

**SUBMISSION TO THE
ECONOMIC REGULATION AUTHORITY**

**Western Power's Proposed Revisions to the
Access Arrangement**

November 2011

Executive Summary

Matter

The Electricity Networks Access Code 2004 (**Code**) establishes under an access arrangement the framework for access to distribution and transmission network services in Western Australia. The framework includes access to Western Power's covered network, and the regulation and funding of augmentations to this covered network.

Western Power's current access arrangement (**AA2**) was approved by the Economic Regulation Authority (**Authority**) in January 2010 with a start date of 1 March 2010. On 7 October 2011 the Authority published and invited comments on Western Power's Proposed Revisions to the Access Arrangement (**PRAA**) developed under the Code. In addition, the Authority has published an issues paper and conducted a public forum to help inform interested parties about Western Power's proposed revisions, the review process and some of the key issues to be addressed by the Authority in making a determination on the revisions.

Subject to the Authority's approval, the PRAA will apply from 1 July 2012 to 30 June 2017 (**AA3**).

Context

The role of the Authority is to determine whether Western Power's proposed revised access arrangement complies with the requirements of the Code. In doing so, the Authority is guided by specific provisions of the Code relating to particular elements of the access arrangement, as well as the Code objective of promoting economically efficient investment in and operation and use of electricity networks and services of networks in Western Australia, in order to promote competition in markets upstream and downstream of the networks.

Scope

Synergy in providing its comments has relied on its practical experience and has focused primarily on the efficient operation and use of Western Power's electricity networks and services of networks.

Key issues

Synergy has provided comments on particular key issues associated with:

- Application and queuing policy
 - Reference services
 - Standard access contract
 - Smartgrid proposal
 - Customer survey
 - Service standard adjustment mechanism
 - Investment Proposal
 - D Factor Scheme
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Recommendations Synergy recommends that the Authority conduct a thorough assessment of Western Power's total revenue requirement. Further a holistic assessment of the proposed changes in context of the efficient operation and use of Western Power's electricity networks and services of networks is required. Synergy has highlighted in this submission areas in the PRAA where proposed changes appear to result in an inefficient outcome. In addition, Synergy recommends more clarity on how liability is determined and risk allocated. Synergy requests the Authority to review the PRAA in the context of assigning the risk to the party best able to manage it.

INTRODUCTION

Synergy is pleased to provide the following specific comments to the Authority on the PRAA. As a general introductory comment Synergy has been very pleased by the level of consultation and cooperation shown by Western Power in the preparation of its PRAA. While some issues do remain, Western Power has made a significant effort to explain some of the more complicated aspects of its PRAA. Western Power also showed great regard to the wishes of Synergy's customers when devising changes to the bi-directional tariff. Unless otherwise specified, words in *italics* in this submission have the same meaning as in the Code.

APPLICATION AND QUEUING POLICY

Constrained Connection Policies

On the 23 December 2010 the *Authority* received a proposal from Western Power to vary the *Application and Queuing Policy (AQP)* in its Access Arrangement. At the time Western Power indicated the proposed changes were required to address a range of issues that were identified by applicants, other stakeholders and regulatory bodies.

The Authority conducted a public consultation¹ on the proposed changes. On 28 February 2011 Synergy provided the Authority with a submission raising a number of concerns associated with the changes to the AQP proposed by Western Power.

The Authority in its decision published on 1 April 2011 decided not to vary the AQP in Western Power's approved Access Arrangement². In making its decision the Authority relevantly pointed out the next access arrangement review was scheduled to commence in approximately 6 months time and that Western Power, leading up to this review, should address the concerns raised by interested parties during the Authority's public consultation.

Synergy has reviewed Western Power's current proposed changes to the AQP as part of the PRAA and notes that the current proposed changes to AQP have unfortunately not changed from the proposal Western Power previously provided to the Authority on 23 December 2010. Synergy also does not believe that Western Power has addressed the concerns that Synergy raised in the submission that was provided to the Authority on 28 February 2011. Consequently, the concerns that Synergy raised in its previous submission to the Authority continue to apply to Western Power's current proposed changes to the AQP under the PRAA³.

¹ Commencing on 31 January 2011.

² Approved on 19 January 2010.

³ Synergy will not reproduce all these concerns in this submission and refers the Authority to Synergy's previous public submission on the AQP provided on 28 February 2011.

Synergy notes that Western Power in its PRAA also indicates:

In proposing revisions to an access arrangement there may be a range of outcomes which conform with the Access Code requirements. There will not be a uniquely correct outcome, as reasonable minds may differ on outcomes that satisfy those requirements. Subject to satisfying the Access Code requirements, it is for Western Power to determine the manner in which it will satisfy them.

The Authority must first assess whether Western Power's proposed revisions satisfy the Code requirements; it is not permissible for the Authority to move straight to a different, preferred outcome which may also satisfy the Access Code's requirements. It is only if Western Power's proposed revisions do not satisfy the Code requirements that the Authority may substitute its own assessment of what the revisions should be.

Synergy submits that the PRAA does not demonstrate how the proposed changes to the AQP satisfy the *code objectives*, and in particular 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; "

The proposed changes to the AQP, which would provide Western Power with absolute discretion to constrain connection and *covered services*, do not accommodate the interests of Synergy and its customers. The effect of the changes would entitle Western Power to connect Synergy's customers but not provide the service requested by the customer.

Constraints will always occur in any type of network. However a strategy of constraining services will not deliver the *code objectives*, particularly efficient investment in services of networks in order to promote competition in markets upstream and downstream of the network. Therefore, Synergy submits that it would be more appropriate to deal with network constraints through economic initiatives and price signals.

The Code also relevantly 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 the Competition and Consumer Act 2010.; 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.

Consequently, Synergy submits that it is reasonable for the Authority to also consider the proposed AQP changes in light of whether the Code would remain capable of certification as an effective access regime under the Competition and Consumer Act if the proposed changes to the AQP were incorporated into the *model applications and queuing policy*. Synergy cannot see how a Code which has a *model applications and queuing policy* framework based on constraining services provided to people seeking to connect would be capable of certification as an effective access regime.

Synergy submits that the current AQP meets the requirements of Synergy, the Code and the *code objectives*. For the reasons stated above and in its previous submission to the Authority. Synergy submits the proposed changes under the PRAA do not achieve the *code objectives*.

For example, under the Code the definition of *covered services* includes a *connection service*, which means the right to connect facilities and equipment at a connection point. This means that an access seeker can invoke the arbitration process contained in Chapter 10 of the Code in the event of a dispute over terms and conditions for interconnection with a *covered network*. This right of appeal feature is another fundamental element that underpins the certification of the Western Australian access regime as an effective regime. However, it now appears that Western Power's proposed changes to the AQP, based on constraining *services*, may deprive customers of the ability to effectively have a dispute on this matter heard.

Further, if so, the effect of the proposed changes to the AQP may also be contrary to the anti hindering provisions under section 115 of the Electricity Industry Act 2004, assuming they apply. Alternatively, if they do not apply, in Synergy's submission the lack of an appeal mechanism also weighs against the regime continuing to meet the certification requirements of the Competition and Consumer Act.

Reasonable Notifications Affecting the Transfer of Electricity at a Connection Point

The current AQP clearly delineates between two application types:

1. A connection application, which may be submitted by anyone who wishes, subject to paying the cost of any works, to connect equipment and facilities.
2. A transfer application, to effect the transfer of electricity for a *connection point* on a *User's access contract*.

