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# Applications & Queuing Policy

## Response to public consultation on the Preliminary Offer Processing Fee and the Preliminary Acceptance Fee

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# 1 Introduction

On the 16 January 2013 Western Power published a consultation paper on new fees relating to Western Power's revised Applications and Queuing Policy (AQP). The purpose of the paper was to seek feedback on the methodology for calculating two new fees in relation to the provision of a shared network solution for Competing Applications Groups (CAGs).

These new fees are:

1. **Preliminary offer processing fee ("processing fee")** – this is the fee for developing CAG solutions required to provide a preliminary access offer (PAO); and
2. **Preliminary acceptance fee ("acceptance fee")** – this fee is paid by applicants as part of their acceptance of the PAO. It facilitates progression to the access offer.

Written submissions were sought on the issues raised for consultation in the paper by 5 February 2013. One written submission was received.

In addition, Western Power hosted a Revised AQP Fees Workshop and Transition Update forum on 22 January 2013 at Western Power's Head Office. This forum provided further information on the new fee structure and gave customers and potential applicants the opportunity to ask questions and provide feedback.

This paper provides Western Power's response to the key questions and issues relating to the new fees raised in both the written submission and the public forum held on 22 January 2013.

The paper should be read in conjunction with the published methodology paper, "Applications and Queuing Policy - Methodology to determine the preliminary offer processing fee and the preliminary acceptance fee" (fees methodology paper). The processing fee and the acceptance fee apply with effect from 1 February 2013.

<http://www.westernpower.com.au/aboutus/accessArrangement/Networkaccessprices.jsp>

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## 2 Issues raised and Western Power's response

There were a number of issues raised in both the public forum and in the one written submission received in response to the consultation process. Those issues have been grouped into common themes to assist readers to understand the key issues raised regarding these new fees and Western Power's response.

None of the issues raised suggested the methodology for determining fees should be changed. However a number of questions involved requests for further clarity in the information provided in the consultation paper.

The outcome of the original work to develop the fees methodology outlined in the consultation paper, and the public consultation process, is the finalisation of the "Methodology to determine the preliminary offer processing fee and the preliminary acceptance fee" paper (fees methodology paper) referenced in the Introduction to this document.

The following sections summarise the issues raised, Western Power's response and a description of how these matters have been incorporated into the fees methodology paper.

### 2.1 Issues related to process

#### 1. When (at what stages) do I have to pay fees to continue to be part of the CAG and the shared network solution?

There are 4 distinct phases in the CAG process from initial enquiry to the final issuing of access offers. At each stage there is an associated fee.

- a. The enquiry stage has an enquiry fee.
- b. The application stage has an application fee.
- c. The preliminary access offer (PAO) stage has the preliminary offer processing fee (processing fee). This fee is paid on acceptance of the Notice of Intention to prepare a preliminary access offer (NOI) from Western Power, if an applicant wishes to proceed as part of the CAG to the PAO.
- d. The access offer stage has the preliminary acceptance fee (acceptance fee). This fee is paid on acceptance of the PAO. This enables Western Power to develop and make access offers to the members of the CAG. It also incorporates a payment towards the cost of reworking the shared network solution should the applicant withdraw after accepting the PAO.

Once an access offer is issued, acceptance of the access offer involves executing the necessary individual access contract and paying capital contributions associated with that access contract.

The fees methodology paper includes:

- An overview of the key stages including their associated fees and activities in Section 2;
- The methodology to determine the processing fee in Section 4; and
- The methodology to determine the acceptance fee in Section 5.

**2. What happens when the total capacity sought by members of the CAG exceeds the total capacity that is expected to be made available through the shared network solution? There is a risk that I may not get an access offer, so how do I assess this risk?**

As there are currently a significant number of applications for network capacity, this scenario (total capacity sought exceeds the capacity likely to be available) has a reasonable likelihood of occurring at the NOI stage. However the readiness to proceed will vary significantly between applicants and the CAG process facilitates the progression of applicants who are ready to proceed.

The benefit of the revised AQP is that applicants decide at specific stages whether they wish to progress their connection application as part of the CAG. Western Power will provide information at each stage to assist applicants' decision process. An explanation of the details included in the NOI and PAO will be addressed in fact sheets to be released on the Western Power website in May 2013.

