AA4 submission to the Economic Regulation Authority No. 1: Western Power's proposed transfer and relocation policy

8 December 2017

DMS# 15103606

Contents

A. EXECUTIVE SUMMARY

Matter	Western Power (**WP**) proposed Transfer and Relocation Policy (**TaRP**).
Context	On 6 October 2017, the Economic Regulation Authority (**Authority**) released WP's proposed TaRP for the fourth Access Arrangement Period (**AA4**). The role of the Authority is to determine whether WP's proposed TaRP complies with the requirements of the *Electricity Networks Access Code 2004* (WA) (**Access Code**). In doing so, the Authority is guided by specific provisions of the Access Code relating to a *standard access contract*, as well as the Access 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*. The Authority in performing its functions under the Access Code must also have due regard to the matters specified under section 26(1) of the *Economic Regulation Authority Act 2003* (WA) (**ERA Act**).
Scope	Synergy's submission: ▪ Outlines its concerns with respect to a number of WP's proposed amendments to the TaRP, including provisions relating to *users'* relocation rights and the circumstances under which WP assesses whether to provide its consent to assignments. ▪ Sets out its view of the Access Code requirements against which the Authority must assess the TaRP. ▪ Expresses Synergy's view on certain areas where Synergy considers the proposed TaRP does not, or appears to not, meet relevant legal requirements, including the Access Code requirements.
Key issues	▪ Synergy considers the Authority must, in accordance with clause 4.34 of the Access Code, ensure, as a part of its decision in relation to WP's *proposed revisions* in respect of the TaRP, that no party will lose any pre-existing contractual rights. ▪ Synergy currently has a number of rights it considers it will be prevented from exercising if certain WP's changes are approved by the Authority. Synergy is currently precluded from discussing these rights with the Authority by virtue of the confidentiality provisions in place between Synergy and WP and Synergy and its customers. Synergy would be happy to discuss these matters with the Authority provided the Authority issues a suitable notice under section 51 of the ERA Act compelling Synergy's production of relevant information. Synergy considers the TaRP contains defined terms that differ to the meaning given to those terms in the Access Code, in particular regarding the *term Bidirectional Point* that does not appear in the Access Code. Synergy considers it is important for the Authority to determine whether it is within the Authority's powers to

	approve a document that deviates from the definition in the Access Code such that it introduces a new concept to the definition, as is the case in respect of the definition of Connection Point in the TaRP. ▪ Clause 5.3 of the TaRP provides WP may refuse to consent to an assignment if the assignment would have the effect of materially increasing WP's financial or technical risk under the relevant *access contract*. Synergy's position as a state government owned *user* means it has a credit rating equivalent to the state government. Synergy considers this clause would limit Synergy's ability to assign its access rights to third parties given WP may seek to obtain more advantageous terms and conditions by contracting directly with access seekers. This is particularly the case in the context of the sort of capacity constraints to which the WP network is presently subject. ▪ Synergy considers if WP withholds consent to a proposed relocation, WP should be required to provide, at the request of the proposing *user*, a detailed explanation of the commercial and technical grounds that were the basis of the refusal. Synergy also considers the proposed clause 6.4 of the TaRP should be better aligned to the wording in the Access Code to require WP to provide *users* with a detailed explanation of why consent for certain proposed relocations are withheld. ▪ In Synergy's view, the proposed new clause 6.5 of the TaRP should not be approved by the Authority because it imposes an obligation on *users* proposing to effect a *relocation* under the TaRP to also make an application under the *application and queuing policy* in circumstances where such an obligation is inconsistent with the Access Code requirements with respect to the TaRP. ▪ A summary of the key matters requiring the Authority's consideration and determination is detailed in Attachment 3.

A. INTRODUCTION

1. Synergy is Western Australia's largest electricity retailer and is also WP's largest network *user*. Synergy's retail and generation electricity transfer access contracts (**ETAC**) with WP collectively involve more than one million *connection points*. Synergy pays WP more than $1.2 billion annually for transport services under its two existing ETACs.

