AUSTRALIAN **ENERGY** COUNCIL

26 June 2020

Energy Policy WA
Locked Bag 11
Cloisters Square, Perth, WA 6850

Submitted by graham.pearson@energycouncil.com.au to energytransformation@energy.wa.gov.au

**Proposed changes to the Electricity Networks Access Code**

The Australian Energy Council (the "**AEC**") welcomes the opportunity to make a submission to Energy Policy WA on the proposed changes to the Electricity Networks Access Code 2004 (the "**Access Code**").

The AEC is the industry body representing 24 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

**Changing the Access Code objective**

The draft changes propose significant amendments to the Access Code objective (item 2.1). It removes reference to the promotion of competition in markets upstream and downstream of the networks and instead adds three new objectives: promoting the long-term interests of consumers in relation to price, quality, safety and reliability and security of electricity supplies; the regulation of access to the services of networks, in relation to quality, security and reliability of covered networks; and a focus on the environmental implications of the supply of electricity.

The consultation paper notes that "the promotion of competition was not an end in itself, but rather was a means to improve outcomes for electricity consumers" and for this reason the reference to competition was removed.[1] It is indeed the case that competition supports improved outcomes for consumers, however reference to competition shouldn't be removed simply because it's not the intended final result. Competition is a cornerstone of the SWIS and removing it from the Access Code is inconsistent with the Market Rules that continues to have as an objective "to encourage competition among generators and retailers in the South West interconnected system, including by facilitating efficient entry of new competitors".[2] Maintaining the explicit reference to competition is crucial so the Economic Regulation Authority ("**ERA**") can take this into account as part of an assessment, and including this reference will help to achieve the overall objective of better outcomes for electricity consumers.

---

[1] See p27, Energy Transformation Strategy: Proposed Changes to the Electricity Networks Access Code consultation paper

[2] See p10, Wholesale Electricity Market Rules

Level 14, 50 Market Street
Melbourne 3000
GPO Box 1823 Melbourne Victoria 3001

P +61 3 9205 3100
E info@energycouncil.com.au
W energycouncil.com.au

ABN 92 608 495 307

Another proposed amendment to the Access Code objective is the inclusion of a new focus on environmental objectives:

> *the environmental consequences of energy supply and consumption, including reducing carbon pollution, considering land use and biodiversity impacts, and encouraging energy efficiency and demand management.*[3]

The AEC is concerned about the inclusion of this objective and its consequences. It is inconsistent with the Market Rules objective "to avoid discrimination in that market against particular energy options and technologies"[4] and it seemingly offers Western Power a direct role in prioritising how electricity is generated and supplied, potentially threatening new investment opportunities for market participants. The AEC's position is that environment regulation is best governed through the already robust, independent environmental approval process in Western Australia that all new generators need to satisfy. The Access Code should not promote investment in generating assets on environmental grounds, and thereby distorting the market, when all new projects already need to go through a rigorous process to obtain formal environmental approval. Accordingly, the AEC recommends against inclusion of the 'environmental consequences' objective in the Access Code.

**Network opportunity map / alternative options**

The proposed changes to the Access Code require Western Power to produce a Network Opportunities Map ("**NOM**") to give greater transparency on network constraints, planned investments and the potential value of providing services to resolve constraints. Western Power must also engage with providers of alternative options and consider alternative options for addressing these transmission and distribution system constraints. But while Western Power is compelled to engage and consult with potential providers of alternative options, it is not incentivised or even required to procure or implement alternative option solutions from non-network providers. A network operator may instead choose to implement the non-network solutions in its own capacity and, indeed, there will always be a strong corporate incentive to ensure that all work is undertaken in-house as far as possible as this is much easier to manage, is perceived to carry less risk and boosts the asset base. In this context, it is unclear how the NOM will deliver the least cost, most efficient solution without a positive obligation and financial targets put on the network operator to procure alternative option solutions from non-network providers. Moreover, the proposed changes do not provide the ERA with clear direction on what should occur if alternative option solutions are more efficient than that proposed by the network operator.

