

Western Australia

Electricity Distribution Regulations 1997

As at 23 Jun 2004

Version 00-a0-03

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Electricity Distribution Regulations 1997

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Western Australia

ELECTRICITY CORPORATION ACT 1994

Electricity Distribution Regulations 1997

Made by the Governor in Executive Council.

Part 1 — General

1. Citation

These regulations may be cited as the *Electricity Distribution Regulations 1997*.

2. Commencement

These regulations come into operation on 1 July 1997.

3. Definitions

In these regulations, unless the contrary intention appears —

“**access application**” means an access application made under regulation 8;

“**access information**” has the meaning given in regulation 14 (1);

“**access offer**” means an offer made by Western Power to an applicant to provide the distribution access services requested in an access application made by that applicant and, where Western Power makes an additional offer under regulation 11 (4) in relation to the access application, includes that additional offer;

“**ancillary services**” means the following services:

- (a) voltage control;
- (b) control system services;
- (c) spinning reserve; and
- (d) post-trip management;

“**applicable laws**” means the Act, the *Energy Corporations (Powers) Act 1979*, the *Electricity Act 1945* and the *Energy Co-ordination Act 1994*;

“**applicant**”, in respect of an access application, means the person who has made the access application or on whose behalf the access application has been made;

“augment”, in relation to the electricity distribution network, means to enhance or expand the electricity distribution network;

“business day” means any day other than a Saturday, Sunday and any day that is a public holiday or bank holiday in the Perth metropolitan area;

“connection” means a distribution connection or a transmission connection;

“connection equipment” in respect of a distribution connection means all of the electrical equipment that, in Western Power’s opinion, is —

- (a) likely to be used only in order to transfer electricity to or from the electricity distribution network at the relevant point and includes any transformers or switchgear at the relevant point that are necessary for that transfer; or
- (b) installed to support the electrical equipment referred to in paragraph (a) or to provide back-up for the electrical equipment referred to in paragraph (a) as contemplated by the Distribution Technical Code or network planning criteria;

“connection services”, in respect of a distribution connection, means the establishment and maintenance of that distribution connection;

“contract maximum demand”, in respect of a distribution connection, means the contract maximum demand (expressed in kW) specified in the distribution access agreement in respect of the distribution connection;

“control system services” means the 24 hour control of the electricity transmission network and the electricity distribution network through monitoring, switching and dispatch which is provided through control centres and supervisory control and data acquisition and communication equipment;

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“controllers”, in respect of a distribution connection, means all of those persons who engage in one or more of the activities of owning, controlling and operating the plant or equipment transferring electricity to or taking electricity from the electricity distribution network at that distribution connection;

“declared sent-out capacity”, in respect of a distribution connection, means the maximum level at which electricity may be transferred to the electricity distribution network at the distribution connection and is the figure (expressed in kW) specified in the distribution access agreement in respect of the distribution connection;

“disconnect”, in respect of a distribution connection, means to operate switching equipment so as to prevent the transfer of electricity through the distribution connection;

“distribution access agreement”, in respect of a user, means —

- (a) if the user is not Western Power, then an agreement entered into between Western Power and the user under these regulations, under which Western Power agrees to provide distribution access services to the user; and
- (b) if the user is Western Power, then a deemed distribution access agreement provided for by regulation 15 (2) or 52 (8);

“distribution access services” means the following services —

- (a) distribution network services;
- (b) connection services;
- (c) ancillary services;
- (d) metering services;

“distribution connection” means a point at which electricity is transferred to or from the electricity distribution network;

“distribution employee” means an employee or officer of Western Power who is engaged wholly or partly in those

parts of Western Power's business involving the granting of access to electricity distribution capacity or the planning, operation, maintenance, development or augmentation of the electricity distribution network;

“distribution entry point” means an entry point which is also a distribution connection;

“distribution exit point” means an exit point which is also a distribution connection;

“distribution network services” in respect of the electricity distribution network means the use of the electricity distribution network to transport electricity, including —

- (a) network distribution services, being the transport of electricity using the electricity distribution network;
- (b) network operation services, being —
 - (i) control of performance of the electricity distribution network;
 - (ii) monitoring of faults on the electricity distribution network and rectification of faults identified;
 - (iii) maintenance of the electricity distribution network; and
- (c) the management of the voltage and frequency of electricity transferred through the electricity distribution network;

“distribution price schedule”, in respect of a financial year or other period of time, means the schedule of indicative prices referred to in clause 6 (3) (b) of Schedule 6 to the Act in respect of that financial year or other period of time prepared by Western Power;

“Distribution Technical Code” means the Technical Code prepared by Western Power under regulation 28;

“electricity distribution network” has the meaning given in regulation 5 (1);

“electricity transmission network” has the meaning given in the *Electricity Transmission Regulations 1996*;

“eligible premises” has the meaning given in regulation 51;

“embedded generating unit” means a generating unit the primary purpose of which is to supply on-site loads otherwise than through the electricity distribution network though it may also transfer electricity that is surplus to the on-site loads to the electricity distribution network;

“encumbrance” includes a mortgage, pledge, lien, charge or other security interest;

“entry point” means a connection at which electricity is more likely to be transferred to the electricity distribution network or the electricity transmission network (as the case requires) than to be transferred from the electricity distribution network or the electricity transmission network (as the case requires);

“exempt connection” means a distribution connection which is not an existing connection and is not being used by Western Power solely to transfer electricity to or from one or more premises that are not eligible premises;

“existing agreement” means an agreement, contract, understanding or arrangement under which Western Power provides access to electricity distribution capacity which —

- (a) was entered into prior to 1 July 1997; or
- (b) was entered into after 1 July 1997 with a person in respect of any eligible premises;

“existing connection” means a connection which exists as at 1 July 1997;

“exit point” means a connection at which electricity is more likely to be transferred from the electricity distribution network or the electricity transmission network (as the case requires) than to be transferred to the electricity distribution network or the electricity transmission network (as the case requires);

“force majeure event” has the meaning given in regulation 36 (1);

“generating unit” means an electricity generator and related equipment essential to the electricity generator’s operation, which together function as a single entity;

“good electricity industry practice” has the meaning given in regulation 30 (1);

“interconnected network” means the electricity distribution network but not a regional power system;

“linked transmission agreement” in respect of a distribution access agreement which Western Power believes forms part of an arrangement relating to the transportation of electricity between —

- (a) a transmission connection and a distribution connection; or
- (b) a distribution connection in respect of one sub-network and a distribution connection in respect of another sub-network,

means an access agreement (as defined in the *Electricity Transmission Regulations 1996*) which Western Power believes was entered into for the provision of transmission access services in respect of that arrangement;

“market member” has the meaning given to that term in regulation 4 of the *Electricity Industry (Wholesale Market) Regulations 2004*;

“metering equipment” means equipment to measure and record —

- (a) the rate at which electricity is transferred to or from the electricity distribution network; and
- (b) the quantity of electricity transferred to or from the electricity distribution network,

for the purposes of these regulations;

“metering services” means —

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- (a) the provision of metering equipment complying with the Distribution Technical Code;
- (b) the use of that metering equipment to measure and record:
 - (i) the rate at which electricity is transferred to or from the electricity distribution network; and
 - (ii) the quantity of electricity transferred to or from the electricity distribution network, for the purposes of these regulations;
- (c) the maintenance of that metering equipment; and
- (d) the remote monitoring of that metering equipment;

“network planning criteria” means the criteria developed by Western Power under regulation 29;

“outage” means any planned or unplanned full or partial unavailability of plant or equipment;

“post-trip management” means the maintenance of system security in the aftermath of trips;

“preliminary assessment”, in relation to an access application, means a preliminary opinion of Western Power, provided for the general information of the applicant, as to the technical feasibility of the proposal in the application, the suitability of the location of the proposed distribution connection or connections, the likely availability of spare capacity at that proposed distribution connection or connections and likely extent of any augmentation;

“premises” has the meaning given in the *Energy Corporations (Powers) Act 1979*;

“Prices and Charges Paper” means a document containing the details of pricing methods referred to in clause 6 (3) (c) of Schedule 6 to the Act;

“Referee” means the Office of Referee established under the *Electricity Referee and Dispute Resolution Regulations 1997*;

“regional power system” means any part of the electricity distribution network identified as a regional power isolated system on the depiction prepared and maintained under regulation 5(2);

“related body corporate” means —

- (a) in respect of Western Power, a subsidiary (as defined in section 3 of the Act) of Western Power;
- (b) in respect of another body corporate, a body corporate that is related to the first-mentioned body by virtue of section 50 of the *Corporations Act 2001* of the Commonwealth;

“renewable energy source” means an energy source other than a fossil fuel or a man-made nuclear fission process;

“response” in respect of an access application means the response given under regulation 8 (8);

“sensitive information” has the meaning given in regulation 14 (2);

“South West interconnected system” has the meaning given to that term in section 3 of the *Electricity Industry Act 2004*;

“spinning reserve” means the ability to immediately and automatically increase generation or reduce demand in response to a fall in frequency;

“sub-network” means a part of the electricity distribution network which is not connected to another part of the electricity distribution network by equipment that forms part of the electricity distribution network though it may be so connected by equipment forming part of the electricity transmission network;

“supervising officers” means —

- (a) the directors and the chief executive officer of Western Power; and
- (b) the senior managers of Western Power whose duties include providing accounting, financial, audit or legal services (by whatever name known);

“technical compliance agreement”, in respect of a distribution connection, means an agreement between Western Power and one or more of the controllers who are not the users in respect of the distribution connection under which the controller or controllers agree to comply with the Distribution Technical Code and any relevant parts of these regulations;

“transfer point” means a point at which electricity is transferred between the electricity transmission network and the electricity distribution network;

“transmission access services” has the meaning given to the term “access services” in the *Electricity Transmission Regulations 1996*;

“transmission connection” means a point at which electricity is transferred to or from the electricity transmission network;

“transmission employee” has the meaning given in the *Electricity Transmission Regulations 1996*;

“transmission fee schedule” has the meaning given to the term “fee schedule” in the *Electricity Transmission Regulations 1996*;

“voltage control” means keeping network voltages within operational limits in normal operation and in the aftermath of trips by automatic regulation of generation MVA output or by transmission or distribution voltage control equipment such as capacitor banks and automatic tap-changers;

“Western Power” means the Western Power Corporation referred to in section 4 of the Act.

[Regulation 3 amended in Gazette 31 Dec 1998 p.7399; 28 Sep 2001 p.5357; 28 Dec 2001 p.6715; 22 Jun 2004 p. 2162-3.]

4. Interpretation

Subject to the *Interpretation Act 1984*, these regulations must be interpreted in accordance with the following rules of interpretation, unless the contrary intention appears —

- (a) a reference in these regulations to a contract or another instrument includes a reference to any amendment, variation or replacement of it;
- (b) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (c) if an event must occur on a day which is not a business day then the event must occur on the next business day;
- (d) the symbol " Σ " requires a summation to be performed over the range of variables specified in respect of the algebraic terms specified;
- (e) all data which is to be utilised in calculations made under these regulations is to be utilised to the accuracy, in terms of a number of decimal places, to which it is given in these regulations;
- (f) all indices are to be calculated to 3 decimal places;
- (g) the calculation of a charge or fee is to be performed to the nearest cent;
- (h) any other calculation shall be performed to the accuracy, in terms of a number of decimal places, determined by Western Power in respect of all users;
- (i) if examples of a particular kind of conduct, thing or condition are introduced by the word "**including**", then the examples are not to be taken as limiting the interpretation of that kind of conduct, thing or condition;
- (j) a connection is a user's connection or a connection of a user if it is the subject of a distribution access agreement or a transmission access agreement between the user and Western Power; and

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- (k) a reference to a half hour is a reference to a 30 minute period ending on the hour or on the half hour and, when identified by a time, means the 30 minute period ending at that time.

5. Electricity distribution network

- (1) In these regulations, “**electricity distribution network**” has the meaning given to “electricity distribution system” in section 89 of the Act.
- (2) Subject to subregulation (3), Western Power must prepare and maintain a geographical depiction of the electricity distribution network.
- (3) For the avoidance of doubt, in these regulations a regional power system is to be taken to be part of the electricity distribution network even though —
 - (a) the regional power system may not be physically connected to the electricity transmission network; and
 - (b) the regional power system may not be physically connected to another regional power system or the interconnected network.
- (3a) Before making a change to the depiction prepared and maintained under subregulation (2) to the effect that what was identified as a regional power isolated system is to be identified as a part of the interconnected network, Western Power must provide details of the proposed change to users who will be affected by that change and allow a reasonable period of time for those persons to comment on the proposed change.
- (4) Western Power must supply a copy of the depiction of the electricity distribution network prepared and maintained under subregulation (2) to any person which requests a copy of it.