Applicants may also request information from Western Power concerning:

- Whether they are competing with other applications and the circumstances giving rise to that competition and the aggregated capacity of those applications;
- An estimate of the likely time for an access offer to be made; and
- Except where confidentiality restrictions apply, the capacity requirements of each competing applicant, their priority position and details of the augmentations required to meet the requirements of those applicants.

When an NOI is issued to applicants, those who elect to proceed with the CAG must pay the processing fee.

Applicants will then be presented with a PAO and will be asked to confirm whether they intend to proceed to an access offer by accepting the PAO and paying the acceptance fee.

If applicants elect to continue to proceed with the CAG to an access offer, and the CAG continues to be over-subscribed (i.e. Western Power cannot offer sufficient network capacity to allow all applicants in a CAG to connect), Western Power will make access offers to accepting applicants in order of their priority dates, until there is no more spare capacity.

Where Western Power is unable to provide an access offer to an applicant(s) impacted by this over-subscription, Western Power will refund the full amounts of the processing fee(s) and acceptance fee(s) paid by those applicant(s). Those applications will continue to retain their priority date and will be considered for future CAG solutions.

The fees methodology paper includes an explanation of refunding of fees where an access offer cannot be made due to an over-subscription in Section 5.2(3).

To provide an additional early opportunity for applicants to assess the likelihood of Western Power being able to make them an access offer, Western Power has introduced a pre-NOI step in which applicants will be provided with advance notice of Western Power's intention to issue an NOI, and invited to receive an NOI. This is expected to result in only those applicants that are ready, able and willing to participate in the CAG solution will do so, enabling Western Power to provide qualified information in the NOI.

Applicants may elect to not be considered in a CAG solution if they consider the circumstances of oversubscription for a shared network solution are likely to persist.

Finally, applicants are encouraged to maintain regular contact with their Access Sponsors who are available to provide information and assistance as required.

The fees methodology paper includes:

- An Appendix with worked examples that demonstrate various scenarios including full subscription, under-subscription and over-subscription to the capacity available; and
- An explanation of the potential outcomes related to acceptance of access offers in Section 5.2.

### **3. Will fees change if the membership of the CAG changes? For example, if other applicants elect not to proceed?**

Where the fees for developing the PAOs are not sufficient to collectively fund the works, for example due to insufficient acceptances, and Western Power considers it cannot make PAOs for that reason, Western Power will re-issue the NOIs to applicants with revised fees.

Equally, where the fees for developing the access offers are not sufficient to collectively fund the works, and Western Power considers it cannot make access offers for that reason, Western Power will re-issue its PAOs to applicants with revised fees.

The fees methodology paper includes:

- An explanation of the revision of the processing fee, if not all applicants elect to proceed, in Section 4; and
- An explanation of the revision of the acceptance fee, if not all applicants elect to proceed, in Section 5.

### **4. If a CAG is not viable, would the fees be refunded?**

If Western Power is unable to make an access offer due to the CAG being deemed unviable or some other factor that leads to Western Power dissolving the CAG, Western Power will refund the remaining amounts of the fees (after debiting the costs incurred).

This fees methodology paper includes an explanation of this in section 5.2(2).

### **5. What happens, with regards to fees, if you are only provided a part offer for part of the capacity requested?**

Where Western Power is only able to offer a portion of the capacity sought in the application, the processing fee and acceptance fee will be counted towards any contribution payable under the contributions policy. This could arise, for example, where the solution is over-subscribed, but part of the capacity sought by an applicant can be met.

The fees methodology paper includes an explanation of this in Section 5.2(3).

### **6. How are costs determined if you belong to multiple CAGs? Is there an opportunity to split the costs between the CAGs?**

If an applicant is in more than one CAG, even where there is interdependency between the CAGs, each individual CAG is treated separately for the purpose of calculating fees and there is no intention to split or share costs between CAGs. This ensures that those applicants who may have their capacity requirements satisfied through their membership of one CAG are not prejudiced. This is aligned with the fourth fee principle in the fees methodology paper requiring a non-discriminatory approach.

