157, 18 September 2020

<sup>552</sup> Section 12.51D inserted by WAGG No 157, 18 September 2020

<sup>553</sup> Section 12.51E inserted by WAGG No 157, 18 September 2020

- (b) any other advice taken into account in making a final decision in respect of a proposal to amend *technical rules*, except to the extent that it includes *confidential material*; and
  - (c) if applicable, the reasons why the *Authority* made a decision on a proposal to amend *technical rules* without the advice of the *technical rules committee* in accordance with section 12.51E.<sup>554</sup>
- 12.52 At any time before the *review* under section 12.56 commences, the *Authority* may decide to defer consideration of a proposal to amend the *technical rules* for the *Western Power Network* until the *review* if, in the *Authority's* opinion, deferring consideration of the proposal would better achieve the *Code objective*.<sup>555</sup>
- 12.53 As soon as practicable, the *Authority* must consider whether any amendments to *technical rules* proposed under section 12.50, and not rejected under section 12.51, are consistent with this Chapter 12 and the *Code objective*, having regard, among other things, to section 12.4A and any exemptions granted under sections 12.34 and 12.41, and then either: <sup>556</sup>
- (a) approve the proposed amendments to the *technical rules* in the proposed form; or
  - (b) approve the proposed amendments to the *technical rules* in a modified form; or
  - (c) not approve the proposed amendments to the *technical rules*,  
by *publishing* a notice of its decision, and if the decision was to approve the proposed amendments, the date on which the amendments commence.<sup>557</sup>
- 12.54 If the *Authority* considers a proposed amendment to *technical rules* to be substantial, the *Authority*:
- (a) must consult the public in accordance with Appendix 7 (as if sections A7.12, A7.18, A7.19, A7.23 and A7.24 do not apply) before making a decision to approve or not approve the proposed amendment; and
  - (b) [not used].<sup>558</sup>
- 12.54A The *Authority* will use reasonable endeavours to assess and make a final decision in respect of all proposals to amend *technical rules* within 150 *business days* from the date the proposal to amend *technical rules* is deemed to be submitted to the *Authority* in accordance with section 12.50D.<sup>559</sup>

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<sup>554</sup> Section 12.51F inserted by WAGG No 157, 18 September 2020

<sup>555</sup> Section 12.52 amended by WAGG No 180, 22 October 2008

<sup>556</sup> Section 12.53 amended by WAGG No 183, 21 November 2014

<sup>557</sup> Section 12.53 amended by WAGG No 157, 18 September 2020

<sup>558</sup> Section 12.54 amended by WAGG No 157, 18 September 2020; Section 12.54 amended by WAGG No 134, 30 July 2021

<sup>559</sup> Section 12.54A inserted by WAGG No 157, 18 September 2020

### **Notification of changes to technical laws**

12.55 If a representative of the Coordinator notifies the *Authority* of a material change to a relevant *written law* or *statutory instrument* which the Coordinator's representative considers may affect the operation of *technical rules* for one or more *covered networks* ("**material change**"), then the *Authority* must refer the material change to one or more appropriately constituted *technical rules committees* for advice which must be provided to the *Authority* in a reasonable time and may include a proposal to amend the *technical rules* for one or more *covered networks* under section 12.50.<sup>560</sup>

### **Review of technical rules**

12.56 The *Authority* must cause a *review* of the *technical rules* for the *Western Power Network* to be carried out approximately 6 months before the *target revisions commencement date* in the *first access arrangement* for the *covered network*.<sup>561</sup>

12.57 The purpose of the *review* under section 12.56 is:

- (a) to assess the effectiveness of the *technical rules* in achieving the objectives in section 12.1 and the *Code objective*; and
- (b) to consider any proposals to amend the *technical rules* which have been deferred under section 12.52.

12.58 The *Authority* may carry out the *review* under section 12.56 in the manner it considers best achieves the *Code objective*.

### **Coordination with other service providers in an interconnected system**

12.59 A *service provider* that operates a network in an *interconnected system* must cooperate with a *service provider* of an interconnected network ("**other service provider**") to the standard of a *reasonable and prudent person*.

12.60 In complying with section 12.59, a *service provider* must:

- (a) cooperate with an other *service provider* who is *processing* an *access application* to enable the other *service provider* to *process* the *access application* expeditiously; and
- (b) liaise as necessary with other *service providers* in relation to:
  - (i) [not used];<sup>562</sup>
  - (ii) the planning and development of interconnected networks.

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<sup>560</sup> Section 12.55 amended by WAGG No 183, 21 November 2014

<sup>561</sup> Section 12.56 amended by WAGG No 180, 22 October 2008

<sup>562</sup> Section 12.60 amended by WAGG No 157, 18 September 2020



**[Heading not used]<sup>563</sup>**

12.61 [not used]<sup>564</sup>

12.62 [not used]<sup>565</sup>

**[Heading not used]<sup>566</sup>**

12.63 [not used]<sup>567</sup>

12.64 [not used]<sup>568</sup>

**[Heading not used]<sup>569</sup>**

12.65 [not used]<sup>570</sup>

12.66 [not used]<sup>571</sup>

12.67 [not used]<sup>572</sup>

**[Heading not used]<sup>573</sup>**

12.68 [not used]<sup>574</sup>

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<sup>563</sup> Heading to section 12.61 inserted by WAGG No 180, 22 October 2008; Heading to section 12.61 deleted by WAGG No 183, 21 November 2014

<sup>564</sup> Section 12.61 inserted by WAGG No 180, 22 October 2008; Section 12.61 deleted by WAGG No 183, 21 November 2014

<sup>565</sup> Section 12.62 inserted by WAGG No 180, 22 October 2008; Section 12.62 deleted by WAGG No 183, 21 November 2014

<sup>566</sup> Heading to section 12.63 inserted by WAGG No 180, 22 October 2008; Heading to section 12.63 deleted by WAGG No 183,

<sup>567</sup> Section 12.63 inserted by WAGG No 180, 22 October 2008; Section 12.63 deleted by WAGG No 183, 21 November 2014

<sup>568</sup> Section 12.64 inserted by WAGG No 180, 22 October 2008; Section 12.64 deleted by WAGG No 183, 21 November 2014

<sup>569</sup> Heading to Section 12.65 inserted by WAGG No 180, 22 October 2008; Heading to section 12.65 deleted by WAGG No 13, 21 November 2014

<sup>570</sup> Section 12.65 inserted by WAGG No 180, 22 October 2008; Section 12.65 deleted by WAGG No 183, 21 November 2014

<sup>571</sup> Section 12.66 inserted by WAGG No 180, 22 October 2008; Section 12.66 deleted by WAGG No 183, 21 November 2014

<sup>572</sup> Section 12.67 inserted by WAGG No 180, 22 October 2008; Section 12.67 deleted by WAGG No 183, 21 November 2014

<sup>573</sup> Heading to section 12.68 inserted by WAGG No 22 October 2008; Heading to section 12.68 deleted by WAGG No 183, 21 November 2014

<sup>574</sup> Section 12.68 inserted by WAGG No 180, 22 October 2008; Section 12.68 deleted by WAGG No 183, 21 November 2014

### **Support services for technical rules committee<sup>575</sup>**

- 12.69 It is a function of the *Authority* to provide support services that a *technical rules committee* reasonably requires for the *technical rules committee* to meet its obligations and functions under the *Code*.<sup>576</sup>
- 12.70 Support services provided to the *technical rules committee* by the *Authority* may include, but are not limited to:
- (a) making staff members available to assist the *technical rules committee*;
  - (b) procuring consultants to assist the *technical rules committee*;
  - (c) making meeting rooms available for the *technical rules committee*;
  - (d) scheduling meetings of the *technical rules committee*; and
  - (e) taking minutes at a meeting of the *technical rules committee*.<sup>577</sup>

### **Reporting by the Authority<sup>578</sup>**

- 12.71 The *Authority* must publish for each financial year:
- (a) the number of proposals to amend *technical rules* received for the financial year; and
  - (b) the number of proposals to amend *technical rules* that were rejected; and
  - (c) the total number of *business days* taken to make a final decision in respect of each proposal to amend *technical rules* from the date of deemed submission; and
  - (d) in respect of proposals to amend *technical rules* where a final decision was not made within 150 *business days* from the date of deemed submission, the number of proposals to amend *technical rules* and the reason the final decision was not made within 150 *business days*.<sup>579</sup>
- 12.72 Where the *Authority*, or the *technical rules committee* acting on the request of the *Authority*, requests further information in respect of a submitted proposal to amend *technical rules* in accordance with section 12.50F, the period of time between the request being made and the provision of the further information requested is not to be taken into account when considering the timeframe taken by the *Authority* to make a final decision in respect of the reporting obligation set out in section 12.71(c) and 12.71(d).<sup>580</sup>

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<sup>575</sup> Heading to section 12.69 inserted by WAGG No 157, 18 September 2020

<sup>576</sup> Section 12.69 inserted by WAGG No 157, 18 September 2020

<sup>577</sup> Section 12.70 inserted by WAGG No 157, 18 September 2020

<sup>578</sup> Heading to section 12.71 inserted by WAGG No 157, 18 September 2020

<sup>579</sup> Section 12.71 inserted by WAGG No 157, 18 September 2020

<sup>580</sup> Section 12.72 inserted by WAGG No 157, 18 September 2020

## Chapter 13 – Ringfencing

### Service provider must comply with ringfencing objectives and rules

- 13.1 Except to the extent that the *Authority* grants an exemption under section 13.31, a *service provider* must, in relation to a *covered network*:
- (a) comply with the *ringfencing objectives*; and
  - (b) if *ringfencing rules* apply to the *covered network* – comply with the *ringfencing rules*.

### Application of ringfencing objectives and rules to integrated providers

- 13.2 If the *service provider* for a *covered network* is an *integrated provider*, a reference in this Chapter 13 to an “**associate**” of the *service provider* or of its *network business* includes any *other business* of the *service provider*.

### ‘Ringfenced business’ defined

- 13.3 In this Chapter 13, “**ringfenced business**” means:
- (a) for an *integrated provider* — the *network business*; or
  - (b) for any other *service provider* — the *service provider*.

### Other business must have deemed access contract

- 13.4 If:
- (a) a *service provider* for a *covered network* is an *integrated provider*, and
  - (b) the *network business* provides one or more *covered services* to an *other business*,
- then:
- (c) by 3 months after the *access arrangement start date*, the *network business* and the *other business* must record in writing the full terms and conditions of the arrangement by which the *network business* is to provide the *covered services* to the *other business* (“**deemed access contract**”); and
  - (d) unless the contrary intention appears, a reference in this Code to *access contract* includes a *deemed access contract* under section 13.4(c); and
  - (e) unless the contrary intention appears, a reference in this Code to *user* includes the *other business* under a *deemed access contract* under section 13.4(c).

### **Associate contracts**

- 13.5 Without limiting section 13.4 a *service provider* must, by 3 months after the *access arrangement start date*, record in writing the full terms and conditions of any contract, arrangement or understanding by which it provides *covered services* to an *associate* (“**associate contract**”).

### **Amendments to associate contracts and deemed access contracts**

- 13.6 If an *associate contract* or a *deemed access contract* is amended by agreement between the parties or otherwise varied or terminated, the *service provider* must within 5 *business days* notify the *Authority* that the *associate contract* or a *deemed access contract* has been amended, varied or terminated.

- 13.7 A *service provider* must, if requested by the *Authority*, provide an *associate contract* or a *deemed access contract* to the *Authority* within the time specified by the *Authority*.

- 13.8 The *Authority* must, if it considers that an *associate contract* or a *deemed access contract*:

- (a) is contrary to the *Code objective*; or
- (b) may have been entered into for the purpose of preventing or hindering access by any person to *services*,

require a *service provider*, by notice, to ensure that the *ringfenced business* provides *covered services* to the *associate* on terms and conditions which are not contrary to the *Code objective* and do not have the purpose of preventing or hindering access by any person to *services*, and may, without limiting the *Authority's* powers and subject to section 13.9, specify the terms and conditions for the provision of *covered services* by the *ringfenced business* to the *associate*.

- 13.9 In specifying the terms and conditions for the provision of *covered services* by a *ringfenced business* to an *associate* under section 13.8, the *Authority* must not specify any more changes to the existing terms and conditions than are necessary to ensure that the terms and conditions are not contrary to the *Code objective* and do not prevent or hinder access by any person to *services*.

- 13.10 The *Authority* may consult the public in accordance with Appendix 7 before imposing a requirement under sections 13.8.

### **Ringfencing objectives**

- 13.11 The *ringfencing objectives*, in relation to a *service provider* of a *covered network*, are that:

- (a) the *ringfenced business* must not carry on a *related business*; and
- (b) subject to section 13.11(d), only marketing staff of the *ringfenced business* may have access to or possession of, or make use of, *commercially sensitive information*; and
- (c) subject to section 13.11(d) and any *written law* including this Code, and except to the extent that the information comes into the public domain

otherwise than by disclosure by the *service provider*, *commercially sensitive information*:

- (i) must be used only for the purpose for which that information was developed or provided; and
  - (ii) must not be disclosed to any person (including any servant, consultant, independent contractor or agent of any *associate* of the *ringfenced business*) without the prior consent of the person who provided it or to whom it relates; and
- (d) *commercially sensitive information* may be disclosed to and used by the *service provider's senior staff* but:
- (i) only to the minimum extent necessary from time to time for good corporate governance; and
  - (ii) where possible only in summary or aggregated form or otherwise in a form that minimises the disclosure of any commercially sensitive or confidential details; and
  - (iii) for use only in relation to the *ringfenced business* and only for the purpose for which it was developed or provided,
- (e) any goods or *services* that the *ringfenced business* provides to, or receives from, any *associate* of the *ringfenced business* must be provided or received on terms that would be reasonable if the parties were dealing at arm's length; and
- (f) any goods or *services* that the *ringfenced business* provides to, or receives from, a third party operating in competition with an *associate* of the *ringfenced business* must be provided or received on a basis that does not competitively or financially disadvantage the third party, relative to the *associate*; and
- (g) the *service provider's* accounts and records relating to its *covered network* must be kept in a way that:
- (i) provides a comprehensive view of the *ringfenced business's* legal and equitable rights and liabilities in relation to the *covered network*; and
  - (ii) provides a true and fair view of:
    - A. the *network business* as distinct from any *other business* carried on by the *service provider* or any *associate* of the *service provider*; and
    - B. income derived from, and expenditure relating to, the *covered network*; and
    - C. the *service provider's* assets and liabilities so far as they relate to the *covered network*;
- and

- (iii) provides sufficient information to enable the *price control* and *pricing methods*, and these *ringfencing objectives* and any applicable *ringfencing rules*, to be applied in a reasonable manner; and
  - (iv) enables all revenue received by the *service provider* from the provision of goods or *services* to an *associate* of the *ringfenced business* to be separately identified; and
  - (v) enables all expenditure by the *service provider* on goods or *services* provided by an *associate* of the *ringfenced business* to be separately identified; and
- (h) the *service provider*, when entering into service agreements, including asset management agreements, ensures that the terms and conditions of each agreement facilitates the implementation of these *ringfencing objectives* and any *ringfencing rules*.

### **Factors the Authority must have regard to**

13.12 In exercising its functions under this Chapter 13 the *Authority* must have regard to the geographical location of the *covered network* and the extent (if any) to which it is interconnected with other networks.

13.13 Section 13.12 does not limit the matters to which the *Authority* must or may have regard.

### **Authority may approve ringfencing rules**

13.14 The *Authority*:

- (a) may at any time; and
- (b) must for a *covered network* if it determines that the *ringfencing objectives* are not being achieved for the *covered network*,

draft and approve *ringfencing rules*, for the purpose of ensuring that the *ringfencing objectives* are achieved.

13.15 Without limiting section 13.14, a *service provider* may submit *ringfencing rules* to the *Authority* for approval.

13.16 *Ringfencing rules* may be expressed to apply to:

- (a) one or more specified *covered networks*; or
- (b) all *covered networks* in a specified geographical area or *interconnected system*; or
- (c) any other specified class or classes of *covered networks*,

in each case with or without specified exceptions.

13.17 The *Authority* must not approve *ringfencing rules* which would, if approved, require a *service provider* or other person to engage in an act or omit to engage in an act which would contravene a *written law* or a *statutory instrument*.

- 13.18 The *Authority* may at any time revoke or vary any *ringfencing rules*.
- 13.19 Subject to section 13.20, before approving, revoking or varying *ringfencing rules*, the *Authority* must consult the public in accordance with Appendix 7.
- 13.20 The *Authority* may at any time correct clerical mistakes, or errors arising from accidental slips or omissions, in any *ringfencing rules* without consulting the public in accordance with Appendix 7 if it considers that doing so will not unduly prejudice a person.
- 13.21 The *Authority* must place on the *public register* a copy of any approved, revoked or varied *ringfencing rules*.

**Ringfencing rules and compliance procedures are not confidential**

- 13.22 *Ringfencing rules* and *ringfencing compliance procedures* :
- (a) are not *confidential material* for the purposes of this Code; and
  - (b) must not be claimed by the *service provider* to be, and are not, confidential in any way.

**Additional ringfencing rules for an integrated provider**

- 13.23 *Ringfencing rules* which apply to an *integrated provider* may:
- (a) add to the *ringfencing objectives* for the *integrated provider*; and
  - (b) deal with any matter the *Authority* considers necessary or convenient to:
    - (i) achieve the *Code objective* or the *ringfencing objectives*; or
    - (ii) maintain the confidence of those who *generate, transport or consume* electricity that the *Code objective* or the *ringfencing objectives* are being achieved;
- and
- (c) without limiting section 13.23(b), require the physical separation of all or part of the *network business's* offices, equipment or marketing staff from those of any *other business*.

- 13.24 Section 13.23 does not limit sections 13.14 to 13.21.

**Service provider to procure compliance by its associates**

- 13.25 *Ringfencing rules* which apply to a *covered network* may require a *service provider* to procure an *associate* of the *ringfenced business* to comply with any one or more of:
- (a) the *ringfencing objectives*; and
  - (b) any applicable *ringfencing rules*; and
  - (c) the *ringfencing compliance procedures*.

- 13.26 Without limiting section 13.25, *ringfencing rules* which apply to a *covered network* may require a *service provider* to procure any *associate* of the *ringfenced business* that undertakes activities for the *ringfenced business* in relation to the network under service agreements, including asset management agreements:
- (a) to establish and *maintain* a separate set of accounts in respect of the activities undertaken for the *ringfenced business* in relation to the network; and
  - (b) to allocate any costs that are shared between an activity for which accounts are kept under section 13.26(a) and another activity according to a methodology for allocating costs that is transparent; and
  - (c) to provide the accounts established and *maintained* under section 13.26(a) to the *Authority* at the *Authority's* request.

### **Commencement time for ringfencing rules**

- 13.27 An approval, variation or revocation of *ringfencing rules* may be expressed to take effect immediately or at one or more specified times.
- 13.28 If no time is specified, an approval, variation or revocation of the *ringfencing rules* takes effect 3 months after it is placed on the *public register*.

### **Exemptions from ringfencing requirements**

- 13.29 The *Authority* must not grant Electricity Networks Corporation<sup>581</sup> an exemption from this Chapter 13.
- 13.30 A *service provider* may apply to the *Authority* for an exemption from a provision of the *ringfencing objectives* or the *ringfencing rules* in respect of the *covered network*.
- 13.31 Subject to section 13.29, the *Authority* may grant a *service provider* an exemption from a provision of the *ringfencing objectives* or the *ringfencing rules* in respect of a *covered network* if the *Authority* determines in all the circumstances that the disadvantages of requiring the *service provider* to comply with the provision are likely to exceed the advantages.
- 13.32 An exemption under section 13.31:
- (a) may be granted for a specified period or indefinitely;
  - (b) may be unconditional or subject to any conditions the *Authority* considers fit in which case the *service provider* must comply with the conditions; and
  - (c) may be varied or revoked by the *Authority* after reasonable notice to the *service provider*.
- 13.33 A person may apply to the *Authority* for an exemption granted to a *service provider* under section 13.31 to be revoked and the *Authority* must consider the application and within a reasonable time advise the person of the *Authority's* determination in relation to the application.

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<sup>581</sup> Section 13.29 amended by WAGG No 59, 31 March 2006



- 13.34 Before granting, varying or revoking an exemption under section 13.31, the *Authority* must consult the public under Appendix 7.
- 13.35 The *Authority* must *publish* details of any grant, revocation or variation of an exemption under section 13.31.
- 13.36 Without limiting the generality of the type of exemptions that may be granted under section 13.31, exemptions to *ringfencing rules* may be transitional in nature and may include provisions allowing a *service provider* time to comply with *ringfencing objectives* or *ringfencing rules*, which time must be as short as the *Authority* considers to be reasonably practicable.

### **Compliance monitoring and compliance reporting**

13.37 A *service provider* must:

- (a) establish, *maintain* and implement effective procedures (“***ringfencing compliance procedures***”) to ensure and monitor its compliance with section 13.1; and
- (b) when requested by the *Authority*, provide a copy of its *ringfencing compliance procedures* to the *Authority*; and
- (c) at reasonable intervals determined by the *Authority* from time to time, assess its compliance with, and the effectiveness of, its *ringfencing compliance procedures*, and its compliance with section 13.1, and provide a report to the *Authority* regarding the assessment.

{Note: Information provided under section 13.37(c) will be one of the factors considered by the *Authority* under section 13.14(b).}

- 13.38 The *Authority* must place the *service provider’s ringfencing compliance procedures* on the *public register*.
- 13.39 No act or omission by the *Authority* concerning the adequacy or effectiveness of a *service provider’s ringfencing compliance procedures* affects the *service provider’s* obligations under section 13.1.
- 13.40 Nothing in any *ringfencing compliance procedures* limits section 13.1 or 13.14.
- 13.41 The *Authority* may from time to time *publish* guidelines setting out model *ringfencing compliance procedures* and model reporting procedures in relation to *ringfencing compliance procedures*.

### **Breach of ringfencing requirements**

- 13.42 A *service provider* must report to the *Authority* details of any breach of section 13.1 immediately upon becoming aware of the breach.
- 13.43 A person who considers that a *service provider* has breached section 13.1 may provide details of the breach to the *Authority*.
- 13.44 On receipt of details under sections 13.42 or 13.43 the *Authority* must, and any other time on its own initiative the *Authority* may, consider whether to make a determination under section 13.14(b).

**Service provider to provide information to Authority and arbitrator**

- 13.45 The *service provider* of a *covered network* must comply with any request by the *Authority* or the *arbitrator* to inspect or make copies of the *service provider's* accounts and records for the *covered network*.

## Chapter 14 – Administration and Miscellaneous

### Service provider to provide information on access arrangements

- 14.1 A *service provider* of a *covered network* must establish and *maintain* an information package in relation to the *covered network* which includes:
- (a) the *access arrangement* and *access arrangement information* for the *covered network*, or if there is no *access arrangement*, any *proposed access arrangement* for the *covered network*; and
  - (b) any *price list* in effect for the *covered network*; and
  - (c) any notices in respect of the *covered network* or the *access arrangement* provided to the *Authority* under this Code or the *access arrangement*; and
  - (d) references to any issues papers or decisions and *reasons published* by the *Authority* or the Minister in respect of the *covered network*, with details of where those papers or decisions may be accessed.
- 14.2 A *service provider* of a *covered network* must, if requested by a *user* or an *applicant*, provide a copy of the information package for the *covered network* to the *user* or *applicant* within 10 *business days* of the request, subject to the *user* or *applicant* paying any reasonable fee requested by the *service provider* for copying the information package.
- 14.3 On the request of a *user*, a *service provider* must promptly notify the *user* of the additional capacity that will be provided by an *augmentation* to be funded by that *user* if the quantity of that additional capacity is reasonably capable of being determined.<sup>582</sup>

### Data collection regarding target revenue

- 14.4 A *service provider* must in accordance with *good electricity industry practice*:
- (a) throughout an *access arrangement period* collect and *maintain* data on any variables used in the *access arrangement* or *access arrangement information* in connection with cost allocations for the derivation of *target revenue*; and
  - (b) make that information available to the *Authority* on reasonable request.

### Public register

- 14.5 The *Authority* must establish and *maintain* a *public register* and place on that register:
- (a) this Code; and

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<sup>582</sup> Section 14.3 amended by WAGG No 134, 30 July 2021

- (b) a listing of the *covered networks*; and
- (c) a description of each *covered network*; and
- (d) for each *covered network*:
  - (i) each *proposed access arrangement* and *proposed revisions* submitted to the *Authority*; and
  - (ii) each *access arrangement information* and amended *access arrangement information* submitted to the *Authority*; and
  - (iii) each submission received in relation to an *access arrangement*, *proposed revisions* to an *access arrangement*, *access arrangement information*, *framework and approach*, *tariff structure statement* and *price lists*; and
  - (iv) each *draft decision* or *final decision* made by the *Authority* or Board under this Code; and
  - (v) the current *access arrangement* and *access arrangement information*; and
- (e) anything else that is required under this Code to be placed on the *public register*.<sup>583</sup>

14.6 The *public register* must be *maintained in electronic form* and:

- (a) may be kept solely in *electronic form* if the *Authority*:
  - (i) *maintains* and makes available at its premises a means of accessing the *public register in electronic form*; and
  - (ii) provides a copy of any item on the *public register* to any person on request and the payment of a reasonable fee; and
- (b) otherwise — must be *maintained* in both *electronic form* and hard copy form and the *Authority*:
  - (i) must make the hard copy *public register* available for inspection during ordinary business hours on *business days* at its principal place of business; and
  - (ii) must provide a copy of any item on the *public register* to any person on request and the payment of a reasonable fee.

14.7 Without limiting section 14.6, the *Authority* is required to make available for inspection during ordinary business hours on *business days* at its principal place of business copies of:

- (a) this Code as amended from time to time; and

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<sup>583</sup> Section 14.5 amended by WAGG No 157, 18 September 2020

- (b) each amendment made to this Code.

### **Register of interested persons**

- 14.8 The *Authority* must *maintain a register of interested persons* for each *network* (or, at the *Authority's* discretion, all *networks*) to be used by the *Authority* in the performance of its functions under this Code, including in connection with public consultation under Appendix 7.
- 14.9 The *Authority* must endeavour to *maintain* the currency of the *register of interested persons* by periodically advertising in newspapers, industry journals and in any other form of media which it considers appropriate.
- 14.10 Where the *Authority* is required to send a notice to each person listed on the *register of interested persons* in respect of a *network*, the *Authority* may send the notice electronically and if a person listed on the *register of interested persons* has not provided an electronic address to the *Authority* or if the electronic address provided is not current or is not functioning, the *Authority* is not required to send the person the notice.

### **Protection for the Authority**

- 14.11 The *Authority* is not liable for any loss or damage to third parties resulting from or in connection with the *public register* or *register of interested persons*, including but not limited to loss or damage resulting from:
- (a) errors or omissions in the *public register* or *register of interested persons*; or
  - (b) failure to *maintain* the currency of the *public register* or *register of interested persons*; or
  - (c) failure of electronic notices where the *Authority publishes* a thing.

### **Treatment of confidential information**

- 14.12 Subject to section 14.13, where a *disclosing person* provides *relevant material* to a *recipient* in accordance with this Code, the *disclosing person* may, at the time at which the *relevant material* is provided, give notice to the *recipient* that the *relevant material* or part of the *relevant material* is *confidential material*.
- 14.13 A *disclosing person*:
- (a) may give notice to the *recipient* that *relevant material* is *confidential material* only if the *relevant material* is in fact *confidential material*, and where only a part or parts of the *relevant material* is *confidential material*, the *disclosing person* may give notice only in respect of those parts; and
  - (b) must in a notice under section 14.12 specify in reasonable detail the basis upon which the *disclosing person* makes the claim that the *relevant material* is *confidential material*.
- 14.14 The *recipient* must not disclose, *advertise* or *publish* any *confidential material* to any person (other than a worker of the *recipient* who is bound by an adequate confidentiality undertaking), unless the *recipient* is of the opinion:

- (a) that the disclosure of the *confidential material* would not cause detriment to the *disclosing person* or another person; or
- (b) that, although the disclosure of the *confidential material* may cause detriment to the *disclosing person* or another person, either:
  - (i) if the *recipient* is the *Authority*,<sup>584</sup> the public benefit in disclosing it outweighs the detriment; or
  - (ii) the *recipient* is:
    - A. expressly required by this Code to disclose it despite any claim of confidentiality; or
    - B. required by another *written law* or *statutory instrument* to disclose it.

14.15 For the purposes of section 14.14, a disclosure cannot cause detriment to a person if the thing disclosed is already in the public domain (other than by disclosure by the *recipient* in breach of section 14.14).

#### **How this Code applies to multiple service providers**

14.16 These sections 14.16 to 14.21 apply if there is more than one *service provider* in connection with a *network*, including if:

- (a) the *network* is owned or operated by two or more persons as a joint venture or partnership; or
- (b) the *network* is owned and operated by different persons; or
- (c) a *network* is legally owned by a person or persons on trust for others.

14.17 In such a case each *service provider* in connection with the *network* is referred to in these sections 14.16 to 14.21 as a *participant*.

14.18 If this Code requires or permits something to be done by the *service provider*, that thing may be done by one of the *participants* on behalf of all the *participants*, provided that each *participant* complies with this Code.

{Note: For example, a *proposed access arrangement* may be submitted under section 4.1 by one *participant* on behalf of all *participants*.}

14.19 If a provision of this Code refers to the *service provider* bearing any costs, the provision applies as if the provision referred to any of the *participants* bearing any costs.

14.20 If a provision of this Code, other than Chapter 13, refers to the *service provider* doing something, the provision applies as if the provision referred to one or more of the *participants* doing the thing on behalf of all the *participants*.

14.21 If:

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<sup>584</sup> Section 14.14 amended by WAGG No 180, 22 October 2008

- (a) there is more than one *service provider* in connection with a *network*; and
- (b) one is the owner and another is the operator; and
- (c) responsibility for complying with the obligations imposed by this Code on the *service provider* is allocated among them by their *access arrangements* or their *access arrangement*,

then each *service provider* is responsible for complying with the obligations allocated to it.

### **How this Code applies to successor service providers**

14.22 If a person becomes a *service provider* in relation to a *covered network*, for example, if:

- (a) the person purchases a *covered network*; or
- (b) a license is cancelled under section 35 of the Act and the assets, rights and interests of the former licensee vest in the person under regulations under section 35(4) of the Act,

then,

- (c) the *network* remains a *covered network*;
- (d) any *access arrangement* approved under this Code continues to apply to the *network* concerned despite the change in *service provider* and binds the person in the same way it bound other *service providers* immediately before the person became a *service provider* with respect to the *network* concerned; and
- (e) any arbitration award made under the *Code* continues to apply to the *network* concerned despite the change in *service provider* and binds the person in the same way it bound other *service providers* immediately before the person became a *service provider* with respect to the *network* concerned.

### **Authority may seek advice**

14.23 The *Authority* in the performance of a function under this Code may seek advice from the Director of Energy Safety on matters relating to the performance of that function, for which purpose the Director of Energy Safety is to be treated as a worker of the *Authority*.

14.24 The Director of Energy Safety:

- (a) has the function of providing advice under section 14.23; and
- (b) is not obliged to provide advice under section 14.23.

14.25 Section 14.23 does not limit the *Authority's* power to seek advice from any person.

### **CPI adjustment**

14.26 Where this Code refers to an amount being "**CPI adjusted**" then the *Authority* must:

- (a) adjust the amount (including as previously *CPI adjusted*) from each 1 July, to reflect the change in *CPI* between the *CPI published* for the March quarter immediately preceding the adjustment and the *CPI published* for the March quarter of the previous year; and
- (b) *publish* the adjusted amount.

### **General process for public consultation**

14.27 Appendix 7 has effect.

### **Detailed provisions regarding contributions for certain work on the Western Power Network**<sup>585</sup>

14.28 Appendix 8 has effect.<sup>586</sup>

### **Guidelines by the Authority**<sup>587</sup>

14.29 The *Authority* must *publish* guidelines in accordance with:

- (a) section 6.32D;
- (b) section 6.56;
- (c) section 6.88;
- (d) section 6A.6; and
- (e) section 9.17.<sup>588</sup>

14.30 The *Authority* may *publish* guidelines in accordance with:

- (a) section 4.5; and
- (b) section 13.41.<sup>589</sup>

14.31 The *Authority* may waive the requirement for a *service provider* to comply with one or more guidelines *published* and referred to in sections 14.29 and 14.30.<sup>590</sup>

14.32 Before granting a waiver under section 14.31, the *Authority* must:

- (a) consult the public in accordance with Appendix 7;
- (b) determine whether the granting of a waiver better achieves the *Code objective*; and

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<sup>585</sup> Heading to section 14.28 inserted by WAGG No 137, 29 June 2007; Heading to section 14.28 amended by WAGG No 180, 22 October 2008

<sup>586</sup> Section 14.28 inserted by WAGG No 137, 29 June 2007

<sup>587</sup> Heading to section 14.29 inserted by WAGG No 157, 18 September 2020

<sup>588</sup> Section 14.29 inserted by WAGG No 157, 18 September 2020

<sup>589</sup> Section 14.30 inserted by WAGG No 157, 18 September 2020

<sup>590</sup> Section 14.31 inserted by WAGG No 157, 18 September 2020



- (c) determine whether the advantages of granting the waiver outweigh the disadvantages, in particular the disadvantages associated with decreased regulatory certainty and increased regulatory cost and delay.<sup>591</sup>
- 14.33 Without limiting section 14.31, a *service provider* may at any time request the *Authority* to waive a requirement for the *service provider* to comply with one or more guidelines in accordance with section 14.31.<sup>592</sup>
- 14.34 The *Authority* may, from time to time, amend or replace the guidelines referred to in sections 14.29 and 14.30 in accordance with the consultation process specified for such guidelines.<sup>593</sup>
- 14.35 Nothing prevents the *Authority* from *publishing* any of the guidelines referred to in sections 14.29 and 14.30 in the same document as another guideline, provided that if the *Authority* does so, the *Authority* must clearly state in that document which guidelines the document contains.<sup>594</sup>

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<sup>591</sup> Section 14.32 inserted by WAGG No 157, 18 September 2020

<sup>592</sup> Section 14.33 inserted by WAGG No 157, 18 September 2020

<sup>593</sup> Section 14.34 inserted by WAGG No 157, 18 September 2020

<sup>594</sup> Section 14.35 inserted by WAGG No 157, 18 September 2020

## Chapter 15 – Transitional

### Minister may make determinations

15.1 The Minister may determine, after consultation with affected parties, how any matter in progress immediately before the commencement of Part 8 of the Act is to be treated, after that commencement, for the purposes of the provisions of the *Code*.

15.1A [not used]<sup>595</sup>

15.2 The Minister must *publish* a determination made under section 15.1 in the Gazette.<sup>596</sup>

15.2A [not used]<sup>597</sup>

### Access arrangements for SWIS to be compatible with market

15.3 Without limiting sections 5.34 to 5.36, an *access arrangement* for a *covered network* which forms part of the *SWIS* may specify as *trigger events* one or more events or sets of circumstances in connection with the arrangements established under Part 9 of the Act.

### Access arrangements to be compatible with changes to contestability

15.4 Without limiting sections 5.34 to 5.36, an *access arrangement* for a *covered network* may specify as *trigger events* one or more events or sets of circumstances in connection with changes to the thresholds for contestability with respect to electricity supply.

### Preservation of Western Power Network actions<sup>598</sup>

15.5 If an action could have been commenced before the *referee* under the previous regime immediately before 1 July 2007 seeking a remedy in respect of a thing done or not done before 1 July 2007 in connection with or arising out of a *prior application*, an action may be commenced before the *arbitrator* seeking the remedy in respect of the thing.<sup>599</sup>

15.6 Section 15.5 does not extend any period of limitation or waive any other requirement under the previous regime for commencing an action.<sup>600</sup>

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<sup>595</sup> Section 15.1A inserted by WAGG No 122, 12 September 2023; section 15.1A deleted by WAGG No 54, 10 May 2024

<sup>596</sup> Section 15.2 amended by WAGG No 122, 12 September 2023; section 15.2 amended by WAGG No 54, 10 May 2024

<sup>597</sup> Section 15.2A inserted by WAGG No 122, 12 September 2023; section 15.2A deleted by WAGG No 54, 10 May 2024

<sup>598</sup> Heading to section 15.5 amended by WAGG No 180, 22 October 2008

<sup>599</sup> Section 15.5 inserted by WAGG No 137, 29 June 2007

<sup>600</sup> Section 15.6 inserted by WAGG No 137, 29 June 2007

- 15.7 If a person commences an action before the *arbitrator* seeking a remedy under section 15.5, the *arbitrator*—
- (a) may hear the matter under Chapter 10; and
  - (b) may make any determination in respect of the matter which is consistent with—
    - (i) the *Code objective*; and
    - (ii) the Act and this Code generally.<sup>601</sup>

**[Heading not used]<sup>602</sup>**

- 15.8 [not used]<sup>603</sup>

**Transitional arrangements for 2020 (No. 2) amendments<sup>604</sup>**

- 15.9 By 1 October 2021, a *service provider* must *publish*:
- (a) the first *network opportunity map* in accordance with section 6A.1; and
  - (b) the first *alternative options strategy* in accordance with sections 6A.3 and 6A.4.<sup>605</sup>
- 15.10 The amendments made to section 5.1 by the *2020 (No. 2) amendments* only apply on and from the next *review* of the *access arrangement* for the *Western Power Network* after the *2020 (No. 2) amendments*, and do not:
- (a) entitle the *Authority* to vary a *service provider's access arrangement* under section 4.41; or
  - (b) require a *service provider* to propose revisions to its *access arrangement* prior to the next *revisions submission date* for the *service provider's access arrangement*.<sup>606</sup>
- 15.11 Sections 15.12 to 15.16 are transitional provisions that apply only in respect of the application of the next *review* of the *access arrangement* for the *Western Power Network* after the *2020 (No. 2) amendments* and not any subsequent *reviews*.<sup>607</sup>
- 15.12 Section 4.A2(f) is deleted and replaced with “a list of and classification of services which must specify whether services are *reference services* or *non-reference services*, and may specify the eligibility criteria for each *reference service*, the structure and *charging parameters* for each *distribution reference tariff* and a description of the

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<sup>601</sup> Section 15.6 inserted by WAGG No 137, 29 June 2007

<sup>602</sup> Heading to section 15.8 amended by WAGG No 180, 22 October 2008; Heading to section 15.8 deleted by WAGG No 157, 18 September 2020

<sup>603</sup> Section 15.8 inserted by WAGG No 137, 29 June 2007; Section 15.8 deleted by WAGG No 157, 18 September 2020

<sup>604</sup> Heading to section 15.9 inserted by WAGG No 157, 18 September 2020

<sup>605</sup> Section 15.9 inserted by WAGG No 157, 18 September 2020

<sup>606</sup> Section 15.10 inserted by WAGG No 157, 18 September 2020

<sup>607</sup> Section 15.11 inserted by WAGG No 157, 18 September 2020

approach to setting each *distribution reference tariff* in accordance with sections 7.2 to 7.12<sup>608</sup>.

- 15.13 The requirement to *publish* documents by 31 months prior to the *target revisions commencement date* in section 4.A4 does not apply.<sup>609</sup>
- 15.14 The requirement to make and *publish* the final *framework and approach* by no later than 23 months prior to the *target revisions commencement date* in section 4.A9 does not apply provided that the *Authority* must comply with its obligations under section 4.A9 by no later than 2 August 2021.<sup>610</sup>
- 15.15 The requirement to submit *proposed revisions* and revised *access arrangement information* to the *Authority* by no later than 17 months prior to the *target revisions commencement date* in section 4.48 does not apply provided that the *service provider* must comply with its obligations under section 4.48 by no later than 1 February 2022.<sup>611</sup>
- 15.16 The *target revisions commencement date* is 1 July 2023.<sup>612</sup>
- 15.17 Notwithstanding section 12.50, prior to 1 August 2021, a proposal to amend *technical rules* may only be submitted under section 12.50 by:
- (a) the *service provider*; or
  - (b) the Chair of the *technical rules committee*; or
  - (c) a *service provider* of an interconnected network.<sup>613</sup>

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<sup>608</sup> Section 15.12 inserted by WAGG No 157, 18 September 2020

<sup>609</sup> Section 15.13 inserted by WAGG No 157, 18 September 2020

<sup>610</sup> Section 15.14 inserted by WAGG No 157, 18 September 2020

<sup>611</sup> Section 15.15 inserted by WAGG No 157, 18 September 2020

<sup>612</sup> Section 15.16 inserted by WAGG No 157, 18 September 2020

<sup>613</sup> Section 15.17 inserted by WAGG No 157, 18 September 2020

## Chapter 16 – Priority Projects<sup>614</sup>

### Minister may make determinations<sup>615</sup>

- 16.1 The Minister may determine that a project is a *priority project* for the purposes of the provisions of the Code.<sup>616</sup>
- 16.2 The Minister must *publish* a determination made under section 16.1 in the Gazette.<sup>617</sup>
- 16.3 At the time of *publishing* a *priority project determination* the Minister must also *publish* the *reasons* for the *priority project determination*, including the basis on which the Minister considers that the *priority project determination* meets the *Code objective*.<sup>618</sup>
- 16.4 The *Electricity Networks Access Code 2004 Priority Project Determination (North Region Energy Project Stage 1) 2023* continues as if made under this Chapter 16.<sup>619</sup>

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<sup>614</sup> Heading to Chapter 16 inserted by WAGG No 54, 10 May 2024

<sup>615</sup> Heading to section 16.1 inserted by WAGG No 54, 10 May 2024

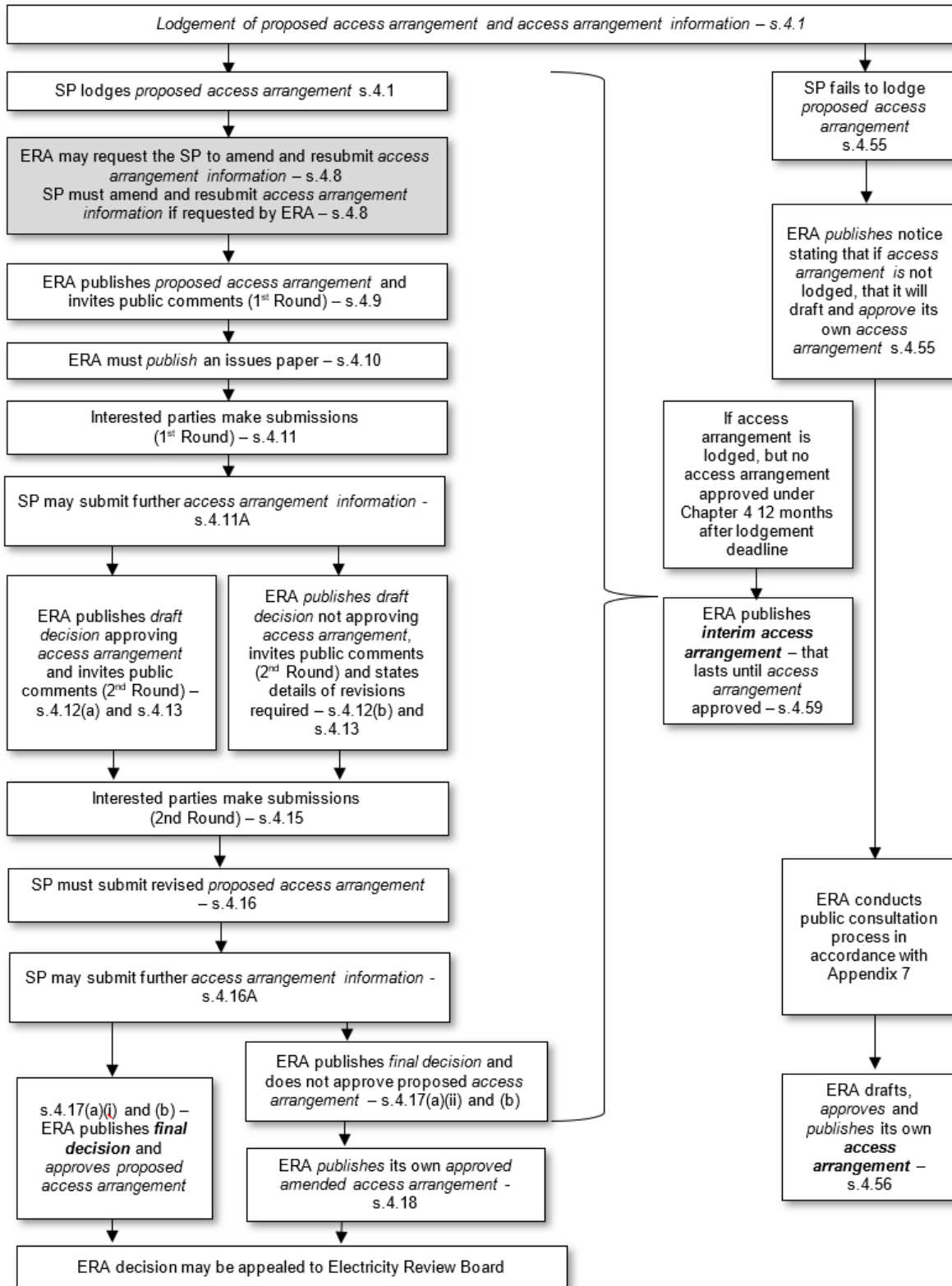
<sup>616</sup> Section 16.1 inserted by WAGG No 54, 10 May 2024

<sup>617</sup> Section 16.2 inserted by WAGG No 54, 10 May 2024

<sup>618</sup> Section 16.3 inserted by WAGG No 54, 10 May 2024

<sup>619</sup> Section 16.4 inserted by WAGG No 54, 10 May 2024

## Appendix 1 – Flowchart of access arrangement approval process<sup>620</sup>



<sup>620</sup> Flowchart to Appendix 1 deleted and replaced by WAGG No 157, 18 September 2020

## Appendix 2 – Model Applications and Queuing Policy

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This Appendix 2 leaves some matters to be completed when an *applications and queuing policy* is incorporated into an *access arrangement*. These matters are noted in square brackets, eg. “[x]”.

The variable can be a simple absolute number or may follow a more sophisticated structure designed by the *service provider* to best suit the characteristics of its *covered network* and business. For example, if [x] is the time by which a *service provider* must make an *access offer* for a *class 1 application*, the *service provider* may specify that [x] is 5 *business days* where the application is in respect of between one and 100 existing *connection points* and [x] is 10 *business days* where the application is in respect of more than 100 *connection points*.

The variables proposed by a *service provider* are subject to approval by the *Authority* under Chapter 4, and (without limiting the *Authority’s* discretion or duties) must be consistent with the *Code objective* and section 5.1(g).

Footnotes following each matter in square brackets contain instructions to the *Authority*. The footnotes form part of this model *applications and queuing policy* and, like these introductory notes, have legal effect.

### Subappendix 2.1– Interpretation

#### Definitions and Interpretation

A2.1 In this *applications and queuing policy*, unless the contrary intention is apparent:

“**access contract**” has the same meaning as “*access agreement*” does in Part 8 of the Act.

{Note: At the time this Code was made, the definition in section 103 of the Act was:

‘ “**access agreement**” means an agreement under the Code between a network service provider and another person (a “*network user*”) for that person to have access to services. }<sup>622</sup>

“**access offer**” means a form of *access contract* which complies with clause A2.103 or A2.105, as applicable, which has been *signed* by the *service provider* and is in such a form that it can, without anything else being required, become an *access contract* when *signed* by an *applicant*.

“**Act**” means the *Electricity Industry Act 2004*.

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<sup>621</sup> Appendix 2 amended by WAGG No 207, 8 November 2005

<sup>622</sup> Note to clause A2.1 amended by WAGG No 180, 22 October 2008

**“applicant”** means an *applicant* under this *applications and queuing policy* for an *access contract*, or for the modification of any other *contract for services*, and includes a prospective *applicant*.<sup>623</sup>

**“application”** means an *access application* under this *applications and queuing policy* (as amended under this *applications and queuing policy*) and includes any additional information provided by the *applicant* in relation to the *access application*.

**“application form”** means the form referred to in clause A2.22 contained in a *service provider’s access arrangement*.

**“bypass”**, in relation to an application (**“bypassed application”**), means that the *first come first served* principle is not applied in respect of the bypassed application, so that an application with later *priority* receives an *access offer* before the *bypassed* application.

**“capacity increase”** means an increase in a *user’s* capacity under a *contract for services* in respect of a *connection point*.<sup>624</sup>

**“capacity increase notice”** means a notice, under clause A2.30, provided by a *user* to a *service provider* in respect of a *user’s* request for *capacity increase*.

**“class 1 application”** has the meaning given to it in clause A2.5.

**“class 2 application”** has the meaning given to it in clause A2.6.

**“class 3 application”** has the meaning given to it in clause A2.7.

625

**“Code”** means the Electricity Networks Access Code 2004.

**“competing”**, in relation to two or more applications, means (subject to section 5.9A of the *Code*) that the provision of the *covered service* sought in one application may impede the *service provider’s* ability to provide the *covered services* that are sought in the *other applications*.<sup>626</sup>

**“confidential information”** means information disclosed, by an *applicant* or a *disclosing person*, to the *service provider*, in or in connection with, an application or a *capacity increase* notice which the *disclosing person* (acting as a *reasonable and prudent person*) has identified as being commercially sensitive or confidential.

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**“CPI”** means the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities *published* by the Australian Bureau of Statistics from time to time

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<sup>623</sup> Clause A2.1 amended by WAGG No 180, 22 October 2008

<sup>624</sup> Clause A2.1 amended by WAGG No 180, 22 October 2008

<sup>625</sup> Clause A2.1 amended by WAGG No 207, 8 November 2005

<sup>626</sup> Clause A2.1 amended by WAGG No 180, 22 October 2008

<sup>627</sup> Clause A2.1 amended by WAGG No 180, 22 October 2008

<sup>628</sup> Clause A2.1 amended by WAGG No 180, 22 October 2008



or, if the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities ceases to be *published*, such alternative index as the *service provider* may reasonably determine, and in all cases the *CPI* figure is to be adjusted to correct for any effects of a change in the rate of *GST*.

**“customer transfer code”** means a code made under section 39(1) or section 39(2a) of the Act in respect of the matter referred to in section 39(2)(b) of the Act.

**“customer transfer request”**:

- (a) if “customer transfer request” is defined in the *customer transfer code* — has the meaning given to that term in the *customer transfer code*; and
- (b) otherwise — means a request by an incoming *user* to the *service provider* to transfer an outgoing *user’s access rights* and obligations in respect of a *contestable customer* to the *incoming user*.

**“disclosing person”**, in relation to an application or a *capacity increase notice*, means a person who discloses *confidential information* to the *service provider* in, or in connection with, an application or a *capacity increase notice*, as applicable.

**“dormant application”** means an application that was lodged by the *applicant* on a date that is more than three years before the date on which the *service provider* is considering the application under clause A2.78 and in respect of which the *service provider* has not made an *access offer*.

**“first come first served”** means that an *applicant* with earlier *priority* receives an *access offer* before an *applicant* with later *priority*.

**“GST”** means goods and *services tax* or similar value added tax levied or imposed in Australia pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth or otherwise on a supply.

**“initial response”** means the initial response of the *service provider* to an *applicant* under clause A2.89 in relation to an application.

**“law”** means “written laws” and “statutory instruments” as defined in the *Code* and rules of the general law including the common law and equity.

**“lodgement fee”** means:

- (a) for an application — the fee specified under clause A2.14; or
- (b) for a *capacity increase notice* — the fee specified under clause A2.35.

**“materially different”**, in relation to an amended application, includes an amended application which is materially different to the original application in respect of any one or more of the criteria specified in clause A2.75.

**“maximum demand”** means the highest amount of electrical power in respect of electricity transferred, or forecast to be transferred, over a specified period (half hour, day, week, month, season or year) at an *exit point*.

**“preliminary assessment”** means the preliminary assessment of the *service provider* to an *applicant* under clause A2.93 in relation to an application.

**“priority”**, in relation to an application, means the priority that the *applicant* has, as against any other *applicant* with a *competing* application, to obtain access to *covered services*.

**“project”** means a project identified in a *tender notice*.

**“project related application”** means an *application* designated under clause A2.58 by the *service provider*, acting as a *reasonable and prudent person*, as a *project-related application*, provided that the *applicant* has not notified the *service provider* under clause A2.60 that the application is not a *project-related application*.

**“proponent”** means a person who gives a *tender notice* to the *service provider* in respect of a *project*.

**“proposed controller”** means a person who owns, operates or controls *facilities and equipment* at a *connection point* and who is specified by an *applicant* in an application in respect of a *connection point*.

**“queue”** means a *first come first served* queue described in clauses A2.47 to A2.48.

**“queuing rules”** means the principles described in clauses A2.46 to A2.48 that apply to determine the *priority* of an application.

**“requested capacity”** means, in respect of a *connection point*, the capacity requested to become contracted capacity under the *access contract* for which an application is made.

**“services end date”** means, in respect of a *connection point*, the date on which the *service provider* ends the provision of *services* to the *user* in respect of that *connection point*.

**“services start date”** means, in respect of a *connection point*, the date on which the *service provider* commences providing *services* to the *user* in respect of that *connection point*.

**“signed”** by the *service provider* or the *applicant* means duly signed or otherwise executed by or on behalf of all persons who comprise the *service provider* or the *applicant*, as the case may be.

**“spare capacity”** means the capacity, from time to time, of the *covered network* as configured at the time to provide *covered services* having regard to the *service provider’s* contractual obligations in respect of the *covered network*.

**“tender notice”** means a notice given to the *service provider* under clause A2.56(a).

**“transfer matters”**, in relation to a *customer transfer request*, has the meaning given to it in clause A2.43.

**“workers”** of a person means the directors, officers, servants, employees, agents, sub- contractors and consultants of the person.

A2.2 Unless the contrary intention is apparent, a term with a defined meaning in the Code has the same meaning in this *applications and queuing policy*.

A2.3 Unless the contrary intention is apparent:

- (a) a rule of interpretation in the *Code*; and
- (b) the *Interpretation Act 1984*,

apply to the interpretation of this *applications and queuing policy*.

### **Transition of prior applications**

[X]<sup>629</sup>

### **Negotiations in good faith**

A2.4 The *service provider* must negotiate in good faith with an *applicant* regarding the terms for an *access contract* for a *covered service*.

### **Classes of applications**

A2.5 A “**class 1 application**” is an application:

- (a) by an *applicant* who is already a *user* of the *network*; and
- (b) in respect of one or more existing *connection points*; and
- (c) seeking only a *reference service* at the *reference tariff*; and
- (d) which does not require any *augmentation*.

A2.6 A “**class 2 application**” is an *application*:

- (a) by an *applicant* who is not already a *user* of the *network*; and
- (b) which otherwise meets the requirements for a *class 1 application*.

A2.7 A “*class 3 application*” is an application which does not meet the requirements for a *class 1 application* or *class 2 application*.

630

A2.8 If an *application* is initially misclassified by a *service provider* in its notification under clause A2.89 (for example because it is initially thought that the *application* is not likely to require an *augmentation*, but one later proves necessary) or requires reclassification because it has been amended, then the *service provider* may reclassify it and the relevant clauses of this *applications and queuing policy* appropriate to its new classification apply as though the new classification had applied to the *application* from the date the *application* was originally lodged.

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<sup>629</sup> Insert transition of prior applications provisions, if applicable. To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*. See section 5.7(i) of the *Code*.

<sup>630</sup> Clause A2.7 amended by WAGG No 207, 8 November 2005

## Subappendix 2.2– The application

### Informal communications

A2.9 Prior to lodging an *application* with a *service provider*, an *applicant* may contact the *service provider* to discuss the proposed *application*, including matters such as:

- (a) what classification will likely apply to the proposed *application*;
- (b) whether it is likely that there is sufficient *spare capacity* to provide the requested *covered services* or whether there may be *required work*, including whether it is likely that any new *connection assets* will be required to provide the *covered services* requested in the *application*; and
- (c) if it is likely that there will be *required work* — whether or not a *contribution* will likely be required from the *applicant* under the *contributions policy* in respect of the *required work* and a good faith estimate of the approximate amount of the *contribution*; and
- (d) if it is likely that there will be *required work* — a good faith estimate of the likely time required for the undertaking of the work; and
- (e) what system or other studies are likely to be required in the *processing* of the *application*, whether the *service provider* is able to undertake the studies and the approximate costs of such studies,

and the *service provider* must engage in such discussions in good faith and use all reasonable endeavours to satisfactorily and promptly address any matters raised by the *applicant*.<sup>631</sup>

A2.10 The discussions under clause A2.9 are not binding on a *service provider*, and the *service provider* is not liable for any error or omission that is made as a *reasonable and prudent person* in the discussions under clause A2.9.

### Confidentiality

A2.11 Information which the *service provider* is required to disclose under clauses A2.68(a), A2.68(b) or A2.68(c) is not *confidential information*.

A2.12 The *service provider* must not disclose *confidential information* unless:

- (a) the disclosure is made to the *Authority* on a confidential basis; or
- (b) the disclosure is made to a worker of the *service provider* who is bound by an adequate confidentiality undertaking; or
- (c) the disclosure is made with the consent of the *disclosing person*; or
- (d) the disclosure is required or allowed by *law*, or by the *arbitrator* or another court or tribunal constituted by *law*; or

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<sup>631</sup> Clause A2.9 amended by WAGG No 180, 22 October 2008

- (e) the information has entered the public domain other than by breach of this clause A2.12; or
- (f) the information could be inferred by a *reasonable and prudent person* from information already in the public domain.

### **Costs of processing application**

- A2.13 For an *application* other than a *class 3 application*, an *applicant* must pay to the *service provider* the *lodgement fee* prescribed in clause A2.14 for the *application* at the time it lodges the *application*.
- A2.14 The *lodgement fee* is:
- (a) for a *class 1 application* —  $\$[x]^{632}$ ; and
  - (b) for a *class 2 application* —  $\$[x]^{633}$ .
- A2.15 For a *class 3 application*, an *applicant* must, when requested by the *service provider*, pay an amount to the *service provider* or a third party in respect of a reasonable cost incurred, or to be incurred within a reasonable timeframe, in *processing* the *application*.
- A2.16 The total of the costs referred to in clause A2.15 must not exceed the reasonable costs which would be incurred by a prudent *service provider*, acting efficiently and in good faith, in accordance with *good electricity industry practice*, seeking to achieve the lowest practicable cost of *processing* the *application*.
- A2.17 The costs referred to in clause A2.15 must not include any costs of the *service provider* in relation to an *access dispute* (which are to be awarded by the *arbitrator* under Chapter 10).
- A2.18 The *service provider* may adjust the amounts referred to in clauses A2.14(a) and A2.14(b) (including as previously adjusted) from each 1 July in accordance with section 14.26(a) of the *Code* and must provide a notice setting out the adjusted amounts to the *Authority*, and the *Authority* must place the notice on the *public register*.
- A2.19 A dispute between an *applicant* and the *service provider* regarding a cost under clause A2.15 may be referred by either party to the *arbitrator* for determination, in which case the *arbitrator* may either affirm the amount or reduce it.

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<sup>632</sup> To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*. The value inserted for variable  $[x]$  may be expressed as a single value or by a more sophisticated structure for example a range of numbers but should not exceed a forecast of reasonable costs which would be incurred by a *service provider* acting as a *reasonable and prudent person* seeking to achieve the lowest practicable cost of processing an *application* of the relevant class in relation to the relevant *network*.

<sup>633</sup> To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*. The value inserted for variable  $[x]$  may be expressed as a single value or by a more sophisticated structure for example a range of numbers but should not exceed a forecast of reasonable costs which would be incurred by a prudent *service provider*, acting efficiently and in good faith, in accordance with *good electricity industry practice*, seeking to achieve the lowest practicable cost of processing an *application* of the relevant class in relation to the relevant *network*.

### Lead times for applications

A2.20 An *applicant* must endeavour to lodge an *application* to the *service provider*:

- (a) for a *class 1 application* — at least [*x*]<sup>634</sup> *business days* before the requested *services start date*; and
- (b) for a *class 2 application* — at least [*x*]<sup>635</sup> *business days* before the requested *services start date*; and
- (c) for a *class 3 application* — within a reasonable time before the requested *services start date*, having regard to the time required for undertaking any necessary work.<sup>636</sup>

### Access application

A2.21 The *access application* process is commenced by the *applicant* giving a written *application* to the *service provider* on the *application form* in the *service provider's access arrangement* using reasonable endeavours to accurately and completely address each item in the *application form*.

A2.22 The *service provider* must include an *application form* in its *access arrangement* which makes provision for an *applicant* to provide the following information to the *service provider* in respect of an *application*:

- (a) the full name and address of the *applicant*; and
- (b) whether the *applicant* is acting as agent for any person in making the *application*, and if so, details of the *applicant's* principals; and
- (c) the *applicant's* preliminary classification of the *application*; and
- (d) any conditions precedent that the *applicant* seeks for the requested *access contract*; and
- (e) whether the *application* is being made in connection with a tender process under clauses A2.56 to A2.61; and
- (f) the *covered services* requested, and for each requested *covered service*:
  - (i) the requested *services start date* and requested *services end date*; and
  - (ii) the location or meter number of each requested *connection point*, as applicable; and

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<sup>634</sup> To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*. Unless the *Authority* considers that the *Code objective* and the objectives in section 0 require otherwise, the value inserted for variable [*x*] should not exceed 10 in respect of services to be added to an existing *access contract*, and 25 otherwise.

<sup>635</sup> To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*. Unless the *Authority* considers that the *Code objective* and the objectives in section 0 require otherwise, the value inserted for variable [*x*] should not exceed 25.

<sup>636</sup> Clause A2.20 amended by WAGG No 180, 22 October 2008

- (iii) the requested *service standards*; and
  - (iv) the requested *tariff*; and
  - (v) any additional terms the *applicant* seeks in respect of the *covered service*; and
- (g) for each requested *connection point*:
- (i) such information regarding the *facilities and equipment* at the *connection point* to the extent required by:
    - A. the *technical rules*; or
    - B. the *service provider* acting as a *reasonable and prudent person*,and
  - (ii) if the *applicant* wishes to nominate a *proposed controller* for the *connection point*, information in reasonable detail regarding the *proposed controller*; and
  - (iii) if the *connection point* is an *entry point* — the proposed *declared sent out capacity* (expressed in kW or kVA) of the plant connected or to be connected at the *entry point*; and
  - (iv) if the *connection point* is an *exit point* — the expected *maximum demand* (expressed in kW or kVA) connected or to be connected at each *exit point*;
- and
- (h) if the *applicant* so chooses, the *applicant's* preliminary proposal in relation to whether any *contribution* under the *contributions policy* will be paid or (except in the case of a headworks *charge*) provided in kind, and the preliminary proposed terms on which that may occur (but this does not prevent the *applicant* from making an alternative proposal once the scope of any *required work* is better known);<sup>637</sup> and
  - (i) such information concerning the *applicant* as the *service provider* requires, acting reasonably, to assess the *applicant's* ability to meet its obligations under the requested *access contract*.

A2.23 An *applicant* may request in an *application* a *preliminary assessment* of a *class 3 application*.

A2.24 When an *application* contains estimates or forecasts of any information —

- (a) the *service provider* may treat that estimated or forecast information as factual information; and

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<sup>637</sup> Clause A2.22 amended by WAGG No 180, 22 October 2008

- (b) the *application* is a warranty by the *applicant* to the *service provider* that each such estimate or forecast is the *applicant's* best estimate or forecast as a *reasonable and prudent person*.

### **Errors or omissions in an application**

- A2.25 If the *service provider* becomes aware of any material error or omission in an *application* or purported *application* it must immediately notify the *applicant* about it and may request information under clause A2.28.
- A2.26 If an *applicant* is notified by the *service provider* or otherwise becomes aware of any material error or omission in an *application*, it must amend the *application* to remedy it as soon as practicable after becoming aware of it.
- A2.27 If remedying an error or omission in an *application* amounts to a material amendment to the *application*, clauses A2.73 and A2.74 apply.

### **Additional information**

- A2.28 At any time, the *service provider* may, acting as a *reasonable and prudent person*, request the *applicant* to provide further information that the *service provider* reasonably requires to enable it to process the *application*.
- A2.29 An *applicant* who receives an information request under clause A2.28 must provide the requested information to the *service provider* as soon as reasonably practicable.

## **Subappendix 2.3– Capacity increase notices and customer transfer requests**

### **Capacity increase notice**

- A2.30 A *user* may request a *capacity increase* by providing a *capacity increase notice* to the *service provider*.
- A2.31 Within 10 *business days* of receipt of a *capacity increase notice* under clause A2.30, the *service provider* must determine, and notify the *user*, whether or not it accepts the *capacity increase*.
- A2.32 The *service provider* must accept the *capacity increase* if it forms the view as a *reasonable and prudent person* that:
- (a) accepting the *capacity increase* would not be likely to impede the ability of the *service provider* to provide a *covered service* sought in an *access application* lodged by another *applicant*; and
  - (b) it is not likely that there will be *required work* to provide the *capacity increase*, and otherwise the *service provider* must reject the *capacity increase*.<sup>638</sup>

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<sup>638</sup> Clause A2.32 amended by WAGG No 180, 22 October 2008



- A2.33 If the *service provider* accepts the *capacity increase* under clause A2.31 then the *service provider* and the *user* must, as soon as practicable, arrange to amend the *user's contract for services* in accordance with the *capacity increase*.<sup>639</sup>
- A2.34 If the *service provider* does not accept the *capacity increase* under clause A2.31 then the *service provider* must state in its notice under clause A2.31 that the *user* must make an *application* under Subappendix 2.2 to increase its capacity as described in the *capacity increase notice*.

#### **Lodgement fees for capacity increase notices**

- A2.35 For a *capacity increase notice* an *applicant* must pay to the *service provider* the a *lodgement fee* of  $\$[x]$ <sup>640</sup> at the time it lodges the *capacity increase notice*.
- A2.36 The *service provider* may adjust the amount referred to in clause A2.35 (including as previously adjusted) from each 1 July in accordance with section 14.26(a) of the *Code* and must provide a notice setting out the adjusted amount to the *Authority*, and the *Authority* must place the notice on the *public register*.

#### **Lead times for capacity increase notices**

- A2.37 An *applicant* must endeavour to lodge a *capacity increase notice* to the *service provider* at least  $[x]$ <sup>641</sup> *business days* before the requested *services start date*.

#### **Form of capacity increase notices**

- A2.38 A *capacity increase notice* must:
- (a) provide sufficient information to the *service provider* to enable the *service provider* to process the *capacity increase notice*; and
  - (b) comply with any requirements for *capacity increase notice* under a *law*.

#### **Additional information**

- A2.39 At any time, the *service provider* may, acting as a *reasonable and prudent person*, request the *applicant* to provide further information that the *service provider* reasonably requires to enable it to process a *capacity increase notice*.
- A2.40 An *applicant* who receives an information request under clause A2.39 must provide the requested information to the *service provider* as soon as reasonably practicable.

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<sup>639</sup> Clause A2.33 amended by WAGG No 180, 22 October 2008

<sup>640</sup> To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*. The value inserted for variable  $[x]$  may be expressed as a single value or by a more sophisticated structure for example a range of numbers but should not exceed a forecast of reasonable costs which would be incurred by a prudent *service provider*, acting efficiently and in good faith, in accordance with *good electricity industry practice*, seeking to achieve the lowest practicable cost of processing a *capacity increase notice* in relation to the relevant *network*.

<sup>641</sup> To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*. Unless the *Authority* considers that the *Code* objective and the objectives in section 0 require otherwise, the value inserted for variable  $[x]$  should not exceed 10.

### **Customer transfer requests**

- A2.41 An incoming *user* may lodge a *customer transfer request* with the *service provider*.
- A2.42 The *service provider*, incoming *user* and outgoing *user* must comply with the *customer transfer code* with respect to a *customer transfer request*.
- A2.43 To the extent that there is no *customer transfer code* or the *customer transfer code* does not make provision for any of the following matters ("**transfer matters**"):
- (a) the timing of the lodgement and processing of the *customer transfer request*; and
  - (b) the fees, if any, applying to the *customer transfer request*; and
  - (c) the form of the *customer transfer request*; and
  - (d) information required to be provided by or to any person in connection with the *customer transfer request*; and
  - (e) any other matter which it is necessary or convenient to deal with to facilitate the efficient processing of the *customer transfer request*,
- the *service provider*, incoming *user* and outgoing *user* must:
- (f) comply with any provisions in the *access arrangement* dealing with the *transfer matters*; and
  - (g) to the extent that the *access arrangement* does not make provision for a *transfer matter*, as *reasonable and prudent persons*, act in a manner which facilitates the efficient processing of the *customer transfer request*.
- A2.44 A *customer transfer request* is not to be assessed as an *application* and the *queuing rules* do not apply to the processing of a *customer transfer request*.

## **Subappendix 2.4 – The Queue**

### **Queuing rules apply only when there are competing applications**

- A2.45 The *queuing rules* apply only where there are *competing applications*.

### **Queuing rules determine priority of applications**

- A2.46 The *queuing rules* apply to determine the *priority* of an *applicant's application* in the *queue*.
- A2.47 Subject to clause A2.61, the *priority* of an *applicant's application* in a *queue* is to be determined by reference to the time at which the *application* is lodged, which is the time at which the *service provider* actually receives the *application*.
- A2.48 If an *applicant* submits more than one *application*, then the *applicant* has a different *priority* in respect of each *application*, and every reference in the *queuing rules* to the

*applicant's priority* is to be read as a reference to the *applicant's priority* in respect of the relevant *application*.

### **More than one queue**

A2.49 Under clause A2.47 there may from time to time be more than one *queue* in respect of a *network*.

