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Mr Alistair Butcher
Director
Electricity Access
Economic Regulation Authority
Level 6 Governor Stirling Tower
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PERTH WA 6000

Dear Alistair

**SUBMISSION ON THE DRAFT DECISION ON THE WESTERN POWER NETWORKS
BUSINESS UNIT PROPOSED ACCESS ARRANGEMENT FOR THE SOUTH WEST
INTERCONNECTED NETWORK**

Thank you for the opportunity to provide a submission on the *Draft Decision on the Western Power Networks Business Unit Proposed Access Arrangement for the South West Interconnected Network* ("Draft Decision").

Synergy has reviewed the Draft Decision and while in general, Synergy agrees and support the majority of the findings of the Economic Regulation Authority ("Authority"), there are a number of areas that we wish to offer further comment and suggested enhancements. These are documented in Attachment A.

It is Synergy's view that acceptance of the comments made, the subsequent incorporation of any suggested enhancements would ensure a fair and equitable outcome for both Western Power and the users of it's network including Synergy's customers.

Should you have any queries in regard to this letter or the attachment, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read "G. Draper", written in a cursive style.

**GRANT DRAPER
HEAD OF STRATEGIC BUSINESS**

**SUBMISSION OF COMMENTS BY SYNERGY ON THE DRAFT DECISION ON
THE WESTERN POWER NETWORKS BUSINESS UNIT PROPOSED ACCESS
ARRANGEMENT FOR THE SOUTH WEST INTERCONNECTED NETWORK**

Required Amendment 73

Western Power to amend the Electricity Transfer Access Contract by reproducing Model Access Contract clauses A3.19 to A3.24 (Relocation) without material omission or variation.

Required Amendment 74

Western Power to amend the Electricity Transfer Access Contract clause 1.1 to include a definition of "relocation" which reproduces the definition of that term in the Model Access Contract without material omission or variation.

Western Power Networks has proposed an omission from the MAC by excluding the provisions related to the user's ability to relocate contracted capacity. The ERA sees this as a removal of flexibility for the user. In our view, relocation to another connection point needs to remain as flexible as possible. Relocation (in the event that there is augmentation) should be on a first come first-serve basis. As long as the application and queuing process as per the MAC requirements facilitates this approach then Synergy is in support of the ERA's recommendation.

Required Amendment 77

Western Power to amend the Electricity Transfer Access Contract clause 6.1 (User must nominate Controller) to reproduce Model Access Contract clause A3.36(a) without material omission or variation and Electricity Transfer Access Contract clause 6.1 to be amended to specify a reasonable test for when an exit point needs a designated controller.

Given Synergy's 800,000+ customers, the requirement, set out in ETAC clause 6.1(a), to nominate controllers for each contracted point would cause great difficulty and be of little or no practical value. However, Synergy recognises the merit of nominating a controller in certain circumstances.

In regard to exit points, Synergy submits the requirement to nominate a controller be restricted to where:

- the customer consumes at least 2,100MWh per annum; and
- Western Power Networks requests that a controller be nominated.

This represents a practical and reasonable requirement for exit points as the threshold is set at a level where potential for network disturbance exists but this is qualified by a requirement for Western Power Networks to request that a controller be nominated. This combination of requirements ensures that controllers are only nominated where it has been determined that there is a material risk of network disturbance occurring.

Synergy understands the suggested prerequisite minimum level of 2,100MWh per annum forms part of existing access arrangements and therefore its adoption as the threshold level would not be inconsistent with current market practice.

In regard to entry points, Synergy accepts the 30kVA DSOC threshold above which a controller is required to be nominated as being reasonable. This recognises that generators below this level are unlikely to materially contribute to any network disturbances that would impact other customers.

Required Amendment 78

Western Power to amend the Electricity Transfer Access Contract clause 6.2(a) (Where the User is not the Controller) to delete the word "unconditionally".

Synergy supports the ERA's recommendation to delete the word "unconditionally" as it places a higher level of compliance obligation than that established in the MAC.

In the same vein, Synergy notes the ERA made reference to the additional requirements in ETAC clause 6.2(a) relating to clauses 12, 15, 16 and 24 and that by not making reference to these clauses in the Required Amendment 78, the ERA is in effect approving the extension of compliance to these clauses despite there being no similar requirement in the clause A3.38 of the MAC. Synergy raises the issue whether the extension of ETAC clause 6.2(a) to include these additional clauses meet the requirements of clause 5.3(a) of the Code.

Required Amendment 80

Western Power to amend the Electricity Transfer Access Contract clause 6.2(c) (Curtailed where Western Power is not satisfied of compliance by controller) to reproduce Model Access Contract clause A3.39(b) without material omission or variation.

