



APPLICATION FOR AMENDMENTS TO THE ELECTRICITY RETAIL SUPPLY CODE

FINAL DECISION

May 2013

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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 Act¹. 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.² 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.³
- 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.⁴ QEnergy expressed a number of concerns relating to credit support requirements between generators and retailers, access to metering data and customer transfer arrangements governed by the Code.
- 1.6 In response to QEnergy's amendment application, the Commission released the following discussion papers for public consultation:
 - Consultation Paper (released 10 July 2012), which invited submissions on QEnergy's amendment application. The Commission received submissions from

1 Section 24, *Utilities Commission Act*.

2 *Ibid.*

3 Utilities Commission, *Electricity Retail Supply Code – Statement of Reasons*, 3 August 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.

QEnergy, Power and Water Corporation (PWC) and the Northern Territory Major Energy Users Group (NTMEU).

- Options Paper (released 28 September 2012), which outlined other potential options for amending the Code. The Commission received submissions from QEnergy, PWC and the NTMEU.
 - Draft Decision Paper and a draft Code (with the Commission's proposed amendments) and proposed credit support guidelines (released 16 November 2012). The Commission received submissions from PWC and QEnergy.
- 1.7 These documents and public versions of all submissions are available on the Commission's website: (www.utilicom.nt.gov.au).
- 1.8 In its submission to the Draft Decision Paper, PWC suggested a number of cost implications associated with the Commission's proposed amendments to the Code, in particular costs associated with meeting reduced timeframes for the provision of metering data to customers and retailers.
- 1.9 On 7 December 2012, the Commission delayed the release of the Final Decision Paper and revised Code (originally scheduled for 14 December 2012) for the purpose of engaging in further discussions with PWC on its suggested cost implications. The Commission advised relevant stakeholders that it would endeavour to release the Final Decision Paper and revised Code in early 2013.
- 1.10 On 12 February 2013, PWC provided further information on its submission to the Draft Decision Paper. This document is available on the Commission's website (www.utilicom.nt.gov.au).
- 1.11 The Act requires the Commission to ensure that the Code remains relevant and effective.⁵
- 1.12 After consideration of the issues raised, the Commission has made its final decision to amend the Code in accordance with this Final Decision Paper and the revised Code.

Key aspects of the proposed amendments to the Code

1.13 Table 1.1 presents a summary of the key changes to the Code.

Topic	The Commission's final decision	Implementation of decision
Retailer-generator credit support arrangements	The Commission has decided not to maintain the existing retailer-generator credit support arrangements.	N/A
	The Commission has decided not to adopt QEnergy's proposal (Option A1) 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.	
	The Commission has decided to adopt an approach that: <ul style="list-style-type: none"> • defines the elements underpinning the credit support duration; and • allows the credit support amount to change in response to negotiated billing or payment periods (Option A2). 	Amendment to clause 3.2.2

⁵ Section 24 (9), *Utilities Commission Act*.

Retailer-generator credit support arrangements (continued)	The Commission has decided to adopt an approach that defines 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 has decided to adopt an approach that requires 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 has decided to adopt a scaling-down mechanism for retailer-generator credit support arrangements as set out in Option A5. Percentage reduction amounts are defined by the Commission in guidelines.	Amendment to clause 3.2.2
	The Commission has decided to adopt the following requirements: <ul style="list-style-type: none"> - a retailer must advise the generator or network provider (whichever is applicable) of any change to its credit rating immediately after becoming aware of that change; and - the generator or network provider (whichever is applicable) may obtain relevant credit rating information to monitor ongoing changes to the retailer's credit rating. 	Amendment to clause 3.6
	The Commission has decided not to adopt the National Energy Customer Framework (NECF) retailer-distributor credit support arrangements for retailer-generator credit support arrangements (Option A6).	N/A
Forms of credit support	The Commission has decided to 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 has decided to 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 has been removed.	Amendment to clause 3.2.2 (a)
Credit support allowances percentage table for retailer-network provider credit support arrangements	The Commission has decided to adopt an approach whereby the credit support allowances percentages table is defined by the Commission in guidelines. The credit support allowances percentage table reflects the table outlined in QEnergy's amendment application, representing the most recent version of the table under NECF arrangements. In future, the Commission will consider changes to the table 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 has decided to align the timeframe for the provision of data to customers and retailers (Option C1). The network provider is now required to provide data to customers and retailers within three business days (Option C2). The following exception to the timeframe will apply. If the network provider receives a customer data request in respect to ten or more meter installations, the network provider may increase the timeframe within which it must complete that customer data request(s) beyond the three-business-day timeframe, but only if: <ul style="list-style-type: none"> - the network provider, acting in good faith, determines that it does not have the capacity to finalise the valid data request in accordance with the timeframes stipulated in the Code; - the network provider notifies the relevant retailer in writing of the determination above; 	Amendment to clause 6

Response time to a data request (continued)	<ul style="list-style-type: none"> - the network provider notifies the relevant retailer in writing of the timeframe within which it can finalise the valid data request which: <ul style="list-style-type: none"> • is expressed in business days from the date on which the network provider received the valid data request from the retailer; and • is fair and reasonable in the circumstances; and - the network provider notifies the Commission in writing of the timeframe as determined in accordance with this process. <p>The Commission has decided to add an additional clause requiring 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.</p> <p>The timeframe for the provision of data to customers commences once the customer data request is valid.</p> <p>The Commission has amended the customer data request form at Annexure 2 of the Code so that it is more comprehensive in the information provided. The Customer data request form will need to be completed by both customers and retailers for data requests to be considered valid.</p> <p>The Commission has decided to add an additional clause that obliges the network provider to publish the customer data request form on its website, enabling easy access to customers.</p>	
Minimum timeframes for processing data requests	The Commission has decided to retain clause 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 has decided to permit the 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 Clause 6.4 has been added (multi-party agreement)
Timeframe to reject a customer transfer request	The Commission has decided to 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 has decided to 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 has decided to permit customers using more than 160 megawatt hours each year to waive the cooling-off period. The act of waiving the cooling-off period must be in writing at the time the customer enters into an electricity supply contract with a retailer.	Amendment to clause 8.2.20 Clause 8.2.21 has been added

Purpose of this paper

- 1.14 Chapter 2 of this Final Decision Paper outlines the Commission's final decision to amend (as well as the rationale for amending) the Code and responds to submissions from industry participants and stakeholders in the Territory's electricity supply industry.
- 1.15 This paper also serves as explanatory material for the revised Code, which has been released in conjunction with this Final Decision Paper, and comes into effect 1 June 2013.

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- 1.16 The revised Code and all relevant documents are available on the Commission's website (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.
- 1.17 In amending 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.⁶
- 1.18 The Commission thanks QEnergy, PWC and NTMEU for their contribution to the discussion papers.

⁶ Section 5 (2), *Utilities Commission Act*.

CHAPTER 2

Final 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 Networks 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)⁷, interested parties continue to express doubts over whether consumers will see the full benefits of retail contestability as demonstrated in the National Electricity Market (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 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 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 and

⁷ All Territory customers became contestable from 1 April 2010.

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

- 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 that its final decision strikes 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 outlines:
- the Code's existing arrangements;
 - proposed amendments (including amendments proposed in QEnergy's initial and supplementary applications as well as PWC's submissions) as well as the Commission's proposed options (as stipulated in the Options Paper);
 - views in submissions in response to the Consultation Paper and Options Paper;
 - the Commission's draft decision and its response to views in submissions;
 - views in submissions in response to the Commission's draft decision; and
 - the Commission's final decision and rationale.

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;⁹ 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.¹⁰

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

⁹ Clause 3.2.2 (a), Retail Supply Code.

¹⁰ 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 & Poor’s, Fitch Ratings or Moody’s Investor Services.¹¹
- 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).¹²
- 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’.¹³
- 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.¹⁴ 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 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.¹⁵

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) (Option A1) 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;

¹¹ Ibid, Schedule 1.

¹² Ibid, clause 3.2.2 (b).

¹³ Ibid.

¹⁴ Ibid, clause 3.2.1.

¹⁵ 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
- 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 the Consultation Paper

- 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, 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.

The Commission's comments in the Options Paper

- 2.22 In the Options Paper, the Commission stated that QEnergy's 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), which would adversely

impact on the market and its continued stability and may transfer undue risk from retailers to generators; and

- 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 submissions in response to the Options Paper

- 2.23 In its submission to the Options Paper, 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.
- 2.24 In its submission to the Options Paper, PWC reiterated previous comments made in its submission in response to the Consultation Paper (as outlined above).
- 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 was 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; and
 - 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.

