

Submission to the Economic Regulation Authority



Western Power Access Arrangement No.5: Access Arrangement Policies and Standard Access Contract

20 April 2022

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1. Executive summary

Matter	Western Power's (WP) proposed standard electricity transfer access contract (SETAC), applications and queuing policy (AQP) and multi-function asset policy (MFAP) applicable to its fifth access arrangement (AA5). ¹
Context	<p>The Electricity Networks Access Code (ENAC) section 5.1(b), (g) and (m) requires an access arrangement must, amongst other matters, include an AQP, SETAC, and a MFAP. In addition, ENAC section 5.3 requires the SETAC must be reasonable and sufficiently detailed and complete to form the basis of a commercially workable access contract. The ENAC section 5.7 and 5.37 also requires the AQP and MFAP to reasonably accommodate the interests of the service provider, users and applicants and be sufficiently detailed to enable users and customers/applicants to understand in advance how the AQP and MFAP will operate.</p> <p>There are a small but material number of matters in relation to the AQP, SETAC and MFAP where Synergy is seeking greater clarity and clearer obligations that discourage certain practices that operate contrary to the interest of users/customers. By doing so, Synergy's recommended changes will enable the AQP, SETAC and MFAP to satisfy the Code objective specified in ENAC section 2.1.</p>
Scope	This submission details key matters under the AQP, SETAC and MFAP that if not addressed could result in outcomes contrary to the interests of users and customers and details how these issues should be addressed.
Issues	<ol style="list-style-type: none">1. WP together with non-user third parties in the past have made modifications to connection points on Synergy's access contract without obtaining the necessary consents and approvals from Synergy and its customers.2. The lack of detail in the AQP and WP practices are limiting users from easily applying for and using the prudent discount and distributed generation discount (C15 and B3) reference services.3. Proposed AQP amendments will limit users/customers from using the D10 (streetlight LED replacement) reference service. Following WP discussions, Synergy understands this outcome was a drafting error and the D10 service is not being withdrawn.4. The MFAP has not given sufficient regard to what the interests of users are and how they will be accommodated.5. In the past force majeure has been declared in relation to service standard reporting purposes but Synergy (as a network user) has not been notified of such events under its ETAC. The lack of a force majeure notice under an ETAC has financial ramifications to network users.

¹ <https://www.erawa.com.au/cproot/22426/2/Appendix-E---Reference-Services---Track-Changes-1-February-2022-.pdf>

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| 6. The MFAP needs greater transparency and information provision to users specifically how the cost users pay for multi-function assets will be reduced and how this value is calculated. |
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2. Introduction

Synergy is Western Australia's largest electricity retailer and the largest user of WP's network. Synergy's retail and generation ETACs with WP collectively involve more than one million connection points. Synergy pays WP more than \$1.3 billion annually for transport and metering services under its existing ETACs.

The AQP and SETAC are the fundamental instruments that permit users to apply for, use and pay for covered services. Therefore, it is important these instruments provide sufficient clarity to:

- Accommodate the interests of users
- Be commercially workable
- Enable users and customers/applicants to understand in advance how they will operate.

However, WP practices in relation to these instruments in some instances have created outcomes contrary to the interests of users and customers and contrary to the Code objective and, in relation to the ETAC, result in an access contract that is not commercially workable and, in relation to the AQP, results in a policy that users are unable to understand in advance how it will operate.

Resolution of these issues requires an ERA regulatory determination. Synergy is seeking the ERA to include greater clarity and clearer obligations in the AQP and SETAC that will discourage practices that operate contrary to the interests of users/customers, provide commercially workable outcomes and provide for an AQP with clear obligations to enable users to understand in advance how it will operate in all required circumstances, as detailed in this submission.

In addition, the MFAP is aimed at ensuring efficient use of network assets and accommodating the long-term interest of users, including by putting downward pressure on the cost of using covered services. Synergy considers that, contrary to the requirements of the ENAC, including section 4.2, there is insufficient transparency and information for users to determine if these outcomes are being delivered.

