



# **APPLICATION FOR AMENDMENTS TO THE RETAIL SUPPLY CODE**

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**DRAFT DECISION**

*November 2012*

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## Call for submissions

Submissions are invited from interested parties concerning this Draft Decision and the revised Retail Supply Code.

Submissions should be directed in the first instance to:

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Utilities Commission  
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The closing date for submissions is **30 November 2012**.

## Confidentiality

In the interest of transparency and to promote informed discussion, the Commission will make submissions publicly available.

Persons wishing to submit confidential information should:

- clearly identify the relevant sections of the submission that are confidential, so that the remainder of the document can be made publicly available; and
- provide a copy of the submission suitable for publication with any confidential material removed.

Confidential information is defined in section 26 of the *Utilities Commission Act* as information that could affect the competitive position of a licensed entity or other person or information that is commercially sensitive for some other reason.

## Public access to submissions

Subject to the above, submissions will be made available for public inspection at the office of the Commission and on its website ([www.utilicom.nt.gov.au](http://www.utilicom.nt.gov.au)).

To facilitate publication on the Commission's website, submissions should be provided electronically in Adobe Acrobat or Microsoft Word format by CD, DVD, or email. However, if this is not possible, submissions can be made in writing.

# CHAPTER 1

## Executive Summary

### Introduction

- 1.1 The Utilities Commission of the Northern Territory (the Commission) is an independent statutory authority responsible for the economic regulation of the electricity supply industry, which is governed by the *Utilities Commission Act* (the Act), the *Electricity Reform Act*, the *Electricity Networks (Third Party Access) Act*, and associated legislation.
- 1.2 Under the Act, the Commission has the power to make codes and rules if authorised to do so under a relevant industry regulation Act or by regulations under the Act<sup>1</sup>. These relevant industry regulation Acts include the *Electricity Reform Act*, and the *Electricity Networks (Third Party Access) Act* among others.
- 1.3 On 3 August 2011, the Commission made an Electricity Retail Supply Code (the Code) in accordance with the Act.<sup>2</sup> The Code prescribes matters relating to arrangements:
  - between electricity businesses for the transfer of customers between retailers;
  - between generators and retailers including credit support and billing;
  - between electricity businesses for business-to-business interaction;
  - for a retailer of last resort; and
  - for dispute resolution between electricity businesses.<sup>3</sup>
- 1.4 The Code was developed in response to the need for a governing set of rules to support retail supply activities, full retail contestability and emerging competition in the Territory market. The Commission flagged the possibility of amending the Code in response to issues that may impact on the administration of the Code or further developments in the market.
- 1.5 On 15 May 2012, QEnergy Limited (QEnergy) made an application to the Commission to amend parts of the Code.<sup>4</sup> QEnergy expressed a number of concerns relating to credit support requirements between generators and retailers, access to metering data, and customer transfers arrangements governed by the Code.
- 1.6 On 10 July 2012, the Commission released a Consultation Paper on QEnergy's proposed amendments and received submissions from QEnergy, Power and Water Corporation (PWC) and the Northern Territory Major Energy Users Group (NTMEU).

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1 Section 24, *Utilities Commission Act*.

2 *Ibid.*

3 Utilities Commission, *Electricity Retail Supply Code Consultation Paper*, July 2011, page 1.

4 An electricity entity may make a request for the Commission to vary or revoke parts of the Code under clause 2.2.1 of the Retail Supply Code.

- 1.7 On 28 September 2012, the Commission released an Options Paper, which outlined potential options for amending the Code and sought public comment on whether or not these options adequately address the concerns raised by interested parties and participants in the Territory's electricity supply industry.
- 1.8 The Commission received submissions from QEnergy, PWC and the NTMEU. Public versions of these submissions (as well as submissions made in response to the Options Paper) are available on the Commission's website: ([www.utilicom.nt.gov.au](http://www.utilicom.nt.gov.au)).
- 1.9 The Act requires the Commission to ensure that the Code remains relevant and effective.<sup>5</sup>
- 1.10 After consideration of the issues raised, the Commission has made its Draft Decision to amend the Code in accordance with this paper and the revised Code.

## Key aspects of the proposed amendments to the Code

1.11 Table 1.1 presents a summary of the key proposed amendments to the Code.

Topic	Commission's Draft Decisions	Implementation of Decision
Retailer-generator credit support arrangements.	The Commission does not propose to maintain the existing retailer-generator credit support arrangements.	N/A
	The Commission does not support QEnergy's proposal (Option A1) for the Commission to reduce the maximum 'required generation credit support amount' payable by a retailer to a generator from two months (ie two times) to two weeks (ie 0.5 times) of generation charges.	
	The Commission will adopt an approach that: <ul style="list-style-type: none"> <li>defines the elements underpinning the credit support duration; and</li> <li>allows the credit support amount to change in response to negotiated billing or payment periods. (Option A2).</li> </ul>	Amendment to clause 3.2.2.
	The Commission will define the reactive period as a 14-day timeframe or as otherwise specified by the Commission in guidelines (Option A3).	Amendment to clause 3.2.2 and 3.2.2(ba).
	The Commission will adopt the approach of requiring PWC Generation to comply with a set of negotiation principles and to submit to the Commission a negotiation framework in relation to retailer-generator credit support arrangements (Option A4).	Amendment to clause 3.5.
	The Commission will adopt a scaling down mechanism for retailer-generator credit support arrangements as set out in Option A5. Percentage reduction amounts will be defined by the Commission in guidelines.	Amendment to clause 3.2.2.
	The Commission will adopt the following requirements: <ul style="list-style-type: none"> <li>a retailer must advise generators or the network provider (whichever is applicable) of any change to its credit rating immediately after becoming aware of that change; and</li> <li>the generator or network provider (whichever is applicable) may obtain relevant credit rating information</li> </ul>	Amendment to clause 3.6.

<sup>5</sup> Section 24 (9), *Utilities Commission Act*.

	to monitor ongoing changes to the retailer's credit rating.	
	The Commission does not support the adoption of NECF retailer-distributor credit support arrangements for retailer-generator credit support arrangements (Option A6).	N/A
Forms of credit support	The Commission will permit all alternative forms of credit support to be determined by the parties through honest, fair and good faith negotiations (second Option A6).	Amendment to clause 3.4.1.
Alignment of government-owned corporations with private enterprises	The Commission will adopt an approach whereby credit support requirements are applied consistently across private and public enterprises. (Option A7). The exemption of credit support requirements for public enterprises will be removed.	Amendment to clause 3.2.2 (a).
Credit support allowances percentage table for retailer-network provider credit support arrangements.	The Commission will adopt an approach whereby the credit support allowances percentages table is defined by the Commission in guidelines.  This table will be defined in accordance with the table outlined in QEnergy's amendment application.  Subsequent changes to the table will be considered on a case by case basis and where appropriate in the Territory context.	Development of Credit Support Guidelines.
Response time to a data request	The Commission will align the timeframe for the provision of data to customers and retailers (Option C1).  The network provider will be required to provide data to customers and retailer within 3 business days (Option C2).  The Code will clarify that the timeframe for the provision of data to customers will commence once the customer data request is valid.  The Commission will insert an additional clause that will require the network provider to inform customers of any additional information that is required to process a customer data request as soon as practicable and within one business day of receiving an incomplete customer data request.	Amendment to clause 6.
Minimum timeframes for processing data requests	The Commission will retain cause 6.2.8 (b) in its current form.	No amendment to clause 6.2.8 (b).
Data arrangements and provision of data to the generator	The Commission will permit parties to enter into a tripartite agreement (or multi-party agreement) to facilitate data requests and usage of metering data (Option D).	Amendment to clause 6. In particular clause 6.4 has been inserted (multi-party agreement).
Timeframe to reject a customer transfer request	The Commission will reduce the timeframe to notify the rejection of a customer transfer request from five business days to three business days (Option E).	Amendment to clause 8.
Timeframe to advise of a customer transfer date	The Commission will reduce the timeframe to advise of a customer transfer request from five business days to three business days (Option F).	Amendment to clause 8.
Waiving the cooling-off period	The Commission will permit customers using more than 160 megawatt hours each year to waive the cooling-off period.	Amendment to clause 8.2.20.

## Purpose of this paper

- 1.12 The purpose of this paper is to outline the Commission's Draft Decision to amend the Code, seek public comment on the form and content of these amendments and to respond to the issue raised by industry participants and stakeholders in the Territory's electricity supply industry.
- 1.13 The form and content of the proposed amendments to the Code are contained in the revised Code, which has been released in conjunction with this Draft Decision and is available on the Commission's website ([www.utilicom.nt.gov.au](http://www.utilicom.nt.gov.au)).
- 1.14 In seeking to amend the Code, the Commission has had regard to the need to:
- promote competitive and fair market conduct;
  - prevent misuse of monopoly or market power;
  - facilitate entry into relevant markets;
  - promote economic efficiency;
  - ensure consumers benefit from competition and efficiency;
  - protect the interests of consumers with respect to reliability and quality of services and supply in regulated industries;
  - facilitate maintenance of the financial viability of regulated industries; and
  - ensure an appropriate rate of return on regulated infrastructure assets.<sup>6</sup>
- 1.15 Chapter 2 outlines the Commission's response to submissions and the rationale for the proposed amendments to the Code.
- 1.16 This Draft Decision should be read in conjunction with the revised Code and any submissions made in response to the Options Paper. These documents are available on the Commission's website ([www.utilicom.nt.gov.au](http://www.utilicom.nt.gov.au)) or by contacting the Commission's Office by telephone on 08 8999 5480, fax on 08 8999 6262, or email at [utilities.commission@nt.gov.au](mailto:utilities.commission@nt.gov.au).
- 1.17 The timeframe for consultation is outlined in Table 1.2.

Table 1.2: Timeframe for consultation

Action	Timeframe
Commission issues Draft Decision to amend the Retail Supply Code	16 November 2012
Comments due on Draft Decision	30 November 2012
Final Decision including the issuing of a varied Retail Supply Code.	14 December 2012

- 1.18 The Commission invites submissions on this Draft Decision and revised Code by close of business 30 November 2012.

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<sup>6</sup> Section 5 (2), *Utilities Commission Act*.

