

27 August 2010

Mr Greg Watkinson
Chief Executive Officer
Economic Regulation Authority
Level 6, 197 St Georges Terrace
Perth WA 6000

Dear Greg

SUBMISSION OF PROPOSED AMENDMENTS TO THE STANDARD ELECTRICITY TRANSFER ACCESS CONTRACT

Western Power has recently discovered an error in the standard Electricity Transfer Access Contract (**ETAC**) included in Western Power's revised Access Arrangement. The error causes the ETAC to be inconsistent with the Authority's decision on Western Power's revised Access Arrangement.

Western Power seeks a change to the ETAC under section 4.41A of the *Electricity Network Access Code* to correct this error.

Omission of Schedule 8 of ETAC

As part of its proposed revisions to the SWIS Access Arrangement (**WPAA**), Western Power sought changes to the security provisions under the ETAC. One of these changes was to remove the ability of the User to provide a parent company guarantee as a form of security. This change required the amendment of clause 9 of the ETAC and the deletion of Schedule 8 of the ETAC (which sets out the approved Form of Guarantee). As you are aware, as part of its submission to support the WPAA revisions, Western Power included a copy of the ETAC which tracked all of its proposed changes (including the deletion of Schedule 8).

The Authority's consideration and decision in relation to Western Power's proposed changes to the security provisions was set out in paragraphs 267 - 273 of the Final Decision (4 Dec 2009). At paragraph 273 (see below) the Authority disallowed the changes.

273. The Authority has determined that it will not allow Western Power to make the proposed change to clause 9 of the electricity transfer access contract. In coming to this determination, Western Power has not provided any evidence or analysis to satisfy the Authority that the proposed changes to clause 9 are reasonably necessary, to protect Western Power's commercial interests.

The Authority's Further Final Decision (19 Jan 2010) does not address this matter further.

In our response to the Final Decision, Western Power accepted the Authority's disallowance (see excerpt below of Western Power's response to the Final Decision).

Final Decision Required Amendment (and corresponding Draft Decision Required Amendment)	Western Power's response	Cross Reference to access arrangement documentation
<p>Miscellaneous matters relating to the ETAC that were not the subject of Required Amendments</p> <p>(a) Clause 9 of the ETAC</p> <p>In its first submission on the Draft Decision, Western Power proposed a change to clause 9 of the ETAC (which provides for Western Power to require a user to provide security against the user's obligations under a contract for a network service). At paragraph 273 of the Final Decision the Authority did not allow Western Power's proposed changes to clause 9 of the ETAC to:</p> <ul style="list-style-type: none"> • Remove the option of providing a parent company guarantee as security; and • Increase the investment grade credit ratings 	<p>Disallowance accepted</p>	<p>Western Power has removed these proposed changes to clause 9 of the ETAC, in accordance with the requirements of paragraph 273 of the Final Decision</p>

In accordance with this decision, Western Power reversed the changes made to clause 9 in the ETAC. However, Western Power omitted to reinstate the deleted Schedule 8. The ETAC that was included in the revised WPAA does not include Schedule 8.

Schedule 8 is referred to in clause 9(a)(iii):

- (iii) if Western Power* is satisfied, as a Reasonable and Prudent Person*, that the User*'s parent company's financial and technical resources are such that the User*'s parent company would be able to meet the User*'s obligations under this Contract* (including because the User*'s parent company meets at least one of the credit ratings given in clauses 9(b)(i) and 9(b)(ii)), procure from the User*'s parent company a guarantee substantially in the form set out in Schedule 8.

Accordingly, Schedule 8 should be reinserted into the ETAC for two important reasons:

- First, to ensure that the ETAC is consistent with the Authority's decision in relation to the revisions to WPAA; and
- Secondly, for the proper operation of clause 9(a)(iii) of the ETAC.

Additional minor amendments

(a) Stamp duty

As you may be aware, on 1 July 2008, the *Duties Act 2008(WA)* came into force, replacing the *Stamp Act 1921(WA)*. The new Act abolished the concept of 'stamp duty' in Western Australia and introduced a new legal concept of 'duty'.

Clause 37.4 of the ETAC still refers to 'stamp duty':

37.4 Stamp duty

The User* is liable for and must pay all stamp duties that are assessed on this Contract*. If it is dutiable, the User* must produce this Contract* to the Office of State Revenue for assessment.

A number of customers have, since the implementation of the revised WPAA, sought this change to the ETAC.

Western Power requests that clause 37.4 be amended to reflect this change in law, so that it refers to 'duty'.

(b) Note

While making the above two amendments it would also be an opportune time to update the note of the first page of the ETAC. The note still refers to “including proposed Electricity Networks Access Code Amendments (No 2) 2008”. These amendments were in force and part of the Electricity Networks Access Code at the time the revised ETAC was approved.

Application

Western Power applies under section 4.41A of the *Electricity Network Access Code* for the above amendments to be made to the ETAC.

The advantages of the proposed amendments clearly outweigh any disadvantages. The advantages are:

- ensuring that clause 9(a)(iii) of the ETAC is certain and operates as approved by the Authority; and
- ensuring that the current laws relating to ‘stamp duty’ are properly reflected in the ETAC.

The proposed amendments constitute necessary “corrections”, are not material and do not detrimentally affect the rights of any applicant. There are no disadvantages in Western Power’s opinion.

I have attached a copy of the ETAC included in WPAA, in which I have tracked the proposed changes.

Western Power would be happy to provide any additional information that is required to process this application.

Yours sincerely

**PHIL SOUTHWELL
GENERAL MANAGER REGULATION & SUSTAINABILITY**