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Rob Pullella  
Access Arrangement Review  
Electricity Access  
Economic Regulation Authority  
PO Box 8469  
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Dear Mr Pullella,

**Western Power's Proposed Revised Access Arrangement –Submissions on the Application and Queuing Policy**

Synergy appreciates this opportunity to provide further comments on Western Power's proposed Access Arrangement revisions.

Synergy makes the following submissions on the Applications and Queuing Policy (AQP) submitted by Western Power under its proposed revised access arrangement (PRAA). Unless otherwise specified, words in italics in this submission have the same meaning as in the Electricity Networks Access Code (ENAC) or the *Electricity Industry Act 2004*, as applicable, and words commencing with capitals have the same meaning as in the AQP.

**Overarching Considerations**

In providing its comments Synergy believes it is important to first highlight the fundamental aims and objectives of the ENAC. The ENAC aims to:

1. provide access to services and to give effect to the *Competition Principles Agreement* (presumably so that the ENAC is capable of certification as an effective access regime under Part IIIA of the *Trade Practices Act 1974* (Cth)); and
2. establish a framework for third party access to electricity transmission and distribution networks with the objective of promoting the economically efficient investment in, and operation and use of, networks and services of networks in Western Australia in order to promote competition in markets upstream and downstream of the networks.

In addition, it is also important to note that section 2.2 of the ENAC relevantly requires the Minister and the Economic Regulatory Authority (**ERA**) to have regard to the Code objectives when performing a function under the Code, whether or not the provision refers expressly to the *Code objective*.

#### **A1. Applications and Queuing Policy**

Under section 5.1(g) of the ENAC Western Power must, in its PRAA, include an *applications and queuing policy* in accordance with sections 5.7 to 5.11 of the ENAC. Western Power has proposed that the AQP in the PRAA as meeting the requirements of the ENAC.

Sections 5.7 (a) and (b) of the ENAC require the *application and queuing policy* to:

"(a) to the extent reasonably practicable, accommodate the interests of the *service provider* and of *users* and *applicants*; and

(b) be sufficiently detailed to enable *users* and *applicants* to understand in advance how the *applications and queuing policy* will operate; and"

In addition, Appendix 2 of the ENAC provides a model applications and queuing policy and states that;

"...if the *service provider* adopts this model policy it can be assured that its *applications and queuing policy* will be consistent with sections 5.7 to 5.9 and the Code objective".

Section 5.10(a) of the ENAC provides that the AQP may "be based in whole or in part upon the *model applications and queuing policy*, in which case, to the extent that it is based on the *model applications and queuing policy*, any matter which in the *model applications and queuing policy* is left to be completed in the *access arrangement*, must be completed in a manner consistent with:

"(i) any instructions in relation to the matter contained in the *model applications and queuing policy*; and

(ii) sections 5.7 to 5.9;

(iii) the *Code objective*;"

Alternatively, under section 5.10(b) of the ENAC, the *applications and queuing policy* may "be formulated without any reference to the *model applications and queuing policy* and is not required to reproduce, in whole or in part, the *model applications and queuing policy*".

It is not immediately apparent to Synergy whether Western Power's AQP has, in accordance with section 5.10(b) of the ENAC, been formulated without any reference to the *model applications and queuing policy* or whether, in accordance with section 5.10(a) of the ENAC, Western Power has based the AQP in whole or in part on the *model applications and queuing policy*. Synergy submits that it is important for Western Power to advise all relevant parties which of sections 5.10(a) or 5.10(b) applies otherwise it is very difficult for parties to make submissions on the extent to which Western Power's AQP complies with the ENAC. Further, Synergy submits that it will be very difficult for the ERA to perform the task required of it under section 5.11 of the ENAC.

To the extent that it has been able, Synergy has sought to form a view on whether Western Power intended that parts of the AQP be based upon the *model applications and queuing policy* and has made submissions accordingly. However, Synergy requests that the ERA require Western Power to advise which parts of its AQP are based upon the *model applications and queuing policy*, alternatively whether the AQP was formulated without any reference to the *model applications and queuing policy*. Once Western Power has done this Synergy will be in a better position to make further submissions on whether the AQP complies with the requirements of the ENAC.

Under section 5.11(a) of the ENAC the ERA must determine that the AQP is consistent with sections 5.7 to 5.9 and with the *Code objective* to the extent that the AQP reproduces, without material omissions or variations, the *model applications and queuing policy*. Further, under section 5.11(b) of the ENAC the ERA otherwise must have regard to the *model applications and queuing policy* in determining whether the AQP is consistent with sections 5.7 to 5.9 of the ENAC and the *Code objective*.

