

**DISCUSSION PAPER**  
**CONTESTABLE CUSTOMER**  
**SUPPLY CODE**

**JUNE 2002**



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## Foreword

This decision paper deals with procedures already in place and being observed by both licensed retailers. To clarify the basis of the procedures and to ensure that they are enforceable, the procedures are now being incorporated into a code made under the *Utilities Commission Act 2000*.

The draft Contestable Customer Supply Code ("the Draft Code") is published at Appendix A and aims to benefit both licensed electricity entities and potential new entrants by providing a greater level of regulatory certainty and ensuring continuity of supply to customers.

## Submissions

Public involvement is an important element of regulatory decision-making processes. Submissions are therefore invited from interested parties regarding the positions taken by the Commission in the Draft Code.

Submissions regarding the Draft Code should be directed in the first instance to the Executive Officer, Utilities Commission at any of the following:

*Postal address:*  
GPO Box 915  
DARWIN NT 0801

*Telephone:*  
(08) 8999 5480

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The closing date for submissions is **Friday, 19 July 2002**.

In the interests of transparency and to promote informed discussion, the Commission intends to make submissions publicly available. However, if a person making a submission does not want their submission to be public, the person should claim confidentiality in respect of the document (or any part of the document). Claims for confidentiality should be clearly noted on the front page of the submission and the relevant sections of the submission should be marked as confidential, so that the remainder of the document can be made publicly available.

To facilitate publication on the Commission's website, submissions should be made electronically by disk or email. However, if this is not possible, submissions may be made in writing.

Subject to the above, submissions will be made available for public inspection at the office of the Commission at Level 9, 38 Cavenagh Street, Darwin, or on its website at [www.utilicom.nt.gov.au](http://www.utilicom.nt.gov.au).

Information about the role and current activities of the Commission, including copies of reports, papers and submissions may also be found on the Commission's website.



## CHAPTER

## 1

## INTRODUCTION

## Background

1.1 As part of its commitment to National Competition Policy, the Territory Government introduced competition into the NT electricity market on 1 April 2000. Specifically, competition among generators and retailers is being introduced in stages, commencing with the largest customers. Shown below is the contestability timetable.<sup>1</sup>

Date for introduction of competition	Minimum consumption level per annum
1 April 2000 ("Tranche 1")	> 4 gigawatt hours
1 October 2000 ("Tranche 2")	3 gigawatt hours
1 April 2001 ("Tranche 3")	2 gigawatt hours
1 April 2002 ("Tranche 4")	750 megawatt hours
1 April 2003* ("Tranche 5")	160 megawatt hours
1 April 2005* ("Tranche 6")	All customers

\* A public benefits test is to be undertaken in 2002 to determine whether the electricity market should proceed to 'full retail contestability'.

1.2 The electricity reforms undertaken by the Government include transitional arrangements such as those set out in section 28(h)(i) of the *Electricity Reform Act 2000*, requiring that the electricity entity selling to non-contestable customers offer to sell electricity to customers on the same tariff schedule that applied to those customers immediately before becoming contestable customers. The requirement remains for a period of two years as specified in the *Electricity Reform (Administration) Regulations*.

1.3 In early 2002, the Commission recognised the possibility that some Tranche 1 contestable customers may not have negotiated contracts with licensed retailers in place prior to the expiry of their grace period on 1 April 2002.

1.4 On 19 February 2002, the Commission issued its "Customer Information Circular No. 5" to all Tranche 1 and Tranche 2 contestable customers in order to clarify the arrangements to apply once the grace period ceased, notably that:

- the grace period tariff ends two years after that class of customer have become contestable customers;
- if a grace period customer has not entered into a negotiated contract with a licensed retailer by the end of the grace period, that customer will be rolled onto a 'default contract' with the Power and Water Authority (PAWA) as the default retailer;

<sup>1</sup> See "Final Recommendation of the NT Electricity Access Regime", December 2001, page 27, certified by the relevant Commonwealth Minister on recommendation of the National Competition Council.

- the default contract will be deemed to be in force between the contestable customer and PAWA until such time as the customer commences taking supply under a contract negotiated with either PAWA or another retailer;
- the price to be paid by a customer rolled onto a default contract for electricity consumed (the default tariff):
  - ◆ will no longer be a regulated tariff;
  - ◆ will be a price set by PAWA that can be varied at any time after a period of notice; and
  - ◆ is expected to be much higher than the price a customer could secure by entering into a negotiated contract (due to the short term and high risk nature of the default arrangements);
- customers need to actively seek and secure a negotiated electricity supply contract prior to the conclusion of their grace period or they will be required to pay the default tariff for electricity consumed; and
- the arrangements will apply to all tranches of contestable customers, although the post-grace period arrangements for Tranches 4, 5 and 6 contestable customers would be a matter considered (along with other matters) in the context of the Government's forthcoming public benefits test of the extension of contestability to smaller customers.

