



Review of the *Electricity Industry Customer Transfer Code 2004*

Draft Recommendations Report

Department of Finance | Public Utilities Office

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Executive summary

The Department of Finance's Public Utilities Office (the **Office**) is reviewing the *Electricity Industry Customer Transfer Code 2004* (the **Transfer Code**) on behalf of the Minister for Energy (the **Minister**). The Transfer Code is made by the Minister under section 39 of the *Electricity Industry Act 2004* (the **Industry Act**).

The Transfer Code facilitates the transfer of contestable customers between competing retailers. It has not been reviewed or amended since its implementation in 2004.

The objectives of the review are to address inconsistencies of the Transfer Code with the *Electricity Industry (Metering) Code 2012* (the **Metering Code 2012**) and assess industry proposed amendments and the suitability of the Transfer Code to meet its objectives.

Following a review undertaken by the former Office of Energy, the *Electricity Industry Metering Code 2005* (the **Metering Code 2005**)¹ was repealed and replaced by the Metering Code 2012. The Metering Code 2012 is, in effect, the Metering Code 2005 with amendments.

The Transfer Code and the Metering Code 2012 are interconnected owing to the role that metering data and meter provision play in the transfer of contestable customers. The Office has identified required amendments to the Transfer Code to ensure it is consistent with the Metering Code 2012.

The Transfer Code must be consistent with the Metering Code 2012 to provide certainty to licensees about their compliance obligations. If the inconsistencies are not addressed, network operators and retailers may experience unnecessary operational and licence compliance risks and costs. Inconsistencies also make it difficult for the Economic Regulation Authority (the **Authority**) to enforce compliance.

On 29 April 2014, the Office published an Issues Paper that invited public comment on options to improve the effectiveness and efficiency of the Transfer Code. The Office received six submissions from stakeholders on the Issues Paper (submissions are available on the Department of Finance's website²). Following receipt of these submissions, the Office has prepared this Draft Recommendations Report, which sets out proposed amendments to the Transfer Code intended to improve its effectiveness and efficiency.

¹ Between June 2010 and August 2011, the former Office of Energy reviewed the Metering Code 2005. It published a Final Recommendations Report in August 2011, which detailed its final recommended Code amendments for the Minister's consideration. The Public Utilities Office managed the drafting of the Code amendments approved by the Minister. Amendments were gazetted in December 2012. Full details of the Metering Code 2005 review, including all published documents, can be found on the Department of Finance website at <http://www.finance.wa.gov.au/cms/content.aspx?id=14551> (website link as at 10 September 2014).

² <http://www.finance.wa.gov.au/cms/content.aspx?id=17838> (website link as at 10 September 2014)

The main recommendations proposed by this Draft Recommendations Report are:

- retaining the current definition of “trading day” (8.00 am to 8.00 am) and not aligning it with the Metering Code 2012 definition of “day” (midnight to midnight);
- increasing the caps on the number of standing data requests and historical consumption data requests that a retailer can submit to a network operator each day from 20 to 100; and
- increasing the cap on the number of customer transfer requests that can be submitted each day by a retailer from 20 to 50, if a meter change and/or manual meter reading are not required (no change is recommended to the cap on transfers that do involve a meter change and/or manual meter reading).

The Office considers that amending the Transfer Code definition of “trading day” (to align it with the definition of “day” in the Metering Code 2012) is not justified at this time taking into account the estimated system change costs that would be incurred by the Independent Market Operator (the **Market Operator**) and Western Power, and the relatively low transfer rate on the South West Interconnected System at present.

The Office would likely recommend making the definition of “trading day” (currently 8AM to 8AM) consistent with the Metering Code 2012 definition of “day” (midnight to midnight), if government decided to introduce full retail contestability or to make a substantial change to the contestability threshold in the future.

In recommending the proposed data and customer transfer request caps, the Office has taken into consideration the current level of competition in the electricity retail market, the ability of current systems to provide for larger numbers of data and customer transfer services, and costs involved in upgrading systems to address a greater number of requests. Should government support the introduction of full retail contestability or the lowering of the contestability threshold in the future, the Office would likely recommend removing these caps.

The Transfer Code Review’s final recommendations will support greater efficiency in the existing market. The recommendations will not preclude longer-term efficiency gains and reform options that may arise from the Electricity Market Review.

Stakeholders have four weeks to comment on this Draft Recommendations Report. Once the period for comment has closed on 7 November 2014, the Office will consider the submissions and prepare a Final Recommendations Report with recommendations for the Minister’s approval.

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Abbreviations

This list contains the abbreviations used in this Draft Recommendations Report.

Abbreviation	Full Title
Access Code	<i>Electricity Networks Access Code 2004</i>
Authority	Economic Regulation Authority
Customer Code	<i>Code of Conduct for the Supply of Electricity to Small Use Customers</i>
Energy Arbitrator	Western Australian Energy Disputes Arbitrator
Industry Act	<i>Electricity Industry Act 2004</i>
Market Operator	Independent Market Operator
Market Rules	Wholesale Electricity Market Rules
Metering Code 2005	<i>Electricity Industry Metering Code 2005</i>
Metering Code 2012	<i>Electricity Industry (Metering) Code 2012</i>
Minister	Minister for Energy
MSLA	Model Service Level Agreement
MWh	Megawatt hours
National Energy Retail Law	<i>National Energy Retail Law (South Australia) Act 2011</i>
NECF	National Energy Customer Framework
NEM	National Electricity Market
Office	Department of Finance's Public Utilities Office
SoLR	Supplier of Last Resort
SoLR Plan	Supplier of Last Resort Supply Plan
SoLR Regulations	Supplier of Last Resort Regulations
Transfer Code	<i>Electricity Industry Customer Transfer Code 2004</i>
WEM	Wholesale Electricity Market

1. Introduction

1.1 Background

The (then) Minister established the Transfer Code in 2004, under section 39 of the Industry Act.

The Transfer Code promotes retail competition by establishing:

- the rules governing the use of information about contestable customers;
- the processes for transferring contestable customers between retailers; and
- retailer and network operator obligations when transferring contestable customers.

A contestable customer is a customer who is able to choose their retailer. Full retail contestability exists outside the South West Interconnected System. Within the South West Interconnected System, which includes Western Power's network, customers who consume less than 50 megawatt hours (**MWh**) of electricity per year (equivalent to an annual bill of approximately \$12,600³) are non-contestable⁴. These customers can only be supplied by Synergy⁵. Due to the consumption threshold for contestability, a residential customer is unlikely to be a contestable customer (as at 30 June 2013, 0.04 per cent of residential customers in the South West Interconnected System were contestable⁶).

Horizon Power supplies regional areas outside the South West Interconnected System. Although all of Horizon Power's customers are contestable, and other retailers can supply those customers, no other retailer has operated in these areas until recently. In August 2014, Alinta Energy was granted a licence to retail electricity to customers in the Pilbara consuming more than 160 MWh of electricity per year.

The Transfer Code applies to network operators and retailers, if it is a term or condition of their licence that they comply with the Transfer Code. The Authority issues and enforces compliance with licences under Part 2 of the Industry Act.

³ Economic Regulation Authority, *2013 Annual Performance Report Energy Retailers*, p.37. <http://www.erawa.com.au/electricity/electricity-licensing/performance-reports> (website link as at 10 September 2014)

⁴ The contestability threshold is prescribed by the *Electricity Corporations (Prescribed Customers) Order 2007*.

⁵ Under section 54(2) of the *Electricity Corporations Act 2005*, Western Power is only allowed to supply electricity to Synergy, for the purpose of supplying a "prescribed customer" (customers who consume less than 50 MWh of electricity per annum).

⁶ Economic Regulation Authority, *2013 Annual Performance Report Energy Retailers*, p.4. <http://www.erawa.com.au/electricity/electricity-licensing/performance-reports> (website link as at 10 September 2014)

While Part 8 of the Transfer Code allows for the Authority to recommend amendments to the Transfer Code directly to the Minister, the Office is the agency responsible for advising the Minister on, and implementing amendments to, the Transfer Code. Given the broad range of matters to be considered, and the policy implications of several of those matters, it was agreed with the Authority that the Office will manage the review of the Transfer Code and make recommendations to the Minister.

1.2 Objectives of the review

The objectives of the review are to address:

- inconsistencies between the Transfer Code and the Metering Code 2012;
- industry proposed amendments; and
- the suitability of the Transfer Code to meet its objectives.

The objectives of the Transfer Code are to:

- set out rules for the provision of information relating to contestable customers and the process for transferring contestable customers from one retailer to another retailer in order to promote retail competition;
- protect the interests of contestable customers by ensuring that a contestable customer's verifiable consent is obtained before:
 - a retailer may request the contestable customer's historical consumption data; or
 - a transfer of that contestable customer may proceed; and
- specify the responsibilities and obligations of retailers and network operators in processing and implementing the transfer of a contestable customer.

1.3 Scope of the review

To meet the review objectives, the Office will:

- consult with stakeholders;
- identify amendments to the Transfer Code that are required to ensure it:
 - is consistent with the Metering Code 2012;
 - meets its objectives; and
 - facilitates regulatory efficiency; and
- make recommendations to the Minister on amendments to the Transfer Code.

The review will assess matters that relate directly to the suitability of the provisions of the Transfer Code to meet its objectives. The scope of the review does not include matters relating to individual licensee compliance with the Transfer Code, or operational decisions by licensees.

1.4 Work program and timetable

Activity	Timeframe
Publish Issues Paper for public consultation	April 2014 (completed)
Receive submissions on Issues Paper	May 2014 (completed)
Publish Draft Recommendations Report for public consultation	October 2014 (completed)
Receive submissions on Draft Recommendations Report	November 2014
Publish Final Recommendations Report	December 2014
Seek Ministerial approval for proposed amendments	December 2014

1.5 Issues Paper and submissions

On 29 April 2014, the Office published an Issues Paper inviting public comment on options to improve the effectiveness and efficiency of the Transfer Code. The purpose of the Issues Paper was to identify provisions of the Transfer Code that may require amendment and, if possible, recommend what the amendment should be. Stakeholder comments were prompted by questions relating to potential Transfer Code amendments.

The Office received six submissions⁷ on the Issues Paper from:

- Alinta Energy
- Community Electricity
- Independent Market Operator
- Perth Energy
- Synergy
- Western Power

1.6 Purpose and structure of this Draft Recommendations Report

The Transfer Code is divided into the following parts:

- Part 1 – Preliminary
- Part 2 – Objectives and Arm's Length Treatment
- Part 3 – Information Provision
- Part 4 – Transfer of Contestable Customers
- Part 5 – Communication Rules
- Part 6 – Notices
- Part 7 – Dispute Resolution

⁷ The Issues Paper and submissions are available on the Department of Finance's website at www.finance.wa.gov.au

- Part 8 – Code Amendment
- Appendices (1 – 6)

Each 'Part' is examined in sections 2 to 10 of this Draft Recommendations Report (with each Part having a dedicated section). The purpose of this Draft Recommendation Report is to outline the Office's proposed draft amendments to the Transfer Code for public comment, including recommending that no action be taken in instances where a potential amendment was raised in the Issues Paper, but is not being pursued. A complete list of the draft recommendations is in the Appendix.

