

Response to the Required Amendments in Part B of the Draft Decision (Detailed Response)

**ELECTRICITY NETWORKS CORPORATION
("WESTERN POWER")**

ABN 18 540 492 861

CONTENTS

1	Introduction	3
2	Use of the term 'connection point'	3
3	Services to be used	5
4	Capacity increase	12
5	Reconciliation between customer and retailer	14
6	Seasonal variation	16
7	Relocation	18
8	Deleting a connection point	20
9	Reduced demand payment	21
10	Controllers	24
11	Tariffs	28
12	Additional charges	29
13	User's contribution to Western Power force majeure	30
14	Security	32
15	User to bear costs for compliance with Technical Rules	34
16	User to make application to modify facilities	36
17	Service standards	38
18	Limitation of liability	39
19	Tariffs for services	41
20	Scope of the AQP	42
21	Need to restrict users to be market participants	48
22	Costs for access enquiries	50
23	Application forms	52
24	Applicant to request exemptions upfront	53
25	Tender projects	54
26	Interaction with capital contributions policy	55
27	Conditions precedent	59
28	Terms for a non-reference service	61
29	If applicant rejects access offer	62
30	Dormant access offers	63
31	Customer transfer requests	65
32	Securing contribution payment	66
33	Connection assets	68
34	Non-capital costs	69
35	Works above standard works	72

36	Provision in kind	73
37	Time Payments	74
38	Rebates	75
39	Variances between forecast and actual costs	76
40	Non-contestable customers and developers	77
41	TRP Issues	79

1 Introduction

In this section, Western Power sets out in detail the reasons for its position on the Required Amendments that it proposes to not adopt.

Western Power considers it impracticable and unnecessary to set out a separate response to each individual Required Amendment. Instead, Western Power sets out its position on a broad issue that is covered by a number of different individual Required Amendments.

The accompanying access arrangement information explains how Western Power's proposed access arrangement satisfies the requirements of the Code.

2 Use of the term 'connection point'

2.1 Associated required amendments

65 - Western Power to amend Electricity Transfer Access Contract clause 1.1 by substituting the term 'connection point' for 'contracted point' in the definition of 'contracted point' and consequential amendments should be made to the Electricity Transfer Access Contract in each place where the term 'contracted point' is used.

117 - Western Power to delete proposed applications and queuing policy clause 2.1 (One contract per contracted point).

154 - Western Power to amend proposed applications and queuing policy by replacing all references to 'contracted point' with 'connection point' and reproducing model applications and queuing policy definition of 'connection point' without material omission or variation.

181 - Western Power to delete the definition of 'contracted point' from its proposed capital contributions policy.

2.2 Western Power's position in the original AA

In the ETAC, the term connection point was replaced with contracted point. Western's Power's rationale for this omission was explained in Section 2.1 of Appendix 10 of the AA, namely, to

avoid confusion between a point at which ownership of electricity changes (ie the meter point or points) and where ownership of the network assets changes (ie the attachment point).

The definition of contracted point was *‘a point on the network identified, or to be identified, as an exit point or entry point in Schedule 3’*.

2.3 Authority’s assessment

By way of Required Amendments (RA) 65, 154 and 181, the Authority did not approve the proposed amendment and required that the definition of connection point in the MAC be substituted for contracted point with consequential amendments.

The Authority’s assessment was that the change of definition by Western Power created confusion over what points are to be covered under the ETAC and that the concept of contracted point in the Electricity Industry (Obligation to Connect) Regulations 2005 is not relevant to the usage of that term in the ETAC.

The Authority required Western Power to adopt the term connection point throughout the AA.

2.4 Western Power’s response

In Western Power experience, there are practical problems regarding the use of the term ‘connection point’, as defined in the MAC, throughout the AA. The Code, Metering Code and Customer Transfer Code use the terms connection point, exit point and entry point for two purposes. Firstly, those terms are used to define a transaction involving the transfer of electricity between parties to a standard access contract. Secondly, those terms are used to describe a physical point of attachment to the network. The Codes appear to assume that there is one physical point of attachment applicable to each User. In reality, there are various connection configurations (for example, a shopping centre and a high rise building with multiple tenants).

Western Power has adopted a definition of connection point similar to that in the MAC as meaning an exit point or an entry point, but has defined entry point and exit point differently from the MAC. These new definitions allow for the various physical configurations of network assets making up the entry point and the exit point and create a notional point of transfer of electricity - the connection point.

Western Power has used a new definition, attachment point (defined in the AQP), to refer to the physical point on the network at which network assets are connected to assets owned by another person, a term that is well understood in the electrical industry.

These amended definitions apply to the AQP as well as the ETAC and overcome the confusion raised by the Authority in its Draft Decision.

The rules that map the physical connection arrangements to the notional connection point are now provided for in the AQP. A number of consequential amendments have also been made.

The resolution of RA 65, 154 and 181 by the creation of the new definitions consequentially resolves RA117 by which the Authority required there to be a deletion of the AQP clause 2.1 requiring one contract per contracted point, as they clarify that the connection point is the point associated with a single end user, and is thus indivisible. Various submissions to the Authority had confused the connection point with the attachment point. There can, because of the nature of the network, be several connection points associated with a single attachment point and vice versa.

3 Services to be used

3.1 Associated required amendments

68 - Western Power to delete Electricity Transfer Access Contract clause 3.4 (Use of Contracted Capacity) and replace it with Model Access Contract clauses A3.15 and A3.16 without material omission or variation.

132 - Western Power to delete proposed applications and queuing policy clauses 10.2(b) and (c) (Existing access contracts and determination of spare capacity).

3.2 Western Power's position in the original AA

By ETAC clause 3.4, Western Power provided a procedure to reduce a user's capacity at a connection point at the discretion of Western Power but subject to suitable safeguards for the user, including a reasonableness test, notice period and exception arising from force majeure. The provision enabled Western Power to optimise its investment in and operation of the network for the benefit of all current and prospective users, which in turn would promote competition and meet the Code objective.

3.3 Authority's assessment

The Authority recognised that there may be circumstances in which a user's contractual entitlements may be used in a way which either impairs competition downstream or upstream, or results in inefficient network utilisation. However, the Authority noted that if a user is not utilising or expecting to utilise contracted capacity, the user will have a commercial incentive to seek to trade any spare capacity, which will contribute to the efficient utilisation of the network. The Authority considered that there was no evidence of a risk of inefficient use of the network to justify clause 3.4 of the ETAC.

The Authority's view was that the MAC clauses A3.15 and A3.16 provided a balance between the need for service providers to be able to efficiently make use of under-utilised network capacity and the rights of users to contract for guaranteed access to network capacity.

The Authority considered it would not be reasonable for Western Power to vary a user's contracted capacity without the agreement of the user, in circumstances where Western Power will not be aware of the user's expected capacity requirements. The Authority required that clause 3.4 of the ETAC be deleted and replaced with MAC clauses A3.15 and A3.16.

The Authority also required the deletion of clauses 10.2(b) and (c) of the AQP which provided Western Power with the discretion to decrease the user's capacity where the capacity provided under the existing contract is deemed by Western Power not to be reasonably necessary to satisfy the user's contractual requirements. The Authority's reasoning is similar to that regarding clause 3.4 of the ETAC. It objected to Western Power's ability to reduce an applicant's contracted capacity based on its own interpretation of the applicant's requirements and it objected to Western Power's ability to unilaterally decrease contracted capacity. The Authority regarded the mechanism to vary capacity as one that should appropriately be dealt with in the standard access contract, rather than in the AQP.

3.4 Western Power's response

3.4.1 Reason for clause 3.2

Western Power has included the ETAC clause 3.4 (now clause 3.2) solely to avoid new applicants having to pay a contribution for, and Western Power having to provide, an augmentation that is not technically required. It is not intended to deny a user the right to transfer electricity up to its contracted capacity where the user, in good faith, intends to use that right. Nor is it intended to have any impact on the user's right to assign its rights at the connection point. However, Western Power has made some amendments to the clause in order to address the Authority's reasons for requiring the amendment.

3.4.2 Impact on Western Power

Western Power is not directly impacted by having to perform unnecessary augmentation of the network, provided that the Authority permits Western Power to add any such new facilities investment to the capital base, so that it can earn an adequate return. This must include any situation where the Arbitrator directs Western Power to provide an applicant with the covered services it seeks, but not charge them a capital contribution for that part of the augmentation that does not meet NFIT.

Western Power is, however, indirectly impacted, in the current severely resource constrained environment, in having to direct its workforce and funding towards providing the unnecessary augmentation as well as its other obligations.

Nonetheless, Western Power has no real vested interest in this issue. The remainder of this discussion is presented because of Western Power's firm belief that its proposed amendment to the MAC fully supports the Code objective, whilst the MAC (in this matter) did not.

3.4.3 Nature of capacity rights in the SWIS

Unlike in the NEM (which is discussed further below), in the SWIS a generator is provided with firm capacity rights at the user's connection point. This is provided solely by means of the user's contract, and is not required by any provision of the Act or the Code. The relevant clauses from the ETAC are reproduced below.

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.

A 'Service' is an entry or exit service, which is the right to transfer electricity at a connection point.

By clause 3.2 of the ETAC, Western Power has made the right to use the service conditional on the user demonstrating that it reasonably requires the service.

The user has no contractual right to assign its capacity to another person elsewhere on the network, because its right to transfer electricity exists only at that connection point.

For a user to trade its capacity rights, that user would have to reduce its contracted capacity at the connection point. Western Power would then allocate that capacity to the next applicant in the queue, who may or may not be the person to whom the user has 'sold' its capacity rights. The user and the applicant are thus in no position to effect such a transfer of capacity rights without the cooperation of Western Power in its management of the queue under the AQP.

Under the AQP, Western Power could only provide such cooperation by using the bypass provisions, which are intended to operate when needed to meet the Code objective. It is unlikely that Western Power could justify to the bypassed applicant that the Code objective was met by favouring the party to whom the existing user had 'sold' its capacity rights.

Similarly, under section 5.2 of the Code, Western Power must not permit a user to "relocate" capacity to a different connection point where the effect of that relocation would be to impede Western Power's ability to provide covered services sought in an application. Therefore, any attempt to effect a trade in capacity rights under the TRP would still have to result in an application being sought for the increased capacity at a different connection point.

3.4.4 Anti-competitive and economically inefficient outcomes of removing clause 3.2

Western Power believes that the current electricity market in Western Australia has insufficient competition to allow the exclusion of clause 3.2, and thus effectively place increased power in the hands of existing market participants to create significant barriers to entry for their competitors. Such barriers would be in the form of either increased capital contributions or outright exclusion from connection to the network. In the case of generation, this would result in an increased cost of electricity due to the provision of technically unnecessary augmentation, or the risk of insufficient generation to meet the IMO's forecast requirements. Such an outcome defeats the Code objective.

In addition, Western Power regards the creation of a secondary, unregulated market for trading capacity on the covered network as contrary to the purpose of the Code, which is to regulate access to a monopoly asset. Allowing a person to trade capacity allocations raises questions of whether that person is providing a covered service, and should thus be subject to the Code coverage provisions. Again, given the current lack of effective competition in the SWIS, allowing such a secondary, unregulated scheme would create an inappropriate wealth transfer from new entrants to existing users.

3.4.5 Other means of achieving the intent of clause 3.2

Western Power considered other commercial mechanisms to ensure that new applicants appropriately fund all augmentations, and that premature investment in the network by Western Power is minimised.

It should be noted that such augmentations for most areas of the network outside the metropolitan area of Perth might cost in the order of \$50M to \$300M.

Two alternative options to clause 3.2 are as follows.

The first is that the applicant agrees to pay the required contribution if, at some time in the future, an augmentation is required because the existing user chooses to commence using its unused contracted capacity, as calculated at the time the user uses its capacity. Western Power considers this option creates untenable uncertainty for an applicant, and would likely result in the applicant being unable to finance its project. In addition, due to the complexity of the technical interplay between users at various connection points, a mechanism to capture the costs that should be allocated to each applicant (also considering the load growth that had occurred in the mean time) would be extremely difficult for Western Power to apply.

The second option is that Western Power requires the applicant to pay a contribution in advance towards a future augmentation, to be calculated by undertaking a number of systems studies to examine various scenarios involving what the existing user may or may not choose to do. This option would be likely to put Western Power at risk of either under-recovering or over-recovering funds from the applicant. In addition, Western Power may not be able to build the

augmentation in the existing user's required timeframe, potentially putting the integrity of the network at risk.

Also, this approach would result in Western Power requiring a significantly longer time to process the applicant's application.

This latter impact is important, as it limits the ability of an applicant to meet the timeframes required under the Market Rules for participation in a reserve capacity auction, again providing a barrier to entry that impedes competition in the Western Australian electricity market.

Western Power also considered the possibility of 'over booking' capacity. It should be noted that under the AQP, Western Power is required to have regard to its contractual obligations, so that any move in this direction would require a change to the AQP.

This is what occurs in, for example, the distribution network around the metropolitan area of Perth, where the network is not rated to allow every appliance connected to the network to be operating simultaneously. Such a mechanism relies on having a sufficient diversity factor to ensure network capacity is available as needed. However, for those parts of the network, such as the Goldfields, Geraldton, the South West, Albany and so on, that are most likely to be the subject of the operation of clause 3.2, there is no diversity. The network has to be built to allow all existing generation in each of these areas to run concurrently to its full capacity or risk load shedding, which is not permitted under the Technical Rules.

3.4.6 Comparison with the NEM

Western Power provides to generators a 'firmer' capacity right than that given in the NEM, by providing in the contract, subject to various curtailment and financial provisions, the right to transfer electricity up to the contracted capacity.

Generators do not currently have firm capacity rights within the NEM. Generators operate on a non-firm, open access regime, where generation is dispatched or not dispatched depending on price, so that if two generators compete for the same network capacity, only the less expensive generator is dispatched. Whereas congestion in the SWIS is managed through increased augmentation to ensure reliability criteria under the Technical Rules are met, the NEM has implemented a series of constraint equations, constraining generators on or off according to network conditions.

The AEMC is currently undergoing two major review processes that are relevant to clause 3.2. The first is a review of congestion management on the transmission networks, and the associated [Issues Paper](#), released 3 March 2006, describes the many reviews by various consultants that have attempted to define economically efficient ways to reduce congestion in the network.

An associated review of the pricing incentives on network operators to invest in the network is being undertaken as part of a review of electricity transmission revenue and pricing rules. The

AEMC released the [Issues Paper \(Transmission Pricing\)](#), which addresses the transmission pricing aspects of the review, on 14 November 2005. The following is an extract from this paper, describing the intention not to introduce anything resembling property rights regarding the shared network for generators in the NEM.

6.1 Price and Other Economic Signals in the NEM

The Commission considers that it is important for the transmission pricing arrangements to complement the consumption, production and investment signals provided by other aspects of the NEM arrangements. To this end, the following section briefly describes the NEM arrangements that already provide incentives to generators, consumers and investors to behave efficiently. These features are:

- regional pricing structure (section 6.1.1);
- non-firm grid access for generators (section 6.1.2); and
- the transmission investment arrangements, including the Regulatory Test (section 6.1.3).

In this context, the Commission reiterates that although these features are important to the development of transmission pricing Rules, they will not themselves be the subject of this Review. This implies, in particular, that the creation of property rights over the shared network will not be considered. It also means that greater specification of generators' access network rights – as requested in The Group, AGL and VENCORP submissions – will not be addressed in this Review. The issue of compensation payments from one network user to another will also not be considered as these obligations may create *de facto* shared transmission property rights.

It is clear that, despite submissions from large users, the AEMC does not intend to address the issue of capacity rights in the NEM, through pricing signals or otherwise, at least in the near term. Regulatory and pricing answers have not been found to the complex issue of approximating a market for monopoly network capacity, or for providing market-based solutions for overcoming network congestion.

Therefore, Western Power submits that it is unreasonable to expect it to implement any sort of market solution for this issue in its much smaller, peakier and strung out network, when those responsible for the larger, more well-established NEM have been unable to do so.

3.4.7 Commercial drivers

Unlike in the NEM, Western Power does charge generators a use of system fee. However, this is a small proportion of the overall revenue received from the network, which is intended merely to provide an additional locational signal. Unlike the pricing in the gas industry, the charges are not sufficient to provide a commercial incentive to reduce unused contracted capacity when compared to the strong commercial incentive to retain that contracted capacity to avoid a future contribution.

For example, a generator who retires one unit, and decides that it may, sometime in the future, want to build a replacement unit, might face an annual payment of \$2M to retain contracted capacity for an avoided contribution of \$50M. Therefore, in contrast to the Authority's comments, this relative low cost of the access charges and high cost of avoided augmentation cost provides a strong commercial incentive for users not to release unused contracted capacity.

3.4.8 Current users

It should be noted that current major users have clauses similar to clause 3.2 in their existing access agreements. Section 106(b) of the Act states that the approval of the AA does not afford a party any ground or reason for not complying with its existing access agreement. Further, section 4.34 of the Code does not permit the Authority to approve a proposed access arrangement which would have the effect of depriving a person of a prior contractual right. However, some existing users may have the contractual right to automatically revert to a contract approved under the AA.

3.4.9 Improved protection for users in clause 3.2

Western Power has, however, modified clause 3.4 of the ETAC (now clause 3.2). The amended provisions remove Western Power's immediate and unilateral right to reduce contracted capacity, and now require Western Power to give notice to the user of any such intention. Western Power's determination must be made after having regard to the submissions made by the user and any other relevant matter. This mirrors the provisions regarding bypass in the AQP.

There is also now an additional restriction on the use of the power to reduce contracted capacity. As well as Western Power having to form a reasonable opinion that the contracted capacity is not reasonably necessary to satisfy the user's actual requirements (or forecast requirements after a temporary disruption), the power cannot be exercised unless the contracted capacity was the subject of an application submitted by an applicant who is not the user. The purpose of this additional safeguard is to limit the operation of this clause to incidents where the release of unused contracted capacity is genuinely required to meet the Code objective in the manner described in the sections above. It consequentially ensures that clause 3.7 of the ETAC (Reduced Demand Payment) is not triggered by the operation of clause 3.2, as revenue will be recovered from the incoming user.

It is also relevant to note that if a user did not agree with any action taken by Western Power under this clause, it would be entitled to engage the dispute mechanism in the contract. This is an additional safeguard ensuring that Western Power must act reasonably in calling upon clause 3.2.

3.4.10 Conclusion

Accordingly, Western Power submits that clause 3.4 (now 3.2) of the ETAC is reasonable in the present circumstances and not inconsistent with the requirements of section 5.3(a) of the Code nor with the Code objective. Indeed, the proposed clause actively supports the Code objective of promoting the economically efficient investment in, and operation and use of the network in order to promote competition in relevant markets.

However, Western Power accepts the Authority's decision that this issue is better dealt with contractually than in the AQP, and hence has deleted clauses 10.2 (b) and (c) of the AQP.

If the Authority is still unsure that the case has been made with regards to this issue, then Western Power suggests that any final decision to remove clause 3.2 of the ETAC be deferred until the next regulatory period. The immaturity of the market, and the lack of any alternative practical mechanisms to provide commercial incentives that ensure optimised investment would suggest that an additional 3 years to review this important matter are required. Such a deferral would not have much additional impact on users, as clause 3.2 is contained within existing contracts.