3. Regulatory requirements

The ENAC and the ERA's final Framework and Approach decision² (**F&A**) provide the fundamental regulatory requirements for determining a reference service. The ENAC requirements for the provision of the AQP, MFAP and SETAC are outlined in Appendix A to this submission.

If WP approves a user utilising a reference service, the user must then use and pay for the service and WP must provide, the service in accordance with the access contract. Therefore, if WP does not approve or process a user's application for a reference service the user cannot use the service.

Given the interaction between the AQP and access contracts, Synergy considers the key requirements that underpin the operation of these instruments and ensures users can efficiently get approval to use a reference service is detailed in ENAC sections 5.3 and 5.7, particularly 5.7(a) and 5.7(b). These key

² [Framework and approach for Western Power's fifth access arrangement review Final decision 9 August 2021](#)




requirements work together to ensure that the AQP and access contract will provide users/customers with a framework and outcomes that:



1. Are reasonable.
2. Are sufficiently detailed to be commercially workable and so that users/customers can understand in advance how key processes will operate.
3. Accommodate user requirements.

4. Summary of Synergy's AQP, SETAC and MFAP requirements

To assist the ERA's consideration of Synergy's AQP, SETAC or MFAP requirements, Synergy has adopted a 'traffic light' approach to identify which services:

- **Meet Synergy's needs** – i.e. the AQP, SETAC or MFAP accommodates the interests of users and customers and is commercially workable ('green light')
- **Partially meet Synergy's needs** – i.e. the AQP, SETAC or MFAP partially accommodates the interests of users and customers and is partially commercially workable ('amber light')
- **Does not meet Synergy's needs** – i.e. the AQP, SETAC or MFAP does not accommodate the interests of users and customers and is not commercially workable ('red light').

WP's existing & proposed reference services	Meets Synergy / customer needs	Rationale	Submission reference
AQP - Procedure for modifying the network		WP together with third parties in the past effected network modifications without first obtaining the necessary consents and approvals from Synergy and customers, resulting in a commercially problematic ETAC. Synergy considers this event is inconsistent with the Code objective and contrary to the requirements of ENAC sections 5.3(b)(i) and 5.7(a).	5.1
AQP - Procedure for applying for a prudent or distributed generation discount		The lack of detail and WP practices are preventing users from applying for and using the prudent discount and distributed generation discount reference services. Synergy considers this outcome is inconsistent with the Code objective and contrary to the requirements of ENAC sections 5.3(b)(i) and 5.7, particularly 5.7(a), 5.7(b) and 5.7(c).	5.2
AQP - Access to D10 streetlight LED replacement service		Proposed amendments to the AQP will prevent users/customers from using the D10 reference service. Following WP discussions, Synergy understands this outcome was a drafting error and the D10 service is not being withdrawn.	5.3

WP's existing & proposed reference services	Meets Synergy / customer needs	Rationale	Submission reference
ETAC - Charges under a force majeure event		In the past, force majeure has been declared in relation to network service standard reporting to the ERA but Synergy (as a network user) has not been notified of such events under its ETAC. The lack of a force majeure notice under an ETAC has financial ramifications to network users. Synergy considers this outcome is inconsistent with the Code objective and contrary to the requirements of ENAC sections 5.3(b)(i) and 5.8(b).	6.1
MFAP - Information for the long-term interest of users		The MFAP has not given sufficient regard to what the interest of users are and how they will be accommodated. One key area that needs to be addressed is transparency and the provision of information to users. Including an explanation of how the cost users pay for multi-function assets have been reduced and the reasons for adopting that manner of reduction Synergy considers this outcome is inconsistent with the Code objective and contrary to the requirements of ENAC sections 4.2 and 5.37.	7.1

5. AQP Processes

5.1 Procedure for modifying the network

During AA4 Synergy experienced a number of instances where WP together with a third party completed a modification to the network, under clause 14.3 of the AQP (to combine multiple connection points into a single connection point), without Synergy's prior knowledge or consent.

