ELECTRICITY INDUSTRY ACT 2004

ELECTRICITY NETWORKS ACCESS CODE 2004
Approval by Minister

I, ERIC RIPPER, Minister for Energy for the State of Western Australia, under section 104(1) of the Electricity Industry Act 2004 hereby establish the Electricity Networks Access Code contained in this document.

In accordance with section 41 of the Interpretation Act 1984, this Code comes into operation on the day of its publication in the Gazette.

ERIC RIPPER

Dated at Perth this 29th day of November 2004.
Contents

Introduction

Chapter 1 – Introductory
   Citation
   Commencement
   Definitions
   Interpretation

Chapter 2 – General Principles
   Code objective
   Code objective with other objectives, requirements and factors etc
   Freedom to contract
   Service provider to use reasonable endeavours to provide access to covered services
   Requirement to undertake augmentations and funding of augmentations

Chapter 3 – Coverage
   Subchapter 3.1 – Covered networks
      SWIS is covered
      Other networks may be covered
   Subchapter 3.2 – Criteria for coverage
      Minister’s decision on coverage
      Coverage criteria
      Factors the Minister must have regard to
   Subchapter 3.3 – Coverage process
      Applications for coverage
      Invitation for submissions and issues paper
      First round public submissions
      Draft coverage decision by the Minister
      Second round public submissions
      Final coverage decision by Minister
      Final coverage decision has effect
      Late submissions
      Reasons
      Service provider agrees to network coverage
      Extensions of time under this Chapter
   Subchapter 3.4 – Revocation of coverage
      Revocation of coverage

Subchapter 3.5 – Miscellaneous
   Advertising
   Publishing
   Automatic coverage of augmentations
   Notification of network modification
Chapter 4 – Access Arrangements: Approval and Review

Subchapter 4.1 – Approval process
Submission of first access arrangement
Access arrangement information
Invitation for submissions and issues paper
First round public submissions
Draft decision by Authority
Second round public submissions
Revised proposed access arrangement
Final decision by Authority
Amended proposed access arrangement
Further final decision by Authority
Authority drafting and approving own access arrangement if further final decision is to not approve
Access arrangement start date

Subchapter 4.2 – Criteria for approval
Reasons
Criteria for approval of a proposed access arrangement
Factors the Authority must have regard to
Information to be provided by Authority if it requires change to price control or pricing methods
Access arrangement must not override prior contractual rights
Conditional approval – price lists

Subchapter 4.3 – Revision and review
Trigger events
Revision of price control or pricing methods during the term of an access arrangement
Revision of access arrangement if Appendix 2, Appendix 3 or Appendix 4 are amended
Review of access arrangement

Subchapter 4.4 – Miscellaneous
Late submissions
No confidentiality for certain documents
Authority drafting and approving own access arrangement if no access arrangement submitted
Interim access arrangement in the event of delay
Extensions of time under this Chapter 4
Suspension of deadlines when Authority obtains information
Suspension of deadlines for judicial proceedings

Chapter 5 – Access Arrangement: Content
Required contents of an access arrangement
Reference services
Standard access contract for each reference service
Service standards for each reference service
Applications and queuing policy
Capital contributions policy
Transfer and relocation policy
Efficiency and innovation benchmarks
Supplementary matters
Revisions submission
Trigger events

Chapter 6 – Price Control
Subchapter 6.1 – Target revenue
Form of price control
Form of price control for first access arrangement
Price control objectives
Target revenue may be adjusted for unforeseen events
Target revenue may be adjusted for technical rule changes
‘Investment adjustment mechanism’ defined
Requirement for an investment adjustment mechanism
‘Gain sharing mechanism’ defined
Requirement for a gain sharing mechanism
Objectives for gain sharing mechanism
‘Surplus’ defined
Prior surpluses may be retained
Determining the above-benchmark surplus
Determining the increase to the target revenue
‘Service standards adjustment mechanism’ defined
Requirement for service standards adjustment mechanism
Authority may make a determination of excluded services for a covered network

Subchapter 6.2 – Calculation of Service Provider’s Costs
When this Subchapter 6.2 applies
Non-capital costs
Capital-related costs
Determining the capital base
Capital base for the start of the first access arrangement period
Capital base for the start of subsequent access arrangement periods
Capital base must not include forecast new facilities investment
New facilities investment test
Capital base not to include investment in respect of which a capital contribution is provided
Recoverable portion
Speculative investment
Redundant capital
Calculating weighted average cost of capital
Authority may make a determination of a methodology for calculation of weighted average cost of capital
Depreciation

Subchapter 6.3 – Service provider may seek approval for costs
Approval for new facilities investment
Approval for non-capital costs

Chapter 7 – Pricing methods
‘Pricing methods’ defined
Form of pricing methods
Objectives of pricing methods – Primary objectives
Objectives of pricing methods – Other objectives
Objectives of pricing methods – Reconciling primary and other objectives
Tariff components
Postage stamp charges in certain cases
‘Equivalent tariff’ defined
Prudent discounts
Discounts for distributed generating plant
Access arrangement must detail policies regarding discounts

Chapter 8 – Price lists
Approval of price lists if required
Publication of price lists if approval not required

Chapter 9 – Regulatory Test
Subchapter 9.1 – Introductory
Objectives of this Chapter 9
No major augmentation without regulatory test determination
‘Regulatory test’ defined
‘Committed’ defined
Authority may make a determination that an augmentation is or is not a major augmentation
Service provider must make information available

Subchapter 9.2 – Regulatory test process
Regulatory test as part of access arrangement approval process
Regulatory test not as part of access arrangement approval process
Regulatory test may be expedited, otherwise modified or waived
Vexatious etc alternative options

Subchapter 9.3 – Anti-avoidance provisions
Anti-avoidance provisions
Chapter 10 – Dispute Resolution

Subchapter 10.1 – Introduction
Commercial Arbitration Act 1985 does not apply
Procedural rules

Subchapter 10.2 – Access Disputes
Notification of a dispute
Other parties joining
Conciliation and reference to arbitration
Authority not required to conciliate
Expedited hearing of disputes under applications and queuing policy
Factors which the arbitrator must have regard to
The arbitration
Arbitrated tariff to be guided by access arrangement and price list
Arbitrated tariffs for reference services
Arbitrated terms for reference services
Arbitrated tariffs for non-reference services
Award by the arbitrator
Restrictions on access awards
Arbitrated award requiring augmentation of network
Effect of awards
Costs of arbitration

Subchapter 10.3 – Application of the regulatory test in an arbitration
Arbitrator must make proposed award if award would require major augmentation
Service provider must consult and submit major augmentation report
Service provider's costs of compliance, if applicant withdraws
Authority must publish determination regarding major augmentation report
Arbitrator must have regard to Authority's determination

Subchapter 10.4 – Contractual Disputes
Jurisdiction of arbitrator
Procedural rules

Chapter 11 – Service standards
Service provider must comply with service standards
Authority to monitor service standards
Penalties for breach of service standards

Chapter 12 – Technical Rules
Objectives of the technical rules
Persons bound by technical rules
Technical rules prevail over contract
Networks which must have technical rules
Approval process for technical rules – Non-covered network
Approval process for technical rules – Covered network
Have regard to current regulation in case of deadlock
Commencement of technical rules
Technical rules committee
Recommendations from the technical rules committee
Authority may observe the technical rules committee
Scope and content of technical rules
Person applies to service provider for exemption from technical rules
Service provider applies to Authority for authorisation to grant exemption from technical rules
Amendments to technical rules
Notification of changes to technical laws
Review of technical rules
Coordination with other service providers in an interconnected system

Chapter 13 – Ringfencing
Service provider must comply with ringfencing objectives and rules
Application of ringfencing objectives and rules to integrated providers
‘Ringfenced business’ defined
Other business must have deemed access contract
Associate contracts
Amendments to associate contracts and deemed access contracts
Ringfencing objectives
Factors the Authority must have regard to
Authority may approve ringfencing rules
Ringfencing rules and compliance procedures are not confidential
Additional ringfencing rules for an integrated provider
Service provider to procure compliance by its associates
Commencement time for ringfencing rules
Exemptions from ringfencing requirements
Compliance monitoring and compliance reporting
Breach of ringfencing requirements
Service provider to provide information to Authority and arbitrator

Chapter 14 – Administration and Miscellaneous
Service provider to provide information on access arrangements
Data collection regarding target revenue
Public register
Register of interested persons
Protection for the Authority
Treatment of confidential information
How this Code applies to multiple service providers
How this Code applies to successor service providers
Authority may seek advice
CPI adjustment
General process for public consultation

Chapter 15 – Transitional
Minister may make determinations
Access arrangements for SWIS to be compatible with market
Access arrangements to be compatible with changes to contestability

Appendix 1 – Flowchart of access arrangement approval process

Appendix 2 – Model Applications and Queuing Policy

Sub-appendix 2.1 – Interpretation
Definitions and Interpretation
Transition of prior applications
Negotiations in good faith
Classes of applications

Sub-appendix 2.2 – The application
Informal communications
Confidentiality
Costs of processing application
Lead times for applications
Access application
Errors or omissions in an application
Additional information

Sub-appendix 2.3 – Capacity increase notices and customer transfer requests
Capacity increase notice
Lodgement fees for capacity increase notices
Lead times for capacity increase notices
Form of capacity increase notices
Additional information
Customer transfer requests

Sub-appendix 2.4 – The Queue
Queuing rules apply only when there are competing applications
Queuing rules determine priority of applications
More than one queue
First come first served principle
Bypass
Applications in relation to tender projects etc
Reserve capacity auctions for SWIS
Processing of applications not affected
Exercising an option not affected
Priority of withdrawn applications
Provision of information about position in queue

Sub-appendix 2.5 – Amendment and withdrawal of application
Amendment to application
Amending application to address necessary augmentation
Priority of amended applications
Withdrawal of application
Applications do not expire

Sub-appendix 2.6 – Processing the application and making the access offer
Service provider must be expeditious and diligent
Conditions precedent permitted in access contract
Conditions precedent and determination of spare capacity
Security
Initial response
Preliminary assessment
Progress reporting
Service provider must make access offer
Extension of time to perform obligations
Terms of access offer – If application requests reference service
Terms of access offer – If application requests non-reference service
Arbitrator’s powers preserved
Access offer is not a contract
Applicant’s options on receipt of an access offer
If applicant accepts access offer

Appendix 3 – Model Standard Access Contract
Parties
Background

Part A – Interpretation and introduction
Definitions and interpretation
Interpretation
Duration
There must be both a capacity contract and a technical compliance contract
When the parts of this contract apply

Part B – Capacity Provisions
Provision and use
Contracted capacity
Contracted maximum demand and declared sent-out capacity
Variation to contracted capacity
Relocation
Customer transfer
Provisions of access arrangement on supplementary matters apply
Curtailment
Title to electricity
Designated controllers
Tariff and charges
Invoicing and payment
Security

Good electricity industry practice
Cooperation
Directions from system operator
User must provide information
Technical rules
Actions of third parties causing user to breach technical rules
Tariff and charges
Invoicing and payment
Security
Part D – Common Provisions
Service provider must comply with service standards
Representations and warranties
Liability and indemnity
Insurances
Force majeure
Default
Termination
Access to premises
Disputes
Set off
Assignment by user
Corporate restructuring of service provider
Confidentiality
Ring fencing
Notices
Miscellaneous

Appendix 4 – Model Capital Contributions Policy

Sub-appendix 4.1 - Introductory
Definitions and interpretation
Application of this capital contributions policy

Sub-appendix 4.2 - Capital contributions
Capital contribution
Reasonable rate of return
Manner of contribution
Provision of capital contribution in kind
Provision of capital contribution by financial payment
Rebates and recoupment

Sub-appendix 4.3 – Non-capital contributions
Non-capital contribution
Manner of contribution

Appendix 5 – Procedural Rules for Arbitration
Application
Definitions
Informality and expedition
Arbitrator may request information
Hearing to be in private
Right to representation
Procedure
Particular powers of arbitrator
Determinations
Contempt
Disclosure of information
Power to take evidence on oath or affirmation
Failing to attend as a witness
Failing to answer questions etc.
Intimidation etc.
Party may request arbitrator to treat material as confidential
Costs
Appeal to Court
Copies of decisions to be given to the Authority
Effect of appointment of new arbitrator on evidence previously given and awards and determinations previously made
Decision of the Arbitrator

Appendix 6 – Matters to be Addressed by Technical Rules

Appendix 7 – General process for public consultation
Application of this Appendix 7
Where the decision maker is not the Authority
Issues paper
Submissions from the service provider
First round public submissions
Draft decision by the Decision Maker
Second round public submissions (if applicable)
Final decision by decision maker
Publication of submissions
Late submissions
Introduction

(This Code is made by the Minister under Part 8 of the Electricity Industry Act 2004 (“Act”).

The Code may be amended from time to time in accordance with the procedure set out in sections 108 to 110 of the Act and must be reviewed every 5 years under section 111 of the Act.

The Code aims to be, where appropriate given conditions prevailing in Western Australia:

• consistent with the National Electricity Code and National Gas Code; and
• capable of certification as an effective access regime under Part IIIA of the Trade Practices Act 1974.

This Code establishes a framework for third party access to electricity transmission and distribution networks with the objective of promoting the economically efficient investment in, and operation and use of, networks and services of networks in Western Australia in order to promote competition in markets upstream and downstream of the networks.

Regulations made under section 118 of the Act may prescribe penalties for failure to comply with certain provisions of this Code.)
Chapter 1 – Introductory

Citation
1.1 This Code may be cited as the Electricity Networks Access Code 2004.

Commencement
1.2 This Code comes into operation on the date on which this Code is published in the Gazette.

Definitions
1.3 In this Code, unless the contrary intention appears:

“above-benchmark surplus” has the meaning given to it in section 6.25 as limited by section 6.26.

“access”, in relation to services, has a meaning corresponding with the meaning that it has when used in that context in the Trade Practices Act 1974 of the Commonwealth.

“access application” means an application lodged with a service provider under an access arrangement to establish or modify an access contract and includes any additional information provided by the applicant in relation to the application.

“access arrangement” means an arrangement for access to a covered network that has been approved by the Authority under this Code.

“access arrangement information”, in relation to an access arrangement, means the information submitted by the service provider under section 4.1 as described in sections 4.2 and 4.3, as amended from time to time, and is not part of the access arrangement.

“access arrangement period”, in relation to an access arrangement, means a period:

(a) between the access arrangement start date and the first revisions commencement date; or

(b) between a revisions commencement date and the next revisions commencement date.

“access arrangement start date” means the day on which an access arrangement (other than an interim access arrangement) takes effect, and is determined in accordance with 4.26.

(Note: See definition of “review” for access arrangement review.)
“access contract” has the same meaning as ‘access agreement’ does in Part 8 of the Act, and under section 13.4(d) includes a deemed access contract.

(Note: At the time this Code was made, the definition in section 103 of the Act was:

‘“access agreement” means an agreement under the Code between a network service provider and another person (a “network user”) for that person to have access to services.’)

“access dispute” means a dispute, in connection with an access application, between the applicant and the service provider, including a dispute in relation to:

(a) whether the applicant or the service provider has complied with, or the manner in which the applicant or the service provider has purported to comply with, the applications and queuing policy; and

(b) the terms and conditions, including service standards, on which the applicant should be permitted to acquire covered services from the service provider; and

(c) whether an augmentation is required to provide covered services sought by the applicant and the terms and conditions applying to any such augmentation; and

(d) whether the service provider should grant the applicant an exemption to the technical rules under section 12.34; and

(e) the arrangements which will apply in respect of a supplementary matter connected with the access application.

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

“additional revenue”, when used in 6.41, has the meaning given to it in section 6.42.

“advertise” means:

(a) where the Minister is required to advertise a thing — that the Minister must place an advertisement in a newspaper which has circulation throughout the State which states that the thing has been placed on an internet website which is under the Coordinator’s control; and

(b) where the Authority is required to advertise a thing — that it must place an advertisement in a newspaper which has circulation throughout the State which states that the thing has been placed on the public register.

“alternate pricing provisions” has the meaning given to it in section 4.33.

“alternative option costs” has the meaning given to it in section 6.41.

“alternative options”, in relation to a major augmentation, means alternatives to part or all of the major augmentation, including demand-side management and generation solutions (such as distributed generation), either instead of or in combination with network augmentation.

“amended proposed access arrangement” means an amended proposed access arrangement submitted by a service provider to the Authority under section 4.19.

“amended proposed revisions” are amended proposed revisions submitted by a service provider to the Authority under section 4.19 (as modified under section 4.52).

“anticipated incremental revenue” for a new facility means:

(a) the present value (calculated at the rate of return over a reasonable period) of the increased tariff income reasonably anticipated to arise from the increased sale of covered services on the network to one or
more users (where “increased sale of covered services” means sale of covered services which would not have occurred had the new facility not been commissioned),

minus

(b) the present value (calculated at the rate of return over the same period) of the best reasonable forecast of the increase in non-capital costs directly attributable to the increased sale of covered services (being the covered services referred to in the expression “increased sale of covered services” in paragraph (a) of this definition),

where the “rate of return” is a rate of return determined by the Authority in accordance with the Code objective and in a manner consistent with Chapter 6, which may (but does not have to) be the rate of return most recently approved by the Authority for use in the price control for the covered network under Chapter 6.

“applicant” means a person (who may be a user) who has lodged an access application under the access arrangement for a covered network to establish or modify an access contract, and includes a prospective applicant.

“applications and queuing policy” means a policy in an access arrangement setting out the access application process under section 5.1(g).

“approval” of a proposed access arrangement or proposed revisions means approval by the Authority under Chapter 4.

“approved total costs”, in relation to covered services provided by a service provider by means of a covered network for a period of time, means:

(a) those capital-related costs which satisfy the new facilities investment test; and

(b) those non-capital costs which satisfy the test in (as applicable) section 6.40 or 6.41.

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

“associate”, in relation to a person and subject to section 13.2, has the meaning it would have under Division 2 of Part 1.2 of the Corporations Act 2001 of the Commonwealth if sections 13, 14, 16(2) and 17 of that Act were repealed, except that a person will not be considered to be an associate of a service provider solely because that person proposes to enter, or has entered, into a contract, arrangement or understanding with the service provider for the provision of a covered service.

(Note: Reference must be made to the Corporations Act 2001 (Cth) to determine whether one person is an associate of another person. At the Code commencement date, the following are examples of persons who are associates of a body corporate under the Corporations Act 2001 (Cth):
- a director or secretary of the body corporate; and
- a related body corporate of the body corporate; and
- another body corporate that can control or influence the composition of the board or the conduct of the affairs of a body corporate.)

“associate contract” means any contract, arrangement or understanding by which a service provider provides covered services to an associate or a related body corporate.

“average cost of service provision”, in relation to a user or group of users, a covered service and a specified period of time, means that part of approved total costs that is associated with providing the covered service to the user or group of users, during the period of time.
“augmentation”, in relation to a covered network, means an increase in the capability of the covered network to provide covered services, including by the development, construction, acquisition or commissioning of new network assets.

“Authority” means the Economic Regulation Authority established by the Economic Regulation Authority Act 2003.

“bare transfer”, when used in sections 5.18 to 5.24, refers to a transfer of a user’s access rights, under a transfer and relocation policy, in which the user’s obligations under the contract for services, and all other terms of the contract for services, remain in full force and effect after the transfer.

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

“capital base” for a covered network means the value of the network assets that are used to provide covered services on the covered network determined under sections 6.44 to 6.63.

“capital contribution” means a contribution made, or to be made, by a user in respect of an augmentation.

“capital contributions policy” means a policy in an access arrangement under section 5.1(h) dealing with capital contributions by users in respect of augmentations.

“capital-related costs”, in relation to covered services provided by a service provider by means of a covered network for a period of time, means:
(a) a return on the capital base of the covered network; and
(b) depreciation of the capital base of the covered network.

“Chapter 9 objectives” has the meaning given to it in section 9.1.

“charge”, for a user for a covered service, means the amount that is payable by the user to the service provider for the covered service, calculated by applying the tariff for the covered service.

“Code change” means an amendment to Appendix 2, Appendix 3 or Appendix 4 of this Code after the start of an access arrangement period.

“Code commencement date” means the date on which this Code is published in the Gazette.

“Code objective” has the meaning given to it in section 2.1.

“commercially sensitive information” means all confidential or commercially sensitive information in relation to an applicant, user or consumer which is developed by or comes into the possession of a service provider including a ringfenced business’s past, present and future dealings with the applicant, user or consumer.

“committed”, in relation to a proposed major augmentation, has the meaning given to it in section 9.5 as limited by section 9.6.

“common service” means a covered service that is ancillary to the provision of one or more of entry services, exit services and network use of system services that ensures the reliability of a network or otherwise provides benefits to users of the network, the costs of which cannot reasonably be allocated to one or more particular users and so needs to be allocated across all users.

“competing applications” exist where the provision of the covered service sought in one access application may impede the service provider’s ability to provide a covered service sought in one or more other access applications.

“confidential material” means relevant material which the disclosing person advises the recipient is of a confidential or commercially sensitive nature.

“connect” means to form a physical link to or through a network.
“connection assets”, for a connection point, means all of the network assets that are used only in order to provide covered services at the connection point.

“connection point” means a point on a covered network identified in an access contract as an entry point or exit point.

“connection service” means the right to connect facilities and equipment at a connection point.

(Note: A connection service is the right to physically connect to the network, and will regulate technical compliance etc. It is not the same thing as an entry service or exit service, which are the right to transfer electricity.)

“consume” means to consume electricity.

“consumer” means a person who consumes electricity.

(Note: A consumer may also be a user, if it acquires a covered service from a service provider.)

“contestable”, in relation to a consumer, means a consumer whose load exceeds the threshold for contestability prescribed under section 93 of the Electricity Corporation Act 1994 or another enactment.

“contractual dispute” means a dispute between a service provider and a user that is not an access dispute and is referred to the arbitrator under a contract for services.

“contributing user” means a user that is or may be required to make a capital contribution in respect of a required augmentation.

“Coordinator” means the Coordinator of Energy referred to in section 4 of the Energy Coordination Act 1994.

“coverage applicant” means a person who lodges a coverage application.

“coverage application” means an application under section 3.8 requesting that the whole or part of a network be covered.

“coverage decision”, for a coverage application for a network, means either or both of the draft coverage decision under section 3.17 by the Minister and the final coverage decision under section 3.21 by the Minister.

“covered”, with regard to a network, means that the service provider of the network is subject to section 4.1.

“covered network” means a network that is covered.

“covered service” means a service in relation to the transportation of electricity provided by means of a covered network, including:

(a) a connection service; or
(b) an entry service or exit service; or
(c) a network use of system service; or
(d) a common service; or
(e) a service ancillary to a service listed in paragraphs (a) to (d) above,

but does not include an excluded service.

(Note: This Code uses the expression covered service to describe what is sometimes called a ‘regulated service’. It can be distinguished from an excluded service.

Covered services subdivide into reference services and non-reference services.)

“CPI” means the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities most recently published by the Australian Bureau of Statistics or, if the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities ceases to be published, such alternative index as the Authority may reasonably
determine, and in all cases the CPI figure is to be adjusted to correct for any effects of a change in the rate of GST as defined in the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth.

“CPI adjusted” has the meaning given to it in section 14.26.

“customer transfer code” means a code made under section 39(1) or section 39(2a) of the Act in respect of the matter referred to in section 39(2)(b) of the Act.

“deadlock”, in Chapter 12, means circumstances in which the members of a technical rules committee cannot reach consensus on an aspect of model technical rules or on a matter on which the technical rules committee has been requested to, or one or more of its members wishes to, provide advice to the Authority.

“decision maker”, in Appendix 7, means a person who, under this Code, is obliged or chooses to consult the public under Appendix 7 on a matter for consultation.

“deemed access contract” means the full terms and conditions of the arrangement by which a network business is to provide covered services to an other business.

“designated date” means the date by which a service provider must submit proposed revisions to the Authority after a trigger event has occurred and is either:

(a) specified in the access arrangement; or

(b) able to be determined, after the trigger event has occurred, using a method specified in the access arrangement.


“disclosing person” means a person who provides relevant material to a recipient under the Code.

“discount” means a discount referred to in section 7.9 or 7.10, as the case may be.

“distributed generating plant” means a generating plant with an entry point to a network at a nominal voltage of less than 66 kV and no entry point to a network at a nominal voltage of 66 kV or higher.

“distribution system” means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of less than 66 kV.

“DORC” has the meaning given to it in section 6.46.

“draft coverage decision”, for a coverage application for a network, means a draft decision under section 3.17 by the Minister on the coverage application that the network be covered or not be covered.

“draft decision” means a draft decision by the Authority under section 4.12 either to approve a service provider’s proposed access arrangement or to not approve the proposed access arrangement.

“draft revocation decision”, for a revocation application for a network, means a draft decision under section 3.17 (as modified under section 3.31) by the Minister on a revocation application that a network be covered or not be covered.

“efficiency and innovation benchmarks” means efficiency and innovation benchmarks in an access arrangement under section 5.1(j).

“efficiently minimising costs”, in relation to a service provider, means the service provider incurring no more costs than would be incurred by a prudent service provider, acting efficiently, in accordance with good electricity industry practice, seeking to achieve the lowest sustainable cost of delivering covered services and without reducing service standards below the service standard benchmarks set for each covered service in the access arrangement or access contract.
“electronic form”, in relation to the public register, means that the public register is kept on an internet website which is accessible to the public and from which information may be downloaded.

“entry point” means a point on a covered network identified as such in an access contract at which, subject to the access contract, electricity is more likely to be transferred into the network than transferred out of the network.

“entry service” means a covered service provided by a service provider at an entry point under which the user may transfer electricity into the network at the entry point.

“excluded service” means a service in relation to the transportation of electricity provided by means of a covered network, including:

(a) a connection service; or
(b) an entry service or exit service; or
(c) a network use of system service; or
(d) a common service, or
(e) a service ancillary to the services listed in paragraphs (a) to (d) above,

which meets the following criteria:

(f) the supply of the service is subject to effective competition; and
(g) the cost of the service is able to be excluded from consideration for price control purposes without departing from the Code objective.

“exclusive license” means an exclusive license granted under regulations made under section 26(1) of the Act.

“exclusivity right” means a contractual right which by its terms either:

(a) expressly prevents a service provider supplying covered services to persons who are not parties to the contract; or

(b) expressly places a limitation on the service provider’s ability to supply covered services to persons who are not parties to the contract,

but does not include a user’s contractual right to obtain a certain volume of covered services.

“exit point” means a point on a covered network identified as such in an access contract at which, subject to the access contract, electricity is more likely to be transferred out of the network than transferred into the network.

“exit service” means a covered service provided by a service provider at an exit point under which the user may transfer electricity out of the network at the exit point.

“facilities and equipment”, in relation to a connection point, means the apparatus, equipment, plant and buildings used for or in connection with generating, consuming and transporting electricity at the connection point.

“final coverage decision”, for a coverage application for a network, means a final decision under section 3.21 by the Minister on the coverage application that the network be covered or not be covered.

“final decision” means a final decision by the Authority under section 4.17 either to approve the service provider’s proposed access arrangement or to not approve the service provider’s proposed access arrangement.

“final report” means a final report provided by the Chair of the technical rules committee to the Authority under section 12.11(b)(ii) setting out the technical rules committee’s progress in performing its functions under section 12.23, and in the case of deadlock, advice in accordance with section 12.25.
“final revocation decision”, for a revocation application for a network, means a final decision by the Minister on a revocation application under section 3.21 (as modified under section 3.31 that a network be covered or not be covered.

“first access arrangement”, for a covered network, means the first access arrangement approved (or if no access arrangement has been approved, to be approved) for the covered network under this Code.

“first access arrangement period”, for a covered network, means the access arrangement period for the first access arrangement.

“force majeure”, operating on a person, means a fact or circumstance beyond the person’s control and which a reasonable and prudent person would not be able to prevent or overcome.

“forecast new facilities investment”, for a covered network, means the capital costs forecast to be incurred in developing, constructing and acquiring new network assets for the covered network.

“further final decision” means, where the Authority’s final decision is to not approve the service provider’s proposed access arrangement, the further final decision of the Authority under section 4.21 either to approve the service provider’s amended proposed access arrangement or to not to approve the service provider’s amended proposed access arrangement.

“gain sharing mechanism” is defined in section 6.19.

“generate” means to produce electricity.

“generating plant”, in relation to a connection point, means all equipment involved in generating electricity.

“generator” means a person who generates electricity.

“good electricity industry practice” means the exercise of that degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably and ordinarily exercise under comparable conditions and circumstances consistent with applicable written laws and statutory instruments and applicable recognised codes, standards and guidelines.

“incoming user” has the meaning given to it in section 5.7(f).

“incremental cost of service provision”, in relation to a user or group of users, a covered service and a specified period of time, means that part of approved total costs that would be avoided by the service provider during the specified period of time if it were not to provide the covered service to the user or group of users.

“information package” means an information package established and maintained by a service provider in relation to covered network which complies with section 14.1.

“integrated provider” means:

(a) Western Power Corporation; and

(b) a service provider which, under section 13.31, has been given an exemption from section 13.11(a).

“interconnected network”, in relation to a network, means another network which is part of the same interconnected system as the first network.

“interconnected system” means an electricity system comprising two or more networks interconnected with each other, and in relation to a particular network means an interconnected system of which the network is a part.

“interested person”, for a network, means a person who is registered under section 14.8 in respect of that network.
“interim access arrangement”, for a covered network, means an access arrangement drafted and approved by the Authority under section 4.59.

“interim access arrangement period”, for an interim access arrangement, means the period from the date of approval of the interim access arrangement until the access arrangement start date for the covered network.

“investment adjustment mechanism” has the meaning given to it in section 6.13.

“investment difference” has the meaning given to it in section 6.13.

“judicial proceedings” has the meaning given to it in section 4.69.

“load” means the amount of electrical power transferred out of a network at a connection point at a specified time.

“maintain” includes (as necessary and as applicable) renew, replace or update.

“major augmentation” means an augmentation for which the new facilities investment for the shared assets:

(a) exceeds $5 million (CPI adjusted), where the network assets comprising the augmentation are, or are to be, part of a distribution system; and

(b) exceeds $15 million (CPI adjusted), where the network assets comprising the augmentation are, or are to be, part of:
   (i) a transmission system; or
   (ii) both a distribution system and a transmission system.

“major augmentation proposal” means a proposal in respect of one or more proposed major augmentations submitted by a service provider under sections 9.10 and 9.11, or under sections 9.15 and 9.16, as applicable.

“major augmentation report” has the meaning given to it in section 10.41(b).

“marketing staff” means servants, consultants, independent contractors or agents directly involved in sales, sale provision or advertising (whether or not they are also involved in other functions) but does not include servants, consultants, independent contractors or agents:

(a) who are senior staff; or

(b) involved only in technical, administrative, accounting or service functions.

“matter for consultation” means a document, determination or decision that under this Code is required to be or may be the subject of public consultation under Appendix 7.

“model applications and queuing policy” means the model applications and queuing policy in Appendix 2.

“model capital contributions policy” means the model capital contributions policy in Appendix 4.

“model standard access contract” means the model standard access contract in Appendix 3.

“modified test” means one or more modified tests set out in an access arrangement for the purposes of section 6.52(b)(i)B in respect of new facilities investment below one or more test application thresholds.

“net benefit” means a net benefit (measured in present value terms to the extent that it is possible to do so) to those who generate, transport and consume electricity in (as the case may be):

(a) the covered network; or
(b) the covered network and any interconnected system.

"net benefit after considering alternative options" is defined in section 9.4.

"network" has the meaning given to "network infrastructure facilities" in the Act.

(Note: At the time this Code was made, the definition in section 103 of the Act was:

' "network infrastructure facilities" means:

(a) the electrical equipment that is used only in order to transfer electricity to or from an electricity network at the relevant point of connection including any transformers or switchgear at the relevant point of connection or which is installed to support or to provide backup to that electrical equipment as is necessary for that transfer; and

(b) the wires, apparatus, equipment, plant and buildings used to convey, and control the conveyance of, electricity,

which together are operated by a person (a "network service provider") for the purpose of transporting electricity from generators to other electricity networks or to consumers. }

"network assets", in relation to a network, means the apparatus, equipment, plant and buildings used to provide or in connection with providing covered services on the network, which assets are either connection assets or shared assets.

"network business" means the part of an integrated provider's business and functions which are responsible for the operation and maintenance of a covered network and the provision of covered services by means of the covered network.

"network modification", when used in sections 3.36 to 3.37, means, in respect of a covered network, either:

(a) the commissioning of an augmentation to the covered network; or

(b) a disposal or decommissioning of network assets of the covered network.

"network persons", means the service provider, applicants, users and controllers of a covered network where the service provider of the covered network has applied to the Authority for an exemption from one or more requirements of the technical rules applying to the covered network.

"new facilities investment", for a new facility, means the capital costs incurred in developing, constructing and acquiring the new facility.

"new facilities investment test", in respect of a covered network, means the test set out in section 6.52.

"new facility" means any capital asset developed, constructed or acquired to enable the service provider to provide covered services including assets required for the purpose of facilitating competition in retail markets for electricity.

"non-capital costs", in relation to covered services provided by a service provider by means of a covered network for a period of time, means all costs incurred in providing the covered services for the period of time which are not capital-related costs, including those operating, maintenance and administrative costs which are not capital-related costs.

"non-covered network" means a network that is not a covered network.

"non-reference service" means a covered service that is not a reference service.

"notification threshold" has the meaning given to it in section 3.37.

"ODV" has the meaning given to it in section 6.46.

"other business" means the part or parts of an integrated provider's business which are not the network business, and includes any part or parts of the integrated
provider’s business and functions which acquire covered services from the network business.

“other service provider”, in relation to a service provider that operates a network in an interconnected system, has the meaning given to it in section 12.59.

“outgoing user” has the meaning given to it in section 5.7(f).

“participant”, when used in sections 14.16 to 14.21, has the meaning given in section 14.17.

“preliminary report” means a preliminary report provided by the Chair of the technical rules committee to the Authority under section 12.11(b)(i) setting out the technical rules committee’s progress in performing its functions under section 12.23, and in the case of deadlock, advice in accordance with section 12.25.

“price control” means the provisions in an access arrangement under section 5.1(d) and Chapter 6 which determine target revenue.

{Note: Price control can consist of direct or indirect limits, and consists of a limit on the level of tariffs through the control of overall revenue. The structure of tariffs is dealt with by the pricing methods in Chapter 7.}

“price control methodology” means a methodology included in an access arrangement as part of price control.

{Examples of the things that might comprise price control methodologies are: the means for determining a suitable return on investment; the means of forecasting load; and calculation of the X factor if CPI-X is used.}

“price list” means the schedule of reference tariffs in effect in an access arrangement under section 5.1(f) and Chapter 8 for a covered network.

“price list information” means a document which sets out information which would reasonably be required to enable the Authority, users and applicants to:

(a) understand how the service provider derived the elements of the proposed price list; and

(b) assess the compliance of the proposed price list with the access arrangement.

“pricing methods” means the structure of reference tariffs in an access arrangement as defined in section 7.1.

“pricing years” for an access arrangement are periods of no longer than one year, the start and end dates of which are set out in the access arrangement, which together account for the entire access arrangement period and in respect of which a price list must be submitted to the Authority under either section 8.1 or 8.7.

“proceedings”, when used in Chapter 10 and Appendix 5, means any proceedings before the arbitrator under this Code whether final or interlocutory, and includes any application in connection with and at any stage of proceedings, and includes the making of an award.

“processing” an access application means the performance of all requirements under an applications and queuing policy necessary for the making of an access offer including engaging in discussions, preparing an initial response and carrying out a preliminary assessment and making an access offer.

“proposed access arrangement” means a proposed access arrangement that has been submitted by a service provider with the Authority for approval under this Code, but which has not been approved.

“proposed award”, in respect of an arbitration under Chapter 10 which is subject to Subchapter 10.3, means a document provided to the parties to the arbitration under section 10.40(a) which describes in reasonable detail the nature of the major
 augmentation that the arbitrator anticipates it will require the service provider to undertake in its award.

“proposed major augmentation” means a major augmentation detailed in a major augmentation proposal under section 9.11(a) or 9.16(a), as applicable.

“proposed revisions” means proposed revisions to an access arrangement that, under section 4.37 or 4.48, have been submitted by a service provider to the Authority for approval under Chapter 4.

“public register” means the register established and maintained by the Authority under section 14.5.

“publish” means:

(a) where the Minister is required to publish a thing — that the Minister must:

(i) provide the thing to the Coordinator; and

(ii) procure the Coordinator to place the thing on an internet website which is under the Coordinator’s control;

and

(b) where the Authority is required to publish a thing — that the Authority must:

(i) place the thing on the public register; and

(ii) send a notice to each person listed on the register of interested persons maintained under section 14.8 in respect of the network to which the thing relates advising the person that the thing has been placed on the public register.

“queuing dispute” has the meaning given to it in section 10.13.

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

“reasons”, in relation to a decision or other determination, means a statement of the decision-maker’s reasons for deciding including, as applicable:

(a) findings on material questions of fact relied on by the decision-maker in reaching the decision;

(b) reference to the evidence on which findings of fact are based; and

(c) identification of the steps in the decision-making process, explanation of the link between the findings of fact and the final decision and a description of the role of policy or guidelines in the decision-making process.

“recipient” means, the Minister, Authority or a service provider, as applicable, when provided with relevant material.

“recoverable portion”, for new facilities investment for a covered network, has the meaning given to it in section 6.57.

“redundant capital”, for a covered network, means an amount determined under section 6.61 to be removed from the capital base of the covered network.

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

“reference tariff” means the tariff specified in a price list for a reference service.
“register of interested persons” means the register or registers maintained by the Authority under section 14.8.

“regulatory test” is defined in section 9.3.

“related body corporate” and “related company”, in relation to a body corporate, mean a body corporate that is related to the first-mentioned body corporate under the Corporations Act 2001 of the Commonwealth.

“related business” means the business of generating, purchasing or selling electricity, but does not include generating, purchasing or selling electricity to the extent necessary:

(a) for the safe and reliable operation of a covered network; or
(b) to enable a service provider to provide balancing and ancillary services in connection with a covered network; or
(c) to comply with an obligation under Part 9 of the Act.

(Note: Part 9 of the Act deals with the wholesale market.)

“relevant material” means information or a document provided to a recipient under the Code.

“relocation” means a relocation of capacity from one connection point in a user’s access contract to another connection point the user’s access contract under a transfer and relocation policy.

“required augmentation” means an augmentation to a covered network that needs to be undertaken in order for the service provider to provide the covered services sought by an applicant.

“review” of an access arrangement means the process set out in sections 4.46 to 4.52

“revisions commencement date” means a date on which revisions to an access arrangement which have been approved by the Authority commence under section 4.26 (as modified under section 4.52).

“revisions submission date” is the date specified in an access arrangement under section 5.29(a) as the date by which the service provider must submit its proposed revisions to the access arrangement to the Authority under section 4.48.

“revocation applicant” means a person who applies to the Minister for the Minister to revoke coverage of a covered network as described in section 3.30.

“revocation application” means an application for revocation of coverage made under section 3.7 (as modified under section 3.31).

“revocation decision”, for a revocation application for a network, means either or both of the draft revocation decision under section 3.17 (as modified under section 3.31) by the Minister and the final revocation decision under section 3.21 by the Minister.

“ringfenced business” is defined in section 13.3.

“ringfencing compliance procedures” means procedures established and maintained by a service provider as required by section 13.37(a) to ensure and monitor a service providers compliance with section 13.1.

“ringfencing objectives” means the objectives in section 13.11 (as added to under section 13.23 if applicable).
“ringfencing rules” means rules drafted and approved by the Authority under section 13.14 as varied from time to time under section 13.18.

“senior staff” means servants, consultants, independent contractors or agents involved strategic decision making, including directors and the executive officer or officers to whom marketing staff report either directly or indirectly.

“service” means a covered service or an excluded service.

“service provider”, in relation to a network, means a person who owns or operates the network.

“service standard benchmarks” means the benchmarks for service standards for a reference service in an access arrangement under section 5.1(c).

“service standard performance report” means a report provided by a service provider to the Authority under section 11.3.

“service standards” means either or both of the technical standard, and reliability, of delivered electricity.

“service standards adjustment mechanism” has the meaning given to it in section 6.29.

“shared assets” mean those network assets which are not connection assets.

“specific criterion” means an objective, requirement or factor specified in this Code in relation to a thing (including the making of any decision or the doing, or not doing, of any act), and “specific criteria” means any two or more such objectives, requirements or factors specified under this Code in relation to such a thing, whether or not all specified in one provision.

“speculative investment amount”, for a new facility (if any), is determined under section 6.58.

“stand-alone cost of service provision”, in relation to a user or group of users, a covered service and a specified period of time, means that part of approved total costs that the service provider would incur in providing the covered service to the user or group of users, for the period of time if the covered service was the sole covered service provided by the service provider and the user or group of users was the sole user or group of users supplied by the service provider during the specified period of time.

“standard access contract” means the terms and conditions for a reference service in an access arrangement under section 5.1(b).

“standard tariff exit point”, in section 7.7, means an exit point in respect of which the contracted maximum demand under a contract for services is less than 1 MVA.

“standard tariff user”, in section 7.7, means a user who transfers electricity out of a network at a standard tariff exit point.

“statutory instruments” means all relevant instruments made under a written law including all directions, notices, orders and other instruments given or made under a written law and includes, as existing from time to time:

(a) orders made under section 8 of the Act; and
(b) licences granted, renewed or transferred under section 19 of the Act; and
(c) standard form contracts approved under section 51 of the Act; and
(d) orders made under section 55(7) of the Act; and
(e) approved policies as defined in section 62 of the Act; and
(f) last resort supply plans approved under section 73 of the Act as amended under sections 74 and 75 of the Act; and
(g) market rules as defined in section 121(1) of the Act.

“submission deadline”, in relation to a service provider’s submission of a proposed access arrangement for a covered network, means the date which is six months after the network becomes covered.

“supplementary matter” has the meaning given to it in section 5.27 and supplementary matters must be dealt with in an access arrangement under section 5.1(k).

“surplus”, for a covered network for an access arrangement period, arises when the conditions described in section 6.23 are satisfied.

“SWIS” means the “South West interconnected system” as defined in the Act.

(Note: Some parts of the SWIS are owned by the Western Power Corporation and some are privately owned.

As at the date of this Code the definition in the Act was:
‘ the interconnected transmission and distribution systems, generating works and associated works –

(a) located in the South West of the State and extending generally between Kalbarri, Albany and Kalgoorlie; and

(b) into which electricity is supplied by –

(i) one or more of the electricity generation plants at Kwinana, Muja, Collie and Pinjar; or

(ii) any prescribed electricity generation plant. ’

“target revenue”, for a covered network for an access arrangement period, is determined in accordance with section 6.4(a).

“target revisions commencement date” is the date specified in an access arrangement under section 5.29(b) as the target date for the revisions commencement date.