{Example: One group of *applications* may relate to new *generation* projects in one part of a *covered network* and another group of *applications* may relate to new *consumers* at an industrial area at a different part of the *covered network* and each group of applications may be in a separate queue.}

### **First come first served principle**

A2.50 Subject to clauses A2.51 to A2.62, the *service provider* must ensure that an *applicant* with earlier *priority* receives an *access offer* before an *applicant* with later *priority* ("first come first served").

### **Bypass**

A2.51 Subject to the process in clauses A2.53 to A2.55, *bypass* is permitted to the extent necessary to better achieve the *Code objective*.

A2.52 Without limiting clause A2.51, circumstances where the *bypass* test in clause A2.51 might be satisfied include:

- (a) where an *application* that has earlier *priority* in a *queue* cannot, and an *application* with later *priority* can, presently proceed to an *access contract* or otherwise progress through the *applications* process, for example because:
  - (i) the *applicant* with earlier *priority* has not obtained environmental or other approvals that it requires in order to proceed; or
  - (ii) of delays in *processing* the *application* that has earlier *priority* caused by the arbitration of an *access dispute* under Chapter 10; or
- (b) where an *applicant* fails to use reasonable endeavours to progress its *application* in accordance with this *applications and queuing policy*; or
- (c) where the *application* is frivolous, vexatious or was not made in good faith.

A2.53 If the *service provider* considers that the *bypass* test in clause A2.51 is satisfied in relation to an *application*, it must give the *applicant* a notice (subject to clause A2.12) setting out in reasonable detail the basis on which the *service provider* considers that the *bypass* test in clause A2.51 is satisfied and requiring the *applicant* to either:

- (a) if possible, progress the *application*; or
- (b) otherwise provide information to the *service provider* demonstrating why the *application* should not be *bypassed*.

- A2.54 At least [*x*]<sup>642</sup> *business days* after giving a notice under clause A2.53, the *service provider* must make a fresh determination, having regard to all *relevant material* including anything which has occurred, and any information provided, since the notice was given under clause A2.53 whether the *bypass* test in clause A2.51 is satisfied, and if the *service provider* considers that the *bypass* test in clause A2.51 is satisfied, it may *bypass* the *application* to the extent permitted under clause A2.51.
- A2.55 If the *service provider* *bypasses* an *application* under clause A2.54, the *service provider* must (subject to clause A2.12) provide *reasons* to the *applicant* for its decision to *bypass* the *application* including information in reasonable detail explaining on what basis the *service provider* determined that *bypassing* the *application* was necessary to better achieve the *Code objective* under clause A2.51.

### **Applications in relation to tender projects etc**

- A2.56 Clauses A2.58 to A2.60 apply:
- (a) where a *proponent* gives notice (“**tender notice**”) to the *service provider* that it is requesting tenders or proposals in connection with a *project* and that some or all of the persons lodging tenders or proposals in connection with the *project* may wish to *transport* electricity from or to the *project* and may lodge a *class 3 application* for that purpose; and
  - (b) where the *service provider* has not been given a *tender notice* by a *proponent* but two or more *applications* have been lodged with the *service provider*, each of which is expressly designated as being made in connection with the same tender process.
- A2.57 When a *proponent* requests tenders or proposals in connection with a *project* the *proponent* must also inform *applicants* who may lodge tenders or proposals in connection with the *project* to specify on their *application forms* that the *application* is being made in connection with the tender process for the *project*.
- A2.58 When a *class 3 application* is lodged with the *service provider*, the *service provider* must determine as a *reasonable and prudent person* whether it is lodged for the purpose of transporting electricity from or to a *project*, and if so it must by notice to the *applicant* designate the *application* as a *project-related application*.
- A2.59 For the purposes of A2.58, the *service provider* must determine that an *application* is lodged for the purpose of transporting electricity from or to a *project* where the *application* provides that it is made in connection with a tender process under clauses A2.56 to A2.61.
- A2.60 If an *applicant* receives a notice from the *service provider* under clause A2.58, the *applicant* may notify the *service provider* that its *application* is not a *project-related application* and the *service provider* must deal with the *application* on the basis that it is not a *project-related application*.

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<sup>642</sup> To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*. Unless the *Authority* considers that the *Code objective* and the objectives in section 0 require otherwise, the value inserted for variable [*x*] should not be less than 20.

- A2.61 All *project-related applications* for a *project* are to be treated as having the same *priority*, equal to the *priority* attaching to the earlier of:
- (a) the date the *service provider* received the *tender notice* from the *proponent*, or
  - (b) such other date that the *service provider* becomes aware that an invitation to tender for the *project* has been announced.
- A2.62 If the *service provider* is of the opinion that one or more *access contracts* have been entered into in connection with a *project*, the *service provider* must:
- (a) liaise with the *proponent* of the *project* to determine whether its opinion is correct; and
  - (b) if it determines that its opinion is correct, give notice to each other *applicant* that has made an *application* in connection with the *project* that:
    - (i) one or more *access contracts* have been entered into in connection with the *project*, and
    - (ii) its *application's priority* in the *queue* is now the *priority* that its *application* would have had in accordance with the *first come first served* principle if it had not been designated as a *project-related application*.

### **Reserve capacity auctions for SWIS**

A2.63 [X]<sup>643</sup>

### **Processing of applications not affected**

- A2.64 Nothing in the *queuing rules* prevents the *service provider* from *processing* more than one *application* concurrently.
- A2.65 To avoid doubt, the *service provider* must comply with the timeframes set out in this *applications and queuing policy* in respect of each *application* which is lodged with the *service provider*, whether or not it is *processing* more than one *application* concurrently.

### **Exercising an option not affected**

- A2.66 An option granted to a *user* as part of the terms of an *access contract* to extend the duration of the *access contract* is not an *application* and is not subject to the *queuing rules* if it is exercised in accordance with its terms.

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<sup>643</sup> If applicable, insert provisions regarding *processing of applications* made in connection with a tender process under a *law* made under Part 9 of the *Act*. To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*. See section 5.7(h) of the *Code*.

### **Priority of withdrawn applications**

A2.67 An *application* which is withdrawn or deemed by this *access arrangement* to have been withdrawn loses its *priority* under the *queuing rules*, even if it is subsequently amended or resubmitted.

### **Provision of information about position in queue**

A2.68 The *service provider* must make known to any *applicant* with an *application* in a *queue*:

- (a) in respect of each *competing application* in the *queue*:
  - (i) the fact that the *competing application* exists in the *queue*; and
  - (ii) whether the *competing application* is ahead of, or behind, the *applicant's* position in the *queue* and if any of the *competing applications* are *project-related applications*; and
- (b) a description of the circumstances which caused the *applications* in the *queue* to be *competing applications* (including information in reasonable detail regarding the aggregated capacity requirements of those *competing applications* which are ahead of the *applicant* in the *queue*); and
- (c) the likely time until the making of an *access offer*, the commissioning of any necessary *augmentation* and the undertaking of any other *required work*; and
- (d) except to the extent that it is prevented from doing so by clause A2.12, in respect of each *competing application* in the *queue*:
  - (i) the capacity requirements of the *competing application*; and
  - (ii) the geographic location at which the *competing application* seeks the capacity; and
  - (iii) reasonable details regarding any work required by the *competing application*.<sup>644</sup>

A2.69 The information in clause A2.68 must be provided:

- (a) upon initial lodgement of an application; and
- (b) at any time after a reasonable request by the *applicant* for updated information; and
- (c) as soon as practicable after a material change in the information previously notified under this clause A2.69, including when information of the kind referred to in clause A2.68(d) which was previously withheld on the ground that the *service provider* was prevented from doing so by clause A2.12 is no longer entitled to be withheld on that ground.

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<sup>644</sup> Clause A2.68 amended by WAGG No 180, 22 October 2008

## Subappendix 2.5 – Amendment and withdrawal of application

### Amendment to application

A2.70 An *applicant* may at any time by notice to the *service provider* amend an application.

A2.71 Without limiting clause A2.70, an amendment to an application may include a change to the identity of the *applicant* in which case the other information in the application must also be amended accordingly.

### Amending application to address necessary work<sup>645</sup>

A2.72 Without limiting clause A2.70, if an application would require any *required work* or result in the *user* being required to pay a *headworks charge*, then at any time after the *service provider* provides the necessary information the *applicant* may revise its application to add to the application the terms of a *payment contract* or (except in connection with the *headworks charge*) a works contract under the *contributions policy*.<sup>646</sup>

### Priority of amended applications

A2.73 Subject to clause A2.74, an amended application has the same *priority* as the original application.

A2.74 Subject to clause A2.75, if an amended application is *materially different* from the original application, and if the difference is such that an *applicant* whose *competing application* has a date of *priority* subsequent to the original application is materially prejudiced in terms of the likelihood, timing and terms of its obtaining *access* (compared with that later *applicant's* position with respect to the original application), then:

- (a) if it is possible to construe the amended application as a combination of the original application and a notional supplementary application (whether for further *capacity* or otherwise) — then the original application retains its *priority* and the notional supplementary application has *priority* according to the time of amendment; but
- (b) otherwise — the amended application has *priority* according to the time of amendment.

A2.75 For the purposes of clause A2.74, without limiting the ways in which an amended application may be *materially different* to the original application, an amended application is not *materially different* from the original application:

- (a) in terms of the capacity sought in the application, if the capacity sought in the amended application is  $\pm[x]^{647}$  % of the capacity sought in the original application; and

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<sup>645</sup> Heading to clause A2.68 amended by WAGG No 180, 22 October 2008

<sup>646</sup> Clause A2.68 amended by WAGG No 180, 22 October 2008

<sup>647</sup> To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*. The value inserted for variable  $[x]$  should allow for the normal fine-tuning of output or load

- (b) in terms of the *charges* payable under the application, if the *charges* payable under the amended application are  $\pm [x]^{648}$  % of the *charges* payable under the original application; and
- (c) to the extent that the amendment deals with the matters in clause A2.72; and
- (d)  $[x]^{649}$

### **Withdrawal of application**

A2.76 An *applicant* may at any time before it enters into an *access contract*, by notice in writing to the *service provider* withdraw an application.

### **Applications do not expire**

A2.77 Subject to clause A2.78, an application does not expire due to the passage of time.

A2.78 Where the *service provider* holds the opinion as a *reasonable and prudent person* that it is unlikely that an *access offer* will be made in respect of a *dormant application*, then the *service provider* must give the *applicant* a notice requiring the *applicant* to provide information to the *service provider* demonstrating why the *dormant application* should not be taken to have been withdrawn by the *applicant*.

A2.79 At least  $[x]^{650}$  *business days* after giving a notice under clause A2.78, the *service provider* must make a fresh determination, having regard to all *relevant material* including anything which has occurred, and any information provided, since the notice was given under clause A2.78 whether the *dormant application* should be taken to have been withdrawn by the *applicant*.

A2.80 If the *service provider* makes a determination under clause A2.79 that the *dormant application* should be taken to have been withdrawn by the *applicant* then the *dormant application* is deemed to have been withdrawn by the *applicant*.

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as a *project* is developed. It is not intended to accommodate a material reconfiguration of the project (e.g. adding or removing a processing unit), nor to facilitate 'gaming' of the *queue*.

<sup>648</sup> To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*. The value inserted for variable  $[x]$  should allow for the normal fine-tuning of output or load as a project is developed. It is not intended to accommodate a material reconfiguration of the *project* (e.g. adding or removing a processing unit), nor to facilitate 'gaming' of the *queue*.

<sup>649</sup> To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*, if applicable. If there are to be other criteria inserted in the *access arrangement*, to be taken into account when determining if an amended *application* is *materially different* from the original *application*, add "(d)".

<sup>650</sup> To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*, if applicable. Unless the *Authority* considers that the *Code objective* and the objectives in section 5.7 require otherwise, the value inserted for variable  $[x]$  should not be less than 20.



## **Subappendix 2.6 – Processing the application and making the *access offer***

### **Service provider must be expeditious and diligent**

A2.81 The *service provider* must process an application expeditiously and diligently.

### **Conditions precedent permitted in access contract**

A2.82 The *service provider* and an *applicant* must negotiate in good faith regarding any conditions precedent that the *applicant* or *service provider* seeks to have included in an *access contract* in order to achieve the objectives set out in clause A2.83.

A2.83 The objectives of this *applications and queuing policy* with regard to conditions precedent are:

- (a) conditions precedent in *access contracts* should facilitate the development of electricity consuming and generating projects and provide flexibility; and
- (b) conditions precedent should not unduly impede the ability of the *service provider* to provide a *covered services* to *applicants* with later *priority* or cause uncertainty and delay; and
- (c) conditions precedent should not constitute an inappropriate barrier to entry into a market or be for the purpose of hindering or preventing *access* by any person to *covered services*.

### **Conditions precedent and determination of spare capacity**

A2.84 In determining whether there is sufficient *spare capacity* to provide *covered services* requested in an application the *service provider*:

- (a) subject to clause A2.84(b), must regard any conditional *access contract* as being unconditional; and
- (b) must, for the purposes of determining *spare capacity* only, disregard its obligation to provide *covered services* under any conditional *access contract* that contains a condition precedent for which a period of longer than 18 months from the date the *access contract* was entered into is allowed for its fulfilment.

A2.85 To avoid doubt nothing in clause A2.84 prevents a *service provider* or an *applicant* from entering into an *access contract* that contains a condition precedent for which a period of longer than 18 months from the date the *access contract* was entered into is allowed for its fulfilment.

### **Security**

A2.86 If the *service provider* determines that an *applicant's* technical or financial resources are such that a *reasonable and prudent person* would consider there to be a material risk that the *applicant* will be unable to meet its obligations under any *access contract* which results from the *applicant's* application, then the *service provider* may, subject to clause A2.87, require as a term of the *access contract* either or both of the following:

- (a) a provision, at the *applicant's* election, requiring the *applicant* to
  - (i) pay the *charges* for up to 2 months' *services* in advance; or
  - (ii) provide a bank guarantee in terms acceptable to the *service provider* (acting as a *reasonable and prudent person*), guaranteeing the *charges* for 2 months' *services*; or
  - (iii) if applicable, procure from the *applicant's* parent company a guarantee substantially in the form set out in the *service provider's access arrangement* guaranteeing the *charges* under the *access contract*;and
- (b) if the *applicant* will be required to make a *contribution*, a provision, at the *applicant's* election, requiring the *applicant* to:
  - (i) provide a bank guarantee in terms acceptable to the *service provider* (acting as a
  - (ii) *reasonable and prudent person*), guaranteeing the *contribution*; or
  - (iii) if applicable, procure from the *applicant's* parent company a guarantee substantially in the form set out in the *service provider's access arrangement* guaranteeing the *contribution*.<sup>651</sup>

A2.87 If the *service provider* requires an *applicant* to provide security under clause A2.86, then:

- (a) the *applicant* may propose alternative arrangements (for example, more frequent payment) to manage the *service provider's* financial risk under the *access contract*, and
- (b) if so, the *service provider* and the *applicant* must negotiate as *reasonable and prudent persons*, with a view to agreeing on alternative arrangements which meet the following objectives:
  - (i) minimising the extent to which the *service provider's* requirement for security from the *applicant* constitutes a barrier to the *applicant's* entry to a market; and
  - (ii) not contravening section 115 of the Act, and not otherwise hindering the *applicant's* ability to compete in upstream or downstream markets,but also in the view of a *reasonable and prudent person*:
  - (iii) reasonably addressing the risk to the *service provider* that the *applicant* may be unable to meet the *applicant's* obligations under the *access contract*, and

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<sup>651</sup> Clause A2.86 amended by WAGG No 180, 22 October 2008

- (iv) being reasonably practicable for the *service provider* to administer.

A2.88 For the purposes of clauses A2.86 and A2.87, a reference:

- (a) to an *applicant* includes a *user* where the *user* has lodged a *capacity increase notice* or *customer transfer request*; and
- (b) to an application includes a *capacity increase notice* or *customer transfer request*.

### **Initial response**

A2.89 Subject to clause A2.91, the *service provider* must provide an *initial response* to the *applicant* specifying:

- (a) if the application is a *class 1 application* or *class 2 application*, advising the *service provider's* classification of the application; or
- (b) if the application is a *class 3 application* advising the *service provider's* classification of the application and specifying:
  - (i) the time by which the *service provider* will provide a *preliminary assessment* (if requested); and
  - (ii) the time by which the *service provider* expects to make an *access offer*; and
  - (iii) whether the application has caused the *service provider* to give a notice under clause A2.53 to any person.

A2.90 The *initial response* must be provided:

- (a) for a *class 1 application* — within  $[x]^{652}$  *business days* after the application is lodged; or
- (b) for a *class 2 application* — within  $[x]^{653}$  *business days* after the application is lodged; or
- (c) for a *class 3 application* — within  $[x]^{654}$  *business days* after the application is lodged.

A2.91 If, by the time by which the *service provider* is required to give an *applicant* an *initial response* under clause A2.90, the *service provider* has given the *applicant* an *access offer*, the *service provider* is not required to provide an *initial response* to the *applicant*.

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<sup>652</sup> To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*, if applicable. Unless the *Authority* considers that the *Code objective* and the objectives in section 5.7 require otherwise, the value inserted for variable  $[x]$  should not exceed 5.

<sup>653</sup> To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*, if applicable. Unless the *Authority* considers that the *Code objective* and the objectives in section 5.7 require otherwise, the value inserted for variable  $[x]$  should not exceed 5.

<sup>654</sup> To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*, if applicable. Unless the *Authority* considers that the *Code objective* and the objectives in section 5.7 require otherwise, the value inserted for variable  $[x]$  should not exceed 20.

A2.92 An *initial response* is not binding on a *service provider*, and the *service provider* is not liable for any error or omission, which is made as a *reasonable and prudent person*, in an *initial response*.

### **Preliminary assessment**

A2.93 If an application contains a request for a *preliminary assessment* of a *class 3 application*, the *service provider* must give the *applicant* a *preliminary assessment* setting out at least the following information:

- (a) whether it is likely that there is sufficient *spare capacity* to provide the requested *covered services* or whether any *required work* is likely to be required to provide those *covered services*, including whether it is likely that any new *connection assets* will be required to provide the *covered services* requested in the application; and
- (b) whether or not a *contribution* is likely to be required from the *user* under the *contributions policy* and an estimate of the amount of the *contribution* which will be sought; and
- (c) a good faith estimate of the likely time required for the undertaking of any *required work*; and
- (d) a description of what system or other studies are likely to be required in the *processing* of the application, information regarding whether the *service provider* is able to undertake the studies and an estimate of the approximate costs of such studies.<sup>655</sup>

A2.94 If, by the time by which the *service provider* is required to give an *applicant* a *preliminary assessment* under clause A2.93, the *service provider* has given the *applicant* an *access offer*, the *service provider* is not required to provide a *preliminary assessment* to the *applicant*.

A2.95 The *preliminary assessment* must be provided as soon as practicable after the application is lodged, having regard to the nature of the application.

### **Progress reporting**

A2.96 An *applicant* must upon request by the *service provider* (which request must not be made more frequently than once per month) provide a progress report to the *service provider* containing information in reasonable detail regarding its application, including whether there has been any material change in any information previously provided by the *applicant*.

A2.97 The *service provider* must upon request by the *applicant* (which request must not be made more frequently than once per month) provide a progress report to the *applicant* containing information in reasonable detail regarding the *processing* of the application, including:

- (a) whether there has been any material change in any estimates of costs or times previously provided by the *service provider*; and

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<sup>655</sup> Clause A2.93 amended by WAGG No 180, 22 October 2008

- (b) if the application requests a *preliminary assessment*, whether there has been any material change in any of the matters listed in clause A2.93.

A2.98 If an *applicant* has requested a *preliminary assessment* the *applicant* must not request a progress report until one month after the *applicant* has received the *preliminary assessment*.

### **Service provider must make access offer**

A2.99 The *service provider* must, acting as a *reasonable and prudent person*, give an *access offer* to the *applicant* as soon as practicable, and in any event must (subject to clause A2.100) do so within:

- (a) for a *class 1 application* — [*x*]<sup>656</sup> *business days* after the application is lodged; or
- (b) for a *class 2 application* — [*x*]<sup>657</sup> *business days* after the application is lodged; or
- (c) for a *class 3 application* — as soon as practicable after the application is lodged, having regard to the nature of the application.

### **Extension of time to perform obligations**

A2.100 If:

- (a) the *service provider* (acting as a *reasonable and prudent person*) has requested further information from the *applicant* under clause A2.28 which it reasonably requires to process the application; and
- (b) the request was made as soon as the *service provider* became aware that it required the information; and
- (c) the *service provider* has expeditiously and diligently progressed the *processing* of the application before making the request, after receiving the information, and (to the extent possible) between making the request and receiving the information,

then the time period for complying with any other obligation under this *applications and queuing policy* is extended by an amount of time equal to the time taken by the *applicant* to comply with the request.

A2.101 An *applicant* and the *service provider* may agree to deal with any matter in connection with the *applicant's* application in a manner different to the treatment of the matter in this *applications and queuing policy* as long as the ability of the *service provider* to provide a *covered service* that is sought by another *applicant* is not impeded.

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<sup>656</sup> To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*, if applicable. Unless the *Authority* considers that the *Code objective* and the objectives in section 5.7 require otherwise, the value inserted for variable [*x*] should not exceed 5.

<sup>657</sup> To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*, if applicable. Unless the *Authority* considers that the *Code objective* and the objectives in section 5.7 require otherwise, the value inserted for variable [*x*] should not exceed 10.

A2.102 Without limiting the generality of clause A2.101, an *applicant* and the *service provider* may agree to extend any one or more of any of the time periods set out in this *applications and queuing policy* on one or more occasions, and:

- (a) the time period is extended by the amount of time agreed; and
- (b) unless otherwise agreed, the time for complying with any other obligation is extended by the same amount of time.

**Terms of access offer – If application requests reference service**

A2.103 If an application requests a *reference service* on terms materially the same as those set out for the *reference service* in the *access arrangement*, then:

- (a) if the application is a *class 1 application* — the *access offer* must be on materially the same terms as those requested in the application except (subject to clause A2.104) for the terms relating to any security or other prudential requirements, which must be determined in accordance with clauses A2.86 and A2.87; and
- (b) if the application is a *class 2 application* — the *access offer* must be on materially the same terms as those requested in the application except (subject to clause A2.104) for the terms relating to any security or other prudential requirements, which must be determined in accordance with clauses A2.86 and A2.87; and
- (c) if the application is a *class 3 application* — the *access offer* must be on materially the same terms as those requested in the application except (subject to clause A2.104) for the terms relating to:
  - (i) any *contribution* (including the terms of any works contract or *payment contract*); and
  - (ii) any other provisions necessary to deal with any *required work*; and
  - (iii) the *services start date*, however the *access offer* must not specify an earlier *services start date* where doing so may impede the ability of the *service provider* to provide a *covered service* that is sought by another *applicant*; and
  - (iv) any security or other prudential requirements, which must be determined in accordance with clauses A2.86 and A2.86(b)(iii).<sup>658</sup>

A2.104 Any terms in an *access offer* under clause A2.103(c) or clause A2.103(b) dealing with a matter listed under that clause must be:

- (a) consistent with the *Code objective*; and
- (b) reasonable; and
- (c) subject to clauses A2.104(a) and A2.104(b), as similar as practicable to any terms requested in the application dealing with the matter.

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<sup>658</sup> Clause A2.103 amended by WAGG No 180, 22 October 2008

**Terms of access offer – If application requests non-reference service**

A2.105 If an application requests a non-*reference service* then the terms of the *access offer* must be:

- (a) consistent with the *Code objective*; and
- (b) reasonable; and
- (c) subject to clauses A2.105(a) and A2.105(b), as similar as practicable to any terms requested in the application dealing with the relevant matter.

**Arbitrator's powers preserved**

A2.106 Nothing in clauses A2.103 to A2.105 limits the *arbitrator's* power to make an award compelling the *service provider* to provide access to a *covered service* on terms specified in the award.

**Access offer is not a contract**

A2.107 Despite the giving of an *access offer* by the *service provider* to the *applicant*, the *service provider* and the *applicant* will not be taken to have entered into an *access contract* until the *applicant* has *signed* that document.

**Applicant's options on receipt of an access offer**

A2.108 The *applicant* must as soon as practicable, and in any event within 30 *business days*, after receipt of an *access offer*, either:

- (a) *sign* the *access offer*, thereby entering into an *access contract*; or
- (b) by notice to the *service provider* reject the *access offer* and request amendments to the application; or
- (c) by notice to the *service provider* withdraw the application,

and if 30 *business days* after receipt of the *access offer* the *applicant* has not complied with any of clauses A2.108(a), A2.108(b), or A2.108(c), then (unless the *arbitrator* makes an order extending the time limit on the ground that the delay is beyond the *applicant's* reasonable control) the *applicant* is to be taken to have withdrawn its application.

A2.109 If the *applicant* rejects an *access offer* and requests amendments to the application under clause A2.108(b), the *service provider* must:

- (a) deal with the amended application in accordance with clauses A2.73 to A2.75; and
- (b) make a further *access offer* to the *applicant* which incorporates the *applicant's* requested amendments as soon as practicable in accordance with this *applications and queuing policy*.

**If applicant accepts access offer**

A2.110 If the *applicant signs* the *access offer*, it must:

- (a) forthwith give written notice of the *signing* to the *service provider*;
- (b) as soon as practicable procure the stamping of the *signed access contract*,  
and
- (c) as soon as practicable thereafter give to the *service provider* at least one original copy of the *signed* and stamped *access contract*.

A2.111 Upon an *applicant signing* an *access offer*, the application in response to which the *access offer* was made ceases to exist.



## **Appendix 2A – Transitional Western Power Network Applications and Queuing Policy<sup>659</sup>**

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<sup>659</sup> Appendix 2A inserted by WAGG No 134, 30 July 2021

# Applications and Queuing Policy

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# Contents

<b>Part A – Common Provisions</b> .....	<b>1</b>
<b>1. Operation and Objectives</b> .....	<b>1</b>
1.1 Status of Figure 1 .....	1
1.2 Objectives.....	1
<b>2. Introduction</b> .....	<b>4</b>
2.1 Definitions .....	4
2.2 <i>Application of this Applications and Queuing Policy to Connection Applications and Electricity Transfer Applications</i> .....	14
2.3 Interpretation.....	14
2.4 <i>Prior Applications</i> .....	14
2.5 Supplementary Matters Apply .....	15
2.6 Exercising an Option Not Affected.....	15
2.7 Nature of Capacity Available for transferring electricity into the <i>Network</i> .....	15
<b>3. The Application</b> .....	<b>15</b>
3.1 <i>Applications to be Made in Good Faith</i> .....	15
3.2 Commencing the <i>Application</i> Process .....	15
3.3 <i>Applicant to be Market Participant</i> .....	16
3.4 Related Electricity Transfer <i>Application</i> and <i>Connection Application</i> .....	16
3.5 Information Required With All <i>Applications</i> .....	16
3.6 Information Required with Electricity Transfer <i>Applications</i> .....	17
3.7 Information Required with <i>Connection Applications</i> .....	17
3.8 One Electricity Transfer <i>Access Contract</i> per <i>Connection Point</i> .....	18
3.9 Forecasts of Information.....	18
3.10 Errors or Omissions in an <i>Application</i> .....	18
3.11 Additional Information.....	19
3.12 Western Power must be Expeditious and Diligent .....	19
3.13 Amendment and Withdrawal of <i>Application</i> .....	19
3.14 <i>Applications</i> Do Not Expire .....	19
3.15 <i>Network</i> Planning.....	19
<b>4. The Access Offer</b> .....	<b>20</b>
4.1 <i>Access Offer</i> to be Signed by Western Power .....	20
4.2 If <i>Application</i> Requests <i>Reference Services</i> .....	20
4.3 If <i>Application</i> Requests Non-Reference Service .....	20

4.4	<i>Services Start Date and Services End Date</i> .....	20
4.5	Conditions Precedent Permitted in <i>Access Contract</i> .....	20
4.6	Objectives with Regard to Conditions Precedent .....	21
4.7	Conditions Precedent and Determination of <i>Spare Capacity</i> .....	21
4.8	Conditions Precedent Not Longer Than 8 Months .....	21
4.9	Security .....	22
4.10	Arbitrator’s Powers Preserved .....	22
<b>5.</b>	<b>Entering Into or Modifying an <i>Access Contract</i></b> .....	<b>22</b>
5.1	When <i>Access Offer</i> Becomes <i>Access Contract</i> .....	22
5.2	<i>Applicant’s</i> Options on Receipt of an <i>Access Offer</i> .....	22
5.3	If <i>Applicant</i> Rejects <i>Access Offer</i> and Requests Amendments .....	23
5.4	If <i>Applicant</i> Accepts <i>Access Offer</i> .....	23
5.5	<i>Connection Application</i> Ceases to Exist After Signing.....	23
<b>6.</b>	<b>Confidentiality</b> .....	<b>23</b>
6.1	<i>Confidential Information</i> .....	23
6.2	<i>Confidential Information</i> Must Not be Disclosed .....	23
6.3	<i>Disclosure to AEMO</i> .....	24
<b>Part B –</b>	<b><i>Electricity Transfer Applications</i></b> .....	<b>24</b>
<b>7.</b>	<b>Costs and Timing of Processing <i>Electricity Transfer Applications</i></b> .....	<b>24</b>
7.1	Where <i>Applicant</i> Seeks a <i>Reference Service</i> .....	24
7.2	Where <i>Applicant</i> Seeks a <i>Non-Reference Service</i> .....	25
7.3	<i>Connection Application</i> Costs Not Affected .....	26
7.4	Unused .....	26
<b>8.</b>	<b>Eligibility Criteria for <i>Reference Services</i></b> .....	<b>26</b>
<b>9.</b>	<b><i>Electricity Transfer Application for a New Connection Point</i></b> .....	<b>26</b>
9.1	<i>Customer Transfer Request</i> .....	26
9.2	Creating a New <i>Connection Point</i> or Connecting New <i>Generating Plant</i> .....	26
<b>10.</b>	<b><i>Electricity Transfer Application to Modify an Existing Covered Service</i></b> .....	<b>27</b>
10.1	Selection of Different <i>Covered Service</i> or Selection or Modification of an Existing <i>Non-Reference Service</i> .....	27
10.2	Increase or Decrease in <i>Contracted Capacity</i> .....	28
10.3	More than 1 Change or Modification Within 12 Months .....	29
10.4	Modification of <i>Generating Plant</i> .....	29
10.5	Capacity Allocation services.....	30
<b>11.</b>	<b>De-energisation and Re-energisation</b> .....	<b>30</b>
11.1	De-energisation.....	30

11.2	Re-energisation .....	30
<b>12.</b>	<b><i>Electricity Transfer Application to Obtain a New Access Contract</i></b> .....	<b>31</b>
<b>13.</b>	<b>Contestability Assessment</b> .....	<b>31</b>
13.1	Western Power Must Perform Contestability Assessment .....	31
13.2	Unused .....	31
13.3	Rejection of <i>Application</i> .....	31
<b>14.</b>	<b><i>Connection Point Configuration</i></b> .....	<b>32</b>
14.1	Rules for Mapping <i>Network Assets</i> to a Single <i>Connection Point</i> .....	32
14.2	One <i>NMI</i> per <i>Connection Point</i> .....	32
14.3	Combining Multiple <i>Connection Points</i> into a Single <i>Connection Point</i> .....	32
14.4	Separating a Single <i>Connection Point</i> to Create Multiple <i>Connection Points</i> .....	33
<b>15.</b>	<b>Time to Perform Obligations</b> .....	<b>33</b>
15.1	Extension of Time to Perform Obligations.....	33
15.2	Concurrent <i>Applications</i> .....	34
<b>Part C –</b>	<b><i>Connection Applications</i></b> .....	<b>35</b>
<b>16.</b>	<b><i>Specific Connections Applications</i></b> .....	<b>35</b>
16.1	<i>Connection Application</i> for a New <i>Connection Point</i> .....	35
16.2	<i>Connection Application</i> for an Increase or Decrease of <i>Contracted Capacity</i> .....	35
16.3	<i>Connection Application</i> to Modify <i>Generating Plant</i> .....	35
16.4	<i>Connection Application</i> to Modify or <i>Augment</i> the Network.....	35
16.5	Opt-out of <i>Competing Applications Group</i> Process .....	36
16.6	Publication .....	36
<b>17.</b>	<b>Lead Time for <i>Connection Applications</i></b> .....	<b>36</b>
<b>17A.</b>	<b>Pre-enquiry Discussions</b> .....	<b>36</b>
17A.1	<i>Applicant</i> May Contact Western Power.....	36
17A.2	Informal Discussions Not Binding .....	37
17A.3	Provision of Information on Request .....	37
17A.4	Provision of <i>Confidential Information</i> .....	37
<b>18.</b>	<b><i>Enquiry State</i></b> .....	<b>37</b>
18.1	Compulsory <i>Enquiry</i> Notification .....	37
18.2	<i>Applicant</i> May Request Studies and Information .....	38
18.2A	Western Power to Issue an <i>Enquiry</i> Response Letter at Conclusion of <i>Enquiry</i> Stage .....	38
18.3	<i>Enquiry</i> Response Letter and Discussions Not Binding .....	38
18.4	Fees Payable.....	38
<b>19.</b>	<b>Reporting During the Processing of the <i>Connection Application</i></b> .....	<b>39</b>
19.1	<i>Initial Response</i> .....	39

19.2	<i>Initial Response is Not Binding</i> .....	39
19.3	Preliminary Assessment.....	39
19.4	Updates and Progress Reporting .....	40
<b>20.</b>	<b><i>Connection Application Costs</i></b> .....	<b>40</b>
20.1	<i>Applicant Must Pay Costs</i> .....	40
20.2	Processing Proposal .....	41
20.3	<i>Applicant-specific Solution Option</i> .....	42
20.3A	<i>Interaction Between Applicant-Specific Solutions and Competing Applications Groups</i> .....	42
20.4	Disputes May be Referred to Arbitrator .....	43
20.5	Use of Engineering Firms to Provide Studies .....	43
20A.	Unpaid Fees or <i>Charges</i> .....	43
<b>21.</b>	<b><i>Contributions Policy Applies</i></b> .....	<b>43</b>
<b>22.</b>	<b><i>Dormant applications</i></b> .....	<b>44</b>
<b>23.</b>	<b><i>Release of Contracted Capacity</i></b> .....	<b>44</b>
<b>24.</b>	<b><i>Where There Are Competing Applications</i></b> .....	<b>44</b>
24.1	<i>Formation of Competing Applications Groups</i> .....	44
24.2	<i>Notice of Intention to Prepare a Preliminary Access Offer</i> .....	45
24.3	<i>Response to Notice of Intention to Prepare a Preliminary Access Offer</i> .....	45
24.4	<i>Western Power’s Actions Following Response to the Notice of Intention to Prepare a Preliminary Access Offer</i> .....	46
24.5	<i>Response to Preliminary Access Offer</i> .....	46
24.6	<i>Subsequent Access Offers</i> .....	47
24.6A	<i>Minimum and Maximum Levels of Acceptance</i> .....	48
24.6B	<i>Failure to Achieve Minimum Levels</i> .....	48
24.6C	<i>Exceeding Maximum Levels</i> .....	48
24.7	<i>Changing Composition of Competing Applications Group</i> .....	49
24.7A	<i>Termination of a Competing Applications Group</i> .....	49
24.8	<i>Spare Capacity</i> .....	50
24.9	<i>Types of Information</i> .....	50
24.10	<i>When Western Power Must Update Information</i> .....	50
24.11	<i>Concurrent Consideration</i> .....	51
24.12	<i>When Clause 24 Does Not Apply</i> .....	51
24A.	<i>Priority Dates of Applications in Particular Circumstances</i> .....	51
24A.1	<i>Withdrawn Connection Applications</i> .....	51
24A.2	<i>Amended Connection Applications</i> .....	51
24A.3	<i>Network Control Services</i> .....	52

24A.4 Supplier of Last Resort and Default Supplier Arrangements .....	52
<b>25. Additional Terms of the Preliminary <i>Access Offer</i> or <i>Access Offer</i>.....</b>	<b>52</b>
25.1 Terms Under <i>Contributions Policy</i> .....	52
25.2 Exemptions from <i>Technical Rules</i> .....	52
<b>26. Making the <i>Access Offer</i> .....</b>	<b>52</b>
<b>Part D – Transfer and Relocation Policy.....</b>	<b>54</b>
<b>27. Novation of entire contract.....</b>	<b>54</b>
<b>28. Novation of part of contract .....</b>	<b>54</b>
<b>SCHEDULE 1           FORM OF GUARANTEE .....</b>	<b>55</b>



## Part A – Common Provisions

### 1. Operation and Objectives

#### 1.1 Status of Figure 1

Figure 1 contains additional explanatory material regarding information provided to *applicants* and the processes contemplated by this applications and queuing policy. To avoid doubt, Figure 1 is included for explanatory purposes and does not form part of the operative provisions of this applications and queuing policy.

#### 1.2 Objectives

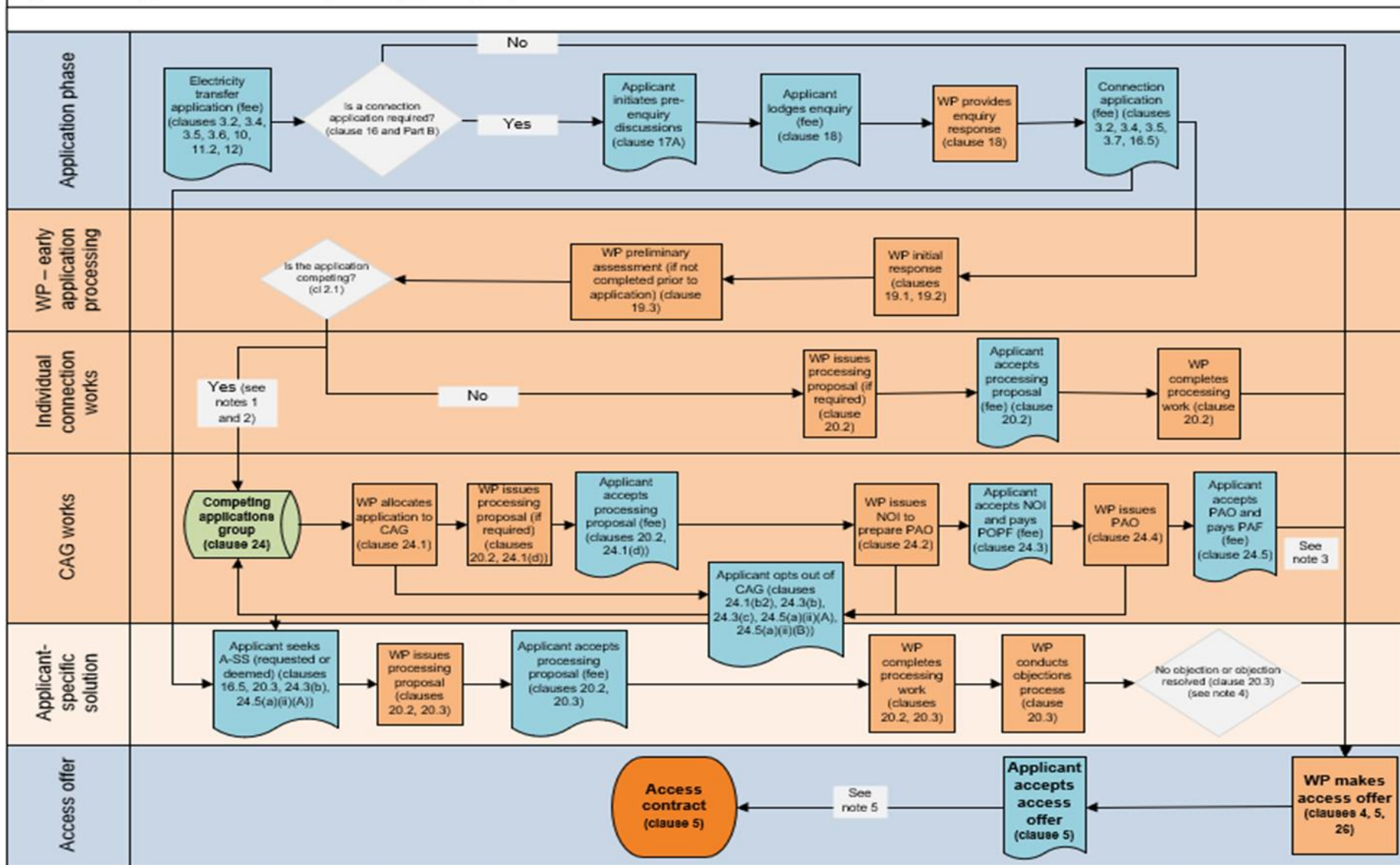
The objectives of this applications and queuing policy are:

- (a) To provide an equitable, transparent and efficient process for assessing the suitability of plant and equipment to connect to Western Power's *network* and to make *access offers* based on that assessment; and
- (b) To undertake assessments and to provide shared *network access offers* that facilitate access by *generators* and loads to the WA Electricity Market (**WEM**) on an economically efficient and non-discriminatory basis that is consistent with WEM requirements, and uses a process that is equitable, transparent and efficient; and
- (c) Where feasible and cost-effective, to facilitate joint solutions for *connection applications*.

Western Power may from time to time determine that it can provide *shared asset works* that can provide access to multiple *applicants*.

Figure 1

Figure 1: Applications and queuing policy – process overview



{Notes regarding Figure 1:

1. Western Power may allocate *spare capacity to applicants* in order of *priority date*, regardless of whether they are members of a *competing applications group* (see clause 24.8(b)).
2. Where an *applicant* is a member of one or more *competing applications groups*, the processing of its *application* in respect of that group(s) must progress in parallel with the processing of its *application* in respect of its individual *connection works*. Where an *applicant* receives a *preliminary access offer* or *access offer*, they will each relate to both the *competing applications group works*, and any other *works* required to connect that *applicant* to the *network*, including that *applicant's* individual *connection works*.
3. If the *preliminary acceptances* received by Western Power for the proposed *competing applications group works* cannot all be fulfilled having regard to the circumstances which lead to applications being classified as *competing*, Western Power will make *access offers* in order of *priority date*, and those who do not receive *access offers* will retain their *priority date* and be refunded the *competing applications group fees* (clause 24.6(c)). If the *preliminary acceptances* received by Western Power are insufficient to progress the proposed *works*, Western Power will revise and reissue the *preliminary access offers* to *applicants* (clause 24.6(b)).
4. If Western Power accepts the objection and cannot otherwise modify the *applicant-specific solution* to resolve it, Western Power cannot make an *access offer* in respect of that solution (clause 20.3(d)).
5. If the acceptances received by Western Power exceed the maximum levels set by Western Power, those acceptances which fall within those maximum levels will be effective and those which exceed those levels will be ineffective. *Applicants* whose acceptances are ineffective will be reallocated to a new *competing applications group*, unless they are eligible to receive and willing to accept an *access offer* that partially meets their requirements (clause 24.6C). If the acceptances received by Western Power are below the minimum levels set by Western Power, Western Power will revise and reissue the *access offers* to *applicants* (clause 24.6B).
6. Figure 1 is not intended to be an exhaustive depiction of all processes and outcomes under this applications and queuing policy nor list all clauses to each step of the process. Figure 1 depicts the successful pathways to obtaining an *access offer* only.
7. Figure 1 is limited to the processes that arise under this applications and queuing policy and does not capture processes that otherwise apply pursuant to the *access arrangement*.
8. Figure 1 should be read in conjunction with the operative provisions of this applications and queuing policy.
9. To avoid doubt, where *electricity transfer applications* and *connection applications* are required, the *electricity transfer application* may be made at the same time as the *connection application* or subsequently.}

## 2. Introduction

### 2.1 Definitions

In this applications and queuing policy, unless the contrary intention is apparent:

**“2020 (No. 2) amendments”** has the meaning given to it in the *Code*.

{Note: Under the *Code* “2020 (No. 2) amendments” means “the amendments made to this Code made by the *Electricity Networks Access Code Amendments (No. 2) 2020*”.

**“access arrangement”** means the current *access arrangement* approved in respect of the *network* under the *Code*.

**“access contract”** means an agreement between Western Power and another person for that person to have access to *covered services*.

{Note: Under the *Code* “access contract” has the same meaning as ‘access agreement’ does in Part 8 of the Act, and under section 13.4(d) includes a *deemed access contract*. The definition of “access agreement” under the *Act* is “an agreement under the Code between a network service provider and another person (a “network user”) for that person to have access to services”.

**“access contract number”** means the unique identifier given to each *access contract* by Western Power.

**“access dispute”** has the meaning given to it in the *Code*.

{Note: under the *Code* “access dispute” means “a dispute, in connection with an *access application*, between the *applicant* and the service provider, including a dispute in relation to any one or more of the following (and the paragraphs of this definition do not limit each other):

- (a) whether the *applicant* or the service provider has complied with, or the manner in which the *applicant* or the service provider has purported to comply with, the applications and queuing policy; and
- (b) the terms and conditions, including service standards, on which the *applicant* should be permitted to acquire *covered services* from the service provider; and
- (c) whether work is required work and the terms and conditions applying, or proposed to apply, to any such work; and
- (ca) anything connected with or arising out of a proposed *contribution*; and
- (cb) a matter heard under section 15.7; and
- (cc) anything connected with or arising out of Appendix 8; and
- (cd) [not used]; and
- (d) whether the service provider should grant the *applicant* an exemption to the *technical rules* under section 12.34; and
- (e) the arrangements which will apply in respect of a supplementary matter connected with the *access application*”.

**“access offer”** means a form of contract developed under this applications and queuing policy which has been *signed* by Western Power and is in such a form that it can, without anything else being required, become an *access contract* when *signed* by an *applicant*.

**“Act”** means the *Electricity Industry Act 2004*.

**“accumulation meter”** has the meaning given to it in the *Metering Code*.

{Note: Under the *Metering Code*, “accumulation meter” means “a *meter* that measures accumulated energy data and records it in one or more accumulated energy registers, and includes a *meter* with interval energy data storage capability which is deemed to be an accumulation *meter* under clause 3.2(2)”.

**“applicant”** means a person (who may be a *user* or a *customer*) who has lodged, or intends to lodge, an *application*.

**“applicant-specific solution”** means a method of satisfying a *connection application* by either:

- (a) *works* funded solely by the *applicant* whether by direct funding or through payment of tariffs and/or *contributions* by that *applicant* and not involving another *applicant*; or
- (b) an *operational solution* involving only that *applicant*; or
- (c) a combination of *works* funded solely by the *applicant* and an *operational solution* involving only that *applicant*.

**“application”** means an *electricity transfer application* or a *connection application*.

**“application form”** with regards to an *application*, means the applicable *application* form (as is specified as being applicable to the *applicant’s application* in this applications and queuing policy or on Western Power’s website) provided by Western Power on its website, or otherwise published by Western Power, for that type of *application*.

**“attachment point”** means a point on the *network* at which *network assets* are *connected* to assets owned by another person.

**“augment”** and **“augmentation”** have the meaning given to ‘work’ in the *Code*.

{Note: Under the *Code* “work” means “any activity or undertaking in connection with the covered *network*, whether of a capital or non-capital nature, including the planning, designing, development, approval, construction, acquisition and commissioning of new facilities and new *network assets* and the procurement or provision of any good or service”.}

**“bidirectional point”** means a single, indivisible (except as allowed under this applications and queuing policy) point, that for purposes under the *access arrangement* involving the transfer of electricity, is deemed to consist of a single *attachment point*, *connected* or to be *connected* to a *user’s connection point*, with a single *meter* (regardless of the actual configuration of *network assets* making up the *bidirectional point*), at which electricity is to be transferred into and out of the *network*.

**“bidirectional service”** means a *covered service* provided by Western Power at a *connection point* under which the *user* may transfer electricity into and out of the *network* at the *connection point*.

**“capacity”**, with regards to a part of the *network* (including a *connection point*), refers to the maximum rate at which electricity can be transported through that part of the *network* in accordance with *good electricity industry practice*.

**“capacity allocation same connection point decrease service”** means a *covered service* to decrease *contracted capacity* at a *connection point* under one *access contract* related to a corresponding increase to the *contracted capacity* at the same *connection point* under another *access contract* for a clearly specified period of time following which the decreased *contracted capacity* is reinstated.

**“capacity allocation same connection point increase service”** means a *covered service* to increase *contracted capacity* at a *connection point* under one *access contract* related to a corresponding decrease to the *contracted capacity* at the same *connection point* under another *access contract* for a clearly specified period of time following which the increased *contracted capacity* is reinstated.

**“capacity allocation service”** means one or more of:

- (a) *capacity allocation same connection point decrease service*; and
- (b) *capacity allocation same connection point increase service*; and
- (c) *capacity allocation swap decrease service*; and
- (d) *capacity allocation swap increase service*.

**“capacity allocation swap decrease service”** means a *covered service* to decrease *contracted capacity* for an *exit service* or *exit service component* at one or more *connection points* related to a corresponding increase to the *contracted capacity* for an *exit service* or *exit service component* at another one or more *connection points* (whether under the same *access contract* or not) for a specified period of time following which the decreased *contracted capacity* is reinstated.

**“capacity allocation swap increase service”** means a *covered service* to increase *contracted capacity* for an *exit service* or *exit service component* at one or more *connection points* related to a corresponding decrease to the *contracted capacity* for an *exit service* or *exit service component* at another one or more *connection points* (whether under the same *access contract* or not) for a specified period of time following which the decreased *contracted capacity* is reinstated.

**“charge”**, for a *covered service* relating to the transfer of electricity, means the amount that is payable by a *user* to Western Power for the *covered service* under an *access contract*.

**“Code”** means the *Electricity Networks Access Code 2004* (as amended).

**“competing”**, in relation to two or more *connection applications*, means that the provision of the *covered service* sought in one *connection application* may impede Western Power’s ability to provide the *covered services* that are sought in the other *connection applications*.

**“competing applications group”** means a number of *applications* that are *competing* for access to the *network* and that have been grouped together by Western Power in accordance with clause 24.

**“complete”**, in relation to an *application* or *notice*, means where the *applicant* or *controller* (as applicable) has:

- (a) used reasonable endeavours to accurately and completely address each item in the applicable *application form* (including by the provision of any supporting information required by the *application form*); and
- (b) with respect to an *electricity transfer application*, provided all of the information required under clauses 3.5 and 3.6 for the *application*; and
- (c) with respect to a *connection application*, provided all of the information required under clauses 3.5 and 3.7 for the *application*,

to Western Power’s satisfaction, acting as a reasonable and prudent person.

**“completion date”** means, in relation to *works*, the date when the *works* are *complete* except for minor omissions and minor defects which will not prevent the use of the *works*.

**“confidential information”** means:

- (a) in the case of information disclosed by an *applicant* or a *disclosing person* to Western Power in or in connection with an *application*, information which the *disclosing person* (acting as a reasonable and prudent person) has identified as being commercially sensitive or confidential; and
- (b) in the case of information disclosed by Western Power to an *applicant* or a *disclosing person* in connection with an *application*, information which Western Power (acting as a reasonable and prudent person) has identified as being commercially sensitive or confidential, and

does not include the information referred to in clause 6.1.

**“connection application”** means an *application* in relation to a *covered service* lodged with Western Power under this applications and queuing policy that has the potential to require a modification to the *network*, including an *application* to:

- (a) connect facilities and equipment at a new *connection point*; or
- (b) increase *consumption* or generation at an existing *connection point*; or
- (c) materially modify *facilities and equipment* connected at an existing *connection point* in a way that means that they no longer meet the eligibility criteria for the *covered service* at the relevant *connection point* or if the modification is likely to adversely impact the security, safety or reliability of the *network*; or
- (d) *augment* the *network* for any other reason,

and includes any additional information provided by the *applicant* in regard to the *application*.

**“connection asset”** has the meaning given to it in the *Code*.

{Note: Under the *Code* "connection assets" for a *connection point* means "all of the *network assets* that are used only in order to provide *covered services* at the *connection point*".}

**“connection point”** means:

- (a) an *exit point*; or
- (b) an *entry point*; or
- (c) a *bidirectional point*;

identified or to be identified as such in an *access contract*.

**“consume”** has the meaning given to it in the *Code*.

{Note: Under the *Code*, "consume" means "to consume electricity".}

**“consumption”**, for a *connection point*, means the amount of electricity *consumed* at the *connection point*, and is measured in Watt-hours.

**“constraint”** means a limitation on the capability of the *network* (including arising by reference to the technical limitations and configuration of the *network*) such that it is unsafe, inconsistent with the maintenance of the reliability and security of the *network* or otherwise unacceptable to transfer (including accept the transfer of electricity into or out of the *network* at a *connection point*) the level of electricity that would occur if the limitation was removed. Constraints affecting the *network* may increase over time due to changes in load or generation connected to the *network*.

**“contestable customer”** means a *customer* to whom the supply of electricity is not restricted under section 54 of the *Electricity Corporations Act 2005* or under another enactment dealing with the progressive introduction of *customer* contestability.

{Note: At the time this applications and queuing policy comes into effect, the relevant instrument under section 54 of the *Electricity Corporations Act 2005* was the *Electricity Corporations (Prescribed Customers) Order 2007*, gazetted 29 June 2007.}

**“contract for services”** has the meaning given to it in the *Code*.

{Note: Under the *Code* "contract for services" means "an agreement between a service provider and another person for the person to have access to services, and includes an *access contract*".}

**“contracted capacity”**, for a *connection point*, means the maximum rate at which a *user* is permitted to transfer electricity to or from the *network* at the *connection point*, being either:

- (a) the rate specified in the *user's access contract* from time to time; or
- (b) if no rate is specified in the *user's access contract*, the maximum rate of electricity permitted to be transferred under the *reference service* eligibility criteria for the *reference service* for that *connection point* in the *user's electricity transfer access contract*; or
- (c) if no rate is specified in the *user's access contract* or in the *reference service* eligibility criteria, the maximum rate of electricity permitted to be transferred through the *connection assets* under the *technical rules*,

as applicable, and is measured in Watts or Volt-Amps.

**“contribution”** means any *contribution* applicable under the *contributions policy*.

**“contributions policy”** means the *contributions policy* in the *access arrangement*.

**“controller”** means a person, which includes a *customer*, who owns, operates or controls (or will own, operate or control) *facilities and equipment* at a *connection point*, and who is specified by an *applicant* in an *application* in respect of the *connection point*.

**“covered service”** has the same meaning given to it in the *Code*.

{Note: Under the *Code* "covered service" means "a *service* provided by means of a *covered network*, including:

- (a) a *connection service*; or
- (b) an *entry service*, *exit service* or *bidirectional service*; or
- (c) a network use of system service; or
- (d) a *common service*; or
- (e) a *service* ancillary to a service listed in paragraph (a) to (d) above,

but does not include an *excluded service*".}

**“customer”** has the meaning given to it in the *Act*.

**“Customer Transfer Code”** means the *Electricity Industry Customer Transfer Code 2016*, made under section 39(2)(a) of the *Act* in respect of the matter referred to in section 39(2)(b) of the *Act*, and includes all rules, policies or other subordinate documents developed under the *Customer Transfer Code*.

**“customer transfer request”** has the meaning given to it in the *Customer Transfer Code*.

{Note: Under the *Customer Transfer Code*, “customer transfer request” means “a request by a *retailer* to a *network* operator made using the form published under clause 4.1 to transfer a *contestable customer* at a *connection point* in the *network* operator’s *network* from one *retailer* to another” .}

**“de-energise”** in respect of a *connection point*, means to operate, modify or remove switching or other equipment to prevent the transfer of electricity through the *connection point*.

**“disclosing person”**, in relation to an *application*, means a person who discloses *confidential information* to Western Power in, or in connection with, an *application*.

**“distributed energy or other non-network solution”** means the *generation* and export of electricity or provision of other services by a *user* at a *connection point* on the *distribution network* where that electricity or other service provides a *network* benefit.

**“dormant application”** means a *connection application* in respect of which:

- (a) no work has been undertaken by Western Power; or



- (b) no work has been agreed by Western Power and the *applicant* to be undertaken by Western Power,

to progress the *application*, including a system or other study, the preparation of a detailed cost estimate or other work, under clauses 20.2, 20.3 or 24, for a period of 12 continuous months calculated retrospectively from the date that the assessment as to dormancy is made, with the exception that an *application* is not a *dormant application* where:

- (c) the *application's* lack of progress is due to Western Power not progressing the *application*; or
- (d) the *application* has a *priority date* that is less than 3 years before the date that the assessment as to dormancy is made.

**“electricity transfer application”** means an *application* in relation to a *covered service* lodged with Western Power under this applications and queuing policy seeking to obtain or modify an *entry service* or an *exit service* or a *bidirectional service* or a *supply abolishment service* or a *capacity allocation service* and includes any additional information provided by the *applicant* in regard to the *application*.

**“electricity transfer access contract”** means a type of *access contract* that provides the *user* with an *entry service* or *exit service* or *bidirectional service*, or any combination of the three, at a *connection point* or *connection points*.

**“enquiry”** means an *enquiry* by an *applicant* under clause 18.

**“entry point”** means a single, indivisible (except as allowed under this applications and queuing policy) point, that for purposes under the *access arrangement* involving the transfer of electricity, is deemed to consist of a single *attachment point*, *connected* or to be *connected* to a *user's connection point*, with a single *meter* (regardless of the actual configuration of *network assets* making up the *entry point*), at which electricity is more likely to be transferred into the *network* than out of the *network*.

**“entry service”** means a *covered service* provided by Western Power at a *connection point* under which the *user* may transfer electricity into the *network* at the *connection point*.

**“entry service component”** means the component of a *bidirectional service* relating to the transfer of electricity by the *user* into the *network* at the *connection point*.

**“exit point”** means a single, indivisible (except as allowed under this applications and queuing policy) point, that for purposes under the *access arrangement* involving the transfer of electricity, is deemed to consist of a single *attachment point*, *connected* or to be *connected* to a *user's connection point*, with a single *meter* (regardless of the actual configuration of *network assets* making up the *exit point*), at which electricity is more likely to be transferred out of the *network* than into the *network*.

**“exit service”** means a *covered service* provided by Western Power at a *connection point* under which the *user* may transfer electricity out of the *network* at the *connection point*.

**“exit service component”** means the component of a *bidirectional service* relating to the transfer of electricity by the *user* out of the *network* at the *connection point*.

**“final notice”** has the meaning given in clause 20A.

**“generate”** has the meaning given to it in the *Code*.

{Note: Under the *Code*, “generate” means “to produce electricity”.

**“generating plant”** has the meaning given to it in the *Code*.

{Note: Under the *Code*, “generating plant” means in relation to a *connection point* “all equipment involved in generating electricity”.

“**generation**”, for a *connection point*, means the amount of electricity *generated* at the *connection point*, and is measured in kilowatts.

“**generation application**” means a *connection application* which relates to *generating plant* to be established or modified or an increase in *contracted capacity* for *entry services* or *entry service components* servicing a *generating plant* but excluding any *generating plant* which is not expected to be registered under the *WEM Rules* as a registered facility (as defined in the *WEM Rules*) participating in security constrained economic dispatch.

“**generator**” has the meaning given to it in the *Code*.

{Note: Under the *Code* “generator” means a person who *generates* electricity”.

“**Ideal Generator Performance Standard**” has the meaning given to it in the *WEM Rules*.

“**incoming retailer**” has the meaning given to it in the *Customer Transfer Code*.

{Note: Under the *Customer Transfer Code*, “incoming retailer”, in relation to a *customer transfer request* or *transfer*, means “the *retailer* that will supply a *contestable customer* after the *transfer time*”.

“**initial response**” means the *initial response* of Western Power to an *applicant* under clause 19.1 in relation to a *connection application*.

“**interval meter**” has the meaning given to it in the *Metering Code*.

{Note: Under the *Metering Code*, “interval meter” means “a *meter* that measures *interval energy data* and records it in a *data logger*, and excludes a *meter* with *interval energy data* storage capability which is deemed to be an *accumulation meter* under clause 3.2(2)”.

“**law**” means “written law” and “statutory instruments” as defined in the *Code*, orders given or made under a written law or statutory instrument as so defined or by a government agency or authority, *Codes of Practice* and Australian Standards deemed applicable under a written law and rules of the general law including the common law and equity.

“**LED replacement service**” means to replace an existing streetlight luminaire with an LED luminaire.

“**lodgement fee**” means the fee specified for an *enquiry* or an *application* in the *price list*.

“**loss factor**” has the meaning given to it in the *WEM Rules*.

{Note: Under the *WEM Rules*, “loss factor” means “(a) a factor representing *network losses* between any given node and the Reference Node where the Loss Factor at the Reference Node is 1, expressed as a product of a Transmission Loss Factor and a Distribution Loss Factor and determined in accordance with clause 2.27.5 [of the *WEM Rules*]; and (b) in relation to the Balancing Portfolio, the Portfolio Loss Factor”.

“**market operator**” means the entity conferred the functions in respect of the ‘Wholesale Electricity Market’ under the *WEM Rules* which, as at the date this version of the applications and queuing policy comes into effect, is the Australian Energy Market Operator Limited.

“**market participant**” means a person who, at a time after “energy market commencement” (as defined in the *WEM Rules*) is a “market participant” (as defined in the *WEM Rules*).

“**meter**” has the meaning given to it in the *Metering Code*.

{Note: Under the *Metering Code*, “meter” means “a device which measures and records electricity production or *consumption*” .}

“**Metering Code**” means the code made under section 39(1) of the *Act* in respect of a matter referred to in section 39(2)(a) of the *Act*, and includes any service level agreement, metering data agency agreement, communications rules, metrology procedure, mandatory link criteria and registration process developed under that code.

“**metering database**” means the “metering database” (as defined in the *Metering Code*) operated by Western Power under the *Metering Code*.

“**metering equipment**” means a *meter* or *meters* and associated equipment complying with the *Metering Code* used to measure and record electricity transferred to or from the *network* at a *connection point*, which may include the measurement of the rate of transfer and the quantity and quality of the transferred electricity.

“**metering installation**” has the meaning given to it in the *Metering Code*.

{Note: Under the *Metering Code*, “metering installation” means “the *devices* and methods for the purpose of metrology which lie between: (a) at one boundary, a *metering point*; and (b) at the other boundary, either: (i) if a telecommunications *network* is used for the delivery of *energy data* from the *metering point* – the point of connection to the telecommunications *network*; or (ii) if there is no such telecommunications *network* – the interface port of either the *meter* or *data logger* or both.”}

“**Negotiated Generator Performance Standard**” has the meaning given to it in the *WEM Rules*.

“**network**” has the meaning given to “Western Power Network” in the *Code*.

{Note: Under the *Code*, “Western Power Network” means “the *covered network* that is *covered* under section 3.1”. The “Western Power Network” is the portion of the SWIN that is owned by the Electricity Networks Corporation.}

“**network assets**” has the meaning given to it in the *Code*.

{Note: Under the *Code*, “network assets”, in relation to a *network* means “the apparatus, equipment, plant and buildings used to provide or in connection with providing *covered services* on the *network*, which assets are either *connection assets* or *shared assets*” .}

“**Network Control Services**” has the meaning given to Network Control Service in the *WEM Rules*.

“**NMI**” means National Market Identifier, which is the unique identifier assigned by Western Power to each *connection point*.

“**operational solution**” means a method of satisfying a *connection application* that does not rely primarily on construction of new *network assets* or *augmentation* of existing *network assets*.

{Note: Examples of *operational solutions* could include *generator* runback schemes, load inter-trips, and off grid voltage support.}

“**preliminary acceptance**” has the meaning given to it in clause 24.5(b).

“**preliminary access offer**” mean an indicative and non-binding *access offer* that is made to an *applicant* within a *competing applications group* in accordance with clause 24.

“**premise**” has the meaning given to it in the *Energy Operators (Powers) Act 1979*.

“**previous retailer**” has the meaning given to it in the *Customer Transfer Code*.

{Note: Under the *Customer Transfer Code* “previous retailer”, in relation to a transfer, “means the *retailer* that supplied the *contestable customer* before the transfer time” .}

“**price list**” means the then current approved price list (as defined in the *Code*) applying under the *Code*.

{Note: under the *Code*, “approved price list” means “a *price list* approved by the *Authority*”}

{Note: Some costs and fees that may be levied under this applications and queuing policy may not be specified as firm values in the *price list*.}

“**priority date**” has the meaning given to it in clause 3.21(c).

“**Proposed Generator Performance Standard**” has the meaning given to that term in the *WEM Rules*.

“**Proposed Negotiated Generator Performance Standard**” has the meaning given to that term in the *WEM Rules*.

“**reallocated applicant**” has the meaning given to it in clause 24.6C(a).

“**re-energise**”, in respect of a previously *de-energised connection point*, means to operate switching or other equipment so as to permit the transfer of electricity through the *connection point*.

“**reference service**” means a *covered service* designated in the *access arrangement* as a *reference service* (as defined by the *Code*).

{Note: under the *Code*, “reference service” means “a *covered service* provided to a *user* and designated as a reference service in an *access arrangement* under section 5.1(a) for which there is a reference tariff, a standard *access contract* and service standard benchmarks.”}

“**Registered Generator Performance Standard**” has the meaning given to it in the *WEM Rules*.

“**remote de-energise service**” means to de-energise a *meter* associated with a *connection point* on a non-permanent basis by a command sent to the *meter* from a remote locality.

“**remote re-energise service**” means to re-arm a previously de-energised *meter* by a command sent to a *meter* from a remote locality.

“**remote load control service**” means to control the load at a *connection point* by way of sending commands to an activated device associated with the *connection point* from a remote locality.

“**remote load limitation service**” means to limit the load at a *connection point* by way of sending commands to an activated device associated with the *connection point* from a remote locality.

“**retailer**” has the meaning given to it in the *Act*.

“**revenue meter**” has the meaning given to it in the *Metering Code*.

{Note: Under the *Metering Code*, “revenue meter” means “subject to clause 3.13(5), a *meter* that is used under this *Code* as the source of energy data, unless this *Code* permits an alternative source of energy data to be used”.

“**services end date**” means, in respect of a *connection point*, the date on which Western Power ends the provision of *covered services* to the *user* in respect of that *connection point*.

“**services start date**” means, in respect of a *connection point*, the date on which Western Power commences providing *covered services* to the *user* in respect of that *connection point*.

“**shared assets**” has the meaning given to it in the *Code*.

{Note: Under the *Code* “shared assets” mean “those *network assets* which are not *connection assets*”.

“**signed**” by Western Power or the *applicant* means duly *signed* or otherwise executed by or on behalf of all persons who comprise Western Power or the *applicant*, as the case may be.

**“spare capacity”** means the *capacity*, from time to time, of the *network*, as configured at the time of an *application*, to provide an *exit service* or *exit service component* sought in the *application*, having regard to matters including Western Power’s contractual obligations in respect of the *network*.

**“standard access contract”**, with respect to a *reference service*, means the *access contract* applicable to that *reference service* under the *access arrangement*.

**“standing data”** has the meaning given to it in the *Metering Code*.

**“supply abolishment service”** means a service to permanently disconnect electricity supply, remove the *meter* and abolish a *connection point*.

**“technical requirement”** has the meaning given to the term “Technical Requirement” in the *WEM Rules*.

**“technical rules”** means the *technical rules* (as defined in the *Code*) applying from time to time to the *network* under Chapter 12 of the *Code*, as modified in accordance with the *Code* and in the case of a *transmission connected generating system* or proposed *transmission connected generating system* also includes the *Registered Generator Performance Standards* for that *transmission connected generating system*.

**“transfer and relocation policy”** has the meaning given to it in the *Code* .

{Note: Under the *Code* “transfer and relocation policy” means “the provisions of an *access and queuing policy* that relate to a *user’s* rights to *transfer* its *access rights* to another person” .}

**“transition application”** means an *application* which:

- (a) seeks modifications to an *access contract* or any other *contract for services*; and
- (b) the modifications, if implemented, would not materially impede Western Power's ability to provide a *covered service* sought in one or more other *applications* compared with what the position would be if the modifications were not implemented.

**“transmission connected generating system”** has the meaning given to the term “Transmission Connected Generating System” in the *WEM Rules*.

**“unmetered connection”**, with respect to a *connection point*, has the same meaning as the term “type 7 *connection point*” when that term is used in the *Metering Code*.

**“user”** has the meaning given to it in the *Code*.

{Note: Under the *Code* “user” means “a person, including a *generator* or a *consumer*, who is a party to a *contract for services* with a *service provider*, and under section 13.4(e) includes an *other business* as a party to a *deemed access contract*” .}

**“verifiable consent”** has the meaning given to it in the *Customer Transfer Code*.

{Note: Under the *Customer Transfer Code* “*verifiable consent*”, in relation to a request for historical *consumption* data or a *customer transfer request*, means “consent that is given by a *contestable customer*—

- (a) expressly; and
- (b) either:
  - (i) orally, if the oral consent is evidenced in such a way that it can be verified and made the subject of a record under clause 3.9.4; or
  - (ii) in writing; and
- (c) after the *retailer* obtaining the consent has in plain language appropriate to the *contestable customer* disclosed all matters materially relevant to the giving of the consent, including each specific purpose for which the consent will be used; and

- (d) by a person whom a *retailer* (acting reasonably) would consider competent to give consent on the *contestable customer's* behalf; and
- (e) which has not expired under clause 1.5".}

**“WEM Rules”** means the market rules referred to in section 123(1) of the Act.

**“works”** has the meaning given to it in the *contributions policy*.

{Note: Under the *contributions policy*, “works” means “headworks and all *works* required to be undertaken to provide an *applicant* with the *covered services* sought by the *applicant* in a *connection application*, including *works* associated with:

- (a) *augmentation of connection assets*;
- (b) *augmentation of shared assets*;
- (c) alternative options; and
- (d) other non-capital *works*".}

## **2.2 Application of this Applications and Queuing Policy to Connection Applications and Electricity Transfer Applications**

- (a) Part A and Part B but not Part C of this applications and queuing policy apply to an *electricity transfer application*.
- (b) Part A and Part C but not Part B of this applications and queuing policy apply to a *connection application*.
- (c) To avoid doubt, this applications and queuing policy only applies to *applications* in relation to *covered services*.
- (d) An *applicant* and Western Power may agree to deal with any matter in connection with an *application* in a manner different to the treatment of the matter in this applications and queuing policy as long as the ability of Western Power to provide a *covered service* that is sought by another *applicant* is not impeded.
- (e) Part D of this applications and queuing policy sets out the *transfer and relocation policy* for the purposes of the *Code*.

