

Appendix D

Transfer and Relocations Policy (marked up)

Amended proposed access arrangement

16 November 2018



- Important note – Amendments that were made as part of Western Power’s
- original proposal is marked-up as purple;
 - revised proposal is marked-up as blue; and
 - revised amended proposal is marked-up as red.

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

Transfer and Relocation Policy

1 July 2019



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Transfer and Relocation Policy

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1. Defined terms and interpretation

1.1 Defined terms

“**access arrangement**” means the current *access arrangement* approved in respect of the *network* under the *Code*.

“**access contract**” has the meaning given to it in the *Code*.

“**access rights**” means all or part of a *user’s* rights under an *access contract* to obtain a *covered service*.

“**applications and queuing policy**” means the applications and queuing policy under the *access arrangement*.

“**assign**” means to assign or novate a *user’s access rights* under an *access contract* to another person, and may take the form of a *bare transfer* or a *novation*.

“**assigned access right**” means any *access right* that is or is proposed to be the subject of an *assignment*.

“**assignee**” means a person who *makes* an *assignment*.

“**assignment**” means an *assignment* of a *user’s access rights* under an *access contract* to another person, and may take the form of a *bare transfer* or a *novation*.

“**assignor**” is a person who *takes* an *assignment*.

“**bare transfer**” means an *assignment* under which the *assignor* *assigns* the whole or a part of its *access rights* under an *access contract* to an *assignee*, but under which there is no *novation*, with the result that the *assignor’s* obligations under the *access contract* for *services*, and all other terms of the *access contract* for *services*, remain in full force and effect after the *assignment*, whether or not the *assignee* becomes bound to the *assignor* or any other party to fulfil those obligations.

“**bare transferee**” means a person who takes a *bare transfer*.

“**bidirectional point**” has the meaning given to it in the *applications and queuing policy*.

“**capacity**” for a *connection point*, refers to the capacity of the *network* to transfer electricity at the *connection point*.

“**Code**” means the *Electricity Networks Access Code 2004*.

“**connection point**” means, *in respect of a user*, an *exit point* or an *entry point* or *bidirectional point* identified or to be identified as such in an *under the user’s access contract*.

“**contracted capacity**” for a *connection point*, means the maximum rate at which a *user* is permitted to transfer electricity to or from the *network* at the *connection point*, being either:

- a. the rate specified in the *user’s access contract* from time to time; or
- b. if no rate is specified in the *user’s access contract*, the maximum rate of electricity permitted to be transferred under the *reference service* eligibility criteria for the *reference service* for that *connection point* in the *user’s electricity transfer access contract*; or

- c. if no rate is specified in the *user's access contract* or in the *reference service* eligibility criteria, the maximum rate of electricity permitted to be transferred through the *connection assets* under the *technical rules*,

as applicable, and is measured in Watts or Volt-Amps.

–“**customer transfer request**” has the meaning given in the *customer transfer code*.

“**destination point**” has the meaning given in clause 6.1(b).

“**encumbrance**” includes any lease, licence, native title right, easement, mortgage, charge, lien, pledge, deposit, hypothecation, restrictive covenant, building condition, retention of title or other interest of any third party affecting any property.

“**entry point**” has the meaning given to it in the *applications and queuing policy*.

“**exit point**” has the meaning given to it in the *applications and queuing policy*.

“**law**” means “written laws” and “statutory instruments” as defined in the *Code*, orders given or made under a written law or statutory instrument as so defined or by a government agency or authority, Codes of Practice and Australian Standards deemed applicable under a written law and rules of the general law including the common law and equity.

“**network**” has the meaning given to “Western Power Network” in the *Code*.

“**novate**” and “**novation**” mean to substitute, with the consent of all parties to the *access contract* and with effect on and from a date nominated as the effective date of the novation, an *assignee* for an *assignor* as a party to an *access contract*, with the result that:

- a. all rights and obligations of the *assignor* under the *access contract* become rights and obligations of the *assignee* as if the *assignee* had been named in the *access contract* in place of the *assignor*; and
- b. the *assignor* is released from any obligations under the *access contract* arising on or after the effective date of the novation, but remains liable for any default by it in the performance of those obligations prior to the effective date of the novation.