## CHAPTER 2

### Draft Decision to amend the Retail Supply Code

#### Summary

- 2.1 The Code provides an overall framework, together with appropriate mechanisms, to facilitate retail competition in the Territory's electricity supply industry. This is achieved through prescribing a coordinated package of processes and procedures for retail supply activities.
- 2.2 The Code aims to strike an appropriate balance between the needs of consumers and electricity entities and the protection of the Territory electricity market. Matters prescribed in the Code include arrangements:
  - between electricity businesses for the transfer of customers between retailers;
  - between generators and retailers including credit support and billing;
  - between electricity businesses for business to business interaction;
  - for a retailer of last resort; and
  - for dispute resolution between electricity businesses.
- 2.3 The development of the Code was influenced by similar regulatory arrangements in other Australian jurisdictions.
- 2.4 The Territory market is dominated by one vertically integrated government-owned corporation, PWC. PWC business units (PWC Generation, PWC Network and PWC Retail) have substantial market power in each respective supply chain of the electricity supply industry.
- 2.5 PWC's vertical integration is seen as a major concern to some interested parties, such as QEnergy and the NTMEU. Despite the removal of legal barriers to full retail contestability (FRC)<sup>7</sup>, interested parties continue to express doubts over whether consumers will see the full benefits of retail contestability as demonstrated in the NEM.
- 2.6 Regulatory arrangements in the Code may assist in promoting a level playing field among competitors, while lifting barriers of entry to facilitate FRC. However, the Commission is mindful of providing inappropriate market signals that encourage activities that are detrimental to the market and its continued stability.
- 2.7 For example, a credit support regime should encourage retailers' to appropriately manage risk as well as factoring in all of the potential costs in making business decisions, including any impact on third-party market participants. A credit support regime should be robust enough to actively discourage retailers from adopting inferior

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<sup>7</sup> The Territory adopted a staged approach to contestability. All large customers (depending on their consumption level) were able to choose their retailer from between 1 April 2000 to April 2002. Small businesses and household customers (that is consuming less than 750 megawatt hours of electricity each year) became contestable from 1 April 2010.



and inefficient business strategies, which are detrimental to generators and the market as a whole.<sup>8</sup>

- 2.8 This needs to be balanced with the need to promote appropriate risk management on behalf of generators. This is important in the Territory context, given PWC Generation's dominance in the generation market and PWC Retail's dominance in the retail electricity market.
- 2.9 An overly stringent credit support regime may not provide any incentives for PWC Generation to appropriately manage risk in a commercially sound manner, but instead provide a mechanism for PWC Generation to request credit support from a competitive retailer, to the commercial advantage (or perceived commercial advantage) of its related party, PWC Retail.
- 2.10 The Commission considers its Draft Decision to strike an appropriate balance between promoting a level playing field and facilitating FRC on the one hand and protecting the integrity of the market and discouraging inappropriate market signals among industry participants and stakeholders on the other.
- 2.11 This chapter is structured as follows:
- the Code's existing arrangements are outlined;
  - QEnergy's initial and supplementary applications for amendments to the Code and PWC's proposed amendments are outlined as well as the Commission's proposed options (as stipulated in the Options Paper) where relevant;
  - views in submissions are outlined;
  - the Commission's response is outlined including information on the proposed amendments; and
  - the Commission draft decision is outlined.

## **Credit support arrangements between a retailer and a generator**

### **Existing arrangements**

- 2.12 Credit support requirements between a generator and a retailer are contained in clause 3.2 of the Code. The Code:
- prevents a generator from requiring credit support from a retailer that either has an 'acceptable credit rating' (or its parent company has an acceptable credit rating) or is a fully owned subsidiary of the Australian Federal Government, or an Australian state or territory government;<sup>9</sup> and
  - allows a generator to require credit support from a retailer up to the 'required generation credit support amount' calculated under the Code but only in instances where the retailer does not have an 'acceptable credit rating' or is not a fully owned subsidiary of the Australian Federal Government, or an Australian state or territory government.<sup>10</sup>

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<sup>8</sup> Competition Economists Group, 'Assessing efficiency in settlement and prudential arrangements for energy markets; A report for AEMO', January 2010.

<sup>9</sup> Clause 3.2.2 (a), Retail Supply Code.

<sup>10</sup> Ibid, Clause 3.2.2 (b).

- 2.13 The Code defines 'acceptable credit rating' as a credit rating of BBB+ (or its equivalent) or higher from Standard and Poor's, Fitch Ratings or Moody's Investor Services.<sup>11</sup>
- 2.14 If a generator requires credit support from a retailer, the 'required generation credit support amount' is the greater of:
- two times the retailer's reasonable forecast of its highest generation services bill (ie the billing period) over the following 12 months (of which the forecast must be updated half yearly); or
  - two times the generator's record of the highest generation services bill issued to the retailers by the generator over the previous 12 months (which will be updated half yearly).<sup>12</sup>
- 2.15 The time period covered by the highest generation services bill must not exceed one month for the purpose of calculating the 'required generation credit support amount'.<sup>13</sup>
- 2.16 Therefore, the maximum time period covered by the credit support amount (the credit support duration) is 56 days (assuming the maximum monthly (or 28-day) billing period, multiplied by two).
- 2.17 The required generation credit support mechanism defined in the Code enables a generator to calculate the maximum amount it may require from a retailer.<sup>14</sup> Retailers and generators can negotiate and agree on alternative credit support arrangements.
- 2.18 The Code prescribes a form of credit support that may be any combination of:
- a bank guarantee that is unconditional and callable on demand and is issued by a financial institution supervised by the Australian Prudential Regulation Authority;
  - an unconditional guarantee or other form of irrevocable credit support that is in a form that is acceptable to the generator (or network provider) at its sole discretion and is issued by an entity with an acceptable credit rating; or
  - such other forms of credit that the parties consider to be acceptable.<sup>15</sup>

### **Option A1: Reducing the credit support amount to 0.5 times of generation services charge**

#### *QEnergy's proposed amendment*

- 2.19 In its amendment application, QEnergy proposed that the Commission reduce the maximum 'required generation credit support amount' payable by a retailer to a generator from two months (ie two times) to two weeks (ie 0.5 times) of generation charges (or the retailer's reasonable forecasts of generation charges) on the basis that:
- QEnergy is unable to compete on a level playing field, given PWC's dominant market position as a provider of generation services;
  - PWC Generation will always require the maximum 'required generation credit support amount' and has been unwilling to negotiate terms below this upper limit;

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<sup>11</sup> Ibid, Schedule 1.

<sup>12</sup> Ibid, Clause 3.2.2 (b).

<sup>13</sup> Ibid.

<sup>14</sup> Ibid, Clause 3.2.1.

<sup>15</sup> Ibid, Clause 3.4.1.

- PWC Retail is not required to provide credit support to generators. Therefore, the arrangements in the Code impose additional financial cost on QEnergy's business (which are not imposed on PWC Retail), and place it at a competitive disadvantage in the retail electricity market; and
- QEnergy's claims that PWC has not been willing to consider any other way of mitigating risk to its business, including:
  - more flexible forms of credit support from a retailer, such as a trust account; and
  - shorter settlement periods (such as billing periods shorter than one month), which will reduce the 'required generation credit support amount' calculated under the Code.

*Views in submissions in response to Option A1*

2.20 In its submission to the Consultation Paper, NTMEU considered PWC to have a unique position to limit the entry of competitive retailers into the market by applying credit support requirements on new retailers. This results in increased costs to competitive retailers, which are not incurred by PWC Retail.

2.21 In its submissions to the Consultation Paper and Options Paper, PWC opposed QEnergy's proposal and recommended that the Commission maintain the existing arrangements. PWC made the following points:

- the maximum 'required generation credit support amount' payable by a retailer to a generator should remain at two months (two times) of generation charges or the retailer's reasonable forecasts of generation charges given that:
  - six weeks of trading would have passed on the occurrence of a retailer of last resort (RoLR) event;
  - two weeks of credit support would not cover the payments outstanding on the occurrence of a RoLR event, and
- QEnergy's proposed amendment would:
  - transfer considerable risk to PWC and create significant financial exposure to PWC Generation;
  - increase the risk that PWC will activate payment default mechanisms at an earlier stage as opposed to a similar situation where credit support is available;
- PWC claims that it would react promptly to a payment default given the lack of RoLR procedures in the Code;
- PWC claims that it has demonstrated its willingness to request credit support below the maximum amount stipulated in the Code, where the circumstances are appropriate; and
- the existing arrangements were considered appropriate at the time the Code was developed in 2011 and provide a suitable method for PWC Generation to manage its financial risk.

*Commission's comments*

2.22 In the Options Paper, the Commission responded to QEnergy's proposal and stated that the proposal would always result in a shortfall of credit support to the generator to cover a RoLR event (assuming a monthly or 28-day billing period). The Commission

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noted that this would adversely impact on the market and its continued stability and may transfer undue risk from retailers to generators.

- 2.23 The Commission also noted that QEnergy's proposal may result in such a shortfall of credit support to generators that there may be no incentive for retailers to engage in effective negotiation with the generator.

*Views in submission to Options Paper*

2.24 QEnergy responded to the Commission's comments in its submission to the Options Paper stating that the likelihood of its proposal having an impact on the integrity of the market will depend on the risk of the individual retailer and the volumes transferable under the credit support requirements.

2.25 In its submission to the Options Paper, NTMEU commented generally on the Commission's approach to devising the options outlined in the Options Paper: NTMEU's view is that:

- The Commission needs to develop solutions that reflect the essential nature of the market, where PWC Generation has an effective monopoly.
- As a monopoly, PWC Generation can avoid the need to negotiate with other parties and can provide related parties with preference to maximise the ability of its related parties to retain market share.
- The Rules need to be structured so that competition is possible within a market where competition exists only at the retail end of the market.

*Commission's response to views in submissions to Option A1*

2.26 The Commission notes QEnergy's comment that any adverse impact on the market will depend on the risk of the individual retailer and the volumes transferable under the credit support requirements. The Commission agrees with QEnergy's comments in terms of the specific impact of a particular RoLR event.

2.27 The Commission is concerned with any inappropriate market signals that may stem from adopting QEnergy's proposal. The Commission's view is that:

- It is regulatory best practice for retailer-generator credit support arrangements to cover payments outstanding up until the transfer of customer load from the defaulted retailer to the RoLR.
- QEnergy's proposal will always result in a shortfall of credit support from a retailer to the generator to cover these payments outstanding.
- Undue financial risk will be transferred from retailers to generators who may not have agreed to accept this risk. This may be exploited by retailers and exacerbated on a wider scale through risky business ventures. This will adversely impact on the market and its continued stability. Regulatory arrangements should not impose this type of risk to be borne by generators.

2.28 The Commission also notes that the losses incurred up until the transfer of customer load to the RoLR should be borne by the party that can absorb the loss at the lowest costs (which should result in appropriate price signals to industry participants and consumers). This is generally the bank that provides a bank guarantee, the entity that provides an alternative form of credit support or some other arrangement in favour of the generator (and as agreed through negotiations) or the generator if it agrees to bear the loss.

- 2.29 The implication of adopting QEnergy's proposal is that most of the loss will be borne by the generator (regardless of whether the generator is the most appropriate party to absorb the loss in the circumstances). This would be mandated by the Code, without the consent of the generator. The Commission does not consider this to be an acceptable outcome.
- 2.30 The Commission is also mindful that there are no legal barriers to contestability in the generation market. If QEnergy's proposal is adopted, privately-owned generators would not have the ability to request credit support to cover payments outstanding up until the transfer of customer load to the RoLR. This may impact on a private entity's decision to enter into the generation market and may present a barrier to entry in this regard.
- 2.31 The Commission considers that the concerns raised by QEnergy and NTMEU appear legitimate and the Code does not adequately address these concerns in its present form.
- 2.32 In particular, the Commission notes NTMEU's concerns regarding PWC's monopoly status and the ability (or perceived ability) to abuse that monopoly power through preferential treatment of its related parties.
- 2.33 The Commission notes that it can be difficult to devise regulatory responses that have the same type of impact as significant structural reform undertaken in NEM jurisdictions. However, the Commission has implemented other measures (independent of the Code) to address potential issues of discriminatory conduct in the Territory market (ie Ring-fencing Code contains provisions which require PWC business units to deal in a non-discriminatory arms length basis towards other PWC business units and third parties).
- 2.34 In regard to PWC's comment that the existing arrangements should remain as PWC has demonstrated its willingness (in one instance) to request credit support below the maximum amount, the Commission has identified deficiencies in the way in which credit support is calculated (for discussion see Option A2) and notes that the existing arrangements intended to (among other things) facilitate good faith negotiation with respect to credit support arrangements between the parties. The Commission considers that the existing arrangements do not achieve this objective and should be amended so that the Code remains relevant and effective.

#### *Commission's draft decision*

- 2.35 Commission's draft decision:
- The Commission does not propose to maintain the existing retailer-generator credit support arrangements in its current form.
  - The Commission does not support Option A1; QEnergy's proposal for the Commission to reduce the maximum 'required generation credit support amount' payable by a retailer to a generator from two months (ie two times) to two weeks (ie. 0.5 times) of generation charges (or the retailer's reasonable forecasts of generation charges).
  - The Commission will adopt various other measures as outlined in this Draft Decision Paper below.

