



CHAMBER OF COMMERCE AND INDUSTRY
WESTERN AUSTRALIA

21 February 2007

Mr Robert Pullella
Executive Director Competition, Markets and Electricity
Economic Regulation Authority
PO Box 8469
Perth BC WA 6849

Dear Robert,

Submission to Consultation on Matters Relating to Western Power's Revised Proposed Access
Arrangement for the South West Interconnected Network

The Chamber of Commerce and Industry Western Australia (CCI) is the leading business association in Western Australia. It is the second largest organisation of its kind in Australia with a membership of approximately 5,000 organisations in all sectors including manufacturing, resources, agriculture, transport, communications, retailing, hospitality, building and construction, community services and finance.

Most members are private sector businesses but CCIWA also has representation in the not-for-profit sector and the government sector. About 80 percent of members are small businesses, and members are located in all geographical regions of WA. Some 100 business associations are affiliated with CCI, expanding the organisation's representative coverage to more than 10,000 enterprises.

CCI is pleased to make this submission to the ERA concerning *Matters Relating to Western Power's Revised Proposed Access Arrangement for the South West Interconnected Network*.

Since the early to mid 1990s, and in part stemming from the 1995 Competition Principles Agreement, the Government of WA has implemented reforms designed to provide third party access to essential infrastructure. The aim has been to increase competition and to lower prices for consumers, with access being only part of a broader reform process that also included the establishment of the Wholesale Electricity Market (WEM) for the South West Interconnected System (SWIS).

CCI strongly supported the establishment of the WEM, and argued against the Government of the days' belief that Western Australia was best served by preserving the vertically integrated utility while encouraging the involvement of private sector generation around it by lowering access levels.

The Proposed Amendments

Western Power has submitted a proposal to revise access arrangements for the SWIS. The ERA has called for submissions on three matters:

1. a proposed provision (under the standard access contract for reference services) that will allow Western Power to unilaterally determine to reduce a network user's contracted capacity at a connection point;
2. the treatment of capital contributions under the proposed access arrangement; and
3. the ability of Western Power to require payment of capital contributions in the nature of "headworks" charges.

To assist in its consideration of these issues, the ERA has commissioned a report from Parsons Brinckerhoff Associates (PBA) and called for public submissions.

CCI has reviewed the PBA Report, and the various submissions to the consultation process, and offers the following comments on Matter One: the proposed assignment of a unilateral right for Western Power to reduce a network user's contracted capacity. Much of the comment offered is in response to Western Power's own submission advocating the creation of the right.

General Principles

The ERA indicates that it is particularly interested to receive submissions addressing whether the right being sought by Western Power to unilaterally determine to reduce the contracted capacity of a network user under the proposed clause 3.2 is:

- reasonable; and
- consistent with the objective as set out in the Access Code considering its impact on economically efficient investment in and operation of and use of networks in Western Australia in order to promote competition in markets upstream and downstream of the networks.

CCI urges the ERA to avoid adopting a narrow construction of these terms, and to keep the initial rationale for electricity market reform firmly at the forefront of its considerations.

The *Access Code*'s objectives are to create a competitive electricity industry underpinned by market principles. Indeed, one of the primary stated objectives of the State Government's Electricity Reform Taskforce was to "remove impediments to effective competition between persons engaged in, or in commercial activities connected with, the supply of electricity".¹ The Taskforce's *Final Report* released in 2002 stated:

The Task Force believes that the most sustainable means of achieving the objectives set by Government in its Terms of Reference is by implementing structural, market and regulatory arrangements to actively promote competition in the electricity supply industry. Achieving a competitive market will take time, and strong commitment from Government and industry alike will be required to achieve reform and realise the benefits of a more competitive electricity supply industry for Western Australia.

The benefits that would flow from successful implementation of the proposed reforms are substantial and include:

- benefits to electricity industry productivity, through competitive pressures;
- benefits to consumers, through lower prices and greater choice;

¹ Electricity Reform Taskforce, *Final Report*, p. 1.

- benefits to society generally, through more efficient use of limited resources including greater use of renewable energy, distributed generation and demand management; and
- economic growth and employment growth, through better resource allocation in the economy.²

This statement should provide the conceptual framework through which any proposed change to the WEM should be considered. Any measures taken to change the Access Arrangements to the SWIS should give effect to the principles expressed above, and should not be aimed at, or have the effect of, reinstating, entrenching, or further strengthening the monopoly that currently exists for the transmission network. Any decision on the proposal should consider that the market is more effective at inducing economically efficient electricity networks than are regulators.

Justifications Advanced in Favour of the Amendment

Western Power argues that it should be able to make a subjective decision to reduce a network user's capacity, subject to reasonable qualifications, where that capacity is in excess of the user's reasonable requirements and is being sought by another user.

This in effect is a request to unilaterally determine a user's "reasonable requirements", then to claw back excess capacity when in Western Powers' opinion, and justified by the need to avoid inefficient investment in the network, the user is not utilizing this excess capacity appropriately. Western Power, however claim that the right would not be 'unilateral' because a network user can make a submission if there is a proposal to seize excess capacity.

Western Power further argue that the assignment of the right is justified on competition policy grounds viz. a user may be "hoarding" capacity or otherwise acting in an anti-competitive manner.

Western Power therefore purports to be both service provider and regulator, empowered to unilaterally make and enforce decisions about a user's electricity requirements and conduct in the market.