“**relocation**” has the meaning given in clause 6.1(a).

“**retiring point**” has the meaning given in clause 6.1(a).

“**service**”, in respect of a *connection point*, means a *covered service* to be provided under an *access contract* in respect of the *connection point*.

1.2 Interpretation

- a. Unless:
 - i. the contrary intention is apparent: or
 - ii. the term has been redefined in clause 1.1,a term with a defined meaning in the *Code* has the same meaning in this *transfer and relocation policy*.
- b. Unless the contrary intention is apparent:

- iii. a rule of interpretation in the *Code*; and
- iv. the *Interpretation Act 1984*, apply to the interpretation of this *transfer and relocation policy*.

2. Application of this *transfer and relocation policy*

2.1 Application in respect of an *access contract*

Unless otherwise expressly stated in an *access contract*, this *transfer and relocation policy* applies in its entirety to each *access contract*.

2.2 Application in respect of a *customer transfer request*

This *transfer and relocation policy* does not in any way apply to a *customer transfer request*.

2.3 Access Code

This *transfer and relocation policy* is based on the *Code* as in force as at the date this *transfer and relocation policy* is approved by the *Authority*. If there is an amendment to the *Code* after this date then the application of this *transfer and relocation policy* is subject to any varied or additional requirements imposed or required by those amendments.

3. Assignment only under this *transfer and relocation policy*

A *user* must not, except as expressly permitted by this *transfer and relocation policy*:

- a. *assign, novate*, declare itself a trustee of, or otherwise dispose of, any of its rights under an *access contract*; or
- b. subcontract the performance of its obligations under an *access contract*; or
- c. create an *encumbrance* over any of its rights or obligations under an *access contract*.

4. Bare transfers

The provisions in this clause 4 apply to a *bare transfer*.

4.1 User may make *bare transfer*

- a. Subject to clause 4.2, a *user* may make a *bare transfer* without Western Power's prior consent.
- b. For the avoidance of doubt, a *bare transferee* does not become a *user* by virtue of any *bare transfer*.

4.2 User must notify Western Power of the details of the *bare transfer*

If the *user* makes a *bare transfer*, the *user* must notify Western Power of:

- a. the identity of the *assignee*; and
- b. the nature of the assigned *access rights*,

before the *assignee* may commence using the *assigned access rights*.

4.3 **Bare transfer does not release the user**

- a. A *bare transfer* does not constitute a *novation*, and does not result in:
 - i. the release of the *user* in any way from any of its obligations to Western Power under the *access contract*; or
 - ii. the release of any provider of any bank guarantee under the *access contract* from any liability to Western Power under that bank guarantee.
- b. The *user* remains wholly liable to Western Power for any default under the *access contract* in accordance with its terms, whether caused by the *user*, the *assignee* or any other person.
- c. The provider of any bank guarantee under the *access contract* remains wholly liable to Western Power in accordance with the terms of that bank guarantee.

5. **Assignments other than bare transfers**

The provisions in this clause 5 apply to an *assignment* other than a *bare transfer*.

5.1 **Western Power's consent required**

For an *assignment* other than a *bare transfer*, the following provisions apply.

- a. A *user* may not *assign* all or any *access rights* without Western Power's prior written consent which consent may be withheld on reasonable commercial and technical grounds and which consent may be subject to conditions which are reasonable on commercial and technical grounds.
- b. Western Power is not required to give its consent to the *assignment* unless, under the proposed *assignment*, the *assignee* is bound to Western Power under terms that are identical to the terms of the *access contract* between Western Power and the *user*.
- c. Western Power's consent shall not be unreasonably withheld or delayed where the *user* can satisfy Western Power (acting on reasonable commercial and technical grounds) that the proposed *assignee* is financially and technically capable of performing the *user's* obligations in respect of the *assigned access rights*.