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## **Option A2: Defining the credit support duration**

### *Proposed Option*

- 2.36 In the Options Paper, the Commission proposed a methodology for defining the credit support duration, which could form the basis for the calculation of the maximum 'required generation credit support amount' in the Code. This methodology includes:
- the quotient of the credit support duration divided by the billing period of the generation services bill is determined; and
  - the maximum 'required generation credit support amount' is calculated by multiplying the amount charged in the generation services bill (or the retailer's reasonable forecasts thereof) by this quotient.
- 2.37 Option A2 was proposed by the Commission in response to the potential risk of shortfall that arises out of negotiating shorter billing or payment periods while maintaining the current formula for calculating the maximum 'required generation credit support amount' in the Code.
- 2.38 The Commission noted that this risk of shortfall may be a key consideration for generators in deciding whether or not to accept shorter billing or payment periods and may actually hinder effective negotiation of shorter billing or payment periods between the parties.

### *Views in submissions in response to Option A2*

- 2.39 In its submission to the Options Paper, QEnergy outlined its support for Options A2 while noting that the adoption of Option A2 will have little impact given that there is no real incentive on PWC Generation to reduce the billing period.
- 2.40 In its submission to the Options Paper, PWC commented that its billing cycle is monthly and processed manually by Strategy and Corporate Affairs (a function within the corporation dealing with FRC). PWC considered that the reduction of the billing period from monthly to fortnightly would increase the cost of providing this service. PWC considered it prudent to keep the costs of FRC to a minimum.

### *Commission's response to views in submissions to Option A2*

- 2.41 The Commission notes PWC comments in regard to its billing cycle and the view that a reduction of the billing period would increase the costs of providing this service. However, Option A2 does not propose to mandate a reduction in the billing period. It merely facilitates changes to the credit support amount in response to changes in the billing or payment period, as negotiated between the parties.
- 2.42 The Commission notes QEnergy's comment that the adoption of Option A2 will have little impact on PWC Generation's behaviour to reduce the billing period. However, the Commission's view is that this option, together with other measures to improve the negotiation framework (as outlined in this paper), should increase pressure on PWC Generation to consider a reduction in the billing or payment period (an example can be found in the discussion of Option A4 in this Draft Decision Paper). The Commission believes that adopting Option A2 will help facilitate this process.

### *Commission's draft decision*

- 2.43 The Commission's draft decision is to adopt Option A2 (defining the credit support duration). Changes to clause 3.2.2 in the Code have been proposed as a result.

### **Option A3: Defining the reactive period**

#### *Proposed Option*

- 2.44 In the Options Paper, the Commission proposed to define the credit support duration in reference to various time periods, including a 14-day allowance for the reactive period, which may be set as otherwise determined by the Commission (Option A3).
- 2.45 The Commission noted that, as RoLR arrangements become more developed, there may be potential to reduce the 14-day allowance for the reactive period, which would reduce the maximum 'required generation credit support amount' in the Code.
- 2.46 The Commission also noted that a 14-day allowance for the reactive period may be appropriate in the circumstances, at least until such time as the RoLR procedures in the Code are fully developed and tested.

#### *Views in submissions in response to Option A3*

- 2.47 In its submission to the Options Paper, PWC commented that a reactive period of 14 days is prudent in the circumstances given the lack of RoLR arrangements. PWC noted that the development of RoLR arrangements should be given priority in light of the financial risks to PWC Retail.

#### *Commission's response to views in submissions to Option A3*

- 2.48 The Commission agrees with PWC that a reactive period of 14 days is prudent in the circumstances, at least until such time as RoLR procedures are fully developed and tested.
- 2.49 However, the Commission's view is that the definition of the reactive period should be flexible in light of potential improvements to the RoLR procedures. The Commission should have the option to redefine the reactive period in guidelines.
- 2.50 The Commission notes that the ability to redefine the reactive period is in line with Option A2; credit support should cover payments outstanding up until the transfer of customer load from the defaulted retailer to the RoLR. If RoLR procedures become more efficient and effective over time, then this should be reflected in reduced credit support requirements from a retailer to a generator.

#### *Commission's draft decision*

- 2.51 The Commission's draft decision is to adopt Option A3 to define the reactive period as a 14-day timeframe or as otherwise specified by the Commission in guidelines. Changes to clause 3.2.2 have been proposed as a result. In particular, clause 3.2.2 (ba) has been inserted, which clarifies the reactive period.

### **Option A4: Framework for negotiation of retailer-generator credit support arrangements**

#### *Proposed Option*

- 2.52 In the Options Paper, the Commission proposed a more robust negotiation framework for the Code, which would set high-level principles governing the conduct of negotiation between the parties to reflect honest, fair and good faith negotiations.
- 2.53 The option to implement a negotiation framework for retailer-generator credit support arrangements (Option A4) was proposed by the Commission to address the unequal (actual or perceived) bargaining positions between emerging retailers and the incumbent as well as the specific characteristics and difficulties of negotiating in the Territory's electricity supply industry.

- 2.54 The Commission noted that an improved negotiation framework may be incorporated into the Code at least until such time as the market achieves the same level of contestability as demonstrated in the NEM.
- 2.55 The Commission proposed the following improvements to the negotiation framework<sup>16</sup>:
- the generator and retailer must negotiate honestly, fairly and in good faith, terms and conditions relating to credit support;
  - the generator must provide all information as the retailer may reasonably require to enable the retailer to engage in effective negotiation with the generator in relation to credit support;
  - the generator must identify and inform the retailer of the reasonable costs and/or increase or decrease in costs (as appropriate) of considering alternative credit support arrangements including:
    - lowering or increasing the billing period or payment period (whichever is applicable); and
    - (on request of the retailer) alternative forms of credit support other than a bank guarantee, including but not limited to:
      - shareholder or parent guarantee (conditional or unconditional);
      - third party guarantee (conditional or unconditional);
      - cash deposit;
      - security bond;
      - security interest;
      - an insurance-related product (eg trade credit insurance); or
      - a hybrid product, which may include a bank guarantee and a combination of any of the above (whichever is applicable);
  - the generator must commence, progress and finalise (whichever is applicable) negotiation of credit support arrangements on a best endeavours basis.
- 2.56 The Commission proposed that the generator could be required to submit to the Commission for approval, a negotiating framework detailing the generator's approach to negotiation of credit support arrangements and demonstrating its compliance with the negotiation principles.
- 2.57 The Commission noted that Option A4 is similar to the negotiation framework for access to transmission network services in the NEM.<sup>17</sup> A similar negotiation framework for access to network services also exists under the *Electricity Networks (Third Party Access) Act*.<sup>18</sup>

*Views in submissions in response to Option A4*

- 2.58 In its submission to the Options Paper, QEnergy outlined its support for Option A4 while noting that its adoption will have little impact on PWC Generation's behaviour. QEnergy cited customer feedback in the NEM in relation to customer interactions with

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<sup>16</sup> For an example of a negotiation framework, see ElectraNet Negotiation Framework < <http://www.electranet.com.au/assets/Uploads/negotiatingframework.pdf>>

<sup>17</sup> Clause 6A.9.5, National Electricity Rules.

<sup>18</sup> See the Network Access Code, which is a Schedule to the *Electricity Networks (Third Party Access) Act (NT)*.



transmissions network service providers (TNSP). QEnergy claimed that a negotiation framework makes little difference to the interaction between customers and TNSPs in the NEM.

- 2.59 In its submission to the Options Paper, PWC commented that it already has a mechanism for the negotiation of credit support and other financial operations for potential risk to the corporation:
- PWC's Receivables Risk Management Committee manages the negotiation of credit support;
  - this Committee considers proposal from retailers and makes recommendations on the viability of any proposal; and
  - PWC has, through the Committee, considered alternative credit support arrangements with one retailer.

*Commission's response to views in submissions to Option A4*

- 2.60 The Commission notes PWC's view that it already has a mechanism within the corporation in relation to the negotiation and consideration of credit support. However, the existence of the Receivables Risk Management Committee does not address the unequal (perceived or actual) bargaining position between the parties.
- 2.61 A negotiation framework as proposed under Option A4 would set high-level principles governing the conduct of negotiation between the parties to reflect honest, fair and good faith negotiations. Option A4 does not propose to replace PWC's internal risk assessment process in relation to credit support nor does it propose to mandate the outcome of this internal process.
- 2.62 PWC is invited to refer to the TNSP negotiation frameworks submitted to the Australian Energy Regulator (and publicly available) and the relevant clauses in the National Electricity Rules<sup>19</sup> as examples.
- 2.63 The Commission notes QEnergy's comment that implies that the negotiation framework may make little difference to the interaction between retailers and generators in the Territory.
- 2.64 The Commission's view is that an improved negotiation framework should increase transparency in the negotiation process and address the unequal (perceived or actual) bargaining position between the parties. The Commission also notes that retailers (other than PWC Retail) do not service significant volumes of customer load compared to PWC Retail and that PWC Generation may not have a commercial imperative to deal with these retailers.
- 2.65 For example, in relation to the reduction of billing or payment periods, PWC Generation will be required (on the request of the retailer) to identify and inform the retailer of the reasonable costs (and where relevant the increase or decrease in costs) of lowering or increasing the billing or payment period. This information can be used to facilitate negotiations and determine whether negotiations are proceeding in good faith.

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<sup>19</sup> Clause 6A.9.5, National Electricity Rules.

- 2.66 It is noted that the reduction of billing or payment periods could be beneficial to generators<sup>20</sup> and may present a win-win situation for all parties concerned. For instance, if the billing period is reduced:
- The retailer, to the benefit of the generator, will be required to pay its bills closer to the time electricity is generated by the generator and purchased by the retailer. The generator's contribution to the retailer's working capital is reduced.<sup>21</sup> The retailer will be required to manage its payments more diligently.
  - The credit support duration will be reduced. Should a default occur, RoLR procedures will be triggered sooner rather than later and the payments outstanding to the generator will not be as great, which mitigates the impact of a default.
  - Small or emerging retailers that successfully negotiate and/or agree to shorter billing or payment periods (and are comfortable managing their payments more diligently) may be able to access a bank guarantee enabling participation in the market.
  - The generator will be able to request credit support up until the transfer of customer load to the RoLR, which is in line with the Commission's objectives in terms of administering and enforcing RoLR procedures.
- 2.67 In light of the above example, if PWC Generation (in negotiation with a retailer) alleges that a reduction in billing or payment periods cannot be considered at all due to costs, then this will not (without sufficient justification) demonstrate good faith negotiations. The Commission is mindful that industry participants may construe this behaviour as benefiting PWC Retail. PWC Generation will be required to justify this statement so that the parties may discuss a way forward.
- 2.68 The Commission considers that the improved negotiation framework, together with other measures as outlined in this Draft Decision Paper, should address concerns of unequal (perceived or actual) bargaining positions between the parties and assist in improving transparency, accountability and certainty among negotiating parties during the negotiation process.

*Commission's draft decision*

- 2.69 The Commission's draft decision is to adopt Option A4 to require PWC Generation to submit to the Commission a negotiation framework for retailer-generator credit support arrangements. Clause 3.5 has been inserted as a result.
- 2.70 The negotiation requirements will only apply to PWC Generation as:
- it currently supplies 100 per cent (or close to 100 per cent) of customer load (inclusive of Independent Power Producers' contracted to generate and supply electricity to PWC Generation<sup>22</sup>) in the Territory and has substantial market power in the generation market;

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<sup>20</sup> AEMO noted that generators generally support shorter NEM settlement cycles. See AEMO Energy Market Prudential Readiness Report, Page 7. Also see submission from the National Generators Forum <<http://www.aemo.com.au/~media/Files/Other/electricityops/0539-0016%20pdf.ashx>>

<sup>21</sup> For more information see Competition Economists Group, 'Assessing efficiency in settlement and prudential arrangements for energy markets; A report for AEMO', January 2010, page 10.