WP performed these modifications for premises in relation to a single residential, commercial and industrial complex. The modification affects the connection points under Synergy's ETAC and prevents Synergy from supplying its business or residential customers. Following the connection point modification, Synergy subsequently became aware of the change primarily through customer complaints. Synergy incurs substantial costs to engage with customers, address complaints and remediate the issue.

Synergy notes AQP clause 14.3(d) requires the network operator to obtain the retailer's consent prior to the network operator giving effect to the modification:

(d) Where an *application* is made under clause 14.3(a) by an *applicant* who is not the *retailer* in relation to a relevant *connection point*, the *applicant* must obtain the consent of the *retailer*.

In addition, SETAC clause 18.2(a)(i) and ENAC section 2.8 requires WP must comply with the AQP:

18.2 Western Power's representations and warranties

- (a) Western Power represents and warrants to the User that:
 - (i) Western Power has complied with the Applications and Queuing Policy in the Access Arrangement and the requirements in the Code in respect of the User's Application under the Access Arrangement provided that Western Power will not be taken to be in breach of this warranty because of a failure by Western Power to comply with the Applications and Queuing Policy or the Code which is the direct result of a breach by the User of the Applications and Queuing Policy or the Code; and

2.8 Without limiting section 2.7, a service provider must:

- (a) comply with the access arrangement for its covered network and must expeditiously and diligently process access applications; and

Notwithstanding these provisions there appears to be no express ramifications for WP not complying with the ENAC, SETAC or AQP outside of the user initiating costly and inefficient access disputes or suing for breach of contract. Therefore, Synergy recommends the ERA not approving the AQP unless it contains the following amendments (changes in red) to clause 14.3(f):

- “(d) Where an *application* is made under clause 14.3(a) by an *applicant* who is not the *retailer* in relation to a relevant *connection point*, the *applicant* must obtain the consent of the *retailer*.
- (e) A *retailer* must have *verifiable consent* from its *customer* before making an *electricity transfer application* to change the configuration of a *connection point*.
- (f) *Western Power* must determine, as a *reasonable and prudent person*, within 5 business days whether it will accept the *application*. **Western Power must not accept and process an *application* under clause 14.3(a) unless:**
 - (i) **the *applicant* has provided Western Power with written evidence the *retailer* has provided its consent to the *applicant* in accordance with clause 14.3(d); and**
 - (ii) **the *retailer* has provided an *electricity transfer application* in accordance with clause 14.3(e); and....”**

These amendments are necessary to comply with ENAC section 5.7(a) and (b) to accommodate the interests of users and ensure the AQP is sufficiently detailed to enable users, applicants and WP to understand in advance how the AQP will operate. In addition, Synergy requests the ERA not approving the AQP unless the requirements under AQP clauses 14.3(d)-(f) outlined above is also included into the network modification procedure under AQP clause 14.4 (to create multiple connection points).

As WP has performed these connection point modifications relating to residential premises in the past Synergy recommends the ERA make the following amendments (changes in red) to AQP clause 14.3(a):

- (a) A person may make an *electricity transfer application* to have multiple *connection points* supplying a single *premise* or adjacent *premises* of a single **residential**, commercial or industrial complex combined into a single *connection point*, subject to clause 14.1, by notice to Western Power.

5.2 Procedure for applying for a prudent or distributed generation discount - reference services B3 and C15

Synergy in its submission on the proposed reference services³ highlighted the AQP does not contain a clear process and timeframes, consistent with ENAC section 5.7, for users to apply for and receive the B3 and C15 reference services. Notwithstanding Synergy applying for the C15 reference service on two occasions during 2021, Synergy has yet to access the reference services as its applications have not been progressed. The lack of reference service application progress highlights that the relevant provisions of the current AQP does not satisfy the requirements in ENAC section 5.7, particularly 5.7(a) (b) and (c).