The Commission's response to views in submissions to the Options Paper

- 2.26 In the Draft Decision Paper, the Commission made the following comments.
- In response to 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 agreed with QEnergy's comment in terms of the specific impact of a particular RoLR event. However, the Commission stated that it was concerned with any inappropriate market signals that may stem from adopting QEnergy's proposal.
 - The Commission considered 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; and
 - 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.
 - 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.

- 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, which the Commission considered to be an unacceptable outcome.
- Given that there is no legal barrier to contestability in the generation market, the adoption of QEnergy's proposal may impact on a private entity's decision to enter into the generation market and present a barrier to entry. This is because privately owned generators would be unable to request credit support to cover payments outstanding up until the transfer of customer load to the RoLR.
- In relation to NTMEU's concerns that PWC Generation's may apply credit support arrangements for the benefit of PWC related parties, the Commission noted the difficulties it faces in devising regulatory responses that have the same type of impact as significant structural reform in NEM jurisdictions. However, the Commission also noted that other measures have been implemented to address potential issues of discriminatory conduct in the Territory market, such as obligations imposed upon PWC under the Ring-fencing Code.
- The concerns raised by QEnergy and NTMEU appear legitimate and the Code does not adequately address these concerns in its present form.
- Notwithstanding PWC's claim that it has demonstrated its willingness (in one instance) to request credit support below the maximum amount as specified in the Code, the Commission stated that it has identified deficiencies in the way in which credit support is calculated (for discussion see Option A2) and noted that the existing arrangements fall short of facilitating good faith negotiation with respect to credit support arrangements between the parties, as originally intended. As the existing arrangements do not achieve this objective, the Commission considered that the Code should be amended so it remains relevant and effective.

The Commission's draft decision

2.27 The Commission's draft decision was as follows:

- 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 (which are outlined in the Draft Decision Paper).

Views in submissions in response to the Commission's draft decision

2.28 The Commission did not receive further submissions in response to its draft decision not to support Option A1.

2.29 PWC and QEnergy made a number of comments in response to the Commission's draft decision not to retain the existing arrangements and to adopt various other

measures (as outlined in the Draft Decision Paper). These matters are discussed in relevant sections of this Final Decision Paper.

The Commission's final decision

2.30 The Commission's draft decision stands.

2.31 The Commission's final decision is:

- not to adopt 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).
- not to retain the existing arrangements; and
- adopt other measures as outlined in this Final Decision Paper (rationale is discussed in relevant sections of this paper).

Option A2: Defining the credit support duration

Proposed option

2.32 In the Options Paper, the Commission proposed a methodology for defining the credit support duration, which sought to form the basis for the calculation of the maximum 'required generation credit support amount' in the Code (Option A2). This methodology was as follows:

- 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.

2.33 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.

2.34 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 the Options Paper

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

2.36 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.

The Commission's response to views in submissions to the Options Paper

2.37 In the Draft Decision Paper, the Commission:

- noted PWC's comment that a reduction in the billing period would increase the costs of providing this service but stated that Option A2 does not propose to

mandate a reduction in the billing period and merely facilitates changes to the credit support amount in response to changes in the billing or payment period, as negotiated between the parties; and

- noted QEnergy's view that the adoption of Option A2 will have little impact on PWC Generation's behaviour to reduce the billing period; however it expressed the view that this option, together with other measures to improve the negotiation framework (as outlined in the Option A4 section of this paper), should increase pressure on PWC Generation to consider a reduction in the billing or payment period. The Commission considered that adopting Option A2 would help facilitate this process.

The Commission's draft decision

2.38 The Commission's draft decision was to adopt Option A2 (defining the credit support duration). The Commission proposed changes to clause 3.2.2 of the Code.

Views in submissions in response to the Commission's draft decision

2.39 In its submission to the Draft Decision Paper, PWC raised the following points:

- PWC stated that its credit processes and systems are structured around calendar months, not 28-day billing cycles, and PWC is unable to incorporate 28-day billing cycles under its current system.
- PWC noted that it is unclear whether the Commission is mandating 28-day billing cycles (as opposed to calendar months) for second-tier retailers. In order to support this function, PWC would need a new billing system, adding costs of around \$3 to \$4 million as well as additional costs associated with arrangements for meter reading.
- PWC sought clarity on the way in which the highest generation services bill over the previous 12 months will be calculated on a 28-day billing period. The methodology could be 28 days of each month where electricity usage is at its highest, the first or last 28 days in each month or the whole 12 months using the sum of the highest 28 days of electricity consumption.

2.40 In its submission to the Draft Decision Paper, QEnergy disputed PWC's claim that it would cost \$3 to \$4 million to alter the billing cycle and noted that the proposed methodology for the calculation of credit support is reasonably straight forward.

The Commission's response to views in submissions to the draft decision

2.41 The Commission notes PWC concerns on whether the Code will mandate billing cycles (other than monthly billing cycles) for second-tier retailers and the ambiguity regarding the way in which the highest generation services bill over the previous 12 months will be calculated on a 28-day billing period under clause 3.2.2 (b) (ii) of the Code.

2.42 The Commission also notes PWC's comment that its current billing systems are only able to accommodate monthly cycles and that altering its billing cycle to 28 days would require a new billing system, adding costs of around \$3 to \$4 million.

2.43 The Commission notes that Option A2 does not intend to mandate the actual billing period or cycle programmed into PWC's billing system.

2.44 The Commission confirms that Option A2 intends to define the elements underpinning the credit support duration so that the credit support duration (and the credit support amount) can be flexible in light of changes to the billing period, payment period (as

- negotiated through honest, fair and good faith negotiations) and/or reactive period (discussed further in the Option A3 section of this paper).
- 2.45 The Commission notes that the 28-day billing period proposed under Option A2 was based on the elements underpinning the existing arrangements in the Code. The Commission notes that the credit support amount under the existing arrangements is based on a 56-day credit support duration, which consists of (among other things¹⁶) a 28-day billing period.
- 2.46 The Commission acknowledges that codifying the 28-day billing period for the purpose of calculating the credit support amount raises concerns for PWC given its monthly billing system. However, the Commission's view is that the credit support duration has to be in days so it can be calculated accurately and appropriately and is flexible in light of changes to the negotiated billing and payment periods and/or the reactive period.
- 2.47 To meet these objectives and accommodate PWC's monthly billing system, the Commission has decided to incorporate Option A2 in the Code, but define the billing period as a period of up to 31 days to accommodate monthly billing cycles.
- 2.48 This means that the highest generation services bill, as determined under clause 3.2.2 (b) (ii) of the Code, will be consistent with PWC's monthly billing cycle. The highest generation services bill under a monthly billing cycle is assumed to be the bill issued under a 31-day month.
- 2.49 The Commission notes that clause 3.2.2 (b) (ii) of the Code refers to the generator's record of the highest generation services bill issued by the generator over the previous 12 months and this may cause issues in instances where previous bills were issued under a different billing period to a newly negotiated billing period. In such cases, the Commission's view is that:
- If a billing period is negotiated that is different to the billing period in any bill issued by the generator over the previous 12 months, the generator should select the highest generation services bill issued by the generator over the previous 12 months that reflects the negotiated billing period (ie if a 28-day billing period is negotiated and the generator issued monthly bills over the previous 12 months, the generator would pick a monthly bill that reflects the negotiated 28-day billing period eg February on a non-leap year).
 - If no such bill exists, the generator should pro rata (starting from the beginning of the month) the highest generation services bill over the previous 12 months so it is consistent with the negotiated billing period. (eg if a 14-day billing period is negotiated and the generator issued monthly bills over the previous 12 months, with the highest generation services bill issued in January, the January bill should be a pro rata from 1 January to 14 January (representing the newly negotiated 14-day billing period). Clause 3.2.2 (bc) has been inserted in the Code to clarify these points.

¹⁶ The credit support amount is currently two times the highest generation services bill as determined in accordance with either clauses 2.2.2 (a) or 2.2.2 (b) of the Code. The multiple of two was derived from the quotient of a 56-day credit support duration. The credit support duration consists of a 28-day billing cycle, 14-day payment period and 14-day reactive period.