4 Capacity Increase

4.1 Associated required amendments

69 - Western Power to delete Electricity Transfer Access Contract clause 3.6 (Increase of Contracted Capacity) and reproduce the procedure for a variation in user capacity in Model Access Contract clauses A3.15 to A3.17 without material omission or variation.

115 - Western Power to delete proposed applications and queuing policy clause 1.5 (Application of the policy).

121 - Western Power to amend proposed applications and queuing policy clause 3.2(a) (Class 1 application) to reproduce model applications and queuing policy clause A2.5(a) without material omission or variation.

4.2 Western Power's position in the original AA

By clause 3.6 of the ETAC, a user would not be entitled to increase contracted capacity unless the user made an application under the AQP, the customer transfer code or the ETAC as applicable. Western Power's procedures were a departure from the MAC which provided for the user to issue a capacity increase notice without the need for any other application.

However, to properly consider the potential impact of an application on other users and enable Western Power to optimise its investment in and operation of the network in accordance with the Code objective, it was necessary for capacity increases to be dealt with under the ETAC, the

AQP and the customer transfer code as applicable. The notion of a capacity increase notice was removed from the ETAC to avoid duplication and mitigate compliance risk with the application process. Applications for increase in capacity were dealt with as class 1 applications under the AQP to ensure a clear process was outlined for a capacity increase. It was proposed that existing users be required to apply under the AQP like any other applicant.

4.3 Authority's assessment

The Authority considered that the exclusion of the concept of a capacity increase notice removed a right to expeditious increases of capacity for existing users. The Authority felt that a capacity increase notice facilitated a streamlined process, which was envisaged in the MAC and the model AQP (in circumstances where no network augmentation is required and where there is no applicant in the queue for that capacity).

The Authority determined that the proposed revisions were not reasonable nor consistent with section 5.3(a) of the Code or the Code objective. Similar considerations applied to the relevant provisions of the AQP. The Authority required the deletion of the offending provisions.

4.4 Western Power's response

Western Power fully supports the philosophy behind the capacity increase notice provisions of the MAC, namely, to ensure that where a user seeks a capacity increase and the transaction will generally involve lower costs and entail less administration to the service provider than a normal access application, then there should be a streamlined process to deal with the request for a capacity increase.

However, there is a practical problem in considering the user's request for a capacity increase. It may not be immediately obvious that a capacity increase will not trigger an augmentation. Western Power may need to determine whether this is the case. This determination must be scheduled in with other access applications.

Western Power has now added a streamlined capacity increase process into the AQP. By this streamlined process, all types of applications that Western Power receives enter an orderly queue for processing but once it is determined that no augmentation is required, the capacity increase process is expedited.

Western Power will undertake to notify the applicant within 10 business days whether a full application is required or whether the increase can be accepted. If a full application is required (for example, because the attachment point is in a particularly constrained part of the network or there are competing applications or because the user has presented more than one capacity increase application in a 12 month period), then the applicant will have a priority date from the day the applicant submits the capacity increase application.

Accordingly, clause 3.4 of the ETAC requires all capacity increase applications to be processed under the AQP. The AQP allows for an expedited process for capacity increases where it is determined by Western Power that no augmentation is required.

The amended provisions are considered to be reasonable and consistent with section 5.3(a) of the Code and the Code objective.

5 Reconciliation between customer and retailer

5.1 Associated required amendments

70 - Western Power to delete Electricity Transfer Access Contract clause 3.7 (Start Date of new Services).

71 - Western Power to delete Electricity Transfer Access Contract clause 3.8 (Contribution of Capacity increase or new contracted point).

5.2 Western Power's position in the original AA

Western Power made provision in the ETAC detailing when a new service would commence. That date was either the date of practical completion of any works required to provide the service or, if no works, the date of signing the relevant access offer. This provision ensured that Western Power was not obligated to commence the services until after the construction of any required works was complete, and particularly catered for the situation where a retailer had submitted an application for a new connection point, and the retailer's customer had submitted a separate application for the same connection point (common industry practice).

The ETAC also included a provision for Western Power to obtain security before it commenced capital works for which a contribution was required. The provision in the ETAC was inserted to reinforce the fact that Western Power might be waiting for a controller who is not the user to pay the contribution, which again is likely to be the case when the retailer is the user, and the retailer's customer is paying the contribution.

5.3 Authority's assessment

In relation to the Start Date, the Authority determined that this provision created duplication and gave rise to uncertainty and ambiguity (with a provision in a schedule to the ETAC) as to when the services under the access contract start. The Authority required the deletion of the Start Date provision.

In relation to Western Power's requirement to obtain security for commencing capital works for which a contribution is required, the Authority considered that the provision duplicated a matter of detail under the CCP. The Authority also did not consider the Code (section 2.9)

contained a mandatory requirement for security before augmentation works commenced. The Authority considered that the appropriate instrument for dealing with capital contributions was the capital contributions policy. It determined that the additional requirement was not reasonable and inconsistent with section 5.3(a) of the Code and the Code objective.

5.4 Western Power's response

Western Power has deleted the start date provision of the ETAC, subject to the acceptance of amendments it has made to the AQP which now provide a reconciliation process between the retailer's access application and the customer's connection application.

Western Power has also agreed to delete the provision relating to the commencement of capital works in the ETAC, subject to the acceptance of its amended provisions of the AQP by which, among other things, it is clarified that a retailer's application for a new connection point or capacity increase will not be finalised until the customer has paid any contribution arising from the customer's connection application.

The new clause 9.2 of the AQP has amended reconciliation provisions to recognise the way in which the industry in fact operates in circumstances where a customer approaches Western Power for a new connection before the customer has selected a retailer. The customer's connection application will be processed and, if an augmentation is required and the customer is required to pay a capital contribution, the customer will pay that contribution and Western Power will construct the works but the connection will not be energised until the customer has selected a retailer and the retailer has submitted an access application for that connection point.

Calculation of the capital contribution assumes that the customer's retailer will select a particular reference service, at a particular level (particularly if it is a CMD service) and for a particular length of time. The anticipated new revenue is calculated accordingly. If the retailer then selects a different reference service or a different CMD, the anticipated new revenue will either be under or over recovered. If Western Power did not recover or rebate the difference, then the result will be inequitable. The calculation of the contribution has assumed that someone will eventually pay the charges. The customer might pay a small contribution, so that Western Power commences the works, but if the customer decides not to proceed or if it cannot find a retailer, then Western Power will be forced to recover the bulk of the augmentation costs from other users.

The amended AQP provisions specify that Western Power will perform a reconciliation when the user adds a new connection point in this situation and that the user must pay or receive the difference, whether or not it paid the original contribution. When the retailer makes an application to put in a connection point, where another person has already put in an application to establish the physical attachment point, then the retailer must pay an additional capital contribution or accept a rebate to pass on to the other person.

6 Seasonal variation

6.1 Associated required amendments

72 - Western Power to delete Electricity Transfer Access Contract clause 3.9 (Decrease of Contracted Capacity) and substitute provisions which reproduce Model Access Contract clauses A3.15 & A3.16 without material omission or variation.

6.2 Western Power's position in the original AA

Original clause 3.9 of the ETAC set out a procedure by which a user may decrease contracted capacity at a connection point from time to time but restricted a user to one variation in each 12-month period. The MAC does not restrict the number of variations that a user may seek.

Western Power submitted in the AA that the purpose of the 12-month restriction was to facilitate an orderly market for access, to minimise administrative costs to Western Power and to prevent users seeking to pass seasonal revenue variations onto Western Power when those variations are not reflective of the cost of maintaining the fixed network Assets. Western Power further submitted that the clause enabled users to access under-used capacity while mitigating the risk of stranded assets.

6.3 Authority's assessment

By RA72 the Authority requires Western Power to delete clause 3.9 and substitute clauses A3.15 and A3.16 of the MAC. In the Authority's assessment, Western Power considered the restriction on a user's entitlement to vary contracted capacity more than once in each 12 month period as not reasonable and therefore not consistent with Section 5.3(a) of the Code. The Authority considered that the claimed risk of users abusing the contracted capacity decrease provisions to take advantage of seasonal fluctuations and demand was apparently low, because of clause 3.5 of the ETAC in relation to contracted capacity. By clause 3.5 of the ETAC the user was obliged to endeavour, as a reasonable and prudent person, to ensure that the rate at which electricity is transferred out of or into the network by or on behalf of the user does not exceed the contracted capacity.

The Authority considered that the proposed variation was inconsistent with the Code objective as it would constrain competition by preventing a user from reducing contracted capacity when an en use customer transfers to a competitor. The Authority referred to clause 3.10 of the ETAC, which, the Authority noted, did not provide for circumstances where a variation is only needed to adjust for a transferred load.

6.4 Western Power's response

By way of clarification of Western Power's intention to prevent users from regularly adjusting their contracted capacity to match their seasonal requirements, Western Power notes that the annual network prices are determined on the basis that contracted capacity is fixed for a 12-month period. If the contracted capacity of one user were allowed to be varied seasonally, then this option would need to be made available to all users and the network prices would need to compensate for this by being set higher than otherwise to ensure that the target revenue is recovered. A similar argument is made for the seasonal variation in the selection of reference services (for example, users attempting to select a CMD reference service in summer and a metered demand reference service in winter to save money on access charges when consumption is low).

In addition, network planners need to know the maximum use of the network to ensure it has a sufficient capacity. The contracted capacity of users is one of the factors used by these planners to determine when augmentation is required.

However, Western Power has revised clause 3.9 (now clause 3.5) of the ETAC to clarify when contracted capacity can be changed. New clause 10.1 of the AQP describes the related situation of a user seeking to modify its covered service at a connection point (which will most likely be to change from one reference service to another). The following rationale applies equally to both provisions.

The amended provisions delete the previous prohibition on the user giving more than one notice to decrease contracted capacity in any period of 12-month period except in extraordinary circumstances. Instead, there is now an ability of the user to seek to reduce contracted capacity of a service at a connection point on more than one occasion in any rolling period of 12 months. However, there is no obligation on Western Power to accept the reduction.

Western Power is entitled to refuse the reduction if satisfied that it is sought by reason of the seasonal nature of the business or operation at the connection point. The potential for users to take advantage of seasonal fluctuations in demand is not low by reason of original clause 3.5 of the ETAC (now amended clause 3.1(c)) in relation to contracted capacity because there is nothing in that clause that prevents a user from reserving capacity that is greater than their requirements, or from changing their requirements throughout the year.

Under clause 3.5, if Western Power receives more than one notice to decrease contracted capacity in a 12-month period, Western Power allows for several scenarios in which Western Power will accept a reduction in contracted capacity, where that reduction is driven by actual changes in requirements, providing the flexibility sought by various users in their submissions on the original AA.

Western Power notes that this is related to a service at a connection point, and is unrelated to any customer transfer made under the Customer Transfer Code, in which case a user's access

contract is amended by force of that code. Clause 3.5 relates to changes in contracted capacity at a connection point, regardless of whether the current user made the previous change. Therefore, the limit on changes in a 12-month period remains with the connection point following a customer transfer.

7 Relocation

7.1 Associated required amendments

73 - Western Power to amend the Electricity Transfer Access Contract by reproducing Model Access Contract clauses A3.19 to A3.24 (Relocation) without material omission or variation.

74 - Western Power to amend Electricity Transfer Access Contract clause 1.1 to include a definition of 'relocation' which reproduces the definition of that term in the Model Access Contract without material omission or variation.

191 - Western Power to make consequential amendments to the transfer and relocation policy resulting from the Authority's required amendments to the electricity transfer access contract.

7.2 Western Power's position in the original AA

Western Power did not include in the ETAC provisions reflecting MAC clauses A3.19 to A3.24 which provide for the 'relocation' of capacity between a user's connection point, in part because these provisions overlapped with the provisions of the TRP. Instead, clause 30 of the ETAC refers to the transfer and relocation policy. Western Power considers that this provides greater contractual certainty regarding the user's rights of assignment.

Further, and this position is reinforced in the TRP, Western Power believed that an arrangement which allowed a user that has contracted capacity at one point the right to decrease capacity at that point in order to take up similar capacity at another point, even when there are applicants in the queue seeking that capacity, would significantly bias the access regime in favour of existing users and not meet the Code objective.

If an applicant is currently in the queue and capacity becomes available because of the decrease by the relocating user at a contracted point, then that applicant should have first access to that capacity under the first-come first-served principle.

Instead of a special regime of 'rotation' of capacity as contemplated by the MAC, relocation is more appropriately effected by:

- the user decreasing contracted capacity at one connection point under the contract; and
- the user increasing contracted capacity at another connection point under the contract, which means submitting an application under the AQP,

as described in the TRP.

To include any special regime that did not follow this system would create duplication and inconsistency between the ETAC and the policies. This would create a lack of clarity regarding users' and applicants' rights under the contract and the AQP.

7.3 Authority's assessment

The Authority considered that the omission of the MAC provisions excluded the user's ability to relocate contracted capacity and thereby removed flexibility for users to seek a relocation of capacity between connection points. The Authority determined that this affected competition in upstream and downstream markets.

The Authority considered that Western Power's concern that relocations potentially favour existing users over applicants is inconsistent with the intention of the MAC, specifically, clause A3.21 of the MAC.

The Authority also had regard to section 5.21(a) of the Code which expressly requires a transfer and relocation policy to permit a user to freely relocate capacity.

The Authority considered that a streamlined process as envisaged in the model AQP represented a reasonable balance of the interests of service providers and users and that the absence of the MAC clauses allowing rotation of capacity between the user's connection points was neither reasonable nor consistent with the requirements of section 5.3 of the Code or the Code objective.

The Authority also considered that proposed clause 6.2 of Western Power's transfer and relocation policy was objectionable. It required users to determine whether there is sufficient capacity at the destination point to satisfy a relocation of capacity from one connection point to another. If the capacity was sufficient, then that provision required Western Power to approve the relocation but should the capacity be insufficient, or should there not be a connection point at the destination point, then the user would be required to lodge an application under the AQP.

7.4 Western Power's revised position

Western Power understands that the MAC relocation provisions were intended to ensure that if there were genuine savings to the service provider because it was dealing with the same party (seeking to relocate capacity), then this should be reflected in a streamlined process. However, this process of 'relocation' is identical to the two separate transactions of the user decreasing its capacity at one connection point and increasing its capacity at another connection point. Western Power considers that it is critical that the increase is processed through the AQP so that appropriate studies can be done to determine if network augmentation is required.

Although Western Power understands that the MAC provisions had the movement of a retailer's customer in mind, the right to move network capacity from one connection point to another would be likely to be used by existing generators to 'jump the queue' in certain areas.

Western Power proposes that the MAC relocation provisions not be included in the ETAC and, instead, users be required to effect the relocation by following the normal process to reduce capacity and to increase capacity as two separate transactions in accordance with the AQP and the TRP.

In the circumstances, Western Power regards the proposed omission as reasonable and consistent with the requirements of the Code and the Code objective.

8 Deleting a connection point

8.1 Associated required amendments

75 - Western Power to amend Electricity Transfer Access Contract clause 3.10 (Deletion of a contracted point) to confine its operation to the deletion of a connection point by reason of the permanent disconnection of Facilities and Equipment.

117 - Western Power to delete proposed applications and queuing policy clause 2.1 (One contract per contracted point).

8.2 Western Power's position in the original AA

Western Power proposed in its original clause 3.10 of the ETAC to delete a connection point in circumstances that go beyond permanent disconnection of Facilities and Equipment. The additional circumstances were where Western Power has successfully processed a Customer Transfer Request in relation to the connection point under the Customer Transfer Code or the connection point has been added to another access contract by some other means. Other than in those circumstances, Western Power could refuse the request.

Western Power's intention in relation to its original clause 3.10 was to ensure that all connection points on the network would be captured in someone's contract. This would have the consequence that Western Power would therefore be receiving its appropriate tariff revenue.

One of the practical outcomes of this provision is that a retailer could not simply terminate a customer without that customer having found an alternative retailer or unless the customer is de-energised in accordance with proper contractual or legal procedures.

8.3 Authority's assessment

The Authority's assessment is that the additional provisions, which are not provided for in the MAC (only permanent disconnection is provided for) give rise to inconsistencies. The inconsistencies occur in the area where a customer is or is to be transferred to another user. The Authority considered that the grounds other than permanent disconnection overlapped with and were inconsistent with provisions of the transfer and relocation policy and the provisions relating to relocation in MAC clauses A3.19 to A3.24. The Authority concluded that Western Power must reproduce MAC clauses A3.19 to A3.24.

8.4 Western Power's response

Western Power proposes to add a further circumstance under clause 3.10 (now clause 3.6) where a deletion can occur, namely, where Western Power has de-energised the connection point under the ETAC or a law. Clause 3.6 now allows for the circumstance where a retailer exercises its rights under the Code of Conduct for Small Use Customers or under another law to cease supplying electricity to a customer and also deals with the circumstance where Western Power has curtailed services under the ETAC.

Western Power is not aware of the extent to which, according to the Authority, where the remaining provisions (other than in relation to permanent disconnection) involving a customer transfer overlap with provisions of the TRP. Western Power notes that a user's access contract is modified by force of the Customer Transfer Code in the event of a customer transfer request.

This issue relates also to RA117, as the intent of clause 3.6 is to ensure that each energised connection point is on a user's contract. It is not appropriate that any connection point on the network be energised unless that connection point is associated with a user who will pay the access charges, and, if the connection point is an exit point, pay for the consumption of electricity at that exit point.

9 Reduced demand payment

9.1 Associated required amendments

76 - Western Power to delete Electricity Transfer Access Contract clause 3.11 (Payment on decrease of Contracted Capacity).

173 - Western Power to delete proposed capital contributions policy clause 8 (Reduced demand payment).

182 - Western Power to delete the definition of 'cost recovery period' from its proposed capital contributions policy.

188 - Western Power to delete the definition of 'reduced demand payment' from its proposed capital contributions policy.

9.2 Western Power's position in the original AA

Western Power proposed a provision of the ETAC (clause 3.11) requiring payment of outstanding charges or an additional capital contribution by a user before any reduction of capacity at, or deletion of, a connection point takes effect.

Western Power's reasons for including this provision were as stated in the AA to be that the provision is based on a 'user pays' principle which would avoid costs being unfairly passed on to users and promote competition. Western Power felt that users, particularly retailers, would consider the implications of this provision and might seek in turn to allocate the risk to their end customers.

9.3 Authority's assessment

In the assessment of the Authority, the MAC does not contain any equivalent and this provision was not reasonable. The Authority considered that the provision allowed Western Power an additional discretion to seek revenue from users without providing the reference services agreed to under the access contract. The Authority stated that the provision appeared to be directed to mitigating Western Power's commercial risk of the user failing to pay outstanding contractual charges but there are provisions elsewhere in the ETAC relating to outstanding charges. The Authority felt it was not reasonable to require a capital contribution in the event of a contractual adjustment. The Authority considered that the requirement to pay a capital contribution on reduction or deletion of a '*contracted point*', where a capital contribution has been previously paid, was not reasonable. It felt that a capital contribution related to an increase in the capacity of the network because the definition of augmentation in the Code relates to an increase in the capacity of the network, not a decrease in utilisation of the network. Therefore, the Authority considered that Western Power should not be entitled to a payment in the form of a capital contribution for a decrease of the user's contracted capacity.

