



**Submission**  
**To the**  
**Economic Regulation Authority**  
**Regarding**  
**Proposed Variations to Western Power's Access Arrangement**  
**for 2009/10 to 2011/12: Applications and Queuing Policy**

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# Executive Summary

<b>Matter</b>	Proposed variations to Western Power’s Applications and Queuing Policy ( <b>AQP</b> ).
<b>Context</b>	The Economic Regulation Authority ( <b>Authority</b> ) is seeking submissions concerning Western Power’s proposed modifications to its AQP.
<b>Scope</b>	This submission is provided by Synergy to the Authority in response to its Issues Paper of January 2011 concerning the proposed variations to Western Power’s AQP.
<b>Key issues</b>	Synergy considers that there are a number of areas of the proposed AQP that require careful review by the Authority. Specifically, the proposal to remove the current concept of a queue and replace it with a competing applications methodology needs cautious and thorough consideration to determine whether it better or more effectively achieves the Code objectives. In addition, the proposed changes have not been developed under a framework where the stated outcomes can be tested or demonstrated. Consequently, Synergy submits that it is reasonable for the Authority to also consider whether the Electricity Networks Access Code 2004 ( <b>Code</b> ) would be capable of certification as an effective access regime under the Trade Practices Act if the proposed changes to the AQP were incorporated into the model applications and queuing policy.
<b>Recommendations</b>	Synergy makes a number of recommendations herein. These are summarised in Section 4 of this submission.

## 1 Background

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In December 2010, the Economic Regulation Authority (**Authority**) received a proposal from Western Power to vary its Application and Queuing Policy (**AQP**) under section 4.41A of the Electricity Networks Access Code 2004 (**Code**). The AQP forms Appendix 1 of Western Power's Access Arrangement<sup>1</sup> for the South West Interconnected Network (**SWIN**), the portion of the South West Interconnected System (**SWIS**) owned and operated by Western Power.

To assist industry participants in providing feedback on Western Power's proposed amendments to the AQP, the Authority has released an Issues Paper<sup>2</sup>.

Synergy is pleased to provide comment to the Authority on the proposed variations to the AQP. In providing its comments Synergy believes it is important to first highlight the fundamental aims and objectives of the Code. The Code aims to:

1. Be consistent with the National Electricity Code and National Gas Code;
2. Be capable of certification as an effective access regime under Part IIIA of the Trade Practices Act 1974.; and
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 for Energy (**Minister**) and the Authority 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.

Unless otherwise specified, words in *italics* in this submission have the same meaning as in the Code.

## 2 Matters for consideration

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In this section, Synergy would like to remark on some general observations pertaining to Western Power's proposed amendments. In making these comments, Synergy makes reference to section 5.7 of the Code:

*"5.7 An applications and queuing policy must:*

*(a) to the extent reasonably practicable, accommodate the interests of the service provider and of users and applicants; and*

*(b) be sufficiently detailed to enable users and applicants to understand in*

*advance how the applications and queuing policy will operate;"*

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<sup>1</sup> *Amended Proposed Revisions to the Access Arrangement for the South West Network owned by Western Power*, Western Power, 24 December 2009.

<sup>2</sup> *Proposed Variations to Western Power's Access Arrangement for 2009/10 to 2011/12: Applications and Queuing Policy, Issues Paper*, Economic Regulation Authority, 31 January 2011.

In addition, Appendix 2 of the Code provides a model applications and queuing policy and states that;

“...if the *service provider* adopts this model policy it can be assured that its *applications and queuing policy* will be consistent with sections 5.7 to 5.9 and the *Code objective*”.

## 2.1 Efficient development of generation plant

Western Power considers that its revised AQP “*will lead to more efficient development of generation plant*”<sup>3</sup>, however no basis for this claim is provided. Synergy believes that the efficient development of generation solutions is dependent upon the free operation of commercial market forces for the entire market. An assessment on the basis of a “shared access offers” process focussed on network optimisation only has the potential to lead to a sub-optimal outcome for the market as a whole.

