



**Submission to the Economic Regulation Authority -
ERA draft findings on Western Power's proposed
Model Service Level Agreement
14 July 2020**

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Executive summary

Matter	The Economic Regulation Authority (ERA) has published its draft findings on Western Power’s (WP) proposed amendments to its model service level agreement (draft findings). The ERA has invited Electricity Industry Metering Code 2020 (Code) participants and interested parties to make submissions on the ERA’s draft finding.
Context	<p>WP’s Model Service Level Agreement (MSLA) is a requirement under the Code, was first approved by the ERA in March 2006 and has remained unchanged since. The MSLA details the metering services WP must provide and the terms and conditions it must offer, including applicable charges. The MSLA automatically applies to metering services if Synergy does not have its own metering agreement with WP.</p> <p>In August 2017, WP released its proposed MSLA changes for public comment.</p> <p>Synergy made MSLA submissions in November 2017 and July 2019.</p> <p>On 13 November 2019, WP submitted a proposed revised MSLA to the ERA for approval and the ERA subsequently published and invited public submissions.</p> <p>Synergy was the only market participant to make a submission to the ERA on 19 December 2019.</p> <p>On 18 March 2020 the ERA published a consultation paper (consultation paper) outlining its MSLA determinations and proposed amendments and invited further public submissions.</p> <p>Synergy made a submission on 17 April 2020 (April submission) in response to the consultation paper.</p> <p>The ERA published its draft findings for public comment on 16 June 2020.</p>
Scope	<p>The ERA has sought stakeholder feedback in relation to the following matters detailed in its draft findings:</p> <ol style="list-style-type: none">1. Metering services offered2. Metering service descriptions3. Process for requesting metering services4. Meter reading schedule5. Timeframes and service levels6. Charges for metering services7. Terms and conditions.
Synergy response	Overall Synergy supports the ERA’s draft finding and has also suggested several amendments for the ERA’s consideration as detailed in this submission.

1. INTRODUCTION

The ERA published its draft findings on 16 June 2020. The ERA has invited Code participants and interested parties to make submissions on its draft findings. Overall Synergy supports the ERA's draft findings and has also suggested several amendments for the ERA's consideration as detailed in this submission.

2. METERING SERVICES OFFERED

The ERA's draft findings with respect to metering services offered by WP is that the proposed list of services meets the requirements of clause 6.6(1)(a)(i) to include at least all of the metering services the network operator is required to provide under the Code, the Code of Conduct and the Customer Transfer Code. Synergy supports the ERA's draft findings and confirms its previous position (contained in its April submission) that the metering services offered by WP in the proposed MSLA is sufficient to meet Synergy's requirements.

3. METERING SERVICE DESCRIPTION

The ERA's draft findings include that the service descriptions contained in the proposed MSLA meets the requirements of clause 6(1)(b)(i) of the Code to include a detailed description for each metering service. Synergy supports the ERA's draft findings and confirms its previous position (contained in its April submission) that WP's proposed metering service descriptions are sufficiently detailed to understand the service that will be delivered.

4. PROCESS FOR REQUESTING METERING SERVICES

The ERA in its consultation paper determined there were two limitations with the proposed process for requesting metering services relating to appointments and service order cancellations and accordingly determined the MSLA must include:

- a process for requesting a preferred appointment time for all metering services; and
- a process for requesting the cancellation of services.

The ERA in its draft findings (required amendment 1) determined that MSLA clause 3.3 be amended as follows:

"The User may request the provision of Metering Services, [or the cancellation of Metering Services](#), under this Agreement, by submitting to Western Power a Service Order in accordance with the Code and the Communication Rules. [The User may request a preferred appointment date and time and Western Power must make reasonable endeavours to perform the Metering Service at that preferred date and time.](#)"

Synergy supports the ERA's required amendment 1.

5. METER READING SCHEDULE

The ERA in its consultation paper determined the MSLA must include details about when and how changes can be made to the meter reading schedule. This should include when users will be notified, what consultation will be undertaken and how WP will ensure users are able to meet their billing obligations.

