

Attachment 12.6

Transfer and Relocation Policy for AA4 Change Summary Access Arrangement Information

2 October 2017



Access Arrangement Information (AAI) for the period
1 July 2017 to 30 June 2022

Transfer and Relocation Policy for AA4 Change Summary

Summary of proposed changes from AA3

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Transfer and Relocation Policy for AA4 Change Summary

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1. Introduction

The Transfer and Relocation Policy is a requirement of Chapter 5 of the *Electricity Networks Access Code 2004 (the Code)*, and provides for capacity transfers and relocations between customer connection points within individual Access Contracts.

Western Power's Transfer and Relocation Policy was not amended during AA3.

Western Power has proposed minimal changes to the Transfer and Relocation Policy, for the purpose of ensuring that:

- the policy more closely aligns with the provision of the Code
- defined terms are consistent with other instruments
- boundaries with other regulatory instruments are distinct
- the obligations and rights of involved parties are transparent

This document summarises the proposed changes to the Transfer and Relocation Policy for AA4 and the rationale for each of these proposed changes. This summary document is supported by the proposed Transfer and Relocation Policy (submission document number 1596 and 1568), which details proposed changes in both "tracked change" mode and as an unmarked version.

2. Proposed amendments

The proposed amendments and their rationale for change are detailed in table 1 below. Where a wording change is proposed, new text is highlighted in red, whilst removed text is highlighted as a strikethrough.

Table 1: Proposed amendments to the Transfer and Relocation Policy

No.	Section	Current State/Definition	Proposed change	Rationale for change
1	1.1	" assignee " means a person who makes an <i>assignment</i> . " assignor " is a person who takes an <i>assignment</i> .	Definitions should be amended as follows: " assignee " means a person who takes makes an <i>assignment</i> . " assignor " is a person who makes takes an <i>assignment</i> .	The definitions of assignee and assignor in the Transfer and Relocation Policy appear to be the wrong way around. Assignee is defined as the person who makes an assignment (and assignor as the person who takes an assignment). At law a person who makes an assignment is an assignor and a person who takes an assignment is an assignee (see for example section 17.01 J W Carter "Contract Law in Australia" 6 th edition). The definitions have been amended to reflect this. Also this use of "assignor" and "assignee" is consistent with the definitions of "bare transfer" and "novate".

No.	Section	Current State/Definition	Proposed change	Rationale for change
2	1.1	<p>“connection point” means an <i>exit point</i> or an <i>entry point</i> or <i>bidirectional point</i> identified or to be identified as such in an <i>access contract</i>.”</p>	<p>Definition should be amended as follows:</p> <p>“connection point” means, in respect of a user, an <i>exit point</i> or an <i>entry point</i> or <i>bidirectional point</i> identified or to be identified as such in an under the user’s <i>access contract</i>.”</p>	<p>In the context of the Transfer and Relocation Policy the definition of connection point is principally relevant to the concept of relocation.</p> <p>The definition should be amended to make it much clearer that the reference to a connection point is to a connection point the user has a right to use under its access contract.</p> <p>This will be more consistent with the concept of relocation in the Network Access Code which is defined as <i>“a relocation of capacity from one connection point in a user’s access contract to another connection point [in] the user’s access contract under a transfer and relocation policy.”</i></p> <p>“To be identified” suggests a user can relocate to a connection point it does not have rights to use. This is not correct – to relocate to such a point the user would first need to acquire rights to use the point under the applications and queuing policy and then follow the transfer and relocation policy.</p>

