

10 November 2005



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Dear Alistair

## **WESTERN POWER'S PROPOSED ACCESS ARRANGEMENT**

Alinta welcomes the opportunity to respond to the Economic Regulation Authority ("Authority") on the proposed Access Arrangement for the South West Interconnected System ("SWIS") submitted by Western Power and published on the website of the Authority on 31 August 2005.

Alinta currently has interests in electricity generation and retailing within the SWIS and therefore has significant interest in the outcome of the assessment of the Western Power Access Arrangement by the Authority.

Alinta has conducted a review of the substantial documentation submitted by Western Power and the Issues Paper released by the Authority. The findings from that review are detailed within the attached submission. An electronic version of the submission has been sent via electronic mail.

Yours sincerely



**Justin Scotchbrook**  
**MANAGER WA REGULATORY DEVELOPMENT**



**ALINTA LIMITED'S SUBMISSION ON THE PROPOSED ACCESS  
ARRANGEMENT FOR THE SOUTH WEST INTERCONNECTED  
NETWORK**

**10 November 2005**

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## 1. INTRODUCTION

### 1.1 Alinta Limited's submissions

Alinta Limited (**Alinta**) makes the submissions set out in this document to the Economic Regulation Authority (**ERA**) about Western Power Corporation's (**Western Power**) Proposed Access Arrangement (**Proposed Access Arrangement**) and *access arrangement information* for the South West Interconnected Network (**SWIN**) in the South West Interconnected System (**SWIS**).

The submissions are made in response to a notice issued by the ERA on 31 August 2005 inviting submissions on the Proposed Access Arrangement. They are also made in light of the Issues Paper: Proposed Access Arrangement for the South West Interconnected Network published by the ERA on 16 September 2005.

Alinta makes the submissions on its own behalf and on behalf of its related entities, including Alinta Sales Pty Ltd (**Alinta Sales**). As discussed below, key drivers of Alinta's and its subsidiaries' interest in the Proposed Access Arrangement are:

- the effect it may have upon their business activities; and
- the promotion of competition in Western Australian electricity markets.

### 1.2 Alinta's interest in the Proposed Access Arrangement

Alinta is an emerging participant in Western Australian electricity markets, including those served by the SWIN. Through its subsidiaries, Alinta is:

- an electricity *generator*;
- a *user* of electricity transportation services; and
- a retailer of electricity.

Alinta's electricity generating activities include the ownership, though a subsidiary, of two cogeneration units at Pinjarra in the South West of Western Australia. Alinta is also committed to construct at least two further generators at Wagerup, also in the South West of Western Australia.

In respect of electricity transportation, Alinta's subsidiary Alinta Sales is a significant *user* of *services* provided by means of the SWIN. Alinta Sales and Western Power are currently parties to a Network Access Agreement (dated 25 July 2003) which was entered into under the electricity access regime established pursuant to the provisions of the *Electricity Corporation Act 1994* (WA). Alinta Sales is a potential *user* for the purposes of the Proposed Access Arrangement.

Alinta's electricity retailing activities in relation to the SWIN include the sale of electricity by Alinta Sales to *contestable consumers*. The number of *consumers* supplied by Alinta from the SWIN is likely to increase over time and as retail "contestability" continues to be introduced in markets served by the SWIN. In addition, as a retailer Alinta Sales is a major

purchaser of electricity produced by generation facilities, including major renewable generation facilities such as the Alinta Walkaway Wind Farm.

The Proposed Access Arrangement has the potential to have a significant impact on Alinta's electricity industry activities. Accordingly, Alinta is highly interested in the document, particularly with respect to:

- the effect that the Proposed Access Arrangement may have on Alinta's current and potential business activities in markets that are upstream (such as generation and wholesale markets) and downstream (such as the retail market or markets) of the SWIN; and
- whether the proposed Access Arrangement will promote economically efficient investment in, and operation and use of, the SWIN and *services* provided by means of the SWIN in order to promote competition in upstream and downstream markets.

Consistent with these interests, Alinta considers that it is important to ensure that the *access arrangement* finally approved by the ERA for the SWIN complies with the requirements of the *Electricity Networks Access Code 2004 (Code)*, including the *Code objective*, and that it provides for equitable arrangements for existing market participants, new market entrants and industry stakeholders generally.

### 1.3 Scope of Alinta's submissions

The submissions set out Alinta's concerns and questions in relation to a number of material areas of the Proposed Access Arrangement, including the proposed:

- Introduction section;
- Reference Services section;
- Standard Access Contract;
- Connection Access Contract;
- Electricity Transfer Access Contract;
- Interconnection Works Agreement;
- Capital Contributions Policy;
- Price Control Mechanism;
- Applications and Queuing Policy; and
- Service Standards.

Given the complexity and scale of the Proposed Access Arrangement<sup>1</sup> and the relatively short submission period, it has not been possible for Alinta to fully analyse the document or the extent to which it satisfies the requirements of the *Code*, including the *Code objective*. Nor has it been possible for Alinta to fully understand the relationships between some of the key policies and documents, or Western Power's reasons for adopting certain positions in respect of the Proposed Access Arrangement. For this reason, Alinta's submissions should generally be treated as raising particular issues that Alinta requests the ERA to explore when considering the Proposed Access Arrangement, rather than as firm assertions of position.

Alinta encourages the ERA to fully examine and test the Proposed Access Arrangement to ensure it fully satisfies the requirements of the *Code*. It is important that the ERA do this because of the complexity of the Proposed Access Arrangement, the limited opportunity that potential *users* have had to analyse the document, and the information asymmetry that exists between Western Power and potential *users*. Particular areas of the Proposed Access Arrangement that Alinta encourages the ERA to fully consider and analyse include:

- the application of the *New Facilities Investment Test*;
- Western Power's proposed *investment adjustment mechanism*;
- the components of Western Power's pricing proposal for its *reference tariffs*, including:
  - Network valuation;
  - Capital expenditure;
  - Operating expenditure; and
  - Rate of return; and
- the structure of the *reference tariffs*.

In addition, Alinta requests that the ERA consider transitional issues associated with existing access agreements. Particular issues that may arise in this context include the provision of a standby power service and pricing.

Alinta may wish to make additional submissions in the future. Alinta notes that section 4.53 of the *Code* provides that the ERA may consider any submission made after the time set for making submissions has expired.

#### 1.4 Interpretation

If a word or phrase is italicised in this document, it has the meaning given to it by the *Code*.

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<sup>1</sup> The Proposed Access Arrangement and accompanying *access arrangement information* document is lengthy, detailed and complex. The Proposed Access Arrangement itself contains 8 appendices, including 3 substantial contracts. The *access arrangement information* document is 198 pages long and has 10 detailed appendices.

In this respect, please note the following.

- The phrases "standard access contract", "application and queuing policy", "price list" and "capital contribution policy" appear both italicised in lower case (i.e. *standard access contract*) or capitalised (i.e. Standard Access Contract). Where the phrases appear italicised in lower case, their *Code* definition is intended. Where they are capitalised, they refer to the documents contained in the appendices to the Proposed Access Arrangement.<sup>2</sup>
- Sections 7 and 8 of this submission depart from the general rule. In these sections, where a word or phrase is italicised, this indicates that it has been defined in either the *Code* or the proposed Capital Contributions Policy.

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<sup>2</sup> The phrase "Standard Access Contract" refers to the series of documents contained in Appendix 4; the phrase "Application and Queuing Policy" refers to the document contained in Appendix 1; the phrase "Price List" refers to the document contained in Appendix 5; and the phrase "Capital Contributions Policy" refers to the document contained in Appendix 3.

## 2. INTRODUCTORY SECTION OF THE PROPOSED ACCESS ARRANGEMENT

### 2.1 Introduction

This section sets out Alinta's submissions regarding the "Introduction" section of the Proposed Access Arrangement (Section 1).

### 2.2 Nature of the Proposed Access Arrangement

Alinta notes that, in addition to the Proposed Access Arrangement, other instruments (such as the *Code*) will govern *access* to the SWIN. However, in clause 1.1, the Proposed Access Arrangement seems to imply that it alone governs the terms on which *access* to the SWIN will be provided. Alinta suggests that this clause should be amended so that it accurately informs *users* that other instruments may also affect the terms on which *access* to the SWIN is provided.

### 2.3 Scope of the Proposed Access Arrangement

Alinta queries whether the Proposed Access Arrangement clearly identifies the infrastructure to which it applies. Clause 1.1 explains that the Proposed Access Arrangement governs *access* to the SWIN (or the SWIS as the Proposed Access Arrangement calls it). However, the Proposed Access Arrangement does not precisely define what the SWIS is, or give any physical or geographical description of what it covers. Although it is reasonable to assume that this phrase has the meaning attributed to it in the *Code*, the Proposed Access Arrangement does not make this clear, because it does not italicise the phrase as required by (its own) clause 2.1. Furthermore, even if the *Code* definition is applied, *users* will still be required to refer to the *Electricity Industry Act 2004* (WA) for a substantive definition.

Given that the Proposed Access Arrangement is one of the most important instruments regulating *access* to the SWIN, Alinta considers it is important that the Proposed Access Arrangement clearly (and immediately) identify the infrastructure to which it applies in detail and with accuracy and precision. Alinta suggests that a prospective *user* should be able to easily refer to the Proposed Access Arrangement to determine whether it applies to a *network*, or part of a *network*, to which the prospective *user* requires *access*. Therefore, Alinta submits that the Proposed Access Arrangement should be amended so that it expressly defines the SWIN.

Alinta also suggests that it would be desirable to clarify the use of the terms "SWIS" and "SWIN" within the Proposed Access Arrangement. For example, in the manner used by the ERA in its Issues Paper. We note that clause 1.1 of the Proposed Access Arrangement refers to the "SWIS", which is stated to be a *covered network* under the *Code*. Reference to the definition of "SWIS" in the *Code* indicates that the term refers to the South West Interconnected System owned by Western Power as well as privately owned parts of that *system*. Section 3.1 of the *Code* states that those parts of the SWIS owned by Western Power are covered by the *Code*.

### 2.4 Proposed commencement dates

Alinta queries whether it is appropriate for the Proposed Access Arrangement to specify a particular initial commencement date. Section 4.26 of the *Code* requires the ERA (as



opposed to the *service provider*), to nominate the start date for the *access arrangement*. The exact timing of this date depends on when the ERA approves the *access arrangement* or approves its own *access arrangement*. While Western Power's proposed date of 1 July 2006 may be taken as the date on which it would prefer the *access arrangement* to commence, this is ultimately a matter for the ERA to decide pursuant to the power under section 4.26 of the *Code*.

Alinta also notes that the proposed *target revisions commencement date* (outlined in clause 1.6 of the Proposed Access Arrangement) would not comply with section 5.30(b) of the *Code* if the ERA sets the *access arrangement start date* earlier than 1 July 2006.

## 2.5 Composition of the Proposed Access Arrangement

### (a) **Typographical errors**

#### (i) **Numbering of appendices**

The Proposed Access Arrangement appears to misnumber the documents that are contained in its appendices. Clauses 1.7(c) and (d) explain that the Standard Access Contract and the Capital Contribution Policy appear in Appendices 3 and 4 respectively. However, the Standard Access Contract appears in Appendix 4, while the Capital Contributions Policy appears in Appendix 3.

#### (ii) **Description of the standard access contracts**

Clause 1.7(c) of the Proposed Access Arrangement states that "the Standard Access Contract" is "attached at Appendix 3" (as noted this should be Appendix 4). However, this Appendix contains three contracts, not one contract. These are:

- (A) an Electricity Transfer Access Contract (**Transfer Contract**);
- (B) a Connection Access Contract (**Connection Contract**); and
- (C) an Interconnection Works Agreement (**IWA**).

These documents appear to be independent contracts that deal with different issues and different sets of rights and obligations. Alinta suggests that it would be helpful if clause 1.7(c) was amended so that it accurately informs *users* that the Proposed Access Arrangement contains three different Standard Access Contracts, as opposed to just one contract, and specifies the nature of those contracts.

#### (iii) **Explanation of price application policy**

Alinta submits that clause 1.7(f) of the Proposed Access Arrangement should be amended to insert the word "reference" in front of the word "tariffs". As it currently stands, clause 1.7(f) explains that Appendix 6 governs the "application of the tariffs set out in the price list". To the extent that the Price List does, or is intended to, contain *tariffs* other than *reference*

*tariffs*, Alinta questions whether this is consistent with the concept of a *price list* under the *Code*.

(b) **Price list description**

Alinta queries whether Clause 1.7(e) of the Proposed Access Arrangement should be amended along the following lines:

"(e) the *price list* attached at Appendix 5, which describes the *reference tariffs* in effect under this Access Arrangement for each *Reference Service*."

(c) **Appendix 7 - "Revenue & Average Price Path" document**

Alinta queries whether the document contained in Appendix 7 of the Proposed Access Arrangement should form part of the Proposed Access Arrangement. This document is entitled "Revenue & Average Price Path for the Transmission and Distribution Network Businesses". It outlines the methodology used by Western Power to calculate its *target revenue* and *price controls*. The document seems to be merely explanatory in nature. Alinta queries whether it is more appropriate for it to be included in the *access arrangement information*, rather than the Proposed Access Arrangement.

### 3. REFERENCE SERVICES

#### 3.1 Introduction

Alinta has a number of questions and concerns about the *reference services* set out in Section 3 of the Proposed Access Arrangement. These questions and concerns are outlined below.

#### 3.2 Conceptual distinction between *reference tariffs* and *reference services*

Alinta queries whether the Proposed Access Arrangement recognises the conceptual distinction that the *Code* draws between *reference services* and *reference tariffs*. Sections 5.1(a) and 5.2(a) of the *Code* require *access arrangements* to identify at least one *reference service*. The *Code* defines a *reference service* as:

*A covered service designated as a reference service in an access arrangement under section 5.1(a) for which there is a reference tariff, a standard access contract and service standard benchmarks.*

Therefore, a *reference service* is a *covered service* which is designated as a reference service for which there is, among other things, a *reference tariff*. According to this analysis, the starting point for dealing with *reference services* and *reference tariffs* is the identification of a *service*, followed by the determination of the *tariff* for that *service*. It is implicit in this approach that there is a fundamental difference between a *reference service* and a *reference tariff*, and that a *reference service* is not merely something that arises from the structuring of a *tariff*.

Despite this, Alinta is concerned that some aspects of the Proposed Access Arrangement blur the distinction between *reference services* and *reference tariffs*. In a number of places in the Proposed Access Arrangement it seems that the *reference services* are not, in fact, driven by a distinction as to the nature of the rights that a *user* obtains or will obtain, but as an outworking of a *tariff* structure that Western Power seeks to apply. An example of this occurs in clause 3.3 of the Proposed Access Arrangement, which outlines *reference services* applicable to "loads" connected to the distribution network. Clause 3.3 explains that the:

*reference services* are bundled in the sense that the *reference tariff* applicable to each *reference service* is inclusive of both transmission and distribution charges.

Alinta queries whether this indicates that the definition of those *reference services* has been driven by the *tariff* structure, rather than by the nature of the different rights attached to each *reference service*. This indication is reinforced by the lack of detail in clause 3 in relation to the *reference services* and the footnoted direction to refer to the Price List in Appendix 5. According to the analysis drawn from the *Code* definitions above, Alinta queries whether it may be more accurate for clause 3.3 to state that the *reference services* are "bundled" in the sense that each *reference service* provides a *user access rights* in respect of both the transmission and distribution networks (if that is the case).

This issue also arises in the Price List that forms part of the Proposed Access Arrangement. The *price list* identifies the eligibility criteria that *users* must satisfy in order to qualify for *reference tariffs* (as opposed to *reference services*). This is curious, because it would seem that *users* must qualify for a *reference service* rather than a *reference tariff*. Moreover, it is

only after *users* have qualified for a *reference service*, that *reference tariffs* can be imposed on them. The Proposed Access Arrangement appears to apply a different approach.

Alinta encourages the ERA to analyse this issue to ascertain whether Western Power's approach is appropriate and consistent with the requirements of the *Code*. In making this suggestion, Alinta acknowledges that the Price List could be interpreted as implicitly specifying different *reference services* in so far as it specifies the eligibility criteria for different *reference tariffs*. However, this would be out of step with the approach suggested above. In addition, Alinta's initial impression is that the *reference tariff* eligibility criteria (as currently formulated) in the Price List may not be easily or meaningfully used in determining the nature of the rights (eg a right to transfer electricity) that attach to the *reference service* and, therefore, should not be used to define that right. Further, the eligibility criteria are confusing in so far as they focus on availability to "customers", as opposed to *users* (e.g. refer to clause 2.1.1 of the Price List).

### 3.3 The number of distribution *reference services* on offer

Based on the current description of the *reference services* in clause 3.3 of the Proposed Access Arrangement, Alinta queries whether they are actually different distribution *services* or simply one *service* with different *tariff* arrangements.

