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24 October 2008

Access Arrangement Review
Electricity Access
Economic Regulation Authority
PO Box 8469
Perth BC WA 6849

Dear Sir,

Preliminary Submission on Western Power's Proposed Revisions to the Access Arrangement

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

1 Overarching Considerations

In providing its comments Synergy believes it is important to first highlight the fundamental aims and objectives of the Electricity Networks Access Code 2004 (**Code**). The Code aims to:

1. Be consistent with the National Electricity Code and National Gas Code; and
2. Be capable of certification as an effective access regime under Part IIIA of the Trade Practices Act 1974.
3. Establish a framework for third party access to electricity transmission and distribution networks with the objective of promoting the economically efficient investment in, and operation and use of, networks and services of networks in Western Australia in order to promote competition in markets upstream and downstream of the networks.

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

2 Preliminary Issues

Synergy notes that fundamental key elements of the proposed Access Arrangement revisions are based on the proposed amendments to the Code that are still subject to Ministerial approval. Therefore these amendments are not legally relevant. Synergy is concerned that despite this, the ERA has sought public submissions on revisions based on Code amendments that have no legal effect. It is unclear to Synergy whether these proposed amendments will come into effect during the public submission phase. In this respect, Synergy notes it has made submissions to the Office of Energy (OOE) expressing its concern on some aspects of the amendments.

The proposed amendments are complex and appear to have the potential to fundamentally change the regulatory framework for access and network services in the SWIS.

Synergy also notes that section 11.2 of the Code requires the Authority to publish, at least once a year, the service standard performance of the "Reference Services" including the standard metering services. This performance report has not been published to date. Synergy submits that it is important for users to have and review this report and the actual service standard performance of Western Power under the existing Access Arrangement before they can be in a position to adequately comment on the proposed revisions to the Access Arrangement.

Therefore, Synergy strongly recommends that the timeframe for the review of these proposed Access Arrangement revisions needs to be extended to at least allow:

1. Sufficient time for the proposed amendments to be approved or rejected by the Minister, and if approved, the public needs time to understand the implications of any Code amendments and the effect these amendments could have on the end customer and users of the network.
2. Publication of the service standard performance report for reference services and sufficient time for the public to consider the implications of this report.

In the time available, Synergy intends to make progressive submissions on matters of concern to it. This is the first of these submissions.

A1. Applications & Queuing Policy (AQP)

A1.1 Contestability Determination

A1.1.1 Authority to Determine Contestability

The AQP and associated supporting documentation does not make it clear where Western Power derives its authority to determine the contestability status of a connection point.

Synergy notes that the rule that a connection point once determined to be contestable by Western Power is always contestable does not appear to be supported by legislation or to be consistent with the Electricity Corporations (Prescribed Customers) Order 2007. Consequently, when the customer on a connection point changes Western Power will need to accept a retailer's request to reassess its contestability determination and authority to service the connection point under section 54 of the Electricity Corporations Act 2005 and the Electricity Corporations (**Prescribed Customers Order 2007**).

The Access Arrangement needs to be consistent with legislative policy. For example, the current Access Arrangement allows the Network Operator to determine the contestability status of a connection point if 12 months consumption data does not exist. This is inconsistent with the current Prescribed Customers Order 2007. Therefore, Synergy's current recourse has been to contest the determination of these connection points, for example, after our customers, seeking access to particular retail tariffs, have complained and brought it to our attention.

Therefore, Synergy submits that the contestability determination rule in section 13.2(a) of the AQP is inconsistent with the provisions of section 54 of the Electricity Corporations Act 2005 and the Prescribed Customers Order 2007. For example, the provisions outlined in section 13.3 of the AQP do not currently make it clear that, in certain circumstances, Western Power will need to reverse the access contestability status of a connection point.

A1.1.2 Consistency in the application of the Contestability Rules

The proposed Access Arrangement contestability rules needs a level of consistency and constraint because it is not always applied with the correct level of substantiation or diligence.

Our ongoing discussions with Western Power have also indicated that it has used other, internal policy rules, including the aggregation of consumption at several connection points to determine the contestability status of a connection point. The situation becomes particularly problematic when a contestable NMI is split into several (eg. up to 20) NMIs with our customers seeking access to the non-contestable tariffs.

Synergy's concern is that the current and proposed Access Arrangement, and any unilateral implementation of contestability determination outside of the Access

Arrangement creates a regime that produces frustration and encourages disputes which directly affect the end customer's ability to choose and increases the cost to the retailer in implementing the regime.

Retail tariff, access and transfer eligibility need to coexist in a unified and complimentary manner without unintended consequences such as franchise customers paying contestable retail tariff rates.

A1.1.3 Delineating Contestability Policies and Legislative Jurisdictions

In light of the recent reported tariff increases and proposed changes to the Access Arrangement, Synergy believes that it is important for the AQP to establish a clear delineation of the contestability policies associated with:

- Access (the right for respective retailers to transport electricity out of a connection point for a specified amount and capacity),
- Transfer (the right for retailers to move a connection point onto their access contract), and
- Retail Tariff (the right for customers to be eligible and choose tariffs where they meet the tariff eligibility criteria for that tariff, independent of the connection point status that the customer is consuming electricity from).

The AQP does not make this delineation clear and this can confuse users and customers. It is important that access and transfer contestability determination for a connection point does not affect the retail tariff eligibility choice for a customer. This retail tariff choice and eligibility is managed under a separate regulatory instrument (tariff by-laws) and logically should be independent of the contestability status of a connection point. Transport and access contestability should not affect the price end-customer pays. Therefore, this tariff element of the industry needs to remain customer centric and Western Power should not have the ability to directly or in-directly influence retailers rights in determining tariff eligibility.

