

Access Arrangement Information

Standard Access Contract Demonstration of Code Compliance

**ELECTRICITY NETWORKS CORPORATION
("WESTERN POWER")**

ABN 18 540 492 861

{Outline: This document is included in Western Power's access arrangement information in accordance with section 4.2 of the Code.}

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1 Introduction

The Electricity Transfer Access Contract (**ETAC**) is the standard access contract that Western Power proposes for each of the reference services (each a type of exit or entry service) in its Access Arrangement (**AA**). A person becomes party to an ETAC after making an electricity transfer application under the Applications and Queuing Policy (**AQP**) for a reference service.

This Access Arrangement Information (**AAI**) document explains how Western Power formed the ETAC in its proposed AA, and how the ETAC complies with the Code in accordance with section 4.2 of the Code. It also explains in detail each of the principal modifications that Western Power has made to the Model Access Contract (**MAC**) in Appendix 3 of the Code. This document should be read in conjunction with AAI on the Capital Contributions Policy (**CCP**) and the AQP, to which this policy strongly relates.

In preparing the ETAC, Western Power was mindful that the contract must be reasonable and sufficiently detailed and complete to form the basis of a commercially workable contract. Western Power was also mindful of the need for the ETAC to be consistent with the Code objective of promoting economically efficient investment in, and operation and use of, the network and network services. The ETAC must also work within the wholesale electricity market (**WEM**) framework and generally complement the rest of the AA and other relevant parts of the Act.

These key matters underpinned Western Power's thinking in developing the ETAC and in considering the implications of alternative approaches that may be adopted in addressing particular matters within a standard access contract.

1.1 Structure of the ETAC

The ETAC is structured in a manner to facilitate the construction of a connection or technical compliance contract, in the manner envisaged by clause A3.11 of the MAC. This allows a user to be relieved of the 'connection obligations' with respect to a connection point where Western Power contracts with the controller at that connection point with regards to those same connection obligations.

2 Electricity Transfer Provisions

2.1 Modifying the services

Clauses 3.2 to 3.5 of the ETAC contain provisions regarding changes to the services, and set out the processes, rights and obligations of the parties in each situation, in more detail than provided for under the MAC. Western Power believes this results in a more detailed and complete contract.

2.1.1 Change of service

The user has been given the option under clause 3.2 of the ETAC to change the service selected for a connection point from time to time. For example, a customer of a retailer might increase demand such that they become eligible to move from a metered demand reference service to a CMD reference service, under the reference service eligibility criteria. In these circumstances, the user is invited to apply under the AQP when it seeks to change its service.

2.1.2 Capacity increase

Clause 3.3 of the ETAC requires that any capacity increase be dealt with under the contract, the AQP and the Customer Transfer Code, as applicable. This is reasonable, as it enables Western Power to properly consider the potential impacts of an application on other users and thereby enables Western Power to optimise its investment in and operation of the Network in accordance with the Code objective.

The MAC incorporated a notion of a capacity increase notice. This has been removed from the ETAC and replaced with a streamlined process in the AQP, which is explained further in the AQP AAI. In general terms, the AQP allows for an expedited process for capacity increases where it is determined by Western Power that no augmentation is likely to be required.

2.1.3 Capacity decrease

Clause 3.4 of the ETAC allows the user to seek to reduce contracted capacity of a service at a connection point. However, if Western Power receives more than one notice to decrease contracted capacity in a 12-month period, the ETAC allows for several scenarios in which Western Power may accept a reduction in contracted capacity where the reduced capacity will be sufficient for the user's needs and special circumstances apply. These special circumstances are likely to be where the reduction is driven by actual changes in requirements. Western Power is also entitled to refuse the reduction if satisfied that it is sought because of the seasonal nature of the business or operation at the connection point.

The clause relates to changes in contracted capacity at a connection point, regardless of whether the current user made the previous change within the 12-month period. The restrictions on the ability of a user to decrease capacity within a 12-month period remains with the connection point following a customer transfer.

Western Power considers that this is reasonable, as it enables Western Power to properly manage the network planning processes for the benefit of users. In addition, the situations in which capacity can be decreased have been clearly specified and hence provide the sufficient detail to form the basis of a commercially workable contract.

2.1.4 Deletion of a connection point

Clause 3.5 of the ETAC obliges Western Power to accept a request to delete a connection point subject to the following conditions:

- for permanent disconnection, the user must provide appropriate notice to allow Western Power time to prepare modifications to its network equipment, and then to effect and test those changes; and
- for deletion of a connection point that is not to be permanently disconnected, that point must have been transferred to another electricity transfer contract (such as via a customer transfer request) or Western Power must have lawfully de-energised the connection point, so that at no point can electricity be transferred without being captured under an electricity transfer contract.