<sup>22</sup> An Independent Power Producers is a generator that sells electricity to another generator.

- its primary customer is a related party, PWC Retail with 99 per cent market share in the retail electricity market; and
- PWC Generation may not have a commercial imperative to deal with other competitive retailers, who are likely to hold insignificant market share in the retail electricity market. Regardless of whom PWC Generation deals with (competitive retailers or PWC Retail) and in the absence of competition in the generation market, PWC Generation is likely to continue to service 100 per cent (or close to 100 per cent) of customer load in the Territory in the foreseeable future.

### **Option A5: Scaling down the required generation credit support amount**

#### *Proposed Option*

- 2.71 In the Options Paper, the Commission proposed a methodology to scale down the maximum 'required generation credit support amount' on account of the retailer's credit rating from agencies such as Standard & Poor's, Fitch Ratings, Moody's Investor Services and Dun & Bradstreet.
- 2.72 An example would be to scale down the maximum 'required generation credit support amount' if a retailer has a credit rating that is, for example below the acceptable credit rating (currently set at BBB+). For instance, a retailer with a BBB credit rating could have its maximum required generation credit support amount reduced by, for example 30 per cent, while a retailer with a BBB- credit rating could receive a 15 per cent reduction.
- 2.73 The Commission considered the use of the National Electricity Customer Framework (NECF) credit allowance percentage table as a template (table 2.1). The first three columns outline the credit ratings from Standard & Poor's, Fitch Ratings, Moody's Investor Services and Dun and Bradstreet. The fourth column lists the percentage of credit reduction for each credit rating. It was noted that percentage of credit reduction in the fourth column was indicative only and only included in the Options Paper as an example.

Table 2.1: Credit support allowance percentages

<b>Standard and Poor's/Fitch Rating</b>	<b>Moody's Rating</b>	<b>Dun and Bradstreet dynamic risk score</b>	<b>Credit support reduction (% reduction the credit support)</b>
AAA	Aaa	N/A	100.0%
AA+, AA, AA-	Aa1, Aa2, Aa3	Minimal	100.0%
A+, A, A-	A1, A2, A3	Very Low	100.0%
BBB+	Baa1	Low	52.9%
BBB	Baa2	Average	37.5%
BBB-	Baa3	N/A	22.0%
BB+	Ba1	N/A	17.0 %
BB	Ba2	Moderate	11.0 %
BB-	Ba3	High	6.7 %
B+	B1	Very High	3.3 %

B	B2	N/A	1.4 %
B-	B3	Severe	0.9 %
CCC/CC	Caa, Ca, C	N/A	0.3 %

2.74 Option A5 was proposed by the Commission:

- to reinforce the notion that not all retailers have the same level of risk of default;
- to reinforce the view that credit support arrangements should only cover the likelihood of default for a given level of financial risk (through commercial considerations) and should not be applied to the extent that the generator is taking advantage of its position as a monopoly service provider;
- in light of PWC Generation's dominant market position as a monopoly service provider; and
- acknowledging the need for access to generation services to facilitate FRC.

2.75 The Commission suggested that, should Option A5 be adopted, generators may wish to offset the risk (or perceived risk) that arises through the reduction of the maximum 'required generation credit support amount', by negotiating alternative credit support arrangements, which may include shorter billing or payment periods or alternative forms of credit support, through honest, fair and good faith negotiations.

*Views in submissions in response to Option A5*

2.76 In its submission to the Options Paper, QEnergy outlined its support for Option A5 as it would result in meaningful change in the market, but noted its preference for Option A6 (adoption of NECF arrangements for retailer-generator credit support arrangements). QEnergy expressed the view that Option A5 is less sophisticated than Option A6 as Option A5 does not utilise volumes as an input into the calculation of the maximum 'required generation credit support amount'.

2.77 In its submission to the Options Paper, PWC commented that:

- Option A5 will not remove financial risk faced by PWC Generation;
- should Option A5 be adopted:
  - further consideration should be given to allocating percentage reduction figures to highly rated companies (eg AAA-) as it does not support a 100 per cent allowance for even the highest rated companies; and
  - the generation price should be higher for those retailers presenting a scaled down level of generation credit support, which will incorporate higher residual credit risk; and
- given the lack of visibility of financial statements for privately-owned businesses, PWC recommends that a provision be inserted into the Code which would allow PWC to request updates in relation to a retailer's financial position. This will assist PWC to determine whether or not a change in a retailer's credit rating is appropriate in response to events or changes in circumstances.

*Commission's response to views in submissions to Option A5*

2.78 In regard to PWC's comment that Option A5 will not remove the financial risk faced by PWC Generation, the Commission's view is that credit support arrangements in the Code do not exist solely to protect an industry participant from financial risk, but aim

to facilitate FRC and promote a level playing field, while discouraging inappropriate market signals for the benefit of the market and its continued stability.

2.79 The Commission considers Option A5 to be a mechanism supportive of competitive market conduct that normally occurs in more contestable markets, which can be achieved by addressing the following concerns:

- Specific circumstances in dealing in the Territory market including:
  - concerns that credit support arrangements are being used as an instrument to maintain barriers of entry and limit retail competition, for example to hinder access to bank guarantees;
  - a monopoly service provider such as PWC Generation may not consider an individual retailer's true risk of default;
  - concerns that credit support arrangements are imposed on competitive retailers to the benefit of PWC Generation's related party, PWC Retail; and
  - retailers (other than PWC Retail) do not service significant volumes of customer load compared to PWC Retail. There may be no incentive for PWC Generation to deal with these retailers in a commercial like manner.
- Concerns that credit support arrangements may transfer undue risk from retailers to generators.

2.80 To address these concerns, the Commission will set the percentage reduction amounts at levels that would:

- be commensurate with an individual retailer's true risk of default (as determined by the retailer's credit rating);
- incentivise the parties to consider alternative arrangements through honest, fair and good faith negotiations, which may include alternative forms of credit support or reductions in the billing or payment periods; and
- not be overly beneficial to retailers to avoid undue risk being transferred from retailers to generators.

2.81 The Commission's view is that the adoption of Option A5 will not prevent PWC from addressing its financial risks. PWC Generation can still protect its financial interests through negotiations (eg alternative forms of credit support or changes in the billing or payment period) or other business arrangements.

2.82 In regard to PWC's proposal to remove the exemption of credit support with respect to highly rated companies and replace it with a percentage reduction, the Commission notes that this would imply removing the blanket exemption that applies to entities with an acceptable credit rating (BBB+ and above). However, it is noted that market participants in the NEM that meet the 'acceptable credit criteria' (as determined by the regulator) are exempt from NEM generator-retailer credit support requirements.<sup>23</sup>

2.83 The Commission does however see the validity in removing the blanket exemption with respect to highly rated companies, but only if this would prevent a real risk of financial contagion. The Commission notes that the Australian Energy Market Commission has released an issues paper on market resilience (entitled NEM

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23 Clause 3.3.2 National Electricity Rules.

Financial Market Resilience) and various market participants have made submission highlighting financial contagion risks in the NEM.<sup>24</sup> The New Zealand Electricity Authority's Prudential Security Review Discussion Paper briefly discussed the application of credit support arrangements for entities with highly rated credit ratings and the potential triggering of contagion effects that may result.<sup>25</sup>

- 2.84 It is noted that the likelihood of a financial contagion event in the Territory is remote (PWC Retail has more than 99 per cent market share and is unlikely to be the subject of a RoLR determination). Therefore, the Commission will retain the 'acceptable credit rating' provision in the Code at this stage. However, the Commission may revisit this decision, pending the outcome of any review of the NEM and further developments in the Territory market.
- 2.85 In regard to PWC's comment that the generation price should be higher to incorporate higher residual risk for those retailers that present a scaled down level of credit support, the Commission notes that the risk of dealing with an individual retailer should not increase (or arise) purely from the application of credit support requirements in the Code, and should be based on the merits of dealing with an individual retailer and that individual retailer's true risk of default.
- 2.86 The Commission also notes that PWC Generation (in providing a wholesale generation quote) is required to deal with a competitive retailer on a non-discriminatory arms length basis.<sup>26</sup>
- 2.87 In regard to PWC's comment on the lack of visibility of financial statements for private businesses, the Commission notes that any changes to a business's financial position should be reflected in changes in its respective credit ratings from Standard & Poor's, Fitch Ratings, Moody's Investor Services or Dun & Bradstreet.
- 2.88 However, the Commission agrees that generators should be provided with some form of information to assess changes in a retailer's financial position. In response, the Commission proposes to adopt the following arrangements:
- a retailer must advise the generator of any change to its credit rating immediately after becoming aware of that change; and
  - the generator may obtain relevant credit rating information about a retailer and monitor ongoing changes to the retailer's credit rating.
- 2.89 Similar obligations exist with respect to NEM distributor-retailer credit support arrangements,<sup>27</sup> and network provider-retailer credit support arrangements in the Code.<sup>28</sup>
- 2.90 The Commission notes QEnergy's comment that Option A5 is less sophisticated than Option A6 as A5 does not utilise volumes as an input to calculate the credit support amount.
- 2.91 However, the Commission notes that the Territory market is currently comprised of three retailers and one incumbent generator, PWC Generation. The Commission also notes that PWC Retail has more than 99 per cent market share in the retail electricity market and other competitive retailers are unlikely to contribute significantly to PWC

24 <<http://www.aemc.gov.au/market-reviews/open/nem-financial-market-resilience.html>>

25 < <http://www.ea.govt.nz/our-work/consultations/advisory-group/settlement-prudential-security-review>>

26 See Ring-fencing Code

27 See clause 6B.B3.3 of the National Electricity Rules, version 51.

28 Clause A.A6 (d)-(e) of Appendix A of the Retail Supply Code.

Generation's annual income in accordance with the NECF methodology, at least until such time as the market becomes more competitive.

- 2.92 The Commission considers that the application of volumes as an input for the calculation of credit support under the NECF methodology is likely to result in PWC Generation not being able to request credit support from competitive retailers (other than PWC Retail). This would transfer undue financial risk from retailers to generators (in this case PWC Generation).
- 2.93 Given the above points, the Commission considers Option A5 (scaling down the credit support amount on account of the retailer's credit rating) to be more appropriate than Option A6 (NECF distributor-retailer credit support arrangements for retailer-generator credit support arrangements) in the Territory context, at least at these early stages of FRC.

#### *Commission's draft decision*

2.94 Commission's draft decision:

- The Commission will adopt Option A5 (scaling down the credit support amount on account of the retailer's credit rating). The scaling down percentage reduction table will be formulated in guidelines made by the Commission. Changes to clause 3.2.2 have been proposed as a result.
- The Commission will require a retailer to advise the generator of any change to its credit rating immediately after becoming aware of that change. Clause 3.6 has been inserted as a result.
- The Commission will allow the generator to obtain relevant credit rating information about a retailer and monitor ongoing changes to the retailer's credit rating. Clause 3.6 has been inserted as a result.