“tariff”, for a covered service, means the criteria that determine the charge that is payable by a user to the service provider.

“technical rules”, for a network, means the technical rules (if any) in effect for the network under Chapter 12.

“technical rules committee”, in relation to a network or interconnected system, means the current committee, if any, established under section 12.16 for the network or interconnected system.

“technical rules start date” for the technical rules for a network is the date on which the technical rules take effect and is specified by the Authority under section 12.15.

“test application threshold”, for a modified test in an access arrangement, means the threshold for new facilities investment below which the modified test applies.

“transfer” refers to a transfer of a user’s access rights to another person and includes an assignment or novation of access rights under a transfer and relocation policy.

“transfer and relocation policy” means a policy in an access arrangement under section 5.1(i) which specifies a user’s rights to transfer its access rights to another person and relocate capacity from one connection point in its access contract to another connection point in its access contract.

“transmission system” means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of 66 kV or higher.

“transport” includes transmit and distribute.
“trigger event” is a set of one or more circumstances specified in an access arrangement under section 5.1(l)(ii), the occurrence of which requires a service provider to submit proposed revisions to the Authority under section 4.37.

“user” means a person, including a generator or a consumer, who is party to a contract for services with a service provider, and under section 13.4(e) includes an other business as a party to a deemed access contract.

“weighted average cost of capital”, in relation to a covered network, is expressed as a percentage and means a weighted average of the cost of debt and the cost of equity as calculated under section 6.64.

“workers” of a person means the directors, officers, servants, employees, agents, sub-contractors and consultants of the person.

“written law” means:
(a) all Western Australian Acts and all Western Australian subsidiary legislation for the time being in force; and
(b) all Commonwealth Acts and all Commonwealth subsidiary legislation for the time being in force, where the term “subsidiary legislation” has the meaning given to it under the Interpretation Act 1984, if “Commonwealth Act” were substituted for “written law”.

Interpretation

1.4 This Code is a written law under the Electricity Industry Act 2004, and unless the contrary intention is apparent the Interpretation Act 1984 applies to it.

1.5 In this Code, unless the contrary intention is apparent:
(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) a reference to a law includes any amendment or re-enactment of it that is for the time being in force, and includes all laws made under it from time to time; and
(d) where italic typeface has been applied to some words and expressions, it is solely to indicate that those words or expressions may be defined in section 1.3 or elsewhere, and in interpreting this Code the fact that italic typeface has or has not been applied to a word or expression is to be disregarded, to avoid doubt, nothing in this section 1.5(d) limits the application of section 1.3; and
(e) where information in this Code 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 this Code; and
(ii) is to be disregarded in interpreting this Code; and
(iii) might not reflect amendments to this Code or other documents or written laws,
and
(f) a reference to:
(i) this Code includes any Appendix to this Code; and
(ii) a section, Chapter or Appendix is a reference to a section of, Chapter of or Appendix to this Code, and
(iii) a clause is a reference to a clause in an Appendix to this Code;

and

(g) without limiting section 1.4:

(i) where in this Code the word “may” is used in conferring a power, such word shall be interpreted to imply that the power may be exercised or not, at discretion;

(ii) where in this Code the word “must” is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed.
Chapter 2 – General Principles

Code objective

2.1 The objective of this Code ("Code objective") is to promote the economically efficient:
(a) investment in; and
(b) operation of and use of,

networks and services of networks in Western Australia in order to promote competition in markets upstream and downstream of the networks.

(Note: This Code sets out more specific objectives that also apply in relation to the performance of certain functions under the Code, for example, section 6.4 sets out objectives for the price control in an access arrangement.)

2.2 The Minister, the Authority and the arbitrator must have regard to the Code objective when performing a function under this Code whether or not the provision refers expressly to the Code objective.

Code objective with other objectives, requirements and factors etc

2.3 Where this Code specifies one or more specific criteria in relation to a thing (including the making of any decision or the doing, or not doing, of any act), then:
(a) subject to section 2.3(b), the specific criteria and the Code objective all apply in relation to the thing; and
(b) subject to section 2.4, to the extent that a specific criterion and the Code objective conflict in relation to the thing, then:
(i) the specific criterion prevails over the Code objective in relation to the thing; and
(ii) to the extent that the specific criterion conflicts with one or more other specific criteria in relation to the thing, the Code objective applies in determining how the specific criteria can best be reconciled and which of them should prevail.

2.4 If the Code objective is specified in a provision of this Code as a specific criterion, then the Code objective is to be treated as being also a specific criterion for the purposes of section 2.3, but to the extent that the Code objective conflicts with one or more other specific criteria the Code objective prevails.

Freedom to contract

2.5 Nothing in this Code except:
(a) an applications and queuing policy in an access arrangement; and
(b) the ringfencing objectives and any ringfencing rules approved for a network by the Authority under Chapter 13; and
(c) any applicable technical rules,
limits:
(d) the services a service provider may agree to provide to a user or applicant; or
(e) the terms for, or connected with, the provision of services which may be agreed between a service provider and a user or applicant; or

(f) the covered services which may be the subject of an access dispute or award under Chapter 10; or

(g) the terms for, or connected with, the provision of covered services which may be the subject of an access dispute or award under Chapter 10.

2.6 Nothing in this Code or an access arrangement prevails over or modifies the provisions of any contract for services provided by means of a network, except for:

(a) if an access arrangement is in effect for the network — the applications and queuing policy; and

(b) the ringfencing objectives, to the extent that they apply to the network, and any ringfencing rules in effect for the network; and

(c) any provisions of the technical rules which by this Code are expressed to prevail over such a contract; and

(Note: See section 12.5.)

(d) subject to section 10.32(a), an award by the arbitrator.

Service provider to use reasonable endeavours to provide access to covered services

2.7 A service provider for a covered network must use all reasonable endeavours to accommodate an applicant’s:

(a) requirement to obtain covered services; and

(b) requirements in connection with the negotiation of an access contract.

2.8 Without limiting section 2.7, a service provider must:

(a) comply with the access arrangement for its covered network and must expeditiously and diligently process access applications; and

(b) negotiate in good faith with an applicant regarding the terms for an access contract; and

(c) to the extent reasonably practicable in accordance with good electricity industry practice, permit an applicant to acquire a covered service containing only those elements of the covered service which the applicant wishes to acquire; and

(d) to the extent reasonably practicable, specify a separate tariff for an element of a covered service if requested by an applicant, which tariff must be determined in accordance with sections 10.23 and 10.24; and

(e) when forming a view as to whether all or part of any proposed new facilities investment meets the new facilities investment test, form that view as a reasonable and prudent person.

Requirement to undertake augmentations and funding of augmentations

2.9 If a service provider will need to undertake an augmentation (“required augmentation”) in order to provide a covered service sought in an access application then:

(a) if all of the forecast new facilities investment for the required augmentation meets the new facilities investment test, the service provider must undertake and fund the augmentation; and

(b) if only part or none of the forecast new facilities investment for the required augmentation meets the new facilities investment test and the applicant
provides the capital contribution for the required augmentation determined under the capital contributions policy, the service provider must undertake the required augmentation and fund the part which meets the new facilities investment test; and

(c) if only part or none of the forecast new facilities investment for the required augmentation meets the new facilities investment test and the applicant does not provide the capital contribution for the required augmentation determined under the capital contributions policy, then this Code does not compel the service provider to undertake or fund the required augmentation.
Chapter 3 – Coverage

Subchapter 3.1 – Covered networks

SWIS is covered
3.1 The portions of the SWIS which are owned by Western Power Corporation are a covered network from the Code commencement date, unless coverage has subsequently been revoked under section 3.30.

Other networks may be covered
3.2 A network other than the covered network that is covered under section 3.1 may become covered after the Code commencement date where a person make a coverage application in respect of the network and the Minister decides under section 3.3(a) that the network should be covered.

Subchapter 3.2 – Criteria for coverage

Minister’s decision on coverage
3.3 Subject to section 3.12 Minister must make a final coverage decision or draft coverage decision which must be either:

(a) that the network be covered; or

(b) that the network not be covered.

3.4 If a coverage decision is that a network be covered, the coverage decision may cover the network to a greater or lesser extent than requested in the coverage application if, having regard to the part of the network that is necessary to provide covered services that applicants may seek, the Minister considers that doing so is consistent with the Code objective.

Coverage criteria
3.5 A coverage decision must be that a network be covered if the Minister determines an affirmative answer to each of the following questions:

(a) Would access (or increased access) to covered services provided by means of the network promote a material increase in competition in at least one market (whether or not in Western Australia) other than the market for the covered services provided by means of the network?

(b) Would it be uneconomic for anyone to develop another network to provide the covered services provided by means of the network?

(c) Would access (or increased access) to the covered services provided by means of the network not be contrary to the public interest?

Factors the Minister must have regard to
3.6 The Minister must when exercising the Minister’s functions under this Chapter 3 have regard to the geographical location of the network and the extent (if any) to which the network is interconnected with other networks.

3.7 Section 3.6 does not limit the factors to which the Minister may have regard.
Subchapter 3.3 – Coverage process

Applications for coverage

3.8 A coverage applicant may make a coverage application to the Minister requesting that the whole or any part of a network be covered.

3.9 A coverage applicant may withdraw its coverage application by notice to the Minister at any time before the Minister makes a final coverage decision.

3.10 A coverage application must be made in accordance with any guidelines which may be developed and published by the Minister concerning the form and content of coverage applications and specifying the amount of any fee to be paid on the making of a coverage application.

3.11 Within 10 business days after receipt of the coverage application inform the service provider and each other person known to the Minister whom the Minister believes has a sufficient interest in the matter that the Minister has received the coverage application.

3.12 Minister may dismiss a coverage application if the Minister receives a coverage application which the Minister considers to have been made on trivial or vexatious grounds, then, without further consideration, the Minister must dismiss the coverage application.

Invitation for submissions and issues paper

3.13 The Minister must publish and advertise:

(a) a coverage application, stating how copies of the coverage application may be obtained; and

(b) an invitation for submissions on the coverage application,

as soon as practicable and in any event within 10 business days after the coverage application is received by the Minister.

3.14 The Minister may produce and publish an issues paper examining the issues raised in connection with a coverage application within 20 business days after the invitation for submissions on the coverage application is advertised under section 3.13(b).

3.15 The Minister must arrange to provide a copy of a coverage application to any person who requests a copy within 5 business days after the person makes the request and pays any reasonable fee required by the Minister.

First round public submissions

3.16 A person may make a submission to the Minister on a coverage application within the later of:

(a) 15 business days after an invitation for submissions on the coverage application is advertised under section 3.13(b); and

(b) 10 business days after an issues paper is published in respect of the coverage application under section 3.14

Draft coverage decision by the Minister

3.17 Subject to section 3.24, the Minister must consider any submissions made under section 3.16 on a coverage application and must make a draft coverage decision either:

(a) that the network be covered; or

(b) that the network not be covered.
3.18 The Minister must, within 15 business days (but not earlier than 10 business days) after the due date for submissions under section 3.16, publish and advertise the draft coverage decision and provide a copy of the draft coverage decision and reasons to the coverage applicant and the service provider.

3.19 The Minister must publish and advertise an invitation for submissions on a draft coverage decision at the same time as the Minister publishes the draft coverage decision.

Second round public submissions

3.20 A person may make a submission to the Minister on a draft coverage decision within 15 business days after the invitation for submissions on the draft coverage decision is advertised under section 3.19.

Final coverage decision by Minister

3.21 Subject to section 3.24, the Minister must consider any submissions made under section 3.20 on a draft coverage decision and must make a final coverage decision either:

(a) that the network be covered; or
(b) that the network not be covered.

3.22 The Minister must, within 15 business days (but not earlier than 10 business days) after the due date for submissions under section 3.20, publish and advertise the final coverage decision and provide a copy of the final coverage decision and reasons to the coverage applicant and the service provider.

Final coverage decision has effect

3.23 The Minister must specify a date in the final coverage decision on which the final coverage decision will have effect, which date must not be earlier than 10 business days after the day the final coverage decision is made.

Late submissions

3.24 The Minister may consider any submission received pursuant to an invitation for submissions after the time for making the submission has expired.

Reasons

3.25 At the time of advertising and publishing a coverage decision the Minister must also advertise and publish the reasons for the coverage decision.

Service provider agrees to network coverage

3.26 At any time prior to the Minister making a final coverage decision for a network, the service provider may notify the Minister that it agrees to coverage of the network to the same extent as specified in the coverage application, in which case the Minister may then make a final coverage decision that the network be covered to the same extent as specified in the coverage application and if the Minister does so:

(a) the Minister is not required to consider the matters set out in sections 3.5 to 3.6; and
(b) the Minister is not required to comply with the process in sections 3.13 to 3.22.
Extensions of time under this Chapter

3.27 Subject to section 3.28, the Minister may extend any deadline, or provide for stages in the making of a coverage decision in addition to those provided for, in this Chapter 3, but only if, and only to the extent that, the Minister first determines that:

(a) a longer period of time is essential for due consideration of all the matters under consideration or satisfactory performance of the relevant obligation, or both; and

(b) the Minister has taken all reasonable steps to fully utilise the times and processes provided for in this Chapter 3.

3.28 The Minister:

(a) must not exercise the power in section 3.27 to extend any deadline unless, before the day on which the time would otherwise have expired, the Minister advertises and publishes the Minister’s decision to extend the deadline; and

(b) may (subject to section 3.29) exercise the power in section 3.27 to extend a deadline on more than one occasion but the total time for the extension of a deadline cannot exceed the period originally specified in this Chapter 3 for the relevant deadline.

3.29 The Minister must not extend the deadline specified in section 3.15.

Subchapter 3.4 – Revocation of coverage

Revocation of coverage

3.30 A covered network ceases to be covered if a revocation applicant makes a revocation application to the Minister for coverage of the covered network to be revoked and the Minister makes a final revocation decision that the network not be covered.

3.31 The process for the Minister to decide on revocation of coverage is the same as the process for a decision on coverage outlined in sections 3.9 to 3.29, with appropriate modifications including replacing a reference to:

(a) “coverage application” with a reference to “revocation application”; and

(b) “coverage decision” with a reference to “revocation decision”; and

(c) “draft coverage decision” with a reference to draft revocation decision; and

(d) “final coverage decision” with a reference to “final revocation decision”; and

(e) “coverage” with a reference to “revocation of coverage”; and

(f) “coverage applicant” with a reference to “revocation applicant”.

Subchapter 3.5 – Miscellaneous

Advertising

3.32 Where the Minister is required to advertise a thing under this Chapter 3, the advertisement must contain a description of the network the subject of the advertisement.

Publishing

3.33 The Minister must publish all submissions made in connection with a coverage application or revocation application.

(Note: A person may state that a submission or part of a submission is confidential in which case sections 14.12 to 14.15 apply.)
Automatic coverage of augmentations

3.34 An augmentation of a covered network is part of the covered network from the time the augmentation is commissioned.

3.35 Section 3.34 does not limit section 3.30.

Notification of network modification

3.36 A service provider must:

(a) as soon as practicable after a network modification which meets the notification threshold has occurred, notify the Authority of the details of the network modification; and

(b) within 30 business days after receiving a request from the Authority, and within 30 business days after the end of a year, provide the Authority with an updated description of the covered network, identifying all significant network modifications (whether or not they meet the notification threshold) that have occurred since the last description,

and the Authority must promptly after notification amend the description of the covered network on the public register to reflect the network modification or network modifications.

(Note: The Authority is required to establish and maintain a public register under section 14.5.)

3.37 For the purposes of section 3.36, the notification threshold for a network modification is:

(a) for an augmentation — an augmentation requiring new facilities investment of more than $15 million (CPI adjusted); or

(b) for a disposal or decommissioning — a disposal or decommissioning involving network assets that are valued by the service provider as a reasonable and prudent person at more than $15 million (CPI adjusted).
Chapter 4 – Access Arrangements: Approval and Review

Subchapter 4.1 – Approval process

(Note: Appendix 1 contains a flowchart which provides an outline of the access arrangement approval process.)

Submission of first access arrangement

4.1 The service provider of a covered network must submit a proposed access arrangement and access arrangement information to the Authority by the submission deadline.

(Note: Sections 14.16 to 14.21 apply where there are two service providers for a covered network, for example because one person owns it and another operates it.)

(Note: If a service provider does not submit a proposed access arrangement for the first access arrangement period by the submission deadline sections 4.55 to 4.58 will apply.)

(Note: A service provider that submits an access arrangement and access arrangement information under section 4.1 must also submit proposed technical rules under Chapter 12 to be processed in parallel with the access arrangement.)

Access arrangement information

4.2 Access arrangement information must enable the Authority, users and applicants to:

(a) understand how the service provider derived the elements of the proposed access arrangement; and

(b) form an opinion as to whether the proposed access arrangement complies with the Code.

4.3 Access arrangement information must include:

(a) information detailing and supporting the price control in the access arrangement; and

(b) information detailing and supporting the pricing methods in the access arrangement; and

(c) if applicable, information detailing and supporting the measurement of the components of approved total costs in the access arrangement; and

(d) information detailing and supporting the service provider’s system capacity and volume assumptions.

4.4 If a service provider submits a revised proposed access arrangement under section 4.16 or an amended proposed access arrangement under section 4.19, the service provider must at the same time submit appropriately amended access arrangement information.

4.5 The Authority may from time to time publish guidelines setting out in further detail what information must be included in access arrangement information in order for the access arrangement information to comply with sections 4.2 and 4.3, either generally or in relation to a particular matter or circumstance.
4.6 Subject to sections 4.2 and 4.3, access arrangement information submitted more than three months after guidelines are published under section 4.4 must comply with the guidelines.

4.7 The Authority may waive the requirement for a service provider to comply with one or more guidelines published under section 4.4 if it is satisfied that doing so will better achieve the Code objective.

4.8 The Authority may, to the extent necessary to make access arrangement information comply with sections 4.2 and 4.3, require the service provider to amend and resubmit access arrangement information to the Authority within a reasonable time specified by the Authority, which time must not exceed 5 business days.

Invitation for submissions and issues paper

4.9 The Authority must publish and advertise:

(a) a proposed access arrangement; and

(b) an invitation for submissions on the proposed access arrangement,

as soon as practicable and in any event within 5 business days after the proposed access arrangement is submitted to the Authority.

4.10 The Authority may produce and publish an issues paper examining the issues raised in connection with the proposed access arrangement within 20 business days after the invitation for submissions on the proposed access arrangement is advertised under section 4.9(b).

First round public submissions

4.11 A person may make a submission to the Authority on the proposed access arrangement within the later of:

(a) 30 business days after the invitation for submissions on the proposed access arrangement is advertised under section 4.9(b); and

(b) 10 business days after an issues paper is published in respect of the proposed access arrangement under section 4.10.

(Note: Under section 14.5(d)(iii), the Authority must place each submission made under section 4.11 on the public register.)

(Note: A person may state that a submission or part of a submission is confidential in which case sections 14.12 to 14.15 apply.)

Draft decision by Authority

4.12 Subject to section 4.27, the Authority must consider any submissions made under section 4.11 on a proposed access arrangement and must make a draft decision either:

(a) to approve the proposed access arrangement; or

(b) to not approve the proposed access arrangement, in which case the Authority must in its reasons provide details of the amendments required to the proposed access arrangement before the Authority will approve it.

4.13 The Authority must, within 42 business days after the due date for submissions under section 4.11, publish and advertise the draft decision.

4.14 The Authority must publish and advertise an invitation for submissions on a draft decision at the same time as it publishes the draft decision.
Second round public submissions

4.15 A person may make a submission to the Authority on a draft decision within 20 business days after the invitation for submissions on the draft decision is published under section 4.14.

(Note: Under section 14.5(d)(iii), the Authority must place each submission made under section 4.15 on the public register.)

(Note: A person may state that a submission or part of a submission is confidential in which case sections 14.12 to 14.15 apply.)

Revised proposed access arrangement

4.16 The service provider’s submission on a draft decision under section 4.15 may include a revised proposed access arrangement, and if so a reference in this Code to a “proposed access arrangement” is to be read as though it was a reference to a “revised proposed access arrangement”.

Final decision by Authority

4.17 Subject to section 4.27, the Authority must consider any submissions made under section 4.15 on the draft decision and must make a final decision either:

(a) to approve the proposed access arrangement; or
(b) to not approve the proposed access arrangement, in which case the Authority must in its reasons for the final decision provide details of the amendments required to the proposed access arrangement before the Authority will approve it.

4.18 The Authority must, within 30 business days after the due date for submissions under section 4.15, publish and advertise the final decision.

Amended proposed access arrangement

4.19 If the Authority’s final decision is to not approve the proposed access arrangement, then the service provider may submit an amended proposed access arrangement to the Authority within 20 business days after the final decision is published and the Authority must publish and advertise the amended proposed access arrangement.

4.20 If a service provider submits an amended proposed access arrangement to the Authority under section 4.19, then, unless the contrary intention is apparent, a reference in this Code to a “proposed access arrangement” is to be read as though it was a reference to an “amended proposed access arrangement”.

Further final decision by Authority

4.21 If the Authority’s final decision is to not approve a proposed access arrangement, then, subject to section 4.23, the Authority must make, publish and advertise a further final decision either:

(a) to approve; or
(b) to not approve,

the amended proposed access arrangement or (if the service provider did not submit an amended proposed access arrangement) the proposed access arrangement.

4.22 The time for complying with section 4.21 is:

(a) if the service provider submits an amended proposed access arrangement — within 15 business days after it is submitted; and
(b) otherwise — within 25 business days after the final decision is published.
4.23 If the Authority’s final decision is to not approve a proposed access arrangement and the service provider submits an amended proposed access arrangement and either:

(a) the amended proposed access arrangement implements the amendments required under section 4.17(b); or

(b) the amended proposed access arrangement does not implement the amendments required under section 4.17(b) but otherwise (in the Authority’s view) adequately addresses the matters which prompted the Authority to require the amendments,

then the Authority’s further final decision must be to approve the amended proposed access arrangement unless:

(c) approving the amended proposed access arrangement would be inconsistent with the Code objective; and

(d) the Authority determines that the advantages of not approving the amended proposed access arrangement outweigh the disadvantages, in particular the disadvantages associated with decreased regulatory certainty and increased regulatory cost and delay.

Authority drafting and approving own access arrangement if further final decision is not to approve

4.24 If the Authority’s further final decision is not to approve a service provider’s access arrangement, then the Authority must draft, approve, publish and advertise its own access arrangement, which must be:

(a) based on the amended proposed access arrangement or (if the service provider did not submit an amended proposed access arrangement) the proposed access arrangement; and

(b) amended from the basis in section 4.24(a) only to the extent necessary to satisfy the criteria for approval in section 4.28.

4.25 The Authority must comply with section 4.24 within 20 business days after a further final decision is published.

Access arrangement start date

4.26 When the Authority:

(a) makes a final decision or further final decision to approve a proposed access arrangement; or

(b) approves its own access arrangement under section 4.24,

the Authority must specify an access arrangement start date which must:

(c) be consistent with the Code objective; and

(d) be at least 20 business days after the final decision, further final decision or the Authority’s own access arrangement under section 4.24 is published.

Subchapter 4.2 – Criteria for approval

Reasons

4.27 Where the Authority makes a draft decision, final decision or further final decision, the Authority must provide and publish reasons for the draft decision, final decision or further final decision.
Criteria for approval of a proposed access arrangement

4.28 Subject to section 4.32, when making a draft decision, final decision or further final decision, the Authority must determine whether a proposed access arrangement meets the Code objective and the requirements set out in Chapter 5 (and Chapter 9, if applicable) and:

(a) if the Authority considers that:

(i) the Code objective and the requirements set out in Chapter 5 (and Chapter 9, if applicable) are satisfied — it must approve the proposed access arrangement; and

(ii) the Code objective or a requirement set out in Chapter 5 (or Chapter 9, if applicable) is not satisfied — it must not approve the proposed access arrangement;

and

(b) to avoid doubt, if the Authority considers that the Code objective and the requirements set out in Chapter 5 (and Chapter 9, if applicable) are satisfied, it must not refuse to approve the proposed access arrangement on the ground that another form of access arrangement might better or more effectively satisfy the Code objective and the requirements set out in Chapter 5 (and Chapter 9, if applicable).

{Note: The effect of section 4.28 is to make the Authority’s decision in relation to a proposed access arrangement a “pass or fail” assessment. The intention is that, if a proposed access arrangement meets the Code objective and the requirements set out in Chapter 5 (and Chapter 9, if applicable), the Authority should not refuse to approve it simply because the Authority considers that some other form of access arrangement might be even better, or more effective, at meeting the Code objective and the requirements set out in Chapter 5 (and Chapter 9, if applicable).}

4.29 The Authority:

(a) must not approve a proposed access arrangement which omits something listed in section 5.1; and

(b) may in its discretion approve a proposed access arrangement containing something not listed in section 5.1; and

(c) must not refuse to approve a proposed access arrangement on the ground that it omits something not listed in section 5.1.

Factors the Authority must have regard to

4.30 In determining whether to approve a proposed access arrangement, the Authority must have regard to following:

(a) the geographical location of the network and the extent (if any) to which the network is interconnected with other networks; and

(b) contractual obligations of the service provider or other persons (or both) already using the network; and

(c) the operational and technical requirements necessary for the safe and reliable operation of the network; and

(d) to the extent relevant — written laws and statutory instruments.

4.31 Section 4.30 does not limit the factors the Authority may have regard to.

4.32 The Authority must not approve a proposed access arrangement which would, if approved, require the service provider or another person to engage in an act or omit to engage in an act which would contravene a written law or a statutory instrument.
Information to be provided by Authority if it requires change to price control or pricing methods

4.33 If the Authority:

(a) makes a draft decision or final decision to not approve a proposed access arrangement which requires amendments to the price control or pricing methods in the proposed access arrangement; or

(b) approves its own access arrangement under section 4.24 or 4.55 containing price control or pricing methods which differ from those in the proposed access arrangement,

(with the price control or pricing methods as required to be amended, or as approved, respectively, being called in this section the “alternative pricing provisions”) then the Authority’s reasons for the relevant decision must:

(c) provide a detailed description of the alternative pricing provisions; and

(d) give reasons for the Authority’s choice of alternative pricing provisions; and

(e) provide sufficient information and data to enable the service provider to replicate the Authority’s work in selecting and developing the alternative pricing provisions.

Access arrangement must not override prior contractual rights

4.34 Subject to section 4.35, the Authority must not approve a proposed access arrangement which would, if approved, have the effect of depriving a person of a contractual right that existed prior to the earlier of the submission deadline for the proposed access arrangement and the date on which the proposed access arrangement was submitted.

4.35 Section 4.34 does not apply to protect an exclusivity right which arose on or after 30 March 1995.

Conditional approval – price lists

4.36 The Authority must, as a condition of approval of a proposed access arrangement, require a service provider to submit each price list under the access arrangement to the Authority under section 8.1 for approval, if:

(a) the service provider requests such a condition; or

(b) the Authority considers that the submission of price lists under the access arrangement to the Authority under section 8.1 for approval would improve the operation of the access arrangement.

Subchapter 4.3 – Revision and review

Trigger events

4.37 If an access arrangement:

(a) specifies one or more trigger events; and

(b) the conditions of a trigger event are satisfied,

then:

(c) as soon as practicable, the service provider must notify the Authority that the conditions of the trigger event are satisfied; and

(d) the service provider must submit proposed revisions to the Authority by the designated date; and
(e) the Authority must consider the proposed revisions in accordance with sections 4.46 to 4.52.

Revision of price control or pricing methods during the term of an access arrangement

4.38 The Authority may by notice to a service provider vary the price control or pricing methods in an access arrangement before the next revisions commencement date, but only if the Authority determines that:

(a) its approval of the access arrangement was based on materially false, misleading or deceptive information provided to it by the service provider, and the Authority considers that the impact of the materially false, misleading or deceptive information is of a sufficient magnitude to warrant making the variation before the end of the access arrangement period; or

(b) either:

(i) its approval of the access arrangement contains a material error or was based on materially false, misleading or deceptive information provided to it by a person other than the service provider; or

(ii) significant unforeseen developments have occurred that are:

A. outside the control of the service provider; and

B. not something that the service provider, acting in accordance with good electricity industry practice, should have been able to prevent or overcome,

and the impact of the error, materially false, misleading or deceptive information or unforeseen developments is so substantial that the Authority considers that the advantages of making the variation before the end of the access arrangement period outweigh the disadvantages, having regard to the impact of the variation on regulatory certainty.

4.39 Before giving a notice under section 4.38, the Authority must consult the public in accordance with Appendix 7.

4.40 The Authority must publish a notice given under section 4.38.

Revision of access arrangement if Appendix 2, Appendix 3 or Appendix 4 are amended

4.41 Subject to section 4.42, if there is a Code change, the Authority may by notice to a service provider vary its access arrangement in one or more of the following ways:

(a) if the access arrangement incorporates some or all of the terms of the model applications and queuing policy — vary the access arrangement to incorporate any relevant amendments to Appendix 2 made by the Code change; or

(b) if the access arrangement incorporates some or all of the terms of the model standard access contract — vary the access arrangement to incorporate any relevant amendments to Appendix 3 made by the Code change; or

(c) if the access arrangement incorporates some or all of the terms of the model capital contributions policy — vary the access arrangement to incorporate any relevant amendments to Appendix 4 made by the Code change.

4.42 Before giving a notice under section 4.41, the Authority must determine whether the advantages of varying the access arrangement under section 4.41 outweigh the disadvantages, in particular the disadvantages associated with decreased regulatory certainty and increased regulatory cost and delay.
4.43 The Authority:
   (a) may consult the public under Appendix 7; and
   (b) must consult the service provider,
before giving a notice under section 4.41.

4.44 The Authority must publish a notice given under section 4.41.

4.45 Nothing in section 4.41 limits the matters which may be specified as trigger events in an access arrangement.

Review of access arrangement

4.46 An access arrangement continues in effect from the access arrangement start date until the network ceases to be a covered network.

   {Note: The revision of an access arrangement does not create a new access arrangement but operates as an amendment to the access arrangement. Accordingly, in a subsequent access arrangement period the original access arrangement continues to have effect, but in a revised form.}

4.47 An access arrangement may only be amended in accordance with this Chapter 4.

4.48 The service provider of a covered network must submit proposed revisions and revised access arrangement information to the Authority by the revisions submissions date specified in the access arrangement.

4.49 If a service provider has failed to submit proposed revisions to the Authority by the revisions submissions date then the Authority may publish a notice stating that if, by a specified time, the service provider has not submitted proposed revisions to the Authority, the Authority will draft, approve, publish and advertise its own proposed revisions for the covered network.

4.50 If a service provider has not submitted proposed revisions to the Authority by the time specified in a notice under section 4.49, the Authority may draft, approve, publish and advertise its own proposed revisions for the covered network.

4.51 The Authority must consult the public under Appendix 7 before approving its own proposed revisions under section 4.50.

4.52 Sections 4.2 to 4.23 and 4.26 to 4.36 apply to the Authority’s consideration of proposed revisions submitted by a service provider under section 4.48 with appropriate modifications including replacing a reference to:
   (a) “proposed access arrangement” with a reference to “proposed revisions”; and
   (b) “amended proposed access arrangement” with a reference to “amended proposed revisions”; and
   (c) “access arrangement start date” with a reference to “revisions commencement date”.

Subchapter 4.4 – Miscellaneous

Late submissions

4.53 The Authority may consider any submission made pursuant to an invitation for submissions after the time for making the submission has expired.

No confidentiality for certain documents

4.54 Where this Code requires the Authority to publish or advertise:
   (a) a proposed access arrangement, a revised proposed access arrangement, an amended proposed access arrangement or an access arrangement; or
(b) proposed revisions; or
(c) access arrangement information,

(each of which is a “relevant document”) then the Authority must publish or advertise, as applicable, a relevant document despite any claim of confidentiality made to the Authority in respect of the relevant document.

**Authority drafting and approving own access arrangement if no access arrangement submitted**

4.55 If, for the first access arrangement period, a service provider has failed to submit a proposed access arrangement to the Authority by the submission deadline then the Authority must publish a notice stating that if, within 20 business days the service provider has not submitted a proposed access arrangement to the Authority, the Authority will draft, approve, publish and advertise its own access arrangement for the covered network.

4.56 If a service provider has not submitted a proposed access arrangement to the Authority within 20 business days of the publishing of a notice under section 4.55, the Authority must, within 12 months after the submission deadline, draft, approve, publish and advertise its own access arrangement for the covered network.

4.57 The Authority must consult the public under Appendix 7 before drafting, approving, publishing and advertising its own access arrangement under section 4.56.

4.58 If the Authority drafts, approves, publishes and advertises its own access arrangement for a covered network under section 4.56, it must also draft, approve and publish access arrangement information for the covered network.

**Interim access arrangement in the event of delay**

4.59 If, for the first access arrangement period:

(a) a service provider has submitted a proposed access arrangement; but
(b) by 12 months after the submission deadline no access arrangement has been approved under this Chapter 4,

then, as soon as practicable and in any event within 18 months after the submission deadline, the Authority must draft, approve, publish and advertise an “interim access arrangement” to take effect for the interim access arrangement period.

4.60 Unless a user requests otherwise, an access contract entered into under an interim access arrangement is deemed to provide that at the end of the interim access arrangement period:

(a) the tariff payable under the access contract is varied from the end of the interim access arrangement period to be the tariff payable for an equivalent service under the access arrangement; and
(b) the difference between:

(i) the charges paid between the commencement date of the access contract and the end of the interim access arrangement period based on the access contract tariffs; and

(ii) the charges that would have been payable under the access contract had the access arrangement been in effect during the interim access arrangement period and the access arrangement tariffs had applied to the access contract (which are to be calculated using the user’s actual use of services during the period, without allowing for any possible variation in the user’s use of services arising from the different tariffs),

must be treated as an underpayment or overpayment, as appropriate, under the access contract and must be paid by or paid to, as applicable, the user.
4.61 For the purposes of section 4.60:
(a) the date of underpayment or overpayment, as appropriate, is deemed to be the approval date of the subsequent access arrangement; and
(b) either party may give notice to the other of an underpayment or overpayment under the access contract and section 4.60.

4.62 To assist with the determination of:
(a) the underpayment or overpayment amount under section 4.60(b); and
(b) the access contract variation under section 4.60(a),
the Authority must not approve an access arrangement which does not:
(c) designate, for each reference service under the interim access arrangement, an equivalent covered service in the access arrangement; and
(d) specify a tariff for each equivalent covered service designated under section 4.62(c); and
(e) provide for suitable provisions to deal with the underpayment or overpayment, as appropriate, under section 4.60.

4.63 Nothing in section 4.62 obliges a service provider to, after the end of the interim access arrangement period, enter into an access contract to provide, or to provide at a particular tariff, a covered service which was a reference service under an interim access arrangement but is not a reference service under the access arrangement.

Extensions of time under this Chapter 4

4.64 Subject to sections 4.65 to 4.67, the Authority may extend any deadline specified in section 4.66 but only if, and only to the extent that, the Authority first determines as a reasonable and prudent person that:
(a) a longer period of time is essential for due consideration of all the matters under consideration or satisfactory performance of the relevant obligation, or both; and
(b) the Authority or the service provider, as applicable, has taken all reasonable steps to fully utilise the times and processes provided for in this Chapter 4; and
(c) in the case of an extension under:
   (i) section 4.66(a)(i) — the service provider has made substantial progress in the preparation of its proposed access arrangement; and
   (ii) section 4.66(a)(ii) — the service provider has made further substantial progress in the preparation of its proposed access arrangement since the extension under section 4.66(a)(i); and
   (iii) section 4.66(n) — it is reasonably likely that the service provider’s proposed access arrangement submitted under section 4.1 will be approved within the additional period of time under section 4.66(n).

4.65 The Authority:
(a) must not exercise the power in section 4.64 to extend any deadline unless, before the day on which the time would otherwise have expired, it publishes notice of, and reasons for, its decision to extend the deadline; and
(b) may (subject to section 4.66) exercise the power in section 4.64 to extend a deadline specified in section 4.66 on more than one occasion for each deadline.
4.66 The Authority must not extend a deadline beyond the limit (which for each deadline applies to the aggregate of all extensions of that deadline under section 4.64) specified below:

(a) subject to sections 4.64(c)(i) and 4.64(c)(ii), the submission deadline referred to in section 4.1:
   (i) may, be extended by up to an additional 60 business days; and
   (ii) then, may be extended by no more than a further 60 business days; and
(b) the deadline of 5 business days in section 4.9 may be extended by no more than an additional 5 business days; and
(c) the deadline of 20 business days in section 4.10 may be extended by no more than an additional 20 business days; and
(d) the deadline of 30 business days in section 4.11(a) may be extended by no more than an additional 30 business days; and
(e) the deadline of 10 business days in section 4.11(b) may be extended by no more than an additional 10 business days; and
(f) the deadline of 42 business days in section 4.13 may be extended by no more than an additional 42 business days; and
(g) the deadline of 20 business days in section 4.15 may be extended by no more than an additional 20 business days; and
(h) the deadline of 30 business days in section 4.18 may be extended by no more than an additional 30 business days; and
(i) the deadline of 20 business days in section 4.19 may be extended by no more than an additional 20 business days; and
(j) the deadline of 15 business days in section 4.22(a) may be extended by no more than an additional 15 business days; and
(k) the deadline of 25 business days in section 4.22(b) may be extended by no more than an additional 25 business days; and
(l) the deadline of 20 business days in section 4.25 may be extended by no more than an additional 20 business days; and
(m) the deadline of 12 months in section 4.56 may be extended by no more than an additional 6 months; and
(n) subject to section 4.64(c)(iii), the deadline of 18 months in section 4.59 may be extended by no more than an additional 3 months.

4.67 Despite sections 4.64 to 4.66, at any time, the Authority, in its discretion and whether or not any other extension has been granted:

(a) may extend the deadline of 42 business days in section 4.13 by a period of 10 business days; and
(b) may extend the deadline of 30 business days in section 4.18 by a period of 10 business days.

Suspension of deadlines when Authority obtains information

4.68 Despite anything else in this Code, if the Authority exercises its power to obtain information and documents under section 51 of the Economic Regulation Authority Act 2003 in respect of an access arrangement, then:

(a) the Authority may, by publishing a notice, suspend the operation of the deadline for the issue of a draft decision under section 4.12, a final decision
under section 4.17 or an interim access arrangement under section 4.59, if the Authority considers that such a suspension is essential for due consideration of all the matters relevant to the decision; and

(b) if the Authority suspends a deadline under section 4.68(a) — time ceases to run in respect of the relevant deadline until the suspension is ended by the Authority publishing a notice, which it must publish no later than 10 business days after it receives the information or documents but may publish at any earlier time.

**Suspension of deadlines for judicial proceedings**

4.69 Despite anything else in this Code, if judicial proceedings commence with respect to an access arrangement or a matter of interpretation or application of this Code which is likely to affect the approval of an access arrangement ("judicial proceedings"), then:

(a) the Authority may, by publishing a notice, suspend the operation of the deadline for the issue of a draft decision under section 4.12, a final decision under section 4.17 or a further final decision under section 4.21, if the Authority considers that it is essential that the judicial proceedings be resolved in order for the Authority in its draft decision, final decision or further final decision, as applicable, to give due consideration to the matters raised in the judicial proceedings; and

(b) if the Authority suspends a deadline under section 4.69(a) — time ceases to run in respect of the relevant deadline until the suspension is ended by the Authority publishing a notice, which it must publish no later than 10 business days after the judicial proceedings have been determined or discontinued but may publish at any earlier time.
Chapter 5 – Access Arrangement: Content

Required contents of an access arrangement

5.1 An access arrangement must:
   (a) specify one or more reference services under section 5.2; and
   (b) include a standard access contract under sections 5.3 to 5.5 for each reference service; and
       (Note: An access arrangement may contain a single standard access contract in which the majority of terms and conditions apply to all reference services and the other terms and conditions apply only to specified reference services.)
   (c) include service standard benchmarks under section 5.6 for each reference service; and
   (d) include price control under Chapter 6; and
   (e) include pricing methods under Chapter 7; and
   (f) include a current price list under Chapter 8 a description of the pricing years for the access arrangement; and
   (g) include an applications and queuing policy under sections 5.7 to 5.11; and
   (h) include a capital contributions policy under sections 5.12 to 5.17; and
   (i) if required under section 5.25, include efficiency and innovation benchmarks under section 5.26; and
   (k) include provisions dealing with supplementary matters under sections 5.27 and 5.28; and
   (l) include provisions dealing with:
       (i) the submission of proposed revisions under sections 5.29 to 5.33; and
       (ii) trigger events under sections 5.34 to 5.36.

       (Note: At the same time as an access arrangement is submitted, access arrangement information must be submitted under section 4.1 and technical rules must be submitted under section 12.10. Neither the access arrangement information nor the technical rules are part of the access arrangement.)

Reference services

5.2 An access arrangement must:
   (a) specify at least one reference service; and
   (b) specify a reference service for each covered service that is likely to be sought by either or both of:
       (i) a significant number of users and applicants; or
       (ii) a substantial proportion of the market for services in the covered network;

   and
(c) to the extent reasonably practicable, specify reference services in such a manner that a user or applicant is able to acquire by way of one or more reference services only those elements of a covered service that the user or applicant wishes to acquire; and

(d) for the covered network that is covered under section 3.1 — specify one or more reference services such that there is both:

(i) a reference service which enables a user or applicant to acquire an entry service at a connection point without a need to acquire a corresponding exit service at another connection point; and

(ii) a reference service which enables a user or applicant to acquire an exit service at a connection point without a need to acquire a corresponding entry service at another connection point.

**Standard access contract for each reference service**

5.3 A standard access contract must be:

(a) reasonable; and

(b) sufficiently detailed and complete to:

(i) form the basis of a commercially workable access contract; and

(ii) enable a user or applicant to determine the value represented by the reference service at the reference tariff.

5.4 A standard access contract may:

(a) be based in whole or in part upon the model standard access contract, in which case, to the extent that it is based on the model standard access contract, any matter which in the model standard access contract is left to be completed in the access arrangement, must be completed in a manner consistent with:

(i) any instructions in relation to the matter contained in the model standard access contract; and

(ii) section 5.3;

(iii) the Code objective; and

(b) be formulated without any reference to the model standard access contract and is not required to reproduce, in whole or in part, the model standard access contract.

(Note: The intention of this section 5.4(b) is to ensure that the service provider is free to formulate its own standard access contract which complies with section 5.3 but is not based on the model standard access contract.)

