



Office of Energy
Government of Western Australia

Recent Urgent Amendments to the *Electricity Networks Access Code 2004*

Consultation Paper

**(No 1) 2007 Amendments
(No 2) 2007 Amendments
(No 1) 2008 Amendments**

11 July 2008

Request for submissions

Submissions are invited from interested parties. Unless confidentiality is sought, the submissions will be available for public inspection at the Office of Energy and will be available on-line in PDF format from the time of processing of the submission until 4 weeks after the release of the final report of the review. The Office of Energy may exercise its discretion not to exhibit any submissions based on their length or content (for example, if they contain material that is defamatory, offensive, or in breach of any law).

Submissions must have regard to the specific issues that have been raised. Interested parties may submit either electronic submissions or hard copy submissions. However electronic submissions are preferred. Submissions in response to this paper are due by Thursday 14 August 2008.

Submissions should be sent to:

Consultation – Electricity Network Access Code Amendments

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Confidentiality

The Office may disclose submissions in various ways, by publishing:

- submissions;
- extracts from submissions; or
- a list of submissions received.

If aspects of a submission are considered confidential, those aspects should be clearly identified and the reasons for a claim of confidentiality noted in a covering letter.

A request for access to a confidential submission will be determined in accordance with the *Freedom of Information Act 1992*.

Inquiries regarding this consultation should be directed to:

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Stephen Eliot, A/Director, Markets and Regulatory Policy (08) 9420 5646.

Disclaimer

This document is provided for the sole purpose of consulting on amendments to the *Electricity Networks Access Code 2004*, pursuant to section 109 of the *Electricity Industry Act 2004*. No warranty or representation is given that the amendments discussed will be maintained or varied or deleted. Nothing in this document constitutes, or will under any circumstances become, legal advice. Persons using this document should obtain their own independent legal advice.

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APPENDICES

Appendix 1: The *Electricity Networks Access Code Amendments (No. 1) 2007*, published 29 June 2007.

Appendix 2: The *Electricity Networks Access Code Amendments (No. 2) 2007*, published 29 August 2007.

Appendix 3: The *Electricity Networks Access Code Amendments (No. 1) 2008*, published 25 January 2008.

1 Introduction

Comment is sought from interested parties on the three urgent amendments to the Access Code identified below.

Date Published & Operational	Published in Government Gazette	Title of Amendments
29 June 2007	No 137/2007	<i>Electricity Networks Access Code Amendments (No. 1) 2007 -</i> the No 1 2007 Amendments
29 Aug 2007	No 176/2007	<i>Electricity Networks Access Code Amendments (No. 2) 2007 -</i> the No 2 2007 Amendments
25 Jan 2008	No 13/2008	<i>Electricity Networks Access Code Amendments (No. 1) 2008 -</i> the No 1 2008 Amendments.

In the remainder of this document, amendments will be referred to by a short form of their name as indicated in bold in the table above (for example, the *Electricity Networks Access Code Amendments (No. 2) 2007* will be referred to as the No 2 2007 Amendments).

2 Electricity Networks Access Code Amendments (No 1) 2007

2.1 Introduction

The No 1 2007 Amendments were published in *the Government Gazette* on 29 June 2007 and are attached in Appendix 1. These were urgent amendments to provide for the imminent commencement of Western Power's approved access arrangement on 1 July 2007 (the **Access Arrangement**).

The need for these amendments was identified during the lead up to the commencement of the Access Arrangement and from the Final Decision and Further Final Decision of the Authority on Western Power's proposals for its access arrangement.

2.2 Purpose

The Amendments were implemented to ensure that aspects of Western Power's Access Arrangement, which were approved by the Authority on 26 April 2007, can operate in an effective manner.

These amendments were made in response to two requirements; the need to:

- change the method by which the No 2 2006 Amendments (published in the Gazette on 8 December 2006) are implemented; and
- clarify the means by which applicants in the access queue under the old access regime are treated under the Access Arrangement (the **Queuing Requirements**).

2.2.1 Re-implementing the No 2 2006 mechanism

The earlier No 2 2006 Amendments established a mechanism by which certain specified distribution network enhancements were exempt from the New Facilities Investment Test (the **NFIT**) under section 6.52 of the Access Code. This was to allow for the continuation of long-term policies that require the payment of the full cost or average cost of certain network enhancements, such as pole to pillar connections, un-metered supplies and subdivision developments.

In their original form, these amendments utilised an Extensions and Expansions Policy, provided for in Part 4 of the Act, to identify the particular enhancements to be exempted from the NFIT and to provide for how capital contributions were to be determined for those enhancements. However, the Office of Energy subsequently decided that these matters were better dealt with in the Access Code itself.