Consequently, the AQP relevantly requires that a transfer application to effect the flow of electricity through a *connection point* on an *access contract* may only be submitted by a market participant⁴. Essentially, this means the holder of an *access contract* has the legal right, and may initiate the flow of electricity through the *connection point*, only by fulfilling the requirements and obligations outlined in the *access contract*.

In Synergy's experience however, Western Power will frequently perform works⁵, connect a retail customer and commence the flow of electricity without the retailer having knowledge of what has occurred. This situation often puts the retailer in a position in which it is in breach of its *access contract* because the retailer has not, contrary to clause 3 of the *standard access contract*, ensured the correct *reference service* and metering arrangements have been put in place⁶. It is also important to note that under an *access contract* the transfer of electricity to a *connection point* cannot legally occur unless the *User* or retailer has made and Western Power has approved a transfer application under the AQP.

⁴ For a connection point on their *access contract* under the Electricity Industry (Wholesale Electricity Market) Regulations 2004.

⁵ That sometimes also results in permanent reconfiguration of a network,

⁶ Synergy understands that this approach works in the NEM because the network operator has an access contract directly with the consumer and the consumer is directly liable to the network operator in respect of the use of

Western Power's practice of performing works and energising⁷ retail customers' without notice to the retailer also creates commercial issues and additional costs arising from the retailer implementing remedial actions. These costs are especially significant in circumstances where Western Power has connected a customer and effected the flow of electricity to a consumer who has no supply or generation contract with Synergy but whom Synergy becomes the de-facto supplier under the notional wholesale meter arrangements.

Synergy submits that this practice is contrary to the *code objectives* and sections 5.7(a) and (b) of the Code. Therefore, in order to mitigate the exposure to retailers Synergy submits the AQP must contain a mechanism that requires Western Power to notify a *User* in respect of a connection application that has been made for a *connection point* on the *User's access contract*. Synergy's liability to Western Power under the access contract is fundamentally dependent on this information. Further, there should be amendments to the *standard access contract* to ensure Western Power bears the costs incurred by retailers where Western Power fails to either notify retailers or energises a *connection point* without receiving a transfer application from a retailer.

Synergy submits that this change is necessary for the *Standard Access Contract* to be reasonable, sufficiently detailed and commercially workable⁸; and for the AQP to be sufficiently detailed to enable *users* and *applicants* to understand in advance how the AQP will operate⁹.

REFERENCE SERVICES

Eligibility Criteria Contrary To Code Objectives

Synergy notes that all of the *reference services* have been modified to include conditions that have the effect of giving Western Power a discretionary ability to refuse access to *reference services*. Synergy submits this is not warranted and is contrary to the *code objectives* and section 5.2(b) and (c) of the Code:

"5.2 An *access arrangement* must:

- (a) specify at least one *reference service*; and
- (b) specify a *reference service* for each *covered service* that is likely to be sought by either or both of:
 - (i) a significant number of *users* and *applicants*; or
 - (ii) a substantial proportion of the market for *services* in the *covered network*;
- (c) to the extent reasonably practicable, specify *reference services* in such a manner that a *user* or *applicant* is able to acquire by way of one or more *reference services* only those elements of a *covered service* that the *user* or *applicant* wishes to acquire; and..."

the connection point and the transfer of electricity through the connection point. This is not the case with the West Australian access regime.

⁷ Effecting the flow of electricity through the connection point.

⁸ As required by section 5.3 of the Code.

⁹ As required by section 5.7(a) and (b) of the Code.

Synergy submits that this change does not reflect only those elements of the *covered service* that Synergy and its customers are seeking. Western Power in its PRAA has blurred the lines between a *reference service* that must be provided to *Users* and the contractual requirements for the use of a service.

Under the Code the *reference service* must represent only the service that the *Users* want. Synergy submits that Western Power cannot by contract change the constituent of the services and narrow the scope of the services from what *Users* want.

The *reference services* described in the PRAA should clearly be a description of the services as required by section 5.2 of the Code. Consequently, Synergy submits that the eligibility criteria be removed from the service description and Western Power properly describes the *reference services* that must be provided under the Code.

Further Synergy submits that the eligibility criteria cannot be part of a *reference service* because its design and purpose is to derogate from the services a *User* requires or seeks and therefore, it is not consistent with the Code. That is why a *User's* right to a *reference service* should not be conditional or linked to matters such as whether the terms of an *access contract* are materially different or an exemption under the *Technical Rules* apply or the applicable service standard benchmark. Therefore, Synergy submits that all the *reference services* in the PRAA do not meet the requirements of section 5.2 of the Code.

In addition, Synergy also submits that such an approach would not meet the requirements of section 5.3 of the Code to provide the basis of a commercially workable *access contract*. Further in regard to this it is not clear to Synergy whether the *Standard Access Contract* proposed in the PRAA is based on section 5.4(a) or (b) in the Code. However, it appears to Synergy that the *Standard Access Contract* in the PRAA has been developed under section 5.4(b) of the Code. Therefore, Synergy submits that section 5.4(b) applies and requests that the Authority give regard to the *model standard access contract* in determining whether the *standard access contract* is consistent with section 5.3 and the *code objective*.

Based on discussions with Western Power Synergy believes that the PRAA may not actually represent what Western Power was intending to achieve with this proposed change.

Bi-Directional Services

Section 5.2(b) of the Code requires the PRAA to contain a *reference service* that is likely to be sought by a significant number of *users* and *applicants* or a substantial portion of the market. Under sections 5.2(b), (c) and (d) of the Code Western Power must, in its PRAA;

"(b) specify a *reference service* for each *covered service* that is likely to be sought by either or both of:

(i) a significant number of *users* and *applicants*; or

(ii) a substantial proportion of the market for *services* in the *covered network*;

and

(c) to the extent reasonably practicable, specify *reference services* in such a manner that a *user* or *applicant* is able to acquire by way of one or more *reference services* only those elements of a *covered service* that the *user* or *applicant* wishes to acquire; and

- (d) for the *covered network* that is *covered* under section 3.1 - specify one or more *reference services* such that there is both:
- (i) a *reference service* which enables a *user* or *applicant* to acquire an *entry service* at a *connection point* without a need to acquire a corresponding *exit service* at another *connection point*; and
 - (ii) a *reference service* which enables a *user* or *applicant* to acquire an *exit service* at a *connection point* without a need to acquire a corresponding *entry service* at another *connection point*."

In addition, for each *reference service* under the *standard access contract* section 5.3 of the Code requires that;

"A *standard access contract* must be:

- (a) reasonable; and
- (b) sufficiently detailed and complete to:
 - (i) form the basis of a commercially workable *access contract*; and
 - (ii) enable a *user* or *applicant* to determine the value represented by the *reference service* at the *reference tariff*."

In April 2011 Western Power conducted a review of its bi-directional services and consulted Synergy on the development of new bi-directional services. Synergy supports the bi-directional service and tariff structure described in Western Power's PRAA. Synergy applauds the level of review and consultation conducted by Western Power.

Synergy does not however support these services being extended to the connection of battery and electrical vehicle systems. While consultation on bi-directional services generally was good, Synergy was not consulted on these systems including the impact of including battery and electric vehicles systems on these bi-directional services. In addition, Synergy has already advised Western Power of its concerns and the outstanding matters that need to be addressed before battery and electric vehicles systems are included on these services.