The ERA in its draft findings further articulated its views that compliance with the Code requires the following detail to be included in the MSLA:

- The frequency and process by which changes to the Metering Reading Schedule can be made by WP.
- How users will be notified.
- The consultation WP will undertake including whether there is an ability of an affected user to request an amendment to the proposed change.
- An acknowledgement that WP will consider affected user obligations to customers under the Code of Conduct in making any changes.

Consequently the ERA in its draft findings required the service description for MS-1 Scheduled Energy Data Provision on page 36 of the proposed MSLA to be amended as follows:

“Western Power will publish a Meter Reading Schedule, for the following calendar year by 31 October each year. New meters will be added to the Meter Reading Schedule, during the year as new Metering Points are established. Western Power may amend the Meter Reading Schedule during the year for Meter Reading optimisation, following consultation with the User for a period of not less than 3 weeks prior to any changes to the Meter Reading Schedule occurring.

When amending the Meter Reading Schedule, Western Power must, in good faith, take into account the affected User obligations to customers under the Code of Conduct and any submissions made by Users or potential Users through the consultation process and, as far as practicable, seek to accommodate them.

Where amended, Western Power will publish an amended Meter Reading Schedule and notify relevant and affected Users not less than 10 Business Days before the amendments take effect.”

Synergy supports the ERA’s required amendment 2. Synergy also recommends a minor clarification to the drafting by the amendments in **red text** above.

6. TIMEFRAMES AND SERVICE LEVELS

Synergy notes the ERA has re-affirmed its earlier position that consistent with clause 6.6(a)(b)(ii) of the Code the MSLA cannot contain KPIs that qualify a service timeframe (required amendment 3). Synergy agrees with the ERA’s interpretation. In the transition from the current MSLA where a KPI qualifies a service timeframe to an absolute service timeframe (i.e. no qualification) Synergy does not expect to see any increase in MSLA charges as a result of the change.

7. CHARGES FOR METERING SERVICES

7.1 Pricing and charging arrangements

Synergy supports the ERA’s draft findings (required amendment 4) that fees for standard metering services that are recovered through network tariffs must be removed from Table 5 in Schedule 5 of the proposed MSLA given the charges are specified within WP’s approved access arrangement price list. Synergy also notes WP has accepted the ERA’s requirement.

Synergy notes the ERA has required WP to include a productivity improvement of 1% per annum, consistent with the access arrangement decision for the AA4 period to ensure the MSLA prices continue to reflect efficient costs over time.

7.2 Travel costs

Synergy supports the ERA's required amendment 5 that MSLA schedule 5 must be amended to remove the labour and fleet rate calculation methodology and replaced with specific hourly rates. Synergy notes WP has accepted the ERA's requirement.

The ERA considers travel costs should be averaged across all customers, rather than setting different fees for metropolitan and country customers. Synergy in its April submission supported this approach as it is consistent with how pass through of metering charges applies under the *Energy Operators (Electricity Generation and Retail Corporation) (Charges) By-laws 2006*.¹ Synergy also notes WP has accepted the ERA's required amendment 6.

7.3 Prices for meters, radio frequency communication installations and meter re-configurations

Synergy in its April submission raised concerns about the pricing for remote energy data services based on discussions it had with WP that the additional (incremental) metering charges in the MSLA, for the provision of remote energy data, was based exclusively on the cost of providing the data through cellular communications (not radio mesh). Synergy considered the cost of providing remote energy data through radio mesh communications was generally cheaper than through cellular communications (subject to topography and radio mesh coverage). In this event the annual access arrangement price list would not reflect the lowest sustainable cost for that service as required by the Code.

Synergy appreciates the ERA considering the matter and notes the ERA's response:

"As the radio mesh is still being installed it is unlikely the difference in cost would be material at this stage. However, if the data is being provided using radio mesh and the cost is less than the proposed fee, Western Power would not be able to charge a user more than the actual costs incurred and would need to adjust the fee accordingly."²

Synergy strongly advocates the ERA monitors this matter via its annual determination of WP's network price list and publish the results of its review as part of that determination.

In its April submission Synergy supported WP's proposed fees for meter exchanges and radio frequency communication links as it considered the proposed fees would encourage the uptake of remote metering services and allow customers to benefit from the new services this infrastructure will provide.