- 2.50 The Commission notes that the implementation of the negotiation framework under Option A4 imposes an obligation upon PWC Generation to consider billing and/or payment periods through honest, fair and good faith negotiations (discussed further in Option A4 of this paper).

The Commission's final decision

- 2.51 The Commission's final decision is to:
- Adopt Option A2 (defining the credit support duration) but define the billing period as a period of up to 31 days to accommodate monthly billing cycles. Clause 3.2.2 of the Code has been amended.
 - Amend clause 3.2.2 (b) (ii) by inserting clause 3.2.2 (bc) to clarify the operation of clause 3.2.2 (b) (ii) of the Code in instances where the newly negotiated billing period does not reflect the previous billing period:
 - If a billing period is negotiated that is different to the billing period in any bill issued by the generator over the previous 12 months, the generator is to select the highest generation services bill issued by the generator over the previous 12 months that reflects the negotiated billing period; or
 - If no such bill exists, the generator is to pro rata (starting from the beginning of the month) the highest generation services bill over the previous 12 months so that it is consistent with the negotiated billing period.

Option A3: Defining the reactive period

Proposed option

- 2.52 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).
- 2.53 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.
- 2.54 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 the Options Paper

- 2.55 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.

The Commission's response to views in submissions to the Options Paper

- 2.56 In the Draft Decision Paper, the Commission:
- agreed with PWC's comment 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;
 - expressed the view that the definition of the reactive period should be flexible in light of potential improvements to the RoLR procedures. The Commission's preference was that it should have the option to redefine the reactive period in guidelines;

- noted that the ability to redefine the reactive period is in line with the adoption of Option A2 (defining the credit support duration as discussed above); and
- expressed the view that more efficient RoLR procedures should be reflected in reduced credit support requirements from a retailer to a generator.

The Commission's draft decision

2.57 The Commission's draft decision was 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 of the Code were proposed. In particular, the Commission proposed to insert clause 3.2.2 (ba), which sought to clarify the reactive period.

Views in submissions in response to the Commission's draft decision

2.58 The Commission did not receive further submissions in relation to its draft decision to adopt Option A3.

The Commission's final decision

2.59 The Commission's draft decision stands.

2.60 The Commission's final 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). Clause 3.2.2 of the Code has been amended, in particular clause 3.2.2 (ba) has been inserted to clarify the reactive period.

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

Proposed option

- 2.61 In the Options Paper, the Commission proposed a more robust negotiation framework for the Code, which sought to set high-level principles governing the conduct of negotiation between the parties to reflect honest, fair and good faith negotiations.
- 2.62 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.
- 2.63 The Commission noted that an improved negotiation framework may be incorporated in the Code at least until such time as the market achieves the same level of contestability as demonstrated in the NEM.
- 2.64 The Commission proposed the following improvements to the negotiation framework¹⁷:
- 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;

¹⁷ For an example of a negotiation framework, see ElectraNet Negotiation Framework <www.electranet.com.au/assets/Uploads/negotiatingframework.pdf>

- 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);
 - (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 (as applicable); and
- the generator must commence, progress and finalise negotiation of credit support arrangements on a best endeavours basis.

2.65 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.

2.66 The Commission noted that Option A4 is similar to the negotiation framework for access to transmission network services in the NEM.¹⁸ A similar negotiation framework for access to network services also exists under the *Electricity Networks (Third Party Access) Act*.¹⁹

Views in submissions in response to the Options Paper

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

2.68 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

¹⁸ Clause 6A.9.5, National Electricity Rules.

¹⁹ See the Network Access Code, which is a Schedule to the *Electricity Networks (Third Party Access) Act* (Northern Territory).

- PWC has, through the committee, considered alternative credit support arrangements with one retailer.

The Commission's response to views in submissions to the Options Paper

2.69 In the Draft Decision Paper, the Commission made the following comments:

- The Commission noted PWC's view that it already has a mechanism within the corporation in relation to the negotiation and consideration of credit support but stated that the existence of the Receivables Risk Management Committee does not address the unequal (perceived or actual) bargaining position between the parties.
- The Commission clarified that 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.
- The Commission clarified that a negotiation framework under 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.
- The Commission invited PWC 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 as examples.
- The Commission noted QEnergy's comment that a negotiation framework may make little difference to the interaction between retailers and generators in the Territory. The Commission also noted 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. The Commission expressed the view that an improved negotiation framework should increase transparency in the negotiation process and address the unequal (perceived or actual) bargaining position between the parties.
- In relation to the reduction of billing or payment periods, the Commission stated that the negotiation framework under Option A4 would require PWC Generation (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 and can be used to facilitate negotiations and determine whether negotiations are proceeding in good faith.
- The Commission outlined the benefits of reduced billing or payment periods and how it can be beneficial to generators, and present a win-win situation for all parties concerned:
 - 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. 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; and

- 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.
- The Commission cautioned that 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 stated that industry participants may construe this behaviour as benefiting PWC Retail. To improve the negotiation process, PWC Generation will be required to justify this statement so that the parties may discuss a way forward.
- The Commission considered that the improved negotiation framework, together with other measures as outlined in the 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.

The Commission's draft decision

2.70 The Commission's draft decision was to adopt Option A4 (to require PWC Generation to submit to the Commission a negotiation framework for retailer-generator credit support arrangements). The Commission proposed to insert clause 3.5 in the Code. The Commission also stated that 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 Generation²⁰) in the Territory and has substantial market power in the generation market;
- 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.

Views in submissions in response to the Commission's draft decision

2.71 In its submission to the Draft Decision Paper, PWC reiterated its view that it already has a mechanism within the corporation for the negotiation of credit support (Receivable Risk Management Committee) and has used this facility to consider (and adopt) alternative credit support arrangements for one retailer.

2.72 In its submission to the Draft Decision Paper, QEnergy reiterated its view (expressed in previous submissions and separate correspondence to the Commission) on the difficulties it faces in negotiating with PWC given PWC's vertically integrated

²⁰ Independent Power Producers are generators that sell electricity to other generators.

structure. QEnergy stated that it hopes to construct a long-term successful working relationship with PWC in the future.

The Commission's response to views in submissions to the draft decision

- 2.73 The Commission notes PWC's view that it already has a mechanism (Receivable Risk Management Committee) within the corporation in relation to the negotiation of credit support and has used this facility to consider (and adopt) alternative credit support arrangements for one retailer.
- 2.74 However, the Commission believes that PWC has not provided any substantial evidence that this committee adequately addresses the unequal (perceived or actual) bargaining position between the parties. These concerns are at the centre of QEnergy's amendment application and have been raised previously by QEnergy and NTMEU in individual correspondence to the Commission (as well as in submissions to relevant discussion papers in this matter).
- 2.75 The Commission notes PWC's comment that it has adopted alternative credit support arrangements in one instance. However, the Commission must also alleviate or minimise any concerns of perceived bias in the exercise of substantial bargaining power by a monopoly service provider.
- 2.76 Although the committee has reached a favourable outcome in one instance, a perception of bias, as well as the potential for PWC to abuse its monopoly power, may still exist given that the committee is constituted solely by PWC management and is likely to be able to enforce the process as well as the outcome of negotiation, to the benefit or perceived benefit of PWC business units only.
- 2.77 In paragraph 2.60-61 of the Draft Decision Paper, the Commission:
- noted that the existence of the committee does not address the equal (perceived or actual) bargaining position between the parties; and
 - clarified that the 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 and does not intend 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.
- 2.78 As no substantial evidence has been presented to the Commission demonstrating that the committee adequately addresses the concerns raised by industry participants and stakeholders in this matter, the Commission considers that Option A4 should be adopted to incorporate a more robust negotiation framework for the negotiation of credit support arrangements in the Territory.

The Commission's final decision

- 2.79 The Commission's draft decision stands.
- 2.80 The Commission's final decision is to adopt Option A4, requiring PWC Generation to submit to the Commission a negotiation framework for retailer-generator credit support arrangements and comply with certain negotiation principles stipulated in the Code. The Commission has inserted clause 3.5 in the Code.
- 2.81 The negotiation requirements 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) in the Territory and has substantial market power in the generation market;

- 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

- 2.82 In the Options Paper, the Commission proposed a methodology that sought 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 and Bradstreet.
- 2.83 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.
- 2.84 The Commission considered the use of the National Credit 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

Standard & Poor's/Fitch Rating	Moody's Rating	Dun and Bradstreet dynamic risk score	Credit support reduction (% reduction the credit support)
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 %

2.85 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.