[Regulation 5 amended in Gazette 31 Dec 1998 p.7400.]

6. Reports and forecasts and prescribed fees

- (1) The fee prescribed for the purposes of clause 4 of Schedule 6 to the Act is \$10,000.
- (2) If Western Power is satisfied that the cost to Western Power of providing a report and forecast of electricity distribution capacity under clause 4 of Schedule 6 to the Act in response to a request is less than the fee prescribed under subregulation (1), then Western Power will reduce or waive, in whole or in part, the fee in the case of that request.
- (3) For the purposes of clauses 6 (1) (d) and 6 (3) of Schedule 6 to the Act and these regulations, the prescribed fee is \$50.00.

Part 2 — Access

7. Access procedure

The procedure to be followed under this Part is illustrated by the flow chart in Schedule 1.

8. Access application

- (1) A person who is not an existing user and who wants Western Power to provide it with one or more distribution access services must make an access application in accordance with this regulation.
- (2) A person to whom Western Power is providing distribution access services and who wants Western Power to provide it with one or more distribution access services in addition to those to which the user has access already must make an access application in accordance with this regulation.
- (3) A person who makes an access application under subregulation (1) or (2) and who wants Western Power to provide it with one or more transmission access services in connection with the distribution access services to which the access application relates (for example, because the person is seeking to transport electricity between a transmission connection and a distribution connection or between a distribution connection in respect of one subnetwork and a distribution connection in respect of another sub-network) must also apply for those transmission access services under the *Electricity Transmission Regulations 1996*.
- (4) An access application is not to be made for any services other than distribution access services.
- (5) An access application may only be made for the provision of distribution access services which the applicant wishes Western Power to commence to provide within 3 years of the date of the access application.

- (6) An access application must contain the information listed in part A of Schedule 2 and may specify that the applicant wishes Western Power to make a preliminary assessment of the access application.
- (7) Western Power must give the applicant a written response within 20 business days after receiving the access application.
- (8) A response in respect of an access application must include the following information —
 - (a) the information listed in part B of Schedule 2;
 - (b) the period within which Western Power is able to make a preliminary assessment of the access application;
 - (c) whether Western Power is able to make an access offer to the applicant within 65 business days of receiving the access application, and, if not, an alternative period that is reasonable for making the access offer; and
 - (d) an estimate of the expenses likely to be incurred by Western Power by reason of processing the access application, preparing a response, carrying out a preliminary assessment, making an access offer under regulation 11 and negotiating a distribution access agreement.
- (9) The information provided under subregulations (8) (a) and (d) is indicative and is not binding on Western Power.

9. Provision and use of information in respect of access application

- (1) Western Power may request further information from an applicant.
- (2) A request for further information under subregulation (1) must be in writing.
- (3) Western Power may only request further information under subregulation (1) if the information requested is reasonably

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necessary in order to carry out one or more of the following activities —

- (a) process the access application;
 - (b) prepare a response;
 - (c) carry out a preliminary assessment; or
 - (d) make an access offer to provide distribution access services.
- (4) If —
- (a) Western Power makes a request under subregulation (1) in relation to an access application; and
 - (b) the person to which the request has been made has not provided all the information requested within 15 business days of Western Power making the request or such longer time as Western Power and the person agree,

then the access application loses its priority for the purposes of regulation 13 and lapses.

- (5) If an access application loses its priority under subregulation (5) and the person to which the request has been made subsequently provides all the information requested, then the priority of the access application for the purposes of regulation 13 is to be determined as if the access application had been received on the date on which that information is received by Western Power.
- (6) An applicant, in making an access application and providing information under this Part must —
- (a) act in good faith; and
 - (b) use reasonable endeavours to ensure that the access application and the information concerned is accurate and complete.
- (7) If an applicant becomes aware of any material information relevant to an access application which is not included in the access application or of any material alteration to any

information contained in or relevant to the access application, then the applicant must promptly notify Western Power in writing of that information or alteration.

- (8) If Western Power receives a notice under subregulation (8) or otherwise becomes aware of any material information relevant to an access application which is not included in the access application or of any material alteration to any information contained in or relevant to an access application, then Western Power may, by written notice to the applicant —
- (a) extend the period within which Western Power must give the response under regulation 8 (8) or carry out the preliminary assessment and give the report under regulation 10 or make the access offer under regulation 11 (1) in respect of the access application (as the case requires), to such longer period as Western Power reasonably requires; or
 - (b) where the information or alteration is such as to, in the opinion of Western Power, materially alter the distribution access services requested by the access application, Western Power may reject the access application.

10. Preliminary assessment

- (1) If an access application specifies that the applicant wishes Western Power to make a preliminary assessment of the access application, then Western Power must make that preliminary assessment and give the applicant a report of that preliminary assessment within the period for making the preliminary assessment specified in the response in respect of the access application.
- (2) A report under subregulation (1) is indicative and is not binding on Western Power.

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11. Access offer

- (1) Subject to regulation 13, unless otherwise agreed by the applicant and Western Power, Western Power must make an access offer to provide to the applicant the distribution access services requested in an access application —
 - (a) within 65 business days of Western Power giving the response in respect of the access application; or
 - (b) if a longer period for making the access offer is specified in that response, then within that longer period.
- (2) If Western Power makes a request for information under regulation 9 (1) to an applicant, then the period referred to in subregulation (1) ceases to run until the information requested by Western Power is received by Western Power.
- (3) An access offer must —
 - (a) relate to the transportation of electricity between —
 - (i) a specified distribution entry point or distribution entry points and a specified distribution exit point or distribution exit points;
 - (ii) a specified distribution entry point or distribution entry points and a transfer point; or
 - (iii) a transfer point and a specified distribution exit point or distribution exit points;
 - (b) subject to paragraphs (e) and (f), be for the distribution access services requested in the access application in response to which it is made and be consistent with any technical parameters specified in that access application;
 - (c) be in writing and contain the proposed terms and conditions on which Western Power will provide the distribution access services, including terms and conditions of the kind set out in Schedule 3;
 - (d) specify how the charges for the distribution access services requested in the access application are to be calculated;

- (e) be consistent with the Act, these regulations and the Distribution Technical Code; and
 - (f) subject to paragraph (e), to the extent that it contains —
 - (i) terms and conditions (other than terms and conditions of the kind referred to in subregulation (9) (d) (ii) or regulation 12 (4), (5), (8) and (9); or
 - (ii) fees and charges (other than fees and charges in the distribution price schedule, for providing connection services in respect of an exempt connection or related to capital contributions contemplated by regulation 12),

be fair and reasonable and consistent with good electricity industry practice.
- (4) If Western Power believes that the requirements of the person making an access application would be met by Western Power providing one or more different distribution access services to those requested in the access application, then Western Power may, in addition, make an offer in accordance with subregulation 3 (a), (c), (d), (e) and (f) in relation to those different distribution access services.
- (5) To avoid doubt —
- (a) subject to subregulation (3) (b), an access offer may contain terms and conditions which differ from those contained in the relevant access application;
 - (b) a distribution access agreement may contain terms and conditions which differ from those contained in the relevant access offer; and
 - (c) subject to regulation 47, an access offer and a distribution access agreement may contain terms and conditions (including terms and conditions related to fees and charges) which differ from those contained in another access offer or distribution access agreement for any reason, including —

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- (i) to reflect the provisions of these regulations;
- (ii) the quantities in which the relevant distribution access services are to be supplied or are supplied;
- (iii) because of the different nature of the plant or equipment required to provide the relevant distribution access services;
- (iv) the geographical and electrical location of the relevant distribution connections and transfer points;
- (v) the periods for which the relevant distribution access services are supplied;
- (vi) the electricity distribution capacity required to provide the relevant distribution access services;
- (vii) the characteristics of the relevant load or generation; and
- (viii) the performance characteristics at which the relevant distribution access services are provided.

(6) If —

- (a) Western Power makes an access offer to an applicant; and
- (b) Western Power and the applicant have not entered into a distribution access agreement in relation to the distribution access services which are the subject of the access offer within the relevant period determined in accordance with subregulation (7),

then the access offer expires and the access application loses its priority for the purposes of regulation 13 and lapses.

- (7) The relevant period for the purposes of subregulation (6) is a period of 20 business days (or such longer period as Western Power may agree with the applicant) following the day on which the access offer is made.

- (8) The provision of distribution access services by Western Power under a distribution access agreement is subject to the following conditions precedent —
- (a) the user satisfying Western Power that the user has put in place any arrangements required by regulation 43 (1);
 - (b) where Western Power believes that the distribution access agreement forms part of an arrangement relating to the transportation of electricity between —
 - (i) a transmission connection and a distribution connection; or
 - (ii) a distribution connection in respect of one sub-network and a distribution connection in respect of another subnetwork,Western Power and the user entering into an appropriate access agreement (as defined in the *Electricity Transmission Regulations 1996*) in relation to the provision of transmission access services in respect of that arrangement;
 - (c) Western Power or the user gaining environmental and planning approvals for any necessary augmentation to the electricity distribution network or the design, construction, installation and commissioning of any exempt connection contemplated by the distribution access agreement;
 - (d) Western Power gaining the approval of the Minister under section 34 of the Act, if required;
 - (e) where the person with which Western Power enters into the distribution access agreement is not the controller or is not the only controller in respect of a distribution connection which is the subject of the distribution access agreement, the entering into of a technical compliance agreement with Western Power by such of the controllers as Western Power requires in relation to the distribution connection (in form and substance satisfactory to Western Power, acting reasonably); and

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(f) the provision of a bank guarantee in accordance with regulation 44 (1), if required.

(9) If —

(a) Western Power makes an access offer; and

(b) one or more of the connections to which the access offer relates is an exempt connection,

then the access offer must —

(c) inform the applicant that the applicant may choose not to have the connection services at the exempt connection provided by Western Power; and

(d) contain the proposed terms and conditions on which Western Power will —

(i) if the applicant chooses not to have Western Power provide the connection services at the exempt connection, augment the electricity distribution network to the extent necessary to permit the transfer of electricity between the electricity distribution network and the connection equipment in respect of the exempt connection; or

(ii) if the applicant chooses to have Western Power provide the connection services at the exempt connection, construct the connection equipment and provide the connection services at the exempt connection,

including terms and conditions relating to the design, construction, installation, commissioning and testing of the augmentation or the connection equipment (as the case requires) and the fees and charges for providing the connection services at the exempt connection.

12. Capital contributions

- (1) For the purposes of this regulation, an augmentation is commercially viable if in Western Power's reasonable opinion —
 - (a) Western Power will recover within a reasonable time the costs, the capital investment and a reasonable rate of return on the capital investment in respect of the augmentation as contemplated by clause 5 of Schedule 6 to the Act, and not increase the charges payable by existing users; and
 - (b) the division of Western Power responsible for operating the electricity distribution network has sufficient allocated capital funds to undertake the augmentation, having regard to sections 82 and 83 of the Act.
- (2) The reasonable rate of return on the capital investment associated with a proposed augmentation contemplated by subregulation (4) (c) or subregulation (5) (b) is to be determined by Western Power taking into account —
 - (a) Western Power's cost of capital and its components;
 - (b) the potential future use of the augmentation by existing and potential users;
 - (c) the financial viability of the applicant and the applicant's business;
 - (d) the impact of the capital investment upon the performance targets and other measures of Western Power's performance as set out in any applicable statement of corporate intent under the Act.
- (3) The reasonable time within which the costs, the capital investment and the reasonable rate of return in respect of a proposed augmentation contemplated by subregulation (4) (c) or subregulation (5) (b) must be recovered is to be determined by Western Power taking into account —
 - (a) the anticipated commercial life of the augmentation; and

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- (b) the purpose for which the applicant requires the electricity distribution capacity the subject of the relevant access offer,

but in any event cannot exceed 15 years.

- (4) If —

- (a) Western Power and a user enter into a distribution access agreement;
- (b) the services to be provided under the distribution access agreement include connection services using a connection that is not an exempt connection;
- (c) Western Power is not able to reliably provide those connection services without augmenting that connection; and
- (d) the augmentation concerned is not commercially viable without any capital contribution,

then the user must make a capital contribution towards the augmentation in accordance with this regulation.