Alinta suggests that there may, in reality, be only 1 or 2 *reference services* in respect of access to the distribution network. They could be a "Distribution Transfer Service" (incorporating an *entry service* and *exit service*) or separate distribution *entry services* and *exit services*. The *tariffs* for these *services* could employ the same structure as the current *reference tariffs* proposed by Western Power.

Alinta makes this suggestion because it considers that there should, according to the scheme set out in the *Code*, be some discernable difference between the nature of the core rights (and not just the *tariffs*) associated with one *reference service* when compared to another. Alinta suggests that, if there is no discernable difference between the core rights attached to the *reference services*, then there is actually only one *reference service* set out in the Proposed Access Arrangement.

### 3.4 Reference service offered

Alinta has a number of concerns regarding the *reference services* offered by the Proposed Access Arrangement. These concerns relate to different facets of the *reference services*.

#### (a) Description of reference services and eligibility criteria for users

Clauses 3.3 to 3.5 of the Proposed Access Arrangement list the *reference services* offered by Western Power. However, these clauses do not describe the *reference services* clearly, or explain when *users* will be eligible to apply for them (as highlighted above).

Alinta suggests that the Access Arrangement document itself should expressly and precisely describe the nature of each *reference service*. This should be done by describing the nature of the core right that the *user* will obtain under the *reference service*, consistently with the rights based approach adopted in the *Code* (eg see definition of "Connection Service" in the *Code*).

Alinta requests that the ERA consider whether the lack of clarity and definition in respect of some of the *reference services* means that they do not satisfy the requirements of the *Code*.

In addition, there appear to be some particular issues with the *reference services* proposed by Western Power. The first relates to clause 3.3 of the Proposed Access Arrangement, which lists 10 *reference services* that are available to "loads connected to the distribution network". The words "load" and "distribution network" are not defined in Proposed Access Arrangement, and they are not italicised to indicate that the *Code* definition applies to them. However, even if the *Code* definitions were intended to apply, it should be noted that:

- (i) "distribution network" is not defined in the *Code* (although "*distribution system*" is defined); and
- (ii) "load" is defined as an amount of electricity transferred out of a *network*, which would not easily apply in interpreting the meaning of the *reference services*.

Alinta assumes, consistent with industry usage, that the term "load" is intended to refer to a *consumer* of electricity. However, if this is correct, that raises issues about what the *reference services* are intended to do. For example,

- (i) are the *reference services* intended to apply to *users* who transport electricity on the distribution network to *consumers* (or "loads"); or
- (ii) are the *reference services* intended to apply to the actual *consumers* in the sense that the *reference services* are applicable to actual *consumers* that wish to enter into access agreements for the *reference services* (as opposed to, say, a retailer).

Alinta also questions whether the *reference services* are intended to cover only *exit services*, or both *entry services* and *exit services* as those terms are defined in the *Code*, and whether connection rights are included.

A further issue arises insofar as the *reference services* are stated to be "bundled". Setting aside the issues raised above about bundling, Alinta is not clear about whether any *reference service* is available to a *user* that only requires *access* to the distribution network (i.e. an unbundled *service*).

Alinta also questions whether it is appropriate to define *reference services* by reference to the type of *consumer* (e.g. residential or business) and use of electricity (e.g. street lighting). Alinta would prefer that *reference services* be defined by reference to the nature of the rights attached to the particular *reference services*.

In addition, clause 3.4 of the Proposed Access Arrangement provides a *reference service* for "generators" directly connected to the distribution network. Again, the Proposed Access Arrangement does not define this word, or italicise it to indicate that the *Code* definition is intended. Nonetheless, the *Code* definition of "generator", and the Proposed Access Arrangement's description of the *service* as a "Distribution Entry Service", imply that this *service* is an *entry service*, even though

the Proposed Access Arrangement does not appear to expressly say so. However, based on the wording of clause 3.4, Alinta queries whether this *reference service* is available to *users* who are not "generators", but still seek only an *entry service* to the distribution network (if there are such persons). It is also unclear whether a *user* taking the Distribution Entry Service could additionally require an *exit service* and, if it does, how such a *service* might operate in conjunction with a *reference service* listed in clause 3.3 of the Proposed Access Arrangement.

Clause 3.4 (which provides the Distribution Entry Service) and clause 3.5 (which provides the Transmission Services) also require *users* to be "directly connected" to the required *network*. In this regard, it is unclear:

- (i) when a *user* is deemed to be "directly connected" to the *network* (we assume a *user's* customer would be directly connected to the *network* and the service would still be available to the *user*); and
- (ii) what the position is in relation to a person who is not "directly connected" to the *network*.

Despite its appearance, the Price List in Appendix 5 of the Proposed Access Arrangement does not appear to shed any light on when *users* will be eligible to apply for the different *reference services* that are offered. The Price List outlines certain eligibility criteria that apply to the Proposed Access Arrangement. However, it indicates that these criteria determine when *users* will be eligible for particular *reference tariffs*, as opposed to particular *reference services* (refer to comments at section 3.2 of this submission).<sup>3</sup>

(b) **Rights and obligations of *users***

Alinta queries whether the Proposed Access Arrangement adequately explains the core rights that *users* obtain when they subscribe to the *reference services*. The areas of particular interest to Alinta in this regard are outlined below.

(i) **Relationship between the *reference services* on offer**

Alinta's impression is that the Proposed Access Arrangement does not adequately explain the core rights that a *user* receives in relation to the *reference services* on offer. For example, it is difficult to identify a clear right to transfer electricity to and from the SWIN, or to physically *connect* to the SWIN. The Proposed Access Arrangement does not appear to explain other entitlements including:

- (A) whether any of the *reference services* entitle a *user* to transfer electricity onto the system at an *entry point* on the distribution network, and remove it from the system at an *exit point* on the

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<sup>3</sup> In relation to the Price List, Alinta notes section 5 of Western Power's submission to the ERA dated 2 November 2005. While Alinta understands Western Power's assertions, it does not find them compelling. The final paragraph of that section from Western Power's submission seems to cut across the argument put in the preceding paragraphs of that submission.

*transmission system*) (assuming it is necessary to provide such an entitlement);

(B) whether *users* that intend to transport electricity from a transmission network to a distribution network require:

(I) a Transmission Entry Service (under clause 3.5 of the Proposed Access Arrangement) in addition to a distribution network *reference service* (under clause 3.3 of the Proposed Access Arrangement); or

(II) simply a distribution network *reference service* identified under clause 3.3; and

(C) whether the specified *reference services* also give *users* a right to *connect* to the SWIN, or whether *users* are required to obtain a *connection service* separately (Alinta notes this may be addressed to some extent in the Application and Queuing Policy, but that the right is not expressly addressed in the Standard Access Contract).

(ii) **Retailers' obligations in relation to their *consumers***

Clause 3.7 of the Proposed Access Arrangement provides:

Where a *consumer* receives electricity supply from a retailer, the retailer **must** procure a *reference service* in respect of that *consumer* (emphasis added).

Alinta queries whether it is appropriate for Western Power to include such a provision. It is unclear why a retailer should be prohibited from procuring *non-reference services* for *consumers* where doing so would meet both the *user's* and *consumer's* needs. Alinta is concerned that this provision may be used as a means of restricting *users* to the designated *reference services* or to create an impression that *non-reference services* are not available.

The status of this provision is also unclear. For example, how will Western Power require compliance with it? In this respect, Alinta notes that this obligation has not been expressly included in the Standard Access Contract that forms part of the Proposed Access Arrangement.

(c) **Key services omitted**

Alinta queries whether the *reference services* outlined in clauses 3.3 to 3.6 of the Proposed Access Arrangement satisfy the requirements of section 5.2(b) of the *Code*.

Upon a close examination of the Proposed Access Arrangement's *reference services*, it is apparent that they do not include:

(A) a *connection service*;

- (B) a use of system service;
- (C) a *common service*;
- (D) ancillary services.

Nor do they provide a simple *entry service* or *exit service* in respect of the distribution network.

If the Proposed Access Arrangement intends to incorporate these *services* as part of the *reference services* it outlines in clauses 3.3 to 3.5, this is not immediately clear from the face of the document. If this is the intention, the Proposed Access Arrangement should be amended to make it clear.

In addition, if the Proposed Access Arrangement does not intend to provide these *services* as *reference services*, it is arguable that it should be required to do so under section 5.2(b) of the *Code*. Section 5.2(b) requires *access arrangements* to:

specify a *reference service* for each *covered service* that is likely to be sought by either or both:

- (i) a significant number of *users* and *applicants*; or
- (ii) a substantial portion of the market for *services* in the *covered network*.

Alinta is inclined to the view that a significant number of *users* or a substantive proportion of the market will seek at least some (if not all) of the omitted *services*. In particular, given the proposed Applications & Queuing Policy, and the inclusion of a Connection Contract, it is of some concern that the Proposed Access Arrangement does not identify a *connection service* as a *reference service*.

Alinta is also concerned that the Proposed Access Arrangement does not include a standby service as *reference service*. The Wholesale Electricity Market (to be established under the *Wholesale Electricity Market Rules 2004*) is scheduled to commence in July 2006. If the Wholesale Electricity Market has not commenced by the time the Proposed Access Arrangement is approved, Alinta queries whether Western Power should be required to include a standby service as a *reference service* up until the time the Wholesale Electricity Market commences.

### 3.5 Compliance with section 5.2(c) of the *Code*

Alinta requests the ERA to consider whether the Proposed Access Arrangement complies with section 5.2(c) of the *Code* as it is not apparent on the face of the Proposed Access Arrangement that a *user* or *applicant* can obtain only those elements of the *covered service* that it wishes to acquire. The manner in which the *reference services* in clauses 3.3 to 3.5 have been specified and described (including in the Price List) do not seem to easily permit a *user* to obtain only some aspects of a *reference service* (eg. the Anytime Energy (Residential) reference service). Nor are those *reference services* described in a way that conveys to *users* and *applicants* the availability of only elements of the *services*.



### 3.6 **Compliance with section 5.2(d) of the *Code***

Section 5.2(d) of the *Code* applies specifically to the SWIN. Alinta requests that the ERA consider whether the Proposed Access Arrangement complies with this provision in respect of the *reference services* it provides for *access* to the distribution network within the SWIS (i.e. in clauses 3.3 and 3.4).

## 4. GENERAL COMMENTS ON THE STANDARD ACCESS CONTRACT

### 4.1 Introduction

This section highlights some issues that Alinta has identified in relation to the overall framework for the Standard Access Contract. Later sections of this submission examine the individual documents that comprise the Standard Access Contract.

### 4.2 Practical application of the Standard Access Contract

Alinta suggests that the Proposed Access Arrangement should expressly identify which of the documents set out in Appendix 4 apply to each of the *reference services* outlined in clauses 3.3 to 3.5 of the Proposed Access Arrangement. Alinta's understanding, based on an examination of the provisions of the documents, is that:

- (a) the Transfer Contract is a pro forma contract that is intended to apply to all or any of the *reference services*. It appears that the Proposed Access Arrangement envisages that this document will be tailored to account for the particular *reference services* that *users* require in each case;
- (b) the Connection Contract is intended to apply to a *connection service*; and
- (c) the IWA does not directly apply to any particular *reference service*. It is directly concerned with construction works that are to be carried out.

However, it is not readily apparent that this is the case.

Alinta suggests that it would be helpful if the Proposed Access Arrangement itself explained when, and in what circumstances, each of the forms of contract in Appendix 4 are to apply. The Proposed Access Arrangement should be amended so that it specifies the particular contract in Appendix 4 that applies to each *reference service*. Otherwise, a *user* or *applicant* is required to engage in a process of attempting to interpret these things based on a complex web of documents, including the Applications & Queuing Policy.

### 4.3 Interconnection Works Agreement

Alinta queries whether it is appropriate for the Proposed Access Arrangement to include the IWA as part of the Standard Access Contract or as a separate *standard access contract*.

The *Code* requires *standard access contracts* to set out the terms and conditions on which the *service provider* will provide *access* to a *reference service*.<sup>4</sup> At first glance, the IWA does not appear to satisfy this requirement. It is a contract that deals with the construction of works. In itself, the IWA does not entitle (or authorise) *users* to transfer electricity to or from the system, or set out the terms and conditions on which *users* can use *reference services*. Viewed in this way, it is arguable that the IWA should not be included as a *standard access contract*.

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<sup>4</sup> See the definition of *standard access contract* in Section 1.3 of the *Code*. See also clause 5.1(b) of the Proposed Access Arrangement.

It can, however, be argued that the IWA forms part of a *standard access contract* that otherwise sets out the terms and conditions of a *reference service*. Viewed broadly, the undertaking of works may be a pre-condition of obtaining *access to reference services*. As the IWA sets out the terms and conditions governing these works, it arguably forms part of a wider *standard access contract* (eg, a Transfer Contract or Connection Contract). It may be suggested that this view of *standard access contract* is consistent with the definition of "access agreements" provided in the *Electricity Industry Act 2004* (WA). That Act defines an "access agreement" as an agreement that provides for a person "to have access to services" (see section 103).

Although Alinta has not had sufficient opportunity to fully assess the Transfer Contract, Alinta considers that its terms and conditions indicate that the IWA should be viewed as forming part of a broader *standard access contract*. Clause 25.2 of the Transfer Contract contemplates that the parties may enter into an IWA. It may be that the existence of the IWA as a separate document is best seen as an attempt to simplify the Transfer Contract by addressing certain complex issues in a separate document, rather than squeezing them into the Transfer Contract itself.

Alinta suggests that the ERA consider whether the IWA should be included as a separate *standard access contract* under the Proposed Access Arrangement. Alinta is inclined to favour such a view as it believes there are benefits to treating it as such.

If the ERA forms the view that the IWA should exist as a separate contract, Alinta suggests that it should be amended so that it is clear that the agreement is integrated as part of an overall *standard access contract*. Further, its status as part of a *standard access contract* should be clarified by ensuring that it is applicable in respect of *reference services* only. It should not attract authority in respect of *services* that are not *reference services* (e.g. in relation to an arbitration under the *Code*) because it appears in the *standard access contract*.

Having said this, Alinta's preferred position would be for *users* who require Western Power to undertake works in connection with the *network*, or to *connect* to the *network* to have access to services, to be able to compel Western Power to undertake those works under the terms and conditions of an IWA that is fair, reasonable and approved by the ERA. In this regard, it may be desirable to include an interconnection works service as a *reference service* in the Proposed Access Arrangement.

#### 4.4 Connection Contract

Alinta queries whether it is appropriate for the Connection Contract to be included as part of the Standard Access Contract. As noted earlier in this Submission, a *connection service* does not appear to have been specified as one of the *reference services* under the Proposed Access Arrangement. Under the *Code*, *standard access contracts* should be provided for *reference services*.<sup>5</sup> Therefore, if the Proposed Access Arrangement does not identify a *connection service* as a *reference service*, then the Connection Contract cannot be submitted as part of the Standard Access Contract. However, as discussed above,<sup>6</sup> Alinta

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<sup>5</sup> See definition of "standard access contracts" in section 1.3 of the *Code*.

<sup>6</sup> See section 3.4(c) of this Submission.

submits that it may be preferable for the Proposed Access Arrangement to identify the *connection service* as one of the *reference services*.

## 5. ELECTRICITY TRANSFER ACCESS CONTRACT

### 5.1 Introduction

This section sets out the terms of the Transfer Contract which Alinta submits are not reasonable and, therefore, do not comply with the requirements of section 5.3 of the *Code* and the *Code objective*.

### 5.2 Transfer of electricity

Alinta queries whether the Transfer Contract provides *users* with a clear right to transfer electricity or to *connect* to the *network* at a *connection point*. There is no express right in the Transfer Contract for *users* to transfer electricity or to *connect* to the *network* at a *connection point*. The *model standard access contract* clearly provides these rights. It does so in:

- (a) clause A3.12, which provides that (for each *connection point*) the *service provider* must provide, and the *user* must pay for and may use, "services";
- (b) clause A3.2, which defines "service" (in respect of a *connection point*) to mean a *service* provided in respect of the *connection point* as specified in Schedule 2, and if applicable includes "the transfer of electricity at a *connection point*";
- (c) Schedule 2, which provides for, among other things, an "*entry or exit service*" and a "*connection service*" to be specified;
- (d) clause A3.2, by defining:
  - (i) "entry service" to mean a *covered service* provided by the *service provider* at an *entry point* under which the *user* may transfer electricity into the *network* at the *entry point*;
  - (ii) "exit service" to mean a *covered service* provided by the *service provider* at an *exit point* under which the *user* may transfer electricity out of the *network* at the *exit point*; and
  - (iii) "connection service" to mean the right to *connect facilities and equipment* at a *connection point*.