No.	Section	Current State/Definition	Proposed change	Rationale for change
3	2.3	N/A	<p>Insert the following new clause 2.3:</p> <p><i>This transfer and relocation policy is based on the Code as in force as at the date this transfer and relocation policy is approved by the Authority. If there is an amendment to the Code after this date then the application of this transfer and relocation policy is subject to any varied or additional requirements imposed or required by those amendments.</i></p>	<p>This clause makes clear the Transfer and Relocation Policy is subordinate to the Access Code and applies subject to any changes made to the Access Code from time to time.</p> <p>The clause is principally included for clarity and to avoid misunderstanding, given it sets out what Western Power in any event understands to be the hierarchy between the Access Code and instruments made under it.</p>
4	5.1(a)	A user may not <i>assign</i> all or any <i>access rights</i> without Western Power's prior written consent	<p>Clause 5.1(a) is amended as follows:</p> <p>A user may not <i>assign</i> all or any <i>access rights</i> without Western Power's prior written consent <i>which consent may be withheld on reasonable commercial and technical grounds and which consent may be subject to conditions which are reasonable on commercial and technical grounds</i></p>	<p>The intent of this change is to more accurately reflect the wording of the Access Code (in this case clause 5.20).</p> <p>The change is to the advantage of Users as it makes clearer that Western Power may only withhold consent on reasonable grounds.</p>

No.	Section	Current State/Definition	Proposed change	Rationale for change
5	5.3.	<p>Assignment to financially and technically competent persons</p> <p>Western Power is not required to give its consent to an <i>assignment</i> under clause 5.1 if it can reasonably demonstrate that such an <i>assignment</i> would have the effect of materially increasing its financial or technical risk under the relevant <i>access contract</i>.</p>	<p>Clause 5.3 should be amended as follows:</p> <p>Western Power is not required to give its consent to an <i>assignment</i> under clause 5.1 if, in Western Power’s reasonable opinion, it can reasonably demonstrate that such an <i>assignment</i> would have the effect of materially increasing Western Power’s its financial or technical risk under the relevant <i>access contract</i>. Western Power’s reasonable opinion may be based on, without limitation, credit reference information available to Western Power and in forming its opinion Western Power will take into account any relevant information, if any, provided by the proposed assignee.</p>	<p>The current clause places the onus on Western Power to demonstrate an assignment would increase its risk. However it is the assignee, not Western Power, who will have access to the information relevant to assessing the assignee’s financial position.</p> <p>Apart from publicly available credit reports or accounts Western Power is totally dependent upon the assignee to demonstrate its financial position. Given this, the onus should be on the assignee to provide the information to substantiate it has adequate financial capacity.</p>
6	6.1	<p>“A “relocation” occurs when a user:</p> <ol style="list-style-type: none"> decreases its <i>contracted capacity</i> at a <i>connection point</i> (a “retiring point”); and makes a corresponding increase in its <i>contracted capacity</i> at another <i>connection point</i> (a “destination point”).” 	<p>Clause 6.1 should be amended as follows:</p> <p>A “relocation” occurs when a user:</p> <ol style="list-style-type: none"> decreases its <i>contracted capacity</i> at a <i>connection point</i> (a “retiring point”); and makes a corresponding increase in its <i>contracted capacity</i> at another <i>connection point</i> under the user’s access contract (a “destination point”). 	<p>The definition should be amended to make it clearer that the concept involves the user moving capacity from one connection point it has a right to use, to another connection point it has a right to use.</p>

No.	Section	Current State/Definition	Proposed change	Rationale for change
7	6.2	<p>Access contract provisions in respect of a destination point</p> <p>“Western Power and the <i>user</i> must comply with any provisions in the <i>access contract</i> with respect to an increase of <i>contracted capacity</i> at a <i>connection point</i>, or an additional <i>connection point</i>, relating to a <i>destination point</i>.”</p>	<p>Clause 6.2 should be amended as follows:</p> <p>“Western Power and the <i>user</i> must comply with any provisions in the <i>access contract</i> with respect to an increase of <i>contracted capacity</i> at a <i>connection point</i>, or an additional connection point, relating to a <i>destination point</i>.”</p>	<p>As per the definition of relocation in the Network Access Code a user may only relocate to a connection point it has rights to use.</p> <p>That definition is:</p> <p><i>“a relocation of capacity from one connection point in a user’s access contract to another connection point [in] the user’s access contract under a transfer and relocation policy.”</i></p> <p>The reference to “an additional connection point” is somewhat confusing and suggests, incorrectly, a relocation can be used to transfer capacity to a point the user does not have rights to use.</p> <p>These words should be deleted.</p>