Consequently, Synergy submits that a proposed connection framework that forces business solutions to align with network constraints does not provide a reasonable mechanism to accommodate the interests of the *service provider* and of *users* and *applicants*. Synergy notes that the proposed changes to the AQP contain a mechanism for applicant specific solutions, however, the effect of rules governing this approach means that ultimately there is also no certainty for these types of applications - such applications can be objected to, which means business and generation solutions may need to be modified to serve the constraints of the network. Consequently, this can also affect any proposed bi-lateral contract between the generator users and retailer users.

Synergy submits that the current proposed changes to the AQP would not have the effect of ensuring the network will be developed in such a way so as to serve the needs of efficient business and generation solutions. To this end, Synergy believes that queues are a necessary mechanism to ensuring efficient business solutions will get access to the network. The bypass mechanism provides a proactive and real-time basis to evaluate and to balance the interests of the *service provider*, *users* and *applicants*. The proposed changes are designed to limit the *service provider's* activities in assessing and balancing their needs with those of, *users* and *applicants*. Consequently, Synergy submits the proposed changes do not provide an alternative framework that better or more effectively achieves the *Code objectives* or support an effective access regime.

## 2.2 Promotion of competition

The proposed AQP process for shared access offers has the potential to artificially constrain competing generation projects. This approach can have the effect of requiring efficient business solutions and services to be scaled down or otherwise changed in order to secure connection and access.

As noted above, Synergy believes that effective competition in the wholesale market is dependent upon the development of the network supporting free operation of commercial market forces, whereas the proposed AQP bears the potential to preclude or restrict or force changes upon individual projects based on network constraints, thereby reducing competition.

Synergy submits that the proposed changes to the AQP, contrary to the *Code objective*, do not sufficiently accommodate the interests of large scale businesses. The changes have the potential to positively discriminate against large-scale projects, sacrificing economies of scale and low cost services by unduly constraining solutions in order to optimise the existing network in preference to the commercial requirements of the *applicants*.

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<sup>3</sup> Proposed mid-term revisions to the Applications and Queuing Policy, Western Power, p. 5.

The key issue here is that network development operation decisions need to be more efficient to meet the interests of *applicants* as opposed to business growth and development being constrained to accommodate the interests of the network. Consequently, Synergy believes that the proposal fails to demonstrate that the proposed changes will give practical effect to, or better achieve, the *Code objectives*.

In addition, Synergy submits that it would be unlikely for the Code to be capable of certification as an effective access regime under the Trade Practices Act if the proposed changes to the AQP were incorporated into the *model applications and queuing policy*.

### **2.3 Assessment of plant**

It is not clear how the proposed changes to the AQP will accommodate the interests of the *service provider* and of *users* and *applicants*. Synergy respects Western Power's role in assessing the technical suitability of plant and equipment for connection i.e. compliance with the relevant technical standards. However, the proposed AQP provides Western Power with significant discretion to require applicants to modify their business plans and application in order to conform to shared network access offers based on network constraints, without being aware of the commercial viability and net benefit of each project (and therefore the prospect of it proceeding) nor of the impact of its decisions on such viability or on the market as a whole.

For the above reasons, Synergy submits that the proposed objectives of the varied AQP create uncertainty and need further deliberation as they do not meet the *Code objective* and requirement for balancing the interests of the *service provider, users* and *applicants*. It is critical that the broader requirements of the *applicants* and associated *users* are appropriately accommodated within an effective access regime. Synergy submits that the proposed changes are likely to produce outcomes where the shared network offers do not accommodate the interests of any of the *applicants* and associated *users*.

The SWIN will need to accommodate the connection of a significant capacity of new renewable generation projects that may require specific network connection designs not accommodated in the shared network access offer. If these new renewable projects are unable to connect on the basis of a shared network access offer then the retailers in the SWIS will incur penalties for the shortfall in the procurement of renewable energy. These penalties will and must ultimately be passed to customers. This is another example of the commercial considerations of the *applicant* needing to be accommodated within the AQP.

### **2.4 Treatment of franchise market**

Clause 7.4 of the proposed AQP states that an applicant and Western Power may agree to deal with any matter in a manner different to the treatment of the matter in the AQP “...as long as the ability of Western Power to provide a covered service that is sought by another applicant is not impeded”.