The Transfer Contract provides that Western Power must provide, and that the *user* must pay for and may use, "Services",<sup>7</sup> but defines a "Service" as a *reference service* in respect of a contracted point which is specified in Schedule 3 of the Transfer Contract.<sup>8</sup> In contrast to the *model standard access contract*, the Transfer Contract does not provide any definition of the *reference services* and the rights attached to them. Rather, the Transfer Contract points to the covered services specified in Western Power's Proposed Access

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<sup>7</sup> See clause 3.1 of the Transfer Contract.

<sup>8</sup> See definition of "services" in clause 1.1 of the Transfer Contract.

Arrangement as a *reference service*. However, for the reasons outlined in section 3.4(a) of this Submission, resort to the Proposed Access Arrangement does not provide any real guarantee (other than by a series of deductions and inferences) as to the nature of the rights attached to the *reference services*. Further, as discussed in section 3.4(c) of this submission, Alinta considers that Western Power has not included a *connection service* as a *reference service* under its Proposed Access Arrangement.

Alinta suggests that the Transfer Contract should be amended to be consistent with the definition of "service" under the *model standard access contract*. Further, Alinta considers that it should be made clear that each of the *reference services* is capable of including a *connection service* as an integrated part of the *reference service* if required by a *user* or *applicant*.

### 5.3 Maximum liability amount

Clause 18.5(b) of the Transfer Contract provides that the *user's* maximum liability to Western Power in connection with the Transfer Contract is limited depending on the voltage of the "Contracted Point" at which a "generation plant" or "consuming plant" is connected to the SWIN and upon the type of "generation plant".

For example, under clause 18.5(b)(i) of the Transfer Contract, a *user's* liability will be limited to \$50 million in aggregate for each "Contracted Point" at which a "generation plant" (other than a wind or solar power generation plant) is connected to the SWIN at a voltage of 132kV or above. On the other hand, Western Power's liability under the Transfer Contract will be limited to \$10 million (see clause 18.5(a)). Alinta submits that such a high maximum liability amount for *users* is inequitable and does not reflect a reasonable balance of risk among the parties, given that Western Power's liability is limited to an amount of \$10 million.

Western Power states, in its "Reasons for Modifying the Model Access Contract" document, that the limits of liability reflect different levels of technical risk posed by the various types of facilities. Alinta considers that a \$50 million limit for each "contracted point" at which a "generation plant" is connected to the SWIN at a voltage of 132kV and above is in excess of the actual risk posed by such facilities. Alinta also considers that the liability limits specified in clause 18.5(b) of the Transfer Contract are in excess of the actual level of risk faced by Western Power. Alinta considers that Western Power's risk of causing damage to a "generation plant" is greater than a *user's* risk of causing damage to the SWIN. It is more likely that a *user's* particular plant will be damaged by Western Power's activities, than that such plant will damage the entire SWIN. In addition, the relative effect of loss arising from isolated events would be significantly greater for small generators than for Western Power.

Alinta urges the ERA to carefully consider the justification for, and reasonableness of, the limits of liability that are specified in clause 18.5(b) of the Transfer Contract. Alinta considers that the *user's* maximum liability to Western Power under each paragraph of 18.5(b) should be the same as Western Power's liability to the *user*.

Further, the ERA should consider the reasonableness of clause 18.5(b)(v) of the Transfer Contract, especially in respect of retailers that may seek to compete effectively with Western Power in the retail market by servicing significant numbers of *customers*.

#### 5.4 **Re-set of the maximum liability amount**

Clause 18.5(d) of the Transfer Contract provides that, at the end of each 3 year period, the parties shall negotiate to re-set the maximum liability amounts for Western Power and the *user*, having regard for any relevant changed circumstances in that period. There is no such clause in the *model standard access contract*.

Alinta submits that clause 18.5(d) of the Transfer Contract is unreasonable as it provides a wide discretion for Western Power to seek to increase the maximum liability amount of a *user* and to decrease its liability exposure under clause 18.5(a). Further, clause 18.5(d) provides a lack of certainty to *users* due to Western Power's wide discretion. Alinta questions the need for, and desirability of, a provision of this nature. If the ERA determines that such a provision is reasonable, then Alinta submits that the parties should only be required to negotiate to re-set the maximum liability amounts in tightly defined circumstances. For example, one circumstance might be when the *user's* "contracted capacity" (as defined in the Transfer Contract) has been materially varied under the Transfer Contract with the result that the maximum liability should be re-set to reflect only that change in "contracted capacity".

#### 5.5 **Charges**

##### (a) **Clause 7.2 of the Transfer Contract**

Clause 7.2(b) of the Transfer Contract provides that the *user* must pay Western Power "any other charge applicable to the provision of each Service as published by Western Power or agreed between the Parties or otherwise required by Law". This does not appear in clause A3.41 of the *model standard access contract*, which only requires the *user* to pay the "charge" for a *service* calculated at the applicable *tariff* specified in the *price list*.

Alinta submits that clause 7.2(b) of the Transfer Contract constitutes a material variation from the *model standard access contract* and is unreasonable in its current form as it does not specify with certainty what kind of other charges will apply to the Transfer Contract nor in what circumstances they may be applicable, especially in so far as Western Power may simply publish other charges.

Further, Western Power has not provided the prices associated with these other charges. Therefore, the Transfer Contract is uncertain as *users* do not know the extent of the other charges that apply under the contract. As such, Alinta considers that clause 7.2 of the Transfer Contract does not comply with clause 5.3(b) of the *Code* as it is not sufficiently detailed to form the basis of a commercially workable *access contract* and does not enable a *user* or *applicant* to determine the value represented by the *reference service* at the *reference tariff*.

Alinta submits that it is consistent with the scheme established by the *Code* for Western Power to seek to apply, in connection with the provision of *reference services*, charges that are additional to the *reference tariffs* for those *reference services*. Alinta considers that the definitions of the terms "*access contract*", "*reference service*", "*reference tariff*" and "*tariff*" in section 1.3 of the *Code* indicate that a *reference tariff* for a *reference service*, as applied in a *standard access contract*, should include all – not merely some – of the criteria that

determine the *charge* that is payable by a *user* to Western Power. It seems inconsistent with the operation of those definitions and the *Code objective* for Western Power to be permitted to earn some revenue by means of an unregulated *tariff* mechanism that applies to a *reference service* (such as clause 7.2(b) of the Transfer Contract).

(b) **Clause 7.3 of the Transfer Contract**

Clause 7.3 of the Transfer Contract is reasonably equivalent to clause A3.42 of the *model standard access contract*. However, the Transfer Contract provides an additional requirement that the *user* must be unable to use the affected *service* "solely because of the Force Majeure Event" in order to be relieved of its obligations and pay a reduced level of the "charges".<sup>9</sup> The *model standard access contract* provides that if the affected *service* is unavailable for 2 days due to a *force majeure event*, then the *user* is relieved of its obligations and instead must pay 10% of the standing *charges*.

Alinta considers that the proposed clause 7.3(a)(ii) is wholly unreasonable and submits that the provision should be deleted. Even if it were to be retained, Alinta would consider that it is inflexible to include the word "solely" in clause 7.3(a)(ii). Alinta submits that the wording of clause A3.42 of the *model standard access contract* is a reasonable and commercially workable term and should be applied.

Further, clause 7.3(b) of the Transfer Contract provides that if the *user* causes or contributes to the force majeure event, or the *user* would not, but for the force majeure event, have been ready, willing and able to make use of the affected service, then the *user* is not relieved of its obligations to pay for the service.

There is no equivalent provision in the *model standard access contract*.

Alinta considers that it is unreasonable to include clause 7.3(b) in the Transfer Contract. Western Power should not be able to continue to earn full revenue when it is not able to perform its obligations by relying on a mechanism that requires *users* to pay the full amount of the charges because they were for some reason not ready, willing and able to make use of the affected service. Additionally, Alinta suggests that it is unreasonable to require a *user* to pay full charges on the ground that it contributed to, or caused, the force majeure event, if no regard is paid to the extent to which the *user* caused or contributed to the event. Further, clause 7.3(b) of the Transfer Contract is subjective, unusual and provides wide discretion to Western Power.

## 5.6 Curtailment

Clause 24.3 of the Transfer Contract provides that where a curtailment is planned due to *augmentation* or maintenance, or where necessary for Western Power to comply with a law, Western Power must use reasonable endeavours to notify the *user* of the proposed curtailment within "a reasonable time before it occurs". Alinta submits that, in such circumstances, it is reasonable for Western Power to give the *user* at least a specified

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<sup>9</sup> See cl 7.3(a)(ii) of the Transfer Contract.



minimum number of business days' prior notice and to liaise with the *user* concerning the timing of the planned *augmentation* or maintenance, or where necessary for Western Power to comply with a law. That specified minimum number of days should depend on the nature of the *load* (e.g. priority loads, industrial loads, residential loads), with a minimum of 10 business days' prior notice for any load type. In these circumstances, Western Power will have control of when it will curtail the *user's* capacity, and it is reasonable for the *user* to have at least 10 business days' notice of the curtailment in order to deal with the planned curtailment.

Under clause 24.4 of the Transfer Contract, if Western Power notifies the *user* of a curtailment, the *user* must comply or "procure compliance" with any reasonable requirements concerning the curtailment. Clause A3.30 of the *model standard access contract* does not require the *user* to "procure" such compliance by others. Alinta submits that it is unreasonable for the *user* to be contractually obligated to procure compliance by third parties (for example, third parties at an *exit point*) with requirements concerning the curtailment as the *user* may not be in a position to procure compliance or, even if it can do so, to ensure that the third party complies. Alinta submits that clause 24.4 of the Transfer Contract would be reasonable if it was amended to delete the general obligation on a *user* to "procure compliance" with curtailment requirements, and insert a requirement that the *user* must use reasonable endeavours to procure compliance with curtailment requirements by persons taking a supply of electricity through a *connection point*.

## 5.7 Use of Contracted Capacity

Clause 3.4(a) of the Transfer Contract provides that if, in the reasonable opinion of Western Power, the "contracted capacity" in respect of a "contracted point" is not reasonably necessary to satisfy the *user's* actual requirements, Western Power may decrease that "contracted capacity" accordingly. We note that there is no equivalent provision in the *model standard access contract*.

Alinta considers that clause 3.4 of the Transfer Contract is unreasonable because it allows Western Power to use a discretion to decrease a *user's* "contracted capacity". Further, that discretion is unreasonably wide in scope. When making a determination under clause 3.4(a) of the Transfer Contract, Western Power is required to have regard to the nature, condition and use of the *facilities and equipment* installed at the "contracted point" and whether the *user* cannot use the services because of a force majeure event (clause 3.4(b) of the Transfer Contract). However, Western Power is not required to consider whether the *network* capacity actually being used by the *user* is materially less than the "contracted capacity". Nor is it clear how Western Power would be in a position to be able to form an opinion as to whether the "contracted capacity" is "not reasonably necessary". Further, such a provision may materially decrease certainty associated with contracted capacity, thereby adversely affecting the interests of *users*. Therefore, Alinta submits that clause 3.4(a) of the Transfer Contract (as currently phrased) is both unreasonable and will also negatively affect a *user's* or *applicant's* ability to determine the value represented by the *reference service* at the *reference tariff*. This type of discretion will make Transfer Contracts unbankable for project finance purposes and make it difficult for *users* to manage exposure under supply contracts with customers.

## 5.8 Decrease of Contracted Capacity

Under clause 3.9 of the Transfer Contract, the *user* may give notice to Western Power seeking to reduce the "contracted capacity" at an existing "contracted point". However, the *user* is restricted to giving such a notice only once every 12 months except in extraordinary circumstances. There is no equivalent provision in the *model standard access contract*.

Alinta submits that it is unreasonable to restrict the *user* to notifying Western Power only once every 12 months that it seeks to reduce "contracted capacity". Further, this restriction is inconsistent with the *Code objective* of promoting competition in markets upstream and downstream of the SWIN, as it is inflexible for *users*.

Alinta submits that *users* should be able to apply to reduce their "contracted capacity" at a "contracted point" when it is commercially necessary to do so, especially given the proposed clause 3.11 of the Transfer Contract. However, Alinta acknowledges that Western Power may wish to restrict *users* from making an application to reduce the "contracted capacity" where the intention or ultimate effect of the variation would be to take commercial advantage of seasonal fluctuations in electricity consumed at the contracted connection.

Alinta suggests that the Transfer Contract should be amended to remove the yearly restriction on a *user's* ability to notify Western Power that it seeks to reduce its "contracted capacity" and that Western Power's concerns be addressed, if they are legitimate, by some other means.

## 5.9 Deletion of a Contracted Point

Under clause 3.10 of the Transfer Contract, the *user* may give notice to Western Power seeking to delete a "contracted point" from the Transfer Contract. If the *user* seeks to permanently disconnect *facilities and equipment* for a "generating plant" at a "contracted point", notice must be given to Western Power at least 3 months before the planned disconnection.

Further, under clause 3.11(a) of the Transfer Contract, on any reduction of the "contracted capacity" or deletion of a "contracted point", Western Power may require a *user* to pay a *capital contribution*, regardless of whether a *capital contribution* has been previously paid before the reduction or deletion takes effect. There is no equivalent provision in the *model standard access contract*.

Alinta suggests that it is unreasonable to require a *user* to pay a *capital contribution* on reduction or deletion of a "contracted point", where a *capital contribution* has been previously paid. If Western Power has already been paid a *capital contribution* and has therefore already been compensated for augmenting its *network*, then it is unacceptable that it be able to require a *user* to pay a further *capital contribution* to make a mere contractual adjustment.

## 5.10 Change of Service

Clause 3.2 of the Transfer Contract provides that:

- the *user* may seek to change the service in respect of a "contracted point"; and

- Western Power must process such a request,

in accordance with the Price Application Policy, which is attached to the Proposed Access Arrangement.

It is not clear to Alinta why the Price Application Policy is related to the procedure for a *user* to request a change in service and for Western Power to process such a request. It is Alinta's understanding that the Price Application Policy is concerned with the rules and procedures governing the application of *tariffs*. Alinta queries whether clause 3.2 of the Transfer Contract should refer to the Applications and Queuing Policy instead of the Price Application Policy.

## 6. CONNECTION ACCESS CONTRACT

### 6.1 Introduction

This section of the submissions sets out the terms of the Connection Contract which Alinta submits are not reasonable and therefore do not comply with the requirements of section 5.3 of the *Code* and the *Code objective*.

The Connection Contract contains similar provisions to the Transfer Contract, with the Transfer Contract containing additional provisions in relation to, among other things, the provision and use of capacity and *charges*. For this reason, the comments set out in section 5 of this Submission apply equally in relation to the Connection Contract.

### 6.2 User's rights under the "Connection Contract"

Alinta queries whether the Connection Contract provides a *user* with a core right to a *connection service*. A *connection service* is defined in the *Code* as the right to *connect facilities and equipment* at a *connection point*. Western Power's *access arrangement information* states that the purpose of the Connection Contract is to provide *connection services* to a party that does not have an electricity transfer *access contract* with Western Power. However, Alinta has been unable to identify an express right for a *user* to obtain a *connection service* under the Connection Contract.

Alinta requests that the ERA examine the Connection Contract to determine whether the document contains the right for a *user* to obtain a *connection service* from Western Power.

Alinta suggests that the Connection Contract cannot be effective unless such a right is expressly provided.

### 6.3 Use of the term "Services" in the "Connection Contract"

Alinta queries the use of the term "Services" in the Connection Contract (for example, see clause 4 in relation to complying with *good electricity industry practice*; see clause 18 in relation to curtailment). The Connection Contract defines a "Service" as a "Reference Service" provided under this Contract ...". As discussed in section 3.4(c) of these submissions, Alinta considers that Western Power has not included a *connection service* as a *reference service* under its Proposed Access Arrangement. Therefore, the use of the term "Services" (as defined) in the Connection Contract appears to be incorrect as no *reference services* are provided for under the Connection Contract.

### 6.4 Connection Contract as a Standard Access Contract

As mentioned in section 4.4 of these submissions, Alinta queries whether it is appropriate for the Connection Contract to be included as, or as part of, a *standard access contract*. Under the *Code*, it appears that *standard access contracts* are related only to the provision of *reference services*. If the Proposed Access Arrangement does not identify a *connection service* as a *reference service*, then Alinta queries whether the Connection Contract can be submitted as, or as part of, a *standard access contract*.

## 6.5 **Maximum liability amount**

Clause 12.5(b) of the Connection Contract is equivalent to clause 18.5(b) of the Transfer Contract. As such, Alinta repeats its submissions in section 5.3 of these submissions in relation to clause 12.5(b) of the Connection Contract. Alinta further submits in relation to clause 12.5(b) of the Connection Contract, that the maximum liability amounts for a *user* of a *connection service* are unreasonably in excess of the actual level of risk faced by Western Power. A *user* of a *connection service* is less likely to cause significant damage to the SWIN. Therefore, Alinta submits that the maximum liability amount for a *user* of a *connection service* under the Connection Contract should be reduced.