The No 1 2007 Amendments thus re-implemented the former Extensions and Expansions Policy regime as part of the Access Code, while achieving the same policy objectives, by:

- relocating parts of the Extensions and Expansions Policy to a new Appendix 8 in the Access Code, specifically those parts which:
 - identify which enhancements are exempt from the NFIT; and
 - determine the treatment of capital contributions for the identified enhancements;
- repealing sections 2.9A and 5.14A of the Access Code;
- amending sections 2.9 and 5.14 of the Access Code;
- inserting new section 5.17A into the Access Code, which provides for Appendix 8 enhancements to prevail over section 5.14 and so to be charged at the cost determined under Appendix 8, regardless of NFIT; and
- inserting new section 5.17B into the Access Code, which is a transitional provision made necessary by the fact that Western Power's Access Arrangement had been approved by that stage, and so to avoid doubt it was necessary to confirm in this section that section 5.17A was to prevail over any inconsistent provision in the Access Arrangement.

2.2.2 Queuing Requirements

The No 1 2007 Amendments also provide for transitioning of applications under the old access regime's application queue (**prior applications**) to that under the Applications and Queuing Policy (**AQP**) approved as part of the Access Arrangement.

Provisions under section 105 of the Act allow the Minister to include in the Access Code matters of a savings, transitional or supplementary nature. These amendments were needed because Western Power was concerned that its approved AQP may not have dealt adequately with prior applications, and there was no opportunity to correct this before the Access Arrangement commenced.

In this respect, these amendments provide clarity on the rights and obligations of affected parties transitioning to the access queue under the Access Arrangement. Specifically the Amendments insert:

- sections 15.5 to 15.8, which preserve the rights of prior applications and clarify the basis on which the Arbitrator would hear any action; and
- a new Appendix 9, which provides the transitional mechanisms for any prior applications.

2.3 Consultation

As part of the earlier No 1 2006 Amendment process, a prior 30 day consultation process was undertaken on the aspects relating to exemption of certain enhancements from the NFIT. No submissions were received.

Both the Secretariat of the Economic Regulation Authority and Western Power were consulted on the No 1 2007 Amendments.

It was essential that these Amendments be implemented before commencement of the Access Arrangement on 1 July 2007. Since the Amendments were urgent but not minor, they were published in the *Gazette* without a formal prior consultation process. This current consultation process provides stakeholders with an opportunity to comment on these amendments.

- Stakeholders and interested parties are invited to comment on the *Electricity Networks Access Code Amendments (No. 1) 2007*, published in the *Government Gazette* on 29 June 2007, which were urgent amendments to provide for the imminent commencement of Western Power's approved Access Arrangement on 1 July 2007.

3 Electricity Networks Access Code Amendments (No 2) 2007

3.1 Introduction

The No 2 2007 Amendments were published in the *Government Gazette* on 29 August 2007 and are attached in Appendix 2. These were urgent amendments to provide for the imminent introduction by Western Power of a distribution headworks charge scheme.

3.2 Purpose

The No 2 2007 Amendments were implemented to remove any doubt that Western Power's proposed Distribution Headworks Charge Scheme, designed to reduce the cost of residential and commercial developments in more isolated regional areas of the South West Interconnected System (**SWIS**), could commence.

These amendments were made to clarify that:

- Western Power, as a service provider, has freedom to contract; and
- Appendix 8 does not preclude other capital contributions being required in addition to an Appendix 8 augmentation.

3.2.1 Freedom to Contract

Sections 2.4A and 2.4B were inserted to place beyond doubt the fact that Western Power, as a service provider, may negotiate and contract with any party for electricity network access services on agreed terms that are different from the standard access contract for reference services.

The need for this amendment became evident when Western Power decided that a Distribution Headworks Charge Scheme was needed to spread the cost of network enhancements in regional areas over future users and so reduce the cost to individual users, in particular those that may trigger an expensive network enhancement and be asked to pay for it up front.

This is a particular issue in regional areas at the extremities of the SWIN, where there is little remaining spare capacity, population densities are low and long feeders exist. These features mean that capacity enhancements to meet new loads in these areas are often not economic for the service provider to undertake. Under Western Power's Capital Contributions Policy as it was originally applied, such enhancements may not have occurred without relatively large capital contributions from network users.

Offers from Western Power to developers in these areas had been stalled for some nine months while a distribution headworks charge policy was being developed and implementation issues resolved. It was therefore very important that the distribution headworks charge policy proceeded as soon as possible.

Western Power's Capital Contributions Policy under the approved Access Arrangement was not developed with a headworks charge in mind. Following public consultation on the matter, the Authority expressed the view that there is nothing in the Access Code to prevent the development of a headworks charge. However, Western Power took the view that its Distribution Headworks Charge Scheme could not be implemented under the presently approved Capital Contributions Policy in all cases.

While Western Power plans to seek approval for an amended Capital Contributions Policy to specifically accommodate the Distribution Headworks Charge Scheme, it would not have been possible to complete this process for many months, leading to further delay for areas where connection applications had been stalled. It would also have been necessary to make further Access Code amendments to allow the approved Access Arrangement to be amended prior to the next regulatory reset on 1 July 2009 so that the Capital Contributions Policy could be amended.

To immediately progress connection applications, Western Power advised that it could make interim binding offers of the same value as would apply under the Distribution Headworks Charge Scheme methodology, to applicants for connection in stalled areas. Western Power undertook that, at these locations, the offers would be less than capital contributions calculated under the approved Capital Contribution Policy.