- (5) If —

- (a) Western Power and a user enter into a distribution access agreement;
- (b) Western Power is not able to reliably provide the distribution access services which are the subject of the distribution access agreement without augmenting the electricity distribution network to either transport electricity on the network or to link the network to an exempt connection; and
- (c) the augmentation concerned is not commercially viable without any capital contribution,

then the user must make a capital contribution towards the augmentation in accordance with this regulation.

- (6) If subregulation (4) or subregulation (5) requires a user to make a capital contribution, then —

- (a) the amount of the capital contribution is equal to the amount that would be required to make the augmentation commercially viable; and
 - (b) the capital contribution must be paid to Western Power in the manner and at the time set out in the distribution access agreement.
- (7) A proposed augmentation satisfies paragraph (a) of the commercial viability test set out in subregulation (1) if —
 - (a) the discounted present value of the future cash flows anticipated in respect of the augmentation over the reasonable time in respect of the augmentation is determined in accordance with subregulation (3), using a real discount rate equal to the reasonable rate of return in respect of the augmentation determined in accordance with subregulation (2); and
 - (b) that discounted present value is positive.
- (8) If —
 - (a) Western Power and a user enter into a distribution access agreement;
 - (b) the services to be provided under the distribution access agreement include distribution access services in respect of a connection that is not an exempt connection; and
 - (c) Western Power is obliged under an existing agreement to repay an amount of money to a person if it provides those services,

then the user must pay Western Power an amount equal to the amount referred to in paragraph (c).
- (9) If —
 - (a) Western Power makes an access offer; and
 - (b) the access offer contemplates the provision of connection services or ancillary services using an exempt connection,

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then Western Power may include in the access offer a condition that the user makes a capital contribution in respect of the capital investment associated with designing, constructing, installing and commissioning the connection equipment or with providing those ancillary services (as the case requires) and a rate of return on that investment and, if so, the capital contribution must be taken into account in the determination of fees for providing the connection services or the ancillary services (as the case requires) set out in the access offer.

[Regulation 12 amended in Gazette 31 Dec 1998 p.7400; 28 Dec 2001 p.6715.]

13. First come first served

- (1) If —
- (a) Western Power has received 2 or more access applications; and
 - (b) Western Power believes there is not sufficient spare capacity to provide the distribution access services the subject of all of those access applications or that it does not have sufficient resources (including personnel) to process all of those access applications at the same time,

then Western Power must process those access applications and make access offers in an order which reflects the priority of those access applications as determined in accordance with these regulations.

- (2) An access application (in this subregulation called the “**first access application**”) received by Western Power has priority over all later access applications received by Western Power unless the first access application loses its priority in accordance with these regulations.
- (3) The applicant making an access application may withdraw that access application by written notice given to Western Power and, if an applicant does so, then the access application loses its priority and lapses.

- (4) If Western Power rejects an access application under these regulations, then the access application loses its priority for the purposes of this regulation and lapses.
- (5) If an access offer is rejected prior to the end of the relevant period determined in accordance with regulation 11 (7), then the access application in response to which the access offer was made loses its priority and lapses.
- (6) Nothing in this regulation prevents Western Power from processing more than one application at the same time.
- (7) Notwithstanding any other provision of these regulations, if an access application lapses, then Western Power is not required to take any further action in relation to the access application (including making a preliminary assessment of the access application and giving a report under regulation 10 or making an access offer under regulation 11 in relation to the access application).

14. Confidentiality

- (1) In this regulation “**access information**”, in respect of a person, means all information contained in the following documents —
 - (a) an access application made by that person;
 - (b) the response by Western Power to the access application made by that person;
 - (c) the report of a preliminary assessment under regulation 10 (1) of that access application;
 - (d) the access offer made to that person in respect of the distribution access services which are the subject of the access application;
 - (e) any information provided by that person in response to a request under regulation 9 in relation to the access application;
 - (f) in respect of a person which takes electricity from the electricity distribution network, the quantity taken; and

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- (g) in respect of a person which transfers electricity to the electricity distribution network, the quantity transferred.
- (2) An item of access information is sensitive information until a distribution access agreement is entered into in respect of the distribution access services the subject of the relevant access application, at which time it ceases to be sensitive information.
- (3) Western Power must use all reasonable endeavours to —
 - (a) keep confidential any access information which comes into the possession or control of Western Power or of which Western Power becomes aware; and
 - (b) ensure that the only officers and employees of Western Power who have possession of access information are those permitted by subregulation (4).
- (4) This regulation does not prevent —
 - (a) the disclosure of an item of sensitive information to —
 - (i) a distribution employee or a transmission employee;
 - (ii) a supervising officer who requires the item for the purposes of these regulations or to discharge his or her duties; or
 - (iii) a legal or other professional adviser, auditor or other consultant of Western Power who requires the item for the purpose of advising Western Power;
 - (b) the disclosure of an item of access information that is not sensitive information to —
 - (i) an employee or officer of Western Power or a related body corporate of Western Power; or
 - (ii) a legal or other professional adviser, auditor or other consultant of Western Power or a related body corporate of Western Power who requires the item for the purpose of advising Western Power or that related body corporate;

- (c) the disclosure of an item of information to any regulatory authority having jurisdiction over Western Power; and
- (d) the disclosure, use or reproduction of an item of information —
 - (i) if the item is at the time generally and publicly available other than as a result of a breach of this regulation by Western Power;
 - (ii) with the consent of the person or persons which would be affected by the disclosure, use or reproduction of that item;
 - (iii) to the extent required by law;
 - (iv) if required in connection with legal proceedings, arbitration, expert determination, or proceedings under the *Electricity Referee and Dispute Resolution Regulations 1997*, or for the purpose of advising a person in relation to any such matter;
 - (v) that is trivial in nature;
 - (vi) if required to protect the safety of personnel, plant or equipment;
 - (vii) by or on behalf of Western Power to the extent reasonably required in connection with Western Power's financing arrangements, investment in Western Power or a disposal of Western Power's assets;
 - (viii) of an historical nature in connection with the preparation and giving of reports under these regulations and the Distribution Technical Code; or
 - (ix) as an unidentifiable component of an aggregate sum.

15. Distribution access agreements

- (1) Western Power is taken to have given a person a grant of access under clause 2 of Schedule 6 to the Act where Western Power and the person enter into a distribution access agreement.
- (2) Western Power is taken to have given itself a grant of access under clause 2 of Schedule 6 to the Act and to have entered into a distribution access agreement on the terms and conditions set out in an access offer when the general manager of a division of Western Power responsible for trading of electricity (or a delegate of that general manager) notifies in writing the general manager of the division of Western Power responsible for operating the electricity distribution network (or a delegate of that general manager) that Western Power as a user agrees to the terms of the access offer.
- (3) To avoid doubt, the general manager of a division of Western Power responsible for trading of electricity (or a delegate of that general manager) and the general manager of the division of Western Power responsible for operating the electricity distribution network (or a delegate of that general manager) may, subject to these regulations, vary the terms of a deemed distribution access agreement under subregulation (2).

16. Cost of processing access applications

An applicant must, when requested by Western Power, reimburse Western Power for all reasonable expenses incurred by Western Power by reason of processing the access application, preparing a response, carrying out a preliminary assessment, making an access offer under regulation 11 and negotiating a distribution access agreement.

17. Suspension of time limits

The periods of time referred to in regulations 8 (7), 9 (4) (b), 10 (1), 11 (1) and 11 (7) may cease to run in accordance with regulation 8 (2) of the *Electricity Referee and Dispute Resolution Regulations 1997*.

18. Metering

- (1) If half hour demand metering equipment with remote monitoring facilities complying with the requirements of the Distribution Technical Code is required by Western Power at a distribution connection the subject of a distribution access agreement, then Western Power must install that equipment at that distribution connection as soon as it is practicable to do so unless —
 - (a) Western Power is the user in respect of the distribution connection; or
 - (b) under a distribution access agreement Western Power agrees to provide metering services at that connection.
- (2) When Western Power is installing metering equipment in accordance with subregulation (1), the user in respect of the distribution connection must co-operate with Western Power, and must ensure that the controllers in respect of the distribution connection co-operate with Western Power, to enable Western Power to do so.
- (3) If under subregulation (1) Western Power installs metering equipment, then the user in respect of the distribution connection must reimburse Western Power's reasonable costs and expenses in doing so (including the cost of the metering equipment and the remote monitoring facilities).

Part 3 — Pricing methods, prices and charges

19. Pricing methods and prices

- (1) Before Western Power adopts pricing methods under clause 6 (2) of Schedule 6 to the Act or determines prices to be paid by users, it must —
 - (a) within a reasonable time before doing so, provide the Coordinator of Energy with such information relating to the pricing methods or prices as the Coordinator reasonably requires for the purpose of performing his or her functions under section 6 of the *Energy Coordination Act 1994*; and
 - (b) take into consideration any recommendations made by the Coordinator as to those pricing methods or prices.

[(2) deleted]

- (3) On or before 31 May in each year, Western Power must prepare and make publicly available a distribution price schedule for the following financial year.
- (4) A distribution price schedule must be determined in accordance with the methodology set out in the Prices and Charges Paper.
- (5) Western Power may from time to time prepare and make publicly available amendments to the Prices and Charges Paper or a distribution price schedule.
- (6) A distribution price schedule and a Prices and Charges Paper is to relate to prices for access to the interconnected network and to the regional power systems.

*[Regulation 19 amended in Gazette 31 Dec 1998 p.7400;
28 Dec 2001 p.6715.]*

20. Charges

- (1) The charges that a user must pay Western Power for the provision of distribution access services under a distribution

access agreement are calculated in accordance with the distribution access agreement and the prices used in calculating those charges are determined in accordance with the distribution access agreement.

- (2) If —
- (a) a tax is imposed or there is an increase in the amount of a tax or a new law is passed or an existing law is amended after the date of a distribution access agreement (in this subregulation called the “**Change**”); and
 - (b) there is any increase in the cost to Western Power of providing the distribution access services under the distribution access agreement which was not contemplated at the time the distribution access agreement was entered into,

then the user must pay Western Power such additional amounts as are necessary to compensate Western Power for the increased cost directly attributable to the Change.

- (3) In subregulation (2) —
- “**tax**” means any tax, levy, impost, deduction, charge, withholding or duty imposed by any authority (including any stamp or transaction duty), together with any related interest, penalty, fine or expense in connection with it, except if imposed on the overall net income of Western Power.

Part 4 — Balancing

21. Standby arrangements

- (1) A user must keep Western Power informed of its arrangements for the provision of standby power and must promptly provide to Western Power such information concerning those arrangements as Western Power reasonably requests.
- (2) If —
 - (a) a user has an arrangement with a person other than Western Power in relation to the provision of electricity or standby power to the user; and
 - (b) the user becomes aware that that arrangement has terminated or changed or will terminate (other than by expiration of the term of the arrangement) or change in a material particular,

then the user must promptly notify Western Power accordingly and provide to Western Power details of any substitute arrangements in relation to the provision of electricity or standby power to be put in place by the user.

22. Loss Factors

- (1) The loss factor for a distribution connection —
 - (a) on the interconnected network is —
 - (i) unless subregulation (2) applies to the connection, the factor determined by Western Power applying the steps set out in Schedule 4;
 - (ii) if subregulation (2) applies to the connection, the average loss factor calculated under that subregulation;
 - (b) on a regional power system is the factor determined by Western Power applying the steps set out in the Distribution Technical Code.
- (2) Western Power may —

- (a) in the Prices and Charges Paper, specify certain distribution connections on the interconnected network that are exit points as constituting a category for the purposes of this subregulation; and
- (b) from time to time calculate an average loss factor for the connections specified as constituting a category.

[Regulation 22 inserted in Gazette 31 Dec 1998 p.7401; amended in Gazette 28 Dec 2001 p.6715-6.]

