# AA4 submission to the Economic Regulation Authority No. 3: Western Power's proposed application and queuing policy

**8 December 2017**

# Contents

## A. EXECUTIVE SUMMARY

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| **Matter** | Western Power (**WP**) proposed Applications and Queuing Policy (**AQP**). |
| **Context** | On 6 October 2017, the Economic Regulation Authority (**Authority**) released WP's proposed AQP for the fourth Access Arrangement Period (**AA4**), which was lodged with the Authority by WP on 2 October 2017.<br><br>The role of the Authority is to determine whether WP's proposed AQP complies with the requirements of the *Electricity Networks Access Code 2004* (WA) (**Access Code**). In determining discretionary elements, the Authority must be 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, to promote competition in markets upstream and downstream of the networks. The Authority is also required to perform its functions under the Access Code in a manner consistent with matters the Authority is required to have regard to under section 26(1) of the *Economic Regulation Authority Act 2003* (WA) (**ERA Act**). |
| **Scope** | Synergy's submission:<br><br>▪ Outlines its concerns with respect to a number of WP's proposed amendments to the AQP.<br><br>▪ Outlines what Synergy considers to be the customer (applicant) impacts of the proposed AQP.<br><br>▪ Sets out Synergy's understanding of the Access Code requirements (sections 5.7 to 5.9, and section 5.11) against which WP, the Authority and Synergy (as a user) will assess the AQP.<br><br>▪ To the extent possible, expresses Synergy's views on certain areas where Synergy has concerns the AQP does not meet relevant legal requirements including the Access Code requirements and Access Code objective and the ERA Act. |
| **Key issues** | ▪ Synergy notes the Authority's obligation under section 4.34 of the Access Code to ensure it must not *approve proposed revisions* which 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. Synergy notes it is therefore critical any Reference Services *approved* by the Authority must be compatible with existing *access contracts* and retail contracts.<br><br>▪ Synergy currently has a number of rights it considers will be prevented from exercising if certain of 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 |

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| | Authority provided the Authority issues a suitable notice under section 51 of the ERA Act compelling Synergy's production of relevant information.<br><br>▪ WP's proposal to amend the definition of "connection application" by inserting the words "in relation to a covered service" has far-reaching consequences, which are inconsistent with the Access Code objective and sections 5.7(a), 5.7(b) and 5.7(d) of the Access Code. Importantly, the definition of *covered service* in the Access Code expressly excludes an *excluded service*. The effect of specifying a connection application only applies in relation to *covered services* would be to exclude the requirement that an applicant must submit a connection application in respect of *excluded services*, and WP would have no obligation to comply with the AQP with respect to those *services*. To the extent WP decided *excluded services* applied, they would therefore be unregulated. This is contrary to the Access Code because the Access Code is drafted on the basis the AQP applies to *excluded services* and *covered services* alike. Synergy has material concerns over the *user* and residential customer impact of WP's proposed amendments to clauses 3.6 or 3.7 of the proposed AQP. Synergy considers the scope of clauses 3.6(b)(ii)(B) and 3.7 is unduly broad, impractical and unworkable as it would require *users* to continually undertake detailed inquiries of customers to ascertain, for example, whether an apparatus such as an air conditioner, bore pump, or an electric vehicle is likely to be connected. WP's proposal will also have the unintended effect of making a *user* accountable or liable for a connection application made by an *applicant* (e.g. a PV supplier and installer) under the AQP, or for an electrician's works notification to WP. It is not the role of the *user* to provide technical assurance or apparatus certification to WP. The person best placed to do this is the person who submits a connection application and/or undertakes the *required works*. Therefore, Synergy proposes clause 3.6(b)(ii)(B) be drafted consistently with clause A2.22(g) of the *model applications and queuing policy*.<br><br>▪ Synergy is concerned WP's proposal to amend the way confidential information is dealt with under the AQP lacks clarity and greatly expands WP's discretion to disclose confidential information, including where it is "necessary for the performance of WP's functions". Further, the steps WP is required to take to ensure confidentiality of information is not specified beyond disclosure being required to be made "on a confidential basis", the legal effect of which is unclear from Synergy's point of view.<br><br>▪ Synergy agrees in principle with WP's proposal to include a process for dormant applications. However, WP's proposal, as currently drafted, is not consistent with section 5.7 of the Access Code, notably imposing requirements that do not reflect those in the *model applications and queuing policy* (Appendix 2 to the Access Code). The Authority is required to have regard to the *model applications and queuing policy* in determining whether WP's proposed AQP is consistent with section 5.7 of the Access Code (and the Access Code objective).<br><br>▪ WP's proposal to allow it and an applicant to agree the different treatment of an application under the AQP (so long as it does not 'impede' WP's ability to provide a *covered service* to another *applicant*) is of concern to Synergy. This is because there is the potential for *applicants*, particularly unsophisticated *applicants*, to forego protections or provisions that are in their best interests to expedite arrangements (including, for example, the protection in the AQP requiring WP to make access offers for *reference services* on materially the same terms as the *standard access contract* applicable to a *reference service*). Given the relative |

bargaining position of an *applicant* and WP, this could give rise to discriminatory treatment of *applicants* and as such in Synergy's view is inconsistent with the Access Code objective and sections 5.7(a) and 5.7(b) of the Access Code.

- Synergy is concerned WP's proposed new clause 12A goes beyond the scope of the AQP, to the extent the new clause deals with relocations that do not involve any modification to an existing contract for *services* or the establishment of a new contract for *services*.

- Synergy is concerned WP's proposal to introduce a new clause dealing with multiple trading relationships at a connection point is unclear because the term is undefined in the proposed AQP. Further, in circumstances where WP has not informed stakeholders of what its concept of "multiple trading relationships" is (for example, whether it adopts a concept which aligns with the Australian Energy Market Commission's definition, or whether WP proposes a broader concept), nor how that concept will interact with existing *users*, it is not clear how the proposed clause will be applied in practice. WP has also not made it clear whether parties to the multiple trading relationship must be market participants. Synergy submits the Authority should **not** *approve* WP's proposed clause 14.5 at this point in time as it is inconsistent with section 5.7(b) of the Access Code.

- WP's proposed amendment to clause 16.3 of the AQP, requiring *users* to provide information WP might require to assess compliance of modified *generating plant* with the *technical rules,* is insufficiently clear. Compliance with the *technical rules* is a very broad concept which could impose obligations on small *users* to establish complex compliance plans in respect of small *generating plant*. Further, on the current drafting, *users* could be required to comply with all *technical rules*, not simply those that apply to the *user*/*applicant*.

- Synergy submits WP's proposed amendments to clause 19.3 of the AQP, to make preliminary assessments compulsory (irrespective of whether there is any real need for one), is inconsistent with the Access Code objective and sections 5.7(a) and 14.3 of the Access Code. A preliminary assessment is intended, amongst other things, to determine if there is sufficient spare capacity available to support a connection application. Despite WP's submission that preliminary assessments are required in almost every case, Synergy considers spare capacity will not be an issue for routine connection applications, for example, in relation to equipment used by residential and small business customers such as photovoltaic (**PV**)[1] and battery systems. A blanket requirement to undertake preliminary assessments in every case irrespective of whether it is necessary will not promote regulatory outcomes that are in the public interest. The requirement for compulsory preliminary assessments, at least in the cases of those routine connection applications, should be excluded.

- WP's proposal to amend clause 24.2 of the AQP to remove the words "the applicants within" from the phrase "the requirements of the applicants within a competing applications group" is inconsistent with the Access Code objective and section 5.7(a) of the Access Code. The effect of the proposed amendment is WP would no longer be compelled to have regard to the requirements of individual *applicants* within a *competing applications* group. There is no guarantee members of a *competing applications* group have common requirements (indeed there are

[1] Synergy's current rolling 12 month average for residential PV is 2,310 connections per month.

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| | competing *applicants* with different interests). Synergy submits the words "the applicants within" be retained in clause 24.2, and also be added into clause 24.4. |

## B. INTRODUCTION

1. Synergy appreciates the opportunity to make this submission to the Authority on the AQP proposed by WP for AA4.

2. Synergy provided submissions to WP on 7 September 2017 (**Synergy's Initial Submissions**) on a draft of WP's initially proposed AQP (**Consultation Draft**). While some of Synergy's concerns have been addressed in WP's AQP submitted to the Authority, a number of Synergy's concerns remain unaddressed. Further, the proposed AQP submitted by WP to the Authority contains a number of new provisions in respect of which Synergy was not consulted.

## C. REGULATORY REQUIREMENTS

3. In preparing this submission, Synergy has sought to apply the following provisions of the Access Code and ERA Act. These provisions are detailed in Attachment 1 to this submission.

4. 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 where bolding is used in relation to definitions or headings.