5.5 The Authority:

(a) must determine that a standard access contract is consistent with section 5.3 and the Code objective to the extent that it reproduces without material omission or variation the model standard access contract; and

(b) otherwise must have regard to the model standard access contract in determining whether the standard access contract is consistent with section 5.3 and the Code objective.
**Service standards for each reference service**

5.6 A *service standard benchmark* for a *reference service* must be:

(a) reasonable; and

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

**Applications and queuing policy**

5.7 An *applications and queuing policy* must:

(a) to the extent reasonably practicable, accommodate the interests of the *service provider* and of *users* and *applicants*; and

(b) be sufficiently detailed to enable *users* and *applicants* to understand in advance how the *applications and queuing policy* will operate; and

(c) set out a reasonable timeline for the commencement, progressing and finalisation of *access contract* negotiations between the *service provider* and an *applicant*, and oblige the *service provider* and *applicants* to use reasonable endeavours to adhere to the timeline; and

(d) oblige the *service provider*, subject to any reasonable confidentiality requirements in respect of *competing applications*, to provide to an *applicant* all commercial and technical information reasonably requested by the *applicant* to enable the *applicant* to apply for, and engage in effective negotiation with the *service provider* regarding, the terms for an *access contract* for a *covered service* including:

(i) information in respect of the availability of *covered services* on the *covered network*; and

(ii) if an *augmentation* will be required to provide the *covered services* sought:

A. operational and technical details of the *required augmentation*; and

B. commercial information regarding the likely cost of the *required augmentation*;

and

(e) set out the procedure for determining the priority that an *applicant* has, as against another *applicant*, to obtain *access* to *covered services*, where the *applicants’ access applications* are *competing applications*; and

(f) to the extent that *contestable consumers* are *connected* at *exit points* on the *covered network*, contain provisions dealing with the transfer of capacity associated with a *contestable consumer* from the *user* currently supplying the *contestable consumer* ("*outgoing user*") to another *user* or an *applicant* ("*incoming user*") which, to the extent that it is applicable, are consistent with and facilitate the operation of any *customer transfer code*; and

(g) establish arrangements to enable a *user* who is:

(i) a ‘supplier of last resort’ as defined in section 67 of the Act to comply with its obligations under Part 5 of the Act; and

(ii) a ‘default supplier’ under regulations made in respect of section 59 of the Act to comply with its obligations under section 59 of the Act and the regulations; and

(h) facilitate the operation of Part 9 of the Act, any enactment under Part 9 of the Act and the ‘market rules’ as defined in section 121(1) of the Act; and
if applicable, contain provisions setting out how access applications (or other requests for access to the covered network) lodged before the start of the relevant access arrangement period are to be dealt with.

(Note: For the first access arrangement period section 5.7(i) would apply in respect of access applications or requests for access lodged under any prior access regime such as the regimes established under the Electricity Transmission Regulations 1996 (WA) and Electricity Distribution Regulations 1997 (WA). For subsequent access arrangement periods it would apply in respect of access applications lodged in a prior access arrangement period.)

5.8 The paragraphs of section 5.7 do not limit each other.

5.9 Under section 5.7(e), the applications and queuing policy may:

(a) provide that if there are competing applications, then priority between the access applications is to be determined by reference to the time at which the access applications were lodged with the service provider, but if so the applications and queuing policy must:

(i) provide for departures from that principle where necessary to achieve the Code objective; and

(ii) contain provisions entitling an applicant, subject to compliance with any reasonable conditions, to:

A. current information regarding its position in the queue; and

B. information in reasonable detail regarding the aggregated capacity requirements sought in competing applications ahead of its access application in the queue; and

C. information in reasonable detail regarding the likely time at which the access application will be satisfied;

and

(b) oblige the service provider, if it is of the opinion that an access application relates to a particular project or development:

(i) which is the subject of an invitation to tender; and

(ii) in respect of which other access applications have been lodged with the service provider,

(“project applications”) to, treat the project applications, for the purposes of determining their priority, as if each of them had been lodged on the date that the service provider becomes aware that the invitation to tender was announced.

5.10 An applications and queuing policy may:

(a) be based in whole or in part upon the model applications and queuing policy, in which case, to the extent that it is based on the model applications and queuing policy, any matter which in the model applications and queuing policy is left to be completed in the access arrangement, must be completed in a manner consistent with:

(i) any instructions in relation to the matter contained in the model applications and queuing policy; and

(ii) sections 5.7 to 5.9;

(iii) the Code objective; and
(b) be formulated without any reference to the model applications and queuing policy and is not required to reproduce, in whole or in part, the model applications and queuing policy.

(Note: The intention of this section 5.10(b) is to ensure that the service provider is free to formulate its own applications and queuing policy which complies with sections 5.7 to 5.9 but is not based on the model applications and queuing policy.)

5.11 The Authority:

(a) must determine that an applications and queuing policy is consistent with sections 5.7 to 5.9 and the Code objective to the extent that it reproduces without material omission or variation the model applications and queuing policy; and

(b) otherwise must have regard to the model applications and queuing policy in determining whether the applications and queuing policy is consistent with sections 5.7 to 5.9 and the Code objective.

Capital contributions policy

5.12 The objectives for a capital contributions policy must be that:

(a) in respect of a required augmentation, it strikes a balance between the interests of:
   (i) the contributing user; and
   (ii) other users; and
   (iii) consumers;

(b) it does not constitute an inappropriate barrier to entry.

5.13 A capital contributions policy must facilitate the operation of this Code, including:

(a) section 2.9; and

(b) the new facilities investment test; and

(c) the regulatory test.

5.14 A capital contributions policy must not require a user to make a capital contribution in respect of any part of new facilities investment which meets the new facilities investment test.

5.15 A capital contributions policy must set out:

(a) the circumstances in which a contributing user may be required to make a capital contribution in respect of a required augmentation; and

(b) the method for calculating any capital contribution a contributing user may be required to make towards the required augmentation; and

(c) for any capital contribution:
   (i) the terms on which a contributing user must make the capital contribution; or
   (ii) a description of how the terms on which a contributing user must make the capital contribution are to be determined.

5.16 A capital contributions policy may:

(a) be based in whole or in part upon the model capital contributions policy, in which case, to the extent that it is based on the model capital contributions policy, any matter which in the model capital contributions policy is left to be
completed in the access arrangement, must be completed in a manner consistent with:

(i) any instructions in relation to the matter contained in the model capital contributions policy; and

(ii) sections 5.12 to 5.15; and

(iii) the Code objective;

and

(b) be formulated without any reference to the model capital contributions policy and is not required to reproduce, in whole or in part, the model capital contributions policy.

(Note: The intention of this section 5.16(b) is to ensure that the service provider is free to formulate its own capital contributions policy which complies with sections 5.12 to 5.15 but is not based on the model capital contributions policy.)

5.17 The Authority:

(a) must determine that a capital contributions policy is consistent with sections 5.12 to 5.15 and the Code objective to the extent that it reproduces without material omission or variation the model capital contributions policy; and

(b) otherwise must have regard to the model capital contributions policy in determining whether the capital contributions policy is consistent with sections 5.12 to 5.15 and the Code objective.

Transfer and relocation policy

5.18 A transfer and relocation policy:

(a) must permit a user to make a bare transfer without the service provider’s consent; and

(b) may require that a transferee under a bare transfer notify the service provider of the nature of the transferred access rights before using them, but must not otherwise require notification or disclosure in respect of a bare transfer.

5.19 For a transfer other than a bare transfer, a transfer and relocation policy:

(a) must oblige the service provider to permit a user to transfer its access rights and, subject to section 5.20, may make a transfer subject to the service provider’s prior consent and such conditions as the service provider may impose; and

(b) subject to section 5.20, may specify circumstances in which consent will or will not be given, and conditions which will be imposed, under section 5.19(a).

5.20 Under a transfer and relocation policy, for a transfer other than a bare transfer, a service provider:

(a) may withhold its consent to a transfer only on reasonable commercial or technical grounds; and

(b) may impose conditions in respect of a transfer only to the extent that they are reasonable on commercial and technical grounds.

5.21 A transfer and relocation policy:

(a) must permit a user to relocate capacity at a connection point in its access contract to another connection point in its access contract, (a “relocation”) and, subject to section 5.22, may make a relocation subject to the service provider’s prior consent and such conditions as the service provider may impose; and
subject to section 5.22, may specify in advance circumstances in which consent will or will not be given, and conditions which will be imposed, under section 5.21(a).

5.22 Under a transfer and relocation policy, for a relocation a service provider:

(a) must withhold its consent where consenting to a relocation would impede the ability of the service provider to provide a covered service that is sought in an access application; and

(b) may withhold its consent to a relocation only on reasonable commercial or technical grounds; and

(c) may impose conditions in respect of a relocation only to the extent that they are reasonable on commercial and technical grounds.

5.23 An example of a thing that would be reasonable for the purposes of sections 5.20 and 5.22 is the service provider specifying that, as a condition of its agreement to a transfer or relocation, the service provider must receive at least the same amount of revenue as it would have received before the transfer or relocation, or more revenue if tariffs at the destination point are higher.

5.24 Section 5.23 does not limit the things that would be reasonable for the purposes of sections 5.20 and 5.22.

Efficiency and innovation benchmarks

5.25 An access arrangement which contains a gain sharing mechanism must, and an access arrangement which does not contain a gain sharing mechanism may, contain efficiency and innovation benchmarks.

5.26 Efficiency and innovation benchmarks must:

(a) if the access arrangement contains a gain sharing mechanism, be sufficiently detailed and complete to permit the Authority to make a determination under section 6.25 at the next access arrangement review; and

(b) provide an objective standard for assessing the service provider’s efficiency and innovation during the access arrangement period; and

(c) be reasonable.

Supplementary matters

5.27 Each of the following matters is a “supplementary matter”:

(a) balancing; and

(b) line losses; and

(c) metering; and

(d) ancillary services; and

(e) stand-by; and

(f) trading; and

(g) settlement; and

(h) any other matter in respect of which arrangements must exist between a user and a service provider to enable the efficient operation of the covered network and to facilitate access to services, in accordance with the Code objective.

5.28 An access arrangement must deal with a supplementary matter in a manner which:

(a) to the extent that the supplementary matter is dealt with in:

(i) an enactment under Part 9 of the Act; or
(ii) the ‘market rules’ as defined in section 121(1) of the Act, applying to the covered network — is consistent with and facilitates the treatment of the supplementary matter in the enactment or market rules; and

(b) to the extent that the supplementary matter is dealt with:

(i) in a written law other than as contemplated under section 5.28(a); and

(ii) in a manner which is not inconsistent with the requirement under section 5.28(a) to the extent that it applies to the covered network, is consistent with and facilitates the treatment of the supplementary matter in the written law; and

(c) otherwise — in accordance with the technical rules applying to the covered network and the Code objective.

Revisions submission

5.29 An access arrangement must specify:

(a) a revisions submission date; and

(b) a target revisions commencement date.

5.30 For the first access arrangement:

(a) the revisions submission date must be at least 6 months before the target revisions commencement date under section 5.30(b); and

(b) the target revisions commencement date must be no more than 3 years after the access arrangement start date.

5.31 Subject to section 5.32, for access arrangements other than the first access arrangement:

(a) the revisions submission date must be at least 6 months before the target revisions commencement date; and

(b) the target revisions commencement date must be 5 years after the start of the access arrangement period, unless a different date is proposed by the service provider and the different date is consistent with the Code objective.

5.32 The Authority:

(a) in determining whether an access arrangement period of longer than 5 years is consistent with the Code objective must have regard to:

(i) the likely advantages of the approval (including by way of reduced regulatory costs); and

(ii) the likely disadvantages of the approval;

and

(b) if it determines that an access arrangement period of longer than 5 years is consistent with the Code objective, must consider whether to require under section 5.34 that the access arrangement include one or more trigger events.

5.33 Section 5.32(a) does not limit the matters to which the Authority may have regard.

Trigger events

5.34 If it is consistent with the Code objective an access arrangement may specify one or more trigger events.

5.35 To avoid doubt, under section 5.34, an access arrangement may specify a trigger event which was not proposed by the service provider.
5.36 Before determining whether a *trigger event* is consistent with the *Code objective* the *Authority* must consider:

(a) whether the advantages of including the *trigger event* outweigh the disadvantages of doing so, in particular the disadvantages associated with decreased regulatory certainty; and

(b) whether the *trigger event* should be balanced by one or more other *trigger events*.

(Example: The *service provider* may wish to include a *trigger event* allowing it to reopen the *access arrangement* if actual *covered service* consumption is more than x% below forecast. However, if the *Authority* were minded to allow such a *trigger event*, it may also require the inclusion of a complementary *trigger event* requiring the *service provider* to reopen the *access arrangement* if *covered service* consumption is more than y% above forecast.)
Chapter 6 – Price Control

Subchapter 6.1 – Target revenue

Form of price control

6.1 Subject to section 6.3, an access arrangement may contain any form of price control provided it meets the objectives set out in section 6.4 and otherwise complies with this Chapter 6.

6.2 Without limiting the forms of price control that may be adopted, price control may set target revenue:

(a) by reference to the service provider’s approved total costs; or

(Note: This includes “revenue cap” price controls based on controlling total revenue, average revenue or revenue yield and “price cap” price controls based on cost of service.)

(b) by setting tariffs with reference to:

(i) tariffs in previous access arrangement periods; and

(ii) changes to costs and productivity growth in the electricity industry;

(Note: This includes “price cap” price controls based on controlling the weighted average of tariffs or individual tariffs.)

or

(c) using a combination of the methods described in sections 6.2(a) and 6.2(b).

Form of price control for first access arrangement

6.3 The first access arrangement must contain the form of price control described in section 6.2(a).

Price control objectives

6.4 The price control in an access arrangement must have the objectives of:

(a) giving the service provider an opportunity to earn revenue (“target revenue”) for the access arrangement period from the provision of covered services as follows:

(i) an amount that meets the forward-looking and efficient costs of providing covered services, including a return on investment commensurate with the commercial risks involved;

plus:

(ii) for access arrangements other than the first access arrangement, an amount in excess of the revenue referred to in section 6.4(a)(i), to the extent necessary to reward the service provider for efficiency gains and innovation beyond the efficiency and innovation benchmarks in a previous access arrangement;

(Note: The presence of section 6.4(a)(ii) provides incentive to a service provider during an access arrangement period to pursue efficiency gains and innovation beyond the...
efficiency and innovation benchmarks in the access arrangement, because the service provider may be rewarded in the calculation of the target revenue for subsequent access arrangement periods.)

plus:

(iii) an amount (if any) determined under section 6.6;

plus:

(iv) an amount (if any) determined under section 6.9;

plus:

(v) an amount (if any) determined under an investment adjustment mechanism (see sections 6.13 to 6.18);

plus:

(vi) an amount (if any) determined under a service standards adjustment mechanism (see sections 6.29 to 6.32);

and

(b) enabling a user to predict the likely annual changes in target revenue during the access arrangement period; and

(c) avoiding price shocks (that is, sudden material tariff adjustments between succeeding years).

6.5 The amount determined in seeking to achieve the objective specified in section 6.4(a)(i) is a target, not a ceiling or a floor.

Target revenue may be adjusted for unforeseen events

6.6 If:

(a) during the previous access arrangement period, a service provider incurred capital-related costs or non-capital costs as a result of a force majeure event; and

(b) the service provider was unable to, or is unlikely to be able to, recover some or all of the costs (“unrecovered costs”) under its insurance policies; and

(c) at the time of the force majeure event the service provider had insurance to the standard of a reasonable and prudent person (as to the insurers and the type and level of insurance),

then subject to section 6.8 an amount may be added to the target revenue for the covered network for the next access arrangement period in respect of the unrecovered costs.

6.7 Nothing in section 6.6 requires the amount added under section 6.6 in respect of unrecovered costs to be equal to the amount of unrecovered costs.

6.8 An amount must not be added under section 6.6 in respect of capital-related costs or non-capital costs, to the extent that they exceed the costs which would have been incurred by a service provider efficiently minimising costs.

Target revenue may be adjusted for technical rule changes

6.9 If, during the previous access arrangement period, the technical rules for the covered network were amended under section 12.53 with the result that the service provider, in complying with the amended technical rules:

(a) incurred capital-related costs or non-capital costs:

(i) for which no allowance was made in the access arrangement; and
(ii) which the service provider could not have reasonably foreseen at the time of the approval of the previous access arrangement;

and

(b) did not incur capital-related costs or non-capital costs for which allowance was made in the access arrangement,

then subject to sections 6.10 to 6.12 an amount may be added to the target revenue for the covered network for the next access arrangement period in respect of the costs.

6.10 The amount (if any) to be added under section 6.9(a) must be positive, and the amount (if any) to be added under section 6.9(b) must be negative.

6.11 A positive amount must not be added under section 6.9(a) in respect of capital-related costs or non-capital costs, to the extent that they exceed the costs which would have been incurred by a service provider efficiently minimising costs.

6.12 A negative amount added under section 6.9(b) must have regard to the savings that would have been made by a service provider efficiently minimising costs even if the service provider did not actually achieve that level of savings.

‘Investment adjustment mechanism’ defined

6.13 An “investment adjustment mechanism” is a mechanism in an access arrangement detailing how any investment difference for the access arrangement period is to be treated by the Authority at the next access arrangement review.

6.14 In sections 6.13 and 6.16, “investment difference” for an access arrangement period is to be determined at the end of the access arrangement period by comparing:

(a) the nature (including amount and timing) of actual new facilities investment which occurred during the access arrangement period;

with

(b) the nature (including amount and timing) of forecast new facilities investment which at the start of the access arrangement period was forecast to occur during the access arrangement period.

Requirement for an investment adjustment mechanism

6.15 If an access arrangement uses the form of price control described in section 6.2(a), then the access arrangement must contain an investment adjustment mechanism.

6.16 Without limiting the types of investment adjustment mechanism which may be contained in an access arrangement, an investment adjustment mechanism may provide that:

(a) adjustments are to be made to the target revenue for the next access arrangement in respect of the full extent of any investment difference; or

(b) no adjustment is to be made to the target revenue for the next access arrangement in respect of any investment difference.

6.17 An investment adjustment mechanism must be:

(a) sufficiently detailed and complete to enable the Authority to apply the investment adjustment mechanism at the next access arrangement review; and

(b) without limiting this Code, consistent with the gain sharing mechanism (if any) in the access arrangement;

(c) consistent with the Code objective.
6.18 An investment adjustment mechanism in an access arrangement applies at the next access arrangement review.

‘Gain sharing mechanism’ defined

6.19 A “gain sharing mechanism” is a mechanism:

(a) in an access arrangement which the Authority must apply at the next access arrangement review to determine an amount to be included in the target revenue for one or more of the following access arrangement periods; and

(b) which operates as set out in sections 6.20 to 6.28.

Requirement for a gain sharing mechanism

6.20 An access arrangement must contain a gain sharing mechanism unless the Authority determines that a gain sharing mechanism is not necessary to achieve the objective in section 6.4(a)(ii).

Objectives for gain sharing mechanism

6.21 A gain sharing mechanism must have the objective of:

(a) achieving an equitable allocation over time between users and the service provider of innovation and efficiency gains in excess of efficiency and innovation benchmarks; and

(b) being objective, transparent, easy to administer and replicable from one access arrangement to the next; and

(c) giving the service provider an incentive to reduce costs or otherwise improve productivity in a way that is neutral in its effect on the timing of such initiatives.

(For example, a service provider should not have an artificial incentive to defer an innovation until after an access arrangement review.)

6.22 A gain sharing mechanism must be sufficiently detailed and complete to enable the Authority to apply the gain sharing mechanism at the next access arrangement review, including by prescribing the basis on which returns are to be determined for the purposes of section 6.23.

‘Surplus’ defined

6.23 A “surplus” has arisen to the extent that:

(a) returns actually achieved by the service provider from the sale of covered services during the previous access arrangement period;

exceeded:

(b) the level of returns from the sale of covered services which at the start of the access arrangement period was forecast to occur during the access arrangement period.

Prior surpluses may be retained

6.24 Subject to the provisions of any investment adjustment mechanism, the service provider may retain all of the surplus achieved in the previous access arrangement period, and accordingly, the Authority must not make an adjustment in order to recover the surplus achieved in the previous access arrangement period when approving the price control in a subsequent access arrangement.
Determining the above-benchmark surplus

6.25 Subject to section 6.26, the Authority must determine how much (if any) of the surplus results from efficiency gains or innovation by the service provider in excess of the efficiency and innovation benchmarks in the previous access arrangement (“above-benchmark surplus”).

6.26 An above-benchmark surplus does not exist to the extent that a service provider achieved efficiency gains or innovation in excess of the efficiency and innovation benchmarks during the previous access arrangement period by failing to comply with section 11.1.

(Note: Section 11.1 requires a service provider to maintain a service standard at least equivalent to the service standard benchmarks set out in the access arrangement or access contract.)

Determining the increase to the target revenue

6.27 The Authority must apply the gain sharing mechanism to determine how much (if anything) is to be added to the target revenue for one or more coming access arrangement periods under section 6.4(a)(ii) in order to enable the service provider to continue to share in the benefits of the efficiency gains or innovations which gave rise to the surplus.

6.28 If the Authority makes a determination under section 6.27 to add an amount to the target revenue in more than one access arrangement period, that determination binds the Authority when undertaking the access arrangement review at the beginning of each such access arrangement period.

‘Service standards adjustment mechanism’ defined

6.29 A “service standards adjustment mechanism” is a mechanism in an access arrangement detailing how the service provider’s performance during the access arrangement period against the service standard benchmarks is to be treated by the Authority at the next access arrangement review.

Requirement for service standards adjustment mechanism

6.30 An access arrangement must contain a service standards adjustment mechanism.

6.31 A service standards adjustment mechanism must be:

(a) sufficiently detailed and complete to enable the Authority to apply the service standards adjustment mechanism at the next access arrangement review; and

(b) consistent with the Code objective.

6.32 A service standards adjustment mechanism in an access arrangement applies at the next access arrangement review.

Authority may make a determination of excluded services for a covered network

6.33 The Authority may from time to time make and publish a determination (which subject to section 6.37 has effect for a specified covered network) of which services being provided by means of the covered network are excluded services.

6.34 If a determination has effect under section 6.33, the determination is binding in respect of the approval or review of price control in an access arrangement for the covered network.

6.35 Without limiting section 6.33, a service provider may at any time request the Authority to determine under section 6.33 that one or more services provided by means of the service provider’s covered network are excluded services.

6.36 Before making a determination under section 6.33, the Authority must consult the public in accordance with Appendix 7.
6.37 A determination under section 6.33:
(a) may be revoked or amended by a further determination under section 6.33; and
(b) has effect until revoked by a further determination; and
(c) does not have effect in relation to the approval or review, as applicable, of an access arrangement if the determination is published less than 3 months before the submission deadline (as extended under section 4.66(a)) or revisions submission date, as applicable.

\{Note: The intention of section 6.37(c) is to ensure that the goalposts are not set or shifted too late in the process.\}

**Subchapter 6.2 – Calculation of Service Provider's Costs**

When this Subchapter 6.2 applies

6.38 The following provisions, namely:
(a) sections 6.40 to 6.42 (non-capital costs); and
(b) sections 6.43 to 6.70 (capital-related costs),
apply in relation to an access arrangement only to the extent that, in determining target revenue, it is necessary to calculate part or all of the relevant component of the service provider’s approved total costs.

6.39 Nothing in section 6.38:
(a) limits the operation of a section of this Code or a provision of an access arrangement which refers to a provision of this Subchapter 6.2 for a purpose other than calculating the service provider’s approved total costs; or
(b) requires an access arrangement to determine target revenue in a manner which requires the calculation of, or of any component of, the service provider’s approved total costs.

\{Note: Each element of the price control, as with each other component of an access arrangement, must be proposed by a service provider in its proposed access arrangement submitted under section 4.1. Under section 4.28, the Authority must approve the access arrangement, including the price control, if the Authority considers that it meets the applicable objectives.\}

**Non-capital costs**

6.40 Subject to section 6.41, the non-capital costs component of approved total costs for a covered network must include only those non-capital costs which would be incurred by a service provider efficiently minimising costs.

6.41 Where, in order to maximise the net benefit after considering alternative options, a service provider pursues an alternative option in order to provide covered services, the non-capital costs component of approved total costs for a covered network may include non-capital costs incurred in relation to the alternative option (“alternative option costs”) if:
(a) the alternative option costs do not exceed the amount of alternative option costs that would be incurred by a service provider efficiently minimising costs; and
(b) at least one of the following conditions is satisfied:
   (i) the additional revenue for the alternative option is expected to at least recover the alternative option costs; or
(ii) the alternative option provides a net benefit in the covered network over a reasonable period of time that justifies higher reference tariffs; or

(iii) the alternative option is necessary to maintain the safety or reliability of the covered network or its ability to provide contracted covered services.

(Note: The service provider may adopt an alternative option either due to the operation of the regulatory test, or due to the service provider's own processes in advance of the regulatory test.)

6.42 For the purposes of section 6.41(b)(i) “additional revenue” for an alternative option means:

(a) the present value (calculated at the rate of return over a reasonable period) of the increased tariff income reasonably anticipated to arise from the increased sale of covered services on the network to one or more users (where “increased sale of covered services” means sale of covered services which would not have occurred had the alternative option not been undertaken);

minus

(b) the present value (calculated at the rate of return over the same period) of the best reasonable forecast of the increase in non-capital costs (other than alternative option costs) directly attributable to the increased sale of the covered services (being the covered services referred to in the expression “increased sale of covered services” in section 6.42(a)),

where the “rate of return” is a rate of return determined by the Authority in accordance with the Code objective and in a manner consistent with this Chapter 6, which may be the rate of return most recently approved by the Authority for use in the price control for the covered network under this Chapter 6.

Capital-related costs

6.43 The capital-related costs component of approved total costs for a covered network must be calculated by:

(a) determining a capital base under sections 6.44 to 6.63; and

(b) calculating a return on the capital base of the covered network by applying the weighted average cost of capital calculated under section 6.64 to the capital base; and

(c) calculating the depreciation of the capital base under section 6.70.

Determining the capital base

6.44 The capital base for the covered network:

(a) must be determined at the start of each access arrangement period; and

(b) may be determined from time to time by the service provider during an access arrangement period.

6.45 If the service provider determines the capital base under section 6.44(b) during an access arrangement period, then:

(a) the determination does not affect a subsequent determination under section 6.44(a); and

(b) the determination does not affect the target revenue or the determination of tariffs for the access arrangement period.
Capital base for the start of the first access arrangement period

6.46 For the start of the first access arrangement period, the capital base for a covered network must be determined using one of the following asset valuation methodologies:

(a) depreciated optimised replacement cost ("DORC"); or

(b) optimised deprival value ("ODV").

6.47 If under section 6.46 the ODV asset valuation methodology is used to determine the capital base at the start of the first access arrangement period for the covered network that is covered under section 3.1, the valuation must utilise, to the extent possible, any ministerial valuation under section 119 of the Act of the network assets which comprise the covered network.

(Note: Under section 119 of the Act the Minister may commission a DORC valuation of existing network facilities, and if the Minister does so, in certain circumstances, the valuation provided to the Minister is taken to be the DORC valuation of the facilities.)

Capital base for the start of subsequent access arrangement periods

6.48 For the start of each access arrangement period other than the first access arrangement period, the capital base for a covered network must be determined in a manner which is consistent with the Code objective.

(Note: A number of options are available in relation to the determination of the capital base at the start of an access arrangement period, including:

- rolling forward the capital base from the previous access arrangement period applying benchmark indexation such as the consumer price index or an asset specific index, plus new facilities investment incurred during the previous access arrangement period, less depreciation and redundant capital etc; and

- valuation or revaluation of the capital base using an appropriate methodology such as the Depreciated Optimised Replacement Cost or Optimised Deprival Value methodology.)

Capital base must not include forecast new facilities investment

6.49 Subject to section 6.50, the capital base for a covered network must not include any amount in respect of forecast new facilities investment.

6.50 For the start of each access arrangement period, the capital base for a covered network may include forecast new facilities investment which:

(a) has not yet occurred but is forecast to occur before the access arrangement start date; and

(b) at the time of inclusion is reasonably expected to meet the new facilities investment test when made.

(Note: Forecast new facilities investment in a proposed access arrangement may actually have occurred by the time of the access arrangement start date. Under section 6.50, such new facilities investment may be included in the capital base for a covered network.)

6.51 For the purposes of section 6.4(a)(i) and subject to section 6.49, the forward-looking and efficient costs of providing covered services may include costs in relation to forecast new facilities investment for the access arrangement period which is reasonably expected to meet the new facilities investment test when the forecast new facilities investment is forecast to be made.
New facilities investment test

6.52 New facilities investment may be added to the capital base if:

(a) the new facilities investment does not exceed the amount that would be invested by a service provider efficiently minimising costs, having regard, without limitation, to:

(i) whether the new facility exhibits economies of scale or scope and the increments in which capacity can be added; and

(ii) whether the lowest sustainable cost of providing the covered services forecast to be sold over a reasonable period may require the installation of a new facility with capacity sufficient to meet the forecast sales;

and

(b) one or more of the following conditions is satisfied:

(i) either:

A. the anticipated incremental revenue for the new facility is expected to at least recover the new facilities investment; or

B. if a modified test has been approved under section 6.53 and the new facilities investment is below the test application threshold – the modified test is satisfied;

or

(ii) the new facility provides a net benefit in the covered network over a reasonable period of time that justifies the approval of higher reference tariffs; or

(iii) the new facility is necessary to maintain the safety or reliability of the covered network or its ability to provide contracted covered services.

6.53 The Authority may, in an access arrangement, approve a “modified test” for the purposes of section 6.52(b)(i)B to apply to a covered network in respect of new facilities investment below the test application threshold where:

(a) the service provider has proposed a modified test to apply in respect of new facilities investment below a proposed test application threshold; and

(b) the Authority determines that approving the access arrangement with the proposed modified test:

(i) would be efficient in that the advantages of approving the proposed modified test would outweigh the disadvantages; and

(ii) would promote the achievement of the Code objective.

6.54 In making a determination under section 6.52 the Authority must have regard to whether the new facilities investment was required by a written law or a statutory instrument.

6.55 Section 6.54 does not limit the matters to which regard must or may be had in making a determination under section 6.52.

Capital base not to include investment in respect of which a capital contribution is provided

6.56 No amount may be added to the capital base in respect of any new facilities investment for which a capital contribution has been, or is to be, provided to the service provider.
Recoverable portion

6.57 If only part of any new facilities investment satisfies the new facilities investment test, that part (“recoverable portion”) may be added to the capital base.

Speculative investment

6.58 The “speculative investment amount” (if any) for a new facility at any time is equal to:

(a) the new facilities investment;

(b) any recoverable portion;

(c) any amount for which a capital contribution has been, or is to be, provided to the service provider;

(d) any part of the speculative investment amount for the new facility previously added to the capital base under section 6.60.

6.59 If the calculation in section 6.58 produces a negative result, the speculative investment amount is zero.

6.60 If:

(a) a speculative investment amount was created for a new facility at a time; and

(b) a determination is being made under section 6.44 at a later time,

then any part of the speculative investment amount which satisfies the new facilities investment test at the later time may be added to the capital base.

(Note: Reasons for the investment satisfying the new facilities investment test at the later time could include a change in the type or volume of covered services provided using the new facility from the circumstances prevailing at the original time.)

Redundant capital

6.61 Subject to section 6.62, the Authority may in relation to a determination under section 6.44(a) require an amount (“redundant capital”) to be removed from the capital base to the extent (if any) necessary to ensure that network assets which have ceased to contribute in any material way to the provision of covered services are not included in the capital base.

6.62 Before requiring a removal under section 6.61, the Authority must have regard to:

(a) whether the service provider was efficiently minimising costs when it developed, constructed or acquired the network assets; and

(b) the uncertainty such a removal may cause and the effect which any such uncertainty may have on the service provider, users and applicants; and

(c) whether the cause of the network assets ceasing to contribute in any material way to the provision of covered services was the application of a written law or a statutory instrument; and

(d) whether the service provider was compelled to develop, construct or acquire the network assets:

(i) by an award by the arbitrator; or

(ii) because of the application of a written law or a statutory instrument; and
whether the depreciation of the network assets should be accelerated instead of or in addition to a redundant capital amount being removed from the capital base under section 6.61.

6.63 If the Authority requires a removal under section 6.61, then when making other determinations under this Chapter 6 the Authority may have regard to the removal.

{Examples of such other determinations include approving a weighted average cost of capital and assessing the economic life of assets.}

Calculating weighted average cost of capital

6.64 An access arrangement must set out the weighted average cost of capital for a covered network, which:

(a) if a determination has effect under section 6.65:

(i) for the first access arrangement for the covered network that is covered under section 3.1 — may use any methodology (which may be formulated without any reference to the determination under section 6.65) but, in determining whether the methodology used is consistent with this Chapter 6 and the Code objective, regard must be had to the determination under section 6.65; and

(ii) otherwise — must use the methodology in the determination under section 6.65 unless the service provider can demonstrate that an access arrangement containing an alternative methodology would better achieve the objectives set out in section 6.4 and the Code objective,

and

(b) if a determination does not have effect under section 6.65 – must be calculated in a manner consistent with section 6.66.

Authority may make a determination of a methodology for calculation of weighted average cost of capital

6.65 The Authority may from time to time make and publish a determination (which subject to section 6.68 has effect for all covered networks under this Code) of the preferred methodology for calculating the weighted average cost of capital in access arrangements.

6.66 A determination under section 6.65:

(a) must represent an effective means of achieving the Code objective and the objectives in section 6.4; and

(b) must be based on an accepted financial model such as the Capital Asset Pricing Model.

6.67 Before making a determination under section 6.65, the Authority must consult the public in accordance with Appendix 7.

6.68 A determination under section 6.65:

(a) may be revoked or amended by a further determination under section 6.65; and

(b) has effect for the period specified in the determination, which must not be more than 5 years, unless earlier revoked by a further determination; and

(c) subject to section 6.69, does not have effect in relation to the approval or review, as applicable, of an access arrangement if the determination is published less than 6 months before the submission deadline (as extended under section 4.66(a)) or revisions submission date, as applicable.

{Note: The intention of section 6.68(c) is to ensure that the goalposts are not set or shifted too late in the process.}
6.69 For the covered network that is covered under section 3.1, a determination under section 6.65 has effect in relation to the approval of the first access arrangement if it is published at least 3 months before the submission deadline.

Depreciation

6.70 An access arrangement must provide for the depreciation of the network assets comprising the capital base, including the economic lives of each network asset or group of network assets, the depreciation method to be applied to each network asset or group of network assets and the circumstances in which the depreciation of a network asset may be accelerated.

Subchapter 6.3 – Service provider may seek approval for costs

Approval for new facilities investment

6.71 A service provider may at any time apply to the Authority for the Authority to determine whether:

(a) actual new facilities investment made by the service provider meets the new facilities investment test; or
(b) forecast new facilities investment proposed by the service provider will meet the new facilities investment test.

6.72 If an application is made to the Authority under section 6.71, then subject to section 6.75 the Authority must make and publish a determination (subject to such conditions as the Authority may consider appropriate) within a reasonable time.

6.73 Before making a determination under section 6.72, the Authority must consult the public in accordance with Appendix 7.

6.74 The effect of a determination under section 6.72 is to bind the Authority when it approves proposed revisions, but in the case of forecast new facilities investment under section 6.71(b) the Authority is only bound if the new facilities investment has proceeded as proposed.

6.75 The Authority:

(a) must make a determination under section 6.72 if the actual or forecast new facilities investment is equal to or greater than the amount of $15 million (CPI adjusted); and
(b) may make a determination under section 6.72 if the actual or forecast new facilities investment is less than the amount of $15 million (CPI adjusted).

Approval for non-capital costs

6.76 A service provider may at any time apply to the Authority for the Authority to determine whether:

(a) actual non-capital costs incurred by the service provider meet the requirements of section 6.40; or
(b) forecast non-capital costs proposed to be incurred by the service provider will meet the requirements of section 6.40.

6.77 If an application is made to the Authority under section 6.76, then subject to section 6.80 the Authority must make and publish a determination (subject to such conditions as the Authority may consider appropriate) within a reasonable time.

6.78 Before making any determination under section 6.77, the Authority must consult the public in accordance with Appendix 7.
6.79 The effect of a determination under section 6.77 is to bind the Authority when it approves proposed revisions, but in the case of forecast non-capital costs under section 6.76(b) the Authority is only bound if the non-capital costs were incurred as proposed.

6.80 The Authority:

(a) must make a determination under section 6.77 if the actual or forecast non-capital costs are equal to or greater than the amount of $1.5 million (CPI adjusted); and

(b) may make a determination under section 6.77 if the actual or forecast non-capital costs are less than the amount of $1.5 million (CPI adjusted).
Chapter 7 – Pricing methods

‘Pricing methods’ defined

7.1 In this Code “pricing methods” means the structure of reference tariffs included in an access arrangement under this Chapter 7, which determines how target revenue is allocated across and within reference services.

Form of pricing methods

7.2 An access arrangement may contain any pricing methods provided they collectively meet the objectives set out in sections 7.3 and 7.4 and otherwise comply with this Chapter 7.

{Examples:
  • The pricing methods may result in tariffs which distinguish between:
    • voltage levels; and
    • classes of users.
  • The pricing methods may result in tariffs which relate to specific connection points, and may result in tariffs which involve a combination of fixed and variable amounts related to one or more of the following elements:
    • demand levels (maximum kW or kVA per period);
    • energy quantities involved (kWh or kVAh per period); and
    • time of use.
  • If the pricing methods use quantities in determining tariffs, they may use minimum, maximum or actual quantities.}

Objectives of pricing methods – Primary objectives

7.3 Subject to sections 7.5 and 7.7, the pricing methods in an access arrangement must have the objectives that:

(a) reference tariffs recover the forward-looking efficient costs of providing reference services; and

(b) the reference tariff applying to a user:

(i) at the lower bound, is equal to, or exceeds, the incremental cost of service provision; and

(ii) at the upper bound, is equal to, or is less than, the stand-alone cost of service provision.

{Notes:
  1. The objective in section 7.3(a) refers to charges paid by an individual user. However in practice reference tariffs will be set, and access arrangements will be assessed, by aggregating together groups of similar users.
  2. One implication of section 7.3(b)(i) is that the charges paid by users should increase as the network becomes constrained, reflecting the increased incremental cost of service provision.
  3. The charge paid by a user in respect of a reference service will normally reflect the average cost of service provision}
Objectives of pricing methods – Other objectives

7.4 Subject to sections 7.5 and 7.7, the pricing methods in an access arrangement must have the objectives that:

(a) the charges paid by different users of a reference service differ only to the extent necessary to reflect differences in the average cost of service provision to the users; and

{Examples of factors which may result in the charges paid by different users of a reference service differing from each other, include:

- the quantities of reference service supplied or to be supplied; or
- a user’s time pattern of network usage; or
- the technical characteristics or requirements of the facilities and equipment at the relevant connection point; or
- the nature of the plant or equipment required to provide the reference service; or
- the periods for which the reference service is to be supplied; or
- subject to section 7.7, a user’s location.}

(b) the structure of reference tariffs so far as is consistent with the Code objective accommodates the reasonable requirements of users collectively; and

{Example: Users may prefer more of the average cost of service provision to be recovered using tariff components that vary with usage or demand than might otherwise be the case under section 7.6.}

(c) the structure of reference tariffs enables a user to predict the likely annual changes in reference tariffs during the access arrangement period; and

(d) the structure of reference tariffs avoids price shocks (that is, sudden material tariff adjustments between succeeding years).

{Note: Price adjustments between succeeding years could include tariff rebalancing to achieve greater cost reflectivity of individual tariffs. The mechanisms to avoid price shocks could include a phased approach or other measures to assist in the management of adjustment costs.}

Objectives of pricing methods – Reconciling primary and other objectives

7.5 To the extent that the objectives in section 7.3 conflict with the objectives in section 7.4 in respect of pricing methods in a proposed access arrangement, the Authority, when determining whether the pricing methods are consistent with this Chapter 7, must reconcile the conflict, or determine which objective is to prevail, having regard to the Code objective but where necessary permitting the objectives in section 7.3 to prevail over the objectives in section 7.4.

Tariff components

7.6 Unless an access arrangement containing alternative pricing methods would better achieve the Code objective, for a reference service:

(a) the incremental cost of service provision should be recovered by tariff components that vary with usage or demand; and

(b) any amount in excess of the incremental cost of service provision should be recovered by tariff components that do not vary with usage or demand.
Postage stamp charges in certain cases

7.7 The tariff applying to a standard tariff user in respect of a standard tariff exit point must not differ from the tariff applying to any other standard tariff user in respect of a standard tariff exit point as a result of differences in the geographic locations of the standard tariff exit points.

‘Equivalent tariff’ defined

7.8 In sections 7.9 and 7.10, “equivalent tariff” means:
   (a) for a reference service — the reference tariff; and
   (b) for a non-reference service — the tariff that it is reasonably likely would have been set as the reference tariff had the non-reference service been a reference service.

Prudent discounts

7.9 A service provider may propose in its access arrangement to discriminate between users in its pricing of services to the extent that it is necessary to do so to aid economic efficiency, including:
   (a) by entering into an agreement with a user to apply a discount to the equivalent tariff to be paid by the user for a covered service; and
   (b) then, recovering the amount of the discount from other users of reference services through reference tariffs.

Discounts for distributed generating plant

7.10 If a user seeks to connect distributed generating plant to a covered network, a service provider must reflect in the user’s tariff, by way of a discount, a share of any reductions in either or both of the service provider’s capital-related costs or non-capital costs which arise as a result of the entry point for distributed generating plant being located in a particular part of the covered network by:
   (a) entering into an agreement with a user to apply a discount to the equivalent tariff to be paid by the user for a covered service; and
   (b) then, recovering the amount of the discount from other users of reference services through reference tariffs.

Access arrangement must detail policies regarding discounts

7.11 An access arrangement must contain a detailed policy setting out how the service provider will implement:
   (a) if the service provider so chooses – section 7.9; and
   (b) section 7.10,
including a detailed mechanism for determining when a user will be entitled to receive a discount and for calculating the discount to which the user will be entitled.
Chapter 8 – Price lists

Approval of price lists if required

8.1 If a service provider’s access arrangement requires it to submit price lists to the Authority for approval, the service provider must, at least 45 business days before the start of each pricing year (except for the first pricing year), submit to the Authority:

(a) a proposed price list to apply for the next pricing year; and
(b) price list information.

8.2 If the Authority considers that a service provider’s proposed price list complies with:

(a) the price control in the service provider’s access arrangement; and
(b) the pricing methods in the service provider’s access arrangement,
then the Authority must:

(c) approve and publish the service provider’s proposed price list which has effect from a date specified by the Authority; and
(d) publish the service provider’s price list information.

8.3 The Authority must not approve a service provider’s proposed price list if the proposed price list does not comply with sections 8.2(a) and 8.2(b), and must notify the service provider that it does not approve the proposed price list and provide reasons.

8.4 If a service provider is notified under section 8.3 that the Authority does not approve a proposed price list submitted by the service provider, the service provider may at any time submit a revised proposed price list to the Authority.

8.5 If the Authority:

(a) notifies a service provider under section 8.3 that it does not approve a proposed price list submitted by the service provider and
(b) has not approved a revised proposed price list
then the price list most recently in effect continues in effect until the Authority approves a revised proposed price list submitted by the service provider under section 8.4.