23. Interpretation of regulations 24, 25 and 27

In this regulation and regulations 24, 25 and 27 —

- (a) the “**group of connections**” in respect of a user’s distribution access agreement consists of —
 - (i) the entry points and exit points specified in the distribution access agreement and any linked transmission agreement in respect of the distribution access agreement; and
 - (ii) the entry points from which standby power is being supplied to one or more of those connections;

[(b) deleted]

- (c) the “**energy entry amount**” for the group of connections in respect of a distribution access agreement for a period is determined by applying the following formula:

$$EEA = \sum_{j=1}^{j=n} (ETEntry_j \times LFEEntry_j \times LFTXEntry_j)$$

where —

EEA (in kWh) is the energy entry amount for the group of connections in respect of the distribution access agreement for the period;

ETEntry_j (in kWh) is the quantity of electricity transferred at entry point _j to the electricity distribution

network or the electricity transmission network (as the case requires) during the period under the distribution access agreement or any linked transmission agreement in respect of the distribution access agreement;

LFEntry_j (a rate) is —

- (i) if entry point_j is a transmission connection, then 1; and
- (ii) if entry point_j is a distribution connection, then the loss factor for entry point_j determined under regulation 22;

LFTXEntry_j (a rate) is —

- (i) if entry point_j is a transmission connection, then the loss factor determined under regulation 20 of the *Electricity Transmission Regulations 1996* in respect of entry point_j; and
- (ii) if entry point_j is a distribution connection, then the loss factor determined under regulation 20 of the *Electricity Transmission Regulations 1996* in respect of the transfer point supplying entry point_j;

the variable “j” represents an entry point which is one of the group of connections;

the variable “n” represents the number of entry points in the group of connections;

- (d) the “**energy exit amount**” for the group of connections in respect of a user’s distribution access agreement for a period is determined by applying the following formula:

$$EEXA = \sum_{i=1}^{i=n} (ETE_{Exit\ i} \times LFE_{Exit\ i} \times LFTXE_{Exit\ i})$$

where —

- EEXA (in kWh) is the energy exit amount for the group of connections in respect of the distribution access agreement for the period;
- ETExit_i (in kWh) is the quantity of electricity transferred at exit point_i from the electricity distribution network or the electricity transmission network (as the case requires) during the period under the distribution access agreement or any linked transmission agreement in respect of the distribution access agreement;
- LFExit_i (a rate) is —
- (i) if exit point_i is a transmission connection, then 1; and
 - (ii) if exit point_i is a distribution connection, then the loss factor for exit point_i determined under regulation 22;
- LFTXExit_i (a rate) is —
- (i) if exit point_i is a transmission connection, then the loss factor determined under regulation 20 of the *Electricity Transmission Regulations 1996* in respect of exit point_i; and
 - (ii) if exit point_i is a distribution connection, then the loss factor determined under regulation 20 of the *Electricity Transmission Regulations 1996* in respect of the transfer point supplying exit point_i;
- the variable “i” represents an exit point which is one of the group of connections;
- the variable “n” represents the number of exit points in the group of connections;

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- (e) the “**permitted tolerance**” for a group of connections is —
- (i) an amount expressed in kWh equal to 3% of the relevant amount in respect of the group of connections; or
 - (ii) in a case where —
 - (I) the distribution access agreement is for transporting electricity any of which is derived from a renewable energy source; and
 - (II) the user was a party to an agreement of that kind when the *Electricity Distribution Amendment Regulations (No. 2) 2004* commenced,
1500 kWh;
- and
- (f) the “**relevant amount**” (expressed in kWh) in respect of a group of connections is equal to the aggregate of the contract maximum demand figures for all of the exit points in respect of the group of connections divided by 2.

[Regulation 23 amended in Gazette 31 Dec 1998 p.7401; 28 Dec 2001 p.6716; 29 Oct 2002 p.5344-5; 22 Jun 2004 p. 2163.]

24. Balancing

- (1aa) This regulation does not apply to a user’s distribution access agreement for transporting electricity using any part of the South West interconnected system during a period for which the user is a market member.
- (1) A user (other than Western Power) must use reasonable endeavours to ensure that the energy entry amount for the group of connections in respect of each of its distribution access

agreements for each half hour is equal to the energy exit amount for the group of connections for that half hour.

- (1a) The half hourly out of balance charge for a half hour in respect of a distribution access agreement —
- (a) that relates to a regional power system, is to be determined in accordance with the methodology set out in the Prices and Charges Paper, and any relevant provisions of the Distribution Technical Code; and
 - (b) that relates to the interconnected network, is to be determined in accordance with subregulations (2) to (9).
- (2) For the purposes of subregulation (3), the “**revised net amount**” for the group of connections in respect of a user’s distribution access agreement for a half hour is an amount equal to the energy entry amount for the group of connections for the half hour minus the energy exit amount for the group of connections for the half hour, except where —
- (a) that amount is positive and is equal to or less than the permitted tolerance for the group of connections; or
 - (b) that amount is negative and is greater than or equal to zero minus the permitted tolerance,

in which case, the revised net amount for the group of connections is equal to zero.

- (3) The half hourly out of balance charge in respect of a distribution access agreement for a half hour is determined by applying the following formula:

$$\text{HOBC} = \text{RNA} \times \text{HOBFC} \times \frac{1}{100}$$

where —

HOBC (in \$) is the half hourly out of balance charge in respect of the distribution access agreement for the half hour;

RNA (in kWh) —

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- (a) if the revised net amount for the group of connections in respect of the distribution access agreement for the half hour is positive, then is equal to that revised net amount minus the permitted tolerance for the group of connections; or
- (b) if the revised net amount for the group of connections in respect of the distribution access agreement for the half hour is negative, then is equal to that revised net amount plus the permitted tolerance for the group of connections; and

HOBFB (in ¢/kWh) is —

- (a) if RNA is negative, then the half hourly out of balance (sell) fee set out in the transmission fee schedule for the financial year in which the half hour falls applicable to the half hour; or
 - (b) if RNA is positive, then the half hourly out of balance (buy) fee set out in the transmission fee schedule for the financial year in which the half hour falls applicable to the half hour.
- (4) If the sum of the half hourly out of balance charges for the half hours in a month is negative, then an amount equal to -1 multiplied by that sum is payable by the user to Western Power, except if the user is Western Power.
 - (5) If the sum of the half hourly out of balance charges for the half hours in a month is positive, then an amount equal to that sum is payable by Western Power to the user, except if the user is Western Power.
 - (6) For the purposes of subregulation (7), the “**adjusted net amount**” for the group of connections in respect of a user’s distribution access agreement for a half hour is an amount equal to the energy entry amount for the group of connections for the half hour minus the energy exit amount for the group of connections for the half hour, except where —

-
- (a) the result is positive and is greater than the permitted tolerance for the group of connections, in which case the adjusted net amount for the group of connections is equal to that permitted tolerance; or
- (b) the result is negative and is less than zero minus that permitted tolerance, in which case the adjusted net amount for the group of connections is equal to zero minus that permitted tolerance.
- (7) The out of balance charge in respect of a distribution access agreement for a month is determined by applying the following formula:

$$\text{OBC} = \text{ANA} \times \text{OBF} \times \frac{1}{100}$$

where —

OBC (in \$) is the out of balance charge in respect of the distribution access agreement for the month;

ANA (in kWh) is the sum of the adjusted net amounts for the group of connections in respect of the distribution access agreement for all of the half hours falling within the month;

OBF (in ¢/kWh) is determined as follows:

- (a) if ANA is negative, then OBF is the out of balance (sell) fee set out in the transmission fee schedule for the financial year in which the month falls;
- (b) if ANA is positive, then OBF is the out of balance (buy) fee set out in the transmission fee schedule for the financial year in which the month falls.
- (8) If the out of balance charge for a month is negative, then the amount equal to -1 multiplied by that out of balance charge is payable by the user to Western Power, except if the user is Western Power.

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- (9) If the out of balance charge for a month is positive, then an amount equal to that out of balance charge is payable by Western Power to the user, except if the user is Western Power.

[Regulation 24 amended in Gazette 31 Dec 1998 p.7401; 28 Dec 2001 p.6716; 22 Jun 2004 p. 2164.]

25. Excess standby generation charge

- (1aa) This regulation does not apply to a user's distribution access agreement for transporting electricity using any part of the South West interconnected system during a period for which the user is a market member.

- (1) In this regulation —

- (a) the “**demand exit rate**” for the group of connections in respect of a user's distribution access agreement for a half hour is determined by applying the following formula:

$$\text{DERA} = \sum_{i=1}^{i=n} (\text{PTExit}_i \times \text{LFExit}_i \times \text{LFTXExit}_i)$$

where —

DERA (in kW) is the demand exit rate for the group of connections in respect of the distribution access agreement for the half hour;

PTExit_{*i*} (in kW) is the average rate at which electricity is transferred at exit point _{*i*} from the electricity distribution network or the electricity transmission network (as the case requires) during the half hour under the distribution access agreement or any linked transmission agreement in respect of the distribution access agreement;

LFExit_{*i*} (a rate) is —

- (i) if exit point _{*i*} is a transmission connection, then 1; and

- (ii) if exit point i is a distribution connection, then the loss factor for exit point i determined under regulation 22;

LFTXExit $_i$ (a rate) is —

- (i) if exit point i is a transmission connection, then the loss factor determined under regulation 20 of the *Electricity Transmission Regulations 1996* in respect of exit point i ; and
- (ii) if exit point i is a distribution connection, then the loss factor determined under regulation 20 of the *Electricity Transmission Regulations 1996* in respect of the transfer point supplying exit point i ;

the variable “ i ” represents an exit point which is one of the group of connections; and

the variable “ n ” represents the number of exit points in the group of connections;

- (b) the “**demand entry rate**” for the group of connections in respect of a distribution access agreement for a half hour is determined by applying the following formula:

$$\text{DER} = \sum_{j=1}^{j=n} (\text{PTEnter}_j \times \text{LFEnter}_j \times \text{LFTXEnte}_j)$$

where —

DER (in kW) is the demand entry rate for the group of connections in respect of the distribution access agreement for the half hour;

PTEntry $_j$ (in kW) is the average rate at which electricity is transferred at entry point j to the electricity distribution network or the electricity

transmission network (as the case requires) during the half hour under the distribution access agreement or any linked transmission agreement in respect of the distribution access agreement;

LFTXEntry_j (a rate) is —

- (i) if entry point_j is a transmission connection, then 1; and
- (ii) if entry point_j is a distribution connection, then the loss factor for entry point_j determined under regulation 22;

LFTXEntry_j (a rate) is —

- (i) if entry point_j is a transmission connection, then the loss factor determined under regulation 20 of the *Electricity Transmission Regulations 1996* in respect of entry point_j; and
- (ii) if entry point_j is a distribution connection, then the loss factor determined under regulation 20 of the *Electricity Transmission Regulations 1996* in respect of the transfer point supplying entry point_j;

the variable “j” represents an entry point which is one of the group of connections; and

the variable “n” represents the number of entry points in the group of connections;

- (c) the “**standby generation reservation**” (in kW) for a group of connections is the aggregate rate at which Western Power may be required to transport standby power to the connections in the group of connections

- under the distribution access agreement or any linked transmission agreement;
- (d) the “**excess demand**” (in kW) in respect of a group of connections for a half hour is equal to —
- (i) the demand exit rate for the group of connections for the half hour;
- minus
- (ii) the demand entry rate for the group of connections for the half hour;
- minus
- (iii) the standby generation reservation for the group of connections for the half hour,
- but if the result of this calculation is negative, then the excess demand in respect of the group of connections for the half hour is zero;
- (e) if the excess demand in respect of a group of connections for a half hour is not zero, then an excess demand period in respect of the group of connections commences at the start of that half hour, except if that half hour already falls within an excess demand period in respect of the group of connections; and
- (f) each excess demand period in respect of a group of connections includes 336 half hours.
- (2) If an excess demand period in respect of a group of connections in respect of a user’s distribution access agreement commences during a month, then the excess standby generation capacity charge payable by the user in respect of the group of connections for the month is determined by applying the following formula:

$$\text{ESCC} = \sum_{i=1}^{i=n} (E_i \times \text{ESGF})$$

where —

ESCC (in \$) is the excess standby generation capacity charge in respect of the group of connections for the month;

E_i (in kW) is the highest excess demand in respect of the group of connections for any half hour falling within excess demand period i ;

ESGF (in \$/kW) is the excess standby generation capacity fee set out in the transmission fee schedule for the financial year in which the month falls;

the variable “ i ” represents an excess demand period in respect of the group of connections that commenced during the month;

the variable “ n ” represents the number of excess demand periods in respect of the group of connections that commenced during the month.

[Regulation 25 amended in Gazette 28 Dec 2001 p.6716; 29 Oct 2002 p.5344-5; 22 Jun 2004 p. 2164.]

26. Excess network usage charge

(1aa) This regulation does not apply to a user whose distribution access agreement is for transporting electricity using any part of the South West interconnected system during a period for which the user is a market member.