### Applicable Access Code provisions

5. Section 2.1 – Access Code objective.

6. Section 2.6 – provides that nothing in the Access Code or an *access arrangement* prevails over or modifies the provisions of a *contract for services*, except for, amongst other things, the *applications and queuing policy* and the *technical rules*.

7. Section 4.30 when read in conjunction with section 4.52 – provides 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*.

8. Section 4.34 when read in conjunction with section 4.52 – provides the Authority must not *approve proposed revisions* which 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.

9. 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.

10. Section 5.7 – sets out the mandatory requirements of an AQP.

11. Section 5.8 – provides each of the paragraphs in section 5.7 (being the requirements for an AQP) do not limit each other.

12. Section 5.9 – provides in respect of the requirement for an AQP to set out the procedure for determining the priority competing applications have to obtain access to covered services (section 5.7(e) of the Access Code), an AQP may:

12.1 provide that priority between *competing applications* is determined by reference to the time at which the *access applications* were lodged with the *service provider*, and if so, then the AQP must:

(a) provide for departures from that principle where necessary to achieve the Access Code objective; and

(b) contain provisions entitling an *applicant*, subject to compliance with any reasonable conditions, to:

(i) current information regarding its position in the queue;

(ii) information in reasonable detail regarding the aggregated capacity requirements sought in *competing applications* ahead of its *access application* in the queue; and

(iii) information in reasonable detail regarding the likely time at which the *access application* will be satisfied; and

(c) oblige the *service provider* to treat *project applications*, for the purposes of determining their priority, as if each of them had been lodged on the date the *service provider* becomes aware the invitation to tender was announced.

13. Section 5.11 – requires the *Authority* to expressly determine the AQP is consistent with sections 5.7 to 5.9 and the Access Code objective to the extent it produces without material omission or variation the *model applications and queuing policy*, and otherwise must have regard to the *model applications and queuing policy* in determining whether the applicable *applications and queuing policy* is consistent with sections 5.7 to 5.9 and the Access Code objective.

### ERA Act

14. Regulation 26(1) – specifies additional matters the Authority must have regard to in considering WP's proposed AQP:

- 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.

## D. OVERARCHING ISSUES

### Primacy of pre-existing contractual rights; Reference Services must not be inconsistent with existing ETACs

15. Section 4.34 of the Access Code, when read in conjunction with section 4.5.2, provides the Authority must not *approve proposed revisions* which 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**).

16. Synergy notes that 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*.

17. Nevertheless, in order 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 many rights it considers it will be prevented from exercising if certain of 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 provided the Authority issues a suitable notice under section 51 of the ERA Act compelling Synergy's production of relevant information.

18. Importantly, the Authority should not limit its enquiries to considering previous approved *standard access contracts* or *reference services* because there will be many *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 transfer and relocation policy (**TaRP**) parties have modified various rights and obligations under that document.

19. 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 AQP parties have modified various rights and obligations under that document.

20. The principle of freedom to contract enshrined in section 2.4A of the Access Code which 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 the AQP, and any applicable *technical rules*.

21. Section 2.6 of the Access Code provides 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.

22. In addition, in order to give effect to clause 4.34 of the Access Code, it is crucial the Authority ensures that all *reference services approved* by the Authority can be obtained by a *user* based on the pre-existing terms and conditions of access. That is, the new *reference services* must be compatible with Pre-existing Contractual Rights including in *access contracts* and *retail contracts*.

### Definition of "confidential information" (clause 2.1), and consequential amendments to clauses 6.1, 24.9(d), 24.10(c)

23. Synergy acknowledges in response to Synergy's Initial Submissions, WP has made some improvements to its proposal by amending the way confidential information is dealt with under the AQP. However, the remaining provisions Synergy expressed concern about in its Initial Submissions remain inconsistent with the Access Code.

24. Section 5.7(d) of the Access Code requires the provision of information to *competing applications* is to be subject to reasonable limits including "reasonable confidentiality requirements".

25. WP proposes the types of information specified in clause 24.9(d) will be in an "anonymised" format without details of the applicant's name or physical address of any connection point relevant to the application. However, a recipient of such information may be able to back-calculate such information in particular situations where it may be self-evident that information pertains to a particular generator. For example, where the information references a particular technology type or fuel type (as contemplated by clause 24.9) and the general location on the WP network of the relevant application is self-evident. Nevertheless, clause 6.2 would entitle WP to disclose confidential information in circumstances described in clause 24.9 on a non-anonymised basis if disclosure is necessary for the performance of WP's functions. In either case, Synergy considers that disclosure should only be made if WP has procured the agreement of the recipient to keep such information confidential.

26. WP proposes it, an applicant or a disclosing person (as those terms are defined in the proposed AQP), must not disclose confidential information unless the disclosure is made, on a confidential basis, to: (i) the Authority; (ii) market operator; or (iii) where necessary for the performance of WP's functions (see WP's proposed amendments to clause 6.2(a)).

27. On the current AQP drafting, the provision applies only to disclosure to the Authority. Use of the phrase "confidential basis" makes sense because it enlivens the Authority's obligations with respect to such information set out in section 55 of the ERA Act. Disclosure of confidential or commercially sensitive information to the Authority carries a number of protections in addition to those in section 55 of the ERA Act, including in relation to current or former staff members and members of the Authority (section 57 of the ERA Act).

28. In contrast, Synergy does not understand how requiring disclosure "on a confidential basis" to the system operator or any person provided it is necessary for the performance of WP's functions, does not enliven any comparable statutory obligations in respect of disclosure by WP in general. Nor does the provision require WP to ensure the party to whom confidential information is provided, maintains the confidentiality of the information. This is troubling in the context of disclosure to any person where necessary for the performance of WP's functions because the class of potential disclosures is unusually broad and includes parties to whom disclosure may cause material commercial harm to the party to whom the confidential information pertains.

29. Further, there is no objective test against which to assess whether the disclosure is necessary for the performance of WP's functions.

30. The proposal is therefore contrary to section 5.7(b) of the Access Code because it is not sufficiently detailed to enable *users* and applicants to understand how it will operate and section 5.7(d) of the Access Code because it is simply not compliant with the confidentiality requirements set out in that provision. WP's proposal is also contrary to the legitimate business interests of

*applicants* and *users*, as contemplated by section 26(1)(d) of the ERA Act, to which the Authority must have regard.

31. In Synergy's view, the Authority must therefore refrain from approving WP's proposed provision and instead require a redrafted regime that would require WP to obtain confidentiality undertakings. In Synergy's view, such an arrangement should be enforceable by parties to whom any confidential information is commercially sensitive under section 11 of the *Property Law Act 1969* (WA) and require a more tailored disclosure right proportionate to the interests described by WP as its rationale for the change.

### Definition of "connection application" (clause 2.1); application of the AQP to Connection Applications and Electricity Transfer Applications (clause 2.2(c))

32. Synergy acknowledges WP's detailed rationale for why it proposes inserting the words "in relation to a covered service" in the definition of "connection application" and the deletion of the note to that definition.

33. However, WP's proposed amendments are inconsistent with the Access Code objective and sections 5.7(a), 5.7(b) and 5.7(d) of the Access Code.

34. The definition of *covered service* in the Access Code expressly excludes an *excluded service*. Therefore, the effect of specifying in the AQP that a connection application applies only to *covered services* would, along with other changes throughout the proposed AQP, be to exclude the requirement that an *applicant* must submit a connection application in respect of *excluded services* and WP would have no obligation to comply with the AQP in respect of *excluded services*. To the extent WP decided *excluded services* applied, they would therefore be unregulated.

35. This is contrary to the Access Code because the Access Code is drafted on the basis the AQP applies to *excluded services* and *covered services* alike.

36. The state government's intent is very clear given the drafting of the definition of *covered services*. This is because the definition of *excluded service* provides the supply of the *service* must be subject to effective competition and the cost of the service ***is able to be excluded*** from consideration for *price control* purposes without departing from the Access Code objective (**emphasis** added). Assessing whether a *service* is an *excluded service* is therefore a question of fact and a question of law, neither of which requires the *service* must be the subject of a determination by the Authority under section 6.33 of the Access Code.

37. Under section 6.33 of the Access Code, the Authority may determine a *service* to be an *excluded service* for the purpose of review or approval of *price control* in an *access arrangement* (section 6.34 of the Access Code).

38. The upshot of this is disagreement may arise between WP and *users* about whether or not a particular *service* is an *excluded service* and whether as a consequence the AQP does not apply. Services could, in the estimation of WP and one or more *users* during the course of an *access arrangement period* become *excluded services* and then cease being *excluded services* either because supply of the *services* ceases being subject to effective competition or the *service* is no longer able to be excluded from consideration for *price control* purposes without departing from the Access Code objective.