The Authority also determined that the Capital Contributions Policy is not the framework in which a service provider should seek to recover payments for unused demand (paragraph 1822 Draft Decision).

9.4 Western Power's response

Western Power has considered the assessment of the Authority and has deleted clause 3.11 of the ETAC. In its place, Western Power has inserted the reduced demand payment provisions of the CCP at new clause 3.7 of the ETAC. Western Power agrees with the Authority's assessment that the ETAC is a more appropriate place for this provision.

Western Power originally inserted a provision in both the ETAC and the CCP to ensure that if a person paid a contribution that was based on the assumption of Western Power receiving a certain revenue with respect to that connection point and then the associated user reduced their use of the services such that the assumed revenue would not eventuate, then Western Power could seek an additional contribution to cover the difference. This is intended to ensure that the applicant/user pays an equitable share of the augmentation. This is likely to occur when a customer has paid the original capital contribution so a retailer may become liable for a capital contributions type payment. Accordingly, the provision is reasonable.

Clause 3.7 clarifies that the reduced demand payment is payable when the following occurs.

- A contribution payment was originally paid for augmentation to shared assets or connection assets in respect of the connection point (by the user, the controller, or another person)
- The contribution calculation assumed a certain revenue over a certain time.
- The user has sought to reduce its contracted capacity such that Western Power will receive less than the assumed revenue.
- No other person will be paying an equivalent increase in revenue with respect to the augmentation (either because the connection point has migrated to another contract or because there is another user using the relevant assets).

Western Power does not propose to implement the reverse, that is, a rebate on an increase in capacity. This is due to the nature of the contribution calculation. Someone who pays a contribution ensures that their new connection imposes no additional costs on existing users but it also means that they do not contribute to the existing shared network. Therefore, Western Power considers that this is reasonable, and fairly assigns the costs of network assets between users.

Western Power's proposed new clause 3.7 not only relocates the reduced payment demand to its correct place in the ETAC but also deals with the confusion to which the Authority referred relating to dual provisions regarding payment of outstanding charges on determination. In this respect, original clause 3.11(b) of the ETAC overlapped with the determination provisions of the ETAC in relation to the obligation to pay unpaid charges under clause 27.1. The removal of the original clause 3.11(b) of the ETAC overcomes this overlap.

In response to the Authority's assessment that the Code defines contributions as applying to augmentations that are increases in network capacity, not to reductions in utilisation of the network, Western Power is of the view that the Authority's interpretation is not correct. As the Authority has itself stated (paragraph 1819 of the Draft Decision) the proposed additional provision introduces a provision that is not directly related to the payment of a contribution, but rather to a reconciliation in regard to a previously paid contribution. The reason for this reconciliation is the same reason that a contribution was charged in the first place, and that is that the user is expected to pay for that part of the works that does not meet NFIT, so that the user does impact the network prices of other users.

The Authority has assessed that the concept of a reduced demand payment is not provided for under the MAC and is considered to be inconsistent with Sections 5.12 to 5.15 of the Code and the Code objective. Western Power has now responded by demonstrating that the proposed provision is consistent with Sections 5.12 to 5.15 of the Code and the Code objective.

The Authority considered that mitigation against a reduction in demand is effectively dealt with under an access contract, where capacity is contracted for a given period of time and any reduction to that capacity is dealt with as part of that contract. Western Power submits that clause 3.7 of the ETAC is precisely such a mitigation provision - it is provision of an access contract which deals with capacity for a given period of time and reduction to that capacity.

Clause 3.7 of the ETAC contemplates that payment of a contribution was made and it links that payment to a connection point. Alinta also submitted that these matters should be addressed and they are in the new clause 3.7 of the ETAC.

10 Controllers

10.1 Associated required amendments

64 - Western Power to amend Electricity Transfer Access Contract clause 1.1 to delete the definitions of 'Connection Contract' and 'Interconnection Works Agreement'.

77 - Western Power to amend Electricity Transfer Access Contract clause 6.1 (User must nominate Controller) to reproduce Model Access Contract clause A3.36(a) without material omission or variation and Electricity Transfer Access Contract clause 6.1 to be amended to specify a reasonable test for when an exit point needs a designated controller.

78 - Western Power to amend Electricity Transfer Access Contract clause 6.2(a) (Where the User is not the Controller) to delete the word 'unconditionally'.

79 - Western Power to amend Electricity Transfer Access Contract clause 6.2(b) (User must satisfy service provider of its arrangements with designated controller) to reproduce Model Access Contract clause A3.39(a) without material omission or variation.

80 - Western Power to amend Electricity Transfer Access Contract clause 6.2(c) (Curtailment where Western Power is not satisfied of compliance by controller) to reproduce Model Access Contract clause A3.39(b) without material omission or variation.

95 - Western Power to amend the Electricity Transfer Access Contract to include provisions which reproduce Model Access Contract clauses A3.62 and A3.63 (Actions of third parties causing user to breach technical rules) without material omission or variation.

112 - Western Power to remove the Connection Access Contract from the proposed access arrangement.

126 - Western Power to amend proposed AQP clause 7.2(c) (Information required with the application for each requested contracted point) by amending clause 7.2(c)(vi) to reproduce model AQP clause A22(g)(ii), without material omission or variation.

153 - Western Power to delete the definition of 'connection contract' in proposed applications and queuing policy clause 1.1.

10.2 Western Power's original proposal

Western Power's proposed ETAC provided for a user to nominate a controller for each contracted point, now connection point. If the user is not the controller then the proposed ETAC provided that the user must procure compliance with the connection provisions of the ETAC from the controller, unless the controller has entered into a separate connection contract with Western Power. Western Power wishes to retain the right to contract with any person including a controller.

This position is different from the MAC, under which a nomination as controller is only required at entry points where the installed capacity exceeds 30 KVA and a parameter which may be specified at exit points (left for completion in the access contract).

Clause 6.2(c) of the proposed ETAC did not contain a provision similar to clause A3.39(b) of the MAC for the user to avoid curtailment, or further curtailment, upon the controller otherwise agreeing in writing (other than by a connection contract) to be bound by the relevant provisions of the ETAC. The omission by Western Power was intended to avoid any confusion about what '*otherwise agreed in writing*' means and clarify Western Power's position that a connection contract was required.

Western Power sought to make it clear in the proposed ETAC that neither party has any liability for any action regarding a third party, except as regard controllers, and that clause A3.62 (and A3.63) of the MAC should not be adopted as their inclusion would be confusing. Western Power added an '*avoidance of doubt*' provision in the proposed ETAC to the effect that the user will be liable to Western Power for any direct damage caused by a controller unless the user can prove that it is not in breach of its requirement to use reasonable endeavours to procure technical compliance from the controller.

In Western Power's submission, the integrity of connected facilities and equipment is critical to network system reliability and security. Western Power has little opportunity to mitigate the risk of damage or failure and the consequences to users in general. Consequently, Western Power felt it is essential that risk be allocated to users and controllers as appropriate and that their respective rights and obligations of the parties and controllers should be clear to enable the safe and reliable management of the network.

10.3 Authority's assessment

In relation to Western Power's proposal that all the users nominate a controller for all contracted points, the Authority determined that the principle in the MAC that there be a threshold below which a user has no nomination obligation and Western Power has no right to notice of the users' arrangements or other rights regarding technical compliance issues, should apply. The Authority supported the MAC intention of requiring nomination of designated controllers for entry points only where the transfer exceeds 30 kVA. In relation to exit points, the Authority considered that the onus is on Western Power to nominate a reasonable threshold having regard to Western Power's network to be protected from technical compliance risk and sought comment from interested parties in relation to what will constitute a reasonable threshold for an exist point.

By RA77 the Authority requires Western Power to amend clause 6.1 of the ETAC to reproduce the entry point threshold and to amend clause 6.1 to specify a reasonable test for when an exist point needs a designated controller. Similarly, RA126 requires Western Power to amend its AQP to not require a controller for each connection point.

In relation to the issue of curtailment where Western Power is not satisfied of compliance by a controller, the Authority's assessment was that Western Power's proposal admitted one way in which a user may avoid further curtailment (ie. by its designated controller entering into a written contract with Western Power under which the designated controller will comply with the matters in MAC clause A3.38). The Authority, by RA80, requires Western Power to amend clause 6.2(c) to reproduce MAC clause A3.39(b).

In relation to the issue of liability of the user for actions of third parties causing the user to breach technical rules, the Authority determined that Western Power's proposed ETAC provisions unreasonably transferred the risk of loss arising from uncontrollable third party actions from Western Power to the user. It has required, by RA95, Western Power to reproduce MAC clauses A3.62 and A3.63.

10.4 Western Power's response

Western Power has made an amendment to clause 6 of the ETAC that clarifies the obligation of the user to provide information about the controller and the nature of that information. The purpose of this amendment is for Western Power to obtain adequate information to enable Western Power to comply with its own obligations under various instruments under the Act, including the Metering Code, Code of Conduct for the Supply of Electricity to Small Use Customers, and other legislation. By the amendment, the user is obliged to:

- by notice to Western Power before the start date of the relevant services, nominate the person as the controller for each connection point

- comply with the relevant provisions of the Metering Code in regard to the provision of controller information (where all references to a ‘customer’ under the relevant provisions of the Metering Code are to be read as references to the controller).

Western Power notes that section 5.19 of the Metering Code determines what information retailers are to provide to Western Power and under what conditions. Therefore, Western Power proposes not to remove the requirement under the AQP for an applicant to provide such information regarding a controller.

Western Power has now amended clause 6 of the ETAC to provide for the following thresholds (circumstances where Western Power may require a user to procure a controller to enter into a connection contract with Western Power, and where Western Power may object to the user’s choice of controller):

- Generating plant with installed capacity exceeding 30 kVA is connected at the connection point.
- The connection assets for the connection point are operated at 66 kV or greater.
- 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.

Western Power considers that these thresholds are reasonable, as they objectively relate to the user’s potential impact on the technical integrity of the network. The first is from the MAC, the second relates to transmission assets, which have inherently higher energy, and hence higher risk associated with them, and the third is taken from the appropriate Australian Standard on voltage flicker standards, as it provides a clear measure of when a user’s equipment might technically have an adverse effect on other users in the vicinity.

Western Power has inserted a definition of connection contract into the amended ETAC which provides for the option contained in MAC clause A3.39, that is, for there to be an agreement in writing other than by way of a complete technical compliance contract.

In relation to Western Power’s right to curtail if the user does not satisfy Western Power of the controller’s compliance, Western Power has added a provision that this right can apply, not just until a controller has entered into a connection contract with Western Power but also where the controller has ‘*otherwise agreed in writing*’ to Western Power to be bound by the relevant technical compliance requirements of the ETAC (provided by means of the amended definition of ‘connection contract’). This provides Western Power and controllers greater flexibility to enter into agreements that are of a complexity appropriate to the situation.

In relation to the issue of liability of the user for actions of third parties, A3.62 and A3.63 of the MAC exempt the user from liability for breach of the Technical Rules if the user has not been negligent or acted as a ‘*reasonable and prudent person*’, subject to nothing in those provisions affecting the liability of the user for negligence or for a Default, or the operation of the force majeure provisions of the ETAC.

Western Power has substantially reproduced MAC clauses A3.62 and A.3.63 in the amended ETAC (clause 11.3), making them reciprocal, and subject to clause 6 regarding controllers. Therefore, the user remains liable for actions of its controller (where that controller has not separately contracted with Western Power), providing greater contractual certainty regarding the user's obligations.

Western Power remains of the view that it is essential for the user to take responsibility for technical compliance by a controller, where the controller has not entered into a connection contract with Western Power.

11 Tariffs

11.1 Associated required amendments

81 - Western Power to amend Electricity Transfer Access Contract clause 7.1 (Tariffs) to include provisions which reproduce Option B in Model Access Contract clause A3.40 without material omission or variation.

11.2 Western Power's position in the original AA

In clause 7.1 of its proposed Access Arrangement, Western Power included MAC A3.40 Option A but omitted Option B, which provides for the user to negotiate an outcome of selecting a reference tariff for its reference service in the first year of the service, but then rather than accept the reference tariff in future years, the user's tariff would increment by CPI from its original position.

11.3 Authority's assessment

The Authority considered that the removal of Option B was not reasonable as it removed a viable option for the user.

11.4 Western Power's response

Western Power believes that the inclusion of Option B is not consistent with the Code objective. As the Authority itself stated in paragraph 1139, 'by definition, a Standard Access Contract is expressed as being a contract for a reference service which has an applicable reference tariff.' Allowing users to select a non-reference tariff for a reference service would provide inequitable treatment amongst users and would result in unbalanced allocation of target revenue. In general, prices can rise more (or less) than the CPI allowed for by Option B, and allowing users to select non-reference tariffs for reference services is inconsistent with Western Power's pricing methods. A user may negotiate a non-reference service under the terms of a 'non-

reference/non-standard contract', but the ETAC is a standard contract for reference services, and so a non-reference element is not appropriate in this document.

12 Additional charges

12.1 Associated required amendments

84 - Western Power to delete Electricity Transfer Access Contract clause 7.2(b) (Charges).

12.2 Western Power's position in the original AA

In clause 7.2(b) of its proposed Access Arrangement, Western Power amended MAC A3.41 to include a requirement that the user must pay to Western Power, in addition to the Charge for each Service calculated at the Tariff, any other charge applicable to the provision of each Service, as published by Western Power, as agreed between the Parties or as otherwise required by Law.

12.3 Authority's assessment

By way of RA 84 of its Draft Decision, the Authority did not approve the proposed clause 7.2(b) and required that MAC A3.40(b)(ii) [sic] be reproduced without material omission or variation.

In the Authority's Assessment, there was no basis for the broadening of Western Power's discretion to require payment of additional charges otherwise not agreed to under the Standard Access Contract as, by definition, a Standard Access Contract is expressed as being a contract for a reference service which has an applicable reference tariff. The Authority further acknowledged and accepted Alinta's submission concerning whether the proposed clause 7.2(b) was sufficiently detailed.

12.4 Western Power's response

Western Power does not wish to be precluded from being able to recover those charges in addition to the Tariff, to the extent that there are any, to which it is entitled to either under the Standard Access Contract or at law. This might include, for example, lodgement fees due under the AQP, any administrative fees listed in the Price List, fees under the Metering Code, fees under the Customer Transfer Code and so on.

Consequently, in light of its stated intent, Western Power has considered the Authority's Assessment and the submissions of the interested parties and proposes an amended 7.2 to the following effect:

- The User must pay to Western Power the Charge for each Service calculated at the Tariff determined under clause 7.1.

- Nothing in clause 7.2 prevents Western Power from recovering any other monies otherwise payable by the User to Western Power under the Contract or at law.

Western Power submits that the amended proposed clause 7.2(b) does no more than clarify the existence of its pre-existing rights in contract or at law. It does not create any new contractual right of recovery for charges. As such, it does not, in contravention of the Code, broaden the discretion of Western Power to require payment by users of charges outside of the access contract, and it provides additional (and sufficient) detail and clarification to form the basis of a commercially workable access contract.

Western Power considers that its position in relation to this RA is consistent with the Code requirements.

13 User's contribution to Western Power force majeure

13.1 Associated required amendments

86 - Western Power to amend Electricity Transfer Access Contract clause 7.3(a)(ii) (Charges during Western Power's Force Majeure Event) to delete the word 'solely'.

87 - Western Power to delete Electricity Transfer Access Contract clause 7.3(b) (User contribution to force majeure event).

13.2 Western Power's position in the original AA

Under clause 7.3(a)(ii) of its proposed ETAC, Western Power included a provision not contained in the MAC which added a requirement for the user to be unable to use a service solely because of a force majeure event in order for the user to be relieved of payment obligations.

Under clause 7.3(b) of its proposed ETAC, Western Power included a provision by which the force majeure provisions would have no operation when the user contributed to the event or was unable to use the affected service.

13.3 Authority's assessment

The Authority did not approve clause 7.2(a)(ii) or clause 7.3(b), for which there are no equivalent provisions in the MAC.

The Authority required that the word 'solely' be deleted from 7.2(a)(ii) and that 7.3(b) be deleted in its entirety as it considered these clauses were not sufficiently detailed and complete and therefore inconsistent with the requirements of sections 5.3(a) and (b) of the Code.

In the Authority's Assessment, as force majeure is defined as an event beyond the control of the user, there are no circumstances in which a user's actions could contribute to a force majeure event. The Authority considered that the introduction of the word 'solely' in 7.3(a)(ii) is uncertain in its operation and would create a discrepancy between the provisions relating to suspension of obligations during force majeure (where there is no such 'sole cause' requirement) and payment obligations during force majeure.

The Authority also considered that the inclusion of clause 7.3(b) would add uncertainty to the access contract by introducing a requirement that a user be 'ready, willing and able' to take services.

13.4 Western Power's response

In accordance with RA86, Western Power has deleted the word 'solely' from clause 7.3(a)(ii).

The Authority required, by RA87, that proposed clause 7.3(b) of the ETAC (user contribution to force majeure event) be deleted as, by reason of the definition of force majeure as an event beyond the control of the user, there are no circumstances in which a user can contribute to a force majeure event.

However, in both the MAC and the ETAC, force majeure is defined as being an event or circumstance beyond a 'party's' control and which 'the party' acting as a reasonable and prudent person is not able to prevent or overcome. Under both the ETAC and the MAC, force majeure is not defined as an event beyond the control of the user. Rather, it is defined as an event beyond the control of the affected party. For the purposes of clause 7.3 of the proposed ETAC the affected party is Western Power.

Therefore, it is possible that a user could, by its acts or omissions, cause or contribute to an event of force majeure suffered by Western Power (for example, the user's generator could be faulty causing the force majeure event that resulted in Western Power being unable to supply electricity). While Western Power should reasonably be, as in the MAC and ETAC, relieved of its service obligation, the MAC and ETAC go further and relieve the user of its payment obligation to the extent of 90% of the standing charges. However, if the user has caused the force majeure event affecting Western Power, it would be inequitable to allow the user the relief from paying the standing charges.

Western Power acknowledges the Authority's comments regarding uncertainty in respect of the requirement that a user be ready, willing and able to take services. Western Power's intention was to deal with the situation where the force majeure event has no practical effect on the user. Western Power has now deleted clause 7.3(b) and inserted terms into new clause 7.3(a) which allows a limited exception to the user's ability to claim relief from the standing charges, namely, where the user is unable to make use of the affected service due to an outage (ie where the user's facilities and equipment are concurrently de-energised for its own reasons).

The standard interval metering equipment will determine when the user stopped transferring electricity.

14 Security

14.1 Associated required amendments

90 – Western Power to amend Electricity Transfer Access Contract clause 9(b) (Security for capital contributions) to reproduce Model Access Contract clause A3.51(b) without material omission or variation.