### **Option A6: NECF arrangements for retailer-generator credit support arrangements**

#### *Proposed Option*

- 2.95 In the Options Paper, the Commission proposed a methodology to calculate the maximum 'required generation credit support amount' as an alternative to Option A5 (discussed above). Option A6 is based on the NECF for distributor-retailer credit support arrangements in the NEM and includes:
- a retailer's initial 'required generation credit support amount' is calculated to cover payments outstanding up until the transfer of customer load to the RoLR;
  - the retailer's credit allowance is then calculated in two steps:
    - the maximum loss to which a generator should be exposed due to a RoLR event is calculated. The Commission invited submissions on how the maximum loss could be calculated;
    - the maximum loss is scaled down depending on the retailer's credit rating; and
  - the maximum 'required generation credit support amount' is the amount of the initial 'required generation credit support amount' that exceeds the credit allowance for that retailer.
- 2.96 Option A6 was proposed by the Commission:
- to reinforce the notion that not all retailers have the same level of risk of default.

- to reinforce the view credit support arrangements should only cover the likelihood of default for a given level of financial risk (through commercial considerations) and should not be applied to the extent that the generator is taking advantage of its position as a monopoly service provider; and
- in light of PWC Generation's dominant market position as a monopoly service provider; and
- acknowledging the need for access to generation services to facilitate FRC.

*Views in submissions in response to Option A6*

2.97 In its submission to the Options Paper, QEnergy outlined its strong support for Option A6. QEnergy stated that Option A6:

- would respond to specific risk, volumes (whether or not a retailer's load volumes are significant);
- was designed in the NEM to address perceived bargaining inequity between network providers and retailers. This applies in the Territory context because of PWC Generation's monopoly power;
- was developed through significant consultation with stakeholders across NEM jurisdictions;
- provides a fair compromise between the existing arrangements in the Code and QEnergy's proposed amendment; and
- will result in meaningful change in the market.

2.98 In its submission to the Options Paper, PWC opposed Option A6 and made the following points:

- NECF arrangements are considered appropriate in the NEM. However, the Territory market differs in terms of the absence of hedging arrangements, which allow generators to manage risk in the wholesale market.
- These hedging arrangements do not exist in the Territory market. PWC Generation enters into bilateral contracts with retailers.
- Therefore, overlaying NEM rules onto the existing framework will be a risk to PWC and will not provide any apparent benefits to customers.

*Commission's response to views in submissions to Option A6*

2.99 In regard to PWC's comment that NECF or NEM arrangements are inappropriate due to the absence of hedging arrangements in the Territory, the Commission notes that:

- NECF retailer-distributor credit support arrangements are already contained in retailer-network provider credit support arrangements in the Code.
- The fact that generators and retailers in the NEM address risks in different ways does not necessarily preclude the adoption of NEM arrangements in the Territory. Hedging arrangements evolved in response to specific risks associated with NEM pooling arrangements and price fluctuations. If similar risks exist, they can still be managed through bilateral contractual arrangements in the Territory.

2.100 The Commission will continue to incorporate NEM arrangements in the Territory, wherever feasible.

2.101 In relation to whether or not Option A6 should be adopted, the Commission notes that the Territory market is currently comprised of three retailers and one incumbent generator, PWC Generation. The Commission also notes that PWC Retail has more



than 99 per cent market share in the retail electricity market and other competitive retailers are unlikely to contribute significantly to PWC Generation's annual income in accordance with the NECF methodology, at least until such time as the market becomes more competitive.

2.102 The Commission considers that the application of volumes as an input for the calculation of credit support under the NECF methodology is likely to result in PWC Generation not being able to request credit support from competitive retailers (other than PWC Retail). This would transfer undue financial risk from retailers to generators (in this case PWC Generation). The Commission considers the adoption of Option A6 to be unsuitable for the Territory, at least at these early stages of FRC.

*Commission's draft decision*

2.103 The Commission will not adopt Option A6 (NECF distributor-retailer credit support arrangements for retailer-generator credit support arrangements) in the Code.

**Forms of credit support**

*Existing arrangements:*

2.104 Clause 3.4.1 of the Code prescribes a form of credit support that may be any combination of:

- a (unconditional) bank guarantee;
- a form of unconditional guarantee (other than a bank guarantee) that is considered acceptable to the generator (or network provider) at its sole discretion;
- or
- such other form of credit support that is considered acceptable to the parties.

2.105 These arrangements intend to facilitate negotiation of alternative forms of credit support other than bank guarantees (as agreed between the parties through good faith negotiation).

*QEnergy's proposed amendment*

2.106 In its supplementary submission, QEnergy stated that the arrangements in the Code provide PWC with substantial power to determine the form of irrevocable credit support. To address this, QEnergy proposed that the form of irrevocable credit support should be acceptable to the Commission at its sole discretion.

2.107 In its submission to the Consultation Paper, PWC opposed QEnergy's proposed amendment and stated that it is industry practice for management of commercial risk to lie with the business rather than the regulator.

2.108 In the Options Paper, the Commission responded to QEnergy and commented that it may not be the most appropriate body to mandate forms of irrevocable credit support (other than bank guarantees).

2.109 The Commission also noted that one of the key differences between an irrevocable form of credit support provided by a third party and a bank guarantee is that a bank guarantee is generally provided by an entity that is subject to Australian Prudential Regulatory Authority supervision.

2.110 The Commission proposed Option A4 (framework for negotiation of retailer-generator credit support arrangements) and Option A6 (second Option A6<sup>29</sup> as discussed below) as alternatives.

*Second Option A6: Alternative forms of credit support*

2.111 In the Options Paper, the Commission proposed that the Code could be amended to:

- ensure that the form of unconditional guarantee is determined as agreed between the parties through honest, fair and good faith negotiations and not at the sole discretion of the network provider or generator (whichever is applicable); and
- allow payments by way of cash in lieu of bank guarantees.

2.112 The second Option A6 was proposed by the Commission:

- In response to common arguments by monopoly service providers that no alternatives exists to bank guarantees (that would provide the same level of assurance and protection); and
- recognising that the costs of obtaining bank guarantees may be substantial for small and emerging retailers.

2.113 The Commission outlined other potential forms of credit support that could be considered in negotiation, including but not limited to:

- shareholders or parent guarantee (including conditional guarantees);
- third-party guarantee (including conditional guarantees);
- cash deposit;
- security bond;
- security interest;
- an insurance-related product (for example trade credit insurance); or
- a hybrid product, which may include a bank guarantee and a combination of any of the above.

2.114 The Commission noted that cash is generally considered to be one of the safest forms of credit support, but also noted that relevant parties would have to be comfortable with any potential risk of clawback.<sup>30</sup>

*Views in submissions on second Option A6*

2.115 In its submission to the Options Paper, QEnergy outlined its support for the second Option A6. However, QEnergy stated that this option would have little impact on PWC Generation's negotiating behaviour.

2.116 In its submission to the Options Paper, PWC commented that a mechanism for considering alternative forms of credit support (and financial and other risks) already exists within the corporation:

- PWC's Receivables Risk Management Committee manages the negotiation of credit support, including alternative forms of credit support; and

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<sup>29</sup> The Options Paper outlined (in error) two Option A6s. The second Option A6 refers to the Commission's proposed option discussed at paragraph 2.80-86 of the Options Paper.

<sup>30</sup> Clawback involves reversing transactions in accordance with relevant bankruptcy or insolvency law. For example, payments made by a bankrupt or insolvent entity to a related party under section 139A-139H of the *Bankruptcy Act* 1966 and within a certain timeframe before the declaration of bankruptcy or insolvency may be 'clawed back' for the benefit of creditors.

- this Committee considers proposals from retailers (in accordance with relevant risk assessment procedures) and makes recommendations on the viability of any proposals.

2.117 PWC also commented that cash deposits are not an acceptable alternative to existing arrangements as cash may be construed as preferential treatment (eg a voidable preference) and recovered by the liquidator.

*Commission's response to views in submissions to the second Option A6*

2.118 The Commission notes QEnergy's proposal and concerns that the Code provides PWC with substantial power to consider any alternative forms of irrevocable credit support.

2.119 However, the Commission considers that it would not be the most appropriate body to mandate alternative forms of irrevocable credit support as it neither has the skills nor expertise to make such commercial decisions in specific circumstances. The Commission understands that the determination of alternative forms of irrevocable credit support is a commercial decision between the parties on how to best manage their risk.

2.120 In regard to the Commission's proposal to permit payments of cash in lieu of bank guarantees, the Commission agrees with PWC's comment that cash could be viewed as preferential treatment and recoverable by the liquidator. This proposal could present a risk to the market and its continued stability.

2.121 As an alternative, the Commission will amend the Code so that all forms of alternative credit support (including cash) are considered by the parties through honest, fair and good faith negotiations. This is consistent with Option A4 (improved negotiation framework).

*Commission's draft decision*

2.122 Commission's draft decision:

- The Commission will not adopt QEnergy's proposed amendment for the form of irrevocable credit support to be determined by the Commission at its sole discretion.
- The Commission will amend clause 3.4.1 of the Code so that alternative forms of credit support are determined by the parties through honest, fair and good faith negotiations.

**Option A7: Alignment of government-owned corporations with private enterprises**

2.123 The Code exempts both retailers with an acceptable credit rating and retailers that are a fully owned subsidiary of the Australian Federal Government, or an Australian state or territory government, from the credit support requirements under the Code.<sup>31</sup>

2.124 In the Options Paper, the Commission proposed that the Code be amended so that credit support requirements (including the application of the acceptable credit rating) are applied consistently across private and public enterprises.

2.125 Option A7 was proposed by the Commission:

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<sup>31</sup> Clause 3.2.2(a) of the Code.

- recognising that the existing arrangements exempt government-owned corporations from the application of credit support requirements in the Code, even if they do not have an acceptable credit rating. This removes the right of competitive generators (or competitive network service providers) to request credit support from a government-owned retailer;
- to ensure that government-owned corporations are not provided with a competitive advantage in procuring services from other electricity entities; and
- on the understanding that it is regulatory best practice to adopt arrangements that apply equally across all industry participants, regardless of government ownership and consistent with the approach in the NEM.

2.126 The Commission stated that it was inclined to adopt Option A7, but also noted that the application of credit support arrangements between business units within a vertically-integrated corporation may be difficult irrespective of the ownership of the corporation (and in the absence of structural reform).

*Views in submissions in response to Option A7*

2.127 In its submission to the Options Paper, QEnergy outlined its support for Option A7, which it argued attempts to level the playing field with respect to PWC Retail.

2.128 In its submission to the Options Paper, PWC commented that further consideration of Option A7 is required as it implies changes to legislation to allow a level playing field:

- Regulatory arrangements are such that PWC is required to supply electricity to all Territory customers (including those customers that may not be profitable), on electricity tariffs that are not cost reflective and regardless of whether these customers are on a regulated or non-regulated network.
- Second tier retailers only have to supply electricity to customers on the regulated network. These retailers are able to choose the customers they wish to serve.
- Therefore, the existing policy implies that FRC does not deliver benefits to all parties. Credit support requirements on PWC Retail will jeopardise PWC's ability to efficiently operate the retail component of the corporation and this could be highly detrimental to customers.

2.129 In its submission to the Options Paper, NTMEU noted that Option A7:

- levels the playing field for retailers competing with PWC Retail;
- has the potential to increase costs to end users; and
- still leaves PWC Generation considerable power to protect PWC Retail's market share.

*Commission's response to views in submissions to the second Option A7*

2.130 The Commission considers Option A7 to be a mechanism to assist in promoting a level playing field in the Territory's electricity supply industry. The Commission also notes that Option A7 is based on NEM generator-retailer credit support arrangements, which do not discriminate on the basis of ownership.

2.131 The Commission notes that Option A7 would apply to PWC Retail only with respect to a decision to procure generation services outside of the corporation. Should a third party generator deal with PWC Retail, the Commission believes that it should have same rights with respect to credit support as PWC Generation dealing with a competitive retailer (other than PWC Retail). The Code should apply in a

competitively neutral manner given that legal barriers to contestability have been lifted.