Where they have commented on a specific amendment, the submissions have been summarised to provide an overview of stakeholders' views. For a full account of each stakeholder's position on a particular matter, please consult the relevant submission.

1.7 Invitation for submissions

The Office invites submissions on this Draft Recommendations Report by 5pm (WST) on Friday 7 November 2014.

Electronic submissions are preferred and should be emailed to alexander.kroon@finance.wa.gov.au. Alternatively, submissions in printed form should be sent to:

Mr Alex Kroon
Markets and Regulation Division
Public Utilities Office, Department of Finance
Locked Bag 11
Cloisters Square WA 6850

Further information on this Draft Recommendation Report, or the review process can be obtained from Mr Alex Kroon, Senior Policy Officer, Public Utilities Office on (08) 6551 4686 or at alexander.kroon@finance.wa.gov.au.

1.8 Confidentiality

Stakeholders should specify where information they provide is confidential or commercial in confidence (and, where possible, should separate confidential information from non-confidential information). The Office will respect the confidentiality of any information provided.

With the exception of any material identified by the author as confidential or commercial in confidence, submissions will be made publicly available on the Department of Finance website.

Requests for information relating to the review will be treated in accordance with the *Freedom of Information Act 1992* (WA) and Department of Finance processes (please see <http://www.finance.wa.gov.au> for further information).

2. Part 1 – Preliminary

2.1 Application

A condition of a licence exemption⁸ can require compliance with the Transfer Code. While there are no current licence exemptions that require compliance with the Transfer Code, it is possible that a licence exemption will be made subject to compliance with the Transfer Code in the future.

As a comparison, the Metering Code 2012 applies to a network operator or retailer to the extent that a condition of a licence exemption requires compliance with it.

The Transfer Code was gazetted in 2004, before the first licence exemptions were made in 2005. This appears to be the reason why the Transfer Code was not applied to licence exemptions when it was made in 2004, while the Metering Code 2012 (and the Metering Code 2005 before it) is.

The Office recommends that clause 1.2 of the Transfer Code be amended to expand the application of the Transfer Code to include network operators and retailers holding licence exemptions, if it is a term or condition of their licence exemption that they comply with the Transfer Code. The current clause 1.2 specifies that it applies to licensed network operators and retailers, the Market Operator and the Authority only.

Alinta Energy, Community Electricity, Perth Energy and Synergy supported this amendment.

Recommendation 1

Amend clause 1.2 to expand the application of the Transfer Code to include network operators and retailers holding licence exemptions, if it is a term or condition of their licence exemption that they comply with the Transfer Code.

2.2 Code definitions

The Office recommends that the following amendments be made to the Transfer Code's definitions:

⁸ The Governor in Executive Council grants licence exemptions under section 8 of the Industry Act. Details on current licence exemptions can be found on the Department of Finance website: <http://www.finance.wa.gov.au/cms/content.aspx?id=15069> (website link as at 10 September 2014)

Access contract

The Transfer Code defines an “access contract” as “...an agreement between a *network operator* and a *retailer* for the *retailer* to have ‘access’ (as defined in section 103 of the Act) to ‘services’ (as defined in section 103 of the Act) on a *network*.”

The Metering Code 2005 contained the same definition of “access contract” and its review identified a need to clarify this definition to explain that it is the same as the definition for “contract for services” in the *Electricity Networks Access Code 2004* (the **Access Code**).

The definition of “access contract” in the Transfer Code is broader than the definition of the same expression in the Access Code. This is because the Transfer Code is not limited to agreements entered into under the Access Code (the Transfer Code also applies to retailers who entered into contracts for services with a network operator before the Access Code was made). Therefore, the Transfer Code definition of “access contract” should be the same as the Access Code definition of “contract for services”, which includes contracts entered into before the Access Code was made.

The Office recommends that the Transfer Code definition of “access contract” be amended to clarify that it is the same as the Access Code definition of “contract for services”.

Alinta Energy and Synergy supported this amendment.

Recommendation 2

Amend the definition of “access contract” to clarify that it is the same as the definition of “contract for services” in the Access Code.

Charges

Under clause 4.14 of the Transfer Code, following a transfer, the network operator, and if applicable, the Market Operator, must do all that is necessary to ensure that the outgoing retailer and incoming retailer are not liable for “charges” after, or before, the transfer respectively. The current definition of “charges” applies only to those payable by the retailer in connection with the “transfer” of electricity.

Under clause 4.6 of the Transfer Code, by submitting a transfer request, the incoming retailer represents and warrants that it will assume the rights and obligations regarding the “supply” of electricity to the contestable customer from the transfer time.

The Market Operator is not involved in the “transfer” of electricity. A network operator transfers electricity through its network to enable the retailer to “supply” electricity to its customers. Relevantly, Western Power and retailers using its network enter into electricity transfer access contracts. Retailers enter into supply contracts with their customers.

The Market Operator's charges payable by retailers do not relate to the physical transfer of electricity, they relate to charges in connection with the supply of electricity. For example, retailers will pay the Market Operator for balancing and load following services. They do not pay the Market Operator for moving (transferring) the electricity through the network.

The Office recommends that the Transfer Code definition of "charges" be amended to clarify that charges means those payable by the retailer to the network operator and Market Operator in connection with the "transfer" *and* "supply" of electricity.

This proposed amendment was identified by a Transfer Code participant after the Issues Paper was published. The Office welcomes comments on the proposed amendment. Comments will be taken into consideration in the development of the Final Recommendations Report.

Recommendation 3

Amend the definition of "charges" to include those payable by the retailer to the network operator and Market Operator in connection with the "supply" of electricity.

Contestable

To take into account a change in legislation since the Transfer Code was made, it is recommended that the reference to the *Electricity Corporation Act 1994* be removed and replaced with a reference to the *Electricity Corporations (Prescribed Customers) Order 2007* made under the *Electricity Corporations Act 2005*.

Synergy supported this amendment.

Recommendation 4

Replace the reference to the *Electricity Corporations Act 1994* with a reference to the *Electricity Corporations (Prescribed Customers) Order 2007* made under the *Electricity Corporations Act 2005*.

Exit point / bidirectional point

An "exit point" is defined as a connection point on a network "...at which *electricity* is more likely to be transferred out of the *network* than transferred into the *network*..."

In recent years there has been a substantial increase in connection points that have become bidirectional⁹ due to the installation of on-site generation, such as rooftop photovoltaic systems. While a majority of these systems have been installed by non-contestable customers, contestable customers have also installed generation systems.

⁹ A bidirectional connection point functions as both an entry and an exit point.

Clause 1.4(2)(a) of the Transfer Code states: “...a reference to a *contestable customer’s exit point* is a reference to the *exit point* on the *network operator’s network* that is used for the supply of *electricity* to the *contestable customer*”. The use of the words “supply of *electricity* to the *contestable customer*” suggests that an “exit point” is a connection point at which electricity flows in one direction (out of the network) and does not include a connection point that is subject to bidirectional flows.

The Transfer Code needs to provide for all contestable customers and it is doubtful that the current definition of “exit point” achieves that aim in relation to customers who both import and export electricity on the same connection point.

Western Power’s revisions to its Access Arrangement¹⁰ for the third regulatory period (1 July 2012 to 30 June 2017), which was approved by the Authority on 29 November 2012, includes new reference services¹¹ for bidirectional points (Western Power’s Access Arrangement for the previous periods included reference services for exit and entry points only). If the Transfer Code is not amended, there could be a perverse outcome whereby a customer’s connection point is on a bidirectional reference service, but has to be classified as an “exit point” in the retailer’s access contract to transfer to that retailer under the Transfer Code.

The Office recommends that the definition of “exit point” in the Transfer Code be amended to include bidirectional connection points. To avoid confusion, this is likely to include the renaming of the definition to “connection point”. For consistency, the drafting of the amendment is likely to be similar to the definition of “connection point” in Western Power’s *Applications and Queuing Policy*¹².

Alinta Energy, Community Electricity, Perth Energy, Synergy and Western Power supported this amendment. However, their submissions had slightly different suggestions as to how the amendment should be drafted in the Transfer Code.

Recommendation 5

Amend the definition of “exit point” in the Transfer Code to provide for contestable customers on bidirectional connection points.

Metropolitan area

To take into account a change in legislation since the Transfer Code was made, it is recommended that the definition of “metropolitan area” be amended to reflect the same definition in the *Code of Conduct for the Supply of Electricity to Small-Use Customers* (the **Customer Code**).

¹⁰ <http://www.erawa.com.au/electricity/electricity-access/western-power-network/access-arrangement/access-arrangement-period-2012-2017> (website link as at 10 September 2014)

¹¹ Network operator reference services prescribe the technical and pricing conditions for using a connection point.

¹² Western Power’s Applications and Queuing Policy is approved by the Authority and forms part of its Access Arrangement. It is available on Western Power’s website at: <http://www.westernpower.com.au/aboutus/accessArrangement/accessArrangement.html> (website link as at 10 September 2014)

This will require an amendment so the definition refers to the region described in Schedule 3 of the *Planning and Development Act 2005* and the townships as constituted under section 26 of the *Land Administration Act 1997*.

Synergy supported this amendment.

Recommendation 6

Amend the Transfer Code definition of “metropolitan area” so it refers to the region described in Schedule 3 of the *Planning and Development Act 2005* and the townships as constituted under section 26 of the *Land Administration Act 1997*.

Network operator and retailer

To take into account a change in legislation since the Transfer Code was made, it is recommended that the following words be removed from the definitions of “network operator” and “retailer”: “(including regulations made under section 31A of the *Electricity Corporation Act 1994*)”.

In 2006 the *Electricity Corporation Act 1994* was renamed the *Electricity Transmission and Distribution Systems (Access) Act 1994* and section 31A was repealed as part of that process.

No submissions on the Issues Paper commented on this amendment.

Recommendation 7

Remove the words “(including regulations made under section 31A of the *Electricity Corporation Act 1994*)” from the definitions of “network operator” and “retailer” in the Transfer Code.

Trading day

Background

The Transfer Code derives its definition of “trading day” from the Market Rules. The Market Rules define “trading day” as the 24 hour period commencing at 8AM.

The Metering Code 2012 does not define the term “trading day”. It uses the term “day”, which it defines as the 24 hour period starting at midnight. This is independent of the Wholesale Electricity Market’s (the **WEM**) concept of a “trading day”.

Because a network operator cannot send data for part of a day to a retailer, it can experience problems when it is required to provide data to retailers and the Market Operator when a customer transfers. This is because data validation, substitution and estimation methods under the Metering Code 2012 are based on the midnight to midnight calendar (due to its definition of “day”). However, clause 4.11 of the Transfer Code requires the transfer to occur at 8AM on the nominated transfer date (the start of the “trading day”).

The data file format used by Western Power for interval meters¹³ only allows a full day’s data commencing and finishing at the metering day (midnight to midnight). This means that, in the network operator’s meter registry¹⁴, the customer’s connection point is transferred at midnight prior to the “trading day”, and the next day’s data is sent to the incoming retailer. Since the Transfer Code requires a transfer to occur at 8AM, the outgoing retailer misses eight hours of data for the period midnight to 8AM.

Draft Recommendation

The Office recommends that the definition of “trading day” not be amended at this time.