(1) In this subregulation and subregulation (2) —

(a) the “**excess amount**” in respect of a distribution entry point for a half hour is equal to —

(i) the average aggregate rate (in kW) at which the generating units connected at the distribution entry point transferred electricity to the electricity distribution network during that half hour;

minus

(ii) the declared sent-out capacity (in kW) for that entry point,

but if the result of this calculation is negative, then the excess amount in respect of the entry point for the half hour is zero;

- (b) if the excess amount in respect of a distribution entry point for a half hour is more than zero, then an excess period in respect of the distribution entry point commences at the start of that half hour, except if that half hour already falls within an excess period in respect of the distribution entry point; and
 - (c) each excess period in respect of a distribution entry point includes 336 half hours.
- (2) If an excess period in respect of a user's distribution entry point commences during a month, then the excess network usage charge payable by the user in respect of the distribution entry point for the month is determined by applying the following formula:

$$\text{EUNC} = \sum_{i=1}^{i=n} \left(\frac{E_i}{\text{DSC}} \times \text{UNC} \times \text{EF} \right)$$

where —

EUNC (in \$) is the excess use of network charge in respect of the distribution entry point for the month;

E_i (in kW) is the highest excess amount for any of the half hours which fall within excess period i ;

DSC (in kW) is the declared sent-out capacity for that entry point;

UNC (in \$) is the use of network charge in respect of the distribution entry point for the month;

EF is the excess network usage factor set out in the distribution price schedule for the financial year in which the month falls;

the variable “i” represents an excess period in respect of the distribution entry point which commences during the month; and

the variable “n” represents the number of excess periods in respect of the distribution entry point which commence during the month.

(3) In this subregulation and subregulation (4) —

(a) the “**excess rate**” in respect of a distribution exit point for a half hour is equal to —

(i) the average rate (in kW) at which electricity is transferred from the electricity distribution network at the distribution exit point during that half hour;

minus

(ii) the contract maximum demand for the distribution exit point,

but if the result of this calculation is negative, then the excess rate in respect of the distribution exit point for the half hour is zero;

(b) if the excess rate in respect of a distribution exit point for a half hour is more than zero, then an excess demand period in respect of the distribution exit point commences at the start of that half hour, except if that half hour already falls within an excess demand period in respect of the distribution exit point; and

(c) each excess demand period in respect of a distribution exit point includes 336 half hours.

(4) If an excess demand period in respect of a user’s distribution exit point commences during a month, then the excess network usage charge payable by the user in respect of the distribution exit point for the month is determined by applying the following formula:

$$\text{EUNC} = \sum_{i=1}^{i=n} \left(\frac{E_i}{\text{CMD}} \times \text{UNC} \times \text{EF} \right)$$

where —

EUNC (in \$) is the excess use of network charge in respect of the distribution exit point for the month;

E_i (in kW) is the highest excess rate for any of the half hours which fall within excess demand period i;

CMD (in kW) is the contract maximum demand for the distribution exit point;

EF is the excess network usage factor set out in the distribution price schedule for the financial year in which the month falls;

UNC (in \$) is the use of network charge in respect of the distribution exit point for the month;

the variable “i” represents an excess demand period in respect of the distribution exit point which commences during the month; and

the variable “n” represents the number of excess demand periods in respect of the distribution exit point which commence during the month.

[Regulation 26 amended in Gazette 28 Dec 2001 p.6716; 22 Jun 2004 p. 2164.]

27. Other consequences of being out of balance

- (1aa) This regulation does not apply to a user’s distribution access agreement for transporting electricity using any part of the South West interconnected system during a period for which the user is a market member.
- (1) For the purposes of this regulation, a user is materially out of balance in respect of a distribution access agreement for a half hour if the difference between —

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- (a) the energy entry amount for the group of connections in respect of that distribution access agreement for the half hour; and
- (b) the energy exit amount for the group of connections for the half hour,

is more than the permitted tolerance for the group of connections.

(2) If Western Power becomes aware that —

- (a) a user (other than Western Power) is materially out of balance in respect of one of its distribution access agreements for a period; and
- (b) as a result, the operation of the electricity distribution network or the electricity transmission network is likely to be materially adversely affected or persons with electrical installations connected to the electricity distribution network or the electricity transmission network are likely to be materially adversely affected,

then, subject to subregulation (3), Western Power may interrupt or curtail the transfer of electricity to or from one or more of the group of connections in respect of that distribution access agreement in order to remove or reduce that material adverse effect.

- (3) Western Power must give notice to a user of its intention to exercise its powers under subregulation (2) in relation to a connection of the user a reasonable time before doing so.
- (4) This regulation does not limit regulations 31 or 32.

[Regulation 27 amended in Gazette 28 Dec 2001 p.6716-7; 22 Jun 2004 p. 2164.]

Part 5 — Technical regulation

28. Distribution Technical Code

- (1) Western Power must prepare and make publicly available a Distribution Technical Code on or before 31 July 1997.
- (1a) On or before 31 March 1999, Western Power must amend the Distribution Technical Code so that it relates to —
 - (a) the interconnected network; and
 - (b) the regional power system,and subregulation (3) does not apply in respect of that amendment.
- (2) Western Power may from time to time amend the Distribution Technical Code.
- (3) Before amending the Distribution Technical Code in a manner which Western Power reasonably believes to be material, Western Power must make details of the proposed amendment publicly available and allow a reasonable period of time for persons affected by the proposed amendment to comment on the proposed amendment.
- (4) The Distribution Technical Code must contain the following in relation to both the interconnected network and the regional power systems:
 - (a) performance standards in respect of service quality parameters in relation to the electricity distribution network;
 - (b) the technical requirements which apply to the design or operation of plant or equipment connected to the electricity distribution network;
 - (c) requirements relating to the operation of the electricity distribution network (including the operation of the electricity distribution network in emergency situations)

or where there is a possibility of a person suffering injury);

- (d) obligations to test plant or equipment in order to demonstrate compliance with the technical requirements referred to in paragraph (b) and the operational requirements referred to in paragraph (c);
- (e) procedures which apply if Western Power believes that a plant or equipment does not comply with the requirements of the Distribution Technical Code;
- (f) procedures relating to the inspection of plant or equipment connected to the electricity distribution network;
- (g) requirements which relate to control and protection settings for plant or equipment connected to the electricity distribution network;
- (h) procedures which apply in the case of the commissioning and testing of new plant or equipment connected to the electricity distribution network;
- (i) procedures which apply to the disconnection of plant or equipment from the electricity distribution network;
- (j) procedures relating to the operation of generating units and other plant or equipment as part of or connected to the electricity distribution network (including the giving of dispatch instructions and compliance with those instructions);
- (k) metering requirements in relation to distribution connections;
- (l) the information which is required to be provided to Western Power in relation to the operation of plant or equipment connected to the electricity distribution network at a distribution connection and how and when that information is to be provided;

- (la) the steps to be applied by Western Power for determining the loss factor for a distribution connection on a regional power system;
 - (m) requirements in relation to under frequency load shedding with which users must comply; and
 - (n) any other relevant matters relating to the power system (including the electricity distribution network) or plant or equipment connected directly or indirectly to the electricity distribution network.
- (5) Subject to subregulation (11), Western Power (in its capacity as the operator of the electricity distribution network) and all users must use all reasonable endeavours to comply with the Distribution Technical Code.
- (6) Subject to subregulation (11), if the user in respect of a distribution connection is not the controller, or is not the only controller, of the plant or equipment connected at the distribution connection, then the user must use all reasonable endeavours to ensure that all of the controllers of that plant or equipment comply with these regulations and the Distribution Technical Code in respect of the plant or equipment.
- (7) A user may apply to Western Power for a determination that a specified provision or provisions of the Distribution Technical Code not apply, or apply with variations, to the user.
- (8) If Western Power receives an application under subregulation (7), then Western Power may determine that the provisions of the Distribution Technical Code are to apply in relation to the user (either generally or in a particular case or class of cases) as if a specified provision or provisions were omitted or were modified or varied in a specified manner.
- (9) A determination under subregulation (8) must be consistent with good electricity industry practice.
- (10) A determination under subregulation (8) must —

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- (a) be in writing to the user or users affected by the determination;
 - (b) specify the period for which the determination applies.
- (11) If Western Power makes a determination under subregulation (8), then the Distribution Technical Code applies to a user the subject of the determination in the manner contemplated by the determination during the period for which the determination applies.
- (12) Western Power must maintain a register containing a copy of every determination under subregulation (8).
- (13) Western Power must, upon request, permit a user to review the register maintained under subregulation (12) during normal business hours.

[Regulation 28 amended in Gazette 31 Dec 1998 p.7401-2.]

29. Network planning criteria

- (1) Western Power must prepare criteria relating to the planning of the electricity distribution network on or before 31 July 1997.
- (1a) On or before 31 March 1999, Western Power must amend the network planning criteria so that it relates to —
- (a) the interconnected network; and
 - (b) the regional power system,
- and subregulation (3) does not apply in respect of that amendment.
- (2) Western Power may from time to time amend the network planning criteria.
- (3) Before amending the network planning criteria in a manner which Western Power reasonably believes to be material, Western Power must make publicly available details of the proposed amendment and allow a reasonable period of time for

persons affected by the proposed amendment to comment on the proposed amendment.

- (4) The network planning criteria must be consistent with the Distribution Technical Code and must contain the following in relation to both the interconnected network and the regional power systems:
- (a) contingency criteria;
 - (b) steady-state criteria, including —
 - (i) real and reactive generating criteria;
 - (ii) voltage limits;
 - (iii) frequency criteria;
 - (iv) thermal rating criteria; and
 - (v) fault rating criteria;
 - (c) stability criteria, including —
 - (i) transient stability criteria;
 - (ii) dynamic stability criteria;
 - (iii) voltage stability criteria; and
 - (iv) frequency stability criteria;
 - (d) quality of supply criteria, including —
 - (i) voltage fluctuation criteria;
 - (ii) harmonic voltage criteria;
 - (iii) harmonic current criteria;
 - (iv) voltage unbalance criteria; and
 - (v) electro-magnetic interference criteria;
 - (e) distribution carrier selection criteria;
 - (f) construction standards criteria; and
 - (g) environmental criteria.
- (5) Western Power must provide a copy of the network planning criteria (as amended) to any user or applicant who requests a copy of it.

r. 29A. Distribution Technical Code, network planning criteria and distribution price schedule may form one or more documents

- (6) Without limiting Western Power's obligations under the Act, any proposal to augment the electricity distribution network must be consistent with the network planning criteria to the extent that Western Power reasonably believes the network planning criteria are applicable in the circumstances.

[Regulation 29 amended in Gazette 31 Dec 1998 p.7402.]

29A. Distribution Technical Code, network planning criteria and distribution price schedule may form one or more documents

Nothing in these regulations prevents a part of the Distribution Technical Code, the network planning criteria or the distribution price schedule being prepared or distributed —

- (a) separately from the rest of the document; or
- (b) amalgamated with another part of one of those documents if the parts relate to the same component of the electricity distribution network.

[Regulation 29A inserted in Gazette 31 Dec 1998 p.7402-3.]

30. Good electricity industry practice

- (1) Good electricity industry practice means the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from a significant proportion of operators of facilities forming part of a power system for the generation, transmission, distribution or supply of electricity under conditions comparable to those applicable to the relevant facility consistent with applicable laws, these regulations, the Distribution Technical Code, licences, codes, reliability, safety and environmental protection.
- (2) The determination of comparable conditions for the purposes of subregulation (1) is to take into account factors such as the relative size, function, age and technological status of the relevant facility and the applicable laws, these regulations, the Distribution Technical Code, licences and codes.

- (3) Western Power must comply with good electricity industry practice when providing distribution access services and in planning, operating, maintaining, developing and augmenting the electricity distribution network.
- (4) A user must comply with good electricity industry practice in operating, maintaining, constructing and commissioning plant or equipment connected to the electricity distribution network or in transferring electricity to or taking electricity from the electricity distribution network.

