

**Response to PUO Position Paper:  
Changing the Contractual Relationship  
between the Electricity Distributor,  
Customers and Retailers**

13 July 2016

## 1 Introduction

On 15 June 2016, the Public Utilities Office (PUO) released the 'Position Paper: Changing the Contractual Relationship between the Electricity Distributor, Customers and Retailers' (Position Paper) for comment. The Position Paper sets out proposed reforms to the contractual relationship between customers, distributors and retailers.

This submission details Western Power's response to the Position Paper. The submission is structured in response to the questions posed by the PUO in the Position Paper.

In summary, Western Power supports:

- the implementation of the triangular contracting model, and
- the adoption of the National Energy Customer Framework, in order to ensure national consistency, as opposed to the enhanced local scheme proposed in the Position Paper.

Western Power welcomes further discussions with the PUO to clarify any comments.

## 2 The Distributor-Customer Relationship

### 1. Should standard contracts be prescribed pursuant to regulation, or developed by the distributor for approval by the local regulator?

Western Power considers that it is best placed to develop deemed standard contracts that meet the varying needs of its customer base, and have it approved by the local regulator.

Western Power is required to draft the Model Standing Offer (connection contract), and submit to the AER for approval. In developing this contract, Western Power is guided by the NER Chapter 5A, and as such has a robust policy underpinning it.

It is appropriate that Western Power extend this contract development to the supply contracts to ensure consistency.

As a general comment, in section 4.2.1, the PUO states that "*prohibition will placed on the distributor to prevent directly billing a customer for ongoing supply services*". Western Power notes that this restriction in the NERL only applies to small customers, and similarly should only be applied to small customers. The circumstances that necessitate direct billing by the Distributor are rare and limited to large customers, however explicitly preventing this scenario should be avoided.

### 2. Should the distributor be limited to large customers in the development of deemed class-specific contracts?

Western Power agrees that the development of class-specific contracts should be limited to large customers.

The administrative complexity and oversight of class-specific contracts for small customers would likely outweigh any benefits that these types of contracts would provide.

In line with the answer to the previous question, Western Power considers that it is best placed to develop deemed standard contracts that meets the varying needs of small customers.

### 3. Is the negotiation framework under Chapter 5A suitable for negotiating ongoing supply contracts in the South West Interconnected System? If not, what amendments should be made?

Western Power considers that Chapter 5A is suitable for negotiating ongoing supply contracts in the SWIS.

**4. Is there any reason why the high-level contractual provisions under r. 82 of the National Energy Retail Rules should not be adopted in the South West Interconnected System?**

The provisions in rule 82 of the NERR replicate, at a high-level, the distributor's existing obligations under the Small Use Customer Code, therefore, they do not necessarily need to be explicitly stated in the contract. However, given the provisions are not inconsistent with the distributor's existing obligations, Western Power considers that there is no reason why they should not be adopted.

Western Power notes though, that the provisions should be improved to clarify that the query, complaint or dispute which the distributor is obliged to handle, should relate to the distribution of energy or customer connection services. Otherwise the query, complaint or dispute will be referred to retailers or the appropriate entity.

**5. Should the additional information provisions above be included within local customer protection arrangements?**

Western Power agrees that the provision of information should be included, although notes that some cost will likely be imposed by meeting these requirements. However, these costs can be included in Western Power's broader EMR transition program.

**6. Should Western Power's liability to customers under the ongoing supply contract be limited? If so, why and in what ways?**

An increase to Western Power's liability position following the implementation of the triangular contracting model will result in Western Power's finite resources being used to respond to individual claims rather than investing in improvements to the safety, reliability and efficiency of the electricity network for all West Australians. Accordingly, Western Power does not support any fundamental changes to the extent of its liability position. In broad terms this would mean the following:

- Western Power's liability to customers is limited to negligence and fraud.
- In determining negligence the principles in section 5W of the Civil Liability Act are observed.
- A cap on liability applies in respect of Western Power's liability to each customer. The caps should differ depending on the type of customer.
- Indirect loss is expressly excluded.

