

# Final findings on Western Power's Model Service Level Agreement

31 August 2020

**Economic Regulation Authority**

WESTERN AUSTRALIA

D218279

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## Final findings

1. Western Power's model service level agreement (MSLA) is a requirement under the *Electricity Industry (Metering) Code 2012* and was first approved by the Economic Regulation Authority in March 2006.
2. The MSLA sets out the metering services that Western Power must provide and the terms and conditions it must offer, including applicable charges. The MSLA automatically applies to metering services if a user does not have its own agreement with Western Power.
3. The MSLA has not been amended since March 2006.
4. On 13 November 2019, Western Power submitted a proposed revised MSLA to the ERA in accordance with Division 6.2 of the Metering Code.<sup>1</sup>
5. As required under clause 6.20(2) of the Metering Code, the ERA published a notice to initiate a review of Western Power's MSLA on 21 November 2019.<sup>2</sup> The ERA published Western Power's proposed revised MSLA and invited public submissions from Metering Code participants and interested parties.
6. The public consultation period closed on 19 December 2019. The ERA received one submission, from Synergy.<sup>3</sup>
7. The ERA published a consultation paper on 18 March 2020 setting out details of the proposed changes and its preliminary views, highlighting areas where the ERA was particularly seeking feedback from stakeholders with practical experience of metering services.
8. The ERA received submissions from Western Power, Synergy and Alinta Energy.<sup>4</sup>
9. As required under the Metering Code, the ERA published its draft findings for consultation on 16 June 2020. The draft findings included 18 amendments needed to Western Power's proposed MSLA for it to comply with the requirements of the Metering Code.
10. The changes required included:
  - Amending the process for requesting services.
  - Amending the process for changing the meter reading schedule.
  - Clarifying the service standards by removing the proposed Key Performance Indicators (KPIs).
  - Amending prices, the process for updating prices and cancellation fees.

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<sup>1</sup> The *Electricity Industry (Metering) Code 2012* replaced the *Electricity Industry (Metering) Code 2005*.

<sup>2</sup> A copy of Western Power's proposal can be found here: <https://www.erawa.com.au/electricity/electricity-access/western-power-network/model-service-level-agreement>

<sup>3</sup> The submission received can be found here: <https://www.erawa.com.au/electricity/electricity-access/western-power-network/model-service-level-agreement>

<sup>4</sup> The submissions received can be found here: <https://www.erawa.com.au/electricity/electricity-access/western-power-network/model-service-level-agreement>

- Clarifying Western Power's obligations and responsibilities for the delivery of metering services and the consequences if those services are not provided in accordance with the MSLA.
11. The ERA received submissions on the draft findings from Western Power, Synergy and Alinta.<sup>5</sup>
  12. Western Power agreed with all the required amendments with the following exceptions:
    - It proposed additional modifications to processes for requesting services.
    - It did not agree that KPIs should be removed from the MSLA.
    - It did not agree with some aspects of the required amendments clarifying Western Power's obligations for the delivery of metering services and the consequences if the services are not provided in accordance with the MSLA.
  13. Synergy and Alinta supported the required amendments in the draft findings. Each proposed some additional amendments.
  14. Synergy proposed:
    - Further amendments to the required amendments clarifying Western Power's obligations for the delivery of metering services and the consequences if the services are not provided in accordance with the MSLA
    - Setting a maximum one-day notification period for Force Majeure Events likely to prevent the operation of clause 5.8 of the Code or adversely affect the use by a customer of life support equipment.<sup>6</sup>
    - Minor drafting changes.
  15. Alinta considered that additional information should be included on invoices.
  16. The ERA has taken account of the submissions to make its final findings.
  17. The ERA considers that the required amendments identified in the draft findings, with some modifications to take account of matters raised in submissions, are needed for the proposed MSLA to comply with the requirements of the Metering Code. Details of the ERA's findings and required amendments are set out in this decision.
  18. Western Power is required to amend the MSLA in accordance with the ERA's final findings and publish it. The ERA expects Western Power to publish its amended MSLA by 30 September 2020. The amended MSLA should commence as soon as possible after allowing adequate time for the changes to be communicated to users and any required system changes. Western Power has advised that it is engaging with users on the changes and anticipates a commencement date of 1 November 2020.
  19. If Western Power fails to amend the document in accordance with the final findings, the Metering Code allows the ERA to publish an amended MSLA.

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<sup>5</sup> The submissions received can be found here: <https://www.era.com.au/electricity/electricity-access/western-power-network/model-service-level-agreement>

<sup>6</sup> Clause 5.8 states: A network operator must in accordance with the Code provide a user with whatever information the network operator has, including energy data and standing data, 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 obligation (unless another time is specified in the applicable service level agreement).

## Background

### Regulatory requirements

20. The Metering Code requires Western Power to have an MSLA specifying the metering services provided, together with the service levels and prices for those services. The MSLA and any amendments to it must be approved by the ERA.

21. Under clause 5.2 of the Metering Code, the MSLA automatically applies if there is no written service level agreement:

#### 5.2 Unwritten service level agreement adopts model service level agreement

If a network operator provides, and a user accepts, a metering service and there is no written service level agreement between the parties in respect of the metering service, then unless the parties agree otherwise, the terms of the unwritten service level agreement for the metering service are to be taken to be those set out in the model service level agreement in respect of the metering service.

22. Clause 6.5 of the Metering Code states the requirements for all documents required under the Metering Code:<sup>7</sup>

#### 6.5 Requirements for all documents

A *document* must:

- (a) comply with this *Code*; and
- (b) not impose inappropriate barriers to entry to a market; and
- (c) be consistent with *good electricity industry practice*; and
- (d) be reasonable; and
- (e) be consistent with the *Code objectives*; and
- (f) be consistent with the *market rules*; and
- (g) unless this *Code* requires otherwise, be consistent with other enactments.

23. The Metering Code objectives are set out in clause 2.1 of the Metering Code:

#### 2.1 Code Objectives

- (1) The *Code objectives* are to:
  - (a) promote the provision of accurate metering of electricity production and consumption;
  - (b) promote access to and confidence in *data* of parties to commercial *electricity* transactions;
  - (c) facilitate the operation of Part 8 and Part 9 of the Act, the *Customer Transfer Code* and the *Code of Conduct*.

<sup>7</sup> The Metering Code also requires Western Power to have:

- A metrology procedure containing information on the devices and methods used to measure, record, prepare and provide energy data. The procedure must also specify the minimum requirements for meters and metering installations, the procedures for estimating, substituting and validating energy data and procedures for ensuring accuracy of meters.
- A mandatory link criteria specifying any communication links required as part of a metering installation.
- Communication rules setting out rules for the communication of information and data between Code participants.



- (2) *Code participants* must have regard to the *Code objectives* when performing an obligation under this *Code*, whether or not the provision under which they are performing refers expressly to the *Code objectives*.

24. Clause 6.6 of the Metering Code sets out the requirements specific to the MSLA:

6.6 Requirements for model service level agreement

- (1) 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*, the *Code of Conduct* 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) detailed description of the *metering service*; and
    - (ii) a timeframe, and where appropriate other service levels, for the performance of the *metering service*,
 and
  - (c) subject to clause 5.21(9), specify the maximum *charges* that the *network operator* may impose for each *metering service* referred to in clause 6.6(1)(a); and
  - (d) if any of the *charges* specified under clause 6.6(1)(c) is variable, provide details of the methodology and cost components that will be used to calculate the variable *charge* including (where applicable) hourly labour rates, distance-related costs and equipment usage costs; and
  - (e) provide that the *charges* which may be imposed under a *service level agreement* may 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*; and
  - (f) require the *network operator* to *publish*, annually, a list setting out for each *metering point* on the *network* either:
    - (i) each *date* for a *scheduled meter reading* in the coming year; or
    - (ii) the *reading day number* to apply for the current year,
 and specify the procedures by which, and frequency with which, this list may be revised;
 and
  - (g) specify the procedures for a *Code participant* to make a request for *metering services* (“**metering service order**”) and the procedures for dealing with a *metering service order*.
 

{Note: Without limiting clause 6.6(1), a model service level agreement must, at least:

    - (a) specify service levels (including timeframes) under clause 3.11(2);
    - (b) specify test and audit service levels under clause 5.21;

- (c) *contain a mandatory charging provision under clause 5.21(9);*
  - (d) *specify the service levels (including timeframes) for the provision, installation, operation and maintenance of metering installations under clause 3.5(1);*
  - (e) *specify a time limit for the purposes of clause 5.13(2);*
  - (f) *specify service levels (including timeframes) for metering repairs.}*
- (2) The paragraphs of this clause 6.6 do not by implication limit each other.
25. Clause 6.20 sets out the requirements for the review and amendment of all documents required under the Metering Code:
- 6.20 Review and amendment of network operator's documents (other than communication rules)**
- (1A) This clause 6.20 does not apply in respect of communication rules.
  - (1) The Authority may in its absolute discretion:
    - (a) of its own initiative; or
    - (b) upon request by a Code participant,
 require or permit a network operator to amend a document provided that the document as amended must comply with this Code.
  - (2) Before requiring or permitting an amendment to a document under this clause 6.20, the Authority must initiate a review of the document under clause 6.20(3), which review may be of the whole document or only that part of the document for which the amendment is proposed.
  - (3) The Authority must, if it undertakes a review under this clause 6.20:
    - (a) within 50 business days after initiating the review:
      - (i) publish its draft findings in relation to the review; and
      - (ii) notify the network operator of its draft findings;
 and
    - (b) allow a period of at least 20 business days after publication of the draft findings for persons to make submissions in relation to the draft findings; and
    - (c) within 10 business days after the end of the period in 6.20(3)(b):
      - (i) publish its final findings in relation to the review (which must detail any amendments required to the document) together with any submissions made under clause 6.20(3)(b) in relation to the review; and
      - (ii) notify the network operator of its final findings.
  - (3A) The Authority may on one or more occasions extend the time limits specified in clauses 6.20(3)(a) and 6.20(3)(c) for a period determined by the Authority.
  - (3B) The Authority must not exercise the power in clause 6.20(3A) to extend the time limits specified in clauses 6.20(3)(a) and 6.20(3)(c) unless, before the day on which the time would otherwise have expired, it publishes notice of, and reasons for, its decision to extend the time limit.
  - (4) The network operator must amend any document in accordance with the Authority's final findings.

- (5) The network operator must publish any document that has been amended under clause 6.20(4).
  - (6) If a network operator fails to amend a document as required under clause 6.20(4), the Authority may publish the amendment, and the document has effect as amended by the published amendment, from the time of publication or such other time as is stated in the publication.
26. The ERA must also have regard to the requirements of section 26 of the *Economic Regulation Authority Act 2003*:

**26. Authority to have regard to certain matters**

- (1) In performing its functions, other than the functions described in section 25(c)<sup>8</sup> and (d)<sup>9</sup>, the Authority must have regard to –
  - (a) the need to promote regulatory outcomes that are in the public interest;
  - (b) the long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets;
  - (c) the need to encourage investment in relevant markets;
  - (d) the legitimate business interests of investors and service providers in relevant markets;
  - (e) the need to promote competitive and fair market conduct;
  - (f) the need to prevent abuse of monopoly power or market power;
  - (g) the need to promote transparent decision-making processes that involve public consultation.
- (2) The Authority has the discretion as to the weight it gives to each of the matters referred to in subsection (1) in the performance of a particular function.
- (3) Nothing in subsection (1) limits a provision of another written law that requires the Authority, in performing a particular function, to have regard to, or take into account, particular objectives, considerations or other matters.
- (4) If there is any conflict or inconsistency between subsection (1) and a provision described in subsection (3), the latter provision prevails to the extent of the conflict or inconsistency.

### **Western Power's proposal**

- 27. Western Power's MSLA has not been amended since it was first approved by the ERA in March 2006.
- 28. A copy of the proposal can be found on the ERA's website.<sup>10</sup>

### **Public consultation**

- 29. As required under clause 6.20(2) of the Metering Code, the ERA published a notice to initiate a review of Western Power's MSLA on 21 November 2019. The ERA published Western Power's proposed revised MSLA and invited public submissions from Metering Code participants and interested parties.

<sup>8</sup> The functions it is given by or under the *National Gas Access (WA) Act 2009*.

<sup>9</sup> The functions referred to in section 20(1) of the *Railways (Access) Act 1998*.

<sup>10</sup> A copy of the proposed MSLA can be found here: <https://www.erawa.com.au/electricity/electricity-access/western-power-network/model-service-level-agreement>

30. The ERA received one submission, from Synergy. Synergy stated that it supported the proposed metering service standards, metering service descriptions and metering service transactions. However, Synergy submitted that there were additional matters the ERA needed to determine on terms and conditions and pricing.
31. As part of its review of Western Power's MSLA, the ERA published a consultation paper on 18 March 2020 setting out details of the proposed changes and its preliminary views, including the matters raised by Synergy. The consultation paper highlighted areas where the ERA was particularly seeking feedback from stakeholders with practical experience of metering services.
32. The ERA received submissions from Western Power, Synergy and Alinta.
33. As required under the Metering Code, the ERA published its draft findings for consultation on 16 June 2020. The draft findings included 18 amendments needed to Western Power's proposed MSLA for it to comply with the requirements of the Metering Code.
34. The ERA received submissions from Western Power, Synergy and Alinta.
35. Details of the matters raised in submissions are included below in the relevant sections of the final findings.