The fees methodology paper includes:

- Fee principles in section 3;
- The methodology to determine the processing fee in Section 4; and
- The methodology to determine the acceptance fee in Section 5.

**7. What are the terms and conditions associated with paying the preliminary offer processing fee and the preliminary acceptance fee?**

Details of the processing fee will be included in the NOI to applicants. Details of the acceptance fee will be included in the PAO to applicants.

The terms and conditions with respect to payment of the fees will be in early undertakings contracts (EUC)s to be included with both the NOI and PAO.

The fees methodology paper includes an AQP process overview including clarification that EUCs will be included with the NOI and PAO in Section 2.

Acceptance of an NOI or PAO will require execution of the EUC and payment of the relevant fee within 30 business days of receipt of the NOI or PAO.

**8. We understand that Western Power has the discretion to include applicants later in the CAG process. How will these applicants be treated in relation to fees?**

Western Power may accept late membership of CAGs prior to issuing the PAO, subject to acceptance not delaying the preparation of the PAO (clause 24.7 of the AQP). In such cases of late membership, the processing fee will be determined on the same basis as has been applied to the original members of the CAG.

The fees methodology paper includes clarification on the fees paid by applicants that are accepted as late members of the CAG and the methodology to determine the processing fee in Section 4.

**9. What is included in the preliminary access offer? We would like to have a reasonably accurate indication of the shared network costs and our contribution, our connection costs and timing of both the shared network solution and our connection solution to be able to make a decision to progress.**

The PAO is intended to provide all of the information that will be contained in the final access offer. The information will not be to the same degree of accuracy as the final access offer but will cover all of the same matters.

Western Power will provide information in the PAO to enable each applicant to understand the derivation of the acceptance fee and an EUC that will set out the scope of works and the terms and conditions associated with the payment of that fee. It will also include the details with respect to both the shared network solution and the individual connection solution relevant to the applicant. It is therefore important for applicants to ensure they develop their connection solutions as early as possible so that both the shared network solution and their individual connection solution are completed in order to provide a PAO.

The PAOs may differ from an ultimate access offer where, for example, not all PAOs are accepted, or an applicant withdraws before an access offer is made or accepted. In such cases, the PAOs, or the access offers, would be revised and reissued.

An explanation of the details included in the PAO will be addressed in a fact sheet to be released on the Western Power website in May 2013.

The fees methodology paper includes reference to the PAO in sections 2 and 5.

#### **10. Is the rework component of the preliminary acceptance fee the same for all applicants?**

Each applicant will pay the same amount for the rework cost component (second component) of the acceptance fee and is refundable (after debiting costs incurred). However, the actual costs of rework and any refunds back to the withdrawing applicant will vary according to the impact of that applicant's withdrawal.

Although this component of the acceptance fee will be the same for all applicants, the effective outcome of this is two-fold:

- those applicants that proceed to conclude an access contract will have their fees credited towards any contribution payable under the contributions policy towards the works to construct the solution; and
- for those applicants that elect not to conclude an access contract, the rework costs will be proportionate to the impact on the CAG of their withdrawal. Applicants seeking smaller amounts of capacity relative to other applicants in a CAG are likely to have a lesser impact on the CAG solution than those applicants seeking a large amount of capacity.

Note that the first component of the acceptance fee representing Western Power's costs of developing the access offer is non-refundable.

The fees methodology paper includes reference to this in section 5.

#### **11. Is it reasonable for an applicant to be penalised for withdrawing from the process if there is a material change in the cost or timing of the shared network solution from the Preliminary Access Offer to the Access Offer?**

There is a reasonable degree of certainty around the cost and timing of the shared network solution when applicants are provided the PAO. In preparing the PAOs, Western Power will have undertaken much of the work required to maximise certainty around project timing and cost. For example the nature of the shared network solution will be determined and a reasonable estimate of costs and timing for construction will have been determined. Material changes to the cost or timing of the shared network solution are less likely during preparation of the final access offers.

Rework costs are allocated to those applicants who cause the rework, namely, withdrawing applicants. The payment of the rework cost component is necessary to minimise the negative impact upon remaining CAG applicants of an applicant withdrawing. Western Power will be preparing the access offers in good faith and it is not intended that the costs of this process, including any rework, will be borne by Western Power.

