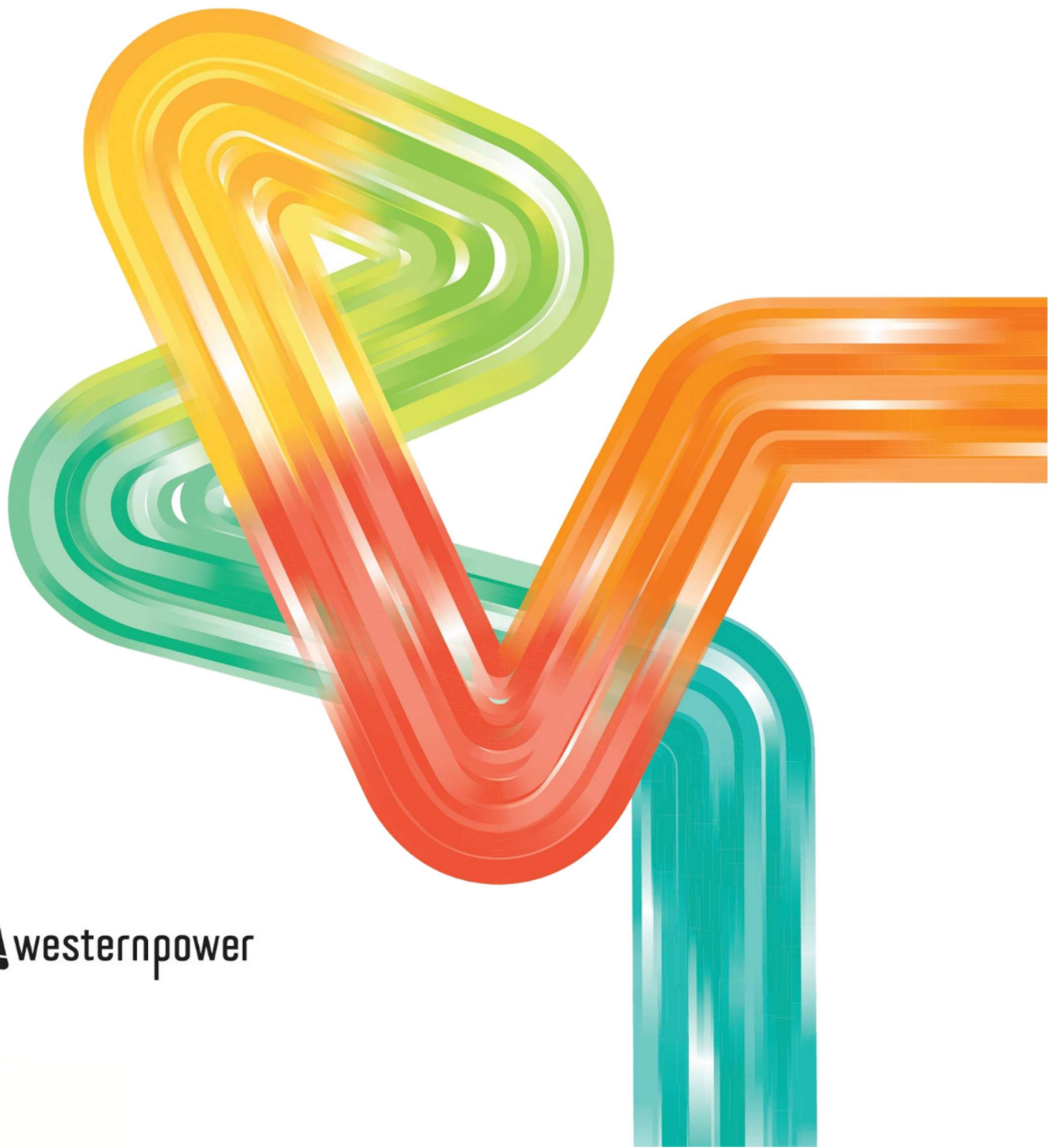


Model Service Level Agreement

Western Power's submission on ERA Draft Findings

Public

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1. Western Power Response to Required Amendments

1.1 Required Amendment#1 – Appointments (Amendments proposed)

Western Power must amend clause 3.3 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.

