



Western Power

Transfer and Relocation Policy

Western Power Corporation

ABN 38 362 983 875

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1.1 Defined terms and interpretation

1.2 Defined terms

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

“Australian Bank” has the meaning given to “Australian bank” in section 9 of the Corporations Act 2001 (Cth).

“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.

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

“capital contributions policy” means the policy contained in the *access arrangement* dealing with *contributions* by *users*.

“contracted point” means an *exit point* or an *entry point* identified as such in an *access contract*.

“contracted capacity”, at a *contracted point*, means the maximum rate a *user* is permitted to transfer electricity at that *contracted point*.

“contribution” means any amount payable by a *user* under the *capital contributions policy*.

“Code” means the Electricity Networks Access Code 2004.

“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.

“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**” means those parts of the *SWIS* that are owned, operated or owned and operated by the Western Power *networks business* in respect of which access is given under the *access arrangement*.

“**novate**” means 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 *contracted point*, means a *covered service* to be provided under an *access contract* in respect of the *contracted point* and, if applicable, includes the transfer of electricity at the *contracted point*.

1.3 Interpretation

In this *transfer and relocation policy*:

- (a) a reference to:
 - (i) the singular includes the plural and the plural includes the singular;
 - (ii) an officer or body of persons includes any other officer or body for the time being exercising the powers or performing the functions of that officer or body;
 - (iii) this *transfer and relocation policy* or any other instrument includes any variation or replacement of it;
 - (iv) “under” includes “by”, “by virtue of”, “pursuant to” and “in accordance with”;
 - (v) “day” means a calendar day;
 - (vi) “person” includes a public body, company, or association or body of persons, corporate or unincorporated;
 - (vii) a person includes a reference to the person's personal representatives, executors, administrators, successors and permitted assigns; and
 - (viii) any monetary amount is to that amount in Australian dollars;
- (b) a word of any gender includes the corresponding words of each other gender;
- (c) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (d) “including” and similar expressions are not words of limitation;

- (e) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
- (f) a reference to a clause is a reference to a clause of this *transfer and relocation policy*.

1.4 Code definitions apply

Unless the contrary intention is apparent, a term with a defined meaning in the *Code* has the same meaning in this *transfer and relocation policy*.

1.5 Interpretation

Unless the contrary intention is apparent:

- (a) a rule of interpretation in the *Code*; and
- (b) 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*.

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*

Subject to clause 4.2, a *user* may, acting as a *reasonable and prudent person*, assign its *access rights* without Western Power's prior consent.

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.

4.4 *Assignee* may not effect a *bare transfer*

- (a) An assignee taking the benefit of any *assigned access rights* under a *bare transfer* may not itself effect or purport to effect any *assignment* of those *access rights* to any person other than by way of re-*assignment* to the *user* from whom it took the benefit of the *assigned access rights*, and any attempt by the assignee to effect such an *assignment* is of no force or effect.
- (b) Nothing in clause 4.4(a) is to be taken to prevent the *user* from effecting another *bare transfer* of the *assigned access rights* following a re-*assignment* to it of those rights.

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.
- (b) Western Power's consent shall not be unreasonably withheld or delayed where:
 - (i) 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*; and
 - (ii) the proposed assignee provides security to Western Power in a form which complies with the requirements of the relevant *access contract*.

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 relate to the *assigned access rights*.

5.3 Assignment to an Australian Bank

- (a) Western Power will not unreasonably withhold or delay its consent to a *user's* assigning by way of security, mortgaging, charging or otherwise creating a security (as principal or surety) in favour of an *Australian Bank* over the *user's access rights* under an *access contract* for the purposes contemplated by clause 5.3(b), subject to the execution by the *Australian Bank* of such agreements between the *Australian Bank*, the *user* and Western Power as are required to be negotiated under clause 5.3(c).
- (b) The *user* shall supply to Western Power full conformed copies of all charges, mortgages or other instruments of security executed by the *user* in favour of the *Australian Bank*, or in relation to any transaction with the *Australian Bank*, which are the subject of any consent granted under clause 5.3, no later than 5 *business days* after their execution, together with certified extracts of all provisions of any other relevant agreements as are necessary properly to construe and interpret those charges, mortgages or other instruments of security.
- (c) Western Power may withhold its consent under clause 5.3 until the *Australian Bank*, Western Power and the *user* have agreed on the terms of any consent deed or tripartite deed by which the rights of Western Power and the *Australian Bank* against the *user* are regulated and ordered.
- (d) Western Power and the *user* must negotiate any such deed with the *Australian Bank* under clause 5.3(c) in good faith.
- (e) The terms of the deed negotiated under clause 5.3(c) must not materially diminish Western Power's rights, liabilities and obligations under the *access contract*.
- (f) The *user* must meet Western Power's reasonable costs, including legal costs, incurred in negotiating and documenting the deed negotiated under clause 5.3(c).

5.4 Assignment to financially and technically competent persons

- (a) In considering whether or not to consent to an *assignment* under clause 5.1, it will be reasonable grounds for Western Power to withhold consent if that *assignment* would be on the basis of several liability for the *user* and any assignee.
- (b) Western Power is not required to give its consent to an assignment under clause 5.1 if it can reasonably demonstrate that such an assignment would have the effect of materially increasing its financial or technical risk under the relevant *access contract*.

6. Relocation

6.1 Occurrence of *relocation*

A “**relocation**” occurs when a *user*:

- (a) decreases its *contracted capacity* at a *contracted point* (a “**retiring point**”); and
- (b) makes a corresponding increase in its *contracted capacity* at another *contracted point* (a “**destination point**”).

6.2 Provisions in respect of the *destination point*

- (a) If a *user* requests a *destination point* at a location:
 - (i) where there was not previously a *contracted point*; or
 - (ii) that was a *contracted point* (of the *user's* or of another person) up to the date that the *user* requests the *relocation*, and the previous *contracted capacity* at the *contracted point* is less than the capacity the *user* seeks at the *destination point*,

then the *user* must make an *access application* under the *applications and queuing policy* to add or modify the *destination point* to or under its *access contract*.

- (b) If a *user* requests a *destination point*:
 - (i) at a location that was a *contracted point* (of the *user* or of another person) up to the date that the *user* requests the *relocation*, and the previous *contracted capacity* at the *contracted point* is greater than or equal to the *contracted capacity* the *user* seeks at the *destination point*; and
 - (ii) where any technical characteristics of the *facilities and equipment* to be *connected* at the *destination point* are materially the same as the technical characteristics of the *facilities and equipment* that were *connected* at the *destination point* prior to the *relocation*,

then the *user* may notify Western Power to add or modify the *destination point* to or under its *access contract*, and Western Power must consent to the addition or modification.

6.3 *Access contract* provisions in respect to 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 *contracted point*, with respect to a *retiring point*.

6.4 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.