The current ambiguity and high-level description of the process outlined in the AQP creates uncertainty in relation to what WP must do and by when, including, how WP requests the user to provide additional information. This lack of clarity has resulted in a number of unworkable practices and outcomes inconsistent with the requirements in ENAC section 5.7, particularly 5.7(b), (c). For example, the current AQP and the associated processes and practices implemented by WP:

- Does not accommodate the interest of users and applicants
- Are not sufficiently detailed to enable users and applicants to understand in advance how the AQP will operate in relation to these services
- Does not set out any reasonable or meaningful timeline or service standards for progressing and finalising a user's application and does not incentivise the network operator to adhere to any timelines
- Does not provide a user or applicant with any relevant commercial or technical information to enable a user or applicant to apply for and engage with the network operator in relation to calculating the reduction in network costs.

Therefore, Synergy recommends the ERA not approving this service and the AQP in the absence of a process, consistent with ENAC section 5.7, that addresses these matters.

5.3 Access to D10 streetlight LED replacement service

WP's proposed AA5 revisions includes the ongoing provision of the D10 LED replacement⁴ reference service. However, WP has made amendments to the AQP that has the effect of preventing a user from applying for and using the D10 reference service as the service is "no longer offered"⁵.

Following WP discussions, Synergy understands the removal of the D10 reference service was a drafting error and the service is not being withdrawn.

³ Synergy's submission on Western Power Access Arrangement No. 5: Reference Services, section 6.10.

⁴ [Appendix-E---Reference-Services---Track-Changes-1-February-2022-.pdf \(erawa.com.au\)](#), page 64.

⁵ Attachment 13.2, Applications and Queuing Policy Change Summary, Access Arrangement Information, 1 February 2022, page 4.

6. SETAC

6.1 Force majeure notification and charges

A number of force majeure events have occurred during AA4 where Synergy considers WP should have notified users that it was not able to deliver and meet the requirements of reference services in relation to a large number of connection points on Synergy's access contract. For example, in situations where WP has notified the ERA of a force majeure event for service standard benchmarking purposes but has not notified Synergy of a force majeure event under its ETAC, notwithstanding force majeure is defined in a similar manner under the SETAC and the ENAC and service standard benchmarks⁶.

Clause 7.3 of the proposed, and current AA4, SETAC requires that WP only charge 10% of the standing charges during force majeure events.

Clause 22 details WP's obligations and what WP must do in relation to a force majeure event.

ENAC sections 6.6-6.8, contemplates that WP would have insurance for a force majeure event and permits WP to recover any unrecovered costs under its target revenue as a result of the force majeure event.

ENAC section 5.3(b) requires the SETAC to be commercially workable and section 5.6(b) requires the service standard benchmark for a reference service to be sufficiently detailed and complete to enable a user to determine the value represented by the reference service at the reference tariff.

Synergy considers a situation where WP notifies the ERA of a force majeure event for the purposes of the service standard benchmarks but does not notify a user under its respective ETAC is inconsistent with:

1. The SETAC approved by the ERA.
2. Good electricity industry practice.
3. ENAC section 5.3, particularly section 5.3(b) because such a contract is not commercially workable.
4. ENAC section 5.6(b), including because such a situation means a user is unable to use the service standard benchmarks to determine the value represented by the reference service at the reference tariff.

However, the only manner in which a user can dispute WP's current interpretation of the ENAC is to pursue expensive legal proceedings and the cost of these proceedings is highly likely to be more than the resultant benefit available under clause 7.2 of the SETAC. This is an inefficient and commercially undesirable outcome.

Therefore, Synergy considers the ERA not approving WP's proposed SETAC unless amendments have been made to address the issue outlined above. Synergy also considers it is important the ERA clarify the operation of clauses 7.2 and 22 of the SETAC to provide users with certainty in relation to how the contract works. Including confirming that any force majeure target revenue claims WP makes under ENAC sections 6.6-6.8 are also force majeure events under clauses 7.2 and 22 of the SETAC.

⁶ Refer [Service Standard Performance Report for the year ended 30 June 2021](#) pages 33 and 35.

Synergy has recommended amendments in Appendix B which provide greater certainty to users and permit users to withhold the payment of any charges that are inconsistent with clause 7.3 of the SETAC.

7. MFAP Issues

7.1 Information for the long-term interest of users

WP 's MFAP⁷ provides the:

- Details for identifying applicable non-covered services that use multi-function assets
- Methodology used to calculate net incremental revenue
- Methodology for calculating the deduction to target revenue.