## ERA review

36. The ERA's review of Western Power's MSLA considered each of the requirements listed in clause 6.6(1) of the Metering Code as set out in the previous section on regulatory requirements.
37. The requirements have been grouped under the headings below:
- metering services offered
  - metering service descriptions
  - process for requesting metering services
  - meter reading schedule
  - timeframes and service levels
  - charges for metering services
  - terms and conditions.

## Metering services offered

38. Clause 6.6(1)(a) sets out the requirements for services to be included in the MSLA:

- (1) 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*, the *Code of Conduct* and the *Customer Transfer Code* require the *network operator* to provide); and
    - (ii) may provide,
      - to other *Code participants* on request,

39. The Metering Code defines a metering service as:

A service in connection with the measurement of electricity production or consumption, including in connection with:

- (a) the provision, installation, operation and maintenance of metering equipment; and
- (b) the obtaining, provision, storage and processing of data; and
- (c) services ancillary to the services listed in paragraphs (a) and (b) of this definition.

40. The metering services a network operator is required to provide under the Metering Code include:

- Clause 3.5(1) – ensure that there is a *metering installation* at every *connection point* on its *network* which is not a *Type 7 connection point*.<sup>11</sup>
- Clause 3.5(3) – provide, install, operate and maintain the *metering installations*:
- Clause 5.3 – read meters.
- Clause 5.6 – provide energy data after the meter reading.
- Clause 5.8 – provide data for user’s obligations under the *Code of Conduct for the Supply of Electricity to Small Use Customers*.
- Clause 5.9 – provide standing data to users.<sup>12</sup>
- Clause 5.10 – provide standing data to retailers.
- Clause 5.11 – provide standing data to an incoming retailer.
- Clause 5.12 – provide energy data on request to current users.
- Clause 5.13 – provide standing data on request to current users.
- Clause 5.14 – provide bulk standing data on request to current users.
- Clause 5.17 – provide energy data and standing data to third parties if directed to do so by a customer.

<sup>11</sup> Clause 3.9(2) states a connection points is Type 7 if it is associated with one or more of the following loads:

- Street, traffic, park, community, or security lighting; or
- Ticket issuing machines, parking meters, or community watering systems; or
- Telephone service requirements; or
- Loads consuming less than the starting electric current of a meter;
- Or other loads of a similar nature.

<sup>12</sup> Clause 4.3 of the Metering Code sets out a description and source of information that must be recorded as standing data by the network operator in the metering database.

- Clause 5.20 – undertake energy data verification on request.
  - Clause 5.21 – undertake tests and audits on request.
41. Metering services required to meet Code of Conduct obligations include:
- meter readings for customer billing
  - meter readings on request
  - verification of energy data and meter readings on request
  - installing and energising connections
  - de-energising and re-energising connections.
42. Metering services required to meet Customer Transfer Code obligations include:
- provide standing data
  - provide historical consumption
  - install new meters
  - provide meter readings.

### ***Western Power's proposal***

43. The current MLSA includes “standard” metering services and “extended” metering services. Standard metering services include:
- meter installation and energisation
  - scheduled meter readings
  - meter repairs and replacements not requested by users
  - standing data and historical energy data provision.
44. The costs of standard metering services are recovered through network charges under Western Power's access arrangement.
45. Extended metering services include:
- Meter re-configurations, exchanges and communication installations requested by users.
  - Non-scheduled special meter readings requested by users.
  - Meter investigations and testing requested by users.
  - De-energising and re-energising users.
46. The costs of extended metering services are recovered through the MSLA fees.
47. Western Power's proposal included:
- Combining all the current individual scheduled meter reading services into a single scheduled meter reading service.
  - Introducing three categories of standard metering services.
  - Various amendments to the other services offered in the current MSLA.
48. A complete list of the proposed services is set out in Appendix 1.

### ***Draft findings***

49. The ERA sought feedback from users of Western Power's metering services to confirm that the list of services included all of the services required under the Metering Code, Code of Conduct and the Customer Transfer Code.
50. Synergy confirmed that the metering services included in the proposed MSLA were sufficient to meet Synergy's requirements.
51. Alinta requested an additional service to allow customers to change their "meter read route". In response to Alinta's request, Western Power agreed to add a new service for route alterations.
52. Based on a comparison of the proposed list of services with the services the network operator is required to provide under the Metering Code, the Code of Conduct and the Customer Transfer Code the ERA considered that the proposed list of services met the requirements of clause 6.6(1)(a)(i).e, the Code of Conduct and the Customer Transfer Code.

### ***Final findings***

53. Synergy supported the ERA's draft findings and confirmed that the proposed metering services met Synergy's requirements.
54. Based on its review of the proposed list of services and the feedback from stakeholders, the ERA is satisfied 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 Metering Code, the Code of Conduct and the Customer Transfer Code.



## Metering service descriptions

56. Clause 6.6(1)(b)(i) sets out the requirement for detailed descriptions of metering services:
- (1) A *model service level agreement* must at least:
    - ...
    - (b) for each *metering service* referred to in clause 6.6(1)(a), specify:
      - (i) detailed description of the *metering service*;

## Western Power's proposal

57. The current MSLA combines service descriptions and service standards in Schedule 3.
58. In its revised MSLA, Western Power separated service descriptions and service standards. Service descriptions are set out in Schedule 3 and service standards have been moved to Schedule 4.
59. Western Power amended the service descriptions to incorporate the changes to metering services.

## Draft findings

60. As required under clause 6(1)(b)(i), the proposed MSLA includes a description for each service. The ERA considered that the level of detail must be adequate to enable users to clearly understand the service that will be delivered.
61. The ERA sought feedback from users on whether the proposed descriptions were sufficiently detailed to enable them to clearly understand the service that will be delivered.
62. Synergy and Alinta both confirmed that the proposed descriptions were sufficiently detailed.
63. Based on its review of the service descriptions in the proposed MSLA and feedback from stakeholders, the ERA was satisfied the proposed MSLA meets the requirements of clause 6(1)(b)(i) to include a detailed description for each metering service.

## Final findings

64. In its submission on the draft findings, Synergy supported the ERA's draft findings and confirmed that the proposed metering service descriptions were sufficiently detailed.
65. Based on its review of the service descriptions in the proposed MSLA and feedback from stakeholders, the ERA is satisfied the proposed MSLA meets the requirements of clause 6(1)(b)(i) to include a detailed description for each metering service.

## Process for requesting metering services

67. Clause 6.6(1)(g) sets out the requirements for metering service requests:
- (1) A *model service level agreement* must at least:
    - ...
    - (g) specify the procedures for a Code *participant* to make a request for *metering services* (“**metering service order**”) and the procedures for dealing with a *metering service order*.
68. Clause 5.1(4) of the Metering Code is also relevant to the process for requesting metering services as it specifies the information to be submitted by a Metering Code participant to a network operator when requesting a metering service from the network operator is detailed in Appendix 4 of the Metering Code.
69. Appendix 4 of the Metering Code includes the following requirements for requests for metering services:
- The network operator must develop a metering service order form suitable for transmission by electronic communication for use by users.
  - Upon the successful, or unsuccessful, completion of the work, or the cancellation of a metering service order, the network operator must send a response to the user with details of the status of the requested work.
  - Completion of a metering service order may result in either or both of changes to standing data and collection of energy data, in which case the relevant provisions of the Metering Code apply.
  - A user may request a preferred appointment date and time and the network operator must make reasonable endeavours to perform the metering service at that preferred date and time.
  - Unless otherwise agreed, a user who wishes to revise a previously notified preferred date and time must request the network operator to cancel the metering service order and must submit a new order specifying the new preferred date and time.
  - The network operator must publish a form to allow a user to request the network operator to cancel a metering service order.
  - Upon receipt of a request to cancel a metering service order, the network operator must use reasonable endeavours to ensure that the previously requested work is not carried out and costs are not incurred.

### Western Power’s proposal

70. Clause 3.3 of the current MSLA sets out how users can request metering services:

The *user* may request the provision of new or additional *metering services*, or the cancellation of *metering services*, which are being provided by Western Power under this Agreement by submitting to Western Power a *service request* in accordance with the *Code* and the *communication rules*. Detail in relation to the transactions, processes and procedures will be provided in the *build pack*.<sup>13</sup>

<sup>13</sup> “Communication rules” are required under the Metering Code and set out rules for the communication of information and data between Metering Code participants.

71. "Service Request" is defined as "either a written or electronic request submitted by the User to Western Power, in accordance with the communication rules."
72. In its revised MSLA, Western Power amended clause 3.3 to the following:

The User may request the provision of Metering Services under this Agreement, by submitting to Western Power a Service Order in accordance with the Code and the Communication Rules.
73. Western Power defined "Service Order" as "a request for a Service submitted by the User to Western Power in accordance with the communication rules."
74. The type of service order required for each metering service is included in the service descriptions in Schedule 3. A diagram of the service order process is included in Figure 1 of Schedule 4.

### **Draft findings**

75. The ERA compared the processes included in the proposed MSLA with the requirements of the Metering Code.
76. The ERA considered the proposed MSLA complied with the requirements of clause 6.6(1)(g) and Appendix 4 of the Metering Code with two exceptions:
  - Appendix 4 provides for users to request a preferred appointment date and time and the network operator must make reasonable endeavours to perform the metering service at that preferred date and time. The proposed MSLA only included provisions for a user to request a nominated date or appointment time for non-scheduled special meter readings.
  - Appendix 4 requires the network operator to publish a form to allow a user to request to cancel a service order. The proposed MSLA included cancellation fees but a process and form to request a cancellation was not included.
77. In order to comply with the requirements of Appendix 4, the ERA considered that the MSLA must include:
  - a process for requesting a preferred appointment time for all metering services
  - a process for requesting the cancellation of services.

#### **Draft Findings Required Amendment 1**

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.](#)

### **Final findings**

78. Synergy supported the ERA's draft findings.
79. Western Power accepted the ERA's required amendment, subject to making additional modifications to the drafting on the process for requesting appointments that Western Power considered necessary to provide additional clarity of options for service requests.

80. Western Power proposed the following additional drafting to be added to each relevant service description in Schedule 3 and Schedule 4.<sup>14</sup>

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 7:00 a.m. and 11:59 a.m. on any Business Day or noon and 5:00 p.m. on any Business Day. The timeframe specified in the Service Standard will be the minimum notice period for the “preferred date”.
81. Synergy and Alinta confirmed that they had no concerns with Western Power’s proposed modifications.
82. Subject to making Required Amendment 1 below, the ERA is satisfied the proposed MSLA complies with the requirements of clause 6.6(1)(g) to specify the procedures for a Code participant to make a request for metering services and the procedures for dealing with a metering service order and includes all of the specific requirements set out in Appendix 4 of the Metering Code.

### Required Amendment 1

Clause 3.3 must 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.

The following text must be added to the service descriptions for MS-7, MS-8, MS-9, MS-10, MS-11, MS-12, MS-13, MS-14, MS-15, MS-16, MS-17 and MS-19:

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 7:00 a.m. and 11:59 a.m. on any Business Day or noon and 5:00 p.m. on any Business Day. The timeframe specified in the Service Standard will be the minimum notice period for the “preferred date”.

<sup>14</sup> MS-7, MS-8, MS-9, MS-10, MS-11, MS-12, MS-13, MS-14, MS-15, MS-16, MS-17 and MS-19.

## Meter reading schedule

83. Clause 6.6(1)(f) sets out the requirements for meter reading schedules:

(1) A *model service level agreement* must at least:

...

(f) require the *network operator* to *publish*, annually, a list setting out for each *metering point* on the *network* either:

(i) each *date* for a *scheduled meter reading* in the coming year; or

(ii) the *reading day number* to apply for the current year,

and specify the procedures by which, and frequency with which, this list may be revised;

## Western Power's proposal

84. The current MSLA includes the requirements of Clause 6.6(1)(f) on pages 31 and 33 of Schedule 3:

When a network connection is established, the network operator will assign a metering reading frequency ..., and a specific route and reading cycle day, along with a best fit in schedule and route optimisation.

The *network operator* will *publish*, each year all metering reading schedules for all network connection points for the following calendar year by October 31. Any subsequent additions (or changes) to this *published* schedule during the year will added to the existing schedule and *published*, following consultation with the relevant and impacted *Code participants*.

85. In the proposed MSLA, meter reading schedule requirements have been included in the service description for MS-1 Scheduled Energy Data Provision on page 36:

When a Metering Point is established, Western Power will assign a Reading Day Number to a Meter in the Meter Reading Schedule.

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. Where amended, Western Power will publish an amended Meter Reading Schedule.

## Draft findings

86. The proposed MSLA met the requirements of clause 6.6(1)(f) to publish annually a meter reading schedule and assign meter reading dates to each meter. However, it did not comply with the requirement to specify the procedures by which, and the frequency with which, the meter reading schedule may be revised.

87. Compliance with the Metering Code requires the following detail in the MSLA:

- The frequency and process by which changes to the Metering Reading Schedule can be made by Western Power.
- How users will be notified.
- The consultation Western Power will undertake including whether there is an ability of an affected user to request an amendment to the proposed change.