91 - Western Power to amend the Electricity Transfer Access Contract to reproduce Model Access Contract clause A3.52 and A3.53 (Alternative security arrangements) without material omission or variation.

136 - Western Power to amend proposed applications and queuing policy clause 14.8(a) (Security) to reproduce model applications and queuing policy clause A2.86(a) without material omission or variation and by deleting proposed applications and queuing policy clause 14.8(b).

146 - Western Power to amend proposed applications and queuing policy to reproduce model applications and queuing policy clause A2.87 (Alternative security) without material omission or variation.

14.2 Western Power's position in the original AA

Western Power initially proposed that the user would be obliged to provide evidence that it had a credit rating of at least a specified standard or Western Power could require security. This approach was a variation to the MAC and the AQP which provides a threshold test for security to be provided by a user, namely, where Western Power as a reasonable person has determined that there is a material risk that the user does not have the financial and technical resources to meet its obligations. Western Power also proposed that there be no qualification on Western Power's right to seek security in relation to capital contributions. Western Power proposed that the form of security for capital contributions would be an unconditional and irrevocable bank guarantee.

14.3 Authority's assessment

The Authority considered that it was neither reasonable nor inconsistent with section 5.3(a) of the Code and the Code objective for the threshold test in the MAC to be removed. The Authority also considered that the cost of acquiring a rating from a recognised rating agency could impose a material added cost burden on users seeking to establish a retailer or generation business which could operate as a barrier to entry. The Authority required that the ETAC reproduce clause A3.51(a) of the MAC.

In relation to security for capital contributions, the Authority objected to Western Power's provision because it removed alternative security options. The Authority considered that the removal of the threshold test was not reasonable in that a user should only bear the cost of security where Western Power's legitimate commercial interests were at risk. The Authority required that MAC clause A3.51(b) be reproduced.

The Authority required Western Power to reproduce MAC clauses A3.52 and A3.53 which provide for the user to propose alternative forms of security and, failing agreement, the issue of alternative security would be the subject of dispute resolution procedures.

14.4 Western Power's response

14.4.1 ETAC

Western Power agrees to include the threshold test and has amended the ETAC accordingly. The amendment generally follows clause A3.51(a) of the MAC except in relation to the option of the provision of a parent company guarantee. There is a reasonable qualification to the ability to provide a parent company guarantee; namely, where Western Power, acting reasonably, determines that the parent company could also pose a material financial or technical risk.

The provision regarding an appropriate credit rating has now been amended so that a rating will be sufficient evidence of financial security but no longer a mandatory requirement. The use of this rating standard is in line with the national electricity market and allows a transparent and easy to administer process although it is not an exclusive requirement.

In relation to security for capital contributions, clause 9 of the ETAC has been amended to provide that security for a contribution is not limited to an irrevocable and unconditional bank guarantee but can be an '*equivalent financial instrument*' on terms acceptable to Western Power acting reasonably.

However, Western Power does not agree that the threshold test is appropriate to secure capital contributions. It is in the very nature of a capital contribution of the kind contemplated in the Capital Contributions Policy that security is necessary to protect other users from tariff increases that could flow from under-utilised augmentation works constructed for the benefit of a user that reneges on its capital contribution payment responsibilities.

It is not necessary to insert MAC clause A3.52 providing for alternative arrangements for security as the inclusion of the option of an '*equivalent financial instrument*' is sufficient to deal with alternative arrangements. This would practically eliminate the need for the parties to defer to dispute resolution provisions. However, should the need arise for some reason, the standard dispute resolution provisions in the contract would be applicable. There is therefore no need for a special dispute resolution clause like MAC clause A3.53.

14.4.2 AQP

Western Power has taken a different approach in the AQP. The test in the ETAC refers to the user's technical and financial capability to meet all of its liabilities under the contract. Western Power considers that in many cases, allowing the user to select to provide a bank guarantee for 2 months charges is not a measure commensurate with the risk posed by the user's inability to meet all of its obligations under the contract. In addition, Western Power notes its compliance with RA97 to include indemnifier provisions in the ETAC.

Therefore, Western Power has included the security test in clause 4.9 of the AQP, but has made it objective, and has made the remedies if the test is satisfied objectively commensurate with the risk. The appropriate remedy might be to provide an indemnifier who will indemnify Western Power only in respect of those liabilities for which there is a material risk that the applicant will not be able to meet. Alternatively, the applicant can procure a guarantor to guarantee its liabilities, who may be a parent company, a bank, or some other person. The form of guarantee from the MAC has been included as a schedule in the AQP.

The modifications that Western Power has made to the insurance provisions in the ETAC provides greater certainty to applicants that Western Power could only reasonably require the applicant to provide an indemnifier or guarantor, with respect to the applicants liabilities for damage, in the event that the applicant is at risk of not maintaining adequate insurance under the ETAC.

Western Power considers this is a reasonable outcome, consistent with section 5.7(a) of the Code. It is also more consistent with section 5.7(b) of the Code than the model AQP provisions, which did not allow a mechanism for the indemnifier envisaged by the MAC to be introduced during the applications process, which is the only practical time for the applicant to procure an indemnifier.

15 User to bear costs for compliance with Technical Rules

15.1 Associated required amendments

92 - Western Power to delete Electricity Transfer Access Contract clause 11.2 (User to bear costs of technical rule compliance).

15.2 Western Power's position in the original AA

In clause 11.2 of its proposed ETAC, Western Power included an obligation not contained in the MAC that the user bear its own costs as well as all reasonable Western Power costs related to the user's compliance with the technical rules.

15.3 Authority's assessment

In the Authority's Assessment, as under the MAC the user and the service provider are to bear their own costs of technical compliance except in circumstances where the capital contributions policy applies, the proposed clause 11.2 created the risk that Western Power could over-recover in respect of the same activity. That is, Western Power could potentially recover under both the capital contributions policy and by way of reimbursement by the user of Western Power's technical compliance costs. Accordingly, the Authority considered that this risk of over-recovery posed by the proposed clause 11.2 was not reasonable and therefore inconsistent with section 5.3(a) of the Code.

15.4 Western Power's response

Apart from the requirement that a service provider or system management reimburse a generator for certain tests conducted under Technical Rule 4.1.3(d), the Technical Rules do not contain provision for the recoupment of costs incurred in compliance with the Technical Rules. Further, the draft Technical Rules issued by the ERA on 11 April 2006 contained a statement following Rule 3.2.1(f) that:

Where a User's equipment increases the fault levels in the transmission system or distribution system, responsibility for the cost of any upgrades to the equipment required as a result of the changed power system conditions will be dealt with by commercial arrangements between the network Service Provider and the User.

Consequently, to the extent that this statement is not using the term 'commercial arrangements' to refer to arrangements outside of the ETAC, Western Power has amended clause 11.2 of the ETAC to incorporate the ability to recover such costs.

Western Power seeks to be able to recover, to the extent not already provided for under the capital contributions policy, the costs it reasonably incurs in performing actions in compliance with the Technical Rules brought about by acts or omissions of the user. Of particular concern to Western Power is the ability to recover those costs incurred where a user's equipment increases the fault levels in the transmission system. Western Power further wishes to allay the concerns of users that they will be liable for the costs incurred by another user arising from compliance by that other user with the Technical Rules. Western Power seeks to do this by clarifying, for the avoidance of doubt, that this will not be so.

Consequently, Western Power has considered the Authority's Assessment and the submissions of the interested parties, and proposes amending clause 11.2 of the ETAC to include the following additional provisions:

- Where an act or omission of the User 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 payable by the User under the Capital Contributions Policy.

- Without limiting clause 11.2, 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 Capital Contributions Policy.
- 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.

Western Power considers that its position in relation to these RAs adequately addresses the Authority's concerns is both reasonable and consistent with the Code requirements.

16 User to make application to modify facilities

16.1 Associated required amendments

93 - Western Power to amend Electricity Transfer Access Contract clause 12 (Technical characteristics of Facilities and Equipment) to delete the requirement in clause 12(b) for a user to make application under the applications and queuing policy before modifying facilities and equipment.

115 - Western Power to delete proposed applications and queuing policy clause 1.5 (Application of the policy).

16.2 Western Power's position in the original AA

By ETAC clause 12 (a), information about the technical characteristics of facilities and equipment must be provided by the user to Western Power.

ETAC clause 12 (b) provides that the user must not materially modify such facilities and equipment without first making a successful application under the AQP. Similarly, proposed AQP clause 1.5 provides that any reference to an application for a covered service also refers to an increase in capacity of an existing covered service and to a material change in the technical characteristics of facilities and equipment connected at an existing contracted point.

16.3 Authority's Assessment

In relation to proposed ETAC clause 12 (b) and proposed AQP clause 1.5, the Authority did not consider it appropriate that a user must make application under the AQP in relation to any material modification to facilities and equipment or increased capacity. The Authority considered that this places an additional burden on an existing user to return to the queue via the AQP.

In addition, the authority considered that a modification of facilities and equipment should not always necessitate an application under the AQP. For example, where a change in the technical characteristics does not affect the capacity required by the user.

The Authority considered that Western Power could obtain up-to-date information about the technical characteristics of facilities and equipment and where the modification does not arise in a need for network augmentation, without requiring an application to be made under the AQP.

As capacity increases and changes to facilities and equipment are not subject to the AQP, the Authority considered that these proposed additions to the AQP were inconsistent with sections 5.7(a) and (b) of the Code and the Code objective.

16.4 Western Power's response

Western Power has amended clause 12 (b) of the ETAC so that a user must only make an application under the AQP in relation to any material modification to generating plant. This reflects the more significant impact that a change to generating plant can have on the network and other users than consuming plant (which must merely continue to comply with the Technical Rules). Western Power maintains a database of details regarding generating plant, and uses this to assess each new application through system studies. System studies examine issues, such as thermal capability of the network, that are common to loads and generators, and also issues of stability and voltage and frequency response that concern the interrelation of all connected generating plant. For example, the studies might determine that a change to the way in which a generator responds to faults requires Western Power to install stabilising equipment on the network.

Even for very small generators, it is important that Western Power knows the exact details of the connected plant so that Western Power can examine the impact on fault level ratings and generally ensure the safety of its personnel when working on the network. It is feasible that changes to small generators might result in Western Power being required to undertake works. For example, a change to the automatic voltage regulator on a small distribution unit might affect the voltage for other users, and hence require Western Power to install voltage-correcting equipment on the network.

It is envisaged that the requirement to inform Western Power of any changes to equipment might be handled by notice procedures. Such technical changes to existing generating plant might impact the augmentation costs to be incurred by other applicant's in the queue. Therefore, a change in the technical characteristics of generating plant must go through the same process as any other application, and should be a part of the AQP to ensure the applicants' priority is correctly assigned.

17 Service standards

17.1 Associated required amendments

96 - Western Power to amend the Electricity Transfer Access Contract to include a provision which reproduces Model Access Contract clause A3.67 (Service provider must comply with service standards) and Schedule 2 without material omission or variation.

17.2 Western Power's position in the original AA

The ETAC does not contain an equivalent clause to MAC A3.67 which provides that a service provider must provide services to a user in accordance with the 'service standards'. 'Service standards' is defined as either standards specified in a schedule to the ETAC or, if nothing is specified, those applying in respect of the service under the access arrangement.

The service standards benchmark specified in the access arrangement are not applicable on an individual user basis. Instead, they reflect targets for particular groups in accordance with network configuration and location. Specified standards are based on system averages (ie system-wide overall performance benchmarks).

Accordingly, the sanctions against Western Power for not meeting a particular service standard may be for non-compliance with the access arrangement or legislation. It is not appropriate that there be contractual remedies for non-compliance.

By way of example, it is not appropriate to say that a particular user would receive a time-of-use reference service at a SAIDI of 242 minutes (06/07 benchmark), as that implies that Western Power would be in breach of that access contract if that user experienced a longer interruption time in respect of that reference service. Similarly, if Western Power does not satisfy a service standard for a particular reference service, which is determined on a system-wide basis, it would not be appropriate for Western Power to incur the statutory sanctions and also be in breach of contract with all users being supplied with that reference service.

17.3 Authority's assessment

The Authority has determined that the omission is material as users may be unaware of the option to negotiate individual service standards in the absence of an express provision to do so within the standard access contract. The authority considered that submissions advanced by Western Power did not address the issue of the impact an omission equivalent to MAC clause A3.67 has on the reasonableness of the ETAC and its consistency with the Code objective. The Authority considered it was not reasonable and therefore inconsistent with section 5.3(a) of the Code and the Code objective for the ETAC to omit MAC clause A3.67.

17.4 Western Power's response

Western Power refers to its earlier position that its proposed standards in the access arrangement do not apply at individual user level. The MAC clause contemplates that the service standards can be used at individual user level. Accordingly, for the reasons that Western Power has previously provided to the Authority, it is not appropriate to include MAC clause A3.67.

Western Power's obligation to comply with service standards is covered in the Code and any breach of those standards would be appropriately dealt with by the relevant provisions of the Code.

18 Limitation of liability

18.1 Associated required amendments

98 - Western Power to amend Electricity Transfer Access Contract clause 18.5 (Limitation of liability) to reproduce Model Access Contract clause A3.74 without material omission or variation such that the value of '[x]' is left to be inserted in the access contract by agreement between the parties or arbitrated award.

18.2 Western Power's position in the original AA

By ETAC clause 18.5, Western Power specified limits on liability to reflect the varying levels of technical risk posed by the different types of facilities. The result of Western Power's proposal is that, for each contract, Western Power has a total liability of \$10 million per year. The User's maximum liability to Western Power in connection with the ETAC is limited depending on the voltage of the 'contracted point' at which a 'generation plant' or 'consuming plant' is connected to the SWIN and upon the type of 'generation plant'.

18.3 Authority's assessment

The Authority considered that under the Code, the Authority has discretion not to determine respective caps on the liability of Western Power and users if the Authority considers it appropriate. The Authority also considered that the matter raised "commercial issues" as to the reasonableness of the liability caps introduced by Western Power. These issues were to be outside the scope of the Authority's determination power, as they do not directly affect a user's access to Western Power's network.

The Authority did not consider it reasonable to include a clause in the ETAC that attempts to provide equivalent liability provisions for all users. Rather, the Authority considered that each user should be entitled to negotiate the relevant liability provisions in accordance with their individual requirements.

The Authority therefore required that Western Power amend the ETAC to provide that the maximum liability be left at the value of '[x]' to be inserted in each access contract by agreement between the parties or arbitrated award.

18.4 Western Power's response

In light of the Authority's decision, Western Power's has considered the submissions made by interested parties in response to its original AA submission, and considered further whether its specified limitations on liability reflect standard industry practice. Western Power has therefore, based on the outcomes of a risk analysis workshop, revised the limits on liability in clause 18.5 of the ETAC and has amended this clause to reduce the maximum liability of each user operating within a certain risk class. The risk classes have also been amended from being separated by a 132 kV threshold to a 66 kV threshold in accordance with the transmission/distribution delineation in the Code.

Table 1 presents a comparison between the limits of liability previously submitted and Western Power's proposed revised submission.

Risk Class	Previous Submission	Revised Submission
Western Power	\$10M	\$5M
Transmission thermal generating plant	\$50M	\$20M
Transmission wind or solar generating plant	\$20M	\$10M
Distribution generating plant	\$10M	\$1M
Transmission consuming plant	\$10M	\$5M
Distribution consuming plant (every 100 connection points)	\$5M	\$1M

Table 1: Previous and revised liability limits

Western Power considers that these limits of liability are reasonable, and that the inclusion of these limits in the standard contract ensures that the ETAC has an appropriate element of certainty and forms a commercially workable contract, and most importantly, enables a user or applicant to determine the value represented by the reference service. By presenting limits appropriate to a class of users, rather than a single number as envisaged by the MAC, Western Power has not, as suggested by the Authority, presented a single solution for all users, but rather a commercially appropriate set of numbers reflecting individual users' requirements.

The Authority has stated in paragraph 1262 of the draft decision that each user should be entitled to negotiate the relevant liability provisions in accordance with their individual requirements. Western Power notes that nothing in its proposed ETAC limits the operation of section 2.8(b) of the Code with regards to the requirement on Western Power to negotiate in good faith with an applicant regarding the terms of an access contract.

Further, Western Power considers that not approving a standard set of liability limits is detrimental to the interests of those applicants who do not have sufficient resources to

effectively negotiate with Western Power, or to pay the upfront costs associated with arbitration.

Western Power considers that the Authority has no power to require Western Power to leave the limitation of liability values to negotiation between the parties or arbitration under the propose/respond (or 'pass/fail') model of Chapter 4 of the Code and sections 5.4 and 5.5. Western Power has completed this matter, one that is left to be completed in the MAC, directly in accordance with the instructions contained within the MAC, in accordance with section 5.4(a)(i) of the Code. Under section 5.5(a), the Authority must approve the ETAC to the extent that it reproduces without material omission or variation a provision in the MAC.

Footnotes 50 and 52 in the MAC require the Authority to either approve a number inserted by Western Power or to approve a decision by Western Power to leave the value for negotiation. The limit amounts are 'to be inserted' and the Authority is then charged with the duty to approve the amounts or disapprove them. The alternative of leaving the amounts to negotiation and arbitration only arises where the access arrangement that is submitted chooses to take that course. If that alternative course is taken then the Authority may approve that course. In this case, Western Power has chosen to submit the access arrangement with limits stated and so the Authority must consider those limits under its powers in Chapter 4 of the Code, in particular, section 4.28(b).

Therefore, contrary to the Authority's statement in paragraph 1261 of the draft decision, the Authority does not have discretion to determine that Western Power must take one course or the other. The Authority must consider the liability limits that Western Power proposes.

Western Power therefore considers that the Authority has not acted within its statutory powers in this respect.

19 Tariffs for services

19.1 Associated required amendments

111 - Western Power to amend the Electricity Transfer Access Contract to include Schedule 4 (Tariffs) of the Model Access Contract completed so as to set out the tariffs payable for reference services under the Electricity Transfer Access Contract.

19.2 Authority's assessment

By RA 111, the Authority required that Western Power amend the proposed ETAC to include Schedule 4 (Tariffs) as contained in the MAC completed so as to set out the tariffs payable for reference services under the ETAC.

In the Authority's Assessment, in the absence of a provision equivalent to Schedule 4 of the MAC setting out the relevant tariffs, the prices payable under the contract will not be contained

in the contract itself, but rather will only be ascertainable from another document (the published price list). The Authority further stated that, as a SAC is to set out the terms and conditions for a reference service, one of which being the applicable tariff, the absence of such a provision renders the ETAC not sufficiently detailed and complete and is therefore inconsistent with section 5.3(b) of the Code.

19.3 Western Power's response

Schedule 3 of the proposed ETAC provides for the relevant details of any reference service (per connection point) to be available to and therefore ascertainable by the user. Clause 7.1 of the ETAC provides that the tariff payable under the ETAC for a given service is as specified in the Price List (as defined) from time to time for the service.