Some doubt was expressed as to whether Western Power, as a statutory corporation, would be able to make these interim offers. The *Electricity Corporations Act 2005* gives Western Power the power to do anything within its functions. Under section 41(b), Western Power has the function of doing anything "authorised" or "required" by Part 8 of the *Electricity Industry Act 2004* or the *Electricity Networks Access Code*. Because section 2.5 of the Access Code was expressed in negative rather than positive language, there was at least some doubt as to whether Western Power was "authorised" to contract outside the terms of its Access Arrangement. Therefore it was decided that the Access Code be amended to re-express the relevant part of section 2.5 in positive terms, in order to provide an express authorization for Western Power to negotiate and enter into access contracts including non-standard contracts.

3.2.2 Required Augmentation

A lay reading of Appendix 8 in isolation could have led to the conclusion that an applicant who sought a connection which included an augmentation identified in Appendix 8, as well as other non-Appendix 8 augmentations, would have its capital contribution requirement capped by the amount determined for the Appendix 8 augmentations. On such a view it would not be liable for any further

capital contributions or Distribution Headworks Charge Scheme payments.

Although such a view was unlikely to be sustainable legally, section A8.20 was added to make it clear that required augmentations, for which capital contributions may be charged, can include more than one Appendix 8 augmentation and other augmentations, collectively, as was originally intended.

3.3 *Consultation*

Both the Secretariat of the Economic Regulation Authority and Western Power were consulted on these Amendments.

It was essential that these Amendments be implemented prior to the Minister announcing commencement of the Distribution Headworks Charge Scheme on 29 August 2007 and before Western Power began issuing quotes under this scheme to applicants for connection.

Since the Amendments are urgent but not minor, they were published in the *Government Gazette* without prior formal consultation process. This current consultation process provides stakeholders with an opportunity to comment on these urgent amendments, as provided for under the Act.

- Stakeholders and interested parties are invited to comment on the *Electricity Networks Access Code Amendments (No. 2) 2007, published in the Government Gazette on 29 August 2007, which were urgent amendments to provide for the imminent commencement of Western Power's Distribution Headworks Scheme.*

4 **Electricity Networks Access Code Amendments (No 1) 2008**

4.1 *Introduction*

The No 1 2008 Amendments were published in *the Government Gazette* on 25 January 2008 and are attached in Appendix 3. These were urgent amendments to allow for deferral of the time by which non-covered networks in the SWIS were required to submit Technical Rules to the Authority for its approval.

4.2 *Purpose*

Section 12.6(b) of the Access Code requires non-covered networks that are part of an interconnected system which includes one or more covered networks to have Technical Rules.

Section 12.7 requires that a service provider of a non-covered network required by section 12.6(b) to have Technical Rules, must within 6 months from the date the covered network's Technical Rules are approved, either give notice to the Authority that it wishes to adopt the Technical Rules of another network or submit proposed Technical Rules to the Authority for its approval.

Section 12.8 provides for the Authority, at its discretion, to extend the 6 month time period under 12.7 by up to 3 months.

Currently the only covered network is Western Power's transmission and distribution network in the SWIS.

The Authority approved Western Power's Technical Rules on the same day that it approved its Access Arrangement, on 26 April 2007, and so the 6 months deadline expired on 26 October 2007.

The Authority advised the Office of Energy in mid October that it had not received advice from service providers captured by section 12.6 of the Access Code about their Technical Rules and that it needed additional time in which to consult with affected service providers and develop a strategy to deal with the matter.

On investigating this matter, two issues became apparent:

- the definition of what constitutes a network under the Access Code is taken from section 103 of the Act and is very broad. It could be construed to include possibly unintended distribution infrastructure such as apartment blocks, caravan parks and shopping centres; and
- Western Power's set of approved Technical Rules is a lengthy and complex technical document which would need to be carefully reviewed by suitable experts and amended to allow a service provider to adopt such a document - a significant regulatory overhead, especially for a small network.

The No 1 2008 Amendments added a new section 12.8A, which provided for the Authority, specifically in the case of the SWIS, to extend the time under section 12.7 up to any date on or before 25 September 2008.

This extension of the period under 12.7 allows extra time for:

- resolution of the issue of who is to be captured by section 12.6;
- whether the adoption of existing Technical Rules under section 12.7(a) can be made more efficient, less costly and less time consuming;
- consultation with stakeholders on any Access Code changes;
- implementing any Access Code changes; and
- service providers to comply with the revised requirements for Technical Rules.

4.3 Consultation

Section 12.8A was always intended to be an interim measure, pending more substantial amendment to this area of the Code. The proposed No 2 2008 amendments, which are consulted on in the Annotated Code that was released concurrently with this paper, propose the section's repeal. However, as a non-minor Access Code amendment, the Act requires consultation on the insertion of this section.

Both the Secretariat of the Economic Regulation Authority and Western Power were consulted on these Amendments.

It is understood that the Authority consulted with network owners that were likely to be captured by these provisions.