2.86 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 the Options Paper

2.87 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'.

2.88 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 in the Code that 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.

The Commission's response to views in submissions to the Options Paper

2.89 In the Draft Decision Paper, the Commission made the following comments:

- In response to PWC's comment that Option A5 will not remove the financial risk faced by PWC Generation, the Commission expressed the view 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.

- The Commission considered 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:
 - 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;
 - 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; and
 - concerns that credit support arrangements may transfer undue risk from retailers to generators.
- The Commission stated that should Option A5 be adopted it 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.
- The Commission expressed the view that the adoption of Option A5 will not prevent PWC from addressing its financial risks. The Commission considered that PWC Generation would be able to protect its financial interests through negotiations (eg alternative forms of credit support or changes in the billing or payment period) or other business arrangements.
- In response 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:
 - noted that market participants in the NEM are exempt from NEM generator-retailer credit support requirements if they meet the 'acceptable credit criteria' (as determined by the regulator);
 - noted that the Australian Energy Market Commission has released an issues paper on market resilience (titled NEM Financial Market Resilience) and various market participants have made submissions highlighting financial contagion risks in the NEM;²¹
 - noted that the New Zealand Electricity Authority's Prudential Security Review Discussion Paper briefly discussed the application of credit support

²¹ <www.aemc.gov.au/market-reviews/open/nem-financial-market-resilience>

arrangements for entities with high credit ratings and the potential triggering of contagion effects that may result²²;

- concluded that it sees validity in removing the blanket exemption with respect to highly rated companies if this would prevent a real risk of financial contagion, while noting that the likelihood of a financial contagion event in the Territory is remote (given that PWC Retail has more than 99 per cent market share and is unlikely to be the subject of a RoLR determination); and
 - flagged that the possibility of lifting the exemption, pending the outcome of any review of the NEM and further developments in the Territory market.
- In response 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 expressed the view 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. The Commission also noted that PWC Generation (in providing a wholesale generation quote) is required to deal with a competitive retailer on a non-discriminatory arms-length basis.²³
 - In response to PWC's comment on the lack of visibility of financial statements for private businesses, the Commission noted 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 and Bradstreet, but proposed to adopt the following measures²⁴ on the basis that generators should be provided with some form of information to assess changes in a retailer's financial position:
 - 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.
 - In response to QEnergy's comment on its preference for Option A6 (NECF distributor-retailer credit support arrangements for retailer-generator credit support arrangements) instead of Option A5 on account that Option A5 is less sophisticated because it does not utilise volumes as an input to calculate the credit support amount, the Commission:
 - noted that the Territory market currently comprises three retailers and one incumbent generator, PWC Generation;
 - noted 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

²² <www.ea.govt.nz/our-work/consultations/advisory-group/settlement-prudential-security-review>

²³ See Utilities Commission's Ring-fencing Code.

²⁴ The Commission also noted that similar obligations exist with respect to NEM distributor-retailer credit support arrangements under clause 6B.B3.3 of the National Electricity Rules, version 51 and network provider-retailers credit support arrangements in the Code (clause A.A6(d)-(e) of Appendix A of the Retail Supply Code).

NECF methodology, at least until such time as the market becomes more competitive;

- concluded 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), which would transfer undue financial risk from retailers to generators (in this case, PWC Generation); and
- considered Option A5 (scaling down the credit support amount due to the retailer's credit rating) to be more appropriate than Option A6 in the Territory context, at least at the early stages of FRC.

The Commission's draft decision

2.90 The Commission's draft decision was as follows:

- 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. The Commission proposed changes to clause 3.2.2 of the Code.
- The Commission will require a retailer to advise the generator of any change to its credit rating immediately after becoming aware of that change.
- 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. The Commission proposed to insert clause 3.6 in the Code.

Views in submissions in response to the Commission's draft decision

2.91 The Commission received no further submissions in relation to its draft decision to adopt Option A5.

The Commission's final decision

2.92 The Commission's draft decision stands.

2.93 The Commission's final decision is to:

- adopt Option A5 (scaling down the credit support amount due to the retailer's credit rating), with the scaling down percentage reduction table formulated in guidelines made by the Commission. Clause 3.2.2 of the Code has been amended;
- require a retailer to advise the generator of any change to its credit rating immediately after becoming aware of that change; and
- 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 in the Code.

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

Proposed option

2.94 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; and
 - 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.

2.95 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 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.

Views in submissions in response to the Options Paper

2.96 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.

2.97 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; and
- therefore, overlaying NEM rules onto the existing framework will be a risk to PWC and will not provide any apparent benefits to customers.

The Commission's response to views in submissions to the Options Paper

2.98 In the Draft Decision Paper, the Commission made the following comments:

- In response to PWC's comment that NECF or NEM arrangements are inappropriate due to the absence of hedging arrangements in the Territory, the

Commission stated that it will continue to incorporate NEM arrangements in the Territory wherever feasible and made the following points;

- NECF retailer-distributor credit support arrangements are already contained in retailer-network provider credit support arrangements in the Code; and
 - 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.
- In response to QEnergy's comment that Option A6 should be adopted, the Commission:
 - noted that the Territory market is currently comprised of three retailers and one incumbent generator, PWC Generation;
 - noted 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;
 - concluded 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), which would transfer undue financial risk from retailers to generators (in this case, PWC Generation); and
 - considered Option A6 to be unsuitable for the Territory, at least at the early stages of FRC.

The Commission's draft decision

2.99 The Commission's draft decision was not to adopt Option A6 (NECF distributor-retailer credit support arrangements for retailer-generator credit support arrangements) for retailer-generator credit support arrangements in the Code.

Views in submissions in response to the Commission's draft decision

2.100 The Commission received no further submissions in relation to its draft decision not to adopt Option A6.

The Commission's final decision

2.101 The Commission's final decision is not to adopt Option A6 (NECF distributor-retailer credit support arrangements for retailer-generator credit support arrangements) for retailer-generator credit support arrangements in the Code.

Forms of credit support

Existing arrangements:

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

- a bank guarantee (unconditional);

- 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.

2.103 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

2.104 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.

Views in submissions in response to the Consultation Paper

2.105 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.

The Commission's comments in the Options Paper

2.106 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).

2.107 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.

2.108 The Commission proposed Option A4 (framework for negotiation of retailer-generator credit support arrangements) and Option A6 (second Option A6²⁵ as discussed below) as alternatives.

Proposed option – Second option A6: Alternative forms of credit support

2.109 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.

2.110 The second Option A6 was proposed by the Commission:

- in response to common arguments by monopoly service providers that no alternatives exist 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.

²⁵ 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.

2.111 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.

2.112 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.²⁶

Views in submissions to the Options Paper

2.113 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.

2.114 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
- this Committee considers proposals from retailers (in accordance with relevant risk assessment procedures) and makes recommendations on the viability of any proposals.

2.115 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 recoverable by the liquidator.

The Commission's response to views in submissions to the Options Paper

2.116 In the Draft Decision Paper, the Commission:

- noted QEnergy's proposal and concerns that the Code provides PWC with substantial power to consider alternative forms of irrevocable credit support;
- considered 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 noted that the determination of alternative forms of irrevocable credit support is a commercial decision between the parties on how to best manage their risk;
- agreed with PWC's comment that cash could be viewed as preferential treatment and recoverable by the liquidator and noted that a proposal allowing cash in lieu

²⁶ 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.

of bank guarantees could present a risk to the market and its continued stability; and

- concluded that a more suitable option would be to 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. The Commission noted that this would be consistent with the adoption Option A4 (improved negotiation framework).

The Commission's draft decision

2.117 The Commission's draft decision was that:

- 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; and
- 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.

Views in submissions in response to the Commission's draft decision

2.118 In its submission to the Draft Decision Paper, PWC reiterated that cash deposits are not an acceptable alternative to existing arrangements as cash may be construed as preferential treatment and recoverable by the liquidator.

The Commission's response to views in submissions to the draft decision

2.119 The Commission notes PWC's repeated concerns that cash deposits are not an acceptable alternative to existing arrangements. However, the Commission did not propose to mandate a requirement for cash in lieu of bank guarantees but merely proposed to facilitate such arrangements, should it be acceptable to negotiating parties.

2.120 The Commission is mindful that there may be situations where cash could be deemed acceptable to negotiating parties (eg small scale credit arrangements whereby a bank guarantee would be uneconomical or instances where cash is used as an interim measure while formal credit support arrangements are being negotiated and/or finalised between the parties).