ENAC section 5.37(a) requires that the MFAP to accommodate the interest of users (including consumers). Synergy considers these interests should also include the long-term interests of consumers under the Code objective. Particularly in relation to efficient use of the network and putting downward pressure on network prices. In addition, ENAC section 6.86(d) also requires regard should be given to the manner in which the cost users pay (revenues) for multi-function assets have been reduced.

Synergy considers the MFAP has not given sufficient regard to what the interest of users are and how they will be accommodated. One key area that needs to be addressed under the MFAP is transparency and the provision of information to users in relation to:

- Which assets are being used efficiently as multi-function assets
- Financial information in relation to multi-function assets
- Information showing how revenues of multi-function assets have been reduced and the reasons for adopting that manner of reduction.

Synergy notes the MFAP contains details and methods for calculating various cost information annually and at the end of an access arrangement. However, there is no requirement to publish this information so users can identify multi-function assets on the network, understand how the MFAP is operating and how the costs of multi-function assets have been reduced.

Therefore, Synergy recommends the ERA require the MFAP to publish annually;

1. Multi-function asset type and location.
2. The financial information required to be derived under the MFAP.
3. An explanation of how the cost users pay for multi-function assets have been reduced and the reasons for adopting that manner of reduction.

⁷ [Appendix-D---Multi-Function-Asset-Policy-1-February-2022-.pdf \(erawa.com.au\)](#) page 7.

Appendix A - Applicable ENAC requirements

2.4C The *service provider* for the *Western Power Network* may not enter into an *access contract* which does not permit a *user's* export of electricity into the *Western Power Network* to be interrupted or curtailed in either of the following circumstances:

- (a) in circumstances where *constraints* are created by other *users* of the *Western Power Network* (including *users* that connected to the *Western Power Network* after the date of the relevant *access contract*); or
- (b) in connection with the operation of security constrained economic dispatch, provided that this section 2.4C does not affect any agreements entered into by the *service provider* prior to the date of the 2020 (No. 2) amendments.

2.4D Nothing in section 2.4C prevents the inclusion of other interruption or curtailment rights in an *access contract* or the *standard access contract* including, without limitation, rights to curtail or interrupt for *force majeure*, maintenance, in emergencies, or as required by law.

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

- (a) comply with the *access arrangement* for its *covered network* and must expeditiously and diligently process *access applications*;

2.5 Nothing in this Code except:

- (a) an *applications and queuing policy* in an access arrangement; and
- (b) the *ringfencing objectives* and any *ringfencing rules* approved for a network by the *Authority* under Chapter 13; and
- (ba) section 2.4C; and¹⁵⁶
- (c) any applicable *technical rules*,
limits:
- (d) the *services* a *service provider* may agree to provide to a *user* or *applicant*; or
- (e) the terms for, or connected with, the provision of *services* which may be agreed between a *service provider* and a *user* or *applicant*; or
- (f) the *covered services* which may be the subject of an *access dispute* or award under Chapter 10; or
- (g) the terms for, or connected with, the provision of *covered services* which may be the subject of an *access dispute* or award under Chapter 10.

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

5.3 A *standard access contract* must be:

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

5.4 A *standard access contract* may:

- (a) be based in whole or in part upon the *model standard access contract*, in which case, to the extent that it is based on the *model standard access contract*, any matter which in the *model standard access contract* is left to be completed in the *access arrangement*, must be completed in a manner consistent with:
 - (i) any instructions in relation to the matter contained in the *model standard access contract*; and
 - (ii) section 5.3;
 - (iii) the *Code objective*; and
- (b) be formulated without any reference to the *model standard access contract* and is not required to reproduce, in whole or in part, the *model standard access contract*.

