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ELECTRICITY INDUSTRY ACT 2004

**TOP-UP AND SPILL
MARKET RULES**

25 June 2004

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APPROVAL BY MINISTER

I, ERIC RIPPER, Minister for Energy for the State of Western Australia, under regulation 5(1) of the *Electricity Industry (Wholesale Market) Regulations 2004* hereby approve the top-up and spill market rules contained in this document.

These rules are to commence in accordance with regulation 5(3) of the *Electricity Industry (Wholesale Market) Regulations 2004*.

ERIC RIPPER,

Dated at Perth this 23rd day of June 2004.

(These rules commence at the beginning of the 25th of June 2004, see rule 1.1 below.)

PREFACE

The first steps towards electricity reform were based on providing open access to Western Power's electricity transmission and distribution systems so that Independent Power Producers (IPPs) could directly supply customers whose demand exceeds the contestability threshold level. One requirement placed upon IPPs was that they balance their generation output with their load demands at all times. This required investment in load following equipment that made supply to smaller customers, those with demand less than a few megawatts, uneconomic. In recognition that perfect balancing was not possible, some tolerance was permitted but any imbalance beyond relatively low levels could incur significant costs.

In November 2002, Government accepted a recommendation from the Electricity Reform Task Force that Western Power be required to provide an improved transitional balancing service, a Top-up and Spill service, until the reformed electricity market, including a new balancing service, is fully operational. (ERTF Recommendation 76.)

The Top-up and Spill (TUAS) market allows members to purchase top-up energy from Western Power when their production is below the level of their customer demand, and to sell spill energy to Western Power when their production exceeds demand. These rules detail the rights and obligations of members under the TUAS market rules, including Western Power as the market service provider, and outline the pricing arrangements and operating procedures.

These rules have effect under Part 9 of the *Electricity Industry Act 2004*, and apply to the South West Interconnected System.

Western Power is required by these rules to manage and operate the TUAS market. The Minister will be responsible for ensuring Western Power's compliance with these rules.

The TUAS market is designed to accommodate the requirements of both renewable and non-renewable generators, including the specific requirements of intermittent renewable generators. However, it is not to be used for the provision of "part-supply" and the quantity of top-up that may be taken by an intermittent renewable generator is limited to the generator's expected annual output.

The TUAS market is intended to operate as an alternative to and an extension of the existing balancing arrangements under the *Electricity Transmission Regulations 1996* and *Electricity Distribution Regulations 1997*, as well as the important initial step towards the longer term wholesale electricity market (WEM). The TUAS market makes cost neutral balancing available to IPPs at pre-published prices. More significantly, the TUAS market enables IPPs to intentionally vary their generation from customer load requirements by trading electricity where it is commercially attractive to do so.

The initial market services, and these initial market rules, provide an important step towards the introduction of the longer term WEM. Work is currently underway to develop rules for the WEM and it is intended that these will be put in place in the second half of 2004. The WEM will be implemented progressively and it is expected that some two years will be required to develop and test the necessary systems for the longer term trading and balancing arrangements. To cover this period of time, the TUAS market rules will be subsumed into the WEM rules as a transitional arrangement. The TUAS market will continue to operate until the WEM balancing and trading arrangements commence.

Members and prospective members should take these planned changes into account when making contracting and investment decisions in connection with these rules.

These rules can be examined and downloaded at Western Power's internet site: www.westernpower.com.au.

ELECTRICITY INDUSTRY ACT 2004

TOP-UP AND SPILL MARKET RULES

CHAPTER 1—INTRODUCTORY

Commencement

1.1 These rules commence at the beginning of the 25th of June 2004.

{See regulation 5(3) of the *Electricity Industry (Wholesale Market) Regulations 2004*.}

Definitions

1.2 In these rules, unless the contrary intention appears from the context—

“**access contract**” means a “distribution access agreement” as defined in the *EDR* or an “access agreement” as defined in the *ETR*.

{Note: At the time these rules commenced, the definition in regulation 3 of the *EDR* was—

“**‘distribution access agreement’** in respect of a user, means—

- (a) if the user is not Western Power, then an agreement entered into between Western Power and the user under these regulations, under which Western Power agrees to provide distribution access services to the user; and
- (b) if the user is Western Power, then a deemed distribution access agreement provided for by regulation 15(2) or 52(8).”

At the time these rules commenced, the definition in regulation 3 of the *ETR* was—

“**‘access agreement’** in respect of a user, means—

- (a) if the user is not Western Power, then an agreement between Western Power and the user, under which Western Power agrees to provide access services to the user; and;
- (b) if the user is Western Power, then a deemed access agreement provided for by regulation 15(2) or 49(1) under which Western Power as a user is provided with access services.”}

“**accepted nomination**” means a *nomination* which has been accepted under rule 3.18 or rule 3.19(d) for a half hour in a *supply day*.

“**access regulations**” means—

- (a) to the extent that the *member’s access contract* incorporates or is governed by the *ETR*—the *ETR*; and
- (b) to the extent that the *member’s access contract* incorporates or is governed by the *EDR*—the *EDR*.

“**administration fee**” means the fee charged by the *market service provider* and payable by a *member* under rule 5.11.

“**applicant**” has the meaning given to it in rule 2.2 or rule 8.1 as applicable.

“**application**” means an application under rule 2.2.

“**appointee**” means a person appointed to the *TUAS consultation group* in accordance with Chapter 11.

“**auditor**” means a person appointed to conduct an audit under clause A2.1.

“**arbitrator**” has the meaning given to it in section 61 of the *Gas Pipelines Access (Western Australia) Act 1998*.

“**balancing band**” means a band defined in rule 3.28.

“**balancing month**” means the month over which balancing is calculated under the *access regulations*.

“**balancing price list**” means the list of prices prepared and *published* by the *market service provider* under rule 4.2(a) specifying prices for *balancing electricity* and comprising under these rules either a *normal price list*, a *high price list*, or a *liquids price list*.

“**balancing electricity**” is defined in rule 3.6(b) and means *balancing top-up electricity* or *balancing spill electricity*.

“**balancing spill electricity**” means the electricity accepted by the *market service provider* from a *member* as defined in rule 3.6(b)(ii).

“**balancing spill price**” means the applicable price for *balancing spill electricity* determined under rule 4.6 from the prices specified in a *balancing price list*.

“**balancing top-up electricity**” means the electricity supplied by the *market service provider* to a *member* as defined in rule 3.6(b)(i).

“**balancing top-up price**” means the applicable price for *balancing top-up electricity* determined under rule 4.6 from the prices specified in a *balancing price list*.

“**business day**” means a day that is not a Saturday, Sunday or a public holiday in Western Australia.

“**communication**” means a notice, approval, consent or other communication given or made under these rules.

“**conflict of interest**” is defined in clause A2.4.

“**connection assets**” means all of the network assets that are used only in order to transfer electricity into or out of a network at the relevant connection point and includes any transformers or switchgear at the relevant point, or which is installed to support or to provide backup to, such electrical equipment as is necessary for that transfer.

“**connection point**” means an *entry point*, *exit point* or *transfer point*.

“**CMD**” or “**contract maximum demand**” for a *connection point* means the maximum amount of electricity that the *member* may transfer out of the *network* at the *connection point* being either—

- (a) the amount specified in the *member’s access contract* from time to time in respect of the *connection point*; or
- (b) if no amount is specified in the *member’s access contract*, the maximum amount of electricity permitted to be transferred through the *connection assets* at the *connection point* under the *technical code*.

“**default**” means any event or thing which is a default as defined in rule 6.1.

“**default of payment**” means the *default* specified in rule 6.1(a).

“**dispatchable generator**” means any generator other than an *intermittent renewable generator*.

“**dispatchable plant**” means any plant used to generate electricity other than *intermittent renewable plant*.

“**DSOC**” means the amount notified from time to time as declared sent out capacity in respect of a *connection point* under a *member’s access contract*.

“**economic cost neutrality**” is defined in rules 5.1 to 5.3.

“**EDR**” means the *Electricity Distribution Regulations 1997*.

“**entry point**” has the meaning given to it in the *access regulations*.

{Note: At the time these rules commenced, the definition in regulation 3 of the *EDR* was—

“**‘entry point’** means—

a connection at which electricity is more likely to be transferred to the electricity distribution network or the electricity transmission network (as the case requires) than to be transferred from the electricity distribution network or the electricity transmission network (as the case requires).”

At the time these rules commenced, the definition in regulation 3 of the *ETR* was—

“**‘entry point’** means—

a connection at which electricity is more likely to be transferred to the electricity transmission network than to be transferred from the electricity transmission network.”}

“**ETR**” means the *Electricity Transmission Regulations 1996*.

“**excluded EDR provision**” is defined in rule 3.41.

“**excluded ETR provision**” is defined in rule 3.38.

“**exit point**” has the meaning given to it in the *access regulations*.

{Note: At the time these rules commenced, the definition in regulation 3 of the *EDR* was—

“**‘exit point’** means—

a connection at which electricity is more likely to be transferred from the electricity distribution network or the electricity transmission network (as the case requires) than to be transferred to the electricity distribution network or the electricity transmission network (as the case requires).”

At the time these rules commenced, the definition in regulation 3 of the *ETR* was—

“**‘exit point’** means—

a connection at which electricity is more likely to be transferred from the electricity transmission network than to be transferred to the electricity transmission network.”}

“**expiry date**” means the date upon which an *imbalance default notice* expires and is determined in accordance with rules 6.12 and 6.13.

“**forecast production data**” means data of the type specified in the *operating procedures*, which is to be provided in accordance with rule 3.25.

“**former member**” means a *member* who has cancelled its *membership* under rule 2.14.

“**general default notice**” means a notice given in accordance with rule 6.6.

“**good electricity industry practice**” has the meaning given to it in the *access regulations*.

{Note: At the time these rules commenced, the definition in regulation 30(1) of the *EDR* was—

“Good electricity industry practice means the exercise of that degree of skill diligence, prudence and foresight that reasonably would be expected from a significant proportion of operators of facilities forming part of a power system for the generation, transmission, distribution or supply of electricity under conditions comparable to those applicable to the relevant facility consistent with applicable laws, these regulations, the Distribution Technical Code, licences, codes, reliability, safety and environmental protection.”

At the time these rules commenced, the definition in regulation 28(1) of the *ETR* was—

“Good electricity industry practice means the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from a significant proportion of operators of facilities forming part of a power system for the generation, transmission or supply of electricity under conditions comparable to those applicable to the relevant facility consistent with applicable laws, these regulations, the Technical Code, licences, codes, reliability, safety and environmental protection.”}

“**high price day**” means a day to which, in accordance with the *operating procedures*, a *high price list* applies.

“**high price list**” means a *price list* prepared and *published* by the *market service provider* under rule 4.2(a)(ii) or 4.2(b)(ii).

“**imbalance**” is defined in rule 3.29.

“**imbalance default notice**” means a notice given in accordance with rule 6.11.

“**interested person**” means a *member*, a person who has made a submission to the Minister under rule 12.2 or any other person with a legitimate interest in the *TUAS market* who has notified the Minister of its interest.

“**intermittent renewable generator**” is defined in rule 7.1.

“**intermittent renewable plant**” means generating plant (powered by a renewable energy source) used by an *intermittent renewable generator* to generate electricity.

“**level**” means the degree of rigour with which a *negative assurance audit* is undertaken as defined in A2.15.

“**liquids**” means a liquid fuel (including fuel oil and distillate) used as fuel in—

- (a) the *market service provider’s* generating plant; or
- (b) other plant in respect of which the *market service provider* has a contractual arrangement to pay the plant owner or operator to use a liquid fuel, for the purposes of maintaining the secure and reliable operation of the SWIS.

“**liquids event**” means a period of time to which, in accordance with the *operating procedures*, a *liquids price list* applies.

“**liquids price list**” means a *price list* (if any) prepared and *published* by the *market service provider* under rule 4.2(a)(iii) or 4.2(b)(iii).

“**line losses**” are to be determined in accordance with the *operating procedures*.

{Note: See clause A5.7 of the *operating procedures*.}

“**market service provider**” means the Western Power Corporation referred to in section 4 of the *Electricity Corporation Act 1994*.

“**maximum trading requirement**” means the maximum quantity of *trading top-up electricity* and *trading spill electricity* notified to the *market service provider* from time to time under rule 3.9.

“**member**” means a person joined as such under these rules and includes the *market service provider*.

“**membership notice**” means a notice under, as applicable, rule 2.8, 2.9(b) or 2.10.

“**negative assurance audit**” means a review with the objective of enabling the *auditor* to state whether, on the basis of review procedures that do not provide all the evidence that would be required in a standard audit, anything has come to the *auditor’s* attention that indicates the *market service provider’s* non-compliance with the rules set out in A2.1.

“**network**” has the meaning given to “electricity distribution system” and “electricity transmission system” in the *Electricity Corporation Act 1994*.

{Note: At the time these rules commenced, the definitions in section 89 of the Act were—

“**‘electricity distribution system’** means—

- (a) the part or parts of the system operated by the corporation for the transportation of electricity that is or are prescribed by the regulations for the purposes of this paragraph; and
 - (b) plant and equipment that is—
 - (i) used by the corporation—
 - (I) in connection with the transfer of electricity to or from any part referred to in paragraph (a); or
 - (II) for a purpose related to such transfer;
- and

(ii) prescribed, or of a kind that is prescribed, by the regulations for the purposes of this subparagraph.

‘electricity transmission system’ means—

(a) the part or parts of the system operated by the corporation for the transportation of electricity that is or are prescribed by the regulations for the purposes of this paragraph; and

(b) plant and equipment that is—

(i) used by the corporation—

(I) in connection with the transfer of electricity to or from any part referred to in paragraph (a); or

(II) for a purpose related to such transfer;

and

(ii) prescribed, or of a kind that is prescribed, by the regulations for the purposes of this subparagraph.”}

“nomination” means a nomination for an amount of *trading top-up electricity* or *trading spill electricity* under rule 3.16 for a half hour in a *supply day*.