## **2.3 Interpretation**

- (a) Unless:
  - (i) the contrary intention is apparent; or
  - (ii) the term has been redefined in clause 2,

a term with a defined meaning in the *Code* has the same meaning in this applications and queuing policy.

- (b) Unless the contrary intention is apparent:
  - (i) a rule of interpretation in the *Code*; and
  - (ii) the *Interpretation Act 1984*,

apply to the interpretation of this applications and queuing policy.

## **2.4 Prior Applications**

- (a) Unused.

- (b) To the extent permitted by *law*, an *application* made prior to the date of commencement of this applications and queuing policy shall be deemed to have been made under this applications and queuing policy, with its *priority date* being the date it was lodged under the previous version of the applications and queuing policy, but if the *application* was taken to be amended under that version of the policy such that its priority was determined by the time of amendment, then the *priority date* is that time of amendment.
- (c) To the extent permitted by *law*, for the purposes of timeframes within this applications and queuing policy only, an *application* made prior to the current *access arrangement period* shall be deemed to have been made on the day the current *access arrangement period* commences.

## 2.5 Supplementary Matters Apply

Western Power and the *applicant* must, in accordance with section 5.28 of the *Code*, comply with any provisions of the *supplementary matters* relating to this applications and queuing policy.

## 2.6 Exercising an Option Not Affected

An option granted to a *user* as part of the terms of an *access contract* to extend the duration of the *access contract* is not an *application* and is not subject to this applications and queuing policy if it is exercised in accordance with its terms.

## 2.7 Nature of Capacity Available for transferring electricity into the *Network*

- (a) This clause 2.7 applies to *entry services* and *entry service components*.
- (b) *Contracted capacity* for *entry services* and *entry service components* is provided on a non-firm basis and the provision of such services is subject to interruption or curtailment for *constraints*.
- (c) In the case of *entry services* and *entry service components*, *capacity* and *contracted capacity* represent the maximum capacity available to provide such services in the absence of *constraints*.
- (d) A *user* provided with an *entry service* or *entry service component* under an *access contract* has no greater priority to the *capacity* of the *network* than any other *user*.
- (e) The definition of *spare capacity* does not apply to *entry services* and *entry service components* or to *applications* for *entry services* and *entry service components*.
- (f) This clause 2.7 does not affect the operation of *access contracts* entered into prior to the date of the 2020 (No. 2) amendments unless such *access contract* is amended so as to increase the *contracted capacity* for *entry services* and *entry service components*.

# 3. The Application

## 3.1 Applications to be Made in Good Faith

Western Power and an *applicant* must act reasonably and in good faith with regard to each other in relation to an *application*.

## 3.2 Commencing the Application Process

- (a) The *application* process is commenced by the *applicant* submitting an *enquiry* to Western Power.

- (b) Following Western Power's response to the *enquiry*, the *applicant* must submit:
  - (i) an *application* to Western Power on the appropriate *application form*; or
  - (ii) where permitted under this applications and queuing policy, notice to Western Power, that is *complete*.
- (c) Western Power will stamp *complete applications* with the date on which the *applications are* lodged and *complete*, and this date will be the *priority date*. The *priority date* may change in accordance with the provisions of clause 24A or otherwise be determined in accordance with clauses 10 or 11.2.

### 3.3 Applicant to be Market Participant

An *applicant* who seeks an *exit service* or an *entry service* or a *bidirectional service* or a *supply abolishment service* or a *capacity allocation service*:

- (a) must submit an *electricity transfer application*; and
- (b) must be, or intend to be (providing reasonable proof of intent), a *market participant* at the time the electricity transfer is to take place.

### 3.4 Related Electricity Transfer Application and Connection Application

Where:

- (a) a *retailer* seeks to obtain or modify an *exit service* or an *entry service* or a *bidirectional service* or a *supply abolishment service* or a *capacity allocation service* on behalf of a *customer*; or
- (b) a *generator* seeks to obtain or modify an *entry service* or a *bidirectional service* or a *capacity allocation service* on behalf of a *controller* who is not the *generator*,

and both a *connection application* and an *electricity transfer application* will be required under this applications and queuing policy, then the *applications* may:

- (c) be submitted concurrently by the *retailer* or *generator*; or
- (d) be submitted at different times by the *retailer* or *generator* and the *customer* or *controller* as applicable, in which case both parties are *applicants*.

### 3.5 Information Required With All Applications

All *applicants* must provide the following information to Western Power in respect of an *application* at the time of submitting the *application*:

- (a) details of the *applicant*, including:
  - (i) the full name and address of the *applicant*; and
  - (ii) whether the *applicant* is acting as agent for any person in making the *application*, and if so, details of the *applicant's* principals; and
  - (iii) whether the *applicant* is an existing *user*, and if so, details of the *applicant's* existing *access contract*,

and

- (b) any conditions precedent that the *applicant* seeks to include in the resulting *access offer*; and



- (c) details of the *connection point*, including:
  - (i) the location or *NMI* of the *connection point*, as applicable; and
  - (ii) the forecast annual *consumption* of electricity, if applicable; and
  - (iii) the forecast annual *generation* of electricity, if applicable,

and

- (d) such information concerning the *applicant* as Western Power requires, acting as a reasonable and prudent person, to assess the *applicant's* ability to meet its obligations under the resulting *access contract*.

### 3.6 Information Required with Electricity Transfer Applications

The *applicant* must provide the following information to Western Power in respect of an *electricity transfer application* at the time of submitting the *electricity transfer application*:

- (a) the *covered services* requested, and for each requested *covered service*:
  - (i) the requested *services start date* and requested *services end date*;
  - (ii) if the *covered service* is a non-*reference service*, then a description of the non-*reference service*, including any deviation sought from the applicable tariff, service standard or standard *access contract* for an equivalent *reference service*;
  - (iii) if applicable, the contracted *capacity* sought or sought to be increased or decreased for the *covered service*; and
  - (iv) the *applicant's* eligibility for the *covered service* sought; and
- (b) details of the *connection point*, including:
  - (i) for an existing *connection point*, any changes to be made to the *standing data* for that *connection point* as a result of the *application*; and
  - (ii) for a new *connection point*:
    - (A) such information regarding the *connection point* required as *standing data*; and
    - (B) any *facilities and equipment* likely or required to be connected at the *connection point*; and
  - (iii) for the abolishment of an existing *connection point*, details of the *connection point* to be abolished and the *connection assets* to be removed or disconnected; and
  - (iv) if the *applicant* will not be the *controller*, information regarding the *controller* in compliance with the relevant provisions of the *Metering Code* in regard to the provision of *controller* information (with all references to a '*customer*' under the relevant provisions of the *Metering Code* to be read as references to the *controller* for the purposes of this clause 3.6).

### 3.7 Information Required with Connection Applications

The *applicant* must provide the following information to Western Power in respect of a *connection application* at the time of submitting the *connection application*:

- (a) the *covered services* requested; and

- (b) the requested *services start date* and requested *services end date* for covered services involving the transfer of electricity that are likely to be sought under an associated *electricity transfer application*,
- as applicable; and
- (c) the *capacity* sought or sought to be increased or decreased, if applicable; and
  - (d) such information regarding the *facilities and equipment* likely or required to be connected at the *connection point* to the extent required by:
    - (i) the *technical rules*; and
    - (ii) Western Power acting as a reasonable and prudent person; and
  - (e) where the *connection application* relates to a *transmission connected generating system*:
    - (i) whether, for each *technical requirement*, it is proposed that the *Ideal Generator Performance Standard* will apply or a *Proposed Negotiated Performance Standard* will be submitted for that *technical requirement*; and
    - (ii) if the *applicant* proposes to submit a *Proposed Negotiated Generator Performance Standard* for a *technical requirement*, the *Proposed Negotiated Generator Performance Standard* for that *technical requirement*; and
  - (f) a full description of any exemptions to the *technical rules* sought by the *applicant* under Chapter 12 of the *Code*.

### 3.8 One Electricity Transfer Access Contract per Connection Point

Each *connection point* must be included in one and only one *electricity transfer access contract* to allow the transfer of electricity at that *connection point* except to the extent necessary to facilitate a *capacity allocation same connection point decrease service* or *capacity allocation same connection point increase service*.

### 3.9 Forecasts of Information

When an *application* contains estimates or forecasts of any information:

- (a) Western Power may treat that estimated or forecast information as factual information; and
- (b) the *applicant* warrants to Western Power that each such estimate or forecast is the *applicant's* best estimate or forecast acting as a reasonable and prudent person.

### 3.10 Errors or Omissions in an Application

- (a) If Western Power becomes aware of any material error or omission in an *application* it must immediately notify the *applicant* about it and may request information under clause 3.11.
- (b) If an *applicant* is notified by Western Power under clause 3.10(a), or otherwise becomes aware of any material error or omission in an *application*, it must amend the *application* to remedy it as soon as practicable after becoming aware of it.
- (c) If Western Power has notified the *applicant* under clause 3.10(a), the *applicant* must amend the *application* to remedy the material error or omission within 20 business days, or the *application* and, as applicable, any associated *electricity transfer application* or *connection application* will be deemed to have been withdrawn.

- (d) If remedying an error or omission in an *application* amounts to a material amendment to the *application*, clause 24A.2 applies.

### **3.11 Additional Information**

- (a) At any time, Western Power may, acting as a reasonable and prudent person, request the *applicant* to provide further information that Western Power reasonably requires to enable it to process the *application*.
- (b) If Western Power has notified the *applicant* under clause 3.11(a), the *applicant* must amend the *application* to provide the additional information within 20 business days, or the *application* and, as applicable, any associated *electricity transfer application* or *connection application* will be deemed to have been withdrawn.
- (c) If providing additional information for an *application* amounts to a material amendment to the *application*, clause 24A.2 applies.

### **3.12 Western Power must be Expeditious and Diligent**

Western Power must process an *application* expeditiously and diligently.

### **3.13 Amendment and Withdrawal of Application**

- (a) An *applicant* may at any time by notice in writing to Western Power, amend an *application*.
- (b) If an amendment to an *application* results in a change to the original *lodgement fee*, Western Power may *charge* the *applicant* the new *lodgement fee* or refund part of the original *lodgement fee*, having regard to the work already *completed* in processing the *application*.
- (c) An *applicant* may at any time before it enters into an *access contract*, by notice in writing to Western Power, withdraw an *application*.
- (d) Unused.
- (e) Without limiting this clause 3.13, an amendment to an *application* may include a change to the identity of the *applicant* in which case the other information in the *application* must also be amended.

### **3.14 Applications Do Not Expire**

Unless expressly provided otherwise by this applications and queuing policy, an *application* does not expire due to the passage of time.

### **3.15 Network Planning**

- (a) In processing *applications* (including as *applicant-specific solutions* or *competing applications groups*) Western Power must have regard to the general network planning otherwise being undertaken by Western Power and seek to develop solutions and process *applications* in a manner which most effectively enables *applicants* to benefit from any efficiencies and costs savings provided by that network planning.
- (b) Due to the range of potential network constraints and related solutions, timeframes for the development of solutions will be variable. Western Power will keep *applicants* informed on a

regular basis of the network constraints that affect them and expected timeframes for the development of solutions.

- (c) The information Western Power will provide to *applicants*, and the further studies it may be requested to undertake, extend to information and studies as to how *applications* co-ordinate with network planning being undertaken by Western Power.
- (d) In undertaking network planning Western Power will have regard to the nature and number of *enquiries* and *applications* Western Power has received under this applications and queuing policy, it being acknowledged that in doing so Western Power will need to make a good faith assessment as to the likelihood that specific projects will proceed.

## **4. The Access Offer**

### **4.1 Access Offer to be Signed by Western Power**

Western Power must present the *access offer* in such a form that it can, without anything else being required, become or modify an *access contract* or *access contracts* when *signed* by an *applicant*.

### **4.2 If Application Requests Reference Services**

If an *application* requests a *reference service*, then the *access offer* must be on materially the same terms as the *standard access contract* applicable to the *reference service*.

### **4.3 If Application Requests Non-Reference Service**

If an *application* requests a *non-reference service*, then the terms of the *access offer* must be:

- (a) consistent with the *Code objective*; and
- (b) reasonable; and
- (c) subject to this applications and queuing policy, as similar as practicable to those terms requested in the *application* dealing with the relevant matter, and negotiated in good faith by the *applicant* and Western Power during the processing of the *application*.

### **4.4 Services Start Date and Services End Date**

The *services start date* and the *services end date* specified in the *access offer* must be as close as practicable to the *services start date* and the *services end date* sought in the *application*.

### **4.5 Conditions Precedent Permitted in Access Contract**

Western Power and an *applicant* must negotiate in good faith regarding any conditions precedent that the *applicant* or Western Power seek to have included in an *access contract* in order to achieve the objectives set out in clause 4.6. For the avoidance of doubt, Western Power may require a condition precedent in the *access contract* that:

- (a) the *works* involved in providing access to the *applicant* pass a regulatory test (if required); and
- (b) other *applicants* that:
  - (i) are in the same *competing applications group* as the *applicant*; and
  - (ii) have been or are subsequently offered *access contracts*,

enter those *access contracts* with Western Power and that any conditions precedent in those *access contracts* are fulfilled.

#### 4.6 Objectives with Regard to Conditions Precedent

The objectives of this applications and queuing policy with regard to conditions precedent are:

- (a) conditions precedent in *access contracts* should facilitate the development of electricity *consuming* and *generating* projects and provide flexibility; and
- (b) conditions precedent should not unduly impede the ability of Western Power to provide *covered services* to *competing applicants* or cause uncertainty and delay; and
- (c) conditions precedent should not constitute an inappropriate barrier to entry into a market or be for the purpose of hindering or preventing *access* by any person to *covered services*.

#### 4.7 Conditions Precedent and Determination of Spare Capacity

In determining whether there is sufficient *spare capacity* to provide *covered services* requested in an *application*, Western Power must regard any existing *access contracts* with conditions precedent as being unconditional.

#### 4.8 Conditions Precedent Not Longer Than 8 Months

- (a) Western Power and an *applicant* must not enter into an *access contract* that contains a condition precedent that may be fulfilled more than 8 months from the date the *access contract* was entered into, unless the condition precedent relates to the completion of the related *works* and the *applicant* and Western Power agree that a longer period is reasonably necessary due to the nature of *works* to be conducted, in which case the period of 8 months may be extended by agreement between the *applicant* and Western Power.
- (b) If, after the period of time agreed under clause 4.8(a), a condition precedent in an *access contract* has not been fulfilled, then:
  - (i) if there is no *competing application*, Western Power and the relevant *user* may agree within 20 business days to extend the period in the *access contract* allowed for the satisfaction of the condition precedent by up to a further 6 months; or
  - (ii) if there is a *competing application*, then, subject to clause 6, Western Power and the existing *user* must negotiate in good faith within 20 business days to accommodate both the *user's* and the *competing applicant's* requirements.

{Note: this might mean sharing the costs of *augmentation* as calculated under the *contributions policy*, or some *other means* of resolving the conflict.}

- (c) If no agreement is reached under clause 4.8(b), then either Western Power or the *user* may:
  - (i) terminate the *access contract*; or
  - (ii) waive any conditions precedent that are for the benefit of that party if that would result in the *access contract* becoming unconditional; or
  - (iii) refer this matter to the *Arbitrator* as an *access dispute*.

## 4.9 Security

- (a) Subject to clause 4.9(b), if there is a material risk that the *applicant* will be unable to meet any or all of its liabilities under an *access contract* resulting from the *applicant's application*, then Western Power may require the *applicant* to procure:
  - (i) an indemnifier acceptable to Western Power (acting as a reasonable and prudent person) who will agree to be a party to the *access contract* and indemnify Western Power in respect of those liabilities; or
  - (ii) a guarantor acceptable to Western Power (acting as a reasonable and prudent person) to provide a guarantee in favour of Western Power substantially in the form set out in Schedule 1,
- (b) If an *applicant* has an unqualified credit rating of at least:
  - (i) BBB from Standard and Poor's Australia Pty Ltd; or
  - (ii) BAA from Moody's Investor Service Pty Ltd,

and provides evidence to this effect to Western Power, without limiting the *User's* security obligations related to clause 4.9(c), then Western Power is not entitled to require the *User* to provide the security under clause 4.9(a).

- (c) Notwithstanding an *applicant* providing evidence that it has an unqualified credit rating in accordance with clause 4.9(b), Western Power may, as a condition under an *access contract* or otherwise, require the *user or indemnifier* to provide an irrevocable and unconditional bank guarantee or equivalent financial instrument in terms acceptable to Western Power (acting as a reasonable and prudent person), guaranteeing the value of any amount of any *contribution* that remains unpaid or not provided at the time of requirement.
- (d) Western Power may perform a security assessment under this clause 4.9 prior to making an *access offer*.

## 4.10 Arbitrator's Powers Preserved

Nothing in this clause 4 limits the *Arbitrator's* power to make an award compelling Western Power to provide *access* to a *covered service* on terms specified in the award.

# 5. Entering Into or Modifying an Access Contract

## 5.1 When Access Offer Becomes Access Contract

- (a) An *access offer* becomes an *access contract*, or modifies an existing *access contract* in accordance with the terms of that *access contract*, as applicable, when *signed* by both parties.
- (b) Western Power must *sign* the *access offer* before giving the *access offer* to the *applicant*.

## 5.2 Applicant's Options on Receipt of an Access Offer

The *applicant* must as soon as practicable, and in any event within 30 business days after receipt of an *access offer*, either:

- (a) *sign* the *access offer*, thereby entering into an *access contract* or modifying an existing *access contract*, as applicable; or

- (b) by notice to Western Power reject the *access offer* and request amendments to the *application*;  
or
- (c) by notice to Western Power withdraw the *application*,

and if 30 Business Days after receipt of the *access offer* the *applicant* has not complied with any of clauses 5.2(a), 5.2(b) or 5.2(c), then (unless the *Arbitrator* makes an order extending the time limit on the ground that the delay is beyond the *applicant's* reasonable control) the *applicant* is to be taken to have withdrawn its *application* and any, as applicable, associated *electricity transfer application* or *connection application*.

### **5.3 If Applicant Rejects Access Offer and Requests Amendments**

If the *applicant* rejects an *access offer* and requests amendments to the *application* under clause 5.2(b), Western Power and the *applicant* must negotiate in good faith regarding the *application*, but if Western Power and the *applicant* have not *signed* an *access contract* (including an *access contract* with conditions precedent) within 30 business days, then the *application* and any, as applicable, associated *electricity transfer application* or *connection application* will be deemed to have been withdrawn.

### **5.4 If Applicant Accepts Access Offer**

If the *applicant* signs the *access offer*, it must:

- (a) forthwith give written notice of the *signing* to Western Power;
- (b) as soon as practicable procure the stamping of the *signed access contract*, if applicable, and pay all duties that are assessed by the Office of State Revenue on the *access contract*; and
- (c) as soon as practicable thereafter give to Western Power at least one original copy of the *signed* and stamped *access contract*.

### **5.5 Connection Application Ceases to Exist After Signing**

Without limiting any other circumstances in which an *application* may cease to exist, an *application* is satisfied, and ceases to exist, upon:

- (a) both Western Power and the *applicant signing* an *access contract* as a result of the making of that *application*, and any conditions precedent in the *access contract* have been satisfied or waived;
- (b) the *access contract* being terminated due to a failure by the *applicant* to satisfy the conditions precedent in the *access contract*; or
- (c) the *access contract* being terminated due to a breach or default of the *applicant*.

## **6. Confidentiality**

### **6.1 Confidential Information**

Information which Western Power is required to disclose under clauses 18.2A, 24.9(a), 24.9(b) and 24.9(c) is not *confidential information*.

### **6.2 Confidential Information Must Not be Disclosed**

Western Power, an *applicant* or a *disclosing person* must not disclose *confidential information* unless:



- (a) the disclosure is made to the Authority on a confidential basis; or
- (b) the disclosure, where it is made by an *applicant* or a *disclosing person*, is made to a worker of Western Power who is bound by an adequate confidentiality undertaking; or
- (c) the disclosure is made with the consent of the *disclosing person*; or
- (d) the disclosure is required or allowed by *law*, or by the *Arbitrator* or another court or tribunal constituted by *law*; or
- (e) the information has entered the public domain other than by breach of this clause 6.2; or
- (f) the information could be inferred by a reasonable and prudent person from information already in the public domain;
- (g) the disclosure is made in accordance with clauses 24.9(d) or 24.10;
- (h) the disclosure is made in accordance with clause 16.6;
- (i) the disclosure is made in accordance with clause 6.3.

### **6.3 Disclosure to AEMO**

Western Power may disclose the following information relating to *connection applications* to AEMO:

- (a) information relating to a *generation application* required to be provided to current other *applicants* under clause 16.6 and, in addition, in respect of each such *generation application* the identity of the *applicant* and the forecast in service date for their *generating plant*, modified *generating plant* or increased *contracted capacity*;
- (b) any information required for AEMO to undertake its system management functions under the *WEM Rules* (including any information AEMO notifies Western Power it requires to discharge those functions);
- (c) that a particular *access contract* has been executed and the key details of that contract such as the parties' names, the name and location of the *generating plant* and of any facilities which will consume load, and the initial *contracted capacity*; and
- (d) that all conditions precedent in an *access contract* have been satisfied or waived.

## **Part B – Electricity Transfer Applications**

### **7. Costs and Timing of Processing Electricity Transfer Applications**

#### **7.1 Where Applicant Seeks a Reference Service**

- (a) An *applicant* who seeks a *reference service* must pay to Western Power the *lodgement fee* in the *price list* specified as being applicable to the *applicant's application* in this applications and queuing policy, which will be:
  - (i) a new *connection point* fee;
  - (ii) an *access contract* modification fee;
  - (iii) a new *access contract* fee;
  - (iv) a *capacity allocation service* fee;



- (v) a *remote load control service, remote load limitation service, remote energise service or remote de-energise service fee*; or
- (vi) a *distributed energy or other non-network solution assessment fee*.
- (b) If the *applicant* is not an existing *user*, then the *lodgement fee* must be paid at the time the *applicant* lodges its *electricity transfer application*.
- (c) If the *applicant* is an existing *user*, then the *lodgement fee* will be added to the next invoice under the *user's* existing *access contract*.
- (d) Western Power must notify the *applicant* that it has received the *applicant's electricity transfer application* within 5 business days.
- (e) Subject to Western Power performing a security assessment under clause 4.9, if the *applicant* is an existing *user* and selects a *reference service*, then Western Power must use reasonable endeavours to make an *access offer*, by notice to the *applicant*, to modify the *applicant's access contract*:
  - (i) within 5 business days of receiving the *complete electricity transfer application*; or
  - (ii) within 5 business days of an *access offer* being signed by an *applicant* for any associated *connection application*,

whichever is later.

- (f) Subject to Western Power performing a security assessment under clause 4.9, if the *applicant* is not an existing *user*, and selects a *reference service*, Western Power must use reasonable endeavours to make an *access offer*:
  - (i) within 10 business days of receiving the *complete electricity transfer application*; or
  - (ii) within 5 business days of an *access offer* being signed by an *applicant* for any associated *connection application*,

whichever is later.

## **7.2 Where Applicant Seeks a Non-Reference Service**

- (a) An *applicant* seeking a *non-reference service*, including, but not limited to, an *exit service* or an *entry service* or a *bidirectional service* with a different *tariff* or a different *access contract* than for an equivalent *reference service*, must, when requested by Western Power, pay an amount to Western Power in respect of a reasonable cost incurred, or to be incurred within a reasonable timeframe, in processing the *application*.
- (b) The total of the costs referred to in clause 7.2(a) must not exceed the reasonable costs which would be incurred by a prudent *service provider*, acting efficiently and in good faith, seeking to achieve the lowest practicable cost of processing the *application*.
- (c) The costs referred to in clause 7.2(a) must not include any costs of Western Power in relation to an *access dispute* (which are to be awarded by the *Arbitrator* under Chapter 10 of the *Code*).
- (d) If an *applicant* selects a *non-reference service*, then Western Power must make an *access offer* as soon as practicable after the *complete application* is lodged, having regard to the nature of the *non-reference service* being sought by the *applicant*.

### 7.3 Connection Application Costs Not Affected

Nothing under this Part B affects costs applicable for a *connection application*.

### 7.4 Unused

## 8. Eligibility Criteria for Reference Services

If an *applicant* seeks a *reference service* under this Part B and Western Power is satisfied as a reasonable and prudent person that the *applicant* does not meet the eligibility criteria given in the *access arrangement* for the *reference service*, then Western Power may reject the *applicant's electricity transfer application*.

## 9. Electricity Transfer Application for a New Connection Point

### 9.1 Customer Transfer Request

- (a) An *incoming retailer* may lodge a *customer transfer request* with Western Power with respect to an *exit point* at which electricity is proposed to be supplied to a *contestable customer*. With respect to the *customer transfer request*:
  - (i) Western Power, the *incoming retailer* and the *previous retailer* must comply with the *Customer Transfer Code*; and
  - (ii) except as specified in this clause 9, this applications and queuing policy does not apply.
- (b) Western Power must not process the *customer transfer request* if it determines under clause 13 that the *customer transfer request* relates to the supply of electricity to a *customer* who is not a *contestable customer*.
- (c) Western Power must process a *customer transfer request* such that the *incoming retailer* receives the same *covered service* at the same *contracted capacity* as the *previous retailer*.
- (d) The *exit point* must be transferred as a complete and indivisible unit such that all associated *meters* are transferred in one transaction.
- (e) If the *incoming retailer* seeks to modify the *covered service* with respect to an *exit point* that has been the subject of a *customer transfer request*, then that *incoming retailer* must make an *application* under this applications and queuing policy as a separate transaction after the *customer transfer request* has been processed.

### 9.2 Creating a New Connection Point or Connecting New Generating Plant

- (a) An *applicant* who seeks to create a new *connection point* or to install new *generating plant* at an existing *connection point* must:
  - (i) submit an *electricity transfer application* on the *application form* that is applicable for the type of *facilities and equipment* to be *connected* at the *connection point*; and
  - (ii) submit, or procure that its *customer* submits, a *connection application*.
- (b) If the *applicant* is seeking a *reference service*, then:
  - (i) if the *applicant* is an existing *user*, the new *connection point lodgement fee* applies to the *application*; or

- (ii) if the *applicant* is not an existing *user*, the new *access contract lodgement fee* applies to the *application*,

but if the *applicant* is seeking a *non-reference service* then clause 7.2 applies to the *application*.

- (c) If an *applicant* submits an *electricity transfer application* subsequent to Western Power making an *access offer* for an associated *connection application* (to the *applicant*, its *customer* or another person) and:
  - (i) the *capacity*; or
  - (ii) the *services start date* (as relates to the transfer of electricity); or
  - (iii) the *services end date* (as relates to the transfer of electricity),

sought in the *connection application* and the *electricity transfer application* are not the same, such that the *application* of the *contributions policy* based on the information in the *electricity transfer application* would produce a *contribution* different to that specified in the *access offer* for the associated *connection application*, then Western Power may:

- (iv) where the *contribution* would be higher to that specified in the *access offer*, require the *applicant* to pay the difference; or
- (v) where the *contribution* would be lower to that specified in the *access offer* and the *contribution* specified in the *access offer* has been paid by the *applicant*, rebate the difference to the person who paid a *contribution* in respect of the *connection application*,

as applicable.

- (d) The *services start date* for the *covered services* sought under the electricity transfer application will be the later of:
  - (i) the *services start date* (as relates to the transfer of electricity) sought in the *connection application*; or
  - (ii) the *services start date* sought in the *electricity transfer application*; or
  - (iii) the *completion date* of any *works* resulting from the *connection application*.

## **10. Electricity Transfer Application to Modify an Existing Covered Service**

### **10.1 Selection of Different Covered Service or Selection or Modification of an Existing Non-Reference Service**

- (a) An *applicant* may make an *electricity transfer application* to:
  - (i) select a different *exit service*, *entry service* or *bi-directional service*;
  - (ii) modify an *exit service*, *entry service* or *bi-directional service* by selecting a component reference service (metering) under Appendix E to the *access arrangement*;
  - (iii) select a *supply abolishment service*;
  - (iv) select a *LED replacement service*;
  - (v) select a *remote load control service*, *remote load limitation service*, *remote de-energisation service* or *remote re-energisation service*;
  - (vi) select or modify a *non-reference service*,

with respect to a *connection point* in the *applicant's access contract*, by notice to Western Power.

- (b) If the *applicant* is seeking:
  - (i) an *exit service, entry service* or *bi-directional service*, then the new *connection point lodgement fee* applies to the *application*;
  - (ii) a different *exit service, entry service* or *bi-directional service*, then the *access contract modification fee* applies to the *application*;
- (c) If the *applicant* is seeking a *non-reference service* or a modification to a *non-reference service* then clause 7.2 applies to the *application*.
- (d) If Western Power considers, as a reasonable and prudent person, that the requested change in *covered service* indicates that the *applicant* will require a greater *capacity*, then:
  - (i) Western Power must notify the *applicant* within 5 business days whether the *applicant* must also submit, or procure that its *controller* submits, a *connection application* for an increase in *contracted capacity*; and
  - (ii) the *priority date* of such *connection application* shall comprise:
    - (A) if a *complete connection application* is received by Western Power within 20 business days of the notice sent to the *applicant* under clause 10.1(d)(i), the date Western Power received the *electricity transfer application* under clause 10.1(a); and
    - (B) otherwise, the date Western Power received the *complete connection application*.
- (e) If the *application* requests a new *covered service* that is serviced at a different voltage than the existing *covered service*, then Western Power must notify the *applicant* that it must submit, or procure that its *controller* submits, a *connection application*.

## 10.2 Increase or Decrease in Contracted Capacity

- (a) An *electricity transfer application* to increase or decrease *contracted capacity* with respect to an existing *covered service* under the *applicant's access contract*, may be made by notice to Western Power.
- (b) The *lodgement fee* for an *access contract* modification applies to the *applicant's application*, plus any costs for any associated *connection application*.
- (c) Western Power must notify the *applicant* whether or not it accepts the increase or decrease in *contracted capacity* within 5 business days of receipt by Western Power of the *applicant's* notice under clause 10.2(a) (or such further time as a prudent *service provider* would reasonably require to consider such *application*).
- (d) Western Power must accept the increase or decrease in *contracted capacity* if it forms the view as a reasonable and prudent person that:
  - (i) accepting the increase or decrease in *contracted capacity* would not be likely to impede the ability of Western Power to provide a *covered service* sought in an *application* lodged by another *applicant*; and
  - (ii) it is not likely that an *augmentation* or any work would be required to provide the increase or decrease in *contracted capacity*; and
  - (iii) in the case of a second or further *application* or notice in any rolling period of 12 months, the additional *application* or notice satisfies clause 10.3.
- (e) If Western Power determines that it cannot form the view required for acceptance of the increase or decrease in *contracted capacity* under clause 10.2(d), then:

- (i) Western Power must notify the *applicant* that it must submit, or procure that its *controller* submits, a *connection application*; and
- (ii) the *priority date* of such *connection application* shall comprise:
  - (A) if a *complete connection application* is received by Western Power within 20 business days of the notice sent to the *applicant* under clause 10.2(e)(i), the date Western Power received the *electricity transfer application* under clause 10.2(a); and
  - (B) otherwise, the date Western Power received the *complete connection application*.

### 10.3 More than 1 Change or Modification Within 12 Months

If Western Power receives:

- (a) more than 1 *application* or notice under clause 10.1; or
- (b) more than 1 *application* or notice under clause 10.2,

seeking to change the *covered service*, including to decrease or increase the *contracted capacity*, with respect to a single *connection point* in any rolling period of 12 months, then in relation to each additional *application* or notice, Western Power:

- (c) must, subject to this clause 10 and acting as a reasonable and prudent person, accept the change of *covered service*, where the new *covered service* will be sufficient to meet the actual requirements of the *applicant*, and it is required by reason of one or more of the following circumstances:
  - (i) a change in the actual *consumption* or *generation* by the *applicant* in respect of that *connection point* over the 12 month period prior to the *applicant* giving notice under clause 10.1(a) or 10.2(a) (as applicable), as recorded by the *metering equipment*; or
  - (ii) a change in the nature of the business or operation conducted at the *connection point*; or
  - (iii) a shutdown of the business or operation conducted at the *connection point* (including a shutdown for maintenance purposes) for longer than 1 continuous month; or
  - (iv) a rapid increase or decline in the business at the *connection point*; or
  - (v) a decrease in the number of *capacity credits* (as defined in the *WEM Rules*) allocated to any *generating plant* at the *connection point* under the *WEM Rules*; or
  - (vi) as part of a *relocation*; or
  - (vii) some other special circumstance,

and

- (d) is entitled to refuse the change in *covered service* where Western Power is satisfied, as a reasonable and prudent person, that the change is sought by reason of the seasonal nature of the business or operation at the *connection point*.

### 10.4 Modification of Generating Plant

- (a) An *applicant* must make a *connection application* before materially changing any of those characteristics of *generating plant connected at a connection point* required to be provided in the applicable *application form*.

- (b) If the *applicant signs an access offer* in respect of the *connection application*, then the parties must amend the *applicant's access contract* accordingly.

## 10.5 Capacity Allocation services

An *applicant* may make an *electricity transfer application* for a *capacity allocation service*.

Western Power must notify the *applicant* whether or not it accepts the increases and decreases in capacity included in the *capacity allocation service application* within 5 business days of receipt by Western Power of the *application* or such further time as a prudent service provider would reasonably require to consider such *application*.

Western Power must approve the increases and decreases in capacity in the *capacity allocation service application* if it forms the view as a reasonable and prudent person that accepting the *capacity allocation service* would not be likely to impede the ability of Western Power to provide *covered services* to existing *users* and no *augmentation* or any work would be required to provide the *capacity allocation service*.

The *capacity allocation service* fee applies to the *application*.

## 11. De-energisation and Re-energisation

### 11.1 De-energisation

A request by a *user* to Western Power to *de-energise* an existing *connection point* under the *user's access contract* or applicable *laws* is not an *application* and this applications and queuing policy does not apply to it.

### 11.2 Re-energisation

- (a) An *applicant* who seeks to *re-energise* an existing *de-energised connection point* must submit an *electricity transfer application* on the *application form* that is applicable for the type of *facilities and equipment connected* or to be *connected* at the *connection point*.
- (b) If the *applicant* does not have an *electricity transfer access contract*, then the *lodgement fee* for a new *access contract* applies to the *application*, plus costs associated with the *re-energisation* under the *Metering Code*.
- (c) If the *de-energised connection point* is not on the *applicant's electricity transfer access contract*, then the *lodgement fee* for a new *connection point* applies to the *application*, plus costs associated with the *re-energisation* under the *Metering Code*.
- (d) If the *de-energised connection point* is on the *applicant's electricity transfer access contract*, then only the costs associated with the *re-energisation* under the *Metering Code* apply to the *application*.
- (e) Subject to clause 11.2(g), Western Power must determine, as a reasonable and prudent person, within 5 business days whether it will accept the request for *re-energising*.
- (f) If Western Power determines that it cannot accept the request for *re-energising* under clause 11.2(e), then:
  - (i) Western Power must notify the *applicant* that it must submit, or procure that its *controller* submits, a *connection application*; and

- (ii) the *priority date* of such *connection application* shall comprise:
  - (A) if a *complete connection application* is received by Western Power within 20 business days of the notice sent to the *applicant* under clause 11.2(f)(i) the date Western Power received the *electricity transfer application* under clause 11.2(a); and
  - (B) otherwise, the date Western Power received the *complete connection application*.
- (g) Nothing in clause 11.2 derogates from the obligations of Western Power to *re-energise a connection point* within the timeframes specified in clause 8.2 of the *Code of Conduct for the Supply of Electricity to Small Use Customers 2004* or regulations 7 and 8 of the *Electricity Industry (Obligation to Connect) Regulations 2005*.

## 12. Electricity Transfer Application to Obtain a New Access Contract

- (a) An *applicant* who seeks a new *access contract*, other than under clauses 8 to 11 may make an *electricity transfer application* by notice to Western Power.
- (b) If an *applicant* makes an *application* under clause 12(a), then:
  - (i) if the *applicant* seeks a standard *access contract*, the *lodgement fee* for a new *access contract* applies to the *application*; or
  - (ii) if the *applicant* seeks an *access contract* that is materially different to a standard access contract, then clause 7.2 applies to the *application*.

## 13. Contestability Assessment

### 13.1 Western Power Must Perform Contestability Assessment

- (a) When:
  - (i) an *applicant* makes an *electricity transfer application* or a *connection application* to establish a new *exit point*; or
  - (ii) an *incoming retailer* makes a *customer transfer request* with regard to an *exit point*,

Western Power must determine if the *application* or *customer transfer request* is being made for the purpose of the supply of electricity to a *contestable customer* at that *exit point*.

- (b) Western Power must perform an assessment under this clause 13 within 5 business days of the event that triggered the assessment.

### 13.2 Unused

### 13.3 Rejection of Application

Western Power must reject an *application* where it is not authorised under the *Electricity Corporations Act 2005* or other *written law* to make an *access offer* for the purpose of the supply of electricity to a *customer* because that *customer* is not a *contestable customer*.

{Note: Under section 54 of the *Electricity Corporations Act 2005*, Western Power is prohibited from supplying services for the purpose of the supply of electricity to a *customer* that is not a *contestable customer* by a person other than the 'Electricity



Generation and Retail Corporation' (as defined in section 3 of the *Electricity Corporations Act 2005*) or a subsidiary of that corporation.}

## 14. Connection Point Configuration

### 14.1 Rules for Mapping Network Assets to a Single Connection Point

Western Power must comply with the following when determining the configuration of a *connection point*:

- (a) the proposed configuration must meet the *WA Electrical Requirements*, made pursuant to regulation 49 of the *Electricity (Licensing) Regulations 1991*; and
- (b) a *connection point* may be associated with one or more *revenue meters* which measure and record *energy data*, or none if it is an *unmetered connection point*; and
- (c) if the *connection point* is associated with more than one *revenue meter*, they must be either all *interval meters* or all *accumulation meters*, and not a combination of more than one type of *revenue meter*; and
- (d) a *connection point* may comprise more than one *attachment point* to the *network* provided that each *attachment point* is to the same lot or *premises* and is operated at the same voltage; and
- (e) a *connection point* must have one and only one *controller* at the *connection point*; and
- (f) a *connection point* must have only one type of *exit service*, if any, and only one type of *entry service*, if any, and only one type of *bidirectional service*, if any; and
- (g) a *connection point* must have only one applicable *loss factor*.

### 14.2 One NMI per Connection Point

Western Power must allocate one *NMI* per *connection point*.

### 14.3 Combining Multiple Connection Points into a Single Connection Point

- (a) A person may make an *electricity transfer application* to have multiple *connection points* supplying a single *premise* or adjacent *premises* of a single commercial or industrial complex combined into a single *connection point*, subject to clause 14.1, by notice to Western Power.
- (b) The *lodgement fee* for a new *connection point* applies to an *application* made under clause 14.1.
- (c) Where an *applicant* applies under clause 14.3(a) the *applicant* must demonstrate that the *connection points* are integral to a single business.  

{For example, a supermarket acquiring adjacent *premises* to its existing *premises* with the intention of expanding its operation across these *premises* can combine the two *exit points* into a single *exit point*.}
- (d) Where an *application* is made under clause 14.3(a) by an *applicant* who is not the *retailer* in relation to a relevant *connection point*, the *applicant* must obtain the consent of the *retailer*.
- (e) A *retailer* must have *verifiable consent* from its *customer* before making an *electricity transfer application* to change the configuration of a *connection point*.
- (f) Western Power must determine, as a reasonable and prudent person, within 5 business days whether it will accept the *application*.
- (g) If Western Power determines that it cannot accept the *application* under clause 14.3(f), then:



- (i) Western Power must notify the *applicant* that it must submit, or procure that its *controller* submits, a *connection application*; and
- (ii) the *priority date* of such *connection application* shall be determined:
  - (A) if a *complete connection application* is received by Western Power within 20 business days of the notice sent to the *applicant* under clause 14.3(g)(i), from the date Western Power received the *electricity transfer application* under clause 14.3(a); and
  - (B) otherwise, from the date Western Power received the *complete connection application*.

## 14.4 Separating a Single *Connection Point* to Create Multiple *Connection Points*

- (a) An *applicant* may make an *electricity transfer application* to divide a single *connection point* into multiple *connection points*, subject to clause 14.1.

{Note: This might occur, for example, to allow the new *connection points* to be migrated to a different *user's access contract*.}

- (b) Each *connection point* created under clause 14.4(a) must have its own *metering equipment*.
- (c) Where an *application* is made under clause 14.4(a) by an *applicant* who is not the *retailer* in relation to the *connection point*, the *applicant* must obtain the consent of the *retailer*.
- (d) A *retailer* must have *verifiable consent* from its *customer* before making an *electricity transfer application* to change the configuration of a *connection point*.
- (e) Western Power must determine, as a reasonable and prudent person, within 5 business days whether it will accept the *application*.
- (f) If Western Power determines that it cannot accept the *application* under clause 14.4(e), then:
  - (i) Western Power must notify the *applicant* that it must submit, or procure that its *controller* submits, a *connection application*; and
  - (ii) the *priority date* of such *connection application* shall be determined:
    - (A) if a *complete connection application* is received by Western Power within 20 business days of the notice sent to the *applicant* under clause 14.4(f)(i), from the date Western Power received the *electricity transfer application* under clause 14.4(a); and
    - (B) otherwise, from the date Western Power received the *complete connection application*.

## 15. Time to Perform Obligations

### 15.1 Extension of Time to Perform Obligations

- (a) If:
  - (i) Western Power (acting as a reasonable and prudent person) has requested further information from an *applicant* under clause 3.11 which it reasonably requires to process an *electricity transfer application*; and
  - (ii) the request was made as soon as Western Power became aware that it required the information; and

- (iii) Western Power has expeditiously and diligently progressed the processing of the *electricity transfer application* before making the request, after receiving the information and (to the extent possible) between making the request and receiving the information,

then the time period for complying with any obligation under this applications and queuing policy is extended by an amount of time equal to the time taken by the *applicant* to comply with the request.

- (b) Without limiting the generality of clause 15.1(a), an *applicant* and Western Power may agree to extend any one or more of any of the time periods set out in this applications and queuing policy on one or more occasions, and:
  - (i) the time period is extended by the amount of time agreed; and
  - (ii) unless otherwise agreed, the time for complying with any other obligation is extended by the same amount of time.

## **15.2 Concurrent Applications**

Western Power must use reasonable endeavours to comply with the timeframes set out in this applications and queuing policy in respect of each *electricity transfer application* which is lodged with Western Power, whether or not it is processing more than one *electricity transfer application* concurrently.

## Part C – Connection Applications

### 16. Specific Connections Applications

#### 16.1 Connection Application for a New Connection Point

An *applicant* who seeks to create a new *connection point* or to install new *generating plant* at an existing *connection point* must:

- (a) submit a *connection application* on the *connection application form* that is applicable for the type of *facilities and equipment* to be *connected* at the *connection point*; and
- (b) submit, or procure that its *retailer* submits, an *electricity transfer application* under Part B – *Electricity Transfer Applications* of this applications and queuing policy.

#### 16.2 Connection Application for an Increase or Decrease of Contracted Capacity

- (a) If, after processing an *electricity transfer application* under clause 10.2, Western Power requires a *connection application*, then the *user* must submit or, if applicable, procure that its *customer* submits, a *connection application* on the *connection application form* that is applicable for the type of *facilities and equipment* that is *connected* at the *connection point* or for the *capacity allocation service* sought.
- (b) If a *customer* submits a *connection application* with respect to a *connection point* that will result in an increase to the *contracted capacity* of the *customer's retailer* for that *connection point*, then the *customer* must procure that its *retailer* submit an associated *electricity transfer application* under Part B of this applications and queuing policy.

#### 16.3 Connection Application to Modify Generating Plant

If an *applicant* seeks to materially change the characteristics of *generating plant connected* at a *connection point*, then the *applicant* must *complete* those parts of the appropriate *application form* that deal with those characteristics, and include any additional information specified in the *application form* (which might include equipment schedules, drawings and computer models) that Western Power, as a reasonable and prudent person and acting in accordance with good electricity industry practice, might require to assess the impact of the modification on the *network* and other *users*, compliance of the modified *generating plant* with the *technical rules*, and in the case of a *transmission system connected generator*, the *Proposed Generator Performance Standards* proposed by the *applicant*.

#### 16.4 Connection Application to Modify or Augment the Network

- (a) An *applicant* who seeks to modify or *augment* the *network* for the purpose of receiving a *covered service* other than under clause 16.1 must submit a *connection application* on the applicable *connection application form*.
- (b) If there is no applicable *application form* provided for a *connection application* then the *applicant* may submit its *connection application* by notice to Western Power.

## 16.5 Opt-out of *Competing Applications Group Process*

- (a) An *applicant* may, at the time of making a *connection application* under clause 16, elect that the *connection application* is to be processed as an *applicant-specific solution* and is not to be considered as part of a *competing applications group*.
- (b) If an *applicant* makes an election under clause 16.5(a), it will be deemed to have made a request for a study under clause 20.3(a) and clause 20.3 shall apply to the processing of that *application*.

## 16.6 Publication

- (a) In respect of each *generation application* Western Power must within a reasonable time (to the extent the information is available to Western Power) notify all other *applicants* with *generation applications* of:
  - (i) the *contracted capacity* sought in the *generation application* (and if applicable the existing *contracted capacity* relevant to that *generating plant*);
  - (ii) the location, voltage and arrangement of the proposed (or if applicable upgraded) *connection point*;
  - (iii) the fuel type of the *generating plant*;
  - (iv) the *priority date* of the *generation application*.
- (b) If there is any material change to the information in clause 16.6(a) as it relates to a *generation application* Western Power will, within a reasonable time of becoming aware of the change, notify all *applicants* with *generation applications*.

## 17. Lead Time for *Connection Applications*

An *applicant* must endeavour to lodge a *connection application* to Western Power within a reasonable time before the requested *services start date*, having regard for:

- (a) the time required to determine if any *works* are required, and if so then the time required to plan, design, cost, approve, finance, construct and commission the *works*, including, if applicable, the time required to perform a *regulatory test*; and
- (b) the time required to finalise an *access offer* for the *connection application*; and
- (c) if the *applicant* has requested a derogation from the *technical rules*, then the time required to process this request; and
- (d) in the case of a *connection application* which relates to a *transmission system connected generator*, the time required to determine (in accordance with the *WEM Rules*) the *Registered Generator Performance Standards* that will apply to that *transmission system connected generator*.

## 17A. Pre-enquiry Discussions

### 17A.1 *Applicant May Contact Western Power*

A party considering making a *connection application* may contact Western Power to discuss a proposed *connection application* with Western Power. Western Power will provide reasonable assistance to such *applicants* but this will not include undertaking studies for the *applicant*.

## 17A.2 Informal Discussions Not Binding

The discussions under this clause 17A are not binding on Western Power, and Western Power is not liable for any error or omission that is made as a reasonable and prudent person in the discussions under this clause 17A.

## 17A.3 Provision of Information on Request

On request by the party, Western Power will, subject to clauses 17A.4 and 6.2, provide the party with all existing commercial and technical information that is in Western Power's possession, custody or control that is reasonably required or requested by the party to help it decide whether to make an *application*.

## 17A.4 Provision of Confidential Information

- (a) Where commercial or technical information referred to in clause 17A.3 is *confidential information*:
  - (i) which is confidential to Western Power and in Western Power's possession, custody or control, Western Power will use reasonable endeavours to enter into an adequate confidentiality undertaking with respect to the disclosure of the *confidential information* to the party deciding whether to make an *application*;
  - (ii) disclosed to Western Power by a *disclosing person*, an *applicant* or a third party, except where clause 24.9(d) applies, Western Power will request the consent of the relevant *disclosing person* or *applicant* to the disclosure of the *confidential information* to the *applicant* and, in the event that the relevant *disclosing person* or *applicant* does not consent to such disclosure, Western Power will use reasonable endeavours to provide the relevant *confidential information* to the party who has requested the information in an aggregated or other form in which its confidential aspects cannot be identified.
- (b) Where the relevant *disclosing person* or *applicant* ("*first person*"), under clause 17A.4(a)(ii), notifies Western Power it will consent to the disclosure of the *confidential information* to the other *applicant* ("*second person*") if the second person executes a confidentiality undertaking in favour of the first person, then Western Power will seek to facilitate the process of conclusion of such undertaking but the first and second person must directly negotiate the terms of that undertaking between themselves.

## 18. Enquiry State

### 18.1 Compulsory Enquiry Notification

- (a) Where an *applicant* expects, in good faith, to proceed to a *connection application*, then prior to lodging a *connection application* with Western Power, the *applicant*:
  - (i) must lodge an *enquiry* with Western Power to notify Western Power of the proposed *connection application*; and
  - (ii) may request that a preliminary assessment is undertaken under clause 19.3 prior to the *applicant* lodging the *connection application*.
- (b) Western Power must engage in discussions in good faith and use all reasonable endeavours to satisfactorily and promptly address any matters raised by the *applicant*.

## 18.2 Applicant May Request Studies and Information

An *applicant* may request Western Power to undertake system studies or perform other work necessary to assist the *applicant* in preparing its *connection application*, in which case:

- (a) Western Power must endeavour to perform such work within a reasonable time; and
- (b) unused; and
- (c) clause 20 applies.

{This might occur, for example, if the *applicant* needs input into feasibility studies to determine which of its potential projects proceeds to an *application*.}

### 18.2A Western Power to Issue an Enquiry Response Letter at Conclusion of Enquiry Stage

- (a) At the conclusion of the *enquiry* stage, Western Power must issue an *enquiry* response letter to the *applicant* setting out:
  - (i) a description of the information required for a *complete application*, and the results of any assessment that it may have carried out to indicate the extent of any *spare capacity* available to provide *exit services* or *exit service components*;
  - (ii) the existence of any *competing applications*; and
  - (iii) any constraints known to Western Power on the ability of the *network* to provide the *capacity* proposed as *contracted capacity* in the *connection application* by the *applicant* to the extent the *connection application* relates to *exit services* or *exit service components*.
- (b) Western Power will provide the *enquiry* response letter to the *applicant* within 20 business days of the lodgement of the *enquiry*, or within 20 business days of completion of any system studies or other *works* requested by the *applicant* under clause 18.2. If not all the information is available within that timeframe, Western Power will provide the *applicant* with as much information as possible within 20 business days and an estimated time, being not greater than 20 business days, when the balance of the outstanding information will be provided.

### 18.3 Enquiry Response Letter and Discussions Not Binding

The *enquiry* response letter and discussions under this clause 18 are not binding on Western Power, and Western Power is not liable for any error or omission that is made as a reasonable and prudent person in the *enquiry* response letter and discussions under this clause 18.

### 18.4 Fees Payable

At the time that the *applicant* lodges an *enquiry* under this clause 18, Western Power may *charge* a non-refundable fixed fee for processing the *enquiry* as specified in the *price list*. For the avoidance of doubt, this is in addition to any other payment, *charge* for costs, or fee.

## 19. Reporting During the Processing of the *Connection Application*

### 19.1 *Initial Response*

- (a) Subject to clause 19.1(b), Western Power must provide an *initial response* to the *applicant* within 20 business days of receiving the *applicant's connection application*, specifying:
  - (i) the time by which Western Power will provide a preliminary assessment under clause 19.3 of the *connection application* (if such an assessment was not provided under clause 18.1 before the *connection application* was submitted and is required under clause 19.3); and
  - (ii) the time by which Western Power expects to make an *access offer*.
  - (iii) unused.
- (b) If, by the time by which Western Power is required to give an *applicant* an *initial response* under clause 19.1, Western Power has given the *applicant* an *access offer*, Western Power is not required to provide an *initial response* to the *applicant*.

### 19.2 *Initial Response is Not Binding*

An *initial response* is not binding on Western Power, and Western Power is not liable for any error or omission, which is made as a reasonable and prudent person, in an *initial response*.

### 19.3 *Preliminary Assessment*

A preliminary assessment with regards to a *connection application* may consist of an assessment as to:

- (a) to the extent the *connection application* relates to *exit services* or *exit service components*, whether it is likely that there is sufficient *spare capacity* to provide the requested *covered services* or whether any *works* might be required to provide the *covered services*, including whether it is likely that any *new connection assets* will be required to provide the *covered services* requested in the *application*;
- (b) to the extent the *connection application* relates to *entry services* or *entry service components*, the nature of the *works* which may be required to provide those *entry services* or *entry service components*, including whether it is likely that any *new connection assets* will be required to provide the *covered services* requested in the *application*, and the *contracted capacity* which will be available if those *works* are undertaken and the *contracted capacity* (if any) available in the absence of such *works*; and
- (b2) whether any other *applications* are *competing* with the *application* and the possible grouping of the *application* with *competing applications* into one or more *competing applications groups*; and
- (c) if it is likely that *works* will be required — operational and technical details of the *works*; and
- (d) if it is likely that *works* will be required — whether or not a *contribution* will likely be required from the *applicant* under the *contributions policy* and a good faith estimate of the approximate amount of the *contribution*; and
- (e) if it is likely that *works* will be required — a good faith estimate of the likely time required for the planning, designing, approving, financing, construction and commissioning, as applicable, of any necessary *augmentation* or *works*; and



- (f) Western Power's proposal for processing the *application*, if applicable under clause 20.2.

To avoid doubt, a preliminary assessment must be undertaken in relation to a *connection application* either before that *application* is submitted in accordance with a request under clause 18.1 or after that *connection application* is lodged as advised by Western Power under clause 19.1(a)(i), unless otherwise agreed by Western Power.

## 19.4 Updates and Progress Reporting

- (a) An *applicant* must advise Western Power if there is a material change in any information previously provided by the *applicant* as part of the *applicant's application*.
- (b) Western Power must upon request by the *applicant* (which request must not be made more frequently than once per month, and must not be made less than one month following the provision of an *initial response*) provide a progress report to the *applicant* containing information in reasonable detail regarding the processing of the *connection application*, including whether there has been any material change in any estimates of scope, costs or times, either for processing the *connection application* or for any *works* that might result from the *connection application*, previously provided by Western Power.

## 20. Connection Application Costs

### 20.1 Applicant Must Pay Costs

- (a) If:
  - (i) the *applicant* lodges an *enquiry* under clause 18, and the *applicant* requests Western Power to perform any system or other studies, prepare detailed cost estimates or do any other work to assist the *applicant* prior to the *applicant* lodging a *connection application*;
  - (ii) an *applicant* has submitted a *connection application* and has agreed for Western Power to perform any system or other studies, prepare detailed cost estimates or do any other work to process the *application*, under clause 20.2, clause 20.3 or clause 24.1(d); or
  - (iii) an actual or prospective *applicant* has sought information or assistance from Western Power and Western Power has agreed to perform any system or other studies, prepare detailed cost estimates or do any other work to provide, or in connection with, that information or assistance,

then the *applicant* must, when requested by Western Power, pay to Western Power its reasonable costs incurred, or to be incurred within a reasonable timeframe, in processing the *enquiry* or *connection application* or otherwise undertaking the studies, cost estimates and work referred to in paragraphs (i), (ii) and/or (iii) above.

- (b) The total of the costs referred to in clause 20.1(a) must not exceed a genuine pre-estimate of the reasonable costs which would be incurred by a prudent *service provider*, acting efficiently and in good faith, in accordance with *good electricity industry practice*, seeking to achieve the lowest practicable cost of processing the *connection application*.
- (b1) For the avoidance of doubt, Western Power may *charge applicants* other fees and *charges* in addition to the costs referred to in this clause, and the provisions of clause 20.1(b) do not apply to such other fees and *charges*. Such fees include the *application* fees referred to in clause 7.1, the *enquiry* fee referred to in clause 18.4, the preliminary offer processing fee referred to in clause 24.3, and the *preliminary acceptance* fee referred to in clause 24.5(b).



- (c) The costs referred to in clause 20.1(a) must not include any costs of Western Power in relation to an *access dispute* (which are to be awarded by the *Arbitrator* under Chapter 10 of the *Code*).

## 20.2 Processing Proposal

- (a) Where Western Power considers that to process a *connection application*, or in connection with any request for information or other assistance made to it by an actual or prospective *applicant*, it must perform any system or other studies, prepare detailed cost estimates or do any other *works* or where an *applicant* requests a study under clause 20.3 then:
- (i) Western Power must provide a proposal to the *applicant* outlining the scope, timing and a good faith estimate of the likely costs to be incurred for processing the *connection application* and/or otherwise undertaking the studies, cost estimates or other *works*; and
  - (ii) the *applicant* may request amendments to the scope of work in the proposal, in which case Western Power and the *applicant* must negotiate in good faith regarding the proposal. In the case of a *connection application* which has been lodged, if Western Power and the *applicant* have not agreed within 60 business days on the scope of the work in the proposal, then the *connection application* and any associated *electricity transfer application* will be deemed to have been withdrawn; and
- {Note: This might occur, for example, where the *applicant* is able to perform some of the *works* itself.}
- (iii) the *applicant* may reject the proposal, and in such a case, where a *connection application* has been lodged, then the *connection application* and any associated *electricity transfer application* are deemed to have been withdrawn; and
  - (iv) (if applicable) the *applicant* may at any time request Western Power to cease processing the *connection application*, in which case the *connection application* and any associated *electricity transfer application* are deemed to have been withdrawn and Western Power must cease all work on the *application*.
- (b) Where Western Power spends the costs paid to it by an *applicant* under clause 20.1(a) in processing the *connection application* or otherwise undertaking the requested cost estimates, studies or other work and requires further payment to cover its actual costs in completing the proposal, then it will notify the *applicant* of the reasons for these higher costs and will make a proposal for payment of such additional costs, and Western Power's proposal under this clause will be dealt with under clause 20.2(a) as though it was an original proposal.
- (c) Where Western Power has *charged* an *applicant* costs under clause 20.1(a), then at the time of making an *access offer* to that *applicant* or at the time an *application* is withdrawn (whichever is earlier):
- (i) if Western Power's actual costs are less than the costs that it has *charged*, Western Power must refund the unexpended portion of those costs; or
  - (ii) if Western Power's actual costs are more than the costs that it has *charged*, Western Power may *charge* an additional fee to cover the reasonable costs in excess of the fee it *charged*, and the *applicant* must pay any such additional fee.
- (d) To avoid doubt, in this clause 20.2 references to an *applicant* may extend to a prospective *applicant*.

## 20.3 Applicant-specific Solution Option

- (a) An *applicant* may request Western Power to perform a study of the nature and costs of an *applicant-specific solution* to satisfy the *connection application*. Subject to agreement being reached under clause 20.2(a) in respect of that study, the *applicant* must pay the costs of that study. Western Power will endeavour, subject to receiving any necessary cooperation from the *applicant*, to *complete* the study within 60 business days.
- (b) Once Western Power has *completed* the study, it must provide:
  - (i) existing *users* that Western Power considers may be impeded; and
  - (ii) any *competing applicant* with an earlier *priority date*,with the opportunity to object to providing the *applicant-specific solution* to the *applicant*.
- (c) An existing *user* and *competing applicant* with an earlier *priority date* may object to the *applicant-specific solution* within 30 business days on the grounds that the *applicant-specific solution* would impede Western Power's ability to provide *covered services* to that existing *user* or to provide the *covered services* that are sought in a *competing application* with an earlier *priority date* compared with what the position would be if the *applicant-specific solution* were not implemented. However an objection may not be made on the basis that the *applicant-specific solution* will increase *constraints*.
- (d) Western Power will evaluate the objection within 40 business days of it being lodged and if it agrees that the *applicant-specific solution* would impede Western Power's ability to provide *covered services* to an existing *user* or to provide the *covered services* that are sought in a *competing connection application* with an earlier *priority date*, then it must either decline to offer an *applicant-specific solution* to the *applicant* or modify the *applicant-specific solution* so that the *applicant-specific solution* would not impede Western Power's ability to provide *covered services* to an existing *user* or the *covered services* that are sought in that other *application* with an earlier *priority date*. If Western Power elects to modify the *applicant-specific solution* then it must provide a further opportunity to object under clause 20.3(c) to existing *users* and *competing applicants* with an earlier *priority date* that Western Power considers may be impeded by the *applicant-specific solution*.
- (e) If:
  - (i) no objections are made to an *applicant-specific solution*; or
  - (ii) Western Power evaluates under clause 20.3(d) that an *applicant-specific solution* (whether the original *applicant-specific solution* or a further *applicant-specific solution* developed following modification under clause 20.3(d)) would not impede Western Power's ability to provide *covered services* to an existing *user* or to provide the *covered services* that are sought in a *competing connection application* with an earlier *priority date*,

then Western Power within 30 business days must make an *access offer* to the *applicant* based on the *applicant-specific solution* identified in this clause 20.3(e).

### 20.3A Interaction Between Applicant-Specific Solutions and Competing Applications Groups

For the avoidance of doubt, an *applicant* may seek an *applicant-specific solution* at any time while its *application* is under consideration. Where an *applicant* seeks an *applicant-specific solution* under clause

20.3 above, its *application* will, subject to clauses 16.5 and 24.1(b2), continue to be considered as part of any relevant *competing applications group*.

## 20.4 Disputes May be Referred to Arbitrator

A dispute between an *applicant* and Western Power regarding a cost under clause 20 may be referred by either party to the *Arbitrator* under section 10.13 of the *Code* (expedited hearings) for determination, in which case the *Arbitrator* may either affirm the amount or reduce it. Nothing in this clause limits the matters that may be the subject of an *access dispute*.

## 20.5 Use of Engineering Firms to Provide Studies

- (a) An *applicant* may ask Western Power to permit an engineering firm to conduct a system or other study under this clause 20.
- (b) Western Power will not unreasonably disagree to a request from an *applicant* to use an engineering firm to conduct a system or other study, and where Western Power does disagree, Western Power will provide written reasons explaining why it has disagreed.
- (c) Where Western Power agrees under clause 20.5(a) to a request from an *applicant*, then where this applications and queuing policy refers to a study done or to be done by Western Power, the reference to Western Power will be taken as a reference to the engineering firm.
- (d) Prior to permitting the engineering firm to conduct a system or other study, Western Power may require the engineering firm to enter into a confidentiality agreement.
- (e) Where Western Power agrees under clause 20.5(a) to a request from an *applicant*, Western Power will provide the engineering firm with all reasonable information and cooperation to enable the engineering firm to conduct the system or other study.
- (f) Western Power reserves the right to require amendments to a system or other study completed by an engineering firm where the system or other study does not provide the information that Western Power considers that Western Power requires from the system or other study.
- (g) Nothing in this clause 20.5 removes Western Power's right to *charge applicants* under clause 20 for Western Power's costs of processing *applications*, including but not limited to Western Power's costs under clause 20.5(e) and clause 20.5(f).

## 20A. Unpaid Fees or Charges

Where any fees or *charges* under this applications and queuing policy remain unpaid by an *applicant* more than 60 business days after they are levied or *charged*, then Western Power will send a *final notice* to the *applicant* demanding payment of the fees or *charges* ("*final notice*"). Where the *applicant* has not paid the fees or *charges* within 7 business days of the date of Western Power's *final notice*, the *applicant's application* and any associated *electricity transfer application* are deemed to be withdrawn.

## 21. Contributions Policy Applies

If, during the processing of the *connection application*, Western Power determines that *works* are required to provide the *covered services* sought in the *connection application*, then the *contributions policy* applies to the *connection application*.

## 22. Dormant applications

- (a) Subject to clause 22(b), Western Power will give the *applicant* in respect of a *dormant application* a written notice requesting the *applicant* to show cause in writing why Western Power should continue to process the *dormant application*, and stating the work required to be *completed* to process the *dormant application*.
- (b) In exercising its rights under this clause 22, Western Power must act as a reasonable and prudent person.
- (c) If an *applicant* does not respond to Western Power in writing within 20 business days of receipt of a notice under clause 22(a), the *dormant application*, and any associated *electricity transfer application*, shall be deemed to have been withdrawn and Western Power shall notify the *applicant* in writing accordingly.
- (d) If an *applicant* responds to Western Power within 20 business days of receipt of a notice under clause 22(a) that it no longer wishes to progress the *dormant application* to an *access offer*, the *dormant application*, and any associated *electricity transfer application*, shall be deemed to have been withdrawn upon Western Power's receipt of that response.
- (e) If the *applicant* responds to Western Power within 20 business days of receipt of a notice under clause 22(a) contending that Western Power should continue to process the *dormant application*:
  - (i) Western Power must issue the *applicant* with a processing proposal under clauses 20.2, 20.3 or 24 as soon as practicable; and
  - (ii) if an *access contract* has not been entered into in respect of the *application* within 12 months of the date on which the notice under clause 22(a) was issued, Western Power may provide written notice to the *applicant* under this clause 22(e)(ii) of that fact upon which the *application*, and any associated *electricity transfer application*, shall be deemed to have been withdrawn under this applications and queuing policy.
- (f) In issuing a notice under clause 22(e)(ii), Western Power must have regard to the objectives of this applications and queuing policy, the likelihood of the *application* progressing to an *access offer* and the existence of any *competing applications*.

## 23. Release of Contracted Capacity

Without limiting the circumstances by which *spare capacity* becomes available on the *network*, when an existing *user* reduces *contracted capacity* at one *connection point* and that reduction increases *spare capacity*, then any *application* for that *spare capacity* must be processed by Western Power in accordance with clause 24 and clause 24A, regardless of whether the *user* makes a concurrent *connection application* at that or another *connection point*.

## 24. Where There Are Competing Applications

### 24.1 Formation of Competing Applications Groups

- (a) Where Western Power assesses that an *application* is *competing* with other *applications* then Western Power will, subject to clauses 16.5 and 24.8(b), manage *competing applications* by forming them into one or more *competing applications groups* and assessing a single set of *works* for *shared assets* required to meet some or all of the requirements of each *competing applications group*. To avoid doubt, where there are more than two *competing applications* Western Power may form all the *competing applications* into one *competing applications group*

or it may form them into two or more *competing applications groups* as Western Power considers appropriate given the nature of the *applications*, including how the *competing applications* impede each other, the size of the *capacity* sought in each of the *competing applications*, and the current level of *spare capacity*.

- (b) An *application* may be sorted into more than one *competing applications group* where Western Power considers this appropriate given the nature of the *application* (for example where the *application* competes with certain other *applications* in respect of one *network constraint* and with certain other *applications* in respect of another *network constraint*).
- (b1) Western Power will notify an *applicant* within 30 business days of the *application* if it has sorted the *application* into one or more *competing applications groups*.
- (b2) Where Western Power notifies an *applicant* under clause 24.1(b1) that the *application* has been sorted into one or more *competing applications groups*, then the *applicant* may choose by notice to Western Power at any time that it does not wish to be considered in one or more of the *competing applications groups*. Western Power will accept the choice of the *applicant*.
- (c) To the extent necessary to allow:
  - (i) a supplier of last resort (as defined in section 67 of the *Act*) to comply with its obligations under Part 5 of the *Act*; or
  - (ii) a default supplier (as defined in section 59 of the *Act*) to comply with its obligations under section 59 of the *Act*,

an *applicant* may advise Western Power at any time that it does not wish to be considered to be included within a *competing applications group*, in which case it will be treated as having made an *application* for an *applicant-specific solution* and the *applicant's connection application* will be processed as an *applicant-specific solution* in accordance with clauses 19 and 20 (and the other relevant provisions) of this applications and queuing policy and the *applicant* will be deemed to have made a request for a study under clause 20.3(a).

- (d) To avoid doubt, where Western Power considers that to issue a notice of intention to prepare a *preliminary access offer* it must perform any system or other studies, Western Power may provide a processing proposal to the *applicants* within the *competing applications group* in accordance with clause 20.2.

## 24.2 Notice of Intention to Prepare a Preliminary Access Offer

Where Western Power considers that a single set of *works* for *shared assets* may meet some or all of the requirements of a *competing applications group*, it will issue a notice of intention to prepare a *preliminary access offer* to all *applicants* within that *competing applications group*, and *charge* a preliminary offer processing fee. To avoid doubt, the preliminary offer processing fee is not payable by an *applicant* who under clauses 24.3(b) or 24.3(c) elects to opt out of the *competing applications group* or who under clause 24.3(d) withdraws their *application*.