- An acknowledgement that Western Power will consider affected user obligations to customers under the Code of Conduct in making any changes.
88. The ERA required the proposed MSLA to be amended.

**Draft Findings Required Amendment 2**

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

When a Metering Point is established, Western Power will assign a Reading Day Number to a Meter in the Meter Reading Schedule.

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](#).

[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](#).

**Final findings**

89. In its submission on the draft findings, Western Power accepted the required amendment.
90. Synergy supported the draft findings but proposed the following minor amendment:  
... following consultation with the User for a period of not less than 3 weeks [prior to any changes to the Meter Reading Schedule occurring](#).
91. Western Power has confirmed it has no concerns with Synergy's proposed amendment.
92. Subject to making Required Amendment 2 below, the ERA is satisfied the proposed MSLA complies with the requirements of clause 6.6(1)(f) to publish annually a list setting out the reading day number to apply for each metering point on the network and specify the procedures by which, and frequency with which, this list may be revised.

## Required Amendment 2

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 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.

## Time frames and service levels

93. Clause 6.6(1)(b)(ii) requires timeframes and service levels to be included in the MSLA:

(1) A *model service level agreement* must at least [include]:

...

(ii) a timeframe, and where appropriate other service levels, for the performance of the *metering service*,

94. The note to clause 6.6(1) includes further requirements relevant to time frames and service levels:

{Note: Without limiting clause 6.6(1), a *model service level agreement* must, at least:

(a) specify service levels (including timeframes) under clause 3.11(2);

(b) specify test and audit service levels under clause 5.21;

(c) ...

(d) specify the service levels (including timeframes) for the provision, installation, operation and maintenance of metering installations under clause 3.5(1);

(e) specify a time limit for the purposes of clause 5.13(2);

(f) specify service levels (including timeframes) for metering repairs.}

95. Clause 3.11(2) requires that if an outage or malfunction occurs to a metering installation, the network operator must (subject to clause 3.5(7)) make repairs to the metering installation in accordance with the applicable service level agreement:<sup>15</sup>

### 3.11 Reliability of metering installations

...

(2) If an outage or malfunction occurs to a metering installation, the network operator must (subject to clause 3.5(7)) make repairs to the metering installation in accordance with the applicable service level agreement.

96. Clause 5.21 deals with metering test and audit requests.<sup>16</sup>

97. Clause 3.5(1) requires a network operator to ensure there is a metering installation at every connection point on its network which is not a Type 7 connection point:

### 3.5 Requirements for a metering installation

(1) A network operator must ensure that there is a metering installation at every connection point on its network which is not a Type 7 connection point.

98. Clause 5.13 of the Metering Code sets out the timeframe for providing standing data, including whether there is a communications link at the metering point:

### 5.13 Current user may request standing data

(1) If the *current user* for a *metering point* gives the *network operator* a *standing data* request for the *metering point* in accordance with the *communication rules*, then the *network operator* must:

(a) provide the *current user* with the complete current set of *standing data* for the *metering point*; and

<sup>15</sup> Clause 3.5(7) states that, unless otherwise agreed, a network operator is not required to maintain any metering equipment owned by a user or user's customer.

<sup>16</sup> An extract of clause 5.21 of the Metering Code is included at Appendix 2.



- (b) advise whether there is a *communications link* for the *metering point*.
- (2) The *network operator* must comply with clause 5.13(1) within 2 *business days* after receipt of the request.
99. The timeframe for undertaking and providing meter readings is set out in clause 5.3 of the Metering Code:
- 5.3 Network operator must read meters**
- A *network operator* must, for each *metering point* on its *network*:
- (a) obtain *energy data* from the *metering installation* for the *metering point*, and
- (b) transfer the *energy data* into its *metering database*,
- by no later than 2 *business days* after the *date for a scheduled meter reading* for the *metering point* (or such other time as is specified in applicable *service level agreement*).
100. Timeframes for de-energising and re-energising are set out in the Code of Conduct.

### **Western Power's proposal**

101. The current MSLA combines service descriptions and service standards in Schedule 3.
102. In its revised MSLA, Western Power separated service descriptions and service standards. Service descriptions are set out in Schedule 3 and service standards have been moved to Schedule 4.
103. Schedule 4 describes how timeframes and the performance against service standards are measured.
104. Western Power proposed to increase the following timeframes:
- Meter exchange (metropolitan) - from five business days to 10 business days.
  - Meter investigation (metropolitan) – from five business days to 10 business days.
  - Communications installation (metropolitan) – from five business days to 10 business days.
  - Enablement of signals (metropolitan) - from five business days to 10 business days.
  - Enablement of signals (country) – from 10 business days to 15 business days.
  - Meter investigation on site test metropolitan - from five business days to 10 business days.
  - Meter investigation on site test country – from 10 business days to 18 business days.
  - Meter reconfiguration metropolitan - from five business days to 10 business days.
105. The current MSLA includes Key Performance Indicators (KPIs) for each metering service. For example, the service standard for a De-Energise Service in the metropolitan area is stated as one business day after receipt of the request. However, the KPI for all de-energisations is for 95 per cent of requests to be performed by the scheduled date.
106. Western Power proposed to amend some of the KPIs as set out in **Table 1** below.

**Table 1: Western Power's proposed KPIs (%)**

Service name	Current KPI	Proposed KPI
MS-1 Scheduled meter reading	99.5	99
MS-2 Meter installation and energisation	95	99
MS-3 Standing data provision: Registry updated	100	95
Standing data published		99
MS-4 Historical energy data	100	99
MS-8 Re-energise	98	99
MS-19 Non-scheduled special meter reading	99.5	95
MS-10 Meter Investigation- Inspect	95	95
MS-11 Communications installation	95	95
MS-16 Enablement of Signals	95	95
MS-13 Meter test (laboratory)	95	95
MS-14 Meter Investigation: on-site test	95	95
MS-15 Meter Reconfiguration (Non-AMI)	95	95
MS-18 Verify meter data	98	99

107. Western Power also proposed to amend energy data provision accuracy. In the current MSLA, accuracy is measured based on the number of non-estimated and non-substituted readings subsequently amended by another actual reading and is set at 99.5 per cent.<sup>17</sup>

108. As set out on page 63 of the proposed MSLA, Western Power proposed that energy data provision accuracy would be measured on the ratio of actual values (that is, based on a meter reading) to the total number of energy data values (that is, inclusive of estimated and substituted values) and set as follows:

- Manually read meters (not including self-read) – 96 per cent.
- Remotely read meters (not including self-read) – 98 per cent.
- Manual meter reading errors (not including self-read) – less than or equal to 2 per cent.

## Draft findings

109. The proposed MSLA includes a timeframe for each metering service offered. The timeframes for services with specified times in the Metering Code, Code of Conduct or Customer Transfer Code all appear to be within the specified times.

<sup>17</sup> An estimated or substituted value may be used if an adequate actual meter reading is not available.

110. The services with timeframes Western Power proposed to increase do not have mandated timeframes. Western Power explained its rationale for amending the timeframes:

As part of the review of the MSLA, Western Power has sought independent benchmarking of existing service standards relative to other jurisdictions. This has identified that in general, the performance targets outlined in the existing Model are similar to those prescribed in other jurisdictions in Australia. However, for a number of meter provision and technical services, the existing Model has shorter timeframes to undertake the work.

Western Power has reviewed the impact of these shorter timeframes and identified that they may be contributing to higher service delivery costs, particularly when servicing Country areas, where scheduling to meet shorter timeframes may result in suboptimal resource utilisation. As a result, Western Power is proposing amended service standards that seek to balance both timeliness and cost efficiency.

111. Western Power provided benchmarking information supporting its case that the proposed revised timelines were in line with timeframes adopted in other jurisdictions.<sup>18</sup>
112. The ERA sought feedback from users of Western Power's metering services to confirm that the proposed service standards, including energy data provision accuracy, were consistent with the requirements of the Metering Code.
113. Synergy confirmed its support for the proposed service standards and that it was also satisfied with the proposed changes to energy data provision accuracy. No other stakeholders commented on the proposed timelines.
114. Based on its review of the proposed timelines against the requirement of the Metering Code and in the absence of any concerns from users of metering services, the ERA was satisfied that the proposed timelines were compliant with the Metering Code.
115. However, the ERA considered that the proposed KPIs were not compliant with the requirements of the Metering Code.
116. The Metering Code refers to a "timeframe" for each service and does not explicitly contemplate KPIs. The ERA considered that, unless a KPI was set to 100 per cent, it resulted in there not being a definitive timeframe for each service.
117. As set out in its consultation paper, the ERA considered the KPIs should be removed from the MSLA.
118. Synergy supported this view and submitted:

There needs to be regulatory certainty in how service requests for customers outside of the KPI levels are treated under the Code and Code of Conduct. A situation cannot exist where the Code of Conduct requires an absolute (i.e 100 per cent) metering service standard but the Code permits a lesser standard. Therefore, Synergy supports the ERA's required amendment and considers it will provide users with greater regulatory certainty. Synergy also considers the required amendment is consistent with clause 1.5(5) and 5.8 of the Code.

119. Alinta also agreed with the ERA's view that KPIs were not consistent with the requirements of clause 6.6(1)(b)(ii).

<sup>18</sup> Western Power, *Western Power Metering Model SLA – Consultation on proposed Model SLA amendments*, 25 August 2017, pp. 10-11.

## 120. Western Power did not agree:

Clause 6.6(1)(b)(ii) of the Metering Code requires that the MSLA must **at least** (with emphasis) specify a timeframe, **and** (with emphasis) where appropriate other service levels, for the performance of the metering service.

Western Power considers it is appropriate to include performance indicators for service levels and that the inclusion of both a timeframe and a suitable measure of performance of the metering service is consistent with the requirements of Clause 6.6(1)(b)(ii).

It is important to note that the word “timeframe” refers to a period of time during which something is expected to happen; it is not a reference to a set date upon which something must precisely happen. When the ERA states that “unless a KPI was set to 100 per cent, it results in there not being a definitive timeframe for each service”, it seems that the word “timeframe” is being read as if it said, “absolute time”. It is consistent with the Code for a timeframe to be set for a period in which something is expected to happen (which is definitive), for example within 1 day for MS – 1 where the energy data passes validation, and then have a KPI which measures the performance of Western Power against that standard (99%). The timeframe (that is, a standard which is definitive but not absolute) and the performance measured against that standard are conceptually and actually different things. This structure is consistent with and permitted by clause 6.6(1)(b)(ii) which, as set out above, draws a distinction between a timeframe and other service levels. Western Power’s proposed MSLA specifies a timeframe as required by the Code.

This approach is consistent with the current MSLA and provides users with transparency of performance. Western Power is concerned that the removal of KPIs may result in an increase in performance related disputes.

In relation to the ERA’s preliminary finding that inclusion of KPIs “results in there not being a definitive timeframe for each service”, Western Power proposes that the following clause be added to Schedule 4 – Service Standards:

Where a service is not performed within the service standard timeframe, it will be performed no later than 20 business days after the service standard timeframe or at a time agreed with the user.

And that KPIs be retained within the MSLA.

The addition of this clause will ensure there is a definitive timeframe for each service.

121. Clause 6.6(1)(b)(ii) requires a timeframe and, where appropriate, other service levels. The use of the word “other” contemplates that it will not be time-based but have some other basis (for example, quality). The ERA considered that the KPIs included in the proposed MSLA were not another service level but a qualification of the timeframe. This was not consistent with clause (b)(ii) which specifies “a” timeframe and then other service levels. Accordingly, the KPIs must be removed.
122. Western Power’s proposal to add a blanket 20 day period for any service that was not completed in the specified timeframe (which is generally one to two days) was inconsistent with the Metering Code objective.
123. As removal of the KPIs will improve the clarity of the service standards it should not result in an increase in performance related disputes

**Draft Findings Required Amendment 3**

The KPIs must be removed from the MSLA.

## **Final findings**

124. In its submission on the draft findings, Synergy confirmed that KPIs qualifying a service timeframe were not consistent with the requirements of the Metering Code.

## 125. Western Power did not accept the required amendment:

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".

126. As set out in the draft findings, clause 6.6(1)(b)(ii) requires a timeframe and, where appropriate, other service levels. The use of the word "other" contemplates that it will not be time-based but have some other basis (for example, quality).
127. Apart from the KPIs for accuracy, the KPIs proposed by Western Power are not another service level but a qualification of the timeframe. This is not consistent with clause 6.6(1)(b)(ii) which specifies "a" timeframe and then other service levels.
128. Service standards are minimum requirements that must be met. The service standards should be defined properly rather than have KPIs as exceptions or limitations on the service standard. This is best achieved by setting specific timeframes and defining when Western Power is excused from meeting those timeframes. If a timeframe is unrealistic, the proposed timeframe should be reconsidered.
129. Western Power considered that the KPIs were included in recognition that it is not economically efficient or practicable to guarantee a timeframe is achieved every single time.
130. The ERA considers that inclusion of the KPIs has resulted in a lack of clarity for users on the service they are paying for and does not encourage, or provide economic signals to, Western Power to seek to achieve the lowest sustainable cost.
131. The MSLA prices have been calculated based on the estimated cost for delivering each user request so total MSLA revenue will move in line with the number of requests each year. Western Power has not provided any evidence of differential costs for different levels of service. The costs that have been provided to the ERA were presented as being the cost to undertake each service request.
132. Removing the KPIs does not mean Western Power must necessarily deliver all services within the specified timeframe. It means it will be clear what the timeframe is, and that Western Power has an obligation to compensate users for direct additional costs incurred as a result of the timeframe not being met (and Western Power is not otherwise excused from meeting).