Western Power Response – Accepted subject to inclusion of complimentary amendments.

To provide Code Participants with additional clarity of options for service requests, Western Power proposes the following complimentary amendment be added to each relevant¹ service description in Schedule 3 and in Schedule 4:

The User may request this Metering Service to be provided:

- (a) *without a 'preferred date' or 'appointment time';*
- (b) *with a 'preferred date' but without an 'appointment time'. The timeframe specified in the Service Standard will be the minimum notice period for the 'preferred date';*
- (c) *with a 'preferred date' and an 'appointment time' of either between 7.00a.m. and 11.59a.m. on any Business Day or noon and 5.00p.m. on any Business Day. The timeframe specified in the Service Standard will be the minimum notice period for the 'preferred date'.*

This drafting is consistent with existing provisions relating to preferred appointment dates and times (see MS-19, Schedule 3, section 4.13).

Western Power does not accept Required Amendment 1 without the proposed complimentary amendments.

1.2 Required Amendment#2 - MS-1 Scheduled Energy Data Provision (Accepted)

The service description for MS-1 Scheduled Energy Data provision on page 36 of the proposed MSLA must be amended as follows:

... following consultation with the User for a period of not less than 3 weeks. 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.

Western Power Response – Accepted.

¹ MS-7, MS-8, MS-9, MS-10, MS-11, MS-12, MS-13, MS-14, MS-15, MS-16, MS-17 & MS-19

1.3 Required Amendment#3 – Remove KPIs (Not supported)

The KPIs must be removed from the MSLA.

Western Power Response – not accepted for the reasons outlined below:

Western Power does not agree with the view that the requirement in the Metering Code that a timeframe is included is inconsistent with the inclusion of a KPI.

A timeframe is included for every service. The requirement of clause 6.6(b)(ii) of the Code is met. Whenever Western Power undertakes a service it must seek to complete that service within the specific timeframe. There is no doubt what the timeframe is. However, the KPI reflects the reality that it is not practicable to expect that every timeframe will be met every time. The KPI does not mean there is no timeframe.

To address Western Power's concerns as noted in the following paragraphs but to clarify the issue around timeframes, Western Power proposed the following clause:

Timeframes and KPIs

"For the purposes of clause 6.6(b)(ii) of the Code, the timeframe for each Metering Service which Western Power must seek to achieve is set out in Schedule 4 and the inclusion of KPIs in Schedule 4 does not extend or change those timeframes."

As the Authority notes, KPIs are included in the existing Model Service Level Agreement. Western Power's tariffs and resourcing were set on the basis of these KPIs. The Authority must have previously formed the view KPIs were permitted under the Code. Western Power has structured its operations in reliance on that view and is concerned that there is now a change in the interpretation of the Code though there has been no change in the Code itself.

In addition to the reasons outlined in our prior submission, Western Power considers that the removal of KPIs is not in the economic interest of customers. That is, the removal of KPIs may result in customers paying more for metering services over time, than they would if KPIs are included.

Western Power delivers millions of individual metering services each year via a delivery model which uses a combination of insourcing and outsourcing. The cost of providing services is therefore influenced by competitive market pricing and prudent commercial principles. Western Power has tested the market extensively through multiple tender events over an extended period.

Commercial service providers expect targets to be set for the measurement of performance. Where these targets are 100%, service providers, reasonably, expect to be compensated for the additional risk of contract default, as compared to a lower target, for example 99%. A 100% requirement also effects the utilisation level of resources, by incentivising allocation of additional resources to treat default risk, resulting in a higher cost per service.

In practice, to resource to a level to seek to achieve a 100% KPI is not economically efficient nor in the interests of customers. It would mean that, as compared to existing resourcing, Western Power would be required to engage resources solely to close the gap between a 95% or 99% KPI and a 100% KPI.