31. Interruption and curtailment powers

- (1) Subject to subregulation (2), Western Power may interrupt or curtail the transfer of electricity to or from a distribution connection or the provision of a distribution access service in respect of a distribution connection to the extent, and for such period of time, as Western Power considers is necessary —
 - (a) to carry out planned augmentation, maintenance, testing or repair of that part of the electricity distribution network or electricity transmission network which has the ability to transfer electricity to or from the distribution connection or the plant or equipment used to provide the distribution access service in respect of the distribution connection;
 - (b) to carry out unplanned maintenance, testing or repair of that part of the electricity distribution network or electricity transmission network which has the ability to transfer electricity to or from the distribution connection or the plant or equipment used to provide the distribution access service in respect of the distribution connection, if Western Power considers that doing so is necessary to avoid injury to any person or material damage to any property or the environment;
 - (c) in the event of breakdown of or damage to that part of the electricity distribution network or electricity transmission network which has the ability to transfer

electricity to or from the distribution connection or the plant or equipment used to provide the distribution access service in respect of the distribution connection which affects Western Power's ability to transfer electricity to or from the distribution connection or provide the distribution access service; or

- (d) if a *force majeure* event occurs which affects Western Power's ability to transfer electricity to or from the distribution connection or to provide the distribution access service.

(2) Western Power must —

- (a) give a user at least 10 business days prior notice of any planned augmentation, maintenance, testing or repair that will require interruption to or curtailment of the transfer of electricity to or from, or the provision of a distribution access service to, one or more of the user's distribution connections under these regulations and must liaise with the user concerning the timing of that planned augmentation, maintenance, testing or repair; and
- (b) use reasonable endeavours to promptly notify a user of any unplanned interruptions to or curtailments of the transfer of electricity to or from, or the provision of a distribution access service to, one or more of the user's distribution connections under these regulations.

(3) Subject to subregulation (2), Western Power has no responsibility to inform any person of any interruption or curtailment to the transfer of electricity to or from, or the provision of a distribution access service to, a distribution connection.

(4) If Western Power notifies a user of any interruption to or curtailment of the transfer of electricity to or from, or the provision of a distribution access service to, a distribution

connection (under this regulation or otherwise), then the user must —

- (a) comply with any reasonable requirements concerning the interruption or curtailment set out in the notice; and
- (b) if the distribution connection is a distribution exit point, must use all reasonable endeavours to ensure that the persons taking a supply of electricity through the distribution connection also comply with those requirements.

32. Safety and security of system

- (1) If Western Power is satisfied that it is necessary so to do because of an emergency event or condition, then Western Power may direct a user to do any one or more of the following —
 - (a) to establish or remove a distribution connection;
 - (b) to disconnect a distribution connection;
 - (c) to switch off a generator;
 - (d) to call plant or equipment into service;
 - (e) to take plant or equipment out of service;
 - (f) to commence operation of any plant or equipment or maintain, increase or reduce generation or absorption of active or reactive power output by any plant or equipment;
 - (g) to shut down or vary operation of any plant or equipment;
 - (h) to shed or restore load; or
 - (i) to do any other act or thing necessary to be done.
- (2) An event or condition is an emergency event or condition for the purposes of subregulation (1) if Western Power believes that the event or condition is causing, or is likely to cause —
 - (a) the death of, or injury to, a person; or

- (b) damage to property.
- (3) A direction under subregulation (1) must specify the period within which the direction must be complied with and for how long the direction must be complied with.
- (4) A direction under subregulation (1) must be recorded by Western Power.
- (5) If a person (in this regulation called the “**first person**”) is directed to do something under subregulation (1) but does not comply with the direction, then Western Power may authorise a Western Power employee or another person to carry out that direction and the first person must do all such things as the first person is requested by the authorised person to do in order to assist the authorised person to carry out that direction.
- (6) Regulations 27 and 31 and this regulation do not limit any power or right conferred by any other law or by agreement on Western Power.

33. Maintenance

- (1) A user must keep records detailing —
 - (a) any planned or unplanned maintenance carried out in respect of plant or equipment connected at each of its distribution connections which plant or equipment may impact on the quality of electricity supply through the electricity distribution network or the electricity transmission network; and
 - (b) the date on which any such maintenance was carried out.
- (2) The records referred to in subregulation (1) must be in writing in substantially the form requested by Western Power.
- (3) A user must provide Western Power with any information that Western Power reasonably requests concerning maintenance of plant and equipment connected at the user’s distribution connections.

34. Electricity generation and load forecast information

- (1) Western Power may request a user to provide information relating to the forecast electricity generation or load at one or more of the user's distribution connections.
- (2) If Western Power requests a user to provide information under subregulation (1) in respect of a distribution connection, then Western Power cannot make another request under that subregulation to that user in respect of that distribution connection within 12 months after the previous request was made.
- (3) If Western Power requests a user to provide information under subregulation (1), then the user must promptly provide the information requested.
- (4) Each user must use reasonable endeavours to provide accurate and complete information under subregulation (3).

Part 6 — Access terms

35. Reasonable endeavours

Notwithstanding the terms of any distribution access agreement, an obligation on Western Power to provide distribution access services or to ensure service quality parameters in relation to the electricity distribution network is to be read and construed as an obligation to use all reasonable endeavours to provide those services or ensure those parameters.

36. Force majeure and interruption

- (1) A *force majeure* event in respect of a party to a distribution access agreement or a person to which these regulations apply means any event outside the party's control, including —
 - (a) any act of God, lightning, earthquake, storm, fire, flood, subsidence, land slide, mud slide, wash-out, explosion or natural disaster;
 - (b) any insurrection, revolution or civil disorder, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot;
 - (c) any determination, award or order of any court or tribunal, or any regulatory authority or the award of any arbitrator;
 - (d) any act or omission of government or any government or regulatory department, body, instrumentality, ministry, agency, fire brigade or any other authority other than Western Power or the user (including restraint, expropriation, prohibition, intervention, direction or embargo);
 - (e) any inability or delay in obtaining any governmental, quasi-governmental or regulatory approval, consent, permit, licence or authority;

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- (f) any industrial disputes of any kind, strike, lock-out, ban, limitation or other industrial disturbances;
 - (g) any significant plant or equipment failure which could not have been avoided by the exercise of good electricity industry practice;
 - (h) where the person is party to a distribution access agreement, any act or omission of any person with facilities connected to the electricity distribution network or the electricity transmission network which affects or frustrates the party's ability to perform its obligations under the distribution access agreement;
 - (i) in the case of Western Power, any failure of the electricity transmission network which arises from, is caused by or results from a *force majeure* event in respect of Western Power (in its role as the operator of the electricity transmission network) within the meaning of regulation 35 (1) of the *Electricity Transmission Regulations 1996*; and
 - (j) any application of any law of the Commonwealth, any Commonwealth authority, the State, any State authority or any local government.
- (2) If a user, Western Power or a person who makes an access application (in this regulation called the “**affected person**”) is unable wholly or in part to perform on time and as required any obligation under the distribution access agreement or these regulations (other than an obligation to pay money) because of the occurrence of a *force majeure* event, then, subject to this regulation, that obligation (in this regulation called the “**affected obligation**”) is suspended to the extent that and, subject to subregulation (5), for so long as the affected person's ability to perform the affected obligation is affected by that *force majeure* event.
- (3) Without limiting subregulation (2), Western Power's obligation to transport electricity to or from a distribution connection by means of the electricity distribution network or provide a

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distribution access service is suspended during any period that the transfer of electricity to or from that distribution connection or the provision of the distribution access service in respect of that distribution connection is interrupted or curtailed under regulation 27 or 31 to the extent of the interruption or curtailment.

- (4) Subject to subregulations (5), (6) and (7), if a *force majeure* event occurs, then the affected person must —
- (a) notify any person who in the affected person's reasonable opinion is likely to be adversely affected by the suspension of the affected obligations; and
 - (b) use reasonable endeavours (including incurring any reasonable expenditure of funds and rescheduling man power and resources) to mitigate the consequences and minimise any resulting delay in the performance of the affected obligation.
- (5) If an affected person fails to comply with subregulation (4) (b), then the only consequence of that failure is that the period of suspension of the affected obligation is reduced by the period of any delay in the performance of the affected obligation attributable to that failure.
- (6) The settlement of a labour dispute which constitutes a *force majeure* event is a matter which is within the absolute discretion of the affected person.
- (7) An affected person is not obliged to incur any expenditure in complying with subregulation (4) (b) if the *force majeure* event is constituted by a breach of, or failure to comply with, the distribution access agreement by another party to the distribution access agreement or these regulations by another person to which these regulations apply.

37. Effect of access to capacity

By executing or complying with its obligations under a distribution access agreement or making any capital

contribution under a distribution access agreement, a user does not acquire any right, title or interest in or to the electricity distribution network.

38. Minimum term and renewal

- (1) The term of a distribution access agreement is such term as the parties agree and set out in the distribution access agreement.
- (2) Subject to the terms of the distribution access agreement, a distribution access agreement with an original term of one year or more may be renewed by the user for a further term equal to the original term —
 - (a) if the original term is less than or equal to 3 years, then by written notice to Western Power received at least 3 months prior to expiration of the original term; or
 - (b) if the original term is more than 3 years, then by written notice to Western Power received at least 6 months prior to expiration of the original term,

without the requirement for a further access application.

- (3) In assessing whether or not there is a spare capacity, it must be assumed that a distribution access agreement which may be renewed in accordance with subregulation (2) will be renewed in accordance with that regulation until the time for exercising the option to renew contemplated by that regulation has expired without that option being exercised.

39. Contract maximum demand and declared sent out capacity

- (1) A user must use reasonable endeavours to ensure that the user's actual demand at a distribution connection does not exceed the contract maximum demand for that distribution connection.
- (2) A user must use reasonable endeavours to ensure that the quantity of electricity transferred to the electricity distribution network by or on behalf of the user at a distribution connection

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does not exceed the declared sent-out capacity for the user in respect of that distribution connection.

40. Commencement date

- (1) Subject to regulation 11 (8), a distribution access agreement commences on the day it is entered into by Western Power and the user and the term of the distribution access agreement runs from that day.
- (2) A distribution access agreement may provide for a later day on which the provision of distribution access services is to commence, and, if it does so, then Western Power is under no obligation to provide distribution access services under that distribution access agreement until that later day.

Part 7 — Enforcement, liability and insurance

41. Enforcement

- (1) If a user fails to observe or perform any of its obligations under a distribution access agreement (in this regulation called a “**default**”), then Western Power may —
- (a) notify the user of the default and require the user to remedy the default;
 - (b) if the default is a default in the payment of any amount or a failure to provide and maintain a bank guarantee as contemplated by regulation 44 and has not been remedied by the end of the 3rd business day after the notice was given, then disconnect the user’s distribution connections from the electricity distribution network whilst that default is continuing;
 - (c) if the default is any other type of default and at the end of the 5th business day after the notice was given —
 - (i) the default has not been remedied; or
 - (ii) the user has not to the reasonable satisfaction of Western Power commenced to remedy the default or has commenced to remedy the default but is not diligently proceeding to remedy the default,then disconnect the user’s distribution connections from the electricity distribution network whilst that default is continuing; and
 - (d) if the default has not been remedied at the end of the 20th business day after the notice was given, then treat the default as a repudiation of the distribution access agreement and terminate the distribution access agreement.
- (2) The rights of Western Power under this regulation (except the periods of notice) are in addition to and are not to limit any other rights which Western Power has under a distribution

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access agreement or any other rights or remedies which it has under any other written law, at law, in equity or otherwise.

- (3) Specifically, the imposition by Western Power of a charge under Part 4 or otherwise for the use of any distribution access service other than in accordance with the distribution access agreement does not affect Western Power's rights under this regulation and is not to be taken as any commitment by Western Power to provide any additional distribution access services.
- (4) Termination of a distribution access agreement under this regulation does not prejudice the rights or remedies accrued to either party at the date of termination.

[Regulation 41 amended in Gazette 28 Dec 2001 p.6717.]

42. Liability, insurance and indemnity

- (1) In this regulation —
 - “**direct damage**” suffered by a person means loss or damage suffered by the person which is not indirect damage;
 - “**indirect damage**” suffered by a person, means —
 - (a) any consequential loss, consequential damage or special damages however caused suffered by the person including any —
 - (i) loss of (or loss of anticipated) use, production, revenue, income, profits, business and savings; or
 - (ii) business interruption,
whether or not the consequential loss or damage or special damages was foreseeable;
 - (b) in respect of contractual damages, damages which would fall within the second limb of what is known as the rule in *Hadley v Baxendale*; and
 - (c) any liability of the person to any other person, or any claim, demand, action or proceeding brought against

the person by any other person, and the costs and expenses connected with the claim.