However, should full retail contestability be adopted on the South West Interconnected System or the contestability threshold be lowered substantially in the future, the Office would likely recommend that the definition of “trading day” be amended to be consistent with the definition of “day” in the Metering Code 2012. That is, the “trading day” would then be defined in the Transfer Code as the 24 hour period starting at midnight.

Rationale

Information obtained from retailers indicates that outgoing retailers in a transfer who rely on automated billing systems do not bill the customer for the final eight hours of supply, as they do not receive this data from Western Power to allow them to do so. Retailers can make a manual request to Western Power for the missing data and then do a manual intervention in their billing system to issue the customer’s final bill. However, this can be resource intensive and impractical, particularly for big retailers with large automated systems.

For the incoming retailer, the Office understands from Western Power and retailers that retailers receive the necessary data for the first day that they supply the customer. This is because Western Power’s data file format starts at midnight and the customer transfers eight hours later. However, as the data file format for each day begins at midnight and the customer transfers at 8AM, the incoming retailer potentially receives meter data it is not entitled to (as it is not supplying the customer during this time).

¹³ Western Power uses the National Electricity Market’s NEM12 Data File Format.

¹⁴ A registry forms part of the network operator’s metering database and holds standing data for metering points.

Aligning the definition of “trading day” in the Transfer Code with the definition of “day” in the Metering Code 2012 would remove the need for manual interventions by retailers, reducing the cost of processing the meter data and issuing the final bill for transferring customers. It would also prevent the outgoing retailer from losing revenue from the final eight hours of supply provided to the customer as a result of not having the meter data to bill the customer for that period.

The Office consulted with Western Power, retailers and the Market Operator on potential system changes that they would have to implement to accommodate a change to the Transfer Code definition of “trading day”. In its submission to the Issues Paper, the Market Operator advised that it would cost approximately \$250,000 and take six months to implement the required changes to its systems. As the Market Operator’s operating costs are recovered through market fees, these system change costs would be borne by the market. The Market Operator advised that only minor changes to the Wholesale Electricity Market Rules (the **Market Rules**) and Market Procedures would be needed to facilitate a customer transferring at midnight.

Synergy advised that, if customers transfer at midnight rather than 8AM, it will not have to modify its current billing arrangements and systems. Synergy also explained that its exposure to recovering the required charges from a customer that transfers away from Synergy would be mitigated by the Market Operator making the necessary changes to its systems to ensure meter data and energy are allocated to the right retailer (something the Market Operator advised in its submission to the Issues Paper it is able to do).

Synergy also advised that it might consider changes to its systems to allow it to confirm (validate) the correct allocation of charges to Synergy by the Market Operator. Synergy has estimated that the cost of these system changes would be comparable to the Market Operator’s estimated system change costs (\$250,000).

Western Power advised the Office that it would need to make changes to its systems to accommodate a change to the definition of “trading day”. It estimates these system changes would cost between \$50,000 and \$75,000 and take six months to implement.

The monthly customer transfer rate is relevant to any decision to amend the Transfer Code definition of “trading day”. Historically, the transfer rate on the South West Interconnected System has been relatively low. For example, between July 2011 and June 2013, the average monthly transfer rate was approximately 116 customers¹⁵. During these two years, there were only two months when more than 200 transfers occurred.

¹⁵ 2013 Wholesale Electricity Market Report for the Minister for Energy, Economic Regulation Authority, p.19

If the contestability threshold was lowered substantially, or full retail contestability introduced, the monthly transfer rate would be likely to increase, potentially by a considerable amount. As a comparison, in June 2014, there were 10,356 completed customer transfers in South Australia¹⁶ (the National Electricity Market (the **NEM**)) jurisdiction most comparable in size to the South West Interconnected System). South Australia's average monthly transfer rate between January and June 2014 was 11,975¹⁷.

The Office considers that amending the Transfer Code definition of "trading day" is not justified at this time, taking into account the:

- estimated system change costs that the Market Operator and Western Power would incur;
- relatively low transfer rate on the South West Interconnected System presently; and
- relatively small benefits to the market (considering the low transfer rate) that would accrue from:
 - avoided costs of manual interventions to prepare meter data and the customer's final bill; and
 - the retailer having the meter data to bill the final eight hours of supply prior to the transfer.

However, should the contestability threshold be lowered substantially or full retail contestability introduced, the justification for amending the definition of "trading day" would increase, as the number of transfers would be likely to increase considerably.

Submissions

In its submission, the Market Operator did not offer a view on options to resolve the inconsistency between the Transfer Code and Metering Code 2012, but did provide an overview of the changes it would have to make to its system to accommodate a midnight to midnight "trading day", including the estimated cost of those changes and implementation timelines.

Alinta Energy, Community Energy, Perth Energy, Synergy and Western Power supported aligning the Transfer Code with the Metering Code 2012. However, the submissions differed on the way to achieve this.

Alinta Energy supported changing the Metering Code 2012 definition of "day" to make it consistent with the Transfer Code definition of "trading day". This would require Western Power to provide meter data for all its metering points on an 8AM to 8AM day. However, Alinta Energy expressed concern that the cost to change Western Power's systems could outweigh the benefits.

¹⁶ National Electricity Market Monthly Retail Transfer Statistics, Australian Energy Market Operator. <http://www.aemo.com.au/Electricity/Data/Metering/Retail-Transfer-Statistical-Data> (website link as at 10 September 2014).

¹⁷ Ibid.

Community Electricity acknowledged that the inconsistency between the Transfer Code and Metering Code 2012 is causing Code participants operational problems. However, it highlighted that any resolution could result in Western Power and the Market Operator incurring system change costs. Community Electricity advised that currently, to overcome this inconsistency, it makes manual data requests to Western Power for any data it is missing when a customer transfers.

Synergy suggested that Western Power should be required to make the necessary system changes to accommodate customers transferring at 8AM. It argued that Western Power should have done this in 2004, when the Transfer Code came into effect. Synergy expressed concern that changes to the Transfer Code definition of “trading day” could create uncertainty under the Market Rules.

Western Power proposed changing the definition of “trading day” to 12AM to 12AM. It argued that, as it provides meter data to the market in accordance with the 12AM to 12AM “day” in the Metering Code 2012, it experiences regulatory compliance problems with the inconsistency between the Transfer Code and the Metering Code 2012.

Recommendation 8

Maintain the definition of “trading day” as currently drafted.

UMI or unique market identifier

The term “UMI” or “unique market identifier” is no longer used in the WEM or other jurisdictions in Australia. As “UMI” is outdated, it is recommended that it be replaced with “NMI” (national meter identifier¹⁸).

NMIs are used throughout the NEM and the WEM, with Western Power using its NMI Allocation Procedure¹⁹ to allocate NMIs to its connection points. The amendment will provide consistency with the Metering Code 2012 and the Market Rules, which refer to NMIs rather than UMIs.

Alinta Energy and Synergy supported this amendment.

Recommendation 9

Replace the Transfer Code definition and use of the term “UMI” / “unique meter identifier” with “NMI” / “national meter identifier”.

¹⁸ A national meter identifier is a distinct and universal identifier for each connection point in the NEM and WEM.

¹⁹ http://www.westernpower.com.au/documents/retailersgenerators/buildPack/NMI_ALLOCATION_PROCEDURE_FOR_THE_WESTERN_AUSTRALIA_ELECTRICITY.pdf (website link as at 10 September 2014).

Verifiable consent

When a retailer submits a request to the network operator for a customer's historical consumption data (under clause 3.5) or a customer transfer request (under Part 4), the retailer must obtain the customer's "verifiable consent".

In clause 1.3, "verifiable consent" is defined as consent that is given by the customer expressly and in writing. By requiring a customer's consent to be in writing only, the Transfer Code may be placing an unnecessary administrative burden on retailers and customers that does not facilitate effective retail competition.

As a comparison, section 39 of the National Energy Customer Framework's (the **NECF**) *National Energy Retail Law (South Australia) Act 2011*²⁰ (the **National Energy Retail Law**) and clause 6.3 of Queensland's Electricity Industry Code allow a customer's explicit informed consent to a transfer to be given in writing, verbally or electronically. Victoria's Energy Retail Code allows a customer's explicit informed consent to be given in writing, orally or electronically.

The Office recommends that clause 1.3 be amended to allow retailers to obtain oral "verifiable consent" from a customer. This would give retailers an additional option that is less onerous than obtaining written consent.

It is also recommended that the Transfer Code be amended to require a retailer to record oral consent for audit and compliance purposes. As a comparison, section 40 of the National Energy Retail Law requires a retailer to create a record of each explicit informed consent to enable the Australian Energy Regulator to verify retailer compliance.

Alinta Energy, Perth Energy and Synergy supported this amendment.

Recommendation 10

Amend clause 1.3 to allow retailers to obtain oral "verifiable consent" from a customer and require retailers to create a record of that consent.

2.3 Meaning of "publish"

Clause 1.6 currently states that, if a network operator is required to "publish" a "thing", the network must place the thing on its website and send an electronic notice to each registered retailer advising that the thing has been placed on the website. However, there is no express requirement to maintain the thing on the website once it has been published. Clause 1.6 could imply a requirement to maintain the thing on the website, but this is not clearly articulated. This uncertainty may affect the validity of the thing that is published.

²⁰ Australian Capital Territory, New South Wales, South Australia and Tasmania have adopted the NECF.

Where a network operator is required to publish a thing, the Office recommends that clause 1.6 be amended to require the network operator to maintain that thing on its website until the Transfer Code no longer applies to the network operator, or the seventh anniversary of it being placed on the website (whichever is later). It is also recommended that the network operator be required to make available a hardcopy of the thing for inspection by the public, without cost, during normal office hours at its principal place of business in Western Australia. This would make the Transfer Code consistent with the Metering Code 2012.

Alinta Energy, Community Electricity, Perth Energy, Synergy and Western Power supported this amendment.

Recommendation 11

Amend clause 1.6 so:

- where a network operator is required to publish a thing, the network operator must maintain that thing on its website until the Transfer Code no longer applies to the network operator, or the seventh anniversary of the thing being placed on the website (whichever is later); and
- the network operator is required to make available a hardcopy of the thing for inspection by the public, without cost, during normal office hours at its principal place of business in Western Australia.

3. Part 2 - Objectives and arm's length treatment

3.1 Network operator must treat retailers at arm's length

Under clause 2.2 of the Transfer Code, a network operator must ensure that no retailer that is its associate receives a benefit from the Transfer Code, unless the benefit is attributable to an arm's length application of the Transfer Code to the retailer, or the network operator also makes the benefit available to all other retailers. Where the network operator is an "integrated provider" (as defined in the Access Code), a reference in clause 2.2(1) to an associate of the network operator does not include the integrated provider.

In some cases, where a retailer is an associate of a network operator, the retailer may be the sole retailer on the network; for example, the network operator and retailer may be part of the same body corporate. In this situation, it is questionable whether any benefits are derived by requiring the network operator to treat the retailer at arm's length. There are unlikely to be business needs that require the network operator under the Transfer Code to establish arm's length treatment with a retailer that is its associate until another retailer becomes available on the network.