2.1.5 Update of Schedule 3

Clause 3.6 of the ETAC builds on the MAC requirement to update Schedule 3 of the ETAC where there is any change to the services by allowing such modifications to be made in the metering database under the Metering Code.

This is a practical matter to facilitate the operation of the Metering Code and to avoid administrative duplication, and thus is in the interests of both parties.

Western Power believes that having a single source for applicable tariffs is more appropriate than having two separate contractual incorporated tariff lists. For this reason, Western Power has omitted Schedule 4 (Tariffs) from the MAC and has made a further, consequential amendment in respect of the information to be provided under Schedule 3.

Western Power believes that to have an additional source for tariffs in Schedule 4 is unnecessary as the relevant tariff as contained in the published price list is expressly incorporated into the ETAC by other provisions of the ETAC. Further, as the published price list is published only after scrutiny and approval by the Authority in accordance with the Code, Western Power considers this amendment to be consistent with the provisions and objectives of the Code. Having only one mechanism for determining the appropriate tariff also prevents any uncertainty that may arise where the tariffs contained on those two lists for any particular services to differ.

2.2 Relocation

It is to be noted that the proposed ETAC does not deal with relocation per se, but the consequences of such activity on capacity requirements. The processes involved in relocation are dealt with separately in the AQP and the TRP to avoid any duplication or inconsistency arising between the ETAC and those policies.

2.3 Service Standards

The MAC requires that the service provider be contractually bound to meet the relevant service standard for each service requested by a particular user. The service standard benchmarks specified in the AA reflect targets for particular groups according to network configuration and location, and are not applicable on an individual user basis. Therefore, any reference to the service standards has been removed from the ETAC.

2.4 Title to electricity

Under the MAC, upon transfer electricity at an entry point, the user has the right to an equivalent amount of electricity at an exit point. This clause has not been adopted in the ETAC for a number of reasons including:

- that the concept of electricity balancing does not fit with the concept of a wholesale market pool under Part 9 of the Act; and
- Western Power is required under the Code to provide entry services without exit services and vice versa, and this clause contradicts that requirement; and
- practically, users are never going to have a single exit point that consumes the exact amount of electricity provided at a single entry point. Even under the current balancing regime, users are more likely to have several exit points for each entry point; and
- the clause did not take into account loss factors; and
- taken in reverse, the clause might have implied that if the user transferred no electricity at an entry point, the user was not entitled to electricity at an exit point. This will not be the case under the wholesale market.

The intent of the clause might be to protect a generating user's right to be compensated for its generation. These rights, to the extent they exist under the Metering Code, are enhanced by an obligation on both parties to observe their obligations under the Metering Code.

Western Power considers that this change to the MAC is required to ensure a commercially workable contract that can operate in conjunction with the wholesale market.

2.5 Relationship with controller

The AQP specifies that a party who seeks the right to transfer electricity must be or intend to be a market participant. For this reason, the use of the ETAC will be limited to two classes of user – Market Generators and Market Customers.

In order to fulfil the requirement that the ETAC form the basis of a commercially workable contract, it must address the reasonable needs of both generators and retailers (and parties who are both). Clause 6 of the ETAC details the relationship between the user and the user's controller. For retailers, the controller will generally be the retailer's customer.

The relationship between the user and a controller has been clarified in the ETAC, as the MAC did not provide contractual certainty regarding the user's liability for actions of the controller.

Under the ETAC, the user must nominate a person as a controller for each connection point that satisfies certain threshold requirements. These thresholds are where:

- generating plant with installed capacity exceeding 30 kVA is connected at the connection point.
- the connection assets for the connection point are operated at 66 kV or greater.
- the rating of the largest motor connected at the connection point is greater than 0.4% of the three-phase short circuit fault level at the attachment point.

Western Power considers that these thresholds are reasonable, as they objectively relate to the user's potential impact on the technical integrity of the network. The first is from the MAC, the second relates to transmission assets, which have inherently higher energy, and hence higher risk associated with them, and the third is taken from the appropriate Australian Standard on voltage flicker standards, as it provides a clear measure of when a user's equipment might technically have an adverse effect on other users in the vicinity.

Western Power has a right to object to the user's nomination of a person as the controller and the user must, if required by Western Power, procure that the controller enters into a connection contract with Western Power.