The Office of Energy supports the assignment of the unilateral right to Western Power and agrees with the justifications offered. It adds that the proposed assignment is "an appropriate mechanism and administratively simple."

Comments

CCI considers that Western Power is not equipped to assess whether a market participant's "reasonable requirements" are being met, nor is it appropriate for Western Power to determine whether a user is acting anti-competitively.

The primary concern of Western Power should be to recover investment costs, as contemplated under the Access Code. Anti-competitive behaviour should ideally be dealt with through laws and regulations under the auspices of a competition watchdog, rather than by granting Western Power heavy-handed rights to reduce capacity unilaterally.

We consider the proposed amendment creates a right that is properly characterized as "unilateral" and thus wholly inappropriate and that the proposed amendment introduces administrative complexity that will result in unnecessary additional cost.

There are many avenues available to deal with market power abuse and anti-competitive conduct that do not involve the assignment of regulatory functions to a utility provider. CCI considers that

² Ibid, p. 7.

the ERA—an independent body specifically established to regulate utility markets—is far better equipped and positioned to perform this function.

Remedies are also available under s115 of the *Electricity Industry Act 2004 (WA)* and the *Trade Practices Act 1974 (Cth)*, to address anti-competitive conduct.

The availability of a consultation process does not remove the ‘unilateral’ nature of the right. Although consultation is a step in the proposed process, Western Power nonetheless retains the discretion to completely disregard any objections offered by the affected party, and seize capacity irrespectively.

The proposal is not “administratively simple” because the initial consultation and decision-making phase would add an additional bureaucratic process. The Office of Energy’s suggestion to apply “conditions, processes, and timeframes” upon Western Power to prevent it acting unreasonably, coupled with an appeals mechanism to an independent authority, adds yet another layer of administrative complexity and could lead to lengthy delay and escalated costs imposed on business.

CCI believes that allowing trade in capacity credits, with oversight by the ERA, would be more expedient and consistent with the objectives underpinning the electricity market reform process than a system based around Western Power constantly monitoring individual network user’s consumption and market behaviour, determining whether to seize capacity, undertaking a consultation process and then defending an appeals process.

The Parsons Brinckerhoff Associates Report

The PBA Report provides recommendations to the ERA regarding contracted capacity rights. It reviews the arrangements in various other jurisdictions and considers the potential ramifications of the proposed amendment. The report recommends against the creation of the unilateral right to decrease contracted capacity, and advocates the establishment of a capacity trading mechanism.

CCI notes that in no other jurisdiction examined by PBA, is the service provider permitted to unilaterally reduce contracted capacity. PBA raises concerns, shared by CCI, that the establishment of such a right would constitute a restriction of fair trade and could violate the *Trade Practices Act 1974 (Cth)*.

PBA also raises the market power differential between Western Power and other market participants, stating “competition is best promoted if parties deal with one another on an arm’s length commercial basis and both parties to the contract have similar negotiating power.”³ CCI notes that the proposed amendment massively skews power relations within the market further in Western Power’s favour—an outcome that would surely hinder the market’s effective operation.

CCI strongly agrees with PBA’s view regarding Western Power’s purported involvement in regulating market conduct. PBA’s statement concerning the appropriateness of Western Power’s role in relation to competition says:

“this issue (anti competitive behavior) should not be of concern to Western Power in its role as a facilitator of access. The Primary concern of Western Power should be to recover investment costs and...such recovery is supported under the Access Code. Anti-competitive behaviour should ideally be dealt with through laws and regulations under the auspices of a competition watchdog, rather than by granting Western Power heavy-handed rights to reduce capacity unilaterally.”

³ PBA report, p. 19.

CCI notes PBA's observations that whilst there are no provisions specifically creating a secondary market for trading contracted capacity rights, equally, there is nothing in the *Electricity Industry Act 2004 (WA)* or the Code to prevent trading.

The ERA should consider the introduction of a capacity rights trading approach, to encompass users as well as generators. The model whereby market participants could trade their excess capacity is consistent with the bilateral contract concept upon which the WEM is based. Where market participants have excess capacity, parties should be able to negotiate bilaterally for its transfer. The market mechanism should ensure that capacity is allocated where it is most valued.

Other Submissions Provided to the Review

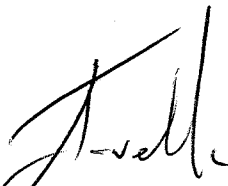
CCI understands that a significant number of stakeholder submissions, including generators, retailers, consumers, local government, community groups and parliamentary representatives reject outright large sections of the proposed amendment.

Recommendations

- The ERA should allow trade in capacity credits, with oversight by the ERA. Extensions or augmentations of the transmission system expanding network capacity would become tradable, making private sector investment into public infrastructure more attractive. This would deliver a net benefit to the community while simultaneously relieving pressure on the public purse to fund electricity transmission infrastructure development.
- Western Power should not be permitted to assess whether a market participant's "reasonable requirements" are being met. The primary concern of Western Power should be to recover investment costs, as contemplated under the Access Code.
- Western Power should not be permitted to determine whether a user is acting anti-competitively. Anti-competitive behaviour should be dealt with through laws and regulations under the auspices of a competition watchdog
- The ERA should reject the Proposed Amendment.

CCI's Senior Adviser – Industry Policy, Ms. Jessica Shaw, is available to provide further detail on this submission. Ms Shaw can be contacted at Jessica.Shaw@cciwa.com or phone 08 9365 7498.

Yours sincerely,



Trevor Lovelle
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