The Office recommends that clause 2.2 be amended so its arm's length treatment provisions do not apply to a network while there is no more than one retailer on the network. This will make the Transfer Code consistent with the Metering Code 2012.

The Office also recommends that, to take into account a change in legislation since the Transfer Code was made and to be consistent with the Metering Code 2012, clause 2.2(2)(b) be amended to replace "section 31A of the *Electricity Corporations Act 1994*" with "section 62 of the *Electricity Corporations Act 2005*".

Alinta Energy, Community Electricity, Perth Energy and Synergy supported this amendment.

Recommendation 12

Amend:

- the arm's length treatment provisions, so clause 2.2(1) does not apply to a network while there is no more than one retailer on the network; and
- clause 2.2(2)(b) to replace "section 31A of the *Electricity Corporation Act 1994*" with "section 62 of the *Electricity Corporations Act 2005*".

4. Part 3 – Information provision

4.1 Submitting a data request

Background

Clause 3.4 of the Transfer Code limits to 20 the number of standing and historical consumption data requests that a retailer may submit to a network operator on a single business day, unless otherwise agreed with the network operator.

There are approximately 26,000 contestable customers on the South West Interconnected System²¹. While the long-term general trend has been towards a steady increase in the number of customers changing retailers since 2008, the monthly customer transfer rate in the South West Interconnected System is relatively low compared to the eastern states²².

Horizon Power has 45,164 customer connections²³. Although all of Horizon Power's customers are contestable, and other retailers can supply those customers, no other retailer has operated in these areas until recently. In August 2014, Alinta Energy was granted a licence to retail electricity to customers in the Pilbara consuming more than 160 MWh of electricity per year.

Draft Recommendation

The Office recommends that clauses 3.4(1) and 3.4(2) of the Transfer Code be amended to increase the number of standing data requests and historical consumption data requests that can be made per day by a retailer from 20 to 100.

However, should full retail contestability be adopted on the South West Interconnected System or the contestability threshold be lowered substantially in the future, the Office would likely recommend the removal of the caps.

Rationale

Every retailer submission to the Issues Paper raised concerns about the data request caps acting as a barrier to competition and causing operational problems. Western Power also supported a review of the caps to ensure they are meeting the Transfer Code objectives.

²¹ Economic Regulation Authority, *Discussion Paper: 2012 Wholesale Electricity Market Report to the Minister for Energy*, p.15. <http://www.erawa.com.au/electricity/wholesale-electricity-market/annual-report-to-the-minister/2012-ministers-report> (website link as at 10 September 2014).

Note: The Economic Regulation Authority's 2013 Discussion Paper does not contain an updated figure for contestable customers.

²² Ibid.

²³ Horizon Power Annual Report 2012-13, p.4. http://www.horizonpower.com.au/annual_reports.html (website link as at 10 September 2014).

The increase in the data request caps from 20 to 100 per day for each retailer will facilitate retail competition without imposing onerous regulatory costs on Western Power. It will also support any lowering of the contestability threshold in the future. The figure of 100 takes into account Western Power's ability to manage that number of requests per day under its existing systems and processes.

Clause 3.4 of the Transfer Code provides a network operator and retailers with the ability to negotiate a higher number of data requests than the cap on any given day. This means the caps do not have to be a barrier to retailers making larger data requests, when needed.

Western Power has advised the Office that retailers make standing and historical consumption data requests in substantially bigger volumes than customer transfer requests, justifying a higher increase to the data request caps than the transfer request caps²⁴.

Historically, the transfer rate on the South West Interconnected System has been relatively low²⁵. Should the contestability threshold be lowered substantially or full retail contestability introduced, the monthly transfer rate would likely increase, potentially by a substantial amount.

Considering the relatively low number of contestable customers and transfer rates in Western Australia, removing the caps cannot be justified at present. If the caps were removed, to ensure compliance with the Transfer Code in all circumstances, Western Power would need to design its systems and processes to accommodate unknown daily fluctuations in transfer requests, while at the same time being required to comply with time based service levels to complete the requests. This would not be an effective or efficient use of resources based on the relatively small number of contestable customers on the South West Interconnected System at the moment.

However, should full retail contestability be adopted in the future, the Office would likely recommend that the caps be removed. Data request caps would act as a substantial barrier to retail competition in this instance and not facilitate full retail contestability.

Following the implementation of amendments to the Transfer Code, consequential amendments to Western Power's Model Service Level Agreement (the **MSLA**) will be required. For example, the MSLA's metering service for the provision of standing data is currently limited to 20 requests per day for each retailer. A review of Western Power's MSLA will also provide an opportunity for the Authority to determine what Western Power's service levels for meeting standing and historical consumption data requests should be (considering that the MSLA service levels were last reviewed and approved in 2006)²⁶.

²⁴ See section 5.1 – *Submitting a customer transfer request* for further information on transfer request caps.

²⁵ Further information on historical transfer rates is available in section 2.2 – *Code definitions*.

²⁶ Recommendation 16 proposes deleting clause 3.8(2)(b) of the Transfer Code and making any amendments necessary for the Transfer Code to defer to the Metering Code 2012 on the network operator's service levels for the provision of standing and historical consumption data.

Submissions

Alinta Energy, Community Electricity, Perth Energy and Synergy consider that the current caps on standing and historical consumption data requests are inadequate and a barrier to retail competition, with Alinta Energy and Perth Energy supporting removing the caps. Synergy did not offer an alternative to the current caps.

Community Electricity noted that the standing data facility in Western Power's Metering Portal²⁷ is automatic and very efficient. Community Electricity suggested that the caps for standing and historical consumption data requests should be set at the highest practical level that the Meter Portal can manage.

Western Power supported a review of the data requests caps on the basis that improvements in technology and market systems have been made since the Transfer Code came into effect. It did not suggest an alternative to the current caps, but objected to removing the caps completely. Western Power suggested system limitations and the financial implications of any system upgrades need to be considered when making any changes to the caps.

Recommendation 13

Amend clauses 3.4(1) and 3.4(2) to increase the number of standing data requests and historical consumption data requests that can be made per day by a retailer from 20 to 100.

4.2 Verifiable consent required for historical consumption data

The Transfer Code Review Issues Paper sought stakeholder views as to whether the Transfer Code should be amended to require the retailer to provide the customer's verifiable consent to the network operator as part of submitting a data request, or to require the network operator to confirm that the customer has provided his or her consent.

Alinta Energy, Community Electricity, Perth Energy, Synergy and Western Power objected to this proposal, outlining the following reasons:

- licence performance audits are sufficient to monitor and enforce a retailer's compliance with the Transfer Code requirement to obtain the customer's verifiable consent;
- it is inappropriate for a network operator to be responsible for verifying a retailer's compliance with the Transfer Code;
- these requirement would impose additional costs on a network operator that outweigh the benefits; and
- because it would slow down the delivery of information to retailers, requiring a retailer to lodge verifiable consents with the network operator would materially impede competition.

²⁷ http://www.westernpower.com.au/retailersgenerators/Metering_portal.html (website link as at 10 September 2014)

The Office notes the objections raised by stakeholders and agrees that it would not be in the best interest of the electricity market to implement the proposed amendment. There would not appear to be a market failure that needs to be addressed by the Transfer Code in relation to obtaining customer verifiable consents.

The Office recommends not amending the Transfer Code to require the retailer to provide the customer's verifiable consent to the network operator as part of submitting a data request, or to require the network operator to confirm that the customer has provided his or her consent.

Recommendation 14

Transfer Code not to be amended to require the retailer to provide the customer's verifiable consent to the network operator as part of submitting a data request, or to require the network operator to confirm that the customer has provided his or her consent.

4.3 The communication rules and providing data to a retailer

Clause 3.8(2)(a) of the Transfer Code states that a network operator must (subject to clause 3.8(3)) provide data requested by a retailer in an electronic format:

- i. in accordance with the communication rules, if they have been approved by the Authority; or
- ii. if no communication rules have been approved by the Authority, in accordance with the Metering Code.

The Metering Code 2005 required the Authority to approve all network operator communications rules²⁸. Under the Metering Code 2012, a network operator no longer has to seek the Authority's approval for its initial communication rules. The new process under the Metering Code 2012 requires a network operator to consult with Code participants and implement communication rules that are "consistent with good electricity industry practice" and "do not impose inappropriate barriers to entry into the market"²⁹.

Some network operators, like Western Power, may have had their communication rules approved by the Authority under the Metering Code 2005. However, communication rules established under the Metering Code 2012 do not need Authority approval.

To ensure consistency with the Metering Code 2012, the Office recommends that clause 3.8(2) of the Transfer Code be amended to reflect that a network operator can now establish its own communication rules under the Metering Code 2012.

Alinta Energy, Community Electricity, Perth Energy, Synergy and Western Power supported amending clause 3.8(2) of the Transfer Code to reflect that a network operator can now establish its own communication rules under the Metering Code 2012.

²⁸ Network operator communication rules set out the file formats, protocols and system designs for the transfer of meter data between a network operator and a retailer.

²⁹ See clause 6.5 of the Metering Code 2012.

Recommendation 15

Amend clause 3.8(2) to reflect that a network operator can establish its own communication rules under the Metering Code 2012.

4.4 Network operator's obligations following receipt of a valid data request

Under clause 3.8(2)(b) of the Transfer Code, the network operator must provide standing and historical consumption data requested under clause 3.8(1) by a retailer within a specified number of business days.

Clause 6.6 of the Metering Code 2012 (and the Metering Code 2005 before it) requires an MSLA to specify metering services that the network operator must provide, which must include all the metering services that the Transfer Code requires the network operator to provide. Therefore, Western Power's MSLA, which was approved by the Authority under the Metering Code 2005, prescribes service levels for each metering service that Western Power provides to retailers. These metering services include providing retailers with standing and historical consumption data on request, within prescribed timeframes (the service level).

As a network operator's MSLA sets the timeframes within which it must provide standing and historical consumption data to a retailer on request, there is no apparent need for the Transfer Code to do the same. A network operator should provide all its metering services in accordance with the Metering Code 2012 and its Authority-approved MSLA. If the Transfer Code also regulates metering services, there is the potential for inconsistency with the Metering Code 2012 and a network operator's MSLA. Further, Western Power's MSLA timeframes for complying with a data request are the same as the Transfer Code's, so deleting clause 3.8(2)(b) of the Transfer Code will not change the service levels that Western Power must operate to.

There is also the added benefit that under the Metering Code 2012, the service levels in an MSLA are independently approved by the Authority and a network operator or retailer can submit revisions to an MSLA to the Authority for consideration and approval at any time.

The Office notes that clause 3.4 of Western Power's MSLA states:

"The user may only request metering services for a metering point for which the user has agreed an access contract with Western Power for the associated connection point."

As there are metering services in Western Power's MSLA that can be requested by a retailer who is not yet the customer's retailer and is preparing a quote to 'win' the customer, clause 3.4 of the MSLA potentially needs amending to allow a user (the retailer) who does not hold the access contract for the customer's connection point to request metering services relating to a transfer. This will ensure Western Power's MSLA complies with clause 6.6 of the Metering Code 2012, which requires Western Power's MSLA to specify the metering services the Transfer Code requires Western Power to provide to Code participants on request.