Synergy submits that, for the reasons set out below, the AQP, having regard to the *model applications and queuing policy*, is not consistent with sections 5.7 to 5.9 of the ENAC or with the *Code objective*.

The *Code objective* is defined in section 2.1 of the ENAC as follows:

"To promote the economically efficient:

- (a) investment in; and
- (b) operation of and use of *networks* and *services of networks* in Western Australia in order to promote competition in markets upstream and downstream of the *networks*".

#### **A1.1 Completeness of Application Is Critically Dependent on Western Power Processes**

Western Power has introduced a new definition of "Complete", which is used in clause 3.2 of the AQP. The effect of the change is that the Application process only commences where the Application or notice is Complete; that is, where Western Power is satisfied, acting as a Reasonable and Prudent Person, that the Application or notice complies with the requirements of the definition of Complete.

This proposal makes the critical assumption that Western Power already has;

1. clearly and completely described all the information that needs to be provided by the Applicant for the Application or notice;
2. tested and validated each applicable end-to-end process to ensure and demonstrate that it works reliably;
3. a robust internal framework to effectively process the application or notification in a timely manner.

Synergy submits that this is not the case.

Synergy and its Customers have experienced delays with applications under the AQP, despite providing all the information required by Western Power. Synergy understands that these delays were and continue to be caused by weaknesses in Western Power's internal operations, communications and processes.

In order to mitigate some of these delays and the uncertainty they cause, Synergy has requested Western Power to conduct workshops to describe and validate the process flows associated with the various transactions and applications under the AQP. However, these workshops have not yet been fully delivered.

For example Synergy's Customers' attempts to split and merge Connection Points under the existing applications and queuing policy approved by the ERA in the first *access arrangement* commencing on 1 July 2007, were frustrated for months because the relevant form that Western Power required to be completed was not available until March 2008. Despite the introduction of the relevant form in March 2008 Synergy and its Customers continue to experience delays in their applications to combine or separate Connection Points under the applications and queuing policy.

Therefore, Synergy submits that the AQP is not sufficiently detailed to enable Users and Applicants to understand in advance how the AQP will operate unless appropriate workshops are also conducted to validate the policies in the AQP.

In addition, Synergy also submits that the determination of when an Application or relevant notice is Complete should not rest exclusively with Western Power, especially if there is no obligation placed on Western Power to first, test and validate its processes and policies. Validation of processes is fundamental in demonstrating a workable system and ensuring that the Interests of Users and Applicants can and will be reasonably accommodated.

It is important to point out that Synergy's Customers have a very strong incentive to provide complete and accurate information as quickly as possible in order to expedite their application/notice because delays in processing the application/notice has direct and material consequences on their business or personal circumstances. However the monopoly service provider does not currently appear to have the same level of incentive to ensure that effective processes are established to expedite applications and notifications.

The AQP must reasonably accommodate the interest of the *service provider*, Users and Applicants. Consequently, all three parties need to reasonably share the responsibility in fully requesting and delivering the correct information in order to ensure an Application or notification is Complete.

It is difficult for Synergy or its Customers to submit a complete Application or notification if the information requested by the *service provider* is not clear or incomplete, or the framework to process the Application or notification is not sufficiently robust.

Therefore, it would not be reasonable for Western Power to have the ability to unilaterally claim an Application or notification is not complete and for Synergy's and its customers to continue to suffer the consequences associated with delays due to deficiencies in the AQP processes and internal processes of the *service provider*.

The inclusion in the definition of Complete of the concept of Western Power being satisfied as a Reasonable and Prudent Person does not overcome these issues because the concept is limited to Western Power acting as such a person in determining whether the Applicant has met the relevant requirements not Western Power.

Therefore Synergy submits that the definition of Complete is not reasonable and does not accommodate the interest of the *service provider*, User and Applicants, as required by the ENAC. Consequently, Synergy recommends that the definition of Complete be changed to the following.

"complete", in relation to an *application* or *notice*, means where Western Power has clearly and completely described all the information that needs to be provided for the application or notice and where the *applicant* or *controller* (as applicable) has:

- (a) used reasonable endeavours to accurately and completely address each item in the applicable *application form* (including by the provision of any supporting information required by the *application form*); and
- (b) with respect to an *electricity transfer application*, provided all of the information required under clauses 3.5 and 3.6 for the *application*; and
- (c) with respect to a *connection application*, provided all of the information required under clauses 3.5 and 3.7 for the *application*.