Clause 3.8(b) of the ETAC provides for the tariff specification and associated details (contained in Schedule 3 to the ETAC) to be recorded, updated and made available to the user in the Metering Database. Therefore, the tariff as contained in the Price List for any applicable service as specified in Schedule 3 of the proposed ETAC and as updated and made available to the user under clause 3.8(b) of the proposed ETAC, is expressly incorporated by clause 7.1 of the proposed ETAC.

Western Power submits that having a single source for applicable tariffs, that is the published price list, which is published only after scrutiny and approval by the Authority in accordance with the scheme outlined in the Code, better achieves and is consistent with the provisions and objectives of the Code (including certainty and completeness) than does the simultaneous existence of two separate, contractually incorporated, tariff lists particularly where there is scope for the tariffs contained on those two lists for any particular service to differ (eg as contemplated by A3.40(b) and (c) and as replicated by clause 7.1(b) and (c) of the ETAC).

20 Scope of the AQP

20.1 Associated required amendments

67 - Western Power to amend Electricity Transfer Access Contract clause 3.2 (User may select Services) by replacing the term 'Price Application Policy' with 'Applications and Queuing Policy' where the earlier term appears.

120 - Western Power to delete proposed applications and queuing policy clause 2.4 (Applying for a new connection).

122 - Western Power to amend proposed applications and queuing policy clause 3.5 (Misclassification of an application) to reproduce model AQP clause A2.8 without material omission or variation.

124 - Western Power to amend proposed applications and queuing policy clause 6.1 (Class 1 and 2 application costs) to reproduce model applications and queuing policy clause A2.13 without material omission or variation.

133 - Western Power to amend proposed applications and queuing policy clause 11.2(a)(ii) (Timing of initial response) to be completed consistent with the instructions in Note 15 in the model applications and queuing policy.

134 - Western Power to delete proposed applications and queuing policy clause 13.2 (Constituent parts of the access offer).

139 - Western Power to delete proposed applications and queuing policy clause 14.11 (If application requests a connection service).

141 - Western Power to delete proposed applications and queuing policy clause 14.13 (If application triggers works).

20.2 Western Power's position in the original AA

The writers of the Code did not appear to have been aware that the end use customers generally submit their own applications for new connections, receive an offer from Western Power and pay any applicable contribution, whilst their chosen retailer submits a completely separate application to have the new connection point added to their contract, and to select an appropriate reference service.

The definitions of the terms 'applicant', 'access application', 'user' and 'access contract' in the Code, and their use in the model AQP and the CCP, appear to restrict the application of these policies to only transactions made by those who have or wish to have the right to transfer electricity. This would effectively exclude the bulk of network augmentation and capital contributions performed or received by Western Power from the Code, as these transactions are made directly with customers rather than retailers.

Even if the term 'applicant' is taken to include customers, the model AQP clearly refers throughout the document to a single person applying for a network augmentation, paying the capital contribution and receiving an access offer resulting in an access contract. This is not the case with the majority of customers, and results in the model policy not applying, or being impossible to apply in a meaningful sense, to the majority of customers.

Western Power considers that the Code did not intend to exclude customers from the provisions of the AQP and the CCP in such circumstances.

In its original submission, Western Power largely ignored the definitional issues, and attempted to set out the rules for a new customer connection in the AQP (specifically in clause 2.4), and the rules for calculating a contribution for various classes of customer in the CCP. Through notionally suggesting that a customer apply for a 'connection service' and the retailer apply for

a 'transfer service', so that each receive an access offer in the form of a connection contract or an ETAC, Western Power attempted to reflect the current operation of the industry.

The AQP was then written referring throughout to an applicant applying for a connection service and receiving an associated offer consisting of an IWA or connection contract. However, this still caused significant definitional problems associated with the problems regarding the definitions of 'connection service' and how the reference services were defined.

Western Power also sought to make several changes to the classes of application so that it could adequately cover the sorts of transactions that applicants seek from Western Power. In addition, Western Power included in the AA a document known as the Price Application Policy, which contained a number of business rules related to changes of reference services and similar matters.

20.3 Authority's assessment

ETAC clause 3.2; RA 67

With respect to clause 3.2 of the ETAC, the Authority's assessment was that a change in services in accordance with clause 3.2 would be subject to the AQP (as a class 1 application). The Authority considered that clause 3.2 was consistent with both the objectives and section 5.3 of the Code, and that its inclusion in the ETAC would reinforce the existing requirements of the AQP. However, the Authority was of the view that the references to the Price Applications Policy in clause 3.2 were an error and should be amended to be references to the AQP. By way of RA67 the Authority required the references to be amended.

AQP clauses 2.4 and 13.2; RAs 120 and 134

The Authority considered that clauses 2.4 and 13.2 of the AQP purported to broaden the scope of the AQP to deal with matters not properly within the scope of matters specified under the Code that may be dealt with in an application and queuing policy. The Authority's assessment was that an application and queuing policy is a policy regulating the application process and not the relationship between the service provider and the applicant after the application process was complete. In the Authority's view, the matters set out in clause 2.4 of the AQP should be included in an access contract. Under RA120 and 134 the Authority required the deletion of clauses 2.4 and 13.2 of the AQP.

AQP clause 3.5; RA 122

With respect to clause 3.5 of the AQP, the Authority considered that the proposed departure from clause A2.8 in the Model AQP erodes the ability of Western Power to correct applications, other than those misclassified as a class 1 or 2 instead of class 3. The Authority considered that the amendment would result in any applicant to a class 1 or 2 application that was misclassified as a class 3 application having to reapply and, as a result, lose its position in the

queue. The Authority's assessment was that the intent of clause A2.8 of the Model AQP was to ensure that an applicant would not lose its position in the queue as a result of a misclassification. On this basis, the Authority considered that clause 3.5 of the AQP was inconsistent with section 5.7(a) of the Code because it does not appropriately accommodate the interests of users and applicants. Also, the Authority considered that Western Power's submission with respect to clause 3.5 did not explain why there would be a difference in its cost recovery for misclassifications of different types. Under RA122, the Authority required clause 3.5 to be deleted and substituted with clause A2.8 of the Model AQP.

AQP clause 6.1; RA 124

With respect to clause 6.1 of the AQP, the Authority considered that the power to, from time to time, publish the lodgement fees provides Western Power with discretion in relation to the determination of the fees. In the Authority's view, clause 6.1 of the AQP removes the Authority's power to approve the lodgement fees under the Access Arrangement. Further, the Authority considers that clause 6.1 is inconsistent with both the objectives and section 5.7(b) of the Code because it is not sufficiently certain to enable users and applicants to be aware of the applicable fees under the AQP. Under RA124 the Authority required clause 6.1 to be deleted and replaced with clause A2.13 and A2.14 of the Model AQP.

AQP clause 11.2(a)(ii); RA 133

The Authority considers that a period of 10 days for the provision of an initial response for a class 2 application is not reasonable as it will result in delays in processing the application, which is inconsistent with section 5.7(c) of the Code – requiring reasonable time lines for progressing and finalising access contract negotiations. The authority considers that the time frame should be consistent with the time specified in Note 15 of the Model AQP, which specified that the time frame should be not exceed 5 business days. Under RA 133 the Authority requires clause 11.2(a)(ii) of the AQP to be amended so that is consistent with Note 15 of the Model AQP.

AQP clauses 14.11 and 14.13; RAs 139 and 141

With respect to clauses 14.11 and 14.13 of the AQP, the Authority considers that neither the proposed connection access contract nor the IWA satisfy the definition of a standard access contract under the Code. RA139 and 141 require clause 14.11 and 14.13 to be deleted.

20.4 Western Power's response

20.4.1 Customers and developers are applicants

Because of the problems described above, the scope of the model AQP is effectively limited to providing a new connection for generators. However, Western Power considers that the

definition of 'covered service' under the Act is broad enough to incorporate a service to perform works ancillary to the transport of electricity.

Therefore, on this basis, Western Power considers that an application for a new connection (or similar, for example a capacity increase at an existing connection) is an access application, and any resulting works contract is an access contract. This means that end use customers and developers are access applicants when they approach Western Power for the provision of services to arrange for a new connection.

20.4.2 Separate electricity transfer and connection applications

To facilitate this situation, Western Power has divided the AQP into three areas: a common section, a section for an 'electricity transfer application' and a section for a 'connection application'. A person who is going to manage their own access charges and the technical issues, such as a generator, would submit both an electricity transfer and a connection application at the same time. Most customers would submit only a connection application, whilst their retailer would submit an associated electricity transfer application.

Western Power in no way wishes to prevent a retailer from acting on behalf of its customer in submitting a connection application, or in any other way the retailer might wish to offer a service to its customer. Ideally, customers would approach only their retailers for all services related to electricity, including a new connection. However, currently the industry does not operate in this way and thus Western Power must facilitate the separate connection and electricity transfer applications.

The electricity transfer application is effectively similar to the old class 1 and 2 applications, whilst a connection application is similar to a class 3 application. The queuing rules, the CCP, the payment of actual costs for processing, initial responses and preliminary assessments all apply only to connection applications. Fixed lodgement fees and processing time frames apply to electricity transfer applications.

20.4.3 Abolishment of class 1, 2 and 3 applications

The classes of application from the model AQP have been abolished for several reasons. Since the Code was gazetted, and even since Western Power made its original submission, Western Power and the industry have gained considerable experience in operating in the new retail market, with its lower levels of contestability and hence a much greater number of small customers. Each of the main instruments under the Act has been gazetted and is operational (particularly the Customer Transfer Code and the Metering Code).

Therefore, Western Power is now able to submit an AQP that better satisfies the Code requirement set out in section 5.7(b) to be sufficiently detailed to allow users and applicants to understand how the policy will operate. Western Power has clearly detailed the types of applications that are made to establish or modify an access contract, whilst leaving sufficient

flexibility to cover situations that are more unusual. By doing this, the associated rules, costs and timing of applications can be set at levels appropriate to the particular transaction. This clearly accommodates the interest of applicants.

New concepts in the AQP include re-energisation, modifying the arrangement of a connection point and changing a covered service. These amendments address RA67 by including the business rules that had been incorporated in the Price Application Policy, and rules from other similar policies, such as the determination of contestability. The latter was developed collaboratively with retailers to overcome perceived unfairness and inflexibility in the way Western Power applied the Distribution Order.

Some of the changes may expand the scope of the AQP beyond what the model anticipated. However, the changes relate to very pertinent information that is not otherwise captured anywhere under the Act. The alternative is to leave the operation of several transactions between Western Power and the electricity industry (which are related to the transfer of electricity) to Western Power's discretion.

20.5 Specific response to required amendments

ETAC clause 3.2 (now clause 3.3); RA 67

Western Power has complied with this required amendment to the ETAC and included the relevant provisions from the Price Application Policy regarding how a new reference service might be selected in the AQP.

AQP clause 2.4; RA 120

Western Power has deleted clause 2.4 of the AQP but, as a counter proposal, has included amendments in Parts B and C of the AQP to provide for separate electricity applications and connection applications. Now, throughout the AQP, for example in clause 16.2 (relating to capacity increases), Western Power has clarified the process that is to apply where a retailer submits an electricity transfer application, and someone (usually, but not necessarily) the customer submits an associated connection application. These changes to the AQP better meet the objectives in section 5.7 of the Code, particularly sections 5.7(a) and (b) because they more suitably clarify the operation of the AQP in this context.

AQP clause 3.5; RA 122

Western Power has deleted clause 3.5 of the AQP, as it is no longer needed now that the classes of application proposed in the model AQP are not used.

AQP clause 6.1; RA 124

Rather than list lodgement fees in the AQP, Western Power has proposed to submit them in the Price List. This meets the intent of the Authority's required amendment, and the objectives of

section 5.7(b) of the Code, by ensuring that the fees are subject to the Authority's approval, whilst ensuring all relevant costs are conveniently located in the one document.

Western Power has submitted three types of fees: a new connection point fee, an access contract modification fee and a new access contract fee. Western Power developed these fees by considering the amount of work involved in processing the different types of applications. A new connection point (or new NMI) requires greater modification of Western Power's systems (for example, to set up the information required to be included in the metering database under the Metering Code) than a simple modification of one of the characteristics regarding an existing connection point. A new connection point (or new NMI) is also more likely to involve crosschecking with a connection application that has been separately submitted.

A new access contract requires even more administrative work to set up. The fees represent estimates of the average number of hours required to process each type of application, and then applying standard hourly rates.

AQP clause 11.2(a)(ii); RA 133

The requirement for timeframes in which to provide an initial response for the classes of application has fallen away with the abolishment of the different classes (except for a connection application). Instead, specific timings are given for various notices in respect of each type of electricity transfer application. For example, for an application for a capacity increase, Western Power must respond within 5 business days to inform the applicant whether a concurrent connection application will be required. Western Power considers that the new timeframes provided meet the requirements of section 5.7(c) of the Code because they will sufficiently progress the finalisation of an application.

AQP clauses 13.2, 14.11 and 14.13; RAs 134, 139 and 141

Western Power has deleted clauses 13.2, 14.11 and 14.13 of the AQP, and has removed all references to a connection service.

21 Need to restrict users to be market participants

21.1 Associated required amendments

118 - Western Power to delete proposed applications and queuing policy clause 2.2 (Must be a wholesale market participant to transfer electricity).

21.2 Western Power's position in the original AA

Western Power made it a requirement of the proposed AQP that an applicant who seeks an access contract must be, or intend to be, a wholesale market participant at the time the

electricity transfer is to take place. The introduction of the provision followed advice from the IMO that such a provision would assist in market settlement and facilitate an orderly, non-discriminatory market.

21.3 Authority's assessment

The Authority has determined that the requirement that a user be a market participant is inconsistent with sections 5.7 (a) and (b) of the Code objective. The Authority noted that the market rules require a person who 'owns, controls or operates' facilities within the SWIS to register as a rule participant. Only those applicants who seek to participate in the wholesale market - and are therefore required to be registered - need to demonstrate that they are market participants. The Authority was satisfied that the market rules adequately deal with these issues and that the inclusion of this clause would create the potential for inconsistency between the market rules and the AQP and an unnecessary restriction.

21.4 Western Power's response

Western Power maintains that AQP clause 2.2 (now clause 3.3) should remain in the AQP.

If a user is not a market participant and is not associated with an NMI, there is a risk that all electricity flowing through the network will not be accounted for. This is because the wholesale market will operate on the principle that all electricity transferred in or out of the network is part of the wholesale market and will be settled by WEMS (the Wholesale Electricity Market System). The market will settle based on the following equation:

Market Generators (SCADA and interval meters) – Market Customers (interval meters) = Electricity Retail Corporation's Notional Wholesale Meter (un-metered and non-interval meter loads – primarily the residential market)

Because the equation only contemplates Market Participants, the transfer of electricity on the network by a non-market participant will affect the settlement of the Notional Wholesale Meter. In these circumstances, the Electricity Retail Corporation will be obliged to purchase the electricity in order to cover the inflated notional load, or will receive free electricity offsetting the notional load, as the case might be.

Western Power is obliged under the WEM rules to provide settlement ready meter data. In order to enable Western Power to do this, each interval meter must be associated with a market participant that the WEMS will recognise. This metering data comes from the same source used to run invoices for network access billing, and several other functions under the Act. If a user is not a market participant, errors will be created in the energy settlement process.

The WEM rules require that any generator over 10 MW must be a market generator. There is no mechanism outside of the Wholesale Market for a generator to get paid for generation, so a

generator under 10 MW must either be its own market generator, be a NMI on another market generator's electricity transfer access contract, or be a generator behind an exit point meter, and thus will already be on the customer's retailer's electricity transfer access contract.

Although there could conceivably be cases where a small generator, not at an exit point, was happy to spill electricity into the network without being paid, Western Power considers that such a situation is unlikely, and should be discouraged due to its effect on an orderly market.

Under section 7 (4) of the Act, a person must have a retail licence before selling electricity to customers. A person with a retail licence must be a market participant, and hence must have an access contract. A person who consumes electricity must purchase that electricity, and hence must purchase from a retailer. Therefore, it follows that a person who consumes electricity will have their NMI on a retailer's electricity transfer access contract.

Finally, a customer is still given the flexibility to contract directly with Western Power for services, as the WEM Rules allow it to become its own market customer.

It is essential for the practical workability of the system that an applicant who seeks to enter into an access contract is, or intends to be a market participant and the time the electricity transfer takes place. Western Power submits that these reasons adequately address the Authority's concerns and substantiate that the proposed provisions are consistent with sections 5.7 (a) and (b) of the Code objective.

22 Costs for access enquiries

22.1 Associated required amendments

123 - Western Power to delete proposed applications and queuing policy clause 4.2 (Western Power may require costs).

22.2 Western Power's position in the original AA

By clause 4.2 of the AQP, Western Power proposed that it be entitled to recover costs from an applicant who requests Western Power to perform studies in relation to matters relevant to the future application, such as providing input to feasibility studies. Western Power submitted that such a clause merely replicated Western Power's ability to recover costs for the same work done for an applicant in actually processing the applicant's application.

22.3 Authority's assessment

The Authority considered that the proposed clause introduced further obligations on parties to the application process in that it seeks to ensure that Western Power is not requested to undertake studies or initial work without reimbursement from the applicant.

The Authority recognised that it is anticipated that any costs incurred by Western Power in relation to studies undertaken through the applications process would be incorporated into the costs negotiated under the access contract. Because of this, these costs may not be recoverable by Western Power if an applicant does not enter into an access contract with Western Power after receiving results of the studies. The Authority recognised that Western Power is at risk of having incurred those costs without appropriate recompense.

Despite this, the Authority considered that the proposed clause is inconsistent with section 5.7(a) of the Code because it:

- limits the application of the clause to Western Power determining the costs without consultation with the applicant; and
- does not provide an opportunity for alternate parties to undertake the studies.

22.4 Western Power's response

Proposed clause 4.2 has been largely replicated in clause 20.1 of the revised AQP. Under clause 20.2 of the revised AQP, Western Power has now limited its right to recover costs.

Under this new provision, Western Power expects it will seek to recover costs from an applicant, Western Power will be required to 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. An applicant may then:

- reject Western Power's proposal as to works;
- direct Western Power to stop incurring costs; or
- negotiate on the scope of work to be complete by Western Power.

This clause provides a mechanism through which Western Power consults with the applicant with respect to the recoverable costs before the costs are incurred. The clause obliges Western Power to issue a proposal to an applicant, whether because of work undertaken during informal discussions with the applicant or during the progressing of an application. This improves the position of applicants from the model AQP. The applicant has an opportunity to negotiate the scope of work or reject the proposal or ask Western Power to cease incurring costs.

In Western Power's view, nothing in the AQP limits an applicant from requiring alternate parties from undertaking studies. By providing the applicant the right to negotiate the scope of work with regards to processing the application, Western Power has ensured that a mechanism exists for the applicant to perform its own system studies (where this is feasible, given technical capacity to perform the works and Western Power's confidentiality obligations). Western Power notes that no such right exists in the model AQP.

Western Power considers that clause 20.2 provides a more transparent process, with improved rights for the applicant from both its previous submission and the model, and adequately addresses the concerns expressed by the Authority.

23 Application forms

23.1 Associated required amendments

125 - Western Power to amend proposed applications and queuing policy clause 7.1 (Commencing the application process) to reproduce model applications and queuing policy clause A2.21 without material omission or variation.