## 24.3 Response to Notice of Intention to Prepare a Preliminary Access Offer

*Applicants* must respond to the notice issued under clause 24.2 within 30 business days by:

- (a) agreeing to have their *application* considered within a *competing applications group* and paying the preliminary offer processing fee as specified in the *price list*. By paying the preliminary offer processing fee, *applicants* demonstrate the good faith of their intention to proceed to an *access contract*, and as such the preliminary offer processing fee is non-refundable. Where an *access*

*contract* is subsequently entered into in respect of the *application*, the preliminary offer processing fee will be counted towards any *contribution* payable, where permissible under the *contributions policy*, and where it exceeds any *contribution* payable under the *contributions policy* and the reasonable costs of Western Power incurred in processing the *application* prior to and including Western Power making a *preliminary access offer* and processing responses to it, the excess will be offset against amounts payable under the *access contract* or refunded to the *applicant* where the *applicant* is not a party to that *access contract*; or

- (b) advising that they wish to opt out of the *competing applications group* and make an *application* for an *applicant-specific solution*, in which case the *applicant's connection application* will be processed as an *applicant-specific solution* in accordance with clauses 19 and 20 (and the other relevant provisions) of this applications and queuing policy and the *applicant* will be deemed to have made a request for a study under clause 20.3(a); or
- (c) advising that they wish to opt out of the *competing applications group* but that they do not want to make an *application* for an *applicant-specific solution* and wish to retain their *priority date* and be considered for inclusion in another *competing applications group*, in which case the *application* shall retain its *priority date* and will be considered for inclusion in another *competing applications group* in accordance with clause 24.1(a); or
- (d) withdrawing their *application*.

Where *applicants* fail to respond to the notice issued under clause 24.2 within 30 business days, their *application* and any associated *electricity transfer application* will be deemed to have been withdrawn.

#### **24.4 Western Power's Actions Following Response to the Notice of Intention to Prepare a Preliminary Access Offer**

Following the response of *applicants* under clause 24.3 (if any), Western Power may, if it continues to consider that a single set of *works* for *shared assets* may meet some or all of the requirements of a *competing applications group*, make *preliminary access offers* to each *applicant* within the relevant *competing applications group* at the same time. Western Power will endeavour to make such *preliminary access offers* to each *applicant* within the relevant *competing applications group* within 60 business days after issuing the notice under clause 24.2.

#### **24.5 Response to Preliminary Access Offer**

- (a) *Applicants* must respond to the *preliminary access offers* within 30 business days after receipt of the *preliminary access offers*, by indicating in good faith in writing either:
  - (i) that it would accept such a *preliminary access offer* if it were an *access offer*; or
  - (ii) that it would reject such a *preliminary access offer* if it were an *access offer* and would request an amendment to the *preliminary access offer*. In this case Western Power and the *applicant* must negotiate in good faith regarding the form of the *preliminary access offer*, but if Western Power and the *applicant* have not agreed on the form of the *preliminary access offer* within 30 business days from the date on which the *applicant* received the *preliminary access offer*, then the *application* and any associated *electricity transfer application* will be deemed to have been withdrawn unless:
    - (A) the *applicant* has notified Western Power in writing that it wishes to be treated as having made an *application* for an *applicant-specific solution* and the *applicant's connection application* will be processed as an *applicant-specific solution* in accordance with clauses 19 and 20 (and the other relevant provisions) of this applications and



queuing policy and the *applicant* will be deemed to have made a request for a study under clause 20.3(a); or

- (B) the *applicant* has notified Western Power in writing that it wishes to opt out of the *competing applications group* but it does not want to make an *application* for an *applicant-specific solution* and wishes to retain its *priority date* and be considered for inclusion in another *competing applications group*, in which case the *application* shall retain its *priority date* and will be considered for inclusion in another *competing applications group* in accordance with clause 24.1(a); or
  - (C) the failure to agree on the form of the *preliminary access offer* within 30 business days is due to Western Power acting in bad faith, in which case Western Power and the *applicant* must negotiate in good faith for a further period of 30 business days regarding the form of the *preliminary access offer* and clauses 24.5(a)(ii)(A) and 24.5(a)(ii)(B) shall apply. If no agreement is reached between Western Power and the *applicant* during this further period, and the *applicant* has not notified Western Power in accordance with clauses 24.5(a)(ii)(A) and 24.5(a)(ii)(B), the *application* and any associated *electricity transfer application* will be deemed to have been withdrawn; or
  - (iii) that it would not accept such a *preliminary access offer* if it were an *access offer*, in which case the *connection application* and any associated *electricity transfer application* are deemed to have been withdrawn.
- (b) Where *applicants* respond under either clause 24.5(a)(i) or an agreement is reached regarding the form of the *preliminary access offer* under clause 24.5(a)(ii) ("*preliminary acceptance*"), the *applicants* must pay within 30 business days a *preliminary acceptance fee* as specified in the *price list* to Western Power to demonstrate the good faith of their intention to proceed to an *access contract*. The *preliminary acceptance fee* is non-refundable but, where an *access contract* is subsequently entered into in respect of the *application*, the *preliminary acceptance fee* will be counted towards any *contribution payable*, where permissible under the *contributions policy*, and where it exceeds any *contribution payable* under the *contributions policy* and the reasonable costs of Western Power incurred in processing the *application* until the execution of an *access contract*, the excess will be offset against amounts payable under the *access contract* or refunded to the *applicant* where the *applicant* is not a party to that *access contract*.
  - (c) If an *applicant* does not respond to Western Power within 30 business days of receipt of the *preliminary access offer* by one of the methods in clause 24.5(a), the *application* and any associated *electricity transfer application* shall be deemed to have been withdrawn.
  - (d) To avoid doubt, *preliminary acceptance* does not give rise to a *contract*.

## 24.6 Subsequent Access Offers

After reviewing the responses by *applicants* to *preliminary access offers* under clause 24.5, Western Power will endeavour within 30 business days from the last date on which responses are required to be provided to Western Power under clause 24.5, to complete the following:

- (a) if Western Power considers it can make *access offers* to *applicants* within the *competing applications group* collectively for the costs nominated in the *access offers*, it will make *access offers* to *applicants* within the *competing applications group* conditional on sufficient acceptance of the *access offers* by *applicants* to ensure that access can be provided to the *applicants* collectively for the costs nominated in the *access offers*; or

- (b) if Western Power does not consider it can make *access offers* to *applicants* within the *competing applications group* collectively for the costs nominated in the *access offers*, it will revise its *preliminary access offer* and submit those revised *preliminary access offers* to *applicants*; or
- (c) where the extent of the *preliminary acceptance* by *applicants* within a *competing applications group* exceeds the ability of Western Power to provide services under *access contracts* (if all such *preliminary acceptances* resulted in *access contracts*), Western Power may make *access offers* to *applicants* in the order of the *priority date* of *applications* until:
  - (i) to the extent *connection applications* relate to *exit services* or *exit service components*, there is no more *spare capacity*; and
  - (ii) to the extent *connection applications* relate to *entry services* or *entry service components* the circumstances which resulted in the *applications* being classified as *competing applications* would prevent Western Power being able to provide such *entry services* or *entry service components* if any further *access offers* were accepted.

If Western Power fails to make an *access offer* to an *applicant* within a *competing applications group*, then notwithstanding any other provision in this applications and queuing policy, the *application* will remain valid and retain its *priority date* and Western Power will refund any *preliminary access offer* processing fee or *preliminary acceptance* fee paid by the *applicant*.

{Note: An *access offer* might not be made to an *applicant* under 24.6(c) because there is no more *spare capacity* after making *access offers* to *applicants* with earlier *priority dates*.}

## 24.6A Minimum and Maximum Levels of Acceptance

An *access offer* to *applicants* within a *competing applications group* will specify:

- (a) if applicable, the minimum number of *applicants* that must accept the *access offers* made to that *competing applications group* (whether expressed by reference to the number of accepting *applicants*, the amount of *capacity* they accept or both) for Western Power to proceed to undertake the *works* specified in the *access offers* at the cost and on the other terms set out in those *access offers*;
- (b) if applicable, the maximum number of *applicants* that may accept the *access offers* made to that *competing applications group* (whether expressed by reference to the number of accepting *applicants*, the amount of *capacity* they accept or both) for Western Power to proceed to undertake the *works* specified in the *access offers* at the cost and on the other terms set out in those *access offers*.

## 24.6B Failure to Achieve Minimum Levels

Where the minimum levels of acceptance set out in clause 24.6A are not met then any acceptance of an *access offer* will be of no effect but Western Power will seek to revise the *access offers* so as to meet the requirements of those *applicants* who did accept *access offers* and issue new *access offers*, provided that there is no obligation on Western Power to revise *access offers* where no *applicants* accepted *access offers* (without prejudice to the entitlement of such *applicants* to opt for an *applicant-specific solution* or make new *applications*).

## 24.6C Exceeding Maximum Levels

- (a) Where the maximum levels of acceptance set out in clause 24.6A are exceeded then priority will, subject to clause 24A.4, be given to *applicants* with an earlier *priority date* in determining which



*access offers* will be of effect and which of no effect. Subject to paragraph (b) below, where an *applicant's* acceptance is not effective that *applicant* ("**reallocated applicant**") will be allocated to a new *competing applications group*.

- (b) In respect of the *reallocated applicant* with the highest queue priority of the *reallocated applicants*, Western Power will, where it is possible to meet the requirements of that *applicant* in part (for example supply part of the *capacity* requested by them), make a further *access offer* to them to supply those partial requirements which that *reallocated applicant* may accept or reject. Where the *reallocated applicant* rejects the *access offer* then they will be allocated to a new *competing applications group*. If the *reallocated applicant* rejects the *access offer* then Western Power will, if practicable to do so having regard to the timeframes for undertaking of *works* set out in those *access offers* which have been effectively accepted, make a further *access offer* to the next *reallocated applicant* with the highest queue priority and the process in this paragraph (b) will continue until Western Power determines it is not practicable to make any further *access offers*.

## 24.7 Changing Composition of Competing Applications Group

- (a) Western Power may change the composition of a *competing applications group*:
  - (i) to remove, at any time, *applicants* within the *competing applications group* whose *applications* have been withdrawn or been deemed to be withdrawn or *applicants* whose *applications* are to be treated, under a clause of this applications and queuing policy, as having been made for an *applicant-specific solution* (for example under clause 24.3(b), 24.5(a)(ii)(A) or clause 24.1(c));
  - (ii) to add additional *applications* to a *competing applications group*, but where Western Power has already issued a notice of intention to prepare a *preliminary access offer* under clause 24.2 to *applicants* within a *competing applications group*, then Western Power will only add additional *applications* to that *competing applications group* where the additional *applications* can be added without delaying preparation of the *preliminary access offer* to the existing *applicants*.
- (b) Despite clause 24.7(a) Western Power may change the composition of a *competing applications group* at any time following changes regarding the nature or location of those factors which resulted in *applications* being classified as *competing* following other *network* developments, changes in *generation* or changes in loads in which case Western Power may recommence the processes under this clause 24.

### 24.7A Termination of a Competing Applications Group

- (a) Western Power may terminate a *competing applications group* by written notice to the *applicants* within that *competing applications group* where:
  - (i) Western Power considers, in accordance with this applications and queuing policy, that it will not issue notices of intention to prepare *preliminary access offers* or *preliminary access offers* or *access offers*, as applicable, in respect of a single set of *works* for *shared assets* to any of the *applicants* within the *competing applications group*; or
  - (ii) Western Power considers that a single set of *works* for *shared assets* is no longer viable.
- (b) To avoid doubt, where Western Power terminates a *competing applications group* under clause 24.7A, the *applications* previously within that *competing applications group* and their *priority*

*date* shall not be affected and may be considered for inclusion in other *competing applications groups*.

## 24.8 Spare Capacity

- (a) In determining whether there is *spare capacity* to provide *covered services* requested in a *connection application* or group of *applications*, Western Power must assume that any existing *access contract* will be renewed in accordance with the terms of that *access contract*.
- (b) If, at any time, *spare capacity* to provide *covered services* becomes available without the need for any works for *shared assets* and there are *applicants* who are *competing* for such *spare capacity*, Western Power may allocate that *spare capacity* to *applicants* on the basis of *priority date* until no *spare capacity* remains without forming a *competing applications group*. To avoid doubt, the *spare capacity* may be offered to an *applicant* who is part of a *competing applications group* and an *applicant* who is not part of a *competing applications group*.

## 24.9 Types of Information

Western Power must make known to any *applicant* that has lodged an *application* with Western Power, or to any existing *user* with an *access contract* with conditions precedent which have not yet been satisfied or waived:

- (a) whether there are *competing connection applications*; and
- (b) a description of the circumstances which caused the *connection applications* to be *competing connection applications* (including in the case of *connection applications* for *exit services* or *exit service components* information in reasonable detail regarding the aggregated *capacity* requirements of those *competing connection applications*); and
- (c) an estimate of the likely time until the making of an *access offer*; and
- (d) where the *application* is a *competing connection application*, in respect of each *connection application* which is *competing* with that *connection application*:
  - (i) in the case of *connection applications* for *exit services* or *exit service components*, the *capacity* requirements of the *competing connection application*;
  - (ii) the geographic location at which the *competing connection application* seeks the *capacity*;
  - (iii) reasonable details regarding any *augmentation* required by the *competing connection application*;
  - (iv) any zone substation relevant to providing the *covered service* sought in the *application*;
  - (v) where the *applicant* is a *generator*, the fuel type involved; and
  - (vi) the *priority date*,

in an anonymised format without details of the *applicant's* name or physical address of any *connection point* relevant to the *application*. Western Power must not provide *confidential information* in an anonymised format under this clause 24.9(d) if Western Power determines, acting as a reasonable and prudent person, that it is possible from the anonymised information to determine the identity of the associated *competing applicant*.

## 24.10 When Western Power Must Update Information

Western Power must provide the information in clause 24.9:

- (a) when issuing notices of intention to prepare *preliminary access offers* under clause 24.2, *preliminary access offers* under clause 24.4 and *access offers* under clause 24.6;
- (b) at any time after a reasonable request by the *applicant*, or by any existing *user* with an *access contract* with conditions precedent which have not yet been satisfied or waived, for updated information; and
- (c) as soon as practicable after a material change in the information previously notified under this clause 24.10, including when information of the kind referred to in clause 24.9(d) is no longer required to be provided in an anonymised format.

## 24.11 Concurrent Consideration

Nothing in clause 24 prevents Western Power from processing more than one *connection application* concurrently.

## 24.12 When Clause 24 Does Not Apply

The provisions in clause 24 do not apply to a *transition application*.

## 24A. Priority Dates of Applications in Particular Circumstances

### 24A.1 Withdrawn Connection Applications

An *application* which is withdrawn, or deemed by this applications and queuing policy to have been withdrawn, loses its *priority date*, even if it is subsequently amended or resubmitted.

### 24A.2 Amended Connection Applications

- (a) Subject to clause 24A.2(b), an amended *connection application* has the same *priority date* as the original *connection application*.
- (b) Subject to clause 24A.2(c), if an amended *connection application* is materially different from the original *connection application*, and if the difference is such that an *applicant* whose *competing application* has a *priority date* subsequent to the original *connection application* is materially prejudiced in terms of the likelihood, timing, cost and terms of it obtaining access (compared with that later *applicant's* position with respect to the original *connection application*), then:
  - (i) if it is possible to construe the amended *connection application* as a combination of the original *connection application* and a notional supplementary *connection application* (whether for further *capacity* or otherwise), the original *connection application* retains its *priority date* and the notional supplementary *connection application* has a *priority date* according to the time of amendment and will be treated for the purposes of this applications and queuing policy as a separate *application* with that *priority date*; but
  - (ii) otherwise — the amended *connection application* has a *priority date* according to the time of amendment.
- (c) For the purposes of clause 24A.2(b), without limiting the ways in which an amended *connection application* may be materially different from the original *connection application*, an amended *connection application* is not materially different from the original *connection application* if the *capacity* sought in the amended *connection application* is less, or less than 5% more than, the *capacity* sought in the original *connection application*.

- (d) Where an *applicant* has provided a response under clause 24.3 agreeing to have its *application* considered within a *competing applications group* following receipt of a notice of intention to prepare a *preliminary access offer* under clause 24.2 and where that *applicant* subsequently amends its *connection application* then Western Power may if it considers it appropriate (having regard to all relevant factors including the impact of the amendment on other members of the *competing applications group* and on Western Power) make or amend a *preliminary access offer* based on the amended *application*.
- (e) Where Western Power does not agree to make or amend the *preliminary access offer* based on the amended *application* then in making *preliminary access offers* Western Power will treat the relevant *application* on the basis that it has not been amended.

### **24A.3 Network Control Services**

Western Power may make an *access offer* as a result of a procurement process for *Network Control Services* without regard to whether there are any *competing connection applications*.

### **24A.4 Supplier of Last Resort and Default Supplier Arrangements**

Notwithstanding anything in clause 24A or in this applications and queuing policy, priority must be given to *applications*:

- (a) to the extent necessary to allow a supplier of last resort (as defined in section 67 of the Act) to comply with its obligations under Part 5 of the Act; or
- (b) to the extent necessary to allow a default supplier (as defined in section 59 of the Act) to comply with its obligations under section 59 of the Act.

## **25. Additional Terms of the Preliminary Access Offer or Access Offer**

### **25.1 Terms Under Contributions Policy**

Western Power must include as terms of the *preliminary access offer* or *access offer*:

- (a) the amount of any *contribution* and other payments, such as rebates, determined under the *contributions policy*; and
- (b) any terms related to the provision of the *contribution* that the *applicant* has selected under the *contributions policy*.

### **25.2 Exemptions from Technical Rules**

The terms related to any exemption to the *technical rules* determined under Chapter 1 of the *technical rules* must be included in the *preliminary access offer* or *access offer*.

## **26. Making the Access Offer**

- (a) Subject to clause 26(b) Western Power must, acting as a reasonable and prudent person, give an *access offer* to the *applicant* as soon as practicable after the *complete connection application* is lodged, having regard to the nature of the *connection application*, consideration of *competing*

*applications* and the need (where applicable) for *works* involving *shared assets* in order for Western Power to be able to provide access in accordance with the *technical rules*.

- (b) In the case of a *connection application* which relates to a *transmission connected generating system* Western Power has no obligation to make an *access offer* until the *Registered Generator Performance Standards* for that *transmission connected generating system* have been determined in accordance with the *WEM Rules*.

## Part D – Transfer and Relocation Policy

### 27. Novation of entire contract

- (a) Western Power will not unreasonably withhold or delay its consent to the counterparty to an *access contract* novating all of its rights and obligations under that *access contract* or give that consent on unreasonable conditions.
- (b) Without limiting the considerations Western Power may have regard to in determining whether to give consent such considerations include the financial and technical capacity of the person who is proposed to assume the obligations under the *access contract*.

### 28. Novation of part of contract

- (a) Subject to clause 28(c), Western Power will not unreasonably withhold or delay its consent to the counterparty to an *access contract* novating part of its rights and obligations under that *access contract* or give that consent on unreasonable conditions.
- (b) Without limiting the considerations Western Power may have regard to in determining whether to give consent such considerations include the financial and technical capacity of the person who is proposed to assume the obligations under the *access contract*.
- (c) Western Power is not required to consent to part of a novation of an *access contract* unless reasonably satisfied:
  - (i) the rights and obligations to be novated constitute a severable part of the *access contract*;
  - (ii) all obligations relevant to the rights to be novated are also being novated;
  - (iii) the ongoing operation of the remaining *access contract* and the ongoing operation of the novated provisions will not adversely affect the integrity of the *network*;
  - (iv) the remaining *access contract* is capable of operating in a meaningful and coherent manner;
  - (v) the novated provisions will operate in a meaningful and coherent manner;
  - (vi) Western Power will not suffer a reduction in revenue as a result of the novation.

## SCHEDULE 1 FORM OF GUARANTEE

DATE [ ]

### PARTIES

1. [### ACN ### a company registered in ### of ###] (“**Guarantor**”); and
2. **Electricity Networks Corporation ABN 18 540 492 861**, a statutory body corporate established by paragraph 4(1)(b) of the *Electricity Corporations Act 2005 (WA)* of 363 Wellington Street, Perth Western Australia (“**Western Power**”).

### RECITALS

- A. Western Power may in its discretion provide Services to [###] (“**the User**”) under an Access Contract at the request of each of the User and the Guarantor.
- B. The Guarantor wishes to execute this Guarantee to secure payment of all amounts payable under the Access Contract to Western Power.

### OPERATIVE PROVISIONS

(i) Guarantee

The Guarantor unconditionally and irrevocably Guarantees as a continuing security to Western Power payment by the User of all moneys and liabilities due and/or payable from or by the User to Western Power under or in connection with the contract dated [###] (“**Access Contract**”) created between the User and Western Power (“**Secured Moneys**”), including moneys and liabilities incurred or arising:

- (i) (**liability**): at any present or future time, whether actually or contingently;
- (ii) (**default**): as a result of any breach of or default under the Access Contract; and/or
- (iii) (**account**): by way of principal, interest, cost, charge, expense, disbursement, fee, tax, stamp or other duty, indemnity, damages or monetary judicial order.

(ii) Secured Moneys

(i) Demand payment

The Guarantor must pay to Western Power, upon demand by Western Power at any present or future time, the amount of the Secured Moneys due from and payable by the User to Western Power at that time under, and in the manner and currency specified in, the Access Contract.

(ii) Costs

The Guarantor must at any present or future time indemnify Western Power upon demand for any cost, charge, expense, disbursement, fee, tax or stamp or other duty incurred by Western Power at any time in connection with the Access Contract, this Guarantee or the Secured Moneys relating to:

- (A) (**security agreements**): preparation, negotiation, execution or performance, or any termination, amendment, consent, claim, demand or waiver;
- (B) (**security rights**): any exercise or enforcement of any right or power conferred on Western Power;

- (C) **(credit increases)**: any extension of further, additional or increased credit or financial accommodation by Western Power, or agreement by Western Power to increase the amount secured; and/or
- (D) **(payments)**: the receipt or payment of any moneys, including moneys paid by Western Power by way of reimbursement to any third party.

(iii) Set-Off exclusion

The Guarantor must make any payment required under this Guarantee without set-off or other deduction, except for the deduction or withholding of any tax compelled by law.

(iii) Indemnity

The Guarantor must as a separate and additional liability of the Guarantor as a principal debtor, and not as a surety, indemnify Western Power against, and pay to Western Power upon demand by Western Power an amount equal to, all Secured Moneys that are or may become invalid, unenforceable, illegal or irrecoverable for any reason or under any circumstances as a liability to Western Power by the Guarantor as a surety, despite any other provision of this Guarantee.

(iv) Guarantee protection

This Guarantee, and the liability of the Guarantor under this Guarantee, is not affected at any time by:

- (i) **(waiver)**: the granting to any person by Western Power of any waiver;
- (ii) **(agreements)**: any agreement, deed or document created with, or action or omission performed, representation made or non-disclosure of any fact or information by, Western Power or any person;
- (iii) **(Secured Moneys)**: any increase or variation in the amount of the Secured Moneys occurring for any reason;
- (iv) **(document amendment)**: any amendment to or transfer, release or termination of any agreement, deed or document or any right, power or liability of any person under any agreement, whether for or without consideration;
- (v) **(enforcement decisions)**: any exercise or enforcement, or any failure or invalidity in, the exercise or enforcement by Western Power of any right or power conferred on Western Power under any agreement, deed or document or by law;
- (vi) **(invalidity)**: any actual or potential invalidity, unenforceability, illegality or irrecoverableness of any agreement, deed or document or consent or any payment made or due to Western Power under any agreement for any reason;
- (vii) **(incapacity)**: any incapacity or absence of power or authorisation of, or other fact relating to, any person in connection with the execution of any agreement, deed or document or otherwise, including any change in the constitution or membership of any person; or
- (viii) **(residual)**: any other breach, default, waiver or fact which, except for this provision, might legally operate:
  - (A) to release or discharge or have any prejudicial effect on; or
  - (B) in any manner to release or discharge the Guarantor from performance of, or limit or provide a defence to any legal action to enforce,

this Guarantee, or any liability of the Guarantor under or in connection with this Guarantee.



(v) Termination

The Guarantor is not entitled to terminate or limit this Guarantee, or any liability of the Guarantor under this Guarantee, until the Secured Moneys have been paid in full.

(vi) Governing Law

This Guarantee is governed by and construed under the law of the State of Western Australia.

(vii) General

(i) Continuing Security

This Guarantee is a continuing security and is not wholly or partially discharged by the payment at any time of any Secured Moneys, settlement of account or other fact and applies to the balance of the Secured Moneys at any time until a final termination of this Guarantee by Western Power.

(ii) Further Assurance

The Guarantor must upon request by Western Power at any time execute any document and perform any action necessary to give full effect to this Guarantee, whether prior or subsequent to performance of this Guarantee.

(iii) Waivers

Any failure or delay by Western Power to exercise any right or power under this Guarantee does not operate as a waiver and the single or partial exercise of any right or power by Western Power does not preclude any other or further exercise of that or any other right or power by Western Power.

## Appendix 3 – Model Standard access contract

660

{This Appendix 3 contains four parts.

Part A contains definitions and commencement provisions, and is included in all *access contracts*.

Part B contains provisions dealing with *capacity services*. It forms part of the *capacity contract*.

Part C contains provisions dealing with technical compliance. It forms part of the *technical compliance contract*.

Part D contains general contractual provisions, and is included in all *access contracts*.

An *access contract* can comprise:

- a “**capacity contract**” based on Part B, together with Parts A and D; and
- a “**technical compliance contract**” based on Part C, together with Parts A and D; and
- a contract which is both a “**capacity contract**” and a “**technical compliance contract**”, containing all four Parts.}

This Appendix 3 leaves some matters to be completed. These matters are noted in square brackets, and fall into two categories:

- Matters which are to be completed when an *access contract* is incorporated into an *access arrangement* is approved by the *Authority* under Chapter 4. Without limiting the *Authority’s* discretion or duties, the way these matters are dealt with must be consistent with the *Code objective* and section 5.4(a).
- Matters which are to be agreed by the *parties* during the *access contract* negotiations, or determined by the *arbitrator* when determining an *access dispute*.

Footnotes following each matter in square brackets denote which category the matter falls into, and provide guidance as to the content of the matter. The footnotes form part of this model *standard access contract* and have legal effect.

## Agreement dated

### Parties

This is a contract between

[Insert name of service provider]<sup>661</sup> (“**service provider**”)

and

[Insert name of user]<sup>662</sup> (“**UserCo**”)

[x]<sup>663</sup>

### Background

- (a) *UserCo* has made an *access application* under the *access arrangement*.
- (b) *Service provider* has made an offer, in accordance with the *access arrangement*, to provide *covered services* to *UserCo*.
- (c) *UserCo* has accepted the offer.
- (d) [x]<sup>664</sup>

## Part A – Interpretation and introduction

{Note: Refer to clause A3.11 for when this Part A applies.}

### Definitions and interpretation

A3.2 In this contract the following terms have the following meanings, unless the contrary intention is apparent:

“**access arrangement**” means the *access arrangement* approved in respect of the *network* under the *Code*.

“**access rights**”, in clauses A3.103 to A3.105, means all or part of *UserCo's* rights under this contract to obtain a *covered service*.

“**accounting period**” means [x]<sup>665</sup>.

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<sup>661</sup> To be inserted in the *access contract* by agreement between the parties or arbitrated award.

<sup>662</sup> To be inserted in the *access contract* by agreement between the parties or arbitrated award.

<sup>663</sup> If there is to be an *indemnifier*, insert name of *indemnifier* and add: “(“**indemnifier**”)”. Whether there is to be an indemnifier is to be inserted in the *access contract* by agreement between the parties or arbitrated award.

<sup>664</sup> If there is to be an *indemnifier*, add: “ (d) The *indemnifier* has agreed to indemnify *service provider* in respect of certain of *UserCo's liabilities*.”

<sup>665</sup> Insert the period in respect of which invoices are rendered. To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access*

“**Act**” means the *Electricity Industry Act 2004*.

“**affected obligation**”, in respect of a *force majeure event*, means the obligation (other than an obligation to pay money) that the *affected person* is unable, wholly or in part to perform because of the *force majeure event*.

“**affected person**”, in respect of a *force majeure event*, means a *party* who is unable, wholly or in part, to perform an *affected obligation*.

“**affected service**” has the meaning given to it in clause A3.42(b).

“**affected service period**”<sup>666</sup> has the meaning given to it in clause A3.42(b).

“**applications and queuing policy**” means the *applications and queuing policy* in the *access arrangement*.

“**augmentation**”, in relation to the *network*, means an increase in the capability of the *network* to provide *covered services*.<sup>667</sup>

“**authorised officer**” means the authorised officer of a *party* as specified in Schedule 9 to whom notice, approval, consent or other communications may be given.

“**Authority**” means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003*.

“**bare transfer**” means a *transfer* of all or part of *UserCo's access rights* in which *UserCo's* obligations under this contract, and all other terms of this contract, remain in full force and effect after the *transfer*.

“**business day**” means a day that is not a Saturday, Sunday or public holiday throughout Western Australia.

“**capacity**” refers to the capacity of the *network* or a *connection point* to transfer electricity.

“**capacity contract**” means an *access contract* (as defined in the *Code*) containing provisions materially equivalent to those in Parts A, B and D of this contract.

“**capacity increase notice**” has the meaning given to it in clause A3.17.

“**CEO meeting**” means a meeting under clause A3.97 between the senior executive officers of each *party* to attempt to resolve a dispute.

“**charge**” for a service for an *accounting period* means the amount that is payable by *UserCo* to *service provider* for the service, calculated by applying the *tariff* for the service, during the *accounting period*.

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*arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

<sup>666</sup> Clause A3.2 amended by WAGG No 207, 8 November 2005

<sup>667</sup> Clause A3.2 amended by WAGG No 180, 22 October 2008

“**claim**” means any claim, demand, action or proceeding made or instituted against a *party* in respect of which that *party* may under this contract, seek to claim indemnity under this contract against the other *party*.

“**Code**” means the Electricity Networks Access Code 2004.

“**Code objective**” has the meaning given to it in section 2.1 of the *Code*.

“**commencement date**” means the date specified in item 1<sup>668</sup> of Schedule 1.

“**common service**” means a *covered service* that is ancillary to the provision of one or more of *entry services*, *exit services* and *network use of system services* that ensures the reliability of the *network* or otherwise provides benefits to *users* of the *network*, the costs of which cannot reasonably be allocated to one or more particular *users* and so need to be allocated across all *users*.

“**communication**” means a notice, approval, consent or other communication given or made under this contract.

“**confidential information**” means information which is confidential under clause A3.109.

“**connect**” means to form a physical link to or through the *network*.

“**connection assets**”, for a *connection point*, means all of the *network assets* that are used only in order to provide *covered services* at the *connection point*.

“**connection point**” means a point on the *network* identified in this contract as an *entry point* or *exit point* under this contract.

“**connection service**” means the right to *connect facilities and equipment* at a *connection point*.

{Note: A *connection service* is the right to physically *connect* to the *network*, and will regulate technical compliance etc. It is not the same thing as an *entry service* or *exit service*, which are the right to *transfer* electricity.}

“**contestable**”, in relation to a *consumer*, means a *consumer* whose *load* exceeds the threshold prescribed under Schedule 6 clause 2(1b) of the *Electricity Transmission and Distribution Systems (Access) Act 1994* or another enactment.<sup>669</sup>

“**contracted point**” has the meaning given to it in clause A3.19(b)(i).

“**contract maximum demand**” or “**CMD**” for a *connection point* means the maximum amount of electricity that *UserCo* may *transfer* out of the *network* at the *connection point* being either:

- (a) the amount specified in Schedule 3 from time to time in respect of the *connection point*; or

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<sup>668</sup> Clause A3.2 amended by WAGG No 207, 8 November 2005

<sup>669</sup> Appendix 3 clause A3.2 amended by WAGG No 59, 31 March 2006

- (b) if no amount is specified in Schedule 3, the maximum amount of electricity permitted to be transferred through the *connection assets* at the *connection point* under the *technical rules*.

{Note: A *user* is free under the *Code* to seek *access* to a service with a varying *CMD*, which will be a *non-reference service*.}

**“contracted capacity”** for a *connection point* means:

- (a) for the electricity transferred into the *network*, the *DSOC*; and  
(b) for the electricity transferred out of the *network*, the *CMD*.

**“contribution”** means any amount (which may be either an up-front amount or a periodic amount, as agreed between the *parties*) as specified in Schedule 5.<sup>670</sup>

**“contributions policy”** means the policy contained in the *access arrangement* dealing with *contributions* by *users*.<sup>671</sup>

**“Corporations Act”** means the *Corporations Act 2001* of the Commonwealth.

**“covered service”** means a service provided by means of the *network*, including:

- (a) a *connection service*; or  
(b) an *entry service* or *exit service*; or  
(c) a *network use of system service*; or  
(d) a *common service*, or  
(e) a service ancillary to the *services* listed in paragraphs (a) to (d) above,

but does not include an *excluded service*.<sup>672</sup>

**“CPI”** means the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities *published* by the Australian Bureau of Statistics from time to time or, if the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities ceases to be *published*, such alternative index as *service provider* acting reasonably and in good faith may determine, and in all cases the *CPI* figure is to be adjusted to correct for any effects of a change in the rate of *GST*.

**“curtailment”** includes a whole or partial curtailment or whole or partial interruption of a service.

**“customer transfer code”** means a code made under section 39(1) or section 39(2a) of the *Act* in respect of a matter referred to in section 39(2)(b) of the *Act*.

**“default”**, in relation to a *party*, is defined in clause A3.85.

<sup>670</sup> Clause A3.2 amended by WAGG No 180, 22 October 2008

<sup>671</sup> Clause A3.2 amended by WAGG No 180, 22 October 2008

<sup>672</sup> Clause A3.2 amended by WAGG No 180, 22 October 2008

“**designated controller**”, where applicable, in respect of a *connection point*, is determined in accordance with clauses A3.36 to A3.39.

“**designated point**” has the meaning given to it in clause A3.36.

“**destination point**” has the meaning given to it in clause A3.19(b).

“**direct damage**” suffered by a person means loss or damage suffered by the person which is not *indirect damage*.

“**disconnect**”, in respect of a *connection point*, means to operate switching or other equipment so as to prevent the *transfer* of electricity through the *connection point*.

“**discounted rate**” means  $[x]^{673}$  % p.a.

“**dispute**” means any dispute or difference concerning:

- (a) the construction of; or
- (b) anything contained in or arising out of; or
- (c) the rights, obligations, duties or liabilities of a *party* under,

this contract.

“**DSOC**” or “**declared sent out capacity**” for a *connection point* means the maximum amount of electricity that *UserCo* may *transfer* into the *network* at the *connection point*, being either:

- (a) the amount specified in Schedule 3 from time to time; or
- (b) if no amount is specified in Schedule 3, the maximum amount of electricity permitted to be transferred through the *connection assets* at the *connection point* under the *technical rules*.

{Note: A *user* is free under the *Code* to seek *access* to a service with a varying DSOC, which will be a non-reference service.}

“**due date**” means the date  $[x]^{674}$  *business days* after a *party* receives a *tax invoice* issued under clause A3.44 or A3.45.

“**efficiently minimising costs**” means *service provider* incurring no more costs than would be incurred by a prudent *service provider*, acting efficiently, in accordance with

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<sup>673</sup> To be completed – for example this could be a reference to the overdraft rate *published* by a major bank. To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

<sup>674</sup> Insert the number of days to be allowed for payment. To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award. Unless the *Authority* or *arbitrator* consider that a different value will better achieve the *Code objective*, 10 business days should be used.

*good electricity industry practice*, seeking to achieve the lowest sustainable cost of delivering the *services*.

**“Electricity Distribution Regulations”** means the *Electricity Distribution Regulations 1997*.

**“Electricity Transmission Regulations”** means the *Electricity Transmission Regulations 1996*.

**“emergency”** has the meaning given to it in clause A3.126.

**“end date”** for a *connection point*, means the date specified as such in Schedule 3 for the *connection point*.

**“entry point”** means a point on the *covered network* identified as such in this contract at which, subject to this contract, electricity is more likely to be transferred into the *network* than transferred out of the *network*.

**“entry service”** means a *covered service* provided by *service provider* at an *entry point* under which *UserCo* may *transfer* electricity into the *network* at the *entry point*.

**“excluded service”** means a service provided by means of the *network*, including:

- (a) a *connection service*; or
- (b) an *entry service* or *exit service*; or
- (c) a *network use of system service*; or
- (d) a *common service*; or
- (e) a service ancillary to the *services* listed in paragraphs (a) to (d) above

which meets the following criteria:

- (f) the supply of the service is subject to effective competition; and
- (g) the cost of the service is able to be excluded from consideration for *price control* purposes without departing from the *Code objective*.<sup>675</sup>

**“exit point”** means a point on the *covered network* identified as such in this contract at which, subject to this contract, electricity is more likely to be transferred out of the *network* than transferred into the *network*.

**“exit service”** means a *covered service* provided by *service provider* at an *exit point* under which *UserCo* may *transfer* electricity out of the *network* at the *exit point*.

**“facilities and equipment”**, in relation to a *connection point*, means the apparatus, equipment, plant and buildings used for or in connection with generating, consuming and transporting electricity at the *connection point*.

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<sup>675</sup> Clause A3.2 amended by WAGG No 180, 22 October 2008



**“financial provision”**, in relation to a *contribution*, means the payment by *UserCo* of a *contribution* by way of either a periodic financial payment or an up front financial payment, as agreed, in accordance with Schedule 5.<sup>676</sup>

**“force majeure”** in respect of a *party* means an event or circumstance beyond the *party’s* control, and which the *party* acting as a *reasonable and prudent person* is not able to prevent or overcome, including (where the foregoing conditions are satisfied):

- (a) any act of God, lightning, earthquake, storm, fire, flood, subsidence, land slide, mud slide, wash-out, explosion or natural disaster; or
- (b) any insurrection, revolution or civil disorder, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot; or
- (c) any determination, award or order of any court or tribunal, or any regulatory authority or the award of any *arbitrator* arising after the *commencement date*; or
- (d) any act or omission of government or any government or regulatory department, body, instrumentality, ministry, agency, fire brigade; or
- (e) any inability or delay in obtaining any governmental, quasi-governmental or regulatory approval, consent, permit, licence or authority; or
- (f) any industrial disputes of any kind, strike, lock-out, ban, limitation or other industrial disturbances; or
- (g) any significant plant or equipment failure which could not have been avoided by the exercise of *good electricity industry practice*; or
- (h) any act or omission of any person with *facilities and equipment* connected to the *network* which frustrates the *party’s* ability to perform its obligations under this contract; or
- (i) any application of any *law* of the Commonwealth, any Commonwealth authority, the State, any State authority or any local government; or
- (j) accidents, weather and acts of third parties (such as generators and other *users* of electricity) that affect the quality, frequency and continuity of the supply of electricity.

**“force majeure event”** means an event of *force majeure*.

**“generate”** means to produce electricity.

**“generating plant”** in relation to a *connection point* means all *facilities and equipment* involved in generating electricity.

**“good electricity industry practice”** means the exercise of that degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably and ordinarily exercise under comparable conditions and circumstances

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<sup>676</sup> Clause A3.2 amended by WAGG No 180, 22 October 2008

consistent with applicable *laws* and applicable recognised codes, standards and guidelines.

“**GST**” means goods and *services* tax or similar value added tax levied or imposed in Australia on a taxable supply under the *GST Act* or otherwise.

“**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

“**guest party**” has the meaning given to it in clause A3.92.

“**host party**” has the meaning given to it in clause A3.92.

“**indemnified party**” has the meaning given to it in clause A3.75.

“**indemnifying party**” has the meaning given to it in clause A3.75.

“**indirect damage**” suffered by a person means:

- (a) any consequential loss, consequential damage or special damages however caused or suffered by the person including any:
  - (i) loss of (or loss of anticipated) opportunity, use, production, revenue, income, profits, business and savings; or
  - (ii) loss due to business interruption; or
  - (iii) increased costs; or
  - (iv) punitive or exemplary damages,whether or not the consequential loss or damage or special damage was foreseeable; or
- (b) in respect of contractual damages, damages which would fall within the second limb of the rule in *Hadley v Baxendale* [1854] 9 Exch. 341; or
- (c) any liability of the person to any other person, or any claim, demand, action or proceeding brought against the person by any other person, and the costs and expenses connected with the claim.

“**information provider**”, in relation to *confidential information*, means the *party* providing the information.

“**information recipient**”, in relation to *confidential information*, means the *recipient* of the information.

“**insolvency event**” in respect of a *party* means any one or more of:

- (a) any suspension or cessation to payment of all or a class of its debts by an insolvent within the meaning of section 95A of the *Corporations Act 2001* of the Commonwealth; or
- (b) any execution or other process of any court or authority issued against or levied upon any material part of that *party's* property or assets; or

- (c) a petition or application is presented (and not withdrawn within 10 *business days*) or an order is made or a resolution is passed for the winding up or dissolution without winding up of that *party* otherwise than for the purpose of reconstruction or amalgamation under a scheme; or
- (d) a receiver or a receiver and manager of the undertaking or any material part thereof of that *party* is appointed; or
- (e) that *party* proposes to enter into or enters into any arrangement, reconstruction or composition with or for the benefit of its creditors; or
- (f) an administrator of that *party* is appointed or the board of directors of that *party* passes a resolution to the effect that is specified in section 436A(1) of the *Corporations Act 2001* of the Commonwealth; or
- (g) that *party* fails (as defined by section 459F of the *Corporations Act 2001* of the Commonwealth) to comply with a statutory demand; or
- (h) a controller (as defined in the *Corporations Act 2001* of the Commonwealth) is appointed in respect of that *party* or the whole or a material part of that *party's* undertaking, property or assets; or
- (i) application is made to a Court for an order in respect of that *party* under Part 2F.1 of the *Corporations Act 2001* of the Commonwealth; or
- (j) an event referred to in section 459C(2) of the *Corporations Act 2001* of the Commonwealth occurs in respect of that *party*, or
- (k) anything analogous or having a substantially similar effect to any of the events specified above occurs under the *law* of any applicable jurisdiction.

**“integrated provider”** means:

- (a) [not used]<sup>677</sup>
- (b) if *service provider* is not Western Power Corporation - *service provider*, if under section 13.31<sup>678</sup> of the *Code*, *service provider* has been given an exemption from section 13.11(a) of the *Code*.

**“interconnected system”** means an electricity system comprising two or more *networks* interconnected with each other, and in relation to the *network* means an *interconnected system* of which the *network* is a part.

**“law”** means “written laws” and “statutory instruments” as defined in the *Code*, orders given or made under a written law or statutory instrument as so defined or by a government agency or authority, Codes of Practice and Australian Standards and rules of the general law including the common law and equity.

**“load”** means the amount of electrical power transferred out of the *network* at a *connection point* at a specified time.

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<sup>677</sup> Clause A3.2 amended by WAGG No 180, 22 October 2008

<sup>678</sup> Appendix 3 clause A3.2 amended by WAGG No 59, 31 March 2006

“**maintain**” includes (as necessary and as applicable) calibrate, test, verify, renew, replace, repair and update.

“**market rules**” means the ‘market rules’ referred to in section 123(1) of the *Act*.

“**metering equipment**” means equipment to measure and record electricity as transferred to or from the *network* at a *connection point*.

“**network**” means the *network* (as defined in the *Code*) owned, operated or owned and operated by *service provider* in respect of which access is given under this contract.

“**network assets**”, in relation to the *network*, means the apparatus, equipment, plant and buildings used to provide or in connection with providing *covered services*. on the *network*, which assets are either *connection assets* or *shared assets*.

“**network business**” means the part of an *integrated provider’s* business and functions which is responsible for the operation and maintenance of the *network* and the provision of *covered services* by means of the *network*.

“**other business**” means the part or parts of an *integrated provider’s* business which are not the *network business*, and includes any part or parts of the *integrated provider’s* business and functions which acquire *covered services* from the *network business*.

“**party**” means *service provider* or *UserCo* and “**parties**” means both of them.<sup>679</sup>

“**payment error**” means any underpayment or overpayment by a *party* of any amount in respect of an invoice.

“**possession**” includes custody, control, and an immediate right to possession, custody, or control.

“**prescribed rate**” means the *discounted rate* plus 3% p.a.

“**price list**” means the most recent price list *published* under the *access arrangement* in accordance with the *Code*.

“**reasonable and prudent person**” means a person acting in good faith and in accordance with *good electricity industry practice*.

“**receipt date**” has the meaning given to it in clause A3.96.

“**related body corporate**”, in relation to a body corporate, means a body corporate that is a *related body corporate* to the first-mentioned body corporate under section 50 of the *Corporations Act 2001* of the Commonwealth.

“**relocation**” has the meaning given to it in clause A3.19.

“**representatives meeting**” means a meeting under clause A3.96 between a duly authorised representative of each *party* to attempt to resolve a dispute.

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<sup>679</sup> If there is to be an *indemnifier*, insert after “both of them.”: “In relation to *indemnifier*, “**other party**” means *service provider*.”

“**service**”, in respect of a *connection point*, means a service to be provided under this contract in respect of the *connection point* as specified in Schedule 2, and if applicable (including if the service is an *entry service* or an *exit service*) includes the *transfer* of electricity at a *connection point*.

“**service provider’s default**” means an event of *default* by *service provider*.

“**service provider’s premises**” means the land on which the *service provider’s works* are located.

“**service provider’s works**” means the works referred to in Schedule 6.

“**service standards**” for a service means:

- (a) the technical standard, and reliability, of delivered electricity specified for the service in Schedule 2; or
- (b) if nothing is specified for the service in Schedule 2 — the service standard (as defined in the *Code*) applying in respect of the service under the *access arrangement*.

“**shared assets**” means *network assets* which are not *connection assets*.

“**standing charges**” has the meaning given to it in clause A3.42(a).

“**start date**”, for a *connection point*, means the date specified as such in Schedule 3 for the *connection point*.

“**supplementary matters**” means the following matters: balancing; line losses; metering; ancillary *services*; stand-by; trading; settlement; and, any other matter in respect of which arrangements must exist between *UserCo* and *service provider* to enable the efficient operation of the *network* and to facilitate *access* to *services* under this contract, in accordance with the *Code objective*.

“**system operator**” for the *network* means, unless the *technical rules* provide otherwise, the person or persons who:

- (a) operate and control the system operation control centre; or
- (b) where there is no system operation control centre — is responsible for the control of the *network* through monitoring, switching and dispatch; or
- (c) where the system operation control centre and another party are both responsible for the control of the *network* through monitoring, switching and dispatch — perform either (a) or (b).

“**tariff**”, for a service, means the tariff specified for the service in Schedule 4.

“**tax invoice**” has the meaning given to that term in the *GST Act*.

“**technical compliance contract**” means an *access contract* (as defined in the *Code*) containing provisions materially equivalent to those in Parts A, C and D of this contract.

“**technical rules**” means the *technical rules* applying from time to time to the *network* under Chapter 12 of the *Code*.

“**term**” means the term of this contract which commences on the *commencement date* and ends on the *termination date*.

“**termination date**” means the date specified in item 2<sup>680</sup> of Schedule 1.

“**third party recipient**” means any person to whom the information *recipient* discloses *confidential information*, or allows *confidential information* to be disclosed.

“**transfer**”, when used in clauses A3.105 and A3.106, includes assign and novate.

“**transport**” includes transmit and distribute.

“**uncontracted point**” has the meaning given to it in clause A3.19(b)(ii).

“**undisputed portion**” means, subject to clause A3.45(d), an amount shown on a *tax invoice* which a *party* does not dispute to be payable.

“**unpaid portion**” has the meaning given to it in clause A3.51(b).

“**user**” means a person, including a generator or a *consumer*, who is party to a *contract for services* with a *service provider*, and under section 13.4(e) of the *Code* includes an *other business* as a party to a *deemed access contract* (where the terms “generator”, “consumer”, “access contract”, “other business” and “deemed access contract” have the meanings they are given in the *Code*).<sup>681</sup>

“**UserCo’s default**” means an event of *default* by *UserCo*.

“**UserCo’s premises**” means the land on which *UserCo’s* works are located.

“**UserCo’s works**” means the works referred to in Schedule 7.

“**variation request**”, in relation to a *connection point*, means a request from *UserCo* to *service provider* to vary the *contracted capacity* at the *connection point*.

“**visitors**” means the customers, invitees, licensees and visitors of a *party*.

“**workers**” means the directors, officers, servants, employees, agents and contractors of a *party*.

“**year**” means calendar year.

## Interpretation

A3.3 In this contract, unless the contrary intention appears:

- (a) a reference to:
  - (i) one gender includes any other gender; and
  - (ii) the singular includes the plural and the plural includes the singular; and

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<sup>680</sup> Clause A3.2 amended by WAGG No 207, 8 November 2005

<sup>681</sup> Clause A3.2 amended by WAGG No 180, 22 October 2008

- (iii) an officer or body of persons includes any other officer or body for the time being exercising the powers or performing the functions of that officer or body; and
  - (iv) this contract or any other instrument includes any variation or replacement of it; and
  - (v) a reference to a **“law”** includes any amendment or re-enactment of it that is for the time being in force, and includes all laws made under it from time to time; and
  - (vi) **“under”** includes **“by”**, **“by virtue of”**, **“pursuant to”** and **“in accordance with”**; and
  - (vii) **“day”** means a calendar day; and
  - (viii) **“person”** includes a public body, company, or association or body of persons, corporate or unincorporated; and
  - (ix) a person includes a reference to the person's personal representatives, executors, administrators, successors and permitted assigns; and
  - (x) all monetary amounts are in Australian dollars and are exclusive of *GST*; and
- (b) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
  - (c) headings are for convenience only and do not affect the interpretation, or form part of, this contract; and
  - (d) **“copy”** includes a facsimile copy, photocopy or (subject to the Electronic Communication Protocol in Schedule 10) electronic copy; and
  - (e) **“including”** and similar expressions are not words of limitation; and
  - (f) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
  - (g) where italic typeface has been applied to some words and expressions, it is solely to indicate that those words or expressions may be defined in clause A3.2 or elsewhere, and in interpreting this contract, the fact that italic typeface has or has not been applied to a word or expression is to be disregarded (but nothing in this clause A3.3(g) limits the application of clause A3.2); and
  - (h) where information in this contract is set out in braces (namely **“{”** and **“}”**), whether or not preceded by the expression **“Note”**, **“Outline”** or **“Example”**, the information:
    - (i) is provided for information only and does not form part of this contract; and

- (ii) is to be disregarded in interpreting this contract; and
  - (iii) might not reflect amendments to this contract or other documents or laws; and
- (i) a reference to:
- (i) this contract includes any schedule to this contract; and
  - (ii) a clause is a reference to a clause of this contract.

A3.4 Unless the contrary intention is apparent, the rules of interpretation in the *Interpretation Act 1984* apply to the interpretation of this contract.

### **Duration**

#### **A3.5 Commencement and term**

- (a) This contract commences on the *commencement date*.
- (b) This contract ends on the *termination date* (unless terminated earlier in accordance with this contract).

{Note: During the *term* of this contract (i.e. between the *commencement date* and the *termination date*) *service provider* must provide the *services* to *UserCo*. However, for each *connection point*, the obligation on *service provider* to provide those *services* is determined by the *start date* and *end date* for each service.}

#### **A3.6 Option to extend term**

[X]<sup>682</sup>

#### **A3.7 Conditions Precedent**

[X]<sup>683</sup>

### **There must be both a capacity contract and a technical compliance contract**

A3.8 For each *connection point*, there must be:

- (a) a *capacity contract*; and
- (b) a *technical compliance contract*,

in respect of the *connection point*.

{Note: This contract may deal with one, or more than one, connection<sup>684</sup> point.}

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<sup>682</sup> Insert option provisions if applicable. To be inserted in the *access contract* by agreement between the parties or arbitrated award. Consequential amendments may be needed to the duration provisions and definitions.

<sup>683</sup> Insert conditions precedent if applicable. To be inserted in the *access contract* by agreement between the parties or arbitrated award.

<sup>684</sup> Clause A3.8 amended by WAGG No 207, 8 November 2005



A3.9 Without limiting the ways in which clause A3.8 may be satisfied, clause A3.8 is satisfied if the *capacity contract* and *technical compliance contract* are both contained in this contract.

A3.10 *Service provider* is not required to provide *services* at a *connection point* whenever, and for so long as clause A3.8 is not complied with for the *connection point*.

### **When the parts of this contract apply**

A3.11 For each *connection point*:

- (a) Parts A and D of this contract apply; and
- (b) if this contract is expressed in Schedule 3 to be a *capacity contract* for the *connection point* — Part B of this contract applies; and
- (c) if this contract is expressed in Schedule 3 to be a *technical compliance contract* for the *connection point* — Part C of this contract applies.

{Note: This contract may be expressed to be both a capacity contract and a *technical compliance contract*.}

### **Part B – Capacity Provisions**

{Note: Refer to clause A3.11 for when this Part B applies.}

### **Provision and use**

A3.12 For each *connection point*, on and from the *start date* and up to and including the *end date*:

- (a) *service provider* must provide the *services*; and
- (b) *UserCo* must pay for and may use the *services*.

### **Contracted capacity**

A3.13 Subject to this contract, to the extent that a service at a *connection point* relates to *capacity*, *service provider* must provide the service up to the *contracted capacity* for the *connection point*.

### **Contracted maximum demand and declared sent-out capacity**

A3.14 For each *connection point*, *UserCo* must endeavour as a *reasonable and prudent person* to ensure that:

- (a) the amount of electricity transferred out of the *network* by or on behalf of *UserCo* does not exceed the *CMD*; and
- (b) the amount of electricity transferred into the *network* by or on behalf of *UserCo* does not exceed the *DSOC*.

### **Variation to contracted capacity**

- A3.15 *UserCo* may submit to *service provider* a *variation request* in relation to a *connection point*.
- A3.16 Subject to clause A3.17, within 10 *business days* after receipt of a *variation request*, *service provider* must determine, and notify *UserCo*, whether or not it accepts the *variation request*.
- A3.17 If in a *variation request* *UserCo* requests *service provider* to increase the *contracted capacity* at a *connection point* ("**capacity increase notice**"), *service provider* must notify *UserCo* that it accepts the *variation request* and the time that the acceptance takes effect, unless:
- (a) accepting the *capacity increase notice* would be likely to impede the ability of *service provider* to provide a service that is sought in an *access application* lodged by another *applicant* under the *applications and queuing policy*; or
  - (b) it is likely that work would be required in response to the *capacity increase notice*,

in either or both cases *service provider* must by notice reject the *capacity increase notice* and state in the notice that to increase its *capacity* as described in the *capacity increase notice* *UserCo* must make an application under the *applications and queuing policy*.<sup>685</sup>

{Note: If *UserCo* wishes to obtain capacity at a *connection point* which is not already specified in Schedule 3, *UserCo* must make an *access application* under the *applications and queuing policy*.}

- A3.18 The *parties* must update Schedule 3 following any variation made in accordance with clauses A3.15 to and A3.17.

### **Relocation**

- A3.19 A "*relocation*" comprises *UserCo*:
- (a) reducing its *capacity* at a *connection point*; and
  - (b) making a corresponding increase in its *capacity* at another *connection point* ("**destination point**") which may be either:
    - (i) a *connection point* at which *UserCo* already has *capacity* ("**contracted point**"); or
    - (ii) a *connection point* at which *UserCo* does not already have *capacity* ("**uncontracted point**").
- A3.20 *UserCo* may apply to *service provider* to undertake a *relocation*, and subject to clauses A3.21, A3.22 and A3.23 *service provider* must permit the *relocation* within 10 *business days* after the application.

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<sup>685</sup> Clause A3.17 amended by WAGG No 180, 22 October 2008

A3.21 Subject to clause A3.23, if the *destination point* is a *contracted point*, then *UserCo* must lodge a *capacity increase notice* or an *access application*, as applicable, in respect of the *capacity* sought to be relocated to the *destination point*, and the *relocation* must not take place until permitted under the *applications and queuing policy*.

A3.22 Subject to clause A3.23, if the *destination point* is an *uncontracted point*, then *UserCo* must lodge an *access application* in respect of the *capacity* sought to be relocated to the *destination point*, and the *relocation* must not take place until permitted under the *applications and queuing policy*.

A3.23 *Service provider* may:

- (a) withhold its consent to a reduction under clause A3.19(a) only on reasonable commercial grounds; and
- (b) impose conditions in respect of a reduction under clause A3.19(a) only to the extent that they are reasonable on commercial grounds.

{An example of a matter that would be reasonable for the purposes of clause A3.23 is *service provider* specifying that, as a condition of its agreement to a *relocation*, the *service provider* must receive at least the same amount of revenue as it would have received before the *relocation*, or more revenue if *tariffs* at the *destination point* are higher.}

A3.24 The *parties* must update Schedule 3 following any variation made in accordance with clause A3.20.

### **Customer transfer**

{Note: See section 5.7(f) of the *Code*.}

A3.25 If a *customer transfer code* places obligations on a *party* in respect of *capacity* or *services* under this contract, the *party* must comply with the obligations.

### **Provisions of access arrangement on supplementary matters apply**

A3.26 The provisions of the *access arrangement* in respect of *supplementary matters* which are incorporated in the *access arrangement* under section 5.27 of the *Code* apply also as terms of this contract, to the extent they are expressed to do so.

### **Curtailment**

A3.27 *Service provider* may, in accordance with *good electricity industry practice*, curtail the provision of *services* in respect of a *connection point*:

- (a) to carry out planned work or maintenance to the *network*; or
- (b) to carry out unplanned maintenance to the *network* where *service provider* considers it necessary to do so to avoid injury to any person or material damage to any property or the environment; or

- (c) in the event of breakdown of or damage to the *network* that affects *service provider's* ability to provide *services* at that *connection point*, or
- (d) if a *force majeure event* occurs affecting *service provider's* ability to provide *services* at the *connection point* for so long as *service provider's* ability to provide *services* is affected by the *force majeure event*; or
- (e) to the extent necessary for *service provider* to comply with a *law*.<sup>686</sup>

A3.28 *Service provider* must keep the extent and duration of any *curtailment* under clause A3.27 to the minimum reasonably required in accordance with *good electricity industry practice*.

A3.29 *Service provider* must use reasonable endeavours to notify *UserCo* of any *curtailment* under clause A3.27 as soon as practicable.

A3.30 If *service provider* notifies *UserCo* of a *curtailment* of *services* under clauses A3.27 to A3.29 in respect of a *connection point*, *UserCo* (acting to the standard of a *reasonable and prudent person*) must comply with any reasonable requirements set out in the notice concerning the *curtailment*.

### **Title to electricity**

A3.31 Title to electricity which is transferred into the *network* at a *connection point* passes from *UserCo* to *service provider* at the time it passes through the *connection point*.

A3.32 Title to electricity which is transferred out of the *network* at a *connection point* passes from *service provider* to *UserCo* at the time it passes through the *connection point*.

A3.33 To avoid doubt, nothing in, and nothing done under or in connection with, this contract causes *UserCo* to acquire any right, title or interest in or to the *network* or any part of it.

A3.34 The operation of clause A3.33 may be displaced by an express provision of this contract.

A3.35 Subject to clause A3.27, upon the *transfer* from *UserCo* to *service provider* of title to and *possession* of a quantity of electricity delivered at an *entry point*, *UserCo* becomes entitled to receive an equivalent quantity of electricity from *service provider* at an *exit point*.

### **Designated controllers**

#### **A3.36 Points which require a designated controller**

Each of the following is a “**designated point**” for which there must be a *designated controller*:

- (a) an *entry point* specified in Schedule 3 at which the installed *capacity* of the *facilities and equipment* to *transfer* electricity into the *network* exceeds 30 KVA; and

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<sup>686</sup> Clause A3.27 amended by WAGG No 180, 22 October 2008

- (b) an *exit point* specified in Schedule 3 at which [x].<sup>687</sup>

### A3.37 **Selecting the designated controller**

- (a) Unless otherwise notified by *UserCo* under clause A3.37(b), the *designated controller* for a *connection point* is the *designated controller* specified in Schedule 3.
- (b) Where:
  - (i) no *designated controller* is specified in Schedule 3 for a *designated point* or *service provider* has objected to the *designated controller* nominated by *UserCo* — *UserCo* must; and
  - (ii) *UserCo* wishes to change the *designated controller* for a *designated point* — *UserCo* may,  
  
by notice to *service provider* nominate a person who owns, operates or controls the *facilities and equipment* at the *designated point* as the *designated controller* for the *designated point* and the person nominated is the *designated controller* from the time of the notice or a later time specified in the notice.
- (c) *Service provider*, acting as a *reasonable and prudent person*, may at any time on reasonable technical or commercial grounds object to the *designated controller* for a *designated point*, in which case *UserCo* must, under clause A3.37(b), either dispute *service provider's* objection under clause A3.96 or nominate a different person as *designated controller*.
- (d) The *parties* must amend Schedule 3 following any variation made in accordance with clause A3.37(b).

### A3.38 **User must procure designated controller's compliance**

For each *designated point* *UserCo* must (unless *UserCo* is the *designated controller*) ensure that the *designated controller* complies, and will continue to comply, with the following provisions of this contract, (for which purpose, references to "*UserCo*" in the provisions are to be read as references to "*designated controller*"):

- (a) clauses A3.92 to A3.95 (*access to premises*); and
- (b) clause A3.120 (*notices*); and
- (c) clause A3.55 (*good electricity industry practice*); and
- (d) clause A3.56 (*cooperation*); and
- (e) clause A3.61 (*technical rules*).

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<sup>687</sup> To be completed – the test for when an exit point needs a *designated controller*. To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award. [Footnote amended by WAGG No 207, 8 November 2005]

**A3.39 UserCo must satisfy service provider of its arrangements with designated controller**

- (a) On reasonable request from *service provider*, *UserCo* must (unless the *designated controller* has already entered into an agreement under clause A3.39(b)(i) or A3.39(b)(ii)) provide evidence to *service provider's* satisfaction as a *reasonable and prudent person* that *UserCo* is complying, and will continue to comply, with clause A3.38.
- (b) If *UserCo* does not satisfy *service provider* under clause A3.39(a), *service provider* may curtail the provision of *services* in respect of the *connection point* until the *designated controller* has either:
  - (i) entered into a *technical compliance contract* with *service provider* in respect of the *connection point*; or
  - (ii) otherwise agreed in writing with *service provider* to be bound by the clauses specified in clause A3.38.

{Note: One way for the agreement in clause A3.39(b)(ii) to be reached would be for the *designated controller* to sign this contract as a *party* in respect of the relevant clauses.}

**Tariff and charges**

**A3.40 Tariff**

[RETAIN ONE ONLY OF THE FOLLOWING TWO OPTIONS, EITHER:

OPTION A:

- (a) The *tariff* payable under this contract for a service is the *tariff* specified in the *price list* from time to time for the service.
- (b) If:
  - (i) no *price list* is *published* by the *Authority* on the date required under the *Code*, or
  - (ii) a purported *price list* which does not comply with the *access arrangement* is *published*,then to the extent that the effect of a *price list* (if it had been *published* on the date required under the *Code* and had been compliant with the *access arrangement*) would have been to reduce the *tariff* payable by *UserCo*, then *UserCo* may recover the *tariff* reduction as an overpayment under clause A3.48.
- (c) If applicable, the *tariff* payable under clause A3.40(a) for a service ("**contracted service**") after the end of the current *access arrangement period* is to be determined as follows:
  - (i) if the new *access arrangement* contains a *reference service* ("**equivalent reference service**") which is materially the same as

the contracted service — then the *tariff* for the contracted service is to be the *reference tariff* for the equivalent *reference service*; and

- (ii) if the new *access arrangement* does not contain an equivalent *reference service*, or if for any reason there is no new *access arrangement* — then the *tariff* for a year will be the *tariff* in the final *price list* which *service provider* was required to *publish* under the current *access arrangement*, adjusted annually every  $[x]^{688}$  by an amount equal to  $[x]^{689}$  % of the change in *CPI* from the previous adjustment date.

- (d) Clause A3.40(c) applies, with appropriate modifications, in respect of the end of each successive *access arrangement period*.

**OR OPTION B:**

- (a) The *tariff* payable under this contract for a service is the *tariff* specified in the *price list* most recently *published* before the *commencement date* for the service, and any subsequent *price lists* are to be disregarded.
- (b) *Tariffs* determined under clause A3.40(a) are to be adjusted annually every  $[x]^{690}$  by an amount equal to  $[x]^{691}$  % of the change in *CPI* from the previous adjustment date.

**WHICHEVER IS APPLICABLE<sup>692</sup>**

### A3.41 Charges

*UserCo* must pay *service provider* the *charge* for each service calculated at the *tariff* determined under clause A3.40.

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<sup>688</sup> Insert the adjustment date. To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

<sup>689</sup> Insert the percentage of the change in *CPI* from the previous adjustment date. To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award. Unless the *Authority* or *arbitrator* consider that a different value will better achieve the *Code objective*, 67% of *CPI* should be used.

<sup>690</sup> Insert the adjustment date. To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

<sup>691</sup> Insert the percentage of the change in *CPI* from the previous adjustment date. To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award. Unless the *Authority* or *arbitrator* consider that a different value will better achieve the *Code objective*, 67% of *CPI* should be used.

<sup>692</sup> Unless the *Authority* considers that a different approach will better achieve the *Code objective*, the standard *access contract* must offer *UserCo* the option, at the time it enters into the contract, to make a once-off election for the *term* of the contract as to whether it will pay the *reference tariff* as in effect from time to time (Option A), or whether it will lock in the *reference tariff* in effect at the time of contracting, to be escalated at a percentage of *CPI* (Option B). If Option A is chosen, definitions need to be added to clause A3.2. [Footnote amended by WAGG No 207, 8 November 2005]

### A3.42 Charges during service provider's force majeure event

- (a) This clause A3.42 applies in respect of any service for which some or all of the *charges* (“**standing charges**”) are payable whether or not *UserCo* makes use of the service.
- (b) If a service (“**affected service**”) is unavailable for any consecutive period of 2 days or longer (“**affected service period**”) due to a *force majeure event* where *service provider* is the *affected person*, then, for the whole of the *affected service period*, *UserCo* is relieved of its obligation under clause A3.41 and instead must pay 10% of the *standing charges* for the affected service.

### A3.43 Contributions

If the *parties* have agreed that *UserCo* must pay a *contribution* the *parties* must comply with the provisions set out in Schedule 5 regarding the *contribution*.<sup>693</sup>

## Invoicing and payment

### A3.44 Service provider invoices

*Service provider* must, within 10 *business days* after the end of an *accounting period*, issue to *UserCo* a *tax invoice* for the *accounting period* showing:

- (a) all amounts payable by *UserCo* to *service provider* under this contract; and
- (b) all outstanding amounts as at the end of the *accounting period* and interest payable on those amounts; and
- (c) GST payable under clause A3.50.

At the same time as issuing a *tax invoice* under this clause A3.44, *service provider* must provide to *UserCo*, in *electronic form*, the metering information used to calculate the *charges* shown on the *tax invoice* in sufficient detail to enable *UserCo* to understand how *service provider* calculated the *charges*.

### A3.45 User invoices

- (a) At the same time as *service provider* issues to *UserCo* a *tax invoice* for the *accounting period* under clause A3.44, *service provider* must provide *UserCo* with all information necessary for *UserCo* to determine any amounts payable by *service provider* to *UserCo*.
- (b) *UserCo* must, within 5 *business days* after receiving the information under clause A3.45(a), issue to *service provider* a *tax invoice* for the *accounting period* showing:
  - (i) all amounts payable by *service provider* to *UserCo* under this contract, which amounts may be calculated using the information

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<sup>693</sup> Clause A3.43 amended by WAGG No 180, 22 October 2008



- provided to *UserCo* by *service provider* under clause A3.45(a);<sup>694</sup> and
- (ii) all outstanding amounts as at the end of the *accounting period* and interest payable on those amounts; and
  - (iii) GST payable under clause A3.50.
- (c) If *UserCo* disputes the information provided by *service provider* under clause A3.45(a), then:
- (i) *UserCo* may issue a *tax invoice* under clause A3.45(b) for an amount *UserCo* (acting as a *reasonable and prudent person*) estimates to be the correct amount payable; and
  - (ii) *UserCo* must before the *due date* of the *tax invoice* under clause A3.45(b), give notice to *service provider* that it disputes the information provided under clause A3.45(a) and provide in that notice full details of the dispute.
- (d) Clause A3.47 applies in respect of a *tax invoice* issued under clause A3.45(b), for the purposes of which the “**undisputed portion**” is taken to be an amount calculated in accordance with the information provided by *service provider* under clause A3.45(a).

#### A3.46 Payment of invoices

- (a) Each *party* which receives a *tax invoice* under clause A3.44 or A3.45, must on or before the *due date* pay to the *party* issuing the *tax invoice* all amounts shown on the *tax invoice* which are payable under the contract.
- (b) If a *party* fails to comply with clause A3.46(a) then, without prejudice to the other *party's* other rights, the *party* must pay interest on any unpaid amount, such interest to be calculated daily at the *prescribed rate* from the *due date* until payment.

#### A3.47 Disputed invoices

- (a) If a *party* disputes any amount set out in a *tax invoice* issued under clause A3.44 or A3.45, then that *party* must pay the *undisputed portion* (if any) and must, prior to the *due date* of the *tax invoice*, give notice to the other *party* that it disputes the amount and provide in that notice full details of the dispute.
- (b) Any amount withheld by a *party* under clause A3.47(a) but subsequently found to have been payable is, without prejudice to the relevant other *party's* other rights, to attract interest calculated daily at the *prescribed rate* from the *due date* of the *tax invoice* until payment.
- (c) Any amount paid by a *party* under clause A3.47(a) but subsequently found not to have been payable is, without prejudice to that *party's* other rights, to attract interest calculated daily at the *discounted rate* from the date the *party* paid the amount to the date the relevant other *party* repays the amount.

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<sup>694</sup> Clause A3.45 amended by WAGG No 180, 22 October 2008

### A3.48 Under and over payments

- (a) If a *party* detects a *payment error* by a *party* of any amount within 18 calendar months after the *payment error*.
  - (i) the *party* must give notice to the other *party* of the *payment error*, and
  - (ii) an adjusting payment must be made by the appropriate *party* within 10 *business days* of the notice.
- (b) Subject to clause A3.48(c), the adjusting payment must, without prejudice to the *party's* other rights, include interest calculated daily at the *discounted rate* from the date of the *payment error* until the date of the adjusting payment.
- (c) An adjusting payment by a *party* will not attract interest under clause A3.48(b) if the underpayment was the result of an error by the other *party*.