39. Further, WP could form a view for the purposes of the AQP that a *service* is an *excluded service* without that same *service* being the subject of a determination under section 6.33 of the Access Code. The formation of such a subjective view, which could lead to a dispute between WP and

one or more *users* could then only be resolved by means of time consuming and costly disputes. Further, in such an event, if the Authority is to *approve* WP's proposed amendments to the definition of "connection application", the effect would be WP could depart from the AQP while the *excluded services* remained, at least for a time, a component of WP's *target revenue*.

40. Synergy contends either outcome is inconsistent with the Access Code objective, section 5.7(a) and section 5.7(b) of the Access Code.

41. Further, the AQP does not provide sufficient detail in relation to when *applicants* must make a connection application because it is not clear what constitutes the "…potential to require a modification to the network, including an *application* to … materially modify *facilities and equipment* connected at an *existing connection point*…".[2]

42. Synergy notes the *reference services*, relevantly, specify the technical eligibility criteria for a person to use a *service*. Therefore, a person could connect and use equipment if they continue to satisfy this criterion. However, based on Synergy's discussions with WP it appears that this is not always the case. In some circumstances WP may require a connection application to be made even if a person's *facilities and equipment* comply with the eligibility criteria for the *reference service* (or *covered service*). This unilateral and ad-hoc determination does not provide regulatory certainty or clarity to *applicants* and it can be a very costly and time consuming exercise to get a position from WP that is applied consistently to all *users* and *applicants*.

43. Therefore, Synergy requires the AQP to define and clarify the matters that require a connection application including setting timelines for WP to diligently and expeditiously respond to a *user's*/*applicant's* queries as to whether a connection application is required in relation to connecting and operating particular equipment or appliances. In Synergy's view, this change will significantly assist Synergy's customers to connect new appliances such as PV, EV and battery as it will remove uncertainty as to what can and cannot be connected without WP's approval, and such a change is consistent with the objective in clause 1.2(c) of the AQP – that is, to facilitate joint solutions for connection applications.

44. Further, Synergy notes WP has broadened the technical eligibility criteria under the *reference services* to include WP's guideline document the "WA Distribution Connection Manual" (**WADCM**). Synergy notes WP seeks to impose this compliance requirement under the proposed changes to the model service level agreement (as that term is defined in the *Electricity Industry (Metering) Code 2012* (WA)). Synergy notes, relevantly, the *covered services* under the *standard electricity transfer access contract* require customers to comply with many technical compliance requirements including the WA Electrical Requirements (**WAER**). Only then will WP provide a *connection point* and a *covered service*.

    In its initial submissions to WP on the model service level agreement, Synergy noted the WADCM is a commercial guideline document and not a statutory instrument, nor is it referenced in the Access Code as having any independent status. The WADCM does not have legal effect under the Access Code such it can restrict *users*' rights to obtain a *reference service* under the Access Code or the applicable *access arrangement*.

45. Unlike the *technical rules* or the WAER, the WADCM – that is essentially a WP guideline document – is not subject to regulatory oversight or approval and therefore cannot be used to restrict the operation of regulated instruments such as the *reference services*, model service level agreement, WAER and *technical rules*. Giving the WADCM the status WP seeks would therefore plainly

[2] *See definition of "connection application" in clause 1.3 of the AQP.*

entitle WP to unilaterally amend, without regulatory scrutiny or approval, the conditions of access.

46. This is clearly inconsistent with the Access Code objective. It would further be inconsistent with many the matters the Authority is required to have regard to under section 26 of the ERA Act, particularly the need to promote transparent decision-making processes that involve public consultation.

47. This matter was considered previously by the Technical Rules Committee (**TRC**) in 2011/12. The TRC determined if there were matters under the WADCM that *users* needed to comply with then the *technical rules* should be amended to incorporate those requirements rather than giving "life" to an unregulated instrument that could be changed at WP's discretion. Consistent with the TRC's regulatory approach, in Synergy's view if WP requires the WADCM to impose conditions under an *access arrangement approved* by the Authority then the WADCM needs to form part of the *access arrangement* which means it must be reviewed by the Authority and must meet the Access Code objective and the ERA Act and be consistent with applicable law.

48. WP also has not provided any explanation why it now requires customers to comply with this commercial guideline document before it will provide a reference service or restrict the use of a reference service. This document is also subject to unilateral change by WP and is therefore uncertain and inconsistent with the Access Code objective to promote the economically efficient operation and use of *services* of *networks*.

49. Therefore, Synergy considers it is important the Authority determines whether giving effect to this guideline document under the *access arrangement*, without regulatory oversight, is consistent with the Access Code objective, promotes regulatory outcomes that are in the public interest and prevents the abuse of monopoly or market power.[3]

50. Synergy considers it is confusing and contrary to the Access Code objective to have a different document that purports to regulate matters pertaining to the *technical rules* under an *access arrangement*. It is also important to note the WADCM has not been developed to be consistent with the objectives detailed in section 12.1 of the Access Code (ie the objective of the *technical rules*).

51. In Synergy's view, any additional technical requirements should be specified in the *technical rules* and assessed as part of the process and criteria defined in Chapter 12 of the Access Code.

### Definition of "relocation" (clause 2.1)

52. WP has proposed amending the definition of "relocation" so it is no longer as defined in the Access Code, but instead is as defined in the TaRP. The definition of "relocation" from the TaRP WP has included in its note to its proposed amended definition of "relocation" in the AQP does not match the current Access Code definition. WP considers there is no difference in substance between the Access Code, TaRP and proposed AQP definitions, such that different wording will not produce any inconsistencies in practice.[4]
53. In Synergy's view, WP's contention does not adequately address the issue. It is not open to WP (or the Authority) to establish definitions in regulatory documents forming part of an *access arrangement* that are not consistent with the intent set out in the Access Code. Further, clear alignment with the Access Code in matters such as defined terms is required for consistency and certainty. It is the Access Code (not the TaRP or the AQP) that sets the requirements for the AQP

[3] See section 26(1)(a) and section 26(1)(f) of the ERA Act.
[4] *Applications and Queuing Policy Change Summary Document* (dated 2 October 2017), page 59.

(including what is meant by "relocation"). The Authority should reject WP's proposed amendment to the definition of "relocation" in the AQP and instead require the definition provided for in the Access Code.

54. Approving WP's proposal would, in Synergy's view, be inconsistent with the Access Code objective and beyond the head of power provided under the Access Code.

### Application of the AQP to Connection Applications and Electricity Transfer Applications (new clause 2.2(d))

55. WP's proposed amendment to clause 2.2(d) would allow WP and an applicant to agree different treatment of an application under the AQP so long as it did not "impede" WP's ability to provide a *covered service* to another *applicant*. Synergy acknowledges WP's explanation of how it considers unintended adverse consequences can be avoided. However, Synergy maintains the concerns expressed in its Initial Submissions in relation to WP's proposed amendments to clause 2.2(d), and repeats those concerns below.

56. In effect, WP's proposed clause 2.2(d) would allow WP and an *applicant* to agree the different treatment of an application under the AQP so long as the application was not a *competing application*.

57. Synergy is concerned this approach could give rise to a situation where applicants forego protections or provisions that are in their best interests to expedite arrangements. For example, WP's proposed amendment would allow an applicant to act against its own best interests inadvertently consenting to foregoing protections set out in the AQP such as, amongst other things:

- the reasonableness and good faith obligation in clause 3.1 of the AQP;
- the expeditious and diligent obligation in clause 3.12 of the AQP did not apply;
- the requirement that an access offer for a *reference service* must be on materially the same terms as the *standard access contract* for that *reference service* (clause 4.2 of the AQP); and
- the requirement that an access offer for a *non-reference service* must be consistent with the Access Code objective and be reasonable (clause 4.3 of the AQP).

58. Given the relative bargaining position of an *applicant* and WP in these circumstances, Synergy considers this could give rise to discriminatory treatment of *applicants* and would therefore be inconsistent with the Access Code objective and sections 5.7(a) and 5.7(b) of the Access Code.

### Withdrawing dormant applications (clause 3.14); dormant applications (clause 22)

59. Synergy agrees in principle with including a process for withdrawing dormant applications in the proposed AQP. However, to be consistent with the section 5.7 of the Access Code, Synergy considers to ensure compliance with the Access Code objective WP's drafting proposal must be amended to:

59.1 Adopt the 3 year time line in the *model applications and queuing policy* (Appendix 2 to the Access Code). The definition of "dormant application" in the *model applications and queuing policy* refers to an "*application* that was lodged by the *applicant* on a date that is more than 3 years before the date the *service provider* is considering the *application*..." Section 5.11(b) of the Access Code requires the Authority to have regard to the *model applications and queuing policy* in determining whether the AQP is consistent with sections 5.7 to 5.9 and the Access

Code objective. The *model applications and queuing policy* has been determined by the Authority as meeting the requirements of the Access Code. Adopting a 3 year time line in the AQP is then consistent with section 5.7 of the Access Code.