23.2 Western Power's position in the original AA

Western Power notes that its application forms will be published on its website.

23.3 Authority's assessment

The Authority notes the model AQP assumes Western Power's access application forms will be a part of the AA, which would give potential applicants the ability to lodge submissions in relation to the forms. Also, if the forms are not part of the approved AA, Western Power will have the ability to change the forms.

23.4 Western Power's response

Western Power considers that clause 3 of the AQP adequately addresses the content of application forms for the purposes of an approved AA, and that Western Power's ability to change the forms will be limited to non-material changes that do not include more or less information than that required by the AQP. The forms currently in use will need significant revision to improve their usability for applicants and Western Power over time, including improvements to ensure they work conveniently with other instruments under the Act (such as the communication rules under the Metering Code).

Western Power's response meets the requirements of section 5.7(a) and (b) of the Code. The forms will change only in non-material ways and, therefore, will be sufficiently settled to be certain to applicants. Further, the forms will be modified to correct any practical or technical problems that arise, making them more user-friendly – which is clearly in the interests of Western Power and applicants (as it should result in the quicker processing of applications, and less administrative workload).

Western Power also notes Code section 4.29(c), which prevents the Authority from refusing to approve an AA on the basis that it does not contain something not listed in section 5.1 of the

Code. Application forms are not required content of an AA under section 5.1 or sections 5.7 to 5.10.

24 Applicant to request exemptions upfront

24.1 Associated required amendments

126 - Western Power to amend proposed AQP clause 7.2(c) (Information required with the application for each requested contracted point) by deleting clause 7.2(c)(v).

24.2 Western Power's position in the original AA

By proposed AQP clause 7.2 (c)(v), Western Power has requested applicants to provide upfront information about exemptions the applicant might seek under the Technical Rules.

24.3 Authority's Assessment

The Authority considered that additional information required by Western Power for an application broadens the information the applicant must provide and increases the obligations placed on the applicant.

In particular, the Authority considered that proposed AQP clause 7.2(c)(v) requires the provision of certain information relating to exemptions sought in relation to the technical rules which are dealt with in chapter 12 of the Code and the technical rules. The Authority is not satisfied that the additional requirements to provide information in relation to the technical rules under the AQP are consistent with section 5.7(b) of the Code.

24.4 Western Power's response

Western Power intends clause 7.2(c)(iv) of the AQP (now clause 3.7(f)) to be a prompt to the applicant to consider their obligations under the technical rules before submitting an application. Western Power's experience is that this results in the best outcome for the applicant, who is then in a more informed position to ensure that the applicant's equipment suppliers are also aware of their obligations. In addition, discussions regarding exemptions from the technical rules can take considerable time to resolve, and should be commenced as soon as possible to avoid extending the time to make an access offer, and impacting other applicants in the queue.

Nothing in clause 3.7(f) prevents the applicant from amending its application under the AQP to include further requests for exemptions, or after the services have commenced. However, whilst an applicant may, under the technical rules, apply for an exemption at any time, if the applicant waits until after its project has been complete and is connected to the network, then

the applicant is at risk that such an exemption may not be approved. This could result in significant costs to the applicant, or even the total curtailment of services to the applicant. Such an outcome is not in the applicant's or Western Power's interests, and if the applicant is a generator, may affect the IMO's ability to source sufficient generation for the network.

Western Power therefore considers that the inclusion of clause 3.7(f) of the AQP meets sections 5.7(a), 5.7(b), and importantly, section 5.7(d)(ii) of the Code.

25 Tender projects

25.1 Associated required amendments

130 - Western Power to amend proposed applications and queuing policy clause 8.9 (Applications in relation to tender projects etc) to reproduce model applications and queuing policy clauses A2.56 to A2.62 without material omission or variation.

25.2 Western Power's position in the original AA

In clause 8.9 of its proposed AQP, Western Power amended the provisions of model AQP clauses A2.56 to A2.62 to provide Western Power with the discretion to determine priority of applications in relation to tender projects, to cater for complex situations where the straightforward application of the model provisions would result in applicants being treated inconsistently.

25.3 Authority's assessment

By RA 130, the Authority required Western Power to amend proposed AQP clause 8.9 (Applications in relation to tender projects etc) to reproduce model AQP clauses A2.56 to A2.62 without material omission or variation.

In the Authority's Assessment, sections 5.7(e) and 5.9[sic] of the Code require the AQP to include provisions like those in A2.56 to A2.62 of the model AQP which provide applicants with considerable certainty over how such applications will be treated, including the requirement under model AQP clause A2.61 that all project related applications are to be treated as having the same priority. Consequently, the Authority considered that, as clause 8.9 of the proposed AQP omitted 'some elements' relating to tender projects it was inconsistent with sections 5.7(a) and 5.7(b) [sic] of the Code.

25.4 Western Power's response

In light of the Authority's Assessment, Western Power has revised what is now clause 24.10 to ensure that applicants participating in a tender project are treated with the same priority.

However, because Western Power is still concerned that applicants not in a tender project could be unfairly disadvantaged in some situations, the same priority only applies where applicants are competing. This should have been the case anyway by force of clause A2.45, but this was not clear, and Western Power considers that its revised clause meets section 5.9(b) of the Code as it was intended to apply in practice. This ensures that, say, an applicant participating in a tender project for wind generation in Albany does not disadvantage other applicants in Albany by jumping ahead of them in the queue because the other participants of the tender project are based in Geraldton.

In addition, Western Power considers that the concept of tender projects in the model AQP is too broad, and that the only application of this concept that is reasonable for Western Power to manage is to generating plant. Otherwise, this clause could be said to apply when, for example, two factories are competing for the same manufacturing job, and both will implement upgrades that require augmentation if they are successful. Western Power does not believe this was the intent of section 5.9(b) of the Code. Referring to generating plant limits the application of this clause to those electricity industry applications that Western Power could reasonably be aware of. This could include reserve capacity auctions under the market rules (including generating plant installed for DSM solutions).

Western Power considers that this meets the requirements of section 5.9(b) of the Code, particularly as this was not a requirement for the AQP, but rather a discretionary option.

26 Interaction with capital contributions policy

26.1 Associated required amendments

127 - Western Power to amend proposed applications and queuing policy clause 7.2(d) (Information required with each application where works may be required to provide the requested covered service) to reproduce model applications and queuing policy clause A2.22(h) without material omission or variation; and delete Proposed AQP clause 7.2(d)(ii).

131 - Western Power to amend proposed applications and queuing policy clause 9.2 (Amending application to address necessary augmentation) to reproduce model applications and queuing policy clause A2.72 without material omission or variation.

137 - Western Power to delete proposed applications and queuing policy clause 14.9 (Payments due under capital contributions policy).

186 - Western Power to amend the proposed capital contributions policy to include the model capital contributions policy definition of 'payment contract' without material variation or omission.

26.2 Western Power's position in original AA

In AQP clause 9.2, Western Power dealt with applications requiring augmentation. Under clause 9.2, if an application required augmentation, after receiving the necessary information from Western Power, the applicant could revise its application to amend the preferred manner of contribution under the CCP. This was a departure from clause A2.72 of the Model AQP, which allowed an application to be revised by adding a payment contract under the CCP or a works contract. Western Power removed the ability to add a works contract both because these contracts relate to the provision of an 'in kind' contribution with respect to the augmentation (which Western Power does not intend to offer, except to developers) and because Western Power intended that the IWA be approved as a standard works contract.

Thus, under the AQP, an applicant could not make an 'in kind' contribution towards augmentation but was required to make a contribution under the CCP. Linked to this position, Western Power included clause 14.9 in the AQP, which applied where a payment was required to be made by an applicant under the CCP. Under clause 14.9, Western Power could require the access contract to include provisions dealing the payment under the CCP.

The Model CCP includes a definition for 'payment contract', which refers to clause A4.14 of the Model CCP. Western Power did not include a definition for 'payment contract' in its CCP because it considers that the access offer under the AQP is effectively a payment contract.

26.3 Authority's assessment

The Authority's assessment was that the removal of the opportunity for a works contract (allowing a payment 'in kind' for augmentation) is inconsistent with the Code objective because, without it, an applicant's ability to obtain access could be limited, which may in turn impede competition upstream and downstream of the network.

The Authority considered that the requirement under clause 9.2 of the AQP that an applicant 'amend' its preferred manner of contribution under the CCP operates on the assumption that the applicant had specified in its application a preferred manner, or several options, of contribution under the CCP. In the Authority's view, the provision, as drafted, would not apply where no options with respect to the manner of contribution under the CCP were included in the application and, in such circumstances, clause 9.2 would not allow an applicant to subsequently agree on a preferred manner of contribution. The Authority considered that this is inconsistent with section 5.7(a) of the Code because it does not accommodate the interests of the applicant.

The Authority required clause 9.2 to be reproduced in accordance with clause A2.72 of the Model AQP without any material omission or variation.

The Authority's assessment was that clause 14.9 sought to include matters in the AQP that are not contemplated by the Code. The Authority considered that clause 14.9 related to the relationship between Western Power and the applicant after the application process was

completed, and not during the application process itself. The Authority was of the view that such a provision would more appropriately be located in an access contract. On this basis, the Authority considered that clause 14.9 was inconsistent with section 5.7 of the Code because it dealt with a matter not properly within the scope of those to be included in an application and queuing policy.

The Authority considered that, because it required the inclusion in the CCP of a provision equivalent to clause A4.14 of the Model CCP, the definition of 'payment contract' in the Model CCP should be included in Western Power's CCP (although Western Power notes that no required amendment did actually require a provision equivalent to clause A4.14 to be included in the CCP).

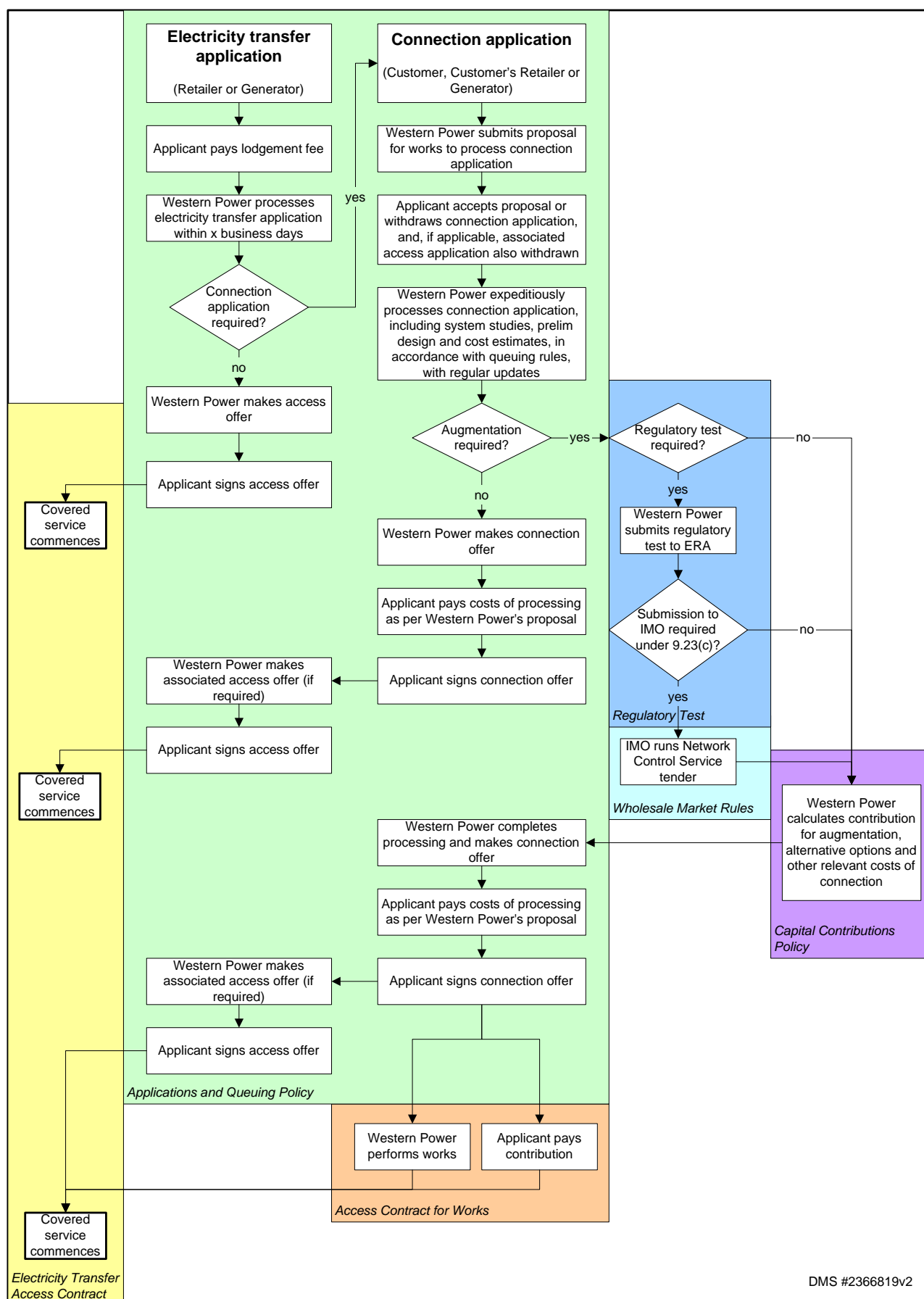
26.4 Western Power's response

Western Power has now deleted both clauses 9.2 and 14.9 of the AQP. To better deal with these issues, Western Power has inserted a new provision in the AQP (clause 22), which clarifies the position that the CCP applies to connection applications. It provides that, if during the processing of a connection application Western Power determines that works are required, the CCP applies to the application. Therefore, the applicant's rights under the CCP are part of the application process under the AQP and do not need to be replicated in the AQP.

Western Power disputes the Authority's assessment that the terms of an access offer are not part of the applications process. The model AQP deals with the terms of the access offer in clauses A2.103 to A2.105. Importantly, under clause A2.111 of the model AQP, the application itself does not cease to exist until the access offer is signed. Therefore, the application process does not cease until the access offer is signed, meaning that the development of the access offer is part of the application process. In addition, section 5.7(d) of the Code requires Western Power to provide to an applicant all commercial information required by the applicant to engage in effective negotiation with Western Power regarding the terms of the access offer (and hence the resulting access contract), including the cost of an augmentation. This can only be provided under the CCP.

The applications process is represented graphically in the following flowchart. It shows the interaction of the AQP and CCP.

Application Process



Western Power has clarified, with a new clause 25.1, that the access offer (usually in the form of a works contract in response to a connection application) must include terms related to any contribution that results from the CCP. This means that if, under the CCP, the applicant has negotiated a time payment, or that Western Power is required to extract a rebate to pay another party, or if there is any other outcome from the application of the CCP, then that outcome is included as a term of the resulting access offer. Accordingly, the definition of 'payment contract' is not required in the CCP.

27 Conditions precedent

27.1 Associated required amendments

135 - Western Power to amend proposed applications and queuing policy clauses 14.4 to 14.6 (Conditions precedent and determination of spare capacity) to reproduce model applications and queuing policy clauses A2.84(b) and A2.85 without material omission or variation.

27.2 Western Power's position in the original AA

Western Power proposed a party could not enter into an access contract that contains a condition precedent which allows a period of more than 6 months for its fulfilment. There were also provisions for dealing with non-fulfilment of a condition precedent after 6 months.

There were two possible practical solutions to the problem in relation to satisfaction of conditions precedents – to assume any unconditional contract would be unconditional, and thus consider the contracted capacity unavailable to a new applicant, or to only allow a certain time frame for a contract to become unconditional. Western Power chose the latter option and suggested a limit of 6 months on time to satisfy conditions precedent. Western Power considered this the best approach to meet the needs of the Code objective and the most reasonable way of accommodating the competing interests of users and applicants.

27.3 Authority's assessment

The Authority noted that Western Power had altered the operation of conditions precedent from the Model AQP. The Authority recognised Western Power's concerns about uncertainty associated with long term conditions, but believed that the Model AQP clause alleviated uncertainty between the applicant and Western Power by requiring Western Power to disregard a conditional contract, for purposes of calculating spare capacity, where a condition precedent is greater than 18 months.

The Authority considered that Western Power's proposed variation removes the potential for applicants to agree to longer terms than provided in the Model and erodes the flexibility which applicants would otherwise have to negotiate a condition precedent for a period of time longer

than six months. The Authority considered the proposed provision to be inconsistent with section 5.7(a) of the Code because it does not accommodate the interests of applicants as far as reasonably practicable.

27.4 Western Power's response

Western Power has considered the Authority's assessment, and, while adhering to the original submission in principle, has extended the time to satisfy conditions precedent to 8 months (now clause 4.8 (a) of the AQP). Western Power recognises the Authority's concerns regarding limiting the time to satisfy conditions precedent, but considers that if the time frame for satisfaction of such conditions is not limited, parties to an access contract are not provided with sufficient certainty that conditions precedent will be satisfied promptly. Western Power submits that 8 months is a reasonable time for an applicant to obtain normal project requirements and approvals including financial backing, internal company approvals, the issue of licenses from the Authority under the Act, environmental and other land approvals. Similarly, a period of 8 months will give Western Power sufficient time to receive its internal approvals and funding. It also enables Western Power enough time to complete a regulatory test under the Code and, if required by the Authority as a result of the regulatory test, a tender process by the Independent Market Operator for an alternative option.

This time frame is also reasonable from the competing applicant's perspective. This is because an applicant can opt to wait until the end of the time for satisfying the conditions precedent before determining whether to proceed with its project (if, for example, the alternative is to pay a contribution that exceeds the applicant's resources). In these circumstances, a competing applicant may be forced to wait for an indefinite amount of time. However, if the time frame for satisfaction is limited to 8 months, a competing applicant is only required to wait for a limited period and may then choose to participate in the following capacity auction under the Market Rules.

Western Power notes its additional provision clause 4.8 (b)(i) that if there is not a competing applicant, then the parties may extend the time for satisfaction of the conditions precedent by up to a further 6 months. Western Power considers this gives the existing user the flexibility required by the Authority's assessment.

By specifying a time limit for satisfaction of conditions precedent, the AQP reasonably balances the interests of existing users and new applicants and is therefore consistent with section 5.7(a) of the Code. This avoids impeding competition in markets upstream and downstream of the network, and hence promotes the Code objective.

28 Terms for a non-reference service

28.1 Associated required amendments

140 - Western Power to amend proposed applications and queuing policy clause 14.12 (If application requests non-reference service) to delete the words in clause 14.12(c) 'and negotiated in good faith by the applicant and Western Power during the processing of the application'.

28.2 Western Power's position in the original AA

Clause 14.12 of the AQP reproduces clause A2.105 of the Model AQP except that, in relation to the requirement that the access offer be as similar as practicable to the terms requested in the application, Western Power adds an additional limb, being that the applicant and Western Power negotiate the terms in good faith during the processing of the application.

28.3 Authority's assessment

In relation to clause 4.12 of the AQP, the Authority considered that the additional limb requiring the terms of the access offer to be negotiated in good faith between the applicant and Western Power during the processing of the application creates uncertainty in what is intended to be a mechanical process. In this respect, the Authority concluded that the variation is inconsistent with the requirements of section 5.7(b) of the Code.