No.	Section	Current State/Definition	Proposed change	Rationale for change
8	New – 6.4	New	<p>Insert the following new clause 6.4:</p> <ol style="list-style-type: none"> a. <i>A relocation may not be made where it would impede the ability of Western Power to provide a covered service sought in an access application.</i> b. <i>A relocation is conditional upon the user obtaining the consent of Western Power, which consent Western Power may withhold on reasonable commercial or technical grounds and which consent may be subject to conditions required on reasonable commercial and technical grounds.</i> c. <i>Without limiting the conditions Western Power may impose, on reasonable commercial or technical grounds, as a condition of consent those conditions may include that Western Power must receive at least the same amount of revenue as it would have received before the relocation or more revenue if the tariffs at the destination point are higher.</i> 	<p>The purpose of this change is to better link the Transfer and Relocation Policy to the provisions of the Access Code. Specifically clauses 5.21 to 5.23.</p> <p>The clause ensures that the Transfer and Relocation Policy more accurately reflects the requirements of the Access Code.</p> <p>Currently relocations are regulated in the Transfer and Relocation Policy by clauses 6.2 and 6.3. However these provisions link back to the User’s access contract rather than the specific requirements of the Code which deal with relocations.</p>

No.	Section	Current State/Definition	Proposed change	Rationale for change
9	New - 6.5	New	<p>The following wording to be added as a clause 6.5 (note that existing clause 6.4 will become clause 6.6):</p> <p>6.5 Process for Relocation</p> <ul style="list-style-type: none"> a. <i>Nothing in this clause 6 limits the requirements of the applications and queuing policy.</i> b. <i>Without limiting clauses 6.2 and 6.3, the user must also, as part of requesting a relocation, if required by the applications and queuing policy, apply for approval of the relocation. Any such application will be processed in accordance with the applications and queuing policy and the user's access contract.</i> 	<p>The purpose of this change is to make clear that relocations are to be processed in accordance with the Applications and Queuing Policy. A relocation may only occur, without jeopardising system integrity and the rights of other users, if there is capacity available at the new point. Where there are multiple requests to use capacity, priority is determined in accordance with the Applications and Queuing Policy. Relocations are therefore subject to that policy.</p>

No.	Section	Current State/Definition	Proposed change	Rationale for change
10	Various	Various minor errors	<p>There are various minor errors in the Transfer and Relocation Policy, for example:</p> <ul style="list-style-type: none"> • in the definitions “bidirectional point” and “entry point” should be in bold, • in paragraph (b) of the definition of “contracted capacity” “<i>electricity transfer access contract</i>” should be “<i>access contract</i>”, • “relocation” should be defined as having the meaning in clause 6.1 rather than clause 6.1(a), • in clause 4.3(a)(i) “user” should be in italics as should “access contract” in both clause 4.3(a)(i) and (ii), • in clause 5.2(a)(iii) insert “they” between “as” and “relate”, and • in clause 6.4 (now 6.6) remove the italics from the “a” before “<i>reasonable and prudent person.</i>” 	Administrative amendments are marked up in the proposed Transfer and Relocation Policy (submission document number 1596 and 1568).

3. Stakeholder Engagement Summary

3.1 Approach

Western Power presented its proposed amendments to the Transfer and Relocation Policy at the Generator Forum on 3 May 2017. Stakeholders were invited to comment on the proposed changes subsequent to the Forum.

Additionally, the proposed Transfer and Relocation Policy was sent to stakeholders via email on 23 June 2017 in “tracked change” format for a second round of feedback. Stakeholders were provided with 2 weeks in which to respond.

3.2 Feedback from Stakeholders

Feedback was received from Synergy via letter on 20 July 2017 – the letter was provided as a confidential submission and as such key points have been summarised in Table 2 below.

Western Power has considered Synergy’s feedback and incorporated edits to the proposed Transfer and Relocation Policy as appropriate. A summary of Synergy’s feedback and Western Power’s response is detailed in Table 2 below.

