

Final Decision on Proposed Variations to Western Power's Access Arrangement for 2009/10 to 2011/12: Applications and Queuing Policy

Submitted by Western Power

1 April 2011

Economic Regulation Authority



WESTERN AUSTRALIA

A full copy of this document is available from the Economic Regulation Authority website at www.erawa.com.au.

For further information, contact:

Economic Regulation Authority
Perth, Western Australia
Phone: (08) 9213 1900

© Economic Regulation Authority 2011

The copying of this document in whole or part for non-commercial purposes is permitted provided that appropriate acknowledgment is made of the Economic Regulation Authority and the State of Western Australia. Any other copying of this document is not permitted without the express written consent of the Authority.

Contents

FINAL DECISION	1
REASONS	3
Mid Period Variations to an Access Arrangement	3
Western Power's Proposed Amendments to the Access Arrangement	4
Assessment of Advantages and Disadvantages of Varying Access Arrangement	5
Requirements of the Access Code	5
Western Power's Assessment	5
Submissions to the Authority	6
Considerations of the Authority	7

FINAL DECISION

1. On 23 December 2010, the Economic Regulation Authority (**Authority**) received a proposal from Western Power to vary Appendix 1 of its current access arrangement, the Application and Queuing Policy (**AQP**), under section 4.41A of the Electricity Networks Access Code 2004 (**Access Code**).¹ Sections 4.41A to 4.45 of the Access Code allow Western Power to propose (mid-period) revisions to vary its approved access arrangement during the access arrangement period and sets out the procedure for the Authority to follow when considering such revisions to an access arrangement.
2. Western Power's current access arrangement covers a three year access arrangement period from 2009/10 to 2011/12 and was approved by the Authority in January 2010, with the access arrangement becoming effective on 1 March 2010.
3. As the proposed changes are material, the Authority undertook public consultation as provided for under section 4.34(a) of the Access Code. As part of this consultation, the Authority prepared an issues paper on the variation proposal to assist interested parties in understanding Western Power's proposal.² The invitation for submissions was published by the Authority on 31 January 2011 with a closing date for submissions of 28 February 2011. All submissions received have been published on the ERA's website. Submissions were received from the following parties:³
 - ERM Power Limited;
 - Moonies Hill Energy Pty Ltd;
 - Verve Energy;
 - Synergy;
 - Griffin Energy; and
 - Pacific Hydro Pty Ltd.
4. Under section 4.42 of the Access Code, the Authority is required to determine whether the advantages of varying the access arrangement outweigh the disadvantages, in particular the disadvantages associated with decreased regulatory certainty and increased regulatory cost and delay.
5. The Authority's public consultation has identified some important issues, some of which appear not to have previously been raised by interested parties. The Authority recognises the need for improvements to the current AQP. However, the Authority is cognisant that Western Power has not addressed the important issues raised in submissions. It also notes that it is only six months until the next access arrangement review process (**AA3**) commences. In these circumstances, and

¹ Western Power, 20 December 2010, Proposed mid-term revisions to the Applications and Queuing Policy (hereafter referred to as "**variation proposal**").

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

³ These submissions are available on the ERA website:
http://www.erawa.com.au/3/1140/48/electricity_access__access_arrangement_variations_.pm

pursuant to section 4.42 of the Access Code, the Authority is not persuaded, at this time, that the advantages of varying the access arrangement in advance of AA3 outweigh the disadvantages.

6. As a result, the Authority has determined not to vary the Applications and Queuing Policy in the approved Western Power's access arrangement. The Authority considers that a revised Applications and Queuing Policy should be assessed as part of the next access arrangement review, which will provide Western Power with the opportunity to consider the issues raised by interested parties during the Authority's public consultation, prior to submitting its proposed revisions to the access arrangement for AA3 in October 2011.

REASONS

Mid Period Variations to an Access Arrangement

7. An access arrangement details the terms and conditions, including prices, that apply to third parties seeking the use of regulated (covered) electricity networks.
8. Under the Access Code an approved access arrangement for a covered network continues in effect from the specified start date until the network ceases to be covered. The service provider responsible for the network is, however, required to periodically submit proposed revisions to the access arrangement, which the Authority is required to assess. Such periodic revisions coincide with defined access arrangement periods of three or more (typically five) years.
9. Further to the requirement for a service provider to submit periodic revisions to the access arrangement, the Access Code contains provisions that allow an approved access arrangement to be varied at other times, including during an access arrangement period. In particular, section 4.41A of the Access Code states:

Subject to section 4.42, if the service provider proposes revisions other than when it is required to do so under this Code and in circumstances where sections 4.38 [“Revision of price control or pricing methods during an access arrangement period”] and 4.41 [“Revision of access arrangement if Code is amended”] do not apply, the Authority may by notice to a service provider vary its access arrangement in accordance with the proposed revisions.
10. Sections 4.42 to 4.44 of the Access Code outline the procedure for amendments to an access arrangement under sections 4.41 and 4.41A of the Access Code.
 - 4.42 Before giving a notice under section 4.41 or 4.41A, the Authority must determine whether the advantages of varying the access arrangement under section 4.41 or 4.41A (as applicable) outweigh the disadvantages, in particular the disadvantages associated with decreased regulatory certainty and increased regulatory cost and delay.
 - 4.43 Before giving a notice under section 4.41 or 4.41A, the Authority:
 - (a) must consult the public under Appendix 7, unless, in the Authority’s opinion, the proposed variations are not material and will not result in a material change to a reference tariff, a reference service, a standard access contract or the rights of any applicant, in which case the Authority may consult the public under Appendix 7; and
 - (b) must consult the service provider.
 - 4.44 The Authority must publish a notice given under section 4.41 or 4.41A.
11. Importantly, section 4.41B of the Access Code specifies that, in considering and implementing revisions under section 4.41A, the Authority is not obliged to undertake a complete review of the access arrangement as would occur with proposed revisions that are periodically required to be submitted by the service provider.

Western Power's Proposed Amendments to the Access Arrangement

12. Section 5.1(g) of the Access Code requires an access arrangement to include an applications and queuing policy. Sections 5.7 to 5.11 of the Access Code detail the provisions relevant to an applications and queuing policy. Western Power's current (AA2) access arrangement includes an applications and queuing policy at Appendix 1. The policy sets out the principles and processes for applying for and obtaining a network service, and for determining applicants' priority for access to services where there is insufficient capacity on the network to meet all applications for services.
13. On 23 December 2010, the Authority received a proposal from Western Power to vary its applications and queuing policy during the current (AA2) access arrangement period.⁴ This variation proposal was submitted under the provisions of section 4.41A of the Access Code. Western Power advised that it was seeking to vary its current applications and queuing policy to address a range of issues that have been identified by applicants, other stakeholders and regulatory bodies.⁵ Key changes include:
- formalisation of the enquiry process including making it compulsory to lodge an "enquiry" prior to lodging an "application";
 - introduction of "competing application groups" which is defined as "a number of applications that are competing for access to limited network capacity and have been grouped together by Western Power";
 - replacement of the existing queuing concept (i.e. the first-come first-served principle) with "competing application groups";
 - facilitation of applicant-specific solutions where connection is achieved by works funded solely by the applicant and/or an operational solution only involving the applicant;
 - amendments to the existing bypass and dormant application provisions in the AQP by detailing the circumstances under which applications will be deemed to be withdrawn by virtue of an act or omission on the part of an applicant; and
 - the introduction and revision of a number of fees and charges associated with the queuing and applications process (enquiry fee, application fee, preliminary offer processing fee, preliminary acceptance fee and applicant-specific study costs).

⁴ Western Power's proposal is available on the Economic Regulation Authority website:
http://www.erawa.com.au/3/1140/48/electricity_access__access_arrangement_variations_.pm

⁵ Western Power, Variation proposal, section 1.

Assessment of Advantages and Disadvantages of Varying Access Arrangement

Requirements of the Access Code

14. Under section 4.41A of the Access Code, if a service provider proposes mid period revisions to its access arrangement, the Authority may issue a notice to vary the access arrangement in accordance with proposed revisions. Before giving a notice under section 4.41A, section 4.42 of the Access Code requires the Authority to determine whether the advantages of varying the access arrangement outweigh the disadvantages, in particular the disadvantages associated with decreased regulatory certainty and increased regulatory cost and delay.

Western Power's Assessment

15. Western Power advises that it is seeking to vary its current applications and queuing policy to address a range of issues that have been identified by applicants, other stakeholders and regulatory bodies.⁶
16. Western Power considers that its proposal to vary the applications and queuing policy during the current (AA2) access arrangement period will:
- lead to more efficient development of generation plant and more strategic development of the Western Power network;
 - be more equitable than the current process;
 - promote competition and therefore better meet the Access Code objective;
 - manage the transition of existing projects by adopting and further developing the concept of "competing applications" that already exists under the current applications and queuing policy; and
 - better accommodate future market changes, if they occur.
17. Western Power indicates that it consulted with stakeholders on initial proposed revisions to the applications and queuing policy, with the consultation process commencing in August 2009 and concluding in November 2010.⁷ The initial proposed revisions that formed the basis of the consultation are outlined in section 2.6.1 of Western Power's variation proposal.
18. Western Power notes the Authority has previously stated that the "...first-come first-served queuing rules under the applications and queuing policy, in combination with the structure of the wholesale electricity market and reserve capacity mechanism, do not serve to promote efficient investment in the electricity network".⁸
19. Western Power notes the Australian Energy Market Commission's final report on the Review of Energy Market Frameworks in light of Climate Change Policies,

⁶ Western Power, Variation proposal, section 1.