“nomination day” means the *business day* before the *supply day* (that is, the day on which *nominations* occur).

“normal price list” means a *price list* that applies except when a *high price list* or *liquids price list* is in effect.

“operating procedures” means the procedures set out in Appendix 5.

“output” is defined in rule 7.2.

“payment default notice” means a notice given in accordance with rule 6.2.

“price list” means a *trading price list* or a *balancing price list*.

“pricing period” means the period to which a set of *price lists* applies.

“publish” is defined in rule 9.3.

“reasonable and prudent person” means a person acting in good faith and in accordance with *good electricity industry practice*.

“receipt date” means the date on which a *member* receives an *imbalance default notice*.

“residual imbalance” is defined in rule 3.37.

“residual imbalance tariff” means the tariff specified in the *residual imbalance tariff list* as applying for the band in which the *residual imbalance* falls.

“residual imbalance tariff list” means a list *published* under rule 4.3.

“revised nomination” is defined in rule 3.19(c).

“spill charge” means the charge payable by the *market service provider* for a half hour, calculated by multiplying the applicable *spill price* by the *member’s* supply of *spill electricity* during the half hour.

“spill price” means a *trading spill price* or a *balancing spill price*.

“spill electricity” means either or both of *trading spill electricity* and *balancing spill electricity*.

“supply day” means the day to which a *nomination* or *accepted nomination* relates (that is, the day on which the *trading electricity* is provided).

“SUR” means (in kW) the rate at which the *member* is transferring *spill electricity* to the *market service provider* during the half hour.

“SWIS” means the “South West interconnected system” as defined in the *Electricity Industry Act 2004*.

“technical code” means a technical code made under—

(a) regulation 26 of the *ETR*; or

(b) regulation 28 of the *EDR*,

as amended or replaced from time to time.

“top-up charge” means the charge payable by a *member* for a half hour, calculated by multiplying the applicable *top-up price* to the *member’s* usage of *top-up electricity* during the half hour.

“top-up electricity” means either or both of *trading top-up electricity* and *balancing top-up electricity*.

“top-up price” means a *trading top-up price* or a *balancing top-up price*.

“TCMD” or **“total contract maximum demand”** means the sum across all *connection points* covered by an *access contract* of the *CMDs* for each *connection point*.

“trading band” means a band specified under rule 4.10.

“trading price list” means a list of prices prepared and *published* by the *market service provider* under rule 4.2(b) specifying prices for *trading electricity* and comprising under these rules either a *normal price list*, a *high price list*, or a *liquids price list*.

“trading electricity” is defined in rule 3.6(a) and means *trading top-up electricity* or *trading spill electricity*.

“**trading spill electricity**” means the electricity accepted by the *market service provider* from a *member* as defined in rule 3.6(a)(ii).

“**trading spill price**” means the applicable price for *trading spill electricity* determined under rule 4.5 from the prices specified in a *trading price list*.

“**trading top-up electricity**” means the electricity supplied by the *market service provider* to a *member* as defined in rule 3.6(a)(i).

“**trading top-up price**” means the applicable price for *trading top-up electricity* determined under rule 4.5 from the prices specified in a *trading price list*.

“**transfer point**” means a *connection point* between different *networks*.

“**TUAS consultation group**” means the group convened under rule 11.1.

“**TUAS charge**” means an amount payable under these rules.

“**TUAS market**” is defined in rule 3.6.

“**TUR**” means (in kW) the rate at which the *market service provider* is transferring *top-up electricity* to the *member* during the half hour.

Interpretation

1.3 The rules of interpretation in the *Interpretation Act 1984* apply to the interpretation of these rules.

1.4 In these rules, unless the contrary intention appears—

- (a) “**including**” and similar expressions are not words of limitation; and
- (b) 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
- (c) where italic typeface has been applied to some words and expressions, it is solely to indicate that those words or phrases may be defined in rule 1.2 or elsewhere, and in interpreting these rules the fact that italic typeface has or has not been applied to a word or expression is to be disregarded (but nothing in this rule 1.4(c) limits the operation of rule 1.2); and
- (d) where information in these rules is set out in braces (namely “{“ and “}”), whether or not preceded by the expression “Note”, “Outline” or “Example”, the information—
 - (i) is provided for information only and does not form part of these rules; and
 - (ii) is to be disregarded in interpreting these rules; and
 - (iii) might not reflect amendments to these rules or other documents or written laws;
 and
- (e) where a clause number commences with “A”, the clause appears in the Appendices to these rules.

References to a member include its generators and customers

1.5 A reference in these rules to a *member* transferring electricity into the *SWIS* includes the transferring--- of electricity into the *SWIS* by or on behalf of the *member* or any of its electricity suppliers (if it has any).

1.6 A reference in these rules to a *member* withdrawing electricity from the *SWIS* includes the withdrawal of electricity from the *SWIS* by or on behalf of the *member* or any of its electricity customers (if it has any).

CHAPTER 2—MEMBERSHIP

Market service provider is a member

2.1 The *market service provider* becomes a *member* on commencement of these rules.

Application for membership

2.2 A person (“**applicant**”) who wishes to become a *member* may give written notice requesting membership materially in the form set out in Appendix 1 (“**application**”) to the *market service provider*, addressed to “Network Access Services Manager”.

Member must have access contract

2.3 A *member* may not participate in the *TUAS market* on a day unless the *member* is entitled under an *access contract* to access the *SWIS* on the day.

Amendment of access contract to provide for cross-default in payment

2.4 An *applicant* may by notice to the *market service provider* offer to amend its *access contract* to include a provision to the effect that any *default of payment* under these rules by the *applicant* (after it has become a *member*) is to be treated in the *access contract* as though it was also a default in payment under the *access contract*.

2.5 If the *market service provider* gives an *applicant* a *membership notice*, it is deemed, if it has not already done so, to have accepted the offer under rule 2.4, and the *access contract* is amended accordingly.

Security from applicant if access contract not amended

2.6 If—

- (a) an *applicant* does not elect to amend its *access contract* under rule 2.4; and

- (b) the *market service provider* (acting as a *reasonable and prudent person*) determines that there is a material risk that, when the *applicant* becomes a *member*, it will be unable to meet its obligation to pay an amount due under these rules,

then the *market service provider* may require the *applicant*, at the *applicant's* election, to either—

- (c) pay a deposit equal to a reasonable estimate of the *applicant's* likely net obligations (after it becomes a *member*) to pay the *market service provider* under these rules over the coming 2 month period; or
- (d) provide a bank guarantee in terms acceptable to the *market service provider* (acting reasonably) guaranteeing the payment of the amount referred to in rule 2.6(c).

One membership per access contract

2.7 A person is entitled to membership of the *TUAS market* and the benefits of that membership once for each *access contract* to which the person is a party, regardless of—

- (a) how many generation units, and of what type, the person uses to generate electricity transferred under the *access contract*; and
- (b) how many connection points, and of what type, are covered by the *access contract*.

Membership notice

2.8 If an *applicant* offers to amend its *access contract* under rule 2.4, then the *market service provider* must within 3 *business days* after receiving the *application* give written notice (“**membership notice**”) to the *applicant* confirming its membership, and the *applicant* is joined as a *member* from the date of the *membership notice*.

2.9 If an *applicant* does not offer to amend its *access contract* under rule 2.4, then the *market service provider* must within 5 *business days* after receiving the *application* either—

- (a) notify the *applicant* that the *market service provider* requires security under rule 2.6 and the amount of the security required; or
- (b) give written notice (“**membership notice**”) to the *applicant* confirming its membership, and the *applicant* is joined as a *member* from the date of the *membership notice*.

2.10 If the *market service provider* gives notice under rule 2.9(a) that it will require security, and the *applicant* either pays a deposit under rule 2.6(c) or provides a bank guarantee under rule 2.6(d), then within 5 *business days* after receiving the payment or deposit the *market service provider* must give written notice (“**membership notice**”) to the *applicant* confirming its membership, and the *applicant* is joined as a *member* from the date of the *membership notice*.

2.11 The time periods in rules 2.9 and 2.10 are suspended to the extent that the *market service provider* is prevented from complying with them due to the *applicant* failing to provide reasonably sufficient information to enable the *market service provider* to determine whether it requires security under rule 2.6 and if so the amount of the security required.

Application disputes

2.12 A dispute between the *market service provider* and an *applicant* may be referred to the *arbitrator*, who is to determine it as though it was a dispute between the *market service provider* and a *member* under these rules.

When the rules apply to a member (other than the market service provider)

2.13 These rules apply to govern the relationships between the *market service provider* and another *member* from the start of the next *balancing month* to start after—

- (a) if the other *member* has joined at or prior to the commencement of these rules—the commencement of these rules;
- (b) if the other *member* joined after the commencement of these rules—the date the *member* joined.

Cancelling membership

2.14 A *member* (other than the *market service provider*) may cancel its membership by giving at least 3 months' written notice to the *market service provider*.

2.15 The *market service provider* may not cancel its membership.

2.16 The following rules will apply to a *former member* as though it was a *member*—

- (a) rules 1.2 to 1.6 and
- (b) rule 2.16; and
- (c) rules 3.3 to 3.5; and
- (d) rule 6.14; and
- (e) Chapter 8; and
- (f) rules 9.1 and 9.2; and
- (g) rules 9.4 to 9.6.

Security from member if access contract not amended

2.17 If—

- (a) a *member* did not, at the time of joining, elect to amend its access contract under rule 2.4; and
- (b) the *market service provider* (acting as a *reasonable and prudent person*) determines at any time after the *member* joins that there is a material risk that the *member* will be unable to meet its obligation to pay for an amount due under these rules,

then the *market service provider* may require the *member*, at the *member's* election, to either pay a deposit under rule 2.6(c) or provide a bank guarantee under rule 2.6(d).

Parties may contract inconsistently with these rules

2.18 Nothing in these rules prevents *members* from entering into an agreement that deals with the subject matter of these rules in a way that differs from the treatment of those matters in these rules.

CHAPTER 3—TUAS MARKET

Obligation to provide

3.1 The *member*—

- (a) may supply wholesale *balancing spill electricity* to the *market service provider*; and
- (b) may accept wholesale *balancing top-up electricity* from the *market service provider*;
- (c) may nominate to supply, and if so must supply, wholesale *trading spill electricity* to the *market service provider*; and
- (d) may *nominate* to accept, and if so must accept, wholesale *trading top-up electricity* from the *market service provider*;

on the terms set out in these rules.

3.2 The *market service provider* must—

- (a) manage and operate the *TUAS market*; and
- (b) supply wholesale *top-up electricity* to a *member*; and
- (c) accept wholesale *spill electricity* from a *member*;

on the terms set out in these rules.

Payment obligation

3.3 The *member* must pay the *market service provider* the *top-up price* for any *top-up electricity* provided under these rules.

3.4 The *market service provider* must pay the *member* the *spill price* for any *spill electricity* provided under these rules.

3.5 An amount payable under these rules is recoverable as a contractual debt.

Trading electricity and balancing electricity

3.6 The “**TUAS market**”, for any half hour period, consists of either or both of—

- (a) “**trading electricity**” for which the *market service provider* and a *member* contract on a day-ahead basis, being either—
 - (i) “**trading top-up electricity**” which is a specified quantity of wholesale electricity that the *market service provider* will supply to the *member*, and the *member* will accept; or
 - (ii) “**trading spill electricity**” which is a specified quantity of wholesale electricity that the *member* will supply to the *market service provider*, and the *market service provider* will accept;

and

- (b) “**balancing electricity**”, being either—
 - (i) “**balancing top-up electricity**” which is the quantity of wholesale electricity required to offset a *member's* negative *imbalance*, that the *market service provider* supplies to the *member*, and the *member* accepts;
 - or
 - (ii) “**balancing spill electricity**” which is the quantity of wholesale electricity required to offset a *member's* positive *imbalance*, that the *member* supplies to the *market service provider*, and the *market service provider* accepts.

Exit point for spill electricity

3.7 For the purposes of an *access contract* and the *access regulations*, the *exit point* at which *spill electricity* is transferred out of the *SWIS* to the *market service provider* is deemed to be the connection for Muja power station.

Entry point for top-up electricity

3.8 For the purposes of an *access contract* and the *access regulations*, the *entry point* at which *top-up electricity* is transferred into the *SWIS* by the *market service provider* is deemed to be the connection for Muja power station.

Member's maximum trading requirement

3.9 The maximum quantity of *trading top-up electricity* and *trading spill electricity* that the *member* may accept or supply for a half hour in a *supply day* is the amount notified to the *market service provider* by the *member* from time to time in accordance with rules 3.10 to 3.14 (“**maximum trading requirement**”).

{Note: The *maximum trading requirement* is to be specified in terms of energy (kWh) for each of top up and spill, for each half hour period in a day.}

3.10 The *member's maximum trading requirement for trading top-up electricity* for a half hour must not exceed the sum of the *CMDs* of all the *member's* loads at *exit points* covered by the *access contract* for the half hour.

3.11 The *member's maximum trading requirement for trading spill electricity* for a half hour must not exceed the sum of the *DSOCs* of all the *member's* generating plant at *entry points* covered by the *access contract* for the half hour.

3.12 A *member* must notify the *market service provider* of its *maximum trading requirement* for a month at least 2 weeks before the *market service provider* is obliged to *publish a price list* under rule 5.10 for the month.