Synergy notes that clause A3.39(b)(ii) of the MAC requires the controller agree with the service provider to be bound by the sub-clauses specified in clause A3.38. In effect, this requires the controller to enter into some form of agreement with Western Power Networks. If this is not already the case (i.e. the controller and Western Power Networks do not have a direct contractual relationship), then Synergy submits the compliance requirement could be imported into supply arrangement between user and his customer. That is, where the user nominates the customer as the controller, then the requirement to comply with clause A3.38 of the MAC can be included in the contract between the customer and the user. This would then serve as evidence that the controller is complying and will continue to comply with clause A3.38. Synergy submits that this simple inclusion in the customer-user contract would be a more efficient outcome than requiring the controller to enter into a new and separate agreement with Western Power Networks, where a contract between these two parties does not already exist.

Required Amendment 85

Western Power to amend the Electricity Transfer Access Contract clause 7.3 (Charges during Western Power's Force Majeure Event) to reproduce Model Access Contract clause A3.42(a) without material omission or variation.

While Synergy acknowledges the ERA's view that during a Force Majeure event, charges paid by a user are restricted to "standing charges", Synergy's raises the question as to why **any** charges should be payable to a service provider during an Force Majeure event.

In a Force Majeure event affecting end-users (customers), where no service is delivered, customers are denied a critical input into their operations, reducing their productive output. In this case it is difficult to reconcile a requirement to pay for a service, which was not delivered, especially where the non-delivery of that service in turn reduces the customer's capacity to pay for that service. Further, this payment requirement reduces the customer's capacity to invest in stand-by facilities to deliver uninterrupted power supplies to avoid the loss of production if a Force Majeure event affecting the network occurs.

Synergy submits the requirement to pay charges, albeit at a reduced level, during a Force Majeure event is unreasonable and inconsistent with clause 5.3(a) of the Code.

Synergy also notes that ETAC clause 7.3(a) only provides payment relief if due to a Force Majeure event a service is unavailable for any consecutive period of 2 days or longer ("Affected Service"). This implies, in circumstances where a service is affected by a Force Majeure event but the duration is less than 2 consecutive days that full charges apply. Synergy submits that, in the absence of any compelling practical rationale, there should be no duration threshold for a service to be deemed an Affected Service, the trigger for payment relief. If a Force Majeure event results in the service provider not being able to provide a service, then similarly, the user should be excused from payment obligations related to that service, irrespective of the duration of the Force Majeure event.

Required Amendment 89

Western Power to amend the Electricity Transfer Access Contract clause 9(a)(iii) (Interest on security by way of pre-payment) to reproduce Model Access Contract clause A3.51(a)(i) without material omission or variation.

Interest earned on paid cash deposits should be paid to the user as the user is forgoing a capital resource to secure a connection and therefore should be compensated. Also, if Western Power Networks did not pay interest, then it would make a return on a "non earned" investment. For these reasons Synergy agrees with the amendment to remove ETAC clause 9(a)(iii). However, Synergy is concerned that the adoption of MAC clause A3.51(a)(i) without change would fail to acknowledge commercial practice in respect of interest payments on credit support. Synergy submits that the rate of interest payable for credit support provided is a commercial matter, settled through negotiation by the user and service provider.

Required Amendment 98

Western Power to amend the Electricity Transfer Access Contract clause 18.5 (Limitation of liability) to reproduce Model Access Contract clause A3.74 without material omission or variation such that the value of "x" is left to be inserted in the access contract by agreement between the parties or arbitrated award.

Synergy notes the ERA's position that agreeing liability limits is a commercial matter to be negotiated between the user and Western Power Networks and as a result the ERA has elected to exercise its discretion not to determine liability caps.

While this position is consistent with the Access Code, Synergy is concerned about how this will work in practice. In particular, Synergy notes the disproportionality in the ETAC between Western Power Networks' liability, capped at \$10 million in every circumstance, and that for users, which is up to five times higher. Despite the ETAC being amended to reflect the ERA's position Synergy is concerned that Western Power will maintain its \$10 million cap in respect of its liability irrespective of any discussion about whether this reflects a fair and equitable outcome for the both parties. Synergy submits that in some circumstances the resultant access contract could be unreasonable to the user. Accordingly, Synergy suggests the ERA assess the merit of the following:

Synergy proposes that clauses 18.2 and 18.3 of the Electricity Transfer Access Contract, which deal with limitations of liability, should be replaced with the following clauses (clause 18.4 is to remain).

18.2 Liability

Subject to the terms of this Contract (including clause 18.3), a Party who:

- (a) is negligent; or
- (b) commits a Default,

is liable to the other Party for, and must indemnify the other Party against, any damage caused by, consequent upon or arising out of the negligence or Default.

18.3 Exclusion of Liability

- (a) Subject to clauses 18.3(b), 18.3(c) and 18.4:
 - (i) the User is not in any circumstance liable to Western Power for any Indirect Damage suffered by Western Power, however arising; and
 - (ii) Western Power is not in any circumstances liable to the User for any Indirect Damage suffered by the User, however arising.
- (b) Each party is liable to the other for the following types of loss and damage, however arising, including under the Metering Agreement:
 - (i) Direct Damage;
 - (ii) lost revenue (whether Indirect Damage or Direct Damage); and
 - (iii) Balancing Costs.