Since the Amendment was urgent but not minor, it was published in the *Government Gazette* without prior formal consultation process. This current consultation process provides stakeholders with an opportunity to comment on these urgent amendments, as provided for under the Act.

Stakeholders and interested parties are invited to comment on the *Electricity Networks Access Code Amendments (No. 1) 2008, published in the Government Gazette* on 25 January 2008, which were urgent amendments to provide for the deferral of when non-covered networks, which were part of the SWIS, to submit Technical Rules to the Authority for its approval.

APPENDIX 1

**The Electricity Networks Access Code Amendments (No. 1)
2007, published 29 June 2007.**

EN404

ELECTRICITY INDUSTRY ACT 2004
Electricity Networks Access Code Amendments (No 1) 2007

I, Francis Logan, Minister for Energy for the State of Western Australia, hereby amend the *Electricity Networks Access Code 2004* established under section 104(1) of the *Electricity Industry Act 2004*.

Dated at Perth this 26th day of June 2007.

FRANCIS LOGAN.

Made by the Minister

1. Citation

These amendments may be cited as the *Electricity Networks Access Code Amendments (No 1) 2007*.

2. Commencement

These amendments come into operation on the date on which they are published in the *Gazette*.

3. The Electricity Networks Access Code amended

These amendments are to the *Electricity Networks Access Code 2004**.

[*Published in *Gazette* 30 November 2004, p. 5517-5700

For amendments to 29 June 2007 see Gazettes—

No 207 of 8 November 2005;

No 59 of 31 March 2006;

No 152 of 1 September 2006; and

No 206 of 8 December 2006.]

4. Section 1.3 amended

Section 1.3 is amended—

(a) by deleting the definitions of "**access application**" and "**applicant**"; and

(b) by inserting the following definitions in the appropriate places—

"

"access application" means—

(a) an application lodged with a *service provider* under an *access arrangement* to establish or modify an *access contract*; and

(b) a *prior application* and a *transitioned application*,

and includes any additional information provided by the *applicant* in relation to the application.

"Appendix 8 augmentation" means an *augmentation* to the *SWIN* of a type specified in clause A8.2 of Appendix 8.

"applicant" means—

(a) 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*; and

(b) a *prior applicant*.

"previous regime" means the *previous regulations* and sections 90 and 91 and Schedules 5 and 6 of the *Electricity Transmission and Distribution Systems (Access) Act 1994* as in effect immediately before 1 July 2007.

"previous regulations" means the *Electricity Transmission Regulations 1996*, the *Electricity Distribution Regulations 1997* and the *Electricity Referee and Dispute Resolution Regulations 1997*, as in effect immediately before 1 July 2007.

"prior applicant" has the meaning given to it in clause A9.1.

"prior application" has the meaning given to it in clause A9.1.

"referee" has the meaning given to it in the *Electricity Referee and Dispute Resolution Regulations 1997*, as in effect immediately before 1 July 2007.

"**SWIN**" means the *covered network* that is *covered* under section 3.1.

"**SWIN access arrangement**" means the *access arrangement* approved for the *SWIN* by the *Authority's* Further Final Decision dated 26 April 2007.

"**transitioned application**" has the meaning given to it in clause A9.1.

";

and

(c) in the definition of "**access dispute**" by inserting after paragraph (c) the following—

"

(ca) anything connected with or arising out of a *capital contribution* under section 5.17A; and

(cb) a matter heard under section 15.7; and

(cc) anything connected with or arising out of Appendix 8; and

(cd) anything connected with or arising out of Appendix 9; and

".

5. Section 2.9 amended

Section 2.9 is deleted and the following is inserted—

"

2.9 If a *service provider* will need to undertake a *required augmentation* in order to provide a *covered service* sought in an *access application* then—

(a) if the *service provider* is Electricity Networks Corporation and requires a *capital contribution* under section 5.17A in respect of an *Appendix 8 augmentation*, then—

(i) if the *applicant* provides the *capital contribution* for the *required augmentation*, or the *applicant* and the *service provider* reach agreement on the terms on which the *applicant* will provide the *capital contribution*—the *service provider* must undertake and fund the *required augmentation*; and

(ii) otherwise—the *service provider* is not required to undertake or fund the *required augmentation*;

and

(b) if section 2.9(a) does not apply, then—

(i) 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 required augmentation; and

(ii) if only part or none of the forecast new facilities investment for the required augmentation meets the new facilities investment test—then—

(A) if the *applicant* provides the *capital contribution* for the *required augmentation* determined under the *capital contributions policy*, or the *applicant* and the *service provider* reach agreement on the terms on which the *applicant* will provide the *capital contribution*—the *service provider* must undertake and fund the *required augmentation*; and

(B) otherwise—the *service provider* is not required to undertake or fund the *required augmentation*.

".

6. Section 2.9A deleted

Section 2.9A is deleted.

7. Section 5.14 amended

Section 5.14 is amended by deleting "5.14A" and inserting instead—

"" 5.17A "".

8. Section 5.14A deleted

Section 5.14A is deleted.