- 2.132 Under these arrangements PWC Retail would have the ability to negotiate a reduction in credit support should it choose to procure generation services from a third party generator outside of the corporation. If this were to occur, it is suggested that PWC Retail would have substantial bargaining power with respect to negotiation of credit support given the amount of customer load it has to offer to a generator.
- 2.133 These arrangements would also apply in instances where two independent government-owned corporations contract with one another (eg a government-owned generator (other than PWC Generation) dealing with PWC Retail or PWC Generation dealing with another government-owned retailer (other than PWC Retail)).
- 2.134 In regard to PWC's concerns that Option A7 may jeopardise PWC's ability to supply electricity to all of the Territory's customers, the Commission notes that PWC's vertically integrated nature implies that Option A7 may have little impact on PWC Retail's ability to supply electricity to customers on the non-regulated network or to those unprofitable customers (as PWC Retail procures most of its generation services from PWC Generation).
- 2.135 The Commission notes PWC's comment that it is required to supply all customers (regardless of whether they are connected to the regulated or non-regulated network or unprofitable) whereas other retailers can be more selective in terms of the customers they supply.
- 2.136 It should be noted that NECF legislation requires certain retailers (called 'designated retailers') to offer standing offer contracts to small customers.<sup>32</sup> These arrangements appear to operate independently of NEM credit support arrangements between the retailer and the distributor or generator, which do not discriminate on the basis of ownership.
- 2.137 The Commission's view is that this is a separate issue which needs to be addressed in terms of the Territory's overall legislative framework (and may involve issues of Government policy) and not directly linked to credit support requirements in the Code.

#### *Commission's draft decision*

- 2.138 The Commission's draft decision is to adopt Option A7 (alignment of government-owned corporations with private enterprises with respect to the application of credit support arrangements), subject to any further comment on the points discussed above. Changes to clause 3.2.2 (a) have been proposed as a result.

## **Credit support arrangements between a retailer and a network provider**

### **Existing arrangements**

- 2.139 Credit support requirements between a network provider and a retailer are contained in clause 3.1 of the Code. The Code states that a network provider may require a retailer to provide credit support up to the 'required network credit support amount', which is calculated in accordance with the Credit Support Guidelines and

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<sup>32</sup> See section 22 National Energy Retail Law (South Australia) Act 2011.

Methodology in Appendix A of the Code.<sup>33</sup> The Credit Support Guidelines and Methodology is based on the NECF distributor-retailer credit support arrangements.

2.140 The 'required network credit support amount' is calculated in the following way:

- a credit allowance is established for each retailer;
- the average credit outstanding for that retailer is calculated; and
- the 'required network credit support amount' is the amount of the average credit outstanding that exceeds the credit allowance.

2.141 The Code details the methodology for calculating the credit allowance for a retailer.

2.142 Table 1 of Appendix A of the Code contains a table that lists equivalent credit ratings from Standard & Poor, Fitch Ratings, Moody's Investor Services, and Dun and Bradstreet against a credit support allowance percentage, which is used to scale down a retailer's maximum credit allowance. The Commission adopted the credit support allowance percentages table as it existed in NECF legislation at the time the Code was developed in 2011.

### **QEnergy's proposed amendment**

2.143 In its supplementary submission, QEnergy noted that the Code's credit support allowance percentages table reflects the previous version of the table under the *National Electricity (Retail Support) Amendment Rules*. QEnergy proposed that the Commission amend the Code to adopt the most recent version of the table.

2.144 In its submission to the Consultation Paper, PWC outlined its support to amend the Code to adopt the most recent version of the table.

### **Option B: Reference to the latest NECF credit support allowance table**

2.145 In the Options Paper, the Commission proposed to amend the Code to define the table in reference to guidelines issued by the Commission, or in reference to national legislation (or a combination of both).

2.146 Option B was proposed by the Commission:

- to reflect the Commission's intention to adopt NEM practices wherever feasible; and
- in recognition that the credit support allowance table in NECF legislation may change from time to time.

### **Views in submissions in response to Option B**

2.147 In its submission to the Options Paper:

- QEnergy outlined its support of Option B.
- PWC opposed Option B as this would result in changes to the Code in response to every amendment to NEM credit support requirements. PWC noted that not all NEM requirements are applicable to the Territory and such an approach would create regulatory uncertainty and may result in parties wanting to re-open credit support arrangements.
- NTMEU made general comments on the application of NEM distributor-retailer credit support arrangements in the Code. NTMEU stated that NEM arrangements

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<sup>33</sup> Clause 3.1.1, Clause 3.1.2 of the Code

may provide guidance. However, any regulatory arrangements for network providers and retailers should address PWC Network's ability to use its monopoly power to support PWC Retail. NTMEU considers Option B to be an improvement, but noted that it does not eliminate the ability of PWC Network's to abuse its monopoly power to benefit PWC Retail.

### **Commission's response to views in submissions to Option B**

- 2.148 The Commission agrees that changes to the credit support allowance percentages table in NECF legislation should not automatically translate into similar changes in the Code. However, the Commission notes that changes in NECF legislation will be persuasive given that NECF retailer-distributor credit support arrangements form the basis of retailer-network provider credit support arrangements in the Code.
- 2.149 As an alternative, the Commission will specify the credit support allowance percentages table in guidelines under the Code. Should the credit support allowance percentages table change under NECF legislation, the Commission will consider these changes and whether or not they are appropriate in the Territory context. If changes are appropriate, the Commission will have the option of amending the guideline as opposed to amending the Code under section 24 of the Act.
- 2.150 The Commission notes NTMEU's comments that the existing arrangements do not address PWC Network's ability to benefit PWC Retail. However, the Commission notes that the Ring-fencing Code requires PWC Networks to act in a non-discriminatory arms length basis towards third parties and other PWC business units.
- 2.151 The Commission also notes that it can be difficult to devise regulatory responses that have the same type of impact as significant structural reform undertaken in NEM jurisdictions. The Commission notes that transfer pricing arrangements (arrangements whereby funds are transfer from one business unit within a vertically-integrated corporation to another consistent with ring-fencing principles and to satisfy credit support requirements) with respect to credit support arrangements between PWC Retail and PWC Networks could be established; however the Commission recognises that this would have little impact on PWC's bottom line (compared to the impact it would have on a private business).

### **Commission's draft decision**

2.152 Commission's draft decision:

- The Commission will specify the credit support allowances percentages table in guidelines under the Code.
- The credit support allowances percentages table will be defined in accordance with the table outlined in QEnergy's amendment application.
- Subsequent changes to NECF arrangements will be considered by the Commission on a case by case basis. The Commission may amend the table if these changes are considered to be relevant in the Territory context.

## Access to metering data

### Response time to a data request

#### *Existing arrangements*

2.153 Clause 6.2.9 of the Code requires a network provider to respond to a data request from a retailer within five business days. In comparison, clause 6.3.9 requires a network provider to respond to a data request from a customer within 20 business days.

#### *QEnergy's amendment proposal*

2.154 In its amendment application, QEnergy proposed that the timeframe within which a network provider must respond to a data request form should be one business day in all cases. QEnergy claims that:

- PWC will not provide data to a customer or a retailer as soon as possible, leading to unnecessary time constraints on a competitive retailer;
- PWC Retail can access this data almost immediately and that this will enable PWC Retail to meet deadlines more aggressively; and
- metering data can be provided to retailers or customers within minutes.

#### *Views in submissions*

2.155 In its submission to the Consultation Paper, PWC opposed QEnergy's proposal and supported that its existing systems are such that data requests cannot be accommodated within such a short period of time. The process includes:

- A request for data is sent to a FRC officer in the Regulation, Pricing and Economic Analysis team.
- This officer liaises with the metering section in PWC Networks to confirm meter details.
- The FRC officer confirms receipt of the request and informs the retailer of costs to provide the data.
- Once the metering section has prepared the data, the FRC officer forwards the data to the retailer.

2.156 Furthermore, PWC noted that:

- arrangements in the NEM are significantly different to PWC's manual processes for the provision of data to retailers and customers as PWC collects and stores the metering data itself and supplies it on request and there is no automated process to enable access to data instantaneously.
- In terms of provision of data to customers, customers may require markedly different data, depending on the customer's individual needs. In comparison, retailers have more knowledge and experience in the market. Therefore, 20 business days is appropriate considering the volume and nature of customer data requests.



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*Options C1 & C2: Reducing the timeframe for provision of metering data to retailers and customers*

2.157 In the Options Paper, the Commission stated that it was inclined to consider that one day for the provision of data is not sufficient. However, the Commission proposed Options C1 & C2 as alternatives.

2.158 In the Options Paper, the Commission proposed:

- that the timeframe within which a network provider is required to respond to a customer's data request could be the same as the timeframe for responding to a retailer's data request (Option C1); and
- the timeframe could be reduced to three or four days (Option C2).

2.159 Options C1 & C2 were proposed:

- recognising that timing is important for the provision of data to customers (as well as to retailers) as this data may be used for negotiating an electricity supply contract;
- noting that prolonged timeframes for the provision of data to customers may unnecessarily draw out negotiations or potentially skew the outcome of negotiations;
- on the understanding that a customer data request is processed and finalised through the same process as a retailer data request (same information is required as well as same business units involved in finalising the request);
- recognising that PWC employs a manual process for the provision of metering data to retailers and customers; however, noting that PWC's role of storing, accessing and providing metering data is not dissimilar to the role of certain market participants in the NEM; and
- on the expectation that PWC should have become more efficient in the provision of data to retailers and customers since the introduction of the Code and should become more efficient in future, irrespective of whether manual or automated processes are adopted.

*Views in submissions in response to Options C1 & C2*

2.160 In its submission to the Options Paper, QEnergy outlined its support to adopt both Options C1 & C2.

2.161 In its submission to the Options Paper, PWC reiterated the points made in its previous submission (outlined above) and noted that:

- PWC does not have the ability to charge large ongoing fees similar to those fees payable by market participants in the NEM with respect to MSATS (Market Settlement and Transfer System) and CATS (Consumer Administration Transfer Solution) services;
- PWC would need more staff to process data requests in accordance with a reduced timeframe and to avoid a breach of the Code;
- if PWC Networks receives a large number of data requests in a short period of time, there is an increased risk that PWC Networks will not be able to meet these requests within a reduced timeframe. This will result in breaches of the Code in the short term and increased costs in the medium and long term for more staff;
- as customer data requests may frequently contain incorrect information, a clause should be inserted in the Code to clarify that the timeframe for provision of data

will only commence once the data request is complete, accurate and the network provider is clear on the data to be supplied; and

- costs associated with the provision of data should be kept to a minimum.

2.162 In its submission to the Options Paper, NTMEU:

- noted that the timeframes in the Code can act as a barrier to entry for retail competition and are in excess of similar timeframes in the NEM; and
- supported the reduction of timeframes for provision of data.

*Commission's response to views in submissions to options C1 & C2*

2.163 In regard to PWC's comment that it does not have the ability to charge large ongoing fees similar to those fees payable in the NEM with respect to MSATS services among others services, the Commission notes that clauses 6.2.12 and 6.3.3 require retailers or customers (whichever is applicable) to pay any reasonable charges incurred by the network provider in the provision of data as approved by the Commission and published by the network provider.

2.164 The Commission understands that PWC Networks has applied the charges listed in the alternative control services schedule submitted to the Commission as part of the 2009 Regulatory Reset. If PWC Networks considers these charges to be insufficient to cover the reasonable costs incurred in providing data to customer and retailers, it is able to submit new charges to the Commission for consideration pursuant to the Code.