2.121 It is important for the Code to be flexible in this regard so that it facilitates honest, fair and good faith negotiations and encourages outcomes beneficial to all negotiating parties.

The Commission's final decision

2.122 The Commission's draft decision stands.

2.123 The Commission's final decision is:

- not to adopt QEnergy's proposed amendment for the form of irrevocable credit support to be determined by the Commission at its sole discretion; and
- adopt second Option A6 and 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

Existing arrangements

2.124 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.²⁷

Proposed option

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

2.126 Option A7 was proposed by the Commission:

- 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.

2.127 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 the Options Paper

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

2.129 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. PWC made the following points:

- 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 the 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.

²⁷ Clause 3.2.2(a) of the Code.

2.130 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 with considerable power to protect PWC Retail's market share.

The Commission's response to views in submissions to the Options Paper

2.131 In the Draft Decision Paper, the Commission:

- considered Option A7 to be a mechanism to assist in promoting a level playing field in the Territory's electricity supply industry;
- noted that Option A7 is based on NEM generator-retailer credit support arrangements, which do not discriminate on the basis of ownership;
- noted 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 was of the belief that a third-party generator should have the same rights with respect to credit support as PWC Generation dealing with a competitive retailer (other than PWC Retail);
- considered that the Code should apply in a competitively neutral manner given that legal barriers to contestability have been lifted;
- clarified that Option A7 would allow PWC Retail 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, the Commission suggested that PWC Retail would have substantial bargaining power regarding negotiation of credit support, given the amount of customer load it has to offer to a generator;
- clarified that Option A7 would apply to two independent government owned corporations contracting 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));
- responded to PWC's concerns that Option A7 may jeopardise its ability to supply electricity to all of the Territory's customers. The Commission noted that:
 - PWC's vertically integrated nature implies that Option A7 may have little impact on PWC's Retail's ability to supply electricity to customers on the non-regulated network or to those unprofitable customers; and
 - PWC Retail procures most of its generation services from PWC Generation; and
- responded to 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) compared to other retailers who can be more selective in the customers they supply. The Commission noted the following:
 - NECF legislation requires certain retailers (called 'designated retailers') to offer standing offer contracts to small customers. The Commission noted that 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; and

- this issue is not directly linked to retailer-generator credit support arrangements in the Code and needs to be addressed separately as part of the Territory's overall legislative framework (which may involve issues of Government policy).

The Commission's draft decision

2.132 The Commission's draft decision was to adopt Option A7 (alignment of government owned corporations with private enterprises regarding the application of credit support arrangements), subject to any further comment on the points raised in the Draft Decision Paper. The Commission proposed to amend clause 3.2.2 (a) of the Code.

Views in submissions in response to the Commission's draft decision

2.133 The Commission received no further submissions in relation to its draft decision to adopt Option A7.

The Commission's final decision

2.134 The Commission's final decision is to adopt Option A7 (alignment of government owned corporations with private enterprises regarding the application of credit support arrangements). The Commission has amended clause 3.2.2 (a) of the Code.

Credit support arrangements between a retailer and a network provider

Existing arrangements

2.135 Credit support requirements between the network provider and a retailer are contained in clause 3.1 of the Code. The Code states that the 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 Methodology in Appendix A of the Code.²⁸ The Credit Support Guidelines and Methodology is based on the NECF distributor-retailer credit support arrangements.

2.136 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.

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

2.138 Table 1 of Appendix A of the Code contains a table that lists equivalent credit ratings from Standard & Poor's, 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.

²⁸ Clauses 3.1.1 and 3.1.2 of the Code.

QEnergy's proposed amendment in supplementary submission

- 2.139 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.
- 2.140 In its submission to the Consultation Paper, PWC outlined its support to amend the Code to adopt the most recent version of the table.

Proposed option – Option B: Reference to the latest NECF credit support allowance table

- 2.141 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).
- 2.142 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 the Options Paper

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

The Commission's response to views in submissions to the Options Paper

- 2.144 In the Draft Decision Paper, the Commission:
- agreed that changes to the credit support allowance percentages table in NECF legislation should not automatically translate into similar changes in the Code, but noted 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;
 - proposed to specify the credit support allowance percentages table in guidelines under the Code and noted that, should the credit support allowance percentages table change under NECF legislation, the Commission would consider these changes and whether or not they are appropriate in the Territory context. The Commission also stated that, if changes are deemed appropriate, the

Commission will be able to amend the guideline as opposed to amending the Code under section 24 of the Act;

- noted NTMEU's comments that the existing arrangements do not address PWC Networks' ability to benefit PWC Retail but also noted 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; and
- stated 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 noted that, although the Commission could implement transfer pricing arrangements²⁹ with respect to credit support arrangements between PWC Retail and PWC Networks, this approach would have little impact on PWC's bottom line, compared to the impact it would have on a private business.

The Commission's draft decision

2.145 The Commission's draft decision was as follows:

- the Commission will specify the credit support allowance 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; and
- 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.

Views in submissions in response to the Commission's draft decision

2.146 The Commission received no further submissions in response to its decision to specify the credit support allowance percentages table in guidelines under the Code.

The Commission's final decision

2.147 The Commission's draft decision stands.

2.148 The Commission's final decision is to:

- specify the credit support allowance percentages table in guidelines under the Code;
- define the credit support allowance percentages table in accordance with the table outlined in QEnergy's amendment application (which is based on the most recent changes to the equivalent NECF table); and
- consider changes to NECF arrangements on a case-by-case basis. The Commission may amend the table if it considers NECF changes to be relevant in the Territory context.

²⁹ Arrangements whereby funds are transferred from one business unit within a vertically integrated corporation to another consistent with ring-fencing principles and to satisfy credit support requirements.

Access to metering data

Response time to a data request

Existing arrangements

2.149 Clause 6.2.1 of the Code requires the network provider to respond to a data request from a retailer within five business days. In comparison, clause 6.3.1 requires the network provider to respond to a data request from a customer within 20 business days.

QEnergy's amendment proposal

2.150 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 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 in response to the Consultation Paper

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

- 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; and
- once the metering section has prepared the data, the FRC officer forwards the data to the retailer.

2.152 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; and
- 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.

Proposed option – Options C1 and C2: Reducing the timeframe for provision of metering data to retailers and customers

2.153 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 and C2 as alternatives.

2.154 In the Options Paper, the Commission proposed:

- 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).

2.155 Options C1 and 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 the Options Paper

2.156 In its submission to the Options Paper, QEnergy outlined its support for the Commission to adopt Options C1 and C2.

2.157 In its submission to the Options Paper, PWC reiterated the points it made in previous submissions 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 to hire 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.

2.158 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.

The Commission's response to views in submissions to the Options Paper

2.159 In the Draft Decision Paper, the Commission proposed a three-business-day timeframe for the provision of data to customers and retailers and made the following comments.

- The Commission considered that a three-business-day timeframe for the provision of data to customers and retailers is not unreasonable in light of similar requirements in NEM jurisdictions.
- In response to PWC's comment that it may breach the provisions of the Code if relevant timeframes are reduced, the Commission noted that any reduced timeframes would be reasonable and could be met by PWC Networks through implementing efficient and effective business practices. The Commission also noted that regulated entities should implement all necessary arrangements to avoid compliance breaches and cautioned that it would respond to breaches in accordance with the Commission's Statement of Approach on Compliance.³⁰
- The Commission noted that the likelihood of PWC Networks being overwhelmed by data requests is remote, although the Commission invited comment on whether or not this is the case.
- The Commission expressed the view that an industry participant's compliance with regulatory arrangements depends on their internal business practices and efficiencies and noted that market participants in the NEM have similar expectations with respect to compliance with regulatory obligations.
- The Commission noted that PWC Networks has had a reasonable timeframe to implement more efficient business practices to respond to information requests.

2.160 The Commission responded to PWC's proposed amendment, which purported to trigger the commencement of the timeframe for provision of metering data to customers and retailers once the customer data request is completed. The Commission favoured PWC's proposed amendment, but also proposed to insert an additional clause, which sought to require 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.

2.161 The Commission also responded to PWC's concerns relating to the network provider's ability to recover the cost of providing data to customers and retailers.

- In response 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 noted that clauses 6.2.12 and 6.3.3 of the Code require retailers or customers (whichever is applicable) to pay

³⁰ Utilities Commission, January 2012, Statement of Approach on Compliance.

any reasonable charges incurred by the network provider in the provision of data as approved by the Commission and published by the network provider.