Synergy notes that the AQP is generally geared towards applications for connection of non-franchise applicants and doesn't necessarily cater for the franchise market; nor does it consider the equipment these consumers wish to connect to the network such as small scale generation, including photovoltaic (**PV**) and other household renewable energy generation. Synergy is the retailer in the franchise market and is responsible for tens of thousands of applications for bi-directional, exit and entry points each year. Synergy queries whether Western Power intends to treat these large volumes of small consumer connection points under clause 7.4. If not, considerable effort would be required by Synergy to review the implications on its access contract and implement the additional processes into the franchise business. It is likely the increased costs resulting from this change will need to be passed on to consumers.

Synergy submits that the proposed changes to the AQP do not accommodate the interests of these *applicants* and may very likely increase the cost and liability of connecting to the

network, particularly in circumstances where these consumers have connected and continue to receive approval to connect equipment to the network contrary to the requirements of the AQP.

## 2.5 Supplier of last resort

Under section 5.7(g) of the Code the AQP must establish arrangements to enable a user who is a supplier of last resort (**SOLR**) to comply with its obligations under Part 5 of the Electricity Industry Act 2004 (**Act**). Synergy does not believe that this requirement is addressed in the proposed amendments to the AQP.

The AQP must allow for bulk off-market transfer processes and allow for the provision of customer data to the SOLR participant. The current AQP is also deficient in such arrangements.

## 3 Specific comments on Western Power’s proposed variations

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In this section, Synergy would like to make specific comments on Western Power’s proposed variations.

### 3.1 Enquiry and application commencement

Synergy supports the concept of a formal enquiry stage for contestable customers that enable *users* and *applicants* to understand how the AQP will operate prior to placing an application in the queue. This will reduce the risk of the queue becoming excessive, inflexible and limiting for projects with a good prospect of proceeding. Synergy considers that a formal Service Level Agreement, outlining the timeframes for processing enquiries, is essential because the current AQP does not contain any incentives for the *service provider* to comply with the specified timelines and consequently, *users* and *applicants* do not have certainty to understand in advance how the AQP will operate.

Synergy is concerned that discretion for Western Power to decide if and when an application is “complete”, where the criteria for determining this is unspecified, may not be sufficiently equitable and transparent, nor based on a holistic assessment of the commercial viability of the project (and therefore its prospect of proceeding).

As noted earlier in this submission, consideration needs to be given to the *applicants* in the franchise market; the proposed formal enquiry stage is not feasible and significant process and technology changes would be required by both Western Power and Synergy at considerable cost to both businesses. For example, the current Communication Rules<sup>4</sup> do not allow for a formal enquiry process for new franchise connections. In another example, Western Power currently approves PV generating plant, such as that installed by schools, to be connected to the network contrary to the AQP without an application from Synergy; in many circumstances Western Power’s approval is given directly to the electrical contractor.

### 3.2 Competing applications

Synergy is not satisfied that the proposed process for Western Power to identify “joint network development solutions” based on its own network optimisation of constraints is any more likely to deliver outcomes which will meet the needs of multiple and future applicants. Synergy submits that such an approach would create barriers to the development of efficient business solutions which require access to the network.

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<sup>4</sup> Developed under the Electricity Industry Metering Code 2005 and approved by the Authority

Synergy understands that Western Power has only recently commenced consistently using the bypass provisions in the current AQP. Synergy believes that the provisions, if used in combination with the dormant application provisions and with the proposed formal enquiry stage, would be effective and satisfactory to overcome many of the existing problems with the queue.

Synergy submits that the claim that 'study churn' would be reduced is incorrect. In the event that a proposed solution (developed and costed by Western Power) offered to all members of a "competing applications group" is not acceptable to an applicant in the group and that applicant withdraws, then either the cost for the remaining applicants would rise or Western Power would need to re-design the solution. In the instance that the connection cost increases then it may no longer be feasible for the remaining applicants who may subsequently withdraw. The stringent process of accepting the preliminary access offer by members of the competing applications group effectively locks down the requirements for these proponents. There is no acceptance of change of circumstances for businesses beyond acceptance of the "preliminary acceptance offer", therefore posing risk for both the applicant and the balance of the group.