2. Synergy is pleased to provide the following specific comments to the Authority on WP's proposed TaRP.

3. Synergy provided submissions to WP on 20 June 2017 (**Synergy's Initial Submissions**) in response to amendments that WP proposed to the TaRP at a generator forum held on 3 May 2017.

4. Synergy has reviewed WP's proposed changes to the TaRP submitted to the Authority on 2 October 2017 as a part of the *access arrangement* review process. Synergy acknowledges the amendments WP has made to its revised proposed TaRP in response to Synergy's concerns.

5. This submission contains those concerns (and the reasons for those concerns) that Synergy still holds in respect of some of the current proposed TaRP amendments. A summary of the key matters requiring the Authority's consideration and determination is detailed in Attachment 3.

B. REGULATORY REQUIREMENTS

6. In preparing this submission Synergy has had particular regard to certain provisions under the Access Code and the *Economic Regulation Authority Act 2003* (WA) (**ERA Act**) that the Authority must take into account in making its decision in relation to WP's *proposed revisions*. These provisions are extracted in Attachment 1.

7. In this submission, words shown in *italics* have the meaning given under the Access Code unless the context otherwise requires. Matters in **bold** are for emphasis (except for headings and in-text defined terms).

Key Access Code provisions

8. Section 2.1 – sets out the Access Code objective.

9. Section 2.4A – essentially, describes the manner that the Access Code and related instruments apply in the context of parties' freedom to contract.

10. Section 4.30 when read in conjunction with section 4.52 – provides that in determining whether to *approve* a *proposed revision*, the Authority must have regard to, amongst other things, the contractual obligations of the *service provider* or other persons (or both) already using the *network*.

11. Section 4.34 when read in conjunction with section 4.52 – provides the Authority must not *approve proposed revisions* that would, if *approved*, have the effect of depriving a person of a contractual right that existed prior to the earlier of the date on which the *proposed revisions* were due to the Authority and the date on which the *proposed revisions* were submitted to the Authority.

12. Section 4.52 – provides that certain of the provisions relating to the Authority's consideration of a *proposed access arrangement* apply to the Authority's consideration of *proposed revisions* submitted by WP under section 4.48 of the Access Code.

13. Section 5.19 – provides that a *transfer and relocation policy*, for a transfer other than a bare transfer, (a) must oblige the *service provider* to permit a *user* to *transfer* its *access rights* and may, subject to section 5.20, make a *transfer* subject to the *service provider's* prior consent and such conditions as the *service provider* may impose, and (b) subject to section 5.20, may specify circumstances in which consent will or will not be given, and conditions which will be imposed, under subsection (a).

14. Section 5.20 – provides that under a *transfer and relocation policy*, for a *transfer* other than a *bare transfer*, (a) a *service provider* may withhold its consent to a *transfer* only on reasonable commercial or technical grounds, and (b) may impose conditions in respect of a *transfer* only to the extent that they are reasonable on commercial or technical grounds.

15. Section 5.21 – provides a *transfer and relocation policy* (a) must permit a user to make a *relocation* and subject to section 5.22, may make a *relocation* subject to the *service provider's* prior consent and such conditions as the *service provider* may impose, and (b) subject to section 5.22, specify in advance circumstances in which consent will or will not be given and conditions which will be imposed.

16. Section 5.22 – provides that a *service provider* (a) must withhold its consent to a *relocation* where consenting to a *relocation* would impede the ability of the *service provider* to provide a *covered service* that is sought in an *access application*, (b) may withhold its consent to a *relocation* only on reasonable commercial or technical grounds, and (c) may impose conditions in respect of a *relocation* only to the extent they are reasonable on commercial and technical grounds.

17. Section 5.23 – provides an example of a thing that would be reasonable for the purposes of sections 5.20 and 5.22, namely the *service provider* must receive at least the same amount of revenue as it would have received before the *transfer* or *relocation*, or more revenue if tariffs at the destination point are higher.

18. Section 5.24 – provides that section 5.23 does not limit the things that would be reasonable for the purposes of sections 5.20 and 5.22.