133. The ERA is requiring Western Power to compensate users only for direct additional costs incurred as a result of Western Power's failure to provide the service. These costs are currently being met by users who have no control over Western Power's performance and are not able to seek an alternative metering service supplier.
134. Making Western Power liable for these costs provides a better signal for Western Power to resource the delivery of metering services efficiently as it is best placed to balance the costs of delivering services against the risk of delivering some services late and the costs it would incur as a result.
135. Western Power can include efficient costs for providing standard metering services in its regulated target revenue proposal. Efficient costs for providing extended metering services can be included in MSLA fees.
136. Changes approved by the ERA as part of this decision will address many of the issues currently making it difficult for Western Power to meet its service standards. These include:
  - New provisions excusing Western Power from providing a service due to factors beyond its control, including not being able to gain the necessary access to a property.
  - Increased timescales for eight types of metering services.
  - The ability to extend timeframes for complex de-energisations.
  - A new provision for requesting users to co-operate to assist Western Power to meet the service standards.
  - Price increases for the first time since 2006.
137. As noted above, service standards are minimum requirements. Users should be able to plan their retail operations based on a clear understanding of Western Power's metering service standards. Users should also be able to expect those service standards will be met or, if not and Western Power is at fault, that they will be able to recover direct additional costs incurred as a result of Western Power's failure.
138. This is best achieved by setting specific timeframes and defining when Western Power is excused from meeting those timeframes, or when and how Western Power can extend those timeframes. If Western Power finds that any of its proposed timeframes are unrealistic, it is able to propose amended timeframes to the ERA for approval.

### Required Amendment 3

The KPIs, excluding those for energy data provision accuracy, must be removed from the MSLA. The "KPIs" for energy data provision accuracy should be relabeled "% accuracy" to more clearly reflect what they are.

## Charges for metering services

139. Clause 6.6(1)(c) to (e) sets out the requirements for charges:

**(1) A model service level agreement must at least:**

...

- (c) subject to clause 5.21(9), specify the maximum *charges* that the *network operator* may impose for each *metering service* referred to in clause 6.6(1)(a); and
- (d) if any of the *charges* specified under clause 6.6(1)(c) is variable, provide details of the methodology and cost components that will be used to calculate the variable *charge* including (where applicable) hourly labour rates, distance-related costs and equipment usage costs; and
- (e) provide that the *charges* which may be imposed under a *service level agreement* may 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*;

140. The note to clause 6.6(1) includes an additional requirement relevant to charges:

*{Note: Without limiting clause 6.6(1), a model service level agreement must, at least:*

...

- (c) *contain a mandatory charging provision under clause 5.21(9);*

141. Clause 5.21(9) requires a service level agreement to include a provision that no charge is to be imposed if the test or audit reveals a non-compliance with the Metering Code:

Any written service level agreement entered into under clause 5.21(7) must include a provision that no charge is to be imposed if the test or audit reveals a non-compliance with this Code.

142. Clause 4.2 of Appendix 4 of the Metering Code includes the following requirements relevant to charges for cancellations:

- (3) Upon receipt of a request to cancel a metering service order, the network operator must use reasonable endeavours to ensure that the previously requested work is not carried out and costs are not incurred.
- (4) A service level agreement (and a model service level agreement) may provide that, to the extent that the network operator complies with clause A4.2(3), the user must pay to the network operator the amount incurred by the network operator, acting efficiently in accordance with good electricity industry practice, before the work or costs were able to be stopped or cancelled.
- (5) The network operator must provide evidence to the user of the amount referred to in clause A4.2(4).

### **Western Power's proposal**

143. The current MSLA includes prices in Schedule 3. Prices and pricing arrangements are set out in Schedule 5 of the proposed MSLA.

144. Western Power proposed the following changes:

- Updating all prices.



- Setting different prices for metropolitan and country metering connections with travel costs included in the price for the metering service based on average travel times, rather than a separate charge based on actual travel time as is currently the case.<sup>19</sup>
- Setting a uniform price for new meters requested by users, installation of radio frequency communication links and manual meter reconfigurations. The proposed price is based on the cost of a visit by a technician and does not include the cost of the meter or any other materials.
- Including provisions for automatic annual updates of prices using the Wage Price Index published by the Australian Bureau of Statistics.
- Introducing cancellation fees.

### *Draft findings*

145. The ERA considered that Western Power's proposed charges for metering services were not compliant with the requirements of the Metering Code and required five amendments:

- Removing fees for standard metering services from the MSLA.
- Including hourly rates for services priced on application.
- Amending prices to average travel costs across all customers.
- Amending the mechanism for annual price updates.
- Removing standard cancellation fees.

146. Each of the draft findings required amendments and the ERA's review of prices are summarised below.

### *Fees for standard metering services*

147. In the current MSLA, the costs for standard metering services are recovered through network charges under the access arrangement and the costs for extended metering services are recovered through MSLA charges.

148. Western Power proposed to continue this approach. However, the proposed MSLA included fees for some standard metering services in Table 5 of Schedule 5.<sup>20</sup> Although there were footnotes stating that these fees are included in the network tariff metering charges under the access arrangement, their inclusion in Table 5 creates confusion.

149. The ERA required the proposed MSLA to be amended.

<sup>19</sup> The metropolitan area is defined in the Metering Code. In addition to the Perth metropolitan area it includes the local government districts of Mandurah and Murray and the townsites of Albany, Bunbury, Geraldton and Kalgoorlie.

<sup>20</sup> Interval, bi-monthly manual, interval monthly manual, interval bi-monthly remote, interval monthly remote, interval daily remote and one-off manual interval read.

**Draft Findings Required Amendment 4**

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.

*Unit rates for services priced on application*

150. Western Power proposed a fixed fee for most services in the MSLA. The exceptions were manual de-energisation and re-energisation services for high voltage supplies which it proposed to price on application. The method used to calculate the fee was included in Schedule 5 of the proposed MSLA. The unit rates that would be used in those calculations were not included in the proposed MSLA.
151. Clause 6.6(1)(d) of the Metering Code requires any applicable hourly labour rates, distance-related costs or equipment usage costs used in the calculation of the price to be included in the MSLA.
152. As requested by the ERA, Western Power provided details of the specific hourly rates for services priced on application. The hourly rates are set out in Table 2 below. They include on-costs, such as payroll tax and superannuation, and indirect costs.

**Table 2: Hourly rates for services priced on application**

Resource description		
Labour rates (\$/hour)	Normal time	Overtime
LR-1 Administration	105.44	122.46
LR-2 Technical Specialist	121.48	135.02
LR-3 Field Worker	124.85	130.79
LR-4 Designer	104.95	123.88
LR-5 Estimator	116.13	138.72
LR-6 Project Management	129.70	152.22
Fleet rates (\$/hour)		
FR-1 Light Fleet		19.61
FR-2 Heavy Fleet		43.03

153. The ERA required the proposed MSLA to be amended to include details of any unit rates used in the calculation of fees for services priced on application.

**Draft Findings Required Amendment 4**

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

*Travel costs*

154. The current MSLA fees are inclusive of 30 minutes of travel. Additional travel is charged separately at an hourly rate.<sup>21</sup>
155. Western Power proposed consolidating all travel costs in the fee for the metering service. It considered that this would be administratively easier to manage. It developed a metropolitan and country fee for each service. Typically, the proposed country fees included additional travel time of 30 minutes compared with metropolitan fees. This resulted in differences in fees of between \$30 to \$112 depending on the service.
156. The ERA agreed consolidating travel costs in the fee for the metering service would be administratively easier to manage. However, the MSLA services are consequential to having a meter. There are no efficiency benefits from setting MSLA fees on a geographical basis. On that basis, the ERA considered travel costs should be averaged across all customers rather than making an arbitrary differentiation between “metropolitan” and “country”.
157. Synergy supported the ERA’s view and noted that the approach was:

Consistent with how Synergy’s passes through certain metering costs to customers under the *Energy Operators (Electricity Generation and Retail Corporation) (Charges) By-laws 2006*.

158. Western Power subsequently provided updated prices that averaged travel costs across all customers. The adjustment was made based on the proportion of metropolitan (85 per cent) and country (15 per cent) connections. The revised prices are included in Appendix 1.
159. The ERA required the proposed MSLA to be amended.

**Draft Findings Required Amendment 5**

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

*Annual price updates*

160. Western Power proposed the MSLA fees would be updated automatically each year based on the Wage Price Index published by the Australian Bureau of Statistics.
161. Automatic updates based on the Wage Price Index are not consistent with the requirement in clause 6.6(1) that prices do 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.
162. Although wages are a large component of the cost, they are not the only component. In any case, the Wage Price Index published by the Australian Bureau of Statistics is not a measure of an efficient increase in Western Power’s labour costs.

<sup>21</sup> Plus airfare and accommodation if required.

163. Periodic updates of the MSLA pricing schedule should be undertaken to ensure prices are current and continue to reflect efficient costs. This would best be achieved by using the pricing parameters approved in Western Power's access arrangement for the period 2017/18 to 2021/22.

164. The access arrangement pricing parameters include:

- The Consumer Price Index – based on the most recent December quarter compared to the December quarter in the previous year.
- Labour escalation – 0.81 per cent to be applied to labour costs only.
- Productivity improvement – minus one per cent each year.

165. The ERA considered that such a mechanism would be consistent with the requirement in clause 6.6(1) that prices do 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.

166. The ERA considered the mechanism should be specified in Schedule 5 as follows:

All Fees set out in this Schedule are:

- (a) effective for the period [ ] to [ ]
- (b) exclusive of GST; and
- (c) will be adjusted on an annual basis from [ ] using the formula as follows:

New price =

$$((\text{Labour component} * (1 + \text{CPI change} + \text{Labour escalation})) + ((\text{Non-labour component} * (1 + \text{CPI change}))) * (1 - \text{Productivity improvement factor}))$$

Where:

Labour component means the portion of the charge that relates to labour costs

Labour escalation means an escalation rate for labour costs above the CPI rate and determined as part of Western Power's Access Arrangement from time to time (currently set at 0.81% p.a. at least until 30 June 2022).

Non-labour component means the portion of the charge that does not relate to labour costs

CPI change means the annual change in the CPI in December of the current year compared to December of the previous year (e.g. prices for the 2021/22 financial year will be escalated based on the CPI reported in December 2020 compared to December 2019)

Productivity improvement factor means a measure of annual productivity improvement, determined as part of Western Power's Access Arrangement from time to time (currently set at 1% p.a. at least until 30 June 2022).

167. The ERA required the proposed MSLA to be amended.

#### **Draft Findings Required Amendment 7**

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.

## *Cancellation fees*

168. Western Power proposed to introduce standard cancellation fees as set out on page 69 of the proposed MSLA.
169. The clauses in Appendix 4 of the Metering Code permit the network operator to require the user to pay the amount incurred by the network operator, acting efficiently in accordance with good electricity industry practice, before the work or costs were able to be stopped or cancelled. The network operator must provide evidence to the user of this amount.
170. A uniform cancellation fee is not consistent with the obligation on Western Power to charge the amount incurred if it acted efficiently. Cancellation costs should be entirely separate from the metering service fee and represent only the reasonable costs incurred by Western Power.
171. The ERA required the proposed MSLA to be amended.

### **Draft Findings Required Amendment 8**

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.

## *Review of proposed fees*

172. Synergy considered that there was insufficient published information for users to satisfy themselves that Western Power had sought to achieve the lowest sustainable cost of providing metering services. Synergy noted that network tariffs were subject to a rigorous price control framework.
173. The revenue Western Power receives for extended metering services through the MSLA is relatively small in comparison to the standard metering costs recovered through network tariffs. In 2016/17, network tariffs included \$76 million for standard metering services compared with \$7.2 million for extended metering services recovered through MSLA charges shown in Table 3 below.

**Table 3: Extended metering services – Western Power’s historical revenue and costs<sup>22</sup> (\$ million nominal)**

	2012/13	2013/14	2014/15	2015/16	2016/17
Revenue	8.659	5.246	5.747	5.278	7.213
Expenditure	(11.143)	(5.817)	(7.002)	(6.469)	(7.492)
Profit/(Loss)	(2.485)	(0.571)	(1.255)	(1.191)	(0.279)

Source: Western Power, Western Power Metering Model SLA: Response to stakeholder submissions, 22 December 2017, p. 4.

