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Dear Commissioner

**Territory Generation submissions to Electricity Retail Supply Code Review Draft Decision Paper and Draft Amended Code**

Thank you for your correspondence of 2 November 2022, inviting Power Generation Corporation trading as Territory Generation ('TGen') to provide submissions in respect of the 'Electricity Retail Supply Code Review Draft Decision Paper 31 October 2022'.

TGen's submissions are as follows:

**1. Credit Support Provisions**

**1.1** By its 'Electricity Retail Supply Code Review Draft Decision Paper 31 October 2022' ('Draft Decision Paper'), the Utilities Commission ('Commission'), invited all stakeholders to make submissions on its proposed amendments to the Electricity Retail Supply Code ('Code').

**1.2** TGen is supportive of the draft generation credit support provisions of the Draft Decision Paper.

**2. Abolishing 'Retailer of Last Resort' provisions**

**2.1** The Draft Decision Paper sets out the Commission's intention to amend the Code by removing in its entirety all Retailer of Last Resort ('RoLR') provisions currently at clause 9 of the Code, along with associated definitions.

**2.2** It is of concern the abolishment of the RoLR provisions is intended in the absence of the Commission ensuring the proposed legislative replacement RoLR scheme is enacted and in effect. Similarly, the Commission has not made any RoLR interim arrangements (such as drafting amendments to clause 9 of the Code). An interim arrangement over deleting clause 9 in advance, would ensure stakeholders are not left without any RoLR provision for the time required to establish a legislative model.

**2.3** The position to abolish the RoLR provisions without an interim option appears to have been advanced, notwithstanding previous stakeholder submissions favouring retention of the RoLR provisions, until the Commission has ensured an appropriate replacement option is in effect by new legislative regime<sup>1</sup> (reflecting the Commission's prior position that a legislative RoLR regime is required).

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<sup>1</sup> Draft Decision Paper, page 20, in summarising previous submissions of Jacana Energy and Power Water Corporation regarding the RoLR

**2.4** As the Commission states in the Draft Decision Paper “[t]he purpose of RoLR provisions is to ensure that in the event of an electricity retailer failure arrangements are in place to ensure that relevant customers continue to receive electricity supply.”<sup>2</sup> RoLR schemes are in effect in other jurisdictions.

**2.5** TGen submits a RoLR scheme is integral to the role of the Commission in effectively providing regulatory oversight, and importantly, ensuring end-customer protections. To abolish the RoLR provisions of the Code without replacement, suggests the Commission will step away from its role to promote security of supply. Without provision in the Code (or substitute legislation), the Commission will not be able to mitigate disruptions to end customers if a retailer fails. Instead, by removing RoLR provisions without an alternative model, the Commission gives preference to commercial parties pursuing their interests in line with what is permissible under contract.

**2.6 Effect on existing contractual obligations**

The Commission may not have had the opportunity to explore in detail the likelihood, that by abolishing the existing RoLR provisions without substitute, existing contractual obligations on commercial parties in relation to end customers will be diminished. For instance, the default and termination provisions of current contracts were drafted with regard to the RoLR provisions as key in ensuring that in the event a retailer fails and cannot meet its contractual obligations leading to contract termination, there is a role for the Commission to mitigate or minimise uncertainty for end customers.

**2.7 Inconsistency of the RoLR provisions with “relevant Commonwealth legislation” - unstipulated**

The Commission does not outline in its Draft Decision Paper, what inconsistency the RoLR provisions have with “relevant Commonwealth legislation”.<sup>3</sup> Without the benefit of understanding what Commonwealth laws are potentially contravened or an elaboration as to why RoLR provisions are deemed ineffective (aside from the unspecified potential inconsistency at law) the ability of stakeholders to provide informed comment or suggest as to interim positions the Commission could adopt, is somewhat curtailed.

**2.8** It is also not apparent from the Draft Decision Paper the basis the Commission itself is not vested with responsibility for drafting the necessary legislative provisions to provide a RoLR scheme (and in the interim, amendments to clause 9 of the Code to seek to remove perceived inconsistency at law). In this regard, the Commission outlines it has an understanding “the Office of Sustainable Energy is progressing work to address this issue...”. However, the Draft Decision Paper does not indicate the stage of any proposed works or commit to a legislative amendment timetable. It only outlines that a different agency of Government has been tasked with carriage of overhauling the RoLR scheme, on an unspecified timeframe to enact legislation. It is respectfully submitted the Commission is introducing unnecessary uncertainty for end customers and affecting established contracts obligations by abolishing the existing RoLR of the Code before an alternate RoLR model is in effect.