## 6.6 **Re-set of the maximum liability amount**

Clause 12.5(d) of the Connection Contract is equivalent to clause 18.5(d) of the Transfer Contract. As such, Alinta repeats its submissions in section 5.4 of these submissions in relation to clause 12.5(d) of the Connection Contract.

## 6.7 **Curtailment**

As mentioned in section 6.3 above, Alinta queries the use of the term "Services" in relation to the curtailment provisions in clause 18 of the Connection Contract given that a *connection service* is not a *reference service*. Even if clause 18 referred to the curtailment of a *connection service*, Alinta queries whether the use of the term "Curtailment" is appropriate in the context of a *connection service* for the physical link to a *network*.

In any event, clause 18 of the Connection Contract is equivalent to clause 24 of the Transfer Contract. As such, Alinta repeats its submissions in section 5.6 of this submission in relation to clauses 18.3 and 18.4 of the Connection Contract.

## 6.8 **Apparent approach to structuring the Connection Contract**

It appears that the Connection Contract has been prepared and structured by taking the Transfer Contract and removing the provisions that do not appear to be relevant to a *connection service*. Alinta is concerned that such an approach may mean that the Connection Contract has not been reasonably structured to address the terms and conditions that should attach to a right to physically *connect facilities and equipment*. One example of the potential issues presented by this approach is set out in section 6.2 of these submissions.

Alinta requests that the ERA carefully consider the reasonableness of all the terms proposed in the Connection Contract in the context of a *connection service*.

## 7. INTERCONNECTION WORKS AGREEMENT

### 7.1 Introduction

In this section, Alinta provides its comments in relation to the draft IWA set out in Appendix 4C of the Proposed Access Arrangement.

Please note that the words and phrases italicised in this section have been defined in either the *Code* or in the proposed Capital Contributions Policy (CCP). Also, capitalised terms adopt the same meaning as used in the IWA unless the context requires otherwise.

### 7.2 Code Requirements in relation to IWA

Under Western Power's proposal, the IWA will be required to be entered into by an *applicant* where a *required augmentation* is necessary and the *required augmentation* involves technical and commercial risk.<sup>10</sup>

Given that the IWA is not specifically contemplated in the *Code*, it is not entirely clear whether the IWA must meet the requirements of a *standard access contract* under section 5.3 of the *Code* or what other *Code* provisions are applicable. Western Power would appear to consider that section 5.3 of the *Code* is not applicable to the IWA.<sup>11</sup>

However, as described in section 4.3 of these submissions, the terms and conditions of the Transfer Contract indicate that the IWA is merely a (smaller) part of a broader *standard access contract*. If it is not, it is difficult to understand how the IWA could be considered to be a *standard access contract*. This suggests that the *Code* requirements applying in respect of a *standard access contract* under section 5.3 of the *Code* must apply to the IWA. Further, Schedule 5 to the *model standard access contract* deals with a number of the matters to be provided for under the IWA. Given that the IWA deals with matters within the scope of a *standard access contract*, Alinta submits that it should meet the requirements which apply with respect to a *standard access contract*.

For the purposes of this section 7, it is assumed that the IWA will be required to meet the *Code* requirements for a *standard access contract*. This means that the IWA must:

- be reasonable;
- be commercially workable; and
- enable an *applicant* to determine the value represented by the *reference service* at the *reference tariff*,

(together the **Code Requirements**).

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<sup>10</sup> Refer to section 4 of Western Power's "Reasons for Modifying the Model Access Contract".

<sup>11</sup> Refer to section 4 of Western Power's "Reasons for Modifying the Model Access Contract".

In relation to this last point, the *applicant* must be able to determine its rights and obligations under the IWA and liability for any *capital contribution* with certainty in order to assess the value provided by any *reference service* sought.

Given that the *Code* does not provide specific guidance on the content of the IWA (for example, by way of a "model" interconnection works agreement), an *applicant* needing a *required augmentation* is particularly vulnerable and the potential exists for an *applicant* to be significantly disadvantaged by the terms of the IWA. The ERA should therefore carefully review the terms and conditions of the IWA proposed by Western Power to ensure they meet the Code Requirements. Alinta submits that the Code Requirements demand that the IWA should be typical of a contract for works entered into by parties of equal bargaining power negotiating at arm's length in the Western Australian power industry. The IWA currently falls short of this standard in a number of material respects and is heavily weighted in favour of Western Power.

### 7.3 Potential Advantages of IWA

Alinta submits that the inclusion of the IWA in the Proposed Access Arrangement as part of a *standard access contract* could have a number of benefits for an *applicant*. The potential benefits include:

- enabling Western Power and the *applicant* to liaise, share information and ensure appropriate interfacing between their respective operations or works. This is particularly important where the interconnection works form part of a wider project being developed by the *applicant*;
- imposing detailed obligations on Western Power with respect to carrying out the interconnection works in accordance with an agreed works programme, including a regime for liquidated damages in the event of delay in carrying out those works, thus enabling the *applicant* to monitor the progress of the interconnection works and giving it contractual remedies in the event that there is a delay in the completion of the works;
- appropriately describing Western Power's and the *applicant's* respective obligations in relation to important matters such as obtaining permits and consents, procuring land access rights and other interests in land, site access and safety, intellectual property, warranties, indemnities and liability, insurance, dispute resolution, confidentiality and assignment of rights and obligations; and
- where the interconnection works form part of a wider project being developed by the *applicant*, giving the *applicant's* project financiers a better understanding of the risks associated with the interconnection works.

### 7.4 Deficiencies of IWA

Despite these potential benefits, the IWA fails to meet the Code Requirements because:

- some terms of the IWA are unreasonable, resulting in an unfair allocation of risks to the *applicant*; and

- the IWA does not have sufficient certainty with respect to the time for completion of the interconnection works or the *capital contribution* for which the *applicant* is liable.

These deficiencies are described in more detail below.

## 7.5 Issues concerning relationship between IWA and Capital Contributions Policy

Western Power's proposed CCP provides that an *applicant's capital contribution* will be based on the *forecast costs* of the interconnection works less any costs likely to be recovered by *new revenue* gained from providing the *covered services* to the *applicant*, as calculated over the *reasonable time*, at the *contributions rate of return*. Accordingly, the CCP contemplates the *capital contribution* being based on *forecast costs*.

Under the IWA, the *applicant's* liability for *capital contributions* is initially fixed under schedule 9 of the IWA. However, the "Note" in Schedule 9 states that there may be "cross linkage" between adjustments to the Works Price and, presumably, the *capital contribution* payable by the Customer under the IWA. A number of provisions of the IWA entitle Western Power to increase the Works Price. For example, clause 14 entitles Western Power to recover any additional costs it incurs arising as a result of an Excusable Delay.

Alinta submits that the CCP and the IWA are inconsistent in that the *capital contribution* payable by an *applicant* will not simply be based on *forecast costs*. The *capital contribution* payable by the *applicant* may be increased in the event that the actual cost of the interconnection works is increased. The mechanism for the increase is through an adjustment to the Works Price under the IWA.

Alinta submits that an adjustment to the *capital contribution* in the event of an increase in the actual costs of the interconnection works would be consistent with the Code Requirements provided that an *applicant* was also entitled to a reduction in, or a reimbursement of, its *capital contribution* to the extent that the actual costs of the interconnection works were less than *forecast costs*.

It is also noted that a number of provisions in the IWA are aimed at enabling an *applicant* to monitor the costs of the interconnection works, and provide assistance to Western Power in the manner in which those interconnection works are carried out, in order to minimise costs. It would be contrary to the commercial principles underlying the IWA if an *applicant* were not entitled to benefit from a reduced *capital contribution* when the costs of the interconnection works were less than *forecast costs*.

## 7.6 Specific Comments

### (a) Clause 1.1 – Definition of Assumed Conditions

Pursuant to clause 14 of the IWA, if an Excusable Delay occurs, Western Power will be entitled to claim any additional costs reasonably incurred as a direct result of the delay. The definition of Excusable Delay includes a Variation, which includes "any material variation in conditions, facts or circumstances between the Assumed Conditions and the actual conditions, facts or circumstances encountered by Western Power or Western Power's Personnel in respect of the Works".



The definition of Assumed Conditions is extremely wide. It includes conditions that were assumed by Western Power in determining the Works Price and the Agreed Works Programme and the long list of conditions, facts and circumstances set out in schedule 6 to the IWA.

The wide definition of Assumed Conditions gives Western Power considerable scope for claiming additional costs from the Customer, with little or no means for the Customer to assess and quantify those costs in advance or manage those costs.

The IWA should contain a definitive list of circumstances in which the Works Price payable by the Customer may be varied, which should be based on general construction industry standards of risk allocation. The definition of Assumed Conditions is unreasonably wide and uncertain and will not be bankable for project finance purposes. Further, as mentioned above, the *capital contribution* payable by the Customer should be reduced in the event that the actual costs of completing the interconnection works are less than the *forecast costs* on which the *capital contribution* is initially assessed.

**(b) Clause 1.1 – Definition of Event Beyond a Person's Control**

The definition of Event Beyond a Person's Control is used in the definition of Force Majeure Event. Western Power is seeking a right to claim an extension of time to the Due Date for Practical Completion and an increase in the Works Price to the extent any delay or additional costs are caused by a Force Majeure Event.

Paragraph (f) of the definition of Event Beyond a Person's Control should be amended to exclude industrial disputes or disturbances that are not on a national or statewide basis. It is unreasonable that Western Power should be granted time and costs for industrial disputes or strikes that are specific to Western Power.

Paragraph (g) of the definition of Event Beyond a Person's Control should be deleted, as each party should be responsible for a failure of its own plant or equipment.

**(c) Clause 1.1 – Definition of Force Majeure Event**

Under the definition of Force Majeure Event, a party is entitled to claim *force majeure* if it has acted in accordance with "Good Electricity Industry Practice but constrained by and having regard to prudent business principles regarding expenditure". Alinta submits that the requirement to act in accordance with Good Electricity Industry Practice is an appropriate constraint on the availability of *force majeure* relief. The obligation to act in accordance with Good Electricity Industry Practice should not be qualified by a party's own financial circumstances or availability of funds. The words "but constrained by and having regard to prudent business principles regarding expenditure" should be deleted.

**(d) Clause 1.7(c) – Inconsistency of provisions**

It is unreasonable that any inconsistency within provisions relating to the scope of the work or to the payment for the work should be resolved by Western Power. The IWA should specify the priority of contract documents in the event of inconsistency

between contract documents. If there is an inconsistency within provisions, this should be referred for dispute resolution under clause 32 of the IWA.

(e) **Clause 2 – Works**

The legal effect of providing that the Works Price and Agreed Works Programme are determined based on the Assumed Conditions is unclear. This creates uncertainty about the time for completion of the interconnection works and the *applicant's* liability for the costs associated with such works, given the *applicant's* apparent liability for increases in the Works Price (see section 7.5 above). Alinta submits that clause 2 is not reasonable or commercially workable and should be deleted.

(f) **Clause 5.3 – Payment for Early Undertakings**

The Customer's obligation to pay Western Power for the Early Undertakings should be conditional upon Western Power providing reasonable information and records to the Customer verifying the costs it incurred in carrying out the Early Undertakings, including records, invoices, receipts and timesheets.

(g) **Clause 7.5 – Cooperation of the parties**

Although this clause requires the Customer to liaise with Western Power to ensure the safety of all personnel on the Site, Western Power is not obliged to take over all responsibility for safety on the Site. Western Power should be required to establish and implement a site safety management plan in relation to the performance of the Works at the Site and ensure that its personnel comply with the site safety management plan.

(h) **Clause 9 – Agreed Works Program**

Under the IWA, Western Power must complete the Works by the Due Date for Practical Completion, subject to any extension of time being granted for Excusable Delays. However, unlike most contracts for works, it is not expressly stated that Western Power bears the risk of other delays in the Works, or costs associated with those delays. The IWA should make it clear that, unless Western Power is expressly entitled to an extension of time or additional costs in connection with a delay in the Works, Western Power is solely responsible for the risk of delays in the execution of the Works and any costs in executing the Works that are associated with such delays.

(i) **Clause 10 – Extension of time resulting from Excusable Delay**

The Customer should be entitled to extend the Due Date for Practical Completion at any time and for any reason the *applicant* thinks sufficient. Under construction law, this right is required to avoid the possibility of time being "at large" in the event of a delay in the Works that is not the subject of an extension of time and to preserve the principal's right to claim liquidated damages in such circumstances. This is a standard clause included in contracts for works (refer to clause 35.5 of General Conditions of Contract AS2124-1992). Alinta submits that this clause is

required on the grounds of reasonableness and making the IWA commercially workable.

Alinta also points out that clause 10.1(d) is incomplete.

(j) **Clause 11.3 – Variations to be agreed before Western Power will proceed**

Under clause 11.3, Western Power is not required to accept or undertake a Variation unless the effect of the Variation on any Due Date for Practical Completion and the price of the Variation have been agreed in writing between the parties. As mentioned above, the definition of Variation includes a material deviation from the Assumed Conditions.

Alinta submits that the clause is unreasonable for the following reasons:

- it does not place any constraint on the extension of time or costs to which Western Power is entitled in connection with the Variation;
- the clause gives Western Power unreasonable bargaining power, as it is not required to proceed with the required Variation (which could be substantial) until the issues of an extension of time and cost are agreed with the Customer; and
- under most contracts for works, a contractor is bound to proceed with any variation – any entitlement to an extension of time or costs is the subject of a separate claim and the contractor is not entitled to suspend the works because issues of time or cost are not agreed.

Alinta submits that the clause should be deleted. Western Power is already entitled to make a claim for an extension of time or costs in respect of Variations under clauses 10 (Extension of time resulting from Excusable Delay) and 14 (Additional Costs).

(k) **Clause 14.1 - Additional costs resulting from Excusable Delay**

Under clause 14.1, Western Power is entitled to claim additional costs arising out of any Excusable Delay in relation to which it is granted an extension of time.

Alinta submits that it is unreasonable for a Customer to be liable for additional costs incurred by Western Power in connection with an Excusable Delay where the delay is not caused or contributed to by the Customer. Specifically, Western Power should not be entitled to claim additional costs for the Excusable Delays described in paragraphs (e), (f), (h) or (i) of clause 10.1(a).

(l) **Clause 14.2 – Additional costs resulting from change in Legal Requirements**

Under clause 14.2, Western Power is entitled to increase the Works Price by the amount of any increase in costs (or to compensate for a reduced net return received) resulting from a change in Legal Requirements. It is reasonable that the Works Price should also be reduced (or the net return received by Western Power be reduced) in the event that a change in Legal Requirements reduces the costs incurred by Western Power in carrying out the Works.

(m) **Clause 15.2 – Design Documentation**

The Customer should be provided with a reasonable period to review the Design Documentation provided by Western Power. Alinta submits that the Customer should be provided with 15 (as opposed to 5) business days to review the Design Documentation.

In relation to clause 15.2(b), the Customer should be entitled to require Western Power to resubmit the Design Documentation if the minor error, omission or defect would prevent the Customer from using the Customer Connection Works for the purposes specified in the agreement.

(n) **Clause 20.2 – Cap on liquidated damages for Western Power Works**

Alinta submits that the proposed cap on Western Power's liability for liquidated damages in the event of a delay in the Works is not reasonable or commercially workable for the following reasons:

- the cap should be based on a percentage of the Works Price - \$500,000 may be completely inadequate compensation for losses or costs suffered or incurred by a Customer in the event of Western Power delay, particularly where the interconnection works form only a component of a major project or where the cost of the interconnection works is substantial;
- the cap should not be based on the actual amount of damage suffered by the Customer as a result of the delay – this effectively requires the Customer to substantiate all delay costs and defeats the purpose of agreeing liquidated damages, which should be a genuine pre-estimate of the losses to be suffered or incurred by the Customer; and
- the proposed cap of 5% of the Works Price is unreasonably low. A cap of 10% of the Works Price is likely to be a more reasonable estimate of the losses to be incurred by the Customer in the event of a delay in the Works and will create a greater incentive for Western Power to complete the Works on time.

If this submission is accepted, then clause 20.5 (Customer to supply information of actual loss) should also be deleted from the IWA.

(o) **Clause 21 – Works Price**

As described in section 7.5, Alinta submits that the *capital contribution* should be reduced if the actual costs of the interconnection works are less than *forecast costs*.

In order to enable the Customer to monitor the actual cost of the Works, clause 20 of the IWA should require Western Power to submit, with its monthly payment invoices, details of the actual costs incurred by Western Power and its subcontractors etc in carrying out the Works together with supporting documentation reasonably requested by the Customer.

The clause should also include the mechanism for reimbursing the Customer an appropriate portion of its *capital contribution* if actual costs of the Works are calculated to be less than the *forecast costs* once Practical Completion is achieved.