These concerns and issues remain and have still to be addressed by Western Power. Synergy submits that the various connection configurations and their impacts for battery and electric vehicle systems have not been fully understood and could potentially have adverse impacts on retailers and government policy, especially in circumstances where retailers do not have knowledge of where these systems are located¹⁰. Consequently, this puts retailers in a position where they are in breach of clause 3 of the *standard access contract*, because retailers do not have the necessary information to ensure the correct retail contract, *reference service* and metering arrangements have been put in place.

In light of the connection issues experienced with photo voltaic systems Synergy submits that there needs to be further work done to understand Western Power's process of how such battery and electric vehicle systems connect to the network and are permitted by Western Power to operate simultaneously with other systems such as photo voltaic systems, including what this means in terms of system peak and increasing the cost of network augmentations.

¹⁰ As is currently the case for some photo voltaic systems.

Synergy also needs to understand the customer, commercial and contractual impacts of connecting and operating battery and electric vehicle systems¹¹. Synergy envisages that without further work in this area being conducted to fully understand the issues customers could be adversely impacted. For example, a number of customers, contrary to the AQP, have breached their supply contract by getting Western Power's approval to connect, energise and operate bi-directional equipment on the network. These arrangements are often implemented between the customer and Western Power without Synergy's knowledge and also cause Synergy to breach its *access contract* with Western Power.

The photo voltaic connection process has highlighted that Western Power's connection and notification procedures have some shortcomings¹². In addition, further work needs to be done on the cost of connections and how Western Power will approve, connect and energise battery and electric vehicle systems, including what type of connection configuration it will permit and how it will notify the retailer.

In addition, Synergy will also require clarity from the Office of Energy on whether a customer will be entitled to a feed-in-tariff payment for electricity exported into the network, as recorded on Western Power's meter, from a battery. It is also not clear to Synergy how Western Power will track the location of these systems and how their meters will differentiate electricity that is exported from a photo voltaic system and electricity that is exported from a battery including, how Synergy will receive this information under the Metering Code Communications Rules.

It is important to note that Synergy has not requested a bi-directional service for battery and electric vehicle systems. Synergy's request for a bi-directional service in the second access arrangement was intended to meet the requirements of Synergy, its customers and state government policy¹³ for photo voltaic systems. Synergy's requirement for a bi-directional service in this regard has not changed.

In addition, section 5.2(c) of the Code requires the PRAA to allow a user to acquire by way of one or more *reference services* only those elements of a *covered service* that the *user* wishes to acquire. Synergy is the exclusive service provider to the residential market in the *SWIS*. Therefore, Synergy submits the Authority must, in the absence of any other compelling evidence of significant need, give regard to Synergy's concerns associated with battery and electric vehicle systems and the connection issues associated with photo voltaic systems and exclude battery and electric vehicle systems from the bi-directional services proposed in the PRAA.

Synergy will make a separate request for a *reference service* to cover battery and electric vehicles systems once the policy, commercial, connection process and technical requirements have been clarified and there is a significant demand from customers to connect battery and electric vehicle systems.

¹¹ Especially if these systems are operating simultaneously with photo voltaic systems.

¹² A key reason for this is because there is no independent mechanism or audit process that ensures Western Power complies with its *Access Arrangement*.

¹³ The key reason why the previous bi-directional service was not implemented was because it operated contrary to state government policy and Synergy's ability to meet those objectives.

During the consultation with Western Power in April 2011 Synergy indicated that it would require time to make system changes to implement the four new *reference services* on its system. This need for time to make system changes is reflected in Western Powers PRAA¹⁴ and at that time Synergy indicated that it would require 6 to 8 months to make changes to implement any new *reference service*. However, the recent introduction of the federal government's clean energy initiative will impact Synergy's system development resources. Synergy estimates that it will now require 10 to 12 months in order to make system changes before it can implement the proposed bi-directional *reference services*. Therefore, Synergy requests the Authority and Western Power to give regard to this implementation requirement when determining the date these new bi-directional services will take effect.

STANDARD ELECTRICITY TRANSFER ACCESS CONTRACT

Section 5.3 of the Code requires:

"5.3 A *standard access contract* must be:

- (a) reasonable; and
- (b) sufficiently detailed and complete to:
 - (i) form the basis of a commercially workable *access contract*; and
 - (ii) enable a *user* or *applicant* to determine the value represented by the *reference service* at the *reference tariff*."

In addition, the Authority in its Issues Paper¹⁵ has indicated that it will give consideration, in view of practical experience, to whether the proposed terms and conditions of the *standard access contract* are consistent with the requirements of the Code.

It is important to recognise the *Standard Access Contract* represents the minimum standards and terms for an *access contract*. Therefore, the Code relevantly requires:

"2.4A Subject to this Code and to—

- (a) an *applications and queuing policy* in an *access arrangement*; and
- (b) the *ringfencing objectives* and any *ringfencing rules* approved for a *network* by the *Authority* under Chapter 13; and
- (c) any applicable *technical rules*, a *service provider* (including Electricity Networks Corporation) and a *user* or *applicant* may negotiate regarding, and may make and implement, an *access contract* for *access* to any *service* (including a *service* which differs from a *reference service*) on any terms (including terms which differ from a *standard access contract*).

{Note: This provision confirms the Code's central emphasis on negotiated outcomes. The express reference to Electricity Networks Corporation confirms that such negotiation and agreement is within its functions under section 41(b) of the *Electricity Corporations Act 2005*.}

¹⁴ PRAA, Appendix Z – Ernst & Young Report – Bi-Directional Tariff Reference Services and Associated Tariffs.

¹⁵ Issues Paper on Western Power's Proposed Revisions to the Access Arrangement for the Western Power Network, 7 November 2011 (**Issues Paper**).

"2.8 Without limiting section 2.7, a *service provider* must:...

- (b) negotiate in good faith with an *applicant* regarding the terms for an *access contract*; and..."

In addition, Synergy submits that it is also important when considering the terms and conditions in the *standard access contract* give to give regard to section 2.4B. Especially, in circumstances in which the *standard access contract* defines the rights of parties associated with an event or subsequent to an event, such as a permanent reconfiguration, of a network but does not recognise that that the event was implemented or came into effect through means that is contrary to law.

"2.4B Section 2.4A does not—

- (a) permit a *service provider*, *user* or *applicant* to do anything which a *written law* prohibits; or
- (b) by implication limit the rights, powers or obligations of a *service provider*, *user* or *applicant*."

Basis of the Proposed Standard Access Contract

It is not clear in the PRAA whether Western Power's proposed *standard access contract* has been developed in accordance with section 5.4(a) or 5.4(b) of the Code. Synergy submits that it appears the proposed *standard access contract* in the PRAA has been developed under section 5.4(b) of the Code without any reference to the *model standard access contract* and has not reproduced without material omission or variation the *model standard access contract*. Therefore, Synergy submits that section 5.5(b) of the Code applies when making a determination on the proposed *standard access contract* under the PRAA. Synergy requests Western Power to make this clear in the PRAA.

Deletion of Connection Points

Synergy submits, in its practical experience, the terms in the proposed *standard access contract* in respect of deleting a connection point do not place a positive obligation on Western Power to effect such a deletion in accordance with the legal framework, knowledge of or a request by the retailer.