9. Sections 5.17A and 5.17B inserted

After section 5.17, the following heading and sections are inserted—

"

Capital contributions for certain SWIN augmentations

5.17A Despite section 5.14, Electricity Networks Corporation may require a *capital contribution* for an *Appendix 8 augmentation* of up to the maximum amount determined under Appendix 8 for the relevant type of *Appendix 8 augmentation*.

5.17B From 1 July 2007 until the first *revisions commencement date* for the *SWIN access arrangement*, section 5.17A prevails over any inconsistent provision of the *SWIN access arrangement*.

".

10. Section 14.28 inserted

After section 14.27, the following heading and section are inserted—

"

Detailed provisions regarding capital contributions for certain SWIN augmentations

14.28 Appendix 8 has effect.

".

11. Sections 15.5 to 15.8 inserted

After section 15.4, the following headings and sections are inserted—

"

Preservation of SWIN actions

15.5 If an action could have been commenced before the *referee* under the *previous regime* immediately before 1 July 2007 seeking a remedy in respect of a thing done or not done before 1 July 2007 in connection with or arising out of a *prior application*, an action may be commenced before the *arbitrator* seeking the remedy in respect of the thing.

15.6 Section 15.5 does not extend any period of limitation or waive any other requirement under the *previous regime* for commencing an action.

15.7 If a person commences an action before the *arbitrator* seeking a remedy under section 15.5, the *arbitrator*—

(a) may hear the matter under Chapter 10; and

(b) may make any determination in respect of the matter which is consistent with—

(i) the *Code objective*; and

(ii) the Act and this Code generally.

Transitional arrangements for the SWIN queue

15.8 Appendix 9 has effect.

".

12. Appendix 4 amended

Appendix 4 is amended by deleting "5.14A" in both places where it appears in the introductory paragraphs of the Appendix, and inserting instead—

"" 5.17A "".

13. Appendices 8 and 9 inserted

After Appendix 7, the following Appendix 8 and Appendix 9 are inserted—

"

Appendix 8—Detailed provisions regarding capital contributions for certain SWIN augmentations

Definitions

A8.1 In this Appendix 8, unless the contrary intention is apparent—

"average cost" for a *scheme* means the *total scheme cost* divided by the total number of *connection points* covered by the *scheme*.

"commercial premises" means *premises* on which electricity is consumed predominantly for commercial use.

"member" in respect of a *scheme* means a person who has initiated or joined a *scheme* under the *SES*.

"pillar" means a ground mounted apparatus forming part of the *SWIN* located on or near a property boundary and to which the consumer mains of a *premises* are connected in order to obtain electricity.

"pole to pillar connection" means the provision to a residential *premises* of an underground 415 V or 240 V supply via a *pillar connection*.

"premises" has the meaning given to it in the *Electricity Act 1945 (WA)*.

"primary production premises" means *premises* owned or occupied by a consumer who is assessed as carrying on a primary production business under the *Income Tax Assessment Act 1997*.

"residential premises" means *premises* on which electricity is consumed predominantly for domestic use.

"scheme" means an arrangement with respect to a particular *SES augmentation* or a particular interconnected series of *SES augmentations* under the *SES*.

"SES" and **"Supply Extension Scheme"** means the approach to *SWIN augmentation* under clauses A8.8 to A8.15.

"SES augmentation" means a *required augmentation* which is an extension of the *SWIN* to connect—

(a) a primary production premises; or

(b) one residential premises on a lot (excluding a residential premises in respect of which a pole to pillar connection is required under a written law or statutory instrument).

"standard dwelling" means a *residential premises* that is located on a lot that is zoned residential, or otherwise permitted to be used for residential purposes under any town planning scheme applying to that lot (excluding lots zoned special rural residential); and has

(a) a load of no more than 63 amperes single-phase 240 volt or 32 amperes three-phased 415 volt; and

(b) sufficient *SWIN* capacity available to it, to supply the applicable load.

"subdivision" means a subdivision of land which requires or has received approval under section 135 of the *Planning and Development Act 2005* (WA), the *Strata Titles Act 1985* (WA) or an equivalent written law.

"substantial consumer" means an *applicant* who the *service provider* forecasts to consume in excess of 10% of the total annual electricity consumption in respect of a *premises*.

"temporary connection" means a non-permanent connection to the *SWIN* that is undertaken to provide supply to activities such as, but not limited to, outdoor functions (such as fairs and concerts), non-standard builder supplies (such as city or commercial developments) and connections to *premises* during renovations.

"total cost" for a *scheme* means the sum of the *forecast new facilities investment* for the *SES augmentation* for which the *scheme* was initiated plus the *forecast new facilities*

investment for each *SES augmentation* for an *applicant* which subsequently joins the *scheme*.

"unmetered connection" means a type of *connection point* described in clause 3.9(2) of the *Electricity Metering Code 2005* established under section 39(2)(a) of the *Act*.