(p) **Clause 24 – Exclusion of indirect damage and limitation of liability**

Alinta submits that the indemnity given by the Customer under clause 24.1(b) is unreasonably wide, an inappropriate allocation of risk to the Customer, difficult to interpret and incapable of being insured against. In short, it is not reasonable or commercially workable. It is to be noted that clause 24.1(b)(i):

- relates to claims for direct and indirect loss suffered by any Customer Person. The definition of "Customer Person" is extremely wide and could extend to Western Power's contractors or third parties (eg, joint venturers) having operations on or in the vicinity of the Works; and
- extends to direct and indirect losses arising out of or in connection with the Agreement. It is not restricted to loss caused or contributed to by the Customer or Customer Person, and therefore requires the Customer to indemnify Western Power and Western Power's Personnel in relation to an extremely wide array of potential loss causing events.

Under clause 24.1(b), the Customer is required to indemnify Western Power in respect of indirect damage which Western Power or Western Power's Personnel may incur to any third party. On the other hand, the indemnity provided by Western Power under clause 24.2 (Liability for third party property damage) only relates to direct damage suffered or incurred by the Customer. Further, Western Power's liability to the Customer arising out of or in connection with the IWA is limited to direct damage (see clause 24.1(a)). Given that Western Power does not provide a reciprocal indemnity to that given by the Customer under clause 24.1(b), the indemnification granted to Western Power under the IWA is far greater than the reciprocal protection granted to the Customer, despite the fact that Western Power is primarily responsible for carrying out the interconnection works.

To take a practical example, what if the Customer was proposing to develop a new power station on the site of a third party, and that third party suffered direct and indirect loss as a result of an interference with that party's operations due to the negligence of Western Power while carrying out the interconnection works? Western Power would be indemnified by the Customer if that third party successfully sued Western Power for direct and indirect damage, except to the extent the liability related to physical damage to property of the third party – this would be so even though the liability arose due to Western Power's negligence. This is clearly an uncommercial approach.

Further, as a result of clause 24.3(b), the Customer's liability in respect of the indemnity under clause 24.1(b) is uncapped and not counted for the purposes of the Maximum Liability Amount. In contrast, Western Power's liability (in all respects, other than where it is fraudulent) is capped by the Maximum Liability Amount.

Western Power attempts to justify this position on the basis that, unlike a normal contractor, it cannot reasonably refuse to undertake the Works.<sup>12</sup> Alinta submits that this does not justify a Customer being required to give Western Power an uncapped indemnity against all third party losses. This is contrary to the Code Requirements and the *Code objective*. Further, Western Power's argument ignores the following considerations:

- an *applicant* is also unable to engage any person other than Western Power to carry out the Western Power Works; and
- Western Power will be able to pass some (possibly a substantial portion) of the design and construction risk associated with the Works to its subcontractors.

Alinta submits that a more balanced indemnity and liability regime should be included in the IWA. This regime should be based on the following key principles:

- each party indemnifies the other against any loss associated with loss of or damage to property or personal injury or death arising out of the acts or omissions of the first party or its contractors, employees or agents; and
- except as covered by these indemnities, neither party should be liable for any indirect or consequential loss suffered or incurred by the other party for any reason.

The provisions proposed by Western Power are oppressive and entirely uncommercial. Alinta suggests it is unlikely that Western Power would be able to include such provisions but for the existence of its power in the market for electricity transmission services. They are not reflective of parties of equal bargaining power negotiating at arm's length. As such, it would be inconsistent with the *Code objective* for those provisions to be included in the IWA. Where new interconnection works are required as part of a new power project (the capital costs of which can run into tens of millions of dollars) an indemnity and liability regime as proposed by Western Power will remove prospects of project finance for the development.

(q) **Clause 30.2 – Termination Payment**

The clause provides that where termination of the IWA arises in specific circumstances, the Customer shall be liable to pay Western Power the Total Costs and any other applicable Termination Payment specified in schedule 10.

As presently drafted, the Customer's potential liability on termination of the IWA under clause 30.2 may be greater than its liability would have been had the Works been completed. This is clearly unreasonable.

The Customer's liability on termination of the IWA under clause 30.2 should be capped at the Total Costs.

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<sup>12</sup> Refer to section 4.1 of Western Power's "Reasons for Modifying the Model Access Contract".

Western Power should also be obliged to mitigate its costs on termination of the IWA (for any reason) by:

- not placing any further new orders or entering into any further new subcontracts for the Works following termination; and
- seeking to minimise the costs it incurs under or in relation to the IWA, the Works and the termination of the IWA, including by cancelling orders or subcontracts where commercially prudent to do so.

(r) **Schedule 12 – Tender process**

Although the philosophy underlying Schedule 12 is reasonable and commercially workable, Alinta submits that a number of amendments should be made to make the provisions more consistent with the Code Requirements. In particular, the amendments described below are intended to facilitate the Customer's role in structuring and managing any interconnection works being subcontracted so that it can assist in minimising the cost of those works.

Firstly, Western Power should be required to consult with the Customer prior to deciding the portion of the Western Power Works that Western Power will subcontract to third parties (paragraph (a)) and the contractors from whom Western Power will invite tenders for the Tendered Works (paragraph (d)). Alinta submits that an obligation to consult with the Customer in relation to those matters should be set out in those paragraphs.

Secondly, in relation to paragraph (f), Alinta submits that Western Power should also be obliged to take into account the Customer's recommendations on the tender documentation in relation to:

- the scope of the Western Power Tendered Works; and
- the ways in which the costs of carrying out the Tendered Works may be minimised.

Thirdly, the time within which the Customer must provide comments on the documentation relating to the Tender Process under paragraph (e), or a recommendation as to the Customer's preferred tenderer under paragraph (h), should be extended from 3 business days to 15 business days.

Finally, an additional clause should be inserted in schedule 12 making it clear that the objective of Western Power undertaking the Tender Process is to seek to minimise the costs of the Tendered Works and to provide that Western Power:

- must manage each aspect of the Tendered Works in the capacity of project manager; and
- is responsible for undertaking the Tendered Works in accordance with the provisions of the IWA to the same extent as if the Tendered Works had not been the subject of the Tender Process.

## 8. CAPITAL CONTRIBUTIONS POLICY

### 8.1 Introduction

#### (a) Outline of section

In this section Alinta provides its comments in relation to the proposed Capital Contributions Policy (CCP) set out in Appendix 3 of the Proposed Access Arrangement.

Please note that the words and phrases italicised in this section have been defined in either the *Code* or the CCP.<sup>13</sup>

#### (b) General comments on Code requirements

- Sections 5.12 to 5.17 of the *Code* specify the requirements for a *service provider's* CCP. The key requirements include the following.
- In respect of a *required augmentation*, an objective of the CCP must be that it strikes a balance between the interests of the *contributing user*, other *users* and *consumers*.
- A further objective must be that the CCP does not constitute an inappropriate barrier to entry.
- The CCP must facilitate the operation of the *Code*, including section 2.9 (Requirement to undertake *augmentations* and funding of *augmentations*), the *new facilities investment test* and the *regulatory test*.
- The CCP must not require a *user* to make a *capital contribution* in respect of any part of *new facilities investment* which meets the *new facilities investment test*.
- To the extent the CCP is based on the *model capital contributions policy* (MCCP), any matter which is left to be completed in the MCCP must be completed in a manner consistent with relevant instructions in the MCCP, sections 5.12 to 5.15 of the *Code* and the *Code objective*.
- The ERA must determine that a CCP is consistent with sections 5.12 to 5.15 and the *Code objective* to the extent that it reproduces without material omission or variation the MCCP.
- The ERA must otherwise have regard to the MCCP in determining whether the CCP is consistent with sections 5.12 to 5.15 and the *Code objective*.<sup>14</sup>

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<sup>13</sup> In addition, please note that in this section, the word "charge" in the phrase "connection charge" is not italicised. This is because the word "charge" as it appears in this phrase does not have the Code meaning.



(c) **Specific submissions on Western Power's CCP**

Western Power's CCP contains a number of material omissions from or variations to the MCCP. The submissions in section 8.2 of this document highlight a number of provisions in Western Power's CCP that Alinta considers to be inconsistent with sections 5.12 to 5.15 and the *Code objective*. Alinta is concerned that these inconsistencies will effectively result in a barrier to entry in markets upstream and downstream of the *networks*, having a negative impact on competition in those markets, and resulting in non-compliance with the *Code objective*.

(d) **General submissions in support of a "shallow" connection charges approach**

Clause 9 of Western Power's CCP materially deviates from the MCCP in relation to "transmission connected generators". The note under clause 5.16(b) of the *Code* provides that such deviations from the MCCP are permitted provided the CCP complies with sections 5.12 to 5.15 and the *Code objective*.

Alinta supports Western Power's proposals under clause 9 of the CCP insofar as they recognise the net benefit to *users* provided through the *connection* of new *generating plants* to the *network*, by limiting the *capital contribution* of new *generating plants* connecting to the *urban shared network* to the *forecast costs* of dedicated *connection assets* only. However, Western Power's approach unfairly discriminates against new *generating plants* requiring *connection* outside the proposed *urban shared network*. It also ignores the arguments in support of the application of a "shallow" approach to connection charges generally in relation to the *network*.

Alinta submits that Western Power's CCP should be amended so that a shallow approach to connection charges applies to the entire *network* and not just the *urban shared network*. In section 8.3 of the submissions, Alinta explains in more detail what it means by a shallow approach to connection charges and outlines the arguments in support of such an approach, including having regard to network charging practices and trends in other States and internationally.

The submissions in section 8.2 focus on specific provisions of Western Power's CCP. In a number of cases, these submissions would be unnecessary or require modification if the approach advocated in section 8.3 were followed. In the event of any inconsistencies between the submissions in sections 8.2 and 8.3, the submissions in section 8.2 should be read as being made in the alternative, only if the submissions in section 8.3 are not accepted by the ERA.

(e) **Use of defined terms**

Alinta notes that Western Power's CCP employs a number of new defined terms. It appears that in many cases these terms are intended to capture similar concepts to those in the MCCP. Alinta is concerned that the use of different defined terms to those set out in the MCCP may have unintended consequences. Alinta requests that

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<sup>14</sup> We understand that this applies to a CCP to the extent it does contain material omissions or variations to the *model capital contributions policy*.

the ERA carefully consider and assess whether the definitions in Western Power's CCP are consistent with sections 5.12 to 5.15 and the *Code objective* having regard to the definitions in the MCCP and the *Code*.

## 8.2 Specific comments on Western Power's CCP

### (a) Clause 2 – Application

Clause 2 of Western Power's CCP is more prescriptive and detailed than the corresponding clause A4.4 of the MCCP. Alinta is concerned that the level of prescription in clause 2 carries a risk that certain circumstances to which the CCP ought apply are not covered by clause 2.

Alinta is unclear as to whether it is proper for clause 2.1(c) to be included in Western Power's CCP. The term "*capital contributions policy*" is defined in the *Code* to mean:

"a policy in an *access arrangement* under section 5.1(h) dealing with *capital contributions by users* in respect of *augmentations*" (emphasis added).

Clause 2.1(c), however, is not concerned with *capital contributions* "by users". Rather, according to its terms, the provision is concerned with a person who "does not intend to become a user or an applicant". These comments also apply to clause 2.2(c) and clause 11 of Western Power's CCP.

### (b) Clause 3 – Lowest sustainable cost

Alinta notes that Western Power's CCP uses the term "efficiently minimising costs", which is defined in the *Code*. That definition is generally consistent with the required test for *capital contributions* set out in clause A4.6 of the MCCP, but that there are some differences between them. Alinta requests that the ERA consider whether these differences are material and consistent with the requirements of the *Code*.

### (c) Clause 5.1 – Amount of contribution

Alinta notes that the proposed method for determining the amount of *contribution* to be made by an applicant is different to that set out in clause A4.5 of the MCCP. Alinta requests that the ERA consider the acceptability of this method, especially in light of the *new facilities investment test* and *regulatory test*.

### (d) Clause 5.2 – Calculation of contribution

The proposed method for determining the amount of *contribution* to be made by an applicant is different to that set out in clause A4.5 of the MCCP. Alinta requests that the ERA carefully consider and assess the method of calculating the *contribution* proposed by Western Power. Alinta notes that Western Power's proposal appears to adopt a more satisfactory approach than that set out in clause A4.5 of the MCCP, especially in relation to clause A4.5.

Further, Alinta notes that although the upfront *capital contribution* payable by an *applicant* is stated to be based on *forecast costs*, the proposed Interconnection

Works Agreement envisages that the *capital contribution* may be revised upwards in the event that the actual costs incurred by Western Power in carrying out the *works* increase.<sup>15</sup> Alinta does not object to this approach, provided the *applicant* is reimbursed in the event that the actual costs of the *works* are less than the *forecast costs* of the *works*.

(e) **Clause 5.4 – Amount of *forecast costs***

Clause 5.4 grants Western Power a number of discretions as to the manner in which it allocates all or a portion of the *forecast costs* to the *applicant*. Alinta submits that clauses 5.4(b), 5.4(c) or 5.4(d) should clearly define when Western Power must allocate only a portion of the *forecast costs* to the *applicant*.

In relation to clause 5.4(b), if Western Power chooses to undertake *works* in excess of the *minimum practical works* to provide *covered services* sought by an *applicant*, then Western Power should only be entitled to recover from the *applicant* the *forecast costs* of the *minimum practical works* (less any part that satisfies the *new facilities investment test*).

In relation to clause 5.4(c), if Western Power reasonably expects to receive *tariff* income from future *applicants*, then Western Power should be required to apportion the *forecast costs* based on the *contracted capacity* sought by the *applicant* relative to total *contracted capacity* expected to be sought by those future *applicants*.

In relation to clause 5.4(d), rather than being under an obligation to negotiate with multiple *applicants* requiring the same *works*, Western Power should be obliged to apportion the *forecast costs* of the *works* between the *applicants* based on the relative use of the *works* sought by each *applicant*. In addition, the term "relative use" should be defined.

In relation to clause 5.4(e), if the *works* provide specific savings to Western Power, then it should be required to allocate to the applicant the *forecast costs* less the amount saved.

(f) **Clause 5.5 – Connection assets**

Alinta submits that the drafting of clause 5.5 is ambiguous. In addition, it is not clear what is meant by "subject to effective competition". Clause 5.5 should be amended so that it is clear that the *applicant* must pay the full *forecast costs* for any *works* that Western Power carries out which it is not required to carry out in order to comply with its obligations under the *Code* where the *applicant* and Western Power have agreed that Western Power will carry out those *works* (i.e. where the *works* are contestable).

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<sup>15</sup> Please see our comments on the Interconnection Works Agreement in section 7.5 of this Submission.

(g) **Clause 5.6 – Non-capital costs**

Alinta submits that clause 5.6 should be consistent with sections A4.16 - 4.17 of the M CCP. The rebates and recoupment provisions (Western Power's CCP, clause 7) should apply fully to *contributions* in respect of *alternative option costs*.

(h) **Clause 5.7 – Works over and above standard works**

The *applicant* should only be liable for the full *forecast costs* of *works* needed to comply with its request to the extent that the *connection* or *reference service* is better than the standard described in the *technical rules* or the *access arrangement* (as the case may be). The CCP should otherwise apply in determining the *applicant's* liability to make a *capital contribution*, including in respect of rebates and recoupment (Western Power's CCP, clause 7).

(i) **Clause 6 – Manner of contribution**

In relation to clause 6.3(a)(i), Alinta submits that the maximum term over which periodic payments may be made should be ten years, rather than five, to more accurately reflect the period over which the *works* are likely to be used by the *applicant* and the repayment of debt finance required in relation to the *works*.

The proposed interest rate in clause 6.3(a)(iii) is excessive and unreasonable. Alinta submits that a rate of 3% above the 90 day bank bill rate or similar would be more reasonable and appropriate. Under this approach, interest rates would vary in line with market changes.

(j) **Clause 7 – Rebates and recoupment**

Neither the Interconnection Works Agreement nor the Standard Access Contract provided by Western Power provide for the rebates and recoupments described in the CCP. This is contrary to clauses A4.13(d) and A4.14(c) of the M CCP. Alinta submits that these should be incorporated into the Interconnection Works Agreement and Standard Access Contract.

A *capital contribution* may involve a significant amount of money being paid by a *user* so that it can receive *network services* for a lengthy period. The *user* should be entitled to reimbursement of a proportional amount of its *capital contribution* if a subsequent *user* benefits from *works* the subject of the *capital contribution* at any time while the first *user* continues to use those *works* under its *access contract*. Accordingly, Alinta submits that the period of 5 years referred to in clauses 7.1(a)(i), 7.2(a) and 7.3 should be replaced with "the period during which original user continues to use those works under its access contract". The reference to 5 years in clause 7.4(d) should be replaced with "the expected remaining life of the works".