### A3.49 Interest on overdue payments

If a *party* defaults in due and punctual payment of a *tax invoice*:

- (a) clauses A3.85 to A3.91 apply; and
- (b) the overdue payments attract interest payable at the *prescribed rate* until the *default* is remedied.

### A3.50 GST

- (a) Unless expressly included, the consideration for any supply under or in connection with this contract (including any *tariff* derived from a *price list*) is *GST* exclusive.
- (b) To the extent that any supply made under or in connection with this contract is a taxable supply, the consideration for that supply is increased by an amount determined by the supplier, not exceeding the amount of the consideration (or its market value) multiplied by the rate at which *GST* is imposed in respect of the supply.
- (c) Without limiting the obligation to provide a *tax invoice* under clauses A3.44 and A3.45, the supplier must issue a *tax invoice* to the *recipient* of a supply to which clause A3.50(b) applies before the payment of the *GST* inclusive consideration determined under that clause.
- (d) If a *party* is entitled under this contract to be reimbursed or indemnified by another *party* for a cost or expense incurred in connection with this contract, the reimbursement or indemnity payment must not include any *GST* component of the cost or expense for which an input tax credit may be claimed by the *party* entitled to be reimbursed or indemnified, or by its representative member.
- (e) Definitions in the *GST Act* apply also in this clause A3.50 unless the context indicates otherwise.

## Security

A3.51 If, at any time, *service provider* determines that *UserCo's*<sup>695</sup> technical or financial resources are such that a *reasonable and prudent person* would consider there to be a material risk that *UserCo* will be unable to meet its obligations under this contract, then *service provider* may, subject to clause A3.51(b)(iii), do either or both of the following:

- (a) require *UserCo*, at *UserCo's* election, to:<sup>696</sup>
  - (i) pay in advance the *charges* for up to 2 months' *services*; or
  - (ii) provide a bank guarantee in terms acceptable to *service provider* (acting reasonably), guaranteeing the *charges* for 2 months' *services*; or
  - (iii) procure from *UserCo's* parent company a guarantee substantially in the form set out in Schedule 11;

and

- (b) if clause A3.43 applies and any amount of the *contribution* remains unpaid or unprovided, require *UserCo* (in addition to *UserCo's* obligations under clause A3.51(a)), at *UserCo's* election, to:<sup>697</sup>
  - (i) pay to *service provider* in full an amount equal to:
    - A. if the *contribution* is a *financial provision* — the net present value of the unpaid amounts of the *financial provision*; or
    - B. if the *contribution* is a *provision in kind* — the net present value of the likely cost to the *service provider* of completing the *provision in kind* (which must not exceed the amount that would be spent by a prudent *service provider* *efficiently minimising costs* of completing the *provision in kind*);each in this clause referred to as the “**unpaid portion**”; or
  - (ii) provide a bank guarantee in terms acceptable to *service provider* (acting reasonably), guaranteeing the *unpaid portion*; or

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<sup>695</sup> If there is to be an *indemnifier*, replace “*UserCo's*” with “either or both of *UserCo's* or *indemnifier's*”.

<sup>696</sup> If there is to be an *indemnifier*, replace “require *UserCo*, at *UserCo's* election, to” with “require *UserCo* to nominate which of *UserCo* or *Indemnifier* is to provide the following security (“**nominated person**”), and then require the *nominated person*, at *UserCo's* election, to:”.

<sup>697</sup> If there is to be an *indemnifier*, replace “require *UserCo* (in addition to *UserCo's* obligations under clause A3.51(a)) at *UserCo's* election, to:” with “require *UserCo* (in addition to *UserCo's* obligations under clause A3.51(a)), to nominate which of *UserCo* or *indemnifier* is to provide the following security (“**nominated person**”), and then require the *nominated person*, at *UserCo's* election, to:”.

- (iii) procure from *UserCo's*<sup>698</sup> parent company a guarantee substantially in the form set out in Schedule 11 guaranteeing the *unpaid portion*.<sup>699</sup>

A3.52 If *service provider* requires *UserCo* to provide security under clause A3.51, then *UserCo* may propose alternative arrangements (for example, more frequent payment) to manage *service provider's* financial risk under this contract, and if so, *service provider* and *UserCo* must negotiate as *reasonable and prudent persons*, with a view to agreeing alternative arrangements which meet the following objectives:

- (a) minimising the extent to which the requirements of clause A3.51 constitute a barrier to *UserCo's* entry to a market; and
- (b) not contravening section 115 of the *Act* and not otherwise hindering *UserCo's* ability to compete in upstream or downstream markets,

but also in the view of a *reasonable and prudent person*:

- (c) reasonably addressing the risk to *service provider* that *UserCo*<sup>700</sup> may be unable to meet its obligations under this contract; and
- (d) being reasonably practicable for the *service provider* to administer.

A3.53 If the *parties* fail to agree on alternative arrangements under clause A3.52, then:

- (a) *UserCo* must comply with clause A3.51 unless the matter is the subject of a dispute under clause A3.53(b); and
- (b) the matter may be the subject of a dispute under this contract, in which case the dispute resolver may either:
  - (i) determine the terms of an appropriate alternative arrangement in which case *UserCo* must comply with those terms; or
  - (ii) determine that no alternative arrangement would meet the objectives in clause A3.52 in which case *UserCo* must comply with clause A3.51.

## **Part C – Technical Compliance Provisions**

{Note: refer to clause A3.11 for when this Part C applies.}

### **Good electricity industry practice**

A3.54 *Service provider* must comply with *good electricity industry practice* when providing *services* and otherwise when acting, or not acting, in connection with this contract.

A3.55 *UserCo* must comply with *good electricity industry practice* in receiving *services* and otherwise when acting, or not acting, in connection with this contract.

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<sup>698</sup> If there is to be an *indemnifier*, replace "*UserCo's*" with the "*nominated person's*".

<sup>699</sup> Clause A3.51(b) amended by WAGG No 180, 22 October 2008

<sup>700</sup> If there is to be an *indemnifier*, replace "*UserCo*" with "*UserCo* or *indemnifier*, as applicable,".

### **Cooperation**

- A3.56 *UserCo* and *service provider* (each acting as *reasonable and prudent persons*) must cooperate and coordinate with each other where reasonably necessary in relation to:
- (a) the planning, development, inspection, testing and commissioning of *facilities and equipment* for a *connection point* and *network assets* for the *network*; and
  - (b) the development and implementation of maintenance schedules for *facilities and equipment* for a *connection point* and *network assets* for the *network*.

### **Directions from system operator**

- A3.57 Without limiting the generality of clause A3.56 *UserCo* and *service provider* must comply with any directions given by *system operator*.

### **User must provide information**

- A3.58 *Service provider* may as a *reasonable and prudent person*, in respect of a *connection point*, make a reasonable request for *generation* forecast information or *load* forecast information, as applicable.
- A3.59 A request under clause A3.58 must not be made more than once in any 12 month period except in an accident, emergency, potential danger or other extraordinary circumstances.
- A3.60 *UserCo* must comply with *service provider's* reasonable request under clause A3.58.

### **Technical rules**

- A3.61 *Service provider* and *UserCo* must each comply with the *technical rules*.

### **Actions of third parties causing user to breach technical rules**

- A3.62 If the actions of another person (including a customer of *UserCo*) cause *UserCo* to breach the *technical rules*, then *UserCo* is not in breach of clause A3.61 and is not liable for any breach of the *technical rules* unless *UserCo*:
- (a) has been negligent; or
  - (b) has not acted as a *reasonable and prudent person*.
- A3.63 Nothing in clause A3.62 limits the operation of clauses A3.71 or A3.80 in respect of either *UserCo* or *service provider*.

### **Tariff and charges**

- A3.64 [x]<sup>701</sup>

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<sup>701</sup> If this *access contract* is a *technical compliance contract* only, and any *tariff* or *charge* applies, insert clauses A3.40 to A3.43 here.

## **Invoicing and payment**

A3.65 [X]<sup>702</sup>

## **Security**

A3.66 [X]<sup>703</sup>

## **Part D – Common Provisions**

{Note: Refer to clause A3.11 for when this Part D applies.}

### **Service provider must comply with service standards**

A3.67 *Service provider* must provide the *services* to *UserCo* in accordance with the *service standards*.

### **Representations and warranties**

#### **A3.68 User's representations and warranties**

- (a) *UserCo* represents and warrants to *service provider* that:
- (i) *UserCo* has complied with the *applications and queuing policy* in the *access arrangement* and the requirements in the *Code* in respect of its *access application* under the *access arrangement*; and
  - (ii) *UserCo's* obligations under this contract are valid and binding and are enforceable against *UserCo* in accordance with their terms; and
  - (iii) this contract and any other transaction under it does not contravene *UserCo's*<sup>704</sup> constituent documents or any *law* or any of *UserCo's* obligations or undertakings by which *UserCo* or any of *UserCo's* assets are bound or cause to be exceeded any limitation on *UserCo's* or *UserCo's* directors' powers; and
  - (iv) neither *UserCo* nor any of its related bodies corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).

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<sup>702</sup> If this *access contract* is a *technical compliance contract* only, and any *tariff* or *charge* applies, insert clauses A3.44 to A3.50 here.

<sup>703</sup> If this *access contract* is a *technical compliance contract* only, and the *service provider* is permitted by the *access arrangement* to seek security in respect of such a contract, insert clauses A3.51 to A3.53 here.

<sup>704</sup> Clause A3.68 amended by WAGG No 180, 22 October 2008

(b) The representations and warranties in clause A3.68(a) are to be taken to be made on each day on which:

- (i) this contract is in effect; or
- (ii) any amount payable by *UserCo* to *service provider* under this contract is or may be outstanding.

**A3.69 [Indemnifier's representation and warranty]**

<sup>705</sup>

**A3.70 Service provider's representations and warranties**

(a) *Service provider* represents and warrants to *UserCo* that:

- (i) *service provider* complied with the *applications and queuing policy* in the *access arrangement* and the requirements in the *Code* in respect of *UserCo's access application* under the *access arrangement*; and
- (ii) *service provider's* obligations under this contract are valid and binding and are enforceable against *service provider* in accordance with their terms; and
- (iii) this contract and any other transaction under it does not contravene *service provider's* constituent documents or any *law* or any of *service provider's* obligations or undertakings by which *service provider* or any of *service provider's* assets are bound or cause to be exceeded any limitation on *service provider's* or *service provider's* directors' powers; and
- (iv) neither *service provider* nor any of its related bodies corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).

(b) The representations and warranties in clause A3.70(a) are to be taken to be made on each day on which:

- (i) this contract is in effect; or
- (ii) any amount payable by *service provider* to *UserCo* under this contract is or may be outstanding.

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<sup>705</sup> If there is to be an *indemnifier*, add a new clause under this heading: "The *indemnifier* represents and warrants to *service provider* that as at the *commencement date*, there has been no material change in the *indemnifier's* financial position since the date *service provider* received information from the *indemnifier* stating that financial position."

## Liability and indemnity

### A3.71 Liability for direct damage

Subject to the terms of this contract, a *party* who:

- (a) is negligent; or
- (b) commits a *default* under this contract,

is liable to the other *party* for, and must indemnify the other *party* against, any *direct damage* caused by, consequent upon or arising out of the negligence or *default*.

### A3.72 Fraud

A *party* who is fraudulent in respect of its obligations to the other *party* under this contract, is liable to the other *party*<sup>706</sup> for, and is to indemnify the other *party*<sup>707</sup> against, any damage caused by, consequent upon or arising out of the fraud. In this case, the exclusion of *indirect damage* in clause A3.73(a) does not apply.

### A3.73 Exclusion of indirect damage

- (a) Subject to clause A3.73(a)(ii):
  - (i) *UserCo*<sup>708</sup> is not in any circumstances to be liable to *service provider* for any *indirect damage* suffered by *service provider*, however arising; and
  - (ii) *service provider* is not in any circumstances to be liable to *UserCo*<sup>709</sup> for any *indirect damage* suffered by *UserCo*<sup>710</sup>, however arising.
- (b) Where this contract states that “[t]he exclusion of *indirect damage* in clause A3.73(a) does not apply”, or words to a similar effect, in relation to a matter, then:
  - (i) the exclusion of *indirect damage* in clause A3.73(a) does not apply in relation to that matter; and
  - (ii) the parties’ liability in relation to the matter is to be determined by *law*, and to avoid doubt the definition of *indirect damage* in this contract is to be disregarded for the purposes of that determination.

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<sup>706</sup> If the *party* is *service provider*, and if there is to be an *indemnifier*, replace “the other *party*” with “either *UserCo* or *indemnifier*”.

<sup>707</sup> If the *party* is *service provider*, and if there is to be an *indemnifier*, replace “the other *party*” with “both *UserCo* and *indemnifier*”.

<sup>708</sup> If there is to be an *indemnifier*, replace “*UserCo*” with “either or both of *UserCo* or *indemnifier*”.

<sup>709</sup> If there is to be an *indemnifier*, replace “*UserCo*” with “either or both of *UserCo* or *indemnifier*”.

<sup>710</sup> If there is to be an *indemnifier*, replace “*UserCo*” with “either or both of *UserCo* or *indemnifier*”.



### A3.74 Limitation of liability

The maximum liability of:

- (a) *service provider* to *UserCo*<sup>711</sup> under and in connection with this contract is limited to an amount of \$[x]<sup>712</sup>; or
- (b) *UserCo*<sup>713</sup> to *service provider* under and in connection with this contract is limited to an amount of \$[x]<sup>714</sup>.

### A3.75 Procedure for party seeking to rely on indemnity

If any claim, demand, action or proceeding (collectively “**claim**”) is made or instituted against a *party*<sup>715</sup> in respect of which that *party*<sup>716</sup> (“**indemnified party**”) may under this contract seek to claim indemnity under this contract against the other *party*<sup>717</sup> (“**indemnifying party**”), the following procedure applies:

- (a) *indemnified party* must give notice of the *claim* to the *indemnifying party* as soon as reasonably practicable; and
- (b) *indemnified party* must not admit, compromise, settle or pay any *claim* or take any other steps which may in any way prejudice the defence or challenge of the *claim* without the prior written consent of the *indemnifying party* (which must not be unreasonably withheld) except as may be reasonably required in order to defend any judgment against *indemnified party* (to avoid doubt, Part 1E of the *Civil Liability Act 2002* applies in respect of any ‘apology’ (as defined in section 5AF of that Act) given by the *indemnified party*); and
- (c) *indemnified party* must permit the *indemnifying party* at the *indemnifying party’s* expense to take any reasonable action in the name of *indemnified party* to defend or otherwise settle the *claim* as *indemnifying party* may reasonably require; and

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<sup>711</sup> If there is to be an *indemnifier*, replace “*UserCo*” with “either or both of *UserCo* or *indemnifier*”.

<sup>712</sup> Insert the maximum amount of *service provider’s* liability to *UserCo* under and in connection with this contract, and insert what this cap applies to (e.g. whether this is per event, in a time period, over the life of the contract, etc). To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

<sup>713</sup> If there is to be an *indemnifier*, replace “*UserCo*” with “both *UserCo* and *indemnifier* collectively”.

<sup>714</sup> Insert the maximum amount of *UserCo’s* liability to *service provider* under and in connection with this contract, and insert what this cap applies to (e.g. whether this is per event, in a time period, over the life of the contract, etc). To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

<sup>715</sup> If the party is *UserCo*, and if there is to be an *indemnifier*, replace “the *party*” with “either or both of *UserCo* or *indemnifier*”.

<sup>716</sup> If the party is *UserCo*, and if there is to be an *indemnifier*, replace “the *party*” with “either or both of *UserCo* or *indemnifier*”.

<sup>717</sup> If the other party is *UserCo* and if there is to be an *indemnifier*, then replace “the other *party*” with “either or both of *UserCo* or *indemnifier*”.

- (d) *indemnified party* must ensure that *indemnifying party* and its representatives are given reasonable access to any of the documents, records, staff, premises and advisers of the *indemnified party* as may be reasonably required by *indemnifying party* in relation to any action taken or proposed to be taken by *indemnifying party* under clause A3.75(c).

#### A3.76 Mitigation of losses

A *party*<sup>718</sup> must take such action as is reasonably required to mitigate any loss to it for which indemnity may be claimed under this contract or otherwise.

#### A3.77 Obligation to pay and right to indemnities survives termination

- (a) A *party's*<sup>719</sup> obligation to pay an amount to another *party* under this contract is a continuing obligation, separate and independent from the other obligations of the *party*<sup>720</sup> and survives termination of this contract.
- (b) Each indemnity in this contract is a continuing obligation, separate and independent from the other obligations of the *parties*<sup>721</sup> and survives termination of this contract. It is not necessary for a *party*<sup>722</sup> to incur expense or make payment before enforcing a right of indemnity conferred by this contract.

### Insurances

#### A3.78 UserCo's insurances

- (a) Subject to clause A3.78(b), *UserCo* must obtain and *maintain* insurance covering those matters, and for the amounts, referred to in Item 1 of Schedule 8.
- (b) To the extent that *service provider* consents (such consent not to be unreasonably withheld), *UserCo* may self-insure for some or all of the matters and amounts referred to in Item 1 of Schedule 8.
- (c) *UserCo* must, before the *commencement date* and at such other times as *service provider* shall reasonably request in writing (such request not to be made more than once in respect of a 12 month period unless extraordinary circumstances apply), provide *service provider* with certificates of currency for the insurances required under clause A3.78(a) or reasonable details of *UserCo's* arrangements under clause A3.78(b), as the case may be.

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<sup>718</sup> If there is to be an *indemnifier*, replace "a *party*" with "a *party* and *indemnifier*".

<sup>719</sup> If there is to be an *indemnifier*, replace "a *party*" with "a *party* and *indemnifier*".

<sup>720</sup> If the *party* is *UserCo* and if there is to be an *indemnifier*, replace "the *party*" with "either or both of *UserCo* or *indemnifier*".

<sup>721</sup> If there is to be an *indemnifier*, replace "the *parties*" with "both the *parties* and *indemnifier*".

<sup>722</sup> If there is to be an *indemnifier*, replace "*party*" with "either or both of *party* or *indemnifier*".

**A3.79 Service provider's insurances**<sup>723</sup>

- (a) Subject to clause A3.79(b), *service provider* must obtain and *maintain* insurance covering those matters and for the amounts referred to in Item 2 of Schedule 8.
- (b) To the extent that *UserCo* consents (such consent not to be unreasonably withheld), *service provider* may self-insure for some or all of the matters and amounts referred to in Item 2 of Schedule 8.
- (c) *Service provider* must, before the *commencement date* and at such other times as *UserCo* reasonably requests in writing (such request not to be made more than once in respect of a 12 month period unless extraordinary circumstances apply), provide *UserCo* with certificates of currency for the insurances required under clause A3.79(a) or reasonable details of *service providers* arrangements under clause A3.79(b), as the case may be.

**Force majeure**

- A3.80 If a person (“**affected person**”) is unable wholly or in part to perform any obligation (“**affected obligation**”) under this contract (other than an obligation to pay money) because of the occurrence of a *force majeure event*, then, subject to these clauses A3.80 to A3.84, the *affected person* is released from liability for failing to perform the *affected obligation* to the extent that and for so long as the *affected person's* ability to perform the *affected obligation* is affected by the *force majeure event*.
- A3.81 Without limiting clause A3.80, *service provider's* obligation in respect of a *connection point* to provide the *services* is suspended during any period that the provision of the *services* in respect of that *connection point* is curtailed under clause A3.27, to the extent of the *curtailment*.
- A3.82 Subject to clauses A3.83 and A3.84, if a *force majeure event* occurs and the *affected person* is unable wholly or in part to perform any obligation under this contract, then the *affected person* must:
- (a) notify the other *party* if the *force majeure event* continues for a period of two days or longer; and
  - (b) use reasonable endeavours (including incurring any reasonable expenditure of funds and rescheduling personnel and resources) to:
    - (i) mitigate the consequences; and
    - (ii) minimise any resulting delay in the performance of the *affected obligation*.
- A3.83 If an *affected person* fails to comply with clause A3.82(b)(ii), then the only consequence of that failure is that the period of suspension of the *affected obligation*

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<sup>723</sup> This clause assumes that *service provider's* self-insurance choices are dealt with on a *user-by- user* basis. A *service provider* may propose to the Authority an alternative approach for inclusion in the *access arrangement*, for example one in which the matters on which the *service provider* may self-insure are prescribed in the *access arrangement*, and the *Authority* may approve such an alternative approach.

is reduced by the period of any delay in the performance of the *affected obligation* attributable to that failure.

A3.84 The settlement of a labour dispute which constitutes a *force majeure event* is a matter which is within the absolute discretion of the *affected person*.

### **Default**

#### A3.85 **Default**

A *party* is in “**default**” if:

- (a) that *party* defaults in the due and punctual payment, at the time and in the manner required for payment by this contract, of any amount payable under this contract; or
- (b) that *party* defaults in the due and punctual performance or observance of any of its obligations contained or implied by operation of *law* in this contract; or
- (c) an *insolvency event* occurs in respect of that *party*; or
- (d) that *party* materially breaches any representation or warranty given to the other *party* under this contract.

#### A3.86 **Default by UserCo**

In the event of *UserCo's default*, then *service provider* may:

- (a) notify *UserCo* of *UserCo's default* and require *UserCo* to remedy *UserCo's default*; or
- (b) if *UserCo's default* is a *default* in the payment of any amount and has not been remedied by the end of the third *business day* after the notice was given, *disconnect*, or curtail the provision of *services* in respect of, all or any of *UserCo's connection points* from the *network* whilst *UserCo's default* is continuing; or
- (c) if *UserCo's default* is any other type of *default* and at the end of the fifth *business day* after the notice was given:
  - (i) *UserCo's default* has not been remedied; or
  - (ii) *UserCo* has not to the reasonable satisfaction of *service provider* begun remedying *UserCo's default* or has begun remedying but is not, in the reasonable opinion of the *service provider*, diligently proceeding to remedy *UserCo's default*,  
  
*disconnect*, or curtail the provision of *services* in respect of, all or any of *UserCo's connection points* from the *network* whilst *UserCo's default* is continuing; and
- (d) if *UserCo's default* has not been remedied at the end of the 20th *business day* after the notice was given, terminate this contract.

A3.87 *UserCo's default* under clause A3.86 does not prejudice the rights or remedies accrued to *service provider* at the date of *UserCo's default*.

**A3.88 Default by service provider**

In the event of *service provider's default*, *UserCo* may:

- (a) notify *service provider* of *service provider's default* and require *service provider* to remedy the *default*; and
- (b) if *service provider's default* has not been remedied at the end of the 20th *business day* after the notice was given:
  - (i) terminate this contract; or
  - (ii) withhold payment of any *charges* payable by *UserCo* from the date of *default* under this contract for so long as the *default* continues unremedied (and no interest is payable by *UserCo* on any amounts so withheld provided they are paid within 10 *business days* after the *default* is remedied).

A3.89 *Service provider's default* under clause A3.88 does not prejudice the rights or remedies accrued to *UserCo* at the date of *service provider's default*.

**Termination**

**A3.90 Termination**

- (a) Subject to clause A3.90(b), this contract terminates on the *termination date*.
- (b) This contract may be terminated before the *termination date* by:
  - (i) written agreement between *service provider* and *UserCo*; or
  - (ii) notice by either *party* at any time at which this contract does not include at least one *connection point*; or
  - (iii) notice by either *party* where there is a *default* by the other *party* under this contract, subject to clauses A3.86 or A3.88 as the case may be; or
  - (iv) notice by either *party* to an *affected person* if a *force majeure event* occurs and the *affected person* is unable wholly or in part to perform any obligation under this contract and the *force majeure event* continues for a period of greater than 180 days in aggregate in any 12 month period.
- (c) On termination of this contract *service provider* may *disconnect* any one or more of *UserCo's connection points*.
- (d) On termination of this contract, unless alternative provisions are agreed:
  - (i) *service provider* may dismantle, decommission and remove *service provider's works* and any *metering equipment* installed on *UserCo's* premises; and

- (ii) in accordance with *service provider's* instructions, *UserCo* must dismantle and decommission or remove any of *UserCo's* works at or connected to any *connection point* that is located on *service provider's premises* and is not otherwise required under another contract.

A3.91 Termination of this contract under clause A3.90(b) does not prejudice the rights or remedies accrued to either *party* at the date of termination.

### **Access to premises**

A3.92 Each *party* ("**host party**") must allow, or use its reasonable endeavours to procure for, the other *party* ("**guest party**") all reasonable rights of entry:

- (a) for the purposes of constructing, installing, operating, *maintaining* and verifying the accuracy of any *metering equipment*, other equipment or thing; and
- (b) to inspect for safety or other *reasons* the construction, installation, operation, maintenance and repair of any *metering equipment*, other equipment or thing; and
- (c) for any other reasonable purpose connected with or arising out of this contract.

A3.93 Any entry under clause A3.92 is made in all respects at the expense and risk of the *guest party*, who must, subject to clauses A3.73 and A3.74, make good any damage occasioned by or resulting from the entry, other than to the extent the damage is caused by:

- (a) fair wear and tear; or
- (b) the negligence or *default* of *host party* or its *workers* or *visitors*;
- (c) a *force majeure event*.

A3.94 A *guest party* must:

- (a) before exercising a right of entry under clause A3.92, give reasonable notice to the *host party* specifying the purpose, proposed time and estimated duration of entry, except where it is not practicable to do so due to any accident, emergency, potential danger or other extraordinary circumstance; and
- (b) while exercising a right of entry under clause A3.92:
  - (i) act as a *reasonable and prudent person*; and
  - (ii) without limiting clause A3.94(b)(i), take steps that are reasonable in the circumstances to ensure that during the entry its *workers* and *visitors* cause as little inconvenience to the *host party* as possible, except to the extent that it is not practicable to do so due to any accident, emergency, potential danger or other extraordinary circumstance, and at all times comply with:

- A. all reasonable health and safety standards, induction and supervision requirements and other requirements of the *host party*; and
- B. all reasonable and lawful directions by or on behalf of the *host party*.

A3.95 To the extent that any equipment or thing is located on the premises of a third person, the *parties* must use their reasonable endeavours to secure for either or both of the *parties* a reasonable right of entry to the third person's premises.

### **Disputes**

A3.96 If a dispute arises between the *parties*, either *party* may give to the other *party* written notice setting out the material particulars of the dispute and requiring duly authorised representatives of each *party* to meet at a place, agreed between the *parties*, within 10 *business days* of the date of receipt of such notice by the relevant *party* ("**receipt date**"), to attempt in good faith by way of discussions and using their best endeavours to resolve the dispute ("**representatives meeting**") and the *parties* must do so.

A3.97 If the dispute is not resolved (as evidenced by the terms of a written settlement signed by each *party's* duly authorised representative) within 20 *business days* after the *receipt date* then the senior executive officer of each *party* must meet at a place agreed between the *parties* within 30 *business days* after the *receipt date* and must attempt in good faith by way of discussions and using their best endeavours to resolve the dispute within 35 *business days* after the *receipt date* ("**CEO meeting**").

A3.98 A *representatives meeting* in clause A3.96 or *CEO meeting* in clause A3.97 may be conducted in person, by telephone, video-conference or similar method of real time communication.

A3.99 If, after complying with the process set out in clauses A3.96 and A3.97 a dispute is not resolved, then either *party* may commence an action to resolve the dispute through litigation and other court processes.

{Note: The *parties* may, if they agree, endeavour to resolve a dispute through mediation, conciliation, arbitration or other alternative resolution methods rather than commencing an action to resolve the dispute through litigation.}

A3.100 A *party* must continue to perform its obligations under this contract despite the existence of a dispute, unless otherwise agreed.

### **Set off**

A3.101 A *party* ("**first party**") may set off any amount due for payment by it to the other *party* under this contract against any amount which is due for payment by the other *party* to the *first party* under this contract.

A3.102 Except as permitted in clause A3.101, no set off is permitted by either *party* in connection with this contract, whether under this contract or otherwise.

### **Transfer by user**

A3.103 Subject to clause A3.104, *UserCo* may make a *bare transfer* of its *access rights* without *service provider's* prior consent.

A3.104 If *UserCo* makes a *bare transfer*, *UserCo* must notify *service provider* of:

- (a) the identity of the transferee; and
- (b) the nature of the transferred *access rights*,

before the transferee may commence using the transferred *access rights*.

A3.105 For a *transfer* other than a *bare transfer*, *UserCo* may *transfer* its *access rights* (subject to clause A3.106) and subject to the *service provider's* prior written consent and such conditions as the *service provider* may impose.

A3.106 For a *transfer* other than a *bare transfer*, *service provider* may:

- (a) withhold its consent in clause A3.105 only on reasonable commercial or technical grounds; and
- (b) impose conditions in respect of the *transfer*, but only to the extent that they are reasonable on commercial and technical grounds.

### **Corporate restructuring of service provider<sup>724</sup>**

A3.107 If *service provider* is restructured:

- (a) in accordance with government policy by *law*; or
- (b) through other means, including the:
  - (i) use of subsidiary or *associated* companies; or
  - (ii) *transfer* of assets, rights and liabilities,

then the rights and obligations of *service provider* under this contract are assigned to the appropriate legal entity pursuant to the restructure.

A3.108 A restructure, *transfer* or assignment under clause A3.107 does not require *UserCo's* approval or consent.

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<sup>724</sup> This clause to be omitted from *standard access contract* unless *service provider* is a wholly state-owned corporation.



## **Confidentiality**

### **A3.109 Confidential information**

This contract and information exchanged between the *parties* under this contract or during the negotiations preceding this contract is confidential to them if:

- (a) the information disclosed contains a notification by the disclosing *party* that the information is confidential; or
- (b) the circumstances in which the information was disclosed or the nature of the information disclosed may reasonably be considered as being confidential; or
- (c) the information constitutes trade secrets; or
- (d) the information has a commercial value to a *party* which would be destroyed or diminished by the publication of the information; or
- (e) the information relates to the business, professional, commercial or financial affairs of a *party* and the value to the *party* would be destroyed or diminished by the publication of the information.

A3.110 Clause A3.109 does not apply to information which, without breach of this contract or other breach of confidence:

- (a) is or becomes generally and publicly available<sup>725</sup>; or
- (b) is lawfully obtained by a *party* from a person other than a *party* or a *related body corporate* of a *party* where such person is entitled to disclose the *confidential information*; or
- (c) is, at the date of this contract, lawfully in the *possession* of the *recipient* of the *confidential information* through sources other than the *party* which supplied the information.

### **A3.111 Prohibited disclosure**

Subject to clause A3.112, an information *recipient* must not disclose or allow to be disclosed any *confidential information* to a *third party recipient*.

### **A3.112 Permitted disclosure**

- (a) An information *recipient* may disclose or allow to be disclosed any *confidential information* to a *third party recipient* in the following circumstances:
  - (i) with written consent of the *information provider*; or
  - (ii) to employees, a *related body corporate* or legal advisers, auditors or other consultants of the *party* requiring information for the

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<sup>725</sup> Appendix 3 clause A3.110 amended by WAGG No 207, 8 November 2005

purposes of this contract or for the purposes of providing professional advice in relation to this contract; or

- (iii) to a bona fide proposed assignee of a *party* to this contract or registered shareholder of 20 percent or more of the voting shares in a *party*; or
  - (iv) if required by *law* or by an authority which has jurisdiction over a *party* or any of its related bodies corporate or by the rules of a stock exchange which has jurisdiction over a *party* or any of its related bodies corporate; or
  - (v) if required for the purposes of prosecuting or defending a dispute or if otherwise required in connection with legal proceedings related to this contract.
- (b) Nothing in clause A3.112(a) limits *service provider's* obligations to comply with Chapter 13 of the *Code*.

#### A3.113 **Third party disclosure**

An information *recipient* disclosing information under clause A3.112(a) must:

- (a) use all reasonable endeavours to ensure that a *third party recipient* does not disclose the *confidential information* except in the circumstances permitted in clause A3.112(a); and
- (b) notify the *third party recipient* that it has a duty of confidence to the *information provider* in respect of the *confidential information*; and
- (c) except to the extent that the *third party recipient* is under an existing enforceable legal obligation to maintain the confidence of the *confidential information* as contemplated in clause A3.113(b), procure a written confidentiality undertaking from the *third party recipient* consistent with clauses A3.109 to A3.118.

#### A3.114 **No unauthorised copying**

A *party* must not copy any document containing the other *party's confidential information* except as necessary to perform this contract.

#### A3.115 **Secure storage**

A *party* must ensure that proper and secure storage is provided for the *confidential information* while in *possession* of a *party*, provided that if a *party* is a corporation it may retain any such documents or parts of documents that form part of board papers (or other formal approval processes) of such corporation and which are required to be retained by that corporation in accordance with usual corporate governance requirements.

#### A3.116 **Return of materials**

A *party* must return all documents containing the other *party's confidential information*, including all copies, to the other *party* on termination or expiration of this contract, or upon request by the other *party*, destroy all such documents.

### A3.117 Remedies

Each *party* acknowledges and agrees that any breach or threatened breach of clauses A3.109 to A3.118 may cause a *party* immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently, each *party* has the right, in addition to any other remedies available at *law* or equity, to seek injunctive relief or compel specific performances of these clauses A3.109 to A3.118 in respect of any such breach or threatened breach.

### A3.118 Survival of obligations

- (a) Clauses A3.109 to A3.118 survive the termination of this contract and remain enforceable for a period of 7 years from the date of such termination.
- (b) Any person who ceases to be a *party* to this contract continues to be bound by these clauses A3.109 to A3.118.

### Ring fencing

A3.119 If *service provider* is an *integrated provider*, then a court or tribunal in considering whether:

- (a) representations made by *workers* of the *other business* can be attributed to the *network business*, or vice versa; or
- (b) a notice or other information given to a worker of the *other business* has been communicated, or should be deemed to have been communicated, to the *network business*, or vice versa; or
- (c) a contract entered into by the *other business* expresses or implies an intention to vary this contract, or vice versa,

must have regard to:

- (d) the fact that *service provider* comprises a *network business* and an *other business* and the distribution of personnel and responsibilities between those businesses; and
- (e) *service provider's* obligations under Chapter 13 of the *Code* (and, if *service provider* is Electricity Networks Corporation, any regulations made under section 62 of the *Electricity Corporations Act 2005*<sup>726</sup>) and anything done or not done by the *service provider* in connection with those obligations.

### Notices

#### A3.120 Requirements for notices

Except as provided in clause A3.121, a communication must be:

- (a) in writing (which includes any *electronic form* capable of being reduced to paper writing by being printed); and

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<sup>726</sup> Appendix 3 clause A3.119(e) amended by WAGG No 59, 31 March 2006

- (b) delivered or sent to the address of the addressee as specified in Schedule 9 by one or more of the following means:
  - (i) by hand delivery; or
  - (ii) by ordinary letter post (airmail if posted to or from a place outside Australia); or
  - (iii) by way of a courier service for hand delivery; or
  - (iv) by facsimile to the facsimile number of the addressee, or
  - (v) by email, as specified in the Electronic Communications Protocol in Schedule 10.

**A3.121 Operational and urgent notices**

Where this contract expressly provides, and where the *parties* agree in writing:

- (a) notices of a day to day operational nature; or
- (b) notices given in an operational emergency,

may be given orally and confirmed in writing within 5 *business days*.

**A3.122 Notice takes effect**

Subject to clause A3.123, a communication takes effect from the later of:

- (a) the time it is received; and
- (b) any later time specified in the communication.

**A3.123 Deemed receipt**

For the purposes of this contract:

- (a) a communication delivered by hand to the address of a *party* (including where a reputable courier service is used for that purpose) is deemed to be received if it is handed (with or without acknowledgment of delivery) to any person at the address who, in the reasonable judgment of the person making the delivery (upon making appropriate enquiries):
  - (i) appears to be; and
  - (ii) represents himself or herself as,  
  
a representative of the *party* to whom the communication is addressed.
- (b) a communication which is posted is deemed to be received by the *party* to whom the communication is addressed:
  - (i) where the communication is sent from outside the country of the address to which it is sent – on the 10th *business day* after the day of posting; and

- (ii) otherwise – on the third *business day* after the day of posting.
- (c) a communication sent by facsimile transmission which is transmitted:
  - (i) prior to 3 p.m. on a *business day* is deemed to have been received by the *party* on that *business day* at the *recipient's* location; and
  - (ii) after 3 p.m. on a *business day*, or on a day which is not a *business day*, is deemed to have been received by the *party* on the first *business day* at the *recipient's* location following the date of transmission,

provided that the sender of the communication is able to produce a transmission log generated by the sender's facsimile machine (or other facsimile transmission device), showing successful uninterrupted facsimile transmission of all pages of the relevant communication to the facsimile number of the addressee.

- (d) a communication sent electronically is deemed to be received by the *party* in accordance with Schedule 10.

#### A3.124 **Change of address**

A *party* may at any time, by notice given to the other *party* to this contract, designate a different address or facsimile number for the purpose of these clauses A3.120 to A3.124.

### **Miscellaneous**

#### A3.125 **Compliance**

Each *party* to this contract must comply with all applicable *laws*.

#### A3.126 **Variation**

- (a) Subject clause A3.126(b), a purported agreement between *service provider* and *UserCo* to revoke, substitute or amend any provision of this contract has no effect unless it is in writing.
- (b) Clause A3.126(a) does not prevent *UserCo* and *service provider* from agreeing by non-written means under clause A3.121 to revoke, substitute or amend any provision of this contract in an accident, emergency, potential danger or other unavoidable cause or extraordinary circumstance (each in this clause an "**emergency**"), provided that the non-written revocation, substitution or amendment applies only while the effects of the *emergency* subsist.

#### A3.127 **No third party benefit**

This contract does not confer any right or benefit on a person other than *UserCo* and *service provider*, despite the person being named or identified, or belonging to a class of persons named or identified, in this contract.

**A3.128 Stamp duty**

*UserCo* is liable for and must pay all stamp duties that are assessed on this contract.

**A3.129 Costs**

Each *party* must pay its own costs, *charges*, expenses, disbursements or fees in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any notice given or made; and
- (b) the performance of any action by that *party* in compliance with any liability arising,

under this contract, or any agreement or document executed or effected under this contract, unless this contract provides otherwise.

**A3.130 Waiver**

A provision of this contract may only be waived by a *party* giving written notice signed by a duly authorised representative to the other *party*.

**A3.131 Entire Agreement**

This contract constitutes the entire agreement between the *parties* as to its subject matter and, to the extent permitted by *law*, supersedes all previous agreements, arrangements, representations or understandings.

**A3.132 Severance**

If the whole or any part of this contract is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this contract has full force and effect and the validity or enforceability of the provision in any other jurisdiction is not affected. This clause A3.132 has no effect if the severance alters the basic nature of this contract or is contrary to public policy.

**A3.133 Counterpart execution**

- (a) This contract may be executed in counterpart.
- (b) Upon each *party* having executed and forwarded to the other *party* a fully signed counterpart of this contract, it is deemed to be properly executed by all *parties*.

**A3.134 Further assurance**

Each *party* agrees, at its own expense, on the request of another *party*, to do everything reasonably necessary to give effect to this contract and the transactions contemplated by it, including, but not limited to, the execution of documents.

**A3.135 Authorised officers**

- (a) Notice, approval, consent or other communication given under this contract may be given by an *authorised officer* of a *party* specified in Schedule 9 to an *authorised officer* of another *party* specified in Schedule 9.
- (b) A *party* may at any time, by notice given to the other *party*, add or replace an *authorised officer* for the purposes of clause A3.135(a).

**A3.136 Merger**

The warranties, undertakings and indemnities in this contract do not merge on termination of this contract.

**A3.137 Remedies**

The rights, powers and remedies provided in this contract are cumulative with and not exclusive of the rights, powers or remedies provided by *law* independently of this contract.

**A3.138 Governing law**

- (a) This contract and the transactions contemplated by this contract are governed by the law in force in Western Australia.
- (b) Without limiting clause A3.138(a), each *party* irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Western Australia and the Courts of appeal from them for the purpose of determining any dispute concerning this contract or the transactions contemplated by this contract.

*[Execution clauses to be inserted.]*

**Schedule 1 to Appendix 3 – Access Contract Information**

1.	<i>Commencement Date</i>	
2.	<i>Termination Date</i>	

**Schedule 2 to Appendix 3 – Services**

	<b>Type of service</b>	<b>Specified</b>	<b>Service standard</b>
1.	<i>Connection service</i>		
2.	<i>Entry or Exit service</i>		
3.	<i>Network use of system service</i>		
4.	<i>Common service</i>		

**Schedule 3 to Appendix 3 – Details of Connection Points and Metering Points**

<i>Connection point</i>	<i>Capacity contract</i> (Tick if applicable)	<i>Technical compliance contract</i> (Tick if applicable)	<i>Type of connection point</i> (i.e. entry point or exit point)	<i>Start Date</i>	<i>End Date</i>	<i>CMD</i> (KW / KVA) (if applicable)	<i>DSOC</i> (KW / KVA) (if applicable)	<i>Designated controller</i> <sup>727</sup> (if applicable)

**Schedule 4 to Appendix 3 - Tariffs**

[X]<sup>728</sup>

**Schedule 5 to Appendix 3 - Contribution (Provision in Kind Contract or Payment Contract)** <sup>729</sup>

[X]<sup>730</sup>

**Schedule 6 to Appendix 3 – Service provider’s works**

[Details to be included in addition to other matters:

- (a) description of *service provider’s works* including reference to specifications; and
- (b) timetable for construction of *service provider’s works*]. <sup>731</sup>

**Schedule 7 to Appendix 3 – UserCo’s works**

[Details to be included in addition to other matters:

- (a) description of *UserCo’s works* to be carried out by *UserCo*; and
- (b) terms of construction of *UserCo’s works*; and
- (c) timetable for construction of *UserCo’s works*; and
- (d) terms of *transfer* of *UserCo’s works* to *service provider* (if any); and
- (e) testing and commissioning; and

<sup>727</sup> To be inserted in the *access contract* by agreement between the parties or arbitrated award.

<sup>728</sup> To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

<sup>729</sup> Heading amended by WAGG No 180, 22 October 2008

<sup>730</sup> Provisions to be inserted as agreed between the *parties* or determined in an arbitrated award in accordance with the *capital contributions policy* in the *service provider’s access arrangement*.

<sup>731</sup> Provisions to be inserted as agreed between the *parties* or determined in an arbitrated award in accordance with the *service provider’s access arrangement*.



- (f) protocols for maintenance co-ordination.]<sup>732</sup>

**Schedule 8 to Appendix 3 – Insurances and Limitation of Liability**

**1. UserCo insurances**

*[To be completed. For example the required insurances may include:*

- (a) public liability – up to \$x million; and
- (b) workers’ compensation – up to \$y million; and
- (c) other insurances as appropriate.]<sup>733</sup>

**2. Service provider insurances**

*[To be completed. For example the required insurances may include:*

- (a) public liability – up to \$x million; and
- (b) workers’ compensation – up to \$y million; and
- (c) other insurances as appropriate.]<sup>734</sup>

**Schedule 9 to Appendix 3 – Notices**

1

	<b>Subject</b>	<b>Information</b>
	Address for service of notices/ place of business	
	<i>Authorised officers</i>	
	Email address	
	Facsimile number	

**2 Service provider**

	<b>Subject</b>	<b>Information</b>
	Address for service of notices/ place of business	
	<i>Authorised officers</i>	
	Email address	
	Facsimile number	

<sup>732</sup> Provisions to be inserted as agreed between the *parties* or determined in an arbitrated award in accordance with the *service provider’s access arrangement*.

<sup>733</sup> Provisions to be inserted as agreed between the *parties* or determined in an arbitrated award in accordance with the *service provider’s access arrangement*.

<sup>734</sup> Provisions to be inserted as agreed between the *parties* or determined in an arbitrated award in accordance with the *service provider’s access arrangement*.

## Schedule 10 to Appendix 3 - Electronic Communications Protocol

### 1. Interpretation

In this schedule:

“**addressee**” means the person to whose *email* address an *email* is sent.

“**automated response message**” means an *email* (“reply email”) sent automatically upon receipt of an *email* (“original email”), where the reply *email* is sent from an *addressee’s information system* to the *originator* of the original *email*, acknowledging that the original *email* has been received by the *addressee’s information system* and containing:

- (a) the name of the *originator* of the original *email*; and
- (b) at least the time, date and subject title of the original *email*; and

{Note: The easiest means to record this information may be to include the whole of the original *email*, preferably excluding attachments, within the reply *email*.}

- (c) the name of the *addressee* of the original *email*; and
- (d) the date and time the original *email* was received by the *addressee’s information system* (which in the absence of evidence to the contrary is taken to be the creation date of the reply *email*).

“**data**” includes the whole or part of a computer program within the meaning of the *Copyright Act 1968* of the Commonwealth.

“**email**” means a communication of *information* by means of guided or unguided electromagnetic energy, or both, by way of packet *transfer* between and within computer networks using the TCP/IP protocol.

“**email address**” means the address nominated in the third item of Tables 1 and 2<sup>735</sup> of Schedule 9, being an address which is a combination of a personal identifier and a machine/network identifier, which are together capable of being resolved by computer networks transmitting *email* using the TCP/IP protocol, so that *email* is transmitted to the *person* providing that email address.

“**information**” means information in the form of data, text, images or sound.

“**information system**” means a system for generating, sending, receiving, storing or otherwise processing *emails*.

“**originator**” means the *person* who sends an *email* to an *addressee*.

“**place of business**” means a place of business nominated under the first item of Tables 1 and 2<sup>736</sup> of Schedule 9 and in relation to a government, a government

<sup>735</sup> Clause 1, Schedule 10 to Appendix 3 amended by WAGG No 207, 8 November 2005

<sup>736</sup> Clause 1, Schedule 10 to Appendix 3 amended by WAGG No 207, 8 November 2005

authority or a non-profit body, includes a place where any operations or activities are carried out by that government, authority or body.

“**purported originator**” means the *person* on the face of the email who appears to be, or purports to be the *originator*, including by purported compliance with clause 5.

## 2. Parties to establish email addresses

*Service provider* and *UserCo* must:

- (a) from time to time, nominate a *place of business* and establish an *email address* to be used for the *communications* under this contract; and
- (b) use reasonable endeavours to ensure that the *information system*, on which *emails* addressed to the *email address* are received, is operational:
  - (i) a 24 hours-a-day; and
  - (ii) 7 days-a-week,to receive *emails* and send *automated response messages* as required by this contract; and
- (c) as soon as practicable notify the other *party* of its *place of business* and *email address* and of any change in each of them; and
- (d) establish a mechanism to generate an *automated response message* for each *email* (other than an *automated response message*) received at the *email address*.

## 3. Requirement for automated response message

- (a) An *email* is neither given nor received under this contract until the *originator* receives the *addressee's automated response message* for the *email*.
- (b) It is the *originator's* responsibility for each attempted *email* to verify that it receives an *automated response message*, and if it does not receive an *automated response message* arrange either for:
  - (i) retransmission of the *email*; or
  - (ii) communication of the *information* by an alternative medium (but this clause 2(b) does not limit the *addressee's* responsibilities under clause 2(d)).
- (c) If the *originator* receives an *automated response message* for an *email*, then (unless the *addressee* proves otherwise) for the purposes of this contract the:
  - (i) *originator* has sent; and
  - (ii) *addressee* has received,the *email* at the date and time shown in the *automated response message*.
- (d) It is the *addressee's* responsibility for each *email* for which the *addressee's information system* generates an *automated response message* to:

- (e) read the *email* and the *information* it contains, and if applicable communicate it to the appropriate *worker* within the *addressee's* organisation; and
- (f) if necessary, notify the *originator* of any difficulty in opening, reading, decompressing or otherwise *accessing* (in a form reasonably readable) any *information* contained in the *email*; and
- (g) if it appears to the *addressee* that the *addressee* was not the intended or correct *recipient* of the *information* in the *email*, communicate this fact to the *originator*.

#### 4. Location

Unless otherwise agreed between the *originator* and the *addressee* of an *email*, the email and the *information* it contains is deemed to have been sent from the *originator's place of business* and received at the *addressee's place of business*.

#### 5. Attribution of emails and reliance

Except to the extent that:

- (a) the *purported originator* of an *email* and the *addressee* of the *email* agree otherwise; or
- (b) the *purported originator* of an *email* proves otherwise,

the *addressee* of an *email* in respect of which an *automated response notice* has been given may assume for all purposes under this contract that the:

- (c) *purported originator* of the *email* is the *originator* of the *email*; and
- (d) *email* was sent by, or with the knowledge and express authority of, the *purported originator*.

#### 6. Signatures

For the purposes of this contract, an *email* must identify the *originator*.

#### 7. Information format

An *originator* must use reasonable endeavours, in selecting the data format for *information* contained in an *email*, to adopt a consistent format over time to facilitate any automated processing of the *information* by the *addressee*.

## **Schedule 11 to Appendix 3 - Guarantee**

DEED dated [to be completed]

### **PARTIES**

1. [### ACN ### a company registered in ### of ###] (“**Guarantor**”); and
2. [### ACN ### a company registered in ### of ###] (“**Service provider**”).

### **BACKGROUND**

- A The *service provider* may in its discretion provide *services* to [###] (“**UserCo**”) under an *access contract* at the request of each of *UserCo* and the *guarantor*.
- B The *guarantor* wishes to execute this *guarantee* to secure payment of all amounts payable under the *access contract* to the *service provider*.

### **1. GUARANTEE**

The *guarantor* unconditionally and irrevocably guarantees as a continuing security to the *service provider* payment by *UserCo* of all moneys and liabilities due and/or payable from or by *UserCo* to the *service provider* under or in connection with the contract dated [###] (“**access contract**”) created between *UserCo* and the *service provider* (“**secured moneys**”), including moneys and liabilities incurred or arising:

- (a) (**liability**): at any present or future time, whether actually or contingently;
- (b) (**default**): as a result of any breach of or default under the *access contract*; and/or
- (c) (**account**): by way of principal, interest, cost, charge, expense, disbursement, fee, tax, stamp or other duty, indemnity, damages or monetary judicial order.

### **2. SECURED MONEYS**

#### **2.1 Demand Payment**

The *guarantor* must pay to the *service provider*, upon demand by the *service provider* at any present or future time, the amount of the *secured moneys* due from and payable by *UserCo* to the *service provider* at that time under, and in the manner and currency specified in, the *access contract*.

#### **2.2 Costs**

The *guarantor* must at any present or future time indemnify the *service provider* upon demand for any cost, *charge*, expense, disbursement, fee, tax or stamp or other duty incurred by the *service provider* at any time in connection with the *access contract*, this *guarantee* or the *secured moneys* relating to:

- (a) (**security agreements**): preparation, negotiation, execution or performance, or any termination, amendment, consent, claim, demand or waiver;
- (b) (**security rights**): any exercise or enforcement of any right or power conferred on the *service provider*;

- (c) **(credit increases)**: any extension of further, additional or increased credit or financial accommodation by the *service provider*, or agreement by the *service provider* to increase the amount secured; and/or
- (d) **(payments)**: the receipt or payment of any moneys, including moneys paid by the *service provider* by way of reimbursement to any third *party*.

### **2.3 Set-Off Exclusion**

The *guarantor* must make any payment required under this *guarantee* without set-off or other deduction, except for the deduction or withholding of any tax compelled by *law*.

## **3. INDEMNITY**

The *guarantor* must as a separate and additional liability of the *guarantor* as a principal debtor, and not as a surety, indemnify the *service provider* against, and pay to the *service provider* upon demand by the *service provider* an amount equal to, all *secured moneys* that are or may become invalid, unenforceable, illegal or irrecoverable for any reason or under any circumstances as a liability to the *service provider* by the *guarantor* as a surety, despite any other provision of this *guarantee*.

## **4. GUARANTEE PROTECTION**

This *guarantee*, and the liability of the *guarantor* under this *guarantee*, is not affected at any time by:

- (a) **(waiver)**: the granting to any person by the *service provider* of any waiver;
- (b) **(agreements)**: any agreement, deed or document created with, or action or omission performed, representation made or non-disclosure of any fact or information by, the *service provider* or any person;
- (c) **(secured moneys)**: any increase or variation in the amount of the *secured moneys* occurring for any reason;
- (d) **(document amendment)**: any amendment to or *transfer*, release or termination of any agreement, deed or document or any right, power or liability of any person under any agreement, whether for or without consideration;
- (e) **(enforcement decisions)**: any exercise or enforcement, or any failure or invalidity in, the exercise or enforcement by the *service provider* of any right or power conferred on the *service provider* under any agreement, deed or document or by *law*;
- (f) **(invalidity)**: any actual or potential invalidity, unenforceability, illegality or irrecoverability of any agreement, deed or document or consent or any payment made or due to the *service provider* under any agreement for any reason;
- (g) **(incapacity)**: any incapacity or absence of power or authorisation of, or other fact relating to, any person in connection with the execution of any agreement, deed or document or otherwise, including any change in the constitution or membership of any person; or
- (h) **(residual)**: any other breach, default, waiver or fact which, except for this provision, might legally operate:
  - (i) to release or *discharge* or have any prejudicial effect on; or

- (ii) in any manner to release or discharge the *guarantor* from performance of, or limit or provide a defence to any legal action to enforce,

this *guarantee*, or any liability of the *guarantor* under or in connection with this *guarantee*.

## **5. TERMINATION**

The *guarantor* is not entitled to terminate or limit this *guarantee*, or any liability of the *guarantor* under this *guarantee*, until the *secured moneys* have been paid in full.

## **6. GOVERNING LAW**

This *guarantee* is governed by and construed under the law of the State of Western Australia.

## **7. GENERAL**

### **7.1 Continuing Security**

This *guarantee* is a continuing security and is not wholly or partially discharged by the payment at any time of any *secured moneys*, settlement of account or other fact and applies to the balance of the *secured moneys* at any time until a final termination of this *guarantee* by the *service provider*.

### **7.2 Further Assurance**

The *guarantor* must upon request by the *service provider* at any time execute any document and perform any action necessary to give full effect to this *guarantee*, whether prior or subsequent to performance of this *guarantee*.

### **7.3 Waivers**

Any failure or delay by the *service provider* to exercise any right or power under this *guarantee* does not operate as a waiver and the single or partial exercise of any right or power by the *service provider* does not preclude any other or further exercise of that or any other right or power by the *service provider*.

**EXECUTED as a deed.**

*[Execution clauses for guarantee to be inserted]*

## **Appendix 3A – Transitional Western Power Network standard access contract<sup>737</sup>**

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<sup>737</sup> Appendix 3A inserted by WAGG No 134, 30 July 2021



# Electricity Transfer Access Contract

Between

Electricity Networks Corporation ABN 18 540 492 861

and

[Name of User] ABN/ACN/ARBN [XXXXXXXXXX]

and

[Name of Indemnifier] ABN/ACN/ARBN [XXXXXXXXXX]<sup>1</sup>

## NOTES TO USER: TO BE DELETED PRIOR TO FINALISING THE DOCUMENT

1. **[User]** - Please note that the User under this contract must be the same entity as the Connection Applicant.
2. **Intermediary** - Please note that the contract template contains optional provisions to be used in circumstances where the User has been exempted from registering as a Rule Participant and has notified AEMO that an Intermediary (as that term is defined in the WEM Rules) will instead be registered as a Rule Participant. See 19.11, 33.4(a)(vi) and definition of Intermediary]

<sup>1</sup> Delete if no Indemnifier

{Note: This contract has been prepared in accordance with the requirements of the Electricity Networks Access Code 2004}



# Contents

<b>Introduction</b>	<b>7</b>
<b>Operative Provisions</b>	<b>7</b>
<b>1. Interpretation</b>	<b>7</b>
1.1 Interpretation	7
1.2 Interpretation Act applies	8
1.3 CPI adjustment	8
<b>2. Duration</b>	<b>9</b>
2.1 Commencement and Term	9
2.2 Option to extend Term	9
2.3 Conditions Precedent	9
<b>Electricity Transfer Provisions</b>	<b>10</b>
<b>3. Services</b>	<b>10</b>
3.1 Provision and use of Services	10
3.2 User may select Services	11
3.3 Eligibility Criteria	11
3.4 Increase or decrease of Contracted Capacity	11
3.5 Addition of a Connection Point	11
3.6 Deletion of a Connection Point	12
3.7 Amendment to Connection Point data	13
<b>4. The User must provide forecast information</b>	<b>14</b>
4.1 Western Power may request information	14
4.2 When Western Power may request information	14
4.3 User must comply with request	14
<b>5. Title to electricity</b>	<b>15</b>
5.1 Transfer into the Network	15
5.2 Transfer out of the Network	15
<b>6. Controllers</b>	<b>15</b>
6.1 User must nominate Controller where Connection Point exceeds threshold	15
6.2 Where the User is not the Controller	15
6.3 Western Power may enter into Access Contracts	17
6.4 Liability and Force Majeure not limited	17
<b>7. Tariff and Charges</b>	<b>17</b>
7.1 Tariff	17
7.2 Charges	18
7.3 Charges during Western Power's Force Majeure Event	19

<b>8.</b>	<b>Invoicing and payment</b>	<b>19</b>
8.1	Western Power invoices	19
8.2	User invoices	20
8.3	Payment of invoices	20
8.4	Disputed invoices	20
8.5	Charge errors	21
8.6	Under and over payments	21
8.7	Interest on overdue payment	21
8.8	GST	22
<b>9.</b>	<b>Security for Charges</b>	<b>22</b>
<b>10.</b>	<b>Security for Contribution</b>	<b>24</b>
	<b>Technical Compliance Provisions</b>	<b>25</b>
<b>11.</b>	<b>Good Electricity Industry Practice</b>	<b>25</b>
11.1	Western Power must comply with Good Electricity Industry Practice	25
11.2	User must comply with Good Electricity Industry Practice	25
<b>12.</b>	<b>Technical Rules and Registered Generator Performance Standards</b>	<b>25</b>
12.1	Western Power and the User must comply	25
12.2	User to bear costs	25
12.3	Actions of third parties	26
<b>13.</b>	<b>Technical characteristics of Facilities and Equipment</b>	<b>26</b>
<b>14.</b>	<b>Cooperation</b>	<b>27</b>
14.1	General Obligation to Co-operate	27
14.2	System Operator Directions	27
<b>15.</b>	<b>Access to premises</b>	<b>27</b>
15.1	Parties must allow reasonable rights of entry	27
15.2	Entry made at risk of Guest Party	27
15.3	Guest Party obligations	27
15.4	Third person's premises	28
<b>16.</b>	<b>Network Constraints</b>	<b>28</b>
16.1	Determining Impact of Constraints	28
16.2	AEMO Directions	28
16.3	Western Power Directions	29
16.4	Liability	29
16.5	Intermediary	29

<b>17. Removal of equipment</b>	<b>29</b>
<b>Common Provisions</b>	<b>30</b>
<b>18. Representations and warranties</b>	<b>30</b>
18.1 The User's representations and warranties	30
18.2 Western Power's representations and warranties	30
18.3 Indemnifier's representations and warranties	31
<b>19. Liability and indemnity</b>	<b>31</b>
19.1 No several liability	31
19.2 Liability for Direct Damage	32
19.3 Exclusion of Indirect Damage	32
19.4 Fraud	32
19.5 Limitation of liability	32
19.6 Procedure for party seeking to rely on indemnity	34
19.7 Obligation to pay and right to indemnities survives termination	34
19.8 Apportionment of liability	34
19.9 Mitigation of losses	35
19.10 Recoveries under insurance	35
19.11 Intermediary Indemnity [Note: Optional Clause]	35
<b>20. Personal injury</b>	<b>36</b>
<b>21. Insurances</b>	<b>36</b>
21.1 The User's insurances	36
21.2 Western Power's insurances	36
21.3 Names of insured	36
21.4 Cross liability	36
21.5 Notice of cancellation	36
21.6 Further obligation	37
<b>22. Force Majeure</b>	<b>37</b>
22.1 Affected Person's obligations are suspended	37
22.2 When Services are Curtailed	37
22.3 Affected Person's obligations	37
22.4 In case of breach	37
22.5 Failure to minimise delays	37
22.6 Settlement of a labour dispute	37
<b>23. Provisions of Access Arrangement on Supplementary Matters apply</b>	<b>38</b>
<b>24. User does not acquire interest in Network</b>	<b>38</b>
<b>25. Curtailment</b>	<b>38</b>
25.1 Western Power may Curtail Services	38
25.2 Extent of Curtailment	38

25.3	Notification of Curtailment	38
25.4	User must comply with Curtailment	38
25.5	Contract does not limit other powers and rights	38
<b>26.</b>	<b>Payments and recoveries under the Contributions Policy</b>	<b>39</b>
<b>27.</b>	<b>Default</b>	<b>39</b>
27.1	Default	39
27.2	Default by the User	39
27.3	Immediate Suspension	39
27.4	Western Power's rights not affected	40
27.5	Default by Western Power	40
27.6	User's rights not affected	40
<b>28.</b>	<b>Termination</b>	<b>40</b>
28.1	Termination	40
28.2	Rights of Parties not affected	41
<b>29.</b>	<b>Disputes</b>	<b>41</b>
29.1	Party may give notice of Dispute and require Representatives' Meeting	41
29.2	Party may require CEO Meeting	41
29.3	Method of Meetings	41
29.4	Party may commence court proceedings	42
29.5	Obligations must be performed	42
<b>30.</b>	<b>Set off</b>	<b>42</b>
30.1	Party may set off payment	42
30.2	No other set off permitted	42
<b>31.</b>	<b>Assignment</b>	<b>42</b>
31.1	Transfer of rights and obligations	42
31.2	Costs	42
<b>32.</b>	<b>Corporate restructuring of Western Power</b>	<b>42</b>
32.1	If Western Power is restructured	42
32.2	User's consent not required	43
<b>33.</b>	<b>Confidentiality</b>	<b>43</b>
33.1	Confidential information	43
33.2	When information is not confidential	43
33.3	Prohibited disclosure	43
33.4	Permitted disclosure	44
33.5	Third party disclosure	44
33.6	No unauthorised copying	44
33.7	Secure storage	44
33.8	Return of materials	45

33.9	Remedies	45
33.10	Survival of obligations	45
<b>34.</b>	<b>Ring Fencing</b>	<b>45</b>
<b>35.</b>	<b>Notices</b>	<b>45</b>
35.1	Requirements for Communications	45
35.2	Operational and urgent Communication	46
35.3	Communication takes effect	46
35.4	Deemed receipt	46
<b>36.</b>	<b>Change of address</b>	<b>47</b>
<b>37.</b>	<b>Miscellaneous</b>	<b>47</b>
37.1	Compliance	47
37.2	Variation	47
37.3	No third party benefit	47
37.4	Duty	47
37.5	Costs	47
37.6	Waiver	47
37.7	Entire agreement	47
37.8	Severance	48
37.9	Counterpart execution	48
37.10	Further assurance	48
37.11	Authorised officers	48
37.12	Merger	48
37.13	Remedies	48
37.14	Governing Law	48
	<b>Execution Clause:</b>	<b>50</b>
	<b>Schedule 1 - Dictionary</b>	<b>52</b>
	<b>Schedule 2 - Access Contract Information</b>	<b>64</b>
	<b>Schedule 3 - Details of Connection Points</b>	<b>65</b>
	<b>Schedule 4 - Works and Contributions</b>	<b>67</b>
	<b>Schedule 5 - Insurances</b>	<b>68</b>
	<b>Schedule 6 - Notices</b>	<b>70</b>
	<b>Schedule 7 - Electronic Communications Protocol</b>	<b>71</b>
	<b>Schedule 8 - Form of Guarantee</b>	<b>74</b>
	<b>Schedule 9 - Negotiated Generator Performance Standards</b>	<b>77</b>

## Parties

**ELECTRICITY NETWORKS CORPORATION ABN 18 540 492 861**, a statutory body corporate established under section 4(1)(b) of the *Electricity Corporations Act 2005 (WA)*, of 363 Wellington Street, Perth, Western Australia (**Western Power**)

– and –

[ ] of [ ] (**User**)

– and –

[ ] of [ ] (**Indemnifier**)

## Introduction

### Background

- (a) The User has made an Application requesting Covered Services at one or more Connection Points.
- (b) Western Power has made an Access Offer in accordance with the Applications and Queuing Policy to provide the Covered Services to the User.
- (c) The User has signed the Access Offer, which has become this Access Contract.
- (d) The Indemnifier has agreed to indemnify Western Power in respect of the User's liabilities under this Access Contract.<sup>1</sup>

## Operative Provisions

### 1. Interpretation

#### 1.1 Interpretation

In this Contract:

- (a) a reference to:
  - (i) the singular includes the plural and the plural includes the singular; and
  - (ii) an officer or body of persons includes any other officer or body for the time being exercising the powers or performing the functions of that officer or body; and
  - (iii) this Contract or any other instrument includes any variation or replacement of it; and
  - (iv) “**under**” includes “**by**”, “**by virtue of**”, “**pursuant to**” and “**in accordance with**”; and
  - (v) “**day**” means a calendar day; and
  - (vi) “**person**” includes a public body, company, or association or body of persons, corporate or unincorporated; and

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<sup>1</sup> Delete this paragraph if there is no Indemnifier.

- (vii) a person includes a reference to the person's personal representatives, executors, administrators, successors and permitted assigns; and
  - (viii) any monetary amount means that amount in Australian dollars,
- and
- (b) a word of any gender includes the corresponding words of each other gender; and
  - (c) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
  - (d) “copy” includes a, photocopy or (subject to the Electronic Communications Protocol in Schedule 7) electronic copy; and
  - (e) “including” and similar expressions are not words of limitation; and
  - (f) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
  - (g) where information is set out in braces (namely “{“ and ”}”), whether or not preceded by the expression “Note”, “Outline” or “Example”, the information:
    - (i) is provided for information only and does not form part of this Contract; and
    - (ii) is to be disregarded in interpreting this Contract; and
    - (iii) might not reflect amendments to this Contract or other documents or Laws,
- and
- (h) a reference to:
    - (i) this Contract includes any Schedule to this Contract; and
    - (ii) a clause is a reference to a clause of this Contract; and
    - (iii) a series of consecutive clauses or Schedules is to be read as inclusive of the first and last in the series; and
    - (iv) “other party”, in relation to the Indemnifier, means Western Power.

## 1.2 Interpretation Act applies

Unless the contrary intention is apparent, the rules of interpretation in the Interpretation Act 1984 (WA) apply to the interpretation of this Contract.

## 1.3 CPI adjustment

In this Contract, “CPI-Adjusted” in reference to an amount means that amount is adjusted under the following formula:

$$N = C \times \left(1 + \frac{CPI_n - CPI_c}{CPI_c}\right)$$

where:

“N” is the new amount being calculated; and

“C” is the current amount being adjusted; and

“CPI<sub>n</sub>” is the CPI applicable at the end of the calendar quarter (quarter<sub>n</sub>) most recently ended prior to the current adjustment date; and



“CPI<sub>c</sub>” is the value of CPI applicable for the calendar quarter occurring 12 months before the calendar quarter referred to in the definition of CPI<sub>n</sub>.

## 2. Duration

### 2.1 Commencement and Term

- (a) This Contract commences on the Commencement Date.
- (b) This Contract ends on the Termination Date (unless terminated earlier under this Contract).

### 2.2 Option to extend Term

- (a) Subject to clause 2.2(b), the User may, by notice to Western Power given no later than 6 months prior to the expiration of the Term as at the time the notice is given, elect to extend the Term by such period as is specified in Part 2 of Schedule 2 as the “Extension Period”, in which event the Termination Date shall be the last day of the Extension Period.
- (b) The Term shall not in any event be extended such that the Termination Date is later than the date specified in Part 2 of Schedule 2 as the “**Latest Termination Date**”, except by mutual agreement between the Parties.

### 2.3 Conditions Precedent

- (a) The formation of this Contract, other than this clause 2.3 and clauses 29.1 to 29.5 {disputes}, 31.1 to 31.2 {assignment}, 33.1 to 33.10 {confidentiality}, 35 {notices} and 37.14 {governing law} is subject to and conditional upon each of the Conditions Precedent being satisfied on or before the date specified in Part 3 of Schedule 2 or:
  - (i) where a Condition Precedent is not specified to be for the benefit of a particular Party, that Condition Precedent being waived by agreement between all Parties; and
  - (ii) where a Condition Precedent is specified to be for the benefit of a particular Party, that Condition Precedent being waived by that Party, on or before the respective date specified in Part 3 of Schedule 2.
- (b) Where a Condition Precedent is not specified to be for the benefit of a particular Party, each of the Parties must use all reasonable endeavours to obtain the fulfilment of the Condition Precedent.
- (c) Where a Condition Precedent is specified to be for the benefit of a particular Party, that Party must use all reasonable endeavours to obtain the fulfilment of the Condition Precedent and the other Party shall not, by wilful act or omission, prevent its fulfilment.
- (d) A Party must promptly notify the other Parties if it:
  - (i) discovers that any of the Conditions Precedent are not satisfied by the date specified in Part 3 of Schedule 2; or
  - (ii) discovers that any of the Conditions Precedent have become incapable of being satisfied by the date specified in Part 3 of Schedule 2; or
  - (iii) waives any right to continue to treat any of the Conditions Precedent as conditions precedent to the formation of this Contract.

- (e) If a Condition Precedent is not satisfied or waived by the date specified in Part 3 of Schedule 2 (or such longer period as the Parties may in writing agree) then, if the Party who seeks to terminate this Contract has complied with clause 2.3(b) or 2.3(c), as the case requires, that Party may, without prejudice to any other right or remedy it may have, terminate this Contract by giving written notice to the other Party.