Scope of Appendix 8 augmentations to SWIN

A8.2 This Appendix 8 applies only in respect of the following *augmentations* to the *SWIN* ("**Appendix 8 augmentations**")—

- (a) a *subdivision* under clause A8.4; and
- (b) a *pole to pillar connection* under clauses A8.5 to A8.6; and
- (c) the development of buildings under clause A8.7; and
- (d) a *Supply Extension Scheme* under clauses A8.8 to A8.15; and
- (e) *augmentations* in excess of standard requirements under clause A8.16; and
- (f) specified *temporary connections* under clause A8.17 and A8.18; and
- (g) streetlights, *unmetered connections*, *relocations*, undergrounding and some *temporary connections* under clause A8.19.

General principles

A8.3 A *capital contribution* for an *Appendix 8 augmentation* (other than a flat fee under clauses A8.5 and A8.17) must not exceed the *forecast new facilities investment* that would be forecast to be incurred for the *augmentation* by a *service provider* *efficiently minimising costs*.

Subdivisions

A8.4 The maximum capital contribution for an applicant who—

- (a) undertakes a *subdivision*; and
- (b) seeks an *augmentation* (other by a *pole to pillar connection*) of the *distribution system* to service the *subdivision*,

is the *forecast new facilities investment* for any *required augmentation* which is or will be located within the boundaries of, or adjacent to, the land being *subdivided*.

Pole to pillar connections

A8.5 The maximum *capital contribution* for a *pole to pillar connection* is a flat fee determined under clause A8.6.

A8.6 Electricity Networks Corporation may from time to time set a flat fee for *pole to pillar connections*, which fee must be calculated to the standard of a *reasonable and prudent person* and in such a way that, over a reasonable forecasting period, the forecast revenue from applying the flat fee to all *pole to pillar connections* installed during the period ("**forecast connections**") is forecast not to exceed—

(a) the sum of forecast new facilities investment which would be incurred for the forecast connections by a service provider efficiently minimising costs;

minus

(b) the anticipated incremental revenue for the forecast connections.

Development of buildings

A8.7 Where an *applicant* seeks a connection to the *SWIN* in respect of—

(a) multiple *residential premises*, including multi-storey buildings, excluding—

(i) residential premises in respect of which a pole to pillar connection is required under a written law or statutory instrument; and

(ii) connections which are *SES* augmentations;

or

(b) commercial premises in relation to which the applicant will not become a substantial consumer; or

(c) mixed residential premises and commercial premises in relation to which the applicant will not become a substantial consumer,

the maximum capital contribution by the applicant is the forecast new facilities investment for the required augmentation.

The Supply Extension Scheme

Initiating or joining an SES

A8.8 An *applicant*, or group of *applicants*, for whom the *required augmentation* is an *SES augmentation*, may apply to Electricity Networks Corporation to either join an existing *scheme* or initiate a new *scheme*.

A8.9 If the *SES augmentation* sought by the *applicants* in clause A8.8 is to be connected to *network assets* which are covered by an existing *scheme*, then a new *scheme* must be initiated if—

(a) the forecast new facilities investment for the SES augmentation exceeds the average cost for the existing scheme; or

(b) the existing scheme commenced more than 10 years ago.

Contribution for applicant initiating a scheme

A8.10 If a single applicant initiates a scheme, the maximum capital contribution for the applicant is the forecast new facilities investment for the SES augmentation.

A8.11 If a group of applicants initiate a scheme, the maximum capital contribution for each applicant within the group is the average cost for the scheme.

Contribution for applicant joining an existing scheme

A8.12 If an applicant joins an existing scheme, the maximum capital contribution for the applicant is the new average cost for the scheme, calculated by adding the forecast new facilities investment for the required augmentation for the applicant to the previous total cost and calculating a new average cost taking into account the new applicant's connection point.

A8.13 In this circumstance the capital contribution to be made by the new applicant will comprise a component in payment of the forecast new facilities investment for the new connection, and a rebate component in accordance with clause A8.14 and A8.15.

Rebate to continuing scheme members

A8.14 If an *applicant* joining a *scheme* causes a decrease in the *average cost* for the *scheme*, Electricity Networks Corporation must, after it receives the *applicant's capital contribution* to join the *scheme* and the connection is completed, make a payment to the existing *scheme members* (excluding the *applicant*) of an amount equal to the difference between the *average cost* immediately before the *applicant* joined the *scheme* and the new *average cost* applying after the *applicant* joined.

Rebates will not be paid after 10 years

A8.15 To avoid doubt, the effect of clause A8.9(b) is that a rebate will only be paid under clause A8.14 within the first 10 years after a *scheme* commences.

Augmentations in excess of standard requirements

A8.16 If

(a) an *applicant* seeks to have *network assets* constructed ("**requested assets**") which Electricity Networks Corporation, in accordance with *good electricity industry practice*, considers are in addition to what is required to meet standard supply arrangements; and

(b) the *forecast new facilities investment* for the *requested assets* ("**requested investment**") exceeds the *forecast new facilities investment* which would be required if the connection was constructed in accordance with standard supply arrangements ("**standard investment**"),

then—

(c) the maximum *capital contribution* in respect of the *standard investment* is to be determined under the provisions of this Code and the *access arrangement* which apply to the type of connection in question; and

(d) in addition, the maximum *capital contribution* may include the difference between the *requested investment* and the *standard investment*.