28.4 Western Power's response

Western Power does not agree with the second amendment sought in RA140 with respect to clause 14.12(c) (now clause 6.3 of the AQP). As this clause deals specifically with non-reference services, the process cannot be completely mechanical, as there is by definition no standard tariff or contract for a non-reference service. It is not reasonable to expect Western Power to automatically accept the terms that the applicant proposes in its application, as suggested by the model AQP, without a period of negotiation on those terms. As this is a non-reference service, the terms might refer to non-standard terms of a contract, or to a request for a different tariff, or to an unusual scope of work.

29 If applicant rejects access offer

29.1 Associated required amendments

142 - Western Power to amend proposed applications and queuing policy clause 15.3 (If applicant rejects access offer) to reproduce model applications and queuing policy clause A2.109 without material omission or variation.

29.2 Western Power's position in the original AA

Under clause 15.3 of the AQP, Western Power reproduced clause A2.109 of the Model AQP (which specifies a procedure to be followed in cases where an applicant rejects an access offer and requests amendments), except that it excluded the part of the provision that requires a revised offer by Western Power to incorporate requested amendments.

29.3 Authority's assessment

The Authority considered that the variation leads to uncertainty over how amendments will be addressed by Western Power in a revised application. The Authority considered that the proposed clause could significantly disadvantage applicants by frustrating the application process, which would be inconsistent with the requirement to have reasonable timelines for progressing and finalising negotiations under section 5.7(c) of the Code. The Authority also considered that the proposal was inconsistent with section 5.7(a) of the Code because it does not accommodate the interests of the parties to the application to the extent reasonably practicable. The Authority required clause 15.3 to be amended so that it reproduces clause A2.109 without material omission or variation.

29.4 Western Power's response

Western Power does not agree that the insertion of clause A2.109(b) of the model AQP would be reasonable, as it appears to require Western Power to automatically incorporate whatever amendments to the access offer that the applicant requires through its amended application, without due processing of the amendments under the AQP. Therefore, Western Power has replaced this clause with clause 5.3(b) of the AQP, which requires Western Power to 'address' the amended application under the AQP. Western Power considers that this is not a material variation from the model provision, but provides clearer drafting.

30 Dormant access offers

30.1 Associated required amendments

143 - Western Power to amend proposed applications and queuing policy clause 15.4 (Dormant access offers) to reproduce model applications and queuing policy clause A2.78 without material omission or variation.

155 - Western Power to amend proposed applications and queuing policy definition of 'dormant application' to reproduce the definition of that term in the model applications and queuing policy without material omission or variation

30.2 Western Power's position in the original AA

Western Power was concerned that the dormant access application provisions in the model AQP stopped at the time the access offer was made, when in fact the application process does not stop until the access offer is signed. Accordingly, under clause 15.4 of the AQP, Western Power included a provision introducing, and dealing with, dormant access offers - which requires a user to sign an access contract within 20 business days or Western Power will consider the application to be 'dormant'. This clause was similar to the model AQP provision dealing with dormant applications, but operated once an offer was made (as opposed to the model clause that operated before an offer was made). In section 16 of Appendix 8 to the AA, Western Power explained the inclusion of clause 15.4 and stated that '[t]he policy has introduced the concept of a dormant access offer, similar to a dormant application in order to mitigate the risk of offered capacity being unused but unavailable to others. This is consistent with the Code objective'.

Under clause 1.1 of the AQP, the definition of 'dormant application' is varied from that specified in the model AQP. The model AQP definition attaches to an application which is lodged on a date more than 3 years before the date on which the service provider is considering the application. However, under clause 1.1 of the AQP, Western Power provides a time limit of 6 months. In this respect, Western Power submitted in section 13 of Appendix 8 of the AA that 'the definition of dormant applications has been changed to mean the application may be considered dormant after 6 months, rather than 3 years. Applicants may extend this, but the onus is on them to demonstrate that it is not dormant after the 6 month period has expired'.

30.3 Authority's assessment

The Authority determined that the 20 business day timeframe to sign an offer imposed by Western Power in clause 15.4 of the AQP was not acceptable. The Authority considered that the AQP unnecessarily imposes a timeframe for determining when an access offer is dormant, when the model AQP did not. The Authority's assessment on this issue was that an access

offer that is not acted on could be satisfactorily managed under clause A2.78 of the model AQP – which enables a service provider to treat an application that is unlikely to proceed to an access offer as dormant. Accordingly, the Authority considered that the 20 business day limit is unnecessary and inconsistent with section 5.7(a) of the Code as the stringent timeframe would not reasonably accommodate the interests of the parties to the application. The Authority required clause 15.4 to be amended so that it replicates clause A2.78 of the model AQP without material omission or variation.

The Authority also considered that the definition of ‘dormant application’ under the AQP adversely affects the interests of applicants because it significantly decreases the timeframe set out in the model AQP from 3 years to 6 months. On this basis, the Authority considered that the variation was inconsistent with section 5.7(a) of the Code in that it does not accommodate the interests of all parties. The Authority required the definition of ‘dormant application’ in the AQP to be deleted and replaced with the definition set out in the model AQP.

30.4 Western Power’s response

Western Power agrees with the Authority’s assessment that the provision dealing with dormant access offers may have been a confusing overlap with the dormant access application process. Accordingly, in its revised submission Western Power has deleted the concept of a dormant access offer and amended the definition of dormant application to be one that has been in the queue for longer than 12 months. In Western Power’s view, allowing an application to be in the queue for longer than 12 months without becoming dormant would be likely to impede competition in markets upstream and downstream of the network and, therefore, would not facilitate the objectives of the Code.

Western Power’s amended provision relating to dormant applications (clause 24.14) follows clause A2.78 of the Model AQP, but has been amended to apply to an application in which an access offer has not been signed (rather than an application for which an offer has not been made). The reason for this, as set out above, is Western Power’s view that the application process does not stop until the access offer is signed and, therefore, an application could become dormant at any stage until that point.

In addition, Western Power has complied with section 5.7(a) of the Code by adopting the amended clause A2.78 of the model AQP and has furthered the interests of applicants by ensuring that the amended dormant application provision applies only where there is a competing application. If there is no competition for the service, then there is no requirement to consider an application as dormant.

31 Customer transfer requests

31.1 Associated required amendments

144 - Western Power to amend proposed applications and queuing policy to reproduce model applications and queuing policy clause A2.43 (Customer transfer requests) without material omission or variation.

31.2 Western Power's position in the original AA

Western Power did not include in the proposed ETAC clause A2.43 of the Model AQP as it was considered unnecessary. The Customer Transfer Code already regulated 'transfer matters' between an applicant and Western Power.

31.3 Authority's assessment

The Authority was concerned that the omission of clause A2.43 resulted in uncertainty over how customer transfers would be processed. The Authority stated that the inclusion of 'transfer matters' is necessary to facilitate the achievement of section 5.7(b) of the Code so that applicants can understand how the applications and queuing policy will operate. In the Authority's view, without these provisions in the AQP, applicants will be unable to determine how Western Power will deal with the matters in Model AQP clause A2.43.

31.4 Western Power's response

Western Power is of the view that the AQP should not replicate matters which are already regulated under the Customer Transfer Code.

In response to the Authority's concerns, Western Power has amended clause 3.1 (now clause 9.1 of the AQP) to detail several matters on which the Customer Transfer Code is silent. These include provisions to ensure that the intent of a customer transfer being a 'bare transfer' from one retailer to another is maintained, such that the incoming retailer is automatically deemed to have the same service for that customer that the previous retailer had. Associated provisions related to Western Power's determination of contestability have also been added to provide greater clarity to retailers and customers (clause 13 of the AQP). As a result of Western Power's now considerable experience in processing customer transfers under the Customer Transfer Code, Western Power considers these matters to be important to both applicants and Western Power.

In Western Power's view, these provisions, in addition to the amendments to clause 9.1 of the AQP, will better facilitate a transparent process and are compliant with section 5.7(b) of the Code. They will enable an applicant to understand how the applications and queuing policy will operate and how customer transfers will be processed.

32 Securing contribution payment

32.1 Associated required amendments

160 - Western Power to amend proposed capital contributions policy clause 4.1 (Applicant must make contribution) to reproduce model capital contributions policy clause A4.8 without material omission or variation.

161 - Western Power to delete proposed capital contributions policy clause 4.2 (Applicant may provide security for new revenue).

32.2 Western Power's position in the original AA

In its proposed CCP, Western Power specified when a capital contribution would be required and referred to new revenue as well as capturing the capital contribution in an interconnection works agreement (IWA). The proposed CCP provision made it clear that Western Power would not be required to undertake capital works until the applicant signed an IWA.

Western Power also proposed that, in addition to requiring the user to enter into an IWA, by clause 4.2 of the CCP, the user was required to provide security for 'new revenue' by way of an unconditional, irrevocable bank guarantee. This proposed requirement was supplementary to the requirement to enter into an IWA. The reasons for this requirement are the same as for the IWA.

32.3 Authority's assessment

As to the proposed requirement in clause 4.1 of the CCP referring to new revenue and an IWA, the Authority considered that the provision introduced additional requirements for users to satisfy were not contemplated under the model CCP, constituted a barrier to entry and could result in unreasonable delays in the commencement of works where an access contract is not signed due to unrelated circumstances. It considered that the proposed variation was inconsistent with section 5.12 of the Code and the Code objective.

As to clause 4.2, the requirement to provide security for new revenue is supplementary and consequential to clause 4.1, the Authority determined that that clause should be deleted for the same reasons.

32.4 Western Power's response

Western Power has, in accordance with the requirement of the Authority, removed reference to an interconnection works agreement and has amended clause 4.1. However, Western Power has retained the requirement that the applicant enter into a contract under which it agrees to provide the contribution to Western Power in accordance with the capital contributions policy.

This was not intended to create an additional obligation on the applicant, but rather to facilitate the operation of time payments under the CCP, so that the applicant would not have to make a full upfront payment as required by section 2.9 of the Code. It is not reasonable or commercially practical to expect Western Power to undertake an augmentation unless the applicant has signed an appropriate access offer that details the provision of time payments by the applicant.

Common practice, for connection applications submitted by small customers, current practice is to form the 'access contract' by requiring the applicant to sign acceptance of a letter of quotation (the 'access offer'). Therefore, the requirement for the applicant to sign a contract is not an onerous requirement.

Western Power has modified clause 4.2 of the CCP to allow Western Power the discretion to require the applicant to provide security for 12 months for the new revenue used in calculating a contribution where the forecast costs are greater than \$50,000. Western Power's experience is that consultants working for applicants will tend to purposely overestimate their client's future consumption or generation to drive down the amount of the contribution. A person who 'games' the CCP in this manner adversely affects all other users, from whom additional revenue must be sourced. Therefore, Western Power considers the requirement to provide security reasonable, as it will encourage consultants and applicants to act more ethically.

After 12 months, Western Power will examine the actual revenue that has resulted from the applicant's application, and either calculate what the contribution should have been and provide a rebate or require an additional contribution as the case may be, or negotiate with the applicant to provide a further 12 months security. This latter case would apply if the applicant can show that its business is ramping up, such that it will meet its forecast use of the network in the coming year. This system currently operates successfully.

By limiting the requirement for the security to be held for 12 months only and not for the full 'reasonable period' used during the calculation of the contribution, which could be up to 15 years, Western Power considers that this provision does not constitute a barrier to entry.

This provision is additional to the reduced demand payment provision in the ETAC. That provision will not operate if Western Power has recovered the cost of the works elsewhere, which is intended to prevent Western Power from 'double dipping' with clause 4.2 of the CCP. It will also not operate in cases where the reduced charges are not because the user has applied to reduce contracted capacity, but rather because the user has selected a metered demand or energy based reference service and has simply consumed less than expected.

It is also additional to clause 9.2 of the AQP, which allows for a reconciliation between the retailer and a customer when the retailer first makes an application, as the services have not yet commenced, and hence the actual consumption or generation of the applicant is not known.

It is appropriate that this security clause remain in the CCP rather than the AQP or the ETAC, because the calculation of the amount of security required is directly related to the calculation of the contribution, as the security amount will be equal to the forecast costs minus the contribution. It would not be appropriate in the ETAC, as Western Power is most likely to choose to enact this provision with regards to customers paying a contribution who will not be party to an ETAC.

Finally, Western Power has allowed for the applicant to provide alternative security to a bank guarantee, namely, an 'equivalent financial instrument'.

33 Connection assets

33.1 Associated required amendments

164 - Western Power to delete proposed capital contributions policy clause 5.5 (Connection assets).

33.2 Western Power's position in the original AA

Western Power has proposed, in clause 5.5 of the proposed CCP, that the applicant be liable for all costs associated with works in providing connection assets where those works are subject to 'effective competition'.

33.3 Authority's assessment

By RA 164, the Authority has required the deletion of clause 5.5 of the proposed CCP. In the Authority's view, the proposal introduces provisions dealing with services that are not included under the Access Arrangement. The Authority considered that this provision is inconsistent with section 5.15 of the Code as a contributing user does now know, with sufficient certainty, when they will be required to make a capital contribution. The Authority's view was that the proposed addition leaves the contributing user not knowing, with sufficient certainty, when the user will be required to make a capital contribution and is inconsistent with section 5.15 of the Code. It invited Western Power to propose an appropriate definition for 'effective competition'.

33.4 Western Power's response

Western Power has redrafted clause 5.5 (now clause 8.1) of the CCP, which now simply provides that the applicant is to pay the full forecast costs of any works to provide connection assets. The 'effective competition' element has been deleted.

This clause applies (generally to transmission customers and to large distribution customers) where there is a clearly identified dedicated asset that connects the applicant to the existing network. In many cases the applicant could choose to provide this asset themselves and the

decision to request Western Power to provide the asset is made on economic or practical grounds. On this basis, Western Power requires the applicant to fund the full cost. This is not seen as a barrier to entry and strikes a balance between the interests of existing users and applicants, by ensuring that existing users are not required to subsidise an asset that only one party will ever use (the nature of a connection asset).

34 Non-capital costs

34.1 Associated required amendments

165 - Western Power to amend proposed capital contributions policy clause 5.6 (Non-capital costs) to be replaced with model capital contributions policy clauses A4.16-A4.19 without material omission or variation.

178 - Western Power to amend proposed capital contributions policy to reproduce model capital contributions policy clause A4.21 (Manner of contribution) without material omission or variation.

179 - Western Power to amend proposed capital contributions policy to reproduce model capital contributions policy clause A4.21 (Manner of contribution) without material omission or variation.

183 - Western Power to delete the definition of 'forecast costs' from its proposed capital contributions policy.

185 - Western Power to amend the proposed capital contributions policy to include the model capital contributions policy definition of 'non-capital contribution' without material variation or omission.

34.2 Western Power's position in the original AA

Western Power amalgamated the model CCP clauses A4.16 – A4.21 dealing with payment for an alternative option with the clauses for the payment for an augmentation using the new defined terms 'forecast costs' (meaning costs for both or either of an augmentation and an alternative option) and contribution. In addition, Western Power introduced a new clause to deal with non-capital costs that were not associated with an alternative option, but were required as part of the works to provide covered services.

34.3 Authority's assessment

The Authority has required that clause 5.6 of the CCP be replaced with the relevant provisions of the model CCP. There were several reasons for this assessment.

The Authority considered that the removal of the model CCP provisions removed the necessary detail on how non-capital contributions are to be deal with.

The Authority also considered that there was potential for Western Power to require an applicant to pay for costs beyond those reasonably contemplated under the model CCP. In particular, it was the Authority's view that the model CCP allows for recovery of 'alternative options costs' only in relation to those that exceed the costs that would otherwise satisfy the test under section 6.41 of the Code. Western Power has omitted the qualifier, leaving the applicant potentially liable for the full alternative options costs which include elements which would otherwise satisfy that test. This operates as a barrier to entry.

By proposing to also include 'any other non-capital costs', Western Power has broadened the potential liability of the applicant beyond the model CCP which allows for the recovery of non-capital costs to be limited to alternative options costs only.

Western Power's proposed CCP clause omits the 'efficiently minimising costs' test.

The Authority also determined that Western Power, in not reproducing model CCP clause A4.19, which provides for allocations across multiple applicants, might be afforded the opportunity to disproportionately recover costs from multiple applicants.

The Authority considered that the proposed clause 5.6 was inconsistent with section 5.12 to 5.15 of the Code and the Code objective.

In relation to the omission of model CCP clause A4.20 regarding the methods of payment for non-capital contributions, the Authority considered this omission created uncertainty for users over how such contributions are to be paid. The model clause provides applicants with an option of payment of non-capital contributions. The absence of that provision leads to uncertainty as to the options users would have available to them for such contributions and Western Power had not provided any detail as to how those costs are to be recovered. The authority required that clause A4.20 of the model CCP be reproduced.

In relation to the omission of model CCP clause A4.21 regarding the terms of payment of non-capital contributions contained within an access contract, the Authority considered that the omission removed certainty for users over how non-capital contributions are paid. The Authority determined that the model clause ensured that an alternative arrangement, such as an access contract, adequately provides for financial provision of rights and obligations and related security matters. By recognising that Western Power proposed to include details in its ETAC regarding these matters, the inclusion of model CCP clause A4.21 would direct users as to the appropriate method of regulating financial provisions and security. The Authority required that that clause be reproduced in the proposed CCP.

34.4 Western Power's response

Western Power recognises that the model CCP and the proposed CCP must deal with the scenario of the service provider performing an 'augmentation' or an 'alternative option' to provide covered services. An augmentation covers an increase in the capability of the covered network including by new network assets. An alternative option, in relation to a major augmentation, is an alternative to part or all of the major augmentation, including demand-side management and generation solutions instead of, or in combination with, network augmentation.

The model CCP used the term 'non-capital contribution' for an alternative option contribution, which Western Power considered was misleading, as an alternative option is a very specific form of non-capital costs, whereas under the Code, 'non-capital costs' is a defined term to mean more general operations and maintenance costs. Therefore, Western Power introduced the more descriptive term 'alternative option contribution'.

All of the provisions of the CCP, including allocating costs between applicants, calculating the contribution and offering various means of payment are common to contributions for an augmentation and an alternative option. Further, the majority of cases involving an alternative option to provide covered services will also involve some sort of network augmentation, so it is appropriate that the two concepts be combined and treated as one.

Western Power considers that most of these RAs result from a lack of clarity of Western Power's intention in simplifying the treatment of the two scenarios under the CCP, and thus the RAs are not necessary.

The issue of the terms relating to the application of the CCP being part of the access offer under the AQP were dealt with in section 26 above.

Regarding clause 5.6 (now clause 8.2), Western Power has noted the Authority's assessment that the works regarding non-capital costs should be subject to the efficiently minimising costs provision, and has amended clause 8.2 accordingly.

Western Power has also introduced the new clauses 8.5 – temporary supplies, and 8.6 – relocation and undergrounding. Temporary supplies are usually a form of non-capital cost, as the assets involved are removed after a short period (effectively creating a 'reasonable time' of zero), and hence they are charged at full cost. If the builder's supply were intended to become the permanent supply, then the normal application of the CCP would occur.