59.2 Be subject to WP meeting its obligations under the AQP (including acting reasonably, expeditiously, diligently and in good faith in relation to the proposed *access contract*, as required by clauses 3.1 and 3.12). This is consistent with section 5.7(b) of the Access Code (as well as sections 2.8(a) and 2.8(b) of the Access Code).

59.3 Not allow deemed withdrawal where delay is beyond the reasonable control of the applicant. Such a condition is consistent with section 5.7(c) of the Access Code, which requires an AQP to set out a reasonable timeline for progressing access contract negotiations and oblige applicants (and the service provider) to use reasonable endeavours to adhere to the timeline.

59.4 Ensure a notice under clause 22(a) is mandatory, not discretionary. Mandating a notice to be issued in all circumstances will allow *users* and *applicants* to understand in advance how the AQP will operate – this ensures consistency with section 5.7(b) of the Access Code. Further, mandating a notice to be issued is consistent with clause A2.78 of the *model applications and queuing policy* (which, as noted at dot point one above, is a policy which the Authority has determined meets the requirements of the Access Code).

59.5 Ensure clause 22(d)(ii) also has "12 months" amended to "3 years". As noted at dot point one above, adopting a 3 year time line is consistent with the *model applications and queuing policy* and therefore consistent with section 5.7 of the Access Code.

60. Synergy also submits the words "upon Western Power's receipt of that response" be removed from clause 22(d) – the inclusion of these words in this subclause does not make sense.

61. Synergy has no objection with WP's proposed amendment to clause 3.14 of the proposed AQP.

## Network planning (clause 3.15) and spare capacity (clause 24.8, and definition of "spare capacity" in clause 2.1)

*Addition of "forecast natural load growth" to definition of spare capacity*

62. Clause 2.10 of the Access Code requires WP to undertake and fund any *required work*. This includes *required work* in relation to spare capacity that is not subject to one or more *contributions* under the *contributions policy*.

63. Forecast natural load growth is fundamental to determining any *required work* in relation to spare capacity. Hence the importance for transparency and a spare capacity register contemplated under section 14.3 of the Access Code.

64. However, WP's proposed drafting is ambiguous in relation to how spare capacity is determined and which amounts are subject to *required work* funded by a *contribution* and which amounts are not. This ambiguity is inconsistent with the Access Code objective and sections 5.7(a) and 5.7(b) of the Access Code.

65. It is essential *users* be given greater clarity and transparency in relation to how spare capacity is determined, managed and allocated under the AQP so they can understand in advance how the AQP will operate (including understanding whether such proposed operations may be contrary to a *user's* electricity transfer access contract (**ETAC**)).

66. To provide the clarity required under sections 5.7 and 14.3 of Access Code, Synergy requests the following information relevantly should be added to the AQP:

    - "Forecast natural load growth" should be defined in the AQP.

    - It should be specified how "forecast natural load growth" is to be determined, including, among other things:

        - whose forecast(s) WP should have regard to, for example whether it is required to consider forecasts proposed by AEMO or to prepare its own natural load growth forecasts;

        - the extent to which the interests of customers, *users* and network operator are to be balanced (as contemplated under section 5.7(a) of the Access Code);

        - there must be reasonable grounds published supporting any forecast;

        - WP must clarify how, given it proposes all *connection points* will become bidirectional points, increased distributed generation is dealt with in the concept of "forecast natural load growth" and whether capital investment in *networks* to facilitate distributed generation will be encouraged and if so how; and

        - clarity should be provided on whether WP considers "forecast growth" includes negative growth.

67. Synergy does not agree with the proposal to include the words "matters including" in the definition of "spare capacity". These words broaden, without providing any clarity, the scope of what WP may have regard to in determining "spare capacity" and are therefore ambiguous and inconsistent with the Access Code and section 5.7(b) of the Access Code.

*Other issues with determining spare capacity*

68. For consistency with the Access Code, Synergy recommends clarifying expressly:

- no part of a *user's* "contracted capacity" (whether utilised or unutilised) can be treated as "spare capacity" (unless otherwise expressly agreed by the *user*).

  So, for example, it needs to be clarified that a "reduction" in contracted capacity (as contemplated in clause 23 of the AQP) does not include unutilised capacity in respect of a *user's* contracted capacity and that spare capacity does not "become available" (as contemplated in clause 24.8(b) of the AQP simply because contracted capacity is not utilised.

  This clarification could be provided in the definition of "contracted capacity" and is consistent with the existing definition of "spare capacity" and the Authority's AA3 *draft decision*[5] at [1590]-[1595] and the Authority's AA3 *final decision*[6] at [2619]-[2624].

- determining spare capacity in no way limits WP's obligation under section 2.10 of the Access Code to undertake and fund any *required work*.

**Increase/decrease in Contracted Capacity (clause 10.2(a)); Relationship with the Transfer and Relocation Policy (new clause 12A)**

69. Synergy is of the view that:

- existing clause 10.2(a) is acceptable, but it will only apply if the "increase" or "decrease" in question involves a **modification** to an existing contract for services or the **establishment** of a new one; and

- proposed new clause 12A is not acceptable to the extent WP intends it to apply to relocations that do not involve any **modification** to an existing contract for services or the **establishment** of a new one.

70. That is because the AQP is intended to deal with "access applications" by "applicants"[7] and by definition, they relate only to **modification** to an existing contract for services or the **establishment** of a new one. In Synergy' regulatory view, it needs to be made clear in the AQP that clause 10.2(a) only applies if the increase/decrease involves a modification to an existing contract for *services* or the establishment of a new *service*.

71. It is therefore premature for the AQP to assume all or any increases, decreases or relocations of capacity will necessarily require an access application to be made.

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5 Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Western Power Network*, 29 March 2012.

6 Economic Regulation Authority, Final Decision on Proposed Revisions to the Access Arrangement for the Western Power Network, 5 September 2012.

7 The Access Code defines the AQP as a policy that sets out "the *access application* process under section 5.1(g)". Section 5.1(g) of the Access Code requires an *access arrangement* to include an AQP "under sections 5.7 to 5.11" of the Access Code. Those sections set out what an AQP **must** and **may** include. They do not specifically mention capacity increases or decreases, but section 5.10(a) of the Access Code does allow (but not compel) an AQP to be based in whole or part on the *model applications and queuing policy* in Appendix 2 to the Access Code. The *model applications and queuing policy* does include provisions for *capacity increases* (clauses A2.30 to A2.40), which is defined (in clause A2.1) as follows: "capacity increase" means an increase in a *user's* capacity under a contract for *services* in respect of a *connection point*. The *model applications and queuing policy* does not contain provisions for capacity decreases. It also does not contain provisions for "relocations" of capacity. They are dealt with in the separate TaRP.

72. See also Synergy's response (at paragraphs 52-54 above) concerning WP's proposed amendment to the clause 2.1 definition of "relocation".

73. Synergy notes WP proposes to amend clause 10.2(e)(ii) by deleting the words "be determined" at the end of the first sentence and replacing them with "comprise", and deleting the words "from" in each of subclauses (A) and (B).

74. The effect of the amendments is to mandate/deem the priority date as either: (A) the date WP received the electricity transfer application under clause 10.2(a); or (B) the date WP received the complete connection application. Synergy considers the insertion of the word "comprise" in place of "be determined" does not make sense, grammatically – if WP wants to remove the words "be determined", then in Synergy's view, those words should be replaced with the word "be".

### Only 1 change in service within 12 months (clause 10.3)

75. WP does not propose any amendments to clause 10.3 of the proposed AQP. However, as a part of the *access arrangement* review process, for the reasons set out below and in light of Synergy's operational difficulties in relation to this provision, Synergy requests clause 10.3(c) be amended to be consistent with section 5.7(b) of the Access Code and the Access Code objective.

76. In the past, WP has only permitted Synergy to change the *covered service* in relation to a *connection point* once in a 12 month period. WP has rejected any additional application Synergy has made even though the reason for the change is consistent with clause 10.3(c) of the AQP. WP's proposal is therefore inconsistent with sections 5.7(a), 5.7(b) and 5.7(c) of the Access Code. For example:

- A customer on an anytime energy tariff will seek a time-of-use tariff from Synergy.
- Synergy will change the network *service* to a time-of-use *service* and WP will approve this change.
- The customer, within a 12 month period, may purchase a PV system and Synergy will apply to WP to change the network *service* to a bi-directional service. However, in this case WP will reject the change but will approve the connection of the PV system.