## Electricity Transfer Provisions

### 3. Services

#### 3.1 Provision and use of Services

- (a) For each Connection Point, on and from the Start Date and up to and including the End Date, subject to and under this Contract:
  - (i) Western Power must provide the Services (up to the Contracted Capacity); and
  - (ii) the User must pay the Charges for, and may use, the Services.
- (b) The User must not:
  - (i) transfer electricity out of the Network at a Connection Point unless it has an Exit Service or Bidirectional Service for that Connection Point; and
  - (ii) transfer electricity into the Network at a Connection Point unless it has an Entry Service or Bidirectional Service for that Connection Point.
- (c) For each Service at each Connection Point, the User must endeavour, as a Reasonable and Prudent Person, to ensure that the rate at which electricity is transferred into or out of the Network by or on behalf of the User does not exceed the Contracted Capacity for that Service. This clause 3.1(c) does not relieve the User of the User's obligation to comply with clause **Error! Reference source not found.** or clause 25.
- (d) Western Power provides the Services under this Contract to the User and does not provide any such Services to the Indemnifier. Western Power's sole liability in connection with the provision of the Services (including any failure of, or defect in provision of the Services) is to the User and Western Power has no liability of any nature to the Indemnifier in connection with the provision of the Services.
- (e) The Contracted Capacity for an Entry Service or an Entry Service Component at a Connection Point represents the maximum Capacity of the Network to accept a transfer of electricity into the Network at that Connection Point in the absence of a Constraint.
- (f) The actual amount of electricity which may be transferred into the Network at any point in time is subject to the Constraints affecting the Network from time to time. Constraints may, without limitation, be caused by the technical limitations and configuration of the Network, the actions or omissions of Generators or Customers or by factors external to the Network and may increase over time as additional Generators or Customer are connected to the Network.
- (g) Without limiting Western Power's obligation to operate the Network in accordance with Good Electricity Industry Practice, Laws and the Technical Rules,

Western Power has no obligation to the User to ensure Constraints do not occur or arise.

- (h) Despite any other provision of this Contract, the Capacity of the Network to accept the transfer of electricity at a Connection Point pursuant to an Entry Service or Entry Service Component is only available to be utilised by the User on a non-exclusive or non-firm basis and the User has no exclusive or firm right or entitlement to use all or any part of the available Capacity of the Network in priority to any other Generator or other person who transfers electricity into the Network.
- (i) Nothing in this clause limits the operation of clause 25.

### **3.2 User may select Services**

- (a) The User may from time to time give notice to Western Power seeking to change the Service in respect of a Connection Point in accordance with the Applications and Queuing Policy.
- (b) If Western Power receives a notice from the User under clause 3.2(a), then Western Power must process that request in accordance with the Applications and Queuing Policy.

### **3.3 Eligibility Criteria**

- (a) Subject to clause 3.3(b), the User must in relation to each Reference Service Point, comply with the Eligibility Criteria applicable to the Reference Service provided, or to be provided, at the Reference Service Point.
- (b) The User is not in breach of clause 3.3(a) to the extent the User is unable to comply with its obligation under clause 3.3(a) as a result of a breach by Western Power of clause 3.2(b).

### **3.4 Increase or decrease of Contracted Capacity**

- (a) The User may not increase or decrease the Contracted Capacity at an existing Connection Point to this Contract unless the User makes an application to Western Power and Western Power approves that application under the Applications and Queuing Policy.
- (b) If the User makes an application to Western Power under clause 3.4, then Western Power must process the application under the Applications and Queuing Policy.

### **3.5 Addition of a Connection Point**

- (a) The User may not add an additional Connection Point to this Contract unless the User makes an application to Western Power, and Western Power approves that application, under:
  - (i) the Applications and Queuing Policy; or
  - (ii) the Customer Transfer Code,as applicable.
- (b) If the User makes an application to Western Power under clause 3.5, then Western Power must process the application under:
  - (i) the Applications and Queuing Policy; or
  - (ii) the Customer Transfer Code,

as applicable.

### 3.6 Deletion of a Connection Point

- (a) The User may give notice to Western Power seeking to delete a Connection Point from this Contract where:
- (i) a transfer request has been made in relation to the Customer for that Connection Point under the Customer Transfer Code; or
  - (ii) the Connection Point will be added to another Access Contract by some other means to that stipulated in clause 3.6(a)(i); or
  - (iii) the Facilities and Equipment in respect of the Connection Point will be permanently Disconnected from the Connection Point.
- (b) If the User seeks to permanently Disconnect any Facilities and Equipment at a Connection Point, then the notice under clause 3.6(a) must be given to Western Power:
- (i) for Generating Plant, excluding Generating Plant up to and including 30 kVA which is being used to offset load, at a Connection Point, at least 6 months before the planned Disconnection; and
  - (ii) for Consuming plant and Generating Plant up to and including 30 kVA which is being used to offset load, at a Connection Point, at least one month before the planned Disconnection.
- (c) Clause 3.6(b) does not limit, and applies in addition to, the requirement the User and Western Power comply with their obligations (including timeframe service standards) specified in the model service level agreement under the Metering Code (to the extent that model service level agreement applies to the User and Western Power) in respect of any supply abolishment service required to give effect to a permanent Disconnection of Facilities and Equipment.
- (d) Subject to clause 3.6(e), if Western Power receives a notice from the User under clause 3.6(a), then it must notify the User that it accepts the deletion, and the date that the deletion takes effect, if:
- (i) Western Power has successfully processed a Customer transfer request in relation to the Connection Point under the Customer Transfer Code; or
  - (ii) the Connection Point has been added to another Access Contract by some other means; or
  - (iii) the Facilities and Equipment in respect of the Connection Point have been permanently Disconnected from the Connection Point,
- as soon as reasonably practicable, otherwise Western Power may notify the User as soon as reasonably practicable that it rejects the deletion.
- (e) Clause 3.6(d) does not limit the requirement the User and Western Power comply, in respect of any supply abolishment service required to give effect to a permanent Disconnection, with their obligations (including timeframe service standards) specified in the model service level agreement under the Metering Code (to the extent that model service level agreement applies to the User and Western Power).

- (f) Subject to the Customer Transfer Code, Western Power must not delete a Connection Point other than in accordance with a notice given by a User under clause 3.6.
- (g) If Western Power commits a breach of clause 3.6(f) in circumstances that constitute Wilful Default it is liable to the User for any damage caused by, consequent upon or arising out of the Wilful Default. In this case, the exclusion of Indirect Damage in clause 19.3 does not apply.

### 3.7 Amendment to Connection Point data

- (a) Unless the Parties otherwise agree, Western Power must, as soon as reasonably practicable, record the information referred to in Part 1 of Schedule 3, with respect to each Connection Point, in the Connection Point Database.
- (b) Subject to clauses 3.7(g) and 3.7(h), Western Power must, as soon as reasonably practicable, update the information contained in a Connection Point Database following any variation made under this clause 3.
- (c) Upon request by the User for information referred to in the Connection Point Database, Western Power will, as soon as reasonably practicable, provide to the User the most up-to-date version of that information.
- (d) The Parties acknowledge that if the User is a Metering Code Participant, for each Connection Point Western Power must also record and update the relevant information required under Part 1 of Schedule 3 in the Metering Database in accordance with the provisions of the Metering Code and, to the extent that a timeframe is not specified in the Metering Code or a service level agreement in force between the User and Western Power, Western Power must do so as soon as is reasonably practicable.
- (e) Nothing in this Contract restricts or prohibits Western Power from maintaining and updating the Metering Database in accordance with the Metering Code.
- (f) Western Power will provide the User with access to the information in the Metering Database in accordance with the Build Pack.
- (g) Subject to clause 3.7(h), where Western Power causes a Permanent Reconfiguration of the Network which results in the information contained in the Contract Database having to be updated:
  - (i) Western Power is not required to update the information contained in the Connection Point Database before the next 1 July following the Permanent Reconfiguration of the Network; and
  - (ii) Western Power must update the information contained in the Connection Point Database before the next 21 July following the Permanent Reconfiguration of the Network.
- (h) Where a Permanent Reconfiguration of the Network occurs as a result of, or arising from, a notice or application by the User under clauses 3.4, 3.5 or 3.6 which results in the information contained in the Contract Database having to be updated:
  - (i) clause 3.7(g) does not apply;
  - (ii) Western Power must update the information contained in the Connection Point Database as soon as reasonably practicable after the Permanent Reconfiguration of the Network; and

- (iii) where the information to be updated is contained in Part 1 of Schedule 3, then the information must be updated in accordance with clause 37.2.
- (i) The Parties must notify each other of any errors discovered in the Connection Point Database as soon as reasonably practicable after becoming aware of the error.
- (j) Western Power must amend any error in the Connection Point Database as soon as reasonably practicable after becoming aware of the error, provided that if Western Power becomes aware of an error otherwise than by notice from the User under clause 3.7(i), no amendment shall be made until Western Power has given notice to the User of the error.
- (k) Where under this Contract Western Power has recorded information in more than one of Part 1 of Schedule 3, the Metering Database and any other database maintained by Western Power for the purposes of this Contract and there is an inconsistency or conflict between the information in the databases in which the information is recorded, then the following order of precedence applies, from highest to lowest:
  - (i) where the circumstances in clauses 3.7(g) or 3.7(h) apply:
    - (A) Part 1 of Schedule 3;
    - (B) any other database;
    - (C) the Metering Database; and
  - (ii) in all other circumstances:
    - (A) the Metering Database;
    - (B) Part 1 of Schedule 3;
    - (C) any other database.
- (l) Western Power must notify the User as soon as reasonably practicable upon becoming aware that a Connection Point has reverted to the User as a default supplier retailer (being a retailer of the type contemplated in section 59 of the Act).

## **4. The User must provide forecast information**

### **4.1 Western Power may request information**

Western Power may as a Reasonable and Prudent Person, in respect of a Connection Point, request power and energy forecast information from the User.

### **4.2 When Western Power may request information**

A request under clause 4.1 must not be made more than once in any 12 month period, except in an Emergency or where any forecasts provided by the User materially differ from the User's actual performance and, in the opinion of Western Power (as a Reasonable and Prudent Person), require revision in order to facilitate the operation of the Network in accordance with Good Electricity Industry Practice.

### **4.3 User must comply with request**

The User must comply with Western Power's reasonable request under clause 4.1.

## 5. Title to electricity

### 5.1 Transfer into the Network

Title to electricity that is transferred into the Network at a Connection Point passes from the User to Western Power at the time it passes through the Connection Point.

### 5.2 Transfer out of the Network

Title to electricity that is transferred out of the Network at a Connection Point passes from Western Power to the User at the time it passes through the Connection Point.

## 6. Controllers

### 6.1 User must nominate Controller where Connection Point exceeds threshold

- (a) If the User is not the Controller of a Connection Point then the User must, by notice to Western Power before the Start Date of the relevant Services, or as soon as reasonably practicable thereafter (but in all cases no later than 30 Business Days after the Start Date of the relevant Services), nominate a person as the Controller for a Connection Point where:
  - (i) Generating Plant with installed capacity exceeding 30 kVA is connected at the Connection Point; or
  - (ii) the Connection Assets for the Connection Point are operated at 66 kV or greater; or
  - (iii) the rating of the largest motor connected at the Connection Point is greater than 0.4% of the three phase short circuit fault level at the Attachment Point.
- (b) The User may, from time to time, by notice to Western Power, change the person the User nominates as the Controller of a Connection Point.
- (c) The Parties must amend the Connection Point Database following any variation made under this clause 6.1.
- (d) Western Power, acting as a Reasonable and Prudent Person, may at any time on reasonable technical or commercial grounds object to a person nominated by the User as a Controller under clause 6.1, in which case the User must either:
  - (i) Dispute Western Power's objection; or
  - (ii) nominate a different person as a Controller.
- (e) If Western Power requires, the User must use reasonable endeavours to procure that the person nominated by the User as a Controller enters into a Connection Contract with Western Power in respect of the Connection Point.
- (f) If the User requests Western Power to do so, Western Power must use reasonable endeavours and act in good faith to enter into a Connection Contract with a Controller (validly nominated by the User under clause 6.1(a)) in respect of the Connection Point.

### 6.2 Where the User is not the Controller

- (a) Subject to clause 6.2(g), if the User is not the Controller of a Connection Point, and the Controller of that Connection Point has not entered into a Connection Contract with Western Power in respect of the Connection Point, then the User



must ensure that the Controller of that Connection Point complies, and will continue to comply, with the obligations set out in this Contract, to the extent that such compliance is reasonably necessary for the Parties to satisfy their obligations under this Contract, including, but not limited to:

- (i) clause 11 (Good Electricity Industry Practice); and
  - (ii) clause 12 (Technical Rules and Registered Generator Performance Standards); and
  - (iii) clause 13 (Technical characteristics of Facilities and Equipment); and
  - (iv) clause 14 (Cooperation); and
  - (v) clause 15 (Access to premises); and
  - (vi) clause **Error! Reference source not found.** (Network Constraints); and
  - (vii) clause 17 (Removal of equipment); and
  - (viii) clause 25 (Curtailed); and
  - (ix) clause 35 (Notices).
- (b) If the User is not the Controller of a Connection Point, and the Controller of that Connection Point has not entered into a Connection Contract with Western Power in respect of the Connection Point, then the User must ensure that it enters into a contract with the Controller obliging the Controller to comply with the obligations set out in this Contract (to the extent set out in clause 6.2(a)) and that such contract entered into between the User and a Controller relating to Services under this Contract contains a provision:
- (i) that neither the User nor Western Power is in any circumstances liable for Indirect Damage suffered by the Controller, however arising, excluding any damage caused by, consequent upon or arising out of fraud; and
  - (ii) under which the Controller covenants in favour of Western Power (which covenant is expressed to be enforceable by Western Power in accordance with section 11 of the *Property Law Act 1969 (WA)*) that it will not bring a claim against Western Power for such Indirect Damage and will not bring a claim which will result in Western Power's aggregate liability to the Controller and the User, under or in connection with this Contract or the Services provided under or in connection with this Contract, exceeding the monetary cap on Western Power's liability in clause 19.5(a).
- (c) The exclusion of Indirect Damage in clause 19.3 does not apply to a failure by the User to ensure that its contract with the Controller contains the covenant referred to in paragraph (ii) above.
- (d) On reasonable request from Western Power, the User must (unless the Controller has already entered into a Connection Contract with Western Power) provide evidence to Western Power's satisfaction as a Reasonable and Prudent Person that the User is complying, and will continue to comply, with clause 6.2(a).
- (e) If the User does not satisfy Western Power under clause 6.2(d), Western Power may refuse to commence the Services or may Curtail the provision of Services in respect of the relevant Connection Point unless and until:



- (i) the Controller has entered into a Connection Contract with Western Power in respect of the Connection Point; or
  - (ii) the User satisfies Western Power under clause 6.2(d).
- (f) For the avoidance of doubt, if the User is in breach of clause 6.2(a), then the User is liable for, and must indemnify Western Power pursuant to clause 19.2 against any Direct Damage caused by, consequent upon or arising out of the acts and omissions, negligent or otherwise, of the Controller to the extent that the acts or omissions, negligent or otherwise, of the Controller are attributable to that breach, unless the Controller has entered into a Connection Contract with Western Power.
- (g) Subject to clause 6.2(h), the User is required to commence, maintain or continue legal proceedings to procure compliance of the Controller with the obligations set out in this Contract, to the extent that such compliance is reasonably necessary for the Parties to satisfy their obligations under this Contract.
- (h) For a Connection Point other than as referred to in clause 6.1, the User is not required to comply with clause 6.2(g) unless Western Power provides an indemnity to the User for all of the User's costs of and incidental to the proceedings.
- (i) Nothing in clause 6.2(g) or clause 6.2(h):
  - (i) limits the User's obligations under the remainder of this clause 6.2; or
  - (ii) derogates from Western Power's other rights under this Contract including its rights under clause 6.2(e), or requires Western Power to pay any compensation to the User for exercising any of those rights.

### **6.3 Western Power may enter into Access Contracts**

Nothing in clause 6.2 is to be taken to prevent Western Power from entering into an Access Contract with any person, including a person who is a Controller.

### **6.4 Liability and Force Majeure not limited**

Nothing in clause 6.2 limits the operation of clauses 19.2 or 22.1 in respect of either the User or Western Power.

## **7. Tariff and Charges**

### **7.1 Tariff**

- (a) The tariff payable under this Contract for a Service is the tariff, or tariffs, as applicable, specified in the Approved Price List from time to time for the Service. For the avoidance of doubt, the tariffs specified in the Approved Price List apply to all consumption during the Pricing Year applicable to the Approved Price List. Where consumption is metered with an accumulation meter and the meter reading interval causes some of the metered consumption to lie within the Pricing Year applicable to the Approved Price List and the remainder within a Pricing Year applicable to another Approved Price List, the consumption covered by the Approved Price List will be determined by prorating the metered consumption uniformly on a daily basis.
- (b) If:

- (i) no Approved Price List is published by the Authority on the date required under the Code; or
  - (ii) a purported Price List which does not comply with the Access Arrangement is published as an Approved Price List,
- then to the extent that the effect of a Price List (if it had been published on the date required under the Code and had been compliant with the Access Arrangement) would have been to reduce the Tariff payable by the User, then the User may recover the Tariff reduction as an overpayment under clause 8.6.
- (c) If applicable, the Tariff payable under clause 7.1(a) for a Service after the end of the current Access Arrangement period is to be determined as follows:
    - (i) if the new Access Arrangement contains a Reference Service (“**Equivalent Reference Service**”) which is materially the same as the Service then the tariff for the Service is to be the tariff for the Equivalent Reference Service; and
    - (ii) if the new Access Arrangement does not contain an Equivalent Reference Service, or if for any reason there is no new Access Arrangement or new Approved Price List under the new Access Arrangement, then the tariff for each quarter will be the Tariff in the final Approved Price List under the previous Access Arrangement, CPI-Adjusted annually each 1 July (or if there was no Approved Price List under the previous Access Arrangement, the Tariff in the final Price List which Western Power was required to publish under the previous Access Arrangement, CPI-Adjusted annually each 1 July).
  - (d) Clause 7.1(c) applies, with appropriate modifications, in respect of the end of each successive Access Arrangement period.
  - (e) Western Power must notify the User of the Tariffs calculated from time to time under clause 7.1(c).
  - (f) For the purposes of calculating Tariffs and Charges for a Service:
    - (i) Western Power is entitled to rely on the information contained in the Contract Database (as updated from time to time in accordance with this Contract); and
    - (ii) where information contained in the Contract Database is updated, or to be updated, in accordance with this Contract, the updated information:
      - (A) will not apply to any period before; and
      - (B) must not be used to calculate a Tariff or Charge until, the date that the information is actually updated in accordance with this Contract.

## 7.2 Charges

The User must pay to Western Power:

- (a) the Charge for each Service calculated at the Tariff determined under clause 7.1.
- (b) Nothing in this clause 7.2 prevents Western Power from recovering any other monies otherwise payable by the User to Western Power under this Contract or at Law.

### 7.3 Charges during Western Power's Force Majeure Event

- (a) If a Service ("**Affected Service**") is unavailable for any consecutive period of two days or longer ("**Affected Service Period**") due to a Force Majeure Event where:
- (i) Western Power is the Affected Person;
  - (ii) the User is unable to use the Affected Service because of the Force Majeure Event; and
  - (iii) Western Power's inability to provide the Affected Service has not been caused by the User's default or negligence,
- then, for that part of the Affected Service Period in which the User's Facilities and Equipment in respect of the Affected Service were not or would not have been subject to a scheduled or unscheduled outage by which the User's Facilities and Equipment were De-energised, the User is relieved of its obligation under clause 7.2 and instead must pay 10% of the "**Standing Charges**" (as defined in clause 7.3(b)) for the Affected Service during that part of the Affected Service Period.
- (b) Under this clause 7.3, Standing Charges means:
- (i) those Charges or components of a Charge which apply to a Service regardless of the actual Generation or Consumption by the User in respect of that Service, as recorded by the Metering Equipment; and
  - (ii) is not those components of a Charge which are determined by reference to the actual Generation or Consumption by the User in respect of that Service, as recorded by the Metering Equipment.

## 8. Invoicing and payment

### 8.1 Western Power invoices

- (a) Subject to clause 8.1(d), Western Power must, within 14 Business Days after the end of an Accounting Period, issue to the User a Tax Invoice for the Accounting Period showing:
- (i) all amounts payable by the User to Western Power under this Contract for the Accounting Period; and
  - (ii) all outstanding amounts as at the end of the Accounting Period and interest payable on those amounts; and
  - (iii) GST payable on those amounts under clause 8.8.
- (b) A Tax Invoice issued by Western Power under clause 8.1(a) or 8.1(d) may include other amounts payable by the User to Western Power with regards to the Service under this Contract or at Law.
- (c) At the same time as issuing a Tax Invoice under this clause 8.1, Western Power must provide to the User, in electronic form, the metering information used to calculate the Charges shown on the Tax Invoice in sufficient detail to enable the User to understand how Western Power calculated the Charges.
- (d) Notwithstanding clause 8.1(a), the Parties may, by mutual agreement, implement a different system of invoicing to that stipulated in clause 8.1(a) including, for example, issuing two or more Tax Invoices per Accounting Period, and separate invoicing for different classes or groups of consumers, Connection Points or Services.

## 8.2 User invoices

- (a) At the same time as Western Power issues to the User a Tax Invoice for an Accounting Period under clause 8.1, Western Power must provide the User with all information necessary for the User to determine any amounts payable by Western Power to the User for the Accounting Period.
- (b) The User must, within five Business Days after receiving the information under clause 8.2(a), issue to Western Power a Tax Invoice for the Accounting Period showing:
  - (i) all amounts payable by Western Power to the User under this Contract, which amounts may be calculated using the information provided to the User by Western Power under clause 8.2(a); and
  - (ii) all outstanding amounts as at the end of the Accounting Period and interest payable on those amounts; and
  - (iii) GST payable on those amounts payable under clause 8.8.
- (c) If the User Disputes the information provided by Western Power under clause 8.2(a), then:
  - (i) the User may issue a Tax Invoice under clause 8.2(b) for an amount the User (acting as a Reasonable and Prudent Person) estimates to be the correct amount payable; and
  - (ii) the User must, before the Due Date of the Tax Invoice under clause 8.2(b), give notice to Western Power that it Disputes the information provided under clause 8.2(a) and provide in that notice full details of the Dispute, including the difference between the amount for which the Tax Invoice has been issued by the User and the amount for which that Tax Invoice would have been issued had the information provided by Western Power under clause 8.2(a) been accepted by the User as correct.
- (d) Clause 8.4 applies in respect of a Tax Invoice issued under clause 8.2(b), for the purposes of which the **“Undisputed Portion”** is taken to be an amount calculated in accordance with the information provided by Western Power under clause 8.2(a).

## 8.3 Payment of invoices

- (a) Each Party which receives a Tax Invoice under clause 8.1 or 8.2, must on or before the Due Date of the Tax Invoice pay to the Party issuing the Tax Invoice all amounts shown on the Tax Invoice which are payable under this Contract.
- (b) If a Party fails to comply with clause 8.3(a) then, without prejudice to the other Party's other rights, the Party must pay interest on any unpaid amount, calculated daily at the Prescribed Rate from the Due Date of the Tax Invoice until payment.

## 8.4 Disputed invoices

- (a) If a Party Disputes any amount set out in a Tax Invoice issued under clause 8.1 or 8.2 then that Party must pay the Undisputed Portion (if any) and must, prior to the Due Date of the Tax Invoice, give notice to the other Party that it Disputes the amount and provide in that notice full details of the Dispute.
- (b) Without prejudice to the other Party's other rights, any amount withheld by a Party under clause 8.4(a) but subsequently found to have been payable attracts

interest calculated daily at the Prescribed Rate from the Due Date of the Tax Invoice until payment.

- (c) Without prejudice to the other Party's other rights, any amount paid by a Party under clause 8.4(a) but subsequently found not to have been payable attracts interest calculated daily at the Prescribed Rate from the date the Party paid the amount to the date the other Party repays the amount.

## 8.5 Charge errors

- (a) Nothing in this clause or elsewhere in this Contract affects or limits the operation of sections 65 and 66 of the *Energy Operators (Powers) Act 1979 (WA)* in relation to Charges paid or payable by the User under this Contract.

## 8.6 Under and over payments

- (a) Subject to clause 8.6(e), if a Party detects a Payment Error by a Party of any amount within 18 calendar months after the Payment Error:
  - (i) the Party must as soon as reasonably practicable give notice to the other Parties of the Payment Error; and
  - (ii) an adjusting payment must be made by the appropriate Party within 10 Business Days of the notice.
- (b) Except where clause 8.6(c) applies, the adjusting payment must, without prejudice to the Party's other rights, include interest calculated daily at the Prescribed Rate from the date of the Payment Error until the date of the adjusting payment.
- (c) An adjusting payment by a Party will not attract interest under clause 8.6(b) if it is made in relation to an underpayment and the underpayment was the result of an error by the other Party.
- (d) Subject to clause 8.6(e), a Party is not entitled to an adjusting payment for a Payment Error notified to the other Parties after the expiry of 18 calendar months after the Payment Error.
- (e) Notwithstanding clauses 8.6(a) and 8.6(d), where:
  - (i) Payment Errors have occurred as a result of an error in the data used to calculate the Charges; and
  - (ii) the Payment Errors occurred in one or more Accounting Periods, the Party who was underpaid or who made an overpayment (as applicable) is entitled to an adjusting payment only for the Payment Errors that occurred in the Accounting Periods that were within the 12 month period preceding the date that the Payment Errors were notified by one Party to the other.
- (f) Where a Payment Error is an error as a result of which the amount set out in a Tax Invoice is less than what it would have been had the error not been made, the Payment Error will be taken to have occurred on the Due Date of the Tax Invoice.
- (g) Where a Payment Error is an error as a result of which the amount set out in a Tax Invoice is more than what it would have been had the error not been made, the Payment Error will be taken to have occurred on the date the User has paid the total amount of the Tax Invoice in full.

## 8.7 Interest on overdue payment

If a Party Defaults in due and punctual payment of a Tax Invoice:

- (a) clauses 27.1 to 28.1(d)(i) apply; and
- (b) the overdue payments attract interest payable at the Prescribed Rate from the Due Date of the Tax Invoice until the Default is remedied.

## 8.8 GST

- (a) Unless expressly included, the consideration for any supply under or in connection with this Contract (including any Charge or Tariff derived from an Approved Price List and any Contribution) is GST exclusive.
- (b) To the extent that any supply made under or in connection with this Contract is a taxable supply and the price for it (including any Charge or Tariff derived from a Approved Price List and any Contribution) is stated to be GST exclusive, the consideration for that supply is increased by an amount determined by the supplier, not exceeding the amount of the consideration (or its market value) multiplied by the rate at which GST is imposed in respect of the supply.
- (c) Without limiting the obligation to provide a Tax Invoice under clauses 8.1 and 8.2, the supplier must issue a Tax Invoice to the recipient of a supply to which clause 8.8(b) applies before the payment of the GST inclusive consideration determined under that clause.
- (d) If a Party is entitled under this Contract to be reimbursed or indemnified by another Party for a cost or expense incurred in connection with this Contract, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the Party entitled to be reimbursed or indemnified, or by its representative member.
- (e) If a Party becomes aware of an adjustment event, that Party agrees to notify the other Party as soon as practicable after becoming so aware, and the Parties agree to take whatever steps are necessary, including the issue of an adjustment note, and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply or any refund of any GST (or part of GST) is paid as soon as is practicable but no later than 10 Business Days after the Party has satisfied itself that the adjustment event has occurred.
- (f) Definitions in the GST Act apply also in this clause 8.8 unless the context indicates otherwise.

## 9. Security for Charges

- (a) Subject to clause 9(b), if Western Power determines at any time during the Term that either or both of the User's or the Indemnifier's technical or financial resources are such that a Reasonable and Prudent Person would consider there to be a material risk that the User will be unable to meet its obligations under this Contract, then:
  - (i) Western Power may require the User to within 15 Business Days nominate which of the User or the Indemnifier ("**Nominated Person**") is to provide security; and
  - (ii) within 15 Business Days of the User's nomination under clause 9(a)(i), the Nominated Person, at the User's election, must either:
    - (A) pay to Western Power a cash deposit equal to the Charges for two months' Services; or

- (B) provide an irrevocable and unconditional bank guarantee or equivalent financial instrument in terms acceptable to Western Power (acting as a Reasonable and Prudent Person), guaranteeing or otherwise securing the Charges for two months' Services; or
  - (C) if Western Power is satisfied, as a Reasonable and Prudent Person, that the User's parent company's financial and technical resources are such that the User's parent company would be able to meet the User's obligations under this Contract (including because the User's parent company meets at least one of the credit ratings given in clauses 9(b)(i) and 9(b)(ii)), procure from the User's parent company a guarantee substantially in the form set out in Schedule 8.
- (b) If the User or the Indemnifier has an unqualified credit rating of at least:
  - (i) BBB from Standard and Poor's Australia Pty Ltd; or
  - (ii) Baa from Moody's Investor Service Pty Ltd,
 and provides evidence to this effect to Western Power, then Western Power is not entitled to determine under clause 9(a) that the User's financial resources are such that there would be a material risk that the User will be unable to meet its obligations under this Contract.
- (c) If any security held by Western Power under clause 9(a)(ii)(A) or 9(a)(ii)(B) at any time is not equal to the Charges for two months' Services, then the Nominated Person must, within 15 Business Days of a written request by Western Power to the User:
  - (i) if the security is a cash deposit under clause 9(a)(ii)(A), provide Western Power with an additional cash payment to increase the security so that it is equal to the Charges for two months' Services; or
  - (ii) if the security is a guarantee under clause 9(a)(ii)(B), replace the guarantee with another guarantee (that is in accordance with clause 9(a)(ii)(B)) in an amount that is equal to the Charges for two months' Services.
- (d) If any security held by Western Power under clause 9(a)(ii)(A) or 9(a)(ii)(B) is called upon by Western Power or if that security ceases to be enforceable for any reason (including due to expiry of the security) then within 15 Business Days the Nominated Person must provide replacement security to Western Power complying with the requirements of clause 9(a)(ii).
- (e) Where a guarantee has been provided to Western Power by the User's parent company but Western Power ceases to be satisfied, as a Reasonable and Prudent Person, that the criteria in clause 9(a)(ii)(C) are met then by notice to the User Western Power may require the provision of a new form of security complying with the requirements of clause 9(a)(ii)(A) or 9(a)(ii)(B) which security must be provided within 15 Business Days of service of Western Power's notice.
- (f) Upon the termination of this Contract and receipt by Western Power of all amounts due by the User to it under this Contract Western Power will return to the User any security provided under this clause 9 which is still held by Western Power. Where the security provided to Western Power was a cash deposit, then Western Power will return to the User the unutilised balance of the cash deposit



and interest accrued on the deposit less any charges (including fees and charges associated with maintaining the interest bearing account) and taxes attributable to the maintenance of the interest bearing account in which the cash deposit was kept.

- (g) Western Power may call upon a cash deposit or bank guarantee (or equivalent financial instrument) provided to it under this clause 9 if an amount due by the User to Western Power under this Contract is not paid by the due date for payment of that amount or, where this Contract does not specify a due date for payment, is not paid within 10 Business Days of Western Power issuing a notice to the User requiring payment of the amount.
- (h) In this clause 9, a reference to the Charges for two months Services means Western Power's reasonable estimate of the Charges which will be incurred by the User for the Services provided under this Contract in the next two calendar month period from the end of the next Accounting Period (that is, from the end of the Accounting Period which expires after the Accounting Period in which the User is notified of the current level of security it is required to provide).
- (i) Where security is provided to Western Power in the form of a cash deposit, then Western Power shall deposit the amount in an interest bearing account maintained with a financial institution, selected consistently with Western Power's policies, or with the Western Australian Treasury Corporation or other government body. Any interest which accrues on the cash deposit shall form part of the security however where, as at the end of a month, the aggregate amount of cash deposit held by Western Power (including interest and after deducting any fees, charges and taxes associated with maintaining the interest bearing account) exceeds the Charges for two months' Services Western Power will, within a reasonable time, pay the excess amount held (above the Charges for two months' Services) to the Customer's nominated bank account.
- (j) Where Western Power is required, under this Contract, to return the whole of a security held as a cash deposit then it will, within a reasonable time, return to the User the unutilised balance of the cash deposit and interest accrued less any charges (including fees and charges associated with maintaining the interest bearing account) and taxes attributable to the maintenance of the interest bearing account.
- (k) Nothing in this Contract is to be taken as imposing any obligation on Western Power to maximise or obtain any return on cash deposit amounts held by Western Power as security.

## 10. Security for Contribution

Without limiting the User's security obligations related to clause 26, where Western Power has determined in accordance with the Contributions Policy that the User is required to provide an irrevocable and unconditional bank guarantee (or equivalent financial instrument) in terms acceptable to Western Power (acting as a Reasonable and Prudent Person), guaranteeing the present value of any amount of any Contribution to be made by the User that remains unpaid or unprovided as calculated by Western Power under the Contributions Policy, the Nominated Person must provide to Western Power the requested bank guarantee (or equivalent financial instrument).



## Technical Compliance Provisions

### 11. Good Electricity Industry Practice

#### 11.1 Western Power must comply with Good Electricity Industry Practice

Western Power must comply with Good Electricity Industry Practice when providing Services and performing its obligations under this Contract.

#### 11.2 User must comply with Good Electricity Industry Practice

The User must comply with Good Electricity Industry Practice in using the Services and performing its obligations under this Contract.

### 12. Technical Rules and Registered Generator Performance Standards

#### 12.1 Western Power and the User must comply

- (a) Western Power and the User must each comply with the Technical Rules.
- (b) The User must ensure each Generating Plant of the User complies with the Registered Generator Performance Standards for that Generating Plant.
- (c) The User must comply with the Generator Monitoring Plan for each Generating Plant of the User.

#### 12.2 User to bear costs

- (a) The User must bear its own costs in relation to compliance with the Technical Rules, the Registered Generator Performance Standards for the User's Generating Plant and each Generator Monitoring Plan for the User's Generating Plant.
- (b) Western Power must bear its own costs in relation to compliance with the Technical Rules.
- (c) Notwithstanding clause 12.2(b), where an act or omission of the User in breach of this Contract causes Western Power to incur extra costs in order to ensure Western Power complies with the Technical Rules, the User shall bear Western Power's reasonable extra costs so incurred to the extent that such costs are not already recovered from the User or any other person under any other arrangement, including the Contributions Policy.
- (d) Without limiting clause 12.2(c), where a User's equipment increases the fault levels in the Network, the User must bear Western Power's reasonable costs of any upgrades to the Network required under the Technical Rules to the extent that such costs are not already payable by the User under the Contributions Policy.
- (e) For the avoidance of doubt, the User is not liable for any costs incurred by another user of the Network arising from compliance by the other user with the Technical Rules.
- (f) If Western Power recovers costs referred to in clause 12.2(c) from another party in circumstances where the User has already paid them to Western Power, Western Power must refund those costs without interest to the User.

### 12.3 Actions of third parties

Subject to clause 6.2(f), if the actions of a third party cause a Party to breach the Technical Rules, then the Party is not in breach of the obligation in clause 12.1 to comply with the Technical Rules unless the Party has:

- (a) been negligent; or
- (b) has not acted as a Reasonable and Prudent Person.
- (c) Nothing in this clause 12.3 limits the operation of clauses 19.2 or 22 in respect of either Party.

### 13. Technical characteristics of Facilities and Equipment

- (a) The Parties must record:
  - (i) in Part 2 of Schedule 3 any technical information that the User was required to provide to Western Power under the Applications and Queuing Policy;
  - (ii) in Part 3 of Schedule 3 any exemptions to the Technical Rules given to the User under Chapter 1 of the Technical Rules; and
  - (iii) in Schedule 9 - any Registered Generator Performance Standards for the User's Generating Plant that are Negotiated Performance Standards.
- (b) Each Party must record any other information required to be recorded in this Contract by the Technical Rules in Part 4 of Schedule 3 - , or otherwise within a database maintained by that Party, and provide the other Parties with reasonable access to the information upon request by that Party.
- (c) The User must not materially modify any Generating Plant connected at a Connection Point unless:
  - (i) where such modification requires an Application under the Applications and Queuing Policy:
    - (A) the User makes such an Application; and
    - (B) the Application is processed by Western Power under the Applications and Queuing Policy, resulting in an Access Offer for the change, which the User accepted;
  - (ii) where such modification does not require an Application under the Applications and Queuing Policy and relates to a Generating Plant owned by a person other than a Small Customer:
    - (A) the User notifies Western Power of the modifications to the Generating Plant in writing at least 45 days prior to the modifications being made; and
    - (B) the modified Generating Plant does not adversely impact the safety or security of the Network.
- (d) For the purposes of clause 13(c)(ii) a modification is material only if:
  - (i) it involves expenditure of more than \$100,000; or
  - (ii) the modification is one which, consistently with Good Electricity Industry Practice, requires review by a duly qualified engineer before being made.

- (e) Notwithstanding clause 13(d), the replacement of like for like parts within a Generating Plant or the replacement of parts in the ordinary course of maintenance and repair is not a material modification for the purposes of clause 13(c)(ii).
- (f) If Western Power does not notify the User within 45 days of receipt of notice under clause 13(c)(ii) that the modification may adversely impact the safety or security of the Network the User may proceed to make the modification. However nothing in this clause derogates from the User's responsibility to ensure the Generating Plant complies with the requirements of this Contract including the obligations to comply with the Technical Rules.

## 14. Cooperation

### 14.1 General Obligation to Co-operate

The User and Western Power (each acting as a Reasonable and Prudent Person) must cooperate and coordinate with each other where reasonably necessary in relation to:

- (a) the planning, development, inspection, testing and commissioning of Facilities and Equipment for a Connection Point and Network Assets for the Network; and
- (b) the development and implementation of Maintenance schedules for Facilities and Equipment for a Connection Point and Network Assets for the Network.

### 14.2 System Operator Directions

Without limiting the generality of clause 14.1, Western Power and the User must each comply with any directions given by the System Operator.

## 15. Access to premises

### 15.1 Parties must allow reasonable rights of entry

Each Party ("**Host Party**") must allow, or use its reasonable endeavours to procure for, the other Party ("**Guest Party**") all reasonable rights of entry to the Host Party's premises:

- (a) for the purposes of constructing, installing, operating, maintaining and verifying the accuracy of any Metering Equipment or other equipment or thing; and
- (b) to inspect for safety or other reasons the construction, installation, operation, maintenance and repair of any Metering Equipment or other equipment or thing; and
- (c) for any other reasonable purpose connected with or arising out of this Contract.

### 15.2 Entry made at risk of Guest Party

Any entry under clause 15.1 is made in all respects at the expense and risk of the Guest Party, who must, subject to clauses 19.3 and 19.5, make good any damage occasioned by or resulting from the entry, other than to the extent the damage is caused by:

- (a) fair wear and tear; or
- (b) the negligence or Default of the Host Party or any of its Workers or Visitors; or
- (c) a Force Majeure Event.

### 15.3 Guest Party obligations

A Guest Party must:

- (a) before exercising a right of entry under clause 15.1, give reasonable notice to the Host Party specifying the purpose, proposed time and estimated duration of entry, except where it is not practicable to do so due to any Emergency; and
- (b) while exercising a right of entry under clause 15.1:
  - (i) act as a Reasonable and Prudent Person; and
  - (ii) without limiting clause 15.3(b)(i), take steps that are reasonable in the circumstances to ensure that during the entry its Workers and Visitors cause as little inconvenience to the Host Party as possible, except to the extent that it is not practicable to do so due to any Emergency, and at all times comply with:
    - (A) all reasonable health and safety standards, induction and supervision requirements and other requirements of the Host Party; and
    - (B) all reasonable and lawful directions by or on behalf of the Host Party.

#### **15.4 Third person's premises**

To the extent that any equipment or thing relevant to the obligations or rights of a Party under this Contract is located on the premises of a third person, the Parties must use their reasonable endeavours to secure for either or both of the Parties a reasonable right of entry to the third person's premises.

### **16. Network Constraints**

#### **16.1 Determining Impact of Constraints**

- (a) Western Power may, from time to time, give such advice and information to AEMO as Western Power considers, acting in good faith, is required to assist AEMO act and give directions to preserve Power System Reliability and address Constraints.
- (b) Western Power will, to the extent provided for in the WEM Rules and having regard to AEMO's responsibilities under the WEM Rules, determine or assist AEMO to determine from time to time which Generators (and other operators of Facilities and Equipment which can transfer electricity into the Network) will have their ability to transfer electricity into the Network curtailed or interrupted from time to time given the nature of the Constraints affecting the Network and the actions required to preserve Power System Reliability in accordance with the WEM Rules.

#### **16.2 AEMO Directions**

- (a) The User must reduce or cease its transfer of electricity into the Network at a Connection Point in accordance with any direction issued to the User by AEMO from time to time.
- (b) Without limiting clause 25 Western Power may, in accordance with Good Electricity Industry Practice, take such action as it considers is required to give effect to any direction issued by AEMO relating to a reduction or cessation in the transfer of electricity into the Network at a Connection Point (whether that direction is given by AEMO to the User or to Western Power).

### 16.3 Western Power Directions

Irrespective of whether AEMO has issued a direction referred to in clause 16.2 Western Power may Curtail the provision of Services to the User at one or more Connection Points where Western Power, in accordance with Good Electricity Industry Practice, considers that because of Constraints such Curtailment is necessary to preserve Power System Reliability and the supply of electricity to Customers.

### 16.4 Liability

- (a) Except to the extent it has not acted in good faith, Western Power has no liability (whether in contract, tort (including negligence), for breach of statutory duty or on any other basis whatsoever) to the User for any Curtailment by Western Power under clause 16.3 or for any directions issued by AEMO (as contemplated by clause 16.2) which are made on the advice of, or using information provided by, Western Power.
- (b) Except to the extent it has engaged in a Wilful Default, Western Power has no liability to the User for any determinations, assessments, analysis or other work of any nature which Western Power undertakes in connection with determining the Capacity Credits or other entitlements under the WEM Rules to be allocated to the User (including without limitation for the impact any such acts or omissions of Western Power have on the User's entitlement to the provision of Services or entitlement to revenue from the Western Australian electricity market or otherwise) and the User agrees that Western Power has no duty of care to the User in contract or tort in respect of any action taken by Western Power in connection with the determination of Capacity Credits and other entitlements under the WEM Rules.
- (c) If a failure by the User to comply with this clause 16 causes Western Power to incur any liability to a third party then the User is liable to Western Power for and must indemnify Western Power against any liability Western Power incurs to that third party and any costs Western Power incurs in defending any Claim by such third party. The exclusion of Indirect Damage in clause 19.3 does not apply to the indemnity in this clause 16.4(c).

### 16.5 Intermediary

If a person is registered under the WEM Rules as the User's Intermediary in respect of a Connection Point then the User is responsible for ensuring that person complies with all obligations in the WEM Rules compliance with which is required to ensure the User complies with this clause 16 and is liable to Western Power for all acts or omissions of such person relating to any directions given by AEMO or Western Power as contemplated by this clause 16.

## 17. Removal of equipment

On the permanent Disconnection of Facilities and Equipment at any Connection Point:

- (a) Western Power may dismantle, decommission and remove Western Power's Works and any Metering Equipment installed on the User's Premises; and
- (b) under Western Power's reasonable instructions, the User must dismantle and decommission or remove any of the User's Works at or connected to the Connection Point.

## Common Provisions

### 18. Representations and warranties

#### 18.1 The User's representations and warranties

- (a) The User represents and warrants to Western Power that:
  - (i) the User has complied with the Applications and Queuing Policy in the Access Arrangement and the requirements in the Code in respect of its Application under the Access Arrangement provided that the User will not be taken to be in breach of this warranty because of a failure by the User to comply with the Applications and Queuing Policy or the Code which is the direct result of a breach by Western Power of the Applications and Queuing Policy or the Code; and
  - (ii) the User's obligations under this Contract are valid and binding and are enforceable against the User under their terms; and
  - (iii) this Contract and any other transaction under it does not contravene the User's constituent documents or any Law or any of the User's obligations or undertakings by which the User or any of the User's assets are bound or cause to be exceeded any limitation on the User's or the User's directors' powers; and
  - (iv) neither the User nor any of its Related Bodies Corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).
- (b) The representations and warranties in clause 18.1(a) are to be taken to be made on each day on which:
  - (i) this Contract is in effect; or
  - (ii) any amount payable by the User to Western Power under this Contract is or may be outstanding.
- (c) To the maximum extent permitted by Law, the only warranties given by and terms which apply to the User under this Contract are those expressly contained in this Contract, and all warranties and terms implied by Law, including those on the part of the User implied by the *Competition and Consumer Act 2010* of the Commonwealth or the *Fair Trading Act 2010 (WA)* or any other Law to similar effect do not apply to this Contract.
- (d) If at Law the exclusion of any warranty or term is prohibited, then the User's liability in respect of a breach of such warranty or term is limited to the maximum extent permitted by Law. For example, where any Law permits the User to limit its liability in respect of a breach of an implied warranty or condition to the replacement or resupply of equivalent goods and services, then the User's liability will be so limited.

#### 18.2 Western Power's representations and warranties

- (a) Western Power represents and warrants to the User that:
  - (i) Western Power has complied with the Applications and Queuing Policy in the Access Arrangement and the requirements in the Code in respect

- of the User's Application under the Access Arrangement provided that Western Power will not be taken to be in breach of this warranty because of a failure by Western Power to comply with the Applications and Queuing Policy or the Code which is the direct result of a breach by the User of the Applications and Queuing Policy or the Code; and
- (ii) Western Power's obligations under this Contract are valid and binding and are enforceable against Western Power under their terms; and
  - (iii) this Contract and any other transaction under it does not contravene Western Power's constituent documents or any Law or any of Western Power's obligations or undertakings by which Western Power or any of Western Power's assets are bound or cause to be exceeded any limitation on Western Power's or Western Power's directors' powers; and
  - (iv) neither Western Power nor any of its related bodies corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).
- (b) The representations and warranties in clause 18.2(a) are to be taken to be made on each day on which:
- (i) this Contract is in effect; or
  - (ii) any amount payable by Western Power to the User under this Contract is or may be outstanding.
- (c) To the maximum extent permitted by Law, the only warranties given by and terms which apply to Western Power under this Contract are those expressly contained in this Contract, and all warranties and terms implied by Law, including those on the part of Western Power implied by the Competition and Consumer Act 2010 (Cth) of the Commonwealth or the Fair Trading Act 2010 (WA) or any other Law to similar effect do not apply to this Contract.
- (d) If at Law the exclusion of any warranty or term is prohibited, then Western Power's liability in respect of a breach of such warranty or term is limited to the maximum extent permitted by Law. For example, where any Law permits Western Power to limit its liability in respect of a breach of an implied warranty or condition to the replacement or resupply of equivalent goods and services, then Western Power's liability will be so limited.

### **18.3 Indemnifier's representations and warranties**

The Indemnifier represents and warrants to Western Power that, as at the Commencement Date, there has been no material change in the Indemnifier's financial position since the date Western Power received information from the Indemnifier stating that position.

## **19. Liability and indemnity**

### **19.1 No several liability**

All parties constituting the User shall be liable under this Contract jointly, or jointly and severally, but not severally.



## 19.2 Liability for Direct Damage

Subject to the terms of this Contract:

- (a) a Party who:
  - (i) is negligent; or
  - (ii) commits a Default under this Contract,is liable to the other Party for, and must indemnify the other Party against, any Direct Damage caused by, consequent upon or arising out of the negligence or Default; and
- (b) the Indemnifier must indemnify Western Power in respect of the liabilities of the User under this Contract.

## 19.3 Exclusion of Indirect Damage

- (a) Subject to clause 19.3(b):
  - (i) either or both of the User or the Indemnifier is not in any circumstances liable to Western Power for any Indirect Damage suffered by Western Power, however arising; and
  - (ii) Western Power is not in any circumstances liable to either or both of the User or the Indemnifier for any Indirect Damage suffered by the User, however arising.
- (b) Where this Contract states that “the exclusion of Indirect Damage in clause 19.3 does not apply”, or words to a similar effect, in relation to a matter, then:
  - (i) the exclusion of Indirect Damage in clause 19.3 does not apply in relation to that matter; and
  - (ii) the Parties’ liability in relation to the matter is to be determined by Law, and to avoid doubt the definition of Indirect Damage in this Contract is to be disregarded for the purposes of that determination.

## 19.4 Fraud

- (a) If Western Power is fraudulent in respect of its obligations to the User under this Contract, then Western Power is liable to either the User or the Indemnifier for, and is to indemnify both the User and the Indemnifier against, any damage caused by, consequent upon or arising out of the fraud. In this case, the exclusion of Indirect Damage in clause 19.3 does not apply.
- (b) If the User or the Indemnifier is fraudulent in respect of its obligations to Western Power under this Contract, then the User or the Indemnifier is liable to Western Power for, and is to indemnify Western Power against, any damage caused by, consequent upon or arising out of the fraud. In this case, the exclusion of Indirect Damage in clause 19.3 does not apply.

## 19.5 Limitation of liability

- (a) Subject to clause 19.5(c), the maximum liability of Western Power to the User and the Indemnifier collectively under and in connection with this Contract is limited to an amount of \$5 million in the aggregate and refreshed annually each 1 July, except that the liability described in clauses 7, 8 and 20 are not counted for the purposes of Western Power’s maximum liability under this Contract.



- (b) Subject to clause 19.5(c), the maximum liability of both the User and the Indemnifier collectively to Western Power under and in connection with this Contract is limited to the lesser of:
- (i) an amount of \$80 million in the aggregate, refreshed annually each 1 July; and
  - (ii) the sum of:
    - (A) for each Connection Point at which Generation Plant (other than wind or solar powered generation) is connected at a voltage of 66 kV and above - \$22 million in the aggregate, refreshed annually each 1 July; and
    - (B) for each Connection Point at which wind or solar powered Generation Plant is connected at a voltage of 66 kV or above - \$11 million in the aggregate, refreshed annually each 1 July; and
    - (C) for each Connection Point at which Generation Plant is connected at a voltage below 66 kV - \$1.2 million in the aggregate, refreshed annually each 1 July; and
    - (D) for each Connection Point at which Consuming plant is connected at a voltage of 66 kV and above - \$6 million in the aggregate, refreshed annually each 1 July; and
    - (E) for every 100 Connection Points at which Consuming plant is connected at a voltage below 66 kV - \$1.2 million in the aggregate, refreshed annually each 1 July,

except that the liabilities described in clauses 7, 8 and 20 are not counted for the purposes of both the User's and the Indemnifier's collective maximum liability under this Contract.

- (c) The monetary caps on liability in this clause 19.5 will be CPI-Adjusted every three years from the Commencement Date, provided that for the purposes of such CPI adjustment the following formula will be used:

$$N = C \times \left(1 + \frac{CPI_n - CPI_c}{CPI_c}\right)$$

where:

“N” is the new liability cap amount being calculated; and

“C” is the current liability cap amount being adjusted; and

“CPI<sub>n</sub>” is the CPI applicable at the end of the calendar quarter (quarter <sub>n</sub>) most recently ended prior to the adjustment date; and

“CPI<sub>c</sub>” is the value of CPI applicable for the calendar quarter occurring 36 months before the calendar quarter referred to in the definition of CPI<sub>n</sub>.

- (d) At the end of each three-year period from the Commencement Date, if there has been a Material Change affecting the liability of a Party under this Contract, then the Parties must negotiate in good faith to reset the monetary caps on liability in this clause. If the Parties are unable to agree on re-setting the monetary caps on liability, the matter shall be determined by an expert nominated by the Parties or, failing agreement, an expert nominated by the Resolution Institute and the determination of the expert shall be final and binding upon the Parties.

## 19.6 Procedure for party seeking to rely on indemnity

If any Claim is made or instituted against:

- (a) either or both of the User or the Indemnifier in respect of which either or both of the User or the Indemnifier (“**Indemnified Party**”) may seek to claim indemnity under this Contract against Western Power (“**Indemnifying Party**”); or
- (b) Western Power in respect of which Western Power (“**Indemnified Party**”) may seek to claim indemnity under this Contract against either or both of the User or the Indemnifier (“**Indemnifying Party**”),

the following procedure applies:

- (i) the Indemnified Party must give notice of the Claim to the Indemnifying Party as soon as reasonably practicable; and
- (ii) the Indemnified Party must not admit, compromise, settle or pay any Claim or take any other steps which may in any way prejudice the defence or challenge of the Claim without the prior written consent of the Indemnifying Party (which must not be unreasonably withheld) except as may be reasonably required in order to defend any judgment against the Indemnified Party (to avoid doubt, Part 1E of the Civil Liability Act 2002 (WA) applies in respect of any ‘apology’ (as defined in Section 5AF of that Act) given by the Indemnified Party); and
- (iii) the Indemnified Party must permit the Indemnifying Party to take, at the Indemnifying Party’s expense, any reasonable action in the name of the Indemnified Party to defend or otherwise settle the claim as the Indemnifying Party may reasonably require; and
- (iv) the Indemnified Party must ensure that the Indemnifying Party and its representatives are given reasonable access to any of the documents, records, staff, premises and advisers of the Indemnified Party as may be reasonably required by the Indemnifying Party in relation to any action taken or proposed to be taken by the Indemnifying Party under clause 19.6(b)(iii).

## 19.7 Obligation to pay and right to indemnities survives termination

- (a) A Party’s and the Indemnifier’s obligation to pay an amount to another Party under this Contract is a continuing obligation, separate and independent from the other obligations of either or both of the Party and the Indemnifier and survives termination (for any reason) of this Contract.
- (b) Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of both the Parties and the Indemnifier and survives termination (for any reason) of this Contract. It is not necessary for either or both of a Party or an Indemnifier to incur expense or make payment before enforcing a right of indemnity conferred by this Contract.

## 19.8 Apportionment of liability

- (a) For the avoidance of doubt, where either or both of the User or the Indemnifier is liable to, or is to indemnify, the other Party under this Contract, the liability or indemnity owed by either or both of the User or the Indemnifier is limited to the proportion of the damage suffered by Western Power as a consequence of the

Default, negligence or fraud of either or both of the User or the Indemnifier giving rise to the liability or indemnity.

- (b) For the avoidance of doubt, where Western Power is liable to, or is to indemnify, either or both of the User or the Indemnifier under this Contract, the liability or indemnity owed by Western Power is limited to the proportion of the damage suffered by either or both of the User or the Indemnifier as a consequence of the Default, negligence or fraud of Western Power giving rise to the liability or indemnity.
- (c) For the purposes of the application of the indemnity given by the Indemnifier under clause 19.2(b):
  - (i) clause 19.8(a) may apply to reduce the User's liability to Western Power and, consequently, the amount of liability for which the Indemnifier must indemnify Western Power;
  - (ii) except as provided in clause 19.8(c)(i), clause 19.8(a) does not apply to reduce the Indemnifier's indemnification obligation.

### **19.9 Mitigation of losses**

A Party and the Indemnifier must take such action as is reasonably required to mitigate any loss or damage to it for which indemnity may be claimed under this Contract or otherwise.

### **19.10 Recoveries under insurance**

- (a) To the extent that Western Power recovers against any insurer under an insurance policy effected by either Party or the Indemnifier for a Claim in connection with this Contract in respect of which either or both of the User or the Indemnifier is liable, for any reason (including negligence), the amount as recovered shall, for the purposes of clause 19.5, be deemed to have been paid.
- (b) To the extent that the User recovers against any insurer under an insurance policy effected by either Party or the Indemnifier for a Claim in connection with this Contract in respect of which Western Power is liable, for any reason (including negligence), the amount as recovered shall, for the purposes of clause 19.5, be deemed to have been paid.

### **19.11 Intermediary Indemnity [Note: Optional Clause]**

Where:

- (a) the User is the Intermediary (as defined in the WEM Rules) of a person and in so far as they are registered as a Rule Participant (as defined in the WEM Rules) and to the extent they perform the functions of an Intermediary; and
  - (b) that person is not party to this Contract,
- then the User must indemnify and keep indemnified Western Power against any costs, expenses, losses or damages suffered or incurred by Western Power due to Claims made by that person against Western Power:
- (i) which Claims are in connection with the provision of the Services (including any failure of, or defect in provision of, the Services); or
  - (ii) which Claims relate to a matter for which Western Power's liability to that person would have been limited or excluded had that person been party to this Contract (jointly with the User).

## **20. Personal injury**

The liability for any personal injury Claim will be determined under Law.

## **21. Insurances**

### **21.1 The User's insurances**

- (a) Subject to clause 21.1(b), the User must obtain and maintain insurance, commencing from the Commencement Date, covering those matters, on the terms and basis, and for the amounts, referred to in Part 1 of Schedule 5.
- (b) To the extent that Western Power consents (such consent not to be unreasonably withheld), the User may self-insure for some or all of the matters and amounts referred to in Schedule 5.
- (c) For each Connection Point, prior to the Start Date of a Service at the Connection Point, and at such other times as Western Power shall reasonably request in writing (such request not to be made more than once in respect of a 12 month period unless extraordinary circumstances apply), the User must provide Western Power with certificates of currency for the insurances required under clause 21.1(a).

### **21.2 Western Power's insurances**

- (a) Subject to clause 21.2(b), Western Power must obtain and maintain insurance, commencing from the Commencement Date, covering those matters, on the terms and basis, and for the amounts referred to in Part 2 of Schedule 5.
- (b) To the extent that the User consents (such consent not to be unreasonably withheld), Western Power may self-insure for some or all of the matters and amounts referred to in Part 2 of Schedule 5.
- (c) Western Power must, before the Commencement Date and at such other times as the User reasonably requests in writing (such request not to be made more than once in respect of a 12 month period unless extraordinary circumstances apply), provide the User with certificates of currency for the insurances required under clause 21.2(a).

### **21.3 Names of insured**

In respect of the insurances referred to in Schedule 5 Part 1 (a)(i) (public and products liability insurance) and Schedule 5 Part 1 (a)(iv) (contractors' plant and equipment insurance) the insurance must list Western Power as an additional insured.

### **21.4 Cross liability**

Every policy of public and products liability insurance must include a cross liability clause in which the insurer expressly accepts that the term insured applies to every person who is named in the policy as if there was a separate policy of insurance for each of them but not so as to increase the limit of liability.

### **21.5 Notice of cancellation**

A Party must notify the other Party immediately on being advised by its insurer of cancellation or non-renewal of any of the insurance policies in Schedule 5, and immediately use all reasonable endeavours to reobtain the insurance policies in Schedule 5.

## 21.6 Further obligation

Both Parties and the Indemnifier must not do any act or make any omission that would be grounds for an insurer to refuse to pay a claim under any of the policies of insurance.

## 22. Force Majeure

### 22.1 Affected Person's obligations are suspended

If a Party ("**Affected Person**") is unable wholly or in part to perform any obligation ("**Affected Obligation**") under this Contract (other than an obligation to pay money) because of the occurrence of a Force Majeure Event, then, subject to this clause 22, the Affected Person's obligation to perform the Affected Obligation is suspended to the extent that, and for so long as, the Affected Person's ability to perform the Affected Obligation is affected by the Force Majeure Event (such period being the "**FM Period**").

### 22.2 When Services are Curtailed

Without limiting clause 22.1, Western Power's obligation in respect of a Connection Point to provide the Services is suspended during any period that the provision of the Services in respect of that Connection Point is Curtailed under clause 25.1, to the extent of the Curtailment.

### 22.3 Affected Person's obligations

Subject to clauses 22.4 and 22.6, if a Force Majeure Event occurs and the Affected Person is unable wholly or in part to perform any obligation under this Contract, then the Affected Person must:

- (a) notify the other Party if the FM Period continues for a period of two days or longer; and
- (b) use reasonable endeavours (including incurring any reasonable expenditure of funds and rescheduling personnel and resources) to:
  - (i) mitigate the consequences of the Force Majeure Event; and
  - (ii) minimise any resulting delay in the performance of the Affected Obligation.

A notice under clause 22.3(a) must be given as soon as reasonably practicable and in any event within 5 Business Days of a Party becoming aware an event is or is likely to be a Force Majeure Event.

### 22.4 In case of breach

An Affected Person is not obliged to incur any expenditure in complying with clause 22.3(b) if the Force Majeure Event is constituted by a breach of, or failure to comply with, this Contract by the other Party.

### 22.5 Failure to minimise delays

If an Affected Person fails to comply with clause 22.3(b)(ii), then the only consequence of that failure is that the FM Period is reduced by the period of any delay in the performance of the Affected Obligation attributable to that failure.

### 22.6 Settlement of a labour dispute

The settlement of a labour dispute which constitutes a Force Majeure Event is a matter which is within the absolute discretion of the Affected Person.

## **23. Provisions of Access Arrangement on Supplementary Matters apply**

The provisions of the Access Arrangement in respect of Supplementary Matters apply also as terms of this Contract, to the extent they are relevant.

## **24. User does not acquire interest in Network**

To avoid doubt, nothing in, and nothing done under or in connection with, this Contract causes the User to acquire any right, title or interest in or to the Network or any part of it.

## **25. Curtailment**

### **25.1 Western Power may Curtail Services**

Western Power may, in accordance with Good Electricity Industry Practice, Curtail the provision of Services in respect of a Connection Point:

- (a) to carry out planned Augmentation or Maintenance to the Network; or
- (b) to carry out unplanned Maintenance to the Network where Western Power considers it necessary to do so to avoid injury to any person or material damage to any property or the environment; or
- (c) if there is any breakdown of or damage to the Network that affects Western Power's ability to provide Services at that Connection Point; or
- (d) if a Force Majeure Event occurs affecting Western Power's ability to provide Services at the Connection Point, for so long as Western Power's ability to provide Services is affected by the Force Majeure Event; or
- (e) if Western Power considers it necessary to do so to preserve Power System Reliability; or
- (f) to the extent necessary for Western Power to comply with a Law.

### **25.2 Extent of Curtailment**

Western Power must keep the extent and duration of any Curtailment under clause 25.1 or clause 16.3 to the minimum reasonably required in accordance with Good Electricity Industry Practice.

### **25.3 Notification of Curtailment**

Western Power must use reasonable endeavours to notify the User of any Curtailment under clause 25.1 or clause 16.3 as soon as practicable.

### **25.4 User must comply with Curtailment**

If Western Power notifies the User of a Curtailment of Services under clause 25.3 or clause 16.3 in respect of a Connection Point, the User (acting as a Reasonable and Prudent Person) must comply, or procure compliance, with any reasonable requirements set out in the notice concerning the Curtailment.

### **25.5 Contract does not limit other powers and rights**

This Contract does not limit any power or right conferred on Western Power by any other agreement between the Parties or any Law, including Section 57 of the *Energy Operators (Powers) Act 1979 (WA)*.

## 26. Payments and recoveries under the Contributions Policy

The Parties must comply with the provisions set out in Schedule 4 regarding any Contributions.

## 27. Default

### 27.1 Default

A Party is in “Default” if:

- (a) that Party defaults in the due and punctual payment, at the time and in the manner required for payment by this Contract, of any amount payable under this Contract; or
- (b) that Party defaults in the due and punctual performance or observance of any of its obligations contained or implied by operation of Law in this Contract; or
- (c) an Insolvency Event occurs in respect of that Party; or
- (d) that Party materially breaches any representation or warranty given to the other Party under this Contract.

### 27.2 Default by the User

In the event of the User’s Default, then Western Power may:

- (a) notify the User of the User’s Default and require the User to remedy the User’s Default; or
- (b) if the User’s Default is a Default in the payment of any amount and has not been remedied by the end of the third Business Day after the notice was given, De-energise, or Curtail the provision of Services in respect of, all or any of the User’s Connection Points from the Network whilst the User’s Default is continuing; or
- (c) if the User’s Default is any other type of Default and at the end of the fifth Business Day after the notice was given:
  - (i) the User’s Default has not been remedied; or
  - (ii) the User has not to the reasonable satisfaction of Western Power begun remedying the User’s Default or has begun remedying but is not, in the reasonable opinion of Western Power, diligently proceeding to remedy the User’s Default,

De-energise, or Curtail the provision of Services in respect of, all or any of the User’s Connection Points from the Network whilst the User’s Default is continuing; and

- (d) if the User’s Default has not been remedied at the end of the 20th Business Day after the notice was given, terminate this Contract.

### 27.3 Immediate Suspension

- (a) If the User breaches a Registered Generator Performance Standard for a Generating Plant of the User, or otherwise commits a breach of this Contract, which breach threatens Power System Reliability, Western Power’s ability to deliver electricity to Customers or Western Power’s ability to discharge its contractual obligations to other persons relating to the Network then Western Power may suspend the provision of Services to the User for the period Western Power considers, in good faith, is required to ensure there is no adverse impact



upon Power System Reliability, Customers or Western Power's remaining contractual counterparties.

- (b) If Western Power, in good faith, considers it can allow the User an opportunity to cure a breach referred to in clause 27.3(a) without adversely affecting Power System Reliability, Customers or Western Power's remaining contractual counterparties it will do so (and will allow such period for remedy of the breach as Western Power in good faith considers it can so allow). However Western Power may implement an immediate suspension (and without prior notice) if it considers this necessary to ensure there is no adverse impact upon Power System Reliability, Customers or Western Power's remaining contractual counterparties.
- (c) Western Power will lift a suspension under this clause 27.3 if satisfied, acting in good faith, that the User is able to, and will, comply with this Contract or if Western Power, in good faith, considers the suspension is no longer required to ensure there is no adverse impact upon Power System Reliability, Customers or Western Power's remaining contractual counterparties.
- (d) Western Power's rights under this clause 27.3 are in addition to its right under clause 27.2.

#### **27.4 Western Power's rights not affected**

The User's Default under clause 27.2 does not prejudice the rights or remedies accrued to Western Power at the date of the User's Default.

#### **27.5 Default by Western Power**

If Western Power is in Default, the User may:

- (a) notify Western Power of Western Power's Default and require Western Power to remedy the Default; and
- (b) if Western Power's Default has not been remedied at the end of the 20<sup>th</sup> Business Day after the notice was given:
  - (i) terminate this Contract; or
  - (ii) withhold payment of any charges payable by the User from the date of Default under this Contract for so long as the Default continues unremedied (and no interest is payable by the User on any amounts so withheld provided they are paid within 10 Business Days after the Default is remedied).

#### **27.6 User's rights not affected**

Western Power's Default under clause 27.5 does not prejudice the rights or remedies accrued to the User at the date of Western Power's Default.

### **28. Termination**

#### **28.1 Termination**

- (a) Subject to clause 28.1(b), this Contract terminates on the Termination Date.
- (b) This Contract may be terminated before the Termination Date by:
  - (i) written agreement between Western Power and the User; or
  - (ii) notice by either Party at any time at which this Contract does not include at least one Connection Point; or



- (iii) notice by either Party where there is a Default by the other Party under this Contract, subject to clauses 27.2 or 27.5, as the case may be; or
- (iv) notice by either Party to an Affected Person if a Force Majeure Event occurs and then:
  - (A) the Affected Person is unable wholly or in part to perform any obligation under this Contract; and
  - (B) the FM Period continues for a period of greater than 180 days in aggregate in any 12-month period.
- (c) On termination of this Contract Western Power may Disconnect any one or more of the User's Connection Points, permanently (under clause 17) or otherwise.
- (d) On termination of this Contract, unless otherwise agreed by the Parties:
  - (i) the User must pay any unpaid amount owed to Western Power pursuant to this Contract; and
  - (ii) Western Power must pay any unpaid amount owed to the User pursuant to this Contract.

## 28.2 Rights of Parties not affected

Termination of this Contract under clause 28.1(b) does not prejudice the rights or remedies accrued to either Party at the date of termination.

## 29. Disputes

### 29.1 Party may give notice of Dispute and require Representatives' Meeting

If a Dispute arises between the Parties, either Party may give to the other Party written notice setting out the material particulars of the Dispute and requiring duly authorised representatives of each Party to meet at a place, agreed between the Parties, within 10 Business Days of the date of receipt of such notice by the relevant Party ("**Receipt Date**"), to attempt in good faith by way of discussions and using their best endeavours to resolve the Dispute ("**Representatives' Meeting**") and the Parties must do so.

### 29.2 Party may require CEO Meeting

If the Dispute is not resolved (as evidenced by the terms of a written settlement signed by each Party's duly authorised representative) within 20 Business Days after the Receipt Date then either Party may, by written notice, require that the senior executive officer of each Party meet at a place agreed between the Parties within 30 Business Days after the Receipt Date and must attempt in good faith by way of discussions and using their best endeavours to resolve the Dispute within 35 Business Days after the Receipt Date ("**CEO Meeting**").

### 29.3 Method of Meetings

- (a) A Representatives' Meeting or CEO Meeting may be conducted in person, by telephone, video conference or similar method of real time communication.
- (b) If the Parties are unable to agree on a meeting place under clause 29.1 or 29.2 in the allocated time frame, the meeting will take place at a place determined by Western Power (acting as a Reasonable and Prudent Person).

#### **29.4 Party may commence court proceedings**

If, after complying with the process set out in clauses 29.1 and 29.2 a Dispute is not resolved, then either Party may commence an action to resolve the Dispute through litigation and other court processes.

#### **29.5 Obligations must be performed**

A Party must continue to perform its obligations under this Contract despite the existence of a Dispute, unless otherwise agreed.

### **30. Set off**

#### **30.1 Party may set off payment**

A Party (“**First Party**”) may set off any amount due for payment by it to the other Party under this Contract against any amount which is due for payment by the other Party to the First Party under this Contract.

#### **30.2 No other set off permitted**

Except as permitted in clause 30.1, no set off is permitted by either Party in connection with this Contract, whether under this Contract or otherwise.

