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Access Code Amendment Response – Economic Regulation Authority

Thank you for the opportunity to comment on the proposed amendments to the Access Code.

The proposed Code amendments include a requirement for Western Power to lodge its proposed revisions for the fourth access arrangement period (**AA4**) no later than 2 October 2017 and for the ERA to take all reasonable steps to complete its review in time for a revised access arrangement to commence on, or before, 1 July 2018.

The ERA seeks to ensure the timely and efficient assessment of Western Power's proposed revisions. However, if Western Power submits its proposal on 2 October, the ERA will need to finalise its decision by the end of May 2018¹ to enable the revised access arrangement to commence on 1 July 2018.

Based on previous experiences in undertaking access arrangement reviews, the ERA does not consider eight months is sufficient time to carry out a proper review, or for adequate consultation with stakeholders, including Western Power.

The ERA has suggested to Western Power that, to achieve the target date for its decision, a realistic revisions submission date would be 30 June 2017. The ERA has met both the PUO and Western Power to discuss achieving the target date through a coordinated approach. We are working with Western Power to streamline the submission and review process where possible.

The attachment provides the ERA's response and comments for each proposed code amendment.

Yours sincerely

NICKY CUSWORTH
CHAIR
13 / 12 / 2016

¹ The Access Code specifies a minimum 20 day period for a revised access arrangement to take effect after it is approved.

ATTACHMENT 1

Section 4.77

The amendments in sections 4.78 to 4.82 will apply to alter the next access arrangement review process following the date the proposed amendments come into effect only. All subsequent reviews of Western Power's access arrangement will occur in accordance with the process set out in Chapter 4 of the Access Code.

ERA Response:

No submission.

Section 4.78

This new definition for the '2016 amendments' is required due to the rolling nature of Western Power's access arrangement under the Access Code. To ensure the amendments apply to the next review only, it is necessary to peg these amendments to a particular point in time. This is consistent with the approach taken for transitional amendments to the Chapter 4 process in the past.

ERA Response:

No submission.

Section 4.79

This amendment extends the deadline for Western Power to submit its proposed revisions to its access arrangement and the access arrangement information.

If Western Power fails to submit its proposed revisions by the revised deadline, then the ERA will still be able to propose its own revisions to the access arrangement as per the process in sections 4.49 to 4.51 of the Access Code.

ERA Response:

This amendment is a concern for the ERA. The consultation paper states:

The amendments to the Access Code place an obligation on the Economic Regulation Authority to take reasonable steps to ensure that the AA4 revisions commencement date occurs on or before 1 July 2018. This is considered to be the earliest feasible time by which the approval process can be undertaken.

The shorter the time between the target revisions commencement date of 1 July 2017 and the actual revisions commencement date, the lower the likelihood of price shock from the adjustment to the price path. A revisions commencement date on or before 1 July 2018 would limit this time to one year, with the price path of the two years of the access arrangement period adjusted to account for the continuation of the 2016-17 Price List prior to the revisions commencement date.

As stated in the covering letter, if Western Power were to submit its proposed revisions on 2 October 2017 the ERA would not be able to complete its assessment by the target commencement date of 1 July 2018. The assessment process will typically take approximately twelve months to complete. For there to be any prospect of the target commencement date of 1 July 2018 being achieved Western Power would need to submit its proposal no later than 30 June 2017.

Section 4.80

This amendment imposes an aspirational date of 1 July 2018 for the 'revisions commencement date' that is to be specified by the Economic Regulation Authority in accordance with Chapter 4. As this date is aspirational only, the Economic Regulation Authority will not be in breach of the Access Code if the 'revisions commencement date' occurs after 1 July 2018.

ERA Response:

The ERA considers specifying an aspirational commencement date for the fourth access arrangement period is unnecessary as the Code already includes provisions limiting the time (including any extensions of time) for each stage of the process and requires the ERA to publish a notice whenever an extension is utilised. In any case, as the proposed aspirational date is not achievable based on the proposed submission date for Western Power, it serves no purpose, other than to unfairly raise stakeholder expectations.

Section 4.81

This amendment requires the Economic Regulation Authority to provide reasons if:

- it determines that it will not be able to specify a revisions commencement date on or before 1 July 2018;
- it specifies a revisions commencement date after 1 July 2018; or
- it has not specified a revisions commencement date by 1 July 2018.

This is intended to provide substantiation that the Economic Regulation Authority has taken reasonable steps to meet the aspirational 'revisions commencement date'.

ERA Response:

As stated above, the ERA considers the proposed aspirational commencement date for the fourth access arrangement period serves no purpose.

Section 4.82

This amendment hardcodes the next 'target revisions commencement date' (to be specified in AA4) as being 1 July 2020.

ERA Response:

Section 5.31 of the Electricity Networks Access Code 2004, and following, allows a service provider to nominate a revisions commencement date which differs from the normal five years without the need for a Code amendment.

Given the uncertainty attached to the timing of future reforms, hard coding the term of the regulatory period is unwise. As noted, the Code already makes provision for a shorter period.

Regardless of whether a three-year or five-year period is chosen the costs of preparing and undertaking a review are similar, therefore a shorter period will increase regulatory costs for consumers. A three-year access arrangement period could also lead to price shock as any adjustments from the current access arrangement will need to be recovered over a shorter period than would be the case if a five-year period was retained for AA4.

Adopting a five-year period does not prevent the transfer of network regulation to the national framework by 1 July 2020. Rather, it provides the opportunity for a more orderly transition to the national framework.

5.31 Subject to section 5.32, for access arrangements other than the first access arrangement:

- (a) the revisions submission date must be at least 6 months before the target revisions commencement date; and*
- (b) the target revisions commencement date must be 5 years after the start of the access arrangement period, unless a different date is proposed by the service provider and the different date is consistent with the Code objective.*

5.32 The Authority:

- (a) in determining whether an access arrangement period of longer than 5 years is consistent with the Code objective must have regard to:*

- (i) *the likely advantages of the approval (including by way of reduced regulatory costs); and*
 - (ii) *the likely disadvantages of the approval;*
- and*
- (b) *if it determines that an access arrangement period of longer than 5 years is consistent with the Code objective, must consider whether to require under section 5.34 that the access arrangement include one or more trigger events.*

5.33 Section 5.32(a) does not limit the matters to which the Authority may have regard.

If a three-year access arrangement period was subsequently deemed necessary this could be achieved by amending the Code in 2017.