If the user is the controller, then the user must comply with the connection provisions. If the user is not the controller, then the user is required to ensure that the controller complies with the connection provisions, unless that controller has separately contracted with Western Power.

Under the MAC, and in the event of technical non-compliance by a controller, the service provider has the right to curtail service until the controller has agreed to be bound by the technical compliance obligations and the non-compliance has been rectified. Western Power considers that it is also reasonable not to commence such services in cases of similar non-compliance.

The ETAC has an avoidance of doubt clause that specifies that the user will be held liable to Western Power for any direct damage caused by a controller unless:

- the controller has entered into a connection contract with Western Power; or
- the user can prove that it is not in breach of its requirement to ensure technical compliance from the controller.

Under the MAC, a user is liable for any default. This would include failing to procure technical compliance from the controller. The inclusion of clause A3.62 (actions of third parties causing user to breach technical rules) was therefore confusing. Clause 11.3 of the ETAC provides

contractual certainty in this sense because it has been made subject to the controller liability provision.

Clause 6.2(b) of the ETAC requires the user to ensure that in any contract the user has with the controller, Western Power is protected against liability for indirect or consequential damage. In effect, this clause reproduces the protections in place where the user is the controller but covers the situation where there is no connection contract with the controller in place.

This clause ensures that neither party is placed in an adverse position in terms of protection against indirect or consequential loss simply because the user is not the controller. In Western Power's view, this position replicates the intention in the MAC that both the user and Western Power should be protected against claims for consequential loss.

The integrity of connected facilities and equipment is critical to network system reliability and security and as such, Western Power should be able to mitigate the risk of damage or failure to its network. This is particularly so given that Western Power retains the right to contract with any person, including a controller. Consequently, it is essential that risk be allocated to users or controllers as appropriate, and that the rights and obligations of the user, the controller and Western Power are clear to enable the safe and reliable management of the network.

2.6 Tariffs and charges

To the extent that there are any, Western Power does not wish to be precluded from being able to recover charges in addition to the tariff to which it is entitled to, either under the ETAC or at law.

Clause 7.2(b) of the ETAC therefore clarifies the existence of these pre-existing rights. The amendments made to the MAC in this respect do not create any new contractual right of recovery for charges nor do they broaden Western Power's discretion to require payment of charges outside of the ETAC.

Similarly, as it is in the interest of both parties that the administrative workload be reduced by capturing all charges relevant to the services, such as fees under the AQP and the Metering Code, within the invoice provisions of the ETAC, Western Power has included a new clause 8.1(b) to clarify that the Tax Invoice issued by Western Power may contain all of the amounts payable by the user to Western Power under the contract or at law for that accounting period. This amendment does not create any new contractual right of recovery for payment; it does no more than both clarify and simplify the administration of invoicing for Western Power and the user.

A user receives relief from the full liability to pay 'standing charges' where there is a force majeure event suffered by Western Power. The actual application of the defined term 'standing charges' is uncertain in the MAC, and so clause 7.3(b) of the ETAC defines 'standing charges' in order to clarify that only 10% of capacity based charges, that is those which apply regardless of actual usage, should apply during a force majeure event. It is now also made

clear in the ETAC that the user will only receive the benefit of having to pay the reduced 'standing charges' where the user has not caused the force majeure event, where Western Power is the Affected Person and to the extent the user would otherwise have been able to use the affected service if the force majeure event had not occurred. The inability of the user to receive the 'standing charges' relief where the user either caused the force majeure event or would otherwise not have used the affected service in any event is considered by Western Power to be reasonable and consistent with the Code Objective.

2.7 Security

The ETAC seeks to balance the costs of complexity with flexibility and comprises the following key components with regard to security for network charges

While the user is not obliged to do so, there is no need to provide security if that user can provide evidence of either a BBB Standard & Poor's rating or better, or a Baa Moody's rating or better. The ratings selected are in line with those required by NEM distributors. A rating is not a necessary requirement.

- A parent company guarantee is acceptable where Western Power, acting reasonably, determines that the parent company would not pose a material financial or technical risk.
- Security may be in the form of an appropriate bank guarantee, an equivalent financial instrument, or a cash deposit for 2 months' charges.

However, the user is still required to secure the full amount of any unpaid contribution calculated under the capital contributions policy with a bank guarantee or equivalent financial instrument. Western Power believes that the threshold test for security for charges (whether there is a material risk based on technical and financial resources, to be determined by Western Power acting reasonably) is not appropriate to secure contributions. Contributions are for one-off works over a limited period, and any payment default results in other users subsidising the cost of the works.