### **31. Assignment**

#### **31.1 Transfer of rights and obligations**

- (a) The User may, in accordance with the Transfer and Relocation Policy, request Western Power’s consent to the User transferring or Assigning its rights or obligations under this Contract.
- (b) Without limiting clause 32, Western Power may transfer or Assign its rights or obligations under this Contract only if it has the consent of the User, which consent is not to be unreasonably delayed or withheld.
- (c) Without limiting the considerations the User may have regard to in determining whether to give consent such considerations include the financial and technical capacity of any person who is proposed to assume Western Power’s obligations under this Contract.

#### **31.2 Costs**

A Party seeking consent under clause 31.1 must pay:

- (a) the other Party’s costs of determining whether to give such consent and of drafting and negotiating any documentation required to effect the transfer or Assignment; and
- (b) any taxes and imposts levied on any such transfer or Assignment or documentation.

### **32. Corporate restructuring of Western Power**

#### **32.1 If Western Power is restructured**

If Western Power is restructured under government policy:

- (a) by Law; or
- (b) through other means, including the:
  - (i) use of subsidiary or associated companies; or
  - (ii) transfer of assets, rights and liabilities,then the rights and obligations of Western Power under this Contract are assigned to and assumed by the appropriate legal entity pursuant to the restructure.

### **32.2 User's consent not required**

A restructure, transfer or Assignment under clause 32.1 does not require the User's approval or consent.

## **33. Confidentiality**

### **33.1 Confidential information**

This Contract and information exchanged between the Parties under this Contract or during the negotiations preceding this Contract is confidential to them if:

- (a) the information disclosed contains a notification by the disclosing Party that the information is confidential; or
- (b) the circumstances in which the information was disclosed or the nature of the information disclosed may reasonably be considered as being confidential; or
- (c) the information constitutes trade secrets; or
- (d) the information has a commercial value to a Party which would be destroyed or diminished by the publication of the information; or
- (e) the information relates to the business, professional, commercial or financial affairs of a Party and the value to the Party would be destroyed or diminished by the publication of the information; or
- (f) the information is about or relating to a Controller or a person who is proposed to be a Controller.

### **33.2 When information is not confidential**

Clause 33.1 does not apply to information which, without breach of this Contract or other breach of confidence:

- (a) is or becomes generally and publicly available; or
- (b) is lawfully obtained by a Party from a person other than a Party or a Related Body Corporate of a Party where such person is entitled to disclose the Confidential Information; or
- (c) is, at the date of this Contract, lawfully in the Possession of the recipient of the Confidential Information through sources other than the Party which supplied the information.

### **33.3 Prohibited disclosure**

Subject to clause 33.4, an Information Recipient must not disclose or allow to be disclosed any Confidential Information to a Third Party Recipient.

### 33.4 Permitted disclosure

- (a) An Information Recipient may disclose or allow to be disclosed any Confidential Information to a Third Party Recipient in the following circumstances:
  - (i) with written consent of the Information Provider; or
  - (ii) to employees, a Related Body Corporate or legal advisers, auditors or other consultants of the Party requiring information for the purposes of this Contract or for the purposes of providing professional advice in relation to this Contract; or
  - (iii) to a bona fide proposed assignee of a Party to this Contract or registered shareholder of 20 percent or more of the voting shares in a Party; or
  - (iv) if required by Law or by an authority (including AEMO) which has jurisdiction over a Party or any of its Related Bodies Corporate or by the rules of a stock exchange which has jurisdiction over a Party or any of its Related Bodies Corporate; or
  - (v) if required for the purposes of prosecuting or defending a Dispute or if otherwise required in connection with legal proceedings related to this Contract; or
  - (vi) [to any person nominated as an Intermediary in respect of the User's Facilities and Equipment. As at the date of this Contract, the User's proposed nominated Intermediary is **[Insert]**] [NOTE: Optional clause].
- (b) The User may disclose or allow to be disclosed a copy of this Contract to a Controller with whom the User will enter, or has entered into, a contract as required by clause 6.
- (c) Nothing in clause 33.4 limits Western Power's obligations to comply with Chapter 13 of the Code.

### 33.5 Third party disclosure

An Information Recipient disclosing information under clause 33.4 must:

- (a) use all reasonable endeavours to ensure that a Third Party Recipient does not disclose the Confidential Information except in the circumstances permitted by clause 33.4; and
- (b) notify the Third Party Recipient that it has a duty of confidence to the Information Provider in respect of the Confidential Information; and
- (c) except to the extent that the Third Party Recipient is under an existing enforceable legal obligation to maintain the confidence of the Confidential Information as contemplated in clause 33.5(b), procure a written confidentiality undertaking from the Third Party Recipient consistent with clauses 33.1 to 33.10.

### 33.6 No unauthorised copying

Subject to any obligation under any Law to do so, a Party must not copy any document containing the other Party's Confidential Information except as necessary to perform this Contract.

### 33.7 Secure storage

A Party must ensure that proper and secure storage is provided for the Confidential Information while in its Possession, provided that if a Party is a corporation it may retain

any such documents or parts of documents that form part of board papers (or other formal approval processes) of such corporation and which are required to be retained by that corporation under usual corporate governance requirements.

### **33.8 Return of materials**

Subject to any obligation under any Law relating to records retention and subject to prudent recording – keeping procedures (including, in contemplation of potential legal action), a Party must return all documents containing the other Party’s Confidential Information, including all copies, to the other Party on termination of this Contract, or, upon request by the other Party, destroy all such documents.

### **33.9 Remedies**

Each Party acknowledges and agrees that any breach or threatened breach of clauses 33.1 to 33.10 may cause a Party immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently, each Party has the right, in addition to any other remedies available at Law, to seek injunctive relief or compel specific performances of these clauses 33.1 to 33.10 in respect of any such breach or threatened breach.

### **33.10 Survival of obligations**

- (a) Clauses 33.1 to 33.10 survive the termination of this Contract and remain enforceable for a period of 7 years from the date of such termination.
- (b) Any person who ceases to be a Party to this Contract continues to be bound by these clauses 33.1 to 33.10.

## **34. Ring Fencing**

If Western Power is an Integrated Provider, then a court or tribunal, in considering whether:

- (a) representations made by Workers of the Other Business can or ought be attributed to the Network Business, or vice versa; or
- (b) a notice or other information given to a Worker of the Other Business has been communicated, or should be deemed to have been communicated, to the Network Business, or vice versa; or
- (c) a Contract entered into by the Other Business does or ought express or imply an intention to vary this Contract, or vice versa,

must have fair and reasonable regard to:

- (d) the fact that Western Power comprises a Network Business and an Other Business and the distribution of personnel and responsibilities between those businesses; and
- (e) the intent and purpose of Western Power’s obligations under Chapter 13 of the Code and anything done or not done by Western Power in connection with those obligations.

## **35. Notices**

### **35.1 Requirements for Communications**

Except as provided in clause 35.2, or where given under the electronic communications protocol in Schedule 7, a Communication must be:

- (a) in writing (which includes any Electronic form capable of being reduced to paper writing by being printed); and
- (b) delivered or sent to the address of the addressee as specified in Schedule 6 by one or more of the following means:
  - (i) by hand delivery; or
  - (ii) by priority post (airmail if posted to or from a place outside Australia); or
  - (iii) by way of a courier service for hand delivery; or
  - (iv) Electronically to the email address of the addressee.

### **35.2 Operational and urgent Communication**

Where this Contract expressly provides:

- (a) and where the Parties agree in writing, Communications of a day to day operational nature; or
- (b) Communications given in an operational Emergency, may be given orally and confirmed in writing, under the electronic communications protocol in Schedule 7, within five Business Days.

### **35.3 Communication takes effect**

Subject to clause 35.4, a Communication takes effect from the later of:

- (a) the time it is received; and
- (b) any later time specified in the Communication.

### **35.4 Deemed receipt**

For the purposes of this Contract:

- (a) a Communication delivered by hand to the address of a Party (including where a reputable courier service is used for that purpose) is deemed to be received if it is handed (with or without acknowledgment of delivery) to any person at the address who, in the reasonable judgment of the person making the delivery (upon making appropriate enquiries):
  - (i) appears to be; and
  - (ii) represents himself or herself as, a representative of the Party to whom the Communication is addressed;
- (b) a Communication which is posted is deemed to be received by the Party to whom the Communication is addressed:
  - (i) where the Communication is sent from outside the country of the address to which it is sent – 10 Business Days after the day of posting; and
  - (ii) otherwise – three Business Days after the day of posting;
- (c) a Communication sent Electronically, other than under the electronic communications protocol in Schedule 7, is deemed to have been received by the Party under the Metering Code; and
- (d) a Communication sent under the electronic communications protocol in Schedule 7 is deemed to be received by the party as specified in the electronic communications protocol in Schedule 7.

## **36. Change of address**

A Party may at any time, by notice given to the other Party to this Contract, designate a different email or postal address for the purpose of these clauses 35.1 to 35.4.

## **37. Miscellaneous**

### **37.1 Compliance**

Each Party to this Contract must comply with all applicable Laws.

### **37.2 Variation**

- (a) Subject to clause 37.2(b), a purported agreement between Western Power and the User to revoke, substitute or amend any provision of this Contract has no effect unless it is in writing.
- (b) Clause 37.2 does not prevent the User and Western Power from agreeing by non-written means under clause 35.2 to revoke, substitute or amend any provision of this Contract in an Emergency provided that the non-written revocation, substitution or amendment applies only while the effects of the Emergency subsist.

### **37.3 No third party benefit**

This Contract does not confer any right or benefit on a person other than the User and Western Power, despite the person being named or identified, or belonging to a class of persons named or identified, in this Contract.

### **37.4 Duty**

The User is liable for and must pay any duty that is assessed on this Contract under the *Duties Act 2008 (WA)*. If it is dutiable, the User must produce this Contract to the Office of State Revenue for assessment.

### **37.5 Costs**

Each Party must pay its own costs, charges, expenses, disbursements or fees in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any notice given or made; and
- (b) the performance of any action by that Party in compliance with any liability arising,

under this Contract, or any agreement or document executed or effected under this Contract, unless this Contract provides otherwise.

### **37.6 Waiver**

A provision of this Contract may only be waived by a Party giving written notice signed by a duly authorised representative to the other Party.

### **37.7 Entire agreement**

This Contract constitutes the entire agreement between the Parties as to its subject matter and, to the extent permitted by Law, supersedes all previous agreements, arrangements, representations or understandings.

### **37.8 Severance**

If the whole or any part of this Contract is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this Contract has full force and effect and the validity or enforceability of the provision in any other jurisdiction is not affected. This clause 37.8 has no effect if the severance alters the basic nature of this Contract or is contrary to public policy.

### **37.9 Counterpart execution**

- (a) This Contract may be signed in any number of counterparts and all such signed counterparts, taken together, shall be deemed to constitute one and the same instrument even though all Parties may not have signed each separate counterpart.
- (b) Where it has been signed in counterparts, the date of this Contract shall be taken to be the day on which the last of the Parties to give such notice gives notice in writing or by fax or electronic mail to the other Parties that it has signed a counterpart, such notice being accompanied by a copy, or a printable Electronic image, of the whole of that counterpart.

### **37.10 Further assurance**

Each Party agrees, at its own expense, on the request of another Party, to do everything reasonably necessary to give effect to this Contract and the transactions contemplated by it, including, but not limited to, the execution of documents.

### **37.11 Authorised officers**

- (a) Notice, approval, consent or other Communication given under this Contract may be given by an Authorised Officer of a Party specified in Schedule 6 to an Authorised Officer of another Party specified in Schedule 6.
- (b) A Party may at any time, by notice given to the other Party, add or replace an Authorised Officer for the purposes of clause 37.11.

### **37.12 Merger**

The warranties, undertakings and indemnities in this Contract do not merge on termination of this Contract.

### **37.13 Remedies**

- (a) Subject to clause 37.13(b), the rights, powers and remedies provided in this Contract are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Contract.
- (b) A Party may only terminate this Contract in circumstances permitted by express provisions of this Contract. Any rights to terminate this Contract at common law are excluded.

### **37.14 Governing Law**

- (a) This Contract and the transactions contemplated by this Contract are governed by the Law in force in Western Australia.
- (b) Without limiting clause 37.14, each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Western Australia and the Courts



of appeal from them for the purpose of determining any Dispute concerning this Contract or the transactions contemplated by this Contract.

# Execution Clause:

Executed as an agreement on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by:

**EXECUTED** for and on behalf of **ELECTRICITY NETWORKS CORPORATION ABN 18 540 492 861** in accordance with paragraph 135(4) of the Electricity Corporations Act 2005 (WA):

\_\_\_\_\_  
Signature of Authorised Officer

\_\_\_\_\_  
Signature of Authorised Officer

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Position title

\_\_\_\_\_  
Position title

**EXECUTED** by **[NAME OF PARTY & ABN/ACN/ARBN]** in accordance with section 127(1) of the Corporations Act 2001 (C<sup>th</sup>):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name

**EXECUTED** by **[NAME OF PARTY & ABN/ACN/ARBN]** in accordance with section 127(1) of the Corporations Act 2001 (C<sup>th</sup>):

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

.....  
Full name

.....  
Full name

## SCHEDULE 1 - DICTIONARY

Unless the context otherwise requires, the defined terms in column 1 below have the respective meanings in column 2:

<u>Column 1</u>	<u>Column 2</u>
Access Arrangement	means the current 'access arrangement' (as defined in the Code) approved in respect of the Network under the Code.
Access Contract	has the meaning given to 'access contract' in the Code.
Access Offer	has the meaning given to 'access offer' in the Applications and Queuing Policy.
Access Rights	means all or part of the User's rights under this Contract to obtain a Covered Service.
Accounting Period	means one calendar month.
Act	means the <i>Electricity Industry Act 2004 (WA)</i> .
AEMO	has the meaning given to that term in the WEM Rules.
Affected Obligation	has the meaning given to it in clause 22.1.
Affected Person	has the meaning given to it in clause 22.1.
Affected Service	has the meaning given to it in clause 7.3(a).
Affected Service Period	has the meaning given to it in clause 7.3(a).
Application	means an application made under the Applications and Queuing Policy.
Applications and Queuing Policy	means the 'applications and queuing policy' (as defined in the Code) in the Access Arrangement.
Approved Price List	means the current approved price list (as that term is defined in the Code) applying under the Access Arrangement.
Assign	includes assign or Novate.
Assignment	includes an assignment or Novation.
Attachment Point	has the meaning given to 'attachment point' in the Applications and Queuing Policy.
Augmentation	in relation to the Network, means an increase in the capability of the Network to provide Covered Services, including by the development, construction, acquisition or commissioning of new Network Assets.
Authorised Officer	means the authorised officer of a party as specified in Schedule 6 to whom any Communication may be given.
Authority	means the Economic Regulation Authority established by the <i>Economic Regulation Authority Act 2003(WA)</i> .
Bidirectional Point	has the meaning given to 'bidirectional point' in the Applications and Queuing Policy.
Bidirectional Service	means a Covered Service provided by Western Power at a Connection Point under which the User may transfer electricity into and out of the Network at the Connection Point.

Build Pack	means the 'Build Pack' developed under the <i>Customer Transfer Code Communication Rules</i> (made under Part 5 of the Customer Transfer Code) and/or the <i>Metering Code Communication Rules</i> (made under Part 6 of the Metering Code), as applicable in the circumstances.
Business Day	means a day that is not a Saturday, Sunday or public holiday throughout Western Australia.
Capacity	with regards to a Connection Point, means the maximum rate at which the Network can transfer electricity at the Connection Point in accordance with Good Electricity Industry Practice in the absence of Constraints.
Capacity Credits	has the meaning given to that term in the WEM Rules.
CEO Meeting	has the meaning given to it in clause 29.2.
Charge	for a Service for an Accounting Period, means the amount that is payable by the User to Western Power for the Service, calculated by applying the Tariff for the Service, during the Accounting Period.
Claim	means any claim, demand, action or proceeding made or instituted against a Party.
CMD	means Contract Maximum Demand.
Code	means the <i>Electricity Networks Access Code 2004</i> .
Code Objective	has the meaning given to 'Code objective' in section 2.1 of the Code.
Commencement Date	means the date of execution of this Contract by the last signing Party, or the first date on which all of the Conditions Precedent are satisfied or waived, whichever is later.
Communication	means a notice, approval, consent or other communication given or made under this Contract.
Conditions Precedent	means the conditions precedent specified in Schedule 2.
Confidential Information	means information which is confidential under clause 33.1.
Connect	has the meaning given to 'connect' in the Code.
Connection Assets	has the meaning given to 'connection assets' in the Code.
Connection Contract	means, at the option of Western Power: <ul style="list-style-type: none"> <li>(a) a contract containing provisions materially equivalent to those in this Contract; or</li> <li>(b) some other agreement in writing to be bound by provisions materially equivalent to such terms and conditions of this Contract satisfactory to Western Power,</li> </ul> but omitting clauses 3 to 9 of this Contract.
Connection Point	means a point on the Network identified, or to be identified, as an Exit Point or Entry Point or Bidirectional Point in the Contract Database.

Connection Point Database	<p>means:</p> <p>(a) Part 1 of Schedule 3; or</p> <p>(b) another database or databases containing information relating to this Contract and maintained by Western Power as agreed between the Parties, which for the avoidance of doubt can include the Metering Database if the User is not a Metering Code Participant and this is agreed by the User and Western Power, as applicable.</p>
Constraint	<p>means a limitation on the capability of the Network (including arising by reference to the technical limitations and configuration of the Network) such that it is unsafe, inconsistent with the maintenance of the reliability and security of the Network or otherwise unacceptable to transfer (including accept the transfer of electricity into or out of the Network at a Connection Point) the level of electricity that would occur if the limitation was removed. Constraints affecting the Network may increase over time due to changes in load or generation connected to the Network.</p>
Consume	<p>has the meaning given to 'consume' in the Code.</p>
Consumer	<p>has the meaning given to 'consumer' in the Code.</p>
Consumption	<p>for a Connection Point, means the amount of electricity Consumed at the Connection Point, and is measured in Watt-hours.</p>
Contract	<p>means this agreement between Western Power and the User.</p>
Contract Database	<p>means the Connection Point Database or, if the Metering Database is not included within the Connection Point Database and clause 3.7(k)(ii) applies, then it means the Metering Database.</p>
Contracted Capacity	<p>for a Connection Point, means the maximum rate at which the User is permitted to transfer electricity to or from the Network at the Connection Point, being either:</p> <p>(a) the rate specified in the Connection Point Database from time to time; or</p> <p>(b) if no rate is specified in the Connection Point Database, the maximum rate of electricity permitted to be transferred under the Eligibility Criteria for the Reference Service for that Connection Point; or</p> <p>(c) if no rate is specified in the Connection Point Database or in the Eligibility Criteria for the Reference Service for that Connection Point, the maximum rate of electricity permitted to be transferred through the Connection Assets under the Technical Rules,</p> <p>and is measured in Watts or Volt-Amps.</p>
Contribution	<p>means any contribution made under the Contributions Policy.</p>
Contributions Policy	<p>means the contributions policy' (as defined in the Code) contained in the Access Arrangement.</p>

Controller	means, in respect of a Connection Point, a person, including a Customer, who owns, operates, controls or otherwise is responsible for the operation of the Facilities and Equipment at the Connection Point, and includes the Controller's Workers and Visitors.
Corporations Act	means the <u>Corporations Act 2001</u> of the Commonwealth.
Covered Service	has the meaning given to 'covered service' in the Code.
CPI, or Consumer Price Index,	means the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities published by the Australian Bureau of Statistics from time to time or, if the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities ceases to be published, such alternative index as Western Power acting reasonably and in good faith may determine, and in all cases the CPI figure is to be adjusted to correct for any effects of a change in the rate of GST.
CPI-Adjusted	has the meaning given to it in clause 1.3.
Curtail	means curtailing or interrupting the whole or part of a Service.
Curtailment	includes a whole or partial curtailment or whole or partial interruption of a Service.
Customer	has the meaning given to 'customer' in the Act.
Customer Transfer Code	means the <u>Electricity Industry Customer Transfer Code 2016</u> , made under section 39(2a) of the Act in respect of the matter referred to in section 39(2)(b) of the Act, and includes all rules, policies or other subordinate documents developed under the Customer Transfer Code.
De-energise	in respect of a Connection Point, means to operate, modify or remove switching or other equipment to prevent the transfer of electricity through the Connection Point.
Default	in relation to a Party, has the meaning given to it in clause 27.1.
Direct Damage	suffered by a person means loss or damage suffered by the person which is not Indirect Damage.
Disconnect	in respect of a Connection Point, means physically detach Network Assets from assets owned by another person at the Connection Point.
Dispute	means any dispute or difference concerning: <ul style="list-style-type: none"> <li>(a) construction of; or</li> <li>(b) anything contained in or arising out of; or</li> <li>(c) rights, obligations, duties or liabilities of a Party under, this Contract.</li> </ul>
DSOC	means Declared Send Out Capacity.
Due Date	means, for a Tax Invoice issued under clause 8.1 or 8.2, the date 10 Business Days after the Party to whom it is addressed receives the Tax Invoice.

Electronically	in relation to a Communication, means a communication of information by means of guided or unguided electromagnetic energy, or both, by way of packet transfer between and within computer networks using the TCP/IP or other widely accepted protocol for packet transfer.
Eligibility Criteria	means, for a Reference Service, the 'Eligibility Criteria' stipulated in the Access Arrangement for that Reference Service.
Emergency	means any accident, emergency, potential danger or other unavoidable cause or extraordinary circumstance.
End Date	for a Connection Point, means the date specified as such in the Connection Point Database for the Connection Point.
Entry Point	has the meaning given to 'entry point' in the Applications and Queuing Policy.
Entry Service	means a Covered Service provided by Western Power at a Connection Point under which the User may transfer electricity into the Network at the Connection Point.
Entry Service Component	means, in respect of a Bidirectional Service and a Connection Point, the component of that Bidirectional Service relating to the transfer of electricity by the User into the Network at that Connection Point.
Equivalent Reference Service	has the meaning given to it in clause 7.1(c)(i).
Exit Point	has the meaning given to 'exit point' in the Applications and Queuing Policy.
Exit Service	means a Covered Service provided by Western Power at a Connection Point under which the User may transfer electricity out of the Network at the Connection Point.
Exit Service Component	means, in respect of a Bidirectional Service and a Connection Point, the component of that Bidirectional Service relating to the transfer of electricity by the User out of the Network at that Connection Point.
Extension Period	has the meaning given to it in clause 2.22.2(a).
Facilities and Equipment	has the meaning given to 'facilities and equipment' in the Code.
First Party	has the meaning given to it in clause 30.1.



Force Majeure	<p>in respect of a Party, means an event or circumstance beyond the Party's control, and which the Party, acting as a Reasonable and Prudent Person, is not able to prevent or overcome, including (where the foregoing conditions are satisfied):</p> <ul style="list-style-type: none"> <li>(a) any act of God, lightning, earthquake, storm, fire, flood, subsidence, land slide, mud slide, wash-out, explosion or natural disaster; or</li> <li>(b) any insurrection, revolution or civil disorder, terrorism, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot; or</li> <li>(c) any determination, award or order of any court or tribunal, or any regulatory authority or the award of any arbitrator arising after the Commencement Date; or</li> <li>(d) any act or omission of government or any government or regulatory department, body, instrumentality, ministry, agency, fire brigade or any other authority other than a Party (including restraint, expropriation, prohibition, intervention, direction or embargo); or</li> <li>(e) any inability or delay in obtaining any governmental, quasi-governmental or regulatory approval, consent, permit, licence or any other authority; or</li> <li>(f) any industrial disputes of any kind, strike, lock-out, ban, limitation or other industrial disturbances; or</li> <li>(g) any significant plant or equipment failure which could not have been avoided by the exercise of Good Electricity Industry Practice; or</li> <li>(h) any act or omission of any person (other than a Party) with Facilities and Equipment connected to the Network which prevents the Party's ability to perform its obligations under this Contract; or</li> <li>(i) any application of any law of the Commonwealth, any Commonwealth authority, the State, any State authority or any local government; or</li> <li>(j) accidents, weather and acts of third parties (such as Generators or Consumers) that affect the quality, frequency and continuity of the supply of electricity.</li> </ul>
Force Majeure Event	means an event of Force Majeure.
FM Period	means the period of suspension of the Affected Obligation pursuant to clause 22.1.
Generate	has the meaning given to 'generate' in the Code.
Generating Plant	has the meaning given to 'generating plant' in the Code.
Generation	for a Connection Point, means the amount of electricity Generated at the Connection Point, and is measured in Watt-hours.
Generator	has the meaning given to 'generator' in the Code.

Good Electricity Industry Practice	has the meaning given to 'good electricity industry practice' in the Code.
Generator Monitoring Plan	means, for a Generating Plant at a Connection Point, the Generator Monitoring Plan (as that term is defined in the WEM Rules) approved for that Generating Plant by AEMO in accordance with the WEM Rules.
GST	means goods and services tax or similar value added tax levied or imposed in Australia on a taxable supply under the GST Act or otherwise.
GST Act	means the <u><i>A New Tax System (Goods and Services Tax) Act 1999</i></u> of the Commonwealth.
Guest Party	has the meaning given to it in clause 15.1.
Host Party	has the meaning given to it in clause 15.1.
Ideal Generator Performance Standard	has the meaning given to that term in the WEM Rules.
Indemnifier	means the Indemnifier specified in the Parties section of this Contract (if any).
Indemnified Party	has the meaning given to it in clause 19.6.
Indemnifying Party	has the meaning given to it in clause 19.6.
Indirect Damage	suffered by a person means any one or more of: <ul style="list-style-type: none"> <li>(a) any consequential loss, consequential damage or special damages however caused or suffered by the person, including any: <ul style="list-style-type: none"> <li>(i) loss of (or loss of anticipated) opportunity, use, production, revenue, income, profits, business and savings; or</li> <li>(ii) loss due to business interruption; or</li> <li>(iii) increased costs; or</li> <li>(iv) punitive or exemplary damages, whether or not the consequential loss or damage or special damage was foreseeable; or</li> </ul> </li> <li>(b) in respect of contractual damages, damages which would fall within the second limb of the rule in <i>Hadley v Baxendale</i> [1854] 9 Exch. 341; or</li> <li>(c) any liability of the person to any other person, or any Claim brought against the person by any other person, and the costs and expenses connected with the Claim.</li> </ul>
Information Provider	in relation to Confidential Information, means the party providing the information.
Information Recipient	in relation to Confidential Information, means the recipient of the information.
Insolvency Event	in respect of a Party, means any one or more of: <ul style="list-style-type: none"> <li>(a) the Party is insolvent within the meaning of section 95A of the Corporations Act; or</li> </ul>

- (b) any execution or other process of any court or authority being issued against or levied upon any material part of that Party's property or assets; or
- (c) a petition or application being presented (and not being withdrawn within 10 Business Days) or an order being made or a resolution being passed for the winding up or dissolution without winding up of that Party otherwise than for the purpose of reconstruction or amalgamation under a solvent scheme; or
- (d) a receiver or a receiver and manager of the undertaking or any material part thereof of that Party being appointed; or
- (e) that Party proposing to enter into or enters into any arrangement, reconstruction or composition with or for the benefit of its creditors; or
- (f) an administrator of that Party being appointed or the board of directors of that Party passing a resolution to the effect that is specified in section 436A(1) of the Corporations Act; or
- (g) that Party failing (as defined by section 459F of the Corporations Act) to comply with a statutory demand; or
- (h) a controller (as defined in the Corporations Act) being appointed in respect of that Party or the whole or a material part of that Party's undertaking, property or assets; or
- (i) an application being made to a court for an order in respect of that Party under part 2F.1 of the Corporations Act; or
- (j) an event referred to in section 459C(2) of the Corporations Act occurring in respect of that Party; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above occurring under the Law of any applicable jurisdiction.

Insured Year	means the period between and including 1 July in a Year and 30 June in the following Year.
Integrated Provider	has the meaning given to 'integrated provider' in the Code.
Intermediary	has the meaning given to that term in the WEM Rules.
Latest Termination Date	has the meaning given to it in clause 2.2(b).
Law	means "written laws" and "statutory instruments" as defined in the Code, orders given or made under a written law or statutory instrument as so defined or by a government agency or authority, Codes of Practice and Australian Standards deemed applicable under a written law and rules of the general law including the common law and equity.
Maintain, and Maintenance	includes (as necessary and as applicable) calibrate, test, verify, renew, replace, repair and update.

Material Change	any change external to a Party, including any change to the regulatory environment or market structure of the Western Australian electricity market, which materially alters or could reasonably be expected to materially alter the risk of a Party under this Contract, the nature of any Claim that can be made under this Contract or both.
Meter	has the meaning given to 'meter' in the Metering Code.
Metering Code	means the code made under Section 39(1) of the Act in respect of a matter referred to in Section 39(2)(a) of the Act, and includes any service level agreement, metering data agency agreement, communications rules, metrology procedure, mandatory link criteria and registration process developed under that code.
Metering Code Participant	has the meaning given to 'Code Participant' in the Metering Code.
Metering Database	means the metering database operated by Western Power under the Metering Code.
Metering Equipment	means a Meter or Meters and associated equipment complying with the Metering Code used to measure and record electricity as transferred to or from the Network at a Connection Point, which may include the measurement of the rate of transfer and the quantity and quality of the transferred electricity.
Negotiated Generator Performance Standard	has the meaning given to that term in the WEM Rules.
Network	has the same meaning given to 'Western Power Network' in the Code.
Network Assets	in relation to the Network, means the apparatus, equipment, plant and buildings used to provide or in connection with providing Covered Services on the Network, which assets are either Connection Assets or Shared Assets.
Network Business	has the same meaning given to 'network business' in the Code.
NMI, or National Market Identifier	means the unique identifier assigned to the Connection Point.
Nominated Person	has the meaning given to it in clause 9(a)(i).
Novate and Novation	mean to substitute, with the consent of all Parties to this Contract and with effect on and from a date nominated as the effective date of the novation, an assignee for the User as a party to this Contract, with the result that: <ul style="list-style-type: none"> <li>(a) all rights and obligations of the User under this Contract become rights and obligations of the assignee as if the assignee had been named in the Contract in place of the User; and</li> <li>(b) the User is released from any obligations under this Contract arising on or after the effective date of the novation, but remains liable for any default by it in the performance of those obligations prior to the effective date of the novation.</li> </ul>
Other Business	has the meaning given to 'other business' in the Code.

Party	means Western Power or the User . {Note: If there is an Indemnifier, refer to clause 1.1(h)(iv)}
Parties	means Western Power and the User. {Note: If there is an Indemnifier, refer to clause 1.1(h)(iv)}
Payment Error	means: (a) any underpayment or overpayment by a Party of any amount in respect of a Tax Invoice; or (b) any error in a Tax Invoice (including the omission of amounts from that Tax Invoice, the inclusion of incorrect amounts in that Tax Invoice, calculation errors in the preparation of a Tax invoice or a Tax Invoice being prepared on the basis of data which is later established to have been inaccurate).
Permanent Reconfiguration	means: (a) a permanent physical change (including a change to the zone substation applicable to a Connection Point and a change to the distance from the applicable zone substation to a Connection Point); or (b) a change to the pricing zone applicable to a Connection Point.
Possession	includes custody, control, and an immediate right to possession, custody, or control.
Power System Reliability	has the meaning given to that term in the WEM Rules.
Prescribed Rate	means, at any point in time, the interest rate (expressed as a rate per cent per annum) equal to the aggregate of 3 annual percentage points and the interest rate (expressed as a rate per cent per annum) then published by the Reserve Bank of Australia as the large business variable indicator lending rate.
Price List	means the 'price list' (as defined in the Code) specified in the Access Arrangement.
Pricing Year	has the meaning given to 'pricing year' in the Code.
Reasonable and Prudent Person	means a person acting in good faith and, where applicable, in accordance with Good Electricity Industry Practice.
Receipt Date	has the meaning given to it in clause 29.1.
Reference Service	means a 'reference service' (as defined in the Code) specified in the Access Arrangement.
Reference Service Point	means a Connection Point for which under this Contract Western Power provides, or is to provide, a Reference Service.
Registered Generator Performance Standard	has the meaning given to that term in the WEM Rules.
Related Body Corporate	has the meaning given to 'Related Body Corporate' in section 50 of the Corporations Act.
Representatives' Meeting	has the meaning given to it in clause 29.1.

Service	means a service to be provided under this Contract in respect of a Connection Point as specified in the Contract Database.
Shared Assets	has the meaning given to 'shared assets' in the Code.
Small Customer	means a customer (as defined in the <u>Electricity Industry Act 2004 (WA)</u> ) consuming not more than 160 MWh of electricity per annum.
Standing Charges	has the meaning given to it in clause 7.3.
Start Date	for a Connection Point, means the date specified as such in the Connection Point Database for the Connection Point.
Supplementary Matters	means the provisions incorporated in the Access Arrangement under sections 5.27 and 5.28 of the Code.
System Operator	for the Network means, unless the Technical Rules provide otherwise, the person or persons who: <ul style="list-style-type: none"> <li>(a) operate and control the system operation control centre; or</li> <li>(b) where there is no system operation control centre — is responsible for the control of the Network through monitoring, switching and dispatch; or</li> <li>(c) where the system operation control centre and another party are both responsible for the control of the Network through monitoring, switching and dispatch — perform the tasks described in either or both of paragraphs (a) and (b).</li> </ul>
Tariff	for a Service, means the tariff specified in clause 7.1 for that Service.
Tax Invoice	has the meaning given to 'Tax Invoice' in the GST Act.
Technical Rules	means the technical rules applying from time to time to the Network under Chapter 12 of the Code, as modified in accordance with the Code, including any derogations agreed to by Western Power in writing and specified in Part 3 of Schedule 3.
Term	means, from time to time, the term of this Contract which commences on the Commencement Date and ends on the date which is then the Termination Date.
Termination Date	means, subject to clause 2.2, the date specified in Part 1 of Schedule 2.
Third Party Recipient	means any person to whom the Information Recipient discloses Confidential Information, or allows Confidential Information to be disclosed.
Transfer and Relocation Policy	means the transfer and relocation policy (as defined in the Code) contained in the Applications and Queuing Policy.
Undisputed Portion	for the purposes of a Tax Invoice issued under 8.2(b) has the meaning given to it in clause 8.2(d) and, in all other cases, means the portion of the amount set out in a Tax Invoice that is not in Dispute.
User	has the meaning given to it in the Code, and for the purposes of this Contract is the User stipulated in the 'Parties section' of this Contract.
User's Default	means an event of Default by the User.
User's Premises	means the land on which the User's Facilities and Equipment are located.

Visitors	means the customers, invitees, licensees and visitors of a Party or a Controller, as the case requires.
WEM Rules	means the ‘market rules’ referred to in section 123(1) of the Act, and includes all rules, policies or other subordinate documents developed under the WEM Rules.
Western Power	means the Electricity Networks Corporation established under section 4(1)(b) of the <i>Electricity Corporations Act 2005 (WA)</i> .
Western Power’s Default	means an event of Default by Western Power.
Wilful Default	means a deliberate and purposeful act or omission carried out with: <ul style="list-style-type: none"> <li>(a) a calculated regard for the consequences of the act or omission; or</li> <li>(b) a reckless or wilful disregard for the consequences of the act or omission,</li> </ul> but does not include any error of judgment, mistake, act or omission, whether negligent or not, which is made in good faith.
Workers	means the directors, officers, servants, employees, agents and contractors of a Party or a Controller, as the case requires.
Works	has the meaning given to it in the Contributions Policy.
Year	means calendar year.

# SCHEDULE 2 - ACCESS CONTRACT INFORMATION

## Part 1 Term

Termination Date:	
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## Part 2 Extension of Term

{Note: Referred to in clause 2.2.}

Extension Period:	
Latest Termination Date:	

## Part 3 Conditions Precedent

{Note: Referred to in clause 2.3.}

<b>For the benefit of the User</b>	1	[Description]
		[Date to be satisfied by]
<b>For the benefit of Western Power</b>	1	[Description]
		[Date to be satisfied by]



# SCHEDULE 3 - DETAILS OF CONNECTION POINTS

## Part 1 Commercial Details

{Note:

(a) If in accordance with clause 3.7 the Parties agree to not have these details stored in this Part then state in each row in the right hand column below where the respective details are to be stored; and

(b) Western Power will store these details in the Metering Database where the User is a Metering Code Participant.}

1	Connection Point 1 Title	
	Address of Premises	
	Name and contact details of Controller	
	NMI	
	Service	
	Start Date	
	End Date	
	CMD (kW/ kVA) (if applicable)	
	DSOC (kW/ kVA) (if applicable)	
	Size of Generator (if applicable)	
	Make and model of Generator (if applicable)	
	Substation (if applicable)	
Substation distance (if applicable)		

## Part 2 Technical Details

{Note: referred to in clause 13(a)}

#	Connection Point	Description of Facilities and Equipment
1		

{Note: attach plans, drawings and other documentation as necessary to fulfil the requirements of clause 13(a).}

## Part 3 Agreed exemptions from Technical Rules

{Note: referred to in clause 13(a)(ii) }

#	Connection Point	Technical Rules Reference	Description of Technical Rules requirement	Description of Derogation
1				

## Part 4 Technical Characteristics



# SCHEDULE 4 - WORKS AND CONTRIBUTIONS

{Note: Referred to in clause 26.}

1	[Connection Point Title / NMI]	
	[Contribution provisions]	
2	[Connection Point Title / NMI]	
	[Contribution provisions]	

## SCHEDULE 5 - INSURANCES

{Note: Referred to in clause 21.}

### Part 1 User insurances

- (a) The User must effect and maintain, commencing from the Commencement Date the following policies of insurance:
  - (i) public and products liability of:
    - (A) public liability insurance for a limit of not less than \$50 million or the maximum liability of the User under clause 19.5 (whichever is greater) in the aggregate of all claims made in an Insured Year; and
    - (B) products liability insurance for a limit of not less than the maximum liability of the User under clause 19.5 per claim and in the aggregate, refreshed annually;
  - (ii) covering the User's liability to Western Power or any third party for death, bodily injury and loss or damage to property caused by any act, omission or negligence in relation to this Contract;
  - (iii) when reasonably requested by Western Power, workers' compensation insurance for all persons employed by the User including employer's liability at common law, with a limit of cover in respect of any one occurrence at least equal to \$50 million;
  - (iv) when reasonably requested by Western Power, motor vehicle third party property insurance for all loss or damage to property caused by or attributable to the use of a motor vehicle in the performance of the Services or any Works under the Contract, for a limit of \$10 million per claim and unlimited in the aggregate of all claims made; and
  - (v) contractors' plant and equipment insurance covering all loss or damage to the User's plant or equipment used in connection with this Contract for its replacement value.
- (b) The policies of insurance under Schedule 5 Part 1(a) must be with an insurer authorised under the *Insurance Act 1973 (Cth)* or the equivalent in the United States of America or the United Kingdom.

### Part 2 Western Power insurances

- (a) Western Power must effect and maintain, commencing from the Commencement Date, the following policies of insurance:
  - (i) public and products liability of:
    - (A) public liability insurance for a limit of not less than the maximum liability of Western Power under clause 19.5 per claim and unlimited in the aggregate of all claims made; and
    - (B) products liability insurance for a limit of not less than the maximum liability of Western Power under clause 19.5 per claim and in the aggregate, refreshed annually;

- covering Western Power's liability to the User or any third party for death, bodily injury and loss or damage to property caused by any act, omission or negligence in relation to this Contract;
- (ii) workers' compensation insurance for all persons employed by Western Power including employer's liability at common law, with a limit of cover in respect of any one occurrence at least equal to \$50 million;
  - (iii) motor vehicle third party property insurance for all loss or damage to property caused by or attributable to the use of a motor vehicle in the performance of the services or any work under the Contract, for a limit of \$10 million per claim and unlimited in the aggregate of all claims made; and
  - (iv) contractors' plant and equipment insurance covering all loss or damage to Western Power's plant or equipment used in connection with this Contract for its replacement value.
- (b) The policies of insurance under Schedule 5 Part 2(a) must be with an insurer authorised under the Insurance Act 1973 (Cth) or the equivalent in the United States of America or the United Kingdom.

## SCHEDULE 6 - NOTICES

{Note: Referred to in clause 35.}

### Part 1 User

Subject	Information
Address for service of notices/ place of business:	
Authorised Officers:	
Email address:	

### Part 2 Western Power

Subject	Information
Address for service of notices/ place of business:	
Authorised Officers:	
Email address:	

## SCHEDULE 7 - ELECTRONIC COMMUNICATIONS PROTOCOL

{Note: Referred to in clause 35.}

In this Schedule, unless the context otherwise requires, the defined terms in column 1 below have the respective meanings in column 2:

<u>Column 1</u>	<u>Column 2</u>
Addressee	means the person to whose Email Address an email is sent.
Automated Response Message	means an email (" <b>Reply Email</b> ") sent automatically upon receipt of an email (" <b>Original Email</b> "), where the Reply Email is sent from an Addressee's Information System to the Originator of the Original Email, acknowledging that the Original Email has been received by the Addressee's Information System and containing: <ul style="list-style-type: none"> <li>(i) the name of the Originator of the Original Email; and</li> <li>(ii) at least the time, date and subject title of the Original Email; and</li> <li>(iii) the name of the Addressee of the Original Email; and</li> <li>(iv) the date and time the Original Email was received by the Addressee's Information System (which in the absence of evidence to the contrary is taken to be the creation date of the Reply Email).</li> </ul>
Data	includes the whole or part of a computer program within the meaning of the <u>Copyright Act 1968</u> of the Commonwealth.
Email	means a communication of Information by means of guided or unguided electromagnetic energy, or both, by way of packet transfer between and within computer networks using the TCP/IP protocol.
Email Address	means the address nominated in Schedule 6, being an address which is a combination of a personal identifier and a machine/network identifier, which are together capable of being resolved by computer networks transmitting email using the TCP/IP protocol, so that email is transmitted to the person providing that email address.
Information	means information in the form of Data, text, images or sound.
Information System	means a system for generating, sending, receiving, storing or otherwise processing emails.
Originator	means the person who sends an email to an Addressee.
Place of Business	means a place of business nominated under Schedule 6 and in relation to a government, a government authority or a non-profit body, includes a place where any operations or activities are carried out by that government, authority or body.
Purported Originator	means the person on the face of the email who appears to be, or purports to be the Originator, including by purported compliance with clause 4 of this Schedule.

## 1. Application to invoicing

Where the Parties have agreed under clause 8.1(d), the procedure set out in this Schedule does not apply to invoicing under this Contract, and the alternative agreed procedure will apply in its place.

## 2. Parties to establish email Addresses

Western Power and the User must:

- (i) from time to time, nominate a Place of Business and establish an Email Address to be used for the Communications under this Contract; and
- (ii) use reasonable endeavours to ensure that the Information System, on which emails addressed to the Email Address are received, is operational:
  - (A) a 24 hours-a-day; and
  - (B) 7 days-a-week,to receive emails and send Automated Response Messages as required by this Contract; and
- (iii) as soon as practicable notify the other Party of its Place of Business and Email Address and of any change in each of them; and
- (iv) establish a mechanism to generate an Automated Response Message for each email (other than an Automated Response Message) received at the Email Address.

## 3. Requirement for Automated Response Message

- (a) An email is neither given nor received under this Contract until the Originator receives the Addressee's Automated Response Message for the email.
- (b) It is the Originator's responsibility for each attempted email to verify that it receives an Automated Response Message, and if it does not receive an Automated Response Message arrange either for:
  - (i) retransmission of the email; or
  - (ii) communication of the Information by an alternative medium (but this clause 3(b) does not limit the Addressee's responsibilities under clause 4 of this Schedule).
- (c) If the Originator receives an Automated Response Message for an email, then (unless the Addressee proves otherwise) for the purposes of this Contract the:
  - (i) Originator has sent; and
  - (ii) Addressee has received,the email at the date and time shown in the Automated Response Message.
- (d) It is the Addressee's responsibility for each email for which the Addressee's Information System generates an Automated Response Message to:
  - (i) read the email and the Information it contains, and if applicable communicate it to the appropriate Worker within the Addressee's organisation; and



- (ii) if necessary, notify the Originator of any difficulty in opening, reading, de-compressing or otherwise accessing (in a form reasonably readable) any Information contained in the email; and
- (iii) if it appears to the Addressee that the Addressee was not the intended or correct recipient of the Information in the email, communicate this fact to the Originator.

#### **4. Location**

Unless otherwise agreed between the Originator and the Addressee of an email, the email and the Information it contains is deemed to have been sent from the Originator's Place of Business and received at the Addressee's Place of Business.

#### **5. Attribution of emails and reliance**

Except to the extent that:

- (a) the Purported Originator of an email and the Addressee of the email agree otherwise; or
- (b) the Purported Originator of an email proves otherwise, the Addressee of an email in respect of which an Automated Response Message has been given may assume for all purposes under this Contract that the:
  - (c) Purported Originator of the email is the Originator of the email; and
  - (d) email was sent by, or with the knowledge and express authority of, the Purported Originator.

#### **6. Signatures**

For the purposes of this Contract, an email must identify the Originator.

#### **7. Information format**

An Originator must use reasonable endeavours, in selecting the data format for Information contained in an email, to adopt a consistent format over time to facilitate any automated processing of the Information by the Addressee.

# SCHEDULE 8 - FORM OF GUARANTEE

Date [###]

## Parties

1. [### ACN ### a company registered in ### of ###] (“**Guarantor**”); and
2. **Electricity Networks Corporation ABN 18 540 492 861**, a statutory body corporate established by paragraph 4(1)(b) of the *Electricity Corporations Act 2005 (WA)* of 363 Wellington Street, Perth, Western Australia (“**Western Power**”).

## Recitals

- A. Western Power may in its discretion provide Services to [###] (“**User**”) under an Access Contract at the request of each of the User and the Guarantor.
- B. The Guarantor wishes to execute this Guarantee to secure payment of all amounts payable under the Access Contract to Western Power.

## Operative Provisions

### 1. Guarantee

The Guarantor unconditionally and irrevocably Guarantees as a continuing security to Western Power payment by the User of all moneys and liabilities due and/or payable from or by the User to Western Power under or in connection with the contract dated [###] (“**Access Contract**”) created between the User and Western Power (“**Secured Moneys**”), including moneys and liabilities incurred or arising:

- (a) (**liability**): at any present or future time, whether actually or contingently;
- (b) (**default**): as a result of any breach of or default under the Access Contract; and/or
- (c) (**account**): by way of principal, interest, cost, charge, expense, disbursement, fee, tax, stamp or other duty, indemnity, damages or monetary judicial order.

### 2. Secured Moneys

#### 2.1 Demand payment

The Guarantor must pay to Western Power, upon demand by Western Power at any present or future time, the amount of the Secured Moneys due from and payable by the User to Western Power at that time under, and in the manner and currency specified in, the Access Contract.

#### 2.2 Costs

The Guarantor must at any present or future time indemnify Western Power upon demand for any cost, charge, expense, disbursement, fee, tax or stamp or other duty incurred by Western Power at any time in connection with the Access Contract, this Guarantee or the Secured Moneys relating to:

- (a) **(security agreements)**: preparation, negotiation, execution or performance, or any termination, amendment, consent, claim, demand or waiver;
- (b) **(security rights)**: any exercise or enforcement of any right or power conferred on Western Power;
- (c) **(credit increases)**: any extension of further, additional or increased credit or financial accommodation by Western Power, or agreement by Western Power to increase the amount secured; and/or
- (d) **(payments)**: the receipt or payment of any moneys, including moneys paid by Western Power by way of reimbursement to any third party.

### 2.3 Set-Off exclusion

The Guarantor must make any payment required under this Guarantee without set-off or other deduction, except for the deduction or withholding of any tax compelled by law.

## 3. Indemnity

The Guarantor must as a separate and additional liability of the Guarantor as a principal debtor, and not as a surety, indemnify Western Power against, and pay to Western Power upon demand by Western Power an amount equal to, all Secured Moneys that are or may become invalid, unenforceable, illegal or irrecoverable for any reason or under any circumstances as a liability to Western Power by the Guarantor as a surety, despite any other provision of this Guarantee.

## 4. Guarantee protection

This Guarantee, and the liability of the Guarantor under this Guarantee, is not affected at any time by:

- (a) **(waiver)**: the granting to any person by Western Power of any waiver;
- (b) **(agreements)**: any agreement, deed or document created with, or action or omission performed, representation made or non-disclosure of any fact or information by, Western Power or any person;
- (c) **(Secured Moneys)**: any increase or variation in the amount of the Secured Moneys occurring for any reason;
- (d) **(document amendment)**: any amendment to or transfer, release or termination of any agreement, deed or document or any right, power or liability of any person under any agreement, whether for or without consideration;
- (e) **(enforcement decisions)**: any exercise or enforcement, or any failure or invalidity in, the exercise or enforcement by Western Power of any right or power conferred on Western Power under any agreement, deed or document or by law;
- (f) **(invalidity)**: any actual or potential invalidity, unenforceability, illegality or irrecoverability of any agreement, deed or document or consent or any payment made or due to Western Power under any agreement for any reason;
- (g) **(incapacity)**: any incapacity or absence of power or authorisation of, or other fact relating to, any person in connection with the execution of any agreement, deed or document or otherwise, including any change in the constitution or membership of any person; or
- (h) **(residual)**: any other breach, default, waiver or fact which, except for this provision, might legally operate:

- (i) to release or discharge or have any prejudicial effect on; or
- (ii) in any manner to release or discharge the Guarantor from performance of, or limit or provide a defence to any legal action to enforce,

this Guarantee, or any liability of the Guarantor under or in connection with this Guarantee.

#### **4.2 Termination**

The Guarantor is not entitled to terminate or limit this Guarantee, or any liability of the Guarantor under this Guarantee, until the Secured Moneys have been paid in full.

### **5. Governing Law**

This Guarantee is governed by and construed under the law of the State of Western Australia.

### **6. General**

#### **6.1 Continuing Security**

This Guarantee is a continuing security and is not wholly or partially discharged by the payment at any time of any Secured Moneys, settlement of account or other fact and applies to the balance of the Secured Moneys at any time until a final termination of this Guarantee by Western Power.

#### **6.2 Further Assurance**

The Guarantor must upon request by Western Power at any time execute any document and perform any action necessary to give full effect to this Guarantee, whether prior or subsequent to performance of this Guarantee.

#### **6.3 Waivers**

Any failure or delay by Western Power to exercise any right or power under this Guarantee does not operate as a waiver and the single or partial exercise of any right or power by Western Power does not preclude any other or further exercise of that or any other right or power by Western Power.

## **SCHEDULE 9 - NEGOTIATED GENERATOR PERFORMANCE STANDARDS**

(NOTE: The Ideal Generator Performance Standards as at the date of this Schedule 9 are those set out in Appendix 12 of the WEM Rules Version \_\_\_\_\_ dated \_\_\_\_\_.)

## Appendix 4 – Model Contributions Policy<sup>738</sup>

{Outline: See section 5.12}<sup>739</sup>

This Appendix 4 leaves some matters to be completed when a *contributions policy* is incorporated into an *access arrangement*. These are shown as variables in square brackets, eg. “[x]”.

The variable can be a simple absolute number or may follow a more sophisticated structure designed by the *service provider* to best suit the characteristics of its *covered network* and business.

The variables proposed by a *service provider* are subject to approval by the *Authority* under Chapter 4, and (without limiting the *Authority’s* discretion or duties) must be consistent with the *Code objective* and section 5.12.

If an *access arrangement* is to include *contributions* in the *capital base* under section 6.51A(b), the *Authority* should consider whether, and if so how, the *contributions policy* in the *access arrangement* should differ from this *model contributions policy*.

This *model contributions policy* does not provide for *contributions* under section 5.17A or a *headworks scheme*. If the *contributions policy* in the *access arrangement* is to provide for *contributions* under section 5.17A or a *headworks scheme*, then the *Authority* should consider how the *contributions policy* should differ from this *model contributions policy*.

Footnotes following each matter in square brackets contain instructions to the *Authority*. The footnotes form part of this *model contributions policy* and, like these introductory notes, have legal effect.<sup>740</sup>

### Subappendix 4.1 – Introductory

#### Definitions and interpretation

A4.1 In this *contributions policy*, unless the contrary intention is apparent<sup>741</sup>

“**Code**” means the *Electricity Networks Access Code 2004*.

“**Code objective**” has the meaning given to it in section 2.1 of the *Code*.

“**new service**” has the meaning given to it in clause A4.4.<sup>742</sup>

<sup>743</sup>

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<sup>738</sup> Heading to Appendix 4 amended by WAGG No 180, 22 October 2008

<sup>739</sup> Appendix 4 amended by WAGG No 207, 8 November 2005

<sup>740</sup> Appendix 4 amended by WAGG No 152, 1 September 2006; Appendix 4 amended by WAGG No 206, 8 December 2006; Appendix 4 amended by WAGG No 137, 29 June 2007; Appendix 4 amended by WAGG No 180, 22 October 2008

<sup>741</sup> Clause A4.1 amended by WAGG No 180, 22 October 2008

<sup>742</sup> Clause A4.1 amended by WAGG No 180, 22 October 2008

<sup>743</sup> Clause A4.1 amended by WAGG No 180, 22 October 2008

“**payment contract**” has the meaning given to it in clause A4.14(a). “**provision in kind**” has the meaning given to it in clause A4.13.

“**provision in kind contract**” has the meaning given to it in clause A4.13(a).

“**reasonable time**” is to be determined in accordance with clause A4.9.

“**relevant applicant**” means an *applicant* seeking a *new service*.

744

A4.2 Unless the contrary intention is apparent, a term with a defined meaning in the *Code* has the same meaning in this *contributions policy*.<sup>745</sup>

A4.3 Unless the contrary intention is apparent:

- (a) a rule of interpretation in the *Code*; and
- (b) the *Interpretation Act 1984*,

apply to the interpretation of this *contributions policy*.<sup>746</sup>

#### **Application of this contributions policy<sup>747</sup>**

A4.4 If it is necessary for a *service provider* to undertake *required work* in order to provide to an *applicant* (“**relevant applicant**”) a *covered service* (“**new service**”) sought in an *access application*, then this *contributions policy* applies.<sup>748</sup>

### **Subappendix 4.2 – Contributions<sup>749</sup>**

#### **Contribution<sup>750</sup>**

A4.5 In this *contributions policy* and subject to clause A4.6, the *contribution* for any *required work* is:

- (a) in respect of the *forecast new facilities investment* in the *required work*:
  - (i) the amount of *forecast new facilities investment* in the *required work* which is permitted to be included in a *contribution* under section 5.14 of the *Code*; plus
  - (ii) a *reasonable rate of return*, determined under clause A4.9, on the amount determined under clause A4.5(a)(i);

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<sup>744</sup> Clause A4.1 amended by WAGG No 180, 22 October 2008

<sup>745</sup> 5 Clause A4.2 amended by WAGG No 180, 22 October 2008

<sup>746</sup> Clause A4.3 amended by WAGG No 180, 22 October 2008

<sup>747</sup> Heading to clause A4.4 amended by WAGG No 180, 22 October 2008

<sup>748</sup> Clause A4.4 amended by WAGG No 180, 22 October 2008

<sup>749</sup> Heading to Sub-appendix 4.2 amended by WAGG No 180, 22 October 2008

<sup>750</sup> Heading to clause A4.5 amended by WAGG No 180, 22 October 2008

and

- (b) in respect of the *non-capital costs* of the *required work*, the amount of forecast *non-capital costs* in the non-capital work which is permitted to be included in a *contribution* under section 5.14 of the *Code*.<sup>751</sup>

A4.6 A *contribution* must not exceed the amount that would be required by a prudent *service provider* acting efficiently, in accordance with *good electricity industry practice*, seeking to achieve the lowest sustainable cost of providing the *new services*.<sup>752</sup>

A4.7 If it is necessary for a *service provider* to undertake *required work* to provide *new services* to more than one *relevant applicant*, the *service provider* must calculate the *contribution* for the *required work* as set out in clause A4.5 and must, acting as a *reasonable and prudent person*, apportion the amount calculated under clause A4.5 between the *relevant applicants* in accordance with the *Code objective* to determine each *relevant applicant's contribution*.<sup>753</sup>

A4.8 If the application of this *contributions policy* in relation to required work produces a *contribution* amount that is greater than zero, the *service provider* is not required to undertake the *required work* unless the *relevant applicant* agrees to provide the *contribution* to the *service provider* in accordance with this *contributions policy*.<sup>754</sup>

#### **Reasonable rate of return**

A4.9 For the purposes of clause A4.5(b), a *reasonable rate of return* is to be determined by the *service provider* as a *reasonable and prudent person* in accordance with the *Code objective* over a *reasonable time* having regard to the risk associated with the *required work*.<sup>755</sup>

A4.10 For the purposes of clause A4.9, a *reasonable time* is to be determined having regard to:

- (a) the anticipated commercial life of any new facility which results from the *required work*, up to a maximum of 15 years; and
- (b) the purpose for which the *relevant applicant* requires the *new services*.<sup>756</sup>

#### **Manner of contribution**

A4.11 A *contribution* may be made:

- (a) by the *relevant applicant* by way of either:
  - (i) subject to clause A4.13, *provision in kind*; or

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<sup>751</sup> Clause A4.5 amended by WAGG No 180, 22 October 2008

<sup>752</sup> Clause A4.6 amended by WAGG No 180, 22 October 2008

<sup>753</sup> Clause A4.7 amended by WAGG No 180, 22 October 2008

<sup>754</sup> Clause A4.8 amended by WAGG No 180, 22 October 2008

<sup>755</sup> Clause A4.9 amended by WAGG No 180, 22 October 2008

<sup>756</sup> Clause A4.10 amended by WAGG No 180, 22 October 2008



- (ii) subject to clauses A4.12 and A4.14, a financial payment comprising either:
    - A. periodic financial payments; or
    - B. an up-front financial payment;

or

  - (b) by the State under the Regional Electricity Supply Policy or otherwise.<sup>757</sup>
- A4.12 The *relevant applicant* may elect under clause A4.11(a)(ii)A to make the *contribution* by way of a periodic financial payment if:
- (a) the *contribution* meets any materiality thresholds below which an periodic financial payment will not apply, for example in terms of one or more of the following in respect of *required work*:
    - (i) a minimum capital cost of \$[x]<sup>758</sup>; or
    - (ii) a minimum amount of \$[x]<sup>759</sup> per period for a periodic financial payment.
  - (b) if requested, the *relevant applicant* provides reasonable security to the *service provider* in the *payment contract* under clause A4.14(a) for the payment of the periodic financial payment over the period referred to in clause A4.10(a).<sup>760</sup>

**Provision of contribution in kind<sup>761</sup>**

- A4.13 The *service provider* may agree to the *relevant applicant* providing or procuring the *required work*, or part of the *required work*, under clause A4.11(a)(i) itself (“**provision in kind**”), in which case:
- (a) the *access contract* or another contract (either in this context a *provision in kind contract*) must deal with the parties’ rights and obligations in relation to the *provision in kind*; and
  - (b) the terms of the *provision in kind contract* are to be negotiated between the *service provider* and the *relevant applicant*, and failing agreement may be the subject of an *access dispute*; and
  - (c) unless the *provision in kind contract* provides otherwise, title to the *required work* passes to the *service provider* on commissioning; and

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<sup>757</sup> Clause A4.11 amended by WAGG No 180, 22 October 2008

<sup>758</sup> To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 5. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

<sup>759</sup> To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 5. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

<sup>760</sup> Clause A4.12 amended by WAGG No 180, 22 October 2008

<sup>761</sup> Heading to clause A4.13 amended by WAGG No 180, 22 October 2008

- (d) if any materiality threshold is met, the *provision in kind contract* must provide for the *service provider* to recoup from other *users* who subsequently benefit from the *required work*, and rebate to the *relevant applicant*, an appropriate amount to reflect the benefit the other *users* receive from the *provision in kind*.<sup>762</sup>

### **Provision of contribution by financial payment<sup>763</sup>**

A4.14 If the *user* elects to make a periodic financial payment under clause A4.11(a)(ii)A or an up-front payment under clause A4.11(a)(ii)B (“**financial provision**”), then:

- (a) the terms of the *access contract* or another contract (either in this context a *payment contract*) must deal with the parties’ rights and obligations in relation to the *financial provision* including (in the case of the up-front payment) regarding security for the *relevant applicant* and must be negotiated between the *service provider* and the *relevant applicant*, and failing agreement may be the subject of an *access dispute*; and
- (b) unless the *payment contract* provides otherwise, title to the *required work* remains with the *service provider* despite the *financial provision*; and
- (c) the *payment contract* must provide:
  - (i) in the case of a periodic payment — for the periodic payments to be adjusted when other *users* subsequently benefit from the *required work*, to ensure that the *relevant applicant* pays no more than a fair share having regard to the benefit the other *users* receive from the *financial provision*; or
  - (ii) in the case of an up-front payment, if any materiality threshold is met — for the *service provider* to recoup from other *users* who subsequently benefit from the *required work*, and rebate to the *relevant applicant*, an appropriate amount to reflect the benefit the other *users* receive from the *financial provision*.<sup>764</sup>

### **Rebates and recoupment**

A4.15 The *contributions policy* may specify materiality thresholds below which any recoupment and rebate mechanism under clause A4.13(d) or A4.14(c)(ii) will not apply, for example in terms of one or more of the following in respect of *required work*:

- (a) a minimum capital cost of \$[x]<sup>765</sup>; or

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<sup>762</sup> Clause A4.13 amended by WAGG No 180, 22 October 2008

<sup>763</sup> Heading to clause A4.14 amended by WAGG No 180, 22 October 2008

<sup>764</sup> Clause A4.14 amended by WAGG No 180, 22 October 2008

<sup>765</sup> To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 5. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

- (b) a minimum amount of \$[x]<sup>766</sup> to be recouped from or rebated to a *user*; or
- (c) a maximum period of [x]<sup>767</sup> months over which the mechanism may operate.<sup>768</sup>

### **Subappendix 4.3 – [Not used]<sup>769</sup>**

A4.16 [Not used]

A4.17 [Not used]

A4.18 [Not used]

A4.19 [Not used]

A4.20 [Not used]

A4.21 [Not used]

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<sup>766</sup> To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 5. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

<sup>767</sup> To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 5. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

<sup>768</sup> Clause A4.15 amended by WAGG No 180, 22 October 2008

<sup>769</sup> Sub-appendix 4.3 comprising clauses A4.16 – A4.21 deleted by WAGG No 180, 22 October 2008

## **Appendix 4A – Transitional Western Power Network Contributions Policy<sup>770</sup>**

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<sup>770</sup> Appendix 4A inserted by WAGG No 134, 30 July 2021

# Contributions Policy

# Contents

<b>1. Defined Terms and Interpretation</b> .....	<b>1</b>
1.1 Defined Terms.....	1
1.2 Interpretation.....	6
<b>2. Applications of this <i>Contributions Policy</i></b> .....	<b>7</b>
<b>3. Lowest Sustainable Cost</b> .....	<b>8</b>
<b>4. <i>Applicant Must Make Contribution</i></b> .....	<b>9</b>
4.1 <i>Applicant Must Make Contribution</i> .....	9
4.2 Payment of <i>GST</i> .....	9
4.3 <i>Applicant Must Provide Security for New revenue</i> .....	9
4.4 Payment of Tax .....	10
<b>5. Amount of <i>Contribution</i></b> .....	<b>11</b>
5.1 Interpretation.....	11
5.2 Calculation of <i>Contribution</i> .....	11
5.3 <i>Reasonable Time</i> .....	11
5.4 Amount of <i>Forecast Costs</i> .....	12
5.5 Forecasting Tax Liability .....	12
<b>6. <i>Distribution Low Voltage Connection Headworks Scheme</i></b> .....	<b>13</b>
6.1 Application .....	13
6.2 <i>Distribution Low Voltage Connection Headworks Scheme Contribution</i> .....	13
6.3 Determination of the <i>Distribution Low Voltage Connection Headworks Scheme Base Charge</i> .....	13
6.4 <i>Distribution Low Voltage Connection Headworks Scheme Prices</i> .....	13
6.5 Exclusion from <i>Distribution Low Voltage Connection Headworks Scheme</i> .....	14
<b>7. General Provisions</b> .....	<b>15</b>
7.1 <i>Connection Assets</i> .....	15
7.2 <i>Non-capital Costs</i> .....	15
7.3 <i>Works Over and Above Standard Works</i> .....	15
7.4 Costs Related to <i>Technical Rules Compliance</i> .....	15
7.5 Temporary Supplies .....	15
<b>8. Manner of <i>Contribution</i></b> .....	<b>16</b>
8.1 Options for Payment.....	16
8.2 When <i>Applicant</i> May Choose Periodic Payment .....	16
8.3 Terms and Amount of Periodic Payment.....	16

8.4	<i>Augmentations Undertaken by Applicants</i> .....	16
<b>9.</b>	<b>Rebates and Recoupment</b> .....	<b>17</b>
9.1	Applicability.....	17
9.2	Parties May Negotiate a Rebate .....	17
9.3	New <i>Applicants</i> Must Pay Rebate .....	18
9.4	<i>Scheme</i> Rebates Determined Under Appendix 8 of the Code .....	18
<b>10.</b>	<b>Obligation to provide information</b> .....	<b>19</b>

# 1. Defined Terms and Interpretation

## 1.1 Defined Terms

In this *contributions policy*, unless the contrary intention is apparent:

**“access arrangement”** means the current *access arrangement* approved in respect of the *network* under the *Code*.

**“access contract”** has the same meaning given to it in the *Code*.

{Note: Under the *Code* “access contract” has the same meaning as “access agreement” does in Part 8 of the Act, and under section 13.4(d) includes a *deemed access contract*. The definition of “**access agreement**” under the *Act* is “an agreement under the *Code* between a network service provider and another person (a “network user”) for that person to have access to services”.

**“Act”** means the *Electricity Industry Act 2004*.

**“additional revenue”** has the same meaning as given to it in the *Code*.

{Note: Under the *Code* “additional revenue” has the meaning given to it in section 6.42 of the *Code* when used in section 6.41 of the *Code*.}

**“alternative options”** means alternatives to part or all of a *network* enhancement, including demand-side management and *generation* solutions (such as distributed *generation*) either instead of or in combination with a *network* enhancement.

**“alternative option contribution”** means a *contribution* made, or to be made, by an *applicant* in respect of an *alternative option*.

**“alternative option test”**, in respect of the *network*, means the test set out in section 6.41 of the *Code*.

**“anticipated incremental revenue”** has the same meaning given to it in the *Code*.

{Note: Under the *Code* “anticipated incremental revenue” for a new facility means “the present value (calculated at the *rate of return* over a reasonable period) of the increased income from *charges* (excluding any *contributions*) reasonably anticipated to arise from the increased sale of *covered services* on the *network* to one or more *users* (where “increased sale of *covered services*” means sale of *covered services* which would not have occurred had the *new facility* not been commissioned),

minus

the present value (calculated at the *rate of return* over the same period) of the best reasonable forecast of the increase in *non-capital costs* directly attributable to the increased sale of the *covered services* (being the *covered services* referred to in the expression “increased sale of *covered services*” in paragraph (a) of this definition).}

**“Appendix 8 work”** has the same meaning given to it in the *Code*.

{Note: Under the *Code* “Appendix 8 work” means “work in connection with the *Western Power Network* of a type specified in clause A8.2 of Appendix 8”.

**“applicant”** means a person (who may be a *user*, a *customer* or a *developer*) who has lodged, or intends to lodge, a *connection application*, and includes a person who does so on behalf of another person.

**“applications and queuing policy”** means the *applications and queuing policy* (as defined in the *Code*) in the *access arrangement*.



**“augmentation”** has the same meaning as given to it in the *Code*.

{Note: Under the *Code* "augmentation" in relation to a *covered network*, means "an increase in the capability of the *covered network* to provide *covered services*".}

**“Authority”** has the same meaning as given to it in the *Code*.

{Note: Under the *Code* "Authority" means "the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003*".}

**“bidirectional point”** has the same meaning given to it in the *applications and queuing policy*.

{Note: Under the *applications and queuing policy* "bidirectional point" means "a single, indivisible (except as allowed under this *applications and queuing policy*) point, that for purposes under the *access arrangement* involving the transfer of electricity, is deemed to consist of a single *attachment point*, *connected* or to be *connected* to a *user’s connection point*, with a single *meter* (regardless of the actual configuration of *network assets* making up the *bidirectional point*), at which electricity is to be transferred into and out of the *network*".}

**“bidirectional service”** means a *covered service* provided by Western Power at a *connection point* under which the *user* may transfer electricity into and out of the *network* at the *connection point*.

**“capital contribution”** has the same meaning given to it in the *Code*.

{Note: Under the *Code* "capital contribution" means "a payment or provision in kind made, or to be made, by a *user* in respect of any *new facilities investment in required work*".}

**“Code”** means the *Electricity Networks Access Code 2004* (as amended).

**“connect”** has the same meaning given to it in the *Code*.

{Note: Under the *Code* "connect" means "to form a physical link to or through a *network*".}

**“connection application”** means an application lodged with Western Power under the *applications and queuing policy* that has the potential to require a modification to the *network*, including an application to:

- (a) *connect facilities and equipment* at a new *connection point*; or
- (b) increase *consumption* or *generation* at an existing *connection point*; or
- (c) materially modify *facilities and equipment connected* at an existing *connection point*; or
- (d) augment the *network* for any other reason,

{Note: this might be, for example, to service a subdivision.}

and includes any additional information provided by the *applicant* in regard to the application.