KPIs are an extremely common commercial mechanism and reflect the realities of resourcing constraints. They are almost universal in information technology contracts. An information technology system could

presumably be built for a 100% KPI but it would involve so many levels of back-up as to be economically inefficient. In human resources contracts KPIs are used in circumstances where work volumes are uncertain, or the nature of the task means some variability in timeframes is expected.

Metering services are provided through a combination of deployment of information technology and use of human resources. In seeking to provide metering services, Western Power must resource to seek to satisfy an unknown level of requests each year.

It is likely to be difficult for Western Power to enter into subcontracts which reflect the requirements of the MLSA if a 100% KPI is included because (reflecting the factors noted above) subcontractors will generally not offer a 100% KPI or will only do so at a price which is set at a premium. The proposed approach to service standards is therefore putting Western Power in a difficult position, where it is forced to take on risks it cannot manage.

Moving the KPIs to 100% would appear to create little benefit to customers. However, it will lead to a requirement for additional investment in IT and human resources as compared to the investment required at the KPIs proposed by Western Power. Western Power will be entitled to recover these additional costs at the next tariff reset as it is entitled to recover the costs it must incur to comply with laws and contractual requirements.

Western Power is concerned that the Authority is taking an overly-rigid view of the meaning of timeframe, which view is not justified by the text of the Code and which view does not seek to achieve the lowest sustainable costs of providing the relevant metering service.

As noted above, it is not Western Power's position that the incorporation of KPIs should in any way change the timeframes for service provision. What the KPIs recognise, however, is that it is not economically efficient or practicable to resource such to guarantee a timeframe is achieved every single time. To reflect this Western Power proposes to include the following sentence in new clause 9(a):

"In respect of the Service Standards for a Metering Service, Western Power will not be regarded as in Default of those Service Standards if it meets any KPI specified for that Metering Service".

1.4 Required Amendment#4 – Remove Fees (Accepted)

Fees for the following standard metering services must be removed from Table 5 in Schedule 5:

- interval, bi-monthly, manual
- interval, monthly, manual
- interval, bi-monthly, remote
- interval, monthly, remote
- interval, daily, remote
- one-off manual interval read.

Western Power Response – Accepted.

1.5 Required Amendment#5 - Hourly Rates (Accepted)

Schedule 5 must be amended to remove the method for calculating labour and fleet rates and replaced with specific hourly rates.

Western Power Response – Accepted.

1.6 Required Amendment#6 - Single Country/Metro price (Accepted)

The proposed metropolitan and country prices must be replaced with a single price that averages travel costs across all customers.

Western Power Response – Accepted.

1.7 Required Amendment#7 - use AA parameters (Accepted)

Schedule 5 must be amended to include a mechanism for annual price updates based on the access arrangement pricing parameters for CPI, labour escalation and productivity improvements.

Western Power Response – Accepted.

1.8 Required Amendment#8 - Cancellations (Accepted)

The table of cancellation fees in Schedule 5 must be deleted and replaced with:

Where a User requests the cancellation of a Metering Service Order in accordance with this MSLA, Western Power must use reasonable endeavours to ensure that the previously requested work is not carried out and costs are not incurred. Western Power may require the User to reimburse Western Power for costs incurred by Western Power in respect of the performance and delivery of a Metering Service Order that is cancelled, before the work or costs were able to be stopped or cancelled, provided that: Western Power used reasonable endeavours to ensure that the previously requested work was not carried out and costs were not incurred; and those costs were incurred acting efficiently in accordance with good electricity industry practice. Where Western Power requires a User to reimburse Western Power for costs incurred on a cancelled service, Western Power must provide reasonable evidence to the User of the costs incurred.

Western Power Response – Accepted.

1.9 Required Amendment#9 - Remove WPI Adjustment (Accepted)

Proposed clause 1.3 must be deleted.

Western Power Response – Accepted.

