



Our ref: RCM/0479  
Enquiries: Charles Crouch  
9420 5654

Mr Lyndon Rowe  
Chairman  
Economic Regulation Authority  
Level 6  
197 St Georges Terrace  
PERTH WA 6000

Dear Mr Rowe

#### **DRAFT DECISION ON WESTERN POWER ACCESS ARRANGEMENT**

Following the release by the Economic Regulation Authority in March 2006 of its draft decision on Western Power's proposed access arrangement, the Office of Energy wishes to make some comments concerning the proposed policy related to customer contributions.

Generally, the Office welcomes the Authority's overall approach in this area, which has been to require that customers have the ability to pay by instalments and receive rebates for subsequent user connections regardless of the nature of the asset or level of consumption.

While payment by customers of capital contributions will clearly be appropriate in some circumstances, these payments often represent a major financial impost. This impost can be ameliorated by the possibility of paying by instalments or rebates where subsequent users derive benefit from the infrastructure. As the Authority has recognised, restricting these provisions to large users is not appropriate.

However, the Office does have some concerns with and comments on aspects of the draft decision which are discussed below.

#### **Limit for periodic payment**

Western Power had originally proposed that periodic payments be limited to cases where "a material proportion" of the assets are transmission and the total contribution exceeds \$1 million.

The Authority has rejected this and requires Western Power to propose an alternative threshold. Submissions have been invited as to what an appropriate amount might be.

The Office supports the Authority's position. The Office acknowledges that there will be levels of investment below which customers can reasonably be expected to fund the entire

amount, either because the administration costs of managing such an amount are excessive in relation to the amount or because the amount itself is so small that nearly all customers making a contribution could be expected to fund it as a lump sum.

While the Office accepts that any threshold will ultimately be an arbitrary one, it is possible to take a view as to what is a reasonable as opposed to an unreasonable amount. The Office believes a sum in the range of \$30,000-50,000 may be an appropriate initial threshold. Any amount significantly in excess of this runs the risk that some smaller users would be unable to fund it as a lump sum, with consequential impacts on small business viability.

### **Terms and amounts of periodic payment**

Western Power had proposed five year terms with 15% interest and minimum payment amounts of \$200,000.

The Authority has accepted a five year term and required Western Power to amend its policy to provide for interest to be negotiated between the parties. The amount of each payment is also to be negotiated.

The Office has a concern that five years may be too short a period and notes that in paragraph 1797 the Authority observes that the standard period elsewhere is seven years. The option of a term up to seven years may be more manageable for some users and the Office believes the payment term should be re-considered.

The Office notes the Authority's views in paragraph 1798 that:

The Authority also notes that users are able to seek alternative forms of finance that may offer longer periods of repayments that better meet that user's needs.

It is true that if users were able to obtain alternative forms of finance, the need for periodic payments would be greatly obviated. However, for many users this is not the case. As the users do not actually own the asset they are paying for, it cannot be used as security, meaning financing is either unavailable or requires security against some other asset. The Office has been made aware of a number of instances where businesses claim to be unable to secure finance to fund customer contributions and believes these may not be isolated cases.

The Office also has a concern with requiring interest to be negotiated between the parties. While this may be appropriate for large business users, smaller businesses are unlikely to have the commercial leverage to effectively negotiate interest rates and will in practice be in a position of "take it or leave it" with whatever interest rate Western Power proposes. Small businesses do not have much bargaining power with other finance lenders and it is unlikely the position would be different with Western Power.

While the disadvantages of a completely prescriptive approach to interest rates are accepted, the Office believes it may be appropriate to provide some guidance as to what an appropriate interest rate could be, especially for small and medium enterprises and residential customers. This could be based upon the 90 day bank bill rate combined with some reasonable allowance for risk and administrative costs.

The Office understands that from the network operator's perspective, some connections may be quite high risk, associated with the relatively high risk of failure of small businesses,

particularly in the first five years after start-up. If the business fails, it is not clear what security might be available to Western Power to recover the outstanding balance. This is in addition to the risk that should the property be sold for a different use, the revenue predictions on which the original capital contribution was based may not be achieved.

The Office also believes that it would not be appropriate for Western Power to be in competition with financial institutions on interest rates offered for what is effectively a loan. It would therefore be reasonable that the interest rate applied to periodic payments would slightly exceed general bank rates for business and personal loans. This would also encourage applicants to exhaust other borrowing options before seeking the periodic payment mechanism.

### **Rebates for subsequent users**

Western Power proposed that rebates be limited to where the original amount was greater than \$1 million, the rebate in excess of \$100,000 and new users emerge within five years.

The Authority has determined that a five year period is appropriate but that threshold amounts and rebate amounts should be negotiated between the parties. This period is probably somewhat short in rural areas where the pace of development may be slow, but the Office accepts that there must be a balance with administrative convenience.

While the Office notes the Authority's view that negotiation makes provision for "payment of rebates or recoupment [to be] relevant to the size and nature of the capital contribution provided", it would be concerned if purely negotiated outcomes led to only larger users being able to access this facility. The Office believes that the issues are similar to those in considering the threshold for periodic payment and requests that the Authority consider whether it would be appropriate to provide indicative amounts for thresholds and rebate amounts to guide negotiated outcomes.

The Office is confident that the approach taken to date will lead to fair and commercial outcomes for large users. However, it is concerned that small and medium enterprises and residential customers, who have little bargaining power or expertise, will suffer from asymmetry of information and influence in their dealings with Western Power. It is important that these customers receive some protection in the approved access arrangement.

I trust these comments are of assistance. If you would like any further information on any aspect of this submission, please contact Charles Crouch on 9420 5654.

Yours sincerely



**JASON BANKS**  
**A/COORDINATOR OF ENERGY**

17 May 2006