Synergy has suffered and continues to suffer financial loss and damages when Western Power permits a person¹⁶ to use a *connection point* on Synergy's *access contract* and does not act on a notification from Synergy to delete an entry or exit *connection point* from Synergy's *access contract*. Synergy has also suffered the converse of this scenario where a *connection point* has been deleted from its *access contract* without Synergy issuing any notification or instructions to do so under its *access contract* thus creating issues between Synergy and the customer under Synergy's supply contract with the customer. These incidents are complex and Synergy would welcome the opportunity to discuss them with Authority in detail. These incidents have not promoted the economically efficient operation of and use of the network and services of the network. It is important to note that if this situation is not satisfactorily addressed, the additional costs and liabilities that Synergy incurs due to the acts or omissions of the network operator will need to be passed on to all consumers.

¹⁶ Who does not have a supply or generation contract with Synergy.

Synergy notes that Western Power has proposed changes to clause 3.6 of the *standard access contract*. However, these changes do not address the incidents that have occurred in relation to the deletion of *connection points*. In addition, the proposed changes to clause 3.6 do not create an incentive for the network operator to effect a deletion only in accordance with the Customer Transfer Code¹⁷ or a retailer's notification under the *access contract*. In addition, it is also important to recognise that it is a retailer who holds the *access contract* with Western Power. Therefore the Customer Transfer Code, relevantly, only permits a retailer to make customer transfer requests to the network operator not a retail customer. This is contrary to what Western Power has proposed for clause 3.6 in the *Standard Access Contract*.

It is not reasonable for a retailer to be liable for an act or omission of the network operator, including inefficiencies in the network operator's internal processes, to effect the removal of a *connection point* from the retailer's *access contract*. In addition, the current terms and conditions in clause 3.6 of the *standard access contract* are not sufficiently detailed and complete to form the basis of a commercially workable *access contract*. This lack of clarity exposes retailers to loss or damage resulting from the acts or omissions of the network operator. To prevent this, the *standard access contract* should place a positive obligation on the network operator to effect a deletion only in accordance with the Customer Transfer Code or the retailer's instructions. Therefore, Synergy proposes that clause 3.6 should be changed to the following to address these issues and to recognise the operation of photo voltaic systems connected to the network:

"3.6 Deletion of a Connection Point"

- (a) The User* may give notice to Western Power* seeking to delete a Connection Point* from this Contract* ~~where:~~
 - ~~(i) the Customer* in relation to the Connection Point* has made a transfer request under the Customer Transfer Code*; or~~
 - ~~(ii) the Connection Point* will be added to another Access Contract* by some other means to that stipulated in clause 3.6(a)(i); or~~
 - ~~(iii) the Facilities and Equipment* in respect of the Connection Point* will be permanently Disconnected* from the Connection Point*.~~
- (b) If the User* seeks to permanently Disconnect* any Facilities and Equipment* at a Connection Point*, then the notice under clause 3.6(a) must be given to Western Power*:
 - (i) for Generating Plant* with a capacity greater than 30kVA at a Connection Point*, at least 6 months before the planned Disconnection*; and
 - (ii) for Consuming* plant (and Generating Plant* up to an including 30kVA) at a Connection Point*, in accordance with the applicable "model service level agreement" or "service level agreement" under the Metering Code* (as amended or substituted from time to time) ~~at least one month before the planned Disconnection*.~~

¹⁷ Electricity Industry Customer Transfer Code 2004.

- (c) If Western Power* receives a notice from the User* under clause 3.6(a), then it must ~~notify the User* that it accepts the deletion, and the date that the deletion takes effect, if:~~
- (i) ~~where Western Power* is required to effect~~ has successfully processed a Customer* transfer request in relation to the Connection Point* under the Customer Transfer Code* - delete the Connection Point* by the time the transfer is to take place under the Customer Transfer Code*; or
 - (ii) ~~where~~ the Connection Point* is required to be ~~has been~~ added to another Access Contract* by some other means - delete the Connection Point* as contemplated by that means; or
 - (iii) ~~where the User* has requested the deletion of the Connection Point* because the User* no longer has a contract with a Customer* or a Generator* at the Connection Point* - delete the Connection Point* by the time within which Western Power* is required to De-energise* the Connection Point* under this Contract*, any other contract or a Law*;~~ or ~~the Facilities and Equipment* in respect of the Connection Point* have been permanently Disconnected* from the Connection Point*, otherwise Western Power* may notify the User* that it rejects the deletion.~~
 - (iv) where the User* has given Western Power* a notice under clause 3.6(a) that complies with clause 3.6(b)(i) – by the time of the planned Disconnection*; or
 - (v) where the User* has given Western Power* a notice under clause 3.6(a) that complies with clause 3.6(b)(ii) – by the time the Disconnection* is required to take place under the applicable "model service level agreement" or "service level agreement" under the Metering Code*

and as soon as practicable notify the User* that it accepts the deletion, and the date that the deletion takes effect, otherwise notify the User* as soon as practicable that Western Power* rejects the deletion.

- (d) Subject to the Customer Transfer Code*, Western Power* must not delete a Connection Point* other than in accordance with a notice given by a User* under clause 3.6.
- (e) If Western Power* commits a breach of clause 3.6(d) in circumstances that constitute Wilful Default* it is liable to the User* for any damage caused by, consequent upon or arising out of the Wilful Default*. In this case, the exclusion of Indirect Damage* in clause 19.3 does not apply.
- (f) Notices under clause 3.6 may be issued and delivered in accordance with processes determined by mutual agreement of the Parties* (for example, without limitation, Build Pack* communications)."

In addition, Synergy submits amendments are needed to ensure Western Power is liable for the loss suffered by a retailer when Western Power breaches its obligations under this clause. Please see Synergy's comment below and proposed changes to the *standard access contract* to address this issue.

Provision of an Accurate List of Connection Point

A retailer may only supply electricity to a customer through a *connection point* on its *access contract*. Consequently, the provision of an accurate list of *connection points* on an *access contract* is fundamental to a retailer's business, to a commercially workable *access contract* and to a determination of the value and liabilities of a retailer for the *services* provided under the *access contract*. Without such a list, it is not possible for a retailer to determine at any given point in time who is taking electricity on its account. As a practical example, this will avoid the circumstances in which Western Power charges Synergy for connection points on Horizon Power's network.

Consequently, a positive obligation to provide an accurate list of *connection points* on an *access contract* is also fundamental to satisfying the *code objectives* and should be a minimum condition in the *standard access contract*. In particular, to ensuring the economically efficient investment in and operation of and use of, *networks* and *services* of *networks*.

Synergy has been seeking an accurate list of the *connection points* on its *access contract* and requests the Authority to consider whether the *standard access contract* must contain a positive obligation on Western Power to provide the *User* with an accurate list of *connection points* in the *access contract* in order to ensure the contract is commercially workable. Western Power continues to have difficulty providing Synergy with such an accurate list. Unless such an obligation is imposed, Synergy submits Western Power's proposed changes to the payment error terms under the *standard access contract* are unworkable as they provide Western Power with the ability to retrospectively, several years later, make Synergy liable for access charges for *connection points* Western Power may have initially omitted to list on Synergy's *access contract*. In addition, under the Code of Conduct¹⁸ and the Energy Operators Powers Act¹⁹ Synergy is limited in its ability to pass on these amounts to its customers.

Notification of permanent reconfigurations

Synergy, from practical experience, submits that it is necessary to clarify and restrict the application of clause 3.7(e) in the proposed *standard access contract* to where Western Power has implemented a permanent reconfiguration only where it is legally entitled to do so. The drafting of the clause applies to situations where Western Power has physically undertaken a permanent reconfiguration, irrespective of whether Western Power did so in accordance with the regulatory regime.