1.10 Required Amendment#10 - Service Standards non-performance (Accepted)

Clause 3.2 must be amended to include:

- A positive obligation on Western Power to use reasonable endeavours to overcome any issue preventing the performance of metering services.
- An obligation on Western Power to provide evidence of the reason for the failure on the user's request.
- A qualification that the issue be material.
- A requirement that Western Power act as a reasonable and prudent person.

Western Power Response – Accepted.

1.11 Required Amendment#11 - Business Day (Accepted)

The definition of “business day” should refer to Western Australia rather than Perth.

Western Power Response – Accepted.

1.12 Required Amendment#12 – Invoicing (Accepted)

Clause 5.1 must be amended as follows: issue to the User a Tax Invoice for that Accounting Period that sets out:

- (a) the amounts payable for each service provided under this Agreement for the Accounting Period; and
- (b) a brief explanation for the amount payable where the service or fee is not listed in Schedule 5; and

Western Power Response – Accepted.

1.13 Required Amendment#13 - Force Majeure (Accepted)

Proposed clause 8.2 and 8.3 must be amended as follows:

- ... then the Affected Person must: (a) notify the other person as soon as reasonably practicable 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; and
 - (b) subject to clause 8.2(a) notify the other Party if the FM Period continues for a period of two days or longer as soon as reasonably practicable and in any event within 5 Business Days of a Party becoming aware an event is or is likely to be a Force Majeure Event; and
 - (c) use reasonable endeavours (including any reasonable expenditure of funds ...
- ... An Affected Person is not obliged to incur any expenditure in complying with clause 8.2(b) if the Force Majeure Event is constituted by a breach of, or failure to comply with, this Agreement or the Code by the other Party.

Western Power Response – Accepted.

1.14 Required Amendment#14 - Liability and indemnity (Amendments Proposed)

Clause 7 and 9 must be amended as follows:

- Clause 19.2 in the electricity transfer access contract must be replicated in clause 7 of the MSLA.
- “Direct Damage” must be defined in the MSLA consistent with definition in the electricity transfer access contract.
- An equivalent to clause 27.1(b) in the electricity transfer access contract must be included in clause 9 of the MSLA.
- A new clause must be included 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.

Western Power Response – Amendments accepted, subject to the inclusion of additional proposed amendments for the reasons outlined below.

Western Power:

- agrees to the inclusion of a clause equivalent to clause 19.2 of the ETAC in the MSLA and this clause is now included as new clause 7.1;
- agrees to the inclusion of a definition of “Direct Damage” consistent with the ETAC;
- agrees to the inclusion of a clause equivalent to clause 27.1(b) of the ETAC in the MSLA and this clause is now included as new clause 9(a); and
- agrees to the inclusion of a clause in the form below to address the final aspect of required amendment 14 provided that clause 3.2 is also amended. Western Power’s rationale is explained further below.

Western Power’s proposed clause (7.2) is as follows:

- “(a) Subject to clause 7.7 and 7.2(c), where Western Power fails to provide Metering Services to the User in accordance with the Service Standards due to Western Power’s Default under this Agreement or negligence, then Western Power is liable for the direct additional costs incurred by the User as a result of Western Power's failure.
- (b) The exclusion of Indirect Damage in clause 7.3 does not apply to the direct additional costs referred to in clause 7.2(a).
- (c) Western Power is not liable for a direct additional cost incurred by the User if the User has a contractual or other legal entitlement to recover the cost from a Customer.”

This clause reflects that proposed by the Authority subject to the matters underlined. By way of explanation:

- the clause makes clear it is subject to the User’s obligation to act reasonably to mitigate its loss or damage (as set out in what was clause 7.6(c) which Western Power has moved to new clause 7.7). That is Western Power should not be liable for a loss the User would have avoided had it acted reasonably. Western Power assumes this would have been intended but the cross-reference to clause 7.7 is to make sure the words of the new clause “Western Power is liable” do not cut across the duty to mitigate.
- Secondly it has been made clear the clause only applies where Western Power is in breach of contract or negligent. Again, we assume this is intended, given it would be highly unusual (both in electricity

regulation but in commerce generally) to make a party liable where it is not in breach of contract or negligent.