**2.9** Existing contractual arrangements between generators and retailers refer to existing RoLR provisions of the Code. In the event a contract breach is not remedied, the existing RoLR provisions are part of a framework of steps to occur. It is clear the purpose of the RoLR provisions is to allow the Commission to be involved to ensure the smooth transition of affected customers to a failed electricity retailer.

**2.10** In the event of unresolved contract breaches, it is untenable that existing contractual arrangements can continue, instead these will inevitably be terminated. If the Commission proceeds to abolish the RoLR provisions from the Code, the transition of customers to an alternate retailer will not be governed by the Commission’s oversight, but instead is likely to be left to the failed retailer. In the absence of the involvement

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<sup>2</sup> Draft Decision Paper, page 20

<sup>3</sup> Ibid

of the Commission, the transition of supply to customers (to a different retailer) would be at the discretion of what communications and provisions a failed retailer elects to put in place for its customer base. This may not be to a standard the Commission expects by the RoLR provisions.

### **2.11 Abolishing the RoLR provision not consistent with the *Utilities Commission Regulations 2001***

TGen's view is that it is preferable the Commission retain the existing RoLR provisions over abolishing clause 9 of the Code without a substitute RoLR model. Abolishing the existence of a RoLR provision prior to replacement, does not appear consistent with Regulation 2A of the *Utilities Commission Regulations 2001* that states a code in relation to retail supply may among other things, allows the Commission to deal with the transfer of customers between retailers, retailer of last resort arrangements and dispute resolution.

### **2.12 Detrimental outcomes for end user in removal of the RoLR provision without substitution**

It is submitted that removing the RoLR provisions prior to establishing replacement provisions (either by amending the Code or by legislative regime) will unnecessarily introduce doubt where parties currently have current clear roles at contract and by reference to the Code. The loss of any RoLR oversight mostly poses the risk of being detrimental to the end customer as the proposed change mean:

- less protections, and increased risk of uncertainty or interrupted supply for end customers, if the retailer a customer is signed up with fails
- introducing disruption to some aspects of default and termination provisions of existing commercial arrangements. These provisions having been drafted contemplating the existence of a RoLR scheme and the associated role of the Commission to protect end customers if a retailer fails, and
- diluting obligations on commercial parties, by removing the ability of the Commission to be involved to facilitate a smooth transition for end customers to be assigned to an alternate retailer (i.e. the RoLR), if a contractual arrangement is terminated.

**2.13** The Commission cites "confusion and risk" as reason for abolishing the RoLR provisions at this stage, prior to a replacement model. TGen submits that the removal of the RoLR provisions, over amending clause 9 of the Code to improve clarity of operation or not amending the existing Code until relevant RoLR legislation is in operation is a greater risk of causing confusion and risk, as existing commercial contracts contemplate a RoLR scheme existing.

**2.14** If the Commission intends to proceed with abolishing the RoLR, it is suggested that sufficient consultation timeframe be allowed (of not less than 12 months, or preferably the timeframe required for a substitute scheme to be given legislative effect). This approach will allow all parties to existing contracts the opportunity to renegotiate existing key contract clauses such as default and termination. It also contemplates the Commission having time to consult in detail with all stakeholders, and if appropriate for the Commission to draft interim amendments to the Code.

## **3. Conclusion**

TGen submits for the consideration of the Commission its position of favouring the retention of the 'Retailer of Last Resort' provisions, until such time that the Commission is in a position to assure affected stakeholders that a suitable legislative RoLR model is in effect.

The Commission allowing time for adequate consultation with all stakeholders, and suitable transition timeframes well in advance of any changes (rather than the advance deletion of clause 9 without substitute) will reflect the Commission appreciating the RoLR provisions are integral to existing contract obligations, and relevant to operations that will affect end customers.

If you have any queries or require clarification, please contact me on 08 7979 2509 or by email [hieu.nguyen@territorygeneration.com.au](mailto:hieu.nguyen@territorygeneration.com.au)

Yours sincerely



Hieu Nguyen

**General Manager Legal, Governance & People and Company Secretary**

14 December 2022