3.13 A member may comply with rule 3.12 by giving a standing notification.

3.14 Rule 3.10 does not apply in respect of the first 4 months after these rules commence.

Advance notice of likely unavailability

3.15 The *market service provider* must use reasonable endeavours, where reasonably practicable, by 9am on the *nomination day*, to give notice to *members* in respect of one or more half hour periods in a *supply day* if it considers that it is unlikely to be able to meet all *members' maximum trading requirements* as specified under rule 3.9 in the half hour.

Nomination of trading amounts

3.16 By 10am on the *nomination day*, a *member* may for one or more half hours in the *supply day* *nominate* to the *market service provider* the amount of *trading top-up electricity* it wishes to accept or *trading spill electricity* it wishes to supply in the half hour ("**nomination**").

3.17 By 12 noon on the *nomination day*, the *market service provider* must for each half hour in the *supply day* notify each *member* that made a *nomination* of—

(a) the amount of the *nomination* which the *market service provider* proposes to accept, determined in accordance with—

- (i) rule 3.21; and
- (ii) any applicable *operating procedures*;

and

(b) the *trading price list* that is to apply to the half hour unless a *liquids event* is declared.

3.18 If—

(a) the *trading price list* notified under rule 3.17(b) is the same as the one which was in effect for the half hour when the *nomination* was submitted; and

(b) the *market service provider* proposes to accept the whole of the *member's nomination*,

then the *nomination* is the *member's "accepted nomination"* for the half hour.

3.19 If—

(a) the *trading price list* notified under rule 3.17(b) is not the same as the one which was in effect for the half hour when the *nomination* was submitted (for which purpose the *price list* in effect when the *nomination* was submitted is the *normal price list* unless the *market service provider* had previously designated the *supply day* as a *high price day* under rule 4.7 or the relevant part of the *supply day* as a *liquids event* under rule 4.8); or

(b) the *market service provider* proposes not to accept the whole of the *member's nomination*,

or both, then—

(c) by 2pm on the *nomination day* the *member* may for each half hour in the *supply day*—

- (i) withdraw its *nomination*; or
- (ii) submit a "**revised nomination**"; or
- (iii) notify the *market service provider* that it will accept the amount notified by the *market service provider* under rule 3.17(a) under the price list notified by the *market service provider* under rule 3.17(b);

and

(d) unless the *member* withdraws its *nomination* under rule 3.19(c)(i), the *member* and the *market service provider* must communicate and by 4pm on the *nomination day* must agree upon the "**accepted nomination**" and the price for the half hour, in accordance with—

- (i) rule 3.21; and
- (ii) any applicable *operating procedures*.

(e) The *market service provider* may reject a *revised nomination* for a half hour if the *revised nomination* is for *trading top-up electricity* when the *member* originally *nominated* under rule 3.16 for *trading spill electricity* for the half hour, and vice versa.

(f) If,

- (i) the *market service provider* notifies a *member* of a change in price under rule 3.17(a) or a change in the *member's nomination* amount under rule 3.17(b); and
- (ii) the *member* does not *communicate* with the *market service provider* regarding its *nomination* in accordance with rule 3.19(d),

then the *member's nomination* will lapse, and the *member* is deemed not to accept or supply any *trading electricity* on the *supply day*.

When market service provider may refuse to accept nomination

3.20 The *market service provider* may (acting as a *reasonable and prudent person*) refuse to accept a *nomination* from a *member* in a month if—

- (a) the *member* fails to comply with the *nomination* procedure set out in these rules or in the *operating procedures* for that month; or
- (b) it is permitted to do so under Chapter 6; or
- (c) the *nomination* is for an amount greater than the *member's maximum trading requirement* notified under rule 3.9; or
- (d) the *member* has failed to comply with rule 3.12 for that month.

Level of nominations which must be accepted

3.21 The *market service provider* must accept *nominations* for *trading electricity* for a half hour up to the level (across all *members*) above which, in the *market service provider's* view as a *reasonable and prudent person*, accepting a higher level of *nominations*—

- (a) could compromise the secure and reliable operation of the *SWIS*; or
- (b) in the case of *trading top-up electricity*—might reasonably be expected to require *liquids* to be burnt in the half hour.

3.22 The *market service provider* (acting as a *reasonable and prudent person*) must—

- (a) aggregate *nominations* across *members* and across *trading electricity* for the purposes of rule 3.21 using a methodology which would be adopted by a *reasonable and prudent person*; and
- (b) apportion *nominations* between *members* for a day, if not all *members' nominations* for *trading electricity* can be accepted for the day, on a pro-rata basis by reference to the *members' nominations* (but the *market service provider* may change the apportionment if it believes in good faith that a *member's* nomination was deliberately set at a level designed to influence the outcome of this apportionment).

Effect of an accepted nomination

3.23 An *accepted nomination* has effect as a contract between the *member* and the *market service provider* for the provision for the half hour of the amount of *trading electricity* specified in the *accepted nomination* at a price determined under rule 4.5.

3.24 The *TUAS charges* are payable whether or not the *market service provider* supplies the amount of *trading top-up electricity* or a *member* supplies the amount of *trading spill electricity* specified in the *accepted nomination*.

Forecast production data

3.25 For the purposes of rule 3.28, a *member* may provide non-binding “**forecast production data**” for each month—

- (a) if it is an *intermittent renewable generator*; or
- (b) if it is both an *intermittent renewable generator* and a *dispatchable generator*, in which case it may do so in relation to its *intermittent renewable plant*.

3.26 *Forecast production data* for a month must be provided at least 2 weeks before the *market service provider* is obliged to *publish* a *price list* under rule 5.10(b).

3.27 Rule 3.26 does not apply in respect of the first 4 months after these rules commence.

Balancing band

3.28 The “**balancing band**” for a *member* for a half hour in a *supply day* is determined as follows—

- (a) for *balancing spill electricity*, the *balancing band* is the larger of—
 - (i) if the *member's* plant includes *intermittent renewable plant* (whether or not it also includes *dispatchable plant*) and the *member* has provided *forecast production data* in respect of the *supply day*—the sum of the *DSOCs* of the *member's intermittent renewable plants* for which the *forecast production data* has been provided under rule 3.25; and
 - (ii) the lesser of 10 MW and the sum (across all the *member's dispatchable plant* if any) of the *member's DSOCs*;

and

- (b) for *balancing top-up electricity*, the *balancing band* is the larger of—
 - (i) if the *member's* plant includes *intermittent renewable plant* (whether or not it also includes *dispatchable plant*) and the *member* has provided *forecast production data* in respect of the *supply day*—the lesser of the sum of the *DSOCs* of the *member's intermittent renewable plants* for which the *forecast production data* has been provided under rule 3.25 and the *member's TCMD*; and
 - (ii) the lesser of 10 MW and the *member's TCMD*.

Calculating member's imbalance

3.29 The *member's* “**imbalance**” for a half hour in a *supply day* is calculated as—

- (a) the sum of all the *member's* electricity generation (adjusted for *line losses*) in the half hour plus the amount of any *trading top-up electricity* in an *accepted nomination* for the half hour (adjusted for *line losses*),

minus—

- (b) the sum of all of the *member's* electricity loads (adjusted for *line losses*) in the half hour plus the amount of any *trading spill electricity* in an *accepted nomination* for the half hour (adjusted for *line losses*).

The market service provider must supply or accept balancing electricity

3.30 The *market service provider* must—

- (a) if the *imbalance* is a negative number—supply *balancing top-up electricity* up to the lesser of—
 - (i) the *member's imbalance*; and
 - (ii) the *member's balancing band* for *top-up electricity* calculated under rule 3.28(b);
 and
- (b) if the *imbalance* is a positive number—accept *balancing spill electricity* up to the lesser of —
 - (i) the *member's imbalance*; and
 - (ii) the *member's balancing band* for *spill electricity* calculated under rule 3.28(a).

Members must maintain adequate generation capacity

3.31 The *member* must ensure at all times that the sum of electricity (adjusted for *line losses*) which it is transferring out of the *SWIS* at any time at all *exit points* covered by the *access contract* is equal to or less than the sum of the *DSOC* of all its generating plant at *entry points* covered by the *access contract*.

3.32 If the *member* is an *intermittent renewable generator*, then it must ensure that the sum of electricity (adjusted for *line losses*) which it is transferring out of the *SWIS* at all *exit points* covered by the *access contract* calculated over a year is equal to or less than the sum of—

- (a) 110% of the sum of the *output* from all its *intermittent renewable plant* at *entry points* covered by the *access contract* in the year; and
- (b) if it also has *dispatchable plant*—the electricity production capability of its *dispatchable plant* (calculated as the *DSOC* of the *dispatchable plant* multiplied by the number of hours over the year).

These rules do not affect standby power and ancillary services arrangements

3.33 Nothing in these rules affects—

- (a) any obligation on a *member* to have arrangements in place in respect of standby power or ancillary services; or
- (b) the operation of any such arrangements.

Top up and spill calculated on an aggregated basis

3.34 Requirements for *trading electricity* and *balancing electricity* are calculated on an aggregated basis for each *access contract*, across all of the *member's entry points* and *exit points*.

Relief from obligation to provide trading electricity

3.35 To the extent that the *market service provider* as a *reasonable and prudent person* determines that continuing to supply *trading electricity* to a *member* or accept *trading electricity* from a *member* could compromise the secure and reliable operation of the *SWIS*, then—

- (a) the *market service provider* may refuse to supply or accept the *trading electricity*; and
- (b) to the extent that the *market service provider* refuses under rule 3.35(a) to supply or accept *trading electricity*, then either—
 - (i) if the refusal is to supply *trading top-up electricity*—the *market service provider* must pay the *member* for each kWh of *trading electricity* not provided, at a rate per kWh equal to the prevailing “residual imbalance (top-up) fee” in Appendix 3 or Appendix 4 (as applicable); or
 - (ii) if the refusal is to supply *trading spill electricity*—the *member* must pay the *market service provider* for each kWh of *trading electricity* not accepted, at a rate per kWh equal to the prevailing “residual imbalance (spill) fee” in Appendix 3 or Appendix 4 (as applicable);
 and
- (c) the *market service provider* must—
 - (i) communicate its refusal to provide or accept the *trading electricity* to the *member* as soon as possible; and
 - (ii) provide reasons for the curtailment to *members* within 48 hours of the curtailment taking effect; and
 - (iii) document the reasons for the curtailment in sufficient detail to allow for future audit of the decision in accordance with rule 5.17.

The TUAS market during a liquids event

3.36 Unless rule 3.35 applies, a *liquids event* has no effect on the *market service provider's* obligation to provide *trading electricity* up to the level of the *accepted nomination* or *balancing electricity*.

Calculating member's residual imbalance

3.37 A member's "residual imbalance" is determined as follows—

- (a) if the *imbalance* is a negative number, then—
 - (i) if the absolute value of the *imbalance* is less than or equal to the *member's balancing band* for *top-up electricity* calculated under rule 3.28(b)—the *residual imbalance* is zero; and
 - (ii) otherwise—the *residual imbalance* is calculated as follows—

$$RI = (-1) \times \{ |I| - BB_{TU} \},$$

where—

RI is the *residual imbalance*; and

$|I|$ is the absolute value of the *imbalance*; and

BB_{TU} is the member's *balancing band* for *top-up electricity* calculated under rule 3.28(b);

and

- (b) if the *imbalance* is a positive number, then—
 - (i) if the *imbalance* is less than or equal to the *member's balancing band* for *spill electricity* calculated under rule 3.28(a)—the *residual imbalance* is zero; and
 - (ii) otherwise—the *residual imbalance* is calculated as follows—

$$RI = I - BB_S,$$

where—

RI is the *residual imbalance*; and

I is the *imbalance*; and

BB_S is the *member's balancing band* for *spill electricity* calculated under rule 3.28(a).

ETR balancing provisions

3.38 In rule 3.39, "excluded ETR provisions" means regulations 21, 22, 23, 24 and 25 of the *ETR*.

3.39 To the extent that the *access contract* between the *member* and the *market service provider* relates to access to the "electricity transmission network" as defined in the *ETR*, then—

- (a) the *excluded ETR provisions* do not apply to, as terms of, or in respect of the *access contract*; and
- (b) the provisions in Appendix 3 apply as terms of the *access contract* as though—
 - (i) they were set out in Part 4 of the *ETR* in place of the *excluded ETR provisions*; and
 - (ii) they were specified in regulation 46 of the *ETR* as essential terms of the *access contract* for the purposes of clause 2(4) of Schedule 5 to the *Electricity Corporation Act 1994*; and
 - (iii) they were expressly incorporated into the *access contract*.

3.40 Rule 3.39(a) applies whether or not the *access contract* would otherwise be read as expressly or impliedly incorporating the *excluded ETR provisions* either in full or by reference.

EDR balancing provisions

3.41 In rule 3.42, "excluded EDR provisions" means regulations 23, 24, 25, 26 and 27 of the *EDR*.

3.42 To the extent that the *access contract* between the *member* and the *market service provider* relates to access to the "electricity distribution network" as defined in the *EDR*, then—

- (a) the *excluded EDR provisions* do not apply to, as terms of, or in respect of the *access contract*; and
- (b) the provisions in Appendix 4 apply as terms of the *access contract* as though—
 - (i) they were set out in Part 4 of the *EDR* in place of the *excluded EDR provisions*; and
 - (ii) they were specified in regulation 47 of the *EDR* as essential terms of the *access contract* for the purposes of clause 2(4) of Schedule 6 to the *Electricity Corporation Act 1994*; and
 - (iii) they were expressly incorporated into the *access contract*.

3.43 Rule 3.42(a) applies whether or not the *access contract* would otherwise be read as expressly or impliedly incorporating the *excluded EDR provisions* either in full or by reference.

