

EN401*

ELECTRICITY INDUSTRY ACT 2004

ELECTRICITY NETWORKS ACCESS CODE AMENDMENTS (NO. 2) 2006

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 1st day of December 2006.

FRANCIS LOGAN.

Made by the Minister

1. Citation

These amendments may be cited as the *Electricity Networks Access Code Amendments (No. 2) 2006*.

2. Commencement

These amendments come into operation on the date on which these amendments 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]

4. Section 1.3 amended

Section 1.3 is amended as follows—

- (a) insert after the definition of “approval” the following definition and note—

“ **approved extension and expansion policy**” has the meaning given to “approved policy” in section 60 of the Act.

{Note: At the time this definition was inserted in this Code, the definition of “approved policy” in section 60 of the Act was—

“ **approved policy**’ means an extension and expansion policy approved under section 62 as amended from time to time and includes any replacement for the policy approved under section 63”}; and

- (b) in the definition of “**connection point**”, insert after “*covered network* identified in” the words—

“ , or to be identified in, ”.

5. Section 2.9 amended

Section 2.9 is amended by deleting “If a *service provider* will need to undertake an augmentation (“**required augmentation**”)” and inserting instead—

“
 Subject to section 2.9A, if a *service provider* will need to undertake a *required augmentation*
 ”.

6. New section 2.9A inserted

After section 2.9 the following section is inserted—

“
 2.9A If—
 (a) an *approved extension and expansion policy* provides that the *service provider* will undertake and fund a *required augmentation* if the *user* pays an amount specified in, or determined under, the policy; and
 (b) the *user* pays the amount,
 then the *service provider* must undertake and fund the *required augmentation* in accordance with the *approved extension and expansion policy* or as otherwise agreed between the *service provider* and *user*.
 ”.

7. Sections 4.72 to 4.76 inserted

After section 4.71 the following heading and sections are inserted—

“
Transitional: Extension of deadlines after 2006 Code change
 4.72 Sections 4.73 to 4.76 are transitional provisions that apply only in respect of the application of the *access arrangement approval* process in Subchapter 4.1 in respect of the *covered network* that is *covered* under section 3.1.
 {Note: These transitional provisions apply only for Western Power’s first *proposed access arrangement* for the SWIN, which is the subject of the *2006 draft decision*.}
 4.73 In sections 4.73 to 4.76—
 “**2006 amendments**” means the amendments to this Code made by the *Electricity Networks Access Code Amendments (No 1) 2006* and the *Electricity Networks Access Code Amendments (No 2) 2006*.
 {Note: The *Electricity Networks Access Code Amendments (No 1) 2006* were *Gazetted* on 1 September 2006 and the *Electricity Networks Access Code Amendments (No 2) 2006* were *Gazetted* on 8 December 2006.}
 “**2006 draft decision**” means the *draft decision* published by the *Authority* on 21 March 2006 under section 4.12(b) not to *approve* the *proposed access arrangement* for the *covered network* that is *covered* under section 3.1.
 “**original section 4.18 deadline**” means the *section 4.18 deadline* applying under this Code immediately before the *Electricity Networks Access Code Amendments (No 2) 2006* take effect.
 “**section 4.18 deadline**” means the deadline in section 4.18 for the issue of a *final decision*, as extended from time to time under this Code.
 4.74 Despite anything else in this Code—
 (a) on the date the *Authority* publishes a notice under section 4.71(b) ending a suspension under section 4.71(a)—
 (i) the *Authority* may *publish* and *advertise* an invitation for submissions on the *2006 draft decision* which have regard to the *2006 amendments*; and
 (ii) if it does so, the *Authority* must specify in the invitation the length of time (which must be no greater than 15 *business days* after the invitation is *published*) that it will allow for the making of submissions under section 4.74(a)(i);
 and
 (b) a person may make a submission to the *Authority* in accordance with an invitation under section 4.74(a)(i) within the period of time specified in the invitation; and
 (c) the *Authority* may, from time to time, by *publishing* a notice, extend the *section 4.18 deadline*, but—
 (i) the notice must be published before the time the *section 4.18 deadline* would otherwise have expired; and
 (ii) the *Authority* must not do so unless it has first determined as a *reasonable and prudent person* that it is essential to do so for due consideration of all the matters under consideration or satisfactory performance of the *Authority’s* obligations under this Code; and
 (iii) the notice must specify the *Authority’s* reasons for deciding to extend the *section 4.18 deadline*; and
 ”.

(iv) the aggregate of all extensions under this section 4.74(c) must not exceed—

- (A) if the *Authority* has *published* and *advertised* an invitation for submissions under section 4.74(a)—an additional 30 *business days*, plus the number of *business days* specified under section 4.74(a)(ii), after the *original section 4.18 deadline*; and
- (B) otherwise—an additional 30 *business days* after the *original section 4.18 deadline*.

4.75 An extension under section 4.74(c) is in addition to any other extension, and does not limit section 4.67.

4.76 Section 4.66(n) is amended to delete “3” and insert—
“ 5 ”.

8. Section 5.14 amended

Section 5.14 is amended by deleting “A” and inserting instead—

“ Subject to section 5.14A, a ”.

9. New section 5.14A added

After Section 5.14 the following section is inserted—

5.14A *A capital contributions policy* may provide for a user to make a *capital contribution* in respect of a *new facility* whether or not the *new facilities investment* meets the *new facilities investment test*, if an *approved extension and expansion policy* provides for the *user* to pay in respect of the *new facility* an amount specified in, or determined under, the *policy*.

10. Section 6.37A amended

Section 6.37A is amended by—

- (a) deleting “to make a tariff equalization contribution to the Tariff Equalization Fund under Part 9A of the Act” and inserting instead —
“ , by a notice made under section 129D(2) of the Act, to pay a tariff equalization contribution into the Tariff Equalization Fund ”; and
- (b) in paragraph (a) deleting “made during the *access arrangement period*” and inserting instead—
“ paid under the notice, including any amount that was payable or paid before the commencement of the *access arrangement period* ”.

11. Section 7.12 amended

Section 7.12 is amended by—

- (a) after “under section 6.37A” deleting “, then” and inserting instead—
“ and is intended to be recovered from *users of reference services* through one or more *reference tariffs*, then the recovery must have the objective of ”; and
- (b) deleting paragraphs (a) and (b) and inserting instead—
“
(a) applying only to *users of reference services* provided in respect of *exit points* on the *distribution system*; and
(b) being equitable in its effect as between the *users* referred to in section 7.12(a); and
(c) otherwise being consistent with the *Code objective*.

12. Opening words to Appendix 4 Amended

After the fourth paragraph beginning “If an *access arrangement* is to include” the following paragraph is inserted—

This *model capital contributions policy* does not provide for a user to make a *capital contribution* under section 5.14A. If the *capital contributions policy* in the *access arrangement* is to provide for *capital contributions* under section 5.14A, then the *Authority* should consider how the *capital contributions policy* should differ from this *model capital contributions policy*.