174. The MSLA fees have not been amended since 2006. To update the fees, Western Power developed a pricing model with estimates of the average field, fleet and administration times and materials used for each service. The proposed fees were based on labour, fleet, material and indirect cost unit rates for 2016/17. The results of the model were compared with the 2016/17 actuals to validate the model and underlying assumptions.
175. As can be seen in Table 3, Western Power has been under-recovering its costs for extended metering services. This indicates the current fees in the MSLA are below cost and, presumably, would have motivated Western Power to manage its expenditure efficiently to minimise losses. For that reason, the ERA considered it reasonable to assume the proposed starting prices are based on efficient costs.
176. The ERA required Western Power to include a productivity improvement of 1 per cent in the annual update of fees to ensure the MSLA fees continue to reflect efficient costs.
177. As set out in the draft findings, benchmarking against other service providers showed Western Power’s proposed fees to be with-in the bounds of other service providers’ fees.
178. It was not possible to find a direct comparator for Western Power’s proposed new three-hour urgent re-energisation service. However, the difference in costs between the urgent and standard service appeared reasonable and, on that basis, the ERA considered the proposed fee was reasonable.
179. Synergy raised concerns that the pricing for remote energy data services was:
- Based exclusively on the cost of providing the data through cellular communications (not radio mesh). Synergy is concerned with this approach because it considers the cost of providing remote energy data through radio mesh communications is generally cheaper than through cellular communications (but subject to topography and radio mesh coverage). If this was correct it would mean the price list is not reflecting the lowest sustainable cost for that service as required by the Code.
180. As noted by Synergy, the cost of providing data through radio mesh communications may be cheaper than through cellular communications. However, 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 is not able to charge a user more than the actual costs incurred and must adjust the fee accordingly.

<sup>22</sup> Excludes capital expenditure and capital contributions associated with Extended Metering Services.

181. Western Power's proposed fee of \$5.39 for the new route alteration service requested by Alinta was based on the estimated time for administration staff to amend the route and used labour rates consistent with the other metering services.
182. The ERA was concerned that the fees Western Power had proposed for new meters were below cost as they did not include the cost of the meter. They 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.
183. However, there will be a funding shortfall if the MSLA fees do not recover the full cost of the meters. Western Power has proposed to include any unrecovered expenditure in its regulated asset base. As set out in the draft findings, 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.
184. Western Power provided updated fees taking account of the required amendments and indexed them for the 2020/21 financial year using the amended mechanism for annual price updates. The updated prices are included in Appendix 1.
185. The ERA was satisfied the updated prices met the requirements of clause 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.

## Final findings

186. In its submission on the draft findings, Western Power accepted the draft findings required amendments 4 to 8.
187. Synergy supported the required amendments.
188. Subject to making Required Amendments 4 to 7 below, the ERA is satisfied the proposed MSLA complies with the requirements of the Metering Code to:
- Specify the maximum charge for each metering service.
  - Provide details of the methodology and cost components that will be used to calculate any variable charges.
  - 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.

- Not impose a charge if a meter test or audit reveals a non-compliance with the Metering Code.

#### **Required Amendment 4**

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.

#### **Required Amendment 5**

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

#### **Required Amendment 6**

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

#### **Required Amendment 7**

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.

189. Subject to making Required Amendment 8 below, the ERA is satisfied the provisions for cancellation fees are compliant with the Metering Code requirements to ensure;
- Western Power must use reasonable endeavours to ensure that the previously requested work is not carried out and costs are not incurred.
  - The user must pay Western Power the amount incurred by Western Power, acting efficiently in accordance with good electricity industry practice, before the work or costs were able to be stopped or cancelled.
  - Western Power must provide evidence to the user of the amount incurred.



## Required Amendment 8

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.

## Terms and conditions

190. Western Power proposed amendments to the terms and conditions, including definitions. These are discussed below in the order of the current MSLA terms and conditions:
- Clause 1 – Definitions and Interpretation
  - Clause 2 - Term
  - Clause 3 – Services
  - Clause 4.1 – Financial covenants by user
  - Clause 4.2 to 4.6 and 5 – Invoicing, payment and GST
  - Proposed new clause 6 – Representations and warranties
  - Current clause 6 – Force majeure
  - Clause 7 – Default
  - Clause 8 – Liability and indemnity
  - Clause 9 – Dispute resolution
  - Clause 10 – Assignments and encumbrances
  - Current clause 11 – Miscellaneous
  - Proposed new clause 11 – Set off
  - Proposed new section – Definitions.
191. Most of the proposed changes were to bring the document into line with the current electricity transfer access contract approved under the access arrangement.
192. Users can acquire metering services only for connections for which they hold an access contract. The ERA considers that harmonising the provisions in the MSLA with the electricity transfer access contract will ensure they work together effectively and comply

with both the Metering Code and Access Code. In some cases, modifications are needed to take account of specific Metering Code requirements.

### **Definitions and interpretation**

193. As discussed under charges for metering services, Western Power proposed adding clause 1.3 for an annual Wage Price Index adjustment to fees.
194. Western Power proposed various minor modifications including moving definitions to a separate schedule.

### **Draft findings**

195. As the ERA required the annual price updates to be based on the Consumer Price Index with adjustments for labour cost escalation and productivity improvements consistent with the ERA's decision on Western Power's access arrangement, clause 1.3 is not required.

#### **Draft Findings Required Amendment 9**

Proposed clause 1.3 must be deleted.

196. The other proposed changes are administrative in nature and bring the MSLA in line with the electricity transfer access contract approved under the access arrangement. The amendments do not materially affect consistency with the Metering Code.

### **Final findings**

197. In its submission on the draft findings, Western Power accepted the required amendment.
198. Subject to making Required Amendment 9 below, the ERA is satisfied the proposed changes are administrative in nature and do not materially affect consistency with the Metering Code.

#### **Required Amendment 9**

Proposed clause 1.3 must be deleted.

### **Term**

199. As set out in the draft findings, Western Power's proposed changes were administrative in nature and bring the MSLA in line with the electricity transfer access contract approved under the access arrangement. The amendments do not materially affect compliance with the Metering Code.

### **Services**

200. In addition to some minor amendments, Western Power proposed amending clause 3.2 as follows:
  - 3.2 Service Standards**
    - [\(a\)](#) Western Power must provide the metering services to the user in accordance with the Service Standards.

- (b) Western Power is not in breach of this Agreement or the Service Standards if it is not (acting reasonably) able to provide a Metering Service:
- (i) because appropriate access to a property is not provided to it;
  - (ii) because it or its employees or agents have a legitimate concern about their ability to safely access a property (including due to risk of attack by animals, threats of violence or unsafe conditions at the property); or
  - (iii) due to other impediments beyond Western Power's reasonable control and which Western Power cannot, acting reasonably, overcome.

### *Draft findings*

201. Western Power's proposed amendments to clause 3.2(b) added parameters for determining when Western Power is not in breach of providing services. The ERA was concerned the proposed parameters lacked clarity about what constituted, and who determined, "appropriate access", "legitimate concerns" and "other impediments".
202. Western Power raised concerns that future circumstances cannot be fully foreseen and clearly defined:
- The difficulty is that the future circumstances in which Western Power may not be able to provide the Metering Services cannot now be fully foreseen and delineated. Nevertheless, Western Power has not proposed an unlimited exclusion along the lines of "Western Power is not in breach if it is unable to provide the Metering Service" but rather it has limited the exceptions to "appropriate access to a property not provided", "legitimate concern [about safety]" and "other impediments [beyond control]". Western Power does not accept that the future circumstances can be clearly defined but in recognising the ERA's concern Western Power proposes replacing "acting reasonably" with "acting as a Reasonable and Prudent Person". This is a standard formulation to cater for uncertain circumstances as used in the MSLA and the ETAC.
203. The ERA considered that Western Power's response had merit. Restricting the circumstances for the purpose of clause 3.2(b) would likely be impractical and attempting to define the relevant terms would have limited effect.
204. In the absence of more restrictive definitions, the ERA considered the clause should be amended as follows.

#### **3.2 Service Standards**

- (a) Western Power must provide the metering services to the user in accordance with the Service Standards.
- (b) Western Power is not in breach of this Agreement or the Service Standards if it is not ~~(acting reasonably)~~ able to provide a Metering Service:
- (i) because appropriate the necessary access to a property cannot be gained by Western Power is not provided to it;
  - (ii) due to a legitimate and material third party risk in relation to an employee or agent's ~~because it or its employees or agents have a legitimate concern about their~~ ability to safely access a property (including due to risk of attack by animals, threats of violence or unsafe conditions at the property); or
  - (iii) due to other impediments beyond Western Power's reasonable control ~~and which Western Power cannot, acting reasonably, overcome.~~
- provided that Western Power has taken all steps acting as a Reasonable and Prudent person to overcome any matter contemplated in subparagraphs (i) to (iii).
- (c) Should Western Power fail to provide a Metering Service, within the service standard time of the User's request, Western Power must:

- (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.

205. The ERA required the following amendment.

**Draft Findings Required Amendment 10**

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.

### *Final findings*

206. In its submission on the draft findings, Western Power accepted the required amendment.
207. Synergy supported the draft findings, subject to two changes. It considered that clause 3.2(b)(iii) should be amended to refer to “material impediments” or deleted in its entirety on the basis that it cuts across the force majeure provision. It also considered there should be a specified timeframe for Western Power to report reasons for any failures.
208. Western Power agreed to amend clause 3.2(b)(iii) to “material impediments” but does not consider there should be a specified timeframe for reporting reasons for any failures.
209. The ERA does not agree with Synergy's view that clause 3.2(b)(iii) acts as a force majeure protection. Amending the clause to refer to “material” impediments, which Western Power has agreed to, will ensure Western Power's obligation is clear.
210. Synergy proposed that Western Power should be required to provide reasons and evidence in support of the reasons for failure as soon as practicable and no later than two business days.
211. The ERA agrees the information should be provided as soon as possible but two business days may not always be practicable or necessary. Amending the clause to “as soon as practicable” will ensure the information is provided on a timely basis.

## Required Amendment 10

Clause 3.2 must be amended to the following:

### 3.2 Service Standards

(a) Western Power must provide the metering services to the user in accordance with the Service Standards.

(b) Western Power is not in breach of this Agreement or the Service Standards if it is not (acting reasonably) able to provide a Metering Service:

(i) because appropriate the necessary access to a property cannot be gained by Western Power is not provided to it;

(ii) due to a legitimate and material third party risk in relation to an employee or agent's because it or its employees or agents have a legitimate concern about their ability to safely access a property (including due to risk of attack by animals, threats of violence or unsafe conditions at the property); or

(iii) due to other material impediments beyond Western Power's reasonable control and which Western Power cannot, acting reasonably, overcome.

provided that Western Power has taken all steps acting as a Reasonable and Prudent person to overcome any matter contemplated in subparagraphs (i) to (iii).

(c) Should Western Power fail to provide a Metering Service, within the service standard time of the User's request, Western Power must as soon as reasonably practicable:

(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.

## Financial covenants by user

212. Western Power proposed changes to:

- Clarify which services are payable under the user's access contract and that any extended metering services required to obtain a metering service under the access arrangement will be required to pay the MSLA fee.
- Ensure users are not liable for meter test fees if the meter is found to be non-compliant.
- Ensure users do not pay a fee to activate a communications link if it is already activated.

213. As set out in the draft findings, the ERA considers the proposed changes clarify the MSLA fees and are consistent with the Metering Code obligations.

## Invoicing, payment and GST

214. Western Power proposed various amendments and renumbering of the current MSLA invoicing, payment provisions and Goods and Services Tax (GST) provisions.

## Draft findings

215. The proposed amendments generally bring the invoicing, payment provisions and GST clauses into line with similar clauses in the electricity transfer access contract approved under the access arrangement.
216. However, Western Power proposed amending the definition of “business day” from “means a day that is not a Saturday, Sunday or public holiday throughout Western Australia” to “means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia”.
217. The proposed amendment would result in the definition being inconsistent with the Metering Code and the electricity transfer access contract.

### Draft Findings Required Amendment 11

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

218. Alinta raised concerns about Western Power’s invoices:

Often extended metering invoices do not refer to the price and service list, making it difficult for customers to reconcile and verify whether they are being charged a cost-reflective price (for a service that is not contained in the MSLA) or the correct price for a service contained in the MSLA. As a result, retailers must query these invoices with Western Power, creating administrative burden for both parties.

Proposed solution

A requirement, (in clause 4.2) for invoices to link the metering service being billed to a charge in the MSLA. If the service being invoiced does not match an MSLA item, Alinta Energy suggests Western Power be required to highlight this and provide information describing the service and substantiating the charge.

219. Clarity of charges to users is necessary to ensure they are correctly charged for the services they have received. To ensure clarity, the ERA considered clause 5.1 should be amended to set out the minimum level of detail on an invoice.

### Draft Findings Required Amendment 12

... issue to the User a Tax Invoice for that ~~the~~ Accounting Period that sets out showing:

- (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

## Final findings

220. In its submission on the draft findings, Alinta proposed adding “... including a reference to the ID listed in Table 5 and whether the charge refers to a metro or country charge if applicable...” to clause 5.1.
221. Synergy proposed minor drafting amendments to clause 5.1.
222. Western Power accepted the draft findings required amendments. It also accepted the further amendment proposed by Alinta but noted it was unnecessary to refer to metro or country charges as there is a single price for all services.

223. Subject to making Required Amendments 11 and 12 below, the ERA considers the proposed amendments provide additional clarity, are administrative in nature and do not materially affect consistency with the Metering Code.