77. Synergy notes the Authority's obligation under section 26 of the ERA Act to have regard to the need to promote competitive and fair market conduct and the need to prevent abuse of monopoly or market power. Synergy submits that clause 10.3(c) of the AQP must be amended to be consistent with both section 5.7(b) of the Access Code (that is, allowing *users* to understand in advance how the AQP will operate) and the Access Code objective to promote competition in markets upstream and downstream of the *networks* – for example competition in the provision of battery, photovoltaic systems (**PVs**) and electric vehicles (**EVs**). Synergy proposes clause 10.3(c) of the AQP be amended as follows:

"(c) must ~~may, subject to this clause 10,~~ accept the change of *covered service*, where ~~Western Power is satisfied, as a reasonable and prudent person, that~~ the new *covered service* will be sufficient to meet the actual requirements of the applicant, and that it is required by reason of one or more of the following circumstances:"

### Re-energisation (clause 11.2(f))

78. Synergy notes WP proposes to amend clause 11.2(f)(ii) by deleting the words "be determined" at the end of the first sentence and to replace them with "comprise", and to delete the words

"from" in each of subclauses (A) and (B). The effect of the amendments is to mandate/deem the priority date as either:

78.1 (A) the date WP received the electricity transfer application under clause 11.2(a); or

78.2 (B) the date WP received the complete connection application.

Synergy considers the insertion of the word "comprise" in place of "be determined" does not make sense, grammatically – if WP wants to remove the words "be determined", then in Synergy's view, those words should be replaced with the word "be".

### Multiple trading relationships (clause 14.5, and consequential amendments to clauses 3.8 and 14.2)

79. Synergy notes WP's rationale and responses to Synergy's concerns expressed in Synergy's Initial Submissions on the inclusion of proposed clause 14.5 in the proposed AQP.

80. In February 2016, the Australian Energy Market Commission (**AEMC**) decided against making the *National Electricity Amendment (Multiple Trading Relationships) Rule 2016* and the *National Energy Retail Amendment (Multiple Trading Relationships) Rule 2016* (**MTR Rules**).

81. The AEMC defined the term "multiple trading relationships" to refer to the ability of a customer to engage with multiple retailers at a premises, noting that a customer who wishes to engage with multiple retailers can do so by establishing a second connection point at a premises.

82. The AEMC explained in its final rule determination into the MTR Rules (dated 25 February 2016)[8] the costs of establishing new connection points were identified to be much lower while considering the report than was anticipated by the Australian Energy Market Operator when it proposed the MTR Rules to the AEMC.

83. However, it is not clear to Synergy whether WP has adopted a concept of multiple trading relationships that aligns with that of the AEMC or whether WP instead proposes a broader class of potential traders, possibly including financial contracts and block-chain technology. This lack of specificity is troubling because it gives rise to the possibility WP may simply assert a set of contractual arrangements constitute multiple trading arrangements and require a *user, applicant* or market participant that disagrees with a given proposal to, without certain foundation, refute this position.

84. This ambiguity is concerning because it is likely to be resolved only through time consuming and expensive dispute resolution arrangements or will see *applicants* and *users* agreeing with WP or otherwise settling for sub-optimal outcomes because they wish to avoid delay and expense. In any case Synergy reiterates the concerns expressed in its Initial Submissions that, as drafted by WP, the proposal is vague (e.g. "multiple trading relationships" is not defined) and seeks to give WP a unilateral right to "agree to depart from" clause 14 of the AQP without regard to the interests of *applicants* or *users*.

85. WP has not provided any sound justification for this proposed change.

86. As WP has not informed stakeholders of what its concept of "multiple trading relationships" is nor how that concept will interact with existing *users*, it is not clear how proposed clause 14.5

[8] See, AEMC, *Final Rule Determination – National Electricity Amendment (Multiple Trading Relationships) Rule 2016, National Energy Retail Amendment (Multiple Trading Relationships) Rule 2016*, 25 February 2016. Available at: http://www.aemc.gov.au/getattachment/d37688a5-d16d-442b-80f5-e7fa51d64ab7/Multiple-Trading-Relationships-final-rule-determin.aspx

will be applied. The Authority should therefore not *approve* WP's proposed clause 14.5 (or the consequential amendments to clauses 3.8 and 14.2) because to do so would be inconsistent with the Access Code objective and sections 5.7(a) and 5.7(b) of the Access Code.

### Connection Application to Modify Generating Plant (clause 16.3)

87. Synergy requests the AQP must clearly define what is meant by the term "materially modifies". This is because in the *standard access contract* WP submitted to the Authority (on 2 October 2017), WP proposes there be ongoing liability in relation to generation modification that is not captured by clause 16.3 of the AQP.

88. Further, it is important to note the *technical rules* define the requirements for design, modification, inspection, testing and operation of *generating plant* (including inverted connected *generating plant*) connected to the *network*. Synergy notes WP has not proposed amendments to the *technical rules* in relation to AA4 but appears to be seeking to deal with certain issues by imposing conditions under the WADCM. See further Synergy's comments at paragraphs 44-51 above regarding the status of the WADCM.

89. Synergy considers, consistent with the Access Code objective and sections 5.7(a) and 5.7(b) of the Access Code, the AQP should be more specific about the scope of the information that could be required by WP under this amended clause. Compliance with the *technical rules* is a very broad concept which could impose obligations on small users to establish complex compliance plans and risk matrix in respect of small *generating plant* and spend a significant amount of time and cost managing customer queries in relation to what facilities and appliances materially modifies the *network*/*connection point*. Synergy assumes this is not WP's intent and requests this to be reflected in the drafting.

90. Synergy is also concerned to ensure WP's proposed amendment does not impose a higher compliance standard than parties are currently subject to. For example, the reference to the *technical rules* in the amendment should be changed to ensure the standard of compliance required is to the *technical rules* that apply to the *user* or *applicant*. This will ensure that grandfathered arrangements can continue to apply and will not impose unreasonably burdensome obligations on *users*, which could result in necessary or desirable modifications not being made to *generating plant*.

91. Under section 26 of the ERA Act, the Authority is required to have regard to the need to promote transparent decision-making processes, the need to promote competitive and fair market conduct and the need to prevent abuse of monopoly or market power. Having regard to that provision, Synergy considers the Authority should not *approve* WP's proposal in respect of clause 16.3 of the AQP.

### Connection Applications to Modify or Augment the Network (clause 16.4 and new clause 2.2(c))

92. WP has not addressed Synergy's concerns expressed in Synergy's Initial Submissions to these proposed amendments. Synergy reiterates these concerns and refers to its comments at paragraphs 32-51 of this document.

### Opting out of CAG process (new clause 16.5(b), and corresponding amendments to clauses 24.1(c), 24.3(b) and 24.5(a)(ii)(A))

93. WP's proposed new clause 16.5(b) (and the corresponding amendments to clauses 24.1(c), 24.3(b) and 24.5(a)(ii)(A)) does not give the applicant the choice of not proceeding with the study or the application.

94. Synergy requests the AQP clarify an applicant may choose to withdraw its application or not proceed with the proposed applicant specific solution, otherwise the APQ will be inconsistent with section 5.7(a) of the Access Code and the Access Code objective.

### Enquiry and reporting stages of Connection Applications (clauses 18.1(a), 19.1(a)(i) and 19.3)

95. WP's proposed amendment to clause 19.3 of the AQP, together with its proposed amendments to clauses 18.19(a) and 19.1(a)(i), would make a preliminary assessment compulsory, irrespective of whether there is actually any real need for one. This is not consistent with the Access Code objective.

96. Previously, a preliminary assessment was only required if requested by the applicant under clause 18.1(a) of the AQP, and the applicant could assess at the time if it was necessary to have one. WP states that "its proposed amendments to clause 19.3 allow an applicant and [WP] to agree that a preliminary assessment is not necessary".[9] WP's response raises the obvious question of what happens if the parties cannot agree. For that reason, WP's proposed amendments to clause 19.3 are inconsistent with section 5.7(a) of the Access Code.

97. Additionally, the proposed drafting in clause 19.3, when read together with the proposed amendments to clauses 18.1(a) and 19.1(a)(i), is ambiguous – it is not clear that an agreement between the parties that a preliminary assessment is not required works with proposed clauses 18.1(a) and 19.1(a)(i). The current wording in the AA3 AQP better reflects that position.

98. Synergy notes WP's response to Synergy's request for an explanation of why a preliminary assessment is required in almost every case.[10] However, Synergy reiterates the view in its Initial Submissions that as a preliminary assessment is intended, amongst other things, to determine if there is sufficient spare capacity available to support the connection application, WP's proposed change is insufficiently detailed to enable *users* and *applicants* to understand how the AQP will operate and at the very least must exclude routine connection applications where spare capacity won't be an issue – for example, in relation to equipment used by residential and small business customers such as PVs and battery systems and now EVs.