CHAPTER 4—PRICE LISTS**Price lists**

4.1 For every half hour period in a *supply day*, there must at all times be *price lists* in effect which collectively specify—

- (a) a *trading top-up price* (for each *trading top-up band*); and
- (b) a *trading spill price* (for each *trading spill band*); and
- (c) a *balancing top-up price*; and
- (d) a *balancing spill price*.

4.2 The *market service provider* must prepare, and must *publish*, *price lists* which are consistent with rule 4.1 and rules 5.1 to 5.10 and are structured as follows—

- (a) for each of *balancing top-up electricity* and *balancing spill electricity*—
 - (i) there must be a *normal price list*; and
 - (ii) there may be one or more *high price lists*; and
 - (iii) there may be a *liquids price list*,
 each of which is a “**balancing price list**”; and
- (b) for each *trading band*, for each of *trading top-up electricity* and *trading spill electricity*—
 - (i) there must be a *normal price list*; and
 - (ii) there may be one or more *high price lists*; and
 - (iii) there may be a *liquids price list*,
 each of which is a “**trading price list**”.

Residual imbalance tariff list

4.3 The *market service provider* must prepare, and must *publish*, a *residual imbalance tariff list* for *residual imbalance tariffs*, and the tariffs contained in that *residual imbalance tariff list* must be calculated in accordance with rule 5.7.

4.4 The *residual imbalance tariff list* may be expressed as one or more margins which apply above or below the prices in a *price list*.

Determining the price payable

4.5 The price payable for *trading electricity* for a half hour in a *supply day* is—

- (a) subject to rule 4.5(b), the price specified for the half hour in the *trading price list* notified for the *supply day* under rule 3.17(b); or
- (b) if the *market service provider* and the *member* agree a different price under rule 3.19(d), the agreed price.

4.6 The price payable for *balancing electricity* for a half hour in a *supply day* is—

- (a) subject to rules 4.6(b) and 4.6(c)—the price specified for the half hour in the relevant *normal price list* for the *balancing electricity*; or
- (b) subject to rule 4.6(c), if the day has been designated a *high price day*—the price specified for the half hour in the relevant *high price list*; or
- (c) if the half hour is within a period which has been designated as a *liquids event* and the *market service provider* has prepared and *published* a *liquids price list* for the type of *balancing electricity* concerned—the price specified for the half hour in the relevant *liquids price list*.

High price days

4.7 The *market service provider* may designate a *supply day* to be a *high price day*—

- (a) when the criteria specified in the *operating procedures* for doing so are met; and
- (b) by notice given in accordance with the *operating procedures*; and
- (c) at any time before, or at, the time specified in rule 3.17 on the *nomination day*.

Liquids events

4.8 The *market service provider* may designate a period of time (which may be all or part of the day) to be a *liquids event*—

- (a) when the criteria specified in the *operating procedures* for doing so are met; and
- (b) by notice given in accordance with the *operating procedures*; and
- (c) at any time prior to 30 minutes before the start of the period.

4.9 The *market service provider* must not designate more than one *liquids event* per *supply day*.

Trading bands

4.10 A “**trading band**” is a band for *trading electricity*, the boundaries of which are to be determined for each *member* in accordance with the *operating procedures*.

The market service provider may offer higher spill prices

4.11 The *market service provider* may from time to time, at its discretion, by notice to the *member*—

- (a) offer higher *trading spill prices* than those set out in the prevailing *price lists*; and
- (b) if so, set a limit on how much *trading spill electricity* it is willing to accept at the higher prices.

Replacement of price lists in changed circumstances

4.12 If, during a period for which a *price list published* under rule 5.8 or rule 5.10 applies, an event occurs—

- (a) which is beyond the *market service provider’s* control, and which the *market service provider* acting as a *reasonable and prudent person* is not able to prevent or overcome; and
- (b) which results in a substantial change in the *market service provider’s* costs of electricity generation from the level of those costs used when calculating the prices in the *price list*,

then the *market service provider* must—

- (c) prepare and *publish* proposed *replacement price lists*; and
- (d) provide a copy of each proposed *replacement price list* to the Minister, together with all reasonable supporting information required by the Minister.

4.13 The Minister has the function of auditing (to a standard and in accordance with procedures determined by the Minister in his or her discretion) the *replacement price lists* proposed under rule 4.12 to confirm that the circumstances justify their use and the prices in them.

4.14 Unless the Minister determines as a result of an audit under rule 4.13 that the circumstances do not justify the use of the *replacement price lists* proposed under rule 4.12 or the prices in them, the *replacement price lists* take effect 5 *business days* after they are provided to the Minister under rule 4.12(d).

CHAPTER 5—PRICING PRINCIPLES AND REVIEW

Prices to be economically cost neutral

5.1 Subject to rule 5.4, the prices in *price lists* must be determined with a view to achieving the objective that the *market service provider's* provision of *balancing electricity* and *trading electricity* is “**economically cost neutral**”.

5.2 *Economic cost neutrality* will be achieved if the *market service provider* is materially neither economically advantaged nor disadvantaged by providing all the *balancing electricity* and *trading electricity* collectively over the period to which the *price lists* apply.

5.3 *Economic cost neutrality* is to be assessed having regard to the forecast short run marginal cost of providing the *balancing electricity* and *trading electricity*, taking into account—

- (a) the impact of seasons, daily load profile and variations between *business days* and non-business days; and
- (b) the operating cost of plant dispatched by the *market service provider* to provide the *balancing electricity* and *trading electricity*, including allowances for scheduled maintenance of plant; and
- (c) the anticipated impact of the *balancing electricity* and *trading electricity* usage on the cost of providing the *balancing electricity* and *trading electricity*, including impacts on operating costs, fuel purchases and fuel storage costs; and
- (d) excluding any allowance for the cost of capital of generating plant used to provide the *balancing electricity* and *trading electricity*; and
- (e) the cost of administration of these rules; and
- (f) the administration fees payable by *members*; and
- (g) all *price lists* that will be in effect during the *pricing period*, and the likely amount of time that each *price list* will be applying.

Top-up trading prices may include 3% margin

5.4 The *top-up prices* in a *trading price list* may be 3% higher than would be required to achieve *economic cost neutrality*.

Trading prices may differ from balancing prices

5.5 The *price lists* for *trading electricity* may diverge from the *price lists* for the *balancing electricity* to account for the anticipated impact of usage of *balancing electricity* and *trading electricity* on the cost of providing the *balancing electricity* and *trading electricity*.

Balancing top-up price not to exceed balancing spill price

5.6 For any half hour period in the *balancing band* the *top-up price* must be equal to or less than the *spill price*.

Residual imbalance tariffs

5.7 The tariffs in the *residual imbalance tariff list*—

- (a) may diverge from the principle of economic cost neutrality set out in rule 5.2 and rule 5.3, but only to the extent necessary to provide an incentive for a *member* to endeavour to maintain its *residual imbalance* at zero; and
- (b) must not be punitive.

Pricing period and pricing review

5.8 The initial *price lists* to apply from the commencement of these rules must be *published* immediately after these rules commence.

5.9 The initial *price lists* must specify prices for *balancing electricity* and *trading electricity* and charges for *residual imbalance* covering at least a 3-month period beginning at the date these rules commence.

5.10 Subsequent *price lists* must—

- (a) specify prices for *balancing electricity* and *trading electricity* and charges for *residual imbalance* covering at least a 1 month period beginning the day after the previous *price list* expires; and
- (b) be *published* by the *market service provider* at least 2 months before the *price list* is to take effect.

Administration Fee

5.11 The *market service provider* may charge an “**administration fee**” to *members* in connection with the provision of *balancing electricity* and *trading electricity*.

5.12 The *administration fee* must be determined with a view to achieving the objectives of *economic cost neutrality* under rules 5.1 to 5.3, subject to the following additional objectives—

- (a) recovering the reasonable costs referred to in rule 5.13 over the reasonably anticipated life of the *TUAS market* and its successors, from all reasonably anticipated users; and
- (b) not imposing an inappropriate barrier to entry for initial *members*.

5.13 The *administration fee* will be sufficient to cover the costs directly connected with—

- (a) the further development of the pricing model; and
- (b) calculating prices; and
- (c) setting up the *TUAS market*; and
- (d) communications with *members*; and
- (e) managing the *TUAS market*; and
- (f) any audit under these rules; and
- (g) settlement.

5.14 Before imposing or changing an *administration fee*—

- (a) the *market service provider* must give the Minister notice of the proposed *administration fee*, together with all reasonable supporting information required by the Minister; and
- (b) the Minister has the function of auditing (to a standard and in accordance with procedures determined by the Minister in his or her discretion) the *administration fee* to confirm that it complies with rules 5.12 and 5.13; and
- (c) unless the Minister determines as a result of the audit that the *administration fee* does not comply with rules 5.12 and 5.13, the *administration fee* takes effect 5 *business days* after the notice was provided to the Minister under rule 5.14(a).

5.15 The *administration fee* is payable quarterly and in arrears.

5.16 If the *member* has paid the *administration fee* for a quarter, it is exempted from paying any fee for administration charged by the *market service provider* under the *access regulations* for the quarter in respect of supply of *balancing electricity*.

Audit procedures

5.17 In accordance with Appendix 2, the *market service provider* must appoint an *auditor* to undertake an *audit* of—

- (a) the *price lists*; and
- (b) the *administration fee*; and
- (c) the *market service provider's* designation of *high price days*; and
- (d) the *market service provider's* designation of *liquid events*; and
- (e) curtailments of *trading electricity* enforced under rule 3.35.

5.18 To avoid doubt, the *residual imbalance tariffs* contained in the *residual imbalance tariff list* published by the *market service provider* under rule 4.3 will not be audited under rule 5.17.

5.19 The Minister may direct the *auditor* appointed under rule 5.17 to take into account, when performing his or her functions under Appendix 2, any matters referred to the Minister by *members* under rule 6.14.

CHAPTER 6—COMPLIANCE

Default

6.1 A *member* is in *default* if—

- (a) the *member* defaults in the due and punctual payment, at the time and in the manner required for payment by these rules, of any amount payable under these rules (“**default of payment**”); or
- (b) the *member* defaults in the due and punctual performance or observance of any of its obligations contained or implied by operation of law in these rules; or
- (c) an insolvency event occurs in respect of the *member*; or
- (d) the *member* materially breaches any representation or warranty given to the other *member* under these rules.

Payment default

6.2 The *market service provider* may give a “**payment default notice**” to a *member* (other than the *market service provider*) when the *member* is in *default of payment*.

6.3 The *market service provider* must withdraw a *payment default notice* as soon as the circumstances for the issue of a *payment default notice* cease to apply.

Effect of payment default notice

6.4 The *market service provider* may refuse to—

- (a) supply *balancing top-up electricity* to; and
- (b) accept *balancing spill electricity* from,

a *member* while the *member* is in receipt of a *payment default notice*.

6.5 To the extent that a *member* has been given a *payment default notice* and has an *imbalance* then the *imbalance* is to be dealt with as a *residual imbalance* under Appendix 3 or Appendix 4 as applicable.

General default

6.6 The *market service provider* may give a “**general default notice**” to a *member* (other than the *market service provider*) when the *member* is in *default*.

6.7 The *market service provider* must withdraw a *general default notice* as soon as the circumstances for the issue of a *general default notice* cease to apply.

Effect of general default notice

6.8 The *market service provider* may refuse to—

- (a) supply *trading top-up electricity* to; and
- (b) accept *trading spill electricity* from,

a *member* while the *member* is in receipt of a *payment default notice* or a *general default notice*.

Written warning for having a residual imbalance

6.9 If a *member* has a *residual imbalance* of an amount other than zero then the *market service provider* may issue a written warning advising the *member* of its failure to comply.

6.10 A warning under rule 6.9 may be issued as soon as practicable after settlement of the *balancing month* during which the *residual imbalance* occurred, or at any earlier time.

Imbalance default

6.11 The *market service provider* may as soon as practicable after settlement of the *balancing month*, or at any earlier time in respect of a *balancing month*, give an “**imbalance default notice**” to a *member* (other than the *market service provider*) if—

- (i) the *member* has a *residual imbalance* of an amount other than zero for at least one half hour in the *balancing month*; and
- (ii) the *market service provider* acting as a *reasonable and prudent person* determines that on at least one occasion in the *balancing month* the cause of the *member* having a *residual imbalance* of an amount other than zero was the *member's* failure to use reasonable endeavours to ensure that its *residual imbalance* for the half hour is zero.

Effect of imbalance default notice

6.12 The *market service provider* may refuse to—

- (a) supply *trading top-up electricity* to; and
- (b) accept *trading spill electricity* from,

a *member* from the date of receipt by the *member* of an *imbalance default notice* (“**receipt date**”) until the expiry of the period specified in rule 6.13 (“**expiry date**”).

6.13 The *expiry date* for the purposes of 6.12 is—

- (a) 7 days from the *receipt date*, if the *imbalance default notice* is the first *imbalance default notice* received in any 12 month period; or
- (b) up to 14 days from the *receipt date*, if the *imbalance default notice* is the second *imbalance default notice* received in any 12 month period; or
- (c) up to 21 days from the *receipt date*, if the *imbalance default notice* is the third *imbalance default notice* received in any 12 month period; or
- (d) up to the total number of days remaining in a *balancing month*, if the *imbalance default notice* is the fourth or further *imbalance default notice* received in any 12 month period.

Default by the market service provider

6.14 A *member* may refer to the Minister any failure or suspected failure by the *market service provider* to comply with these rules.

No termination for member's default

6.15 A *member's membership* is not to be terminated for *default* by the *member*.

6.16 Nothing in rule 6.15 limits any other remedies that may be available to another member as a result of the *default*.