Table 2: Summary of Stakeholder comments and Western Power response

Item	Proposed change	Synergy Feedback	Western Power response
1	2 and 6	<p>Synergy queried whether it is necessary to include the words "which the user has a right to use".</p> <p>This language is inconsistent with the defined terms "relocation" and "transfer and relocation policy" as they appear in clause 1.3 of the Electricity Networks Access Code 2004 (WA) (Access Code).</p> <p>Further, the changes may preclude a party from undertaking activities which are presently authorised under the Transfer and Relocation Policy and are consistent with the Access Code.</p> <p>For example, relocating contracted capacity from one entry point to entry point in the same Electricity Transfer Access Contract (ETAC), where that "destination" entry point is the subject of a bare transfer to a third party.</p> <p>If it is Western Power's intention to preclude the sort of activities that are described above, Synergy considers that Western Power must clearly articulate why this should be the case.</p>	<p>The intent of this change is to better align the definition of connection point with the definition of relocation in the Access Code. The use of the wording "to be identified as such" is ambiguous and inconsistent with that definition. In particular it is unclear what is to be identified and how it is to be identified.</p> <p>Noting Synergy's concerns around the wording "right to use", we have amended Western Power's proposed definition to refer to a exit/entry/bidirectional point under the user's access contract. This essentially matches the definition of relocation in the Access Code, although that definition refers to "in" an access contract. We have used "under" principally for grammatical purposes.</p> <p>Consistent with the change to the definition of connection point, clause 6.1 has been amended to refer to under the user's access contract.</p>

Item	Proposed change	Synergy Feedback	Western Power response
2	5	<p>Synergy does not support the proposed change and considers Western Power is already adequately able to protect its legitimate business interests.</p> <p>Further, the "rationale for change" described by Western Power in respect of this amendment is largely captured by clause 5.1(c) of the Transfer and Relocation Policy. That clause provides "Western Power's consent shall not be unreasonably withheld or delayed where the user can satisfy Western Power (acting on reasonable commercial and technical grounds) that the proposed assignee is financially and technically capable of performing the user's obligations in respect of the assigned access rights."</p> <p>Synergy considers that it follows that where the user has been unable to satisfy Western Power of this position, Western Power can request additional information and is not required to consent to the proposed assignment.</p>	<p>Western Power does not agree with the statement the change to clause 5.3 is not required for Western Power's legitimate business interests.</p> <p>While we note the point in respect of clause 5.1, the current drafting of clause 5.3 is inconsistent with clause 5.1 as it appears to move some onus back to Western Power to demonstrate an assignment unacceptably increases its risk. We do not think this is appropriate, particularly in the case of creditworthiness issues as it will be the user who has access to the necessary information to demonstrate its creditworthiness.</p> <p>The change to clause 5.3 removes the apparent contradiction between 5.3 and 5.1(c).</p>
3	8	<p>In Synergy's view, sections 5.18 to 5.24 of the Access Code require Western Power to detail in the Transfer and Relocation Policy a User's rights with respect to the transfer of access rights and relocation. It is not sufficient for Western Power to generally refer to any rights it purports to have under the Access Code.</p>	<p>We have amended clause 6.4 to take into account the feedback provided. The revised clause now incorporates the specific requirements of the Access Code rather than referring generally to the Access Code.</p>

Item	Proposed change	Synergy Feedback	Western Power response
4	9	<p>Synergy does not agree with the rationale for this change provided by Western Power.</p> <p>Synergy considers that the Applications and Queuing Policy and the Transfer and Relocation Policy are and should remain distinct.</p>	<p>While it is correct that the Transfer and Relocation Policy and Applications and Queuing Policy are different documents, we consider it would be overstating the case to say there is no link between them. Clearly a relocation must be subject to any requirements of the Applications and Queuing Policy if the AQP on its own terms applies to regulate such relocation.</p> <p>However, noting Synergies comments we have modified clause 6.5 to make clear the Applications and Queuing Policy only needs to be considered where, by virtue of the terms of the AQP, the AQP applies to regulate the relocation.</p>