8.6 If the Authority has not notified a service provider that it does not approve a proposed price list within 15 business days after receiving either:

(a) the proposed price list; or
(b) any further information the Authority has requested in relation to the proposed price list,
(whichever is later), then the Authority is to be taken to have approved the price list.

Publication of price lists if approval not required

8.7 If a service provider’s access arrangement does not require it to submit price lists to the Authority for approval, the service provider must, at least 25 business days before the start of each pricing year (except for the first pricing year), submit to the Authority a copy of:

(a) a price list to apply in respect of the next pricing year which complies with:

(i) the price control in the service provider’s access arrangement; and
(ii) the pricing methods in the service provider’s access arrangement;
and

(b) price list information.

8.8 Where a service provider submits a price list and price list information to the Authority under section 8.7, the Authority must publish the price list and price list information.
Chapter 9 – Regulatory Test

(Note: The regulatory test applies only to proposed major augmentations. It applies to a proposed major augmentation whether the service provider proposes to undertake the proposed major augmentation:

(a) in order to provide covered services, but not specifically in relation any particular project; or

(b) in relation to a project involving the generation of or consumption of electricity.

The regulatory test cannot require a project involving the generation or consumption of electricity to be located in a particular place or to be altered in any other way. The regulatory test can only affect what network augmentations are undertaken in order to accommodate the project.)

Subchapter 9.1 – Introductory

Objectives of this Chapter 9

9.1 The objectives of this Chapter 9 (“Chapter 9 objectives”) are:

(a) to ensure that before a service provider commits to a proposed major augmentation to a covered network, the major augmentation is properly assessed to determine whether it maximises the net benefit after considering alternative options; and

(b) to provide an incentive to a service provider, when considering augmentation to a covered network, to select the option (which may involve a major augmentation or may involve not proceeding with an augmentation at all) which maximises the net benefit after considering alternative options; and

(c) to minimise:

(i) delay to projects and other developments; and

(ii) administrative and regulatory costs; and

(iii) any other barriers to the entry of generators and consumers into the electricity market,

arising from the application of the regulatory test.

No major augmentation without regulatory test determination

9.2 A service provider must not commit to a major augmentation before the Authority determines, or is deemed to determine, under section 9.13 or 9.18, as applicable, that the test in section 9.14 or 9.20, as applicable, is satisfied.

‘Regulatory test’ defined

9.3 The “regulatory test” is an assessment under this Chapter 9 of whether a proposed major augmentation to a covered network maximises the net benefit after considering alternative options.

9.4 A “net benefit after considering alternative options” means a net benefit (measured in present value terms to the extent that it is possible to do so) to those who generate, transport and consume electricity in the covered network and any interconnected system, having regard to all reasonable alternative options, including the likelihood of each alternative option proceeding.
‘Committed’ defined

9.5 Subject to section 9.6, a service provider has “committed” to a major augmentation when the service provider, intending to undertake the major augmentation, begins to put its intention into effect by doing an act which is more than merely preparatory to undertaking the major augmentation, including by:

(a) making a substantial financial commitment in respect of the major augmentation, such as committing to:
   (i) a significant obligation which is legally binding; or
   (ii) an obligation which would have significant commercial repercussions if cancelled, discontinued or dishonoured;

or

(b) commencing, or procuring the commencement of, construction of the major augmentation.

9.6 A service provider will not be considered to have committed to undertaking a major augmentation merely because the service provider has:

(a) undertaken preparatory system or other studies in respect of the major augmentation; or

(b) engaged in preparatory planning, design or costing activities in respect of the major augmentation; or

(c) obtained an approval in respect of the major augmentation, unless the approval comes within the description in section 9.5(a) or 9.5(b).

Authority may make a determination that an augmentation is or is not a major augmentation

9.7 A service provider may request the Authority, as part of or prior to a decision under sections 9.13 or 9.18 (as applicable), having regard to the forecast new facilities investment for a proposed augmentation, to determine whether or not the proposed augmentation is a major augmentation.

9.8 A determination by the Authority under section 9.7 is conclusive evidence of whether the proposed augmentation is a major augmentation.

Service provider must make information available

9.9 A service provider must use its reasonable endeavours to ensure that it makes sufficient information available in a timely manner in respect of a proposed major augmentation to maximise the opportunity for potential alternative options to be viable.

Subchapter 9.2 – Regulatory test process

Regulatory test as part of access arrangement approval process

9.10 A service provider may submit a major augmentation proposal as part of its proposed access arrangement, in which case sections 9.11 to 9.14 apply.

9.11 A major augmentation proposal submitted under section 9.10:

(a) must describe in detail each major augmentation to which the major augmentation proposal relates; and

(b) must state that, in the service provider’s view, each proposed major augmentation maximises the net benefit after considering alternative options; and
30 November 2004

GOVERNMENT GAZETTE, WA

5597

(c) may be amended in a revised proposed access arrangement submitted under section 4.16.

9.12 The invitation under section 4.9 for submissions on the proposed access arrangement must invite submissions on the service provider’s statement under section 9.11(b), including submissions on reasonable alternative options to each proposed major augmentation.

9.13 The Authority’s final decision under section 4.17 and, if applicable, its further final decision under section 4.21 must state whether the test in section 9.14 is satisfied or is not satisfied.

9.14 The test in this section 9.14 is satisfied if the Authority is satisfied that:

(a) the service provider’s statement under section 9.11(b) is defensible; and

(b) the service provider has applied the regulatory test properly to each proposed major augmentation:

(i) using reasonable market development scenarios which incorporate varying levels of demand growth at relevant places; and

(ii) using reasonable timings, and testing alternative timings, for project commissioning dates and construction timetables for the major augmentation and for alternative options;

Regulatory test not as part of access arrangement approval process

9.15 A service provider may submit a major augmentation proposal other than as part of the access arrangement approval process, in which case sections 9.16 to 9.22 apply.

9.16 A major augmentation proposal submitted under section 9.15:

(a) must describe in detail each major augmentation to which the major augmentation proposal relates; and

(b) must state that, in the service provider’s view, each proposed major augmentation maximises the net benefit after considering alternative options; and

(c) must demonstrate that the service provider has conducted a consultation process in respect of each proposed major augmentation which:

(i) included public consultation under Appendix 7; and

(ii) gave all interested persons a reasonable opportunity to state their views and to propose alternative options to the proposed major augmentations, and that the service provider had regard to those views and alternative options; and

(iii) involved the service provider giving reasonable consideration to any information obtained under sections 9.16(c)(i) and 9.16(c)(ii) when forming its view under section 9.16(b); and

(d) must comply with the current requirements published under section 9.17.

(e) may include a request that the Authority give prior approval under section 6.72 in respect of the new facilities investment for one or more proposed major augmentations.

9.17 The Authority must publish, and may from time to time publish variations to, its requirements for a major augmentation proposal submitted under section 9.16, which requirements must be directed to ensuring that the Authority receives sufficient information in a suitable form to enable it to efficiently and effectively apply the test in section 9.20.
9.18 The Authority must in respect of a major augmentation proposal submitted under section 9.15 make and publish a determination whether the test in section 9.20 is satisfied or is not satisfied, and must do so:

(a) if the Authority has consulted the public under section 9.19 — within 45 business days; and

(b) otherwise — within 25 business days,

after receiving the major augmentation proposal.

9.19 The Authority may consult the public under Appendix 7 before making a determination under section 9.18.

9.20 The test in this section 9.20 is satisfied if the Authority is satisfied that:

(a) the service provider’s statement under section 9.16(b) is defensible; and

(b) the service provider has applied the regulatory test properly to each proposed major augmentation:

(i) using reasonable market development scenarios which incorporate varying levels of demand growth at relevant places; and

(ii) using reasonable timings, and testing alternative timings, for project commissioning dates and construction timetables for the major augmentation and for alternative options;

and

(c) the consultation process conducted by the service provider meets the criteria in section 9.16(c).

9.21 If the Authority is unable to determine whether the test set out in section 9.20 is satisfied or is not satisfied because the service provider has not provided adequate information (despite the Authority having notified the service provider of this fact and given the service provider a reasonable opportunity, having regard to the time periods specified in section 9.18, to provide adequate information), then the Authority may determine that the test in section 9.20 is not satisfied.

9.22 If the Authority has not published a determination under section 9.18 within the time limits specified in that section, then the Authority is deemed to have determined that the test in section 9.20 is satisfied.

Regulatory test may be expedited, otherwise modified or waived

9.23 If the Authority forms the view that the application of the regulatory test under sections 9.10 to 9.14 or sections 9.15 to 9.22 in respect of a proposed major augmentation would be contrary to the Chapter 9 objectives, including because:

(a) there are no, or it is unlikely that there are any, viable alternative options to the proposed major augmentation; or

(b) the nature of the proposed major augmentation is such that significant advance planning is required and no alternative options exist; or

(c) the nature of the proposed major augmentation, or part of it, is such that it should be submitted to the Independent Market Operator established under the Electricity Industry (Independent Market Operator) Regulations 2004, or

(d) the nature of the funding of the proposed major augmentation means that the proposed major augmentation will not cause a net cost (measured in present value terms to the extent that it is possible to do so) to those who generate, transport and consume electricity in the covered network and any interconnected system,

then the Authority may, by publishing a notice:
(e) expedite or otherwise modify the application of the regulatory test in respect of the major augmentation to the extent the Authority considers necessary to meet the Chapter 9 objectives; or

(f) waive the application of the regulatory test in respect of the major augmentation if the Authority considers it necessary to do so to meet the Chapter 9 objectives.

9.24 Without limiting the circumstances in which the Authority may publish a notice under section 9.23, if a person requests the Authority to form a view under section 9.23 in respect of a proposed major augmentation which is described to the Authority in reasonable detail then the Authority must as soon as practicable form a view and either:

(a) publish a notice under section 9.23; or
(b) notify the person that the Authority does not propose to publish a notice under section 9.23.

Vexatious etc alternative options

9.25 Neither the service provider nor the Authority is required by this Chapter 9 to have regard to an alternative option which is misconceived or is proposed on vexatious grounds.

Subchapter 9.3 – Anti-avoidance provisions

Anti-avoidance provisions

9.26 Section 9.27 applies if the Authority determines that a service provider has engaged in conduct with the purpose of avoiding or frustrating the objective in section 9.1(a).

9.27 The Authority may by notice to the service provider deem:

(a) any two or more augmentations to constitute a single augmentation; or
(b) any augmentation to constitute any two or more augmentations; or
(c) any activity which has been attributed to an augmentation to be attributed to a different augmentation; or
(d) any combination of sections 9.27(a), 9.27(b), or 9.27(c), in which case the deeming has conclusive effect for the purposes of this Chapter 9.

9.28 A notice under section 9.27 must set out reasons for the Authority’s decision under section 9.27.

9.29 A deeming under section 9.27 may:

(a) relate to two or more augmentations whether or not they occur at the same time; and
(b) relate to one or more augmentations whether or not they have been completed; and
(c) specify the time at which a deemed thing occurred or will occur.

9.30 To avoid doubt, each reference in sections 9.27 and 9.29 to “augmentation” includes a major augmentation and an augmentation previously deemed under sections 9.27 and 9.29.
Chapter 10 – Dispute Resolution

Subchapter 10.1 – Introduction

Commercial Arbitration Act 1985 does not apply

10.1 A proceeding under this Chapter 10 is not an arbitration within the meaning of the Commercial Arbitration Act 1985.

Procedural rules

10.2 Appendix 5 applies in respect of an access dispute.

Subchapter 10.2 – Access Disputes

Notification of a dispute

10.3 An applicant or a service provider may notify the Authority in writing that an access dispute exists.

10.4 On receiving a notification under section 10.3, the Authority must give notice in writing of the access dispute to the other parties to the dispute.

10.5 An applicant or service provider who has given notice of an access dispute under section 10.3 may withdraw notification of the access dispute at any time by written notice to the Authority and all other parties to the access dispute.

10.6 If the notification of an access dispute is withdrawn under section 10.5, it is taken for the purposes of this Chapter 10 to never have been given.

Other parties joining

10.7 A person, other than a party to a dispute, may apply to the arbitrator to join and be heard in the proceedings.

10.8 The arbitrator:

(a) must allow a person applying under section 10.7 to join the proceedings if the person is affected by the proceedings unless the arbitrator determines that doing otherwise is necessary to justly dispose of the issues in the proceedings; and

(b) may make such orders concerning the joinder as the arbitrator considers appropriate.

10.9 The arbitrator may on its own initiative:

(a) direct a party to a dispute to provide it with sufficient information to enable it to identify other persons who might wish to apply under section 10.7 to join and be heard in the proceedings;

(Note: This may include information as to any (or any other) applicants and details of each applicant’s access application.)

(b) notify any person identified by it under section 10.9(a) that the dispute exists and the parties to the dispute.
10.10 The parties to a dispute must promptly comply with a direction under section 10.9(a).

**Conciliation and reference to arbitration**

10.11 On receiving a request to refer an access dispute to arbitration, the Authority must:

(a) subject to section 10.12 and if the parties to the dispute agree, attempt to settle the dispute by conciliation; or

(b) if the Authority does not attempt to settle the dispute by conciliation or conciliation fails to settle the dispute, refer the dispute to the arbitrator.

**Authority not required to conciliate**

10.12 The Authority is not obliged to attempt to settle the dispute by conciliation if the Authority is satisfied, on the application of a party to the access dispute, that there are good reasons why the dispute should not be settled by conciliation.

** Expedited hearing of disputes under applications and queuing policy**

10.13 Section 10.14 applies in respect of an access dispute (“queuing dispute”) relating to an interim or procedural matter under an applications and queuing policy, in respect of which either:

(a) the service provider and the applicant agree in writing to have the matter heard as a queuing dispute;

(b) where the arbitrator determines (on application by either party) that a speedy resolution of the queuing dispute may permit the access application to be further progressed and an access offer made without the parties having to resort to a lengthy, full-scale access dispute.

10.14 Unless the arbitrator considers that the Code objective or the just resolution of the queuing dispute require a queuing dispute to be dealt with in another way, when hearing a queuing dispute:

(a) the parties are to be restricted to one round of written submissions and one round of written submissions in reply (which may not be amended except by leave of the arbitrator); and

(b) the hearing is to be conducted without legal representation (but parties may obtain legal advice in preparing the written submission); and

(c) the arbitrator is to treat the objective of informality and expedition as paramount; and

(d) the arbitrator and the parties must endeavour to ensure that the queuing dispute is determined within 10 business days after notice of the queuing dispute is given.

**Factors which the arbitrator must have regard to**

10.15 In exercising its functions under this Chapter 10 the arbitrator must have regard to:

(Note: Section 2.2 requires the arbitrator to have regard to the Code objective when exercising its functions under this Chapter 10.)

(a) the geographical location of the network and the extent (if any) to which the network is interconnected with other networks; and

(b) contractual obligations of the service provider or other persons already using the covered network (or both); and

(c) the operational and technical requirements necessary for the safe and reliable operation of the covered network.

10.16 Section 10.15 does not limit the matters to which the arbitrator may have regard.
The arbitration

10.17 The arbitrator must make a decision on the matters the subject of the access dispute following the procedure prescribed in Appendix 5.

10.18 The arbitrator may at any time terminate an arbitration (without making a decision) if the arbitrator considers that:
(a) the subject matter of the access dispute is trivial, misconceived or lacking in substance; or
(b) the notification of the access dispute was vexatious; or
(c) the party who notified the access dispute has not negotiated in good faith or has notified the access dispute prematurely or unreasonably.

Arbitrated tariff to be guided by access arrangement and price list

10.19 Subject to section 10.20, if an access dispute relates to the tariff that should apply to a covered service, the arbitrator must set the tariff payable by the applicant under the award having regard to the access arrangement and price list and Chapter 7.

Arbitrated tariffs for reference services

10.20 If an access dispute relates to the tariff that should apply to a reference service, then an award must not:
(a) require the applicant to pay more than the reference tariff for the reference service, or
(b) require the service provider to accept less than the reference tariff for the reference service.

Arbitrated terms for reference services

10.21 Subject to section 10.22, the arbitrator must not make an award specifying the terms of an access contract for a reference service that is inconsistent with the standard access contract for the reference service set out in the service provider's access arrangement.

10.22 The arbitrator must, in an award specifying the terms of an access contract for a reference service, deal with each matter which in the standard access contract for the reference service in the access arrangement is left to be agreed by the parties or determined by the arbitrator in a manner which:
(a) has regard to the factors contained in section 10.15; and
(b) is consistent with:
(i) any instructions about the matter contained in the access arrangement; and
(ii) the Code objective.

Arbitrated tariffs for non-reference services

10.23 Where the arbitrator is setting the tariff payable by the applicant for a non-reference service, the award should endeavour to achieve the following objectives:
(a) when the awarded tariff is compared with the reference tariff for a comparable reference service (if any):
   (i) if the non-reference service involves the provision of services to a higher standard, the differential between the awarded tariff and the reference tariff should reflect the increase in the service provider's incremental cost of service provision as a result of the provision of services to that higher standard; and
(ii) if the non-reference service involves the provision of services to a lower standard, the differential between the awarded tariff and the reference tariff should reflect the amount of the service provider’s avoided cost of service provision as a result of the provision of services to that lower standard;

and

(b) subject to the discount provisions in the service provider’s access arrangement, other users should not pay individual reference tariffs for reference services that are higher as a result of the differential referred to in section 10.23(a).

10.24 Where the arbitrator is awarding the tariff payable by the applicant for a non-reference service, the award must have regard to Chapter 7 and the service provider’s access arrangement including the standard access contract contained in the service provider’s access arrangement.

10.25 Section 10.24 does not limit the matters to which the arbitrator must or may have regard.

Award by the arbitrator

10.26 The arbitrator must make a written award on access to the network by the applicant.

10.27 The award referred to in section 10.26:

(a) must deal with the matter that was the basis for the notification of the dispute; and

(b) may, subject to section 10.28, deal with any other matter which a party has requested the arbitrator to deal with that the arbitrator considers expedient to justly dispose of any proceedings before it.

10.28 The arbitrator cannot make an award under section 10.26 that deals with a matter that is, by agreement between the parties, no longer a matter which is in dispute.

10.29 Without limiting the generality of section 10.24 and subject to section 10.32, the award may, without limitation, do any one or more of the following:

(a) specify the manner in which a party must comply with the applications and queuing policy; or

(b) deal with the costs, timing or performance of functions in relation to the planning, designing, constructing, acquiring and commissioning of a proposed augmentation, and may require a party to undertake any such function in a specified manner; or

(c) require the service provider to provide access to a covered service requested by the applicant; or

(d) subject to section 10.35, require the applicant to accept, and pay for, access to a service; or

(e) specify the terms of the access contract including the discount to the reference tariff to which the user is entitled (if any); or

(f) require the service provider to augment the network; or

(g) specify the extent to which the award overrides an earlier award or access contract.

10.30 Before making an award, the arbitrator must give a draft award to the parties to the arbitration and may have regard to representations that any of them may make on the proposed award.

10.31 When the arbitrator makes an award, the arbitrator must give the parties to the arbitration written reasons for the award.
Restrictions on access awards

10.32 The arbitrator cannot make an award that:
(a) would impede the right of a user under an access contract to obtain services unless the user agrees or the arbitrator is satisfied that the user is or will be compensated on just terms for in respect of the impeded right; or
(b) is inconsistent with the access arrangement for the covered network; or
(c) requires the service provider to provide access to a service designated as an excluded service in the access arrangement; or
(d) affects an area of the State that is the subject of the exclusive license of another service provider; or
(e) requires the service provider or another person to engage in an act or omit to engage in an act which would contravene a written law or a statutory instrument.

Arbitrated award requiring augmentation of network

10.33 The arbitrator may make an award that would have the effect of requiring the service provider to augment the network only where the arbitrator is satisfied that:
(a) the augmentation is technically and economically feasible and consistent with the safe and reliable operation of the network; and
(b) in the case of a major augmentation, sections 10.40 to 10.43 have been complied with.

Effect of awards

10.34 Subject to section 10.35, an award is binding on the parties to the arbitration in which it is made.

10.35 An applicant may, within 5 business days after an award is made which orders the parties to enter into an access contract, elect not to enter into an access contract as specified by the award by giving written notice of the election to the arbitrator and the service provider, in which case (subject to any applications and queuing policy provisions about lapse of access applications due to passage of time) the applicant’s access application remains in effect.

10.36 Unless the applicant elects not to be bound by an award in accordance with section 10.35, if the award orders the parties to enter into an access contract then the service provider and applicant must enter into an access contract in the form specified in the award within 15 business days after it is made.

Costs of arbitration

10.37 Subject to sections 10.38 and 10.39, the costs of an arbitration (including the fees and costs of the arbitrator, if the parties are required to pay the fees and costs) are to be determined in the discretion of the arbitrator who may:
(a) direct to and by whom and in what manner the whole or any part of the costs is to be paid; and
(b) fix or settle the amount of costs to be so paid or any part of the costs; and
(c) award costs to be fixed or settled as between party and party or as between solicitor and client; and
(d) award costs by reference to the Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002 as amended or substituted from time to time.
10.38 The costs of complying with Subchapter 10.3 are to be borne equally by the parties unless the arbitrator considers there are compelling reasons to order otherwise.

10.39 If an award is made substantially in the form sought by an applicant, and the applicant elects under section 10.35 not to be bound by the award, then the fees and costs of the arbitrator, to the extent the parties are required to pay the fees and costs, are to be borne by the applicant unless the arbitrator considers there are compelling reasons to order otherwise.

Subchapter 10.3 – Application of the regulatory test in an arbitration

Arbitrator must make proposed award if award would require major augmentation

10.40 Before making an award under section 10.33 that would require a service provider to undertake a major augmentation, the arbitrator must:

(a) make and provide to the parties to the dispute a proposed award; and

(b) direct the service provider to apply the process outlined in section 10.41 in relation to the major augmentation in the proposed award and specify a time by which the service provider must complete each step in the process.

Service provider must consult and submit major augmentation report

10.41 The service provider must, within the time specified by the arbitrator:

(a) conduct a consultation process in respect of the major augmentation in the proposed award which complies with section 9.16(c); and

(b) then, submit a major augmentation report to the Authority that:

(i) demonstrates compliance with section 10.41(a); and

(ii) states whether, in the service provider’s view, the major augmentation in the proposed award maximises the net benefit after considering alternative options.

10.42 The service provider must use its best endeavours to ensure that there are no unnecessary or unreasonable costs or delays in complying with section 10.41.

Service provider’s costs of compliance, if applicant withdraws

10.43 If an applicant withdraws its notice of an access dispute under section 10.5 and the service provider:

(a) has complied with sections 10.41 and 10.42; or

(b) is in the process of complying with section 10.41 and 10.42,

then the applicant must indemnify the service provider for the service provider’s costs of complying with sections 10.41 and 10.42 up to the date that the service provider receives the withdrawal notice.

Authority must publish determination regarding major augmentation report

10.44 The Authority must in respect of a major augmentation report make and publish a determination whether the test in section 10.46 is satisfied or is not satisfied, and must do so:

(a) if the Authority has consulted the public under section 10.45 — within 45 business days; and

(b) otherwise — within 25 business days,

after receiving the major augmentation proposal.
10.45 The Authority may consult the public under Appendix 7 before making a determination under section 10.44.

10.46 The test in this section 10.46 is satisfied if the Authority is satisfied that:

(a) the service provider’s statement under section 10.41(b)(ii) is defensible; and
(b) the service provider has applied the regulatory test properly to the major augmentation in the proposed award:

(i) using reasonable market development scenarios which incorporate varying levels of demand growth at relevant places; and
(ii) using reasonable timings, and testing alternative timings, for project commissioning dates and construction timetables for the major augmentation and for alternative options;

and

(c) the consultation process conducted by the service provider under section 10.41(a) meets the criteria in section 9.16(c).

10.47 The Authority must make a determination under section 10.44 on the basis of all the material before it and must have regard to, but is not bound by, the service provider’s view under section 10.41(b)(ii).

10.48 The Authority must give the arbitrator and the parties to the dispute a copy of its determination under section 10.44.

10.49 If the Authority is unable to make a determination under section 10.44 because the service provider has not provided adequate information (despite the Authority’s having notified the service provider of this fact and given the service provider a reasonable opportunity, having regard to the time periods specified in section 10.44, to provide adequate information), then the Authority:

(a) must notify the arbitrator and the parties to the dispute of the fact and provide a description of the circumstances; and
(b) is not required to make a determination under section 10.44 in relation to the major augmentation in the proposed award.

Arbitrator must have regard to Authority's determination

10.50 In determining whether to make an award that would have the effect of requiring the service provider to undertake the major augmentation described in the proposed award or an augmentation of a different nature (whether a major augmentation or not) the arbitrator must have regard to, but is not bound by, the Authority’s determination under section 10.44.

10.51 For the purposes of section 10.50, without limiting the matters to which the arbitrator must or may have regard, the arbitrator may have regard to the manner in which the service provider complied with sections 10.41 and 10.42.

Subchapter 10.4 – Contractual Disputes

Jurisdiction of arbitrator

10.52 The arbitrator has jurisdiction to hear a contractual dispute.

Procedural rules

10.53 Except to the extent that the access contract provides otherwise, sections 10.3 to 10.6 and Appendix 5 apply to the arbitrator’s hearing of a contractual dispute, with appropriate modifications including the substitution of “contractual dispute” for all references to “access dispute”.
Chapter 11 – Service standards

Service provider must comply with service standards

11.1 A service provider must provide reference services at a service standard at least equivalent to the service standard benchmarks set out in the access arrangement and must provide non-reference services to a service standard at least equivalent to the service standard in the access contract.

Authority to monitor service standards

11.2 The Authority must monitor and, at least once each year, publish a service provider’s actual service standard performance against the service standard benchmarks.

11.3 The Authority may, acting reasonably, request a “service standard performance report” from a service provider for the purposes of monitoring the service provider’s actual service standard performance and the service provider must provide the Authority with a service standard performance report within the time specified by the Authority in its request, which time must not be less than 20 business days.

11.4 In a request under section 11.3 the Authority may specify:
   (a) a period of time which must be covered in the service standard performance report; and
   (b) criteria to be addressed in the service standard performance report; and
   (c) the format required for the service standard performance report,
   and the service provider must comply with the Authority’s specifications.

11.5 The Authority may from time to time, for the purposes of monitoring a service provider’s actual service standard performance:
   (a) consult with users of the service provider’s network; and
   (b) advertise a request for submissions from consumers supplied using the network.

Penalties for breach of service standards

11.6 If a service provider does not comply with section 11.1, then in order to minimise the likelihood of the service provider being excessively penalised for its failure to comply with section 11.1, the Authority must have regard to:
   (a) any remedies awarded (or likely to be awarded) against the service provider under contracts for services in relation to the act or omission which resulted in the service provider not complying with section 11.1; and
   (b) the service standards adjustment mechanism,
   before determining whether to impose a civil penalty under regulations made under section 118(2) of the Act.
Chapter 12 – Technical Rules

Objectives of the technical rules

12.1 The objectives for technical rules are that they:
   (a) are reasonable; and
   (b) do not impose inappropriate barriers to entry to a market; and
   (c) are consistent with good electricity industry practice; and
   (d) are consistent with relevant written laws and statutory instruments.

12.2 The Authority must not approve technical rules for a network unless it determines that the technical rules:
   (a) if the network is part of an interconnected system — work in an integrated fashion with the technical rules governing all interconnected networks; and
   (b) reasonably accommodate the interconnection of further networks in the future.

12.3 The Authority must not approve technical rules for a network which would, if approved, require the service provider or another person to engage in an act or omit to engage in an act which would contravene a written law or a statutory instrument.

Persons bound by technical rules

12.4 Subject to any exemptions granted under sections 12.34 and 12.41, the service provider and users of a network must comply with the technical rules.

Technical rules prevail over contract

12.5 If the provisions of a contract for services provided by means of a network are inconsistent with the technical rules for the network, then the contract is by force of this section amended from time to time to the extent necessary to comply with the technical rules except to the extent that an exemption to the technical rules, granted under section 12.34 or 12.41, affects the contract.

Networks which must have technical rules

12.6 Subject to this Chapter 12, the following networks must have technical rules:
   (a) a covered network; and
   (b) a non-covered network that is part of an interconnected system which contains one or more covered networks.

(Note: Thus, the following networks will not have technical rules:
   - a non-covered network that is part of an interconnected system which contains only non-covered networks; and
   - a non-covered network that is not part of an interconnected system.)
Approval process for technical rules – Non-covered network

12.7 The service provider of a non-covered network that is obliged by section 12.6(b) to have technical rules must, within 6 months of technical rules being approved for a covered network in the interconnected system, either:

(a) give notice to the Authority that it wishes to adopt the technical rules for another network in the interconnected system — in which case it is deemed to have submitted proposed technical rules to the Authority in the form of those technical rules; or

(b) submit proposed technical rules with the Authority.

12.8 The Authority may at its discretion extend the time period under section 12.7 by up to 3 months.

12.9 Before approving proposed technical rules submitted by a service provider under section 12.7, the Authority must consult the public in accordance with Appendix 7.

Approval process for technical rules – Covered network

12.10 The service provider of a covered network must, at the same time as the service provider submits its first access arrangement under section 4.1, submit proposed technical rules to the Authority.

12.11 The approval process for technical rules submitted by the service provider of a covered network under section 12.10 is as follows:

(a) subject to this section 12.10, the technical rules are, to the extent possible, to be processed in parallel with the access arrangement; and

(b) the Chair of the technical rules committee must:

(i) within 20 business days before the last day by which the Authority must make its draft decision under section 4.12 — provide a preliminary report to the Authority; and

(ii) within 30 business days before the last day by which the Authority must make its final decision under section 4.17 — provide a final report to the Authority;

and

(c) the Authority must within 15 business days after it makes a draft decision on the proposed access arrangement under section 4.12 publish draft technical rules which:

(i) if the service provider’s proposed technical rules comply with this Chapter 12 and the Code objective — must be the service provider’s proposed technical rules; and

(ii) otherwise — must be drafted by the Authority and based on the service provider’s proposed technical rules and amended only to the extent necessary to comply with this Chapter 12 and the Code objective, and at the same time the Authority must publish an invitation for submissions on the draft technical rules; and

(d) a person may make a submission to the Authority on the draft technical rules within 15 business days after the invitation is published under section 12.11(c); and

(e) the Authority must consider any submissions on the draft technical rules made under section 12.11(d) and must, at the same time as it approves an access arrangement under section 4.17, section 4.21 or section 4.24, as applicable, approve and publish final technical rules which must be based on the draft technical rules and amended only to the extent necessary to comply with this Chapter 12 and the Code objective.
12.12 If the Authority drafts and approves an interim access arrangement under section 4.59 for a covered network:

(a) the Authority must not draft, approve, or publish technical rules for the covered network; and

(b) any existing technical regulation continues to apply to the covered network until such time as an access arrangement is subsequently approved under Chapter 4.

12.13 If the Authority drafts and approves its own access arrangement under section 4.55 for a covered network, when the Authority consults the public under Appendix 7, the Authority must:

(a) if it makes a draft decision under Appendix 7:
   (i) draft and publish draft technical rules at the same time as it makes its draft decision; and
   (ii) publish an invitation for submissions on the draft technical rules at the same time that it publishes an invitation for submissions on its draft decision under Appendix 7;

and

(b) consider any submissions and draft, approve and publish final technical rules at the same time it makes and publishes its final decision under Appendix 7.

Have regard to current regulation in case of deadlock

12.14 Where:

(a) the Authority is required under this Chapter 12 to draft or approve technical rules for a network; and

(b) the technical rules committee is in deadlock in relation to a matter on which it is required to provide advice to the Authority,

then the Authority, when drafting and approving technical rules for the network, must have regard to whether the current treatment of the matter referred to in section 12.14(b) under another instrument should be replicated in the technical rules but may permit replication only to the extent that the treatment of that matter in that instrument is not contrary to the Code objective.

Commencement of technical rules

12.15 When the Authority approves technical rules for a network, it must specify a technical rules start date for the technical rules, which must be:

(a) consistent with the Code objective; and

(b) at least 30 business days after the approval is published.

Technical rules committee

12.16 Subject to this Chapter 12, the Authority may, at any time and from time to time, establish a technical rules committee for a network or an interconnected system.

12.17 The Authority must establish a technical rules committee for a covered network or the interconnected system of which the covered network is a part to perform the functions described in section 12.23 for the first technical rules for a covered network:

(a) if the covered network is part of an interconnected system; or

(b) if the service provider of the covered network requests the Authority to establish a technical rules committee for the covered network or interconnected system.
12.18 A technical rules committee established under section 12.17 must be established in sufficient time for the technical rules committee to perform the functions described in section 12.23 for the first technical rules for the covered network.

12.19 A technical rules committee:

(a) must consist of at least:

(i) for a network:

A. a representative of the service provider; and

B. a representative from each other service provider of any interconnected network (if applicable); and

C. at least one person representing users of the network; and

D. a representative of the Coordinator;

and

(ii) for an interconnected system:

A. a representative of the service provider for each network in the interconnected system; and

B. at least one person representing users of the networks in the interconnected system; and

C. a representative of the Coordinator;

and

(b) may consist of any other person that the Authority considers appropriate,

and a person on a technical rules committee is a “member” of the technical rules committee.

12.20 The Chair of a technical rules committee is the person who, at that time, is the member of the technical rules committee that is the representative of the Coordinator under section 12.19(a)(i)D or 12.19(a)(ii)C.

12.21 Any communication to the Authority from a technical rules committee must be provided to the Authority by the Chair of the technical rules committee and not by any other member.

12.22 A person who is represented on, or is a member of, a technical rules committee is not precluded from making submissions to the Authority in relation to proposed technical rules in a capacity other than as a person who is represented on, or is a member of, the technical rules committee.

12.23 A technical rules committee, in performing its functions under section 12.11(b) and if otherwise requested:

(a) may develop model technical rules; and

(b) must advise the Authority on the approval of proposed technical rules; and

(c) must, when requested by the Authority, advise the Authority on any matter connected with proposed technical rules or technical rules; and

(d) must, when requested by the Authority, conduct a review of the operation of:

(i) technical rules or a part of technical rules; or

(ii) this Chapter 12 or a part of this Chapter 12,

and advise the Authority of the outcome of the review.

12.24 A technical rules committee must perform the functions described in section 12.23 in accordance with the objectives in section 12.1.
12.25 In the case of deadlock, the Chair of the technical rules committee must advise the Authority of:

(a) the details of the deadlock; and
(b) the position held by each member of the technical rules committee on the matter the subject of the deadlock.

12.26 If the Authority is advised of a deadlock under section 12.25, it must form a view on the matter the subject of the deadlock and advise the technical rules committee of its view, and the technical rules committee must proceed on the basis of the view advised to it.

12.27 The Authority may:

(a) from time to time, provide directions to a technical rules committee in relation to:
   (i) the procedures it must follow in performing its functions; and
   (ii) the manner in which it must perform its functions; and
(b) dissolve a technical rules committee after the first technical rules have been approved for the network, or each network in the interconnected system, as applicable.

Recommendations from the technical rules committee

12.28 The Authority must have regard to any model technical rules developed and advice provided by the technical rules committee under section 12.23:

(a) in deciding whether to approve or not approve proposed technical rules for a network; and
(b) in drafting its own technical rules for a network.

12.29 Section 12.28 does not limit the matters to which the Authority must or may have regard.

Authority may observe the technical rules committee

12.30 Subject to section 12.31, the Authority may appoint a representative to observe any aspect of the operation of the technical rules committee, including by:

(a) attending any meeting of the technical rules committee; and
(b) inspecting any documents (including working papers) provided to or by the technical rules committee in the performance of its functions.

12.31 A representative of the Authority under section 12.30 must not participate in any decision making process of the technical rules committee.

Scope and content of technical rules

12.32 Unless a different form of technical rules will better achieve the Code objective or the objectives set out in section 12.1, the technical rules must address the matters listed in Appendix 6.

Person applies to service provider for exemption from technical rules

12.33 A user, applicant or controller may apply to a service provider for an exemption from one or more requirements of technical rules.
12.34 A service provider must as soon as practicable determine an application under section 12.33:

(a) as a reasonable and prudent person on reasonable technical and operational grounds; and

(b) having regard to the effect the proposed exemption will, if granted, have on the service providers and users of the network and any interconnected network,

and must grant the exemption if the service provider determines that in all the circumstances the disadvantages of requiring the person applying for the exemption to comply with the requirement are likely to exceed the advantages.

12.35 An exemption under section 12.34:

(a) may be granted for a specified period or indefinitely; and

(b) may be subject to any reasonable conditions the service provider considers fit, in which case the person granted the exemption must comply with the conditions, or may be unconditional; and

(c) may be varied or revoked by the service provider after reasonable notice to the person granted the exemption.

12.36 A service provider must notify a person applying for an exemption of its determination under section 12.33 as soon as practicable after making the determination.

12.37 A person may apply to a service provider for an exemption granted to a person under section 12.34 to be revoked and the service provider must consider the application and within a reasonable time advise the person of the service provider’s determination in relation to the application.

12.38 A service provider must provide to the Authority a notice giving details of any grant, revocation or variation of an exemption under section 12.34 or 12.35(c) and the Authority must place the notice on the public register.

12.39 Without limiting the generality of the type of exemptions that may be granted under section 12.34, exemptions to technical rules may be transitional in nature and may include provisions allowing a person time to comply with the technical rules.

**Service provider applies to Authority for authorisation to grant exemption from technical rules**

12.40 A service provider may apply to the Authority for an exemption from one or more requirements of technical rules for the service provider and all applicants, users and controllers of the covered network (“network persons”).

12.41 The Authority must as soon as practicable determine an application under section 12.40:

(a) as a reasonable and prudent person on reasonable technical and operational grounds; and

(b) having regard to the effect the proposed exemption will, if granted, have on the service providers and users of the network and any interconnected network,

and must grant the exemption if the Authority determines that in all the circumstances the disadvantages of requiring the network persons to comply with the requirement are likely to exceed the advantages.

12.42 The Authority may refer a service provider’s application under section 12.40 to the technical rules committee and request the technical rules committee’s advice on the application and must, subject to complying with the time limit under section 12.44, have regard to the advice of the technical rules committee in making its determination under section 12.41.
12.43 An exemption under section 12.41:
(a) may be granted for a specified period or indefinitely; and
(b) may be subject to any reasonable conditions the service provider considers fit, in which case the network persons must comply with the conditions, or may be unconditional; and
(c) may be varied or revoked by the service provider after reasonable notice to the network persons.

12.44 The Authority must notify the service provider of its determination under section 12.41:
(a) where the Authority has consulted the public in accordance with Appendix 7 — within 45 business days of receiving the application under section 12.40; or
(b) where the Authority has not consulted the public in accordance with Appendix 7 — within 25 business of receiving the application under section 12.40.

12.45 A person may apply to the Authority for an exemption granted in respect of a network under section 12.41 to be revoked and the Authority must consider the application and within a reasonable time advise the person of the Authority’s determination in relation to the application.

12.46 Before granting, varying or revoking an exemption under section 12.41, the Authority may consult the public in accordance with Appendix 7.

12.47 The Authority must publish a notice giving details of any grant, revocation or variation of an exemption under section 12.41.

12.48 Without limiting the generality of the type of exemptions that may be granted under section 12.41, exemptions to technical rules may be transitional in nature and may include provisions allowing network persons time to comply with technical rules.

12.49 If the Authority grants an exemption under section 12.41, then the arbitrator may have regard to the waiver in making an award in any access dispute relating to the network.

Amendments to technical rules
12.50 A proposal to amend technical rules may be submitted to the Authority at any time:
(a) by the service provider; or
(b) by the Chair of the technical rules committee; or
(c) by a service provider of an interconnected network,
and must be placed on the public register.

12.51 The Authority, by publishing a notice, may reject a proposal to amend technical rules if, in the Authority’s opinion, the proposal:
(a) is misconceived or lacking in substance; or
(b) has been made on trivial or vexatious grounds.

12.52 At any time before the review under section 12.56 commences, the Authority may decide to defer consideration of a proposal to amend the technical rules for the covered network that is covered under section 3.1 until the review if, in the Authority’s opinion, deferring consideration of the proposal would better achieve the Code objective.

12.53 As soon as practicable, the Authority must consider whether any amendments to technical rules proposed under section 12.50 are consistent with this Chapter 12 and the Code objective, having regard to any exemptions granted under sections 12.34 and 12.41, and then either:
(a) approve; or
(b) not approve,
the proposed amendments by publishing a notice of its decision, and if the decision was to approve the proposed amendments, the date on which the amendments commence.

12.54 If the Authority considers a proposed amendment to technical rules to be substantial, the Authority:

(a) must consult the public in accordance with Appendix 7 before making a decision to approve or not approve the proposed amendment; and

(b) must approve the proposed amendment only if it considers that the amendment will not have a material adverse effect on the service provider or a user.

Notification of changes to technical laws

12.55 If a representative of the Coordinator notifies the Authority of a material change to a relevant written law or statutory instrument which the Coordinator’s representative considers may affect the operation of technical rules for one or more networks (“material change”), then the Authority must refer the material change to one or more appropriately constituted technical rules committees for advice which must be provided to the Authority in a reasonable time and may include a proposal to amend the technical rules for one or more networks under section 12.50.

Review of technical rules

12.56 The Authority must cause a review of the technical rules for the covered network that is covered under section 3.1 to be carried out approximately 6 months before the target revisions commencement date in the first access arrangement for the covered network.

12.57 The purpose of the review under section 12.56 is:

(a) to assess the effectiveness of the technical rules in achieving the objectives in section 12.1 and the Code objective; and

(b) to consider any proposals to amend the technical rules which have been deferred under section 12.52.

12.58 The Authority may carry out the review under section 12.56 in the manner it considers best achieves the Code objective.

Coordination with other service providers in an interconnected system

12.59 A service provider that operates a network in an interconnected system must cooperate with a service provider of an interconnected network (“other service provider”) to the standard of a reasonable and prudent person.

12.60 In complying with section 12.59, a service provider must:

(a) cooperate with an other service provider who is processing an access application to enable the other service provider to process the access application expeditiously; and

(b) liaise as necessary with other service providers in relation to:

(i) matters covered by technical rules for interconnected networks; and

(ii) the planning and development of interconnected networks.
Chapter 13 – Ringfencing

Service provider must comply with ringfencing objectives and rules

13.1 Except to the extent that the Authority grants an exemption under section 13.31, a service provider must, in relation to a covered network:
   (a) comply with the ringfencing objectives; and
   (b) if ringfencing rules apply to the covered network – comply with the ringfencing rules.

Application of ringfencing objectives and rules to integrated providers

13.2 If the service provider for a covered network is an integrated provider, a reference in this Chapter 13 to an “associate” of the service provider or of its network business includes any other business of the service provider.

‘Ringfenced business’ defined

13.3 In this Chapter 13, “ringfenced business” means:
   (a) for an integrated provider — the network business; or
   (b) for any other service provider — the service provider.