**“connection assets”** has the same meaning given to it in the *Code*.

{Note: Under the *Code* "connection assets" for a *connection point*, means "all of the *network assets* that are used only in order to provide *covered services* at the *connection point*".}

**“connection point”** means an *exit point* or an *entry point* or a *bidirectional point* identified or to be identified as such in an *access contract*.

**“consume”** has the same meaning given to it in the *Code*.

{Note: Under the *Code* "consume" means "to *consume* electricity".}

**“consumption”**, for a *connection point*, means the amount of electricity *consumed* at the *connection point*, and is measured in Watt-hours.

**“contracted capacity”** means the maximum rate at which a *user* is permitted to transfer electricity at a *connection point* under the *user’s access contract*.

**“contribution”** has the same meaning given to it in the *Code*, but also includes an *alternative option contribution*.

{Note: Under the *Code* "contribution" means "a *capital contribution*, a *non-capital contribution* or a *headworks charge*".}

**“contributions policy”** has the same meaning given to it in the *Code*.

{Note: Under the *Code* "contributions policy" means "a policy in an *access arrangement* under section 5.1(h) dealing with *contributions by users*".}

**“contributions rate of return”** means the rate of return most recently approved by the *Authority* for use in *price control* for the *network*.

**“covered service”** has the same meaning given to it in the *Code*.

{Note: Under the *Code* "covered service" means "a service provided by means of a *covered network*, including:

- (a) a *connection service*; or
  - (b) an *entry service*, *exit service* or *bidirectional service*; or
  - (c) a network use of system service; or
  - (d) a *common service*; or
  - (e) a *service* ancillary to a service listed in paragraph (a) to (d) above,
- but does not include an *excluded service*".}

**“cpi”** means the “all capitals consumer price index” as defined by the Australian Bureau of Statistics.

**“customer”** has the meaning given to it in the *Act*.

**“distribution low voltage connection headworks scheme”** means the scheme described in clause 6 of this *contributions policy*.

**“distribution low voltage connection headworks scheme application”** means a *connection application* where the proposed or existing *connection point* for a new or upgraded *connection* is to the *distribution system low voltage network* and is within 25 kms of the *relevant zone substation*.

**“distribution low voltage connection headworks scheme base charge”** means the value determined in accordance with section 6.3 of this *contributions policy*.

**“distribution low voltage connection headworks scheme contribution”** means a *contribution* in respect of the *distribution low voltage connection headworks scheme*.

**“distribution low voltage connection headworks scheme works”** with respect to a *distribution low voltage connection headworks scheme application*, means *works* on the *distribution system* reasonably adjacent to the *connection point* (to which the *distribution low voltage connection headworks scheme application* relates) that directly provides for delivery of electricity capacity to that *connection point* and that may include switchgear, *HV* cable, transformers, *low voltage* cable and ancillary equipment.

**“distribution system”** has the same meaning given to it in the *Code*, but excludes equipment within zone substations used for the transportation of electricity at nominal voltage of less than 66 kV.

{Note: Under the *Code* “distribution system” means “any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of less than 66 kV”.

**“entry point”** has the same meaning given to it in the *applications and queuing policy*.

{Note: Under the *applications and queuing policy* "entry point" means "a single, indivisible (except as allowed under this applications and queuing policy) point, that for purposes under the *access arrangement* involving the transfer of electricity, is deemed to consist of a single *attachment point, connected* or to be *connected* to a *user's connection point*, with a single *meter* (regardless of the actual configuration of *network assets* making up the *entry point*), at which electricity is more likely to be transferred into the *network* than out of the *network*".}

**"entry service"** has the same meaning given to it in the *applications and queuing policy*.

{Note: Under the *applications and queuing policy* "entry service" means "a *covered service* provided by Western Power at a *connection point* under which the *user* may transfer electricity into the *network* at the *connection point*".}

**"exit point"** has the same meaning given to it in the *applications and queuing policy*.

{Note: Under the *applications and queuing policy* "exit point" means "a single, indivisible (except as allowed under this applications and queuing policy) point, that for purposes under the *access arrangement* involving the transfer of electricity, is deemed to consist of a single *attachment point, connected* or to be *connected* to a *user's connection point*, with a single *meter* (regardless of the actual configuration of *network assets* making up the *exit point*), at which electricity is more likely to be transferred out of the *network* than into the *network*".}

**"exit service"** has the same meaning given to it in the *applications and queuing policy*.

{Note: Under the *applications and queuing policy* "exit service" means "a *covered service* provided by Western Power at a *connection point* under which the *user* may transfer electricity out of the *network* at the *connection point*".}

**"facilities and equipment"** has the same meaning given to it in the *Code*.

{Note: Under the *Code*, "facilities and equipment" in relation to a *connection point*, means "the apparatus, equipment, plant and buildings used for or in connection with *generating, consuming* and *transporting* electricity at the *connection point*".}

**"forecast costs"** means any or all of the *forecast new facilities investment* or the *forecast alternative option costs*, as applicable, to be incurred by Western Power with regards to *works*.

**"forecast new facilities investment"** has the same meaning given to it in the *Code*.

{Note: Under the *Code* "forecast new facilities investment" for a *covered network* means "the capital costs forecast to be incurred in developing, constructing and acquiring new *network assets* for the *covered network*".}

**"generation"**, for a *connection point*, means the amount of electricity *generated* at the *connection point*, and is measured in kilowatts.

**"good electricity industry practice"** has the same meaning given to it in the *Code*.

{Note: Under the *Code* "good electricity industry practice" means "the exercise of that degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably and ordinarily exercise under comparable conditions and circumstances consistent with applicable *written laws* and *statutory instruments* and applicable recognised codes, standards and guidelines".}

**"GST"** means Goods and Services Tax.

**"HV"** means the high voltage level of the *distribution network* where the voltage is greater than 6 kV and less than 66 kV.

**"low voltage"** means the low voltage level of the *distribution system network* where the voltage is less than 1 kV.

**"minimum practical works"** with regard to *covered services* sought by an *applicant*, means the minimum *works* Western Power must undertake, acting efficiently in accordance with *good electricity industry practice*, to provide only those *covered services* required by that *applicant*.

**"network"** has the meaning given to "Western Power Network" in the *Code*.

{Note: Under the *Code* "Western Power Network" means "the *covered network* that is *covered* under section 3.1". The "Western Power Network" is the portion of the SWIN that is owned by the Electricity Networks Corporation.}

**"network assets"** has the same meaning given to it in the *Code*.

{Note: Under the *Code* "network assets", in relation to a *network* means "the apparatus, equipment, plant and buildings used to provide or in connection with providing *covered services* on the *network*, which assets are either *connection assets* or *shared assets*".}

**"new facilities investment"** has the same meaning as given to it in the *Code*.

{Note: Under the *Code* "new facilities investment" means, for a new facility, "the capital costs incurred in developing, constructing and acquiring the new facility".}

**"new facilities investment test"** has the same meaning as given to it in the *Code*.

{Note: Under the *Code* "new facilities investment test" means, in respect of a *covered network*, "the test set out in section 6.52".}

**"new revenue"** means the *anticipated incremental revenue* or *additional revenue* or both, as applicable, with respect to *works*.

**"non-capital contribution"** means a payment or provision in kind made, or to be made, by a *user* in respect of any *non-capital costs* (or forecast *non-capital costs*) of *required work*.

**"non-capital costs"** means the *non-capital costs* (as defined in the *Code*), but excluding *alternative option costs*, to be incurred by Western Power with regards to *works*.

**"price control"** has the same meaning as given to it in the *Code*.

{Note: Under the *Code* "price control" means "the provisions in an *access arrangement* under section 5.1(d) and Chapter 6 of the *Code* which determine *target revenue*".}

**"reasonable and prudent person"** means a person acting in good faith and in accordance with *good electricity industry practice*.

**"reasonable time"** means the time determined in accordance with clause 5.3.

**"relevant distribution transformer"** with respect to the *distribution low voltage connection headworks scheme* and a *connection application* means the transformer from which the new or upgraded *connection* (to which that *connection application* relates) will be supplied under normal system operating conditions.

**"relevant zone substation"** means the zone substation to which the new or upgraded *connection* will be connected under normal system operating conditions.

**"required work"** means *work* which is necessary in order to provide a *covered service* sought in a *connection application*.

**"retailer"** has the meaning given to it in the *Act*.

**"scheme"** has the same meaning as given to it in Appendix 8 of the *Code*.

**"service provider"** has the same meaning given to it in the *Code*.

{Note: Under the *Code* "service provider" in relation to a *network* means "a person who owns or operates the *network*".}

**"shared assets"** has the same meaning given to it in the *Code*.

{Note: Under the *Code* "shared assets" means "those *network assets* which are not *connection assets*".}

**"SWIS"** is the South West Interconnected System and it has the meaning given to it in the *Code*.

{Note: Under the *Code* "SWIS" has the meaning as given to it in the Act, being "the interconnected transmission and distribution systems, generating *works* and associated *works* -

- (a) located in the South West of the State and extending generally between Kalbarri, Albany and Kalgoorlie; and
- (b) into which electricity is supplied by -
  - (i) one or more of the electricity *generation* plants at Kwinana, Muja, Collie and Pinjar; or
  - (ii) any prescribed electricity *generation* plant".}

**"technical rules"** means the *technical rules* (as defined in the *Code*) applying from time to time to the *network* under Chapter 12 of the *Code*, as modified in accordance with the *Code*.

**"transmission system"** has the same meaning given to it in the *Code*, but also includes equipment within zone substations used for the transportation of electricity at nominal voltage of less than 66 kV.

**"user"** has the same meaning given to it in the *Code*.

{Note: Under the *Code* "user" means "a person, including a *generator* or a *consumer*, who is a party to a contract for services with a *service provider*, and under section 13.4(e) includes an *other business* as a party to a *deemed access contract*".}

**"WEM rules"** means the 'market rules' referred to in section 123(1) of the *Act*, and includes all rules, policies or other subordinate documents developed under the WEM Rules.

**"works"** includes *distribution low voltage connection headworks scheme works* and all *works* required to be undertaken to provide an *applicant* with the *covered services* sought by the *applicant* in a *connection application*, including *works* associated with:

- (a) *augmentation of connection assets*;
- (b) *augmentation of shared assets*;
- (c) *alternative options*; and
- (d) other *non-capital works*.

## 1.2 Interpretation

- (a) Unless the contrary intention is apparent:
  - (i) a rule of interpretation in the *Code*; and
  - (ii) the Interpretation Act 1984

apply to the interpretation of this *contributions policy*.

- (b) Unless:
  - (i) the *contrary* intention is apparent; or
  - (ii) the term has been redefined in clause 1.1,

a term with a defined meaning in the *Code* has the same meaning in this *contributions policy*.

## 2. Applications of this Contributions Policy

- (a) Subject to (b), and (c) below, this *contributions policy* applies if it is necessary for Western Power to perform *works* to provide *covered services*.
- (b) If the *works* required for Western Power to provide the *covered services* sought by an *applicant* are *Appendix 8 works*, then the *contribution* for those *works* is the amount determined under and in accordance with Appendix 8 of the *Code*. For the avoidance of doubt, any such *contribution* is to be paid in addition to any *contribution* payable under this *contributions policy*.
- (c) An *applicant* is required to pay a *contribution* for *works* in any (including any combination of) the following circumstances:
  - (i) in the case of *new facilities investment*, where the capital costs incurred in relation to the relevant *works* do not satisfy the *new facilities investment test*;
  - (ii) in the case of *works* related to *alternative options*, where the *non-capital costs* associated with such *works* do not satisfy the requirements of clause 6.41(b) of the *Code*;
  - (iii) in the case of non-capital *works* including *alternative options*, where the costs of the *works* were not included, and could not reasonably have been included, in forecasts of *non-capital costs* taken into account in setting the *price control*; or
  - (iv) where the *works* meet the requirements of clause 6 of this *contributions policy* (*distribution low voltage connection headworks scheme*).

### 3. Lowest Sustainable Cost

A *contribution* with respect to *covered services* sought by an *applicant* must not exceed the amount that would be required by a prudent *service provider* acting efficiently, in accordance with *good electricity industry practice* seeking to achieve the lowest sustainable cost of providing the *covered services*.

## 4. Applicant Must Make Contribution

### 4.1 Applicant Must Make Contribution

- (a) Subject to paragraph (b) of this clause 4.1, if the application of this *contributions policy* in relation to the *works* produces a *contribution* amount that is greater than zero, Western Power is not required to undertake the *works* in respect of a *connection application* for a *covered service* until the *applicant* enters into a contract with Western Power under which the *applicant* agrees to provide the *contribution*, including any *GST* liability, to Western Power in accordance with this *contributions policy*.
- (b) If the *work* falls within the class of *distribution low voltage connection headworks scheme works*, Western Power must undertake and fund the *work* whether or not the *work* is a *required work*. This does not excuse the *applicant* from any obligations to make a *contribution* under this *contributions policy*.

### 4.2 Payment of GST

The payment of a *contribution* may be subject to *GST* and, if so, Western Power will request an *applicant* to pay an additional amount equal to Western Power's *GST* liability. Western Power may request payment of this additional amount at the time Western Power's *GST* liability arises.

### 4.3 Applicant Must Provide Security for New revenue

- (a) Western Power may require an *applicant* to provide security under this clause if Western Power determines there to be a risk of not receiving the *estimated new revenue*.
- (b) Western Power may require the *applicant* to provide security in the form of an unconditional, irrevocable bank guarantee, or equivalent financial instrument in terms acceptable to Western Power guaranteeing *new revenue* in the amount of:
  - (i) the *estimated new revenue* (where the *estimated new revenue* is less than the *allocated forecast costs*); or
  - (ii) the *allocated forecast costs* (where the *estimated new revenue* is more than the *allocated forecast costs*).
- (c) Where Western Power requires security under clause 4.3(b), the *applicant* must provide it before the commencement of the *works* the subject of the *connection application*.
- (d) Where an *applicant* has provided security under clause 4.3(c), then 24 months after the commencement of the associated *exit service*, *entry service*, or *bidirectional service* Western Power will reconsider the risk of not receiving the *estimated new revenue* (based on the then expected use of those *services*) and if that risk:
  - (i) no longer remains, Western Power will return the security;
  - (ii) remains, but has abated, Western Power may reduce the amount of the security by requiring a new security for the reduced amount; or
  - (iii) has crystallised (such that some or all of the *estimated new revenue* will not be recovered by Western Power), Western Power will re-determine the *contribution* under this *contributions policy* and recover from the *applicant* any difference from the amount of any original *contribution* and, after that recovery, return the security.



(e) In applying this clause Western Power will act as a *reasonable and prudent person*.

(f) For the purposes of this clause 4.3:

“**estimated new revenue**” means the amount calculated under clause 5.2(d).

“**allocated forecast costs**” means the amount of the *forecast costs* allocated to the *applicant* under clause 5.4.

#### **4.4 Payment of Tax**

The receipt by Western Power of a *contribution* may result in Western Power incurring a tax liability (whether under Commonwealth or State income tax and other legislation or under a tax equivalent regime applicable to Western Power as a government owned enterprise) and Western Power may recover from the *applicant*, as part of the *contribution* payable by the *applicant*, Western Power’s forecast of the net tax liability it will incur as a result of the receipt of such *contribution*. For the avoidance of doubt, this clause 4.4 and clause 5.5 do not deal with liability for *GST*, which is dealt with in clause 4.2.

## 5. Amount of Contribution

### 5.1 Interpretation

- (a) For the avoidance of doubt, this clause 5 is to be read subject to the provisions of clauses 2 and 6 of this *contributions policy*.
- (b) For the purposes of this clause 5:
  - (i) the definition of '*new facilities investment test*' is that set out in section 6.52 of the *Code*, but without having regard to subsection 6.52(b)(i) thereof; and
  - (ii) the definition of '*alternative option test*' is that set out in section 6.41 of the *Code*, but without having regard to subsection 6.41(b)(i) thereof.

### 5.2 Calculation of Contribution

The *contribution* payable in respect of any *works* to which this *policy* applies is calculated by:

- (a) determining the appropriate portion of any of the *forecast costs* of the *works* (excluding *distribution low voltage connection headworks scheme works*, but including any *works* relating to a *distribution low voltage connection headworks scheme application* excluded from clause 6 by clause 6.5), which do not meet the *new facilities investment test* or the *alternative option test* (as applicable) to allocate to the *applicant* under clause 5.4; and
- (b) adding any applicable amount calculated under clause 6.3 (*distribution low voltage connection headworks scheme base charge*); and
- (c) adding any applicable amount calculated under clause 7.4; and
- (d) deducting the amount likely to be recovered in the form of *new revenue* gained from providing *covered services* to the *applicant*, or, if the *applicant* is a *customer* (including residential *customers*), to the *customer's retailer*, as calculated over the *reasonable time*, at the *contributions rate of return*; and
- (e) adding any applicable amount calculated under clauses 7.1, 7.3 and 7.5; and
- (f) adding any tax liability (of the nature referred to in clause 4.4) which Western Power forecasts it will incur due to the receipt of the amount payable under paragraphs (a) to (e) of this clause 5.2, as calculated in accordance with clause 5.5; and
- (g) adding any applicable amount calculated under clause 7.2.

### 5.3 Reasonable Time

For the purposes of this *contributions policy*, the *reasonable time* is to be determined by Western Power, as a *reasonable and prudent person*, having regard to:

- (a) the anticipated commercial life of the *works*, up to a maximum of 15 years; and
- (b) the purpose for which the *applicant* requires the *covered services*.

{Note: For example, if the *applicant* is proposing to build a plant with an expected 5 year operating life, then the *reasonable time* might be 5 years or less.}

## 5.4 Amount of Forecast Costs

- (a) Western Power may, acting as a *reasonable and prudent person*, determine that the amount of the *forecast costs* to be allocated to the *applicant* for the purposes of clause 5.2(a) is:
  - (i) the full amount of the *forecast costs*; or
  - (ii) an amount determined under clauses 5.4(b) to 5.4(e).
- (b) If Western Power chooses to undertake *works* in excess of the *minimum practical works* to provide *covered services* sought by an *applicant*, then Western Power will determine that the amount of costs allocated to the *applicant* are the *forecast costs* of the *minimum practical works*.
- (c) If:
  - (i) Western Power reasonably expects to receive *tariff* income from future *applicants*, because of *works* to provide *covered services* sought by an *applicant*, within a period of 10 years, (or such longer period as reasonably determined by Western Power acting as a *reasonable and prudent person*), of the original *applicant's connection application*; or
  - (ii) an *applicant* seeks a *covered service* that will make use of *works* undertaken to provide *covered services* to a previous *applicant*, within a period of 10 years, (or such longer period as reasonably determined by Western Power acting as a *reasonable and prudent person*), of the original *applicant's connection application*, and for which the original *applicant* paid a *contribution* calculated under clause 5.2;then Western Power will apportion the costs based on the relative use of the *works* by the *applicant* compared to the relative use of the *works* expected to be sought by those future *applicants*, or the relative use of the *works* sought by previous *applicants*, or both, as applicable.
- (d) If Western Power has received more than one *connection application* requiring the same *works*, then Western Power may negotiate with the *applicants* under the *applications and queuing policy* to apportion the *forecast costs* of the *works* between the *applicants*, based on the relative use of the *works* sought by each *applicant*.
- (e) If *works* to provide *covered services* to an *applicant* provide specific savings to Western Power in performing its legal obligations, then Western Power will determine that the costs to be allocated to the *applicant* are the *forecast costs* less the amount saved.

## 5.5 Forecasting Tax Liability

For the purposes of determining the costs representing Western Power's tax liability arising due to receipt of an amount calculated under paragraphs (a) to (e) of clause 5.2, Western Power must estimate the net tax liability, with respect to the *contribution*, it will incur over the life of the assets to which the *contribution* relates. The calculation of the grossed up tax expense takes into account the circularity arising from the payment of tax costs by the *customer*, the dividend imputation franking credit passed through to Western Power's shareholder and the statutory tax depreciation benefit which offsets the tax costs incurred by Western Power.

## **6. Distribution Low Voltage Connection Headworks Scheme**

### **6.1 Application**

Subject to clause 6.5 this *distribution low voltage connection headworks scheme* applies to an *applicant* that falls within the class of *applicant* that may make a *distribution low voltage connection headworks scheme application* and where the *works* required to meet the requirements of the *connection application* of that *applicant* are *distribution low voltage connection headworks scheme works*.

### **6.2 Distribution Low Voltage Connection Headworks Scheme Contribution**

- (a) If, in accordance with *good electricity industry practice*, Western Power reasonably considers that the *forecast costs* of *distribution low voltage connection headworks scheme works* (required to meet the requirements of the *connection application* of an *applicant*) over a 15 year period exceed the amount of *new revenue* likely to be gained from providing *covered services* using those *distribution low voltage connection headworks scheme works* to *distribution low voltage connection headworks scheme applicants* over that period, then, upon receiving the *distribution low voltage connection headworks scheme application* of that *applicant*, Western Power will, in accordance with this clause 6, require a *distribution low voltage connection headworks scheme contribution* from the *applicant*.
- (b) Where a *distribution low voltage connection headworks scheme contribution* is made by an *applicant* no further *contribution* shall be required from the *applicant* for the *distribution low voltage connection headworks scheme works* for which that *distribution low voltage connection headworks scheme contribution* was made.
- (c) For the purpose of this *contributions policy* a *distribution low voltage connection headworks scheme contribution* is a *capital contribution*.

### **6.3 Determination of the Distribution Low Voltage Connection Headworks Scheme Base Charge**

The *distribution low voltage connection headworks scheme base charge* is determined by:

- (a) identifying the *applicant's* incremental electrical capacity requirement:
  - (i) by deducting from the *applicant's* required electrical capacity, the original design capacity for a greenfield development on an existing serviced lot as determined by Western Power's policies and procedures from time to time; or
  - (ii) as the *applicant's* required electrical capacity sought in the *distribution low voltage connection headworks scheme application* for an un-serviced lot.
- (b) determining whether the location of the *connection point* (to which the *connection application* relates) is on a land lot separate from the *relevant distribution transformer*; and
- (c) applying the parameters determined under 6.3(a) and 6.3(b) to the prices determined in clause 6.4.

### **6.4 Distribution Low Voltage Connection Headworks Scheme Prices**

The methodology used to develop the *distribution low voltage connection headworks scheme prices* is described in Appendix C (*Distribution low voltage connection headworks scheme Methodology*) of this *Access Arrangement*.

- (a) The *distribution low voltage connection headworks scheme* price is expressed as \$ per kVA.
- (b) The *distribution low voltage connection headworks scheme* prices will vary depending on:
  - (i) whether the incremental capacity requirement at the *connection point* determined under clause 6.3(a) is:
    - (A) less than 216 kVA; or
    - (B) between 216 kVA and 630 kVA; or
    - (C) greater than 630 kVA, and
  - (ii) whether the location of the *connection point* is on a land lot separate from the *relevant distribution transformer*.

## **6.5 Exclusion from *Distribution Low Voltage Connection Headworks Scheme***

The methodology used to develop the *distribution low voltage connection headworks scheme* exclusion threshold is described in Appendix C (*Distribution Low Voltage Connection Headworks Scheme Methodology*) of this *Access Arrangement*.

A *distribution low voltage connection headworks scheme application* is excluded from the provisions of this clause 6 where the *forecast costs of works* (as determined assuming clause 5.4 applies to those *works*) is in excess of the *distribution low voltage connection headworks scheme base charge* plus the exclusion threshold. For the purposes of applying this clause 6.5, only the cost of those *works* which would otherwise fall within the *distribution low voltage connection headworks scheme* apply.

Where a *distribution low voltage connection headworks scheme application* is excluded, the *contribution* is determined under this *contributions policy* excluding the provisions of this clause 6.

## 7. General Provisions

For the avoidance of doubt, this clause 7 is to be read subject to the provisions of clause 2 of this *contributions policy*.

### 7.1 Connection Assets

The *applicant* must pay the full *forecast costs* of any *works* to provide *connection assets*.

### 7.2 Non-capital Costs

The *applicant* must pay to Western Power the full amount of any *non-capital costs* that Western Power incurs in performing *works*, which in any case must not exceed such costs that would be incurred by a prudent *service provider* acting efficiently in accordance with *good electricity industry practice*.

{Note: these costs might include, for example, adjusting protection settings, reprogramming computer equipment and so on.}

### 7.3 Works Over and Above Standard Works

If an *applicant* seeks a *covered service* that is better or different in some respect than an equivalent *service* in the *technical rules* or an equivalent *reference service* in the *access arrangement*, then the *applicant* must pay to Western Power:

- (a) a *contribution* calculated under this *contributions policy* for the equivalent *service*; and
- (b) the difference between the *forecast costs* of the *works* required to provide the equivalent *service* and the *forecast costs* of the *works* required to provide the better or different *service*, to the extent that the better or different *service* does not otherwise meet those parts of the *new facilities investment test* dealing with *net benefit*, safety or reliability.

{Note: this could be, for example, a design philosophy delivering increased security of supply}

### 7.4 Costs Related to Technical Rules Compliance

- (a) The *applicant* must pay a *contribution* calculated under this *contributions policy* in respect of any *works* required to upgrade the fault level ratings of *network assets*, or any other *works* required to ensure that Western Power complies with the *technical rules* with respect to the *network assets*.
- (b) The *applicant* must pay all of its own costs in relation to ensuring that its *facilities and equipment* comply with the *technical rules* and with any requirements of the *WEM rules* (including any Registered Generator Performance Standards (as that term is defined in the *WEM rules*)) applicable to those *facilities and equipment*.

### 7.5 Temporary Supplies

The *contribution* to be paid by an *applicant* who seeks a temporary supply is, if no applicable amount is published on Western Power's website, an amount equal to the full *forecast costs* of the *required works*.

## 8. Manner of Contribution

### 8.1 Options for Payment

A *contribution* may be made:

- (a) by the *applicant* by way of a financial payment comprising either:
  - (i) periodic financial payments, subject to clause 8.2; or
  - (ii) an upfront financial payment;
- (b) by the Western Australian Government under any appropriate government policy; or
- (c) by the *applicant* undertaking the *augmentation* and transferring ownership of the *augmentation*, subject to clause 8.4.

Where the *contribution* is greater than \$1,000,000, the *applicant* and Western Power may negotiate to adjust the *contribution* to reflect actual costs of the *required works* determined after the completion of the *works*. This does not exclude the *applicant* from any obligations to pay a *contribution* under this *contributions policy*.

### 8.2 When Applicant May Choose Periodic Payment

The *applicant* may not elect under clause 8.1(a)(i) to make the *contribution* by way of a periodic financial payment unless the total amount of the *contribution* exceeds \$50,000.

### 8.3 Terms and Amount of Periodic Payment

- (a) If the *applicant* elects to make a *contribution* by way of periodic financial payment under clause 8.2, then:
  - (i) the maximum term over which the periodic payments may be made is 5 years;
  - (ii) interest will be payable on each periodic payment, at a reasonable commercial rate to be negotiated between Western Power and the *applicant*; and
  - (iii) Western Power (acting as a *reasonable and prudent person*) may require the *applicant* to procure an unconditional, irrevocable bank guarantee, or equivalent financial instrument, in terms acceptable to Western Power, guaranteeing the *contribution*.

### 8.4 Augmentations Undertaken by Applicants

- (a) An *applicant* may, with Western Power's approval, construct an *augmentation* of the *network*.
- (b) Where an *applicant*, in accordance with (a) above, constructs an *augmentation* of the *network*, the *applicant* shall agree to transfer the ownership of the *augmentation* to Western Power on such reasonable terms and conditions as may be stipulated by Western Power (after Western Power has tested the *augmentation* and certified that it meets the applicable technical standards) but in no circumstance will Western Power become obliged to make any payment to the *applicant* or any other person with respect to the *augmentation*.

{Note: An *applicant* is required to pay to Western Power the fees set by Western Power from time to time associated with Western Power testing the *augmentation* to establish that it meets the applicable technical standards for the *augmentation* to connect to the *network*.}

## 9. Rebates and Recoupment

### 9.1 Applicability

This clause 9 does not apply to *contributions* made under clause 6 (*distribution low voltage connection headworks scheme*) of this *contributions policy*.

### 9.2 Parties May Negotiate a Rebate

(a) Where:

- (i) an *applicant* has paid a *contribution*, or is paying a *contribution* in the form of periodic payments, for *works* with respect to a *connection point*; and
- (ii) the value of the *contribution* is in excess of \$1,000,000,

then Western Power and the *applicant* may negotiate to require Western Power to provide a rebate in circumstances where a subsequent *applicant* associated with a different *connection point* benefits from the *works* or a part of the *works* in respect of the original *connection point*. The rebate can only be in relation to assets, the costs of which were included in the calculation of the original *contribution* under this *contributions policy*.

(b) Where:

- (i) an *applicant* has paid a *contribution*, or is paying a *contribution* in the form of periodic payments, for *works* with respect to a *connection point* for which the full *forecast costs* of the *works* were allocated to the *applicant* under clause 5.4;
- (ii) at the time that the *works* are carried out, it is only the *applicant* who will benefit from the *works* in relation to that *connection point*; and
- (iii) the value of the *contribution* is in excess of \$200,000 but less than \$1,000,000,

then Western Power and the *applicant* may negotiate to require Western Power to provide a rebate in circumstances where a subsequent *applicant* associated with a different *connection point* benefits from the *works* or a part of the *works* in respect of the original *connection point*.

(c) Where:

- (i) an *applicant* has paid a *contribution*, or is paying a *contribution* in the form of periodic payments, for *works* with respect to a *connection point* for which the full *forecast costs* of the *works* were allocated to the *applicant* under clause 5.4;
- (ii) at the time that the *works* are carried out, it is only the *applicant* who will benefit from the *works* in relation to that *connection point*; and
- (iii) the value of the *contribution* is less than or equal to \$200,000,

then Western Power and the *applicant* may negotiate to require Western Power to provide a rebate in circumstances where a subsequent *applicant* associated with a different *connection point* benefits from the *works* or a part of the *works* within 10 years of the date that the *contribution* was paid, or periodic payments of the *contribution* began, in respect of the original *connection point*.

(d) Any negotiated rebate will be payable to the *customer* or the *user* associated with that *connection point* at the time of the *rebate* being payable.

(e) The amount of a rebate given to a *user* or *customer* under clause 9.2(a), (b) or (c) is determined by apportioning the amortised *contribution* paid in respect of the original *connection point*



between the *user* or *customer* associated with the original *connection point* and each subsequent *applicant* based on the relative *contracted capacity* of each party, where the *contribution* is amortised completely in a straight line over 10 years.

- (f) Western Power is not under any obligation to pay any rebate for a *contribution* to any *user* or *customer* under any circumstance other than that expressly provided for under clause 9.2(a), (b) or (c).

### **9.3 New Applicants Must Pay Rebate**

Where Western Power must pay a rebate to a *user* or a *customer* in respect of a *connection point* under clause 9.2, each subsequent *applicant* that triggers such a rebate must pay to Western Power an upfront amount equivalent to the rebate.

### **9.4 Scheme Rebates Determined Under Appendix 8 of the Code**

Nothing in this clause 9 affects the obligations of Western Power to pay a member of a *scheme* a rebate in accordance with the provisions of Appendix 8 of the *Code*.

## 10. Obligation to provide information

Upon request from an *applicant*, and in respect of a *contribution* for *works*, Western Power will provide the *applicant* with the following information:

- (a) where the *contribution* is in respect of *new facilities investment*, details of assessment of the *new facilities investment* against the requirements of the *new facilities investment test* and details of the calculation of the amount that does not meet the *new facilities investment test*;
- (b) where the *contribution* is made in respect of *non-capital costs* related to *alternative options*, details of assessment of the *non-capital costs* against the *alternative options test* and details of the calculation of the amount that does not satisfy the *alternative options test*;
- (c) details of assumptions and calculations applied in the apportionment of any forecast cost of *works* between the *user* or *applicant* and other *users* or *applicants* or Western Power under clause 5.4 of this *contributions policy*; and
- (d) details of the calculation of a *distribution low voltage connection headworks scheme contribution* under clause 6 of this *contributions policy*.

## Appendix 5 – Procedural Rules for Arbitration

{Outline: See section 10.2.}

### Application

- A5.1 This Appendix 5 applies if:
- (a) in accordance with the *Code*, a *service provider* or another person notifies the *Authority* that an *access dispute* exists; and
  - (b) notification of the dispute is not withdrawn in accordance with the *Code*.

### Definitions

- A5.2 In this Appendix 5 “**Court**” means the Supreme Court.

### Informality and expedition

- A5.3 Subject to the *Code*, *proceedings* must be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Appendix 5 and Chapter 10, and a proper hearing and determination of a dispute, permit.
- A5.4 The *arbitrator* may from time to time make orders regulating the conduct of, and regulating parties’ conduct in relation to, *proceedings* which are directed towards achieving the objective in clause A5.3.
- A5.5 The *parties* to an *access dispute* must at all times conduct themselves in a manner which is directed towards achieving the objective in clause A5.3.
- A5.6 An order under clause A5.4 is not an award.

### Arbitrator may request information

- A5.7 The *arbitrator* may request the *Authority* to give to the *arbitrator* any information in the *Authority’s* possession that is relevant to the *access dispute*.
- A5.8 The *Authority* is to give the *arbitrator* the information requested, whether or not it is confidential and whether or not it came into the *Authority’s* possession for the purposes of the arbitration.
- A5.9 If the *Authority* gives the *arbitrator* information that is confidential, the *Authority* is to identify the nature and extent of the confidentiality and subject to clause A5.10, the *arbitrator* is to treat the information accordingly.
- A5.10 To the extent necessary to comply with the rules of natural justice, the *arbitrator* may disclose to the *parties* any information provided by the *Authority* whether or not it is confidential, but the *arbitrator* may make an order under clause A5.25 or a determination under clause A5.39 in respect of such information.

### Hearing to be in private

- A5.11 Subject to Subchapter 10.3 and clause A5.12, *proceedings* are to be heard in private.

- A5.12 If the *parties* agree, *proceedings* or part of the *proceedings* may be conducted in public.
- A5.13 The *arbitrator* may give written directions as to the persons who may be present at *proceedings* that are conducted in private.
- A5.14 In giving directions under clause A5.13, the *arbitrator* must have regard to the wishes of the *parties* and the need for commercial confidentiality.

### **Right to representation**

- A5.15 Subject to section 10.14, in *proceedings*, a party may appear in person or be represented by someone else.

### **Procedure**

- A5.16 In *proceedings*, the *arbitrator*:
- (a) is not bound by technicalities, legal forms or rules of evidence; and
  - (b) must act as speedily as a proper consideration of the *access dispute* allows, having regard to the need to carefully and quickly inquire into and investigate the dispute and all matters affecting the merits, and fair settlement, of the *access dispute*; and
  - (c) may gather information about any matter relevant to the *access dispute* in any way the *arbitrator* thinks appropriate.
- A5.17 To the extent necessary to comply with the rules of natural justice, the *arbitrator* may disclose to the *parties* any information gathered by the *arbitrator* under clause A5.16(c) whether or not it is confidential, but the *arbitrator* may make an order under clause A5.25 or a determination under clause A5.39 in respect of such information.
- A5.18 The *arbitrator* may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the *parties* in the arbitration hearing, and may require that the cases be presented within those periods.
- A5.19 The *arbitrator* may require evidence or argument to be presented in writing, and may decide the matters on which the *arbitrator* will hear oral evidence or argument.
- A5.20 The *arbitrator* may determine that all or part of *proceedings* are to be conducted by:
- (a) telephone; or
  - (b) closed circuit television; or
  - (c) any other means of communication.

### **Particular powers of arbitrator**

- A5.21 The *arbitrator* may do any of the following things for the purpose of determining an *access dispute*:
- (a) give a direction in the course of, or for the purpose of, *proceedings*; and

- (b) make an interim determination; and
- (c) hear and determine the *proceedings* in the absence of a *party* who has been given notice of the hearing; and
- (d) sit at any place; and
- (e) adjourn to any time and place; and
- (f) refer any matter to an independent expert and accept the expert's report as evidence.

### **Determinations**

A5.22 If the *arbitrator* makes a determination or interim determination it must:

- (a) make it in writing, signed by the *arbitrator*; and
- (b) include *reasons* in the determination.

A5.23 If a determination of an *arbitrator* under this Appendix 5 contains:

- (a) a clerical mistake; or
- (b) an error arising from an accidental slip or omission; or
- (c) a material mathematical miscalculation or a material mistake in the description of any person, thing or matter referred to in the determination; or
- (d) a defect in form,

the *arbitrator* may correct the determination or the Court, on the application of a *party*, may make an order correcting the determination.

### **Contempt**

A5.24 A person must not do any act or thing in relation to the arbitration of an *access dispute* that would be a contempt of court if the *arbitrator* were a court of record.

### **Disclosure of information**

A5.25 The *arbitrator* may (subject to the rules of natural justice) give an oral or written order to a person not to divulge or communicate to anyone else specified information that was given to the person in the course of proceedings unless the person has the *arbitrator's* permission.

A5.26 A person must not contravene an order under clause A5.25.

### **Power to take evidence on oath or affirmation**

A5.27 The *arbitrator* may take evidence on oath or affirmation and for that purpose the *arbitrator* may administer an oath or affirmation.

A5.28 The *arbitrator* may summon a person to appear before the *arbitrator* to give evidence and to produce such documents (if any) as are referred to in the summons.

A5.29 The powers contained in clauses A5.27 and A5.28 may only be exercised for the purposes of arbitrating an *access dispute*.

**Failing to attend as a witness**

A5.30 A person who is served with a summons to appear as a witness before the *arbitrator* must not, without reasonable excuse:

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report himself or herself from day to day unless excused, or released from further attendance, by the *arbitrator*.

**Failing to answer questions etc.**

A5.31 A person appearing as a witness before the *arbitrator* must not, without reasonable excuse:

- (a) refuse or fail to be sworn or to make an affirmation; or
- (b) refuse or fail to answer a question that the person is required to answer by the *arbitrator*, or
- (c) refuse or fail to produce a document that he or she is required to produce by a summons served on it.

A5.32 The determination as to what is a reasonable excuse for the purposes of clause A5.31 is solely in the discretion of the *arbitrator*.

A5.33 It is a reasonable excuse for the purposes of clause A5.31 for an individual to refuse or fail to answer a question or produce a document on the ground that the answer or the production of the document might tend to incriminate the individual or to expose the individual to a penalty.

A5.34 Clause A5.33 does not limit what is a reasonable excuse for the purposes of clause A5.31.

**Intimidation etc.**

A5.35 A person must not:

- (a) threaten, intimidate or coerce another person; or
- (b) cause or procure damage, loss or disadvantage to another person, because that other person:
- (c) proposes to produce, or has produced, documents to the *arbitrator*, or
- (d) proposes to appear, or has appeared, as a witness before the *arbitrator*.

### **Party may request arbitrator to treat material as confidential**

A5.36 A *party* to *proceedings* may:

- (a) inform the *arbitrator* that, in the *party's* opinion, a specified part of a document contains confidential commercial information; and
- (b) request the *arbitrator* not to give a copy of that part to another *party*.

A5.37 On receiving the request, the *arbitrator* must:

- (a) inform the other *party* or *parties* that the request has been made and of the general nature of the matters to which the relevant part of the document relates; and
- (b) ask the other *party* or *parties* whether there is any objection to the *arbitrator* complying with the request.

A5.38 If there is an objection to the *arbitrator* complying with a request, the *party* objecting may inform the *arbitrator* of its objection and of the *reasons* for it.

A5.39 After considering:

- (a) a request;
- (b) any objection; and
- (c) any further submissions that a *party* has made in relation to the request,

the *arbitrator* may (subject to the rules of natural justice) make a determination:

- (d) to not give to the other *party* or *parties* a copy of so much of the document as contains confidential commercial information that the *arbitrator* thinks should not be given; or
- (e) to give the other *party* or another specified *party* a copy of the whole, or part, of the part of the document that contains *confidential information* subject to a condition that the *party* give an undertaking not to disclose the information to another person except to the extent specified by the *arbitrator* and subject to such other conditions as the *arbitrator* determines.

A5.40 If any person (other than the *arbitrator*), in breach of a determination under clause A5.39, discloses information (other than information which has lawfully entered the public domain or which must be disclosed under a *written law*) that the *arbitrator* has determined under clause A5.39 is confidential commercial information, then a person affected by the breach may sue for damages..

### **Costs**

A5.41 The costs of *proceedings* are to be dealt with in accordance with section 10.37<sup>771</sup>.

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<sup>771</sup> Appendix 5 clause A5.41 amended by WAGG No 207, 8 November 2005

## **Appeal to Court**

A5.42 A *party* may appeal to the *Supreme Court*, on a question of law, from a determination of an *arbitrator* under this Appendix 5.

A5.43 An appeal must be instituted:

- (a) not later than the 28th day after the day on which the decision is made or within such further period as the *Supreme Court* (whether before or after the end of that day) allows; and
- (b) in accordance with the rules of the *Supreme Court*.

A5.44 The *Supreme Court* may make an order staying or otherwise affecting the operation or implementation of the determination of the *arbitrator* that the *Supreme Court* thinks appropriate to secure the effectiveness of the hearing and determination of the appeal.

## **Copies of decisions to be given to the Authority**

A5.45 Where the *arbitrator* is required to give a copy of a draft decision or final decision to the *parties* to an *access dispute*, the *arbitrator* is to also give a copy of the decision to the *Authority*.

## **Effect of appointment of new arbitrator on evidence previously given and awards and determinations previously made**

A5.46 Where a new person takes over the functions of *arbitrator* in place of a previous *arbitrator* who has begun but not completed the hearing and determination of an *access dispute*:

- (a) the new *arbitrator* may order the *proceedings* to be re-heard:
  - (i) in full, in which case all evidence heard by the previous *arbitrator* is to be disregarded by the new *arbitrator* unless resubmitted or retendered; or
  - (ii) in part, in which case any evidence heard by the previous *arbitrator* during the parts of the *proceedings* which are re-heard is to be disregarded by the new *arbitrator* unless resubmitted or retendered;
- (b) if no order is made under clause A5.46(a), then the *proceedings* are to continue as though the new *arbitrator* had been present from the commencement of the *proceedings*;
- (c) if an order is made under clause A5.46(a)(ii), then:
  - (i) the *proceedings* are to continue as though the new *arbitrator* had been present during the earlier *proceedings*; and
  - (ii) the new *arbitrator* is to treat any evidence given, document produced or thing done in the course of the earlier *proceedings* in the same manner in all respects as if it had been given, produced or done in the course of the *proceedings* conducted by the new *arbitrator*;



- (d) any interim determination made in the course of the earlier *proceedings* is by force of this Appendix 5 to be taken to have been made by the new *arbitrator*, and
- (e) the new *arbitrator* may adopt and act on any determination of a matter made in the course of the earlier *proceedings* without applying his or her own judgment to the matter.

A5.47 In clause A5.46, “earlier proceedings” means the *proceedings* or parts of the *proceedings* which the new *arbitrator* does not order to be re-heard under clause A5.46(a)(ii).

### **Decision of the Arbitrator**

A5.48 Unless the *arbitrator* has terminated the *proceedings* under section 10.18, the *arbitrator* must require the *parties* to make submissions to the *arbitrator* regarding the *access dispute* by a specified date.

A5.49 In making a decision under section 10.17 of the *Code*, the *arbitrator*:

- (a) must consider submissions received from the *parties* before the date specified by the *arbitrator* under clause A5.48 and may consider submissions received after that date;
- (b) may provide a draft decision to the *parties* and if it does so must request submissions from the *parties* by a specified date;
- (c) if applicable, must consider submissions received from the *parties* before the date specified by the *arbitrator* under clause A5.49(b) and may consider submissions received after that date; and sub-clause
- (d) must provide a final decision to the *parties*.

A5.50 The *arbitrator* may by whatever means it considers appropriate seek written submissions from persons who are not *parties* to the dispute and subject to the rules of natural justice may have regard to those submissions in making its decision under section 10.17 of the *Code*.

A5.51 The *arbitrator* must provide a final decision under section 10.17 of the *Code* within three months of requiring *parties* to make submissions under clause A5.48. The *arbitrator* must also ensure that there is a period of at least 10 *business days*:

- (a) between requiring *parties* to make submissions under clause A5.48 and the last day for such submissions specified by the *arbitrator*; and
- (b) between providing a draft decision to the *parties* under clause A5.49(b) and the last day for submissions on the draft decision specified by the *arbitrator*.

in all other respects the timing for the taking of each of the steps set out in clause A5.49 is a matter for the *arbitrator* to determine.

A5.52 The *arbitrator* may increase the period of three months specified in clause A5.51 by periods of up to one month on one or more occasions provided it provides the *parties* (and each person who has made a written submission to the *arbitrator*) with a notice of the decision to increase the period.

A5.53 A *service provider* must comply with a decision of the *arbitrator* made under this Appendix 5 from the date specified by the *arbitrator*.

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## Appendix 6 – Matters to be Addressed by Technical Rules

{Outline: See section<sup>772</sup> 12.32}

- A6.1 Subject to clause A6.2, *technical rules* must address at least the following matters:<sup>773</sup>
- (a) performance standards in respect of *service standard* parameters; and
  - (b) the identity of the *system operator* for the *network*; and
  - (c) the technical requirements that apply to the design and operation of *facilities and equipment* connected to the *network*; and
  - (d) the standards which apply to the operation of the *network*, including in emergency situations; and
  - (e) obligations to test *facilities and equipment* in order to demonstrate compliance with the *technical rules*; and
  - (f) procedures that apply if the *service provider* believes that any part of *facilities and equipment* does not comply with the *technical rules*; and
  - (g) procedures that apply to the inspection of *facilities and equipment* connected to the *network*; and
  - (h) the standards which apply to control and protection settings for *facilities and equipment* connected to the *network*; and
  - (i) procedures that apply to the commissioning and testing of new *facilities and equipment* connected to the *network*; and
  - (j) procedures that apply to the disconnection of *facilities and equipment* from the *network*; and
  - (k) the information that a *user* must provide to the *service provider* in relation to the operation of *facilities and equipment* connected to the *network*; and
  - (l) the *generation* and *load* forecast information that *users, consumers* and *generators* must provide to the *service provider*; and
  - (m) *network* planning criteria, which must address at least the following matters:
    - (i) contingency criteria; and
    - (ii) steady-state criteria including:
      - A. frequency limits; and

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<sup>772</sup> Appendix 6 amended by WAGG No 207, 8 November 2005

<sup>773</sup> Clause A6.1 amended by WAGG No 157, 18 September 2020

- B. voltage limits; and
- C. thermal rating criteria; and
- D. fault rating criteria; and
- E. maximum protection clearing times; and
- F. auto reclosing policy; and
- G. insulation coordination standard; and
- (iii) stability criteria including:
  - A. rotor angle stability criteria; and
  - B. frequency stability criteria; and
  - C. voltage stability criteria; and
- (iv) quality of supply criteria including:
  - A. voltage fluctuation criteria; and
  - B. harmonic voltage criteria; and
  - C. harmonic current criteria; and
  - D. voltage unbalance criteria; and
  - E. electro-magnetic interference criteria; and
- (v) construction standards criteria; and
- (n) *curtailment of services* including matters such as:
  - (i) planned and unplanned maintenance, testing or repair of the *network*; and
  - (ii) breakdown of or damage to the *network*; and
  - (iii) events of *force majeure*; and
  - (iv) the *service provider's* obligations to comply with a written law or a *statutory instrument*.

A6.2 *Technical rules* are not required to address the matters listed in clause A6.1 to the extent that these matters are dealt with in Chapter 3, Chapter 3A, Chapter 3B, Appendix 12 or Appendix 13 of the *WEM Rules*.<sup>774</sup>

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<sup>774</sup> Clause A6.2 inserted by WAGG No 157, 18 September 2020

## **Appendix 7 – General process for public consultation**

{Outline: Appendix 7 is cited in certain places throughout the *Code*.}

### **Application of this Appendix 7**

A7.1 If this *Code* states that a *matter for consultation*

- (a) must be the subject of public consultation under this Appendix 7 or
- (b) may be the subject of public consultation under this Appendix 7, and the *decision maker* chooses to undertake public consultation under this Appendix 7,

then the *decision maker* must comply with this Appendix 7.

A7.2 If this *Code* requires:

- (a) public consultation in relation to a *matter for consultation* to be completed; or
- (b) a decision or determination relating to a *matter for consultation* to be made,

within a specified period of time, the *decision maker* must complete the public consultation or make the decision or determination, as applicable, in accordance with this Appendix 7 and within the specified time.

### **Where the decision maker is not the Authority**

A7.3 Where the *decision maker* is required under this Appendix 7 to *publish* a thing and:

- (a) the *decision maker* is the *Authority* - the *Authority* must *publish* the thing; and
- (b) is someone other than the *Authority* -

- (i) the *decision maker* must provide a copy of the thing to the *Authority*; and
- (ii) once a copy of the thing is provided to the *Authority*, the *Authority* must forthwith *publish* the thing; and
- (iii) for the purposes of this Appendix 7, the thing is *published* from the time that the *Authority publishes* it

### **Issues paper**

A7.4 The *decision maker* may produce and *publish* an issues paper examining the issues relating to the *matter for consultation*.

### **Submissions from the service provider**

A7.5 Where the *decision maker* is someone other than the *service provider* and is required to invite submissions from the public in relation to a *matter for consultation* in relation to a *covered network* it must also invite submissions from the *service provider*.

### **First round public submissions**

A7.6 The *decision maker* must *publish* an invitation for submissions in relation to a *matter for consultation*.

A7.7 A *decision maker* must specify in its invitation for submissions under clause A7.6 the length of time it will allow for the making of submissions on a *matter for consultation* in accordance with clause A7.9.

A7.8 A person may make a submission on a *matter for consultation* within the period of time specified by the *decision maker*.

A7.9 The time specified by the *decision maker* for the making of submissions must be at least 10 *business days* after the invitation is *published*, and must be at least 10 *business days* after any issues paper was *published* under clause A7.4.<sup>775</sup>

### **Draft decision by the Decision Maker**

A7.10 Subject to clause A7.21, the *decision maker* must consider any submissions made on the *matter for consultation*.

A7.11 The *decision maker* may make a draft decision if, in the opinion of the *decision maker* the circumstances warrant the making of a draft decision.

A7.12 If the *decision maker* determines that a draft decision is warranted, the *decision maker* must *publish* the draft decision within 2 months after the *due date* for submissions under clause A7.7.

### **Second round public submissions (if applicable)**

A7.13 Clauses A7.14<sup>776</sup> to A7.17 apply only if the *decision maker* makes a draft decision under clause A7.11.

A7.14 The *decision maker* must *publish* an invitation for submissions on the draft decision at the time it *publishes* the draft decision.

A7.15 A *decision maker* must specify in its invitation for submissions under clause A7.14 the length of time it will allow for the making of submissions on a *matter for consultation* in accordance with clause A7.17.<sup>777</sup>

A7.16 A person may make a submission on the draft decision to the *decision maker* within the time period specified by the *decision maker*.

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<sup>775</sup> Clause A7.9 amended by WAGG No 134, 30 July 2021

<sup>776</sup> Appendix 7 clause A7.13 amended by WAGG No 207, 8 November 2005

<sup>777</sup> Clause A7.15 amended by WAGG No 180, 22 October 2008

A7.17 The time specified by the *decision maker* for the making of submissions on the draft decision must be at least 10 *business days* after the draft decision is *published*.<sup>778</sup>

### **Final decision by decision maker**

A7.18 Subject to clause A7.21, the *decision maker* must consider any submissions and make a final decision in relation to the *matter for consultation*.<sup>779</sup>

A7.19 The time for the *decision maker* to make and *publish* its final decision is:

- (a) where a draft decision has been made, within 30 *business days* after the *due date* for submissions under clause A7.15; or
- (b) otherwise, within 2 months after the *due date* for submissions under clause A7.7.

### **Publication of submissions**

A7.20 The *decision maker* must *publish* all submissions made under this Appendix 7.

### **Late submissions**

A7.21 The *decision maker* may, consider any submission made after the time for making that submission has expired.

### **Additional consultation**<sup>780</sup>

A7.22 The *decision maker* may undertake additional consultation at any point during the process if required.<sup>781</sup>

### **Extension of deadlines**<sup>782</sup>

A7.23 The *decision maker* may on one or more occasions extend any time limit specified in this Appendix 7 for a period determined by the *decision maker* if, and only to the extent that, the *decision maker* first reasonably determines that:

- (a) a longer period of time is essential for due consideration of all the matters under consideration or satisfactory performance of its obligations under this Code, or both; and
- (b) the *decision maker* has taken all reasonable steps to fully utilise the times and processes provided for in this Appendix 7.<sup>783</sup>

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<sup>778</sup> Clause A7.17 amended by WAGG No 134, 30 July 2021

<sup>779</sup> Clause A7.18 amended by WAGG No 180, 22 October 2008

<sup>780</sup> Heading to clause A7.22 inserted by WAGG No 134, 30 July 2021

<sup>781</sup> Clause A7.22 inserted by WAGG No 134, 30 July 2021

<sup>782</sup> Heading to clause A7.23 inserted by WAGG No 134, 30 July 2021

<sup>783</sup> Clause A7.23 inserted by WAGG No 134, 30 July 2021

A7.24 The *decision maker* must not exercise the power in clause A7.23 to extend a time limit unless, before the day on which the time would otherwise have expired, it *publishes* notice of, and reasons for, its decision to extend the time limit.<sup>784</sup>

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<sup>784</sup> Clause A7.24 inserted by WAGG No 134, 30 July 2021



## **Appendix 8 — Detailed provisions regarding contributions for certain work on the Western Power Network<sup>785</sup>**

### **Definitions**

A8.1 In this Appendix 8, unless the contrary intention is apparent—

“**average cost**” for a scheme means the *total scheme cost* divided by the total number of *connection points* covered by the *scheme*.

“**commercial premises**” means *premises* on which electricity is consumed predominantly for commercial use.

“**member**” in respect of a scheme means a person who has initiated or joined a *scheme* under the SES.

“**pillar**” means a ground mounted apparatus forming part of the *Western Power Network*<sup>786</sup> located on or near a property boundary and to which the *consumer* mains of a premises are connected in order to obtain electricity.

“**pole to pillar connection**” means the provision to a residential premises of an underground 415 V or 240 V supply via a *pillar connection*.

“**premises**” has the meaning given to it in the *Electricity Act 1945 (WA)*.

“**primary production premises**” means premises owned or occupied by a *consumer* who is assessed as carrying on a primary production business under the *Income Tax Assessment Act 1997*.

“**residential premises**” means *premises* on which electricity is consumed predominantly for domestic use.

“**scheme**” means an arrangement with respect to a particular *SES work* or a particular interconnected series of *SES works* under the *SES*.<sup>787</sup>

“**SES**” and “**Supply Extension Scheme**” means the approach to *Western Power Network* work under clauses A8.8 to A8.15.<sup>788</sup>

“**SES work**” means a *required work* which is an extension of the *Western Power Network* to *connect*—

- (a) a primary production premises; or

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<sup>785</sup> Appendix 8 inserted by WAGG No 137, 29 June 2007; Heading of Appendix 8 amended by WAGG No 180, 22 October 2008

<sup>786</sup> Clause A8.1 amended by WAGG No 180, 22 October 2008

<sup>787</sup> Clause A8.1 amended by WAGG No 180, 22 October 2008

<sup>788</sup> Clause A8.1 amended by WAGG No 180, 22 October 2008

- (b) one residential premises on a lot (excluding a residential premises in respect of which a pole to pillar connection is required under a *written law* or *statutory instrument*).<sup>789</sup>

“**standard dwelling**” means a *residential premises* that is located on a lot that is zoned residential, or otherwise permitted to be used for residential purposes under any town planning scheme applying to that lot (excluding lots zoned special rural residential); and has

- (a) a *load* of no more than 63 amperes single-phase 240 volt or 32 amperes three- phased 415 volt; and
- (b) sufficient *Western Power Network* capacity available to it, to supply the applicable *load*.<sup>790</sup>

“**subdivision**” means a subdivision of land which requires or has received approval under section 135 of the *Planning and Development Act 2005* (WA), the *Strata Titles Act 1985* (WA) or an equivalent written law.

“**substantial consumer**” means an *applicant* who the *service provider* forecasts to *consume* in excess of 10% of the total annual electricity consumption in respect of a *premises*.

“**temporary connection**” means a non-permanent connection to the *Western Power Network* that is undertaken to provide supply to activities such as, but not limited to, outdoor functions (such as fairs and concerts), non-standard builder supplies (such as city or commercial developments) and connections to premises during renovations.<sup>791</sup>

“**total cost**” for a scheme means the sum of the *forecast cost* for the *SES work* for which the *scheme* was initiated plus the *forecast cost* for each *SES work* for an *applicant* which subsequently joins the *scheme*.<sup>792</sup>

“**unmetered connection**” means a type of *connection point* described in clause 3.9(2) of the *Electricity Metering Code 2005* established under section 39(2)(a) of the *Act*.

### **Scope of Appendix 8 work to Western Power Network**<sup>793</sup>

A8.2 This Appendix 8 applies only in respect of the following work in connection with the *Western Power Network* (“**Appendix 8 work**”)—

- (a) a *subdivision* under clause A8.4; and
- (b) a *pole to pillar connection* under clauses A8.5 to A8.6; and
- (c) the development of buildings under clause A8.7; and
- (d) a *Supply Extension Scheme* under clauses A8.8 to A8.15; and

<sup>789</sup> Clause A8.1 amended by WAGG No 180, 22 October 2008

<sup>790</sup> Clause A8.1 amended by WAGG No 180, 22 October 2008

<sup>791</sup> Clause A8.1 amended by WAGG No 180, 22 October 2008

<sup>792</sup> Clause A8.1 amended by WAGG No 180, 22 October 2008

<sup>793</sup> Heading to clause A8.2 amended by WAGG No 180, 22 October 2008

- (e) *work* in excess of standard requirements under clause A8.16; and
- (f) specified *temporary connections* under clause A8.17 and A8.18; and
- (g) streetlights, *unmetered connections*, *relocations*, undergrounding and some *temporary connections* under clause A8.19.<sup>794</sup>

### General principles

A8.3 A *contribution* for *Appendix 8 work* (other than a flat fee under clauses A8.5 and A8.17) must not exceed the forecast cost that would be forecast to be incurred for the *work* by a *service provider efficiently minimising costs*.<sup>795</sup>

### Subdivisions

A8.4 The maximum *contribution* for an *applicant* who—

- (a) undertakes a *subdivision*; and
- (b) seeks *work* (other than a *pole to pillar connection*) to be undertaken on the *distribution system* to service the *subdivision*,

is the forecast cost for any *required work* which is or will be located within the boundaries of, or adjacent to, the land being *subdivided*.<sup>796</sup>

### Pole to pillar connections

A8.5 The maximum *contribution* for a pole to pillar connection is a flat fee determined under clause A8.6.<sup>797</sup>

A8.6 Electricity Networks Corporation may from time to time set a flat fee for *pole to pillar connections*, which fee must be calculated to the standard of a *reasonable and prudent person* and in such a way that, over a reasonable forecasting period, the forecast revenue from applying the flat fee to all *pole to pillar connections* installed during the period ("**forecast connections**") is forecast not to exceed—

- (a) the sum of *forecast cost*<sup>798</sup> which would be incurred for the forecast connections by a *service provider efficiently minimising costs*;

minus

- (b) the *anticipated incremental revenue* for the forecast connections.

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<sup>794</sup> Clause A8.2 amended by WAGG No 180, 22 October 2008

<sup>795</sup> Clause A8.3 amended by WAGG No 180, 22 October 2008

<sup>796</sup> Clause A8.4 amended by WAGG No 180, 22 October 2008

<sup>797</sup> Clause A8.5 amended by WAGG No 180, 22 October 2008

<sup>798</sup> Clause A8.6 amended by WAGG No 180, 22 October 2008

## Development of buildings

A8.7 Where an *applicant* seeks a connection to the *Western Power Network* in respect of—

- (a) multiple *residential premises*, including multi-storey buildings, excluding—
  - (i) residential premises in respect of which a pole to pillar connection is required under a *written law* or *statutory instrument*; and
  - (ii) connections which are *SES work*;

or

- (b) commercial premises in relation to which the *applicant* will not become a substantial *consumer*; or
- (c) mixed residential premises and commercial premises in relation to which the *applicant* will not become a substantial *consumer*,

the maximum *contribution* by the *applicant* is the forecast cost for the *required work*.

<sup>799</sup>

## The Supply Extension Scheme

### Initiating or joining an SES

A8.8 An *applicant*, or group of *applicants*, for whom the *required work* comprises or includes SES work, may apply to Electricity Networks Corporation to either join an existing *scheme* or initiate a new *scheme*.<sup>800</sup>

A8.9 If the SES work sought by the *applicants* in clause A8.8 is to be connected to *network assets* which are covered by an existing scheme, then a new scheme must be initiated if—

- (a) the forecast cost for the *SES work* exceeds the average cost for the existing scheme; or
- (b) the existing scheme commenced more than 10 years ago.<sup>801</sup>

### Contribution for applicant initiating a scheme

A8.10 If a single *applicant* initiates a scheme, the maximum *contribution* for the *applicant* is the forecast cost for the *SES work*.<sup>802</sup>

A8.11 If a group of *applicants* initiate a *scheme*, the maximum *contribution* for each *applicant* within the group is the average cost for the scheme.<sup>803</sup>

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<sup>799</sup> Clause A8.7 amended by WAGG No 180, 22 October 2008

<sup>800</sup> Clause A8.8 amended by WAGG No 180, 22 October 2008

<sup>801</sup> Clause A8.9 amended by WAGG No 180, 22 October 2008

<sup>802</sup> Clause A8.10 amended by WAGG No 180, 22 October 2008

<sup>803</sup> Clause A8.11 amended by WAGG No 180, 22 October 2008

### **Contribution for applicant joining an existing scheme**

- A8.12 If an *applicant* joins an existing scheme, the maximum *contribution* for the *applicant* is the new average cost for the scheme, calculated by adding the forecast cost for the *required work* for the *applicant* to the previous total cost and calculating a new average cost taking into account the new *applicant's connection point*.<sup>804</sup>
- A8.13 In this circumstance the *contribution* to be made by the new *applicant* will comprise a component in payment of the forecast cost for the new connection, and a rebate component in accordance with clause A8.14 and A8.15.<sup>805</sup>

### **Rebate to continuing scheme members**

- A8.14 If an *applicant* joining a *scheme* causes a decrease in the *average cost* for the *scheme*, Electricity Networks Corporation must, after it receives the *applicant's contribution* to join the scheme and the connection is completed, make a payment to the existing scheme members (excluding the *applicant*) of an amount equal to the difference between the *average cost* immediately before the *applicant* joined the *scheme* and the new average cost applying after the *applicant* joined.<sup>806</sup>

### **Rebates will not be paid after 10 years**

- A8.15 To avoid doubt, the effect of clause A8.9(b) is that a rebate will only be paid under clause A8.14 within the first 10 years after a *scheme* commences.

### **Work in excess of standard requirements<sup>807</sup>**

- A8.16 If
- (a) an *applicant* seeks to have *work* undertaken ("**requested work**") which Electricity Networks Corporation, in accordance with *good electricity industry practice*, considers are in addition to what is required to meet standard supply arrangements; and
  - (b) the forecast cost for the *requested work* ("**requested cost**") exceeds the *forecast cost* which would be required if the connection was constructed in accordance with standard supply arrangements ("**standard cost**"),
- then—
- (c) the maximum *contribution* in respect of the *standard cost* is to be determined under the provisions of this *Code* and the *access arrangement* which apply to the type of connection in question; and
  - (d) in addition, the maximum *contribution* may include the difference between the *requested cost* and the *standard cost*.<sup>808</sup>

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<sup>804</sup> Clause A8.12 amended by WAGG No 180, 22 October 2008

<sup>805</sup> Clause A8.13 amended by WAGG No 180, 22 October 2008

<sup>806</sup> Clause A8.14 amended by WAGG No 180, 22 October 2008

<sup>807</sup> Heading to clause A8.16 amended by WAGG No 180, 22 October 2008

<sup>808</sup> Clause A8.16 amended by WAGG No 180, 22 October 2008

### Temporary connections

A8.17 If a flat fee is determined under clause A8.18 for a class of *temporary connection*, then the maximum *contribution* for the class of *temporary connection* is the flat fee.<sup>809</sup>

A8.18 Electricity Networks Corporation may from time to time set a flat fee for *temporary connections*, which fee must be calculated to the standard of a *reasonable and prudent person* and in such a way that, over a reasonable forecasting period, the forecast revenue from applying the flat fee to all *temporary connections* installed during the period (“**forecast connections**”) is forecast not to exceed the sum of *forecast cost* which would be incurred for the *forecast connections* by a *service provider efficiently minimising costs*.<sup>810</sup>

### Streetlights, unmetered connections, relocations, undergrounding and some temporary connections

A8.19 The maximum *contribution* for an *applicant* who seeks—

- (a) a modified or new streetlight, including provision of a new streetlight asset;
- (b) an *unmetered connection*;
- (c) to have an existing *network asset* relocated;
- (d) to have an existing overhead *network asset* or connection undergrounded;
- (e) a *temporary connection* if Electricity Networks Corporation has not set a fee for that class of *temporary connection* under clause A8.18,

is the *forecast cost* for the *required work*.<sup>811</sup>

### If required work comprises more than just Appendix 8 work<sup>812</sup>

A8.20 To avoid doubt, if *required work* comprises one or more items of *Appendix 8 work* and one or more other items of *work*, then unless the *service provider* and the *contributing user* agree otherwise, references in the *Code* to “*required work*” are to the *Appendix 8 work* and the other *work* collectively.<sup>813</sup>

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<sup>809</sup> Clause A8.17 amended by WAGG No 180, 22 October 2008

<sup>810</sup> Clause A8.18 amended by WAGG No 180, 22 October 2008

<sup>811</sup> 1 Clause A8.19 amended by WAGG No 180, 22 October 2008

<sup>812</sup> Heading to clause A8.20 amended by WAGG No 180, 22 October 2008

<sup>813</sup> Clause A8.20 inserted by WAGG No 176, 29 August 2007; Clause A8.20 amended by WAGG No 180, 22 October 2008

## **Appendix 9 — [Appendix not used]<sup>814</sup>**

### **[Heading not used]<sup>815</sup>**

A9.1 [not used]<sup>816</sup>

### **[Heading not used]<sup>817</sup>**

A9.2 [not used]<sup>818</sup>

### **[Heading not used]<sup>819</sup>**

A9.3 [not used]<sup>820</sup>

A9.4 [not used]<sup>821</sup>

A9.5 [not used]<sup>822</sup>

### **[Heading not used]<sup>823</sup>**

A9.6 [not used]<sup>824</sup>

### **[Heading not used]<sup>825</sup>**

A9.7 [not used]<sup>826</sup>

A9.8 [not used]<sup>827</sup>

A9.9 [not used]<sup>828</sup>

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<sup>814</sup> Heading amended by WAGG No 180, 22 October 2008; Heading deleted by WAGG No 157, 18 September 2020

<sup>815</sup> Heading to clause A9.1 deleted by WAGG No 157, 18 September 2020

<sup>816</sup> Clause A9.1 deleted by WAGG No 157, 18 September 2020

<sup>817</sup> Heading to clause A9.2 deleted by WAGG No 157, 18 September 2020

<sup>818</sup> Clause A9.2 amended by WAGG No 180, 22 October 2008; Clause A9.2 deleted by WAGG No 157, 18 September 2020

<sup>819</sup> Heading to clause A9.3 deleted by WAGG No 157, 18 September 2020

<sup>820</sup> Clause A9.3 amended by WAGG No 180, 22 October 2008; Clause A9.3 deleted by WAGG No 157, 18 September 2020

<sup>821</sup> Clause A9.4 deleted by WAGG No 157, 18 September 2020

<sup>822</sup> Clause A9.5 deleted by WAGG No 157, 18 September 2020

<sup>823</sup> Heading to clause A9.6 deleted by WAGG No 157, 18 September 2020

<sup>824</sup> Clause A9.6 amended by WAGG No 180, 22 October 2008; Clause A9.6 deleted by WAGG No 157, 18 September 2020

<sup>825</sup> Heading to clause A9.7 deleted by WAGG No 157, 18 September 2020

<sup>826</sup> Clause A9.7 amended by WAGG No 180, 22 October 2008; Clause A9.7 deleted by WAGG No 157, 18 September 2020

<sup>827</sup> Clause A9.8 deleted by WAGG No 157, 18 September 2020

<sup>828</sup> Clause A9.9 deleted by WAGG No 157, 18 September 2020

A9.10 [not used]<sup>829</sup>

**[Heading not used]<sup>830</sup>**

A9.11 [not used]<sup>831</sup>

A9.12 [not used]<sup>832</sup>

**[Heading not used]<sup>833</sup>**

A9.13 [not used]<sup>834</sup>

**[Heading not used]<sup>835</sup>**

A9.14 [not used]<sup>836</sup>

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<sup>829</sup> Clause A9.10 deleted by WAGG No 157, 18 September 2020

<sup>830</sup> Heading to clause A9.11 deleted by WAGG No 157, 18 September 2020

<sup>831</sup> Clause A9.11 deleted by WAGG No 157, 18 September 2020

<sup>832</sup> Clause A9.12 deleted by WAGG No 157, 18 September 2020

<sup>833</sup> Heading to clause A9.13 deleted by WAGG No 157, 18 September 2020

<sup>834</sup> Clause A9.13 amended by WAGG No 180, 22 October 2008; Clause A9.13 deleted by WAGG No 157, 18 September 2020

<sup>835</sup> Heading to clause A9.14 deleted by WAGG No 157, 18 September 2020

<sup>836</sup> Appendix 9 inserted by WAGG No 137, 29 June 2007