Paragraph 183 and 184 of the ERA's draft findings sets out the ERA's consideration and response to the matter of prices for meters, radio frequency communication installations and meter re-configurations:

"183 The fees Western Power has proposed for new meters are below cost as they do not include the cost of the meter. Consequently, the proposed fees comply with the requirements of 6.6(1)(e) to not exceed the costs that would be incurred by a network operator acting in good faith and in accordance with good electricity industry practice, seeking to achieve the lowest sustainable costs of providing the relevant metering service.

¹ Refer schedule 4.

² Draft findings paragraph 157 page 38.

184 As identified in the ERA's consultation paper and acknowledged by Western Power, there will be a funding shortfall if the MSLA fees do not recover the full cost of the meters. As indicated in Western Power's submission, it proposes to include any unrecovered expenditure in its regulated asset base. Capital expenditure for the AA4 period (2016/17-2020/21) will be subject to an ex post review at the next access arrangement review as the ERA must determine the opening regulated asset base for AA5.

- Any contributions received from customers, such as MSLA fees for meter exchanges, will be netted off capital expenditure and not included in the regulated capital base.
- Western Power will need to demonstrate that capital expenditure incurred during AA4, such as any metering capital expenditure that has not been funded by customer contributions, meets the new facilities investment test.
- The treatment of any redundant assets will also be considered as part of the AA5 review."

Synergy considers the approach to address any funding shortfall (i.e. unrecovered expenditure) via the access arrangement determination framework to be reasonable and appropriate.

7.4 Automatic annual updates

Consistent with Synergy's April submission Synergy supports the ERA's required amendment 7 that requires schedule 5 to be amended to include a mechanism for annual price updates based on the access arrangement pricing parameters for CPI, labour escalation and productivity improvements. Synergy also notes WP has accepted this recommendation.

7.5 Cancellation fees

Consistent with Synergy's April submission Synergy supports the ERA's required amendment 8 that requires WP to provide evidence to a user that cancellation fees were incurred efficiently in accordance with good electricity industry practice. Synergy also notes WP accepted the ERA's required amendment in principle but raised concerns that future circumstances cannot be fully foreseen and clearly defined.

8. TERMS AND CONDITIONS

As an overall comment Synergy supports both WP's and the ERA's intent to amend the MSLA to bring the agreement into line with the current electricity transfer access contract approved under the access arrangement No.4 (**ERA approved model ETAC**) subject to modifications to take account of specific Code requirements.

8.1 Required amendment 9 - Proposed clause 1.3 must be deleted.

Synergy supports the ERA's required amendment 9 to delete clause 1.3 from the MSLA. As the ERA notes, the mechanism for the annual price update will be specified in Schedule 5.

8.2 Required amendment 10 - Proposed clause 3.2 service standards

Synergy supports the ERA's required amendment 10, subject to two changes.

Clause 3.2(b)(iii) should either be limited to "material impediments" or deleted in its entirety on the basis that it cuts across the force majeure provision. As currently drafted, "other impediments beyond Western Power's reasonable control" is far too broad. It shifts the risk of non-compliance due to "impediments" onto Users – where Western Power is best placed to manage the risks.

The "impediments" excusing Western Power from compliance should be "**material impediments**".

Synergy proposes the following amended drafting to clause 3.2(b)(iii) (amendments in red text):

- (b) Western Power is not in breach of this Agreement or the Service Standards if it is not able to provide a Metering
...
 - (iii) due to other material impediments beyond Western Power's reasonable control,

Alternatively, Synergy considers that clause 3.2(b)(iii) is unnecessary as it acts as a force majeure clause. As such, Western Power should instead rely on the actual force majeure clause – which is carefully crafted to deal with situations beyond a parties' reasonable control.

There also needs to be a timeframe in proposed clause 3.2(c) within which Western Power provides the reason for failing to provide the Metering Service and evidence of such failure. Including a timeframe is consistent with section 5.8 of the Code, which requires a network operator to provide a User with whatever information the Network Operator has that is necessary to enable the User to comply with its obligations under the Code of Conduct, within the time necessary for the User to comply with the obligations.