3 Connection Provisions

3.1 Costs of compliance with Technical Rules

Apart from the requirement that a service provider or system management reimburse a generator for certain tests, the Technical Rules do not contain provision for the recoupment of costs incurred in compliance with them. Therefore, Western Power has amended the MAC to enable it to recover, to the extent not already provided for in the CCP, the costs it reasonably incurs in performing actions in compliance with the Technical Rules brought about by the acts or omissions of the user. Of particular concern to Western Power, and therefore provided for in the ETAC, is that it has the ability to recover those costs incurred where a user's equipment increases the fault levels in the transmission system. However, as Western Power wishes to

allay the concerns of users that they will be liable for the costs incurred by another user, arising from compliance by that other user with the Technical Rules, a provision has been included in the ETAC clarifying, for the avoidance of doubt, that this will not be so.

3.2 Technical information from application

Clause 12(a) of the ETAC ensures that the technical information provided in the original access application, and on which the original access offer was based, is captured in the contract. This clause also requires the user not to materially change their facilities and equipment without making an application under the applications and queuing policy. This provision ensures that Western Power has available to it accurate information on the characteristics of the equipment connected to the network. This information improves the accuracy of planning studies undertaken to assess the integrity of the system.

Clause 12(b) of the ETAC prevents the user from making a material change in the characteristics of any generating plant connected to the network unless the user submits an application under the AQP to do so. Changes to those characteristics of generating plant that are required to be provided at the time of making an application under the Technical Rules can impact on the network in the same way as a capacity increase and may trigger the need for augmentation or other measures, as may be associated with any other application. Therefore, Western Power considers that it is reasonable to require an application and that to do otherwise would affect the interests of other applicants in the queue, and thus would not meet the Code objective.

3.3 Removal of equipment

The provisions in the MAC regarding removal of equipment by the user have been modified to remove the limits on what Western Power's instructions to the user might be and, consequently, to add that Western Power's instructions must be reasonable. This modification is necessary because the nature of the electrical connection might mean that some of the user's removal work will be on the user's premises (for example, protection equipment). Also, the phrase 'what is not otherwise required under another contract' is problematic, as the user is not in a position to judge whether this is fulfilled without breaching confidentiality and thus has been removed.

This section has been moved from the termination clauses in the MAC (but is still referenced by them) to ensure that the ETAC is internally consistent with regard to the concept of multiple connection points under the one contract.

4 Common Provisions

4.1 Warranties

The ETAC places a mutual exclusion on implied warranties and a mutual limit on any implied liabilities that are prohibited in law from being excluded. This is consistent with the MAC and a step forward from previous arrangements, under which the exclusion was in favour of Western Power only.

4.2 Liability and indemnity

Clause 18.2 of the ETAC specifies various limits of liability to reflect the different levels of technical risk posed by various types of facilities. These different limits cater for multiple connection points under the one contract. The proposed limits have been based on industry standards and risk management workshops to ensure the limits are reasonable and allow for users' different circumstances.

The ETAC allows for an indemnifier to indemnify Western Power in respect of the liability of the user under the ETAC. This is contemplated in the MAC. Rather than being left as footnotes, indemnifier provisions have been incorporated directly into the ETAC to ensure both that the ETAC is complete enough to form the basis of a commercially workable contract and to allow applicants to understand in advance how the contract will operate.

4.3 Insurance

In order to protect the interests of users in general, the ETAC requires that Western Power and users have appropriate insurances in place. Each party is required to hold products and public insurance policies for each category of liability held under the Contract as well as workers compensation to cover their personal injury liability and other relevant forms of insurance.

On advice from Western Power's insurer, insurance policies are required to have a cross liability clause but not a waiver of subrogation clause. Given the large number of contracts based on the ETAC that Western Power expects to be party to, Western Power considers it reasonable to rely upon its insurer's advice in this matter.

The security terms of the ETAC do not provide sufficient security to cover the full liability of the user to Western Power under the contract. For charges, there are security options available to the user to provide security of only 2 months' access charges. They do not extend to the full value of the liability caps. It is therefore, critical that Western Power be given the opportunity to assure itself that the user is adequately insured to cover the full liability of the user under the contract by reviewing a user's insurance policies to ensure, for example, that the policies do not exclude payment upon breach of contract. A provision to this effect is included in the ETAC. The provision is not reciprocal as, unlike the high risk to Western Power, the risk to the user of

not being able to recover a liability owed by Western Power under the contract, given its ownership, is extremely small.