In addition, to the extent not otherwise prescribed in the AQP, Western Power should be required to advise an Applicant as soon as reasonably practicable after receipt of an Application or notice, if an Application or notice is not Complete together with Western Power's reasons.

Synergy also submits that it is necessary for the AQP to contain an obligation for the *service provider* to develop a reasonable mechanism to validate and demonstrate to the ERA that the various transactions and Applications under the AQP:

1. reasonably accommodate the interests of the *service provider*, Users and Applicants; and
2. are sufficiently detailed to enable Users and Applicants to understand in advance how the AQP will operate practically.

#### **A1.2 Re-Energisation Process Conflicts With Metering Code Model SLA and Communications Rules**

Synergy has indicated in its first submission to the ERA dated 24 October 2008 (**First AQP Submission**) that the Re-energisation process outlined in clause 11.2 of the AQP is inconsistent with the Electricity Industry Metering Code 2005 (**Metering Code**) and the Model Service Level Agreement (**Model SLA**).

In addition, Synergy also submits that the inclusion of a Re-energisation process in the AQP is inconsistent with sections 5.7 to 5.11 of the ENAC.

Synergy also has obligations under section 8.1 of the Code of Conduct For The Supply of Electricity To Small Use Customers (**Code of Conduct**) to ensure the timely reconnection of its Customers. Synergy submits that the process for Re-energisations outlined in clause 11.2 of the AQP would interfere with Synergy's ability to effectively fulfil its obligations under the Code of Conduct. Synergy submits that it would be more efficient and timely for Synergy to execute this *service* under the Model SLA instead of manually completing and submitting an Electricity Transfer Application under the AQP.

The obligation to define and comply with the requirements of this service and transaction is defined in the following areas within the Metering Code.

Section 6.1 (a), (2) of the Metering Code states that;

"A *network operator* must in relation to its *network* comply with:  
(a) its *model service level agreement*;..."

Section 6.2 of the Metering Code requires a *network operator* to;

"...as soon as practicable and in any event within 6 months after the date this *Code* applies to the *network operator* submit to the *Authority* for its approval under Division 6.2:  
(a) a proposed *model service level agreement*;..."

Section 6.6 (a) and (b) of the Metering Code state that;

"A *model service level agreement* must at least:

- (a) specify the *metering services* that the *network operator*;



- (i) must provide (which must include at least all the *metering services* that this *Code* and the *Customer Transfer Code* require the *network operator* to provide); and
  - (ii) may provide, to other *Code participants* on request,
- and
- (b) for each *metering service* referred to in clause 6.6(1)(a), specify:
    - (i) a detailed description of the *metering service*; and
    - (ii) a timeframe, and where appropriate other service levels, for the performance of the *metering service*,"

Therefore, further to its First AQP Submission, Synergy also submits that this service and transaction should more appropriately stay under the Model SLA and be removed from the PRAA and the AQP.

In addition, clause 11.2(e) of the AQP should make it clear that it does not provide Western Power with a derogation from performing Energisations within the timeframes specified within:

- clause 8.2 of the Code of Conduct; and
- the *Electricity Industry (Obligation to Connect) Regulations 2005*.

### **A1.3 Contestability Determination Outside the Scope of the ENAC and PRAA**

Synergy, in its First AQP Submission, has provided comments on the contestability assessment criteria outlined in clause 13 of the AQP.

In addition, Synergy also submits that the inclusion of a contestability assessment process in the AQP is inconsistent with sections 5.7 to 5.11 of the ENAC.

Section 5.7(f) of the ENAC states that an *application and queuing policy* must:

"to the extent that *contestable consumers* are connected at *exit points* on the *covered network*, contain provisions dealing with the transfer of capacity associated with a *contestable consumer* from the *user* currently supplying the *contestable consumer* ("**outgoing user**") to another *user* or an *applicant* ("**incoming user**") which, to the extent that it is applicable, are consistent with and facilitate the operation of any *customer transfer code*;"

In addition, the objectives of the Customer Transfer Code (**CTC**) state that:

#### **"2.1 Objectives**

- (1) The objectives of this *Code* are to—

(a) set out rules for the provision of information relating to *contestable customers* and the process for *transferring contestable customers* from one *retailer* to another *retailer* in order to promote retail competition; and

(b) protect the interests of *contestable customers* by ensuring that a *contestable customer's verifiable consent* is obtained before—

(i) a *retailer* may request the *contestable customer's historical consumption data*; or

(ii) a *transfer* of that *contestable customer* may proceed;

and

(c) specify the responsibilities and obligations of *retailers* and *network operators* in processing and implementing the *transfer* of a *contestable customer*."