The AEC suggests that a positive obligation with financial targets should be placed on the network operator to promote active engagement with the market and the selection of the most appropriate option to deliver a least cost and most efficient solution, with an ex-post review undertaken and published to ensure this occurs.

**Impact of alternative options**

Beyond incentivizing the network operator to engage the most appropriate provider to deliver alternative options and address transmission and distribution system constraints, further consideration should also be given to the impact of each alternative option on the WEM. While the alternative option may solve one issue, it has the potential to create flow-on implications across the WEM and impact network users.

The AEC recommends that any new network services that Western Power seek to deploy be integrated with the WEM and there is an obligation for Western Power to consult with AEMO during the process.

---

[3] See P44, Draft Changes to the Electricity Networks Access Code
[4] See p10, Wholesale Electricity Market Rules

**Multi-function assets**

The draft Access Code introduces a new concept of multi-function assets to give the network operator a greater opportunity to use network facilities for both regulated and unregulated services.

The consultation paper accompanying the draft Access Code specifically points to storage as a multi-function asset, noting "distribution connected storage works would be considered a 'multi-function asset' as the storage works are able to provide both regulated network support services and unregulated (for the purposes of the Access Code) essential system services and/or energy arbitrage services".[5]

This is a major expansion of Western Power's remit. It allows the network operator to recover regulated service costs but also generate revenue from unregulated services, or an 'excluded service', explicitly creating a new business line for Western Power. This contrasts with the Explanatory Memorandum for the Electricity Industry Amendment Bill 2009 (the "**Bill**")[6]:

> *The ENAC is intended to set clear boundaries around when Western Power may provide SPS [stand-alone power systems] and provide regulated network services using distribution connected storage devices. The intention is to enable Western Power to operate its existing business efficiently and with a view to providing least cost network services. The intention is not to create new lines of business for Western Power to compete with private sector SPS and storage providers.*[7]

The Explanatory Memorandum for the Bill was clear in its intent that the network operator was not be given free rein to provide unregulated services or establish new lines of business to compete with non-network providers.[8]

In this context, the draft Access Code does not reflect the network operator limitations that were intended by the State Government.

But putting aside that these changes in the draft Access Code were not previously contemplated, most concerning for the AEC is the flow-on consequences of Western Power's expanded scope. In practical terms, it will put Western Power in direct competition with non-network providers, effectively allowing it to go through the non-network providers to have a relationship with users, potentially impacting the revenue received by non-network providers and all the while Western Power will use others' connection points creating more liability for third-parties.

The AEC strongly objects to the draft Access Code enabling Western Power to provide unregulated services from multi-function assets, generate a revenue from this activity and directly compete with non-network providers. However, in the event this proceeds, the AEC recommends that strong checks and balances are imposed under the Access Code's ring-fencing mechanism specifically prohibiting Western Power from:

- Contracting directly with a retailer's customers in the provision of competitive services;
- Participating in the WEM; and
- Favouring its own investments in the provision of alternative options.

The Australian Energy Regulator in the NEM created a ring-fencing guideline for electricity distribution network businesses and such an approach should also be applied in this instance. The aim of the guideline is to separate the regulated and competitive business activities where a regulated network business also offers services in a competitive market. The intent of ring-fencing Western Power's new multi-function asset competitive business is to avoid cross-subsidisation, where it uses regulated revenues to subsidise competitive activities and potentially gain an unfair advantage over non-network providers. At a minimum, the draft Access Code should include such ring-fencing measures on the network operator's unregulated services.

---

[5] See p21, Energy Transformation Strategy: Proposed Changes to the Electricity Networks Access Code consultation paper
[6] See Explanatory Memorandum presented in the Legislative Assembly
[7] See p21, Explanatory Memorandum presented in the Legislative Assembly
[8] See Second Reading speech presented in the Legislative Assembly

Level 14, 50 Market Street
Melbourne 3000
GPO Box 1823 Melbourne Victoria 3001

Phone +61 3 9205 3100
Email info@energycouncil.com.au
Website www.energycouncil.com.au

ABN 98 052 416 083

In addition, we consider that mandating a requirement for the ERA to produce a multi-function asset guideline, as was done under the National Electricity Rules, would provide greater protection for consumers and would be appropriate.