Other business must have deemed access contract

13.4 If:
   (a) a service provider for a covered network is an integrated provider; and
   (b) the network business provides one or more covered services to an other business,

then:
   (c) by 3 months after the access arrangement start date, the network business and the other business must record in writing the full terms and conditions of the arrangement by which the network business is to provide the covered services to the other business (“deemed access contract”); and
   (d) unless the contrary intention appears, a reference in this Code to access contract includes a deemed access contract under section 13.4(c); and
   (e) unless the contrary intention appears, a reference in this Code to user includes the other business under a deemed access contract under section 13.4(c).

Associate contracts

13.5 Without limiting section 13.4 a service provider must, by 3 months after the access arrangement start date, record in writing the full terms and conditions of any contract, arrangement or understanding by which it provides covered services to an associate (“associate contract”).

Amendments to associate contracts and deemed access contracts

13.6 If an associate contract or a deemed access contract is amended by agreement between the parties or otherwise varied or terminated, the service provider must within 5 business days notify the Authority that the associate contract or a deemed access contract has been amended, varied or terminated.
13.7 A service provider must, if requested by the Authority, provide an associate contract or a deemed access contract to the Authority within the time specified by the Authority.

13.8 The Authority must, if it considers that an associate contract or a deemed access contract:

(a) is contrary to the Code objective; or

(b) may have been entered into for the purpose of preventing or hindering access by any person to services,

require a service provider, by notice, to ensure that the ringfenced business provides covered services to the associate on terms and conditions which are not contrary to the Code objective and do not have the purpose of preventing or hindering access by any person to services, and may, without limiting the Authority’s powers and subject to section 13.9, specify the terms and conditions for the provision of covered services by the ringfenced business to the associate.

13.9 In specifying the terms and conditions for the provision of covered services by a ringfenced business to an associate under section 13.8, the Authority must not specify any more changes to the existing terms and conditions than are necessary to ensure that the terms and conditions are not contrary to the Code objective and do not prevent or hinder access by any person to services.

13.10 The Authority may consult the public in accordance with Appendix 7 before imposing a requirement under sections 13.8.

Ringfencing objectives

13.11 The ringfencing objectives, in relation to a service provider of a covered network, are that:

(a) the ringfenced business must not carry on a related business; and

(b) subject to section 13.11(d), only marketing staff of the ringfenced business may have access to or possession of, or make use of, commercially sensitive information; and

(c) subject to section 13.11(d) and any written law including this Code, and except to the extent that the information comes into the public domain otherwise than by disclosure by the service provider, commercially sensitive information:

(i) must be used only for the purpose for which that information was developed or provided; and

(ii) must not be disclosed to any person (including any servant, consultant, independent contractor or agent of any associate of the ringfenced business) without the prior consent of the person who provided it or to whom it relates; and

(d) commercially sensitive information may be disclosed to and used by the service provider’s senior staff but:

(i) only to the minimum extent necessary from time to time for good corporate governance; and

(ii) where possible only in summary or aggregated form or otherwise in a form that minimises the disclosure of any commercially sensitive or confidential details; and

(iii) for use only in relation to the ringfenced business and only for the purpose for which it was developed or provided,

(e) any goods or services that the ringfenced business provides to, or receives from, any associate of the ringfenced business must be provided or received
on terms that would be reasonable if the parties were dealing at arm’s length; and

(f) any goods or services that the ringfenced business provides to, or receives from, a third party operating in competition with an associate of the ringfenced business must be provided or received on a basis that does not competitively or financially disadvantage the third party, relative to the associate; and

(g) the service provider’s accounts and records relating to its covered network must be kept in a way that:

(i) provides a comprehensive view of the ringfenced business’s legal and equitable rights and liabilities in relation to the covered network; and

(ii) provides a true and fair view of:

A. the network business as distinct from any other business carried on by the service provider or any associate of the service provider; and

B. income derived from, and expenditure relating to, the covered network; and

C. the service provider’s assets and liabilities so far as they relate to the covered network;

and

(iii) provides sufficient information to enable the price control and pricing methods, and these ringfencing objectives and any applicable ringfencing rules, to be applied in a reasonable manner; and

(iv) enables all revenue received by the service provider from the provision of goods or services to an associate of the ringfenced business to be separately identified; and

(v) enables all expenditure by the service provider on goods or services provided by an associate of the ringfenced business to be separately identified; and

(h) the service provider, when entering into service agreements, including asset management agreements, ensures that the terms and conditions of each agreement facilitates the implementation of these ringfencing objectives and any ringfencing rules.

Factors the Authority must have regard to

13.12 In exercising its functions under this Chapter 13 the Authority must have regard to the geographical location of the covered network and the extent (if any) to which it is interconnected with other networks.

13.13 Section 13.12 does not limit the matters to which the Authority must or may have regard.

Authority may approve ringfencing rules

13.14 The Authority:

(a) may at any time; and

(b) must for a covered network if it determines that the ringfencing objectives are not being achieved for the covered network, draft and approve ringfencing rules, for the purpose of ensuring that the ringfencing objectives are achieved.

13.15 Without limiting section 13.14, a service provider may submit ringfencing rules to the Authority for approval.
13.16 **Ringfencing rules** may be expressed to apply to:

(a) one or more specified covered networks; or

(b) all covered networks in a specified geographical area or interconnected system; or

(c) any other specified class or classes of covered networks,

in each case with or without specified exceptions.

13.17 The Authority must not approve ringfencing rules which would, if approved, require a service provider or other person to engage in an act or omit to engage in an act which would contravene a written law or a statutory instrument.

13.18 The Authority may at any time revoke or vary any ringfencing rules.

13.19 Subject to section 13.20, before approving, revoking or varying ringfencing rules, the Authority must consult the public in accordance with Appendix 7.

13.20 The Authority may at any time correct clerical mistakes, or errors arising from accidental slips or omissions, in any ringfencing rules without consulting the public in accordance with Appendix 7 if it considers that doing so will not unduly prejudice a person.

13.21 The Authority must place on the public register a copy of any approved, revoked or varied ringfencing rules.

**Ringfencing rules and compliance procedures are not confidential**

13.22 Ringfencing rules and ringfencing compliance procedures:

(a) are not confidential material for the purposes of this Code; and

(b) must not be claimed by the service provider to be, and are not, confidential in any way.

**Additional ringfencing rules for an integrated provider**

13.23 Ringfencing rules which apply to an integrated provider may:

(a) add to the ringfencing objectives for the integrated provider; and

(b) deal with any matter the Authority considers necessary or convenient to:

(i) achieve the Code objective or the ringfencing objectives; or

(ii) maintain the confidence of those who generate, transport or consume electricity that the Code objective or the ringfencing objectives are being achieved;

and

(c) without limiting section 13.23(b), require the physical separation of all or part of the network business's offices, equipment or marketing staff from those of any other business.


**Service provider to procure compliance by its associates**

13.25 Ringfencing rules which apply to a covered network may require a service provider to procure an associate of the ringfenced business to comply with any one or more of:

(a) the ringfencing objectives; and

(b) any applicable ringfencing rules; and

(c) the ringfencing compliance procedures.

13.26 Without limiting section 13.25, ringfencing rules which apply to a covered network may require a service provider to procure any associate of the ringfenced business
that undertakes activities for the ringfenced business in relation to the network under service agreements, including asset management agreements:

(a) to establish and maintain a separate set of accounts in respect of the activities undertaken for the ringfenced business in relation to the network; and

(b) to allocate any costs that are shared between an activity for which accounts are kept under section 13.26(a) and another activity according to a methodology for allocating costs that is transparent; and

(c) to provide the accounts established and maintained under section 13.26(a) to the Authority at the Authority’s request.

Commencement time for ringfencing rules

13.27 An approval, variation or revocation of ringfencing rules may be expressed to take effect immediately or at one or more specified times.

13.28 If no time is specified, an approval, variation or revocation of the ringfencing rules takes effect 3 months after it is placed on the public register.

Exemptions from ringfencing requirements

13.29 The Authority must not grant Western Power Corporation an exemption from this Chapter 13.

13.30 A service provider may apply to the Authority for an exemption from a provision of the ringfencing objectives or the ringfencing rules in respect of the covered network.

13.31 Subject to section 13.29, the Authority may grant a service provider an exemption from a provision of the ringfencing objectives or the ringfencing rules in respect of a covered network if the Authority determines in all the circumstances that the disadvantages of requiring the service provider to comply with the provision are likely to exceed the advantages.

13.32 An exemption under section 13.31:

(a) may be granted for a specified period or indefinitely;

(b) may be unconditional or subject to any conditions the Authority considers fit in which case the service provider must comply with the conditions; and

(c) may be varied or revoked by the Authority after reasonable notice to the service provider.

13.33 A person may apply to the Authority for an exemption granted to a service provider under section 13.31 to be revoked and the Authority must consider the application and within a reasonable time advise the person of the Authority’s determination in relation to the application.

13.34 Before granting, varying or revoking an exemption under section 13.31, the Authority must consult the public under Appendix 7.

13.35 The Authority must publish details of any grant, revocation or variation of an exemption under section 13.31.

13.36 Without limiting the generality of the type of exemptions that may be granted under section 13.31, exemptions to ringfencing rules may be transitional in nature and may include provisions allowing a service provider time to comply with ringfencing objectives or ringfencing rules, which time must be as short as the Authority considers to be reasonably practicable.
Compliance monitoring and compliance reporting

13.37 A service provider must:

(a) establish, maintain and implement effective procedures (“ringfencing compliance procedures”) to ensure and monitor its compliance with section 13.1; and

(b) when requested by the Authority, provide a copy of its ringfencing compliance procedures to the Authority; and

(c) at reasonable intervals determined by the Authority from time to time, assess its compliance with, and the effectiveness of, its ringfencing compliance procedures, and its compliance with section 13.1, and provide a report to the Authority regarding the assessment.

(Note: Information provided under section 13.37(c) will be one of the factors considered by the Authority under section 13.14(b).)

13.38 The Authority must place the service provider’s ringfencing compliance procedures on the public register.

13.39 No act or omission by the Authority concerning the adequacy or effectiveness of a service provider’s ringfencing compliance procedures affects the service provider’s obligations under section 13.1.


13.41 The Authority may from time to time publish guidelines setting out model ringfencing compliance procedures and model reporting procedures in relation to ringfencing compliance procedures.

Breach of ringfencing requirements

13.42 A service provider must report to the Authority details of any breach of section 13.1 immediately upon becoming aware of the breach.

13.43 A person who considers that a service provider has breached section 13.1 may provide details of the breach to the Authority.

13.44 On receipt of details under sections 13.42 or 13.43 the Authority must, and any other time on its own initiative the Authority may, consider whether to make a determination under section 13.14(b).

Service provider to provide information to Authority and arbitrator

13.45 The service provider of a covered network must comply with any request by the Authority or the arbitrator to inspect or make copies of the service provider’s accounts and records for the covered network.
Chapter 14 – Administration and Miscellaneous

Service provider to provide information on access arrangements

14.1 A service provider of a covered network must establish and maintain an information package in relation to the covered network which includes:

(a) the access arrangement and access arrangement information for the covered network, or if there is no access arrangement, any proposed access arrangement for the covered network; and

(b) any price list in effect for the covered network; and

(c) any notices in respect of the covered network or the access arrangement provided to the Authority under this Code or the access arrangement; and

(d) references to any issues papers or decisions and reasons published by the Authority or the Minister in respect of the covered network, with details of where those papers or decisions may be accessed.

14.2 A service provider of a covered network must, if requested by a user or an applicant, provide a copy of the information package for the covered network to the user or applicant within 10 business days of the request, subject to the user or applicant paying any reasonable fee requested by the service provider for copying the information package.

14.3 A service provider must on an annual basis determine as a reasonable and prudent person the spare capacity, if any, in that part of the covered network which is a transmission system and must either:

(a) specify the spare capacity in a register which is available for inspection by users and applicants on reasonable terms; or

(b) make available on payment of a reasonable fee a report on the spare capacity.

Data collection regarding target revenue

14.4 A service provider must in accordance with good electricity industry practice:

(a) throughout an access arrangement period collect and maintain data on any variables used in the access arrangement or access arrangement information in connection with cost allocations for the derivation of target revenue; and

(b) make that information available to the Authority on reasonable request.

Public register

14.5 The Authority must establish and maintain a public register and place on that register:

(a) this Code; and

(b) a listing of the covered networks; and

(c) a description of each covered network; and

(d) for each covered network:

(i) each proposed access arrangement and proposed revisions submitted to the Authority; and

(ii) each access arrangement information and amended access arrangement information submitted to the Authority; and
(iii) each submission received in relation to an access arrangement, proposed revisions to an access arrangement, access arrangement information, price lists and price list information; and

(iv) each draft decision, final decision and further final decision made by the Authority or Board under this Code; and

(v) the current access arrangement and access arrangement information; and

(e) anything else that is required under this Code to be placed on the public register.

14.6 The public register must be maintained in electronic form and:

(a) may be kept solely in electronic form if the Authority:

   (i) maintains and makes available at its premises a means of accessing the public register in electronic form; and

   (ii) provides a copy of any item on the public register to any person on request and the payment of a reasonable fee; and

(b) otherwise — must be maintained in both electronic form and hard copy form and the Authority:

   (i) must make the hard copy public register available for inspection during ordinary business hours on business days at its principal place of business; and

   (ii) must provide a copy of any item on the public register to any person on request and the payment of a reasonable fee.

14.7 Without limiting section 14.6, the Authority is required to make available for inspection during ordinary business hours on business days at its principal place of business copies of:

(a) this Code as amended from time to time; and

(b) each amendment made to this Code.

Register of interested persons

14.8 The Authority must maintain a register of interested persons for each network (or, at the Authority’s discretion, all networks) to be used by the Authority in the performance of its functions under this Code, including in connection with public consultation under Appendix 7.

14.9 The Authority must endeavour to maintain the currency of the register of interested persons by periodically advertising in newspapers, industry journals and in any other form of media which it considers appropriate.

14.10 Where the Authority is required to send a notice to each person listed on the register of interested persons in respect of a network, the Authority may send the notice electronically and if a person listed on the register of interested persons has not provided an electronic address to the Authority or if the electronic address provided is not current or is not functioning, the Authority is not required to send the person the notice.

Protection for the Authority

14.11 The Authority is not liable for any loss or damage to third parties resulting from or in connection with the public register or register of interested persons, including but not limited to loss or damage resulting from:

(a) errors or omissions in the public register or register of interested persons; or
(b) failure to maintain the currency of the public register or register of interested persons; or

(c) failure of electronic notices where the Authority publishes a thing.

**Treatment of confidential information**

14.12 Subject to section 14.13, where a disclosing person provides relevant material to a recipient in accordance with this Code, the disclosing person may, at the time at which the relevant material is provided, give notice to the recipient that the relevant material or part of the relevant material is confidential material.

14.13 A disclosing person:

(a) may give notice to the recipient that relevant material is confidential material only if the relevant material is in fact confidential material, and where only a part or parts of the relevant material is confidential material, the disclosing person may give notice only in respect of those parts; and

(b) must in a notice under section 14.12 specify in reasonable detail the basis upon which the disclosing person makes the claim that the relevant material is confidential material.

14.14 The recipient must not disclose, advertise or publish any confidential material to any person (other than a worker of the recipient who is bound by an adequate confidentiality undertaking), unless the recipient is of the opinion:

(a) that the disclosure of the confidential material would not cause detriment to the disclosing person or another person; or

(b) that, although the disclosure of the confidential material may cause detriment to the disclosing person or another person, either:

(i) the public benefit in disclosing it outweighs the detriment; or

(ii) the recipient is:

A. expressly required by this Code to disclose it despite any claim of confidentiality; or

B. is required by another written law or statutory instrument to disclose it.

14.15 For the purposes of section 14.14, a disclosure cannot cause detriment to a person if the thing disclosed is already in the public domain (other than by disclosure by the recipient in breach of section 14.14).

**How this Code applies to multiple service providers**

14.16 These sections 14.16 to 14.21 apply if there is more than one service provider in connection with a network, including if:

(a) the network is owned or operated by two or more persons as a joint venture or partnership; or

(b) the network is owned and operated by different persons; or

(c) a network is legally owned by a person or persons on trust for others.

14.17 In such a case each service provider in connection with the network is referred to in these sections 14.16 to 14.21 as a participant.

14.18 If this Code requires or permits something to be done by the service provider, that thing may be done by one of the participants on behalf of all the participants, provided that each participant complies with this Code.

(Note: For example, a proposed access arrangement may be submitted under section 4.1 by one participant on behalf of all participants.)
14.19 If a provision of this Code refers to the service provider bearing any costs, the provision applies as if the provision referred to any of the participants bearing any costs.

14.20 If a provision of this Code, other than Chapter 13, refers to the service provider doing something, the provision applies as if the provision referred to one or more of the participants doing the thing on behalf of all the participants.

14.21 If:
   (a) there is more than one service provider in connection with a network; and
   (b) one is the owner and another is the operator; and
   (c) responsibility for complying with the obligations imposed by this Code on the service provider is allocated among them by their access arrangements or their access arrangement,

then each service provider is responsible for complying with the obligations allocated to it.

How this Code applies to successor service providers

14.22 If a person becomes a service provider in relation to a covered network, for example, if:
   (a) the person purchases a covered network; or
   (b) a license is cancelled under section 35 of the Act and the assets, rights and interests of the former licensee vest in the person under regulations under section 35(4) of the Act,

then,
   (c) the network remains a covered network;
   (d) any access arrangement approved under this Code continues to apply to the network concerned despite the change in service provider and binds the person in the same way it bound other service providers immediately before the person became a service provider with respect to the network concerned; and
   (e) any arbitration award made under the Code continues to apply to the network concerned despite the change in service provider and binds the person in the same way it bound other service providers immediately before the person became a service provider with respect to the network concerned.

Authority may seek advice

14.23 The Authority in the performance of a function under this Code may seek advice from the Director of Energy Safety on matters relating to the performance of that function, for which purpose the Director of Energy Safety is to be treated as a worker of the Authority.

14.24 The Director of Energy Safety:
   (a) has the function of providing advice under section 14.23; and
   (b) is not obliged to provide advice under section 14.23.

14.25 Section 14.23 does not limit the Authority’s power to seek advice from any person.

CPI adjustment

14.26 Where this Code refers to an amount being “CPI adjusted” then the Authority must:
   (a) adjust the amount (including as previously CPI adjusted) from each 1 July, to reflect the change in CPI between the CPI published for the March quarter
immediately preceding the adjustment and the CPI published for the March quarter of the previous year; and

(b) publish the adjusted amount.

General process for public consultation

14.27 Appendix 7 has effect.
Chapter 15 – Transitional

Minister may make determinations
15.1 The Minister may determine, after consultation with affected parties, how any matter in progress immediately before the commencement of Part 8 of the Act is to be treated, after that commencement, for the purposes of the provisions of the Code.
15.2 The Minister must publish a determination made under section 15.1 in the Gazette.

Access arrangements for SWIS to be compatible with market
15.3 Without limiting sections 5.34 to 5.36, an access arrangement for a covered network which forms part of the SWIS may specify as trigger events one or more events or sets of circumstances in connection with the arrangements established under Part 9 of the Act.

Access arrangements to be compatible with changes to contestability
15.4 Without limiting sections 5.34 to 5.36, an access arrangement for a covered network may specify as trigger events one or more events or sets of circumstances in connection with changes to the thresholds for contestability with respect to electricity supply.
Appendix 1 – Flowchart of access arrangement approval process

1. Lodgement of proposed access arrangement and access arrangement information - s.4.1

   - SP lodges proposed access arrangement s. 4.1

   - ERA may request the SP to amend and resubmit access arrangement information – s. 4.8
     - SP must amend and resubmit access arrangement information if requested by ERA – s. 4.8

   - ERA publishes proposed access arrangement and invites public comments (1st Round) – s.4.9

   - ERA may publish an issues paper – s.4.10

   - Interested parties make submissions (1st Round)– s. 4.11

2. ERA publishes draft decision approving access arrangement and invites public comments (2nd Round) – s.4.12(a)

   - Interested parties make submissions (2nd Round)– s.4.14

3. ERA publishes final decision and does not approve proposed access arrangement – s.4.17(b)

   - ERA publishes amended proposed access arrangement s. 4.19

   - ERA publishes further final decision and does not approve amended (if applicable) proposed access arrangement - s.4.21(b)

   - ERA publishes access arrangement information

4. SP lodges amended proposed access arrangement – s.4.19

   - ERA publishes further final decision and approves access arrangement – s.4.24

5. SP fails to lodge an amended proposed access arrangement – s.4.19

   - ERA publishes access arrangement information

   - ERA publishes further final decision and approves access arrangement – s.4.21(a)

6. ERA conducts public consultation process in accordance with Appendix 7

   - ERA drafts, approves and publishes its own access arrangement – s.4.56

7. ERA decision may be appealed to Gas Review Board

   - ERA publishes notice stating that if access arrangement is not lodged, that it will draft and approve its own access arrangement s.4.55

   - If access arrangement is lodged, but no access arrangement approved under Chapter 4 12 months after lodgement deadline

   - ERA publishes interim access arrangement – that lasts until access arrangement approved - s.4.59
Appendix 2 – Model Applications and Queuing Policy

(Outline: An access arrangement must include an applications and queuing policy (section 5.1). The service provider must submit for approval, in an access arrangement, an applications and queuing policy. This Appendix 2 sets out a model for such a policy. Under section 5.11, if the service provider adopts this model policy it can be assured that its applications and queuing policy will be consistent with sections 5.7 to 5.9 and the Code objective. Otherwise, under section 5.11(b) the Authority will use this model policy as a benchmark when assessing the service provider’s proposed policy.)

This Appendix 2 leaves some matters to be completed when an applications and queuing policy is incorporated into an access arrangement. These matters are noted in square brackets, eg. “[X]”.

The variable can be a simple absolute number or may follow a more sophisticated structure designed by the service provider to best suit the characteristics of its covered network and business. For example, if [x] is the time by which a service provider must make an access offer for a class 1 application, the service provider may specify that [x] is 5 business days where the application is in respect of between one and 100 existing connection points and [x] is 10 business days where the application is in respect of more than 100 connection points.

The variables proposed by a service provider are subject to approval by the Authority under Chapter 4, and (without limiting the Authority’s discretion or duties) must be consistent with the Code objective and section 5.1(g).

Footnotes following each matter in square brackets contain instructions to the Authority. The footnotes form part of this model applications and queuing policy and, like these introductory notes, have legal effect.

Sub-appendix 2.1 – Interpretation

Definitions and Interpretation

A2.1 In this applications and queuing policy, unless the contrary intention is apparent:

“access contract” has the same meaning as “access agreement” does in Part 8 of the Act.

(Note: At the time this Code was made, the definition in section 103 of the Act was:

‘“access arrangement” means an agreement under the Code between a network service provider and another person (a “network user”) for that person to have access to services.’

“access offer” means a form of access contract which complies with clause A2.103 or A2.105, as applicable, which has been signed by the service provider and is in such a form that it can, without anything else being required, become an access contract when signed by an applicant.


“applicant” means an applicant under this applications and queuing policy for an access contract and includes a prospective applicant.

“application” means an access application under this applications and queuing policy (as amended under this applications and queuing policy) and includes any additional information provided by the applicant in relation to the access application.

“application form” means the form referred to in clause A2.22 contained in a service provider’s access arrangement.
“bypass”, in relation to an application (“bypassed application”), means that the first come first served principle is not applied in respect of the bypassed application, so that an application with later priority receives an access offer before the bypassed application.

“capacity increase” means an increase in a user’s capacity under an access contract in respect of a connection point.

“capacity increase notice” means a notice, under clause A2.30, provided by a user to a service provider in respect of a user’s request for capacity increase.

“class 1 application” has the meaning given to it in clause A2.5.

“class 2 application” has the meaning given to it in clause A2.6.

“class 3 application” has the meaning given to it in clause A2.7.

(Note: See also the capacity increase notice under clause A2.30 and the customer transfer request under clause A2.34.)


“competing”, in relation to two or more applications, means that the provision of the covered service sought in one application may impede the service provider’s ability to provide the covered services that are sought in the other applications.

“confidential information” means information disclosed, by an applicant or a disclosing person, to the service provider, in or in connection with, an application or a capacity increase notice which the disclosing person (acting as a reasonable and prudent person) has identified as being commercially sensitive or confidential.

“contract commencement date” means the date on which an access contract commences.

“contract termination date” means the date of termination of an access contract.

“CPI” means the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities published by the Australian Bureau of Statistics from time to time or, if the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities ceases to be published, such alternative index as the service provider may reasonably determine, and in all cases the CPI figure is to be adjusted to correct for any effects of a change in the rate of GST.

“customer transfer code” means a code made under section 39(1) or section 39(2a) of the Act in respect of the matter referred to in section 39(2)(b) of the Act.

“customer transfer request”:

(a) if “customer transfer request” is defined in the customer transfer code — has the meaning given to that term in the customer transfer code; and

(b) otherwise — means a request by an incoming user to the service provider to transfer an outgoing user’s access rights and obligations in respect of a contestable customer to the incoming user.

“disclosing person”, in relation to an application or a capacity increase notice, means a person who discloses confidential information to the service provider in, or in connection with, an application or a capacity increase notice, as applicable.

“dormant application” means an application that was lodged by the applicant on a date that is more than three years before the date on which the service provider is considering the application under clause A2.78 and in respect of which the service provider has not made an access offer.

“first come first served” means that an applicant with earlier priority receives an access offer before an applicant with later priority.

“GST” means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth or otherwise on a supply.

“initial response” means the initial response of the service provider to an applicant under clause A2.89 in relation to an application.

“law” means “written laws” and “statutory instruments” as defined in the Code and rules of the general law including the common law and equity.
“lodgement fee” means:
(a) for an application — the fee specified under clause A2.14; or
(b) for a capacity increase notice — the fee specified under clause A2.35.

“materially different”, in relation to an amended application, includes an amended application which is materially different to the original application in respect of any one or more of the criteria specified in clause A2.75.

“maximum demand” means the highest amount of electrical power in respect of electricity transferred, or forecast to be transferred, over a specified period (half hour, day, week, month, season or year) at an exit point.

“preliminary assessment” means the preliminary assessment of the service provider to an applicant under clause A2.93 in relation to an application.

“priority”, in relation to an application, means the priority that the applicant has, as against any other applicant with a competing application, to obtain access to covered services.

“project” means a project identified in a tender notice.

“project related application” means an application designated under clause A2.58 by the service provider, acting as a reasonable and prudent person, as a project-related application, provided that the applicant has not notified the service provider under clause A2.60 that the application is not a project-related application.

“proponent” means a person who gives a tender notice to the service provider in respect of a project.

“proposed controller” means a person who owns, operates or controls facilities and equipment at a connection point and who is specified by an applicant in an application in respect of a connection point.

“queue” means a first come first served queue described in clauses A2.47 to A2.48.

“queuing rules” means the principles described in clauses A2.46 to A2.48 that apply to determine the priority of an application.

“requested capacity” means, in respect of a connection point, the capacity requested to become contracted capacity under the access contract for which an application is made.

“services end date” means, in respect of a connection point, the date on which the service provider ends the provision of services to the user in respect of that connection point.

“services start date” means, in respect of a connection point, the date on which the service provider commences providing services to the user in respect of that connection point.

“signed” by the service provider or the applicant means duly signed or otherwise executed by or on behalf of all persons who comprise the service provider or the applicant, as the case may be.

“spare capacity” means the capacity, from time to time, of the covered network as configured at the time to provide covered services having regard to the service provider’s contractual obligations in respect of the covered network.

“tender notice” means a notice given to the service provider under clause A2.56(a).

“transfer matters”, in relation to a customer transfer request, has the meaning given to it in clause A2.43.

“workers” of a person means the directors, officers, servants, employees, agents, sub-contractors and consultants of the person.

A2.2 Unless the contrary intention is apparent, a term with a defined meaning in the Code has the same meaning in this applications and queuing policy.

A2.3 Unless the contrary intention is apparent:
(a) a rule of interpretation in the Code; and
(b) the Interpretation Act 1984,
apply to the interpretation of this applications and queuing policy.
Transition of prior applications

Negotiations in good faith

A2.4 The service provider must negotiate in good faith with an applicant regarding the terms for an access contract for a covered service.

Classes of applications

A2.5 A “class 1 application” is an application:
(a) by an applicant who is already a user of the network; and
(b) in respect of one or more existing connection points; and
(c) seeking only a reference service at the reference tariff; and
(d) which does not require any augmentation.

A2.6 A “class 2 application” is an application:
(a) by an applicant who is not already a user of the network; and
(b) which otherwise meets the requirements for a class 1 application.

A2.7 A “class 3 application” is an application which does not meet the requirements for a class 1 application or class 2 application.

(Note: See also the capacity increase notice under clause A2.30 and the customer transfer request under clause A2.34.)

A2.8 If an application is initially misclassified by a service provider in its notification under clause A2.89 (for example because it is initially thought that the application is not likely to require an augmentation, but one later proves necessary) or requires reclassification because it has been amended, then the service provider may reclassify it and the relevant clauses of this applications and queuing policy appropriate to its new classification apply as though the new classification had applied to the application from the date the application was originally lodged.

Sub-appendix 2.2 – The application

Informal communications

A2.9 Prior to lodging an application with a service provider, an applicant may contact the service provider to discuss the proposed application, including matters such as:
(a) what classification will likely apply to the proposed application;
(b) whether it is likely that there is sufficient spare capacity to provide the requested covered services or whether an augmentation may be required to provide the covered services, including whether it is likely that any new connection assets will be required to provide the covered services requested in the application; and
(c) if it is likely that an augmentation will be required — whether or not a capital contribution or non-capital contribution will likely be required from the applicant under the capital contributions policy and a good faith estimate of the approximate amount of the contribution; and
(d) if it is likely that an augmentation will be required — a good faith estimate of the likely time required for the planning, designing, approving, financing, construction and commissioning, as applicable, of any necessary augmentations; and

1 Insert transition of prior applications provisions, if applicable. To be inserted when the model applications and queuing policy is incorporated into an access arrangement. See section 5.7(i) of the Code.
(e) what system or other studies are likely to be required in the processing of the application, whether the service provider is able to undertake the studies and the approximate costs of such studies,

and the service provider must engage in such discussions in good faith and use all reasonable endeavours to satisfactorily and promptly address any matters raised by the applicant.

A2.10 The discussions under clause A2.9 are not binding on a service provider, and the service provider is not liable for any error or omission that is made as a reasonable and prudent person in the discussions under clause A2.9.

Confidentiality

A2.11 Information which the service provider is required to disclose under clauses A2.68(a), A2.68(b) or A2.68(c) is not confidential information.

A2.12 The service provider must not disclose confidential information unless:

(a) the disclosure is made to the Authority on a confidential basis; or
(b) the disclosure is made to a worker of the service provider who is bound by an adequate confidentiality undertaking; or
(c) the disclosure is made with the consent of the disclosing person; or
(d) the disclosure is required or allowed by law, or by the arbitrator or another court or tribunal constituted by law; or
(e) the information has entered the public domain other than by breach of this clause A2.12; or
(f) the information could be inferred by a reasonable and prudent person from information already in the public domain.

Costs of processing application

A2.13 For an application other than a class 3 application, an applicant must pay to the service provider the lodgement fee prescribed in clause A2.14 for the application at the time it lodges the application.

A2.14 The lodgement fee is:

(a) for a class 1 application — \$[x]^2; and
(b) for a class 2 application — \$[x]^3.

A2.15 For a class 3 application, an applicant must, when requested by the service provider, pay an amount to the service provider or a third party in respect of a reasonable cost incurred, or to be incurred within a reasonable timeframe, in processing the application.

A2.16 The total of the costs referred to in clause A2.15 must not exceed the reasonable costs which would be incurred by a prudent service provider, acting efficiently and in good faith, in accordance with good electricity industry practice, seeking to achieve the lowest practicable cost of processing an application of the relevant class in relation to the relevant network.

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2 To be inserted when the model applications and queuing policy is incorporated into an access arrangement. The value inserted for variable \([x]\) may be expressed as a single value or by a more sophisticated structure for example a range of numbers but should not exceed a forecast of reasonable costs which would be incurred by a service provider acting as a reasonable and prudent person seeking to achieve the lowest practicable cost of processing an application of the relevant class in relation to the relevant network.

3 To be inserted when the model applications and queuing policy is incorporated into an access arrangement. The value inserted for variable \([x]\) may be expressed as a single value or by a more sophisticated structure for example a range of numbers but should not exceed a forecast of reasonable costs which would be incurred by a prudent service provider, acting efficiently and in good faith, in accordance with good electricity industry practice, seeking to achieve the lowest practicable cost of processing an application of the relevant class in relation to the relevant network.
A2.17 The costs referred to in clause A2.15 must not include any costs of the service provider in relation to an access dispute (which are to be awarded by the arbitrator under Chapter 10).

A2.18 The service provider may adjust the amounts referred to in clauses A2.14(a) and A2.14(b) (including as previously adjusted) from each 1 July in accordance with section 14.26(a) of the Code and must provide a notice setting out the adjusted amounts to the Authority, and the Authority must place the notice on the public register.

A2.19 A dispute between an applicant and the service provider regarding a cost under clause A2.15 may be referred by either party to the arbitrator for determination, in which case the arbitrator may either affirm the amount or reduce it.

Lead times for applications

A2.20 An applicant must endeavour to lodge an application to the service provider:
(a) for a class 1 application — at least \[x\] business days before the requested services start date; and
(b) for a class 2 application — at least \[x\] business days before the requested services start date; and
(c) for a class 3 application — within a reasonable time before the requested services start date, having regard to the time required for planning, designing, approving, financing, constructing and commissioning of any necessary augmentation.

Access application

A2.21 The access application process is commenced by the applicant giving a written application to the service provider on the application form in the service provider's access arrangement using reasonable endeavours to accurately and completely address each item in the application form.

A2.22 The service provider must include an application form in its access arrangement which makes provision for an applicant to provide the following information to the service provider in respect of an application:
(a) the full name and address of the applicant; and
(b) whether the applicant is acting as agent for any person in making the application, and if so, details of the applicant's principals; and
(c) the applicant's preliminary classification of the application; and
(d) any conditions precedent that the applicant seeks for the requested access contract; and
(e) whether the application is being made in connection with a tender process under clauses A2.56 to A2.61; and
(f) the covered services requested, and for each requested covered service:
   (i) the requested services start date and requested services end date; and
   (ii) the location or meter number of each requested connection point, as applicable; and
   (iii) the requested service standards; and
   (iv) the requested tariff; and
   (v) any additional terms the applicant seeks in respect of the covered service; and

4 To be inserted when the model applications and queuing policy is incorporated into an access arrangement. Unless the Authority considers that the Code objective and the objectives in section 5.7 require otherwise, the value inserted for variable \[x\] should not exceed 10 in respect of services to be added to an existing access contract, and 25 otherwise.

5 To be inserted when the model applications and queuing policy is incorporated into an access arrangement. Unless the Authority considers that the Code objective and the objectives in section 5.7 require otherwise, the value inserted for variable \[x\] should not exceed 25.
(g) for each requested connection point:

(i) such information regarding the facilities and equipment at the connection point to the extent required by:
   A the technical rules; or
   B the service provider acting as a reasonable and prudent person, and

(ii) if the applicant wishes to nominate a proposed controller for the connection point, information in reasonable detail regarding the proposed controller; and

(iii) if the connection point is an entry point — the proposed declared sent out capacity (expressed in kW or kVA) of the plant connected or to be connected at the entry point; and

(iv) if the connection point is an exit point — the expected maximum demand (expressed in kW or kVA) connected or to be connected at each exit point; and

(h) if the applicant so chooses, the applicant's preliminary proposal in relation to whether any contribution under the capital contributions policy will be paid for or provided in kind, and the preliminary proposed terms on which that may occur (but this does not prevent the applicant from making an alternative proposal once the scope of any augmentation is better known); and

(i) such information concerning the applicant as the service provider requires, acting reasonably, to assess the applicant's ability to meet its obligations under the requested access contract.

A2.23 An applicant may request in an application a preliminary assessment of a class 3 application.

A2.24 When an application contains estimates or forecasts of any information —

(a) the service provider may treat that estimated or forecast information as factual information; and

(b) the application is a warranty by the applicant to the service provider that each such estimate or forecast is the applicant's best estimate or forecast as a reasonable and prudent person.

Errors or omissions in an application

A2.25 If the service provider becomes aware of any material error or omission in an application or purported application it must immediately notify the applicant about it and may request information under clause A2.28.

A2.26 If an applicant is notified by the service provider or otherwise becomes aware of any material error or omission in an application, it must amend the application to remedy it as soon as practicable after becoming aware of it.

A2.27 If remedying an error or omission in an application amounts to a material amendment to the application, clauses A2.73 and A2.74 apply.

Additional information

A2.28 At any time, the service provider may, acting as a reasonable and prudent person, request the applicant to provide further information that the service provider reasonably requires to enable it to process the application.

A2.29 An applicant who receives an information request under clause A2.28 must provide the requested information to the service provider as soon as reasonably practicable.
Sub-appendix 2.3 – Capacity increase notices and customer transfer requests

Capacity increase notice
A2.30 A user may request a capacity increase by providing a capacity increase notice to the service provider.

A2.31 Within 10 business days of receipt of a capacity increase notice under clause A2.30, the service provider must determine, and notify the user, whether or not it accepts the capacity increase.

A2.32 The service provider must accept the capacity increase if it forms the view as a reasonable and prudent person that:

(a) accepting the capacity increase would not be likely to impede the ability of the service provider to provide a covered service sought in an access application lodged by another applicant; and

(b) it is not likely that an augmentation would be required to provide the capacity increase, and otherwise the service provider must reject the capacity increase.

A2.33 If the service provider accepts the capacity increase under clause A2.31 then the service provider and the user must, as soon as practicable, arrange to amend the user’s access contract in accordance with the capacity increase.

A2.34 If the service provider does not accept the capacity increase under clause A2.31 then the service provider must state in its notice under clause A2.31 that the user must make an application under Sub-appendix 2.2 to increase its capacity as described in the capacity increase notice.

Lodgement fees for capacity increase notices
A2.35 For a capacity increase notice an applicant must pay to the service provider the a lodgement fee of $[x]6 at the time it lodges the capacity increase notice.

A2.36 The service provider may adjust the amount referred to in clause A2.35 (including as previously adjusted) from each 1 July in accordance with section 14.26(a) of the Code and must provide a notice setting out the adjusted amount to the Authority, and the Authority must place the notice on the public register.

Lead times for capacity increase notices
A2.37 An applicant must endeavour to lodge a capacity increase notice to the service provider at least [x]7 business days before the requested services start date.

Form of capacity increase notices
A2.38 A capacity increase notice must:

(a) provide sufficient information to the service provider to enable the service provider to process the capacity increase notice; and

(b) comply with any requirements for capacity increase notice under a law.

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6 To be inserted when the model applications and queuing policy is incorporated into an access arrangement. The value inserted for variable [x] may be expressed as a single value or by a more sophisticated structure for example a range of numbers but should not exceed a forecast of reasonable costs which would be incurred by a prudent service provider, acting efficiently and in good faith, in accordance with good electricity industry practice, seeking to achieve the lowest practicable cost of processing a capacity increase notice in relation to the relevant network.

7 To be inserted when the model applications and queuing policy is incorporated into an access arrangement. Unless the Authority considers that the Code objective and the objectives in section 5.7 require otherwise, the value inserted for variable [x] should not exceed 10.
Additional information

A2.39 At any time, the service provider may, acting as a reasonable and prudent person, request the applicant to provide further information that the service provider reasonably requires to enable it to process a capacity increase notice.

A2.40 An applicant who receives an information request under clause A2.39 must provide the requested information to the service provider as soon as reasonably practicable.

Customer transfer requests

A2.41 An incoming user may lodge a customer transfer request with the service provider.

A2.42 The service provider, incoming user and outgoing user must comply with the customer transfer code with respect to a customer transfer request.

A2.43 To the extent that there is no customer transfer code or the customer transfer code does not make provision for any of the following matters ("transfer matters"):

(a) the timing of the lodgement and processing of the customer transfer request; and
(b) the fees, if any, applying to the customer transfer request; and
(c) the form of the customer transfer request; and
(d) information required to be provided by or to any person in connection with the customer transfer request; and
(e) any other matter which it is necessary or convenient to deal with to facilitate the efficient processing of the customer transfer request,

the service provider, incoming user and outgoing user must:

(f) comply with any provisions in the access arrangement dealing with the transfer matters; and

(g) to the extent that the access arrangement does not make provision for a transfer matter, as reasonable and prudent persons, act in a manner which facilitates the efficient processing of the customer transfer request.

A2.44 A customer transfer request is not to be assessed as an application and the queuing rules do not apply to the processing of a customer transfer request.

Sub-appendix 2.4 – The Queue

Queuing rules apply only when there are competing applications

A2.45 The queuing rules apply only where there are competing applications.

Queuing rules determine priority of applications

A2.46 The queuing rules apply to determine the priority of an applicant’s application in the queue.

A2.47 Subject to clause A2.61, the priority of an applicant’s application in a queue is to be determined by reference to the time at which the application is lodged, which is the time at which the service provider actually receives the application.

A2.48 If an applicant submits more than one application, then the applicant has a different priority in respect of each application, and every reference in the queuing rules to the applicant’s priority is to be read as a reference to the applicant’s priority in respect of the relevant application.

More than one queue

A2.49 Under clause A2.47 there may from time to time be more than one queue in respect of a network.

{Example: One group of applications may relate to new generation projects in one part of a covered network and another group of applications may relate to new consumers at an industrial area at a different part of the covered network and each group of applications may be in a separate queue.}
First come first served principle

A2.50 Subject to clauses A2.51 to A2.62, the service provider must ensure that an applicant with earlier priority receives an access offer before an applicant with later priority ("first come first served").

Bypass

A2.51 Subject to the process in clauses A2.53 to A2.55, bypass is permitted to the extent necessary to better achieve the Code objective.

A2.52 Without limiting clause A2.51, circumstances where the bypass test in clause A2.51 might be satisfied include:

(a) where an application that has earlier priority in a queue cannot, and an application with later priority can, presently proceed to an access contract or otherwise progress through the applications process, for example because:

(i) the applicant with earlier priority has not obtained environmental or other approvals that it requires in order to proceed; or

(ii) of delays in processing the application that has earlier priority caused by the arbitration of an access dispute under Chapter 10; or

(b) where an applicant fails to use reasonable endeavours to progress its application in accordance with this applications and queuing policy; or

(c) where the application is frivolous, vexatious or was not made in good faith.

A2.53 If the service provider considers that the bypass test in clause A2.51 is satisfied in relation to an application, it must give the applicant a notice (subject to clause A2.12) setting out in reasonable detail the basis on which the service provider considers that the bypass test in clause A2.51 is satisfied and requiring the applicant to either:

(a) if possible, progress the application; or

(b) otherwise provide information to the service provider demonstrating why the application should not be bypassed.