Therefore, in these situations, it is not reasonable or commercially workable for Synergy and other retailers to commercially suffer the consequences and liabilities of a permanent reconfiguration which has been implemented by Western Power contrary to law and the regulatory regime. Synergy proposes that clause 3.7(e) be amended as follows to address this issue:

¹⁸ Code of Conduct for the Supply of Electricity to Small Use Customers developed under the Electricity Industry Act 2004.

¹⁹ Energy Operators (Powers) Act 1979.

"3.7(e) Subject to clause 3.7(h), where Western Power* in accordance with its legal rights and obligations, causes a Permanent Reconfiguration* of the Network* which results in the information contained in the Contract Database* having to be updated..."

Synergy's practical experience has highlighted that this amendment is necessary.

Limitations on Warranty Obligations

Synergy, from practical experience, submits that it is necessary to clarify the operation and application of clause 18 in the proposed *standard access contract*. The *standard access contract* does not make it clear what should occur in the situation where a *User* is in breach of its warranty representations as a direct result of Western Power breaching its obligations. Therefore, in these situations, it is not reasonable for a retailer to be liable to Western Power and for Western Power to exercise its rights under clause 27.2 of the *standard access contract*. Synergy proposes in order to clarify the rights of the parties in these situation clause 18.1 needs to include the following amendment:

"18.1 If the User* is in breach of the warranty and representation in clause 18.1(a) of this Contract* as a direct result of a breach of the Application and Queuing Policy* or the Code* by Western Power then Western Power may not exercise its rights under clause 27.2 of this Contract* other than to notify the User* of the User*'s Default and the User* will not be liable to Western Power for the breach."

Synergy's practical experience has highlighted that incidents of this nature occur frequently and that this amendment is necessary to clarify the rights of the parties in those circumstances.

Payment of Security For Material Breaches

Clause 9 determines what must occur in the circumstance where a *User* will be unable to meet its obligations under the *standard access contract*. Synergy understands that the intent of this provision is to address circumstances where there is, or a potential for there to be, a breach of a significant or material obligation under the contract. For example, is it Western Power's intent to impose on retailers a security charge in the event a typing error has been made in the name of a Controller the retailer is required to provide Western Power under the *access contract*?

Consequently, Synergy submits that clause 9(a) needs to be amended as outlined below to clarify the materiality associated with a *User* not meeting an obligation under the *standard access contract*:

"9(a) Subject to clause 9(b), if Western Power* determines at any time during the Term* that either or both of the User*s or the Indemnifier*s technical or financial resources are such that a Reasonable and Prudent Person* would consider there to be a material risk that the User* will be unable to meet its material obligations under this Contract*..."

Payment Errors

Synergy notes that Western Power have made further changes to clause 8.6 and the definition of Payment Error in the *standard access contract*. Synergy understands, based on its discussions with Western Power, these changes are to deal with circumstances where Western Power has not invoiced a *User*, for several years, for a *connection point*. The fundamental problem lies in Western Power's ability to provide Users with an accurate list of *connection points* on the *User's access contract*. Typically these *connections points* have not also had their meter read for several years. Consequently, when Western Power subsequently discovers such a *connection point* it is seeking the ability to place these *connection points* on Synergy's access contract and invoice Synergy for past charges.

Western Power's proposed changes are designed to give effect to such an outcome and do not appear to deal with the genuine circumstances associated with a under or overpayment. That is there is no limitation or sunset provision²⁰ on when Western Power can issue an invoice and demand payment for charges that may or may not have been incurred several years in the past. This situation also creates difficulties for a retailer with respect to reconciling such invoices especially in circumstances when the retailer does not have an accurate list of the *connection points* on its access contract. In addition, under the Code of Conduct and the Energy Operators Powers Act Synergy is limited in its ability to pass on these amounts.

Synergy submits that such an approach is unreasonable and does not form the basis of a commercially workable *access contract*. Therefore, Synergy submits that clause 8.6 should remain unchanged and the following changes should be also made to clause 8.1 and the definition of Payment error to clarify the minimum conditions and operation of clause 8.6:

- **Clause 8.1:** To contain a provision that makes it clear Western Power must not issue a tax invoice in respect of amounts that would otherwise have been payable under the *standard access contract* later than 12 months from the date those amounts are payable.
- **Payment Error:** To be defined as any underpayment or overpayment by a party of any amount in respect of a tax invoice for any amount payable by the *User* under the *standard access contract*.

²⁰ The Authority in AA2 made a determination on how the sunset clause should operate.

Payment Duration

Clause 8.3 of the *standard access contract* requires a User to reconcile and pay Western Power's invoices within 10 business days of receiving the invoice. This period may be reasonable and workable for smaller *Users* and retailers²¹.

However, the invoice Synergy receives from Western Power contains more than 8 million transactions that need to be reviewed, reconciled and paid. It is not feasible for Synergy to review, reconcile and pay these invoices within 10 business days. Therefore, Synergy submits that it is not reasonable or commercially workable for the *standard access contract* to specify a payment term of 10 business days as a minimum standard that should apply to all *Users*. This requirement appears to be unnecessarily onerous and depending on the working capital available to a retailer could create a barrier to entry for some retailers.

Synergy requests that the Authority give consideration to what the minimum payment terms in the *standard access contract* should be. Synergy submits that payment terms for access charges of 20 business days are reasonable and consistent with industry practice.

Limitation on Liability

There is a lack of clarity and certainty in the *standard access contract* on the actions resulting in direct damages that a retailer is liable for.

Synergy submits that it is not reasonable, and is contrary to section 5.3 of the Code, for the *standard access contract* to impose liabilities on a retailer for matters which are clearly beyond a retailer's control but are within Western Power's control. This is especially in circumstances where the network operator has been negligent or approved the connection of equipment and facilities to its network which results in damage. Synergy submits that this principle is not clearly articulated in the *standard access contract*, and the practical effect of the *standard access contract* is to make retailers liable for outcomes that is beyond the retailers control.

Synergy submits that the most efficient way to manage risk is to assign it to the party best placed to manage it. Therefore, Synergy submits that the specific liability provisions in the *standard access contract*, in particular under clause 6.2, 19.2 and 19.5, need to be reviewed in the context of assigning risk to the party best able to manage it.

In this respect the *standard access contract* does not represent the minimum conditions for *Users*. In fact it treats a retailer no differently to a generator.

The *standard access contract*, under clause 6.2(e), does purport to give retailers some relief in this respect allowing Western Power to establish a connection contract with the controller of the equipment, which Western Power has given approval to connect to its network. However, in practice Synergy has discovered that Western Power has declined to establish these connection contracts, with the result that the retailer is liable for the actions of the controller, despite Western Power inspecting and giving approval to the controller to connect equipment to the network. This Western Power practice also requires retailers to police the activities of controllers of the network including inspecting and making sure controllers connect to the network in accordance with the connection approval provided by Western Power.

²¹ Who have fewer connection points on their access contract.

Synergy submits that this situation and outcome is neither reasonable nor provides for a commercially workable *access contract*. It is not reasonable for Western Power to have no liability in circumstances where it inspects and approves the connection of equipment and facilities to the network.