ERA Act

19. Section 26(1) – specifies additional matters the Authority must have regard to in performing its functions, including when considering WP's proposed TaRP:

    - the need to promote regulatory outcomes that are in the public interest;
    - the long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets;
    - the need to encourage investment in relevant markets;
    - the legitimate business interests of investors and service providers in relevant markets;
    - the need to promote competitive and fair market conduct;
    - the need to prevent abuse of monopoly or market power; and
    - the need to promote transparent decision-making processes that involve public consultation.

C. OVERARCHING ISSUES

Primacy of pre-existing contractual rights

20. Section 4.34 of the Access Code, when read in conjunction with section 4.5.2, provides the Authority must not *approve proposed revisions* that would, if *approved*, have the effect of depriving a person of a contractual right that existed prior to the earlier of the date on which the *proposed revisions* were due to the Authority and the date on which the *proposed revisions* were submitted to the Authority (**Pre-existing Contractual Right**).

21. Synergy notes section 4.34 of the Access Code is not limited to effectively grandfathering Pre-existing Contractual Rights of a *user* or an *applicant* nor is the subject category of contractual rights limited to a right contained in an *access contract* or a *contract for services.*

22. Nevertheless, for the Authority to perform its obligation in accordance with the Code objective, Synergy considers the Authority must first consider and identify any relevant Pre-existing Contractual Rights. Synergy currently has a number of rights it considers it will be prevented from exercising if certain WP's changes are approved by the Authority. Synergy is currently precluded from discussing these rights with the Authority by virtue of the confidentiality provisions in place between Synergy and WP and Synergy and its customers. Synergy would be pleased to discuss these matters with the Authority subject to the Authority issuing a suitable notice under section 51 of the ERA Act requiring Synergy's production of relevant information.

23. Importantly, the Authority should not limit its enquiries to considering previous approved *standard access contracts* or *reference services* because there will be a number of *access contracts* and *non-reference services* that deviate from the Authority's approved documents and services. Further, it will be important to determine whether in the case of the TaRP parties have modified various rights and obligations under that document.

24. It is clear from the Access Code the TaRP is intended to provide for certain basic rights and obligations with respect to the *transfer* and *relocation* of access rights under the Access Code. The Access Code is clear WP and *users* are not obliged to comply with the TaRP in circumstances where parties enter into contractual arrangements that displace or otherwise amend those basic rights and obligations.

25. The principle of freedom to contract enshrined in section 2.4A of the Access Code provides WP 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*). This provision is subject to an *applications and queuing policy* in an *access arrangement,* and any applicable *technical rules.*

26. Section 2.6 of the Access Code provides that nothing in the Access Code or an *access arrangement* prevails over or modifies the provisions of a *contract for services*, except for present purposes the *applications and queuing policy* and the *technical rules*. But importantly, this provision does not entitle the Authority to approve any *proposed revisions* that would have the effect, if approved, of depriving a person of a Pre-existing Contractual Right.

Definitions

27. Synergy notes that a number of definitions contained in the TaRP are different to the meanings given to those terms in the Access Code. Each of these differences are identified in Attachment 2 to this document.

28. Synergy accepts there are circumstances where minor variations between Access Code definitions and definitions in the TaRP will be necessary to ensure the meaning conveyed in the Access Code is appropriately captured. In principal, these differences should be perfunctory and minimal because where the meaning of terms used in the Access Code are re-defined in the TaRP there is a risk the Authority will be beyond power in approving the TaRP or, if applicable, other *access arrangement* documents.

29. For example, the term "bidirectional point" is defined and used in the TaRP but is not defined or used in the Access Code. Its use in the TaRP therefore introduces a new concept to the access regime by varying the definition of *connection point*.

30. In relation to this approach, Synergy considers that adopting the definition of *connection point* in the Access Code and not applying a new definition of bi-directional point need not preclude WP from offering bi-directional services because the definitions of *exit point* and *entry point* are, in Synergy's view, not inconsistent with the bi-directional service concept. These definitions are set out at Attachment 2.