### **Required Amendment 11**

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

### **Required Amendment 12**

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 Metering Service provided under this Agreement for the Accounting Period; and
- (b) the Metering Service ID, where available, or a brief explanation for the amount payable where the Metering Service or fee is not specified in Schedule 5; and

## ***Representations and warranties***

224. Western Power introduced a new clause 6 on representations and warranties.

### ***Draft findings***

225. The proposed new clauses are taken from the representations and warranties included in the electricity transfer contract. They state clearly that Western Power’s and users’ obligations under the agreement are valid and binding and are enforceable under the terms of the agreement. The proposed amendments do not materially affect consistency with the Metering Code.

### ***Final findings***

226. In its submission on the draft findings, Synergy noted provisions similar to clauses 18.1(a)(i) and 18.2(a)(ii) in the electricity transfer access contract had not been included in the proposed MSLA.
227. These clauses provide that the parties each represent and warrant that they have complied with the Applications and Queuing Policy and Access Code, but will not be in breach of the warranty if they fail to comply with the Applications and Queuing Policy or Access Code because that failure is a direct result of the other party’s breach of the Applications and Queuing Policy or Access Code. Synergy considered warranties should be included in the MSLA for the Applications and Queuing Policy, Communications Rules and Metrology Procedure.
228. Western Power considered this would be a duplication of the Metering Code obligations and, therefore, superfluous and unnecessary.
229. The warranty is for metering services provided under the MSLA, so is not a duplication of Metering Code obligations. The ERA considers Synergy’s proposal has merit and would provide greater clarity about parties’ obligations.

## Required Amendment 13

Clause 6 must be amended to include warranties for the Applications and Queuing Policy, Communication Rules and Metrology Procedure.

### Force majeure

230. The current force majeure provisions are set out in clause 6. Western Power proposed amending the current clause and moving it to clause 8.

#### **6 8. FORCE MAJEURE**

##### **8.1 Affected Person's obligations are suspended**

~~—a)~~ If a Party ("Affected Party") is unable wholly or in part to perform any obligation ("Affected Obligation") under this Agreement (other than an obligation to pay money) because of the occurrence of a Force Majeure Event, then, subject to this clause 8.1, the Affected Person's obligation to perform the Affected Obligation is suspended ~~affected party is released from liability for failing to perform the affected obligation~~ to the extent that, and for so long as, the Affected ~~party's~~ Person's ability to perform the Affected Obligation is affected by the Force Majeure Event (such period being the "FM Period").

##### **8.2 Affected Person's obligations**

~~—b)~~ Subject to clauses 8.3 and 8.5, ~~if~~ a Force Majeure Event occurs and the Affected ~~Person party~~ Person is unable wholly or in part to perform any obligation under this Agreement, then the Affected ~~party~~ Person must:

- ~~ia)~~ promptly notify the other party if the FM Period continues for a period of two days or longer of the occurrence of the force majeure event; and
- ~~ib)~~ use reasonable endeavours (including incurring any reasonable expenditure of funds and rescheduling personnel and resources) to
  - (i) mitigate the consequences of the Force Majeure Event; and
  - (ii) minimise any resulting delay in the performance of the Affected Obligation.

##### **8.3 In case of breach**

An Affected Person is not obliged to incur an 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 by the other Party.

##### **8.4 Failure to minimise delays**

~~e)~~ If ~~the~~ an Affected ~~party~~ Person fails to comply with Clause 8.2(b)(ii) ~~6(b)~~, then the only consequence of that failure is that the FM period ~~of suspension of the affected obligation~~ is reduced by the period of any delay in the performance of the Affected Obligation attributable to that failure.

##### **8.5 Settlement of a labour dispute**

~~e)~~ The settlement of a labour dispute which constitutes a Force Majeure Event is a matter which is within the absolute discretion of the Affected Person.

### Draft findings

231. Synergy considered Western Power should be required to provide immediate notification of a force majeure event likely to prevent the operation of clause 5.8 of the Code or adversely affect any customer using life support equipment. It also considered the provision needed to be expanded to include that an affected party is not obliged to incur



expenditure if the force majeure event constitutes a breach of the Metering Code by the other party.

232. The ERA considered that Western Power’s proposed changes to the force majeure provisions were consistent with the electricity transfer access contract and would ensure they work together effectively. However, Western Power’s proposed amendments did not include provisions for how quickly force majeure events should be notified. The requirement in the electricity transfer access contract is “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.”
233. Synergy proposed immediate notification of a force majeure event if it is likely to prevent the operation of clause 5.8 of the Metering Code or adversely affects customers using life support equipment.<sup>23</sup> The ERA agreed that prompt notification was necessary for these circumstances to enable users to take any actions they can to avoid breaches under the Code of Conduct or mitigate the effect on customers using life support equipment. However, immediate notification may not always be possible. The ERA considered “as soon as reasonably practicable” was a better alternative.
234. For force majeure events that do not prevent the operation of clause 5.8 of the Metering Code or adversely affect customers using life support equipment, the ERA considered the obligations for notifying should be consistent with the electricity transfer access contract.
235. The ERA considered Synergy’s proposed amendment to clause 8.3 was necessary to ensure breaches of the Metering Code are included.
236. The ERA required the MSLA to be amended.

#### **Drafting Findings Required Amendment 13**

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.

<sup>23</sup> Clause 5.8 states “A *network operator* must in accordance with this *Code* provide a user with whatever information the network operator has, including energy data and standing data, 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 (unless another time is specified in the applicable service level agreement).”

## Final findings

237. In its submission on the draft findings, Western Power accepted the required amendment.
238. Synergy supported the required amendment but submitted that greater certainty was required about when it can expect to be notified of a Force Majeure Event. It proposed the following amendment to clause 8.2(a):
- ... notify the other person Party as soon as reasonably practicable and in any event within 1 day of 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;
239. Western Power confirmed it agrees with Synergy's proposed amendment, providing it is one business day.
240. Synergy also identified a minor drafting correction to clause 8.1:
- 8.1 Affected Person's obligations are suspended**
- If a Party ("Affected **Party Person**") is unable wholly or in part ...
241. The ERA considers the additional amendments proposed by Synergy, modified as proposed by Western Power, will add greater certainty to the force majeure provisions and are not inconsistent with the Metering Code requirements.

### Required Amendment 14

Proposed clause 8.1 must be amended as follows:

8.1 Affected Person's obligations are suspended

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

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 and in any event within 1 Business Day of 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.

## Default

242. The current MSLA includes default provisions in clause 7. Western Power proposed amending the provisions in clause 7 and moving it to proposed clause 9.

243. As set out in the draft findings, the proposed amendments provide clarification about the suspension of metering services and do not materially affect consistency with the Metering Code.

## **Liability and indemnity**

244. The current MSLA includes liability and indemnity in clause 8. Western Power proposed amending the clause and moving it to clause 7:

### **8 7 LIABILITY AND INDEMNITY**

#### **8 7.1 Exclusion of Indirect Damage**

~~Neither party will in any circumstances be liable to the other party for Indirect Damage however caused including, without limitation, through breach of contract, in tort (including negligence), in equity, or for breach of statute.~~

- (a) The User is not in any circumstances liable to Western Power for any Indirect Damage suffered by Western Power, however arising.
- (b) Western Power is not in any circumstances liable to the User for any Indirect Damage suffered by the User, however arising.

#### **8 7.2 Limitation of Liability**

The maximum liability of one Party to the other Party under and in connection with this Agreement is limited to the amount equal to:

- ~~(a) Western Power to the User under and in connection with this Agreement is limited in accordance with the users access contract; or~~
- ~~(b) the User to Western Power under and in connection with this Agreement is limited in accordance with the users access contract.~~
- (a) the aggregate monetary limit on that Party's liability under the User's Access Contract applicable to all breaches of, or acts or omissions in connection with, the User's Access Contract ("Access Contract Cap"); less
- (b) the aggregate actual liability incurred by that Party to the other Party under the User's Access Contract, to the intent that each Party's aggregate liability under this Agreement and the User's Access Contract will not exceed the Access Contract Cap applicable to it. If a Party receives an amount of damages under this Agreement which, when aggregated with any amounts it has received under the User's Access Contract, results in the Access Contract Cap being exceeded it must refund the excess amount received over the Access Contract Cap to the other Party.

Payments of charges for services, GST and interest are not taken into account in determining whether the Access Contract Cap has been exceeded.

### **7.3 Personal Injury**

Clauses 7.1 and 7.2 do not apply to personal injury Claims. The liability for any personal injury Claim will be determined under Law.

### **7.4 Fraud**

- (a) If Western Power is fraudulent in respect of its obligations to the User under this Agreement, then Western Power is liable to the User for, and is to indemnify the User against, any damage caused by, consequent upon or arising out of the fraud. In this case, the exclusion of Indirect Damage in clause 7.1 does not apply.
- (b) If the User is fraudulent in respect of its obligations to Western Power under this Agreement, then the User is liable to Western Power for, and is to indemnify Western Power against, any damage caused by, consequent upon

or arising out of the fraud. In this case, the exclusion of Indirect Damage in clause 7.1 does not apply.

- (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.

### **7.5 Interaction with ETAC**

Nothing in this clause 7 limits the operation of any provision in the User's Access Contract providing that "the exclusion of Indirect Damage does not apply" or words to similar effect.

245. The term "indirect damage" is not defined in the current MSLA. Western Power proposed including the following definition consistent with the electricity transfer access contract:

Indirect Damage suffered by a person means any one or more of:

- (a) any consequential loss, consequential damage or special damages however caused or suffered by the person, including any:
- (i) loss of (or loss of anticipated) opportunity, use, production, revenue, income, profits, business and savings; or
  - (ii) loss due to business interruption; or
  - (iii) increased costs; or
  - (iv) punitive or exemplary damages,
- whether or not the consequential loss or damage or special damage was foreseeable; or
- (b) in respect of contractual damages, damages which would fall within the second limb of the rule in Hadley v Baxendale [1854] 9 Exch. 341; or
- (c) any liability of the person to any other person, or any Claim brought against the person by any other person, and the costs and expenses connected with the Claim.

246. Western Power proposed the following definition for "Claim" consistent with the electricity transfer access contract:

Means any claim, demand, action or proceeding made or instituted against a Party.

### *Draft findings*

247. In its submission on Western Power's proposal, Synergy raised concerns with the provisions in clause 7.1 for the exclusion of liability for "Indirect Damage ... however arising":

Synergy is concerned that:

- To the extent a liability exclusion or limitation is broad, that is likely to favour WP (as service provider) over Users (as service takers).
- The breadth of the exclusion or limitation of Indirect Damage is inconsistent with WP's and User's relative risk positions under WP's current standard access contract. For example, under clause 3.6(f) of the standard access contract, WP must not delete a Connection Point other than in accordance with a notice given by a User under clause 3.6. If WP commits a breach of this obligation in circumstances that constitutes a "wilful default", it is liable to the User and the exclusion of Indirect Damage does not apply.
- Users are in any case exposed to certain liabilities to third parties (e.g. to consumers under the Australian Consumer Law) which by law cannot be modified, restricted or excluded. Users may be caught in the middle with exposure to their

customers and other third parties for matters that are attributable to WP's default but for which, due to the liability limitations in the MSLA, WP is not liable for.

- The use in clause 7.1 of "however arising" would appear to apply the exclusion of indirect damage even for a party's fraud or wilful default. Similarly, the liability limitations in clause 7.2 do not contain any exceptions.

Synergy in any case considers the exclusion of indirect damage in clause 7.1 and the liability limitations in clause 7.2 should align with the approach approved by the ERA in respect of the ETAC.

Further, Synergy requires:

- A provision to the effect that WP must pay Users adequate compensation and the liability exclusions and limitations in clause 7 will not apply for certain losses, including:
  - When WP causes standing data to be incorrect and Synergy suffers a loss where it has relied on standing data information in relation to a supply contract (or for any other purpose); and
  - For consequential losses similar to business damage provision under the ETAC. For example, where standing data requires re-work when incorrect etc.

With regard to the proposed amendments to clauses 7.3 to 7.5 of the MSLA, Synergy considers these appear generally appropriate. However, it is unclear why (other than consistency with the ETAC), in the case of fraud (clause 7.4), the MSLA is proposing the overall cap on liability in clause 7.2 should still apply, whereas in the case of personal injury (clause 7.3) it does not. Conceptually, if the clause 7.2 cap on liability is removed for personal injury, why should it not also be removed for fraud?

248. The matters raised by Synergy linked closely with the views it expressed about making sure there are incentives for Western Power to deliver services in line with the service standards. It was unclear to the ERA why Western Power had not amended proposed clause 7 to be fully consistent with similar clauses in the electricity transfer access contract.

249. The ERA considered clause 7 should be amended to be consistent with the electricity transfer access contract so that Western Power would be required to provide financial compensation if its failure to deliver a service in line with the service standards resulted in the user incurring additional costs.

250. In its consultation paper, the ERA considered that proposed clause 7 should be amended to be consistent with provisions in the electricity transfer access contract and ensure that Western Power would be required to pay compensation if its failure to deliver a service in line with the service standard resulted in a user incurring additional costs.

251. Synergy and Alinta both supported the ERA's views.

252. Western Power did not agree:

Western Power does not support the ERA's required amendment and maintains its original position.