Rather than require the parties to procure a 'principals' indemnity extension' in regard to the insurances required under the contract, this same concept is captured more clearly (consistent with currently accepted insurance terminology) by including a two stage process that requires the relevant insurances to be in the joint names of the parties or the parties names be endorsed on the relevant policies.

4.4 Force Majeure

'FM Period' has been defined to improve operation of the force majeure clauses, and terrorism has been added to the list of possible force majeure events.

Western Power considers the release from liability under a force majeure event to be too broad and so has amended the ETAC to make clear the probable intention of the MAC, which is that a force majeure event should only result in the affected obligation being suspended.

Clause 21.3 of the ETAC includes a reasonable qualification to the obligation to incur expenditure during force majeure on an event of breach by the other party.

4.5 Curtailment of services

Western Power also proposes to slightly broaden its curtailment rights for unplanned maintenance where necessary, in accordance with good electricity industry practice. This is not only consistent with other applications of good electricity industry practice elsewhere in the MAC, but also avoids circumstances under which Western Power is prevented by a technicality from exercising prudent measures for the benefit of all network users.

Finally, for clarity, the proposed ETAC now makes it clear that the contractual right to curtail set out in the access contract does not limit other powers that Western Power might have arising from any other agreement between the parties or any Law, including section 57 of the Energy Operators (Powers) Act 1979.

4.6 Termination

The ETAC proposes an obligation on users to pay any unpaid charges owed to Western Power under the Contract. This provides for a commercially workable contract and is consistent with the MAC.

4.7 Assignment

The ETAC also provides that the user's ability to assign is governed by the transfer and relocation policy, which makes some clarifications about the assignment not leading to a release of the user from its obligations under the access contract.

These clarifications provide for a commercially workable agreement.

It should be noted that the MAC (and hence the ETAC) requires the user to notify Western Power of the identity of the assignee and the nature of assigned rights. This contravenes section 5.18 (b) of the Code, which states that Western Power can only require the assignee to make such notification. This would appear to have been an error in the Code, given the MAC position and the impracticality of requiring a third party to notify Western Power.

4.8 Augmentation

The ETAC is the result of an electricity transfer application under the AQP, and some form of works/payment contract will generally result from a connection application under the AQP (under which the CCP is applied). However, clause 25 of the ETAC requires the parties to comply with any provisions laid out in a schedule regarding contributions.

This allows for the parties to specify the terms of the augmentation arrangements in the schedule, either by way of reference to a separate interconnection works or otherwise. It is a convenient, clear and flexible way of dealing with the arrangements relating to augmentation and contribution.

4.9 Terminology

Clause 1.1 of the ETAC contains the defined terms used in the contract. The following changes have been made to the defined terms in the MAC.

Connection Point

There are practical problems in using the term 'connection point' as defined in the MAC throughout the AA. Accordingly, new definitions have been added that deal with the distinction between a connection point and an attachment point.

The Code, Metering Code and Customer Transfer Code use the terms 'connection point', 'exit point' and 'entry point' for two purposes. Firstly, those terms are used to define a transaction involving the transfer of electricity between parties to a standard access contract. Secondly, those terms are used to describe a physical point of attachment to the network.

These Codes appear to assume that there is one physical point of attachment applicable to each user. In fact, the reality is that there are various connection configurations (for example, a shopping centre and a high rise building with multiple tenants). The new definitions allow for

the various physical configurations of network assets making up the entry point and the exit point and create a notional point of transfer of electricity - the connection point.

Western Power has created a new definition, 'attachment point', to refer to the physical point on the network at which network assets are connected to assets owned by another person. 'Attachment point' is a term that is well understood in the electrical industry. The rules that map the physical connection arrangements to the notional connection point are now provided for in the AQP.

Transfer

The term 'transfer', with respect to transferring access rights under a contract, has been changed wherever possible to 'assignment', to avoid confusion with transferring electricity.

Contribution

The term 'capital contribution' has been replaced with 'contribution', in line with the CCP.

Connection Contract

The term 'technical compliance contract' has been replaced with 'connection contract' to better match the term 'connection service' used in the Code.

Claim

The phrase 'in respect of which the other party' has been deleted from the definition of Claim in the ETAC, as this appeared to presuppose the right to an indemnity, whereas the term is used within the ETAC to establish that right.

5 Conclusions

The variations between the ETAC and the MAC have been explained. Western Power believes that users will regard these changes as reasonable and commercially workable. In other respects, the ETAC follows the MAC. The ETAC is consistent with the Code requirements and the Code objective.