2.165 The Commission notes PWC's concerns that it may breach the provisions of the Code if relevant timeframes are reduced. However, the Commission believes that the reduced timeframes are reasonable and can be met by PWC through implementing efficient and effective business practices. The Commission also notes that in the current environment, the likelihood of PWC Networks being overwhelmed by data requests is remote, although the Commission invites comment on whether or not this is the case.

2.166 The Commission considers that the way in which industry participants comply with regulatory arrangements depends on their internal business practices and efficiencies. Market participants in the NEM have similar expectations with respect to compliance with regulatory obligations.

2.167 The Commission proposes a three-business day timeframe for the provision of data to customers and retailers and considers that this timeframe is not unreasonable in light of similar requirements in NEM jurisdictions and the fact that PWC has had a reasonable timeframe to implement more efficient business practices to respond to information requests

2.168 The Commission's view is that regulated entities should implement all necessary arrangements to avoid compliance breaches. The Commission will respond to breaches in accordance with the Commission's Statement of Approach on Compliance.<sup>34</sup>

2.169 The Commission agrees with PWC's proposed amendment that the timeframe for provision of data to customers should commence once the customer data request is

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<sup>34</sup> Utilities Commission, January 2012, Statement of Approach on Compliance.

completed. However, the Commission proposes to insert an additional clause that requires the network provider to inform customers of any additional information that is required to process the data request as soon as practicable and within one business day of receiving an incomplete customer data request.

2.170 The Commission expects PWC to have become more efficient in the provision of data to retailers and customers since the introduction of the Code and that it should become more efficient in future, irrespective of whether manual or automated processes are adopted.

#### *Commission's draft decision*

2.171 Commission's draft decision:

- Align the timeframe for provision of data to customers and retailers (Option C1). Changes to clause 6 have been proposed as a result.
- Require the network provider to provide data to customers and retailers within three business days (Option C2). Changes to clause 6 have been proposed as a result.
- Amend clause 6 to clarify that the timeframe for provision of data to customers will commence once the customer data is valid. The Commission will also insert an additional clause that requires the network provider to inform customers of any additional information that is required to process a customer data request as soon as practicable and within one business day of receiving an incomplete customer data request.

### **Minimum timeframes for processing data requests**

#### *Existing arrangements*

2.172 Clause 6.2.8 (b) of the Code states that, unless otherwise agreed with a network provider, the network provider will process a minimum of:

- two requests for standing data per day; and
- two requests for historical consumption data per day.

#### *PWC's proposed amendment*

2.173 In its submission to the Consultation Paper, PWC proposed that the Code be amended to place an obligation on the network provider to process a maximum of two requests for standing data (or historical consumption data) per day as the inclusion of 'minimum' instead of 'maximum' is a typographical error.

#### *Commission's comments*

2.174 In the Options Paper, the Commission responded to PWC's proposal and noted that:

- the intention of clause 6.2.8 (b) is to ensure that data requests are processed constantly on a day-by-day basis; and
- setting a maximum will result in instances where the network provider would be exempt from processing more than the defined maximum per day as well as being potentially exempt from providing data to retailers within the timeframes set out in the Code.

#### *Views in submissions*

2.175 In its submission to the Options Paper, QEnergy agreed with the Commission's comments in the Options Paper.

2.176 In its submission to the Options Paper, PWC noted that:

- there are limited resources available for manual processing of data requests;
- PWC adopts a prudent approach to meet customer and retailer needs while keeping costs down and acts in good faith to meet data requests; and
- if PWC receives a large number of data request in a short period of time, there is an increased risk that PWC will not be able to meet these request within a reduced timeframe. This will result in breaches of the Code in the short term and increased costs in the medium and long term for more staff.

### ***Commission's Draft Decision***

2.177 As per the Commission's comments outlined in paragraph 2.174, the Commission proposes to retain clause 6.2.8 (b).

### **Data arrangements**

#### *Existing arrangements*

2.178 Currently, a retailer is required to make a request for standing data and/or historical consumption data to the network provider. A retailer may then provide this data to a generator for a wholesale generation quote after which it could provide a quote to a potential customer to supply electricity to that customer.

#### *QEnergy's amendment proposal*

2.179 In its amendment application, QEnergy proposed that the Code should contain provisions that allow any data to be provided directly from PWC Networks to PWC Generation at the request of the retailer as:

- the current process is unnecessary and allows PWC to extend data requests and customer transfers for a prolonged period of time; and
- given the vertically integrated nature of PWC, the Code should contain provisions that allow any data to be provided directly from PWC Networks to PWC Generation at the request of the retailer.

#### *Views in submission*

2.180 In its submission to the Consultation Paper, PWC stated that the current situation is a reflection of PWC's compliance with the Commission's Ring-fencing Code, which requires operational separation of PWC's monopoly and contestable electricity businesses. PWC considers that the current arrangements demonstrate an arm's length relationship between PWC's business units.

2.181 PWC also noted that the current process is as streamlined as possible, given the requirements of the Ring-fencing Code. The process includes:

- An FRC officer at the Regulation, Pricing and Economic Analysis Team processes customer and retail data requests. The data request is forwarded to the metering section within PWC Networks. Once the FRC officer receives the data from the metering section, the officer will forward the data to the retailer or customer as requested.
- If the retailer wishes to obtain a wholesale generation quote, that retailer must liaise with PWC Generation and complete a wholesale pricing request form, which is provided by PWC Generation. The information in this form will constitute a wholesale pricing request. The form is checked by an officer in PWC Generation before a legally binding commitment is finalised.

*Commission comments*

2.182 In the Options Paper, the Commission responded to PWC's comments and noted that the Ring-fencing Code does not necessarily prevent relevant parties from cooperating or negotiating with one another, if all parties consent.

2.183 As an alternative, the Commission proposed Option D (tripartite agreement or multi-party agreement).

*Option D: Provision of historical data directly to a generator*

2.184 In the Options Paper, the Commission proposed that the Code could be amended to permit a tripartite agreement between relevant parties for the provision of data requests and wholesale generation quote, that is negotiated honestly, fairly and in good faith.

*Views in submissions in response to Option D*

2.185 In its submission to the Options Paper, QEnergy expressed its support of Option D.

2.186 In its submission to the Options Paper, PWC opposed Option D and reiterating the points made in its previous submission, it commented that:

- PWC Generation requires a completed wholesale generation quote with supporting information.
- Therefore, a process were the FRC Officer merely passes on data to PWC Generation will not constitute a wholesale generation quote.

*Commission's response to views in submissions to Option D*

2.187 The Commission notes that PWC Generation has a wholesale pricing request form, which must be completed by the retailer before a wholesale generation quote can be made to the retailer.

2.188 However, tripartite agreements can take many forms and can incorporate other procedures that meet any specific requirements imposed by PWC business units. A tripartite agreement could formulate a more efficient and streamlined approach to facilitating wholesale generation quotes. PWC Generation's requirement for a wholesale pricing request form to be completed by the retailer and provided to it does not preclude the implementation of a tripartite agreement to facilitate this process.

2.189 The Commission notes that a tripartite agreement or multi-party agreement should be beneficial to both retailers and generators.

*Commission's draft decision*

2.190 The Commission proposes to allow parties to enter into a multi-party agreement for data requests. Changes to clause 6 have been proposed as a result and clause 6.4 has been inserted.

**Timeframes for customer transfers****Timeframe to reject a customer transfer request**

2.191 Under clause 8.2.6 of the Code, if a network provider rejects a customer transfer request form, it must electronically notify the retailer within five business days. The notification must set out all of the reasons for the rejection. Clause 8.2.5 states that a network provider must use its best endeavours to resolve any potential grounds for rejection prior to rejecting a customer transfer request form.

2.192 The Code provides limited grounds for rejecting a customer transfer request form.

These include instances where:

- the retailer does not have a network access agreement with the network provider;
- the information provided by the retailer is materially inconsistent with the network provider's records on the customer;
- the meter type at the exit point is inconsistent with the meter type required under the Network Connection Technical Code before the customer may transfer, and the customer transfer request form does not include a request for a new meter; or
- the nominated transfer date does not comply with clause 8.2.9 of the Code.

2.193 Clause 8.2.9 defines the transfer date for all customer transfers. In most cases, the transfer will be at the end of the month, provided that the customer transfer request form is submitted no later than ten business days prior to the end of the month for an urban area, or 15 business days prior to the end of the month for a non-urban area.

#### *QEnergy's amendment proposal*

2.194 In its amendment application, QEnergy proposed that the timeframe within which a network provider may reject a customer transfer request should be one business day instead of five. QEnergy claims that that five business days for a network provider to inform a retailer of its rejection of a customer transfer request form:

- is longer than the timeframe in the NEM; and
- increases the length of time for customer transfers, which it deems to be burdensome and inefficient.

#### *Views in submissions*

2.195 In its submission to the Consultation Paper, PWC opposed QEnergy's proposal and stated that a five-business-day timeframe to notify a rejection of a customer transfer request is appropriate given the manual process involved in enable customer transfers between retailers. This process includes:

- Once the customer transfer request is received, PWC checks the request to ensure that the details are correct.
- Arrangements are made with other business units to ensure that the transfer can take place.
- These arrangements require cooperation between staff at the Regulatory Pricing and Economics Area, Metering, Networks, Generation and System Control (which may include a potential site visit) in addition to the current and prospective retailer.

#### *Option E: Reducing the timeframe to notify the rejection of a customer transfer request*

2.196 In the Options Paper, the Commission noted that it was inclined to consider a reduction in the timeframe to notify the rejection of a customer transfer request because:

- there may be financial implications in having a timeframe that is too lengthy. The new retailer may not be able to supply electricity to the customer as initially agreed and the current retailer will be forced to continue to supply electricity to the customer, against the wishes of that customer.
- cooperation between various business units within PWC is not dissimilar to the cooperation required between various market participants in the NEM.

*Views in submissions in response to Option E*

2.197 In its submission to the Options Paper, QEnergy outlined its support for Option E.

2.198 In its submission to the Options Paper, PWC expressed the view that the existing arrangements should remain and re-iterated that:

- PWC employs a manual process, unlike in the NEM, which requires cooperation and coordination across a number of business units.
- The five-business-day timeframe should remain to ensure that appropriate checks (including site visits) can take place.

*Commission's response to views in submissions to option E*

2.199 The Commission notes QEnergy's proposed amendment to reduce the timeframe to notify the rejection of a customer transfer request from five business days to one business day. However, the Commission agrees with PWC's view that one business day may not be appropriate for PWC Network to conduct all appropriate checks with due diligence.

2.200 The Commission notes PWC's request that the five-business-day timeframe should remain. However, given the financial implications to a new retailer, current retailer and customers as outlined above, the Commission considers that the timeframe to notify the rejection of a customer transfer request should be reduced. Ideally, the network provider should be required to notify the rejection of a customer transfer request as soon as possible.

2.201 The Commission recognises that the onus is on the network provider to determine whether or not a transfer can take place. Therefore, the Commission considers that a reduction in the timeframe to notify the rejection of a customer transfer request from five business days to three business days is a reasonable compromise.

*Commission's draft decision*

2.202 Commission's draft decision:

- The Commission will not adopt QEnergy's proposed amendment that the timeframe to notify the rejection of a customer transfer request be reduced from five business days to one business day.
- The timeframe to notify the rejection of a customer transfer request will be reduced from five business days to three business days (Option E). Changes to clause 8 have been proposed as a result.

**Timeframe to advise of a customer transfer date***Existing arrangements*

2.203 Clause 8.2.10 (a) of the Code states that, following the receipt of a valid customer transfer request form, the network provider must electronically notify the current retailer of the transfer date within five business days after receipt of the customer transfer request form.