- The Commission stated that it is of the understanding 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 but noted that PWC Networks is able to submit new charges to the Commission for consideration (pursuant to the Code) if it considers the current charges to be insufficient to cover the reasonable costs incurred in the provision of metering data to customer and retailers.

The Commission's draft decision

2.162 The Commission's draft decision was to:

- align the timeframe for provision of data to customers and retailers (Option C1);
- require the network provider to provide data to customers and retailers within three business days (Option C2). The Commission proposed changes to clause 6 of the Code; and
- amend clause 6 to clarify that the timeframe for provision of data to customers will commence once the customer data is valid. The Commission proposed to 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.

Views in submissions in response to the Commission's draft decision

2.163 In its submission to the Draft Decision Paper, PWC reiterated the points it made in its submission to the Options Paper and elaborated further by providing suggested cost implications associated with the reduction of timeframes for the provision of data to customers and retailers. The suggested cost implications were as follows:

- It would cost PWC \$5 to \$10 million to implement a meter data management system, which is the equivalent system used in the NEM. This system would allow customers to have immediate access to their data. A meter data management system would take one to two years to implement and has to be synchronised with the exiting billing system.
- As a short-term alternative, PWC would have to increase staff in the FRC function of the corporation. Two extra staff members would be required, one in the metering unit and another in the FRC unit at a total cost of \$190 000. There may be breaches of the Code in the short term until extra staff are recruited.
- The additional cost will result in higher cost for consumers with no apparent improvement in customer service.

2.164 The Commission requested further information in relation to the suggested cost implications. In response, PWC added the following comments.

- PWC has customers across multiple sites with more than one meter. PWC is currently not equipped with appropriate systems to process and manage data requests of this magnitude through the reduced timeframe of three days, especially if these customers submit data requests to PWC Networks at the same time.

- In some periods, contract renewals for customers are higher, resulting in spikes in data requests. There are some months where 200 plus data requests need to be processed.
 - PWC prefers a staged approach to reducing the timeframes for provision of data to customers and retailers to enable current Government regulatory reviews to be completed and new systems and processes to be put into place.
- 2.165 PWC proposed changes to the historical consumption data request form in Annexure 2 of the Code to enable it to process data requests more quickly.
- 2.166 PWC also proposed:
- an amendment to the Code, which would require customers to complete a standard data request form; and
 - an amendment to clauses 6.2.9 and 6.2.10 of the Code so that the relevant timeframes for provision of data to customers and retailers commence once the network provider receives a valid data (ie completed) data request form.
- 2.167 In its submission to the Draft Decision Paper, QEnergy disputed the claim that a reduction of timeframes for the provision of data to customers and retailers would impose costs exceeding \$10 million. QEnergy argued that retailers and customers would be reasonable about timeframes and noted that the maximum amount of data requests PWC is likely to receive is well within its capabilities.

The Commission's response to views in submissions to the draft decision

- 2.168 The Commission notes PWC's proposed data request form and believes that it is suitable to facilitate and streamline data request from both retailers and customers. The Commission has amended Annexure 2 of the Code so that it reflects PWC's proposed data request form.
- 2.169 The Commission has also inserted an additional obligation in the Code, which requires the network provider to publish the data request form on its website. This will ensure easy access of the form to customers. Clause 6.2.3 has been inserted in the Code.
- 2.170 Regarding PWC's suggested cost implications in complying with reduced timeframes for the provision of data to customers and retailers, the Commission notes that any improvements or efficiencies should be made within the context of the size and scope of operations as well as the demand for the service (including likely volumes of data requests within the relevant timeframe) for the purpose of meeting regulatory requirements.
- 2.171 The Commission understands that current levels of retail contestability are currently relatively low. Based on the level of activity, the Commission is not convinced that PWC would be unable to comply with a three-business-day timeframe while utilising its existing manual processes (ie without the use of a new data management system).
- 2.172 The Commission understands that Ergon Energy has implemented a minimalist transitioning approach to meeting discovery and National Meter Identifier (NMI) creation requests timeframes in the NEM³¹. The minimalist transitioning approach enables Ergon Energy to continue to utilise manual processes until a certain

³¹ Clause 6.8, Queensland Electricity Industry Code.

threshold of requests is reached. Once this threshold is reached, Ergon Energy is required to take action by (among other things) increasing its resources or increasing the timeframe to respond to discovery or NMI requests, beyond the relevant timeframe.

- 2.173 This is one example where manual processes are deemed to be more efficient and cost effective (considering the size and scope of operations) than automated processes for the purposes of complying with specific regulatory requirements. The Commission believes that improved manual processes could be deemed to be more efficient (and worthy of consideration) in the Territory, at least at these early stages of FRC.
- 2.174 The Commission acknowledges that a decision to improve internal processes and procedures (including the procurement of new IT systems) is a commercial decision for the business in question. However, every effort should be made to ensure that these decisions are the result of efficient and cost-effective solutions that are commensurate to the obligations set out in regulatory instruments.
- 2.175 In the Draft Decision Paper, the Commission stated that the likelihood of PWC Networks being overwhelmed with data requests is remote, but invited comment on whether or not this is the case.
- 2.176 It is noted that the number of data requests is linked to the likely number of customers that could churn at any given time. Due to the current levels of retail contestability, the Commission believes that the number of data requests from customers and retailers in the past has not been excessive and would be manageable in light of current FRC activity in the Territory.
- 2.177 The Commission notes PWC's concerns over its ability to process more complex data requests (ie those requests relating to multiple meters and/or multiple sites).
- 2.178 The Commission acknowledges that data requests can be variable at these early stages of FRC. There may be instances where the network provider receives a complicated or unusual data request within a short period of time, which relates to many meters allocated to a specific customer (ie where a large customer has many meters at a site(s) or in relation to an organisation seeking to procure electricity retail services for a number of sites).
- 2.179 To account for this, the Commission has decided to insert the following exception in the Code:
- If the network provider receives a valid data request in respect of 10 or more meter installations then the timeframes stipulated in the Code will not apply to that valid data request but only if:
 - the network provider, acting in good faith, determines that it does not have the capacity to finalise the valid data request in accordance with the timeframes stipulated in the Code;
 - the network provider notifies the relevant retailer in writing of the determination above;
 - the network provider notifies the relevant retailer in writing of the timeframe within which it can finalise the valid data request which:
 - is expressed in business days from the date on which the network provider received the valid data request from the retailer; and
 - is fair and reasonable in the circumstances; and

- the network provider notifies the Commission in writing of the timeframe as determined in accordance with this process.
- 2.180 The Commission is of the view that it is unable to justify the retention of the five-business-day timeframe for the provision of data to retailers and the 20-business-day timeframe for the provision of data to customers (as proposed by PWC) but considers an exception to be an appropriate way of dealing with any variable risks associated with finalising customer data requests under the current FRC environment.
- 2.181 The Commission notes PWC's suggestion that a phased implementation to reducing timeframes be adopted to allow the Government regulatory review to be completed and PWC to adopt new systems and processes.
- 2.182 It is noted that the Government regulatory review is a matter instigated by Government (and includes matters independent of the Code) and should not have any bearing on the outcome of this amendment application.
- 2.183 It is also noted that PWC has not outlined the nature of the 'new systems and processes' being adopted by PWC and has not explained why a phased implementation is more appropriate considering the concerns raised by industry participants and stakeholders, the current level of retail contestability and the objectives of the Code.
- 2.184 The Commission considers that a three-business-day timeframe (together with the exception) is not unreasonable considering similar requirements in NEM jurisdictions and notes PWC Networks' ability to cope with data requests to date.
- 2.185 The Commission expects that PWC Networks' has become more efficient in the provision of data to customers and retailers since the introduction of the Code and will continue to do so regardless of whether manual or automated processes are adopted. The standard three-business-day timeframe intends to encourage efficiencies in the provision of data to customers and retailers, which is in the long-term benefit of consumers.