{Note: The parties may agree, or the arbitrator may determine when determining an access dispute, to include in an access contract a provision creating consequences in an access contract when a party is in breach under these rules.}

CHAPTER 7—INTERMITTENT RENEWABLE ENERGY GENERATORS

Intermittent renewable generators defined

7.1 In these rules, “**intermittent renewable generator**” means a generator that has no or limited ability to control the availability of the renewable energy source used to generate electricity and which has no or very limited capacity to store energy.

{Examples of *intermittent renewable generators* include wind farms, solar thermal (without storage) and run-of-river hydro generators.}

Output for intermittent renewable generators

7.2 For the purposes of rule 3.32(a), the “**output**” of an *intermittent renewable generator* for a particular 12 month period is the energy in kWh produced by the generator in the period.

CHAPTER 8—DISPUTE RESOLUTION**Applicant**

8.1 For the purpose of this Chapter 8 “**applicant**” means the *market service provider* or a *member* who has given notice of dispute under rule 8.3.

Disputes

8.2 The *members* must attempt to resolve any disputes arising out of or in connection with these rules in good faith by way of discussions between their respective authorised senior officers.

8.3 If the disputes are not resolved after 10 *business days* after discussions under rule 8.2 commence, either party may give written notice to—

- (a) the *arbitrator*; and
- (b) the other party,

and the dispute is by that notice referred to arbitration by the *arbitrator*.

8.4 An *applicant* may withdraw notification of the dispute at any time by notice to the *arbitrator* and all other parties to the dispute.

8.5 The *arbitrator*—

- (a) is not obliged to conduct an arbitration; and
- (b) may terminate an arbitration,

if, in the *arbitrator*’s opinion—

- (c) the subject matter of the dispute is trivial, misconceived or lacking in substance; or
- (d) the notification of the dispute was vexatious; or
- (e) the *applicant* has not complied with rule 8.2 or has resorted to arbitration prematurely or unreasonably; or
- (f) the *arbitrator* is otherwise satisfied, on the application of a party to the dispute, that there are good reasons why the dispute should not be arbitrated.

Procedure

8.6 Appendix 6 applies.

Award by the arbitrator

8.7 The *arbitrator* must make a written award concerning the dispute.

8.8 The award referred to in rule 8.7—

- (a) must deal with the matter that was the basis for the notification of the dispute; and
- (b) may deal with any other matter that the *arbitrator* considers expedient to justly dispose of any proceedings before it.

8.9 Before making an award, the *arbitrator* must give a draft award to the parties to the arbitration and may take into account representations that any of them may make on the proposed award.

8.10 When the *arbitrator* makes an award, the *arbitrator* must give the parties to the arbitration written reasons for making the award.

Restrictions on awards

8.11 The *arbitrator* must not make an award that—

- (a) prejudices the rights of a *member* under these rules unless that *member* agrees or the *arbitrator* is satisfied that the *member* is or will be compensated on just terms for any loss suffered as a result; or
- (b) threatens the financial viability of the *market service provider*.

Effect of awards

8.12 Subject to rule 8.13, an award is binding on the parties to the arbitration in which it is made, from the date specified by the *arbitrator*.

8.13 An *applicant* may, within 2 *business days* after an award is made which orders the *market service provider* to grant membership to the *applicant*, elect not to become a *member* as specified by the award by giving written notice of the election to the *arbitrator* and the *market service provider*.

No third party intervention in arbitration

8.14 Nothing in Chapter 8 gives any person other than the *market service provider* and the *applicant* a right to be heard before the *arbitrator*.

Performance of obligations

8.15 The *parties* must continue to perform their obligations under these rules despite the existence of a dispute, unless they agree otherwise or the *arbitrator* orders otherwise.

Commercial Arbitration Act 1985 does not apply

8.16 The dispute resolution processes provided for by these rules are not arbitrations within the meaning of the *Commercial Arbitration Act 1985*.

Additional jurisdiction of arbitrator for contractual disputes

8.17 The *arbitrator* has jurisdiction to hear a contractual dispute between the *market service provider* and a *member* if—

- (a) the agreement is one made under rule 2.18; and
- (b) the dispute is referred to the *arbitrator* under the agreement.

Procedural rules for contractual disputes

8.18 Except to the extent that an agreement made under rule 2.18 provides otherwise, Appendix 6 applies with the appropriate modifications to the *arbitrator's* hearing of a contractual dispute.

CHAPTER 9—OTHER PROVISIONS**Provisions of access contract apply**

9.1 Except where these rules provide otherwise, the provisions of the *access contract* apply to govern the relationship between the *market service provider* and another *member*.

9.2 Without limiting the generality of rule 9.1 and except where these rules provide otherwise, the following provisions of the *access contract* (if any) apply between the *member* and the *market service provider* in respect of the supply and acceptance of *balancing electricity* and *trading electricity*—

- (a) invoicing and payment; and
- (b) representations and warranties; and
- (c) liability and indemnity; and
- (d) force majeure; and
- (e) notices.

Publishing information

9.3 Where a person is required to “**publish**” a thing under these rules, it must place details of the thing on a suitable website where it can be accessed by the relevant parties.

Title to electricity

9.4 Title to, and risk in, electricity which is transferred into a *network* at a *connection point* under these rules passes from a *member* other than the *market service provider* to the *market service provider* at the time it passes through the *connection point*.

9.5 Title to, and risk in, electricity which is transferred out of a *network* at a *connection point* under these rules passes from the *market service provider* to a *member* other than the *market service provider* at the time it passes through the *connection point*.

9.6 To avoid any doubt, by executing or complying with its obligations under these rules, a *member* other than the *market service provider* does not acquire any right, title or interest in or to the *network*.

CHAPTER 10—OPERATING PROCEDURES**Members must comply with operating procedures**

10.1 Each *member* including the *market service provider* must comply with the *operating procedures* contained in Appendix 5.

CHAPTER 11—TUAS CONSULTATION GROUP

11.1 The Minister may from time to time convene a “**TUAS consultation group**” comprising—

- (a) an *appointee* representing the Coordinator of Energy;
- (b) 2 *appointees* representing the *market service provider*; and
- (c) 2 *appointees* representing the interests of *members* and potential *members*.

11.2 The Minister may from time to time appoint, and may from time to time remove and replace, one *appointee* as Chairperson of the *TUAS consultation group*.

11.3 The Minister may appoint each *appointee* for a period of up to 2 years (but this does not limit clause 11.5 or the Minister's powers under rules 11.6(b)).

11.4 The Minister may re-appoint an *appointee* whose term of appointment has expired.

11.5 A person immediately ceases to be an *appointee* if the person—

- (a) becomes of unsound mind or a person liable, or a person whose assets are liable, to any control or administration under any law relating to physical or mental health; or
- (b) resigns by notice to the Minister; or
- (c) dies; or
- (d) ceases to be a representative of the Coordinator of Energy, the *market service provider*, or a *member* or potential *member* (as the case may be).

11.6 The Minister—

- (a) is to determine appointments (in accordance with rule 11.1) to, and constitution and procedures of, the *TUAS consultation group*; and
- (b) may discharge, alter or reconstitute the *TUAS consultation group*.

11.7 Subject to rule 11.6, the *TUAS consultation group* may determine its own procedures.

CHAPTER 12—AMENDMENT OF RULES

Transitional amendments

12.1 The Minister may, within a 2 month period after the commencement of these rules, forego or abbreviate any consultation phase of these amendment procedures in respect of a proposed amendment to these rules.

Submission of request for amendment of the rules

12.2 Any person with a legitimate interest in requesting an amendment to these rules may make a written submission to the Minister specifying the proposed amendment and demonstrating why the amendment is necessary or desirable.

Amendment of TUAS market rules

12.3 The Minister may within 7 days either—

- (a) determine that the proposed amendment is vexatious, frivolous or not made in good faith, in which case he or she must notify the person who made the submission and the *market service provider* of the decision; or
- (b) refer the proposed amendment to the *TUAS consultation group*.

12.4 The *TUAS consultation group* may within 10 *business days* after the day on which the submission was provided to it—

- (a) determine whether the proposed amendment is likely to have a low impact on the *members* or the *market service provider*; and
- (b) notify the Minister of any determination under 12.4(a).

12.5 Without limiting the *TUAS consultation group's* discretion under rule 12.4—

- (a) a proposed amendment has a low impact if it—
 - (i) corrects a typographical error; or
 - (ii) does not have a material impact on the information technology systems of the *market service provider* or other *members*; or
 - (iii) does not have a material impact on the *market service provider* or other *members*; and
- (b) a proposed amendment is determined to have a high impact if it is not determined to have a low impact.

12.6 The *TUAS consultation group*, within 10 business days after the day on which the submission was provided to it, must make a recommendation to the Minister stating—

- (a) whether he or she should proceed with the proposed amendment; and
- (b) if so the form the amendment should take.

12.7 The Minister must consult with *interested persons* before making a decision under rule 12.8 if—

- (a) the *TUAS consultation group* determines that the proposed amendment is likely to have a high impact on the *members* or the *market service provider*; or
- (b) the *TUAS consultation group* does not make a determination under rule 12.4.

12.8 The Minister may consider any recommendation made by the *TUAS consultation group* and make a decision whether the proposed amendment be—

- (a) approved; or
- (b) not approved, in which case the Minister may state details of the revisions required before the Minister may approve the proposed amendment.

12.9 As soon as practicable after making his or her decision, the Minister may notify the *interested persons* and the *TUAS consultation group* of his or her final decision and his or her reasons for the decision and the amendments to these rules take effect from the date specified by the Minister in his or her decision.

12.10 The Minister may produce an amended copy of these rules and make a public announcement that *interested persons* may obtain a copy of the amended rules from the Minister, as soon as reasonably practicable after a decision to make an amendment under rule 12.8 is made.

12.11 If the proposed amendment relates to Appendix 5, then the Minister must have regard to rule 12.13 when making a decision under rule 12.8.

12.12 The Minister may repeal these rules without complying with the amendment procedure specified in this Chapter 12.

Requirements for operating procedures

12.13 The *operating procedures* must—

- (a) be consistent with these rules; and
- (b) be fair; and

- (c) be reasonable; and
- (d) be consistent with *good electricity industry practice*; and
- (e) so far as reasonably practicable produce predictable and consistent outcomes, and not be susceptible to gaming by either the *market service provider* or another *member*; and
- (f) be sufficiently detailed and clear to enable a *member* or a prospective *member* to adequately determine its rights and obligations.

APPENDIX 1—APPLICATION FORM

{ See rule 2.2.}

This is an *application* under rule 2.2 of the Top-up and Spill Market Rules for the *applicant* to join the *TUAS market*.

Date

A1.1 Date of this application:

Applicant

{Provide details of the company which is to become the “member”.}

A1.2 Name (“**applicant**”)

A1.3 ACN or ABN

A1.4 Address

Contact person

{Provide details of the person who is to act as the liaison between the applicant and Western Power in respect of the application.}

A1.5 Name:

A1.6 Position:

A1.7 Phone:

A1.8 Fax:

A1.9 email:

Access contract

{Provide details of the access contract to which this application relates.}

A1.10 Date, and any other identifying details, of the access contract:

Modification of access contract

A1.11 (tick if applicable) The applicant offers to amend its access contract under rule 2.4

Information regarding security

A1.12 If the *applicant* has not ticked the box in clause A1.11, then the *applicant* must provide with this application financial and technical information which is reasonably sufficient to enable the *market service provider* to determine whether to require security under rule 2.6, and if so in respect of what amount.

Maximum trading requirements

A1.13 The *applicant’s maximum trading requirement* under rule 3.9—

(a) for *trading top-up electricity* is: kWh; and

(b) for *trading spill electricity* is: kWh.

{Note: The *maximum trading requirement* is to be specified in terms of energy (kWh) for each of top up and spill, for each half hour period in a day.}

Forecast production data

A1.14 The *applicant* may provide with this application any *forecast production data* which it elects to provide under rule 3.25.

Signing

Signed on behalf of the applicant—

By:

Name and position:

Date:

APPENDIX 2—TUAS AUDITS

{ See rule 5.17. }

Audit of the market service provider

A2.1 Six months after the date on which the *TUAS market rules* commenced, and at 12 monthly intervals thereafter, the *market service provider* must appoint an *auditor*, in accordance with clause A2.3, to undertake a *negative assurance audit* of the *market service provider's* compliance during the year with the provisions listed in rule 5.17.

A2.2 The *market service provider* must—

- (a) ensure that the *negative assurance audit* is conducted in accordance with this Appendix 2; and
- (b) obtain the *auditor's* final report of its findings within 2 months after the end of the period to which the *negative assurance audit* relates.

Auditor's qualifications etc

A2.3 An *auditor* appointed under this Appendix 2 must have sufficient qualifications, resources, professional skill and experience to enable it to undertake the audit for which it is appointed.

Auditor's conflict of interest

A2.4 In this clause A2.4, but subject to clause A2.7, the term “**conflict of interest**” includes, but is not limited to—

- (a) the holding of any office; or
- (b) the entering into, or giving effect to, any contract, arrangement, understanding or relationship,

by an *auditor* or any of its directors, officers, servants or agents whereby, directly or indirectly, duties or interests are or might be created for the *auditor* or any of the *auditor's* directors, officers, servants or agents which conflict, or might reasonably be expected to conflict, with any one or more of—

- (i) the *auditor's* duties in conducting an audit under this Appendix 2; or
- (ii) the interests of the *market service provider*; or
- (iii) the interests of a *member*.

A2.5 The *market service provider* must ensure that the *auditor*—

- (a) before commencing any audit, and in any audit report, provides full disclosure of all actual or potential *conflicts of interest*;
- (b) at all times has in operation effective procedures to detect any actual or potential *conflict of interest* which arises during the course of the audit; and
- (c) forthwith notifies the *market service provider* and *members* of any actual or potential *conflict of interest* which arises during the course of the audit, and of any non-compliance with this clause A2.5.