A2.54 At least [x] business days after giving a notice under clause A2.53, the service provider must make a fresh determination, having regard to all relevant material including anything which has occurred, and any information provided, since the notice was given under clause A2.53 whether the bypass test in clause A2.51 is satisfied, and if the service provider considers that the bypass test in clause A2.51 is satisfied, it may bypass the application to the extent permitted under clause A2.51.

A2.55 If the service provider bypasses an application under clause A2.54, the service provider must (subject to clause A2.12) provide reasons to the applicant for its decision to bypass the application including information in reasonable detail explaining on what basis the service provider determined that bypassing the application was necessary to better achieve the Code objective under clause A2.51.

Applications in relation to tender projects etc

A2.56 Clauses A2.58 to A2.60 apply:

(a) where a proponent gives notice ("tender notice") to the service provider that it is requesting tenders or proposals in connection with a project and that some or all of the persons lodging tenders or proposals in connection with the project may wish to transport electricity from or to the project and may lodge a class 3 application for that purpose; and

(b) where the service provider has not been given a tender notice by a proponent but two or more applications have been lodged with the service provider, each of which is expressly designated as being made in connection with the same tender process.

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8 To be inserted when the model applications and queuing policy is incorporated into an access arrangement. Unless the Authority considers that the Code objective and the objectives in section 5.7 require otherwise, the value inserted for variable [x] should not be less than 20.
A2.57 When a proponent requests tenders or proposals in connection with a project the proponent must also inform applicants who may lodge tenders or proposals in connection with the project to specify on their application forms that the application is being made in connection with the tender process for the project.

A2.58 When a class 3 application is lodged with the service provider, the service provider must determine as a reasonable and prudent person whether it is lodged for the purpose of transporting electricity from or to a project, and if so it must by notice to the applicant designate the application as a project-related application.

A2.59 For the purposes of A2.58, the service provider must determine that an application is lodged for the purpose of transporting electricity from or to a project where the application provides that it is made in connection with a tender process under clauses A2.56 to A2.61.

A2.60 If an applicant receives a notice from the service provider under clause A2.58, the applicant may notify the service provider that its application is not a project-related application and the service provider must deal with the application on the basis that it is not a project-related application.

A2.61 All project-related applications for a project are to be treated as having the same priority, equal to the priority attaching to the earlier of:

(a) the date the service provider received the tender notice from the proponent; or

(b) such other date that the service provider becomes aware that an invitation to tender for the project has been announced.

A2.62 If the service provider is of the opinion that one or more access contracts have been entered into in connection with a project, the service provider must:

(a) liaise with the proponent of the project to determine whether its opinion is correct; and

(b) if it determines that its opinion is correct, give notice to each other applicant that has made an application in connection with the project that:

(i) one or more access contracts have been entered into in connection with the project; and

(ii) its application’s priority in the queue is now the priority that its application would have had in accordance with the first come first served principle if it had not been designated as a project-related application.

Reserve capacity auctions for SWIS

A2.63 [x]9

Processing of applications not affected

A2.64 Nothing in the queuing rules prevents the service provider from processing more than one application concurrently.

A2.65 To avoid doubt, the service provider must comply with the timeframes set out in this applications and queuing policy in respect of each application which is lodged with the service provider, whether or not it is processing more than one application concurrently.

Exercising an option not affected

A2.66 An option granted to a user as part of the terms of an access contract to extend the duration of the access contract is not an application and is not subject to the queuing rules if it is exercised in accordance with its terms.

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9 If applicable, insert provisions regarding processing of applications made in connection with a tender process under a law made under Part 9 of the Act. To be inserted when the model applications and queuing policy is incorporated into an access arrangement. See section 5.7(h) of the Code.
Priority of withdrawn applications

A2.67 An application which is withdrawn or deemed by this access arrangement to have been withdrawn loses its priority under the queuing rules, even if it is subsequently amended or resubmitted.

Provision of information about position in queue

A2.68 The service provider must make known to any applicant with an application in a queue:

(a) in respect of each competing application in the queue:
   (i) the fact that the competing application exists in the queue; and
   (ii) whether the competing application is ahead of, or behind, the applicant’s position in the queue and if any of the competing applications are project-related applications; and

(b) a description of the circumstances which caused the applications in the queue to be competing applications (including information in reasonable detail regarding the aggregated capacity requirements of those competing applications which are ahead of the applicant in the queue); and

(c) the likely time until the making of an access offer and the commissioning of any necessary augmentation; and

(d) except to the extent that it is prevented from doing so by clause A2.12, in respect of each competing application in the queue:
   (i) the capacity requirements of the competing application; and
   (ii) the geographic location at which the competing application seeks the capacity; and
   (iii) reasonable details regarding any augmentation required by the competing application.

A2.69 The information in clause A2.68 must be provided:

(a) upon initial lodgement of an application; and

(b) at any time after a reasonable request by the applicant for updated information; and

(c) as soon as practicable after a material change in the information previously notified under this clause A2.69, including when information of the kind referred to in clause A2.68(d) which was previously withheld on the ground that the service provider was prevented from doing so by clause A2.12 is no longer entitled to be withheld on that ground.

Sub-appendix 2.5 – Amendment and withdrawal of application

Amendment to application

A2.70 An applicant may at any time by notice to the service provider amend an application.

A2.71 Without limiting clause A2.70, an amendment to an application may include a change to the identity of the applicant in which case the other information in the application must also be amended accordingly.

Amending application to address necessary augmentation

A2.72 Without limiting clause A2.70, if an application would require an augmentation, then at any time after the service provider provides the necessary information the applicant may revise its application to add to the application the terms of a works contract or a payment contract under the capital contributions policy.

Priority of amended applications

A2.73 Subject to clause A2.74, an amended application has the same priority as the original application.
A2.74 Subject to clause A2.75, if an amended application is materially different from the original application, and if the difference is such that an applicant whose competing application has a date of priority subsequent to the original application is materially prejudiced in terms of the likelihood, timing and terms of its obtaining access (compared with that later applicant’s position with respect to the original application), then:

(a) if it is possible to construe the amended application as a combination of the original application and a notional supplementary application (whether for further capacity or otherwise) — then the original application retains its priority and the notional supplementary application has priority according to the time of amendment; but

(b) otherwise — the amended application has priority according to the time of amendment.

A2.75 For the purposes of clause A2.74, without limiting the ways in which an amended application may be materially different to the original application, an amended application is not materially different from the original application:

(a) in terms of the capacity sought in the application, if the capacity sought in the amended application is ± [x] 10% of the capacity sought in the original application; and

(b) in terms of the charges payable under the application, if the charges payable under the amended application are ± [x] 11% of the charges payable under the original application; and

(c) to the extent that the amendment deals with the matters in clause A2.72; and

(d) [x] 12

Withdrawal of application

A2.76 An applicant may at any time before it enters into an access contract, by notice in writing to the service provider withdraw an application.

Applications do not expire

A2.77 Subject to clause A2.78, an application does not expire due to the passage of time.

A2.78 Where the service provider holds the opinion as a reasonable and prudent person that it is unlikely that an access offer will be made in respect of a dormant application, then the service provider must give the applicant a notice requiring the applicant to provide information to the service provider demonstrating why the dormant application should not be taken to have been withdrawn by the applicant.

A2.79 At least [x] 13 business days after giving a notice under clause A2.78, the service provider must make a fresh determination, having regard to all relevant material including anything which has occurred, and any information provided, since the notice was given under clause A2.78 whether the dormant application should be taken to have been withdrawn by the applicant.

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10 To be inserted when the model applications and queuing policy is incorporated into an access arrangement. The value inserted for variable [x] should allow for the normal fine-tuning of output or load as a project is developed. It is not intended to accommodate a material reconfiguration of the project (e.g. adding or removing a processing unit), nor to facilitate ‘gaming’ of the queue.

11 To be inserted when the model applications and queuing policy is incorporated into an access arrangement. The value inserted for variable [x] should allow for the normal fine-tuning of output or load as a project is developed. It is not intended to accommodate a material reconfiguration of the project (e.g. adding or removing a processing unit), nor to facilitate ‘gaming’ of the queue.

12 To be inserted when the model applications and queuing policy is incorporated into an access arrangement, if applicable. If there are to be other criteria inserted in the access arrangement, to be taken into account when determining if an amended application is materially different from the original application, add “(d) “.

13 To be inserted when the model applications and queuing policy is incorporated into an access arrangement, if applicable. Unless the Authority considers that the Code objective and the objectives in section 5.7 require otherwise, the value inserted for variable [x] should not be less than 20.
A2.80 If the service provider makes a determination under clause A2.79 that the dormant application should be taken to have been withdrawn by the applicant then the dormant application is deemed to have been withdrawn by the applicant.

Sub-appendix 2.6 – Processing the application and making the access offer

Service provider must be expeditious and diligent

A2.81 The service provider must process an application expeditiously and diligently.

Conditions precedent permitted in access contract

A2.82 The service provider and an applicant must negotiate in good faith regarding any conditions precedent that the applicant or service provider seeks to have included in an access contract in order to achieve the objectives set out in clause A2.83.

A2.83 The objectives of this applications and queuing policy with regard to conditions precedent are:

(a) conditions precedent in access contracts should facilitate the development of electricity consuming and generating projects and provide flexibility; and

(b) conditions precedent should not unduly impede the ability of the service provider to provide a covered services to applicants with later priority or cause uncertainty and delay; and

(c) conditions precedent should not constitute an inappropriate barrier to entry into a market or be for the purpose of hindering or preventing access by any person to covered services.

Conditions precedent and determination of spare capacity

A2.84 In determining whether there is sufficient spare capacity to provide covered services requested in an application the service provider:

(a) subject to clause A2.84(b), must regard any conditional access contract as being unconditional; and

(b) must, for the purposes of determining spare capacity only, disregard its obligation to provide covered services under any conditional access contract that contains a condition precedent for which a period of longer than 18 months from the date the access contract was entered into is allowed for its fulfilment.

A2.85 To avoid doubt nothing in clause A2.84 prevents a service provider or an applicant from entering into an access contract that contains a condition precedent for which a period of longer than 18 months from the date the access contract was entered into is allowed for its fulfilment.

Security

A2.86 If the service provider determines that an applicant’s technical or financial resources are such that a reasonable and prudent person would consider there to be a material risk that the applicant will be unable to meet its obligations under any access contract which results from the applicant’s application, then the service provider may, subject to clause A2.87, require as a term of the access contract either or both of the following:

(a) a provision, at the applicant’s election, requiring the applicant to

(i) pay the charges for up to 2 months’ services in advance; or

(ii) provide a bank guarantee in terms acceptable to the service provider (acting as a reasonable and prudent person), guaranteeing the charges for 2 months’ services; or

(iii) if applicable, procure from the applicant’s parent company a guarantee substantially in the form set out in the service provider’s access arrangement guaranteeing the charges under the access contract;

and
(b) if the applicant will be required to make a capital contribution, a provision, at the applicant’s election, requiring the applicant to:

(i) provide a bank guarantee in terms acceptable to the service provider (acting as a reasonable and prudent person), guaranteeing the capital contribution; or

(ii) if applicable, procure from the applicant’s parent company a guarantee substantially in the form set out in the service provider’s access arrangement guaranteeing the capital contribution.

A2.87 If the service provider requires an applicant to provide security under clause A2.86, then:

(a) the applicant may propose alternative arrangements (for example, more frequent payment) to manage the service provider’s financial risk under the access contract, and

(b) if so, the service provider and the applicant must negotiate as reasonable and prudent persons, with a view to agreeing on alternative arrangements which meet the following objectives:

(i) minimising the extent to which the service provider’s requirement for security from the applicant constitutes a barrier to the applicant’s entry to a market; and

(ii) not contravening section 115 of the Act, and not otherwise hindering the applicant’s ability to compete in upstream or downstream markets,

but also in the view of a reasonable and prudent person:

(iii) reasonably addressing the risk to the service provider that the applicant may be unable to meet the applicant’s obligations under the access contract; and

(iv) being reasonably practicable for the service provider to administer.

A2.88 For the purposes of clauses A2.86 and A2.87, a reference:

(a) to an applicant includes a user where the user has lodged a capacity increase notice or customer transfer request; and

(b) to an application includes a capacity increase notice or customer transfer request.

Initial response

A2.89 Subject to clause A2.91, the service provider must provide an initial response to the applicant specifying:

(a) if the application is a class 1 application or class 2 application, advising the service provider’s classification of the application; or

(b) if the application is a class 3 application advising the service provider’s classification of the application and specifying:

(i) the time by which the service provider will provide a preliminary assessment (if requested); and

(ii) the time by which the service provider expects to make an access offer; and

(iii) whether the application has caused the service provider to give a notice under clause A2.53 to any person.

A2.90 The initial response must be provided:

(a) for a class 1 application — within \([x]^{14}\) business days after the application is lodged; or

(b) for a class 2 application — within \([x]^{15}\) business days after the application is lodged; or

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14 To be inserted when the model applications and queuing policy is incorporated into an access arrangement, if applicable. Unless the Authority considers that the Code objective and the objectives in section 5.7 require otherwise, the value inserted for variable \([x]\) should not exceed 5.

15 To be inserted when the model applications and queuing policy is incorporated into an access arrangement, if applicable. Unless the Authority considers that the Code objective and the objectives in section 5.7 require otherwise, the value inserted for variable \([x]\) should not exceed 5.
A2.91 If, by the time by which the service provider is required to give an applicant an initial response under clause A2.90, the service provider has given the applicant an access offer, the service provider is not required to provide an initial response to the applicant.

A2.92 An initial response is not binding on a service provider, and the service provider is not liable for any error or omission, which is made as a reasonable and prudent person, in an initial response.

Preliminary assessment

A2.93 If an application contains a request for a preliminary assessment of a class 3 application, the service provider must give the applicant a preliminary assessment setting out at least the following information:

(a) whether it is likely that there is sufficient spare capacity to provide the requested covered services or whether an augmentation is likely to be required to provide those covered services, including whether it is likely that any new connection assets will be required to provide the covered services requested in the application; and

(b) whether or not a capital contribution is likely to be required from the user under the capital contributions policy and an estimate of the amount of the capital contribution which will be sought; and

(c) a good faith estimate of the likely time required for the planning, designing, approving, financing, construction and commissioning of any necessary augmentations; and

(d) a description of what system or other studies are likely to be required in the processing of the application, information regarding whether the service provider is able to undertake the studies and an estimate of the approximate costs of such studies.

A2.94 If, by the time by which the service provider is required to give an applicant a preliminary assessment under clause A2.93, the service provider has given the applicant an access offer, the service provider is not required to provide a preliminary assessment to the applicant.

A2.95 The preliminary assessment must be provided as soon as practicable after the application is lodged, having regard to the nature of the application.

Progress reporting

A2.96 An applicant must upon request by the service provider (which request must not be made more frequently than once per month) provide a progress report to the service provider containing information in reasonable detail regarding its application, including whether there has been any material change in any information previously provided by the applicant.

A2.97 The service provider must upon request by the applicant (which request must not be made more frequently than once per month) provide a progress report to the applicant containing information in reasonable detail regarding the processing of the application, including:

(a) whether there has been any material change in any estimates of costs or times previously provided by the service provider; and

(b) if the application requests a preliminary assessment, whether there has been any material change in any of the matters listed in clause A2.93.

A2.98 If an applicant has requested a preliminary assessment the applicant must not request a progress report until one month after the applicant has received the preliminary assessment.

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16 To be inserted when the model applications and queuing policy is incorporated into an access arrangement, if applicable. Unless the Authority considers that the Code objective and the objectives in section 5.7 require otherwise, the value inserted for variable [x] should not exceed 20.
Service provider must make access offer

A2.99 The service provider must, acting as a reasonable and prudent person, give an access offer to the applicant as soon as practicable, and in any event must (subject to clause A2.100) do so within:

(a) for a class 1 application — \([x]^{17}\) business days after the application is lodged; or
(b) for a class 2 application — \([x]^{18}\) business days after the application is lodged; or
(c) for a class 3 application — as soon as practicable after the application is lodged, having regard to the nature of the application.

Extension of time to perform obligations

A2.100 If:

(a) the service provider (acting as a reasonable and prudent person) has requested further information from the applicant under clause A2.28 which it reasonably requires to process the application; and
(b) the request was made as soon as the service provider became aware that it required the information; and
(c) the service provider has expeditiously and diligently progressed the processing of the application before making the request, after receiving the information, and (to the extent possible) between making the request and receiving the information,

then the time period for complying with any other obligation under this applications and queuing policy is extended by an amount of time equal to the time taken by the applicant to comply with the request.

A2.101 An applicant and the service provider may agree to deal with any matter in connection with the applicant’s application in a manner different to the treatment of the matter in this applications and queuing policy as long as the ability of the service provider to provide a covered service that is sought by another applicant is not impeded.

A2.102 Without limiting the generality of clause A2.101, an applicant and the service provider may agree to extend any one or more of any of the time periods set out in this applications and queuing policy on one or more occasions, and:

(a) the time period is extended by the amount of time agreed; and
(b) unless otherwise agreed, the time for complying with any other obligation is extended by the same amount of time.

Terms of access offer – If application requests reference service

A2.103 If an application requests a reference service on terms materially the same as those set out for the reference service in the access arrangement, then:

(a) if the application is a class 1 application — the access offer must be on materially the same terms as those requested in the application except (subject to clause A2.104) for the terms relating to any security or other prudential requirements, which must be determined in accordance with clauses A2.86 and A2.87; and
(b) if the application is a class 2 application — the access offer must be on materially the same terms as those requested in the application except (subject to clause A2.104) for the terms relating to any security or other prudential requirements, which must be determined in accordance with clauses A2.86 and A2.87; and

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17 To be inserted when the model applications and queuing policy is incorporated into an access arrangement, if applicable. Unless the Authority considers that the Code objective and the objectives in section 5.7 require otherwise, the value inserted for variable \([x]\) should not exceed 5.

18 To be inserted when the model applications and queuing policy is incorporated into an access arrangement, if applicable. Unless the Authority considers that the Code objective and the objectives in section 5.7 require otherwise, the value inserted for variable \([x]\) should not exceed 10.
(c) if the application is a class 3 application — the access offer must be on materially the same terms as those requested in the application except (subject to clause A2.104) for the terms relating to:

(i) any capital contribution (including the terms of any works contract or payment contract); and

(ii) any other provisions necessary to deal with any augmentation; and

(iii) the services start date, however the access offer must not specify a earlier services start date where doing so may impede the ability of the service provider to provide a covered service that is sought by another applicant; and

(iv) any security or other prudential requirements, which must be determined in accordance with clauses A2.86 and A2.87.

A2.104 Any terms in an access offer under clause A2.103(c) or clause A2.103(b) dealing with a matter listed under that clause must be:

(a) consistent with the Code objective; and

(b) reasonable; and

(c) subject to clauses A2.104(a) and A2.104(b), as similar as practicable to any terms requested in the application dealing with the matter.

Terms of access offer – If application requests non-reference service

A2.105 If an application requests a non-reference service then the terms of the access offer must be:

(a) consistent with the Code objective; and

(b) reasonable; and

(c) subject to clauses A2.105(a) and A2.105(b), as similar as practicable to any terms requested in the application dealing with the relevant matter.

Arbitrator’s powers preserved

A2.106 Nothing in clauses A2.103 to A2.105 limits the arbitrator’s power to make an award compelling the service provider to provide access to a covered service on terms specified in the award.

Access offer is not a contract

A2.107 Despite the giving of an access offer by the service provider to the applicant, the service provider and the applicant will not be taken to have entered into an access contract until the applicant has signed that document.

Applicant’s options on receipt of an access offer

A2.108 The applicant must as soon as practicable, and in any event within 30 business days, after receipt of an access offer, either:

(a) sign the access offer, thereby entering into an access contract; or

(b) by notice to the service provider reject the access offer and request amendments to the application; or

(c) by notice to the service provider withdraw the application,

and if 30 business days after receipt of the access offer the applicant has not complied with any of clauses A2.108(a), A2.108(b), or A2.108(c), then (unless the arbitrator makes an order extending the time limit on the ground that the delay is beyond the applicant’s reasonable control) the applicant is to be taken to have withdrawn its application.

A2.109 If the applicant rejects an access offer and requests amendments to the application under clause A2.108(b), the service provider must:

(a) deal with the amended application in accordance with clauses A2.73 to A2.75; and

(b) make a further access offer to the applicant which incorporates the applicant’s requested amendments as soon as practicable in accordance with this applications and queuing policy.
If applicant accepts access offer

A2.110 If the applicant signs the access offer, it must:

(a) forthwith give written notice of the signing to the service provider;
(b) as soon as practicable procure the stamping of the signed access contract; and
(c) as soon as practicable thereafter give to the service provider at least one original copy of the signed and stamped access contract.

A2.111 Upon an applicant signing an access offer, the application in response to which the access offer was made ceases to exist.
Appendix 3 – Model Standard Access Contract

Outline: An access arrangement must specify a standard access contract for each reference service (section 5.3). The service provider may draft and submit for assessment its own standard access contract. This Appendix 3 sets out a model standard access contract. Under section 5.5(a), the Authority must determine that a standard access contract is consistent with section 5.3 and the Code objective if the standard access contract reproduces without material omission or variation the model standard access contract. Otherwise, under section 5.5(b) the Authority will use this model standard access contract as a benchmark when assessing the service provider’s proposed standard access contract.

(This Appendix 3 contains four parts.

Part A contains definitions and commencement provisions, and is included in all access contracts.

Part B contains provisions dealing with capacity services. It forms part of the capacity contract.

Part C contains provisions dealing with technical compliance. It forms part of the technical compliance contract.

Part D contains general contractual provisions, and is included in all access contracts.

An access contract can comprise:

• a “capacity contract” based on Part B, together with Parts A and D; and
• a “technical compliance contract” based on Part C, together with Parts A and D; and
• a contract which is both a “capacity contract” and a “technical compliance contract”, containing all four Parts.)

This Appendix 3 leaves some matters to be completed. These matters are noted in square brackets, and fall into two categories:

• Matters which are to be completed when an access contract is incorporated into an access arrangement is approved by the Authority under Chapter 4. Without limiting the Authority’s discretion or duties, the way these matters are dealt with must be consistent with the Code objective and section 5.4(a).

• Matters which are to be agreed by the parties during the access contract negotiations, or determined by the arbitrator when determining an access dispute.

Footnotes following each matter in square brackets denote which category the matter falls into, and provide guidance as to the content of the matter. The footnotes form part of this model standard access contract and have legal effect.

Agreement dated
Parties

This is a contract between

[Insert name of service provider] 19 (“service provider”)

and

[Insert name of user] 20 (“UserCo”)

Background

(a) UserCo has made an access application under the access arrangement.

(b) Service provider has made an offer, in accordance with the access arrangement, to provide covered services to UserCo.

(c) UserCo has accepted the offer.

(d) [x] 22

Part A – Interpretation and introduction

(Note: Refer to clause A3.11 for when this Part A applies.)

Definitions and interpretation

A3.2 In this contract the following terms have the following meanings, unless the contrary intention is apparent:

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

“access rights”, in clauses A3.103 to A3.105, means all or part of UserCo’s rights under this contract to obtain a covered service.

“accounting period” means [x] 23.


“affected obligation”, in respect of a force majeure event, means the obligation (other than an obligation to pay money) that the affected person is unable, wholly or in part, to perform because of the force majeure event.

“affected person”, in respect of a force majeure event, means a party who is unable, wholly or in part, to perform an affected obligation.

“affected service” has the meaning given to it in clause A3.42(b).

“affected service period”, has the meaning given to it in clause A3.42(b).

19 To be inserted in the access contract by agreement between the parties or arbitrated award.

20 To be inserted in the access contract by agreement between the parties or arbitrated award.

21 If there is to be an indemnifier, insert name of indemnifier and add: “(“indemnifier”)”. Whether there is to be an indemnifier is to be inserted in the access contract by agreement between the parties or arbitrated award.

22 If there is to be an indemnifier, add: “ (d) The indemnifier has agreed to indemnify service provider in respect of certain of UserCo’s liabilities.”

23 Insert the period in respect of which invoices are rendered. To be inserted in the access arrangement and approved by the Authority under Chapter 4. To the extent that the Authority so approves, the access arrangement may leave this to be inserted in the access contract by agreement between the parties or arbitrated award.
“applications and queuing policy” means the applications and queuing policy in the access arrangement.

“augmentation”, in relation to the network, means an increase in the capability of the network to provide covered services, including by the development, construction, acquisition or commissioning of new network assets.

“authorised officer” means the authorised officer of a party as specified in Schedule 9 to whom notice, approval, consent or other communications may be given.

“Authority” means the Economic Regulation Authority established by the Economic Regulation Authority Act 2003.

“bare transfer” means a transfer of all or part of UserCo’s access rights in which UserCo’s obligations under this contract, and all other terms of this contract, remain in full force and effect after the transfer.

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

“capacity” refers to the capacity of the network or a connection point to transfer electricity.

“capacity contract” means an access contract (as defined in the Code) containing provisions materially equivalent to those in Parts A, B and D of this contract.

“capacity increase notice” has the meaning given to it in clause A3.17.

“capital contribution” means any amount (which may be either an up-front amount or a periodic amount, as agreed between the parties) as specified in Schedule 5.

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

“CEO meeting” means a meeting under clause A3.97 between the senior executive officers of each party to attempt to resolve a dispute.

“charge” for a service for an accounting period means the amount that is payable by UserCo to service provider for the service, calculated by applying the tariff for the service, during the accounting period.

“claim” means any claim, demand, action or proceeding made or instituted against a party in respect of which that party may under this contract, seek to claim indemnity under this contract against the other party.


“Code objective” has the meaning given to it in section 2.1 of the Code.

“commencement date” means the date specified in item 2 of Schedule 1.

“common service” means a covered service that is ancillary to the provision of one or more of entry services, exit services and network use of system services that ensures the reliability of the network or otherwise provides benefits to users of the network, the costs of which cannot reasonably be allocated to one or more particular users and so need to be allocated across all users.

“communication” means a notice, approval, consent or other communication given or made under this contract.

“confidential information” means information which is confidential under clause A3.109.

“connect” means to form a physical link to or through the network.

“connection assets”, for a connection point, means all of the network assets that are used only in order to provide covered services at the connection point.

“connection point” means a point on the network identified in this contract as an entry point or exit point under this contract.

“connection service” means the right to connect facilities and equipment at a connection point.

{Note: A connection service is the right to physically connect to the network, and will regulate technical compliance etc. It is not the same thing as an entry service or exit service, which are the right to transfer electricity.}
“contestable”, in relation to a consumer, means a consumer whose load exceeds the threshold prescribed under section 93 of the Electricity Corporation Act 1994 or another enactment.

“contracted point” has the meaning given to it in clause A3.19(b)(i).

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

(a) the amount specified in Schedule 3 from time to time in respect of the connection point; or

(b) if no amount is specified in Schedule 3, the maximum amount of electricity permitted to be transferred through the connection assets at the connection point under the technical rules.

(Note: A user is free under the Code to seek access to a service with a varying CMD, which will be a non-reference service.)

“contracted capacity” for a connection point means:

(a) for the electricity transferred into the network, the DSOC; and

(b) for the electricity transferred out of the network, the CMD.


“covered service” means a service in relation to the transportation of electricity provided by means of the network, including:

(a) a connection service; or

(b) an entry service or exit service; or

(c) a network use of system service; or

(d) a common service, or

(e) a service ancillary to the services listed in paragraphs (a) to (d) above, but does not include an excluded service.

“CPI” means the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities published by the Australian Bureau of Statistics from time to time or, if the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities ceases to be published, such alternative index as service provider acting reasonably and in good faith may determine, and in all cases the CPI figure is to be adjusted to correct for any effects of a change in the rate of GST.

“curtailment” includes a whole or partial curtailment or whole or partial interruption of a service.

“customer transfer code” means a code made under section 39(1) or section 39(2a) of the Act in respect of a matter referred to in section 39(2)(b) of the Act.

“default”, in relation to a party, is defined in clause A3.85.

“designated controller”, where applicable, in respect of a connection point, is determined in accordance with clauses A3.36 to A3.39.

“designated point” has the meaning given to it in clause A3.36.

“destination point” has the meaning given to it in clause A3.19(b).

“direct damage” suffered by a person means loss or damage suffered by the person which is not indirect damage.

“disconnect”, in respect of a connection point, means to operate switching or other equipment so as to prevent the transfer of electricity through the connection point.
“discounted rate” means [x]^{24}\% p.a.

“dispute” means any dispute or difference concerning:

(a) the construction of; or
(b) anything contained in or arising out of; or
(c) the rights, obligations, duties or liabilities of a party under,

this contract.

“DSOC” or “declared sent out capacity” for a connection point means the maximum amount of electricity that UserCo may transfer into the network at the connection point, being either:

(a) the amount specified in Schedule 3 from time to time; or
(b) if no amount is specified in Schedule 3, the maximum amount of electricity permitted to be transferred through the connection assets at the connection point under the technical rules.

(Note: A user is free under the Code to seek access to a service with a varying DSOC, which will be a non-reference service.)

“due date” means the date [x]^{25} business days after a party receives a tax invoice issued under clause A3.44 or A3.45.

“efficiently minimising costs” means service provider incurring no more costs than would be incurred by a prudent service provider, acting efficiently, in accordance with good electricity industry practice, seeking to achieve the lowest sustainable cost of delivering the services.


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

“emergency” has the meaning given to it in clause A3.126.

“end date” for a connection point, means the date specified as such in Schedule 3 for the connection point.

“entry point” means a point on the covered network identified as such in this contract at which, subject to this contract, electricity is more likely to be transferred into the network than transferred out of the network.

“entry service” means a covered service provided by service provider at an entry point under which UserCo may transfer electricity into the network at the entry point.

“excluded service” means a service for the transportation of electricity provided by means of the network, including:

(a) a connection service; or
(b) an entry service or exit service; or
(c) a network use of system service; or
(d) a common service; or
(e) a service ancillary to the services listed in paragraphs (a) to (d) above

which meets the following criteria:

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24 To be completed – for example this could be a reference to the overdraft rate published by a major bank. To be inserted in the access arrangement and approved by the Authority under Chapter 4. To the extent that the Authority so approves, the access arrangement may leave this to be inserted in the access contract by agreement between the parties or arbitrated award.

25 Insert the number of days to be allowed for payment. To be inserted in the access arrangement and approved by the Authority under Chapter 4. To the extent that the Authority so approves, the access arrangement may leave this to be inserted in the access contract by agreement between the parties or arbitrated award. Unless the Authority or arbitrator consider that a different value will better achieve the Code objective, 10 business days should be used.
(f) the supply of the service is subject to effective competition; and

(g) the cost of the service is able to be excluded from consideration for price control purposes without departing from the Code objective.

“exit point” means a point on the covered network identified as such in this contract at which, subject to this contract, electricity is more likely to be transferred out of the network than transferred into the network.

“exit service” means a covered service provided by service provider at an exit point under which UserCo may transfer electricity out of the network at the exit point.

“facilities and equipment”, in relation to a connection point, means the apparatus, equipment, plant and buildings used for or in connection with generating, consuming and transporting electricity at the connection point.

“financial provision”, in relation to a capital contribution, means the payment by UserCo of a capital contribution by way of either a periodic financial payment or an up front financial payment, as agreed, in accordance with Schedule 5.

“force majeure” in respect of a party means an event or circumstance beyond the party’s control, and which the party acting as a reasonable and prudent person is not able to prevent or overcome, including (where the foregoing conditions are satisfied):

(a) any act of God, lightning, earthquake, storm, fire, flood, subsidence, land slide, mud slide, wash-out, explosion or natural disaster; or

(b) any insurrection, revolution or civil disorder, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot; or

(c) any determination, award or order of any court or tribunal, or any regulatory authority or the award of any arbitrator arising after the commencement date; or

(d) any act or omission of government or any government or regulatory department, body, instrumentality, ministry, agency, fire brigade; or

(e) any inability or delay in obtaining any governmental, quasi-governmental or regulatory approval, consent, permit, licence or authority; or

(f) any industrial disputes of any kind, strike, lock-out, ban, limitation or other industrial disturbances; or

(g) any significant plant or equipment failure which could not have been avoided by the exercise of good electricity industry practice; or

(h) any act or omission of any person with facilities and equipment connected to the network which frustrates the party’s ability to perform its obligations under this contract; or

(i) any application of any law of the Commonwealth, any Commonwealth authority, the State, any State authority or any local government; or

(j) accidents, weather and acts of third parties (such as generators and other users of electricity) that affect the quality, frequency and continuity of the supply of electricity.

“force majeure event” means an event of force majeure.

“generate” means to produce electricity.

“generating plant” in relation to a connection point means all facilities and equipment involved in generating electricity.

“good electricity industry practice” means the exercise of that degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably and ordinarily exercise under comparable conditions and circumstances consistent with applicable laws and applicable recognised codes, standards and guidelines.

“GST” means goods and services tax or similar value added tax levied or imposed in Australia on a taxable supply under the GST Act or otherwise.

“guest party” has the meaning given to it in clause A3.92.

“host party” has the meaning given to it in clause A3.92.

“indemnified party” has the meaning given to it in clause A3.75.

“indemnifying party” has the meaning given to it in clause A3.75.

“indirect damage” suffered by a person means:

(a) any consequential loss, consequential damage or special damages however caused or suffered by the person including any:

(i) loss of (or loss of anticipated) opportunity, use, production, revenue, income, profits, business and savings; or

(ii) loss due to business interruption; or

(iii) increased costs; or

(iv) punitive or exemplary damages,

whether or not the consequential loss or damage or special damage was foreseeable; or

(b) in respect of contractual damages, damages which would fall within the second limb of the rule in Hadley v Baxendale [1854] 9 Exch. 341; or

(c) any liability of the person to any other person, or any claim, demand, action or proceeding brought against the person by any other person, and the costs and expenses connected with the claim.

“information provider”, in relation to confidential information, means the party providing the information.

“information recipient”, in relation to confidential information, means the recipient of the information.

“insolvency event” in respect of a party means any one or more of:

(a) any suspension or cessation to payment of all or a class of its debts by an insolvent within the meaning of section 95A of the Corporations Act 2001 of the Commonwealth; or

(b) any execution or other process of any court or authority issued against or levied upon any material part of that party’s property or assets; or

(c) a petition or application is presented (and not withdrawn within 10 business days) or an order is made or a resolution is passed for the winding up or dissolution without winding up of that party otherwise than for the purpose of reconstruction or amalgamation under a scheme; or

(d) a receiver or a receiver and manager of the undertaking or any material part thereof of that party is appointed; or

(e) that party proposes to enter into or enters into any arrangement, reconstruction or composition with or for the benefit of its creditors; or

(f) an administrator of that party is appointed or the board of directors of that party passes a resolution to the effect that is specified in section 436A(1) of the Corporations Act 2001 of the Commonwealth; or

(g) that party fails (as defined by section 459F of the Corporations Act 2001 of the Commonwealth) to comply with a statutory demand; or

(h) a controller (as defined in the Corporations Act 2001 of the Commonwealth) is appointed in respect of that party or the whole or a material part of that party’s undertaking, property or assets; or

(i) application is made to a Court for an order in respect of that party under Part 2F.1 of the Corporations Act 2001 of the Commonwealth; or

(j) an event referred to in section 459C(2) of the Corporations Act 2001 of the Commonwealth occurs in respect of that party; or

(k) anything analogous or having a substantially similar effect to any of the events specified above occurs under the law of any applicable jurisdiction.
“integrated provider” means:

(a) if service provider is Western Power Corporation - service provider; and

(b) if service provider is not Western Power Corporation - service provider, if under section 13.29 of the Code, service provider has been given an exemption from section 13.11(a) of the Code.

“interconnected system” means an electricity system comprising two or more networks interconnected with each other, and in relation to the network means an interconnected system of which the network is a part.

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

“load” means the amount of electrical power transferred out of the network at a connection point at a specified time.

“maintain” includes (as necessary and as applicable) calibrate, test, verify, renew, replace, repair and update.

“market rules” means the ‘market rules’ referred to in section 123(1) of the Act.

“metering equipment” means equipment to measure and record electricity as transferred to or from the network at a connection point.

“network” means the network (as defined in the Code) owned, operated or owned and operated by service provider in respect of which access is given under this contract.

“network assets”, in relation to the network, means the apparatus, equipment, plant and buildings used to provide or in connection with providing covered services. on the network, which assets are either connection assets or shared assets.

“network business” means the part of an integrated provider’s business and functions which is responsible for the operation and maintenance of the network and the provision of covered services by means of the network.

“other business” means the part or parts of an integrated provider’s business which are not the network business, and includes any part or parts of the integrated provider’s business and functions which acquire covered services from the network business.

“party” means service provider or UserCo and “parties” means both of them.26

“payment error” means any underpayment or overpayment by a party of any amount in respect of an invoice.

“possession” includes custody, control, and an immediate right to possession, custody, or control.

“prescribed rate” means the discounted rate plus 3% p.a.

“price list” means the most recent price list published under the access arrangement in accordance with the Code.

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

“receipt date” has the meaning given to it in clause A3.96.

“related body corporate”, in relation to a body corporate, means a body corporate that is a related body corporate to the first-mentioned body corporate under section 50 of the Corporations Act 2001 of the Commonwealth.

“relocation” has the meaning given to it in clause A3.19.

“representatives meeting” means a meeting under clause A3.96 between a duly authorised representative of each party to attempt to resolve a dispute.

26 If there is to be an indemnifier, insert after “both of them.”: “In relation to indemnifier, “other party” means service provider.”
“service”, in respect of a connection point, means a service to be provided under this contract in respect of the connection point as specified in Schedule 2, and if applicable (including if the service is an entry service or an exit service) includes the transfer of electricity at a connection point.

“service provider’s default” means an event of default by service provider.

“service provider’s premises” means the land on which the service provider’s works are located.

“service provider’s works” means the works referred to in Schedule 6.

“service standards” for a service means:
(a) the technical standard, and reliability, of delivered electricity specified for the service in Schedule 2; or
(b) if nothing is specified for the service in Schedule 2 — the service standard (as defined in the Code) applying in respect of the service under the access arrangement.

“shared assets” means network assets which are not connection assets.

“standing charges” has the meaning given to it in clause A3.42(a).

“start date”, for a connection point, means the date specified as such in Schedule 3 for the connection point.

“supplementary matters” means the following matters: balancing; line losses; metering; ancillary services; stand-by; trading; settlement; and, any other matter in respect of which arrangements must exist between UserCo and service provider to enable the efficient operation of the network and to facilitate access to services under this contract, in accordance with the Code objective.

“system operator” for the network means, unless the technical rules provide otherwise, the person or persons who:
(a) operate and control the system operation control centre; or
(b) where there is no system operation control centre — is responsible for the control of the network through monitoring, switching and dispatch; or
(c) where the system operation control centre and another party are both responsible for the control of the network through monitoring, switching and dispatch — perform either (a) or (b).

“tariff”, for a service, means the tariff specified for the service in Schedule 4.

“tax invoice” has the meaning given to that term in the GST Act.

“technical compliance contract” means an access contract (as defined in the Code) containing provisions materially equivalent to those in Parts A, C and D of this contract.

“technical rules” means the technical rules applying from time to time to the network under Chapter 12 of the Code.

“term” means the term of this contract which commences on the commencement date and ends on the termination date.

“termination date” means the date specified in item 3 of Schedule 1.

“third party recipient” means any person to whom the information recipient discloses confidential information, or allows confidential information to be disclosed.

“transfer”, when used in clauses A3.105 and A3.106, includes assign and novate.

“transport” includes transmit and distribute.

“uncontracted point” has the meaning given to it in clause A3.19(b)(ii).

“undisputed portion” means, subject to clause A3.45(d), an amount shown on a tax invoice which a party does not dispute to be payable.

“unpaid portion” has the meaning given to it in clause A3.51(b).
“user” means a person, including a generator or a consumer, who is party to an access contract with a service provider, and under section 13.4(e) of the Code includes an other business as a party to a deemed access contract (where the terms “generator”, “consumer”, “access contract”, “other business” and “deemed access contract” have the meanings they are given in the Code).

“UserCo’s default” means an event of default by UserCo.

“UserCo’s premises” means the land on which UserCo’s works are located.

“UserCo’s works” means the works referred to in Schedule 7.

“variation request”, in relation to a connection point, means a request from UserCo to service provider to vary the contracted capacity at the connection point.

“visitors” means the customers, invitees, licensees and visitors of a party.

“workers” means the directors, officers, servants, employees, agents and contractors of a party.

“year” means calendar year.

Interpretation

A3.3 In this contract, unless the contrary intention appears:

(a) a reference to:

(i) one gender includes any other gender; and

(ii) the singular includes the plural and the plural includes the singular; and

(iii) an officer or body of persons includes any other officer or body for the time being exercising the powers or performing the functions of that officer or body; and

(iv) this contract or any other instrument includes any variation or replacement of it; and

(v) a reference to a “law” includes any amendment or re-enactment of it that is for the time being in force, and includes all laws made under it from time to time; and

(vi) “under” includes “by”, “by virtue of”, “pursuant to” and “in accordance with”; and

(vii) “day” means a calendar day; and

(viii) “person” includes a public body, company, or association or body of persons, corporate or unincorporated; and

(ix) a person includes a reference to the person’s personal representatives, executors, administrators, successors and permitted assigns; and

(x) all monetary amounts are in Australian dollars and are exclusive of GST; and

(b) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and

(c) headings are for convenience only and do not affect the interpretation, or form part of, this contract; and

(d) “copy” includes a facsimile copy, photocopy or (subject to the Electronic Communication Protocol in Schedule 10) electronic copy; and

(e) “including” and similar expressions are not words of limitation; and

(f) 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

(g) where italic typeface has been applied to some words and expressions, it is solely to indicate that those words or expressions may be defined in clause A3.2 or elsewhere, and in interpreting this contract, the fact that italic typeface has or has not been applied to a word or expression is to be disregarded (but nothing in this clause A3.3(g) limits the application of clause A3.2); and

(h) where information in this contract 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 this contract; and
(ii) is to be disregarded in interpreting this contract; and
(iii) might not reflect amendments to this contract or other documents or laws; and

(i) a reference to:
   (i) this contract includes any schedule to this contract; and
   (ii) a clause is a reference to a clause of this contract.

A3.4 Unless the contrary intention is apparent, the rules of interpretation in the Interpretation Act 1984 apply to the interpretation of this contract.

**Duration**

A3.5 **Commencement and term**

(a) This contract commences on the commencement date.
(b) This contract ends on the termination date (unless terminated earlier in accordance with this contract).

(Note: During the term of this contract (i.e. between the commencement date and the termination date) service provider must provide the services to UserCo. However, for each connection point, the obligation on service provider to provide those services is determined by the start date and end date for each service.)

A3.6 **Option to extend term**

[27]

A3.7 **Conditions Precedent**

[28]

**There must be both a capacity contract and a technical compliance contract**

A3.8 For each connection point, there must be:

(a) a capacity contract; and
(b) a technical compliance contract,

in respect of the connection point.