Consequently, Synergy requests the Authority to make the following amendments to clause 6.2(e) of the *standard access contract*:

“6.2(e) For the avoidance of doubt, if the User* is in breach of clause 6.2(a), then the User* is liable for, and must indemnify Western Power* pursuant to clause 19.2 against any Direct Damage* caused by, consequent upon or arising out of the acts and omissions, negligent or otherwise, of the Controller* to the extent that the acts or omissions, negligent or otherwise, of the Controller* are attributable to that breach, unless the Controller* has entered into a Connection Contract* with Western Power* or Western Power has refused to enter into a Connection Contract* with the Controller*.”

Clause 19.5 places an \$80 million dollar maximum liability cap on retailers. Consequently, retailers are required to pay for insurances that cover this amount. However, in Synergy’s experience insurers will only cover retailers for the acts or omissions of the retailer only and not those of third parties²². Synergy, has been unable to determine how a retailer, through its own actions, could cause \$80 million dollars of damage to the network, especially under a regime where the network operator has the obligation to inspect, maintain and approve the connection of equipment to the network. In context of assigning risk to the party best able to manage it, Synergy does not understand the economic basis that Western Power has used to determine this value. Therefore, in light of clause 6.2(e), Synergy submits that it is reasonable for the *standard access contract* to specify a different maximum cap for generators and retailers and that the Authority, in context of assigning risk to the party best able to manage it, be satisfied with methodology used to determine these amounts. It is Synergy’s preference that the methodology is subject to public consultation as part of the Authority’s determination of the PRAA²³.

Compensation For Loss Caused by the Network Operator

Synergy submits that in order for the *standard access contract* to be reasonable and sufficiently detailed to form the basis of a commercially workable *access contract* it must contain a mechanism and clear provisions for retailers and customers to be compensated for any loss caused by an act or omission of a *service provider*.

The current definition and application of Direct Damage under the standard access contract is too narrow and one-sided and it is not clear the circumstances and conditions that would need to apply in order for a retailer to receive any compensation for the loss it has suffered due to an act or omission of the *service provider*.

²² Such as customers.

²³ Synergy can see not reason why this methodology should be confidential and not form part of the PRAA.

Synergy submits that there is no incentive, as required by section 2.1(b) of the Code, for the service provider to ensure the economically efficient operation and use of Western Power's electricity *networks* and *services of networks* when providing *services* under the *standard access contract*. In addition, Synergy submits that the monopoly *service provider* is in the best position to manage its risk and its operations when providing *services* and therefore, should be liable for its actions in relation to the provision of those services.

Therefore, Synergy submits that clause 19 in the *standard access contract* must contain the following provision in order to ensure and promote the efficient operation and use of *networks* and *services of networks*:

"19.4 Western Power liability

- (a) If Western Power* is negligent or commits a Default* under this Contract* it must:
 - (i) repay to the User* any Customer Pass Through Amounts* which the User* is not reasonably able to recover from its Customers* because of the negligence or Default* of Western Power* or because of delay by Western Power* in rectifying or otherwise addressing the negligence or Default*;
 - (ii) reimburse the User's* reasonable costs, including legal costs, of any reasonable action taken for the purposes of recovering from its Customers* the Customer Pass Through Amounts* referred to in clause 19.4(a)(i);
 - (iii) reimburse the User*'s reasonable Operational Costs* of addressing and mitigating the impacts on its business operations arising from, or in connection with, the negligence or Default* of Western Power*;
 - (iv) compensate the User* for any loss or damage, including Indirect Damage*, the User* suffers or incurs as a result of, or arising from, any reduction in cash flow caused by Western Power's* negligence or Default*;
 - (v) reimburse the User* for all expenses and charges (including any Indirect Damage* or other damages, penalties, fines or interest) that the User* incurs as a result of or in connection with a claim by a Customer* under the Competition and Consumer Act*, which the User* is not reasonably able to avoid because of the negligence or Default* of Western Power*;
 - (vi) not enforce any rights it may have against the User* or the Indemnifier* in respect of a User's Default* that arises due to the negligence or Default* of Western Power*.
- (b) The User* must notify Western Power* if the User* intends to take legal action to recover amounts under clause 19.4(a)(i) or to take or not take legal action to defend a claim by a Customer* in relation to clause 19.4(a)(iv) and provide all reasonable details of the actions the User* proposes to take.
- (c) Western Power * must, within [7 days] of receiving notification under clause 19.4(b), advise the User* whether Western Power* wishes to take over the proposed legal action, in which case the User* and Western Power* must work co-operatively to enable Western Power* to take over such legal action on behalf of the User*.

Customer Pass Through Amounts* means amounts paid by the User* to Western Power* under the Contract* which the User* would, in the normal course of its business, pass on to its Customers* and the exclusion of Indirect Damage* does not apply.

Operational Costs* means amounts paid by the User* to Western Power* under the Contract* which the User* would, in the normal course of its business, pass on to its Customers* and the exclusion of Indirect Damage* does not apply.

Competition and Consumer Act* means the *Competition and Consumer Act 2010* (Cth)."

SMARTGRID PROPOSAL

Incremental Roll Out of Non-Metrology Solutions

Synergy does not support Western Power's smartgrid proposal²⁴. In particular, Synergy does not support the incremental approach to installing and implementing a smartgrid infrastructure in the SWIS. Synergy submits that the proposed benefits to be realised through the smartgrid proposal are currently being reviewed through the AMI Steering Group²⁵, and as a result it is premature to invest in an incremental rollout until the AMI Steering Group submission is completed.

There continues to be a significant number of outstanding issues associated with the roll out of a smartgrid infrastructure in the SWIS. In addition, Synergy's experience with the Perth Solar City trial has raised further concerns about the reliability of the smartgrid solutions that Western Power is proposing and is incrementally implementing. Synergy submits that the trial may demonstrate a potential to change customer behaviour to reduce consumption. However, Synergy advocates proceeding cautiously until the incremental costs to the customer and corresponding benefits can be fully determined.

Synergy submits that further work needs to be done in this area and there are a significant number of matters²⁶ that may need to be subject to public consultation before funding for an incremental or mass roll out of smartgrid is approved by the Authority.

Synergy requests the Authority to also give regard to section 26(1) of the Economic Regulation Authority Act 2003 when considering the Western Power's smartgrid proposal under the PRAA. In particular, based on Synergy's current experience, Synergy is concerned that the incremental approach being taken to roll out smartgrid solutions in the SWIS is not giving adequate regard to the long-term interests of consumers in relation to the price, quality and reliability of the services being provided retailers and customers.

There is a need for a holistic, transparent and wider stakeholder consultation process that ensures the legitimate interests of retailers and consumers are taken into account when developing smartgrid solutions and the costs of these solutions that *Users* are required to pay.

²⁴ PRAA, Appendix R – Smartgrid Proposal.

²⁵ Chaired by the Office of Energy.

²⁶ Current being discussed under the Office of Energy's AMI Steering Group's terms of reference.

Therefore, Synergy submits the Authority should not approve the additional \$109 million dollars for an incremental roll out of Western Power's smartgrid proposal. Synergy supports the 280,000 non compliant meters being replaced. However, the cost for this replacement must be based on Western Power implementing the same *services* that would be provided by a meter without any additional enhanced, non-metrology, technology features.

Synergy is also particularly concerned about the impact of the smartgrid solution that is proposed to be implemented as part of replacing the 280, 000 non-compliant meters. For example, Western Power have indicated to Synergy²⁷ that it is still not in a position to confirm the metering data reliability and service standards as a result of implementing the proposed solution outlined in their smartgrid proposal. Further, Western Power has indicated that the details of the implementation will not be known until after the Authority has approved funding for the smartgrid proposal and related D Factor projects.