Temporary connections

A8.17 If a flat fee is determined under clause A8.18 for a class of *temporary connection*, then the maximum *capital contribution* for the class of *temporary connection* is the flat fee.

A8.18 Electricity Networks Corporation may from time to time set a flat fee for *temporary connections*, which fee must be calculated to the standard of a *reasonable and prudent person* and in such a way that, over a reasonable forecasting period, the forecast revenue from applying the flat fee to all *temporary connections* installed during the period ("**forecast connections**") is forecast not to exceed the sum of *forecast new facilities investments* which would be incurred for the *forecast connections* by a *service provider efficiently minimising costs*.

Streetlights, unmetered connections, relocations, undergrounding and some temporary connections

A8.19 The maximum *capital contribution* for an *applicant* who seeks—

(a) a modified or new streetlight, including provision of a new streetlight asset;

(b) an *unmetered connection*;

(c) to have an existing *network asset* relocated;

(d) to have an existing overhead *network asset* or connection undergrounded;

(e) a *temporary connection* if Electricity Networks Corporation has not set a fee for that class of *temporary connection* under clause A8.18,

is the *forecast new facilities investment for the required augmentation*.

Appendix 9—Transitional provisions for the SWIN queue

Definitions

A9.1 In this Appendix 9—

"application and queuing policy" means the *application and queuing policy in the SWIN access arrangement*.

"connection application" means an *access application classified as such under the application and queuing policy*.

"electricity transfer application" means an *access application classified as such under the application and queuing policy*.

"material amendment" means, subject to clause A9.10, an amendment to an access application which is either or both of—

(a) a "material amendment" as that expression is used in the *application and queuing policy*; or

(b) an amendment which would result in the amended *transitioned application* being "materially different" from the *prior application* as that expression is used in clause 24.12(b) of the *application and queuing policy*.

"prior applicant" means the person who lodged a *prior application* and is deemed to have lodged the corresponding *transitioned application*.

"prior application" means an "access application" (as defined in the *previous regulations*) and includes any additional information provided under the *previous regime* before 1 July 2007 by the *prior applicant* in relation to that *access application*.

"transitioned application" means a *prior application* having effect as an *access application* under clause A9.3 and, if applicable, includes each of the deemed *connection application* and *electricity transfer application* under clause A9.5.

Application of this Appendix

A9.2 This Appendix 9 applies only in respect of the *SWIN*, and applies despite the changes made to the *previous regulations* on 1 July 2007 and the repeal of sections 90

and 91 and Schedules 5 and 6 of the *Electricity Transmission and Distribution Systems (Access) Act 1994*.

Transitioning of prior applications

A9.3 A *prior application* has effect for the purposes of this Code and the *SWIN access arrangement* as though it was an *access application* lodged under this Code and the *SWIN access arrangement*.

A9.4 A *transitioned application* is deemed to have been lodged at the time the corresponding *prior application* was lodged.

A9.5 To the extent necessary to enable the *transitioned application* to comply with the *application and queuing policy*, it is to be regarded as two separate *access applications*, being a *connection application* and an *electricity transfer application*.

New queuing etc rules apply to transitioned applications

A9.6 From 1 July 2007, a *transitioned application* is to be dealt with in accordance with this Code and the *SWIN access arrangement*, despite having been lodged and previously dealt with in accordance with the *previous regime*.

Updating a transitioned application

A9.7 By no later than 14 July 2007 Electricity Networks Corporation must give notice to each *prior applicant*—

(a) advising that the *prior applicant's prior application* has been transitioned under clause A9.3; and

(b) if applicable, advising that the *prior application* will have effect as a deemed *connection application* and *electricity transfer application* under clause A9.5. and

(c) for each *covered service* sought by the *prior application*, Electricity Networks Corporation's proposal as a *reasonable and prudent person* for—

(i) the *reference service* to be substituted for the covered service sought by the prior application;

(ii) the *reference tariff* to apply for the reference service;

(iii) the terms and conditions to apply to the reference service (including its proposal, if applicable, for completing any blanks in the standard access contract);

and

No 137 of 29 June 2007.]

4. Sections 2.4A and 2.4B inserted

Insert the following new sections after the heading "**Freedom to contract**" and before section 2.5—

"

2.4A Subject to this Code and to—

(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*,

a *service provider* (including Electricity Networks Corporation) and a *user* or *applicant* may negotiate regarding, and may make and implement, an *access contract* for *access* to any *service* (including a *service* which differs from a *reference service*) on any terms (including terms which differ from a *standard access contract*).

{Note: This provision confirms the Code's central emphasis on negotiated outcomes. The express reference to Electricity Networks Corporation confirms that such negotiation and agreement is within its functions under section 41(b) of

APPENDIX 2

**The Electricity Networks Access Code Amendments (No. 2)
2007, published 29 June 2007.**

Special

ELECTRICITY INDUSTRY ACT 2004
Electricity Networks Access Code Amendments (No. 2) 2007

I, Francis Logan, Minister for Energy for the State of Western Australia, hereby amend the *Electricity Networks Access Code 2004* established under section 104(1) of the *Electricity Industry Act 2004*.