99. Were the Authority to *approve* WP's proposal, this would be contrary to section 4.28(a)(ii) of the Access Code. Section 4.28(a(ii) requires the Authority must **not** *approve* a *proposed access arrangement* if the Authority considers the Access Code objective or a requirement in Chapter 5 (here, the requirement in section 5.7(a) – that an AQP, to the extent reasonably practicable, must accommodate the interests of the *service provider* and of *users* and *applicants*) is not satisfied.

### Applicants paying for studies before receiving notice of intention (clause 24.1(d))

100. By its proposed amendment to clause 24.1(d), WP is requiring applicants, at a reasonably advanced stage of an application, to fund the cost of studies prior to WP issuing a notice of

[9] Western Power, *Applications and Queuing Policy Change Summary Document* (dated 2 October 2017), page 74.
[10] See, Western Power, *Applications and Queuing Policy Change Summary Document* (dated 2 October 2017), page 74.

intention to an applicant in relation to a preliminary access offer. Such late-stage notification and cost may take applicants by surprise. This is inconsistent with section 5.7(b) of the Access Code.

101. In Synergy's view, changes to the AQP must clearly drive effective process improvement rather than create process ambiguity that could prejudice the intent behind clause 3.1 of the AQP and potentially lead to dormant applications. An ambiguous process for CAGs is inconsistent with the Access Code objective and section 5.7(b) of the Access Code.

102. To be consistent with section 5.7(b) of the Access Code, so applicants can better understand in advance how the process will operate (including WP's obligation to process applications expeditiously and diligently), Synergy submits clause 24.1(d) of the AQP be made subject to the timeline under clause 24.1(b)(1). That is, the study proposal and costs must be provided to the applicant, within 30 business days of the application and at the same time they are notified of their CAG. Such a provision would also be consistent with section 5.7(d) of the Access Code (which section obliges the *service provider* to provide an *applicant* all commercial information reasonably requested by the *applicant* to enable the *applicant* to apply for, and engage in effective negotiation with the *service provider*).

### Notice of intention to prepare Preliminary Access Offer (clauses 24.2 and 24.4)

103. WP is proposing to delete the words "the applicants within" from the phrase "requirements of the **applicants within** a competing applications group" in clause 24.2 of the AQP, ostensibly to align that provision with the wording "requirements of a competing applications group" used in clause 24.4.

104. In so doing, an effect of WP's proposed amendment to clause 24.2 is, when deciding whether to issue a notice of intention under clause 24.2, WP would no longer need to have regard to the requirements of individual applicants within a CAG; instead it would need only consider the requirements of the CAG as a whole. This is inconsistent with the Access Code objective and section 5.7(a) of the Access Code.

105. CAGs are created by WP grouping together competing applicants as it considers necessary. In Synergy's view, there is no guarantee the members of a CAG have common requirements (indeed there are competing *applicants* with different interests).

106. Synergy does not consider WP has properly substantiated (consistent with the Access Code objective) why it should be allowed to not take into account the particular requirements of any individual *applicant* and look only at what (it thinks) are the common requirements of the CAG. Doing so risks denying consideration of individual requirements that are important for an individual *applicant* within the CAG.

107. In its Consultation Draft, WP noted that use of the word "continues" in clause 24.4 suggests the wording used in both clauses (clauses 24.2 and 24.4) should be the same.11 Synergy reiterates the view expressed in its Initial Submissions the word "continue" does not necessarily mean one must choose the clause 24.4 wording over the clause 24.2 wording. Indeed, the word "continues" would seem to more strongly argue for a **continuation** of the use of the clause 24.2 wording into clause 24.4.

108. Synergy requests clause 24.4 should be amended to include the words "the applicants within" as follows (amendments in underline):

"Following the response of applicants under clause 24.3 (if any), Western Power may, if it continues to consider that a single set of *works* for *shared assets* may meet some or all of the requirements of the *applicants* within a *competing applications group*, make *preliminary*

[11] See, *AQP Change Summary – Summary of proposed changes from AA3* (dated August 2017), page 11.

*access offers* to each *applicant* within the relevant *competing applications group* at the same time. Western Power will endeavour to make such *preliminary access offers* to each *applicant* within the relevant *competing applications group* within 60 business days after issuing the notice under clause 24.2"

109. The wording used in clause 24.2 in the AA3 AQP should be retained for AA4 – ie the words "the applicants within" should be not removed.

110. Synergy reiterates the view expressed in its Initial Submissions to the extent the effect of WP's proposed changes allows CAG requirements to prevail over an individual CAG applicant's requirement, which would appear to create a form of bypass in relation to how applications are prioritised.

### Response to Notice of Intention to prepare Preliminary Access Offer – Applicant does not require Preliminary Access Offer (clause 24.3(c))

111. Synergy acknowledges WP has included, in its revised proposed clause 24.3(c), provision for an applicant that wishes to opt-of out of the CAG to retain its priority date. However, Synergy suggests the word "may", (between the words "and" and "be considered") should read "will", so the application **will** be considered for inclusion in another CAG in accordance with clause 24.1(a). The word "may" is discretionary; there is no obligation on WP to consider the application for inclusion in another CAG.

112. Using the word "will" instead of "may" provides clarity on how such a right to terminate CAGs would be practically implemented, consistent with sections 5.7(b) and 5.7(e) of the Access Code.

### Response to Preliminary Access Offer (clause 24.5(a)(ii))

113. Synergy acknowledges WP has accommodated part of Synergy's proposal that there be no deemed withdrawal where the failure to agree is due to WP's default – namely, because WP has acted in bad faith. However the effect of the drafting in proposed clause 24.5(a)(ii)(C) is to have a protracted period over which negotiations must be held if WP has acted in bad faith within the first 30 business days. Synergy does not consider this is consistent with WP's obligations to act expeditiously and diligently (both under section 2.8(a) of the Access Code, and under clause 3.12 of the AQP).

114. Given the obligations to act expeditiously and diligently, Synergy requests there should also be a deemed withdrawal if WP fails to act expeditiously and diligently in agreeing the form of the preliminary access offer.

### Response to Preliminary Access Offer (new clause 24.5(d))

115. For consistency with defined terms, Synergy notes the italicised word "access" should be inserted between the words "a" and "contract" in proposed new clause 24.5(d).

### Selection of different Covered Service or selection/modification of existing Non-Reference Service – AMI meters (new clause 10.1(f))

116. Synergy was not consulted on WP's proposal to include the new clause 10.1(f) in the proposed AQP.

117. WP's intent with respect to clause 10.1(f) is to require *users* to apply for a time of use *reference service* to accompany the mandated roll-out of AMI Meters. Some *users* and customers of *users* will not want a time of use *reference service* upon being provided with an

AMI Meter and will prefer to remain on or to be provided an anytime *service* at the relevant *connection point*.

118. Under section 2.7 and section 2.8 of the Access Code, WP is required to use all reasonable endeavours to accommodate an *applicant's* desire to obtain *covered services*, including an obligation to provide only those parts of a *covered service* the *applicant* wishes to be provided with. Mandating a particular *reference service* in the manner proposed by WP is plainly inconsistent with these requirements. For the avoidance of doubt, Synergy does not require, nor does it request a mandated time of use *reference services* based on a customer receiving an AMI Meter. Synergy's position on this matter is detailed in Synergy's "AA4 submission to the Economic Regulation Authority No: 4 Synergy's references services request- Part D" and "AA4 submission to the Economic Regulation Authority No.2: standard electricity transfer access contract".

119. As such, WP's proposed amendment is inconsistent with the Access Code objective and the long term interests of consumers in relation to price, quality and reliability of goods and services (section 26(1)(b) of the ERA Act). The Authority should not *approve* WP's proposed amendment.

### Rules for mapping Network Assets to a Single Connection Point – AMI meters (clause 14.1(c) and definitions of "accumulation meter", "interval meter", "metering installation" and "revenue meter" in clause 2.1)

120. Synergy was not previously consulted on WP's proposal to amend clause 14.1(c), nor the subsequent amendments to definitions in clause 2.1.

121. Synergy has previously responded to WP's AMI Meter roll-out proposal (which is tied to the AQP by the definition of "AMI Meter") in its model service level agreement submission to the Economic Regulation Authority dated 20 November 2017 and will make further submissions in its proposed "AA4 submission to the Economic Regulation Authority No: 5 price control". However, for the purposes of the AQP, Synergy contends the definition of AMI Meter is unworkably broad and therefore inconsistent with section 5.7(b) of the Access Code. For example, it is not clear to Synergy from the proposed definition of "AMI Meter" the type of meter WP is referring to – ie whether it is a Type 4 meter with enhanced technology features, or something else.

122. Further, Synergy notes WP is seeking to incur an investment of $209M to roll-out 355,000 type 4 meters but has failed to disclose to the market under its AA4 proposal the meter functionality and communication link that applies to the investment. Synergy considers this precludes the Authority and parties in the position of Synergy from adequately assessing the economic efficiency of the investment or whether the services or infrastructure provided by means of the assets meet the operational or commercial requirements of *users*.