A2.6 The *market service provider* must not appoint an *auditor*, or having appointed an *auditor* must terminate the appointment, if the *market service provider* becomes aware of an actual or potential *conflict of interest* in the *auditor* which might reasonably be expected to materially adversely affect the *auditor's* independence and impartiality or the performance of its duties.

{Note: Examples of when an actual or potential *conflict of interest* in an *auditor* might reasonably be expected to materially adversely affect the *auditor's* independence and impartiality or the performance of its duties, would be if the *auditor* is the person who designed the relevant systems.}

A2.7 An *auditor* appointed to conduct an audit under this Appendix 2 is not to be taken to have a *conflict of interest* merely because it has previously been appointed to conduct an audit under this Appendix 2, or because it carries out other audit duties for a *member*.

Terms of auditor's retainer

A2.8 Except as stated in clauses A2.9 and A2.10, the terms of retainer of an *auditor* appointed under this Appendix 2 (including regarding remuneration, expenses, insurances and liability) are to be agreed between the *auditor* and the *market service provider*.

Confidentiality

A2.9 The *market service provider* must ensure that the *auditor* enters into a deed of undertaking regarding confidentiality on terms determined by the *market service provider* (acting reasonably), but that deed remains subject to clause A2.10.

A2.10 To the extent that disclosure by an *auditor* of any information or matter regarding a material non-compliance by the *market service provider* is necessary for the *auditor* to report on the material non-compliance, the *market service provider* must—

- (a) waive all of its rights to require that the *auditor* keep the information or matter confidential; and
- (b) authorise disclosure by the *auditor* of the information or matter in accordance with this Appendix 2.

The market service provider, members must cooperate with auditor

A2.11 The *market service provider* and other *members* must cooperate with and provide all reasonable assistance to an *auditor* appointed under this Appendix 2.

A2.12 Without limiting clause A2.11, the *market service provider* must comply without delay with any request by the *auditor* for the purpose of conducting an audit under this Appendix 2 for the *market service provider*—

- (a) to deliver to the *auditor* specified documents or records; and
- (b) to permit the *auditor*—
 - (i) to access its premises during a *business day*; and
 - (ii) to take copies of its records.

A2.13 As a pre-condition to cooperating and providing assistance under clause A2.12(b)(ii), a person may request to be identified as a covenantee under a deed executed under clause A2.9.

Audit report

A2.14 The *market service provider* must ensure that the *auditor's* report of a *negative assurance audit* under this Appendix 2 at least—

- (a) provides reasonable detail regarding the *auditor's* investigations and methodology; and
- (b) details any material restrictions or deficiencies in the *auditor's* access to or use of relevant documents or records; and
- (c) without limiting clause A2.14(a), details the circumstances of any non-compliance by the *market service provider* or the *member* with clauses A2.11 to A2.13, in respect of the *negative assurance audit*; and
- (d) complies with the deed of undertaking under clause A2.9; and
- (e) makes all disclosures required under clause A2.5; and
- (f) either—
 - (i) states that the *negative assurance audit* did not disclose non-compliance; or
 - (ii) provides details of each breach, non-compliance or other circumstance which prevents a statement under clause A2.14 being made.

Level of Audit

A2.15 In clauses A2.15 to A2.18, “**level**” means the degree of rigour with which a *negative assurance audit* is undertaken, including the size and nature of any sample used and the extent, if any, to which the sample is representative.

A2.16 The *market service provider* and the appointed *auditor* are to agree the *level* of the *negative assurance audit*.

A2.17 The *market service provider* must ensure that the intensity of the *negative assurance audit* is adequate and reasonable having regard to—

- (a) the requirements set out in this Appendix 2; and
- (b) the need for the *level* to be sufficient for the *auditor* as a *reasonable and prudent person* to state that the *negative assurance audit* did not disclose non-compliance; and
- (c) the objective that a *negative assurance audit* is normally designed to verify that systems and processes are functioning correctly.

A2.18 A *member* may challenge the adequacy or *level* of a *negative assurance audit* conducted under this Appendix 2 by referring a matter to the Minister.

Audit report

A2.19 For each audit period, the *auditor* must produce an audit report and provide a copy of the unedited audit report, within 2 months after the end of the relevant audit period, to—

- (a) the *market service provider*; and
- (b) the Minister.

Audit summary report

A2.20 For each audit period, the *auditor* must produce a summary audit report, after consulting with the *market service provider* regarding the content of the report, within 2 weeks after the end of the relevant audit period which—

- (a) details all significant instances of non-compliance identified in the *auditor's* report produced under this Appendix 2; and
- (b) details any action that has been taken or is proposed in respect of each instance of non-compliance identified in the audit report.

A2.21 The *auditor* must provide a copy of the summary audit report, within 5 *business days* of its completion, to the Minister.

A2.22 A *member* may request a copy of the summary audit report and the Minister may provide a copy to the *member* within 10 *business days* from the date of the request.

A2.23 The *auditor's* report under clause A2.20 must as far as practicable be consistent with making adequate disclosure, not disclose details of matters expressly identified to it by the *market service provider* during the audit period as comprising the *market service provider's* intellectual property, marketing systems, information technology or otherwise being confidential or commercially sensitive information.

APPENDIX 3—MODIFIED ETR BALANCING PROVISIONS

{ See rule 3.39.}

The provisions referred to in rule 3.39 are as follows—

“21. Interpretation of regulations 22, 23 and 25

In this regulation and regulations 22, 23 and 25—

- (a) the “**group of connections**” in respect of a user’s access agreement consists of the entry points and exit points specified in the access agreement and the entry points from which standby power is being supplied to one or more of those connections;
- (b) if the market service provider is providing standby power under an arrangement with a user, then that standby power is to be taken to have been supplied at the connection for Muja power station; and
- (c) rules 3.7 and 3.8 apply in respect of *spill electricity* and *top-up electricity* respectively.

22. Balancing

- (1) A user must use reasonable endeavours to ensure that its residual imbalance for a half hour is zero.
- (3) The half hourly residual imbalance charge in respect of an access agreement for a half hour is determined by applying the following formula—

$$RIC = RNA \times RIF \times \frac{1}{100}$$

where—

RIC (in \$) is the half hourly residual imbalance charge in respect of the access agreement for the half hour;

RNA (in kWh) means the user’s residual imbalance.

RIF (in ¢/kWh) is—

- (a) if RNA is negative, then the half hourly residual imbalance (top-up) fee set out in the residual imbalance tariff list applicable to the half hour; or
- (b) if RNA is positive, then the half hourly residual imbalance (spill) fee set out in the residual imbalance tariff list applicable to the half hour.
- (4) If the sum of the half hourly residual imbalance charges for the half hours in a month is negative, then an amount equal to -1 multiplied by that sum is payable by the user to Western Power, except if the user is Western Power.
- (5) If the sum for the half hourly residual imbalance charges for the half hours in a month is positive, then an amount equal to that sum is payable by Western Power to the user, except if the user is Western Power.

23. Excess standby generation charge

- (1) In this regulation—

- (a) the “**demand exit rate**” for the group of connections in respect of a user’s access agreement for a half hour is determined by applying the following formula—

$$DERA = \sum_{i=1}^{i=n} (PTExit_i \times LFExit_i) + SUR$$

where—

DERA (in kW) is the demand exit rate for the group of connections in respect of the access agreement for the half hour;

PTExit_i (in kW) is the average rate at which electricity is transferred at exit point_i from the electricity transmission network during the half hour under the access agreement;LFExit_i (a rate) is the loss factor for exit point_i determined under regulation 20;

the variable “i” represents an exit point which is one of the group of connections;

the variable “n” represents the number of exit points in the group of connections;

“SUR” means (in kW) the rate at which the user is transferring spill electricity to Western Power during the half hour.

- (b) the “**demand entry rate**” for the group of connections in respect of an access agreement for a half hour is determined by applying the following formula—

$$DER = \sum_{j=1}^{j=n} (PTEntry_j \times LFEntry_j) + TUR$$

where—

DER (in kW) is the demand entry rate for the group of connections in respect of the access agreement for the half hour;

PTEntry_j (in kW) is the average rate at which electricity is transferred at entry point_j to the electricity transmission network during the half hour under the access agreement;

LFEntry_j (a rate) is the loss factor for entry point_j determined under regulation 20;

the variable “j” represents an entry point which is one of the group of connections;

the variable “n” represents the number of entry points in the group of connections;

“TUR” means (in kW) the rate at which Western Power is transferring top-up electricity to the user during the half hour.

- (c) the “**standby generation reservation**” (in kW) for a group of connections is the aggregate rate at which Western Power may be required to transfer standby power to the connections in the group of connections under the access agreement;
- (d) the “**excess demand**” (in kW) in respect of a group of connections for a half hour is equal to—
- (i) the demand exit rate for the group of connections for the half hour;
- minus
- (ii) the demand entry rate for the group of connections for the half hour;
- minus
- (iii) the standby generation reservation for the group of connections for the half hour, but if the result of this calculation is negative, then the excess demand in respect of the group of connections for the half hour is zero;
- (e) if the excess demand in respect of a group of connections for a half hour is not zero, then an excess demand period in respect of the group of connections commences at the start of that half hour, except if that half hour already falls within an excess demand period in respect of the group of connections;
- (f) each excess demand period in respect of a group of connections includes 336 half hours.
- (2) If an excess demand period in respect of a group of connections in respect of a user’s access agreement commences during a month, then the excess standby generation capacity charge payable by the user in respect of the group of connections for the month is determined by applying the following formula—

$$ESCC = \sum_{i=1}^{i=n} (E_i \times ESGF)$$

where—

ESCC (in \$) is the excess standby generation capacity charge in respect of the group of connections for the month;

E_i (in kW) is the highest excess demand in respect of the group of connections for any half hour falling within excess demand period;

ESGF (in \$/kW) is the excess standby generation capacity fee set out in the fee schedule for the financial year in which the month falls;

the variable “i” represents an excess demand period in respect of the group of connections that commenced during the month;

the variable “n” represents the number of excess demand periods in respect of the group of connections that commenced during the month.

24. Excess network usage charge

- (1) In this subregulation and subregulation (2)—
- (a) the “**excess amount**” in respect of an entry point for a half hour is equal to—
 - (i) the average aggregate rate (in kW) at which the generating units connected at the entry point transferred electricity to the electricity transmission network during that half hour;

minus

 - (ii) the aggregate of the declared sent-out capacity figures (in kW) for those generating units,

but if the result of this calculation is negative, then the excess amount in respect of the entry point for the half hour is zero;
 - (b) if the excess amount in respect of an entry point for a half hour is more than zero, then an excess period in respect of the entry point commences at the start of that half hour, except if that half hour already falls within an excess period in respect of the entry point; and
 - (c) each excess period in respect of an entry point includes 336 half hours.
- (2) If an excess period in respect of a user’s entry point commences during a month, then the excess network usage charge payable by the user in respect of the entry point for the month is determined by applying the following formula—

$$ENUC = \sum_{i=1}^{i=n} (E_i \times USF \times EF)$$

where—

ENUC (in \$) is the excess network usage charge in respect of the entry point for the month;

E_i (in kW) is the highest excess amount for any of the half hours which fall within excess period;

USF (in \$/kW) is the use of system fee in respect of the entry point determined in accordance with the user's access agreement;

EF (a rate) is the excess network usage factor set out in the fee schedule for the financial year in which the month falls;

the variable "i" represents an excess period in respect of the entry point which commences during the month;

the variable "n" represents the number of excess periods in respect of the entry point which commence during the month.

(3) In this subregulation and subregulation (4)—

(a) the "excess rate" in respect of an exit point for a half hour is equal to—

(i) the average rate (in kW) at which electricity is transferred from the electricity transmission network at the exit point during that half hour;

minus

(ii) the contract maximum demand for the exit point,

but, if the result of this calculation is negative, then the excess rate in respect of the exit point for the half hour is zero;

(b) if the excess rate in respect of an exit point for a half hour is more than zero, then an excess demand period in respect of the exit point commences at the start of that half hour, except if that half hour already falls within an excess demand period in respect of the exit point; and

(c) each excess demand period in respect of an exit point includes 336 half hours.

(4) If an excess demand period in respect of a user's exit point commences during a month, then the excess network usage charge payable by the user in respect of the exit point for the month is determined by applying the following formula—

$$\text{ENUC} = \sum_{i=1}^{i=n} (E_i \times (\text{USF} + \text{CSF}) \times \text{EF})$$

where—

ENUC (in \$) is the excess network usage charge in respect of the exit point for the month;

E_i (in kW) is the highest excess rate for any of the half hours which fall within excess demand period;

USF (in \$/kW) is the use of system fee in respect of the exit point determined in accordance with the user's access agreement;

CSF (in \$/kW) is the common service fee determined in accordance with the user's access agreement;

EF (a rate) is the excess network usage factor set out in the fee schedule for the financial year in which the month falls;

the variable "i" represents an excess demand period in respect of the exit point which commences during the month;

the variable "n" represents the number of excess demand periods in respect of the exit point which commence during the month.

25. Other consequences of being out of balance

(1) For the purposes of this regulation, a user is materially out of balance in respect of an access agreement for a half hour if its residual imbalance is not zero.

(2) If Western Power becomes aware that—

(a) a user is materially out of balance in respect of one of its access agreements for a period; and

(b) as a result, the operation of the electricity transmission network or the electricity distribution network as defined in the *Electricity Distribution Regulations 1997* is likely to be materially adversely affected or persons with electrical installations connected to the electricity transmission network or the electricity distribution network as defined in the *Electricity Distribution Regulations 1997* are likely to be materially adversely affected,

then, subject to subregulation (3), Western Power may interrupt or curtail the transfer of electricity to or from one or more of the group of connections in respect of that access agreement in order to remove or reduce that material adverse effect.