A1.1.4 Effective Connection Point Management

Making a connection point contestable essentially makes it eligible to be transferred between retailers. Synergy has no in principle concerns with the fixed contestability rule ("a connection point is always deemed to be contestable if it has previously been assessed to be contestable") providing the application of this concept does not affect customers retail tariff eligibility and provided the "rule" has been lawfully made (refer earlier comments on this matter).

It is important that the ability to transfer connection points under the access regime remains independent and exclusive of the tariffs that a customer is eligible to choose and a retailer is able to offer. A barrier to contestability is that it is fundamental and critical that the Network Operator have a complete, accurate and auditable record of all the connection points to its network and these are periodically reviewed. Contemplating this issue and contestability highlights that it

is also important to reconsider, or revisit, the following fundamental questions associated with managing connection points:

- Who has responsibility of assigning a connection point to an Electricity Transfer Access Contracts (**ETAC**).
- Who has responsibility of tracking and managing a connection point so that manifest errors between databases (as defined in the Metering Code) are avoided.
- Should there be any allowance for orphaned (i.e. unallocated) connection points and if so, what happens to a connection point that does not have a nomination under the ETAC and the Access Regime but electricity is still being supplied to premises through an exit point..
- Who has responsibility for and how are orphaned connection points managed.

Synergy has often deliberated on who would be the most effective and appropriate authority to assess and determine the contestability status of a connection point.

Synergy has not formed a final view on this but believes that it is important to consider the following issues:

- Access contestability determinations should be managed under the Access Regime. Synergy supports the requirements of the Customer Transfer Code for transfers; but considers it is important that clear rules are defined for the contestability determination of a connection point (outside of the Western Power Access Arrangement that is approved by the ERA).
- This assessment needs to be conducted by a person who is in a position to reconcile the status of a connection point and its affect on the calculation of the Notional Wholesale Meter.
- The problems in having it conducted by a person who has responsibility for modifying or augmenting the network including ensuring that determinations are not made to facilitate the modification of the network and the allocation of NMIs.
- There are problems in having it conducted by a person who has responsibility for managing standing data including the contestability status of a connection point.
- The contestability status for a connection should be reported to the metering data owner by the retailer under the current nominations procedure under the ETAC and AQP. This ensures that the metering data owner does not have an incentive to unilaterally modify data to address manifest errors between databases (as defined in the metering code).
- The determination criteria should be developed in collaboration with industry and independently approved. Once approved it should be transparent and be

able to be changed, subject to independent approval, quickly in response to market requirements.

A1.2 Process for Re-energisations

A1.2.1 Inconsistency with the Metering Code Model Service Level Agreement

The re-energisation process outlined in section 11.2 of the AQP does not appear to be practical and appears to be inconsistent with current practices and the procedural requirements of the Reference Services.

The Access Arrangement Reference Services incorporate the provision of Standard Metering Services under the regulated Metering Code Model Service Level Agreement. Under this agreement Synergy submits re-energisations requests to Western Power in accordance with requirements of the Communications Rules. It is not practical for Synergy or other Retailers to conduct the re-energisations in accordance with section 11.2 of the AQP, which involves completing and submitting an electricity transfer application form for each connection point that requires re-energisation.

Synergy recommends that section 11.2 of the AQP needs to be re-drafted to address the inconsistency with the procedures outlined under the Metering Code Model Service Level Agreement.

A4. Electricity Transfer Access Contracts

The ETAC is the fundamental instrument that establishes the relationship and obligations between the users and Western Power under the Access Arrangement. Consequently, it has significant implications and a material impact on the Code objectives.

There are a number of key issues in the previous and proposed ETAC that create significant commercial risk and financial barriers for Synergy to accept certain terms within the ETAC as a reasonable and prudent person. These issues include;

- The requirement to establish insurances up to \$10 billion in order to insure Western Power's network against damage.
- The requirement to establish a network inspection service to ensure that equipment connected to the network continues to comply with the Technical Rules.
- Lack of clarity on how REBS customers with Small Scale Renewable Energy Systems will be charged for network use.
- Western Power's unilateral ability to remove capacity from a customer under a contract with Synergy. Even though the customer may have paid for the right, or provided contributions, for this capacity to be available.

- Inconsistency between the ETAC and Reference Services on exceeding contracted capacity at a connection point.
- Synergy required to provide financial security for works required by customers and the associated contributions that need to be paid to Western Power by the customer.
- Lack of clarity with how Synergy will obtain access to Western Power systems for the connection point data in schedule 3.
- Inconsistency between the ETAC and the Metering Code Model Service Level Agreement for deleting connections points from the ETAC.
- Poor asset data integrity preventing Synergy from reconciling network charges under the ETAC for Streetlight and Unmetered Reference Services.

It is important that the ETAC is not used as a mechanism to unfairly mitigate Western Power's commercial and business risks. These risks should be managed by the appropriate regulatory framework and not forced on users through the ETAC.

The policy determination on all these issues should be clear and these issues should not be conditional on providing an access offer to an applicant.

Synergy notes that these are challenging issues to negotiate with a monopoly service provider especially for a small retailer. Synergy believes these are fundamental policy issues that encourage disputes and need to be addressed urgently under the Access Arrangement.

3 Conclusion

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

Yours faithfully

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Synergy