{Note: The intention of this section 5.4(b) is to ensure that the *service provider* is free to formulate its own *standard access contract* which complies with section 5.3 but is not based on the *model standard access contract*.}

5.5 The Authority:

- (a) must determine that a *standard access contract* is consistent with section 5.3 and the *Code objective* to the extent that it reproduces without material omission or variation the *model standard access contract*; and
- (b) subject to section 5.38, otherwise must have regard to the *model standard access contract* in determining whether the *standard access contract* is consistent with section 5.3 and 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*; and
 - (ii) if there is any *required work*:
 - A. operational and technical details of the *required work*³⁰¹; and
 - B. commercial information regarding the likely cost of the *required work*;

5.37 A multi-function asset 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 *multi-function asset policy* will operate; and

- (c) set out the method for determining *net incremental revenue*; and
- (d) be consistent with the *multi-function asset guidelines*.

5.38 Notwithstanding sections 5.5(b), 5.11(b) and 5.17(b), when determining whether the *standard access contract, applications and queuing policy* or *contributions policy* (as applicable) included in an *access arrangement* is consistent with the *Code objective* and sections 5.3, 5.7 to 5.9, or 5.12 to 5.15 (as applicable), the *Authority* must not have regard to any provisions of the *model standard access contract, model applications and queuing policy* or *model contributions policy* (as applicable) that are inconsistent with section 2.4C or otherwise inconsistent with the operation of security constrained economic dispatch in the *Wholesale Electricity Market*.

Target revenue may be adjusted for unforeseen events

6.6 If:

- (a) during the previous *access arrangement period*, a *service provider* incurred *capital-related costs* or *non-capital costs* as a result of a *force majeure event*; and
- (b) the *service provider* was unable to, or is unlikely to be able to, recover some or all of the costs (“**unrecovered costs**”) under its insurance policies; and
- (c) at the time of the *force majeure event* the *service provider* had insurance to the standard of a *reasonable and prudent person* (as to the insurers and the type and level of insurance), then subject to section 6.8 an amount may be added to the *target revenue* for the *covered network* for the next *access arrangement period* in respect of the unrecovered costs.

6.7 Nothing in section 6.6 requires the amount added under section 6.6 in respect of unrecovered costs to be equal to the amount of unrecovered costs.

6.8 An amount must not be added under section 6.6 in respect of *capital-related costs* or *non-capital costs*, to the extent that they exceed the costs which would have been incurred by a *service provider* *efficiently minimising costs*.

6.86 The *multi-function asset principles* are as follows:

- (a) the *service provider* should be encouraged to use assets that provide *covered services* for the provision of other kinds of *services* where that use is efficient and does not materially prejudice the provision of *covered services*;
- (b) a *multi-function asset* revenue reduction should not be dependent on the *service provider* deriving a positive commercial outcome from the use of the asset other than for *covered services*;
- (c) a *multi-function asset* revenue reduction should be applied where the use of the asset other than for *covered services* is material;
- (d) regard should be had to the manner in which costs of *multi-function assets* have been recovered or revenues of *multi-function assets* have been reduced in respect of the relevant asset in the past and the *reasons* for adopting that manner of reduction; and
- (e) any reduction effected under section 6.84 should be compatible with other incentives provided under this Code.

Appendix B – Proposed amendments to the standard access contract

Synergy's proposed amendments (changes in red) to the standard access contract.