Therefore, section 5.7 (f) of the ENAC and the CTC only deal with transfer of capacity at a Connection Point and the transfer of Connection Points associated with a Contestable Customer. The ENAC and the CTC do not give Western Power the right or the power to define the criteria to determine contestability, whether at a Connection Point or otherwise, or to perform a contestability assessment.

Therefore, further to its First AQP Submission, Synergy submits that the ERA should not approve an *access arrangement* that gives Western Power the ability to determine the criteria for contestability or to conduct contestability assessments. In this respect Synergy submits that clause 13 should be deleted from the AQP.

#### **A1.4 Security Obligations Must Be Contingent on ETAC Obligations**

In Appendix 10 of the Access Arrangement Information at clause 2.3, Western Power indicates that it has added a new condition for financial security in clause 4.9(c) of the AQP in order to align the AQP with the Electricity Transfer Access Contract (ETAC).

Synergy submits that this alignment or link to the ETAC should be clear and should not place any other obligations on the User or Applicant over and above those specified in the User's or Applicant's ETAC.

Synergy submits that clause 4.9(c) could be confusing in its operation, especially if the User has previously negotiated to remove the corresponding security provision in its ETAC with Western Power. In such a case clause 4.9(c) arguably gives Western Power an alternative method to reintroduce a security requirement, notwithstanding the existing ETAC.

Therefore, Synergy submits that the condition in clause 4.9(c) of the AQP should be amended as set out below to clearly link the AQP to the ETAC and to ensure that the AQP does not place a security obligation on a User over and above that which may exist in the ETAC. Synergy also submits that clause 4.9(c) should be amended as set out below to require Western Power to be reasonable in requiring security.



- (c) Notwithstanding an *applicant* providing evidence that it has an unqualified credit rating in accordance with clause 4.9(b), Western Power may, acting as a Reasonable and Prudent Person, as a condition under an *access contract* ~~or otherwise~~, require the *user or indemnifier* to provide an irrevocable and unconditional bank guarantee or equivalent financial instrument in terms acceptable to Western Power (acting as a *reasonable and prudent person*), guaranteeing the value of any amount of any *contribution* that remains unpaid or not provided at the time of requirement, provided that nothing in this clause permits Western Power to require an amendment to an existing access contract.

### A1.5 Supplier of Last Resort

Section 5.7(g) of the ENAC states that an AQP must:

"establish arrangements to enable a *user* who is:

- (i) a 'supplier of last resort' as defined in section 67 of the Act to comply with its obligations under Part 5 of the Act; and
- (ii) a 'default supplier' under regulations made in respect of section 59 of the Act to comply with its obligations under section 59 of the Act and the regulations;"

Synergy understands that the supplier of last resort (**SOLR**) legislative framework has not been fully established and therefore the AQP does not specify the arrangements as required by section 5.7 (g) of the ENAC.

However, section 5.1(I)(ii) of the ENAC states that:

"5.1 An access arrangement must:

- (I) include provisions dealing with:
  - (ii) *trigger events* under sections 5.34 to 5.36."

Therefore, Synergy suggests that the ERA consider whether the implementation of the SOLR framework should be included as a trigger event within the PRAA in accordance with sections 5.34 to 5.36 of the ENAC.

### A1.6 Process to Change Capacity

Synergy notes that the policy, rules and process to manage a change in Capacity at a Connection Point is set out both in the ETAC and the AQP. Synergy submits that the interaction between the ETAC and the AQP in relation to these matters is structurally and procedurally confusing. A large part of this confusion is due to inconsistent drafting between both documents.

Synergy submits that the description of the policy, rules and process between the ETAC and AQP do not meet the requirements of the ENAC because they are inconsistent and are not sufficiently detailed to enable Users and Applicants to understand in advance how the AQP will operate. For example:

- **Increasing Capacity** – clause 10.2 of the AQP specifies that an Electricity Transfer Application form must be completed to increase Contracted Capacity. However, clause 3.4(b) of the ETAC relevantly provides that Western Power may process such an application under either the AQP or the Customer Transfer Code.
- **Period For Notification** – clause 10.2(c) of the AQP indicates that for an increase or decrease of Contracted Capacity, Western Power must notify the Applicant whether or not it accepts the change in Contracted Capacity within 5 business days. However, clause 3.5(b) of the ETAC relevantly provides that Western Power must notify the User within 10 business days whether or not it accepts the decrease in Contracted Capacity. There is also no corresponding clause in the ETAC dealing with requirements for notification associated with an increase in Contracted Capacity.
- **Changes in a 12 month period** – The policies for changes set out in clause 10.3 of the AQP deal with increases or decreases of Contracted Capacity. However, clause 3.5(c)(i) of the ETAC deals only with a reduction in Capacity and does not align directly with all the criteria in the AQP. For example, the AQP does not include a relocation criterion, which is in the ETAC.