- Paragraph (c) is to make clear Western Power should only be liable for costs the User cannot recover from the Customer. So if there is a metering error but the User has a contractual right to recover from the Customer then the User should recover the relevant amount from the Customer and not pursue Western Power.

The duty to mitigate was previously in clause 7.6(c). However, clause 7.6 is headed fraud and clause 7.6(c) does not have any relationship with clause 7.6(a) and (b). Western Power has therefore moved 7.6(c) into a separate clause (7.7). No changes have been made to the wording.

As a result of the proposed inclusion of clause 7.2 Western Power has given further consideration to clause 3.2 (which sets out relief from failure to provide the Service Standards) and in practice what additional matters may impact Western Power's ability to provide a service. Western Power's primary concern is the area of de-energisation. While clause 7.2 covers the main types of events beyond Western Power's control which will impact the ability to provide services, in the case of de-energisations there are additional considerations. Certain sites (in particular those with multiple run-ins) are difficult to safely de-energise due to the complexity of their configuration. Further it may not be possible to readily de-energise some sites without potentially resulting in a power interruption to other sites if Western Power does not have access to all relevant sites. In such cases Western Power considers the User should, acting reasonably, agree to an extension to the service standard to reflect the complexity of the de-energisation and also to ensure the de-energisation does not adversely affect other customers.

To reflect the above Western Power proposes the inclusion of the following new clause 3.5:

"3.5 De-energisation

Where a requested Metering Service relates to de-energisation and the de-energisation is more complex than a standard de-energisation (including because the relevant site involves multiple run-ins) the User will consent to any reasonable extension to the Service Standard proposed by Western Power."

Further in the case of de-energisations and certain other services, Western Power is highly reliant upon the User to assist it procure access and manage the customer relationship given the User has the contractual relationship with the customer. Western Power considers that the User should have an obligation to co-operate as required by Western Power to enable Western Power to meet the Service Standards. It is unfair to impose liability upon Western Power without there being a corresponding obligation on the User to co-operate to enable Western Power to meet its obligations.

Western Power therefore proposes to add clause 3.2(d) to address the above concern:

"The User must provide such co-operation as Western Power reasonably requires to enable Western Power to meet the Service Standards and provide the Metering Services."

1.15 Required Amendment#15 - Dispute Definition (Accepted)

The definition of dispute must be amended to be consistent with the Metering Code definition:

“means any dispute or difference arising in respect of any matter under or in connection with this Agreement between the parties, the subject matter of which is not also an access dispute under the Access Code, a dispute under the market rules, a dispute or a complaint under the Code approved under section 79 of the Act or a dispute under the Customer Transfer Code between the parties” and the words “arising in respect of any matter under or in connection with this Agreement” must be deleted from clause 10.1.

Western Power Response – Accepted.

1.16 Required Amendment#16 – Encumbrances (Accepted)

The proposed changes to clause 12(c) must be amended so they apply only to Western Power.

Western Power Response – Accepted.

1.17 Required Amendment#17 – Model Agreements Superseded (Accepted)

This Agreement constitutes the entire agreement between the Parties as to its subject matter and, to the extent permitted by Law, supersedes all previous model service level agreements in effect under the Metering Code.

Western Power Response – Accepted.

1.18 Required Amendment#18 – House Keeping (Accepted)

The MSLA must be amended to reflect the following minor administrative changes:

- 4.13 Non-Scheduled Special Meter Reading (MS-19) – amend 11.59am to be 11.59 a.m.
- Schedule 4 – Service Standards – “response time” to replace “timeframe” on page 64.
- Definitions for Communications Link, CPI, Life Support Equipment and Related Bodies Corporate must be added.
- Capitalisation of defined terms to be corrected where required.
- Cross references to other clauses to be corrected where required.
- Consistent use of the term “Extended Metering Services”.

Western Power Response – Accepted.