To ensure the Transfer Code is consistent with the Metering Code 2012 and Western Power's MSLA³⁰, the Office recommends that clause 3.8(2)(b) is deleted and the Transfer Code is amended to require it to defer to the Metering Code 2012 on the service levels for the provision of standing and historical consumption data.

Western Power supported deleting clause 3.8(2)(b). Alinta Energy and Perth Energy suggested that the timeframes for providing data should be reduced to improve market efficiency. Community Electricity supported making no amendments to the Transfer Code on the grounds that Western Power's performance in complying with data requests is very good.

Recommendation 16

Delete clause 3.8(2)(b) and make any amendments necessary for the Transfer Code to defer to the Metering Code 2012 on the network operator's service levels for the provision of standing and historical consumption data.

4.5 Charges for standing data and historical consumption data

The Office recommends that clause 3.10(2) of the Transfer Code be amended to require a network operator's charges for standing and historical consumption data to be consistent with the Metering Code 2012. In effect, this will mean that data charges will be prescribed by the network operator's MSLA (or an individual service level agreement that it has agreed independently with a retailer under the Metering Code 2012). This will ensure the Transfer Code is consistent with the Metering Code 2012.

To implement this amendment, clause 3.10(3) and the provisions in clauses 3.10(2)(a) and (b) that prescribe data charges that must apply, if the Metering Code 2012 does not provide otherwise, will be deleted. As clause 6.6 of the Metering Code 2012 requires an MSLA to specify charges for metering services that the network operator must provide, including metering services that the Transfer Code requires the network operator to provide, a situation will not arise where the Metering Code 2012 and MSLA have not prescribed a data charge and the Transfer Code has to prescribe its own charges in their place.

There is also the added benefit that, under the Metering Code 2012, the charges in an MSLA for metering services are independently approved by the Authority and a network operator or retailer can submit revisions to an MSLA to the Authority for consideration and approval at any time.

Synergy and Western Power submitted that network operator data charges are not a matter for the Transfer Code and should be prescribed solely by the network operator's MSLA. Alinta Energy, Community Electricity and Perth Energy suggested that historical consumption data requests should be free, with Alinta Energy also stating that, if there has to be a charge, it should be for a nominal amount to allow the network operator to recover its costs (the Office notes that under Western Power's current MSLA, requests for zero to 12 months of historical consumption data are free).

³⁰http://www.westernpower.com.au/documents/retailersgenerators/METERING_SERVICES_GENERIC_SLA_WITH_WA_RETAILERS.pdf (website link as at 10 September 2014)

Recommendation 17

Delete clause 3.10(3) and amend clause 3.10(2) so a network operator may charge a retailer for historical consumption data only in accordance with the Metering Code 2012.

5. Part 4 – Transfer of contestable customers

5.1 Submitting a customer transfer request

Background

Under clause 4.5(1), unless otherwise agreed with the network operator, a retailer must not submit to a network operator more than 20 customer transfer requests in a business day or with the same nominated transfer date.

The Issues Paper sought comment on whether a cap of 20 transfer requests is unduly restrictive and may be preventing the development of effective retail competition in the contestable market.

Draft Recommendation

If no meter change and/or manual meter reading are required to facilitate the transfer, the Office recommends that the number of customer transfer requests that can be submitted in a day or with the same nominated transfer date by a retailer is increased from 20 to 50.

If a meter change and/or manual meter reading are required to facilitate the transfer, no change to the current cap of 20 transfer requests per day per retailer is recommended.

Should full retail contestability be adopted on the South West Interconnected System or the contestability threshold be lowered substantially in the future, the Office would likely recommend the removal of the caps.

Rationale

The increase in the customer transfer request cap for transfers that do not involve a metering field service will assist in improving retail competition without imposing onerous regulatory costs on Western Power. It will also support any lowering of the contestability threshold in the future. The increase to the cap also takes into account Western Power's ability to manage that number of requests per day under its existing systems and processes.

The increase to the cap for transfer requests that do not involve a meter change, or a site visit to manually read the meter, reflects the fact that Western Power has to complete fewer processes for these transfers. Also, approximately 60 per cent of contestable customers on the South West Interconnected System already have an interval meter and approximately 83 per cent of those meters can be read remotely. In 2013-14, 75 per cent of transfers did not involve a metering field service³¹.

³¹ Figures were provided to the Office by Western Power in July 2014.

Every retailer submission to the Issues Paper raised concerns about the customer transfer request caps acting as a barrier to competition and causing operational problems. Western Power also supported a review of the caps to ensure they are meeting the Transfer Code objectives. In light of this, an increase to the cap for transfers that do not involve a metering field service is considered suitable to address the current needs of the market.

In relation to transfers that involve a metering field service, the Office does not believe an increase to the current cap of 20 requests per day per retailer is justified at this time. This is based on the majority of contestable customers already having an interval meter and the relatively low number of transfers that involve a metering field service (Western Power has advised that in 2013-14, approximately 1.6 transfers per day involved a metering field service). In these circumstances, a cap of 20 transfer requests per day per retailer appears adequate.

Clause 4.5 of the Transfer Code provides the network operator and retailers with the ability to negotiate a number of customer transfer requests above the cap on a particular day, so the caps do not necessarily have to be a barrier to retailers submitting customer transfer requests that exceed the caps on the occasions when they need to make a higher volume of requests. Western Power has advised that it regularly accommodates requests that exceed the caps.

Historically, the transfer rate on the South West Interconnected System has been relatively low³². If the contestability threshold was lowered substantially, or full retail contestability introduced, the monthly transfer rate would increase, potentially by a substantial amount.

Considering the relatively low number of contestable customers and transfer rates in Western Australia, removing the caps cannot be justified without full retail contestability. Caps are a proportionate response to the needs of the market at this time. If the caps were removed, to ensure compliance with the Transfer Code in all circumstances, Western Power might need to design its systems and processes to accommodate unknown daily fluctuations in transfer requests, while at the same time being required to comply with time based service levels to complete the requests. This would not be an effective or efficient use of resources based on the relatively small number of contestable customers on the South West Interconnected System at the moment.

However, should full retail contestability be adopted in the future, the Office would likely recommend that the caps be removed. Customer transfer request caps would act as a substantial barrier to retail competition and not facilitate full retail contestability. If the caps were removed due to full retail contestability, it is acknowledged that Western Power would have to undertake changes to its systems and processes to accommodate the anticipated increase in transfer requests it would receive. However, these changes would be considered inevitable to ensure full retail contestability is effective.

³² Further information on historical transfer rates is available in section 2.2 – *Code definitions*.

Submissions

Alinta Energy and Perth Energy submitted that, as it is a barrier to retail competition, the cap should be removed. Synergy submitted that it believes the current cap is inadequate, but did not suggest what a suitable cap limit should be, or whether the cap should be removed. Community Electricity suggested that, if the customer does not require a meter change to transfer (as it already has an interval meter), there is no reason to have a cap, as the transfer process is administrative only. If a meter change is required (because the customer may have an accumulation meter), those transfers should be accommodated by the Transfer Code to allow for resource constraints.

Western Power supported a review of the cap, but did not suggest what a suitable cap would be. It objected to removing the cap completely, as a cap gives it certainty and allows it to plan effectively with regard to resources, time and costs. Western Power also expressed support for being able to negotiate a transfer limit with retailers on a case-by-case basis, but with a prescribed cap prevailing if agreement cannot be reached (similar to the current approach in the Transfer Code).

Recommendation 18

Increase the number of transfer requests that can be submitted in a day or with the same nominated transfer date by a retailer from 20 to 50 (if no meter change and/or manual meter reading are required to facilitate the transfer).

5.2 Retailer's representations and warranties in relation to a transfer request

The Office recommends that the requirement in clause 4.6(1)(b) for the retailer to pay the network operator's reasonable costs for the installation of a new meter³³ (and associated equipment) is replaced with a requirement for the retailer to pay the network operator's costs in accordance with the Metering Code 2012 (in effect the charges in the network operator's MSLA or service level agreement it has independently negotiated with the retailer). This will ensure that the Transfer Code is consistent with the Metering Code 2012 and that a network operator's charges for a metering service (in this case the installation of a new interval meter and associated equipment to facilitate a transfer) are prescribed by one instrument, the network operator's service level agreement.

Alinta Energy, Perth Energy, Synergy and Western Power supported aligning the Transfer Code with the Metering Code 2012 by requiring the installation of a new interval meter and associated equipment to be provided in accordance with the network operator's MSLA or service level agreement.

³³ Under clause 3.17 of the Metering Code 2012, a transfer cannot occur under the Transfer Code unless the metering installation at each metering point for the customer's connection point contains an interval meter.

Community Electricity responded that, while there is benefit in amending the Transfer Code, it will create additional compliance audit requirements for Code participants that cannot be justified. The Office is mindful of ensuring the Transfer Code does not place onerous regulatory obligations on Code participants. This amendment will not create any new obligations for network operators or retailers. Rather, it will improve regulatory efficiency by ensuring the relationship between the Transfer Code and Metering Code 2012 is adequately addressed in relation to a retailer's request for a new meter to facilitate a transfer.

In addition to the matter above, the final 'Note' at the end of clause 4.6(4) will be amended to reflect that the *Trade Practices Act 1974* has been replaced by the *Competition and Consumer Act 2010*.

Recommendation 19

Replace the requirement in clause 4.6(1)(b) for the retailer to pay the network operator's reasonable costs for the installation of a new meter (and associated equipment) with a requirement for the retailer to pay the network operator's costs in accordance with the Metering Code 2012.

5.3 Nominated transfer date

Clause 4.7 of the Transfer Code provides that a retailer must nominate a transfer date, which must be, if the exit point is in a metropolitan area, at least three business days after the date the transfer request is submitted (it is five business days outside the metropolitan area). In either case, the nominated transfer date cannot be more than 50 business days after the date the transfer request was submitted.

Clause 4.10(1)(b) requires a network operator to ensure that any new meter installation and new service installation required for a transfer is undertaken on or before the nominated transfer date³⁴.

Western Power's MSLA specifies the metering services (and service levels) that a network operator must provide, which must include all the metering services that the Transfer Code requires the network operator to provide. For example, the "meter change" metering service has a service level (i.e. turnaround days) of five business days for the metropolitan area and ten business days for country areas.

³⁴ Under clause 3.17 of the Metering Code 2012, a transfer cannot occur under the Transfer Code unless the metering installation at each metering point for the customer's connection point contains an interval meter.

Because clause 4.10(1)(b) links the timeframe for changing a meter to the nominated transfer date, the Transfer Code is potentially inconsistent with Western Power's MSLA. For example, if the retailer nominates a date for the transfer of a metropolitan customer of three business days from the date the transfer request is submitted, the network operator must carry out the meter change on or before the third business day. However, the MSLA's service level for a metropolitan area meter change (and a non-scheduled special meter reading for the final meter reading) is five business days. The inconsistency between the Transfer Code and Western Power's MSLA causes regulatory uncertainty and potentially requires Western Power to exceed the MSLA's independently approved service levels.

Western Power has advised that retailers regularly nominate transfer dates that require the installation of an interval meter in a timeframe less than its MSLA service levels. To ensure compliance with the Transfer Code, Western Power often prioritises meter changes relating to transfers ahead of other metering services. Western Power is sometimes non-compliant with the Transfer Code because it cannot complete a meter change in the time required to meet the nominated transfer date.