- (2) To the maximum extent permitted by law, the only warranties and terms which apply to the provision of distribution access services by Western Power are those expressly contained in a distribution access agreement and all warranties and terms (except those expressly set out in a distribution access agreement) implied by law, including implied by the provisions of the *Trade Practices Act 1974* of the Commonwealth or any legislation (whether Commonwealth or otherwise) to similar effect, on the part of Western Power, do not apply to the provision of distribution access services by Western Power.
- (3) If at law, the exclusion of any warranty or term is prohibited, then Western Power's liability in respect of a breach of such warranty or term, is limited to the maximum extent permitted by law. For example, where any law permits Western Power to limit its liability in respect of a breach of an implied warranty or condition to the replacement or resupply of equivalent goods and services, then Western Power's liability will be so limited.
- (4) If Western Power or a user is negligent, or defaults in respect of its obligations under a distribution access agreement, then it is liable to the other party (including its directors, servants, consultants, independent contractors and agents) for, and is to indemnify the other party (including its directors, servants, consultants, independent contractors and agents) against, any direct damage caused by, consequent upon or arising out of the negligence or default.
- (5) A party to a distribution access agreement who is fraudulent in respect of its obligations to the other party under the distribution access agreement, is liable to the other party for, and is to indemnify the other party against, any direct damage or indirect damage caused by, consequent upon or arising out of the fraud.
- (6) Except as provided in subregulation (5) —

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- (a) Western Power is not in any circumstances to be liable to a user or a controller for indirect damage, however arising; and
 - (b) a user is not liable to Western Power for indirect damage, however arising.
- (7) Each user must indemnify Western Power for all liability on the part of Western Power to any customer of the user or any generator of the user (including for direct and indirect damage) or any controller of a distribution connection of the user which Western Power may suffer because of the provision of or failure to provide distribution access services to the user, except only to the extent that such liability is caused by, is consequent upon or arises out of the negligence of Western Power or the breach by Western Power of any term of the relevant distribution access agreement.
- (8) Each user must indemnify Western Power for all liability (including direct and indirect damage) on the part of Western Power to any third party by reason of the default of that user under these regulations or under the distribution access agreement or the negligence of that user.
- (9) The terms of a distribution access agreement may contain additional provisions relating to liability of Western Power and a user, including a cap on liability, the terms of an indemnity on the part of a user to Western Power and the requirement of a user to maintain insurances to the reasonable satisfaction of Western Power.

Part 8 — Other matters

43. Ancillary services

- (1) A user must at all times have in place arrangements with Western Power or another person under which the following ancillary services will be provided in respect of each of its distribution exit points:
 - (a) voltage control;
 - (b) control system services;
 - (c) spinning reserve; and
 - (d) post trip management services.
- (2) Western Power may determine that one or more of the ancillary services referred to in subregulation (1) is not required in respect of distribution exit points connected to a particular sub-network.
- (3) A determination under subregulation (2) must be consistent with good electricity industry practice.
- (4) A determination under subregulation (2) must —
 - (a) be in writing to the user or users affected by the determination; and
 - (b) specify the period for which the determination applies.
- (5) If Western Power makes a determination under subregulation (2), then subregulation (1) applies to a distribution exit point the subject of the determination in the manner contemplated by the determination during the period for which the determination applies.
- (6) If an arrangement contemplated by subregulation (1) relates to the provision of ancillary services by a person other than Western Power, then the arrangement must be in form and substance reasonably satisfactory to Western Power.

44. Prudential requirements

- (1) If requested to do so by Western Power, a user (other than Western Power) must provide and maintain a bank guarantee in a form and with a bank acceptable to Western Power under which Western Power may draw in aggregate an amount equal to or more than the amount last nominated by Western Power for the purposes of this regulation under subregulation (2).
- (2) Western Power may from time to time nominate an amount for the purposes of subregulation (1) by written notice given to the user based on a good faith assessment of the credit risk of the user to Western Power.
- (3) If —
 - (a) a user fails to pay to Western Power any amount when due under these regulations or a distribution access agreement; or
 - (b) a user pays an amount under these regulations or a distribution access agreement which Western Power is subsequently required to disgorge or repay under laws relating to insolvency, the protection of creditors or similar matters,

then Western Power may exercise its rights under the bank guarantee in respect of that amount.

45. Title to electricity

- (1) Title to, and risk in, electricity which is transferred to the electricity distribution network passes to Western Power at the time it passes through the relevant distribution connection.
- (2) Title to, and risk in, electricity which is transferred from the electricity distribution network at a distribution connection which is not a transfer point passes from Western Power at the time it passes through the relevant distribution connection to the user in respect of the distribution connection.

- (3) This regulation does not affect an obligation of the user, arising under Part 4 or otherwise, to pay any charge relating to the transport of the electricity.

[Regulation 45 amended in Gazette 28 Dec 2001 p.6717.]

46. Assignment of distribution access agreements

- (1) A user must not —
- (a) assign, novate, declare itself a trustee of, or otherwise dispose of, any of its rights under a distribution access agreement or a grant of access under clause 2 of Schedule 6 to the Act;
 - (b) subcontract the performance of its obligations under a distribution access agreement or a grant of access under clause 2 of Schedule 6 to the Act; or
 - (c) create an encumbrance over any of its rights or obligations under a distribution access agreement or a grant of access under clause 2 of Schedule 6 to the Act,

without the prior written consent of Western Power (such consent not to be unreasonably withheld).

- (2) Prior to giving any consent under this regulation, Western Power may require any assignee or person having the benefit of an encumbrance to enter into documents in form and substance satisfactory to Western Power agreeing to be bound by the terms of the distribution access agreement.
- (3) Western Power may assign all of its rights and obligations under a distribution access agreement to any person who may own or operate all or any part of the electricity distribution network.

47. Essential terms

The following provisions of these regulations are essential terms and conditions for the purposes of clause 2 (4) of Schedule 6 to the Act:

Part 3	Part 6
Part 4	Part 7
regulation 12	regulation 43
regulation 28	regulation 44
regulation 30	regulation 45
regulation 31	regulation 46
regulation 32	regulation 48
regulation 33	

48. Representations and warranties

- (1) The user, by entering into a distribution access agreement, represents and warrants to Western Power that —
- (a) it has duly complied, and will up to the termination of the distribution access agreement continuously comply, with all environmental and safety laws with respect to any of its obligations connected with, arising out of or in relation to the Act, these regulations or the distribution access agreement;
 - (b) it will, as at the date electricity is first transferred through each of the distribution connections under the distribution access agreement, have in full force and effect all necessary authorisations, licences, permits, consents, certificates, authorities and approvals necessary under all law to enable it to observe its obligations under the Act, these regulations and the distribution access agreement, and to allow those obligations to be enforced;
 - (c) it will, as at the date electricity is first transferred through each of the distribution connections under the distribution access agreement, have in full force and effect all necessary leases, licences or easements to construct, operate and maintain any distribution connection and other facilities for which it is responsible under these regulations or a distribution access agreement;

- (d) its obligations under the distribution access agreement are valid and binding and are enforceable against it in accordance with their terms;
- (e) the distribution access agreement and any transaction under it does not contravene the user's constituent documents or any law or any of its obligations or undertakings by which it or any of its assets are bound or cause to be exceeded any limitation on its or its directors' powers;
- (f) its obligations to make payments under the distribution access agreement rank at least equally with all unsecured and unsubordinated indebtedness of the user except debts mandatorily preferred by law;
- (g) neither the user nor any of its related bodies corporate is in default under a law affecting any of them or their respective assets, or any obligation or undertaking by which it or any of its assets are bound;
- (h) there is no pending or threatening action or proceeding affecting the user or any of its related bodies corporate or any of their respective assets before a court, governmental agency, commission, arbitrator or other tribunal which will, or might reasonably be expected to, materially affect its ability to perform its obligations under the distribution access agreement;
- (i) neither the user nor any of its related bodies corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (j) the user is not an agent or trustee (except if and to the extent that it is disclosed as such in its application under Part 2) in relation to the distribution access agreement or the electricity transferred under the distribution access agreement.

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- (2) These representations and warranties are by force of this regulation to be taken to be made on each day on which —
 - (a) electricity is transferred to or from a distribution connection under a distribution access agreement between the user and Western Power; or
 - (b) any amount payable by the user to Western Power under a distribution access agreement is or may be outstanding.

49. Payment arrangements

- (1) Western Power may invoice a user in respect of the charges payable in respect of distribution access services and the charges payable under these regulations, and a user must pay those charges, in accordance with the procedures set out in the distribution access agreement between Western Power and the user.
- (2) A user may invoice Western Power in respect of the charges payable under these regulations, and Western Power must pay those charges, in accordance with the procedures set out in the distribution access agreement between the user and Western Power.
- (3) A distribution access agreement may provide for the payment by a user of interest in respect of overdue amounts.
- (4) A user must pay the charges payable in respect of distribution access services under a distribution access agreement from the commencement date for the provision of distribution access services specified in the distribution access agreement, regardless of whether or not distribution access services are used on and from that date, except if the failure to provide such distribution access services is due to the default of Western Power.

50. Controllers

- (1) Each controller of a distribution connection must —
 - (a) use all reasonable endeavours to comply with the Distribution Technical Code (including, without limitation, any provisions relating to inspection of plant or equipment and the provision of information) in respect of the distribution connection; and
 - (b) comply with good electricity industry practice in operating, maintaining, constructing and commissioning plant or equipment connected to the electricity distribution network or in transferring electricity to or taking electricity from the electricity distribution network.
- (2) Where a user in respect of a distribution connection is not the controller in respect of the distribution connection or is not the only controller in respect of the distribution connection, then the user must ensure that each of the controllers of the distribution connection complies with its obligations under subregulation (1).

Part 9 — Committed capacity and transitional provisions

51. Interpretation

- (1) In this Part —
 - “**WP Trader**” means Western Power in its role as a trader of electricity;
 - “**WP Distribution**” means Western Power in its role as the operator of the electricity distribution network;
- (2) In this Part premises are “**eligible premises**” if Western Power is obliged to make available access for the transport of electricity to them under subclause (1) of clause 2 of Schedule 6 to the Act.

52. Committed capacity

- (1) The following electricity distribution capacity is committed to WP Trader unless subregulation (5) applies:
 - (a) in respect of premises that are not eligible premises and in respect of which there is not an existing agreement —
 - (i) the electricity distribution capacity required from time to time by WP Trader to transport electricity to or from the premises; and
 - (ii) the electricity distribution capacity that WP Trader forecasts will be required from time to time to satisfy the reasonably foreseeable requirements for the transport of electricity to or from the premises;
 - (b) in respect of premises that are eligible premises as at 1 July 1997 and in respect of which there is not an existing agreement — the electricity distribution capacity required from time to time by WP Trader to transport electricity to or from the premises;

- (c) in respect of premises that become eligible premises and in respect of which there is not an existing agreement — the electricity distribution capacity required by WP Trader to transport electricity to or from the premises immediately before they became eligible premises;
 - (d) in respect of premises in respect of which there is an existing agreement — the electricity distribution capacity required by WP Trader to transport electricity to or from the premises for the term of the agreement.
- (2) If premises are eligible premises on 1 July 1997 or become eligible premises before 1 July 1998 and a person makes an access application in respect of the transport of electricity to the premises before 1 July 1999, then the electricity distribution capacity that is required to transport electricity to or from those premises is committed to the person for the purposes of the application and of the person entering into a distribution access agreement in respect of those premises.
- (3) If premises are not eligible premises immediately before 1 July 1998 but become eligible premises on or after 1 July 1998 and before 1 July 1999 and a person makes an access application in respect of the transport of electricity to the premises before 1 July 2000, then the electricity distribution capacity that is required to transport electricity to or from those premises is committed to the person for the purposes of the application and of the person entering into a distribution access agreement in respect of those premises.
- (3a) If premises are not eligible premises immediately before 1 January 1999 but become eligible premises on or after 1 January 1999 and a person makes an access application in respect of the transport of electricity to the premises before 1 January 2001, then the electricity distribution capacity that is required to transport electricity to or from those premises is committed to the person for the purposes of the application and of the person entering into a distribution access agreement in respect of those premises.