The notion that multiple independent projects will achieve coincidental project approval to allow a joint solution to proceed unimpeded is highly improbable without creating significant issues for the respective business plans and their proposed solutions. Synergy, as a prominent offtaker in this market, is well aware that there are many hurdles for project proponents to overcome in parallel with, and following receipt of, an access offer. It is more likely that the competing applications group will become captive to any applicant that encounters a delay in moving to readiness, thereby delaying the progress of the group as a whole and causing a bottleneck. Design iterations, presumed by Synergy to be necessary if a delaying applicant eventually withdraws from a competing applications group, will further aggregate any so-called 'choke-point'.

Synergy observes that it is likely that a shared network augmentation solution developed by Western Power would be a compromise between the various applicants in the group, with a strong possibility of yielding a sub-optimal solution for one or all, or alternatively, a solution that is more expensive than is required.

A competing applications group assumes or forces like needs for applicants. The formation of the group by Western Power assumes that Western Power understands the needs and requirements of all applicants in that group. In addition, the proposed changes contemplates that there will be circumstances where a shared network solution will be oversubscribed. This would indicate that the scope and shared solution was not fit for purpose and that such an outcome creates uncertainty and would also be contrary to the *Code objectives*. The proposed changes also indicate that in circumstances when the offered solution has been oversubscribed the access offers can be prioritised by date. Synergy submits that such an approach is similar to the first-come-first-served principal and that it would not better achieve the *Code objectives* unless it also contained an appropriate bypass mechanism as detailed in the *model application and queuing policy*.

Consequently, Synergy submits that the proposed changes create a new problem associated with oversubscription including uncertainty on how these applications will be processed to give effect to the *Code objectives*. Consequently Synergy submits that these changes do not meet the requirements of sections 5.7(a) and (b) of the Code and the *Code objectives*.

In summary, Synergy does not believe that the proposed arrangements for dealing with competing applications will improve market efficiency, be more workable or better achieve the *Code objectives*.

### **3.3 Deletion of queue concept**

Synergy does not support the proposal to delete the queue framework. Synergy believes that the current queue provisions, if consistently used in combination with the dormant application provisions and with the proposed formal enquiry stage, would be satisfactory to

overcome many of the existing problems with the queue and currently satisfies the *Code objectives*.

The queue provides a means whereby projects with the most advantageous commercial merit that best meets the *Code objectives* in the market is given priority and can come to fruition. This contrasts to the notion of the shared network offer that does not have the means to differentiate between projects on the grounds of commercial merit.

Synergy recognises that Western Power may be exposed to the risk of challenge by applicants that are bypassed. However, Synergy considers that this risk is manageable for Western Power under the current legislative framework provided Western Power consistently and transparently follows due procedure.

### **3.4 Applicant specific solutions**

Synergy believes that, with the retention of the queue concept, the proposed “applicant specific solution” is unnecessary.

If a project is non-competing, a local connection offer can proceed without delay and without the need for any applicant specific solution.

If the application conflicts with other applications already in the queue, any applicant specific solution would only serve to:

- Frustrate such pre-existing applications, lodged by applicants who have made the investment to progress their applications at an appropriate (sufficiently early) stage of their projects; and
- Lead to objections from such other applicants, thereby delaying the approvals process whilst the objections are considered.

Synergy believes that the applicant specific approach, whereby the applicant is required to fully cover the cost of any augmentation, is likely to increase the overall network costs to the market and to Synergy’s customers. It is unreasonable that the cost of an augmentation and the costs borne by the applicant do not take into account the benefits that may accrue to other parties in the future on the basis that the augmentation has occurred.

### **3.5 Fees and costs**

Synergy is concerned about the proposed discretion for Western Power to remove an application from the application process for “unpaid study costs” (which also includes other levied fees) after 60 days.

Western Power has the ability to arbitrarily charge or levy fees on the customer for work that Western Power deems appropriate. In some cases the funds will be required up front to be drawn down by Western Power at their discretion. There is no recognition of the length of time the funds are held and account for the cost of money over what could be – by definition of the proposed process – a quite lengthy period.

Synergy believes that procedural fairness must be afforded to applicants. It would appear to be open to Western Power to refuse or delay in responding to reasonable queries, while the applicant faces the looming threat of being excluded from the process to its commercial detriment.