Synergy proposes the following amended drafting to clause 3.2(c) (amendments in red text and strikethrough):

- (c) Should Western Power fail to provide a Metering Service, within the Sservice Sstandard time of the User's request, Western Power must, as soon as practicable but no later than 2 Business Days of such failure, provide:
 - (i) ~~provide~~ the reason for the failure to provide the Metering Service; and
 - (ii) ~~provide~~ evidence in support of the reason for the failure to provide the Metering Service.

8.3 Required amendment 11 – Definition of business day

Synergy supports the ERA's required amendment 11 for the definition of "business day" to refer to Western Australia rather than Perth.

8.4 Required amendment 12 – Invoices

Synergy supports the ERA's required amendment 12 in principle. However, the reference should be to "Metering Service" rather than "service" so that the tax invoice references the specific Metering Service provided as per the Agreement (rather than a general description of a service).

Synergy proposes the following drafting amendments to clause 5.1 (amendments in red text and strikethrough):

5.1 Invoices

Western Power must, within 10 Business Days after the end of an Accounting Period, issue to the User a Tax Invoice for that Accounting Period that sets out:

- (a) the amounts payable for each Metering Sservice provided under this Agreement for the Accounting Period; and

- (b) a brief explanation for the amount payable where the **Metering Service** or **Fee** is not ~~listed~~ **specified** in Schedule 5; and

8.5 Clause 6 representation and warranties

Synergy supports the inclusion of the representation and warranties clause in the MSLA. In its findings, the ERA notes that these clauses are taken from the representations and warranties included in the ETAC. However, Synergy notes the ERA may have inadvertently omitted provisions similar to clauses 18.1(a)(i) and 18.2(a)(i) in the ERA approved model ETAC as similar provisions have not been included in the MSLA.

Those ETAC warranties provide that the parties each represent and warrant that they have complied with the Applications and Queuing Policy (**AQP**) and Access Code, but will not be in breach of the warranty if they fail to comply with the AQP or Access Code because that failure is a direct result of the other party's breach of the AQP or Access Code.

In earlier submissions (see submissions dated September 2017, November 2017 and July 2019) Synergy raised that warranties similar to those ETAC warranties should be included in the MSLA in respect of the AQP, Communications Rules and Metrology Procedure because:

- those documents are integral to the efficient operation of the MSLA and a failure to comply with them could adversely affected the operation of the MSLA in accordance with the Metering Code; and
- the documents are not "written laws" or "statutory instruments" (as defined in the Access Code) and there is therefore no protection afforded by clause 13.1 of the MSLA (which requires compliance with all applicable "Laws").

To ensure there is some level of protection for a party where the other fails to comply with the relevant document, Synergy recommends warranties regarding compliance with (at the least) the Communications Rules and Metrology Procedure, be included in the MSLA.

8.6 Required amendment 13 – clauses 8.2 and 8.3 force majeure

Synergy supports the ERA's findings in respect of clauses 8.2 and 8.3.

However, consistent with Synergy's earlier submissions, to manage Code of Conduct obligations and relationships with customers, Synergy seeks certainty around when it can expect to be notified of a Force Majeure Event.

Synergy requests the ERA consider the following amendment to clause 8.2(a) as follows (amendments in **red text** and ~~striktthrough~~):

- (a) notify the other ~~person~~ **Party** as soon as reasonably practicable **and in any event within 1 day of** ~~on~~-becoming aware an event is or is likely to be a Force Majeure Event likely to prevent the operation of clause 5.8 of the Code or adversely affect the use by a customer of Life Support Equipment;

Synergy also proposes minor drafting amendment to clause 8.1 as follows (amendments in **red text** and ~~striktthrough~~):

8.1 Affected Person's obligations are suspended

If a Party ("~~Affected Party~~ **Person**") is unable wholly or in part...

8.9 Required amendment 14 – clauses 7 and 9 liability and default

Clause 7 – liability

In principle, Synergy agrees with and supports the ERA's findings and required amendment 14 in respect of clause 7. However, Synergy remains concerned that User's may not be adequately compensated for certain losses, particularly where Western Power causes standing data to be incorrect.