- (4) If premises are not eligible premises immediately before 1 January 2000 but become eligible premises on or after 1 January 2000 and a person makes an access application in respect of the transport of electricity to the premises before 1 January 2002, then the electricity distribution capacity that is required to transport electricity to or from those premises is committed to the person for the purposes of the application and of the person entering into a distribution access agreement in respect of those premises.
- (5) If a person —
- (a) makes an access application in respect of premises referred to in subregulation (2), (3) or (4) within the time specified in the subregulation;
 - (b) enters into a distribution access agreement with WP Distribution in respect of the premises; and
 - (c) ceases to purchase electricity from Western Power,
- then, from the time WP Distribution enters into the distribution access agreement, the electricity distribution capacity committed to WP Trader under subregulation (1) in respect of those premises ceases to be committed to WP Trader.
- (6) In assessing the reasonably foreseeable requirements of any premises under subregulation (1) at any time, regard is not to be had to any change in those requirements that it is foreseeable will occur more than 5 years after that time.
- (7) If, when preparing a response in respect of an access application, Western Power believes that there is not likely to be sufficient spare capacity to provide the distribution access services requested in the access application, then Western Power must include a statement in the response as to whether or not this is due in whole or in part to the operation of subsection (1) (a) (ii) or (b).
- (8) WP Trader is taken to have entered into a distribution access agreement for an indefinite term with WP Distribution in

relation to the provision of distribution access services by WP Distribution to WP Trader in respect of the electricity distribution capacity committed to Western Power under subregulation (1) (b) and (c) less any electricity distribution capacity that ceases to be committed to WP Trader under subregulation (5).

- (9) The charges payable by Western Power for the distribution access services provided under the deemed distribution access agreement under subregulation (8) for a financial year are determined in accordance with the Prices and Charges Paper for that financial year and the other terms and conditions of that deemed distribution access agreement are those terms and conditions listed in regulation 47. To avoid doubt, but subject to these regulations, the general manager of the division of Western Power responsible for trading of electricity (or a delegate of that general manager) and the general manager of the division of Western Power responsible for operating the electricity distribution network (or a delegate of that general manager) may vary the terms of the deemed distribution access agreement under subregulation (8) at any time by agreement.

[Regulation 52 amended in Gazette 31 Dec 1998 p.7403.]

53. Existing agreements

- (1) The terms and conditions on which Western Power provides access to electricity distribution capacity the subject of an existing agreement, are set out in that existing agreement.
- (2) Nothing in these regulations affects the rights of any party under an existing agreement.

54. Western Power and non-eligible premises

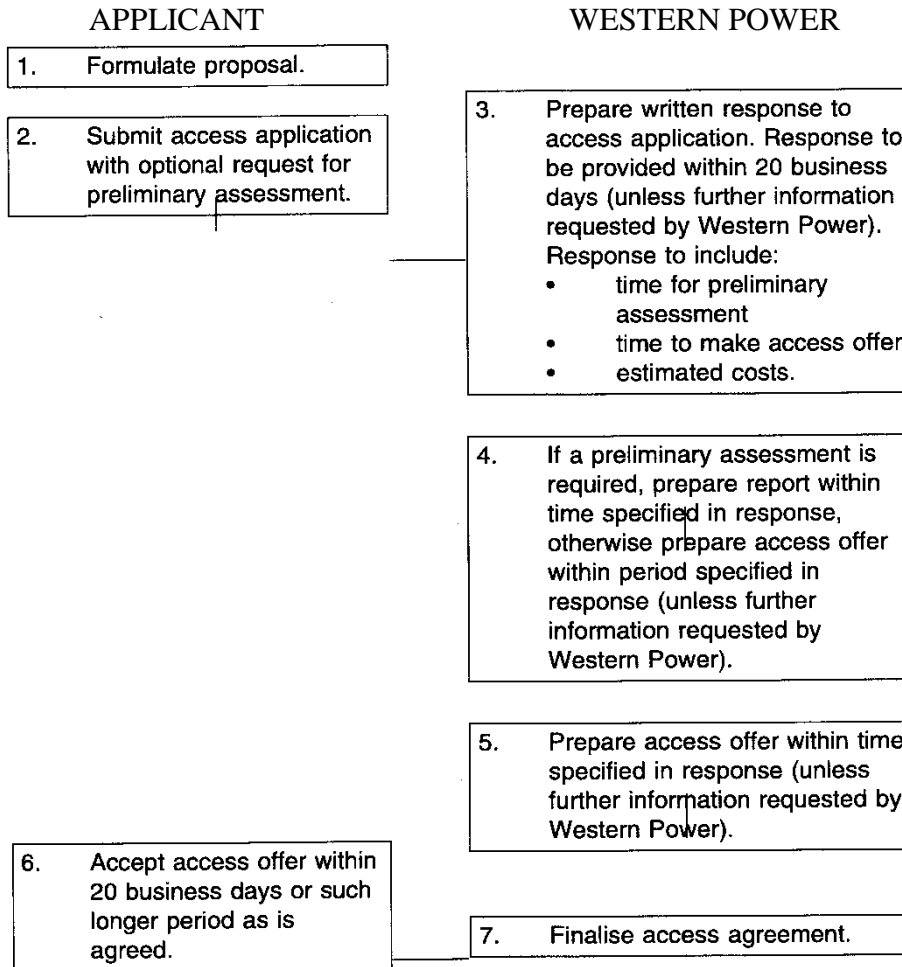
- (1) Except for this Part, these regulations do not apply to WP Trader as a user in respect of electricity distribution capacity it utilises to transfer electricity to or from premises that are not eligible premises.

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- (2) Notwithstanding Part 2, WP Trader need not make an access application for distribution access services it requires in order to transfer electricity to or from premises that are not eligible premises.
- (3) The terms and conditions on which WP Distribution makes available access to WP Trader the electricity distribution capacity WP Trader utilises to transfer electricity to or from premises that are not eligible premises are to be agreed from time to time by the general manager of the division of Western Power responsible for trading of electricity (or a delegate of that general manager) and the general manager of the division of Western Power responsible for operating the electricity distribution network (or a delegate of that general manager).

Schedule 1 — Access application flow chart

[r. 7]



NOTE: The process shown in this flow chart is in simplified form, is for illustrative purposes only and otherwise has no force or effect. The process and times for performing activities are subject to conditions and variations set out in Part 2.

Schedule 2 — Access information

[r. 8 (6) & (8)]

Part A — Information to be included in an access application

An access application must contain the following information:

- (a) the name and address of the person making the access application and of any other persons for whom that person is acting in making the access application;
- (b) the type of distribution access services requested, when those distribution access services are required and for how long they will be required;
- (c) the distribution entry points, distribution exit points and transfer points (as applicable) in respect of which access is being applied for and the capacity (expressed in kVA) for each of those entry points and exit points for which access is being applied for;
- (d) whether the access application is being made in connection with a tender process to supply a project and, if so, who the sponsor is in respect of the project;
- (e) the premises and type of plant in respect of which the distribution access services are required and the configuration of that plant;
- (f) the geographical location of the premises (identified either by a street name and number or by Australian mapping grid co-ordinates);
- (g) the expected maximum demand of the plant connected or to be connected at each of the distribution entry points (if any);
- (h) the maximum generation capacity and the proposed declared sent out capacity for the user at each of the distribution exit points (if any);
- (i) the expected electricity production and consumption of the premises connected or to be connected at each of the distribution entry points and distribution exit points (if any);
- (j) when the applicant expects the plant to be connected at each of the distribution entry points and distribution exit points to be in service (if appropriate);

- (k) details of the controllers in respect of each of the distribution entry points and distribution exit points in respect of which access is being applied for and details of any proposed technical compliance agreement;
- (l) the arrangements which the applicant proposes to enter into in relation to the construction and supply of the connection equipment in respect of the distribution connection;
- (m) the nature of any disturbing load (size of disturbing component MW/MVAr, duty cycle, nature of power electronic plant which may produce harmonic distortion);
- (n) any information as required by the Distribution Technical Code;
- (o) commercial information concerning the applicant to allow Western Power to make an assessment of the ability of the applicant to meet its obligations under any distribution access agreement that results from the access application; and
- (p) any other information reasonably required by Western Power.

**Part B — Information to be included in
a response**

A response must contain the following information:

- (a) whether it is likely that there is sufficient spare capacity to provide the distribution access services requested in the access application or whether the electricity distribution network will have to be augmented to provide those services;
- (b) whether it is likely that any connection equipment will have to be installed or upgraded to provide the connection services (if any) requested in the access application; and
- (c) whether or not a capital contribution will be required of the user under regulation 12.

[Schedule 2 amended in Gazette 28 December 2001 p.6717.]

Schedule 3 — Terms of an access offer

[r. 11 (3)]

In addition to any matters outlined elsewhere in the regulations, an access offer may include terms and conditions of the following kind:

- (a) details of each distribution entry point and each distribution exit point;
- (b) details of any transfer point;
- (c) the contract maximum demand and declared sent-out capacity in respect of each distribution connection;
- (d) if more than one person is selling or purchasing the electricity transferred at the distribution connection, then the mechanism for determining how much of the electricity transferred at that distribution connection is sold or purchased by each of those persons;
- (e) a requirement that the user complies with the provisions of these regulations and the Distribution Technical Code;
- (f) any metering arrangements and, if appropriate, a methodology for adjusting losses where the point of metering is significantly different to the distribution connection;
- (g) the payment conditions;
- (h) the date on which payments in respect of the distribution access services are to commence (whether or not the applicant's plant is actually commissioned by that date);
- (i) the duration and termination conditions of the proposed access agreement;
- (j) terms and conditions in relation to the carrying out of works to establish a distribution connection;
- (k) testing and commissioning requirements;
- (l) agreed protocols for maintenance coordination;
- (m) the provision, installation, operation and maintenance of automatic load shedding facilities;
- (n) the circumstances under which the terms of the resulting distribution access agreement would require renegotiation; and

- (o) the amount of any capital contributions under regulation 12 and the manner in which and the time at which the capital contribution must be paid to Western Power.

[Schedule 3 amended in Gazette 31 Dec 1998 p.7403.]

Schedule 4 — Loss factor formula

[r. 22]

1. To calculate the loss factor for a distribution connection which is an exit point Western Power must follow the following steps:
 - (a) Western Power must determine the line losses assuming the distribution connection was not there and assuming feeder maximum load;
 - (b) Western Power must determine the line losses assuming only the distribution connection was there and assuming feeder maximum load;
 - (c) Western Power must determine the total line losses assuming all the distribution connections are there (including the distribution connection for which the loss factor is being determined) and assuming feeder maximum load;
 - (d) Western Power must allocate a share of the total line losses calculated under step (c) to the distribution connection for which the loss factor is being determined based on the ratio of the result of step (b) and the sum of the results of steps (a) and (b);
 - (e) Western Power must calculate the loss factor for the distribution connection by applying the following formula:

$$\text{LFExit} = 1 + \frac{A}{B}$$

where —

A (in kW) is the share of the total line losses allocated to the distribution connection under step (d);

B (in kW) is the contract maximum demand for the distribution connection.

2. To calculate the loss factor for a distribution connection which is an entry point Western Power must follow the following steps:
 - (a) Western Power must determine the line losses assuming the distribution connection was not there and assuming feeder maximum load;
 - (b) Western Power must determine the total line losses assuming all the distribution connections are there (including the

distribution connection for which the loss factor is being determined) and assuming feeder maximum load;

- (c) Western Power must calculate the loss decrease or increase for the distribution connection for which the loss factor is being determined by subtracting the result of step (b) from the result of step (a);
- (d) Western Power must calculate the loss factor for the distribution connection by applying the following formula:

$$\text{LFEntry} = 1 + \frac{A}{B}$$

where —

A (in kW) is the loss increase or decrease calculated for the distribution connection under step (c);

B (in kW) is the declared sent out capacity for the distribution connection.

[Schedule 4 amended in Gazette 31 Dec 1998 pp.7403-4.]

Notes

¹ This is a compilation of the *Electricity Distribution Regulations 1997* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Electricity Distribution Regulations 1997</i>	1 Jul 1997 p.3335-3406	1 Jul 1997
<i>Electricity Distribution Amendment Regulations 1998</i>	31 Dec 1998 p.7399-404	1 Jan 1999 (see regulation 2)
<i>Corporations (Consequential Amendments) Regulations 2001 Pt. 8</i>	28 Sep 2001 p.5353-8	Deemed operative: 15 Jul 2001 (see r. 2 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Electricity Distribution Amendment Regulations (No. 2) 2001</i>	28 Dec 2001 p.6714-17	28 Dec 2001 (see r. 2)
<i>Electricity Transmission Amendment Regulations 2002 r. 6</i>	29 Oct 2002 p.5343-5	1 Jan 2003 (see r. 2)
<i>Electricity Distribution Amendment Regulations (No. 2) 2004</i>	22 Jun 2004 p. 2162-4	23 Jun 2004 (see r. 2 and <i>Gazette</i> 22 Jun 2004 p. 2161)