The Office recommends that clause 4.7 be amended to require the nominated transfer date for transfers that require a meter change and/or manual meter reading to be:

- if the exit point is in a metropolitan area, at least five business days after the date the transfer request is submitted; and
- if the exit point is not in a metropolitan area, at least ten business days after the date the transfer request is submitted.

The proposed amendments to the timeframes in clause 4.7 will harmonise the Transfer Code with Western Power's MSLA, allowing Western Power sufficient time to complete a meter change and manually read the meter in accordance with its MSLA. The requirements in clause 4.7 for nominated transfer dates for transfers that do not require a meter change or manual meter reading will remain unchanged.

Alinta Energy, Community Electricity, Perth Energy and Western Power supported aligning the Transfer Code timeframes for carrying out a metering service with the service levels in Western Power's MSLA. They differed slightly on how to achieve this.

Synergy submitted that it does not believe it is necessary to amend or link the timeframes in clauses 4.7 and 4.10 with the MSLA. This is because under clause 3.17 of the Metering Code 2012, a customer cannot transfer retailers without an interval meter.

While the Office recognises Synergy's standpoint, the Office does not propose amending the requirement for a customer to have an interval meter as a condition of transfer (clause 4.10(1)(b) of the Transfer Code requires the network operator to ensure that any new meter installation is undertaken before the nominated transfer date). Rather, the Office is addressing the potential regulatory inconsistency faced by Western Power if a retailer nominates a transfer date that is earlier than the number of days Western Power is provided under its MSLA to effect a meter change (if the customer requires one).

Recommendation 20

Amend clause 4.7 to require the nominated transfer date for transfers that require a meter change and/or manual meter reading to be:

- if the exit point is in a metropolitan area, at least five business days after the date the transfer request is submitted; and
- if the exit point is not in a metropolitan area, at least ten business days after the date the transfer request is submitted.

5.4 Network operator obligations following receipt of a valid transfer request

The Transfer Code Review Issues Paper sought stakeholder views as to whether the network operator should be liable for retailer and customer losses caused by an act or omission by the network operator that results in the customer transferring after the nominated transfer date

The Office does not recommend amending the Transfer Code to make a network operator liable for these losses. The Office has concluded that matters of financial compensation should be addressed in contractual arrangements, such as access contracts and service level agreements, between the respective parties. If a network operator fails to comply with the Transfer Code, this will be identified and addressed by the Authority's licensee performance audits.

Further, the dispute resolution process in the Transfer Code is not open to customers, as they are not Code participants. As a result, the Transfer Code cannot address any dispute between a network operator and customer over losses incurred due to a transfer.

However, to improve a retailer's ability to manage a situation where the customer is not transferred on the nominated transfer date, it is recommended that clause 4.10 be amended to require a network operator to notify the outgoing and incoming retailers that the network operator will not be able to transfer the customer on the nominated transfer date (when a nominated transfer date had been agreed previously). This amendment was suggested by Synergy as an alternative to making the network operator liable for retailer and customer losses.

Because clause 4.10(2)(d) requires the network operator to "endeavour" to transfer the customer on the nominated date, the network operator does not have an absolute obligation to transfer the customer on the nominated date. The network operator needs this flexibility, because it will not always be possible to transfer a customer on the nominated date.

Community Electricity, Perth Energy and Western Power objected to the amendment proposed in the Issues Paper, while Alinta Energy and Synergy supported it. Objections to the amendment included that Western Power is already liable under its contracts for failure to comply with service standards and it is not practical to include this liability in the Transfer Code. Supporting submissions noted that the amendment would provide a strong incentive for the network operator to comply with the nominated transfer date.

Recommendation 21

Transfer Code not to be amended to make a network operator liable for retailer or customer losses caused by a network operator's act or omission that resulted in the customer transferring after the nominated transfer date.

Instead, amend clause 4.10 to require a network operator to notify the outgoing and incoming retailers that the network operator will not be able to transfer the customer on the nominated transfer date (when a nominated transfer date had been agreed previously).

5.5 The transfer – actual readings

Under clause 4.11(1) of the Transfer Code, a transfer may only occur on a day the contestable customer's meter is read. Other than by way of a 'note' that is attached to clause 4.11(1), which says that the actual read may comprise a special read or scheduled read, the Transfer Code does not define an "actual read". Further, it does not outline the process to be followed if the network operator cannot obtain an actual read (for example, if the meter is faulty).

In the Metering Code 2012, an "actual value" is defined as energy data for a metering point that has physically been read (or remotely collected by a communications link or an automated meter reading system) from the meter, and includes a "deemed actual value". A "deemed actual value" is an estimated or substituted value that is designated to the meter when the meter is unreadable. Under clause 5.23 of the Metering Code 2012, a deemed actual value is used when the network operator concludes that there is no possibility of determining an actual value.

The Office recommends that the Transfer Code be amended to include the Metering Code 2012 definition of "actual value" in relation to meter readings.

Defining the term "actual value" will clarify the process to be followed when a meter is unreadable and provide certainty to the market by aligning the Transfer Code with the Metering Code 2012. Clause 4.11(1) does not permit the use of a "deemed actual value" in a transfer when the meter is unreadable. If the Transfer Code adopts the Metering Code 2012 definition of "actual value", the network operator can use a "deemed actual value" when the customer's meter is faulty. While this would result in the transfer occurring on an estimated or substituted reading, this would be unavoidable if the meter is faulty.

Alinta Energy, Perth Energy, Synergy and Western Power supported defining the term “actual value” in relation to metering readings. Community Electricity suggested deleting the requirement for a meter to be read on the transfer date, as interval meters are read remotely and there should be no basis to delay a transfer because a meter cannot be read on a particular day.

Recommendation 22

In relation to meter readings, amend the Transfer Code to include the Metering Code 2012 definition of “actual value”.

5.6 Effect of a transfer on an access contract

Clause 4.12(3) requires parties to an access contract to negotiate in good faith any amendments to the access contract related to the removal of the exit point from the previous retailer’s access contract and its inclusion in the incoming retailer’s access contract. The Transfer Code Review Issues Paper sought stakeholder views as to whether amendments to the Transfer Code are required to clarify which retailer supplies the customer during negotiations that take place under clause 4.12(3)

The Office does not recommend any changes to clause 4.12. The Office believes the Transfer Code is clear that the customer’s current retailer (the outgoing retailer) supplies the customer during any negotiations held under clause 4.12.

The customer changes retailers when the exit point is transferred to the incoming retailer’s access contract and at no point is the customer without a retailer.

Community Electricity, Perth Energy, Synergy and Western Power did not support changes to clause 4.12. Alinta Energy supported amending clause 4.12, but noted that it is not aware of any such negotiations taking place under clause 4.12 and assumes the current retailer would continue to supply the customer until negotiations had been completed. Other submissions also noted that these type of negotiations do not appear to occur and the Transfer Code is clear on which retailer supplies the customer during negotiations.

Recommendation 23

Maintain clause 4.12 as currently drafted, as no clarification is required on which retailer supplies the customer during negotiations that take place under clause 4.12(3).

5.7 Rectifying an erroneous transfer

Outside the Issues Paper submission period, Western Power requested that the Transfer Code Review consider an amendment to clause 4.15 in relation to rectifying an erroneous transfer.

Clause 4.15 does not prescribe a timeframe in which retailers may submit a request to the network operator to reverse an erroneous transfer. This can potentially expose network operators to financial risk if retailers dispute the network access charges incurred during the period between the transfer and the request to reverse the transfer, particularly if a substantial time has elapsed (Western Power advised that one request to reverse an erroneous transfer was received 573 days after the transfer occurred). Western Power also explained that the administrative burden to reverse transfers worsens as the delay in identifying erroneous transfers increases.

Western Power has suggested that three months from the date of the transfer is a reasonable timeframe to allow for a request to rectify an erroneous transfer to be made. It believes three months provide sufficient time to identify an erroneous transfer through the billing process and allow Western Power to manage its financial risk.

It is possible that a retailer, acting in good faith, does not identify an erroneous transfer within three months of the transfer. A concern with prescribing an arbitrary timeframe on requests to rectify an erroneous transfer is that it may unfairly disadvantage retailers.

It is also noted that the NECF (and Victoria and Queensland - jurisdictions that have not adopted the NECF) does not prescribe a timeframe for making a request to rectify an erroneous transfer.

Stakeholder feedback is sought on the merits of a proposed amendment to prescribe a timeframe in which requests to rectify an erroneous transfer must be made to a network operator. The Office is yet to form a view on this proposal. A recommendation on whether or not to amend the Transfer Code will be made in the Final Recommendations Report.

Request for comment on new amendment proposal

Stakeholder comment is sought on whether clause 4.15 should be amended to prescribe a timeframe within which requests to rectify an erroneous transfer must be made to the network operator. If so, views are sought on what might constitute a reasonable timeframe.

5.8 Network operator performance reports

Performance information is important in ensuring there is transparency and accountability in a network operator's operations. It also provides an incentive to the network operator to improve service delivery and enable users of the network to determine the value of the service they are receiving. The Transfer Code does not require network operators to produce performance reports on service levels under the Transfer Code.

As a condition of their licence, network operators are required to undertake performance audits on a periodic basis. These audits include the measuring of performance against Transfer Code requirements. However, these audits can involve analysing a sample of transfers that were completed, rather than all transfers completed.

Network operators are also required by the Metering Code 2012³⁵ to report annually on the metering services they provide, which include the services required as part of a transfer (such as meter changes, meter readings and the provision of meter data). However, performance data on metering services will not include information on the majority of transfers, as they do not include a metering field service (because the customer already has an interval meter that can be remotely read). The metering performance data will also not include data on the stages of the transfer process that do not involve metering, such as the requirement to complete a transfer on the nominated transfer date.

Basic performance information on customer transfers is not readily available to retailers, regulators and the public at the moment. This information is valuable to market participants and will become more valuable if full retail contestability is adopted in Western Australia in the future and customer transfers subsequently increase.

The Office recommends that the Transfer Code be amended to require network operators to publish performance information annually on customer transfers. It is recommended that the provisions requiring the publication of this information mirror the equivalent provisions in Part 13 of the Customer Code. That is, the network operator will be required to provide performance information relating to customer transfers each year, as specified by the Authority. The information must be provided to the Authority by the date, and in the form, specified by the Authority. The Authority will also specify the date by which the information must be made publicly available.

Allowing the Authority to specify the information on customer transfers that the network operator must provide will result in network operators only being required to submit one set of performance data to the Authority each year to satisfy the Authority's licensee performance reporting requirements³⁶ and the reporting requirements of the Transfer Code. Allowing the Authority to specify the information that must be reported, rather than the Transfer Code itself, also makes it easier to ensure the information that is reported stays relevant to the needs of the market year after year.

As they have to report on metering services under the Metering Code 2012 and maintain information for licence performance audits, network operators are already maintaining information on customer transfers for reporting purposes and should not incur additional costs to comply with this reporting requirement.

In their submissions, Alinta Energy, Perth Energy and Synergy supported requiring network operators to prepare annual performance information on customer transfers, while Community Electricity and Western Power opposed the requirement.