Alinta submits that the amounts \$1,000,000 in clause 7.1(a)(ii) and \$100,000 in clause 7.1(a)(iii) are unreasonably high, and would result in a *user* not receiving a fair rebate and recoupment in respect of its *capital contribution*. Alinta considers that these amounts should be \$100,000 and \$10,000 respectively.

(k) **Clause 8.1 – Western Power may recover reduced demand payment**

Alinta considers that it should be made clear that clause 8.1 will only apply where the *user* has made a *contribution* for *works*. Alinta submits that the words "who has made a *contribution* for *works* for a *contracted point*" should be inserted after the word *user* in clause 8.1(a). As a consequence of this amendment, the references in clauses 8.1(a)(i) and (ii) to "a *contracted point*" should be replaced with "that *contracted point*".

(l) **Clause 9 – Transmission connected generators**

Western Power's proposals in clause 9 have merit in recognising that, in many cases, it is not reasonable to require an *applicant* to contribute to *augmentation* of the wider *network* and that the *applicant's contribution* should be limited to costs associated with the dedicated *connection assets*. As outlined in section 8.3 of these submissions, Alinta submits that a shallow approach to connection charges should apply generally in relation to the *network*, not just the *urban shared network*. However, if these submissions are not accepted, then the ERA should ensure that clause 9 fairly balances the interests of new *generating plants* seeking connection, as described below.

It is unclear how Western Power has selected the *urban shared network*. There is a prospect of significant disadvantage to, and discrimination in relation to, an *applicant* who requires *works* outside of the *urban shared network*.

For example, there may be planning, environmental or other reasons why it is not appropriate for a significant *load* or *generator* to be located in a densely populated area (i.e. within the presently defined *urban shared network*). Further, it may not be possible for a new *load* to be constructed in close proximity to a *generator* (or vice versa). The CCP should encourage such planning by similarly limiting the *capital contributions* of those *applicants*. Alinta considers that it is consistent with the *Code objective* to encourage the development of new *loads* or *generators* by extending a more favourable approach to *capital contributions* to them.

Accordingly, Alinta submits that a more detailed and precise definition of the *urban shared network* is required, with a much a greater focus on the location and usage of *network assets*. This definition should be aimed at avoiding the disadvantages and discrimination outlined above. For example, the definition could be based on assets, such as 132kV or 330kV transmission lines, and not be tied to geographical boundaries.

Clause 9.4 imposes a significant financial burden on new *generating plants*. If *consumer* demand is sufficient to justify a new *generating plant* then the costs associated with reactive power *works* should be shared among all *network users*. Alinta queries why generators should be unfairly prejudiced because of the location of the *load*. Alinta submits that clause 9.4 has a negative impact on competition in the electricity generation market and should be deleted.

(m) **Clause 10 – Consumers consuming less than 50MWh per year**

Alinta has not been able to analyse clause 10 in detail. Alinta does, however, have some general concerns about whether the provision complies with the *Code* requirements. It appears that at least some of the sub clauses may seek to extract *capital contributions* equal to the cost of carrying out *works* without regard to whether any part of the *works* satisfies the *new facilities investment test* (eg, refer to clause 10.8).

Alinta requests the ERA to fully consider the validity of clause 10.

(n) **Clause 11 – Sub divisions**

Please refer to the earlier comments about clause 2.1(c).

8.3 **Submissions in support of a shallow approach to connection charges**

(a) **"Shallow" vs "Deep" connection charges**

In formulating a *capital contributions policy*, a transmission *service provider* needs to evaluate the additional transmission assets required to accommodate the load flows resulting from the connection of a new *user*, in a manner consistent with its security standards and licence obligations, against the background of the existing and committed *transmission system* and the extant generation and demand. The *service provider* then determines the appropriate split between "system" and "connection" assets. System assets broadly comprise the network of lines and substations used for the bulk transportation of electricity. *Connection assets* are those that provide access to the system for a *generator*, *user* or group of *users*. A distinction can be made between a "shallow" and a "deep" approach to the division of transmission assets between "system" and "connection".

Under a "deep" approach, a *generator* or *customer* proposing to *connect* to the transmission system would be required to pay not only for the cost of the local connection but also for the incremental investment made on the wider *transmission system* to accommodate the additional generating capacity or load. In other words, the generator or customer would be required to pay for all the transmission assets which would not be required if the particular generating station or groups of generating stations or grid supply points did not exist, including the costs of reinforcement at remote sites.

The connection of new generators to the transmission grid can, in some cases, depending on the location of the generator, capacity and other factors, require significant network augmentation resulting from, for example, the reversal of the direction of power flows.

Under a "shallow" approach, generators and customers would be required to pay only for the local assets specifically required to connect them to the *transmission system* and for the specific benefit of particular *users*. The costs of reinforcing the system beyond the *connection assets* would be recovered through use of system *charges*.

Alinta considers that shallow charging is advantageous because a new *user* can readily identify the connection assets and hence costs. Further, moving the cost of shared assets into common infrastructure benefits competition in generation as it removes some of the risk associated with sharing assets. This makes it easier for generators to enter and exit the market and simplifies the charging arrangements. Shallow charging is also more transparent and has the further operational advantage that Western Power's assets would be under Western Power's control. Alinta submits that this approach would be consistent with the *Code objective* and sections 5.12 to 5.15 of the *Code*.

Deep charging may lead to connection charges for subsequent connections being significantly lower than those paid by the initial contributor. The "second comer" gets to "free-ride" on the initial investment. Although this problem can be dealt with under a reimbursement scheme, these require accurate record keeping, carry a high cost and effort to administer, are complex and can still lead to inequitable outcomes.

(b) **National practices and trends**

Alinta understands that the generally accepted practice among transmission entities in other Australian states is to charge only shallow connection charges for new users.

The National Electricity Rules, under which all transmission entities that form part of the National Electricity Market (**NEM**) are required to operate, sets out requirements for the charging of the costs of entry and exit asset as follows<sup>16</sup>:

A "shallow connection asset" policy is to be adopted in which only those assets (including individual assets within a substation) which provide supply to only those Transmission Network Users connected at the connection point are included. This is a simple definition, which avoids the difficulties that can be caused by a "deeper connection asset" policy where assets may change from connection assets to becoming part of the transmission network.

For example, TransGrid adopts a "shallow" connection charge for the recovery of costs associated with the connection of new users.<sup>17</sup>

Nationally, this "shallow" approach to charging transmission connected generators seems to have been accepted without much debate. What debate there has been has centred around charges that should be levied for the connection of embedded generators to the distribution network. In this respect, Alinta understands that the general conclusion has again been that a shallow approach is preferable. In the Essential Services' Commission's (**ESC**) Final Decision on its Embedded Generation Guideline it stated:

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<sup>16</sup> National Electricity Rules, Chapter 6, Schedule 6.2 – Categories of Transmission System Cost, Section 2 – Entry and Exit Assets

<sup>17</sup> ACCC Final Decision, NSW and ACT Transmission Revenue Cap, TransGrid 2005/05 to 2008/09, 27 April 2005

If embedded generators were required to pay deep connection costs, they would be disadvantaged compared with transmission connected generators that are not required to pay this amount.

The ESC's Final Decision was that embedded generators should be charged only the costs of shallow augmentations, leaving network tariffs to deal with the cost of deep augmentation.

(c) **International practices and trends**

Alinta understands that the international trend has also been unequivocally towards a shallow approach to connection charging.

In its statement on charges for connection to the Electricity Supply Board's transmission system, the Commission for Electricity Regulation in Ireland stated:

"The Commission believes that adopting the principle of "deep" connection charges would be:

- difficult and arbitrary to apply in practice;
- discriminatory, notably between existing generators and new entrants. While a "deep" connection charging policy could be consistently applied to all new connections, it would be impossible to execute consistently for all existing connections, given the historic nature of the transmission system. Thus it would be impossible now to determine for each existing connection to the system what remote reinforcement costs were necessary in the past to accommodate those connections, and hence what an appropriate connection charge should be in each case. A "deep" connection charging policy would therefore almost certainly discriminate between existing and new users of the system;
- not cost-reflective, in the sense that remote reinforcement can be argued to be of benefit to a great number of users of the transmission system, since it results in a more secure and reliable system than would otherwise have been the case. Under a "deep" connection charging policy, a new user would be subsidising another user's requirements.

For these reasons, and principally on grounds of non-discrimination, the Commission therefore favours a "shallow" approach to the determination of connection charges.

In 2003 OFGEM, the UK regulator, accepted the National Grids "PLUGS" Proposal for changes to its Connection Charging Methodology.

Under the "PLUGS" proposal, the connection boundary is redefined so that all assets that are shared or could be shared are moved from connection into infrastructure and are charged for via use of system charges. Sharing of transmission assets would henceforth only occur within use of system charge and not connection charges. This means that substations, generation only spurs and shared transformer circuits would be charged for via use of system charges.

The change approved by OFGEM resulted from users raising issues with the previous (deep) connection charging methodology, which they felt was restricting competition and creating barriers to new entrants. Many of these issues were caused by the unpredictability and volatility of deep connection charges, driven by factors outside the user's control. These issues included that:



- deep connection charges depend on the reconfiguration of the network required to connect the new user, which is a function of the attributes of all connected users and not only of the new user; and
- system augmentation is driven by a number of factors, including licence obligations, and not only by new connections. Costs arising from investment decisions driven by wider system developments are more appropriately borne by all users in proportion to the benefit that they derive from the network.

(d) **Practical issues**

Alinta submits that the following practical issues should be considered by the ERA in determining an appropriate *capital contributions policy*.

- The tracking of contributed assets places a significant administrative burden on service providers.
- From an accounting perspective, the contributed assets are treated as revenue and the asset is capitalised once control has passed to the service provider. This has created cash flow problems for service providers. For example, in New South Wales, State Treasury has required that its State Owned Electricity Corporations (**SOCS**) pay dividends out of revenues that have included contributed assets, even though no cash has accrued to the SOC from the transaction.
- Further, from a taxation perspective, it is general industry practice to include in assessable income an amount equal to the accounting income recognised. However, the contributed assets are subsequently depreciated for tax purposes over the asset's effective life (generally over a period of 40 to 50 years). This treatment creates a mismatch between the service provider having to pay tax immediately but only obtaining a deduction over 40 to 50 years for taxation purposes. This again, gives rise to cash flow and funding issues arising from capital contributions.

These issues have prompted service providers to initiate moving away from deep charging in other jurisdictions. For example, the change to the "PLUGS" proposal in the UK was initiated by the National Grid Company and accepted by the regulator.

(e) **Alinta's preferred approach**

Western Power's proposal under the CCP for new *generating plant* seeking *connection* outside of the *urban shared network* to contribute to the *forecast costs* of all required *works* is largely a deep approach to levying connection charges.

Alinta submits that the CCP should be amended to provide a shallow approach to connection charges for all new *generating plant* seeking *connection* to the *network*. The shallow charge should encompass only the *forecast costs* of local assets specifically required to connect the generator to the *network*. The cost of

reinforcing the *network* beyond the dedicated *connection assets* should be recovered through use of system charges.

Generally, the shallow charge should apply regardless of where the generator connects to the *network*. However, Alinta submits that a "semi-deep", or hybrid, approach may be applied in rare instances where the size and location of the generator is relatively large and distant compared with the existing *network*. The appropriate criteria for assessing when a semi-deep approach should be applied is the load capacity of the new generator relative to the total system load.

Alinta understands that the shallow approach to connection charging is mandated in the NEM and has equally been successfully applied in a number of jurisdictions and across a broad range of networks. Alinta submits there is no compelling reason for it not to be applicable to Western Australian circumstances.

An issue that may arise is that of cross-subsidisation of shared *network* assets by existing *users*, who have already paid deep connection charges in the past. Some form of transitional arrangement may be required to ensue equity in these cases.

Alinta submits that its preferred approach would be consistent with the *Code objective* and sections 5.12 to 5.15 of the Code for the following key reasons.

- Moving the cost of shared assets into the *capital base* would benefit competition in generation as it would remove some of the risk associated with sharing assets. This would make it easier for generators to enter and exit the market and would simplify the charging arrangements.
- Shallow charging is also more transparent and less complicated to implement. The arbitrary definition of an *urban shared network* as an area within a 50km radius of Perth is an example of the artificial and unnecessarily complex arrangements required with deep charging.
- The continued use of deep connection charging is contrary to generally accepted national and international practices.
- Deep charging may lead to connection charges for subsequent connections being significantly lower than those paid by the initial contributor. The "second comer" gets to "free-ride" on the initial investment. Although this problem is partly (and appropriately) dealt with under rebate and recoupment provisions, these are complex and resource intensive to implement and administer.
- Any perceived weakening of investment incentives for efficiently locating generating assets is mitigated by the fact that all investment decisions would still be subject to the requirements of the *Code* (including the *new facilities investment test* and the *regulatory test*).

## 9. PRICE CONTROL MECHANISM

### 9.1 Introduction

This section sets out Alinta's comments in relation to the Proposed Access Arrangement's proposed *price control* mechanism.

### 9.2 Revenue yield form of price control

Western Power has proposed to adopt a revenue yield form of *price control* based on its *target revenue*, subject to side constraints in increases to individual *tariffs* of CPI + 2%. The *price control* mechanism effectively sums the annual *target revenue* for the transmission and distribution networks.<sup>18</sup>

Alinta is generally supportive of Western Power adopting the revenue yield form of *price control*.

### 9.3 Effect of side constraints on retail markets

Alinta notes that there is effectively a cap on electricity prices for certain sectors in retail markets served by the SWIN. This exists by virtue of the State Government's control over Western Power's retail prices and its stated intention to not increase those prices in coming years. Alinta queries whether side constraints of CPI +2% on *network tariffs* will deter or hinder the development of viable competition in these retail markets given the potential effect of that cap, contrary to the *Code objective*.

### 9.4 Gain sharing mechanisms

#### (a) Code Requirements

Section 6.20 of the Code requires an *access arrangement* to include a *gain sharing mechanism* unless the ERA determines that a *gain sharing mechanism* is not necessary to achieve the *price control* objectives in section 6.4(a)(ii) of the *Code*. A *gain sharing mechanism* is the mechanism that the ERA applies at each *access arrangement review* to determine the amounts to be included in the *target revenue* for the following *access arrangement periods*.

#### (b) Proposed Access Arrangement's approach

Western Power has proposed not to include a *gain sharing mechanism* in the Proposed Access Arrangement on the grounds that:

- (i) the design and implementation of a *gain sharing mechanism* is not a straight forward matter;
- (ii) developing and implementing a *gain sharing mechanism* could divert management resources away from *service* delivery imperatives;

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<sup>18</sup> See cl 5.2 and 5.14-5.16 of Proposed Access Arrangement. See also section 1 of the document entitled "Revenue and Average Price Path for Transmission & Distribution Network" paper.

- (iii) Western Power expects to face a number of resource constraints in meeting the *service* objectives; and
- (iv) the disaggregation of Western Power is likely to create cost uncertainty and change management challenges.

Alinta considers that these grounds are not sufficient for the ERA to determine that it is not necessary for Western Power to include a *gain sharing mechanism* in the Proposed Access Arrangement. The ERA can only determine that it is not necessary for Western Power to include a *gain sharing mechanism* in the Proposed Access Arrangement if the ERA considers that a *gain sharing mechanism* is not necessary to achieve the objective in section 6.4(a)(ii) of the *Code*. The objective in 6.4(a)(ii) is to reward a *service provider* for efficiency gains and innovation beyond the *efficiency and innovation benchmarks* in a previous *access arrangement*. Western Power's grounds for not including a *gain sharing mechanism* are based on arguments of resources constraints and difficulty. Therefore, Alinta considers that Western Power has not shown that a *gain sharing mechanism* is not necessary to achieve the objective in section 6.4(a)(ii) of the *Code*.

Alinta notes that in Western Power's submission to the ERA dated 2 November 2005 (**Western Power's Submission**), Western Power reiterated its reasons for not including a *gain sharing mechanism* in the Proposed Access Arrangement. Alinta considers that the reasons included in Western Power's Submission do not demonstrate that a *gain sharing mechanism* is not necessary to achieve the objective in section 6.4(a)(ii) of the *Code*.

In Alinta's view, a *gain sharing mechanism* is an important part of incentive based regulation. Further, Alinta considers that a *gain sharing mechanism* would not be complicated for Western Power to implement.

The Proposed Access Arrangement does not include any *efficiency and innovation benchmarks*.<sup>19</sup> If Western Power is required to include a *gain sharing mechanism* in the Proposed Access Arrangement, Western Power will also be required to include *efficiency and innovation benchmarks* which are reasonable and provide an objective standard for assessing Western Power's efficiency and innovation during the *access arrangement period*.<sup>20</sup>

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<sup>19</sup> See cl. 5.9 of the Proposed Access Arrangement.

<sup>20</sup> See sections 5.25 and 5.26 of the *Code*.