Western Power notes the following to address Synergy's concerns:

- contrary to Synergy's assertion that the breadth of the liability exclusion of indirect damage is inconsistent with the ETAC, the liability exclusion of indirect damage mirrors that in the ETAC;
- as to the example given of clause 3.6 of the ETAC, the dis-application of the exclusion of indirect damage there is preserved by clause 7.5 of the MSLA. There are no wilful default provisions in the MSLA;

- the concern expressed about the application of the Australian Consumer Law is speculative and unsubstantiated. There is no recognition of this supposed issue in the ETAC;
- the use of “however arising” mirrors the ETAC. Clause 7.4 of the MSLA specifically dis-applies the liability exclusion of indirect damage to fraud. There are no wilful default provisions in the MSLA. Exclusions to the operation of clause 7.2 are included as to payment of charges for services, GST and interest; and
- the application of the liability cap for fraud and its dis-application for personal injury mirrors the ETAC.

Western Power adopts the principle that as Reference Service (Metering) are provided under the ETAC and the Metering Services comprised therein are provided in accordance with the Code and the MSLA, there must be conformity in the liability provisions in the two agreements.

Synergy also argues the exclusion of indirect damage in clause 7.1 and the liability limitations in clause 7.2 should align with the approach approved by the ERA in respect of the ETAC.

In the proposed MSLA, they do.

The ERA considers clause 7 should be amended to be consistent with the ETAC. Western Power will be liable under the MSLA for losses other than excluded indirect damage in precisely the same way as it is liable under the ETAC. This will provide Synergy with “adequate compensation”.

The required amendment is inconsistent with the ETAC.

253. The ERA considered that the omission of an equivalent clause to 19.2 of the electricity transfer access contract in the MSLA resulted in the MSLA being inconsistent with the electricity transfer access contract.

254. Clause 19.2 of the electricity transfer access contract provides:

Subject to the terms of this Contract:

a party who:

- (i) is negligent; or
- (ii) commits a Default under this Contract,

is liable to the other Party for, and must indemnify the other Party against, any Direct Damage caused by, consequent upon or arising out of the negligence or Default; and

the Indemnifier must indemnify Western Power in respect of the liabilities of the User under this Contract.

255. The ERA considered clause 19.2 in the electricity transfer access contract must be replicated in clause 7 of the MSLA. This also required 'Direct Damage' to be defined in the MSLA consistent with the definition contained in the electricity transfer access contract – “[means] loss or damage suffered by the person which is not Indirect Damage”.

256. In addition, there was an inconsistency between the electricity transfer access contract and MSLA clauses dealing with default. The proposed MSLA did not have the equivalent of the electricity transfer access contract clause 27.1(b) that provides a party is in default if:

that Party defaults in the due and punctual performance or observance of any of its obligations contained or implied by operation of Law in this Contract

257. Accordingly, the ERA considered that an equivalent to clause 27.1(b) in the electricity transfer access contract must be included in clause 9 of the MSLA.
258. An additional clause was also required to clause 7 of the MSLA to clarify what is included in direct damages.
259. The definition of “Indirect Damage” includes consequential damage including “increased costs”. This possibly could be interpreted to exclude increased costs associated with a failure to provide services from “Direct Damage”. The ERA considered that, as the provision of metering services is the subject matter of the MSLA, then the failure to provide these services should give a right for the user to claim compensation. The ERA did not intend that this should be more than the direct costs incurred by the user.
260. To make this clear, the ERA required an additional subclause to 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. These costs would still be subject to the cap on liability in clause 7.2 of the proposed MSLA.
- Failure to deliver Metering Services
- (a) Where Western Power fails to provide Metering Services to a User in accordance with the Service Standards, 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 7.1 does not apply to the direct additional costs referred to in clause 7.6(a).
261. Clause 6.5 of the Metering Code requires that the MSLA complies with the Metering Code and is reasonable. The ERA considered the amendments were necessary to ensure the MSLA is reasonable and meets the Metering Code requirements.
262. The ERA required the proposed MSLA to be amended.

**Draft findings required amendment 14**

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.

### *Final findings*

263. In its submission on the draft findings, Western Power accepted the required amendment subject to the inclusion of additional proposed amendments.

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 cooperate 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 cooperate 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.”

264. Synergy supported the ERA’s findings and required amendment to clause 7 but:

Remains concerned that User’s may not be adequately compensated for certain losses, particularly where Western Power causes standing data to be incorrect.

265. Synergy suggested a clause similar to clause 19.3(b) in the electricity transfer access contract could be included as a new clause 7.1(c) for clarity and overall consistency. Clause 19.3(b) states:

Where this Contract states that “the exclusion of Indirect Damage in clause 19.3 does not apply”, or words to a similar effect, in relation to a matter, then:

- (i) the exclusion of Indirect Damage in clause 19.3 does not apply in relation to that matter; and
- (ii) the Parties’ liability in relation to the matter is to be determined by Law, and to avoid doubt the definition of Indirect Damage in this Contract is to be disregarded for the purposes of that determination.”

266. Synergy agreed 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 was 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.

267. Synergy considered the clause should be amended as follows:

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 than 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.

268. The ERA considers that compliance with the Metering Code requires the MSLA to ensure all parties have clarity about their obligations and that Western Power must deliver the services it is required to in line with the service standards.
269. Taking account of Western Power's and Synergy's submissions on the drafting of clause 7.2, the ERA has amended the wording to be consistent with the required amendment that Western Power is liable if it is at fault in failing to deliver a metering service.
270. The ERA considers Western Power's proposed new clause 7.2(c), that Western Power is not liable for a direct additional cost incurred if the User has a contractual or other legal entitlement to recover the cost from a customer, is reasonable as it still allows the user to recover costs.
271. The ERA considers Western Power's proposal to move clause 7.6(c) into a separate clause is reasonable and makes the drafting clearer.
272. Taking account of the above, clause 7 in the proposed MSLA should be amended as follows:

## **7 LIABILITY**

### **7.1 Liability for Direct Damage**

Subject to the terms of this Agreement a Party who:

- (a) is negligent; or
- (b) commits a Default under this Agreement,

is liable to the other Party for, and must indemnify the other Party against, any Direct Damage caused by, consequent upon or arising out of the negligence or Default.

### **7.2 Failure to provide Metering Services**

(a) Subject to clause 7.7, where Western Power fails to provide Metering Services to the User in accordance with this Agreement, 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 or negligence other than any direct additional costs that the User has a contractual or other legal entitlement to recover from a Customer.

(b) The exclusion of Indirect Damage in clause 7.3 does not apply to the direct additional costs incurred referred to in clause 7.2(a).

### **7.3 Exclusion of Indirect Damage**

- (a) Subject to clause 7.3(c), ~~t~~the User is not in any circumstances liable to Western Power for any Indirect Damage suffered by Western Power, however arising.
- (b) Subject to clause 7.3(c), Western Power is not in any circumstances liable to the User for any Indirect Damage suffered by the User, however arising.
- (c) Where this Agreement states that "the exclusion of Indirect Damage in clause 7.3 does not apply" or words to a similar effect, in relation to a matter, then:

(i) the exclusion of Indirect Damage in clause 7.3 does not apply in relation to that matter; and

(ii) the Parties' liability in relation to the matter is to be determined by Law, and to avoid doubt the definition of Indirect Damage in this Agreement is to be disregarded for the purposes of that determination.

#### 7.4 Limitation of Liability

The maximum liability of one Party to the other Party under and in connection with this Agreement is limited to the amount equal to:

- (a) the aggregate monetary limit on that Party's liability under the User's Access Contract applicable to all breaches of, or acts or omissions in connection with, the User's Access Contract ("Access Contract Cap"); less
- (b) the aggregate actual liability incurred by that Party to the other Party under the User's Access Contract, to the intent that each Party's aggregate liability under this Agreement and the User's Access Contract will not exceed the Access Contract Cap applicable to it. If a Party receives an amount of damages under this Agreement which, when aggregated with any amounts it has received under the User's Access Contract, results in the Access Contract Cap being exceeded it must refund the excess amount received over the Access Contract Cap to the other Party.

Payments of charges for services, GST and interest are not taken into account in determining whether the Access Contract Cap has been exceeded.

#### 7.5 Personal Injury

~~Clauses~~ The exclusion of Indirect Liability in clause 7.3 and clause 7.4 does not apply to personal injury Claims. The liability for any personal injury Claim will be determined under Law.

#### 7.6 Fraud

- (a) If Western Power is fraudulent in respect of its obligations to the User under this Agreement, then Western Power is liable to the User for, and is to indemnify the User against, any damage caused by, consequent upon or arising out of the fraud. In this case, the exclusion of Indirect Damage in clause 7.1 does not apply.
- (b) If the User is fraudulent in respect of its obligations to Western Power under this Agreement, then the User is liable to Western Power for, and is to indemnify Western Power against, any damage caused by, consequent upon or arising out of the fraud. In this case, the exclusion of Indirect Damage in clause 7.1 does not apply.

#### 7.7 Duty to Mitigate

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.

#### 7.8 Interaction with ETAC

Nothing in this clause 7 limits the operation of any provision in the User's Access Contract ~~providing~~ that states that "the exclusion of Indirect Damage does not apply" or words to similar effect.

273. The ERA accepts that more complex de-energisations may take longer than the standard service and it would be reasonable to agree an extended timeframe with the user. However, Western Power's proposed clause 3.5 should be amended to:

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), Western Power may propose an extension to the Service

Standard which must be consented to by the User if it is reasonably required to perform the requested de-energisation.

274. While there may be circumstances where the performance of the service is dependent on a user undertaking a certain act, Western Power’s proposed clause 3.2(d) is too broad. It would make liability uncertain where Western Power considers the user should have performed the act. However, it is difficult to state every co-operative act that is required. The ERA considers the clause should be amended to:

The User must co-operate with Western Power, as Western Power reasonably requests, to enable Western Power to meet the Service Standards and provide the Metering Services, provided that the request by Western Power is reasonable and is limited to matters that are the responsibility of the User or otherwise within the User’s direct control.

275. Taking account of submissions on the draft findings, the ERA has modified the required amendment in the draft findings as follows:

- Added a requirement to include a clause equivalent to clause 19.3(b) in the electricity transfer access contract.
- Amended clause 7.2 so that Western Power is not liable for direct costs incurred that a user is entitled to recover from its customer.
- Amended clause 3 to include provisions to extend timeframes for complex de-energisations and to request co-operation from users to enable Western Power to meet its service standards.

### Required Amendment 15

Clause 3, 7 and 9 must be amended as follows:

- An equivalent to clauses 19.2 and 19.3(b) 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 the definition in the electricity transfer access contract.
- A new clause must be included in clause 7 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, except where the user is entitled to recover those costs from its customer.
- An equivalent to clause 27.1(b) in the electricity transfer access contract must be included in clause 9 of the MSLA.
- Clause 3 must be amended to include provisions to extend timeframes for complex de-energisations and to request co-operation from users to enable Western Power to meet its service standards.

### *Dispute resolution*

276. The current MSLA includes dispute provisions in clause 9. Western Power did not propose amending the current provisions apart from moving them to proposed new clause 10 and adding a definition for the term “dispute”.

### *Draft findings*

277. The proposed change in clause numbering is administrative in nature and does not affect the substance of the clause.
278. The term “dispute” is not defined in the current MSLA. Western Power proposes including the following definition which is consistent with the electricity transfer access contract:
- Dispute - Means any dispute or difference concerning:
- (a) construction of; or
- (b) anything contained in or arising out of; or
- (c) rights, obligations, duties or liabilities of a Party under, this Agreement.
279. However, the Metering Code includes a definition of dispute and the processes that apply for resolving disputes under the Metering Code. The Metering Code definition is:
- means any dispute or difference arising in respect of any matter under or in connection with this Code between any Code participants, 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 of Conduct or a dispute under the Customer Transfer Code.
280. The MSLA should define “dispute” consistently with the Metering Code.
281. The ERA required the MSLA to be amended.

#### **Required Amendment 15**

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.

### *Final findings*

282. In its submission on the draft findings, Western Power accepted the ERA’s required amendment.
283. Synergy supported the required amendment and recommended a definition of “market rules” should be included.
284. The ERA agrees a definition of market rules would add clarity to the MSLA and has modified the required amendment to include it.

## Required Amendment 16

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”

The words

“arising in respect of any matter under or in connection with this Agreement”

must be deleted from clause 10.1.

Market Rules should be included in the list of definitions as follows:

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

## Assignment and encumbrances

285. The current MSLA includes assignment and encumbrances provisions in clause 10. Western Power proposes amending the current provisions and moving them to proposed new clause 12:

### 40. 12. Assignment and encumbrances

- (a) Subject to clause 12(c). A a User may not encumber, assign, part with possession or create any interest or right in favour of a third party in respect of this Agreement, without the prior written consent of Western Power, which will not be unreasonably withheld.
- (b) Subject to Clause 102(c), Western Power may not encumber, assign, part with possession or create any interest or right in favour of a third party in respect of this agreement, without the prior written consent of the user, which will not be unreasonably withheld.
- (c) If a Party ~~Western Power~~ is restructured in accordance with government policy:
  - (i) by law, or
  - (ii) through other means, including the:
    - (A) use of subsidiary or associated companies; or
    - (B) transfer of assets, rights and liabilities.

then the rights and obligations of ~~Western Power~~ a Party under this Agreement are assigned to the appropriate legal entity pursuant to the restructure. A restructure, transfer or assignment under this Clause ~~10~~ 12(c) does not require the other Party's ~~user's~~ approval or consent.