Synergy notes the ERA's proposals are conceptual and would like the opportunity to review and comment on the actual drafting for clauses 7 and 9 when available. Synergy found it difficult to fully review and respond given the ERA's comments did not contain specific drafting.

Clause 7.1 (Exclusion of Indirect Damage)

The ERA may wish to include drafting similar to clause 19.3(b) in the ERA approved model ETAC as a new clause 7.1(c) for clarity and overall consistency.

Clause 7.6 (Failure to deliver Metering Services)

Synergy agrees with the ERA's required amendment to include a new clause to clearly specify that, where Western Power fails to deliver a Metering Service, it is liable for the direct additional costs incurred by a User as a result of Western Power's failure.

However, Synergy is concerned that the proposed clause 7.6 may not capture a failure in respect of the Metering Services that falls outside the Service Standards. The Service Standards cover response timeframes and performance measures. The issue is what happens if Western Power does not provide the Metering Services in accordance with the descriptions in Schedule 3.

For example, Metering Service MS-3 (Standing Data provision) provides that "Standing Data will be provided to the User in accordance with the Code, including: (a) the provision of Standing Data upon registration of a Metering Point; and (b) following changes to items of Standing Data". If the Standing Data is not provided in accordance with the Code, Synergy (and other Users) could suffer loss. In those circumstances, the MSLA should provide compensation for Users and such compensation should not be limited by the definition of Indirect Damage.

Users should also be adequately compensated if Western Power is negligent in the provision of Metering Services.

Synergy's proposed amendments to new clause 7.6 are in **red text and strikethrough** as follows:

7.6 Failure to deliver Metering Services

(a) Where Western Power:

- (i) fails to provide Metering Services to a User in accordance with the Service Standards **or otherwise fails to provide the Metering Services otherwise in accordance with this Agreement;**
- (ii) **is negligent in relation to the provision of Metering Services to a User,**

then Western Power is liable for the direct additional costs incurred by the User as a result of Western Power's failure **or negligence.**

- (b) The exclusion of Indirect Damage in clause 7.1 does not apply to the direct additional costs referred to in clause 7.6(a).

Clause 7.4 (Fraud)

By way of minor amendment, Synergy recommends that clause 7.4(c) of the MSLA is moved into a new, separate clause 7.7 (amendments in red text and ~~striketrough~~ below). This is because the obligation to mitigate losses should not be included within the fraud provision. In the ERA approved model ETAC, there is a separate provision dealing with mitigation of losses.

7.4 Fraud

...

~~(c) A Party must take such action as is reasonably required to mitigate any loss or damage to it for which indemnity may be claimed under this Agreement or otherwise.~~

7.7 Mitigation of losses

A Party must take such action as is reasonably required to mitigate any loss or damage to it for which indemnity may be claimed under this Agreement or otherwise.

Clause 9 – default

Synergy does not make any comment on the ERA's required amendment 14 in respect of clause 9.

8.10 Required amendment 15 – dispute

Synergy supports the ERA's required amendment 15 to require the definition of "dispute" to be consistent with the Code definition. For completeness (and consistent with the proposal to add certain definitions in the ERA's required amendment 18), Synergy suggests that a definition of "market rules" (as referred to in the definition of "dispute") be included in Schedule 1 to the MSLA, as follows:

“Market Rules has the meaning given to it in the Act.”

Synergy also proposes that the term "market rules" in the definition of "dispute", be capitalised.

8.11 Required amendment 16 – clause 12 assignment and encumbrances

Synergy supports the ERA's required amendment 16 to amend clause 12(c) so that it only applies to Western Power.

8.12 Required amendment 17 – clause 13.8 entire agreement

Synergy supports the ERA's findings and required amendment 17 to amend clause 13.8 so that it refers to "all previous model service level agreements in effect under the Metering Code", as opposed to Western Power's proposal for the provision to refer to "all previous agreements, arrangements, representations or understandings".

8.13 Required amendment 18 – minor administrative changes

Synergy supports the minor administrative changes specified in the ERA's required amendment 18.