The impact of the smartgrid solution in terms of Synergy's system and operational changes has not been determined, and therefore the resultant impact on consumer pricing is also yet to be determined.

Consequently, Synergy submits that the Authority should not approve this additional funding given that the solution and technology proposed by Western Power is not adequately developed in order to ensure that Western Power can deliver a service consistent with the *code objectives*. In addition, consistent with the Code, Synergy submits that the Authority should require Western Power when replacing non compliant meters, to only provide the same *services* that would be provided by a compliant meter without smartgrid capabilities. The level of funding required should be commensurate with this approach. Synergy submits to do otherwise would not be efficiently minimising costs.

Synergy also submits Western Power's smartgrid vision is currently the subject of discussion under the AMI Steering Group. Therefore, in the mean time, Synergy submits that the Authority should treat the proposed investment under the PRAA in the same manner as any other *new facilities investment* under the Code.

Synergy also requests that the Authority give regard to whether the technology could be more efficiently deployed by the private sector, the potential for obsolescence due to changing technological landscape and whether alternative solutions could deliver similar energy efficiency outcomes (financial and operational).

FUNDING PROPOSAL

Customer Survey on Preferences for Supply Reliability

Synergy notes that Western Power has provided a report²⁸ in support of its PRAA. Synergy submits that the conclusions provided in the report and PRAA need to be treated with caution and that the report is not representative of customer preferences. For example, Synergy notes that there are a number of issues that raise questions on the credibility of the conclusions formulated based on this report²⁹:

²⁷ After Synergy has formally written to Western Power raising its concerns.

²⁸ Access Arrangement Information – Appendix Y – KPMG Report – Customer Preferences for Supply Reliability Survey.

²⁹ Ibid.

- Large industrial and commercial customers were excluded from the analysis.³⁰ Synergy is aware from previous customer research that expectations and impacts on these customers is most significant.
- A small sample size of 600 residential & small business customers was used compared with the average samples of between 1500 and 3200 Synergy uses for similar studies, in order to ensure validity at the sub-group level. Inferences for business versus residential customers therefore can not be made from this study. For example, Synergy and Western Power's FEA³¹ research tracking has monthly samples of 405 for each sub group to ensure statistical validity with a standard error of 5%.³²
- The sample used by KPMG is not stratified to ensure the sample reflects performance for each network feeder. If perceived data is to be compared to actual Western Power performance, results should have been weighted based on the number of respondents in each feeder region.
- Western Power only use normalised unplanned interruption data to assess current performance. This measure excludes major events and planned interruptions. Customer expectations would include all supply interruptions (planned and unplanned).
- The KPMG report highlights that customers are currently dissatisfied with reported SAIDI normalised unplanned interruptions of 212 minutes pa (customer threshold of 57) and SAIFI normalised unplanned interruptions of 2.1 metro (customer threshold of 1.0). Customer satisfaction is however met in rural long locations.
- Half (48%) of the Western Power survey respondents stated they "*want a more reliable power supply.*"
- These two points confirm that a large proportion of customers are not currently satisfied with service levels from Western Power. This is contrary to the conclusion of Western Power's AA3 submission.
- Communications of planned and unplanned outages with customers is not included in the analysis. Synergy's MOSTER research³³ identifies current customer communication levels advising of planned outage events is inadequate.

It appears, at a high level, Western Power's PRAA is based on the premise that

1. Customers are happy with current services levels³⁴.
2. Western Power's required target revenue to maintain current service levels is in excess of \$10 billion.
3. If customers require a better service then Western Power will require higher target revenue despite reporting that it achieved or exceeded all service benchmark targets for the 2010/2011 period³⁵.

³⁰ Ibid.

³¹ FEA is the Synergy & Western Power 'Future Energy Alliance'.

³² Standard error of 5% means that research results are valid within +/-5%.

³³ Key Research (2011), 'Monitoring Satisfaction to Ensure Retention (MOSTER) Satisfaction Study including Kano analysis technique', January 2011.

³⁴ However, Synergy notes that Western Power have proposed a number of service standards benchmarks for AA3 which are lower then the levels approved in AA2.

³⁵ Western Power's Service Standard Report Year Ending 30 June 2011, as published by the Authority on 26 September 2011 reports that Western Power have met or exceeded all benchmark targets except for Circuit Availability and System Minutes Interrupted on the Radial Network.

Synergy requires service standard benchmarks to be maintained at the same levels that were approved for the AA2 period. In addition, Synergy does not agree with the conclusion that customers are happy with the current standards of service.

Synergy also submits that it is not reasonable for Western Power to be permitted to recover more money in AA3 for a lesser service standard than AA2 and then be allowed to receive a service standard adjustment when it exceeds this lesser service standard. Synergy does not understand how this report and the PRAA creates any real incentive for Western Power to deliver improvements when the benchmarks are lowered. It appears the PRAA permits Western Power to recover more from *Users* by delivering less.

Synergy urges the Authority to give careful consideration to the credibility of the conclusions derived from the KMPG report including Western Power's proposed services standard incentive mechanism.

Service Standard Adjustment Mechanism

Section 6.31 of the Code requires:

"6.31 A service standards adjustment mechanism must be:

- (a) sufficiently detailed and complete to enable the Authority to apply the service standards adjustment mechanism at the next access arrangement review; and*
- (b) consistent with the Code objective."*

Therefore, the *Service Standards Adjustment Mechanism (SSAM)* is not just about adjusting the target revenue. Section 6.31(b) of the Code also relevantly requires the mechanism to promote the economically efficient investment in and operation of *networks* and *services of networks*. Synergy submits that this is a significant issue and the Authority, in determining whether to approve the PRAA, must give regard to whether the proposed SSAM provides an adequate incentive for Western Power to meet the *code objectives* and ensure the efficient operation of its networks and services.

The Authority's Issues Paper highlights that Western Power has removed some of the service standards from the current access arrangement, added new service standards and re-defined service standards. In addition, the Issues Paper indicates that Western Power has lowered the benchmarks that applied in the current access arrangement in order to ensure it meets its license conditions and also to reduce the possibility of not receiving benefits under the gain sharing mechanism.

Synergy submits that such an approach appears to be contrary to the *code objectives*. In particular the lowering of service standards and then providing for an "incentive" payment if the original standards are met does not create an incentive for the efficient operation of the network and services. This is particularly so where Western Power met the original standards in the current access arrangement. It would appear the effect of this change in the SSAM is to permit Western Power to receive more but deliver less. In particular Synergy notes that the proposed SSAM will now only reflect the relative improvement or deterioration in a service standard in a particular year without any reference to the prior year's performance.

Synergy submits that a key issue with the proposed SSAM is that it does not demonstrate how it is consistent with the *code objectives* or even how it better satisfies the *code objectives*.

Service Standard Adjustment Mechanism For Metering Services

The standard metering service is a network *covered service* under the Code. These services are classified as a *common service* under the Code. This means, under the Code, these *services* ensure the reliability of the network, or provide benefits to *Users* of the *network*, and the costs of these *services* cannot reasonably be allocated to one or more particular *users* and so needs to be allocated across all *users*.