**7. Should negotiated ongoing supply contracts grant full scope for the parties to agree to contract away from the default liability settings established under Section 120(1) of the National Electricity Law? Should the answer be different in the case of small use customers?**

Western Power supports transparency and consistency on its liability position across all supply contracts. Accordingly, it is Western Power's preference that default liability settings such as those established under section 120(1) of the National Electricity Law apply to all customers.

Western Power notes that whilst there was scope for the parties to contract away from the liability position set out in the template Electricity Transfer and Access Contract approved as part of Western Power's access arrangement process this did not often occur in practice.

**8. Should customer contractual liabilities to Western Power be limited? If so, why and in what ways?**

Similar to Western Power's comments above regarding the extent of its liability, a limitation on Western Power's ability to recover loss from customers and also the removal of the contractual obligations owed by retailers to Western Power (e.g. provision of security/insurances, indemnifier, counterparty certainty etc.) will have the effect of limiting Western Power's resources resulting in less investment in improvements to the safety, reliability and efficiency of the network for all West

Australians. Accordingly, Western Power does not support any changes that will result in any fundamental change to Western Power's ability to recover its losses. In broad terms this would mean that customers have full liability to Western Power for negligence, fraud and default under their supply agreement.

**9. Should limits on customer contractual liabilities be defined differently for small-use and large customers?**

Western Power notes that any limit that is applied effectively means that the other customers connected to the network pay for any loss Western Power incurs beyond the limit. Having regard to this, Western Power queries whether any limitation is appropriate and the customer who causes Western Power loss is responsible for the full amount of that loss.

If a limit is contemplated then given the potential for large customers to cause significantly more damage to the Western Power network than small-use customers there are good reasons to set different limits.

**10. Are there other liabilities created by statute that should be considered for amendment as part of these reforms?**

Given the proposed changes to the fundamental structure of the contracting model, Western Power would imagine that several pieces of legislation will need to be considered for amendment (such as the Small Use Customer Code, Electricity Regulations, and NQRS). There is nothing specific Western Power seeks to highlight.

### 3 Customer-Retailer Relationship

**1. Are there any circumstances under which specific intervention is needed to ensure contracts are updated to reflect the change in contracting arrangements?**

No comment

**2. Are there any other reasons why intervention in contracts is necessary?**

No comment

### 4 Distributor-Retailer Relationship

**1. Is there any reason why local regulations regarding assistance and cooperation between retailers and distributors should be substantively different to the National Energy Customer Framework model set out in r. 94 of the National Energy Retail Rules?**

Western Power considers that consistency with the NECF is appropriate for assistance and cooperation requirements.

**2. Is there any reason why local regulations regarding provision of information between retailers and distributors should be substantively different to the National Energy Customer Framework model set out in rr.95-100 of the National Energy Retail Rules?**

Western Power considers that consistency with the NECF is appropriate for the provision of information.

Western Power considers that the alignment of retail market operations procedures to the national procedures governed by AEMO (such as B2B and MSATS) will facilitate a significant amount of the information sharing required. However, Western Power notes that provision of outage information to retailers is not currently conducted, and is not catered for within AEMO retail market operations

procedures. Therefore, a bespoke B2B transaction (or similar) will be required to facilitate this information sharing.

Western Power notes that Rule 99 of the NERR requires distributors to provide retailers with information regarding planned interruptions within the same timeframe as notifying customers of the planned interruption. Locally, distributors are currently required to provide customers with information regarding planned interruptions within the following timeframes – 72 hours for general customers (under the NQRS Code) and 3 business days for LSE customers (under the Small Use Customer Code). However, under rule 125(2)(d) NERR distributors are required to provide LSE customers with 4 business days' notice of planned interruptions. Western Power considers that the existing local customer protection arrangement in this regard is adequate and should be retained (i.e. 3 business days/72 hours' notice), rather than replicating the more onerous NERR requirement to provide 4 business days' notice. This customer protection element is not inconsistent with the triangular contracting model, therefore, the minimum change principle should be applied.