Definition of Force Majeure	<p>In respect of a Party, means an event or circumstance beyond the Party's control, and which the Party, acting as a Reasonable and Prudent Person, is not able to prevent or overcome, including (where the foregoing conditions are satisfied):</p> <p>(a) any act of God, lightning, earthquake, storm, fire, flood, subsidence, land slide, mud slide, wash-out, explosion or natural disaster; or</p> <p>(b) any insurrection, revolution or civil disorder, terrorism, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot; or</p> <p>(c) any determination, award or order of any court or tribunal, or any regulatory authority or the award of any arbitrator arising after the Commencement Date; or</p> <p>(d) any act or omission of government or any government or regulatory department, body, instrumentality, ministry, agency, fire brigade or any other authority other than a Party (including restraint, expropriation, prohibition, intervention, direction or embargo); or</p> <p>(e) any inability or delay in obtaining any governmental, quasi-governmental or regulatory approval, consent, permit, licence or any other authority; or</p> <p>(f) any industrial disputes of any kind, strike, lock-out, ban, limitation or other industrial disturbances; or</p> <p>(g) any significant plant or equipment failure which could not have been avoided by the exercise of Good Electricity Industry Practice; or</p> <p>(h) any act or omission of any person (other than a Party) with Facilities and Equipment connected to the Network which prevents the Party's ability to perform its obligations under this Contract; or</p> <p>(i) any application of any law of the Commonwealth, any Commonwealth authority, the State, any State authority or any local government; or</p> <p>(j) accidents, weather and acts of third parties (such as Generators or Consumers) that affect the quality, frequency and continuity of the supply of electricity; or</p> <p>(k) any circumstance or event where Services have been suspended or cannot be provided for a period of two days or longer, notwithstanding that such suspension of Services is otherwise permitted under this Contract.</p>
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22.1 Affected Person's obligations are suspended

If a Party ("**Affected Person**") is unable wholly or in part to perform any obligation ("**Affected Obligation**") under this Contract (other than an obligation to pay money **and clause 22**) because of the occurrence of a Force Majeure Event, then, subject to this clause 22, the Affected Person's obligation to perform the Affected Obligation is suspended to the extent that, and for so long as, the Affected Person's ability to perform the Affected Obligation is affected by the Force Majeure Event (such period being the "**FM Period**").

22.2 When Services are Curtailed

Without limiting clause 22.1, Western Power's obligation in respect of a Connection Point to provide the Services is suspended during any period that the provision of the Services in respect of that Connection Point is Curtailed under clause 25.1, to the extent of the Curtailment **and, notwithstanding any other provision in this Contract, any such Curtailment is deemed to a Force Majeure Event.**

22.3 Affected Person's obligations

Subject to clauses 22.4 and 22.6, if a Force Majeure Event occurs and the Affected Person is unable wholly or in part to perform any obligation under this Contract (**other than clause 22**), then the Affected Person must:

- (a) notify the other Party if the FM Period continues for a period of two days or longer; and
- (b) use reasonable endeavours (including incurring any reasonable expenditure of funds and rescheduling personnel and resources) to:
 - (i) mitigate the consequences of the Force Majeure Event; and
 - (ii) minimise any resulting delay in the performance of the Affected Obligation.
- (c) A notice under clause 22.3(a) must be given as soon as reasonably practicable and in any event within 5 Business Days of a Party becoming aware an event is or is likely to be a Force Majeure Event.
- (d) Where Services have been suspended or curtailed by Western Power, notify the User of the affected Connection Points and the FM Period in respect of each Connection Point.**

7.3 Charges during Western Power's Force Majeure Event

- (a) If a Service ("**Affected Service**") is unavailable for any consecutive period of two days or longer ("**Affected Service Period**") due to a Force Majeure Event where:
 - (i) Western Power is the Affected Person;
 - (ii) the User is unable to use the Affected Service because of the Force Majeure Event; and
 - (iii) Western Power's inability to provide the Affected Service has not been caused by the User's default or negligence,then, for that part of the Affected Service Period in which the User's Facilities and Equipment in respect of the Affected Service were not or would not have been subject to a scheduled or unscheduled outage by which the User's Facilities and Equipment were De-energised, the User is relieved of its obligation under clause 7.2 and instead must pay 10% of the "**Standing Charges**" (as defined in clause 7.3(b)) for the Affected Service during that part of the Affected Service Period.
- (b) Under this clause 7.3, Standing Charges means:

- (i) those Charges or components of a Charge which apply to a Service regardless of the actual Generation or Consumption by the User in respect of that Service, as recorded by the Metering Equipment; and
 - (ii) is not those components of a Charge which are determined by reference to the actual Generation or Consumption by the User in respect of that Service, as recorded by the Metering Equipment.
- (c) Where Western Power has not fulfilled its obligations under clause 22, Western Power must not seek to recover, and the User is not liable under this Contract to pay to Western Power, any amount derived from a Service in excess of what is permitted in this clause 7.3.