(Note: This contract may deal with one, or more than one, correction point.)

A3.9 Without limiting the ways in which clause A3.8 may be satisfied, clause A3.8 is satisfied if the capacity contract and technical compliance contract are both contained in this contract.

A3.10 Service provider is not required to provide services at a connection point whenever, and for so long as clause A3.8 is not complied with for the connection point.

**When the parts of this contract apply**

A3.11 For each connection point:

(a) Parts A and D of this contract apply; and
(b) if this contract is expressed in Schedule 3 to be a capacity contract for the connection point — Part B of this contract applies; and
(c) if this contract is expressed in Schedule 3 to be a technical compliance contract for the connection point — Part C of this contract applies.

(Note: This contract may be expressed to be both a capacity contract and a technical compliance contract.)

27 Insert option provisions if applicable. To be inserted in the access contract by agreement between the parties or arbitrated award. Consequential amendments may be needed to the duration provisions and definitions.

28 Insert conditions precedent if applicable. To be inserted in the access contract by agreement between the parties or arbitrated award.
Part B – Capacity Provisions

(Note: Refer to clause A3.11 for when this Part B applies.)

Provision and use
A3.12 For each connection point, on and from the start date and up to and including the end date:
   (a) service provider must provide the services; and
   (b) UserCo must pay for and may use the services.

Contracted capacity
A3.13 Subject to this contract, to the extent that a service at a connection point relates to capacity, service provider must provide the service up to the contracted capacity for the connection point.

Contracted maximum demand and declared sent-out capacity
A3.14 For each connection point, UserCo must endeavour as a reasonable and prudent person to ensure that:
   (a) the amount of electricity transferred out of the network by or on behalf of UserCo does not exceed the CMD; and
   (b) the amount of electricity transferred into the network by or on behalf of UserCo does not exceed the DSOC.

Variation to contracted capacity
A3.15 UserCo may submit to service provider a variation request in relation to a connection point.
A3.16 Subject to clause A3.17, within 10 business days after receipt of a variation request, service provider must determine, and notify UserCo, whether or not it accepts the variation request.
A3.17 If in a variation request UserCo requests service provider to increase the contracted capacity at a connection point (“capacity increase notice”), service provider must notify UserCo that it accepts the variation request and the time that the acceptance takes effect, unless:
   (a) accepting the capacity increase notice would be likely to impede the ability of service provider to provide a service that is sought in an access application lodged by another applicant under the applications and queuing policy; or
   (b) it is likely that an augmentation would be required in response to the capacity increase notice,
   in either or both cases service provider must by notice reject the capacity increase notice and state in the notice that to increase its capacity as described in the capacity increase notice UserCo must make an application under the applications and queuing policy.

   (Note: If UserCo wishes to obtain capacity at a connection point which is not already specified in Schedule 3, UserCo must make an access application under the applications and queuing policy.)
A3.18 The parties must update Schedule 3 following any variation made in accordance with clauses A3.15 to and A3.17.

Relocation
A3.19 A “relocation” comprises UserCo:
   (a) reducing its capacity at a connection point; and
   (b) making a corresponding increase in its capacity at another connection point (“destination point”) which may be either:
      (i) a connection point at which UserCo already has capacity (“contracted point”); or
      (ii) a connection point at which UserCo does not already have capacity (“uncontracted point”).
A3.20 UserCo may apply to service provider to undertake a relocation, and subject to clauses A3.21, A3.22 and A3.23 service provider must permit the relocation within 10 business days after the application.

A3.21 Subject to clause A3.23, if the destination point is a contracted point, then UserCo must lodge a capacity increase notice or an access application, as applicable, in respect of the capacity sought to be relocated to the destination point, and the relocation must not take place until permitted under the applications and queuing policy.

A3.22 Subject to clause A3.23, if the destination point is an uncontracted point, then UserCo must lodge an access application in respect of the capacity sought to be relocated to the destination point, and the relocation must not take place until permitted under the applications and queuing policy.

A3.23 Service provider may:
(a) withhold its consent to a reduction under clause A3.19(a) only on reasonable commercial grounds; and
(b) impose conditions in respect of a reduction under clause A3.19(a) only to the extent that they are reasonable on commercial grounds.

{An example of a matter that would be reasonable for the purposes of clause A3.23 is service provider specifying that, as a condition of its agreement to a relocation, the service provider must receive at least the same amount of revenue as it would have received before the relocation, or more revenue if tariffs at the destination point are higher.}

A3.24 The parties must update Schedule 3 following any variation made in accordance with clause A3.20.

Customer transfer

(Note: See section 5.7(f) of the Code.)

A3.25 If a customer transfer code places obligations on a party in respect of capacity or services under this contract, the party must comply with the obligations.

Provisions of access arrangement on supplementary matters apply

A3.26 The provisions of the access arrangement in respect of supplementary matters which are incorporated in the access arrangement under section 5.27 of the Code apply also as terms of this contract, to the extent they are expressed to do so.

Curtailment

A3.27 Service provider may, in accordance with good electricity industry practice, curtail the provision of services in respect of a connection point:
(a) to carry out planned augmentation or maintenance to the network; or
(b) to carry out unplanned maintenance to the network where service provider considers it necessary to do so to avoid injury to any person or material damage to any property or the environment; or
(c) in the event of breakdown of or damage to the network that affects service provider’s ability to provide services at that connection point; or
(d) if a force majeure event occurs affecting service provider’s ability to provide services at the connection point for so long as service provider’s ability to provide services is affected by the force majeure event; or
(e) to the extent necessary for service provider to comply with a law.

A3.28 Service provider must keep the extent and duration of any curtailment under clause A3.27 to the minimum reasonably required in accordance with good electricity industry practice.

A3.29 Service provider must use reasonable endeavours to notify UserCo of any curtailment under clause A3.27 as soon as practicable.

A3.30 If service provider notifies UserCo of a curtailment of services under clauses A3.27 to A3.29 in respect of a connection point, UserCo (acting to the standard of a reasonable and prudent person) must comply with any reasonable requirements set out in the notice concerning the curtailment.
Title to electricity

A3.31 Title to electricity which is transferred into the network at a connection point passes from UserCo to service provider at the time it passes through the connection point.

A3.32 Title to electricity which is transferred out of the network at a connection point passes from service provider to UserCo at the time it passes through the connection point.

A3.33 To avoid doubt, nothing in, and nothing done under or in connection with, this contract causes UserCo to acquire any right, title or interest in or to the network or any part of it.

A3.34 The operation of clause A3.33 may be displaced by an express provision of this contract.

A3.35 Subject to clause A3.27, upon the transfer from UserCo to service provider of title to and possession of a quantity of electricity delivered at an entry point, UserCo becomes entitled to receive an equivalent quantity of electricity from service provider at an exit point.

Designated controllers

A3.36 Points which require a designated controller

Each of the following is a “designated point” for which there must be a designated controller:

(a) an entry point specified in Schedule 3 at which the installed capacity of the facilities and equipment to transfer electricity into the network exceeds 30 KVA; and

(b) an exit point specified in Schedule 3 at which [x].

A3.37 Selecting the designated controller

(a) Unless otherwise notified by UserCo under clause A3.37(b), the designated controller for a connection point is the designated controller specified in Schedule 3.

(b) Where:

(i) no designated controller is specified in Schedule 3 for a designated point or service provider has objected to the designated controller nominated by UserCo — UserCo must; and

(ii) UserCo wishes to change the designated controller for a designated point — UserCo may,

by notice to service provider nominate a person who owns, operates or controls the facilities and equipment at the designated point as the designated controller for the designated point and the person nominated is the designated controller from the time of the notice or a later time specified in the notice.

(c) Service provider, acting as a reasonable and prudent person, may at any time on reasonable technical or commercial grounds object to the designated controller for a designated point, in which case UserCo must, under clause A3.37(b), either dispute service provider’s objection under clause A3.96 or nominate a different person as designated controller.

(d) The parties must amend Schedule 3 following any variation made in accordance with clause A3.37(b).

A3.38 User must procure designated controller’s compliance

For each designated point UserCo must (unless UserCo is the designated controller) ensure that the designated controller complies, and will continue to comply, with the following provisions of this contract, (for which purpose, references to “UserCo” in the provisions are to be read as references to “designated controller”):

(a) clauses A3.92 to A3.95 (access to premises); and

(b) clause A3.120 (notices); and

To be completed – the test for when an exit point needs a designated controller. To be inserted in the access arrangement and approved by the Authority under Chapter 4. To the extent that the Authority so approves, the access arrangement may leave this to be inserted in the access contract by agreement between the parties or arbitrated award.
(c) clause A3.55 (good electricity industry practice); and
(d) clause A3.56 (cooperation); and
(e) clause A3.61 (technical rules).

A3.39 UserCo must satisfy service provider of its arrangements with designated controller

(a) On reasonable request from service provider, UserCo must (unless the designated controller has already entered into an agreement under clause A3.39(b)(i) or A3.39(b)(ii)) provide evidence to service provider’s satisfaction as a reasonable and prudent person that UserCo is complying, and will continue to comply, with clause A3.38.

(b) If UserCo does not satisfy service provider under clause A3.39(a), service provider may curtail the provision of services in respect of the connection point until the designated controller has either:

(i) entered into a technical compliance contract with service provider in respect of the connection point; or

(ii) otherwise agreed in writing with service provider to be bound by the clauses specified in clause A3.38.

(Note: One way for the agreement in clause A3.39(b)(ii) to be reached would be for the designated controller to sign this contract as a party in respect of the relevant clauses.)

Tariff and charges

A3.40 Tariff

[RETAIN ONE ONLY OF THE FOLLOWING TWO OPTIONS, EITHER:

OPTION A:

(a) The tariff payable under this contract for a service is the tariff specified in the price list from time to time for the service.

(b) If:

(i) no price list is published by the Authority on the date required under the Code, or

(ii) a purported price list which does not comply with the access arrangement is published,

then to the extent that the effect of a price list (if it had been published on the date required under the Code and had been compliant with the access arrangement) would have been to reduce the tariff payable by UserCo, then UserCo may recover the tariff reduction as an overpayment under clause A3.48.

(c) If applicable, the tariff payable under clause A3.40(a) for a service ("contracted service") after the end of the current access arrangement period is to be determined as follows:

(i) if the new access arrangement contains a reference service ("equivalent reference service") which is materially the same as the contracted service — then the tariff for the contracted service is to be the reference tariff for the equivalent reference service; and

(ii) if the new access arrangement does not contain an equivalent reference service, or if for any reason there is no new access arrangement — then the tariff for a year will be the tariff in the final price list which service provider was required to publish under the current access arrangement, adjusted annually every [x]30 by an amount equal to [x]31% of the change in CPI from the previous adjustment date.

30 Insert the adjustment date. To be inserted in the access arrangement and approved by the Authority under Chapter 4. To the extent that the Authority so approves, the access arrangement may leave this to be inserted in the access contract by agreement between the parties or arbitrated award.

31 Insert the percentage of the change in CPI from the previous adjustment date. To be inserted in the access arrangement and approved by the Authority under Chapter 4. To the extent that the Authority so approves, the access arrangement may leave this to be inserted in the access contract by
(d) Clause A3.40(c) applies, with appropriate modifications, in respect of the end of each successive access arrangement period.

**OR OPTION B:**

(a) The tariff payable under this contract for a service is the tariff specified in the price list most recently published before the commencement date for the service, and any subsequent price lists are to be disregarded.

(b) Tariffs determined under clause A3.40(a) are to be adjusted annually every \( [x] \) by an amount equal to \( [y] \% \) of the change in CPI from the previous adjustment date.

**WHICHEVER IS APPLICABLE**

A3.41 **Charges**

UserCo must pay service provider the charge for each service calculated at the tariff determined under clause A3.40.

A3.42 **Charges during service provider’s force majeure event**

(a) This clause A3.42 applies in respect of any service for which some or all of the charges (“standing charges”) are payable whether or not UserCo makes use of the service.

(b) If a service (“affected service”) is unavailable for any consecutive period of 2 days or longer (“affected service period”) due to a force majeure event where service provider is the affected person, then, for the whole of the affected service period, UserCo is relieved of its obligation under clause A3.41 and instead must pay 10% of the standing charges for the affected service.

A3.43 **Capital contributions**

If the parties have agreed that UserCo must pay a capital contribution the parties must comply with the provisions set out in Schedule 5 regarding the capital contribution.

**Invoicing and payment**

A3.44 **Service provider invoices**

Service provider must, within 10 business days after the end of an accounting period, issue to UserCo a tax invoice for the accounting period showing:

(a) all amounts payable by UserCo to service provider under this contract; and

(b) all outstanding amounts as at the end of the accounting period and interest payable on those amounts; and

(c) GST payable under clause A3.50.

At the same time as issuing a tax invoice under this clause A3.44, service provider must provide to UserCo, in electronic form, the metering information used to calculate the charges

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attachment to the parties or arbitrated award. Unless the Authority or arbitrator consider that a different value will better achieve the Code objective, 67% of CPI should be used.

32 Insert the adjustment date. To be inserted in the access arrangement and approved by the Authority under Chapter 4. To the extent that the Authority so approves, the access arrangement may leave this to be inserted in the access contract by agreement between the parties or arbitrated award.

33 Insert the percentage of the change in CPI from the previous adjustment date. To be inserted in the access arrangement and approved by the Authority under Chapter 4. To the extent that the Authority so approves, the access arrangement may leave this to be inserted in the access contract by agreement between the parties or arbitrated award. Unless the Authority or arbitrator consider that a different value will better achieve the Code objective, 67% of CPI should be used.

34 To be inserted in the access contract by agreement between the parties or arbitrated award. Unless the Authority considers that a different approach will better achieve the Code objective, the standard access contract must offer UserCo the option, at the time it enters into the contract, to make a once-off election for the term of the contract as to whether it will pay the reference tariff as in effect from time to time (Option A), or whether it will lock in the reference tariff in effect at the time of contracting, to be escalated at a percentage of CPI (Option B). If Option A is chosen, definitions need to be added to clause A3.2.
shown on the tax invoice in sufficient detail to enable UserCo to understand how service provider calculated the charges.

A3.45 User invoices

(a) At the same time as service provider issues to UserCo a tax invoice for the accounting period under clause A3.44, service provider must provide UserCo with all information necessary for UserCo to determine any amounts payable by service provider to UserCo.

(b) UserCo must, within 5 business days after receiving the information under clause A3.45(a), issue to service provider a tax invoice for the accounting period showing:

(i) all amounts payable by service provider to UserCo under this contract, which amounts may be calculated using the information provided to user by service provider under A3.45(a); and

(ii) all outstanding amounts as at the end of the accounting period and interest payable on those amounts; and

(iii) GST payable under clause A3.50.

(c) If UserCo disputes the information provided by service provider under clause A3.45(a), then:

(i) UserCo may issue a tax invoice under clause A3.45(b) for an amount UserCo (acting as a reasonable and prudent person) estimates to be the correct amount payable; and

(ii) UserCo must before the due date of the tax invoice under clause A3.45(b), give notice to service provider that it disputes the information provided under clause A3.45(a) and provide in that notice full details of the dispute.

(d) Clause A3.47 applies in respect of a tax invoice issued under clause A3.45(b), for the purposes of which the “undisputed portion” is taken to be an amount calculated in accordance with the information provided by service provider under clause A3.45(a).

A3.46 Payment of invoices

(a) Each party which receives a tax invoice under clause A3.44 or A3.45, must on or before the due date pay to the party issuing the tax invoice all amounts shown on the tax invoice which are payable under the contract.

(b) If a party fails to comply with clause A3.46(a) then, without prejudice to the other party’s other rights, the party must pay interest on any unpaid amount, such interest to be calculated daily at the prescribed rate from the due date until payment.

A3.47 Disputed invoices

(a) If a party disputes any amount set out in a tax invoice issued under clause A3.44 or A3.45, then that party must pay the undisputed portion (if any) and, prior to the due date of the tax invoice, give notice to the other party that it disputes the amount and provide in that notice full details of the dispute.

(b) Any amount withheld by a party under clause A3.47(a) but subsequently found to have been payable is, without prejudice to the relevant other party’s other rights, to attract interest calculated daily at the prescribed rate from the due date of the tax invoice until payment.

(c) Any amount paid by a party under clause A3.47(a) but subsequently found not to have been payable is, without prejudice to that party’s other rights, to attract interest calculated daily at the discounted rate from the date the party paid the amount to the date the relevant other party repays the amount.

A3.48 Under and over payments

(a) If a party detects a payment error by a party of any amount within 18 calendar months after the payment error:

(i) the party must give notice to the other party of the payment error; and

(ii) an adjusting payment must be made by the appropriate party within 10 business days of the notice.
(b) Subject to clause A3.48(c), the adjusting payment must, without prejudice to the party's other rights, include interest calculated daily at the discounted rate from the date of the payment error until the date of the adjusting payment.

(c) An adjusting payment by a party will not attract interest under clause A3.48(b) if the underpayment was the result of an error by the other party.

A3.49 **Interest on overdue payments**

If a party defaults in due and punctual payment of a tax invoice:

(a) clauses A3.85 to A3.91 apply; and

(b) the overdue payments attract interest payable at the prescribed rate until the default is remedied.

A3.50 **GST**

(a) Unless expressly included, the consideration for any supply under or in connection with this contract (including any tariff derived from a price list) is GST exclusive.

(b) To the extent that any supply made under or in connection with this contract is a taxable supply, the consideration for that supply is increased by an amount determined by the supplier, not exceeding the amount of the consideration (or its market value) multiplied by the rate at which GST is imposed in respect of the supply.

(c) Without limiting the obligation to provide a tax invoice under clauses A3.44 and A3.45, the supplier must issue a tax invoice to the recipient of a supply to which clause A3.50(b) applies before the payment of the GST inclusive consideration determined under that clause.

(d) If a party is entitled under this contract to be reimbursed or indemnified by another party for a cost or expense incurred in connection with this contract, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the party entitled to be reimbursed or indemnified, or by its representative member.

(e) Definitions in the GST Act apply also in this clause A3.50 unless the context indicates otherwise.

**Security**

A3.51 If, at any time, service provider determines that UserCo's technical or financial resources are such that a reasonable and prudent person would consider there to be a material risk that UserCo will be unable to meet its obligations under this contract, then service provider may, subject to clause A3.52, do either or both of the following:

(a) require UserCo, at UserCo’s election, to:

   (i) pay in advance the charges for up to 2 months’ services; or

   (ii) provide a bank guarantee in terms acceptable to service provider (acting reasonably), guaranteeing the charges for 2 months’ services; or

   (iii) procure from UserCo’s parent company a guarantee substantially in the form set out in Schedule 11;

and

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35 If there is to be an indemnifier, replace “UserCo’s” with “either or both of UserCo’s or indemnifier’s”.

36 If there is to be an indemnifier, replace “require UserCo, at UserCo’s election, to” with “require UserCo to nominate which of UserCo or Indemnifier is to provide the following security (“nominated person”), and then require the nominated person, at UserCo’s election, to:”.
(b) if clause A3.43 applies and any amount of the capital contribution remains unpaid or unprovided, require UserCo (in addition to UserCo’s obligations under clause A3.51(a)), at UserCo’s election, to:37

(i) pay to service provider in full an amount equal to:

A if the capital contribution is a financial provision — the net present value of the unpaid amounts of the financial provision; or

B if the capital contribution is a provision in kind — the net present value of the likely cost to the service provider of completing the provision in kind (which must not exceed the amount that would be spent by a prudent service provider efficiently minimising costs of completing the provision in kind); each in this clause referred to as the “unpaid portion”; or

(ii) provide a bank guarantee in terms acceptable to service provider (acting reasonably), guaranteeing the unpaid portion; or

(iii) procure from UserCo’s parent company a guarantee substantially in the form set out in Schedule 11 guaranteeing the unpaid portion.

A3.52 If service provider requires UserCo to provide security under clause A3.51, then UserCo may propose alternative arrangements (for example, more frequent payment) to manage service provider’s financial risk under this contract, and if so, service provider and UserCo must negotiate as reasonable and prudent persons, with a view to agreeing alternative arrangements which meet the following objectives:

(a) minimising the extent to which the requirements of clause A3.51 constitute a barrier to UserCo’s entry to a market; and

(b) not contravening section 115 of the Act and not otherwise hindering UserCo’s ability to compete in upstream or downstream markets,

but also in the view of a reasonable and prudent person:

(c) reasonably addressing the risk to service provider that UserCo may be unable to meet its obligations under this contract; and

(d) being reasonably practicable for the service provider to administer.

A3.53 If the parties fail to agree on alternative arrangements under clause A3.52, then:

(a) UserCo must comply with clause A3.51 unless the matter is the subject of a dispute under clause A3.53(b); and

(b) the matter may be the subject of a dispute under this contract, in which case the dispute resolver may either:

(i) determine the terms of an appropriate alternative arrangement in which case UserCo must comply with those terms; or

(ii) determine that no alternative arrangement would meet the objectives in clause A3.52 in which case UserCo must comply with clause A3.51.

37 If there is to be an indemnifier, replace “require UserCo (in addition to UserCo’s obligations under clause A3.51(a)) at UserCo’s election, to:” with “require UserCo (in addition to UserCo’s obligations under clause A3.51(a)), to nominate which of UserCo or indemnifier is to provide the following security (“nominated person”), and then require the nominated person, at UserCo’s election, to:”.

38 If there is to be an indemnifier, replace “UserCo’s” with the “nominated person’s”.

39 If there is to be an indemnifier, replace “UserCo” with “UserCo or indemnifier, as applicable,.”.

(Note: refer to clause A3.11 for when this Part C applies.)

Good electricity industry practice

A3.54 Service provider must comply with good electricity industry practice when providing services and otherwise when acting, or not acting, in connection with this contract.

A3.55 UserCo must comply with good electricity industry practice in receiving services and otherwise when acting, or not acting, in connection with this contract.

Cooperation

A3.56 UserCo and service provider (each acting as reasonable and prudent persons) must cooperate and coordinate with each other where reasonably necessary in relation to:

(a) the planning, development, inspection, testing and commissioning of facilities and equipment for a connection point and network assets for the network; and

(b) the development and implementation of maintenance schedules for facilities and equipment for a connection point and network assets for the network.

Directions from system operator

A3.57 Without limiting the generality of clause A3.56 UserCo and service provider must comply with any directions given by system operator.

User must provide information

A3.58 Service provider may as a reasonable and prudent person, in respect of a connection point, make a reasonable request for generation forecast information or load forecast information, as applicable.

A3.59 A request under clause A3.58 must not be made more than once in any 12 month period except in an accident, emergency, potential danger or other extraordinary circumstances.

A3.60 UserCo must comply with service provider’s reasonable request under clause A3.58.

Technical rules

A3.61 Service provider and UserCo must each comply with the technical rules.

Actions of third parties causing user to breach technical rules

A3.62 If the actions of another person (including a customer of UserCo) cause UserCo to breach the technical rules, then UserCo is not in breach of clause A3.61 and is not liable for any breach of the technical rules unless UserCo:

(a) has been negligent; or

(b) has not acted as a reasonable and prudent person.

A3.63 Nothing in clause A3.62 limits the operation of clauses A3.71 or A3.80 in respect of either UserCo or service provider.

Tariff and charges

A3.64 [x]40

Invoicing and payment

A3.65 [x]41

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40 If this access contract is a technical compliance contract only, and any tariff or charge applies, insert clauses A3.40 to A3.43 here.
Security

Part D – Common Provisions

(Note: Refer to clause A3.11 for when this Part D applies.)

Service provider must comply with service standards

A3.67 Service provider must provide the services to UserCo in accordance with the service standards.

Representations and warranties

A3.68 User’s representations and warranties

(a) UserCo represents and warrants to service provider that:

(i) UserCo has complied with the applications and queuing policy in the access arrangement and the requirements in the Code in respect of its access application under the access arrangement; and

(ii) UserCo’s obligations under this contract are valid and binding and are enforceable against UserCo in accordance with their terms; and

(iii) this contract and any other transaction under it does not contravene user’s constituent documents or any law or any of UserCo’s obligations or undertakings by which UserCo or any of UserCo’s assets are bound or cause to be exceeded any limitation on UserCo’s or UserCo’s directors’ powers; and

(iv) neither UserCo nor any of its related bodies corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).

(b) The representations and warranties in clause A3.68(a) are to be taken to be made on each day on which:

(i) this contract is in effect; or

(ii) any amount payable by UserCo to service provider under this contract is or may be outstanding.

A3.69 [Indemnifier’s representation and warranty]

[43]

A3.70 Service provider’s representations and warranties

(a) Service provider represents and warrants to UserCo that:

(i) service provider complied with the applications and queuing policy in the access arrangement and the requirements in the Code in respect of UserCo’s access application under the access arrangement; and

41 If this access contract is a technical compliance contract only, and any tariff or charge applies, insert clauses A3.44 to A3.50 here.

42 If this access contract is a technical compliance contract only, and the service provider is permitted by the access arrangement to seek security in respect of such a contract, insert clauses A3.51 to A3.53 here.

43 If there is to be an indemnifier, add a new clause under this heading: “The indemnifier represents and warrants to service provider that as at the commencement date, there has been no material change in the indemnifier’s financial position since the date service provider received information from the indemnifier stating that financial position.”
(ii) service provider's obligations under this contract are valid and binding and are enforceable against service provider in accordance with their terms; and

(iii) this contract and any other transaction under it does not contravene service provider's constituent documents or any law or any of service provider's obligations or undertakings by which service provider or any of service provider's assets are bound or cause to be exceeded any limitation on service provider's or service provider's directors' powers; and

(iv) neither service provider nor any of its related bodies corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).

(b) The representations and warranties in clause A3.70(a) are to be taken to be made on each day on which:

(i) this contract is in effect; or

(ii) any amount payable by service provider to UserCo under this contract is or may be outstanding.

**Liability and indemnity**

**A3.71 Liability for direct damage**

Subject to the terms of this contract, a party who:

(a) is negligent; or

(b) commits a default under this contract,

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

**A3.72 Fraud**

A party who is fraudulent in respect of its obligations to the other party under this contract, is liable to the other party for, and is to indemnify the other party against, any damage caused by, consequent upon or arising out of the fraud. In this case, the exclusion of indirect damage in clause A3.73(a) does not apply.

**A3.73 Exclusion of indirect damage**

(a) Subject to clause A3.73(b):

(i) UserCo is not in any circumstances to be liable to service provider for any indirect damage suffered by service provider, however arising; and

(ii) service provider is not in any circumstances to be liable to UserCo for any indirect damage suffered by UserCo, however arising.

(b) Where this contract states that “[t]he exclusion of indirect damage in clause A3.73(a) does not apply”, or words to a similar effect, in relation to a matter, then:

(i) the exclusion of indirect damage in clause A3.73(a) does not apply in relation to that matter; and

(ii) the parties’ liability in relation to the matter is to be determined by law, and to avoid doubt the definition of indirect damage in this contract is to be disregarded for the purposes of that determination.

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44 If the party is service provider, and if there is to be an indemnitee, replace “the other party” with “either UserCo or indemnitee”.

45 If the party is service provider, and if there is to be an indemnitee, replace “the other party” with “both UserCo and indemnitee”.

46 If there is to be an indemnitee, replace “UserCo” with “either or both of UserCo or indemnitee”.

47 If there is to be an indemnitee, replace “UserCo” with “either or both of UserCo or indemnitee.”

48 If there is to be an indemnitee, replace “UserCo” with “either or both of UserCo or indemnitee.”
A3.74 Limitation of liability

The maximum liability of:

(a) service provider to UserCo\(^{49}\) under and in connection with this contract is limited to an amount of $\[x\]. or

(b) UserCo\(^{51}\) to service provider under and in connection with this contract is limited to an amount of $\[x\].

A3.75 Procedure for party seeking to rely on indemnity

If any claim, demand, action or proceeding (collectively “claim”) is made or instituted against a party\(^{53}\) in respect of which that party\(^{54}\) (“indemnified party”) may under this contract seek to claim indemnity under this contract against the other party\(^{55}\) (“indemnifying party”), the following procedure applies:

(a) indemnified party must give notice of the claim to the indemnifying party as soon as reasonably practicable; and

(b) indemnified party must not admit, compromise, settle or pay any claim or take any other steps which may in any way prejudice the defence or challenge of the claim without the prior written consent of the indemnifying party (which must not be unreasonably withheld) except as may be reasonably required in order to defend any judgment against indemnified party (to avoid doubt, Part 1E of the Civil Liability Act 2002 applies in respect of any ‘apology’ (as defined in section 5AF of that Act) given by the indemnified party); and

(c) indemnified party must permit the indemnifying party at the indemnifying party’s expense to take any reasonable action in the name of indemnified party to defend or otherwise settle the claim as indemnifying party may reasonably require; and

(d) indemnified party must ensure that indemnifying party and its representatives are given reasonable access to any of the documents, records, staff, premises and advisers of the indemnified party as may be reasonably required by indemnifying party in relation to any action taken or proposed to be taken by indemnifying party under clause A3.75(c).

A3.76 Mitigation of losses

A party\(^{56}\) must take such action as is reasonably required to mitigate any loss to it for which indemnity may be claimed under this contract or otherwise.

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\(^{49}\) If there is to be an indemnifier, replace “UserCo” with “both UserCo and indemnifier collectively”.

\(^{50}\) Insert the maximum amount of service provider’s liability to UserCo under and in connection with this contract, and insert what this cap applies to (e.g. whether this is per event, in a time period, over the life of the contract, etc). To be inserted in the access arrangement and approved by the Authority under Chapter 4. To the extent that the Authority so approves, the access arrangement may leave this to be inserted in the access contract by agreement between the parties or arbitrated award.

\(^{51}\) If there is to be an indemnifier, replace “UserCo” with “both UserCo and indemnifier collectively”.

\(^{52}\) Insert the maximum amount of UserCo’s liability to service provider under and in connection with this contract, and insert what this cap applies to (e.g. whether this is per event, in a time period, over the life of the contract, etc). To be inserted in the access arrangement and approved by the Authority under Chapter 4. To the extent that the Authority so approves, the access arrangement may leave this to be inserted in the access contract by agreement between the parties or arbitrated award.

\(^{53}\) If the party is UserCo, and if there is to be an indemnifier, replace “the party” with “either or both of UserCo or indemnifier”.

\(^{54}\) If the party is UserCo and if there is to be an indemnifier, replace “that party” with “either or both of UserCo or indemnifier”.

\(^{55}\) If the other party is UserCo and if there is to be an indemnifier, then replace “the other party” with “either or both of UserCo or indemnifier”.

\(^{56}\) If there is to be an indemnifier, replace “a party” with “a party and indemnifier”.

A3.77 **Obligation to pay and right to indemnities survives termination**

(a) A party’s obligation to pay an amount to another party under this contract is a continuing obligation, separate and independent from the other obligations of the party and survives termination of this contract.

(b) Each indemnity in this contract is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this contract. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this contract.

**Insurances**

A3.78 **UserCo’s insurances**

(a) Subject to clause A3.78(b), UserCo must obtain and maintain insurance covering those matters, and for the amounts, referred to in Item 1 of Schedule 8.

(b) To the extent that service provider consents (such consent not to be unreasonably withheld), UserCo may self-insure for some or all of the matters and amounts referred to in Item 1 of Schedule 8.

(c) UserCo must, before the commencement date and at such other times as service provider shall reasonably request in writing (such request not to be made more than once in respect of a 12 month period unless extraordinary circumstances apply), provide service provider with certificates of currency for the insurances required under clause A3.78(a) or reasonable details of UserCo’s arrangements under clause A3.78(b), as the case may be.

A3.79 **Service provider’s insurances**

(a) Subject to clause A3.79(b), service provider must obtain and maintain insurance covering those matters and for the amounts referred to in Item 2 of Schedule 8.

(b) To the extent that UserCo consents (such consent not to be unreasonably withheld), service provider may self-insure for some or all of the matters and amounts referred to in Item 2 of Schedule 8.

(c) Service provider must, before the commencement date and at such other times as UserCo reasonably requests in writing (such request not to be made more than once in respect of a 12 month period unless extraordinary circumstances apply), provide UserCo with certificates of currency for the insurances required under clause A3.79(a) or reasonable details of service providers arrangements under clause A3.79(b), as the case may be.

**Force majeure**

A3.80 If a person ("affected person") is unable wholly or in part to perform any obligation ("affected obligation") under this contract (other than an obligation to pay money) because of the occurrence of a force majeure event, then, subject to these clauses A3.80 to A3.84, the affected person is released from liability for failing to perform the affected obligation to the extent that and for so long as the affected person’s ability to perform the affected obligation is affected by the force majeure event.

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57 If there is to be an indemnifier, replace “a party” with “a party and indemnifier”.

58 If the party is UserCo and if there is to be an indemnifier, replace “the party” with “either or both of UserCo or indemnifier”.

59 If there is to be an indemnifier, replace “the parties” with “both the parties and indemnifier”.

60 If there is to be an indemnifier, replace “party” with “either or both of party or indemnifier”.

61 This clause assumes that service provider’s self-insurance choices are dealt with on a user-by-user basis. A service provider may propose to the Authority an alternative approach for inclusion in the access arrangement, for example one in which the matters on which the service provider may self insure are prescribed in the access arrangement, and the Authority may approve such an alternative approach.
A3.81 Without limiting clause A3.80, service provider’s obligation in respect of a connection point to provide the services is suspended during any period that the provision of the services in respect of that connection point is curtailed under clause A3.27, to the extent of the curtailment.

A3.82 Subject to clauses A3.83 and A3.84, if a force majeure event occurs and the affected person is unable wholly or in part to perform any obligation under this contract, then the affected person must:

(a) notify the other party if the force majeure event continues for a period of two days or longer; and

(b) use reasonable endeavours (including incurring any reasonable expenditure of funds and rescheduling personnel and resources) to:

(i) mitigate the consequences; and

(ii) minimise any resulting delay in the performance of the affected obligation.

A3.83 If an affected person fails to comply with clause A3.82(b)(ii), then the only consequence of that failure is that the period of suspension of the affected obligation is reduced by the period of any delay in the performance of the affected obligation attributable to that failure.

A3.84 The settlement of a labour dispute which constitutes a force majeure event is a matter which is within the absolute discretion of the affected person.

Default

A3.85 Default

A party is in “default” if:

(a) that party defaults in the due and punctual payment, at the time and in the manner required for payment by this contract, of any amount payable under this contract; or

(b) that party defaults in the due and punctual performance or observance of any of its obligations contained or implied by operation of law in this contract; or

(c) an insolvency event occurs in respect of that party; or

(d) that party materially breaches any representation or warranty given to the other party under this contract.

A3.86 Default by UserCo

In the event of UserCo’s default, then service provider may:

(a) notify UserCo of UserCo’s default and require UserCo to remedy UserCo’s default; or

(b) if UserCo’s default is a default in the payment of any amount and has not been remedied by the end of the third business day after the notice was given, disconnect, or curtail the provision of services in respect of, all or any of UserCo’s connection points from the network whilst UserCo’s default is continuing; or

(c) if UserCo’s default is any other type of default and at the end of the fifth business day after the notice was given:

(i) UserCo’s default has not been remedied; or

(ii) UserCo has not to the reasonable satisfaction of service provider begun remedying UserCo’s default or has begun remedying but is not, in the reasonable opinion of the service provider, diligently proceeding to remedy UserCo’s default,

disconnect, or curtail the provision of services in respect of, all or any of UserCo’s connection points from the network whilst UserCo’s default is continuing; and

(d) if UserCo’s default has not been remedied at the end of the 20th business day after the notice was given, terminate this contract.

A3.87 UserCo’s default under clause A3.86 does not prejudice the rights or remedies accrued to service provider at the date of UserCo’s default.
A3.88 Default by service provider

In the event of service provider’s default, UserCo may:

(a) notify service provider of service provider’s default and require service provider to remedy the default; and

(b) if service provider’s default has not been remedied at the end of the 20th business day after the notice was given:

(i) terminate this contract; or

(ii) withhold payment of any charges payable by UserCo from the date of default under this contract for so long as the default continues unremedied (and no interest is payable by UserCo on any amounts so withheld provided they are paid within 10 business days after the default is remedied).

A3.89 Service provider’s default under clause A3.88 does not prejudice the rights or remedies accrued to UserCo at the date of service provider’s default.

Termination

A3.90 Termination

(a) Subject to clause A3.90(b), this contract terminates on the termination date.

(b) This contract may be terminated before the termination date by:

(i) written agreement between service provider and UserCo; or

(ii) notice by either party at any time at which this contract does not include at least one connection point; or

(iii) notice by either party where there is a default by the other party under this contract, subject to clauses A3.86 or A3.88 as the case may be; or

(iv) notice by either party to an affected person if a force majeure event occurs and the affected person is unable wholly or in part to perform any obligation under this contract and the force majeure event continues for a period of greater than 180 days in aggregate in any 12 month period.

(c) On termination of this contract service provider may disconnect any one or more of UserCo’s connection points.

(d) On termination of this contract, unless alternative provisions are agreed:

(i) service provider may dismantle, decommission and remove service provider’s works and any metering equipment installed on UserCo’s premises; and

(ii) in accordance with service provider’s instructions, UserCo must dismantle and decommission or remove any of UserCo’s works at or connected to any connection point that is located on service provider’s premises and is not otherwise required under another contract.

A3.91 Termination of this contract under clause A3.90(b) does not prejudice the rights or remedies accrued to either party at the date of termination.

Access to premises

A3.92 Each party (“host party”) must allow, or use its reasonable endeavours to procure for, the other party (“guest party”) all reasonable rights of entry:

(a) for the purposes of constructing, installing, operating, maintaining and verifying the accuracy of any metering equipment, other equipment or thing; and

(b) to inspect for safety or other reasons the construction, installation, operation, maintenance and repair of any metering equipment, other equipment or thing; and

(c) for any other reasonable purpose connected with or arising out of this contract.
A3.93 Any entry under clause A3.92 is made in all respects at the expense and risk of the guest party, who must, subject to clauses A3.73 and A3.74, make good any damage occasioned by or resulting from the entry, other than to the extent the damage is caused by:

(a) fair wear and tear; or

(b) the negligence or default of host party or its workers or visitors;

(c) a force majeure event.

A3.94 A guest party must:

(a) before exercising a right of entry under clause A3.92, give reasonable notice to the host party specifying the purpose, proposed time and estimated duration of entry, except where it is not practicable to do so due to any accident, emergency, potential danger or other extraordinary circumstance; and

(b) while exercising a right of entry under clause A3.92:

(i) act as a reasonable and prudent person; and

(ii) without limiting clause A3.94(b)(i), take steps that are reasonable in the circumstances to ensure that during the entry its workers and visitors cause as little inconvenience to the host party as possible, except to the extent that it is not practicable to do so due to any accident, emergency, potential danger or other extraordinary circumstance, and at all times comply with:

A all reasonable health and safety standards, induction and supervision requirements and other requirements of the host party; and

B all reasonable and lawful directions by or on behalf of the host party.

A3.95 To the extent that any equipment or thing is located on the premises of a third person, the parties must use their reasonable endeavours to secure for either or both of the parties a reasonable right of entry to the third person’s premises.

Disputes

A3.96 If a dispute arises between the parties, either party may give to the other party written notice setting out the material particulars of the dispute and requiring duly authorised representatives of each party to meet at a place, agreed between the parties, within 10 business days of the date of receipt of such notice by the relevant party (“receipt date”), to attempt in good faith by way of discussions and using their best endeavours to resolve the dispute (“representatives meeting”) and the parties must do so.

A3.97 If the dispute is not resolved (as evidenced by the terms of a written settlement signed by each party’s duly authorised representative) within 20 business days after the receipt date then the senior executive officer of each party must meet at a place agreed between the parties within 30 business days after the receipt date and must attempt in good faith by way of discussions and using their best endeavours to resolve the dispute within 35 business days after the receipt date (“CEO meeting”).

A3.98 A representatives meeting in clause A3.96 or CEO meeting in clause A3.97 may be conducted in person, by telephone, video-conference or similar method of real time communication.

A3.99 If, after complying with the process set out in clauses A3.96 and A3.97 a dispute is not resolved, then either party may commence an action to resolve the dispute through litigation and other court processes.

(Note: The parties may, if they agree, endeavour to resolve a dispute through mediation, conciliation, arbitration or other alternative resolution methods rather than commencing an action to resolve the dispute through litigation.)

A3.100 A party must continue to perform its obligations under this contract despite the existence of a dispute, unless otherwise agreed.

Set off

A3.101 A party (“first party”) may set off any amount due for payment by it to the other party under this contract against any amount which is due for payment by the other party to the first party under this contract.
A3.102 Except as permitted in clause A3.101, no set off is permitted by either party in connection with this contract, whether under this contract or otherwise.

**Transfer by user**

A3.103 Subject to clause A3.104, UserCo may make a bare transfer of its access rights without service provider's prior consent.

A3.104 If UserCo makes a bare transfer, UserCo must notify service provider of:

(a) the identity of the transferee; and

(b) the nature of the transferred access rights,

before the transferee may commence using the transferred access rights.

A3.105 For a transfer other than a bare transfer, UserCo may transfer its access rights (subject to clause A3.106) and subject to the service provider’s prior written consent and such conditions as the service provider may impose.

A3.106 For a transfer other than a bare transfer, service provider may:

(a) withhold its consent in clause A3.105 only on reasonable commercial or technical grounds; and

(b) impose conditions in respect of the transfer, but only to the extent that they are reasonable on commercial and technical grounds.

**Corporate restructuring of service provider**

A3.107 If service provider is restructured:

(a) in accordance with government policy by law; or

(b) through other means, including the:

(i) use of subsidiary or associated companies; or

(ii) transfer of assets, rights and liabilities,

then the rights and obligations of service provider under this contract are assigned to the appropriate legal entity pursuant to the restructure.

A3.108 A restructure, transfer or assignment under clause A3.107 does not require UserCo’s approval or consent.

**Confidentiality**

A3.109 Confidential information

This contract and information exchanged between the parties under this contract or during the negotiations preceding this contract is confidential to them if:

(a) the information disclosed contains a notification by the disclosing party that the information is confidential; or

(b) the circumstances in which the information was disclosed or the nature of the information disclosed may reasonably be considered as being confidential; or

(c) the information constitutes trade secrets; or

(d) the information has a commercial value to a party which would be destroyed or diminished by the publication of the information; or

(e) the information relates to the business, professional, commercial or financial affairs of a party and the value to the party would be destroyed or diminished by the publication of the information.

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62 This clause to be omitted from standard access contract unless service provider is a wholly state-owned corporation.
A3.110 Clause A3.109 does not apply to information which, without breach of this contract or other breach of confidence:

(a) is or becomes generally and publicly available other than by a breach of clause A3.111; or

(b) is lawfully obtained by a party from a person other than a party or a related body corporate of a party where such person is entitled to disclose the confidential information; or

(c) is, at the date of this contract, lawfully in the possession of the recipient of the confidential information through sources other than the party which supplied the information.