Between the PAO and access offer, the most likely reason for material changes in the cost or timing of the shared network solution would be the withdrawal of an applicant requiring higher capital contributions from the remaining applicants, and/or a re-scoped shared network solution. This further supports the principle of allocating the cost of the rework to the withdrawing applicant.

Further withdrawal of applicants as a result of the consequent changes could result in the CAG and shared network solution becoming unviable. Refer to question 4. In this case all remaining CAG members will be refunded their fees less costs.

**12. If Western Power acquires assets for a shared network solution that does not proceed, how will the cost of these assets be refunded?**

This question relates to the fees to the extent that fees cover such items as purchase of land or specific equipment prior to the execution of the access offer and construction work commencing. The purchase of land would be expected to occur rarely, whereas the purchase of long lead time plant and equipment to accelerate project schedule may be more likely to occur. Where Western Power is able to recover costs incurred in acquiring assets for a shared solution that does not proceed, those recovered funds would be returned to the applicants less costs incurred by Western Power.

The share of the recovered funds for each applicant would be determined on the same basis as is used to determine the share of fees for the processing fee and the acceptance fee, depending on the stage in which the associated costs were incurred.

## 2.2 Transparency of information

**13. Will there be sufficient transparency of information to enable applicants to make an informed decision on whether to continue to pay the fees to be part of a CAG shared solution? How will it be demonstrated that an Applicant's fee is fair and reasonable?**

As previously stated (see question 2) the benefit of the revised AQP is that applicants decide at specific stages whether they wish to progress their connection application as part of the CAG. Western Power will provide information at each stage to enable applicants to make an informed decision.

For example the NOI will include:

- Total cost of developing the shared network solution;
- Total capacity expected from the shared network solution;
- Capacity sought by the applicant;
- Details of the calculation of the individual applicant's fees; and
- An anonymous list of CAG applicants in priority order including the capacity sought by each CAG applicant.

At the PAO stage this information would be updated so that applicants are able to assess their continued participation in the process.

The fees methodology paper includes reference to the information that will be provided in terms of the processing fee (section 4) and the acceptance fee (section 5). However the methodology paper does not deal with the additional information that will be provided at each stage of the process. An explanation of the details included in the NOI and PAO will be addressed in fact sheets to be released on the Western Power website in May 2013.

In relation to the quantum of the fee, the fees methodology paper sets out in section 3 the principles which underpin the fees methodology. These principles seek to ensure both that fees are equitable, reflecting an applicant's relative usage of a shared network solution, and that they reflect the applicant's good faith intention to proceed as part of a shared network solution, whilst insulating competing applicants from the cost impact of their withdrawal. The

detailed methodology set out in Sections 4 and 5 are consistent with these principles. This fees methodology paper, including the worked examples (in the Appendix), enable applicants to understand and assess the fairness and reasonableness of the fees.

If applicants have any concerns regarding the calculation of their fees, they are encouraged to discuss those concerns with their Access Sponsor.

## 2.3 Individual connection costs

### 14. How will individual connection costs be managed in conjunction with developing the shared network solution?

The processing fee and acceptance fee only relate to costs for the development of the shared network solution. Each applicant will still have to negotiate with Western Power with respect to its individual connection to the network. It is important for applicants to pursue their individual connection solution in parallel as both the connection solution and CAG shared network solution will be required to provide a PAO and access offer.

This point is reiterated in the fees methodology paper, specifically in the introduction (section 1).

## 2.4 Applicant-specific solutions

### 15. Can you pursue an applicant-specific solution in parallel with a CAG solution?

Yes. This is explained in section 20.3A of the AQP (reproduced below) entitled “Interaction between applicant-specific solutions and competing applications groups”.

*20.3A Interaction between applicant-specific solutions and competing applications groups*

*For the avoidance of doubt, an applicant may seek an applicant-specific solution at any time while its application is under consideration. Where an applicant seeks an applicant-specific solution under clause 20.3 above, its application will, subject to clauses 16.5 and 24.1(b2), continue to be considered as part of any relevant competing applications group.*