(3) Western Power must give notice to a user of its intention to exercise its powers under subregulation (2) in relation to a connection of the user a reasonable time before doing so.

(4) This regulation does not limit regulations 29 or 30 of the *ETR*.

”

APPENDIX 4—MODIFIED EDR BALANCING PROVISIONS

{ See rule 3.42.}

The provisions referred to in rule 3.42 are as follows—

“23. Interpretation of regulations 24, 25 and 27

In this regulation and regulations 24, 25 and 27—

- (a) the “**group of connections**” in respect of a user’s distribution access agreement consists of—
- (i) the entry points and exit points specified in the distribution access agreement and any linked transmission agreement in respect of the distribution access agreement; and
 - (ii) the entry points from which standby power is being supplied to one or more of those connections; and
- (b) rules 3.7 and 3.8 apply in respect of *spill electricity* and *top-up electricity* respectively.

24. Balancing

- (1) A user (other than Western Power) must use reasonable endeavours to ensure that its residual imbalance for that half hour is zero.
- (1a) The half hourly residual imbalance charge for a half hour in respect of a distribution access agreement—
- (a) that relates to a regional power system, is to be determined in accordance with the methodology set out in the Prices and Charges Paper, and any relevant provisions of the Distribution Technical Code; and
 - (b) that relates to the interconnected network, is to be determined in accordance with subregulations (2) to (9).
- (3) The half hourly residual imbalance charge in respect of a distribution access agreement for a half hour is determined by applying the following formula—

$$RIC = RNA \times RIF \times \frac{1}{100}$$

RIC (in \$) is the half hourly residual imbalance charge in respect of the distribution access agreement for the half hour;

RNA (in kWh) means the user’s residual imbalance.

RIF (in ¢/kWh) is—

- (a) if RNA is negative, then the half hourly residual imbalance (top-up) fee set out in the residual imbalance tariff list applicable to the half hour; or
 - (b) if RNA is positive, then the half hourly residual imbalance (spill) fee set out in the residual imbalance tariff list applicable to the half hour.
- (4) If the sum of the half hourly residual imbalance charges for the half hours in a month is negative, then an amount equal to -1 multiplied by that sum is payable by the user to Western Power, except if the user is Western Power.
- (5) If the sum of the half hourly residual imbalance charges for the half hours in a month is positive, then an amount equal to that sum is payable by Western Power to the user, except if the user is Western Power.

25. Excess standby generation charge

(1) In this regulation—

- (a) the “**demand exit rate**” for the group of connections in respect of a user’s distribution access agreement for a half hour is determined by applying the following formula—

$$DERA = \sum_{i=1}^{i=n} (PTE_{exit_i} \times LFE_{exit_i} \times LFTXE_{exit_i}) + SUR$$

where—

DERA (in kW) is the demand exit rate for the group of connections in respect of the distribution access agreement for the half hour;

PTE_{exit_i} (in kW) is the average rate at which electricity is transferred at exit point i from the electricity distribution network or the electricity transmission network (as the case requires) during the half hour under the distribution access agreement or any linked transmission agreement in respect of the distribution access agreement;

LFE_{exit_i} (a rate) is—

- (i) if exit point i is a transmission connection, then 1; and
- (ii) if exit point i is a distribution connection, then the loss factor for exit point i determined under regulation 22;

$LFTXE_{exit_i}$ (a rate) is—

- (i) if exit point i is a transmission connection, then the loss factor determined under regulation 20 of the *Electricity Transmission Regulations 1996* in respect of exit point i ; and

(ii) if exit point i is a distribution connection, then the loss factor determined under regulation 20 of the *Electricity Transmission Regulations 1996* in respect of the transfer point supplying exit point i ;

the variable “ i ” represents an exit point which is one of the group of connections;
the variable “ n ” represents the number of exit points in the group of connections;
and

“SUR” means (in kW) the rate at which the user is transferring *spill electricity* to Western Power during the half hour.

(b) the “**demand entry rate**” for the group of connections in respect of a distribution access agreement for a half hour is determined by applying the following formula—

$$\text{DER} = \sum_{j=1}^{j=n} (\text{PTEnter}_j \times \text{LFEntry}_j \times \text{LFTXEntry}_j) + \text{TUR}$$

where—

DER (in kW) is the demand entry rate for the group of connections in respect of the distribution access agreement for the half hour;

PTEntry j (in kW) is the average rate at which electricity is transferred at entry point j to the electricity distribution network or the electricity transmission network (as the case requires) during the half hour under the distribution access agreement or any linked transmission agreement in respect of the distribution access agreement;

LFEntry j (a rate) is—

- (i) if entry point j is a transmission connection, then 1; and
- (ii) if entry point j is a distribution connection, then the loss factor for entry point j determined under regulation 22;

LFTXEntry j (a rate) is—

- (i) if entry point j is a transmission connection, then the loss factor determined under regulation 20 of the *Electricity Transmission Regulations 1996* in respect of entry point j ; and
- (ii) if entry point j is a distribution connection, then the loss factor determined under regulation 20 of the *Electricity Transmission Regulations 1996* in respect of the transfer point supplying entry point j ;

the variable “ j ” represents an entry point which is one of the group of connections; and

the variable “ n ” represents the number of entry points in the group of connections;

“TUR” means (in kW) the rate at which Western Power is transferring top-up electricity to the user during the half hour.

(c) the “**standby generation reservation**” (in kW) for a group of connections is the aggregate rate at which the market service provider may be required to transport standby power to the connections in the group of connections under the distribution access agreement or any linked transmission agreement;

(d) the “**excess demand**” (in kW) in respect of a group of connections for a half hour is equal to—

(i) the demand exit rate for the group of connections for the half hour;

minus

(ii) the demand entry rate for the group of connections for the half hour;

minus

(iii) the standby generation reservation for the group of connections for the half hour, but if the result of this calculation is negative, then the excess demand in respect of the group of connections for the half hour is zero;

(e) if the excess demand in respect of a group of connections for a half hour is not zero, then an excess demand period in respect of the group of connections commences at the start of that half hour, except if that half hour already falls within an excess demand period in respect of the group of connections; and

(f) each excess demand period in respect of a group of connections includes 336 half hours.

(2) If an excess demand period in respect of a group of connections in respect of a user’s distribution access agreement commences during a month, then the excess standby generation capacity charge payable by the user in respect of the group of connections for the month is determined by applying the following formula—

$$\text{ESCC} = \sum_{i=1}^{i=n} (E_i \times \text{ESGF})$$

where—

ESCC (in \$) is the excess standby generation capacity charge in respect of the group of connections for the month;

E_i (in kW) is the highest excess demand in respect of the group of connections for any half hour falling within excess demand period i ;

ESGF (in \$/kW) is the excess standby generation capacity fee set out in the transmission fee schedule for the financial year in which the month falls;

the variable “ i ” represents an excess demand period in respect of the group of connections that commenced during the month;

the variable “ n ” represents the number of excess demand periods in respect of the group of connections that commenced during the month.

26. Excess network usage charge

(1) In this subregulation and subregulation (2)—

(a) the “**excess amount**” in respect of a distribution entry point for a half hour is equal to—

(i) the average aggregate rate (in kW) at which the generating units connected at the distribution entry point transferred electricity to the electricity distribution network during that half hour;

minus

(ii) the declared sent-out capacity (in kW) for that entry point,

but if the result of this calculation is negative, then the excess amount in respect of the entry point for the half hour is zero;

(b) if the excess amount in respect of a distribution entry point for a half hour is more than zero, then an excess period in respect of the distribution entry point commences at the start of that half hour, except if that half hour already falls within an excess period in respect of the distribution entry point; and

(c) each excess period in respect of a distribution entry point includes 336 half hours.

(2) If an excess period in respect of a user’s distribution entry point commences during a month, then the excess network usage charge payable by the user in respect of the distribution entry point for the month is determined by applying the following formula—

$$EUNC = \sum_{i=1}^{i=n} \left(\frac{E_i}{DSC} \times UNC \times EF \right)$$

where—

EUNC (in \$) is the excess use of network charge in respect of the distribution entry point for the month;

E_i (in kW) is the highest excess amount for any of the half hours which fall within excess period i ;

DSC (in kW) is the declared sent-out capacity for that entry point;

UNC (in \$) is the use of network charge in respect of the distribution entry point for the month;

EF is the excess network usage factor set out in the distribution price list for the financial year in which the month falls;

the variable “ i ” represents an excess period in respect of the distribution entry point which commences during the month; and

the variable “ n ” represents the number of excess periods in respect of the distribution entry point which commence during the month.

(3) In this subregulation and subregulation (4)—

(a) the “**excess rate**” in respect of a distribution exit point for a half hour is equal to—

(i) the average rate (in kW) at which electricity is transferred from the electricity distribution network at the distribution exit point during that half hour;

minus

(ii) the contract maximum demand for the distribution exit point,

but if the result of this calculation is negative, then the excess rate in respect of the distribution exit point for the half hour is zero;

(b) if the excess rate in respect of a distribution exit point for a half hour is more than zero, then an excess demand period in respect of the distribution exit point commences at the start of that half hour, except if that half hour already falls within an excess demand period in respect of the distribution exit point; and

(c) each excess demand period in respect of a distribution exit point includes 336 half hours.

(4) If an excess demand period in respect of a user’s distribution exit point commences during a month, then the excess network usage charge payable by the user in respect of the distribution exit point for the month is determined by applying the following formula—

$$EUNC = \sum_{i=1}^{i=n} \left(\frac{E_i}{CMD} \times UNC \times EF \right)$$

where—

EUNC (in \$) is the excess use of network charge in respect of the distribution exit point for the month;

E_i (in kW) is the highest excess rate for any of the half hours which fall within excess demand period i ;

CMD (in kW) is the contract maximum demand for the distribution exit point;

EF is the excess network usage factor set out in the distribution price list for the financial year in which the month falls;

UNC (in \$) is the use of network charge in respect of the distribution exit point for the month;

the variable “ i ” represents an excess demand period in respect of the distribution exit point which commences during the month; and

the variable “ n ” represents the number of excess demand periods in respect of the distribution exit point which commence during the month.

27. Other consequences of being out of balance

- (1) For the purposes of this regulation, a user is materially out of balance in respect of a distribution access agreement for a half hour if its residual imbalance is not zero.
- (2) If Western Power becomes aware that—
 - (a) a user (other than Western Power) is materially out of balance in respect of one of its distribution access agreements for a period; and
 - (b) as a result, the operation of the electricity distribution network or the electricity transmission network is likely to be materially adversely affected or persons with electrical installations connected to the electricity distribution network or the electricity transmission network are likely to be materially adversely affected,
 then, subject to subregulation (3), the market service provider may interrupt or curtail the transfer of electricity to or from one or more of the group of connections in respect of that distribution access agreement in order to remove or reduce that material adverse effect.
- (3) Western Power must give notice to a user of its intention to exercise its powers under subregulation (2) in relation to a connection of the user a reasonable time before doing so.
- (4) This regulation does not limit regulations 31 or 32 of the *EDR*.

”

APPENDIX 5—OPERATING PROCEDURES

{ See rule 10.1.}

Communications

A5.1 All communications from a *member* (other than the *market service provider*) to the *market service provider*, and (subject to clause A5.2) all communications from the *market service provider* to another *member*, must—

- (a) be by email with an attachment containing the relevant information; and
- (b) be in the format (as to both email and attachment) determined from time to time by the *market service provider* acting as a *reasonable and prudent person* and notified to all *members*; and
- (c) be capable of being reduced to writing by being printed.

A5.2 Communications of a general nature from the *market service provider* to other *members* may be posted on the *market service provider's* website, in which case each *member* must be notified of the posting by an email under clause A5.1.

A5.3 The *market service provider* must *publish* templates for standard communication requirements including—

- (a) *nominations*; and
- (b) *renominations*.

A5.4 A *member* other than the *market service provider* must use the templates published under clause A5.3.

A5.5 If email services are unavailable for any reason *members* must use other methods of communication, in the following priority—

- (a) facsimile services;
- (b) telephone, in which case a written confirmation—
 - (i) must be provided within 48 hours of the verbal communication being made; and
 - (ii) must include the name of the staff member to whom the communication was made.

A5.6 The *market service provider* must *publish* its contact details on its website.

Line losses

A5.7 Where the *TUAS market rules* refer to an adjustment for *line losses*, the adjustment will be calculated in accordance with the *member's access contract* by the *market service provider* acting as a *reasonable and prudent person*.

High Price days

A5.8 The *market service provider* may declare a *high price day* if it determines as a *reasonable and prudent person* (including by undertaking system studies), the generation capacity (adjusted for planned and unplanned outages, standby requirements, spinning reserve, interruptible loads, must not run constraints, and forecast load) exceeds a safety margin set to the standard of a *reasonable and prudent person*.

Liquids Event

A5.9 The *market service provider* may declare a *liquids event* if more than 10MW of generating plant using this fuel is required to run in the absence of higher merit order plant.

A5.10 The *market service provider* as soon as practicable after each *liquids event* must give all other *members* a *notice* outlining the reasons for the *liquids event* and the periods affected by the *liquids event*.

Calculating band size for top-up trading bands

A5.11 For a *member*—

- (a) *top-up trading band 1* is the band from 0% up to and including 70% of the *member's maximum trading requirement* for trading *top-up electricity*; and
- (b) *top-up trading band 2* is the band from 70% up to and including 100% of the *member's maximum trading requirement* for trading *top-up electricity*.

Calculating band size for spill trading bands

A5.12 For a *member*—

- (a) *spill trading band 1* is the band from 0% up to and including 70% of the *member's maximum trading requirement* for trading *spill electricity*; and
- (b) *spill trading band 2* is the band from 70% up to and including 100% of the *member's maximum trading requirement* for trading *spill electricity*.