2.204 In the event that a network provider is unable to transfer a customer within the nominated transfer date, the network provider must electronically notify the retailer of the reasons why it cannot initiate the transfer and provide a proposed timetable for

the transfer within five business days after receipt of the customer transfer request form.<sup>35</sup>

#### *QEnergy's proposed amendment*

2.205 In its amendment application, QEnergy proposed that the timeframe within which a network provider must advise of a customer transfer date should be one business day after the receipt of a valid customer transfer request form. QEnergy claims that:

- five business days is longer than the timeframe in the NEM; and
- taken together with the other timeframes in the Code, the timeframe allows PWC Networks to extend customer transfer requests for a prolonged period of time, which is burdensome and inefficient.

#### *Views in submissions*

2.206 In its submission to the Consultation Paper, PWC expressed the view that the existing arrangements should remain on the basis that:

- five business days is an appropriate timeframe to determine whether a transfer can take place at the allotted time; and
- PWC employs a manual process to enable customer transfers between retailers, including cooperation with various business units and assessment of the information in the request.

#### *Option F: Reducing the timeframe to advise of a customer transfer date*

2.207 In the Options Paper, the Commission stated that it was inclined to consider a potential reduction in the timeframe to advise a retailer of a customer transfer date and noted that:

- the customer transfer date is strictly defined and, in most cases, this date will be set at the end of the month;
- as customer transfer date is predictable, it may be reasonable to assume that the network provider would allocate staff for this particular activity at the end of each month; and
- cooperation between various business units within PWC is not dissimilar to the cooperation required between various market participants in the NEM.

#### *Views in submissions in response to Option F*

2.208 In its submission to the Options Paper, QEnergy outlined its support for Option F.

2.209 In its submission to the Options Paper, PWC expressed the view that the existing arrangements should remain and noted that:

- PWC acts in good faith to confirm the customer transfer date as soon as possible; and
- The five-day timeframe has not created an impediment to the customer transfer process since the introduction of the Code.

#### *Commission's response to views in submissions to option F*

2.210 The Commission notes QEnergy's proposed amendment to reduce the timeframe to advise of a customer transfer date from five business days to one business day. However, the Commission recognises that the onus is on the network provider to

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<sup>35</sup> Clause 8.2.12, Retail Supply Code.



determine whether or not a customer transfer can take place on the date requested by the retailer. Therefore, the Commission considers that a reduction in the timeframe from five business days to one business days is insufficient for the network provider to conduct all appropriate checks with due diligence.

2.211 The Commission notes PWC's comments that it acts in good faith to confirm the customer transfer date as soon as possible and that the current timeframe has not created an impediment the customer transfer process.

2.212 Notwithstanding these points, the Commission considers that the transfer date in the Code is strictly defined and predictable and believes that it is reasonable for the network provider to allocate staff for this particular activity at the end of each month.

2.213 The Commission considers that reducing the timeframe from five business days to three business days will still enable the network provider to conduct all appropriate checks with due diligence.

2.214 Reducing the timeframe to three business days is consistent with Option E as previously discussed.

#### *Commission's draft decision*

2.215 Commission's draft decision:

- The Commission will not adopt QEnergy's proposed amendment to reduce the timeframe to advise of a customer transfer date to one business day.
- The timeframe to advise of a customer transfer request will be reduced from five business days to three business days (Option F). Changes to clause 8 have been proposed as a result.

### **Cooling-off period**

#### *Current arrangements*

2.216 Clause 8.2.20 of the Code states that a customer transfer is not permitted prior to the completion of any cooling-off period. As a result, the incoming retailer will need to take this into account when nominating the customer transfer date.

2.217 Cooling-off period is defined in Schedule 1 of the Code as the ten-business-day period following the date on which the customer enters into an electricity sales contract with a retailer for the supply of electricity to that customer at an exit point.

#### *PWC proposed amendment*

2.218 In its submission to the Consultation Paper, PWC proposed that the Code should be amended to permit customers to waive the cooling-off period. PWC noted that the cooling-off period may delay the customer's ability to transfer between retailers.

#### *Commission's comments*

2.219 In the Options Paper, the Commission stated that it was not inclined to consider waiving the ten-business-day cooling-off period for small to medium sized customers, but may consider a provision for large customers on the basis that larger commercial customers should be in stronger a negotiation position and able to appropriately assess their business risks.

#### *Views in submission*

2.220 In its submission to the Options Paper, QEnergy expressed its support to permit customers to waive the cooling-off period for customers using more than 160 megawatt hours each year.

*Response to views in submissions to the Options Paper:*

2.221 The Commission notes QEnergy's comment that customers using more than 160 megawatt hours each year should be permitted to waive the cooling-off period. The Commission also notes PWC's support for the Commission to permit customers to waive the cooling-off period.

*Commission Draft Decision*

2.222 In the absence of any submission to the contrary, the Commission's draft decision is to permit customers using more than 160 megawatt hours each year to waive the cooling-off period. Changes to clause 8.2.20 have been proposed as a result.

**Other proposed amendments and additional comments**

2.223 Table 2.2 contains the Commission's Draft Decision with respect to other proposed amendments and comments by QEnergy and PWC.

Table 2.2: Proposed amendments and other comments and Commission's Draft Decision

Proposed amendments and other comments	Commission's Draft Decision
<p><i>Decision and timing to amend the Code</i></p> <p>In its submission to the Options Paper, PWC stated that the Code should be amended only when greater consideration has been given to RoLR procedures and other existing legislation and licensing requirements, which leave PWC at a disadvantage.</p> <p>PWC also noted that:</p> <ul style="list-style-type: none"> <li>• it is unclear why a change to the Code is warranted 14 months after the introduction of the Code;</li> <li>• amending the Code is inconsistent with the business relationship of no surprises, as recommended by the Commission; and</li> <li>• amending the Code provides little regulatory certainty.</li> </ul>	<p>The Commission notes that it is under a statutory obligation to ensure that codes are relevant and effective at all times in accordance with section 24 (7) of the Act.</p> <p>The Commission also notes that :</p> <ul style="list-style-type: none"> <li>• it expressed its willingness to review the Code during the development and implementation of the Code in 2011; and</li> <li>• RoLR procedures can be considered separately to the issues raised in this Draft Decision Paper.</li> </ul> <p>Commission's draft decision:</p> <ul style="list-style-type: none"> <li>• the Code will be amended in accordance with this Draft Decision Paper.</li> </ul>
<p><i>Right of costs recovery re provision of data</i></p> <p>QEnergy proposed that the Code be amended to remove the ability of the network provider to recover the reasonable costs incurred in the provision of data to retailers and customers. QEnergy claimed that similar charges do not exist in the NEM.</p> <p>In its submission to the Consultation Paper, PWC noted that the costs incurred in providing the data exceeded the amount charged for the provision of this data.</p>	<p>The Commission notes QEnergy's concerns. However, the Commission also notes that the network provider is under a regulatory obligation to provide this data. The Commission's view is that the network provider should be provided with the right of costs recovery in the provision of data to retailers and customers.</p> <p>In regard to PWC's comment that the amount charged is not enough to cover the cost incurred in providing</p>

	<p>the service, the Commission notes that the Code allows the network provider to charge the reasonable costs of providing the service, which must be approved by the Commission. PWC Networks is free to submit new charges to the Commission for approval.</p> <p>Commission's draft decision:</p> <ul style="list-style-type: none"> <li>• The Commission does not support QEnergy's proposed amendment to remove the ability of the network provider to recover the reasonable costs incurred in the provision of data.</li> </ul>
<p><i>Additional comments regarding administrative provisions</i></p> <p>The Commission has noted ambiguity in clause 8.2.6 of the Code. Clause 8.2.6 does not specify whether the five-day timeframe commences after the receipt of the customer transfer request form or after the network provider rejects the customer transfer request form.</p> <p>In the Options Paper, the Commission proposed to amend clause 8.2.6 so that the five-business-day timeframe commences after the receipt of a customer transfer form.</p> <p>In its submission to the Options Paper, QEnergy expressed support for the proposed amendment.</p>	<p>Commission's draft decision:</p> <ul style="list-style-type: none"> <li>• Clause 8.2.6 will be amended to clarify that the commencement of the five-business-day timeframe will commence after the receipt of a customer transfer request form.</li> </ul>
<p><i>Amending the acceptable credit rating</i></p> <p>QEnergy proposed that the term 'acceptable credit rating' be amended to include a Dunn and Bradstreet Dynamic Risk Score of Low or better.</p> <p>In its submission to the Consultation Paper, PWC agreed with QEnergy's proposed amendment.</p>	<p>Commission's draft decision:</p> <ul style="list-style-type: none"> <li>• The term 'acceptable credit rating' will be defined to include a Dunn and Bradstreet Dynamic Risk Score of Low or better. Changes to Schedule 1 have been proposed as a result.</li> </ul>
<p><i>Retailer of Last Resort Procedures</i></p> <p>Clause 9.4.2 of the Code states that following a RoLR event, the network provider must, as soon as practicable, transfer existing customers from the failed retailer to PWC Retail (as the RoLR). PWC sought clarification on whether a separate customer transfer request form is required for each of the failed retailer's customers and, if so, PWC noted that this may delay the transfer of customers to PWC Retail.</p> <p>Clause 9.4.3 of the Code states that PWC Retail, as the RoLR, must sell electricity to existing customers of the failed retailer in accordance with the RoLR tariffs approved by the Commission. PWC proposed the following:</p> <ul style="list-style-type: none"> <li>• PWC considered that RoLR tariffs should be sufficiently high so as to encourage affected customers to negotiate more favourable terms</li> </ul>	<p>The Commission notes PWC's concerns on the lack of clarity of RoLR procedures in the Code.</p> <p>Commission's draft decision:</p> <ul style="list-style-type: none"> <li>• The Commission will consider developing robust RoLR guidelines under the Code as a separate project to the issues raised in this Draft Decision Paper.</li> </ul>

<p>with PWC Retail or another competitive retailer.</p> <ul style="list-style-type: none"> <li>As such, the RoLR tariff for each customer should consist of existing generation, networks and retail costs plus a 7 per cent retail margin. PWC stated that this is consistent with similar arrangements in the Victorian electricity market.</li> </ul>	
<p>Clause 9.4.4 and 9.4.5 (c) of the Code states that the Commission will gazette the RoLR tariffs for use by PWC Retail. PWC considered this to be unnecessary, as customers enter into contracts with PWC Retail through bilateral agreements.</p>	
<p>Clause 9.4.5 (d) of the Code allows customers to remain on the RoLR tariff indefinitely. PWC proposed that a maximum of three months for customers to remain on the RoLR tariff be set in order to encourage customers to renegotiate after a RoLR event.</p>	
<p>Clause 9.4.5 of the Code does not specify the terms and conditions of contracts associated with a RoLR event. PWC flagged that it does not intend to apply the failed retailer's terms and conditions. PWC sought confirmation on whether this is permissible under the Code.</p>	
<p>Clause 9.5.1 and 9.5.2 of the Code provides that PWC may apply to the Commission to recover costs associated with a RoLR event. However, PWC stated that the Code does not outline a specific framework for costs recovery. As such, PWC proposed that a cost recovery scheme be developed prior to an application being made, including guidelines on the types of costs that may be recovered.</p>	
<p><i>Generator of Last Resort</i></p> <p>In its submission to the Consultation Paper, PWC invited dialogue on potential changes to the Code in response to competition in the generation market. In its submission to the Options Paper, PWC requested that the Commission consider Generator of Last Resort provisions in conjunction with RoLR procedures.</p>	<p>Commission's draft decision:</p> <ul style="list-style-type: none"> <li>The Commission may consider Generator of Last Resorts issues as a separate project to the issues raised in this Draft Decision. However, the development of RoLR procedures will be given priority.</li> </ul>