31. Synergy therefore considers the Authority must determine whether approval of the TaRP with the amended Connection Point definition is consistent with the Authority's powers under the Access Code.

32. Synergy notes the other differences set out at Attachment 2 do not give rise to material differences in meaning which does not appear in the Access Code at all but as a matter of practice considers the Authority should insist upon a strict application of Access Code definitions in the TaRP and other *access arrangement* documents.

Assignment to financially and technically competent persons – proposed amendment to clause 5.3

33. Synergy considers clause 5.3 greatly enhances WP's right of refusal in respect of assignments other than *bare transfers* compared to what is generally the case with respect to assignments under most commercial contracts. Generally speaking, either party will be required to consent to an assignment in circumstances where the proposed assignee has the technical and financial resources to perform the contact proposed for assignment. Synergy does not understand any commercial, regulatory or technical reason for clause 5.3 of the TaRP in the first place, let alone the proposed amendments to that clause.

34. Because clause 5.3 exceeds the standard approach to assignments and novation in commercial contracts, Synergy considers the provision exceeds WP's legitimate business interests and is therefore not consistent with a matter to which the Authority must have regard under section 26(1)(d) of the ERA Act.

35. Further, clause 5.3 of the TaRP limits Synergy's ability to enter into assignments of its *access rights* with third parties, whether they be customers or competitors, because any proposed assignee will have a lower credit rating than Synergy. Given Synergy's position as a state government owned business, Synergy's credit rating is much higher than even large and established electricity retailers and generators. It is therefore likely that clause 5.3 would entitle WP to, in every case, reject a proposed assignment. WP may be incentivised to reject proposed

assignments to obtain more commercially beneficial terms for itself from access seekers than may be in effect between WP and Synergy.

36. In view of this, Synergy considers approval of clause 5.3 of the TaRP as proposed by WP would be contrary to the Access Code objectives because it does not promote the economically efficient operation of and use of *networks* and *services* of *networks* in markets upstream and downstream of the *networks*. Further, it would be inconsistent with the need to promote competitive and fair market conduct as contemplated by the matters the Authority must have regard to under section 26(1)(e) of the ERA Act, when such conduct is measured against standard commercial practice. Finally, it would give WP the opportunity to exercise monopoly power inconsistent with the public interest, having regard to sections 26(1)(a) and 26(1)(f) of the ERA Act.

37. Synergy seeks the deletion of clause 5.3 and its replacement with a more commercially standard provision that entitles WP to reject a proposed assignment in circumstances where it can demonstrate the proposed assignee lacks the financial or technical capacity to perform the proposed assignor's obligations that are proposed to be assigned.

Consent to relocations – proposed new cause 6.4

38. Synergy is pleased WP has, in response to Synergy's Initial Submissions, amended the drafting of proposed new clause 6.4 to reflect WP's rights under the Access Code (namely, those in sections 5.18 to 5.24).

39. However, in order that the drafting more accurately reflects the Access Code provisions, Synergy considers the proposed clause 6.4 should be amended as set out below (Synergy's suggested amendments to WP's proposed clause 6.4 are shown in ~~strikethrough~~ and underline). Synergy also considers there should be a requirement for WP to provide (if applicable) the *user* with a detailed explanation of the commercial and technical grounds that consent is withheld, otherwise there is no practical way for a *user* to ascertain whether Western Power has complied with the provision.

6.4 Consent

a. Western Power:

i. must withhold its consent to ~~A~~a relocation ~~may not be made~~ where it would impeded the ability of Western Power to provide a *covered service* sought in an *access application*~~.~~;

~~b.~~ ii. may only withhold its consent to ~~A~~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 that ~~which~~ consent may be subject to conditions only to the extent that they are ~~required on~~ reasonable on commercial and technical grounds, in which case Western Power must provide the user on the user's written request with a detailed explanation of such commercial and technical grounds.

~~c.~~b. 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.