1.5 With effect from 28 February 2002, the Commission negotiated amendments to clause 21 and subsequently clause 17 of PAWA's retail licence, thereby obliging PAWA to:

- offer to sell electricity to a contestable customer who has not entered into a negotiated contract with either PAWA or another retailer by the end of their grace period;
- include in the standard terms and conditions of that offer, the methodology that would be used for calculating default tariffs; and
- 20 business days before the end of the customer's grace period, write to all grace period customers who have not entered into a negotiated contract with either PAWA or another retailer, notifying them that the grace period will end on the specified date and advising them of the terms and conditions of the default contract.

1.6 The amendments had the purpose of ensuring continuity of supply for contestable customers by nominating PAWA as the 'default retailer' and were effected in a way that ensured uniformity of treatment for all contestable customers who might find themselves 'out of contract'.

1.7 The amended provisions covered a wider range of customers than those customers envisaged by the earlier 'orphan customer' provisions in clause 21 of PAWA's retail licence. In the Commission's view, it was an appropriate result as it recognised and made explicit the inherent characteristics of supplying an essential service.

1.8 In the months after the licence amendments took effect, PAWA officers posed a number of questions regarding the application of the out-of-contract provisions, resulting in the Commission drafting procedures containing behaviour it considered appropriate for the contracting of out-of-contract contestable customers.

1.9 When developing the substance of the contracting procedures, the Commission deferred consideration of the regulatory mechanisms required to give full effect to the procedures. However, in order to achieve the Commission's desired outcomes, it was envisaged that the procedures might need to be incorporated into a code.

1.10 As events unfolded, all Tranche 1 contestable customers had negotiated contracts for their electricity supply prior to the expiry of their grace period on 1 April 2002 and there was no reliance on the amended provisions of PAWA's retail licence.

1.11 On 18 March 2002, the Treasurer as Regulatory Minister approved the making of a Regulation authorising the Commission to make a code pursuant to section 24 of the *Utilities Commission Act 2000* to deal with the arrangements necessary to ensure continuity of supply to out-of-contract contestable customers.

1.12 The Commission envisaged that such a code would only be necessary if doubt was cast over the effectiveness of the amendments to PAWA's retail licence to achieve the intended objectives, being continuity of electricity supply to out-of-contract contestable customers.

1.13 Subsequent to the licence amendments, NT Treasury sought legal advice primarily concerning other related issues in the electricity market, but the advice included a discussion on whether PAWA, as a licensed entity, could change the terms and conditions of customers' supply after the expiry of the grace period applying to those customers.

1.14 The legal advice, subsequently provided to the Commission, casts doubt on the ability of PAWA to change the terms and conditions of electricity supply on the expiry of the grace period (the substance of the amendments to PAWA's retail licence). That advice also questioned the authority of the Commission to influence the existing contracts with contestable customers via amendment to PAWA's licensing arrangements.

1.15 The Commission does not accept the reasoning of the advice regarding the latter matter. However, to remove any doubt, the Commission has developed for comment the draft Contestable Customer Supply Code ("the Draft Code") in order to ensure continuity of supply to customers who find themselves, for any reason, out of contract.

1.16 The Draft Code incorporates the provisions found in clauses 17 and 21 of PAWA's retail licence (which may be removed from the licence as they will be superseded by the Draft Code), as well as the procedures developed by the Commission regarding the contracting of out-of-contract contestable customers.

## **Timetable**

1.17 On 1 April 2002, all Tranche 1 contestable customers had secured negotiated contracts for their electricity supply with licensed retailers. Notwithstanding this, the Commission considers that arrangements should be in place to ensure the continuity of supply to any customers who find themselves out of contract at the expiry of the Tranche 2 grace period on 30 September 2002 or subsequent tranches at their respective grace period expiry dates.

1.18 Section 24 of the *Utilities Commission Act 2000* outlines the requirements of the Commission when making codes or rules, including that, among other requirements, the Commission must consult with the Minister and representative bodies and participants in the regulated industry that the Commission considers appropriate.

1.19 The Draft Code has incorporated provisions from PAWA's retail licence, which require PAWA to undertake certain actions 20 business days prior to the expiry of the contestable customers' grace period.

1.20 Due to the requirements under section 24 of the *Utilities Commission Act 2000* and the timing prescriptions in the Draft Code, the Commission aims to have the making of the Code published in the NT Government Gazette in time for the finalised version of the Code to take effect on 1 September 2002.