Forecast production data

A5.13 For the purposes of the definition of “**forecast production data**” a *member* must provide statistically based forecasts of annual electricity production from its plant as well as shorter-term forecasts, sufficient to enable the *member's balancing band*, and top-up and spill requirements to be determined.

A5.14 Where a *member* is not able to provide *forecast production data*, the average profile of the system for similar types of generation units may be used.

APPENDIX 6—PROCEDURAL RULES FOR ARBITRATION

{ See rule 8.6.}

Application

A6.1 This Appendix 6 applies if—

- (a) in accordance with the rules, the *market service provider* or a *member* notifies the Minister that a dispute exists; and
- (b) notification of the dispute is not withdrawn in accordance with the rules.

Informality and expedition

A6.2 Subject to the rules, proceedings must be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Appendix 6 and Chapter 8, and a proper hearing and determination of a dispute, permit.

A6.3 The *arbitrator* may from time to time make orders—

- (a) regulating the conduct of proceedings; and
- (b) regulating parties' conduct in relation to proceedings,

which are directed towards achieving the objective in clause A6.2.

A6.4 The parties to a dispute must at all times conduct themselves in a manner which is directed towards achieving the objective in clause A6.2.

A6.5 An order under clause A6.3 is not an award.

Arbitrator may request information

A6.6 The *arbitrator* may request the Minister to give to the *arbitrator* any information in the Minister's possession that is relevant to the dispute.

A6.7 The Minister is to give the *arbitrator* the information requested, whether or not it is confidential and whether or not it came into the Minister's possession for the purposes of the arbitration.

A6.8 If the Minister gives the *arbitrator* information that is confidential—

- (a) the Minister is to identify the nature and extent of the confidentiality; and
- (b) the *arbitrator* is to treat the information accordingly.

Hearing to be in private

A6.9 Subject to clause A6.10, proceedings are to be heard in private.

A6.10 If the parties agree, proceedings or part of the proceedings may be conducted in public.

A6.11 The *arbitrator* may give written directions as to the persons who may be present at proceedings that are conducted in private.

A6.12 In giving directions under clause A6.16, the *arbitrator* must have regard to the wishes of the parties and the need for commercial confidentiality.

Right to representation

A6.13 In proceedings under these rules, a party may appear in person or be represented by someone else.

Procedure

A6.14 In proceedings, the *arbitrator*—

- (a) is not bound by technicalities, legal forms or rules of evidence; and
- (b) must act as speedily as a proper consideration of the dispute allows, having regard to the need to carefully and quickly inquire into and investigate the dispute and all matters affecting the merits, and fair settlement, of the dispute; and
- (c) may gather information about any matter relevant to the dispute in any way the *arbitrator* thinks appropriate.

A6.15 The *arbitrator* may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties in the arbitration hearing, and may require that the cases be presented within those periods.

A6.16 The *arbitrator* may require evidence or argument to be presented in writing, and may decide the matters on which the *arbitrator* will hear oral evidence or argument.

A6.17 The *arbitrator* may determine that proceedings are to be conducted by—

- (a) telephone; or
- (b) closed circuit television; or
- (c) any other means of communication.

Particular powers of arbitrator

A6.18 The *arbitrator* may do any of the following things for the purpose of determining a dispute—

- (a) give a direction in the course of, or for the purpose of, proceedings; and
- (b) hear and determine the proceedings in the absence of a party who has been given notice of the hearing; and
- (c) sit at any place; and
- (d) adjourn to any time and place; and
- (e) refer any matter to an independent expert and accept the expert's report as evidence.

A6.19 The *arbitrator* may make an interim determination.

Determinations

A6.20 If the *arbitrator* makes a determination or interim determination it must—

- (a) make it in writing, signed by the *arbitrator*; and
- (b) include in the determination a statement of reasons for making the determination.

A6.21 If a determination of an *arbitrator* under this Appendix 6 contains—

- (a) a clerical mistake; or
- (b) an error arising from an accidental slip or omission; or
- (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the determination; or
- (d) a defect in form,

the *arbitrator* may correct the determination or the Court, on the application of a party, may make an order correcting the determination.

Contempt

A6.22 A person must not do any act or thing in relation to the arbitration of a dispute that would be a contempt of court if the *arbitrator* were a court of record.

Disclosure of information

A6.23 The *arbitrator* may give an oral or written direction to a person not to divulge or communicate to anyone else specified information that was given to the person in the course of proceedings unless the person has the *arbitrator's* permission.

A6.24 A person must not contravene a direction given under clause A6.23.

Power to take evidence on oath or affirmation

A6.25 The *arbitrator* may take evidence on oath or affirmation and for that purpose the *arbitrator* may administer an oath or affirmation.

A6.26 The *arbitrator* may summon a person to appear before the *arbitrator* to give evidence and to produce such documents (if any) as are referred to in the summons.

A6.27 The powers contained in clauses A6.25 and A6.26 may only be exercised for the purposes of arbitrating a dispute under the rules.

Failing to attend as a witness

A6.28 A person who is served with a summons to appear as a witness before the *arbitrator* must not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report himself or herself from day to day unless excused, or released from further attendance, by the *arbitrator*.

Failing to answer questions etc.

A6.29 A person appearing as a witness before the *arbitrator* must not, without reasonable excuse—

- (a) refuse or fail to be sworn or to make an affirmation; or
- (b) refuse or fail to answer a question that the person is required to answer by the *arbitrator*; or
- (c) refuse or fail to produce a document that he or she is required to produce by a summons served on it.

A6.30 The determination as to what is a reasonable excuse for the purposes A6.29 is solely in the discretion of the *arbitrator*.

A6.31 It is a reasonable excuse for the purposes of clause A6.30 for an individual to refuse or fail to answer a question or produce a document on the ground that the answer or the production of the document might tend to incriminate the individual or to expose the individual to a penalty.

A6.32 Clause A6.31 does not limit what is a reasonable excuse for the purposes of clause A6.30.

Intimidation etc.

A6.33 A person must not—

- (a) threaten, intimidate or coerce another person; or
- (b) cause or procure damage, loss or disadvantage to another person,

because that other person—

- (c) proposes to produce, or has produced, documents to the *arbitrator*; or
- (d) proposes to appear, or has appeared, as a witness before the *arbitrator*.

Party may request arbitrator to treat material as confidential

A6.34 A party to an arbitration hearing may—

- (a) inform the *arbitrator* that, in the party's opinion, a specified part of a document contains confidential commercial information; and
- (b) request the *arbitrator* not to give a copy of that part to another party.

A6.35 On receiving the request, the *arbitrator* must—

- (a) inform the other party or parties that the request has been made and of the general nature of the matters to which the relevant part of the document relates; and
- (b) ask the other party or parties whether there is any objection to the *arbitrator* complying with the request.

A6.36 If there is an objection to the *arbitrator* complying with a request, the party objecting may inform the *arbitrator* of its objection and of the reasons for it.

A6.37 After considering—

- (a) a request;
- (b) any objection; and
- (c) any further submissions that a party has made in relation to the request,

the *arbitrator* may make a determination—

- (d) to not give to the other party or parties a copy of so much of the document as contains confidential commercial information that the *arbitrator* thinks should not be given; or
- (e) to give the other party or another specified party a copy of the whole, or part, of the part of the document that contains confidential information subject to a condition that the party give an undertaking not to disclose the information to another person except to the extent specified by the *arbitrator* and subject to such other conditions as the *arbitrator* determines.

A6.38 An action for damages lies against any person (other than the *arbitrator*) who discloses information that the *arbitrator* has determined is confidential commercial information under clause A6.37.

Costs

A6.39 The costs of proceedings, including the fees and costs of the *arbitrator*, are in the discretion of the *arbitrator* who may—

- (a) direct to and by whom and in what manner the whole or any part of those costs is to be paid;

- (b) tax or settle the amount of costs to be so paid or any part of those costs;
- (c) award costs to be taxed or settled as between party and party or as between solicitor and client.

Appeal to Court

A6.40 A party may appeal to the Court, on a question of law, from a determination of an *arbitrator* under this Appendix 6.

A6.41 An appeal must be instituted—

- (a) not later than the 28th day after the day on which the decision is made or within such further period as the Court (whether before or after the end of that day) allows; and
- (b) in accordance with the relevant Rules of Court.

A6.42 The Court may make an order staying or otherwise affecting the operation or implementation of the determination of the arbitrator that the Court thinks appropriate to secure the effectiveness of the hearing and determination of the appeal.

Copies of decisions to be given to the Minister

A6.43 Where the *arbitrator* is required to give a copy of a draft decision or final decision to the parties to a dispute, the *arbitrator* is to also give a copy of the decision to the Minister.

Effect of appointment of new arbitrator on evidence previously given and awards and determinations previously made.

A6.44 Where a new person takes over the functions of *arbitrator* in place of a previous *arbitrator* who has begun but not completed the hearing and determination of a dispute—

- (a) the new *arbitrator* may order the proceedings to be re-heard—
 - (i) in full, in which case all evidence heard by the previous *arbitrator* is to be disregarded by the new *arbitrator*; or
 - (ii) in part, in which case any evidence heard by the previous *arbitrator* during the parts of the proceedings which are re-heard is to be disregarded by the new *arbitrator*;
- (b) if no order is made under clause A6.44(a), then the proceedings are to continue as though the new *arbitrator* had been present from the commencement of the proceedings;
- (c) if an order is made under clause A6.44(a)(ii), then—
 - (i) the proceedings are to continue as though the new *arbitrator* had been present during the earlier proceedings; and
 - (ii) the new *arbitrator* is to treat any evidence given, document produced or thing done in the course of the earlier proceedings in the same manner in all respects as if it had been given, produced or done in the course of the proceedings conducted by the new *arbitrator*;
- (d) any interim determination made in the course of the earlier proceedings is by force of this Appendix 6 to be taken to have been made by the new *arbitrator*; and
- (e) the new *arbitrator* may adopt and act on any determination of a matter made in the course of the earlier proceedings without applying his or her own judgment to the matter.

A6.45 In clause A6.44, “earlier proceedings” means the proceedings or parts of the proceedings which the new arbitrator does not order to be re-heard under clause A6.44(a)(ii).

Arbitrator may issue summons

A6.46 A summons issued by the *arbitrator* under A6.26—

- (a) requiring a person to appear as a witness before the *arbitrator*; or
- (b) requiring a person to appear before the *arbitrator* and to produce a document to the *arbitrator*.

A6.47 A summons must include—

- (a) the name and address of the person on whom the summons is to be served;
 - (b) if the summons is for the production of a document—
 - (i) a proper description of the document; and
 - (ii) if the document is to be produced by a person that is a corporation, the name and title of the appropriate officer of the corporation who is to attend and produce the document;
- and
- (c) the date, time, and place of the hearing of the *arbitrator* at which the person is required to attend and, where applicable, produce the document.

A6.48 The summons remains in force for a period specified in the summons or, if no period is specified, until the conclusion of the proceedings in relation to which the summons has been issued.

A6.49 The summons is to be taken to have been effectively served if—

- (a) a copy of the summons has been handed to the person to be served or, if service by that method is refused or obstructed or made impracticable, a copy of the summons has been placed as near as practicable to the person and the person has been informed of the nature of the summons; or
- (b) a copy of the summons has been delivered to a legal practitioner acting for the person to be served and the legal practitioner has endorsed on the summons a statement to the effect that the legal practitioner accepts service; or

- (c) the person to be served is a corporation and a copy of the summons was served on the corporation in accordance with the Corporations Act 2001 (Cth); or
 - (d) a copy of the summons was served in accordance with an agreement made between the parties as to—
 - (i) the place and method of service; and
 - (ii) the person on whom service may be effected;
- or
- (e) an answer to the summons has been filed with the *arbitrator*; or
 - (f) the *arbitrator* is satisfied that the person to be served has received a copy of the summons.

Decision of the Arbitrator

A6.50 Unless the Minister has made a decision under rule 8.5, the *arbitrator* must require the parties to make submissions to the *arbitrator* regarding the dispute by a specified date.

A6.51 In making a decision under rule 8.6, the *arbitrator* must—

- (a) consider submissions received from the parties before the date specified by the *arbitrator* under clause A6.50;
- (b) after considering submissions received by the date specified by the *arbitrator* under clause A6.50, provide a draft decision to the parties and request submissions from the parties by a specified date;
- (c) consider submissions received from the parties before the date specified by the *arbitrator* under clause A6.51(b); and
- (d) after considering submissions received by the date specified by the *arbitrator* under clause A6.51(b) provide a final decision to the parties.

A6.52 The *arbitrator* may, but need not, by whatever means it considers appropriate seek written submissions from persons who are not parties to the dispute and take those submissions into account in making its decision under rule 8.6.

A6.53 The *arbitrator* must provide a final decision under rule 8.6 within three months of requiring parties to make submissions under clause A6.50. The *arbitrator* must also ensure that there is a period of at least 14 days—

- (a) between requiring parties to make submissions under clause A6.50 and the last day for such submissions specified by the *arbitrator*; and
 - (b) between providing a draft decision to the parties under clause A6.51(b) and the last day for submissions on the draft decision specified by the *arbitrator*.
- (c) in all other respects the timing for the taking of each of the steps set out in clause A6.51 is a matter for the *arbitrator* to determine.

A6.54 The *arbitrator* may increase the period of three months specified in clause A6.53 by periods of up to one month on one or more occasions provided it provides the parties (and each person who has made a written submission to the *arbitrator*) with a notice of the decision to increase the period.

A6.55 The *arbitrator* need not before making a decision under clause A6.51(b) issue a draft decision.

A6.56 The *market service provider* must comply with a decision of the *arbitrator* made under this Appendix 6 from the date specified by the *arbitrator*.