Process for relocations – proposed new clause 6.5

40. Synergy does not agree with proposed new clause 6.5 or WP's rationale for the change.

41. Synergy accepts there may be circumstances where some *users* will be required to make an application under the *applications and queuing policy* in connection with a *relocation* under the TaRP. However, section 5.22(a) of the Access Code makes it clear WP can withhold consent in circumstances where a *relocation* would impede the ability of WP to provide a *covered service* that is sought in an *access application.*

42. In such circumstances an application under the *applications and queuing policy* will be required but Synergy considers this would be the only occasion in respect of which such an application would be required.

43. Further, the Access Code provisions that set out the requirement for the contents of the TaRP are exhaustive rather than permissive, in which sense they do not entitle WP to use the TaRP to expand the scope of the *applications and queuing policy.* In Synergy's view, while there is the potential for cross-over as described in paragraph 41 of this document, the *applications and queuing policy* and the TaRP are, and must remain, distinct. This is because the TaRP deals with capacity decreases and relocations while the *applications and queuing policy* deals with the assessment of plant and equipment to connect to WP's network, assess *connection applications* and make *network access offers*.

44. Synergy therefore considers the Authority should **not** *approve* WP's proposed new clause 6.5 for the TaRP.

Electricity Network Access Code 2004 (WA) requirements

2.1 The objective of this Access Code (**"Code objective"**) is to promote the economically efficient:

(a) investment in; and

(b) operation of and use of, *networks* and *services* of *networks* in Western Australia in order to promote competition in markets upstream and downstream of the *networks*.

2.2 The *Minister*, the *Authority* and the *arbitrator* must have regard to the *Code objective* when performing a function under this Code whether or not the provision refers expressly to the *Code objective*.

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*).

4.30 In determining whether to *approve proposed revisions*, the *Authority* must have regard to the following:

...

(b) contractual obligations of the *service provider* or other persons (or both) already using the *network*.

4.34 Subject to section 4.35, the *Authority* must not *approve* a *proposed access arrangement* which would, if *approved*, have the effect of depriving a person of a contractual right that existed prior to the earlier of the *submission deadline* for the *proposed access arrangement* and the date on which the *proposed access arrangement* was submitted.

5.18 A *transfer and relocation policy*:

(a) must permit a *user* to make a *bare transfer* without the *service provider's* consent; and

(b) may require that a *transferee* under a *bare transfer* notify the *service provider* of the nature of the *transferred access rights* before using them, but must not otherwise require notification or disclosure in respect of a *bare transfer*.

5.19 For a *transfer* other than a *bare transfer*, a *transfer and relocation policy*:

(a) must oblige the *service provider* to permit a *user* to *transfer* its *access rights* and, subject to section 5.20, may make a *transfer* subject to the *service provider's* prior consent and such conditions as the *service provider* may impose; and

(b) subject to section 5.20, may specify circumstances in which consent will or will not be given, and conditions which will be imposed, under section 5.19(a).

5.20 Under a *transfer and relocation policy*, for a *transfer* other than a *bare transfer*, a *service provider*:

(a) may withhold its consent to a *transfer* only on reasonable commercial or technical grounds; and
(b) may impose conditions in respect of a *transfer* only to the extent that they are reasonable on commercial and technical grounds.

5.21 A *transfer and relocation policy*:

(a) must permit a *user* to relocate capacity at a *connection point* in its *access contract* to another *connection point* in its *access contract*, (a **"relocation"**) and, subject to section 5.22, may make a *relocation* subject to the *service provider's* prior consent and such conditions as the *service provider* may impose; and

(b) subject to section 5.22, may specify in advance circumstances in which consent will or will not be given, and conditions which will be imposed, under section 5.21(a).

5.22 Under a *transfer and relocation policy*, for a *relocation* a *service provider*:

(a) must withhold its consent where consenting to a *relocation* would impede the ability of the *service provider* to provide a *covered service* that is sought in an *access application*; and

(b) may withhold its consent to a *relocation* only on reasonable commercial or technical grounds; and

(c) may impose conditions in respect of a *relocation* only to the extent that they are reasonable on commercial and technical grounds.