It will not be in the long term interest of consumers if retailers exit or do not enter the WA electricity market because they cannot compete with the monopoly network provider on an equal basis in the provision of competitive services. The AEC considers this a real possibility without such constraints on Western Power.

**Connection of stand-alone power systems and storage works**

The draft Access Code clearly contemplates the network operator connecting and using stand-alone power systems and storage works. The connection process for these assets is unclear, however it raises the prospect of a conflict if the network operator who uses the assets is also assessing and managing the connection of those assets as well as third party assets. In this case, the AEC suggests that AEMO should take the lead in the connection process and setting the connection standards without input from the network operator.

**Demand management innovation allowance (DMIA)**

A new DMIA mechanism has been proposed for ex-ante funding of the network operator's research and development into innovative projects related to demand management with the intent that it has the potential to reduce long term network costs. The AEC notes a private gas distributor in WA had sought a similar mechanism under an access arrangement however, this was not permitted by the ERA because it was determined;

- To be contrary to the revenue and principles under the national gas rules;
- Not to contribute to the realisation of the national gas objectives; and
- The additional administrative costs of assessing and approving recovery of the scheme expenditures through the reference tariffs were not justified.[9]

The AEC also notes under the WA linear access regime, it is not reasonable for network users to fund any activity for a monopoly network operator at the expense of the network user's own business and where there is no benefit or return to the investor.

Accordingly, the Access Code should explicitly state the DMIA is not to be used to fund new lines of business for the network operator in competition with network users.

**New facilities investment test (NFIT)**

The proposed Access Code changes require the ERA to publish a guideline in relation to factors it will consider when making a NFIT determination. However, given the ERA's role and functions have been limited in relation to the NFIT mechanism, the AEC suggests that the proposed Access Code restrictions on the ERA's functions and oversight should be removed. There needs be clear and binding obligations on the network operator to address these regulatory requirements and provide the ERA with the ability to create effective and meaningful guidelines in assessing and calculating a network operator's costs that will be recovered from network users.

**Priority projects**

The draft Access Code introduces the concept of 'priority projects' that are identified as part of the Whole of System Plan (WOSP). If a project is determined as a priority project as part of the WOSP, then the requirement to undertake a regulatory test is automatically waived and the ERA will only be entitled to review the efficiency of expenditure.

[9] See 391-392, Final decision on proposed revisions to the Mid-West and South-West Gas Distribution Systems access arrangement for 2020 to 2024

The revised Access Code starts from the basis that if the WOSP identifies a priority project then it is not reasonable for the ERA to retest the prudency of the project.[10] However, stakeholders may have concerns over the validity of a nominated priority project in the first place or, over time, questions could be raised over the need, size, timing and solution of the priority project.

It is reasonable to expect that Western Power would develop a sound business case internally to secure the approval of its own management and Board. The additional work to make this suitable for review by the ERA would be minimal so there is little justification for bypassing ERA review. The AEC also expects that Western Power would welcome ERA approval as this would silence any criticism of Western Power wasting resources for unnecessary network enhancements.

The AEC suggests that the draft Access Code is amended to include a mechanism for ERA to assess all priority projects, and consider and address any disputes.

**Assessing the benefits**

The AEC is not aware of any published information that estimates the cost and benefits of the proposed new Access Code mechanisms such as multi-function assets and alternative options. Such published information is a necessary yardstick to assess whether these arrangements will meet the new Access Code objective of being in the long-term interests of consumers.

**Conclusion**

The AEC appreciates this opportunity to provide feedback on the proposed changes to the Access Code and encourages Energy Policy WA to consider the issues raised above.

Any questions about our submission should be addressed to Graham Pearson, Western Australia Policy Adviser by email to graham.pearson@energycouncil.com.au or by telephone on 0466 631 776.

Yours sincerely,

**Graham Pearson**
Policy Advisor, Western Australia
Australian Energy Council

[10] See 23, Energy Transformation Strategy: Proposed Changes to the Electricity Networks Access Code consultation paper