Consequently, Western Power may recover costs from all *Users* and apply the *Price Control* and *pricing methods* to these *covered services* to determine the charges in the *price list* all users must pay. In addition, the Authority also approves the tariffs for these *common services* in the *price list* which all users are obliged to pay under the *access arrangement*.

Synergy submits that there is insufficient visibility and transparency in the PRAA on the service standards, and the delivery of, standard metering services. Synergy views this is an area that could benefit from a service standard adjustment mechanism and that Western Power should be appropriately rewarded for improvements in standard metering services or conversely penalised for deteriorations in service standards.

Therefore, Synergy requests the Authority to give regard to whether the *code objectives* in respect to the efficient operation and use of Western Power's electricity *networks* and *services of networks* would be better satisfied if the PRAA contained a SSAM for standard metering services.

Investment Proposal

Synergy notes that Western Power's investment proposal for AA3 is significant and potentially ambitious. Consequently, Synergy is concerned that Western Power may have difficulties in AA3 with respect to realising its project objectives as it did in the current access arrangement.

Western Power has indicated³⁶ that despite the required increase in capital investment for AA3 its governance and process improvements achieved during AA2 has improved its ability to operate at more economically efficient levels. Western Power has recognised the level of proposed investment for AA3 is greater than in the preceding five years however, it has cited the following factors as reasons why it will deliver on its proposed investment:

- Network risk dictates that this investment must be undertaken.
- Western Power has a flexible and efficient delivery strategy.
- Higher powered incentives will drive efficient investment.
- Key government stakeholders have visibility of funding requirements.

Synergy, during AA2, has not seen the project and process improvements that Western Power is referring to in its PRAA and there does not appear to be any information in this PRAA to objectively support Western Power's improvement claims. In addition, Synergy submits that the PRAA does not contain any effective incentive to compel Western Power to deliver on its proposed investment while at the same time ensuring its business as usual activities do not suffer.

³⁶ PRAA, Access Arrangement Information for 1 July 2012 to 30 June 2017.

Therefore, Synergy requests the Authority to give regard to Western Power's claims and consider any demonstrated ability for Western Power to effectively deliver on its investment proposal. Given the proposed increases in electricity prices attributable to higher input costs and a new cost on carbon, Synergy believes its customers should not be required to fund through higher network tariffs investments that may never come to fruition. While Synergy recognises that any amounts unspent must be refunded in the next access period, Synergy believes a better approach is to ensure that what Western Power plans to spend will in fact be spent.

D Factor Scheme

Western Power is proposing an additional "incentive mechanism" (the 'D-factor') to be included in the *price control* for AA3. In Synergy's view the proposed D-factor projects, under the Code, may only provide *covered services* if the expenditure is to be added to the *target revenue*. Synergy submits that to provide anything else would be contrary to the Code.

It appears that Western Power is proposing delivering a number of D-factor projects that it wants the public to pay for in return for delivering certain unspecified benefits to the public and *Users*. Synergy submits that D-factor projects and any associated funding should be treated no differently to any other *new facility* to enable Western Power to provide *covered services*.

Western Power is proposing that funding for the D-factor project will be subject to the Authority approving a business case and relevant expenditure in accordance with sections 6.40, 6.41 and 6.51A of the Code. In effect, it appears that Western Power will be asking for pre-approval that the project meets the *new facilities investment test* before adding the proposed expenditure to the *target revenue*. This however, is not clearly articulated in the PRAA. Therefore, Synergy submits that there needs to be clarity in the PRAA on whether Western Power will be seeking approval from the Authority for its business case before or after committing any expenditure to these D-factor projects.

The proposed approach appears to contemplate that the D-factor projects are confidential and requires the Authority to determine, without public consultation, whether the proposed *new facility* will provide *covered services* and benefits to the public and *users*.

Synergy submits it is not reasonable to expect the public and *Users* to pay for these projects, without adequate visibility and transparency on the *covered services* and benefits being provided. Synergy submits that the D-factor business cases should be subject to public consultation so that there is transparency. This will enable a proper consultation and consideration of issues including whether the proposed *services* are *excluded services* and that *Users* are satisfied that it is a service that Western Power is in the best position to deliver efficiently. For example, in some circumstances it may be more efficient to deliver on a D-factor outcome through retailer led initiatives rather than a network led initiative, especially if the required outcome or services is based on non-network solutions which can be delivered more efficiently by retailers.

Therefore, Synergy submits that this type of public input is necessary to ensure *covered services* are being provided and to support the outcomes outlined in section 26(1) of the Economic Regulation Authority Act 2003.

The Authority's Issues Paper also highlights the proposed D-factor mechanism provides for a carry over from one access arrangement period to the next of certain operating expenditure and capital expenditure that are incurred by Western Power as a result of deferring a capital expenditure project in relation to demand management initiatives. Synergy submits that the Code does not allow for such an adjustment. Therefore, the PRAA should not contain such a mechanism. In any event such a mechanism could have an effect that is contrary to the *code objectives* and does not create an incentive for Western Power to deliver on its investment plan and proposal. In particular Synergy does not understand how such a mechanism could promote the efficient operation of the network and services of the network.

Weighted Average Cost of Capital (WACC)

Western Power's proposed WACC of 8.82% is substantially higher than the 7.98% that was approved by the Authority for the current AA2 access arrangement. In addition, the Authority's Issues Paper has highlighted that there is a significant departure from the approach the Authority adopted for the current access arrangement. Synergy understands that Western Power's proposed WACC will account for 36% of its proposed target revenue.

Consequently, Synergy requests that the Authority give careful consideration to Western Power's proposed WACC, giving regard to Western Power, as a monopoly state owned entity, having a lower commercial risk profile and access to lower borrowing costs compared to privately owned distributors.

In addition, the Authority has noted that Western Power is seeking an agreement with the Authority on the averaging period to determine the market based WACC parameters³⁷. The Authority has noted that the Code does not provide for such an agreement. Synergy submits, in this regard, the Authority needs to give consideration, holistically, to the effect of such an agreement, whether it would be binding under the Code and whether it would promote the efficient operation and use of Western Power's electricity networks and services of networks.

Synergy notes that the Authority's decision to approve the current access arrangement required a subsequent amendment to the Code aimed at giving legal effect, retrospectively, to the Authority's decision to permit Western Power to defer revenue. Synergy submits that such an approach to developing policy and incrementally amending the Code does not promote transparency and regulatory outcomes in the public interest³⁸ and may place the Code at risk of maintaining its certification as an effective access regime.

In addition, the Authority should give regard to whether such an agreement would better achieve the *code objectives* and other requirements of the Code, including the requirement to avoid price shocks between succeeding years.

³⁷ Such as the risk free rate and debt risk premium.

³⁸ As required under section 26(1) of the Economic Regulation Authority Act 2003.

CONTRIBUTION POLICY

Low Voltage Connection Scheme

Synergy refers the Authority to its previous submission³⁹ on the proposed amendment to the Code and Western Power's Low Voltage Connection Scheme. Synergy requests the Authority to consider the matters raised in that submission in making its determination to approve Western Power's proposed changes to the *contributions policy* containing the Low Voltage Connection Scheme.

Synergy understands that the Office of Energy has not approved the proposed amendment to the Code allowing for an increase in the headworks charges that Western Power may directly recover from consumers who are subject to Western Power's proposed Low Voltage Connection Scheme. Consequently, Synergy submits that this scheme should not be considered as part of the PRAA.

³⁹ Provided to the Authority, Office of Energy and Western Power on 31 August 2011.