5.23 An example of a thing that would be reasonable for the purposes of sections 5.20 and 5.22 is the *service provider* specifying that, as a condition of its agreement to a *transfer* or *relocation*, the *service provider* must receive at least the same amount of revenue as it would have received before the *transfer* or *relocation*, or more revenue if *tariffs* at the destination point are higher.

5.24 Section 5.23 does not limit the things that would be reasonable for the purposes of sections 5.20 and 5.22.

26. Authority to have regard to certain matters

(1) In performing its functions, other than the functions described in section 25(c) and (d), the Authority must have regard to —

(a) the need to promote regulatory outcomes that are in the public interest;

(b) the long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets;

(c) the need to encourage investment in relevant markets;

(d) the legitimate business interests of investors and service providers in relevant markets;

(e) the need to promote competitive and fair market conduct;

(f) the need to prevent abuse of monopoly or market power;

(g) the need to promote transparent decision-making processes that involve public consultation.

Attachment 2 – Table of definitions in Tarp which differ from the Access Code definition

Defined term in proposed TaRP	TaRP definition (italicized terms in this column are defined terms in the TaRP, or the proposed AQP – as applicable)	Access Code definition (italicized terms in this column are defined terms in the Access Code)
access arrangement	means the current *access arrangement* approved in respect of the *network* under the *Code*.	means an arrangement for *access* to a *covered network* that has been *approved* by the *Authority* under this Code.
access rights	means all or part of a *user*'s rights under an *access contract* to obtain a *covered service*.	means all or part of a *user's* rights under a *contract for services* to obtain a *covered service*
applications and queuing policy	means the applications and queuing policy under the *access arrangement*.	means a policy in an *access arrangement* setting out the *access application* process under section 5.1(g)
bare transfer	means an *assignment* under which the *assignor* assigns the whole or a part of its *access rights* under an *access contract* to an *assignee*, but under which there is no *novation*, with the result that the *assignor's* obligations under the *access contract* for *services*, and all other terms of the *access contract* for *services*, remain in full force and effect after the *assignment*, whether or not the *assignee* becomes bound to the *assignor* or any other party to fulfil those obligations.	When used in sections 5.18 to 5.24, refers to a *transfer* of a *user's access rights*, under a *transfer and relocation policy*, in which the *user's* obligations under the *contract for services*, and all other terms of the *contract for services*, remain in full force and effect after the *transfer*. [Sections 5.18 to 5.24 of the Access Code set out the requirements for a *transfer and relocation policy*.]
connection point	means, in respect of a *user*, an *exit point* or an *entry point* or *bidirectional point* under the *user's access contract*.	means a point on a *covered network* identified in, or to be identified in, a *contract for services* as an *entry point* or *exit point*.

Defined term in proposed TaRP	TaRP definition (italicized terms in this column are defined terms in the TaRP, or the proposed AQP – as applicable)	Access Code definition (italicized terms in this column are defined terms in the Access Code)
entry point	has the meaning given to it in the *applications and queuing policy*. Definition in the (proposed) AQP: "means a single, indivisible (except as allowed under this applications and queuing policy) point, that for purposes under the *access arrangement* involving the transfer of electricity, is deemed to consist of a single *attachment point*, *connected* or to be connected to a *user's connection point*, with a single *meter* (regardless of the actual configuration of the *network assets* making up the *entry point*), at which electricity is more likely to be transferred into the *network* than out of the *network*."	means a point on a *covered network* identified as such in a *contract for services* at which, subject to the *contract for services*, electricity is more likely to be transferred into the *network* than transferred out of the *network*.
exit point	Has the meaning given to it in the *applications and queuing policy*. Definition in the (proposed) AQP: "means a single, indivisible (except as allowed under this applications and queuing policy) point, that for purposes under the *access arrangement* involving the transfer of electricity, is deemed to consist of a single *attachment point*, connected or to be *connected* to a *user's connection point*, with a single *meter* (regardless of the actual configuration of *network assets* making up the *entry point*), at which electricity is more likely to be transferred out of the *network* than into the *network*."	means a point on a *covered network* identified as such in a *contract for services* at which, subject to the *contract for services*, electricity is more likely to be transferred out of the *network* than transferred into the *network*.