³⁵ See clause 5.37 of the Metering Code 2012.

³⁶ Currently, the Authority requires distribution licensees, such as Western Power, to complete its *Electricity Distribution Licence Performance Reporting Handbook*.

As part of the preparation of this Draft Recommendations Report, the Office discussed this recommendation with Western Power to attempt to address Western Power's concerns. On the basis that the Authority prescribes the information that network operators must provide each year on customer transfers and its reporting obligations follow a similar format to the Customer Code, Western Power has indicated that it does not object to this new requirement³⁷.

Recommendation 24

Amend the Transfer Code to require network operators to publish performance information annually on customer transfers, as specified by the Authority.

5.9 Supplier of last resort

On 15 July 2009, in accordance with section 71(4) of the Industry Act, the Authority designated Synergy as the Supplier of Last Resort (the **SoLR**) for the South West Interconnected System³⁸. Under section 71(4), Horizon Power is the default SoLR for areas outside the South West Interconnected System.

Section 72 of the Industry Act requires a SoLR to submit a last resort supply plan (the **SoLR Plan**) to the Authority for approval. Section 77 of the Industry Act allows the making of regulations (the **SoLR Regulations**) to prescribe what a SoLR plan must address.

The intent of the Industry Act is that the SoLR Regulations and the SoLR Plan address the bulk transfer of customers during a SoLR event³⁹. This is because a SoLR event has unique characteristics that are not contemplated by the Transfer Code. For instance, the Transfer Code process for transferring a customer is likely to be unworkable during a SoLR event, where thousands of customers may need to be transferred at short notice.

As the Transfer Code is silent on its application during a SoLR event, the Office recommends that the Transfer Code is amended to clarify that its provisions do not apply during a SoLR event. This will avoid potential inconsistencies between the Transfer Code, SoLR Regulations and the SoLR Plan.

³⁷ Western Power will have an opportunity to make a submission to this Draft Recommendations Report and provide further comment on this recommendation as part of the consultation process.

³⁸ [http://www.erawa.com.au/cproot/8090/2/20091110%20Notice%20-%20Synergy%20as%20the%20Default%20Electricity%20SoLR%20for%20the%20area%20covered%20by%20the%20SOUTH WEST INTERCONNECTED SYSTEM.pdf](http://www.erawa.com.au/cproot/8090/2/20091110%20Notice%20-%20Synergy%20as%20the%20Default%20Electricity%20SoLR%20for%20the%20area%20covered%20by%20the%20SOUTH%20WEST%20INTERCONNECTED%20SYSTEM.pdf) (website link as at 10 September 2014)

³⁹ A SoLR event occurs when an electricity retailer fails and can no longer supply its customers. In such an event, the failed retailer's customers transfer to the designated SoLR to ensure they continue to receive electricity.

Alinta Energy, Perth Energy, Synergy and Western Power supported the amendment. Community Electricity suggested that SoLR provisions should be fully articulated. The Office notes that the suitable legislative instrument to articulate SoLR provisions would be regulations made under section 77 of the Industry Act, not the Transfer Code. However, as the Transfer Code regulates every day customer transfers, it needs to define its own role during a SoLR event to avoid confusion and inconsistency, even if that means clarifying that it does not have a role during a SoLR event (and deferring to any regulations made under section 77 of the Industry Act).

Recommendation 25

Amend the Transfer Code to clarify that its provisions do not apply during a SoLR event.

5.10 Consistency with the Customer Code

Customers who consume not more than 160 MWh of electricity per annum are subject to the protections of the Customer Code. This means that contestable customers who consume between 50 MWh and 160 MWh of electricity per annum are covered by the Customer Code.

The Transfer Code Review Issues Paper sought stakeholder views as to whether the Transfer Code should include provisions similar to clauses 3.24A and 5.8 of the Metering Code 2012⁴⁰. The intent of such provisions would be to require the network operator to ensure its process for transferring a customer does not cause a retailer to breach its Customer Code obligations.

In its submission, Synergy raised an example of an inconsistency between the Transfer Code and the Customer Code. Synergy explained that the Customer Code requires retailers to issue a customer with a final bill on request. In relation to a transfer, the final bill will normally be arranged to coincide with the original nominated transfer date. However, if the nominated transfer date is changed by the incoming retailer, or the network operator transfers the customer after the nominated date, the outgoing retailer may breach its Customer Code obligation to issue a final bill on the date requested by the customer.

This is likely if the customer has not been informed by the incoming retailer that the nominated transfer date has been changed and, therefore, the customer does not know that the outgoing retailer needs to be contacted to change the date of issue of the final bill. As a result, the outgoing retailer's ability to issue a final bill on the date requested by the customer is often dependent on the network operator transferring the customer on the original nominated transfer date.

⁴⁰ Clause 3.24A requires a network operator to install a pre-payment meter that enables the retailer to comply with its Customer Code obligations. Clause 5.8 requires a network operator to provide a retailer with information it has to enable the retailer to comply with its Customer Code obligations.

The Office notes that clause 4.14 of the Customer Code allows the retailer to use “reasonable endeavours” to arrange for the customer’s final bill in accordance with the customer’s request. This gives the retailer flexibility to account for any changes to the customer transfer date. Recommendation 21 of this report also recommends an amendment to clause 4.10 to require the network operator to notify the outgoing and incoming retailers if the transfer will not occur on the nominated transfer date (when a date had previously been agreed). Collectively, clause 4.14 of the Customer Code and the recommended amendment to clause 4.10 of the Transfer Code will provide the outgoing retailer with the means to manage the customer’s request for a final bill.

It is also noted that clause 3.24A of the Metering Code 2012 was implemented to ensure the metering installations installed by a network operator have the requisite functionality for the retailer to comply with its Customer Code obligations. There is a clear need in this situation to link the two codes to ensure the infrastructure being installed meets market needs. In relation to clause 5.8 of the Metering Code 2012, which requires a network operator to provide a retailer with information it has to enable the retailer to comply with the Customer Code, this is also addressing a specific requirement for the retailer to receive the meter data it needs to operate effectively. Therefore, these two clauses in the Metering Code 2012 address particular needs of Code participants. As a result, the office has concluded that the need for a similar clause in the Transfer Code is not apparent.

Alinta Energy, Community Electricity, Perth Energy and Synergy supported the amendment. Western Power stated that the amendment is not required, because the Transfer Code allows for retailers to comply with the Customer Code.

Recommendation 26

Transfer Code not to be amended to require the network operator to ensure its process for transferring a customer does not cause a retailer to breach its Customer Code obligations.

6. Part 5 – Communication rules

Network operator communication rules set out the file formats, protocols and system designs for the transfer of meter data between network operator and retailer.

The Transfer Code and the Metering Code 2012 require a network operator to have communication rules. The intention is that a network operator will have one set of communication rules; fulfilling a function under both codes.

While the communication rules provisions under the Transfer Code were consistent with the Metering Code 2005, they are inconsistent with several aspects of the Metering Code 2012.

The communication rules requirements under the Transfer Code are substantially less onerous than under the Metering Code 2012. The Metering Code 2012 is the primary instrument that provides for the establishment and operation of communication rules. As all the necessary requirements for communication rules are in the Metering Code 2012, Part 5 of the Transfer Code may be redundant.

The Transfer Code provisions on communication rules could cause unnecessary duplication and increase the possibility of inconsistencies arising between the Transfer Code and the Metering Code 2012. Inconsistencies between the codes will cause network operators and retailers operational and licence compliance problems that will lead to inefficiencies and unnecessary costs.

The Office recommends that Part 5 of the Transfer Code is deleted to make it consistent with the Metering Code 2012. A consequential amendment to the Transfer Code to clarify the relationship of the Transfer Code with Part 6 of the Metering Code 2012 may be required.

Alinta Energy, Community Electricity, Perth Energy, Synergy and Western Power supported deleting Part 5.

Recommendation 27

Delete Part 5 to make the Transfer Code consistent with the Metering Code 2012.

Note that, to ensure the relationship of the Transfer Code with with Part 6 of the Metering Code 2012 is clear, a consequential amendment to the Transfer Code to clarify its relationship with Part 6 of the Metering Code 2012 may be required (this will be addressed at the drafting stage, if the Minister approves this recommendation).

7. Part 6 – Notices

No amendments to Part 6 of the Transfer Code are recommended.

8. Part 7 – Dispute resolution

8.1 Referral of disputes to the Authority

Part 7 of the Transfer Code designates the Authority as the arbitrator of disputes that arise between network operators, retailers and the Market Operator in respect of any matter under or in connection with the Transfer Code.

Given the Authority's role in approving a network operator's communication rules and in monitoring and enforcing electricity licensees' compliance with the Transfer Code, it is recommended that the Western Australian Energy Disputes Arbitrator (the **Energy Arbitrator**) replace the Authority as the arbitrator of Transfer Code disputes to avoid any perceived conflict of interest on the part of the Authority. For example, because a dispute may raise matters of non-compliance with the Transfer Code, the Authority's role as the administrator of the licensing regime may deter a licensee from raising a dispute with the Authority against a fellow licensee.

Unlike the Authority, the Energy Arbitrator has a specific role in the arbitration of disputes (both the Access Code and the Metering Code 2012 designate the Energy Arbitrator as the arbitrator of Code disputes). By bringing the Transfer Code in line with the arbitration of disputes under other codes, replacing the Authority with the Energy Arbitrator will enhance consistency across the regulatory framework.

Alinta Energy, Perth Energy, Synergy and Western Power supported the amendment (and the consequential amendment recommended in 8.2 – *Costs of disputing parties*). Community Electricity did not support the amendment, stating that the Authority does not have a conflict of interest and therefore does not need to be replaced by the Energy Arbitrator. The Office believes that there is sufficient potential for the Authority to have a perceived conflict of interest to justify the amendment. The amendment will also ensure the Transfer Code is consistent with other codes in the regulatory framework.

Recommendation 28

Amend the Transfer Code to replace the Authority with the Energy Arbitrator as the arbitrator of Transfer Code disputes.

8.2 Costs of disputing parties

When the Metering Code 2005 was amended to replace the Authority with the Energy Arbitrator as the arbitrator of disputes, consequential amendments to the Metering Code 2005 were made to provide for the recovery of the Energy Arbitrator's costs, including the Energy Arbitrator being able to determine the costs of disputing parties and how those costs are settled (clauses 8.10, 8.10A and 8.10B of the Metering Code 2012). As it is recommended that the Energy Arbitrator replace the Authority as the arbitrator of Transfer Code disputes, it is proposed that the Transfer Code adopt the same provisions on dispute costs as the Metering Code 2012.

Recommendation 29

Amend the Transfer Code to adopt the Metering Code 2012 provisions on the determination and recovery of the Energy Arbitrator's dispute costs.

9. Part 8 – Code amendment

While no issues with Part 8 of the Transfer Code were raised by the Issues Paper or submissions to the Issues Paper, the Office has subsequently identified a potential amendment to Part 8 of the Transfer Code.