### Information required with Electricity Transfer Applications (clause 3.6)

123. Synergy was not previously consulted on WP's proposed amendments to clauses 3.6 or 3.7 of the proposed AQP. Synergy considers the scope of clauses 3.6(b)(ii)(B) and 3.7 is unduly broad.

124. Imposing an obligation on users to provide information about facilities and equipment required or likely to be connected at the connection point is a difficult standard for users to meet, especially Synergy who has a mass market of residential customers. This is due to:

124.1 the *user* not necessarily having knowledge of the facilities and equipment likely to be connected; and

124.2 the breadth of the definition of "facilities and equipment", which requires users to advise on the totality of "the apparatus, equipment, plant and buildings used for or in connection with generating, consuming and transporting electricity at the connection point."

125. The problem is compounded by the fact that:

125.1 WP does not disclose to *users* connection applications that have been submitted by an *applicant* in respect of a *user's* access contract; and

125.2 the AQP also does not require WP to reasonably provide this information even after WP has approved the connection application and effected the transfer of electricity without an electricity transfer application.

126. Not only is it impractical and unworkable to impose a blanket obligation of such a detailed and highly subjective nature on *users*, but it also intrusive to customers to do so. Compliance with such an obligation would require *users* to continually undertake detailed inquiries of customers to ascertain, for example, whether an apparatus such as an air conditioner, bore pump, or an electric vehicle is likely to be connected at any stage, or whether a battery may be installed or to obtain detailed information from the customer about the nature of buildings and plans for any modifications or additions to those buildings. To provide an indication of scale Synergy currently receives about 2,300 residential solar applications per month alone to participate in its renewable energy buyback scheme, notwithstanding those same customers also apply to WP direct for connection approval.

127. WP's proposal will also have the unintended effect of making a *user* accountable or liable for a connection application made by an *applicant* (for example, a PV supplier and installer) to WP under the AQP or an electrician's works notification to WP. It is not the role of the *user* to provide technical assurance or apparatus certification to WP. The person best placed to do this is the person who submits a connection application and/or undertakes the *required works*. It appears WP's intent is to abrogate its technical and safety role in relation to approving network connected equipment by imposing an obligation on *users* to provide information traditionally provided to WP by a connection applicant and electrician.

128. At least in relation to clause 3.7 of the AQP – which imposes obligations with respect to connection applications as opposed to electricity transfer applications – there is some reference to the obligation to provide that information consistent with the *technical rules* and as requested by WP (acting as a reasonable and prudent person). However, in clause 3.6 no such limiting language is included, resulting in a highly unworkable obligation, given the breadth of the definition of "facilities and equipment" (as described above) and the plethora of apparatus a residential customer can, and does, install at their premises.

129. Synergy's regulatory position is WP's proposal is inconsistent with the Access Code objective and section 5.7(b) of the Access Code, because there is no objective basis against which to assess whether the information is required by WP.

130. Further, Synergy submits any amendments to clauses 3.6(b)(ii)(B) and 3.7(e) to require an *applicant* to provide WP with details of facilities and equipment at a *connection point*, should be consistent with clause A2.22(g) of the *model applications and queuing policy*. In accordance with section 5.11(b) of the Access Code, the Authority is required to have regard to the *model applications and queuing policy* in determining whether the AQP is consistent with sections 5.7 to 5.9 of the Access Code and the Access Code objective. The *model applications and queuing policy* has been determined by the Authority as meeting the requirements of the Access Code. Clause A2.22 does not refer to facilities or equipment "required or likely to be connected". Clause A2.22 provides –

"(g) for each requested *connection point*:

(i) such information regarding the *facilities and equipment* at the *connection point* to the extent required by:

A. the *technical rules*; or

B. the *service provider* acting as a reasonable and prudent person,"

**Electricity Network Access Code 2004 requirements**

2.1 The objective of this 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 *network*s.

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*.

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; and

(c) set out a reasonable timeline for the commencement, progressing and finalisation of *access contract* negotiations between the *service provider* and an *applicant*, and oblige the *service provider* and *applicants* to use reasonable endeavours to adhere to the timeline; and

(d) oblige the *service provider*, subject to any reasonable confidentiality requirements in respect of *competing applications*, to provide to an *applicant* all commercial and technical information reasonably requested by the *applicant* to enable the *applicant* to apply for, and engage in effective negotiation with the *service provider* regarding, the terms for an *access contract* for a *covered service* including:

(i) information in respect of the availability of *covered services* on the *covered network*;

(ii) if there is any *required work*:

(A) operational and technical details of the *required work*; and

(B) commercial information regarding the likely cost of the *required work*;

and

(e) set out the procedure for determining the priority that an *applicant* has, as against another *applicant*, to obtain *access* to *covered services*, where the *applicants' access applications* are *competing applications*; and

(f) to the extent that *contestable consumers* are *connected* at *exit points* on the *covered network*, contain provisions dealing with the transfer of capacity associated with a *contestable consumer* from the *user* currently supplying the *contestable consumer* (**"outgoing user"**) to another *user* or an *applicant* (**"incoming user"**) which, to the extent it is applicable, are consistent with and facilitate the operation of any *customer transfer code*; and

(g) establish arrangements to enable a *user* who is:

(i) a 'supplier of last resort' as defined in section 67 of the Act to comply with its obligations under Part 5 of the Act; and

(ii) a 'default supplier' under regulations made in respect of section 59 of the Act to comply with its obligations under section 59 of the Act and the regulations; and

(h) facilitate the operation of Part 9 of the Act, any enactment under Part 9 of the Act and the 'market rules' as defined in section 121(1) of the Act; and

(i) if applicable, contain provisions setting out how *access applications* (or other requests for access to the *covered network*) lodged before the start of the relevant *access arrangement period* are to be dealt with.

5.8 The paragraphs of section 5.7 do not limit each other.

5.9 Under section 5.7(e), the *applications and queuing policy* may:

(a) provide that if there are *competing applications*, then priority between the *access applications* is to be determined by reference to the time at which the *access applications* were lodged with the *service provider*, but if so the *applications and queuing policy* must:

(i) provide for departures from that principle where necessary to achieve the *Code objective*; and

(ii) contain provisions entitling an *applicant*, subject to compliance with any reasonable conditions, to:

A. current information regarding its position in the queue; and

B. information in reasonable detail regarding the aggregated capacity requirements sought in *competing applications* ahead of its *access application* in the queue; and

C. information in reasonable detail regarding the likely time at which the *access application* will be satisfied; and

(b) oblige the *service provider*, if it is of the opinion that an *access application* relates to a particular project or development:

(i) which is the subject of an invitation to tender; and

(ii) in respect of which other *access applications* have been lodged with the *service provider*,

("**project applications**") to, treat the *project applications*, for the purposes of determining their priority, as if each of them had been lodged on the date the *service provider* becomes aware the invitation to tender was announced.

5.11 The *Authority*:

(a) must determine that an *applications and queuing policy* is consistent with sections 5.7 to 5.9 and the *Code objective* to the extent it reproduces without material omission or variation the *model applications and queuing policy*; and

(b) otherwise must have regard to the *model applications and queuing policy* in determining whether the *applications and queuing policy* is consistent with sections 5.7 to 5.9 and the *Code objective*.

## 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.

| Item ref. | Key points |
|---|---|
| **23 - 31** | **Definition of "confidential information" (clause 2.1), and consequential amendments to clauses 6.1, 24.9(d), 24.10(c)**<br>• WP's proposed definition on "confidential information" is contrary to clause 5.7(d) of the Code and contrary to the legitimate business interests of applicants and users, as contemplated by section 26(1)(d) of the ERA Act.<br>• In Synergy's view, the Authority must therefore refrain from approving WP's proposed provision and instead require a redrafted regime that would require WP to obtain confidentiality undertakings. |
| **32 - 51** | **Definition of "connection application" (clause 2.1); application of the AQP to Connection Applications and Electricity Transfer Applications (clause 2.2(c))**<br>• Amending the definition of "connection application" would have effects that are ultimately inconsistent with the Code objective and sections 5.7(a), 5.7(b) and 5.7(d).<br>• Further, Synergy notes WP has broadened the technical eligibility criteria under the *reference services* to include WP's guideline document the "WA Distribution Connection Manual" (**WADCM**). Synergy considers it is important the Authority determines whether giving effect to this guideline document under the *access arrangement*, without regulatory oversight, is consistent with the Access Code objective, promotes regulatory outcomes that are in the public interest and prevents the abuse of monopoly or market power. |
| **52 - 54** | **Definition of "relocation" (clause 2.1)**<br>• The Authority should reject the proposed amendment to the definition of "relocation" in the AQP and instead insist upon the definition provided for in the Code.<br>• Approving WP's proposal would, in Synergy's view, be inconsistent with the Code objective and beyond the head of power provided under the Code. |
| **55 - 58** | **Application of the AQP to Connection Applications and Electricity Transfer Applications (new clause 2.2(d))**<br>• Synergy considers that the proposed amendments to 2.2(d) could give rise to discriminatory treatment of applicants and would therefore be inconsistent with the Code objective and sections 5.7(a) and 5.7(b) of the Code. |
| **59 - 61** | **Withdrawing dormant applications (clause 3.14); dormant applications (clause 22)**<br>• Synergy considers that in order to ensure compliance with the *Code objective* WP's drafting proposal must be amended in the manner specified in item 59 of this submission.<br>• Synergy also submits the words "upon Western Power's receipt of that response" be removed from clause 22(d) – the inclusion of these words in this subclause does not make sense. |