## 10. APPLICATIONS AND QUEUING POLICY

### 10.1 Introduction

In this section, Alinta provides its comments in relation to the proposed Applications and Queuing Policy (AQP) set out in Appendix 1 of the Proposed Access Arrangement.

### 10.2 Code requirements in relation to the AQP

Section 5.7 of the *Code* sets out the requirements for an *applications and queuing policy*, which include the requirements that the *applications and queuing policy*:

- to the extent reasonably necessary, accommodate the interests of the *service provider* and of *users* and *applicants*;
- be sufficiently detailed to enable *users* and *applicants* to understand how the policy will operate; and
- set out the procedure for determining priority where there are *competing applications*.

Sections 5.8 to 5.9 of the *Code* also relate to the requirements of an *application and queuing policy*.

The *Code* includes a *model applications and queuing policy* (**Model AQP**). Section 5.11 of the *Code* provides that the ERA:

- must determine that an *applications and queuing policy* is consistent with sections 5.7 to 5.9 of the *Code* and the *Code objective* to the extent that it reproduces without material omission or variation the Model AQP; and
- otherwise, must have regard to the Model AQP in determining whether an *applications and queuing policy* is consistent with sections 5.7 to 5.9 of the *Code* and the *Code objective*.

### 10.3 Application Process

Clause 2.3 of the AQP provides that an *applicant* seeking an exit or *entry service* or a *connection service* must not apply for a greater capacity than is reasonably required by the facilities installed or to be installed in a reasonable period of time. In relation to a *connection service*, an *applicant* can apply for greater capacity when the increase relates to any ensuing *connection asset* only and where the *connection asset* will be solely used by the *applicant*. Alinta submits that clause 2.3 of the AQP should be removed from the document. There is no equivalent provision in the Model AQP to clause 2.3 of the AQP. Alinta considers that clause 2.3 of the AQP does not accommodate the interests of *users* and *applicants* and therefore is inconsistent with section 5.7 of the *Code*. Alinta also queries whether the proposed provision is consistent with the *Code objective*.

Alinta suggests that *applicants* should be allowed the flexibility to apply for a greater capacity than is required by the installed facilities (or to be installed within a reasonable

period) and does not accept that Western Power, in its capacity as a *service provider*, has a legitimate interest in improving the constraints that are inherent in clause 2.3.

In addition, the AQP does not define what "reasonable period" means. An *applicant* may plan to install a number of *generators* at a particular site in a staged process. Under clause 2.3, the *applicant* may be required to make multiple *access applications*, when it would be practical and reasonable for the applicant to make one *access application* at the start of the project.

#### 10.4 Classes of applications

The AQP sets out 3 different classes of applications, which affect the costs of the application and the time Western Power has to process an application.

Broadly, the different classes of applications are as follows:

- a "class 1 application" is an application by an *applicant* who is already a *user* of the *network*, and who is seeking to modify its existing *access contract* by seeking a *reference service* at the *reference tariff* for which no detailed studies are required to determine whether *augmentation* is required (the AQP gives an example of an increase in capacity application);
- a "class 2 application" is similar to a "class 1 application", however it is made by an *applicant* who is not already a *user*; and
- a "class 3 application" is any other application.

Western Power has not included the provisions in the Model AQP that provide for "capacity increase notices" (clauses A2.30 to A2.40). Instead, Western Power has amended the definition of "class 1 application" in the Model AQP to include a capacity increase. However, the provisions in the Model AQP in relation to "capacity increase notices" provide for a simpler process for increasing capacity than the processes in place for "class 1 applications". For example, clause 7.2 of the AQP requires that the *applicant* provide a detailed application form for "class 1 applications". However, in respect of a "capacity increase notice", clause A2.38 of the Model AQP only requires the *applicant* to:

- provide sufficient information to enable the *service provider* to process the notice; and
- comply with any requirements under law.

Further, clause A2.32 of the Model AQP provides that the *service provider* must accept the capacity increase request if it forms the view that:

- the increase would not be likely to impede the ability of the *service provider* to provide a *covered service* sought in an access application lodged by another *applicant*; and
- it is not likely that an *augmentation* would be required to provide the capacity request.

In respect of "class 1 applications" relating to an increase in capacity, the AQP does not contain an equivalent requirement to clause A2.32.

Alinta submits that the AQP should be amended to be consistent with the Model AQP by:

- providing for "capacity increase notices" (as set out in clauses A2.30 to A2.40 of the Model AQP) where an existing *user* seeks to increase their capacity at a contracted point under an *access contract*; and
- amending the definition of "class 1 application" to remove the reference to modifying an existing contract.

Alinta considers that it is unreasonable for an existing *user*, which is already known to Western Power, to be required to provide a detailed application form and be processed under more demanding provisions when it is merely seeking to increase its capacity under an existing *access contract*. The "capacity increase notice" will allow Western Power to obtain sufficient information to form a view as to whether or not it accepts the capacity increase. Further, the AQP does not accommodate the interests of *users* as it does not provide for Western Power to be required to accept a *user's* capacity increase request in the circumstances set out in clause A2.32.

#### 10.5 Informal communications

Clause 4.2 provides that if the *applicant* requests Western Power to perform any studies, prepare detailed cost estimates or do any other work to assist the *applicant* prior to lodging the application, then the *applicant* must pay Western Power's reasonable costs incurred to Western Power. This requirement is not contained in the Model AQP and Alinta requests the ERA to consider whether it sufficiently accommodates the interests of *users*.

#### 10.6 Costs and timing of processing application

Under clause 6.1 of the AQP, for a "class 1 application" and "class 2 application", an *applicant* must pay the lodgement fee published by Western Power from time to time for the application. However, under clause A2.13 of the Model AQP, Western Power must set out the price for lodgement in the AQP itself. Therefore, under the AQP, the lodgement fees are uncertain and at the discretion of Western Power. Alinta submits that Western Power should set out the price for lodging a "class 1 application" and a "class 2 application". The proposed clause 6.1 does not accommodate the interests of *users* and is not sufficiently detailed to enable *users* and *applicants* to understand in advance how the AQP will operate in relation to the important issue of application fees.

#### 10.7 The queue

The queuing rules (set out in clauses 8.1(b) to (d) of the AQP) apply to determine the priority of an application. The priority of an application is determined by the time at which the application is lodged (which is the time when Western Power actually receives the application).

Western Power must ensure that applications are processed in accordance with the "first come first served" principle, which means that Western Power will process an application with earlier priority before an application with later priority and that the capacity sought in

an application with earlier priority will be deemed to have been reserved during the period in which the application is being processed, for the purposes of processing any competing application with later priority.

Clause 8.4 of the AQP provides that the "first come first served" principle does not apply:

- to the extent necessary to better achieve the *Code objective*;
- to the extent necessary to allow a supplier of last resort to comply with its obligations;
- to the extent necessary to allow a default supplier to comply with its obligations (this sub clause is not in Model AQP); or
- if directed by the ERA (this sub clause is not in Model AQP).

Alinta is concerned about the proposal that the ERA be able to give a direction to bypass the queue for 2 reasons. First, the possibility of a regulatory agency intervening in capacity allocations would seem to be inconsistent with the *Code objective*, introduce uncertainty for *users* and *applicants*, and could lead to situations in which the ERA is asked to pick winners and losers. Second, Alinta is unclear as to whether the ERA would have the jurisdiction to accept such a role.

## 10.8 Applications in relation to tender projects

Clause 8.9 of the AQP provides that Western Power must decide whether it is practical to treat competing applications as having the same priority. However, clause A2.61 of Model AQP provides that "all project related applications for a project are to be treated as having the same priority". Further, under clause 8.9 of the AQP, it appears that it is not certain that tender related applications will be treated with the same priority.

Alinta suggests that Western Power has wide discretion in clause 8.9 of the AQP when compared to clause A2.61 of the Model AQP. Alinta considers that Western Power's discretion should be limited in clause 8.9 of the AQP to allow Western Power to treat competing applications as having the same priority only where they are "project related applications" as defined in the Model AQP. Alinta also considers that clause 8.9 of the AQP is not sufficiently detailed to enable *users* and *applicants* to understand how the AQP will operate. Therefore, Alinta considers that clause 8.9 is inconsistent with clause 5.7(b) of the *Code*.

## 10.9 Amending an application

Clause 9.1 of the AQP provides that an *applicant* may at any time amend an application. Subject to clause 9.3(b), an amended application has the same priority as the original application. Clause 9.3(b) deals with a situation in which an amended application is "materially different" from the original application and the difference is such that a competing *user* with lower priority is "materially prejudiced".

Clause 9.3(b) of the AQP does not set out the ways in which an amended application may be "materially different" to the original application. However, clause A2.75 of the Model



AQP sets out some ways (without being limiting) that an amended application is *not* materially different from the original application. These include:

- if the capacity sought in the amended application is +/- [X]% of the capacity sought in the original application (intended to allow for the normal fine tuning of output or load as a project is developed);
- if the charges payable under the amended application are +/- [X]% of the charges payable under the original application (intended to allow for the normal fine tuning of output or load as a project is developed); and
- to the extent that the amendment deals with matters relating to adding to the application terms of a works contract or a payment contract under the *capital contribution policy* where an *augmentation* is required.

Alinta considers that Western Power has a wide discretion under clause 9.3(b) of the AQP to determine that an amended application is "materially different" to an original application. Alinta believes that the AQP should set parameters (such as those contained in clause A2.75 of the Model AQP) to provide Western Power with guidance as to what would be considered to be "not materially different".

Alinta also suggests that clause 9.4(b) be amended so that it is clear that it applies only where a competing *applicant* is directly materially prejudiced by reason of the amendments to the original application.

#### 10.10 Processing an application

Clause 10.2(b) of the AQP provides that, if Western Power determines that the capacity which is provided under an existing *access contract* is not reasonably necessary to satisfy that *user's* actual requirements, then Western Power may decrease that capacity. When making such a determination, Western Power is only required to have regard to:

- the nature, condition and use of the *facilities and equipment* installed at the contracted point; and
- whether the *user* cannot use the *services* because of a circumstance beyond the *user's* control which the *user* is diligently attempting to rectify.

Clause 10.2 of AQP is not in the Model AQP. Alinta submits that clause 10.2 gives Western Power wide discretion to decrease a *user's* capacity. This could have a significant effect on the certainty that a *user* has in relation to its contracted capacity. Clause 10.2 of the AQP does not even require Western Power to consult with the *user* to determine whether the *user* requires the capacity. It is not clear how Western Power would be placed to be able to form an opinion as to whether the contracted capacity is "not reasonably necessary". *Users* may have genuine reasons for not wanting to relinquish unutilised capacity. For example, *users* may be planning an expansion of their facilities and require the capacity. Alinta submits that clause 10.2(b) of the AQP should be removed or, if that is not possible, be amended to require Western Power to consult with the *user* when considering whether to decrease a *user's* capacity and also to include further guidelines as to when Western Power may decrease a *user's* contracted capacity.

### 10.11 Terms of access offer

Clause 14 of the AQP sets out the provisions relating to the terms of an access offer, in particular in relation to:

- conditions precedent;
- *technical rules*;
- security; and
- payments due under the *capital contributions policy*.

Clause 14 of the AQP is different to the equivalent provisions in the Model AQP.

Clause 14.3 of the AQP states that, in determining whether there is sufficient spare capacity, Western Power must regard any existing conditional *access contract* as being unconditional. However, clause A2.84(b) of the Model AQP also states that Western Power must, for the purposes of determining spare capacity, disregard its obligation to provide *covered services* under any conditional *access contract* that contains a condition precedent for which a period of longer than 18 months from the date that the *access contract* was entered into is allowed for its fulfilment. Alinta submits that clause 14.3 should be consistent with clause A2.84 of the Model AQP. Alinta considers that *access contracts* that contain conditions precedent with a long time frame could inflate the estimates of timing for other applications in the queue.

Clause A2.85 of the Model AQP states that nothing prevents the *service provider* from entering into an *access contract* that contains a condition precedent for which a period of longer than 18 months is allowed for its fulfilment. However, clause 14.4 of the AQP states that Western Power and an *applicant* may not enter into an *access contract* that contains a condition precedent for which a period of longer than 6 months from the date of the *access contract* is allowed for fulfilment. Alinta submits that clause 14.4 is too restrictive on *users* and that the ERA should consider providing greater flexibility to *users*. For example, Alinta considers that Western Power and an *applicant* should be able to extend the condition precedent date if an *applicant* can show cause that it is using reasonable endeavours to work towards satisfying the conditions precedent. In addition, Alinta does not understand why Western Power and *users* should be subject to a restriction of this type.

### 10.12 Types of Covered Service

Clause 1.6(a) specifies that the AQP applies to the most commonly sought after *covered services*. Alinta requests the ERA to confirm that the *covered services* specified in clause 1.6(a) and (b) include all of the *reference services* specified in the Proposed Access Arrangement, especially those in respect of the distribution network. If they are not, then they would not be subject to the AQP by virtue of clause 1.6(a) or (b).

### 10.13 Only one electricity transfer contract per Contracted Point

Clause 2.1 states that each contracted point must be included in one and only one electricity transfer contract to allow the transfer of electricity at that contracted point.

Alinta suggests that this provision appears to be inflexible and inconsistent with the *Code objective* because it will prevent the development of arrangements under which multiple *users* transfer electricity at *connection points*.

#### 10.14 Connection Contract

Clause 13.2(b) states that, if an *applicant* is seeking a *connection service* only and Western Power considers, as a reasonable and prudent person, that the *facilities and equipment* to be connected to the *network* present a risk to the safety and reliability of the *network*, then the access offer will consist of a connection contract.

Alinta does not understand the basis for this clause. It seems to be based upon a view that a connection contract is something that Western Power might seek to impose upon a *user*. Further, it appears to be the case that such a contract will only be offered if Western Power considers there to be a risk to the *network*. In this sense, it might be characterised as a "protective" measure for Western Power's benefit.

Alinta suggests that the access offer given to a person who seeks only a *connection service* should consist of a connection contract that provides the *applicant* with an express right to physically connect to the *network*. That enforceable right is the very thing that an *applicant* for a *connection service* will seek.

To deny an *applicant* for a *connection service* with a connection contract unless Western Power wishes to be protected from risk (if that is what the AQP does) would be unfair to the *applicant*, as well as unreasonable. A connection contract should not only provide Western Power with rights, it should also provide a *user* with rights. In this regard, Alinta notes that the *Code* defines a *connection service* as:

"the **right to connect** *facilities and equipment* at a *connection point*" (emphasis added).

Alinta acknowledges that its interpretation of clause 13.2(b) of the AQP may not be correct, especially in light of clause 14.11. If that is the case, then the clause should be amended to clarify the way in which it is intended to operate.

## 11. SERVICE STANDARDS

### 11.1 Code requirements

The *Code* requires all *access arrangements* to include *service standard benchmarks*,<sup>21</sup> and a *service standards adjustment mechanism*.<sup>22</sup>

Section 5.6 of the *Code* requires the *service standard benchmarks* for *reference services* to be:

- reasonable, and
- sufficiently detailed and complete to enable the *user* (or *applicant*) to determine the value represented by the *reference service* at the *reference tariff*.

A *service standards adjustment mechanism* is a mechanism that details how the ERA should treat the difference between the *service standard benchmarks* and the *service provider's* actual performance during the *access arrangement period* at the next *access arrangement review*. The *service standards adjustment mechanism* must be:

- sufficiently detailed and complete to enable the ERA to apply it; and
- consistent with the *Code objective*.

### 11.2 Proposed service standards for transmission reference services

#### (a) Service Standard

Western Power has proposed the following *service standards* for its transmission network *reference services*:

- Circuit Availability;<sup>23</sup> and
- System Minutes Interrupted (meshed network).<sup>24</sup>

Alinta acknowledges that these *service standards* are useful. However, Alinta suggests that Western Power has proposed less *service standards* than most other Australian Transmission Network Service Providers (TNSPs).<sup>25</sup> Alinta considers

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<sup>21</sup> See s5.1(c) of the *Code*.

<sup>22</sup> See s6.30 of the *Code*.

<sup>23</sup> Circuit Availability is defined as "the actual circuit hours available for transmission circuits divided by the total possible defined circuit hours".

<sup>24</sup> System Minutes Interrupted is defined as "the summation of MW Minutes of unserved energy at substations which are connected to the meshed transmission network (which are not radially fed), divided by the system peak MW".

<sup>25</sup> The table in Appendix 1 compares the *service standards* proposed by Western Power with those adopted by other TNSPs.

that the *service standards* proposed by Western Power are not reasonable, and do not permit a *user* to determine the value represented by the transmission *reference services*, because they are limited in scope and do not set standards in respect of some important aspects of the *reference services*.