Relocation of assets will generally not result in any addition to the capital base, making this work another type of non-capital work. Undergrounding of an asset might result in an addition to the capital base, depending on the relative value of the assets, however it will not result in any incremental revenue. Therefore, Western Power considers that both cases should be charged at full cost.

35 Works above standard works

35.1 Associated required amendments

166 - Western Power to delete proposed capital contributions policy clause 5.7 (Works over and above standard works).

35.2 Western Power's position in the original AA

In clause 5.7 of its proposed CCP, Western Power proposed an additional provision to those contained in the model CCP providing for the full cost of the forecast works to apply (ie which the applicant must pay to Western Power) in certain circumstances.

35.3 Authority's assessment

By RA 166, the Authority required Western Power to delete clause 5.7 from the proposed CCP.

In the Authority's Assessment, while noting Western Power's proposal to allocate the full costs of those in excess of those which satisfy the new facilities investment test as well as the Authority's view that in many cases the capital contribution will be required to cover the full cost of the above standard works, the proposed clause 5.7 of the CCP did not allow for consideration to be given to circumstances where the above standard works accrues a benefit to Western Power or another user or applicant.

Accordingly, the Authority determined that the proposed clause 5.7 did not facilitate the achievement of balance required by section 5.12 of the Code. At paragraph 1773 of its Assessment however, the Authority stated that it would consider proposed CCP clause 5.7 could be consistent with section 5.12 and 5.14 of the Code were it to incorporate elements of proposed CCP clause 5.2 and 5.4 (which deal with the appropriate calculation and allocation of a capital contribution to a user).

35.4 Western Power's response

Western Power, in light of the Authority's assessment, has amended its proposed CCP clause 5.7 (now clause 8.3) to incorporate provisions dealing with the appropriate calculation and allocation of the forecast costs of works to an applicant with reference to NFIT.

Western Power considers that its position in relation to this RA is consistent with the Code requirements.

36 Provision in kind

36.1 Associated required amendments

167 - Western Power to amend proposed capital contributions policy clause 6.1 (Options for payment) to reproduce model capital contributions policy clause A4.11 without material variation or omission.

177 - Western Power to amend proposed capital contributions policy to reproduce model capital contributions policy clause A4.13 (Provision of capital contribution in kind) without material omission or variation.

187 - Western Power to amend the proposed capital contributions policy to include the model capital contributions policy definition of 'provision in-kind' without material variation or omission.

36.2 Western Power's position in the original AA

In clause 6.1 and otherwise in its proposed CCP, Western Power omitted the provisions of the model CCP allowing the option for users (generally) to make a contribution on a 'payment in kind' basis.

36.3 Authority's assessment

The Authority has required Western Power to amend clause 6.1 and the proposed CCP to generally reproduce model CCP clauses A4.11, A4.13 as well as the model CCP definition of 'provision in-kind', without material variation or omission.

In the Authority's Assessment, by removing the option for applicants, except in the case of subdivisions, to make in kind capital contributions (as opposed to solely financial contributions), the provisions of Western Power's proposed CCP is inconsistent with section 5.12(b) of the Code and the Code objective, in that it constitutes an inappropriate barrier to entry.

36.4 Western Power's response

Western Power acknowledges the Authority's concerns in respect of Western Power's omission of the provision in kind provisions from its proposed CCP. However, Western Power submits that to include such provisions of general application to all users would place Western Power in great risk of breaching its duty of care obligations to users of its network. Given Western Power's continuing liability for the safety and security of the network, Western Power chooses not to take on the technical compliance risk of allowing other parties to construct part of the covered network. Western Power is simply not currently set up to ensure that sufficient

safeguards and reliability procedures are in place to allow any user to supply its own network assets to be incorporated into the network.

While maintaining that it is not feasible to require Western Power to allow provision in kind contributions from all users, Western Power notes that it has allowed provision in kind contributions for land developers (ie subdivisions), and a limited number of extensions to individual customers (eg mines). Such allowances cover more than 50% of extensions to the distribution network (in value).

Western Power notes that clause A4.13 of the model CCP states that Western Power 'may agree' to an applicant providing an augmentation. Western Power considers that by agreeing to allow developers the provision in kind option, it does in fact adhere to the intent of the model policy. In addition, it notes that sections 5.12 to 5.15 of the Code do not require Western Power to offer a provision in kind option in its capital contributions policy.

Western Power therefore considers that its position in relation to these RAs is consistent with the Code requirements.

37 Time Payments

37.1 Associated required amendments

168 - Western Power to amend proposed capital contributions policy clause 6.2 (When applicant may choose periodic payment) by reproducing model capital contributions policy clause A4.12 without material omission or variation, and propose a materiality threshold which would provide periodic payment options to a substantial number of those contributing.

37.2 Western Power's position in the original AA

By proposed CCP clause 6.2, Western Power provided for a threshold of \$1M above which an applicant could seek to negotiate with Western Power to provide its contribution by way of time payments.

37.3 Authority's assessment

The Authority considered that Western Power's proposed threshold of \$1M was excessive and should be lowered to provide the time payment option to a substantial number of applicants.

37.4 Western Power's response

Western Power has considered the Authority's assessment, and has proposed a new threshold of \$30,000 above which an applicant can seek to negotiate with Western Power to provide its contribution by way of time payments. This threshold ensures that a large number of

applicants, including many rural customers, will be eligible to seek time payments, and thus Western Power considers that it has complied with the RA.

38 Rebates

38.1 Associated required amendments

170 - Western Power to amend proposed capital contributions policy clause 7 (Rebates and recoupment) by reproducing model capital contributions policy clauses A4.15(a) and (b) without material omission or variation, leaving the variables for negotiation between the parties.

171 - Western Power to amend proposed capital contributions policy clause 7 to apply rebates and recoupment to the current owner, rather than the original owner.

38.2 Western Power's position in the original AA

By proposed CCP clause 7, Western Power provided for a threshold of \$1M above which an applicant could seek to negotiate a rebate from Western Power when a subsequent user benefited from the works.

By proposed CCP clauses 7.1, 7.2 and 7.4 of the CCP, Western Power provided that the 'original owner' should have the benefit of any rebate or recoupment.

38.3 Authority's assessment

The Authority considered that rebates should be available to all applicants, and not just those whose contribution exceeded a certain amount.

The Authority considered that the use of the term 'original user' did not recognise that the cost of any capital contribution will be 'capitalised' in the price of the asset should it be transferred.

38.4 Western Power's response

Western Power has considered the Authority's assessment, and has rewritten clause 7 (now clause 10) of the CCP to state that where the full forecast costs of the works has been allocated to the applicant in accordance with clause 6 of the CCP, then the applicant is entitled to negotiate with Western Power to require Western Power to provide a rebate if a future applicants benefits from the works.

Western Power has limited rebates to those applicants who have the full forecast cost of the works allocated under clause 6. Where Western Power has allocated the cost of the works under clause 6 based on the applicant's relative use of the works, Western Power has in effect

already given a form of forwardly applied rebate. Similarly, the costs for pole to pillar applications under the modified test are already shared such that each applicant pays an average amount. Rebates for street lighting are not applicable, as future applicants cannot benefit from these works. Western Power considers that rebates for developers are also not appropriate, as the developers have immediate compensation from their land sales.

Clause 10.1(a) (formerly clause 7.1) has been amended to reflect the fact that contributions would have been 'capitalised' in the price of a facility that has changed ownership, and now ensures the correct party obtains the benefit of any rebates or recoupment, in accordance with RA117.

Clause 10.1(b) allows for rebates to be offered to primary producers and rural residential customers in accordance with Western Power's SES policy developed under section 61 of the Energy Operators (Powers) Act.

39 Variances between forecast and actual costs

39.1 Associated required amendments

172 - Western Power to propose a rebate and recoupment provision to address the variances between forecast and actual cost of augmentation within its capital contributions policy.

39.2 Western Power's position in the original AA

No provision was provided in the proposed CCP to address variances between the forecast and actual cost of augmentation.

39.3 Authority's assessment

The Authority noted the concerns raised by interested parties in relation to the payment of a capital contribution based on forecast costs, without adjusting for the actual cost incurred. The Authority considered that adjustments of this nature are necessary to achieve the Code objective by ensuring efficient investment in the network.

The Authority has requested that Western Power include a rebate and recoupment provision in the CCP to address variances between forecast and actual cost.

39.4 Western Power's response

Western Power considers that attempting to reconcile contributions after an augmentation is complete on the basis of actual costs incurred is not what the majority of applicants prefer. Western Power previously provided reconciliation to actual costs, and its experience was that such a system can result in considerable price shock for an applicant, and is difficult to

administer, particularly for lower value, high volume works where the exact allocation of costs between various works is difficult to determine.

Western Power also notes that this required amendment has no basis in the propose/respond model under section 4.28(b) of the Code.

40 Non-contestable customers and developers

40.1 Associated required amendments

158 - Western Power to delete proposed capital contributions policy clause 2.2 (Application of particular clauses).

175 - Western Power to delete proposed capital contributions policy clause 10 (Consumers consuming less than 50 MWh per year).

176 - Western Power to delete proposed capital contributions policy clause 11 (Subdivisions).

40.2 Western Power's position in the original AA

In CCP clause 10, Western Power introduced a method for calculating contribution payments for applicants who are, or who act on behalf of, consumers that consume less than 50 MWh per year. Under clause 10, contributions from these customers must be made 'up front' and cannot be made by way of an 'in kind' or periodic contribution. The exception to this requirement was in the case of subdivisions, for which payments 'in kind' were permitted (clause 11).

40.3 Authority's assessment

The Authority did not agree with the proposal to treat users differently (with respect to 'in kind' or periodic payments) based on their level of consumption or whether the contribution relates to a subdivision. On the Authority's assessment, these provisions would result in less than 2% of electricity consumers having the option of making an 'in kind' payment or periodic payment.

The Authority considered that all applicants should have equal options for providing capital contributions under the CCP (as provided in clause A4.11 of the Model CCP). The Authority considered that the proposed clauses 10 and 11 of the CCP were discriminatory and not consistent with section 5.12 or the objectives of the Code. The Authority required clauses 10 and 11 of the CCP to be deleted.

40.4 Western Power's response

Western Power notes the Authority's concern that the flexible payment options under the CCP did not apply to small customers. Western Power has now removed this restriction so that access to the time payments and rebates is not applied in a discriminatory manner. As described above, Western Power does not offer the option of providing an 'in kind' contribution.

However, Western Power faces the additional problem that certain classes of applicant are not treated quite in accordance with NFIT. Therefore, Western Power has proposed a modified test in its access arrangement. The CCP has been modified in the assumptions that the modified test will be approved and a minor change will be made to the Code to allow NFIT to not be applied where the modified test is satisfied.

Western Power has proposed the following classes of applicants be given different treatment under the CCP for the stipulated reasons.

Rural residential customers and primary producers

Section 61 of the Energy Operators (Powers) Act 1979 describes a system by which parties might enter into agreements with Western Power for supply beyond the normal range of the network. In response to this legislation, Western Power has developed a series of policies that revolve around the creation of 'schemes'. Schemes are small subsets of the network on its fringe, to which a handful of customers (often primary producers) might be connected. This group of customers jointly negotiates with Western Power regarding the costs for the scheme.

Western Power considers that it would not be in the best interests of rural residential customers and primary producers to move away from its well-established policies regarding these schemes, particularly as the nature of these policies is to continue over a long time (up to 30 years). Accordingly, Western Power seeks to continue to calculate contributions for these classes of users using its existing processes, which were developed to be consistent with the Energy Operators (Powers) Act 1979.

Pole to pillar customers

A residential customer who applies to have their overhead supply to their house placed underground via a "green dome" pillar, or who is required to do so to facilitate government undergrounding policies, is charged a set pole to pillar fee of approximately \$700. Typically, a single pillar might supply 3 to 4 houses and cost in the order of \$3,000. Western Power considers that it is not appropriate to strictly apply NFIT in this situation because such application could result in some customers being forced to pay the full amount, whilst their neighbours might not have to pay anything.

In this case, in accordance with section 6.53 of the Code, Western Power considers that the advantages of applying equitable, transparent and consistent treatment to residential customers outweigh the disadvantages of not strictly applying NFIT. This approach best

ensures the efficient use of the network assets because customers are not discouraged from applying for a pole to pillar connection due to uncertainty concerning costs.

Streetlights

Western Power has proposed a reference tariff for streetlights that assumes that the streetlight asset itself has been fully paid for. Therefore, Western Power considers that NFIT cannot be strictly applied in this situation because the relationship between a contribution and tariff income with regards to target revenue based on the capital base has been already accounted for.

Developers

Western Power considers that it is inappropriate for developers to receive the benefit of the application of NFIT (or time payments and rebates). Developers will capitalise the augmentation to a subdivision in their land sales and make an immediate profit, and any consideration given to the developer (such that the developer does not pay the full forecast cost of the augmentation) effectively results in actual users, including customers, of the network subsidising a person who is not, and will not become, a user of the network.

41 TRP Issues

41.1 Associated required amendments

193 - Western Power to delete proposed clauses 4.4, 5.1(b)(ii), 5.3, 5.4(a) and 6.2 from its transfer and relocation policy.

41.2 Western Power's position in the original AA

There is no model Transfer and Relocation Policy (TRP) to provide guidance as to what should be included by Western Power in the TRP. Western Power's rationale behind the TRP was outlined in Western Power's reasons for modifying the SAC in the following way:

5.1 Assignment

Under the Code, Western Power is required to permit a 'bare transfer' without Western Power's consent. Beyond adding some clarifications regarding the non-assignment of obligations under a bare transfer, the MAC clauses have been largely adopted for the transfer and relocation policy. However, the transfer and relocation policy makes it clear that the assignee cannot make a further bare transfer. Other standard assignment clauses have been added to the transfer and relocation policy.

5.2 Relocation

Relocation has been removed from the SAC and placed in Western Power's transfer and relocation policy, as envisaged by section 5.21 of the Code, and to avoid conflict between the contract and the policy.

Relocation is related to the fundamental question of capacity rights. In considering this matter, Western Power considered whether a user that has contracted capacity at one point should have the right to decrease capacity at that point and take up similar capacity at another point, even when there are applicants in the queue seeking that capacity. Western Power believes that such arrangements, if implemented would significantly bias the access regime in favour of existing users and thus not meet the Code objective.

Therefore, the transfer and relocation policy states that a user who wants to 'relocate' capacity must decrease capacity at the first contracted point in accordance with the contract and increase it at another point in accordance with the contract (effectively, the application and queuing policy).

This means that if an applicant is currently in the queue, and capacity becomes available because of the decrease by the relocating user at a contracted point, then that applicant has first access to that capacity under the first-come, first-served principle. In general, the mechanisms in the capital contributions policy will ensure that costs are shared fairly. However, if there is insufficient network capacity to provide the requested services to both parties, the first-come, first-served principle will apply.'

41.3 Authority's Assessment

When assessing Western Power's TRP, the Authority had regard to the requirements of the SAC, which includes provisions on how a TRP should operate.

The Authority's draft decision has required a number of amendments to the proposed ETAC and as a result, the Authority has proposed that Western Power make consequential amendments to the TRP.

TRP proposed clause 4.4

The Authority was concerned with proposed clause 4.4 of the TRP, which restricts assignees from further assigning access rights under a bare transfer to another person. The Authority considered this proposal unduly restrictive, as it will not facilitate the promotion of competition in markets upstream or downstream of the network. This is because, as the original user of the network remains liable, responsible and obligated to Western Power for the access rights under an assigned access contract, there is no risk to Western Power should an assignee assign access rights under a bare transfer to another person. Further, Western Power has not provided any reasoning for the inclusion of a prohibition on assignees from further assigning

access rights under a bare transfer and consequently the Authority determines that the inclusion of the prohibition is inconsistent with the Code objective as it impedes competition.

TRP Proposed clause 5.1(b)(ii)

Western Power's proposed clause 5.1 (b) (ii) attempts to require security from an assignee prior to Western Power providing its consent to a transfer other than a bare transfer. The Authority considered that it is not reasonable to contemplate security being provided by the assignee in this way.

Because an assignee will become a party to the access contract following a transfer (other than a bare transfer) the Authority considered that the appropriate mechanism for the provision of security is the ETAC.

TRP proposed clause 6.2

In relation to clause 6.2 (a) and (b), the Authority was concerned about the level of knowledge that a user is expected to have in relation to other users' utilisation of a particular connection point. These clauses imply a user having a degree of knowledge about another users' access contract and the Authority considered that it is not appropriate for the TRP to seek to impute this knowledge. Further, the Authority does not consider the inclusion of such conditions to be reasonable on commercial or technical grounds.

41.4 Western Power's response

TRP proposed clause 4.4

The intention behind clause 4.4 is to prevent an unending chain of bare transfers. In Western Power's view, there is nothing in clauses 5.18 or 5.24 which contemplates permitting a bare transfer assignee to make a bare transfer. However, Western Power recognises the Authority's concerns that the inclusion of proposed clause 4.4 may allow Western Power to dictate the terms of a contract between third parties. In this regard, Western Power has amended the TRP as follows:

Clause 4.4 is deleted and clause 4.1 is amended to provide that, in general, a user may make a bare transfer without Western Power's prior consent. An 'avoidance of doubt' provision that states a bare transferee does not become a user by virtue of any bare transfer.

This provision reflects the terms of the Code and clearly provides that only a 'user' may make a bare transfer. A bare transferee is prevented from making a bare transfer without purporting to interfere in a third party contract.

TRP clause 5.1(b)(ii)

The intention behind clause 5.1(b)(ii) was to ensure that an assignee satisfies the same security provisions as those the user is required to satisfy under the terms of the relevant access contract.

It is not Western Power's intention to prescribe additional or different security (or other contractual) requirements to an assignee, but rather to provide clarity to the user as to the proposed assignees impending security obligations under the access contract.

Western Power has now made it clear in the transfer and relocation policy that the same philosophy in ensuring that the assignee is bound by identical security terms is used for all of the terms of the access contract between Western Power and the assignee. Western Power has made it a pre-condition to Western Power's consent to the assignment that all terms of the assigned ETAC between the assignee and Western Power are identical to the terms (excluding capacity) of the ETAC between the assignor and Western Power. This will ensure that Western Power is in no worse position after assignment than it was in before assignment. This is also necessary to ensure that Western Power maintains security in an appropriate form.

Such a pre-condition assumes that the Deed of Novation will have sufficient provisions to cover the practical aspects of the transfer, including in this case the transfer of security from the assignor to the assignee and other necessary transitional provisions.

In light of this, clause 5.1 (b)(ii) has been deleted and the new pre-condition included.

TRP clause 6.2

The Authority has expressed some concern about the possible interplay between this clause and the TRP provisions in the MAC. The Authority also initially expressed concern in RA 69, RA 73 and RA 74 relating to the capacity increase and transfer and relocation provisions of the ETAC. Western Power has now made amendments to the ETAC and the AQP that deal with these matters. Western Power has redrafted clause 6.2 to make it consistent with the proposed ETAC and AQP.