| Item ref. | Key points |
|---|---|
| **62 - 68** | **Network planning (clause 3.15) and spare capacity (clause 24.8, and definition of "spare capacity" in clause 2.1)**<br>• To provide the clarity required under sections 5.7 and 14.3 of Code, Synergy proposes the following information relevantly should be added to the AQP:<br>  ○ "Forecast natural load growth" should be defined in the AQP.<br>  ○ It should be specified how "forecast natural load growth" is to be determined, and include the information specified in item 66 of this submission.<br>• Synergy does not agree with the proposal to include the words "matters including" in the definition of "spare capacity"; these words broaden, without providing any clarity, the scope of what WP may have regard to in determining "spare capacity" and are therefore ambiguous and inconsistent with the Access Code and section 5.7(b) of the Access Code.<br>• For consistency with the Code, Synergy recommends clarifying expressly:<br>  ○ no part of a user's "contracted capacity" (whether utilised or unutilised) can be treated as "spare capacity" (unless otherwise expressly agreed by the user); and<br>  ○ that determining spare capacity in no way limits WP's obligation under section 2.10 of the Code to undertake and fund any "required work". |
| **69 - 74** | **Increase/decrease in Contracted Capacity (clause 10.2(a)); Relationship with the Transfer and Relocation Policy (new clause 12A)**<br>• Synergy is of the view that:<br>  ○ existing clause 10.2(a) is acceptable, but it will only apply if the “increase” or "decrease" in question involves a **modification** to an existing contract for services or the **establishment** of a new one; and<br>  ○ proposed new clause 12A is not acceptable to the extent WP intends it to apply to relocations that do not involve any **modification** to an existing contract for services or the **establishment** of a new one.<br>• With regards to WP’s proposed amendments to clause 10.2(e)(ii) – Synergy considers that the insertion of the word "comprise" in place of "be determined" does not make sense, grammatically – if WP wants to remove the words "be determined", then in Synergy's view, those words should be replaced with the word "be". |
| **75 - 77** | **Only 1 change in service within 12 months (clause 10.3)**<br>• In light of Synergy's operational difficulties in relation to this provision, Synergy submits that clause 10.3(c) must be amended in order to be consistent with section 5.7(b) of the Code. |

| Item ref. | Key points |
|---|---|
| **78** | **Re-energisation (clause 11.2(f))**<br>• Synergy considers that the insertion of the word "comprise" in place of "be determined" does not make sense, grammatically – if WP wants to remove the words "be determined", then in Synergy's view, those words should be replaced with the word "be". The effect of the amendments is to mandate/deem the priority date as either:<br>  ○ (A) the date WP received the electricity transfer application under clause 11.2(a); or<br>  ○ (B) the date WP received the complete connection application. |
| **79 - 86** | **Multiple trading relationships (clause 14.5, and consequential amendments to clauses 3.8 and 14.2)**<br>• The Authority should not approve WP's proposed clause 14.5 (or the consequential amendments to clauses 3.8 and 14.2) because to do so would be inconsistent with the Code objective, sections 5.7(a) and 5.7(b) of the Code. |
| **87 - 91** | **Connection Application to Modify Generating Plant (clause 16.3)**<br>• Synergy considers that, consistent with the *Code objective* and sections 5.7(a) and 5.7(b) of the Code, the AQP should be more specific about the scope of the information that could be required by WP under this amended clause.<br>• Synergy considers that WP's proposal in respect of clause 16.3 of the AQP should not be approved by the Authority. |
| **92** | **Connection Applications to Modify or Augment the Network (clause 16.4 and new clause 2.2(c))**<br>• WP has not addressed Synergy's concerns expressed in Synergy's Initial Submissions to these proposed amendments. Synergy reiterates these concerns and refers to its comments at paragraph 32-51 of this document. |
| **93 - 94** | **Opting out of CAG process (new clause 16.5(b), and corresponding amendments to clauses 24.1(c), 24.3(b) and 24.5(a)(ii)(A))**<br>• Synergy suggests that the AQP clarify that an applicant may choose to withdraw its application or not proceed with the proposed applicant specific solution, otherwise the APQ will be inconsistent with section 5.7(a) of the Code and the Code objective. |
| **95 - 99** | **Enquiry and reporting stages of Connection Applications (clauses 18.1(a), 19.1(a)(i) and 19.3)**<br>• WP's proposed amendment to clause 19.3 of the AQP, together with its proposed amendments to clauses 18.19(a)) and 19.1(a)(i), would make a preliminary assessment compulsory, irrespective of whether there is actually any real need for one.<br>• Synergy considers were the Authority to *approve* WP's proposal, this would be contrary to section 4.28(a)(ii) of the Access Code. |
| **100 - 102** | **Applicants paying for studies before receiving notice of intention (clause 24.1(d))**<br>• To be consistent with section 5.7(b), so that applicants can better understand in advance how the process will operate (including WP's obligation to process applications expeditiously and diligently), Synergy submits that clause 24.1(d) of the AQP be made subject to the timeline under clause 24.1(b)(1). |
| **103 - 110** | **Notice of intention to prepare Preliminary Access Offer (clauses 24.2 and 24.4)**<br>• The wording used in clause 24.2 in the AA3 AQP should be retained for AA4 – ie the words "the applicants within" should be not removed.<br>• Synergy submits that clause 24.4 should be amended to include the words "the applicants within" as specified in item 108. |

| Item ref. | Key points |
|---|---|
| **111 - 112** | **Response to Notice of Intention to prepare Preliminary Access Offer – Applicant does not require Preliminary Access Offer (clause 24.3(c))**<br>• Synergy suggests that the word "may" (between the words "and" and "be considered") should read "will", so that the application will be considered for inclusion in another CAG in accordance with clause 24.1(a). |
| **113 - 114** | **Response to Preliminary Access Offer (clause 24.5(a)(ii))**<br>• Synergy considers there should also be a deemed withdrawal if WP fails to act expeditiously and diligently in agreeing the form of the preliminary access offer. |
| **115** | **Response to Preliminary Access Offer (new clause 24.5(d))**<br>• For consistency with defined terms, Synergy notes the italicised word "access" should be inserted between the words "a" and "contract" in proposed new clause 24.5(d). |
| **116 - 119** | **Selection of different Covered Service or selection/modification of existing Non-Reference Service – AMI meters (new clause 10.1(f))**<br>• WP's proposed amendment is inconsistent with the Access Code objective and the long term interests of consumers in relation to price, quality and reliability of goods and services (section 26(1)(b) of the ERA Act). The Authority should not *approve* WP's proposed amendment. |
| **120 - 122** | **Rules for mapping Network Assets to a Single Connection Point – AMI meters (clause 14.1(c) and definitions of "accumulation meter", "interval meter", "metering installation" and "revenue meter" in clause 2.1)**<br>• For the purposes of the AQP, Synergy considers that the definition of AMI Meter is unnecessarily broad. Additionally, it is not clear from the proposed definition the type of meter WP is referring to (e.g. whether it is a Type 4 meter with enhanced technology features, or something else).<br>• Synergy notes WP is seeking to incur an investment of $209M to roll-out 355,000 type 4 meters but has failed to disclose to the market under its AA4 proposal the meter functionality and communication link that applies to the investment. Synergy considers this precludes the Authority and parties in the position of Synergy from adequately assessing the economic efficiency of the investment or whether the services or infrastructure provided by means of the assets meet the operational or commercial requirements of *users*. |
| **123 - 130** | **Information required with Electricity Transfer Applications (clause 3.6)**<br>• Synergy's regulatory position is WP's proposal is inconsistent with the Access Code objective and section 5.7(b) of the Access Code, because there is no objective basis against which to assess whether the information is required by WP.<br>• Further, Synergy submits that any amendments to clause 3.6(b)(ii)(B) and 3.7(e) to require an applicant to provide WP with details of facilities and equipment at a connection point, should be consistent with clause A2.22(g) of the *model applications and queuing policy* |