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19 May 2006

Director – Electricity Access
Economic Regulation Authority
PO Box 8469
Perth Business Centre
PERTH WA 6000

Via email: wpcdraftdecision@era.wa.gov.au

Dear Sir

DRAFT DECISION ON WESTERN POWER'S PROPOSED ACCESS ARRANGEMENT

Newmont is generally supportive of the ERA's draft decision on Western Power's Proposed Access Arrangement.

It remains our view that the dominant issue in the Proposed Access Arrangement is that of network augmentations, which Newmont considers to be entirely inappropriate. The Authority has required the removal of the Western Power concept of an "urban shared network", however, has not seen fit to address the important issue of "deep network assets" in any alternative manner. The Authority states that the proposal by Western Power to create a region where transmission connected generators are exempt from capital contributions for shared network assets "would result in the Access Code promoting inefficient outcomes, which is contrary to the Code objective." Contrary to this, Newmont would argue that the imposition of any capital contributions on loads or generators for the construction of deep network assets is also creating inefficient economic outcomes.

The Authority went on to state that "While it is recognised that other jurisdictions have adopted an approach which only provides for users to fund "shallow" costs of connection via a capital contribution, the Authority considers that this approach would add to the complexity and uncertainty of administering the system, where the definition of "shallow" and "deep" can be open to some dispute between the user and the service provider." Newmont can only reiterate that this approach has been successfully adopted in far larger networks including the United Kingdom and some states in the USA.



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Additionally, the Authority has required Western Power to delete its proposed Interconnection Works Agreement (IWA) from its Proposed Access Arrangement.

The IWA contains provisions relating to the:

- ▶ provision of construction services by Western Power to the other party in relation to shared facilities and connection facilities, and payment for such services; and
- ▶ construction by Western Power of a network augmentation and the payment of capital contributions by the other party with respect to any augmentation to Western Power's network.

The Authority states that "As the Access Code contemplates SACs applying to reference services only – and in the absence of a demonstrable basis that construction related services satisfy the criteria of a reference service – the proposed IWA is not assessed as complying with section 5.3(b)(iii) of the Access Code."

The Authority notes that Western Power seeks to justify inclusion of the IWA in the proposed access arrangement on the grounds of providing parties with commercial clarity. We support this intent as a means of expediting access agreements with Western Power and as a means of providing increased certainty of commercial arrangements for new entrants. While we have some concerns regarding certain clauses in the IWA, the removal of the proposed IWA from the Access Arrangements appears to be generally counter to project proponent's commercial interests.

We have included additional comment on specific required amendments in an attachment to this letter. Should you have any queries on this submission, please contact the undersigned.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Lyne', with a large, stylized initial 'D'.

David Lyne

Manager Energy Services

Comments on specific amendments.

Required Amendment 64, Deletion of Definitions of Connection Contract and Interconnection Works Agreement – see comments above regarding the draft IWA contracts.

Required Amendment 68, Use of Contracted Capacity - ERA requires Western Power to delete ETAC clause 3.4 (Use of Contracted Capacity) and replace it with MAC clauses A3.15 and A3.16. In line with our previous submission, we agree with this amendment.

Required Amendment 70, Start Date of New Services – ERA requires that Clause 3.7 of ETAC be deleted, and that the start date for each connection point be specified in Schedule 3. We are concerned that this will remove the required flexibility of the contract Start Date and its linkage to the Conditions Precedent, as well as the associated and defined Commencement Date. The User does not wish to commence payments for the connection points until all conditions associated with the Commencement Date have been satisfied.

Required Amendment 73 and 74, Relocation – ERA requires Western Power to amend ETAC by reproducing MAC clauses A3.19 and A3.24. We support this inclusion of a more flexible capacity relocation process.

Required Amendment 85, Payment of Standing Charges During Western Power's Force Majeure Event – ERA requires Western Power to amend ETAC clause 7.3 (Charges during Western Power's Force Majeure Event) to reproduce MAC clause A3.42(a). We continue to hold the view that it is an unusual commercial outcome to oblige the User to continue to pay 10% of the Standing Charges (which we take to mean fixed charges) for the Affected Service, indefinitely, when Western Power has declared a Force Majeure Event. This is particularly onerous given our previous comments regarding the drafting of the Force Majeure clause in the ETAC.

Required Amendment 98, Clause 18.5 Limitation of Liability – We note ERA's preference to "exercise the discretion to leave the matter for determination by commercial negotiation and, if necessary, arbitration in accordance with the Access Code."

However, we consider this issue could represent a significant barrier to entry, and at best increases the time required to finalise new access agreements with Western Power. The inequitable drafting of the current proposal by Western Power does not auger well for future individual negotiations with Western Power. As you would be aware, liabilities of this nature are of key concern to project financiers, causing potential project delays while unresolved.

Required Amendment 169, Terms and Amount of Periodic Payment – We are of the view that the specified interest rate of 15% appears to be unnecessarily high. This should be reduced to a similar rate to that applied for overdue payments in the Access Contracts, of 3 percentage points above the Business Indicator Rate. However, the Authority has again taken the view that this is a commercial issue and best left for negotiation with Western Power. The Authority has required Western Power to delete the clauses dealing with specified rate and term.



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Required Amendment 174, Transmission Connected Generators – The Authority has required the deletion of clause 9 of Western Power's proposal. While this acknowledges the Authority's support of industry participants' views regarding the inequity of the Urban Shared Network proposal, it falls short of recommending a more appropriate course to address the key issue of recognising the system-wide benefits of new entrant investment in deep network assets. The investment tests in the Code should recognise that transmission network charges represent a small percentage of customers' bills, but the transmission network is critical to enabling the benefits of electricity market reforms to be realised. Therefore, the economically efficient amount of transmission is that which maximises the value of the electricity system as a whole, reflected in delivered electricity costs, not that which minimises use of network rate impacts.

Required Amendment 123, Western Power May Require Costs – The Authority agreed with views put forward by industry participants regarding a more collaborative and transparent process for system studies. However the Authority has rejected the proposed clause because it limits the application of the clause to Western Power determining the costs without consultation with the applicant and does not provide an opportunity for alternate parties to undertake the studies.

We previously expressed the view that applicants should have the right to participate fully in the interconnection studies, and to request a practical degree of independent review of these studies. This participatory approach to system studies may minimise the occurrences of dispute requiring costly arbitration.

Required Amendment 129, When Bypass is Permitted – The Authority has deleted clause 8.4(d), however, has retained clause 8.5 (When the bypass test might be satisfied). We previously stated our view on this clause that the abilities for Western Power to remove the priority of an application should be further qualified. A more rigorous test should be incorporated, inclusive of explicit project viability requirements, for applicants to remain in the queue. The Authority has not addressed this issue, presumably because the wording of clause 8.5 is consistent with the comparable clause of the Model AQP of the Access Code.