### **3.6 Withdrawal of applications**

Synergy is concerned about the proposed discretion for Western Power to effectively withdraw an application after 30 days in a wide range of circumstances in which the applicant may need to seek to reach agreement with Western Power on matters in dispute e.g. unresolved technical matters (“error in an application”), the terms of an access offer, the terms of a study offer (in 60 days) or fees levied (as discussed above). Synergy believes that procedural fairness must be afforded to applicants.

### **3.7 Changes to priority dates**

Synergy is concerned about the wide discretion Western Power seeks to refuse to amend an application in certain circumstances, placing applicants under threat of their priority date being unilaterally changed i.e. losing their place in the queue.

The circumstances of particular concern are the proposed provisions of clause 24A.3 in relation to amendments sought to be made to application (whether at the preliminary access offer stage or later in the process).

Again, Synergy believes that procedural fairness must be afforded to applicants.

### **3.8 Timeliness**

Synergy is not satisfied that the proposed variations to the AQP will improve timeliness.

The current queue provisions, if consistently used in combination with the dormant application provisions and with the proposed formal enquiry stage, would be satisfactory to overcoming many of the existing delay problems.

### **3.9 Transfers and modifications**

Synergy does not believe that the process employed under clause 10.1 of the proposed AQP, whereby an applicant may make an electricity transfer application to select a different reference service or to modify a non-reference service, sufficiently caters for the franchise market.

Clause 10.4 requires that an applicant make a connection application before materially changing any of the characteristics of connected generating plant. It is possible for a customer to modify generation plant without the knowledge of the retailer responsible for the connection point; as mentioned earlier in this submission, PV installations occur without Synergy’s knowledge.

### **3.10 Connections**

The process proposed by Western Power does not cater for the franchise market. Currently, new connections for non-contestable customers are requested via a New Connections Service Order under the Communication Rules, which constitutes a connection application under the AQP.

Clause 16.4 (a) of the proposed AQP refers to a builder seeking temporary supply. Western Power’s own portable builders supply scheme does not comply with this clause as currently no connection application is made under the AQP for this scheme. Under the Portable Builders Supply Scheme contractors connect to the network and move the associated meter from location to location without advising either the retailer or Western Power. It is noted that Western Power intends to phase out this scheme in 2011 because it is contrary to the AQP and the *standard access contract*.

## 4 Recommendations

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In summary, Synergy advises the Authority that:

- The proposed changes to the AQP are a paradigm shift. The Code fundamentally is there to ensure that the network supports investment, business and economic development. The proposed change shifts this focus and has the effect of customers accommodating the needs of the network and the *service provider*.
- It is important to ensure that the ineffective application of the current queuing and bypass framework is not used to support a paradigm shift especially when such a shift does not demonstrate how it better and more effectively achieves the objectives of the Code, as required by the Code;
- The proposed changes to the AQP appear to be based on a constrained network policy. It is widely understood and accepted that constrained network policies are network centric and, by their very nature, are designed to accommodate the interest of the *service provider*. Synergy has difficulty understanding how a network centric policy will deliver an effective access regime, including how it could better or more effectively promote business efficiency, competition and efficient investment. There has been insufficient consultation on this very important matter which is also fundamental to the Authority's determination of the proposed changes. This is the fundamental reason why the model policies in the Code contain a queue and bypass framework. It is this framework that gives effect to section 5.7(a) of the Code and the *Code objectives*.
- Any policy that does not contain a practical framework to accommodate the interests of the *service provider* and of *users* and *applicants* (customers) cannot by its very nature give effect to section 5.7(b) of the Code and enable *users* and *applicants* to understand how the AQP will operate. Synergy still has many queries on how these changes will operate and is concerned that these changes create uncertainty and will encourage disputes;
- Synergy submits that the current AQP meets the requirements of the Code and the *Code objectives* and for the reasons stated above cannot understand how the proposed changes better or more effectively achieve the *Code Objectives*. Consequently, Synergy urges that the Authority, in making its determination, considers whether the proposed changes better or more effectively meet the *Code objectives*.
- The proposed changes have not been developed under a framework where the stated outcomes can be tested or demonstrated. Consequently, Synergy submits that it is reasonable for the Authority to also consider whether the Code would be capable of certification as an effective access regime under the Trade Practices Act if the proposed changes to the AQP were incorporated into the *model applications and queuing policy*.

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