⁷ Western Power, Variation proposal, section 2.5, section 2.6.1

⁸ Western Power, Variation proposal, section 2.3. See also Economic Regulation Authority, 13 August 2009, Draft Decision on Proposed Revisions to the Access Arrangement for the South West Interconnected Network, p 288.

which made comments and recommendations relevant to connection and access agreements, including Western Power's applications and queuing policy. Specifically, "[Western Power's] connections applications process should be modified in a number of ways, through the release of more information to the market, segregating applications in the connections queue on a regional basis, and potentially restructuring the connection application charge regime. The release of queue information is already under consideration, and should be implemented quickly."⁹

Submissions to the Authority

20. Three submissions made by interested parties to the Authority were broadly supportive of the proposed changes.
21. ERM Power Limited submitted that it was supportive of the change from a first-come, first-served queue principle to allow applicants that are prepared to fund network augmentation necessary for their connection to be promoted to the head of the queue and have their application dealt with in a timely manner.
22. Moonies Hill Energy Pty Ltd submitted that it was supportive of the introduction of a two-stage process (enquiry and application phase) that allows potential entrants to obtain initial information before proceeding to the application phase. However, Moonies Hill Energy considers the enquiry stage needs to "value add" and not be an additional cost to potential entrants with little or no additional information provided to applicants. It considers the policy needs to be amended to be more specific and mandatory in terms of information that Western Power provides in the enquiry stage.
23. Verve Energy submitted that it is was supportive of the proposed variation to Western Power's AQP, but concerned that the introduction of a compulsory "enquiry" phase could lead to delays. Verve Energy considers the policy should prescribe a maximum timeframe that Western Power can take to process an enquiry and that there should be an appeals process in situations where an applicant is aggrieved by the withdrawal of an application by Western Power. Verve Energy also identified a number of detailed issues for further consideration.
24. The submissions from Pacific Hydro Pty Ltd, Griffin Energy and Synergy all raised significant concerns.
25. Pacific Hydro considers that removal of the first-come first-served queue concept introduces unacceptable sovereign risk to existing queue participants and that the proposed variations put current investment at risk, represent increased regulatory uncertainty and will increase regulatory costs and delay future investments.
26. Griffin Energy submitted that the fundamental problems of transmission system adequacy (including appropriate application of the New Facilities Investment Test) must be addressed before the current or any new AQP is able to be effective. Griffin Energy also considers that the competing applications group will not result in an improvement from the first come first served basis and proposes an alternative method whereby project proponents are required to make a series of payments to

⁹ Western Power, Variation proposal, section 2.4.

remain in the first-come first-served queue. Whilst Griffin Energy considers that generally the proposed AQP will have merit over the existing AQP, more fundamental problems relating to connecting efficient new generation facilities need to be addressed first and that any changes should be deferred until AA3.

27. Synergy considers the proposed changes result in an assessment on the basis of “shared access offers” focussed on network optimisation which has the potential to lead to a sub-optimal outcome for the market as a whole. 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.
28. Synergy also submitted that the proposed changes to the AQP would mean it would be unlikely for the Code to be certified as an effective access regime under the *Trade Practices Act* if the proposed changes were incorporated into the model applications and queuing policy. Synergy considers that the bypass provisions in the current AQP in combination with the dormant application provisions and the proposed formal enquiry stage would be effective and satisfactory to overcome many of the existing problems with the queue. Synergy submitted many other concerns, including that there has been insufficient consultation.

Considerations of the Authority

29. The Authority is required to determine whether the advantages of varying the access arrangement outweigh the disadvantages, in particular the disadvantages associated with decreased regulatory certainty and increased regulatory cost and delay.
30. The Authority considers that the management of the network access queue is important to ensure delays in accessing the network are minimised. However, management of the access queue is only one element of the factors affecting efficient investment in the electricity network. As noted in the Authority’s draft and final decision on the AA2 access arrangement proposals, the Authority considers that the first-come first-served queuing rules under the current applications and queuing policy, in combination with the structure of the wholesale electricity market and reserve capacity mechanism do not serve to promote efficient investment in the electricity network.
31. The Authority considers that there are matters that need to be addressed through the wholesale electricity market mechanisms and that the queuing policy cannot be resolved solely through the queuing rules in the applications and queuing policy. Rather, it requires consideration in a broader review of regulatory arrangements for the electricity market that considers network planning processes, the functioning of the wholesale electricity market, the treatment of new investment under the Access Code, and the queuing rules. The Authority has previously recommended that the issue be addressed by the Office of Energy as the key policy-making body in the wholesale electricity market.
32. However, the Authority recognises that there is a need for improvement to the current AQP which does not need to be delayed until a broader review is conducted. The AQP should reflect the best policy available under the current operating environment to promote efficient investment in the electricity network.
33. The Authority notes that Western Power engaged in a consultation process prior to submitting its proposed variations to its applications and queuing policy. However,

taking into account the submissions received by the Authority on Western Power's proposed variation to the AQP, the Authority is concerned with the serious issues and concerns raised by interested parties and considers further consultation by Western Power with interested parties is warranted.

34. As the next access arrangement review is required to commence no later than 1 October 2011, in approximately 6 months time, the Authority considers that any variations to the AQP should be assessed as part of that review. In the meantime, the Authority considers Western Power should address the concerns raised by interested parties during the Authority's consultation on the proposed variations to the access and queuing policy.