Alinta suggests Western Power should be required to provide other *service standards* in addition to Circuit Availability and System Minutes Interrupted. In particular, Western Power should be required to adopt a "loss of supply event frequency index" to measure the frequency of "off-supply" events, such as extreme events, unplanned outages exceeding a specified impact and outages on all parts of the regulated *transmission system*. Alinta considers that this *service standard* would allow *users* to better assess the value represented by the *reference services*. Alinta also notes that the "loss of supply event frequency index" has already been adopted by most TNSPs and is one of the five core performance measures for TNSPs recommended by the Australian Energy Regulator in the Electricity Transmission Regulatory Guidelines.

(b) **Service Standard benchmark**

For the *first access arrangement period*, Western Power has proposed a target of 8.3 system minutes per year for the System Minutes Interrupted *service standard*. Western Power stated in its *access arrangement information* that over the past 5 years, Western Power's average performance for the System Minutes Interrupted measure was 7.76 system minutes per year. Further, in 2004-2005 Western Power's System Minutes Interrupted statistic was 5.8 minutes per year. Therefore, based on Western Power's historical performance, Alinta considers that Western Power's proposed benchmark of 8.3 minutes is unreasonable as it has been set at a figure that is higher than Western Power's 5 year average of 7.76 minutes per year. Alinta submits that the System Minutes Interrupted benchmark should be decreased to a reasonable figure that reflects Western Power's actual performance over the last 5 years and which provides it an incentive to improve its performance over the *access arrangement period*. This will ensure that the performance incentives (and financial penalties) arising from the *service standards adjustment mechanism* associated with this *service standard* provide a reasonable outcome. Further, Alinta considers that it is unreasonable for Western Power to set a *service standard benchmark* for system interruption at a figure that is greater than the average system interruption over the past 5 years.

For the Circuit Availability *service standard benchmark*, Western Power has proposed a benchmark for the *access arrangement period* of 98.67% availability of the total possible hours available. Western Power stated in its *access arrangement information* that its 5 year average for circuit availability is 98.74%. Alinta considers that it is unreasonable for Western Power to set its *service standard benchmark* at a figure that is less than its average circuit availability over the past 5 years. Further, Alinta considers that Western Power does not have an incentive to improve circuit availability over the *access arrangement period* as the proposed benchmark remains constant over the *access arrangement period*.

Alinta submits that the ERA should review Western Power's *service standard benchmarks* for the transmission *reference services* and consider whether they provide incentives for improvement over the *access arrangement period*.

### 11.3 Proposed service standards for distribution reference services

In the Proposed Access Arrangement, Western Power proposes to use the System Average Interruption Duration Index (**SAIDI**) as its sole *service standard* for distribution *services*. Western Power specifies different SAIDI targets for its "urban" and "rural" sub-networks.

Based on the comparison of different *service standards* for Australian Distribution Network Service Providers (**DNSPs**) set out in Appendix 2 of these submissions, SAIDI appears to be a commonly used *service standard*. The 4 common measures of reliability performance standards used by DNSPs are:

- SAIDI;
- System Average Interruption Frequency Index (**SAIFI**) (the average number of times a customer's supply is interrupted in a year);
- Customer Average Interruption Duration Index (**CAIDI**) (the average duration of each customer interruption); and
- Momentary Average Interruption Frequency Index (**MAIFI**) (the average number of momentary interruptions (of one minute or less) per customer per year).

While Alinta is comfortable with the use of the SAIDI *service standard*, it is concerned that the use of it alone is not reasonable and does not enable a *user* to determine the value represented by the distribution *reference service* at the *reference tariffs*. Alinta requests that the ERA review and consider whether to also require the use of the SAIFI, CAIDI and MAIFI *service standards* for the distribution *reference services*.

### 11.4 Proposed service standards adjustment mechanism

Under the proposed *service standards adjustment mechanism*, at the next *access arrangement review* the ERA will apply financial rewards or penalties to Western Power depending on whether Western Power's actual performance for a particular *service standard benchmark* is between the proposed "lower bound" and "low limit" of a specified "Deadband", or the "upper bound" and "high limit" of a specified "Deadband" for that *service standard*. The size of the reward or penalty is calculated using a designated "incentive rate" for each *service standard*.

#### (a) Transmission services

For the transmission *reference services*, Western Power has proposed an incentive rate for the Circuit Availability *service standard* based on 0.1% of circuit availability, and an incentive rate of 0.1 system minutes interrupted for the System Minute Interrupted *service standard*.

Alinta notes that Western Power's *service standard adjustment mechanisms* differ from those adopted by other TNSPs in that:

- Western Power's incentives are based on only two measures, being Circuit Availability and System Minutes Interrupted; and

- the Circuit Availability *service standard* is not split into component parts, such as peak critical availability.<sup>26</sup>

Alinta considers that, in establishing its *service standard adjustment mechanism* for transmission *reference services*, Western Power should:

- use other *service standard adjustment mechanisms* in addition to Circuit Availability and System Minutes Interrupted (eg. "frequency of off-supply events per annum"); and
- split the Circuit Availability *service standard adjustment mechanism* into component parts (eg. peak critical availability and transformer availability) to allow Western Power to have greater defined targets for achieving performance.

Alinta submits that the ERA should consider whether the *service standard benchmarks* proposed by Western Power are sufficiently challenging to justify the high potential incentive payment that Western Power can earn. Further, Alinta considers that the proposed benchmarks may be easily attainable by Western Power, which could result in *users* paying significant incentive payments to Western Power. In light of these concerns, Alinta requests the ERA to consider whether Western Power's proposals are consistent with the *Code objective*.

#### (b) **Distribution Services**

Under the Proposed Access Arrangement, the "incentive rate" for the distribution *reference services' service standard*, SAIDI, is measured on the portion of distribution revenue per SAIDI minute.

Alinta notes that Western Power's proposed *service standard adjustment mechanism* for distribution *services* closely reflects the *service standard* incentive schemes in South Australia and Victoria.<sup>27</sup> The South Australian and Victorian schemes use the CAIDI and SAIFI *service standards* as key performance indicators. Alinta suggests that it is reasonable for Western Power to consider using CAIDI and SAIFI as *service standards* so that these targets are also adopted in Western Power's *service standard adjustment mechanism*.

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<sup>26</sup> Appendix 3 of this Submission sets out a comparison of the incentive mechanisms used by Western Power and other TNSP is contained in Appendix 3.

<sup>27</sup> Appendix 4 of this Submission sets out a brief comparison of the New South Wales, Queensland, Victorian and South Australian regimes with Western Power's proposed regime.

## Appendix 1 Transmission Network Service Standards

### Comparison with Service Standard Measures adopted by other Australian Transmission Network Service Providers

WPC	ElectraNet (SA)	SPI PowerNet (VIC)	TransGrid (NSW & ACT)	PowerLink (QLD)
Circuit availability (% of total time): <b>98.67</b> .	Circuit availability (%): <b>99.6</b> .	Circuit availability, comprising: <ul style="list-style-type: none"> <li>- Peak critical circuit availability: <b>99.9</b>.</li> <li>- Peak non critical circuit availability: <b>99.85</b>.</li> <li>- Intermediate critical circuit availability: <b>99.85</b>.</li> <li>- Intermediate non critical circuit availability: <b>99.75</b>.</li> </ul>	Circuit availability, which encompasses: <ul style="list-style-type: none"> <li>- Transmission line availability (%): <b>99.4</b>.</li> <li>- Transformer availability (%): <b>99.0</b>.</li> <li>- Reactive plant availability (%): <b>98.5</b>.</li> </ul>	N/A
System minutes interrupted (meshed network): <b>8.3</b> .	Average restoration time (mins): <b>100</b> .	Average restoration time (hours) comprising: <ul style="list-style-type: none"> <li>- Lines: <b>10</b></li> <li>- Transformers: <b>10</b></li> </ul>	Average Outage Restoration Time (measured in minutes, with a seven-day cap per event): <b>1500</b> .	N/A
N/A	Loss of supply event frequency index: <ul style="list-style-type: none"> <li>- Frequency of events lasting more than 0.2 system minutes: <b>5</b>.</li> <li>- Frequency of events lasting more than 1.0</li> </ul>	Loss of supply event frequency index: <ul style="list-style-type: none"> <li>- Frequency of events lasting more than 0.05 system minutes</li> <li>- Frequency of events lasting more than 0.3</li> </ul>	Reliability, split into: <ul style="list-style-type: none"> <li>- Number of events greater than 0.05 system minutes: <b>6</b>.</li> <li>- Number of events greater than 0.4 system minutes: <b>1</b>.</li> </ul>	Total number of events (loss of supply) greater than 0.2 system minutes (per quarter): <b>1.3 (summer), 0.8 (winter)</b> . Total number events (loss of supply) greater



	system minute: <b>2.</b>	system minute		<p>than 1.0 system minutes (per month): <b>0.4 (summer), 0.07 (winter).</b></p> <p>Static Var Compensator events (per month): <b>2.2.</b></p> <p>Equipment events per 1,000 circuit breakers (per month): <b>4.3.</b></p> <p>Secondary system events per 1,000 circuit breakers (per month): <b>3.1.</b></p> <p>Incident (human error) events per 1,000 circuit breakers (per month): <b>2.4.</b></p> <p>Total internal events per 1,000 circuit breakers (per month): <b>10.1.</b></p> <p>Total external events per 1,000 circuit kms (per month): <b>0.6 (summer), 0.4 (winter).</b></p>
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## Appendix 2 – Distribution Network Service Standards

### Comparison with Service Standard Measures adopted by other Australian Distribution Network Service Providers

WPC	Integral Energy (NSW)	Australian Inland (NSW)	Victorian Arrangements
<b>SAIDI Total (system minutes per annum)</b> 2007: 277 2008: 259 2009: 224	N/A	N/A	N/A
<b>SAIDI urban sub-network (system minutes per annum)</b> 2007: 242 2008: 226 2009: 195	<b>SAIDI urban (minutes per customer) *</b> 2007: 88 2008: 86 2009: 84	AI is targeting an improvement in <b>SAIDI</b> of 25 minutes over the whole of next five-year period.	<b>SAIDI</b> (Planned minutes off supply), with a weighting of 25%.
<b>SAIDI rural sub-network (system minutes per annum)</b> 2007: 509 2008: 476 2009: 410	<b>SAIDI rural short (minutes per customer) *</b> 2007: 292 2008: 284 2009: 276	AI is targeting an improvement in <b>SAIDI</b> of 25 minutes over the whole of next five-year period.	<b>SAIDI</b> (Planned minutes off supply), with a weighting of 25%.
N/A	<b>Normalised Distribution (unplanned)</b> 2007: 113 2008: 111 2009: 108	N/A	N/A
N/A	<b>SAIFI urban (no. per customer) *</b> 2007: 1.28 2008: 1.26 2009: 1.24 <b>SAIFI rural short (no. per customer) *</b> 2007: 2.76 2008: 2.72 2009: 2.68	N/A	<b>SAIFI</b> (Unplanned interruption frequency), with a weighting of 65%.

<b>WPC</b>	<b>Integral Energy (NSW)</b>	<b>Australian Inland (NSW)</b>	<b>Victorian Arrangements</b>
N/A	N/A	N/A	<b>CAIDI</b> (Unplanned interruption duration as a measure of impact on individual consumers), with a weighting of 10%.

\* Imposed on Integral Energy by the Minister for Energy & Utilities on 1 August 2005.

### Appendix 3 – Comparison of Incentive Mechanisms

#### Comparison with incentive mechanisms adopted by other Australian Transmission Network Service Providers

WPC	ElectraNet (SA)	SPI PowerNet (VIC)	TransGrid (NSW & ACT)	PowerLink (QLD)
<b>DESCRIPTION</b>				
Incentive rate (portion of transmission revenue). Applies outside a “deadband” around the annual targets with a financial incentive / (penalty) for over / (under) achievement against those targets.	Performance incentives linked to ElectraNet’s Maximum Allowed Revenue (“MAR”). The maximum reward or penalty is a percentage of ElectraNet’s allowed revenue, with rewards and penalties being based on historical performance.	Performance incentives linked to SPIPowerNet’s MAR.	Performance incentives linked to TransGrid’s MAR.	The Commission requires PowerLink to report annually on the following statistics.
<b>INCENTIVE MECHANISMS</b>				
<b>Circuit availability:</b> \$269,000 per 0.1% circuit availability. N/A  N/A  N/A	<b>Circuit availability:</b> 0.35% maximum increase / (decrease) in MAR. N/A  N/A  N/A	<b>Circuit availability:</b> 0.100% maximum increase / (decrease) in MAR. <b>Peak critical availability:</b> 0.075% maximum increase / (decrease) in MAR. <b>Peak non-critical availability:</b> 0.025% maximum increase / (decrease) in	<b>Transmission line availability:</b> 0.20% maximum increase / (decrease) in MAR. N/A  N/A  N/A	<b>Transmission circuit availability</b> overall and for each voltage (330 kV, 220 kV, 132/110 kV) broken down into northern, central and southern areas.  N/A

WPC	ElectraNet (SA)	SPI PowerNet (VIC)	TransGrid (NSW & ACT)	PowerLink (QLD)
N/A	N/A	MAR. <b>Intermediate critical availability:</b> 0.025% maximum increase / (decrease) in MAR.	N/A	N/A
N/A	N/A	<b>Intermediate non-critical availability:</b> 0.025% maximum increase / (decrease) in MAR.	<b>Transformer availability:</b> 0.15% maximum increase / (decrease) in MAR.	<b>Transformer availability,</b> overall and broken down by voltage (at the high voltage terminals) and area.
N/A	N/A	N/A	<b>Reactive plant availability:</b> 0.10% maximum increase / (decrease) in MAR.	N/A
N/A	N/A	N/A	N/A	N/A
<b>System minutes interrupted:</b> \$134,000 per 0.1 system minute interrupted.	<b>Average outage duration (mins):</b> 0.25% maximum increase / (decrease) in MAR.	<b>Average outage duration (hours):</b> 0.125% maximum increase / (decrease) in MAR.	<b>Average outage restoration time (7-day cap per event):</b> 0.10% maximum increase / (decrease) in MAR.	<b>System minutes not supplied.</b>
N/A	N/A	N/A	N/A	<b>The ten-year rolling average of system minutes not supplied.</b>
N/A	N/A	N/A	N/A	<b>Connection point interruption frequency</b>

WPC	ElectraNet (SA)	SPI PowerNet (VIC)	TransGrid (NSW & ACT)	PowerLink (QLD)
N/A	N/A	N/A	N/A	<b>Connection point interruption duration</b>
N/A	N/A	N/A	N/A	<b>Percentage of unplanned connection point interruptions not restored within three hours.</b>
N/A	<b>Number of events &gt; 0.2 system minutes:</b> 0.10% maximum increase / (decrease) in MAR.	N/A	<b>Number of events &gt; 0.05 system minutes:</b> 0.25% maximum increase / (decrease) in MAR.	N/A
N/A	<b>Number of events &gt; 1.0 system minutes:</b> 0.30% maximum increase / (decrease) in MAR.	N/A	<b>Number of events &gt; 0.4 system minutes:</b> 0.20% maximum increase / (decrease) in MAR.	N/A

## **Appendix 4 – Distribution Service Standard Adjustment Mechanisms**

A comparison of Western Power's distribution *service standard adjustment mechanism (SSAM)* to similar mechanisms used in other Australian states is set out below.

### **NSW**

IPART considered applying a monetary service incentive regime for the NSW DNSPs for the 2004-2009 regulatory period. It decided against the introduction of the scheme due to concerns that the NSW DNSPs had not accurately recorded reliability performance information. IPART will instead rely on performance monitoring and reporting as the main incentive for NSW DNSPs to improve their reliability performance.

### **QLD**

In its final determination for the 2004/05 – 2009/10 regulatory period, the QCA decided against introducing a service incentive regime. The QCA believed that service quality of the QLD DNSPs must first be improved in line with Government minimum service standards and be consistent with community expectations before a service quality incentive regime is introduced. QLD, like NSW, will rely on performance monitoring and reporting as the main incentive for QLD DNSPs to improve their reliability performance.

### **VIC**

In its 2001-2005 determination the ESC introduced a service incentive scheme which incorporates an S-factor into the VIC DNSP's price cap formula. The key indicators are unplanned SAIFI, unplanned CAIDI and planned SAIDI. During 2001-2005, the ESC set reliability improvement targets of 25% for urban customers and 17% for rural customers. Incentive rates are set for individual indicators to reflect customer preferences for improvement in each indicator. The VIC DNSPs are rewarded / penalised based on an increase / decrease in the reliability target.

It appears that Western Power's SSAM is currently most closely aligned with that of the VIC distribution service incentive scheme.

### **SA**

The first service incentive scheme in Australia was introduced by South Australia in 2000-2001. The incentive scheme was based on a points system which allowed maximum average revenue to be increased or decreased based on its performance against certain targets. These targets included SAIDI, CAIDI and SAIFI. The scheme was amended in 2005-2010 to include adjustments to performance targets from year to year and the same level of rewards and penalties for over and under performance.

The Western Power's SSAM is also reflecting the requirements of the SA service incentive scheme.