- (c) Where this Contract states that “the exclusion of Indirect Damage in clause 18.3(a) does not apply”, or words to a similar effect, in relation to a matter, then:
- (i) the exclusion of Indirect Damage in clause 18.3(a) does not apply in relation to that matter; and
 - (ii) the Parties’ liability in relation to the matter is to be determined by Law, and to avoid doubt, the definition of Indirect Damage is to be disregarded for the purposes of that determination.

The following consequential change to the definitions needs to be included in clause 1.1:

“Default, in relation to a Party, has the meaning given to it in clause 26.1 and also includes a breach of the Metering Agreement by that Party.”

Synergy proposes the above amendments on the basis that they protect the interests of all Users and also to ensure the correct incentives exist for Western Power to take proper care in providing the services. Without real liability attaching to the conduct of Western Power, there is no incentive to perform correctly.

In order to create the correct incentive, the proposed amendments make Western Power liable for the lost revenue of the User. Given the nature of the contracting parties, the main loss that retailers (such as Synergy) and other consumers of electricity suffer is the lost revenue from a failure of the network or a failure to properly read a meter.

On the basis of the ERA’s recommendation, Synergy has prepared the amendments on the basis that the exclusion of liability in a metering agreement will be dealt with under the access contract. Consequential amendments to the standard proposed Metering Agreement will also be required to ensure consistency (clause 8.1 of the Metering Agreement will need reflect this approach).

Liability Cap

Synergy proposes the following clause to replace clause 18.5 of the ETAC.

18.5 Liability Cap

- (a) The maximum liability of Western Power to the User in any Financial Year under this Contract and the Metering Agreement (including for a failure to provide the Metering Services in accordance with the Metering Agreement) is limited to the Annual Liability Cap in respect of Claims arising from an event or occurrence in that Financial Year.
- (b) The maximum liability of the User to Western Power in any Financial Year under this Contract and the Metering Agreement is limited to the Annual Liability Cap in respect of Claims made arising from an event or occurrence arising in that Financial Year.
- (c) The Parties acknowledge that an event or occurrence arises at the time that the relevant cause of action accrues.

The following consequential definitions also needs to be included in clause 1.1:

“Annual Liability Cap means \$25 million CPI Adjusted at the start of the relevant Financial Year.”

"Financial Year" means the 12 month period from 1 July in a Year to 30 June of the next Year."

"Metering Agreement" means any agreement for the provision of metering services by Western Power to the User."

"Metering Services" means the services provided by Western Power to the User under the Metering Agreement."

Synergy has proposed the above amendments to the liability cap to ensure that Users are treated equally with Western Power under the access contract.

As the largest retailer in the State, Synergy has determined the dollar figure on the basis of an appropriate pre-estimate of the losses that it could potentially suffer from a default by Western Power.

Required Amendment 109

Western Power to amend the Electricity Transfer Access Contract clause 3.3 (Ringfencing) by deleting the words "the User or an Indemnifying Party" in the first line.

Western Power Networks' proposal is that a user or indemnifying party have regard to ring fencing obligations. The ERA can see no such reason for imposing this obligation on a private party as opposed to a public decision maker. We disagree with the ERA's amendment as the question remains why should one set of standards be set for the public decision maker, and another set of standards set for the private party.

In addition to the above, Synergy gives the following comments in relation to clause 24.1 of the ETAC, not specifically addressed by the Authority in its Draft Decision.

Synergy proposes the following be inserted as a new clause 24.6 of the Electricity Transfer Access Contract.

24.6 Liability for Curtailment

Other than clause 18, nothing in this Contract or the Metering Agreement, including this clause 24, operates to exclude or limit the liability of Western Power for a failure to properly provide, or a curtailment of, the Services or Metering Services, if such a failure or curtailment occurs as a result of:

- (a) a failure by Western Power to comply with Good Electricity Industry Practice, including where the curtailment in accordance with clause 24.1 arises as a result of Western Power failing to comply with Good Electricity Industry Practice;
- (b) a Default by Western Power; and
- (c) the negligence or recklessness of Western Power.

The following consequential definitions also need to be included in clause 1.1:

"Balancing Costs means, in respect of a Party any costs payable by that Party to the IMO."

"IMO has the meaning given in the Market Rules."

"Metering Agreement means any agreement for the provision of metering services by Western Power to the User."

"Metering Services means the services provided by Western Power to the User under the Metering Agreement."

Currently clause 24.1 of the Electricity Transfer Access Contract allows Western Power to curtail services in a number of circumstances.

The proposed clause 24.6 is not intended to operate to restrict the ability of Western Power to curtail services. Rather, the clause reflects that Western Power should not be excused from financial liability for a failure to properly provide the services, where that failure is due to the fault of Western Power.

This amendment is to protect the interests of all Users and also to ensure the correct incentives exist for Western Power to take proper care in maintaining the network and providing the services.