Defined term in proposed TaRP	TaRP definition (italicized terms in this column are defined terms in the TaRP, or the proposed AQP – as applicable)	Access Code definition (italicized terms in this column are defined terms in the Access Code)
network	has the meaning given to "Western Power Network" in the Code.	Western Power Network means the *covered network* that is *covered* under section 3.1. (Note: • The SWIS is the South-Western interconnected system including generation plant and associated equipment. • The term "SWIN" is not used in this Code, but is commonly used to describe the network portion of the SWIS. • The "Western Power Network" is the portion of the SWIS that is owned by the Electricity Networks Corporation.) However, there is also a definition of "network", as follows: has the meaning given to "network infrastructure facilities" in the Act.
service	in respect of a *connection point*, means a *covered service* to be provided under an *access contract* in respect of the *connection point*.	has the meaning given to that term in Part 8 of the Act, and "service" has a corresponding meaning. (Note: At the time the *Electricity Networks Access Code Amendments (No 2) 2008* were made, the definition in section 103 of the Act was: ' "services" means – (a) the conveyance of electricity and other services provided by means of network infrastructure facilities; and (b) services ancillary to such services')

Defined term in proposed TaRP	TaRP definition (italicized terms in this column are defined terms in the TaRP, or the proposed AQP – as applicable)	Access Code definition (italicized terms in this column are defined terms in the Access Code)
Relocation	A **"relocation"** occurs when a *user*: (a) decreases its *contracted capacity* at a *connection point* (a **"retiring point"**); and (b) makes a corresponding increase in its *contracted capacity* at another *connection point* under the *user's access contract* (a **"destination point"**).	**"relocation"** means a relocation of capacity from one *connection point* in a *user's access contract* to another *connection point* the *user's access contract* under a *transfer and relocation policy*.

Ref.	Key points
20 – 26	**Primacy of existing contractual rights** • Synergy has considered the proposed TaRP on the basis that it does not override any of Synergy's current contractual rights, which will continue to have effect notwithstanding the Authority's decision to approve or not approve WP's proposed TaRP.
27 - 32	**Definitions** • The term "bidirectional point" is defined and used in the TaRP but is not defined or used in the Access Code. Its use in the TaRP therefore introduces a new concept to the access regime by varying the definition of *connection point.* • Synergy considers the Authority must determine whether approval of the TaRP with the amended Connection Point definition is consistent with the Authority's powers under the Access Code.

33 – 37	**Assignment to financially and technically competent persons – proposed amendment to clause 5.3**
	• Synergy considers approval of clause 5.3 of the TaRP as proposed by WP would:
	  ○ be contrary to the Access Code objectives because it does not promote the economically efficient operation of and use of *networks* and *services* of *networks* in markets upstream and downstream of the *networks*;
	  ○ be inconsistent with the need to promote competitive and fair market conduct as contemplated by the matters the Authority must have regard to under section 26(1)(e) of the ERA Act, when such conduct is measured against standard commercial practice; and
	  ○ give WP the opportunity to exercise monopoly power inconsistent with the public interest, having regard to sections 26(1)(a) and 26(1)(f) of the ERA Act.
	• Synergy seeks the deletion of clause 5.3 and its replacement with a more commercially standard provision

38 – 39	**Consent to relocations – proposed new cause 6.4** • So that the drafting more accurately reflects the Code provisions, Synergy recommends that proposed clause 6.4 be amended in the manner described in section 35.
40 - 44	**Process for relocations – proposed new clause 6.5** • Synergy does not agree with WP's rationale for proposed new clause 6.5, nor the assumptions underlying the proposed new clause; Synergy recommends that the Authority **not** approve WP's proposed new clause 6.5 for the TaRP