A3.111 Prohibited disclosure
Subject to clause A3.112, an information recipient must not disclose or allow to be disclosed any confidential information to a third party recipient.

A3.112 Permitted disclosure

(a) An information recipient may disclose or allow to be disclosed any confidential information to a third party recipient in the following circumstances:

(i) with written consent of the information provider; or

(ii) to employees, a related body corporate or legal advisers, auditors or other consultants of the party requiring information for the purposes of this contract or for the purposes of providing professional advice in relation to this contract; or

(iii) to a bona fide proposed assignee of a party to this contract or registered shareholder of 20 percent or more of the voting shares in a party; or

(iv) if required by law or by an authority which has jurisdiction over a party or any of its related bodies corporate or by the rules of a stock exchange which has jurisdiction over a party or any of its related bodies corporate; or

(v) if required for the purposes of prosecuting or defending a dispute or if otherwise required in connection with legal proceedings related to this contract.

(b) Nothing in clause A3.112(a) limits service provider’s obligations to comply with Chapter 13 of the Code.

A3.113 Third party disclosure
An information recipient disclosing information under clause A3.112(a) must:

(a) use all reasonable endeavours to ensure that a third party recipient does not disclose the confidential information except in the circumstances permitted in clause A3.112(a); and

(b) notify the third party recipient that it has a duty of confidence to the information provider in respect of the confidential information; and

(c) except to the extent that the third party recipient is under an existing enforceable legal obligation to maintain the confidence of the confidential information as contemplated in clause A3.113(b), procure a written confidentiality undertaking from the third party recipient consistent with clauses A3.109 to A3.118.

A3.114 No unauthorised copying
A party must not copy any document containing the other party’s confidential information except as necessary to perform this contract.

A3.115 Secure storage
A party must ensure that proper and secure storage is provided for the confidential information while in possession of a party, provided that if a party is a corporation it may retain any such documents or parts of documents that form part of board papers (or other formal approval processes) of such corporation and which are required to be retained by that corporation in accordance with usual corporate governance requirements.

A3.116 Return of materials
A party must return all documents containing the other party’s confidential information, including all copies, to the other party on termination or expiration of this contract, or upon request by the other party, destroy all such documents.
A3.117 Remedies

Each party acknowledges and agrees that any breach or threatened breach of clauses A3.109 to A3.118 may cause a party immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently, each party has the right, in addition to any other remedies available at law or equity, to seek injunctive relief or compel specific performances of these clauses A3.109 to A3.118 in respect of any such breach or threatened breach.

A3.118 Survival of obligations

(a) Clauses A3.109 to A3.118 survive the termination of this contract and remain enforceable for a period of 7 years from the date of such termination.

(b) Any person who ceases to be a party to this contract continues to be bound by these clauses A3.109 to A3.118.

Ring fencing

A3.119 If service provider is an integrated provider, then a court or tribunal in considering whether:

(a) representations made by workers of the other business can be attributed to the network business, or vice versa; or

(b) a notice or other information given to a worker of the other business has been communicated, or should be deemed to have been communicated, to the network business, or vice versa; or

(c) a contract entered into by the other business expresses or implies an intention to vary this contract, or vice versa,

must have regard to:

(d) the fact that service provider comprises a network business and an other business and the distribution of personnel and responsibilities between those businesses; and

(e) service provider’s obligations under Chapter 13 of the Code (and, if service provider is Western Power Corporation, any regulations made under section 31A of the Electricity Corporation Act 1994) and anything done or not done by the service provider in connection with those obligations.

Notices

A3.120 Requirements for notices

Except as provided in clause A3.121, a communication must be:

(a) in writing (which includes any electronic form capable of being reduced to paper writing by being printed); and

(b) delivered or sent to the address of the addressee as specified in Schedule 9 by one or more of the following means:

(i) by hand delivery; or

(ii) by ordinary letter post (airmail if posted to or from a place outside Australia); or

(iii) by way of a courier service for hand delivery; or

(iv) by facsimile to the facsimile number of the addressee, or

(v) by email, as specified in the Electronic Communications Protocol in Schedule 10.

A3.121 Operational and urgent notices

Where this contract expressly provides, and where the parties agree in writing:

(a) notices of a day to day operational nature; or

(b) notices given in an operational emergency,

may be given orally and confirmed in writing within 5 business days.
A3.122 Notice takes effect

Subject to clause A3.123, a communication takes effect from the later of:
(a) the time it is received; and
(b) any later time specified in the communication.

A3.123 Deemed receipt

For the purposes of this contract:
(a) a communication delivered by hand to the address of a party (including where a reputable courier service is used for that purpose) is deemed to be received if it is handed (with or without acknowledgment of delivery) to any person at the address who, in the reasonable judgment of the person making the delivery (upon making appropriate enquiries):
   (i) appears to be; and
   (ii) represents himself or herself as,
        a representative of the party to whom the communication is addressed.
(b) a communication which is posted is deemed to be received by the party to whom the communication is addressed:
   (i) where the communication is sent from outside the country of the address to which it is sent – on the 10th business day after the day of posting; and
   (ii) otherwise – on the third business day after the day of posting.
(c) a communication sent by facsimile transmission which is transmitted:
   (i) prior to 3 p.m. on a business day is deemed to have been received by the party on that business day at the recipient's location; and
   (ii) after 3 p.m. on a business day, or on a day which is not a business day, is deemed to have been received by the party on the first business day at the recipient's location following the date of transmission,
        provided that the sender of the communication is able to produce a transmission log generated by the sender's facsimile machine (or other facsimile transmission device), showing successful uninterrupted facsimile transmission of all pages of the relevant communication to the facsimile number of the addressee.
(d) a communication sent electronically is deemed to be received by the party in accordance with Schedule 10.

A3.124 Change of address

A party may at any time, by notice given to the other party to this contract, designate a different address or facsimile number for the purpose of these clauses A3.120 to A3.124.

Miscellaneous

A3.125 Compliance

Each party to this contract must comply with all applicable laws.

A3.126 Variation

(a) Subject clause A3.126(b), a purported agreement between service provider and UserCo to revoke, substitute or amend any provision of this contract has no effect unless it is in writing.

(b) Clause A3.126(a) does not prevent UserCo and service provider from agreeing by non-written means under clause A3.121 to revoke, substitute or amend any provision of this contract in an accident, emergency, potential danger or other unavoidable cause or extraordinary circumstance (each in this clause an "emergency"), provided that the non-written revocation, substitution or amendment applies only while the effects of the emergency subsist.
A3.127 **No third party benefit**

This contract does not confer any right or benefit on a person other than UserCo and service provider, despite the person being named or identified, or belonging to a class of persons named or identified, in this contract.

A3.128 **Stamp duty**

UserCo is liable for and must pay all stamp duties that are assessed on this contract.

A3.129 **Costs**

Each party must pay its own costs, charges, expenses, disbursements or fees in relation to:

(a) the negotiation, preparation, execution, performance, amendment or registration of, or any notice given or made; and

(b) the performance of any action by that party in compliance with any liability arising, under this contract, or any agreement or document executed or effected under this contract, unless this contract provides otherwise.

A3.130 **Waiver**

A provision of this contract may only be waived by a party giving written notice signed by a duly authorised representative to the other party.

A3.131 **Entire Agreement**

This contract constitutes the entire agreement between the parties as to its subject matter and, to the extent permitted by law, supersedes all previous agreements, arrangements, representations or understandings.

A3.132 **Severance**

If the whole or any part of this contract is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this contract has full force and effect and the validity or enforceability of the provision in any other jurisdiction is not affected. This clause A3.132 has no effect if the severance alters the basic nature of this contract or is contrary to public policy.

A3.133 **Counterpart execution**

(a) This contract may be executed in counterpart.

(b) Upon each party having executed and forwarded to the other party a fully signed counterpart of this contract, it is deemed to be properly executed by all parties.

A3.134 **Further assurance**

Each party agrees, at its own expense, on the request of another party, to do everything reasonably necessary to give effect to this contract and the transactions contemplated by it, including, but not limited to, the execution of documents.

A3.135 **Authorised officers**

(a) Notice, approval, consent or other communication given under this contract may be given by an authorised officer of a party specified in Schedule 9 to an authorised officer of another party specified in Schedule 9.

(b) A party may at any time, by notice given to the other party, add or replace an authorised officer for the purposes of clause A3.135(a).

A3.136 **Merger**

The warranties, undertakings and indemnities in this contract do not merge on termination of this contract.

A3.137 **Remedies**

The rights, powers and remedies provided in this contract are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this contract.

A3.138 **Governing law**

(a) This contract and the transactions contemplated by this contract are governed by the law in force in Western Australia.
(b) Without limiting clause A3.138(a), each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Western Australia and the Courts of appeal from them for the purpose of determining any dispute concerning this contract or the transactions contemplated by this contract.

[Execution clauses to be inserted.]

Schedule 1 to Appendix 3 - Access Contract Information

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<th>Commencement Date</th>
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Schedule 2 to Appendix 3 – Services

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<td>3</td>
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Schedule 3 to Appendix 3 – Details of Connection Points and Metering Points

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<th>Technical compliance contract (Tick if applicable)</th>
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Schedule 4 to Appendix 3 - Tariffs

[x]

Schedule 5 to Appendix 3 - Capital Contribution (Provision in Kind Contract or Payment Contract)

[x]

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63 To be inserted in the access contract by agreement between the parties or arbitrated award.
64 To be inserted in the access arrangement and approved by the Authority under Chapter 4. To the extent that the Authority so approves, the access arrangement may leave this to be inserted in the access contract by agreement between the parties or arbitrated award.
65 Provisions to be inserted as agreed between the parties or determined in an arbitrated award in accordance with the capital contributions policy in the service provider’s access arrangement.
Schedule 6 to Appendix 3 – Service provider’s works

[Details to be included in addition to other matters:
(a) description of service provider’s works including reference to specifications; and
(b) timetable for construction of service provider’s works].

Schedule 7 to Appendix 3 – UserCo's works

[Details to be included in addition to other matters:
(a) description of UserCo’s works to be carried out by UserCo; and
(b) terms of construction of UserCo’s works; and
(c) timetable for construction of UserCo’s works; and
(d) terms of transfer of UserCo’s works to service provider (if any); and
(e) testing and commissioning; and
(f) protocols for maintenance co-ordination.]

Schedule 8 to Appendix 3 – Insurances and Limitation of Liability

1. UserCo insurances
[To be completed. For example the required insurances may include:
(a) public liability – up to $x million; and
(b) workers’ compensation – up to $y million; and
(c) other insurances as appropriate.]

2. Service provider insurances
[To be completed. For example the required insurances may include:
(a) public liability – up to $x million; and
(b) workers’ compensation – up to $y million; and
(c) other insurances as appropriate.]

Schedule 9 to Appendix 3 – Notices

1

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<td>Facsimile number</td>
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66 Provisions to be inserted as agreed between the parties or determined in an arbitrated award in accordance with the service provider’s access arrangement.
67 Provisions to be inserted as agreed between the parties or determined in an arbitrated award in accordance with the service provider’s access arrangement.
68 Provisions to be inserted as agreed between the parties or determined in an arbitrated award in accordance with the service provider’s access arrangement.
69 Provisions to be inserted as agreed between the parties or determined in an arbitrated award in accordance with the service provider’s access arrangement.
Schedule 10 to Appendix 3 - Electronic Communications Protocol

1. Interpretation

In this schedule:

“addressee” means the person to whose email address an email is sent.

“automated response message” means an email (“reply email”) sent automatically upon receipt of an email (“original email”), where the reply email is sent from an addressee’s information system to the originator of the original email, acknowledging that the original email has been received by the addressee’s information system and containing:

(a) the name of the originator of the original email; and

(b) at least the time, date and subject title of the original email; and

{Note: The easiest means to record this information may be to include the whole of the original email, preferably excluding attachments, within the reply email.}

(c) the name of the addressee of the original email; and

(d) the date and time the original email was received by the addressee’s information system (which in the absence of evidence to the contrary is taken to be the creation date of the reply email).

“data” includes the whole or part of a computer program within the meaning of the Copyright Act 1968 of the Commonwealth.

“email” means a communication of information by means of guided or unguided electromagnetic energy, or both, by way of packet transfer between and within computer networks using the TCP/IP protocol.

“email address” means the address nominated in item 3 of Schedule 9, being an address which is a combination of a personal identifier and a machine/network identifier, which are together capable of being resolved by computer networks transmitting email using the TCP/IP protocol, so that email is transmitted to the person providing that email address.

“information” means information in the form of data, text, images or sound.

“information system” means a system for generating, sending, receiving, storing or otherwise processing emails.

“originator” means the person who sends an email to an addressee.

“place of business” means a place of business nominated under item 1 of Schedule 9 and in relation to a government, a government authority or a non-profit body, includes a place where any operations or activities are carried out by that government, authority or body.

“purported originator” means the person on the face of the email who appears to be, or purports to be the originator, including by purported compliance with clause 5.

2. Parties to establish email addresses

Service provider and UserCo must:

(a) from time to time, nominate a place of business and establish an email address to be used for the communications under this contract; and
(b) use reasonable endeavours to ensure that the information system, on which emails addressed to the email address are received, is operational:
   (i) a 24 hours-a-day; and
   (ii) 7 days-a-week,
   to receive emails and send automated response messages as required by this contract; and
(c) as soon as practicable notify the other party of its place of business and email address and of any change in each of them; and
(d) establish a mechanism to generate an automated response message for each email (other than an automated response message) received at the email address.

3. Requirement for automated response message
   (a) An email is neither given nor received under this contract until the originator receives the addressee’s automated response message for the email.
   (b) It is the originator’s responsibility for each attempted email to verify that it receives an automated response message, and if it does not receive an automated response message arrange either for:
      (i) retransmission of the email; or
      (ii) communication of the information by an alternative medium (but this clause 2(b) does not limit the addressee’s responsibilities under clause 2(d) ).
   (c) If the originator receives an automated response message for an email, then (unless the addressee proves otherwise) for the purposes of this contract the:
      (i) originator has sent; and
      (ii) addressee has received,
      the email at the date and time shown in the automated response message.
   (d) It is the addressee’s responsibility for each email for which the addressee’s information system generates an automated response message to:
      (i) read the email and the information it contains, and if applicable communicate it to the appropriate worker within the addressee’s organisation; and
      (ii) if necessary, notify the originator of any difficulty in opening, reading, decompressing or otherwise accessing (in a form reasonably readable) any information contained in the email; and
      (iii) if it appears to the addressee that the addressee was not the intended or correct recipient of the information in the email, communicate this fact to the originator.

4. Location
   Unless otherwise agreed between the originator and the addressee of an email, the email and the information it contains is deemed to have been sent from the originator’s place of business and received at the addressee’s place of business.

5. Attribution of emails and reliance
   Except to the extent that:
   (a) the purported originator of an email and the addressee of the email agree otherwise; or
   (b) the purported originator of an email proves otherwise,
   the addressee of an email in respect of which an automated response notice has been given may assume for all purposes under this contract that the:
   (c) purported originator of the email is the originator of the email; and
   (d) email was sent by, or with the knowledge and express authority of, the purported originator.

6. Signatures
   For the purposes of this contract, an email must identify the originator.
7. Information format

An originator must use reasonable endeavours, in selecting the data format for information contained in an email, to adopt a consistent format over time to facilitate any automated processing of the information by the addressee.

Schedule 11 to Appendix 3 - Guarantee

DEED dated [to be completed]

PARTIES

1. [### ACN ### a company registered in ### of ###] (“Guarantor”); and

2. [### ACN ### a company registered in ### of ###] (“Service Provider”).

BACKGROUND

A. The service provider may in its discretion provide services to [###] (“UserCo”) under an access contract at the request of each of UserCo and the guarantor.

B. The guarantor wishes to execute this guarantee to secure payment of all amounts payable under the access contract to the service provider.

1. GUARANTEE

The guarantor unconditionally and irrevocably guarantees as a continuing security to the service provider payment by UserCo of all moneys and liabilities due and/or payable from or by UserCo to the service provider under or in connection with the contract dated [###] (“access contract”) created between UserCo and the service provider (“secured moneys”), including moneys and liabilities incurred or arising:

(a) (liability): at any present or future time, whether actually or contingently;

(b) (default): as a result of any breach of or default under the access contract; and/or

(c) (account): by way of principal, interest, cost, charge, expense, disbursement, fee, tax, stamp or other duty, indemnity, damages or monetary judicial order.

2. SECURED MONEYS

2.1 Demand Payment

The guarantor must pay to the service provider, upon demand by the service provider at any present or future time, the amount of the secured moneys due from and payable by UserCo to the service provider at that time under, and in the manner and currency specified in, the access contract.

2.2 Costs

The guarantor must at any present or future time indemnify the service provider upon demand for any cost, charge, expense, disbursement, fee, tax or stamp or other duty incurred by the service provider at any time in connection with the access contract, this guarantee or the secured moneys relating to:

(a) (security agreements): preparation, negotiation, execution or performance, or any termination, amendment, consent, claim, demand or waiver;

(b) (security rights): any exercise or enforcement of any right or power conferred on the service provider;
(c) **(credit increases):** any extension of further, additional or increased credit or financial accommodation by the *service provider*, or agreement by the *service provider* to increase the amount secured; and/or

(d) **(payments):** the receipt or payment of any moneys, including moneys paid by the *service provider* by way of reimbursement to any third party.

### 2.3 Set-Off Exclusion

The *guarantor* must make any payment required under this *guarantee* without set-off or other deduction, except for the deduction or withholding of any tax compelled by law.

### 3. INDEMNITY

The *guarantor* must as a separate and additional liability of the *guarantor* as a principal debtor, and not as a surety, indemnify the *service provider* against, and pay to the *service provider* upon demand by the *service provider* an amount equal to, all **secured moneys** that are or may become invalid, unenforceable, illegal or irrecoverable for any reason or under any circumstances as a liability to the *service provider* by the *guarantor* as a surety, despite any other provision of this *guarantee*.

### 4. GUARANTEE PROTECTION

This *guarantee*, and the liability of the *guarantor* under this *guarantee*, is not affected at any time by:

(a) **(waiver):** the granting to any person by the *service provider* of any waiver;

(b) **(agreements):** any agreement, deed or document created with, or action or omission performed, representation made or non-disclosure of any fact or information by, the *service provider* or any person;

(c) **(secured moneys):** any increase or variation in the amount of the **secured moneys** occurring for any reason;

(d) **(document amendment):** any amendment to or transfer, release or termination of any agreement, deed or document or any right, power or liability of any person under any agreement, whether for or without consideration;

(e) **(enforcement decisions):** any exercise or enforcement, or any failure or invalidity in, the exercise or enforcement by the *service provider* of any right or power conferred on the *service provider* under any agreement, deed or document by law;

(f) **(invalidity):** any actual or potential invalidity, unenforceability, illegality or irrecoverability of any agreement, deed or document or consent or any payment made or due to the *service provider* under any agreement for any reason;

(g) **(incapacity):** any incapacity or absence of power or authorisation of, or other fact relating to, any person in connection with the execution of any agreement, deed or document or otherwise, including any change in the constitution or membership of any person; or

(h) **(residual):** any other breach, default, waiver or fact which, except for this provision, might legally operate:

(i) to release or discharge or have any prejudicial effect on; or

(ii) in any manner to release or discharge the *guarantor* from performance of, or limit or provide a defence to any legal action to enforce,

this *guarantor*, or any liability of the *guarantor* under or in connection with this *guarantee*.

### 5. TERMINATION

The *guarantor* is not entitled to terminate or limit this *guarantee*, or any liability of the *guarantor* under this *guarantee*, until the **secured moneys** have been paid in full.
6. **GOVERNING LAW**

This *guarantee* is governed by and construed under the law of the State of Western Australia.

7. **GENERAL**

7.1 **Continuing Security**

This *guarantee* is a continuing security and is not wholly or partially discharged by the payment at any time of any *secured moneys*, settlement of account or other fact and applies to the balance of the *secured moneys* at any time until a final termination of this *guarantee* by the *service provider*.

7.2 **Further Assurance**

The *guarantor* must upon request by the *service provider* at any time execute any document and perform any action necessary to give full effect to this *guarantee*, whether prior or subsequent to performance of this *guarantee*.

7.3 **Waivers**

Any failure or delay by the *service provider* to exercise any right or power under this *guarantee* does not operate as a waiver and the single or partial exercise of any right or power by the *service provider* does not preclude any other or further exercise of that or any other right or power by the *service provider*.

**EXECUTED as a deed.**

*[Execution clauses for guarantee to be inserted]*
Appendix 4 – Model Capital Contributions Policy

{Outline: See clause 5.12}

This Appendix 4 leaves some matters to be completed when a capital contributions policy is incorporated into an access arrangement. These are shown as variables in square brackets, e.g. "[x]."

The variable can be a simple absolute number or may follow a more sophisticated structure designed by the service provider to best suit the characteristics of its covered network and business.

The variables proposed by a service provider are subject to approval by the Authority under Chapter 4, and (without limiting the Authority’s discretion or duties) must be consistent with the Code objective and section 5.12.

Footnotes following each matter in square brackets contain instructions to the Authority. The footnotes form part of this model capital contributions policy and, like these introductory notes, have legal effect.

Sub-appendix 4.1 - Introductory

Definitions and interpretation

A4.1 In this capital contributions policy, unless the contrary intention is apparent:


“Code objective” has the meaning given to it in section 2.1 of the Code.

“new service” means a covered service sought by a relevant applicant which necessitates a required augmentation or alternative option.

“non-capital contribution” has the meaning given to it in clause A4.16.

“payment contract” has the meaning given to it in clause A4.14(a).

“provision in kind” has the meaning given to it in clause A4.13.

“provision in kind contract” has the meaning given to it in clause A4.13(a).

“reasonable time” is to be determined in accordance with clause A4.9.

“relevant applicant” means an applicant seeking a new service.

“required augmentation” means an augmentation that the service provider needs to undertake in order to provide a new service to a relevant applicant.

A4.2 Unless the contrary intention is apparent, a term with a defined meaning in the Code has the same meaning in this capital contributions policy.

A4.3 Unless the contrary intention is apparent:

(a) a rule of interpretation in the Code; and

(b) the Interpretation Act 1984,

apply to the interpretation of this capital contributions policy.

Application of this capital contributions policy

A4.4 If it is necessary for a service provider to undertake an augmentation (“required augmentation”) or, due to the regulatory test, an alternative option in order to provide to an applicant (“relevant applicant”) a covered service (“new service”) sought in an access application, then this capital contributions policy applies.
Sub appendix 4.2 - Capital contributions

Capital contribution

A4.5 In this capital contributions policy and subject to clause A4.6, the capital contribution for a required augmentation is:

(a) the forecast new facilities investment in the required augmentation less the amount of the forecast new facilities investment which, if the new facilities investment test was applied to the required augmentation, would satisfy the test; plus

(b) a reasonable rate of return, determined under clause A4.9, on the amount determined under clause A4.5(a).

A4.6 A capital contribution must not exceed the amount that would be required by a prudent service provider acting efficiently, in accordance with good electricity industry practice, seeking to achieve the lowest sustainable cost of providing the new services.

A4.7 If it is necessary for a service provider to undertake a required augmentation to provide new services to more than one relevant applicant, the service provider must calculate the capital contribution for the required augmentation as set out in clause A4.5 and must, acting as a reasonable and prudent person, apportion the amount calculated under clause A4.5 between the relevant applicants in accordance with the Code objective to determine each relevant applicant’s capital contribution.

A4.8 If the application of this capital contributions policy in relation to a required augmentation produces a capital contribution amount that is greater than zero, the service provider is not required to undertake the required augmentation unless the relevant applicant agrees to provide the capital contribution to the service provider in accordance with this capital contributions policy.

Reasonable rate of return

A4.9 For the purposes of clause A4.5(b), a reasonable rate of return is to be determined by the service provider as a reasonable and prudent person in accordance with the Code objective over a reasonable time having regard to the risk associated with the required augmentation.

A4.10 For the purposes of clause A4.9, a reasonable time is to be determined having regard to:

(a) the anticipated commercial life of the required augmentation, up to a maximum of 15 years; and

(b) the purpose for which the relevant applicant requires the new services.

Manner of contribution

A4.11 A capital contribution may be made:

(a) by the relevant applicant by way of either:

(i) subject to clause A4.13, provision in kind; or

(ii) subject to clauses A4.12 and A4.14, a financial payment comprising either:

A periodic financial payments; or

B an up-front financial payment;

or

(b) by the State under the Regional Electricity Supply Policy or otherwise.

A4.12 The relevant applicant may elect under clause A4.11(a)(ii)A to make the capital contribution by way of a periodic financial payment if:

(a) the capital contribution meets any materiality thresholds below which an periodic financial payment will not apply, for example in terms of one or more of the following in respect of a required augmentation:

(i) a minimum capital cost of $\$x^{70}$; or

\[70\] To be inserted in the access arrangement and approved by the Authority under Chapter 5. To the extent that the Authority so approves, the access arrangement may leave this to be inserted in the access contract by agreement between the parties or arbitrated award.
ii) a minimum amount of $[x]\textsuperscript{71} per period for a periodic financial payment.

(b) if requested, the relevant applicant provides reasonable security to the service provider in the payment contract under clause A4.14(a) for the payment of the periodic financial payment over the period referred to in clause A4.10(a).

Provision of capital contribution in kind

A4.13 The service provider may agree to the relevant applicant providing or procuring the required augmentation, or part of the required augmentation, under clause A4.11(a)(i) itself ("provision in kind"), in which case:

(a) the access contract or another contract (either in this context a provision in kind contract) must deal with the parties’ rights and obligations in relation to the provision in kind; and

(b) the terms of the provision in kind contract are to be negotiated between the service provider and the relevant applicant, and failing agreement may be the subject of an access dispute; and

(c) unless the provision in kind contract provides otherwise, title to the required augmentation passes to the service provider on commissioning; and

(d) if any materiality threshold is met, the provision in kind contract must provide for the service provider to recoup from other users who subsequently benefit from the required augmentation, and rebate to the relevant applicant, an appropriate amount to reflect the benefit the other users receive from the provision in kind.

Provision of capital contribution by financial payment

A4.14 If the user elects to make a periodic financial payment under clause A4.11(a)(ii)A or an up-front payment under clause A4.11(a)(ii)B ("financial provision"), then:

(a) the terms of the access contract or another contract (either in this context a payment contract) must deal with the parties’ rights and obligations in relation to the financial provision including (in the case of the up-front payment) regarding security for the relevant applicant and must be negotiated between the service provider and the relevant applicant, and failing agreement may be the subject of an access dispute; and

(b) unless the payment contract provides otherwise, title to the required augmentation remains with the service provider despite the financial provision; and

(c) the payment contract must provide:

(i) in the case of a periodic payment — for the periodic payments to be adjusted when other users subsequently benefit from the required augmentation, to ensure that the relevant applicant pays no more than a fair share having regard to the benefit the other users receive from the financial provision; or

(ii) in the case of an up-front payment, if any materiality threshold is met — for the service provider to recoup from other users who subsequently benefit from the required augmentation, and rebate to the relevant applicant, an appropriate amount to reflect the benefit the other users receive from the financial provision.

Rebates and recoupment

A4.15 The capital contributions policy may specify materiality thresholds below which any recoupment and rebate mechanism under clause A4.13(d) or A4.14(c)(ii) will not apply, for example in terms of one or more of the following in respect of a required augmentation:

(a) a minimum capital cost of $[x]\textsuperscript{72}; or

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\textsuperscript{71} To be inserted in the access arrangement and approved by the Authority under Chapter 5. To the extent that the Authority so approves, the access arrangement may leave this to be inserted in the access contract by agreement between the parties or arbitrated award.

\textsuperscript{72} To be inserted in the access arrangement and approved by the Authority under Chapter 5. To the extent that the Authority so approves, the access arrangement may leave this to be inserted in the access contract by agreement between the parties or arbitrated award.
(b) a minimum amount of $\[x\]^{73}$ to be recouped from or rebated to a user; or
(c) a maximum period of $\[x\]^{74}$ months over which the mechanism may operate.

**Sub-appendix 4.3 – Non-capital contributions**

**Non-capital contribution**

A4.16 In this capital contributions policy and subject to clause A4.17, the “non-capital contribution” in respect of an alternative option is the alternative option costs less the amount of the alternative option costs which, if the test in section 6.41 was applied to the alternative option costs, would satisfy the test.

A4.17 A non-capital contribution must not exceed the amount that would be required by a prudent service provider acting efficiently, in accordance with good electricity industry practice, seeking to achieve the lowest sustainable cost of providing the new services.

A4.18 If the application of this capital contributions policy in relation to an alternative option produces a non-capital contribution amount that is greater than zero, the service provider is not required to undertake the alternative option unless the relevant applicant agrees to provide the non-capital contribution to the service provider in accordance with this capital contributions policy.

A4.19 If it is necessary for the service provider to undertake an alternative option to provide new services to more than one relevant applicant, the service provider must calculate the non-capital contribution for the alternative option as set out in clause A4.16 and must, acting as a reasonable and prudent person, apportion the amount calculated under clause A4.16 between the relevant applicants in accordance with the Code objective to determine each relevant applicant’s non-capital contribution.

**Manner of contribution**

A4.20 A non-capital contribution may be made by the relevant applicant by way of a financial payment comprising, as agreed between the service provider and relevant applicant, either:

(a) periodic financial payments; or

(b) an up-front financial payment.

A4.21 Where it is agreed that a relevant applicant will make a periodic financial payment or an up-front payment (“financial provision”), then the terms of the access contract or another contract (either in this context a payment contract) must deal with the parties’ rights and obligations in relation to the financial provision including regarding security for the relevant applicant and must be negotiated between the service provider and the relevant applicant, and failing agreement may be the subject of an access dispute.

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73 To be inserted in the access arrangement and approved by the Authority under Chapter 5. To the extent that the Authority so approves, the access arrangement may leave this to be inserted in the access contract by agreement between the parties or arbitrated award.

74 To be inserted in the access arrangement and approved by the Authority under Chapter 5. To the extent that the Authority so approves, the access arrangement may leave this to be inserted in the access contract by agreement between the parties or arbitrated award.
Appendix 5 – Procedural Rules for Arbitration

Application

A5.1 This Appendix 5 applies if:

(a) in accordance with the Code, a service provider or another person notifies the Authority that an access dispute exists; and

(b) notification of the dispute is not withdrawn in accordance with the Code.

Definitions

A5.2 In this Appendix 5 “Court” means the Supreme Court.

Informality and expedition

A5.3 Subject to the Code, proceedings must be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Appendix 5 and Chapter 10, and a proper hearing and determination of a dispute, permit.

A5.4 The arbitrator may from time to time make orders regulating the conduct of, and regulating parties’ conduct in relation to, proceedings which are directed towards achieving the objective in clause A5.3.

A5.5 The parties to an access dispute must at all times conduct themselves in a manner which is directed towards achieving the objective in clause A5.3.

A5.6 An order under clause A5.4 is not an award.

Arbitrator may request information

A5.7 The arbitrator may request the Authority to give to the arbitrator any information in the Authority’s possession that is relevant to the access dispute.

A5.8 The Authority is to give the arbitrator the information requested, whether or not it is confidential and whether or not it came into the Authority’s possession for the purposes of the arbitration.

A5.9 If the Authority gives the arbitrator information that is confidential, the Authority is to identify the nature and extent of the confidentiality and subject to clause A5.10, the arbitrator is to treat the information accordingly.

A5.10 To the extent necessary to comply with the rules of natural justice, the arbitrator may disclose to the parties any information provided by the Authority whether or not it is confidential, but the arbitrator may make an order under clause A5.25 or a determination under clause A5.39 in respect of such information.

Hearing to be in private

A5.11 Subject to Subchapter 10.3 and clause A5.12, proceedings are to be heard in private.

A5.12 If the parties agree, proceedings or part of the proceedings may be conducted in public.

A5.13 The arbitrator may give written directions as to the persons who may be present at proceedings that are conducted in private.

A5.14 In giving directions under clause A5.13, the arbitrator must have regard to the wishes of the parties and the need for commercial confidentiality.

Right to representation

A5.15 Subject to section 10.14, in proceedings, a party may appear in person or be represented by someone else.
Procedure

A5.16 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 access 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 access dispute; and
(c) may gather information about any matter relevant to the access dispute in any way the arbitrator thinks appropriate.

A5.17 To the extent necessary to comply with the rules of natural justice, the arbitrator may disclose to the parties any information gathered by the arbitrator under clause A5.16(c) whether or not it is confidential, but the arbitrator may make an order under clause A5.25 or a determination under clause A5.39 in respect of such information.

A5.18 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.

A5.19 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.

A5.20 The arbitrator may determine that all or part of proceedings are to be conducted by:

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

Particular powers of arbitrator

A5.21 The arbitrator may do any of the following things for the purpose of determining an access dispute:

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

Determinations

A5.22 If the arbitrator makes a determination or interim determination it must:

(a) make it in writing, signed by the arbitrator; and
(b) include reasons in the determination.

A5.23 If a determination of an arbitrator under this Appendix 5 contains:

(a) a clerical mistake; or
(b) an error arising from an accidental slip or omission; or
(c) a material mathematical miscalculation 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**

A5.24 A person must not do any act or thing in relation to the arbitration of an *access dispute* that would be a contempt of court if the arbitrator were a court of record.

**Disclosure of information**

A5.25 The arbitrator may (subject to the rules of natural justice) give an oral or written order 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.

A5.26 A person must not contravene an order under clause A5.25.

**Power to take evidence on oath or affirmation**

A5.27 The arbitrator may take evidence on oath or affirmation and for that purpose the arbitrator may administer an oath or affirmation.

A5.28 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.

A5.29 The powers contained in clauses A5.27 and A5.28 may only be exercised for the purposes of arbitrating an *access dispute*.

**Failing to attend as a witness**

A5.30 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.**

A5.31 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.

A5.32 The determination as to what is a reasonable excuse for the purposes A5.31 is solely in the discretion of the arbitrator.

A5.33 It is a reasonable excuse for the purposes of clause A5.31 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.

A5.34 Clause A5.33 does not limit what is a reasonable excuse for the purposes of clause A5.31.

**Intimidation etc.**

A5.35 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

A5.36 A party to proceedings 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.

A5.37 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.

A5.38 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.

A5.39 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 (subject to the rules of natural justice) 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.

A5.40 If any person (other than the arbitrator), in breach of a determination under clause A5.39, discloses information (other than information which has lawfully entered the public domain or which must be disclosed under a written law) that the arbitrator has determined under clause A5.39 is confidential commercial information, then a person affected by the breach may sue for damages.

Costs

A5.41 The costs of proceedings are to be dealt with in accordance with section 10.38.

Appeal to Court

A5.42 A party may appeal to the Supreme Court, on a question of law, from a determination of an arbitrator under this Appendix 5.

A5.43 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 Supreme Court (whether before or after the end of that day) allows; and

(b) in accordance with the rules of the Supreme Court.

A5.44 The Supreme Court may make an order staying or otherwise affecting the operation or implementation of the determination of the arbitrator that the Supreme Court thinks appropriate to secure the effectiveness of the hearing and determination of the appeal.

Copies of decisions to be given to the Authority

A5.45 Where the arbitrator is required to give a copy of a draft decision or final decision to the parties to an access dispute, the arbitrator is to also give a copy of the decision to the Authority.
Effect of appointment of new arbitrator on evidence previously given and awards and determinations previously made

A5.46 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 an access 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 unless resubmitted or retendered; 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 unless resubmitted or retendered;
(b) if no order is made under clause A5.46(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 A5.46(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 5 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.

A5.47 In clause A5.46, “earlier proceedings” means the proceedings or parts of the proceedings which the new arbitrator does not order to be re-heard under clause A5.46(a)(ii).

Decision of the Arbitrator

A5.48 Unless the arbitrator has terminated the proceedings under section 10.18, the arbitrator must require the parties to make submissions to the arbitrator regarding the access dispute by a specified date.

A5.49 In making a decision under section 10.17 of the Code, the arbitrator:

(a) must consider submissions received from the parties before the date specified by the arbitrator under clause A5.48 and may consider submissions received after that date;
(b) may provide a draft decision to the parties and if it does so must request submissions from the parties by a specified date;
(c) if applicable, must consider submissions received from the parties before the date specified by the arbitrator under clause A5.49(b) and may consider submissions received after that date; and
(d) must provide a final decision to the parties.

A5.50 The arbitrator may by whatever means it considers appropriate seek written submissions from persons who are not parties to the dispute and subject to the rules of natural justice may have regard to those submissions in making its decision under section 10.17 of the Code.

A5.51 The arbitrator must provide a final decision under section 10.17 of the Code within three months of requiring parties to make submissions under clause A5.48. The arbitrator must also ensure that there is a period of at least 10 business days:

(a) between requiring parties to make submissions under clause A5.48 and the last day for such submissions specified by the arbitrator; and
(b) between providing a draft decision to the parties under clause A5.49(b) and the last day for submissions on the draft decision specified by the arbitrator.

In all other respects the timing for the taking of each of the steps set out in clause A5.49 is a matter for the arbitrator to determine.
A5.52 The arbitrator may increase the period of three months specified in clause A5.51 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.

A5.53 A service provider must comply with a decision of the arbitrator made under this Appendix 5 from the date specified by the arbitrator.
Appendix 6 – Matters to be Addressed by Technical Rules

{Outline: See clause 12.32}

A6.1 *Technical rules* must address at least the following matters:

(a) performance standards in respect of *service standard* parameters; and

(b) the identity of the system operator for the *network*; and

(c) the technical requirements that apply to the design and operation of *facilities and equipment connected* to the *network*; and

(d) the standards which apply to the operation of the *network*, including in emergency situations; and

(e) obligations to test *facilities and equipment* in order to demonstrate compliance with the technical rules; and

(f) procedures that apply if the *service provider* believes that any part of *facilities and equipment* does not comply with the technical rules; and

(g) procedures that apply to the inspection of *facilities and equipment connected* to the *network*; and

(h) the standards which apply to control and protection settings for *facilities and equipment connected* to the *network*; and

(i) procedures that apply to the commissioning and testing of new *facilities and equipment connected* to the *network*; and

(j) procedures that apply to the disconnection of *facilities and equipment* from the *network*; and

(k) the information that a *user* must provide to the *service provider* in relation to the operation of *facilities and equipment connected* to the *network*; and

(l) the *generation* and *load* forecast information that *users*, *consumers* and *generators* must provide to the *service provider*; and

(m) *network* planning criteria, which must address at least the following matters:

(i) contingency criteria; and

(ii) steady-state criteria including:

A frequency limits; and

B voltage limits; and

C thermal rating criteria; and

D fault rating criteria; and

E maximum protection clearing times; and

F auto reclosing policy; and

G insulation coordination standard;

and

(iii) stability criteria including:

A rotor angle stability criteria; and

B frequency stability criteria; and

C voltage stability criteria;

and
(iv) quality of supply criteria including:
   A  voltage fluctuation criteria; and
   B  harmonic voltage criteria; and
   C  harmonic current criteria; and
   D  voltage unbalance criteria; and
   E  electro-magnetic interference criteria;

and

(v) construction standards criteria; and

(n) curtailment of services including matters such as:
   (i) planned and unplanned maintenance, testing or repair of the network; and
   (ii) breakdown of or damage to the network; and
   (iii) events of force majeure; and
   (iv) the service provider’s obligations to comply with a written law or a statutory instrument.
Appendix 7 – General process for public consultation

(Outline: Appendix 7 is cited in certain places throughout the Code.)

Application of this Appendix 7

A7.1 If this Code states that a matter for consultation
(a) must be the subject of public consultation under this Appendix 7 or
(b) may be the subject of public consultation under this Appendix 7, and the decision maker chooses to undertake public consultation under this Appendix 7, then the decision maker must comply with this Appendix 7.

A7.2 If this Code requires:
(a) public consultation in relation to a matter for consultation to be completed; or
(b) a decision or determination relating to a matter for consultation to be made, within a specified period of time, the decision maker must complete the public consultation or make the decision or determination, as applicable, in accordance with this Appendix 7 and within the specified time.

Where the decision maker is not the Authority

A7.3 Where the decision maker is required under this Appendix 7 to publish a thing and:
(a) the decision maker is the Authority - the Authority must publish the thing; and
(b) is someone other than the Authority -
   (i) the decision maker must provide a copy of the thing to the Authority; and
   (ii) once a copy of the thing is provided to the Authority, the Authority must forthwith publish the thing; and
   (iii) for the purposes of this Appendix 7, the thing is published from the time that the Authority publishes it.

Issues paper

A7.4 The decision maker may produce and publish an issues paper examining the issues relating to the matter for consultation.

Submissions from the service provider

A7.5 Where the decision maker is someone other than the service provider and is required to invite submissions from the public in relation to a matter for consultation in relation to a covered network it must also invite submissions from the service provider.

First round public submissions

A7.6 The decision maker must publish an invitation for submissions in relation to a matter for consultation.

A7.7 A decision maker must specify in its invitation for submissions under clause A7.6 the length of time it will allow for the making of submissions on a matter for consultation in accordance with clause A7.9.

A7.8 A person may make a submission on a matter for consultation within the period of time specified by the decision maker.
A7.9 The time specified by the decision maker for the making of submissions must be:
   (a) at least 10 business days; and
   (b) no greater than 20 business days
after the invitation is published, and must be at least 10 business days after any issues paper was published under clause A7.4.

Draft decision by the Decision Maker
A7.10 Subject to clause A7.21, the decision maker must consider any submissions made on the matter for consultation.
A7.11 The decision maker may make a draft decision if, in the opinion of the decision maker the circumstances warrant the making of a draft decision.
A7.12 If the decision maker determines that a draft decision is warranted, the decision maker must publish the draft decision within 2 months after the due date for submissions under clause A7.7.

Second round public submissions (if applicable)
A7.13 Clauses A7.15 to A7.17 apply only if the decision maker makes a draft decision under clause A7.11.
A7.14 The decision maker must publish an invitation for submissions on the draft decision at the time it publishes the draft decision.
A7.15 A decision maker must specify in its invitation for submissions under clause A7.6 the length of time it will allow for the making of submissions on a matter for consultation in accordance with clause A7.17.
A7.16 A person may make a submission on the draft decision to the decision maker within the time period specified by the decision maker.
A7.17 The time specified by the decision maker for the making of submissions on the draft decision must be:
   (a) at least 10 business days; and
   (b) no greater than 20 business days,
after the draft decision is published.

Final decision by decision maker
A7.18 Subject to clause A7.21, the decision maker must consider any submissions and make a final decision in relation to the matter for consideration.
A7.19 The time for the decision maker to make and publish its final decision is:
   (a) where a draft decision has been made, within 30 business days after the due date for submissions under A7.15; or
   (b) otherwise, within 2 months after the due date for submissions under clause A7.7.

Publication of submissions
A7.20 The decision maker must publish all submissions made under this Appendix 7.

Late submissions
A7.21 The decision maker may, consider any submission made after the time for making that submission has expired.