**3. Is there any reason why local regulations regarding classification and reclassification of customers should be substantively different to the National Energy Customer Framework model set out in rr.7-10 of the National Energy Retail Rules? Is the administrative burden associated with the classification and reclassification of customers reasonable?**

Western Power considers that the NECF process as outlined is appropriate. Western Power assumes that this will be managed electronically using AEMOs retail market procedures including the customer classified threshold provisions in MSATS applying as they do in other States (i.e. each NMI has a LOW, MEDIUM or HIGH tag based on set consumption thresholds), and that the administrative burden is reasonable.

Western Power notes that the Tariff Structure Statement included as part of the Regulatory Submission process will include a tariff allocation process for the purposes of assigning a network tariff.

**4. Is there any reason why local regulations regarding referral of enquiries and complaints should be substantively different to the National Energy Customer Framework model set out in rr. 101-102 of the National Energy Retail Rules? Is the overlap between the Customer Code and the proposed provisions adequately resolved?**

Western Power generally agrees that there is no reason why local regulations should be substantively different to the NECF, subject to the following comments:

- Western Power agrees with the PUO's suggestion that the Small Use Customer Code should be amended to address the overlap with the complaints provisions under the NERR, specifically, to exclude the application of the Small Use Customer Code to complaints under the new regulations
- Western Power notes specifically that the requirement *"to provide information about a shared customer's energy consumption, the distributor must use its best endeavours to provide the information to the retailer at no cost and in a timely manner to allow the retailer to carry out its obligations to provide information to its customer"* should be removed. If a retailer is the current Financially Responsible Market Participant, access to consumption data should be facilitated by the appropriate retail market processes managed by AEMO, in the standard Meter Data File Format, and any additional requirement for the Distributor to provide this information is not warranted.

**5. Is there any reason why local regulations regarding coordination of service standard payments should be substantively different to the National Energy Customer Framework model set out in r.84 of the National Energy Retail Rules?**

Western Power generally agrees that there is no reason why local regulations should be substantively different to the NECF. Western Power assumes that there is no intent to change the current local service standard payments and the circumstances in which customers are entitled to those payments.

**6. Is there any reason why local regulations regarding coordination of de-energisations and re-energisations should be substantively different to the National Energy Customer Framework model set out in rr.103-106 of the National Energy Retail Rules?**

Western Power considers that harmonisation with the de-energisation and re-energisation requirements of the National Energy Customer Framework is appropriate. This will be particularly relevant to ensure adequate capture of the new requirements relating to smart metering services and retailer initiated de-energisations and re-energisations that will result from contestable metering framework within the updated NER Chapter 7.

Specific feedback to the points noted by the PUO are as follows:

- *If the distributor is entitled under applicable energy laws to refuse a retailer's request to de-energise a customer's premises, the distributor must promptly notify the retailer of its reasons for doing so.*

Western Power assumes that this will be completed via a 'not complete' response to the B2B de-energisation request, which must include a reason code. Further clarification might be necessary from the PUO if this is not the case.

- *If the distributor de-energises a customer's premises in accordance with applicable energy laws, the distributor must notify the retailer of the de-energisation and the reason for it, as soon as practicable, except where the de-energisation is as a result of the retailer's request.*

Western Power assumes that this will be completed via changing the NMI status to 'D' in MSATS which will notify the retailer. Further clarification might be necessary from the PUO if this is not the case.

- *If a distributor is required to de-energise a customer's premises within the timeframes for de-energisation in accordance with a distributor service standard, and the distributor fails to do so, the distributor must (unless the failure is due to an act or omission of the customer or retailer):*

Western Power requests that the requirements includes a timeframe exclusion for "an event outside the distributor's reasonable control" to cover situations where de-energisations cannot be completed for reasons such as bad weather.

**7. Is there any reason why local regulations regarding mutual indemnification should be substantively different to the National Energy Customer Framework model set out in s.317 of the National Energy Retail Law?**

Western Power makes the observation that mutual indemnities are not required under the existing electricity regime and therefore there may be a change to the risk allocation between distributor and retailer if the provisions in s.317 of the National Energy Retail Law are adopted. That said,

Western Power does not consider that there are any substantive reasons why the mutual indemnification provisions should not be adopted.