5.2 **Deed of novation**

- a. The *assignor* and the *assignee* must enter into a deed of *novation* with Western Power in such reasonable form as Western Power requires, pursuant to which, on and from the effective date of the *novation*:
 - i. the *assignee* acknowledges Western Power's rights under the relevant *access contract* in respect of the *assigned access rights*, and undertakes to observe, perform and be bound by the *user's* obligations and to meet the *user's* liabilities in respect of the *assigned access rights* under the relevant *access contract*; and
 - ii. subject to any limitations and exclusions of liability in the relevant *access contract*, the *assignor* indemnifies the *assignee* and Western Power against, and agrees to defend and hold them harmless from, all liabilities and costs either of them may suffer as a

result of any default by the *assignor* under the relevant *access contract* in respect of the *assigned access rights* occurring prior to the effective date of the *novation*, including any default whose effects do not crystallise until after the effective date of the *novation*; and

- iii. Western Power releases the *assignor* from that part of the *user's* obligations and liabilities under the relevant *access contract* as they relate to the *assigned access rights*.

5.3 Assignment to financially and technically competent persons

Western Power is not required to give its consent to an *assignment* under clause 5.1 if ~~it can reasonably demonstrate that, in Western Power's reasonable opinion,~~ such an *assignment* would have the effect of materially increasing ~~its~~ Western Power's financial or technical risk under the relevant *access contract*. Western Power's reasonable opinion may be based on, without limitation, credit reference information available to Western Power and in forming its opinion Western Power will take into account any relevant information, if any, provided by the proposed assignee.

6. Relocation

6.1 Occurrence of relocation

A "relocation" occurs when a *user*:

- a. decreases its *contracted capacity* at a *connection point* (a "retiring point"); and
- b. makes a corresponding increase in its *contracted capacity* at another *connection point* under the user's access contract (a "destination point").

6.2 Access contract provisions in respect of a destination point

Western Power and the *user* must comply with any provisions in the *access contract* with respect to an increase of *contracted capacity* at a *connection point*, ~~or an additional connection point~~, relating to a *destination point*.

6.3 Access contract provisions in respect of a retiring point

Western Power and the *user* must comply with any provisions in the *access contract* with respect to a decrease of *contracted capacity* at, or a deletion of, a *connection point*, relating to a *retiring point*.

6.4 Consent

- a. A relocation is conditional upon the user obtaining the consent of Western Power. Western Power:
 - i. must withhold its consent to a relocation where it would impede the ability of Western Power to provide a covered service sought in an access application ~~or continue to provide an existing covered service to an existing user;~~
 - ii. may withhold its consent to a relocation on reasonable commercial or technical grounds; and

- iii. may consent to a *relocation* subject to conditions provided that the conditions are required on reasonable commercial and technical grounds.
- b. Without limitation, a condition of consent under clause 6.4(a)(iii) may include that Western Power must receive at least the same amount of revenue as it would have received before the *relocation* or more revenue if the tariffs at the destination point are higher.
- c. If Western Power withholds its consent to a *relocation*, or imposes a condition in respect of a *relocation*, Western Power must provide the *user*, on the *user's* written request, with an explanation of the grounds relied upon ~~by Western Power to withhold its consent or impose conditions.~~
 - ~~— A *relocation* may not be made where it would impede the ability of Western Power to provide a *covered service* sought in an *access application*.~~
 - ~~— A *relocation* is conditional upon the *user* obtaining the consent of Western Power, which consent Western Power may withhold on reasonable commercial or technical grounds and which consent may be subject to conditions required on reasonable commercial and technical grounds.~~
 - ~~— Without limiting the conditions Western Power may impose, on reasonable commercial or technical grounds, as a condition of consent those conditions may include that Western Power must receive at least the same amount of revenue as it would have received before the *relocation* or more revenue if the *tariffs* at the *destination point* are higher.~~

6.5 Process for *Relocation*

- a. Nothing in this clause 6 limits the requirements of the *applications and queuing policy*.
- b. Without limiting clauses 6.2 and 6.3, the *user* must also, as part of requesting a *relocation*, if required by the *applications and queuing policy*, apply for approval of the *relocation*. Any such application will be processed in accordance with the *applications and queuing policy* and the *user's access contract*.

6.46.6 Western Power's costs

A *user* who requests any *assignment* or *relocation* under this *transfer and relocation policy* shall reimburse Western Power for any cost incurred by Western Power, acting as a *reasonable and prudent person*, in processing such request.