## Draft findings

286. The proposed changes to 12(c) considerably broadened the scope of this clause. The current clause applies only to Western Power and it is consistent with similar provisions in the electricity transfer access contract. The proposed changes would appear to apply to any user restructured in accordance with government policy. The resultant inconsistency with the electricity transfer access contract could result in administrative difficulties.

287. The ERA required the MSLA to be amended.

**Required Amendment 16**

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

*Final findings*

288. In its submission on the draft findings, Western Power accepted the required amendment.

**Required Amendment 17**

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

*Miscellaneous*

289. The current MSLA includes miscellaneous provisions in clause 11. Western Power proposed various amendments to the miscellaneous provisions including re-ordering them and moving them to proposed new clause 13.

*Draft findings*

290. Most of the proposed changes to clause 13 were administrative in nature and bring the MSLA provisions into line with the electricity transfer access contract. The amendments did not affect consistency with the Metering Code.

291. However, Synergy raised concerns about clause 13.8:

The potential effect of clause 13.8 of the MSLA is that all agreements or arrangements relating to the provision of metering services (including, for example, additional service level agreements between WP and a user) could be superseded by the MSLA. If such service level agreements are superseded, this means that the user will not be able to provide certain existing services to its end use customers.

For example, Synergy has other service level agreements with WP for the provision of a specific metering service. If that service level agreement is superseded, Synergy's ability to provide these specific services to customers will be affected. Synergy will be pleased to articulate further should the ERA require.

Synergy recommends the following amendments to clause 13.8:

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

292. The ERA considered that Synergy's proposed amendment would clarify that the updated MSLA superseded previous versions of the MSLA and would not affect any agreements users have with Western Power.

293. The ERA considered the clause should be amended.

**Draft Findings Required Amendment 17**

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

## *Final findings*

294. In its submission on the draft findings, Western Power accepted the required amendment.
295. Subject to making Required Amendment 18 below, the ERA is satisfied the proposed changes to clause 13 are administrative in nature and bring the MSLA provisions into line with the electricity transfer access contract. The amendments do not affect consistency with the Metering Code.

### **Required Amendment 18**

Clause 13.8 must be amended as follows:

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.

## *Set off*

296. As set out in the draft findings, Western Power's proposed amendments to the set off clauses are administrative in nature, consistent with the electricity transfer access contract and do not affect consistency with the Metering Code.

## *Definitions*

297. As set out in the draft findings, Western Power's proposed changes to definitions are administrative in nature or consequential to other amendments and do not materially affect consistency with the Metering Code.

## *Other minor amendments*

298. As set out in the draft findings, additional amendments identified by Western Power after submitting its proposal are administrative in nature and are not inconsistent with the requirements of the Metering Code. The ERA agrees the MSLA should be amended to reflect these minor administrative changes.

### **Required Amendment 19**

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”.



## Appendix 1 Comparison of prices in the current and proposed MSLA

**Table 4 Comparison of prices in the current and proposed MSLA**

Current service name	Current classification	Current Price	Proposed service name	Proposed classification	Proposed price 2019/20/	Proposed price 2020/21
Establishment and energisation of a metering connection point	Standard Metering Services	In network tariffs	MS-2: Meter installation and energisation	Reference Service (Metering) (standard metering service)	In network tariffs.	
Meter upgrade	Standard Metering Services	In network tariffs	MS-6: Meter upgrade/replace (not User requested)	Accessory Metering Services – Reference Services (Metering)	In network tariffs.	
Meter change: Single phase Three phase Three phase interval Single phase interval	Extended Metering Services	\$115.50 + travel \$205.50 + travel \$704 + travel \$181.50 + travel	MS-9: Meter exchange Single phase WC Three phase WC CT meter	Extended Metering Services	\$75.33 \$75.33 \$75.33	\$76.15 \$76.15 \$76.15
De-energise	Extended Metering Services	38.50 (plus travel)	MS-7: De-energise manual LV HV	Extended Metering Services	\$62.62 POA	\$63.51 POA
Re-energise	Extended Metering Services	38.50 (plus travel)	MS-8: Re-energise manual LV standard LV urgent HV	Extended Metering Services	\$62.62 \$157.92 POA	\$63.51 \$160.20 POA
Meter investigation	Extended Metering Services	\$93.50	MS-10: Meter investigation	Extended Metering Services	\$189.83	\$192.55
Communications installation: Existing compatible interval meter With interval meter installation	Extended Metering Services	\$858.00 (plus travel) \$715.00 (plus travel)	MS-11: Communications installation  Radio frequency Cellular communication	Extended Metering Services	\$75.33 \$335.12	\$76.15 \$338.64
Supply abolishment -residential -commercial	Extended Metering Services	\$275.00 P.O.A.	Discontinued as now Included in the access arrangement as reference service D1.	N/A	N/A	

Current service name	Current classification	Current Price	Proposed service name	Proposed classification	Proposed price 2019/20/	Proposed price 2020/21
			MS-1 Scheduled Energy data provision	Reference Service (Metering) (standard metering service) or Additional Reference Service (Metering)	In network tariffs.	
Scheduled bi-monthly meter reading	Standard Metering Services	In network tariffs	Consolidated in MS-1 Scheduled Energy data provision	As above	As above	
Scheduled monthly meter reading	Standard Metering Services	In network tariffs	Consolidated in MS-1 Scheduled Energy data provision	As above	As above	
Non-scheduled special meter reading	Extended Metering Services	\$4.95 metro \$21.45 country	MS-19: Non-scheduled special meter reading Accum manual Interval manual Interval remote Accum manual – appointment Interval manual - appointment	Extended Metering Services	\$14.57 \$19.48 \$0.60 \$31.58 \$43.11	\$14.78 \$19.76 \$0.61 \$32.03 \$43.72
Card meter reading	Standard Metering Services	In network tariffs	Discontinued	N/A	N/A	
Customer meter reading	Standard Metering Services	In network tariffs	Discontinued	N/A	N/A	
Manually collected energy interval data (monthly)	Standard Metering Services	In network tariffs	Consolidated in MS-1 Scheduled Energy data provision	Reference Service (Metering) (standard metering service) or Additional Reference Service (Metering)	In network tariffs.	
Remotely collected energy interval data (monthly)		In network tariffs	Consolidated in MS-1 Scheduled Energy data provision	As above	As above	
Remotely collected energy interval data (daily)	Extended Metering Services	\$5.50	Consolidated in MS-1 Scheduled Energy data provision	As above	As above	

Current service name	Current classification	Current Price	Proposed service name	Proposed classification	Proposed price 2019/20/	Proposed price 2020/21
Historical energy interval data (up to 12 months or part thereof)	Standard Metering Services	In network tariffs	MS-4: Historical energy data provision (up to 24 months)	Accessory Metering Services – Reference Services (Metering)	In network tariffs.	
Standing data provision	Standard Metering Services	In network tariffs	MS-3: Standing data provision	Accessory Metering Services – Reference Services (Metering)	In network tariffs.	
Energy interval data produced by survey meter	Extended Metering Services	\$385 + travel	Discontinued	N/A	N/A	
Additional historical energy interval data (13 to 24 months)	Extended Metering Services	\$49.50	Included in MS-4: Historical energy data provision (up to 24 months)	N/A	N/A	
Verify meter data	Extended Metering Services	\$2.75	MS-18: Verify meter energy data	Extended Metering Services	\$6.51	\$6.61
Enablement of signal capabilities and signal maintenance (charge per day)	Extended Metering Services	\$0.66 cumulative \$0.66 interval	MS-16: Enablement of signal pulse outputs Note services for signal maintenance have been discontinued.	Extended Metering Services	\$320.91	\$325.28
Upfront cost to retrofit signals (signals not maintained)		\$242 + travel				
Upfront cost to enable signal when meter installed (signals not maintained)		\$165 + travel				
Maintenance of signals		\$93.50/hr				
Meter test (laboratory) Single phase Three phase	Extended Metering Services	\$297 \$440	MS-13: Meter test (laboratory) Single phase Three phase	Extended Metering Services		
Meter test (on site) Single phase Three phase	Extended Metering Services	\$297 + travel \$473 + travel	MS-14 Meter test (on-site) Single phase Three phase	Extended Metering Services	\$354.54 \$481.30	\$359.57 \$488.16

Current service name	Current classification	Current Price	Proposed service name	Proposed classification	Proposed price 2019/20/	Proposed price 2020/21
			CT		\$566.67	\$574.75
CT meter test	Extended Metering Services	\$280.50 + travel	Included in MS-14: Meter test (on-site)	Extended Metering Services	See above	
Meter installation repair (faulty meters)	Standard Metering Service	In network tariffs	MS-5: Meter installation repair	Accessory Metering Services – Reference Services (Metering)	In network tariffs.	
Meter reconfiguration	Extended Metering Services	\$49.50	MS-15 Meter re-configuration Manual Remote	Extended Metering Services	\$75.33 \$20.02	\$76.15 \$20.32
			MS-12 Communication link de-activation	Extended Metering Services	\$75.33	\$76.15
			MS-17 Remove meter	Extended Metering Services	\$139.27	\$141.23

Source: Western Power's current and revised MSLA and responses to ERA queries

## Appendix 2 Electricity Industry (Metering) Code 2012 – Clause 5.21

- (1) A Code participant may, subject to clauses 5.21(5) and 5.21(6), in relation to a *metering installation*, request the *network operator*<sup>24</sup> to undertake either a test or an audit or both of any one or more of:
  - (a) the accuracy of the *metering installation*; and
  - (b) the energy data from the *metering installation*; and
  - (c) the standing data for the *metering installation*.
- (2) A *network operator*<sup>25</sup> must comply with any reasonable request under clause 5.21(1).
- (3) The user may witness the test or audit.
- (4) A test or audit under clause 5.21(1) is to be conducted in accordance with:
  - (a) the *metrology procedure*; and
  - (b) the applicable *service level agreement*.
- (5) A *Code participant* must not request a test or audit under clause 5.21(1) unless:
  - (a) if the *Code participant* is a user — the test or audit relates to a time or times at which the user was the current user; or
  - (b) it is the *IMO*.
 

{Note: If the *Code participant* seeking the test or audit is a *network operator* or *metering data agent*, the matter will be dealt with by the *metering data agency agreement*.}
- (6) A *Code participant* must not make a request under clause 5.21(1) that is inconsistent with any *access arrangement* or agreement.
- (7) If there is no written *service level agreement* in place between the *network operator*<sup>26</sup> and the user in respect of the testing of the user's *metering installations* or the auditing of information from the meters associated with the *metering installations* or both, the *network operator*<sup>27</sup> or the *user* may require the other to negotiate and enter into a written *service level agreement* in respect of the testing of the *metering installations*, or the auditing of information from the *meters* associated with the *metering installations*, or both.
 

{Note: If there is no written *service level agreement*, any *metering services* provided will be governed by an unwritten *service level agreement* under clause 5.2.}
- (8) A *network operator*<sup>28</sup> may only impose a charge for the testing of the *metering installations*, or auditing of information from the *meters* associated with the *metering installations*, or both, in accordance with the applicable *service level agreement* between it and the user.
- (9) Any written *service level agreement* entered into under clause 5.21(7) must include a provision that *no charge* is to be imposed if the test or audit reveals a non-compliance with this *Code*.
- (10) Any unwritten *service level agreement* in respect of testing of the *metering installations*, or the auditing of information from the *meters* associated with the *metering installations*, or both, includes a provision to the effect described in clause 5.21(9).

<sup>24</sup> If clause 5.29(b) applies, read “*network operator*” as “*network operator and metering data agent*”.

<sup>25</sup> If clause 5.29(b) applies, read “*network operator*” as “*network operator and metering data agent*”.

<sup>26</sup> If clause 5.29(b) applies, read “*network operator*” as “*network operator and metering data agent*”.

<sup>27</sup> If clause 5.29(b) applies, read “*network operator*” as “*network operator and metering data agent*”.

<sup>28</sup> If clause 5.29(b) applies, read “*network operator*” as “*network operator and metering data agent*”.

- (11) If a test or audit shows that the accuracy of the *metering installation* or information from a meter associated with the *metering installation* does not comply with the requirements under this Code, the *network operator*<sup>29</sup>:
- (a) must advise the affected parties as soon as practicable of the errors detected and the possible duration of the existence of the errors; and
  - (b) must restore the accuracy of the *metering installation* in accordance with the applicable *service level agreement*; and
  - (c) may (acting in accordance with *good electricity industry practice*) make corrections to the energy data, up to a maximum of 12 months before the test or audit, to take account of errors referred to in this clause 5.21(11) and to minimise adjustments to the final settlement account.
- (12) The original stored error correction data in a *meter* must not be altered except during accuracy testing and calibration of a *metering installation*.

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<sup>29</sup> If clause 5.29(b) applies, read “*network operator*” as “*network operator and metering data agent*”.

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