**8. Is there any reason why local regulations regarding billing arrangements should be substantively different to the National Energy Customer Framework model set out in Part A of Chapter 6B of the National Electricity Rules?**

Western Power considers that the NECF process as outlined is appropriate.

It should be noted that in other jurisdictions, in addition to the content in Part A of Ch 6B, a detailed B2B Network Billing specification (which is not a national B2B) has also been developed. Whilst there are similarities in each State's version, there are also some differences.

Western Power currently administers its own Network Billing B2B specification, in consultation with Market Participants. This build pack was modelled heavily on the Queensland version.

Western Power expects that this will continue to manage this specification, however the PUO should consider roles and responsibilities in developing, negotiating and approving any new/modified specification in WA.

**9. Is there any reason why local regulations regarding the administrative framework for credit support should be substantively different to the National Energy Customer Framework model set out in Rule 6B.B2.1, Divisions 1, 4 and 5 of Part B of Chapter 6B and Schedule 6B.2 of the National Electricity Rules?**

Western Power considers that the broad NECF administrative framework for credit support is appropriate, including the management of a retailer failure via a Retailer of Last Resort mechanism. Western Power considers that without an equivalent and effective mechanism, that there will likely be cause to amend the Rules to represent jurisdictional differences.

Western Power has previously articulated the limitations of the local equivalent ROLR scheme to the PUO, and would welcome further discussions with the PUO on this point. It is noted on Page 4 of the Position Paper the actual credit support calculations and methodology, as well as ROLR scheme design, will be the subject of later consultation.

Western Power also notes that there is a current NER rule change "Distributor-retailer Credit Support Requirements Rule 2015" currently in progress, and expects that Western Australia would align with any AEMC determination should national alignment be decided upon.

**10. Do you consider that the Commercial Arbitration Act is a suitable framework for managing disputes regarding billing and credit support?**

By way of preliminary comment, Western Power assumes that the references in the above question to "billing" and "credit support" are references to those matters set out in paragraph of section 6.2.10, being:

- Billing - amounts set out in a statement of charges from a distributor to a retailer; or
- Credit support - the distributor's entitlement to the credit support provided by the retailer, in whole or in part.

Western Power notes that disputes as to invoices for charges and Western Power's entitlement to security are currently dealt with contractually under the relevant access agreement with the relevant retailer. Typically this process involves meetings to discuss the dispute followed by litigation if the dispute cannot be resolved.

Given the clear and transparent method for calculating charges, Western Power has had few relatively few disputes with retailers in relation to billing and any disputes that do arise are quickly

resolved. The same also applies in relation to disputes as to Western Power's entitlement to call on security under access agreements. Given this, Western Power considers the existing contractual mechanisms remain appropriate in the context of the above matters and the NER.

If it is nonetheless decided that arbitration is necessary for the matters described above, Western Power provides the following comments in relation to the Commercial Arbitration Act 2012 (WA):

- Western Power notes that there are a number of matters that can be decided by the relevant parties, including but not limited to ss10 (number of arbitrators), 11(2) (the procedure for appointing the relevant arbitrators), 11(6) (any qualifications required of the relevant arbitrator), 13(1) (the procedure for challenging an arbitrator), 19(1) (the procedure to be followed by the arbitral tribunal in conducting the proceedings), 20(1) (the place of arbitration) and 22(1) (language). Western Power considers that these matters should not, without careful consideration of each relevant provision, be left to the stated default position. Western Power considers that a form of agreed arbitration provisions dealing with such matters is preferred to ensure that relevant disputes are consistently, efficiently, appropriately and fairly heard;
- Western Power notes that there are a number of sections in the CAA that the parties can agree do not apply, including but not limited to ss 17(1) (granting of interim measures), 21 (the date of a particular dispute), 23 (statement of claim) and 24(1) (oral hearings). Western Power likewise considers that careful consideration of each of these 'opt out' provisions is required and, if appropriate, reflected in the abovementioned arbitration provisions; and
- Western Power considers that any additional 'rules' of arbitration should, in so far as possible, be clear, certain and agreed upfront.

Western Power would welcome the opportunity to further comment on any proposed form of agreed arbitration provisions as proposed above.