Part 9 of the Metering Code 2012, which is similar to Part 8 of the Transfer Code, includes provisions (clause 9.2) that state nothing in Part 9 limits a person's ability to propose a Code amendment to the Minister, or the Minister's discretion to propose, consider or make a Code amendment. This is to clarify beyond doubt that the Metering Code amendment process is not restricted to amendments raised by the Authority or Code participants. These provisions are not in the Transfer Code.

It is recommended that Part 8 be amended to be consistent with clause 9.2 of the Metering Code 2012.

Recommendation 30

Amend Part 8 to include provisions that state nothing in Part 8 limits:

- a person's ability to propose a Code amendment to the Minister; or
- the Minister's discretion to propose, consider or make a Code amendment.

10. Code Appendices

No amendments to the Transfer Code's appendices are recommended.

11. Other matters raised by stakeholders

11.1 Retailer objections to a transfer

In their submissions on the Issues Paper, Perth Energy and Synergy proposed a Transfer Code amendment to allow the customer's current retailer to raise an objection to a customer transfer if the customer has an outstanding debt with the retailer.

Perth Energy also suggested that the current retailer be allowed to object to a transfer if there is an active Energy and Water Ombudsman⁴¹ investigation involving the customer and retailer.

Clause 4.9 of the Transfer Code requires the network operator to object to a customer transfer on certain grounds, including when the customer does not have an interval meter. However, the Transfer Code does not allow the outgoing retailer to object to a transfer.

Objection relating to debt

The submissions raised concerns that the Transfer Code allows customers to avoid paying their debts and makes it more difficult for the outgoing retailer to pursue a customer for that debt, as the risk of disconnection no longer exists⁴². Concern was also expressed that customers with an unpaid debt are a commercial risk and disincentive to competition. Retailers incur costs pursuing customers to recover debt and will choose not to supply certain customers based on their credit history. Outstanding debts also potentially increase electricity costs for other customers, as retailers may seek to compensate for the lost revenue.

Objections for debt are only explicitly permitted in Victoria⁴³ and Queensland⁴⁴ (NEM jurisdictions where the NECF has not yet been adopted). The NECF is silent on allowing objections on the grounds of debt. Therefore, to the extent that the NECF is adopted by these jurisdictions in the future (and relevant local instruments amended), there will not be objections on grounds of debt in other Australian jurisdictions. In the Western Australian retail gas market, objections to a transfer can only be lodged by the network operator on the basis that the incoming retailer does not have in place the right to use the network to transport gas to the customer⁴⁵.

In the Western Australian regulatory framework, the Customer Code and *Electricity Industry (Customer Contracts) Regulations 2005* provide retailers with the means to recover debt from a customer, including credit management processes. Retailer customer contracts are likely to include provisions relating to the recovery of debt. For example, Synergy's Standard Form Contract provides it with means to recover amounts owing when a customer fails to pay a bill. A retailer may also require a customer to pay a security deposit, which can reduce the retailer's debt exposure.

The Customer Code provides retailers with provisions to manage customers who are experiencing payment difficulties and customers who fail to pay a bill. Therefore, the current regulatory framework provides retailers with several options to manage customer debt while they are a customer of the retailer and after the customer transfers.

⁴¹ Western Australia's Energy and Water Ombudsman receives and resolves complaints about electricity, gas and water service providers. <http://www.ombudsman.wa.gov.au/energyandwater/> (website link as at 10 September 2014)

⁴² Under the Customer Code, only the current retailer can arrange for the disconnection of a customer for failure to pay a bill.

⁴³ Victorian *Electricity Customer Transfer Code*.

⁴⁴ Department of Energy and Water's *Queensland Objection Code Guidelines 2003*.

⁴⁵ Rule 86 of the Retail Energy Market Company's *Retail Market Rules*.

It is a concern that retailer objections on the grounds of debt could become a barrier to competition and, as mentioned earlier, the NECF does not provide for retailer objections on the grounds of debt.

Taking into account the matters identified above, the Office does not support debt objection provisions in the Transfer Code. The regulatory framework on debt recovery and credit management should provide retailers with sufficient means to manage customer debt. The Transfer Code should not act as a proxy for debt recovery when the regulatory framework already provides for this.

Objection relating to Ombudsman investigation

Perth Energy suggested that the current (outgoing) retailer be allowed to object to a transfer on the grounds that there is an active Energy and Water Ombudsman investigation involving the customer and retailer. The submission offered the comparison that under other codes a retailer is prohibited from taking action against a customer, such as disconnecting a customer for failure to pay a bill, if there is an active Energy and Water Ombudsman investigation.

The Office understands that no Australian jurisdiction permits a current retailer to object to a transfer because there is an active Ombudsman investigation involving the retailer and customer.

Only the customer can initiate an Energy and Water Ombudsman investigation, not the retailer. This means that the complaint will be an allegation that the retailer has breached a requirement of its licence. It will not be a complaint that the customer has done something wrong. To penalise a customer for making a complaint by not allowing them to transfer may act as a disincentive to making a complaint and provide the retailer with undue influence over customers.

Consequently, an amendment to the Transfer Code to allow a retailer to object to a transfer on the grounds there is an active Energy and Water Ombudsman investigation is not recommended.

Recommendation 31

Transfer Code not to include provisions to allow retailers to object to a transfer on the grounds of unpaid debt by a customer or an active Energy and Water Ombudsman investigation.

Appendix – Draft Recommendations

Recommendation 1

Amend clause 1.2 to expand the application of the Transfer Code to include network operators and retailers holding licence exemptions, if it is a term or condition of their licence exemption that they comply with the Transfer Code.

Recommendation 2

Amend the definition of “access contract” to clarify that it is the same as the definition of “contract for services” in the Access Code.

Recommendation 3

Amend the definition of “charges” to include those payable by the retailer to the network operator and Market Operator in connection with the “supply” of electricity.

Recommendation 4

Replace the reference to the Electricity Corporations Act 1994 with a reference to the Electricity Corporations (Prescribed Customers) Order 2007 made under the Electricity Corporations Act 2005.

Recommendation 5

Amend the definition of “exit point” in the Transfer Code to provide for contestable customers on bidirectional connection points.

Recommendation 6

Amend the Transfer Code definition of “metropolitan area” so it refers to the region described in Schedule 3 of the Planning and Development Act 2005 and the townships as constituted under section 26 of the Land Administration Act 1997.

Recommendation 7

Remove the words “(including regulations made under section 31A of the Electricity Corporation Act 1994)” from the definitions of “network operator” and “retailer” in the Transfer Code.

Recommendation 8

Maintain the definition of “trading day” as currently drafted.

Recommendation 9

Replace the Transfer Code definition and use of the term “UMI” / “unique meter identifier” with “NMI” / “national meter identifier”.

Recommendation 10

Amend clause 1.3 to allow retailers to obtain oral “verifiable consent” from a customer and require retailers to create a record of that consent.

Recommendation 11

Amend clause 1.6 so:

- where a network operator is required to publish a thing, the network operator must maintain that thing on its website until the Transfer Code no longer applies to the network operator, or the seventh anniversary of the thing being placed on the website (whichever is later); and
- the network operator is required to make available a hardcopy of the thing for inspection by the public, without cost, during normal office hours at its principal place of business in Western Australia.

Recommendation 12

Amend:

- the arm's length treatment provisions, so clause 2.2(1) does not apply to a network while there is no more than one retailer on the network; and
- clause 2.2(2)(b) to replace "section 31A of the *Electricity Corporation Act 1994*" with "section 62 of the *Electricity Corporations Act 2005*".

Recommendation 13

Amend clauses 3.4(1) and 3.4(2) to increase the number of standing data requests and historical consumption data requests that can be made per day by a retailer from 20 to 100.

Recommendation 14

Transfer Code not to be amended to require the retailer to provide the customer's verifiable consent to the network operator as part of submitting a data request, or to require the network operator to confirm that the customer has provided his or her consent.

Recommendation 15

Amend clause 3.8(2) to reflect that a network operator can establish its own communication rules under the Metering Code 2012.

Recommendation 16

Delete clause 3.8(2)(b) and make any amendments necessary for the Transfer Code to defer to the Metering Code 2012 on the network operator's service levels for the provision of standing and historical consumption data.

Recommendation 17

Delete clause 3.10(3) and amend clause 3.10(2) so a network operator may charge a retailer for historical consumption data only in accordance with the Metering Code 2012.

Recommendation 18

Increase the number of transfer requests that can be submitted in a day or with the same nominated transfer date by a retailer from 20 to 50 (if no meter change and/or manual meter reading are required to facilitate the transfer).

Recommendation 19

Replace the requirement in clause 4.6(1)(b) for the retailer to pay the network operator's reasonable costs for the installation of a new meter (and associated equipment) with a requirement for the retailer to pay the network operator's costs in accordance with the Metering Code 2012.

Recommendation 20

Amend clause 4.7 to require the nominated transfer date for transfers that require a meter change and/or manual meter reading to be:

- if the exit point is in a metropolitan area, at least five business days after the date the transfer request is submitted; and
- if the exit point is not in a metropolitan area, at least ten business days after the date the transfer request is submitted.

Recommendation 21

Transfer Code not to be amended to make a network operator liable for retailer or customer losses caused by a network operator's act or omission that resulted in the customer transferring after the nominated transfer date.

Instead, amend clause 4.10 to require a network operator to notify the outgoing and incoming retailers that the network operator will not be able to transfer the customer on the nominated transfer date (when a nominated transfer date had been agreed previously).

Recommendation 22

In relation to meter readings, amend the Transfer Code to include the Metering Code 2012 definition of "actual value".

Recommendation 23

Maintain clause 4.12 as currently drafted, as no clarification is required on which retailer supplies the customer during negotiations that take place under clause 4.12(3).

Recommendation 24

Amend the Transfer Code to require network operators to publish performance information annually on customer transfers, as specified by the Authority.

Recommendation 25

Amend the Transfer Code to clarify that its provisions do not apply during a Supplier of Last Resort event.

Recommendation 26

Transfer Code not to be amended to require the network operator to ensure its process for transferring a customer does not cause a retailer to breach its Customer Code obligations.

Recommendation 27

Delete Part 5 to make the Transfer Code consistent with the Metering Code 2012.

Note that, to ensure the relationship of the Transfer Code with Part 6 of the Metering Code 2012 is clear, a consequential amendment to the Transfer Code to clarify its relationship with Part 6 of the Metering Code 2012 may be required (this will be addressed at the drafting stage, if the Minister approves this recommendation).

Recommendation 28

Amend the Transfer Code to replace the Authority with the Energy Arbitrator as the arbitrator of Transfer Code disputes.

Recommendation 29

Amend the Transfer Code to adopt the Metering Code 2012 provisions on the determination and recovery of the Energy Arbitrator's dispute costs.

Recommendation 30

Amend Part 8 to include provisions that state nothing in Part 8 limits:

- a person's ability to propose a Code amendment to the Minister; or
- the Minister's discretion to propose, consider or make a Code amendment.

Recommendation 31

Transfer Code not to include provisions to allow retailers to object to a transfer on the grounds of unpaid debt by a customer or an active Energy and Water Ombudsman investigation.

Request for comment on new amendment proposal

Stakeholder comment is sought on whether clause 4.15 should be amended to prescribe a timeframe within which requests to rectify an erroneous transfer must be made to the network operator. If so, views are sought on what might constitute a reasonable timeframe.