The Commission's final decision

- 2.186 The Commission's final decision is to:
- align the timeframe for provision of data to customers and retailers (Option C1);
 - require the network provider to provide data to customers and retailers within three business days (Option C2). The Commission has made changes to clause 6 of the Code;
 - amend clause 6 to clarify that the timeframe for provision of data to customers will commence once the customer data is valid. The Commission has inserted 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;
 - incorporate PWC's proposed data request form in Annexure 2 of the Code (with slight modifications). Annexure 2 will apply to data requests from both retailers and customers. All required information must be provided by the customer or retailer to the network provider before the data request is considered valid and the timeframe for provision of data commences;

- amend clause 6.2.9 and 6.2.10 to clarify that the timeframe for the network provider to respond to a data request or reject a data request commences once the data request is considered valid; and
- insert an exception to the standard three-business-day timeframe for provision of data to customers and retailers. Clauses 6.2.13, 6.2.14, 6.3.8 and 6.3.9 have been inserted in the Code.

Minimum timeframes for processing data requests

Existing arrangements

2.187 Clause 6.2.8 (b) of the Code states that, unless otherwise agreed with the 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

2.188 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.

The Commission's comments in the Options Paper

2.189 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 in response to the Options Paper

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

2.191 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 requests in a short period of time, there is an increased risk that PWC 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 to hire more staff.

The Commission's draft decision

2.192 The Commission's draft decision was to retain clause 6.2.8 (b) based on the Commission's comments it made when considering the reduction of timeframes for the provision of data to customers (Option C1 and C2).

Views in submissions in response to the Commission's draft decision

- 2.193 PWC reiterated the points it made in its submission to the Options Paper and elaborated further by providing suggested cost implications should the Commission not set a limit on the maximum amount of requests it must process per day:
- It would cost \$5 to \$10 million for PWC to implement a meter data management system, which is the equivalent system used in the NEM. This system would allow customers to have immediate access to their data. A meter data management system would take one to two years to implement and has to be synchronised with the existing billing system.
 - As an alternative, PWC would have to increase staff in the FRC function of the corporation. Two extra staff members would be required, one in the metering unit and another in the FRC unit at a total cost of \$190 000. There may be breaches of the Code in the short term until extra staff are recruited.
 - PWC argued that these cost will result in higher cost for consumers with no apparent improvement in customer service.
- 2.194 The Commission requested further information in relation to the suggested cost implications. In response, PWC added the following comments:
- PWC has customers across multiple sites with more than one meter. PWC is not equipped with appropriate systems to process and manage data requests of this magnitude through the reduced timeframe of three days, especially if these customers submit data requests to PWC Networks at the same time.
 - In some periods, contract renewals for customers are higher, resulting in spikes in data requests. There are some months where 200 plus data requests need to be processed.
 - PWC prefers a staged approach to reducing the timeframes for provision of data to customers and retailers to enable current Government regulatory reviews to be completed and new systems and processes to be put into place.

The Commission's response to views in submissions to the draft decision

- 2.195 The Commission notes PWC's suggested cost implications should the Commission not set a limit on the maximum amount of requests it must process per day.
- 2.196 In response to PWC's comment that the suggested cost implications will result in higher costs for consumers with no apparent improvement in customer services, the Commission notes that improved data request procedures facilitate retail contestability and improves customer choice for the long-term interest of consumers.
- 2.197 In the Draft Decision Paper, the Commission stated that the likelihood of PWC Networks being overwhelmed with data requests is remote, but invited comment on whether or not this is the case.
- 2.198 As discussed in Option C1 and C2 of this paper, the Commission has decided to adopt PWC's proposed customer data request form and add the following exception to the standard three-business-day timeframe for the provision of data to customers and retailers:
- If the network provider receives a valid data request in respect of 10 or more meter installations then the timeframes stipulated in the Code will not apply to that valid data request but only if:

- the network provider, acting in good faith, determines that it does not have the capacity to finalise the valid data request in accordance with the timeframes stipulated in the Code;
- the network provider notifies the relevant retailer in writing of the determination above;
- the network provider notifies the relevant retailer in writing of the timeframe within which it can finalise the valid data request which:
 - is expressed in business days from the date on which the network provider received the valid data request from the retailer; and
 - is fair and reasonable in the circumstances; and
- the network provider notifies the Commission in writing of the timeframe as determined in accordance with this process.

2.199 The Commission believes that these measures are fair and reasonable, taking into account the need to respond quickly and efficiently to data requests and PWC's manual processes and staff-related issues.

2.200 The Commission considers that clause 6.2.8 (b) should be retained in its current form as the intention of the provision is to ensure that data requests are processed on a day-by-day basis. The Commission considers that the issues raised by PWC have been sufficiently addressed through the implementation of a more robust customer data request form (as proposed by PWC) and through inserting an exception to the standard three-business-day timeframe for the provision of data to customers and retailers in the Code.

The Commission's final decision

2.201 The Commission's draft decision stands.

2.202 The Commission's final decision is to retain clause 6.2.8 (b) in its current form.

Data arrangements

Existing arrangements

2.203 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

2.204 In its amendment application, QEnergy proposed that the Code should contain provisions that would 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 submissions in response to the Consultation Paper

2.205 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.

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

- 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; and
- 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.

The Commission comments in the Options Paper

2.207 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.

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

Proposed option – Option D: Provision of historical data directly to a generator

2.209 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 the Options Paper

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

2.211 In contrast, 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; and
- therefore, a process where the FRC Officer merely passes on data to PWC Generation will not constitute a wholesale generation quote.

The Commission's response to views in submissions to the Options Paper

2.212 In the Draft Decision Paper, the Commission:

- noted 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 but also noted that tripartite or multi-party agreements:
 - can take many forms and can incorporate other procedures that meet any specific requirements imposed by PWC business units; and
 - 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; and

- noted that tripartite or multi-party agreements should be beneficial to both retailers and generators.

The Commission's draft decision

2.213 The Commission's draft decision was to allow parties to enter into a tripartite or multi-party agreement for data requests. The Commission proposed changes to clause 6 by inserting clause 6.4 in the Code.

Views in submissions in response to the Commission's draft decision

2.214 In its submission to the Draft Decision Paper, PWC noted that clause 6.4, as proposed by the Commission, made no reference to the need to obtain verifiable consent from the customer.

The Commission's response to views in submissions to the draft decision

2.215 Clause 6.4 sought to allow multi-party agreements that were not inconsistent with any other obligation imposed upon an electricity entity under an applicable regulatory instrument, as proposed under clause 6.4.5. This would have included requirements elsewhere in the Code, including the requirement to obtain verifiable consent under clause 6.2.3 of the Code.

2.216 The Commission has decided to amend clause 6.4.5, as proposed in the Draft Decision Paper, to make it clear that multi-party agreements cannot operate to circumvent any other obligation in the Code.

The Commission's final decision

2.217 The Commission's draft decision stands, with slight modifications to clause 6.4.5, as initially proposed by the Commission in the Draft Decision Paper.

2.218 The Commission's final decision is to allow parties to enter into a tripartite or multi-party agreement for data requests. The Commission has amended clause 6 and inserted clause 6.4 as per the above paragraphs.

Timeframes for customer transfers

Timeframe to reject a customer transfer request

Existing arrangements

2.219 Under clause 8.2.6 of the Code, if the 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.

2.220 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.

2.221 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 10 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

2.222 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 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 in response to the Consultation Paper

2.223 In its submission to the Consultation Paper, PWC opposed QEnergy's proposal and stated that a five-business-day timeframe to provide notification of a rejection of a customer transfer request is appropriate given the manual process involved in enabling customer transfers between retailers. The following outlines the current process:

- when a 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; and
- 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.

Proposed option – Option E: Reducing the timeframe to notify the rejection of a customer transfer request

2.224 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; 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 the Options Paper

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

2.226 In its submission to the Options Paper, PWC expressed the view that the existing arrangements should remain and reiterated 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.

The Commission's response to views in submissions to the Options Paper

2.227 In the Draft Decision Paper, the Commission:

- noted 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 but agreed with PWC's view that one business day may not be appropriate for PWC Networks to conduct all appropriate checks with due diligence;
- noted PWC's request that the five-business-day timeframe should remain but considered that the timeframe to notify the rejection of a customer transfer request should be reduced and ideally, the network provider should be required to notify the rejection of a customer transfer request as soon as possible;
- recognised that the onus is on the network provider to determine whether or not a transfer can take place; and
- considered 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.

The Commission's draft decision

2.228 The Commission's draft decision was as follows:

- The Commission will not adopt QEnergy's proposed amendment for the timeframe to notify the rejection of a customer transfer request to be reduced from five business days to one business day.
- The Commission will adopt Option E and reduce the timeframe to notify the rejection of a customer transfer request from five business days to three business days. The Commission proposed changes to clause 8 of the Code.