Dated at Perth this 24th day of August 2007.

FRANCIS LOGAN.

Made by the Minister.

1. Citation

These amendments may be cited as the *Electricity Networks Access Code Amendments (No. 2) 2007*.

2. Commencement

These amendments come into operation on the date on which they are published in the *Gazette*.

3. The Electricity Networks Access Code amended

These amendments are to the *Electricity Networks Access Code 2004**.

*[*Published in Gazette 30 November 2004, p. 5517-5700*

For amendments to 29 June 2007 see Gazettes—

No 207 of 8 November 2005;

No 59 of 31 March 2006;

No 152 of 1 September 2006;

No 206 of 8 December 2006; and

(d) advising that the *prior applicant* is not obliged to accept Electricity Networks Corporation's proposals under clause A9.7(c); and

(e) specifying (to the extent reasonably practicable in accordance with *good electricity industry practice*) all additional information required from the *applicant* to cause the *transitioned application* to comply with this Code and the *SWIN access arrangement* and to enable Electricity Networks Corporation to process the *transitioned application* and, if applicable, make an *access offer*.

A9.8 Within 30 *business days* after receipt of a notice referred to in clause A9.7, the *prior applicant* must give Electricity Networks Corporation a notice setting out, for each service sought by the *prior application*, either—

(a) the *prior applicant's* acceptance of Electricity Networks Corporation's proposals under clause A9.7(c); or

(b) the *prior applicant's* counter-proposal in respect of those matters.

A9.9 A notice from a *prior applicant* under clause A9.8—

(a) is an amendment to the relevant *transitioned application* under clause 3.13(a) of the *application and queuing policy*; and

(b) if given under clause A9.8(a) is not a *material amendment*; and

(c) if given under clause A9.8(b), can (subject to clause A9.10), but does not necessarily, amount to a proposal for a *material amendment*,

A9.10 A response under clause A9.8(b) is not a *material amendment* if the response would result in a *transitioned application* which is either (or both of)—

(a) not materially different from the *prior application*; or

(b) not materially different from what the *transitioned application* would have been if the *prior applicant* had accepted Electricity Networks Corporation's proposals under clause A9.7(c);

Assessing whether prior applicant's election might amount to a material amendment

A9.11 Before giving a notice under clause A9.8(b), a *prior applicant* may submit a draft of the notice to Electricity Networks Corporation seeking Electricity Networks Corporation's view as a *reasonable and prudent person* on whether the notice might amount to a *material amendment* if submitted in that form.

A9.12 Electricity Networks Corporation must respond to a request under clause A9.11 within 5 *business days* with its view as a *reasonable and prudent person* as to whether the draft notice would, or would not, amount to a *material amendment*.

Transitioned applications temporarily preserved

A9.13 Despite anything to the contrary in the *SWIN access arrangement*, a *transitioned application* must not be rejected, and cannot have its priority amended or be deemed to have been withdrawn, unless—

- (a) Electricity Networks Corporation has given notice under clause A9.7; and
- (b) the *prior applicant* has given a notice under clause A9.8 or the time for doing so has expired,

and thereafter a *transitioned application* may only be rejected, have its priority amended or be deemed to have been withdrawn in accordance with the *application and queuing policy*.

Time periods restart after exchange of notices

A9.14 For the purposes only of determining a time period under the *application and queuing policy*, a *transitioned application* is deemed to have been lodged on the date the *prior applicant* gives a notice under clause A9.8 or the time for doing so expires.

".

APPENDIX 3

**The Electricity Networks Access Code Amendments (No. 1)
2008, published 25 January 2008.**

EN401

ELECTRICITY INDUSTRY ACT 2004
Electricity Networks Access Code Amendments (No. 1) 2008

I, Francis Logan, Minister for Energy for the State of Western Australia, hereby amend the *Electricity Networks Access Code 2004* established under section 104(1) of the *Electricity Industry Act 2004*.

Dated at Perth this 21st day of January 2008.

FRANCIS LOGAN.

Made by the Minister

1. Citation

These amendments may be cited as the *Electricity Networks Access Code Amendments (No 1) 2008*.

2. Commencement

These amendments come into operation on the date on which they are published in the *Gazette*.

3. The Electricity Networks Access Code amended

These amendments are to the *Electricity Networks Access Code 2004**.

*[*Published in Gazette 30 November 2004, p. 5517-5700*

For amendments to 25 January 2008 see Gazettes—

No 207 of 8 November 2005;

No 59 of 31 March 2006;

No 152 of 1 September 2006;

No 206 of 8 December 2006;

No 137 of 29 June 2007; and

No 176 of 29 August 2007.]

4. New section 12.8A inserted

Insert the following new section after section 12.8—

" 12.8A Without limiting section 12.8, in respect of a *non-covered network* that is part of the *SWIS*, the *Authority* may on one or more occasions at its discretion further extend the time period under section 12.7 to any date on or before 25 September 2008. "

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