Synergy submits that the ETAC and AQP need to be re-drafted so that the hierarchy of policy, rules and process between the ETAC and AQP are clearly delineated and are structurally and procedurally consistent between the two documents.

Synergy submits that in order to enable Users and Applicants to understand in advance how the AQP will operate it is important for Western Power to clearly delineate what information needs to be provided in the ETAC and what information needs to be provided in the AQP. This includes:

1. avoiding the partial or inconsistent duplication of information in the ETAC;
2. separating the contractual obligations in the ETAC from the procedural requirements under the AQP; and
3. ensuring there is consistency in the application of the business rules in both documents.

#### **A1.7 Provision to Give Visibility on the Transfer of Capacity**

Section 5.7(f) of the ENAC requires that the AQP must;

“to the extent that *contestable consumers* are *connected at exit points* on the *covered network*, contain provisions dealing with the transfer of capacity associated with a *contestable consumer* from the *user* currently supplying the *contestable consumer* (“**outgoing user**”) to another *user* or an *applicant* (“**incoming user**”) which, to the extent that it is applicable, are consistent with and facilitate the operation of any *customer transfer code*”.

Synergy submits that the AQP does not fulfil this requirement and that the Transfer of Capacity associated with the Transfer of a *contestable consumer* under the *customer transfer code* cannot be effectively executed unless the *incoming user* has visibility of the CMD booking of the *outgoing user*.

Synergy submits that the AQP should include a mechanism to effectively Transfer Capacity associated with a Contestable Customer. Therefore, Synergy recommends that Western Power, under the AQP, should provide visibility to the *incoming user* of the *outgoing user's* CMD booking for a *contestable consumer*.

In addition, this information will also give the *incoming user* an understanding of the available scope to change the Contracted Capacity in accordance with clauses 3.4 and 3.5 of the ETAC under the PRAA. Without this data an *incoming user* has to make an uninformed determination of whether they can readily nominate a Customer's requested change to Contracted Capacity without incurring costs under the Contributions Policy of the PRAA.

#### **Miscellaneous - Other Trigger Events Under the PRAA**

Section 5.1(l)(ii) of the ENAC requires that an *access arrangement* must

- "(l) include provisions dealing with:
  - (i) the submission of *proposed revisions* under sections 5.29 to 5.33;  
and
  - (ii) *trigger events* under sections 5.34 to 5.36."

The ENAC also defines force majeure and trigger event as;

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

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

Synergy submits that it is not reasonable for the PRAA to specify emissions trading, full retail contestability and the roll-out of Advanced Interval Meters as both Trigger Events and events of Force Majeure.

Synergy notes that the PRAA does not provide a clear description of what is an Advanced Interval Meter and therefore it is difficult for Synergy to effectively comment on the possible impact these meters will have. However, Synergy submits that Western Power will have reasonable notice and a significant degree of influence on the implementation of WA government initiatives associated with emissions trading, full retail contestability and the roll-out of Advanced Interval Meters.

Section 5.35 of the ENAC states that;

"To avoid doubt, under section 5.34, an *access arrangement* may specify a *trigger event* which was not proposed by the *service provider*."

Synergy submits that emissions trading, full retail contestability and the roll-out of Advanced Interval Meters are *trigger events* and not *force majeure* events under the ENAC.

In addition, section 5.36 of the ENAC requires that:

"Before determining whether a *trigger event* is consistent with the *Code objective* the *Authority* must consider:

(a) whether the advantages of including the *trigger event* outweigh the disadvantages of doing so, in particular the disadvantages associated with decreased regulatory certainty; and

(b) whether the *trigger event* should be balanced by one or more other *trigger events*."

Therefore, Synergy submits that the PRAA must be revised in accordance with sections 5.34 to 5.36 of the ENAC to reflect that the initiatives associated with emissions trading, full retail contestability and the roll-out of Advanced Interval Meters are specifically and exclusively as trigger events.

#### **Conclusion**

Synergy submits these comments for the consideration of the ERA and would be pleased for the opportunity to meet and discuss these issues in detail.

Yours faithfully

**KARTHI MAHALINGHAM**  
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**Synergy**