

Transfer and Relocation Policy

ELECTRICITY NETWORKS CORPORATION ("WESTERN POWER")

ABN 18 540 492 861

{Outline: This *applications and queuing policy* is included in Western Power's access arrangement in accordance with section 5.1 of the Code.}

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1. Defined terms and interpretation

1.1 Defined terms

“access arrangement” means the current *access arrangement* approved in respect of the *network* under the *Code*.

“access contract” has the meaning given to it in the *Code*.

“access rights” means all or part of a *user’s* rights under an *access contract* to obtain a *covered service*.

“applications and queuing policy” means the applications and queuing policy under the *access arrangement*.

“assign” means to assign or novate a *user’s access rights* under an *access contract* to another person, and may take the form of a *bare transfer* or a *novation*.

“assigned access right” means any *access right* that is or is proposed to be the subject of an *assignment*.

“assignee” means a person who makes an *assignment*.

“assignment” means an assignment or novation of a *user’s access rights* under an *access contract* to another person, and may take the form of a *bare transfer* or a *novation*.

“assignor” is a person who takes an *assignment*.

“bare transfer” means an *assignment* under which the *assignor* assigns the whole or a part of its *access rights* under an *access contract* to an *assignee*, but under which there is no *novation*, with the result that the *assignor’s* obligations under the *access contract* for services, and all other terms of the *access contract* for services, remain in full force and effect after the *assignment*, whether or not the *assignee* becomes bound to the *assignor* or any other party to fulfil those obligations.

“bare transferee” means a person who takes a *bare transfer*.

“capacity”, for a *connection point*, refers to the capacity of the *network* to transfer electricity at the *connection point*.

“capital contributions policy” means the policy contained in the *access arrangement* dealing with *contributions* by *users*.

“connection point” means an *exit point* or an *entry point* identified or to be identified as such in an *access contract*.

“contracted capacity “, at a *connection point*, means the maximum rate a *user* is permitted to transfer electricity at that *connection point* under the *user’s access contract*.

“contribution” means any amount payable by a *user* under the *capital contributions policy*.

“Code” means the *Electricity Networks Access Code 2004*.

“customer transfer request” has the meaning given in the *customer transfer code*.

“destination point” has the meaning given in clause 6.1(b).

“encumbrance” includes any lease, licence, native title right, easement, mortgage, charge, lien, pledge, deposit, hypothecation, restrictive covenant, building condition, retention of title or other interest of any third party affecting any property.

"entry point" has the meaning given to it in the *applications and queuing policy*.

"exit point" has the meaning given to it in the *applications and queuing policy*.

“law” means “written laws” and “statutory instruments” as defined in the *Code*, orders given or made under a written law or statutory instrument as so defined or by a government agency or authority, Codes of Practice and Australian Standards deemed applicable under a written law and rules of the general law including the common law and equity.

“network” means those parts of the SWIS that are owned, operated or owned and operated by the Western Power *networks business* in respect of which access is given under the *access arrangement*.

“novate” means to substitute, with the consent of all parties to the *access contract* and with effect on and from a date nominated as the effective date of the novation, an *assignee* for an *assignor* as a party to an *access contract*, with the result that:

- (a) all rights and obligations of the *assignor* under the *access contract* become rights and obligations of the *assignee* as if the *assignee* had been named in the *access contract* in place of the *assignor*; and
- (b) the *assignor* is released from any obligations under the *access contract* arising on or after the effective date of the novation, but remains liable for any default by it in the performance of those obligations prior to the effective date of the novation.

“relocation” has the meaning given in clause 6.1(a).

“retiring point” has the meaning given in clause 6.1(a).

“service”, in respect of a *connection point*, means a *covered service* to be provided under an *access contract* in respect of the *connection point*.

1.2 Interpretation

In this *transfer and relocation policy*:

- (a) a reference to:
 - (i) the singular includes the plural and the plural includes the singular;
 - (ii) an officer or body of persons includes any other officer or body for the time being exercising the powers or performing the functions of that officer or body;
 - (iii) this *transfer and relocation policy* or any other instrument includes any variation or replacement of it;
 - (iv) “under” includes “by”, “by virtue of”, “pursuant to” and “in accordance with”;
 - (v) “day” means a calendar day;
 - (vi) “person” includes a public body, company, or association or body of persons, corporate or unincorporated;
 - (vii) a person includes a reference to the person's personal representatives, executors, administrators, successors and permitted assigns; and
 - (viii) any monetary amount is to that amount in Australian dollars;
- (b) a word of any gender includes the corresponding words of each other gender;
- (c) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (d) “including” and similar expressions are not words of limitation;
- (e) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
- (f) a reference to a clause is a reference to a clause of this *transfer and relocation policy*.

1.3 Code definitions apply

Unless the contrary intention is apparent, a term with a defined meaning in the *Code* has the same meaning in this *transfer and relocation policy*.

1.4 Interpretation

Unless the contrary intention is apparent:

- (a) a rule of interpretation in the Code; and
- (b) the *Interpretation Act 1984*,

apply to the interpretation of this *transfer and relocation policy*.