Views in submissions in response to the Commission's draft decision

2.229 The Commission received no further submissions in response to its decision to adopt Option E.

The Commission's final decision

2.230 The Commission's draft decision stands.

2.231 The Commission's final decision is:

- not to 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; and
- adopt Option E to reduce the timeframe to notify the rejection of a customer transfer request will be reduced from five business days to three business days (Option E). The Commission has made changes to clause 8 of the Code.

Timeframe to advise of a customer transfer date

Existing arrangements

2.232 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.

2.233 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.³²

QEnergy's proposed amendment

2.234 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 in response to the Consultation Paper

2.235 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.

Proposed option – Option F: Reducing the timeframe to advise of a customer transfer date

2.236 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 (Option F) 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 the Options Paper

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

2.238 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.

³² Clause 8.2.12, Electricity Retail Supply Code.

The Commission's response to views in submissions to the Options Paper

2.239 In the Draft Decision Paper, the Commission:

- noted QEnergy's proposed amendment to reduce the timeframe to advise of a customer transfer date from five business days to one business day but recognised that the onus is on the network provider to determine whether or not a customer transfer can take place on the date requested by the retailer.
- considered 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.
- noted PWC's comments that it acts in good faith to confirm the customer transfer date as soon as possible and the current timeframe has not created an impediment to the customer transfer process.
- considered that the transfer date in the Code is strictly defined and predictable and believes it is reasonable for the network provider to allocate staff for this particular activity at the end of each month.
- considered 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 and is consistent with Option E (reducing the timeframe to notify the rejection of a customer transfer request).

The Commission's draft decision

2.240 The Commission's draft decision was as follows:

- 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 Commission will adopt Option F for the timeframe to advise of a customer transfer request to be reduced from five business days to three business days. The Commission proposed changes to clause 8 of the Code.

Views in submissions in response to the Commission's draft decision

2.241 The Commission received no further submissions in response to its decision to adopt Option F.

The Commission's final decision

2.242 The Commission's draft decision stands.

2.243 The Commission's final decision is:

- not to adopt QEnergy's proposed amendment to reduce the timeframe to advise of a customer transfer date to one business day; and
- adopt Option F to reduce the timeframe to advise of a customer transfer request from five business days to three business days. Changes have been made to clause 8.2.10 (a) of the Code.

Cooling-off period

Current arrangements

2.244 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.

2.245 The 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

2.246 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.

The Commission's comments in the Options Paper

2.247 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 a stronger negotiating position and able to appropriately assess their business risks.

Views in submissions in response to the Options Paper

2.248 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.

The Commission's response to views in submissions to the Options Paper:

2.249 In the Draft Decision Paper, the Commission noted:

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

The Commission's draft decision

2.250 The Commission's draft decision was to permit customers using more than 160 megawatt hours each year to waive the cooling-off period. Changes to clause 8.2.20 of the Code were proposed.

Views in submissions in response to the Commission's draft decision

2.251 In its submission to the Draft Decision Paper, PWC noted that the act of waiving the cooling-off period should be stated in writing at the time the customer enters into a supply contract with a retailer.

The Commission's response to views in submissions to the draft decision

2.252 The Commission agrees with PWC's comment that the act of waiving the cooling-off period should be stated in writing at the time the customer enters into a supply contract.

The Commission's final decision

2.253 The Commission's final decision is to permit customers using more than 160 megawatt hours each year to waive the cooling-off period. The Commission has amended clause 8.2.20 of the Code. Clause 8.2.21 has been inserted in the Code, which requires the act of waiving the cooling-off period to be in writing at the time the customer enters into an electricity supply contract with a retailer.

Other proposed amendments and additional comments

2.254 Table 2.2 contains the Commission's final decision regarding other proposed amendments and comments by QEnergy and PWC.

Table 2.2: Proposed amendments and other comments and the Commission's final decision

Proposed amendments and other comments	The Commission's draft decision	The Commission's comments and final 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"> • it is unclear why a change to the Code is warranted 14 months³³ after the introduction of the Code; • amending the Code is inconsistent with the business relationship of no surprises, as recommended by the Commission; and • amending the Code provides little regulatory certainty. 	<p>In the Draft Decision Paper, the Commission noted 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 noted that:</p> <ul style="list-style-type: none"> • it expressed its willingness to review the Code during the development and implementation of the Code in 2011; and • RoLR procedures can be considered separately to the issues raised in this Code change process. <p>The Commission's draft decision was to amend the Code in accordance with the Draft Decision Paper.</p>	<p>The Commission received no further submissions on this point.</p> <p>The Commission's draft decision stands.</p>
<p><i>Right of costs recovery regarding 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</p>	<p>In the Draft Decision Paper, the Commission noted QEnergy's concerns but also noted that the network provider is under a regulatory obligation to provide this data.</p> <p>The Commission was of the view that the network provider should be provided with the right of cost recovery in the provision of data to retailers and customers.</p>	<p>The Commission received no further submissions on this point.</p> <p>The Commission's draft decision stands.</p>

³³ At the time of completing the Code change process, the amendments to the Code will be implemented 24 months after its introduction (on 1 August 2011).

<p>incurred in providing the data exceeded the amount charged for the provision of this data.</p>	<p>Regarding PWC's comment that the amount charged is not enough to cover the cost incurred in providing the service, the Commission noted that the Code allows the network provider to charge the reasonable costs of providing the service, which must be approved by the Commission.</p> <p>PWC Networks is free to submit new charges to the Commission for approval.</p> <p>The Commission's draft decision was as follows:</p> <ul style="list-style-type: none"> • 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. 	
<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-business-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 was as follows:</p> <ul style="list-style-type: none"> • 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. 	<p>The Commission received no further submissions on this point.</p> <p>The Commission's draft decision stands.</p>
<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>The Commission's draft decision was as follows:</p> <ul style="list-style-type: none"> • 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. 	<p>The Commission received no further submissions on this point.</p> <p>The Commission's draft decision stands.</p>

<p><i>Service Order Procedures</i></p> <p>Clause 7.1.1 states that the network provider must develop and submit service order procedures to the Commission no later than 20 business days after the commencement of the Code.</p> <p>In its submission to the Draft Decision Paper, PWC requests that clause 7.1.1 of the Code be revoked as PWC has met its obligations by providing an overarching service order process within the required timeframe.</p> <p>PWC noted that it is currently required to develop more in-depth procedures by 29 March 2013, which are in development and will be submitted to the Commission shortly.</p>	<p>N/A</p>	<p>The Commission notes that PWC submitted overarching principles which were accepted as an interim measure on the condition that fully developed procedures be provided by to the Commission by 29 March 2013.</p> <p>The Commission welcomes PWC's progress and commitment in providing more in-depth procedures to the Commission by 29 March 2013.</p> <p>The Commission notes that satisfying a regulatory requirement does not render a clause out of date and that it is not normal practice to amend codes or licences for this reason.</p> <p>The Commission's final decision is to retain clause 7.1.1 of the Code.</p>
<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>In the Draft Decision Paper, the Commission noted PWC's concerns on the lack of clarity of RoLR procedures in the Code.</p> <p>The Commission's draft decision was as follows:</p> <ul style="list-style-type: none"> • The Commission will consider developing robust RoLR guidelines under the Code as a separate project to the issues raised in this Draft Decision Paper. 	<p>In its submission to the Draft Decision Paper, PWC expressed concern that the absence of RoLR provisions has not been properly addressed by the Commission, despite a number of requests by PWC in the past.</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"> • PWC considered that RoLR tariffs should be sufficiently high so as to encourage affected customers to negotiate more favourable terms with PWC Retail or another competitive retailer. • As such, the RoLR tariff for each customer should consist of existing generation, network and retail costs plus a 7 per cent retail margin. PWC stated that this is consistent with similar arrangements in the Victorian electricity market. 		<p>PWC noted that this presents a risk to PWC if a second-tier Retailer becomes insolvent.</p> <p>The Commission's final decision is to develop RoLR procedures as a matter of priority.</p>
<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>The Commission's draft decision was as follows:</p> <ul style="list-style-type: none"> • The Commission may consider Generator of Last Resorts issues as a separate project to the issues raised in this Draft Decision Paper. However, the development of RoLR procedures will be given priority. 	<p>The Commission received no further submissions on this point.</p> <p>The Commission's draft decision stands.</p>