

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

- (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.