2. Application of this transfer and relocation policy

2.1 Application in respect of an *access contract*

Unless otherwise expressly stated in an *access contract*, this *transfer and relocation policy* applies in its entirety to each *access contract*.

2.2 Application in respect of a *customer transfer request*

This *transfer and relocation policy* does not in any way apply to a *customer transfer request*.

3. Assignment only under this transfer and relocation policy

A user must not, except as expressly permitted by this *transfer and relocation policy*:

- (a) *assign, novate*, declare itself a trustee of, or otherwise dispose of, any of its rights under an *access contract*; or
- (b) subcontract the performance of its obligations under an *access contract*; or
- (c) create an *encumbrance* over any of its rights or obligations under an *access contract*.

4. Bare transfers

The provisions in this clause 4 apply to a *bare transfer*.

4.1 User may make *bare transfer*

- (a) Subject to clause 4.2, a user may make a *bare transfer* without Western Power's prior consent.
- (b) For the avoidance of doubt, a *bare transferee* does not become a user by virtue of any *bare transfer*.

4.2 User must notify Western Power of the details of the *bare transfer*

If the user makes a *bare transfer*, the user must notify Western Power of:

- (a) the identity of the *assignee*; and
 - (b) the nature of the *assigned access rights*,
- before the *assignee* may commence using the *assigned access rights*.

4.3 *Bare transfer* does not release the *user*

- (a) A *bare transfer* does not constitute a *novation*, and does not result in:
 - (i) the release of the *user* in any way from any of its obligations to Western Power under the *access contract*; or
 - (ii) the release of any provider of any bank guarantee under the *access contract* from any liability to Western Power under that bank guarantee.
- (b) The *user* remains wholly liable to Western Power for any default under the *access contract* in accordance with its terms, whether caused by the *user*, the *assignee* or any other person.
- (c) The provider of any bank guarantee under the *access contract* remains wholly liable to Western Power in accordance with the terms of that bank guarantee.

5. **Assignments other than bare transfers**

The provisions in this clause 5 apply to an *assignment* other than a *bare transfer*.

5.1 Western Power's consent required

For an *assignment* other than a *bare transfer*, the following provisions apply.

- (a) A *user* may not *assign* all or any *access rights* without Western Power's prior written consent.
- (b) Western Power is not required to give its consent to the *assignment* unless, under the proposed *assignment*, the *assignee* is bound to Western Power under terms that are identical to the terms of the *access contract* between Western Power and the *user*.
- (c) Western Power's consent shall not be unreasonably withheld or delayed where the *user* can satisfy Western Power (acting on reasonable commercial and technical grounds) that the proposed *assignee* is financially and technically capable of performing the *user's* obligations in respect of the *assigned access rights*.

5.2 Deed of *novation*

- (a) The *assignor* and the *assignee* must enter into a deed of *novation* with Western Power in such reasonable form as Western Power requires, pursuant to which, on and from the effective date of the *novation*:
 - (i) the *assignee* acknowledges Western Power's rights under the relevant *access contract* in respect of the *assigned access rights*, and undertakes to observe, perform and be bound by the *user's* obligations and to meet the *user's* liabilities in respect of the *assigned access rights* under the relevant *access contract*; and
 - (ii) subject to any limitations and exclusions of liability in the relevant *access contract*, the *assignor* indemnifies the *assignee* and Western Power against, and agrees to defend and hold them harmless from, all liabilities and costs either of them may suffer as a result of any default by the *assignor* under the relevant *access contract* in respect of the *assigned access rights* occurring prior to the effective date of the *novation*, including any default whose effects do not crystallise until after the effective date of the *novation*; and
 - (iii) Western Power releases the *assignor* from that part of the *user's* obligations and liabilities under the relevant *access contract* as relate to the *assigned access rights*.

5.3 *Assignment* to financially and technically competent persons

Western Power is not required to give its consent to an *assignment* under clause 5.1 if it can reasonably demonstrate that such an *assignment* would have the effect of materially increasing its financial or technical risk under the relevant *access contract*.

6. Relocation

6.1 Occurrence of *relocation*

A “**relocation**” occurs when a *user*:

- (a) decreases its *contracted capacity* at a *connection point* (a “**retiring point**”); and
- (b) makes a corresponding increase in its *contracted capacity* at another *connection point* (a “**destination point**”).

6.2 *Access contract* provisions in respect of a *destination point*

Western Power and the *user* must comply with any provisions in the *access contract* with respect to an increase of *contracted capacity* at a *connection point*, or an additional *connection point*, relating to a *destination point*.

6.3 *Access contract* provisions in respect to a *retiring point*

Western Power and the *user* must comply with any provisions in the *access contract* with respect to a decrease of *contracted capacity* at, or a deletion of, a *connection point*, relating to a *retiring point*.

6.4 Western Power's costs

A *user* who requests any *assignment* or *relocation* under this *transfer and relocation policy* shall reimburse Western Power for any cost incurred by Western Power, acting as a *reasonable and prudent person*, in processing such request.