1.21 To this end, the Commission is working towards the following timetable.

<b>Due by Date</b>	<b>Action</b>
19 July 2002	Submissions to the Draft Code due
16 August 2002	Final Code published
1 September 2002	New arrangements commence

## CHAPTER

## 2

## RATIONALE FOR THE DRAFT CODE

**Features of the Draft Code**

2.1 All the procedures dealt with by the Draft Code are already in place and being observed by the licensed retailers. The sole purpose of the Draft Code is to clarify the legal basis and enforceability by including them in a code made under the *Utilities Commission Act 2000*.

2.2 The Draft Code places three main obligations on relevant retailers:

- for PAWA as the franchise retailer, obligations regarding supply to non-contestable customers;
- for PAWA as the default retailer, obligations regarding supply to contestable customers (including those customers who find themselves out of contract); and
- for contestable retailers, obligations regarding the contracting of out-of-contract contestable customers.

**Non-contestable customers**

2.3 Under the *Electricity Reform Act 2000*, the franchise retailer is obliged to offer to sell electricity to non-contestable customers at prices prescribed by the Minister under an Electricity Pricing Order.

2.4 The Draft Code requires that, at least 20 business days before the customer becomes a contestable customer, PAWA (the licensed franchise retailer) must seek the consent of the non-contestable customer for the customer's basic contact details to be provided to the Commission for subsequent release by the Commission to all licensed electricity retailers.

2.5 As the franchise retailer is the only holder of complete lists of customers, competition would be damaged if the franchise retailer were allowed to begin signing up potential customers before these customers were known to other retailers in the market. Accordingly, clause 4.3 of the Draft Code codifies the previous agreement observed by both retailers to refrain from executing a contract for the supply of electricity to individual contestable customers until at least 10 business days after the date on which the Commission has advised all retailers that the customer is contestable.

**Post-grace period customers**

2.6 If a non-contestable customer has not negotiated a contract for electricity supply with a licensed electricity retailer by the customer's date of contestability, the customer is still guaranteed continuity of electricity supply pursuant to section 28(1)(h) of the *Electricity Reform Act 2000*, whereby the franchise retailer has an obligation to offer to supply the customer for a set period of time ("the grace period") on the same tariff

schedule as applied to the customer immediately before the customer became contestable. The grace period extends for two years from the customer's date of contestability, as specified in the *Electricity Reform (Administration) Regulations*.

2.7 One advantage of the grace period is that, during the grace period, options for supply of electricity to the customer may become clearer or, in some regions where this is not currently the case, choice of retailers may become available. At any time during the grace period, the contestable customer may choose to enter into a negotiated contract with a licensed retailer to secure their supply of electricity.

2.8 It is possible that a contestable customer may not have completed negotiations with a retailer by the end of the customer's grace period. The customer may have been slow to commence negotiations or, alternatively, the customer may be reluctant to complete negotiations because (for example) they may be facing a tariff increase.

2.9 The Commission cannot extend the length of the grace period. In the Commission's view, any extension of the grace period would act as a deterrent to negotiations and reduce the scope for competition in the Territory's electricity market. Two years should be ample time for a customer to have investigated the range of options available and to have negotiated a contract for supply of electricity and is more generous than other jurisdictions. For example, in New South Wales, customers were given only twelve months to conclude a negotiated contract.

2.10 The Draft Code seeks to maintain and clarify the guarantee of continued supply of electricity during the transition of the customer from non-contestable to contestable status.

## **Contestable customers**

2.11 Under the Draft Code, PAWA is nominated as the default supplier of electricity to out-of-contract contestable customers, including:

- any contestable customers who have not entered into a negotiated contract with a retailer at the end of the customer's grace period for as long as the customers pay the default tariff ("post-grace period contestable customers"); and
- any contestable customers who have not renegotiated their current contract or negotiated a new contract for electricity supply with a licensed retailer when their negotiated contract expires ("orphaned contestable customers").

2.12 Prior to the amendments to PAWA's retail licence on 28 February 2002, the test for 'orphaned contestable customer' status required the customer to have used reasonable endeavours to secure an offer from retailers other than PAWA *and* that none of the offers received be reasonable. The Draft Code merely requires the customer to have had their supply agreement expire or be terminated and not have renegotiated supply for the contestable site. This is an appropriate outcome as it recognises and makes explicit the inherent characteristics of supplying an essential service.

2.13 The proposed arrangements ensure continuity of supply of electricity to any contestable customer who might be (for any reason) out of contract by rolling them onto a default supply arrangement with the default retailer unless that customer expressly gives notice of their desire to be disconnected from the network.

2.14 The default supply arrangements are deemed to be in force between the customer and the default retailer until such time as the contestable customer commences taking supply under a contract negotiated with a licensed retailer or the contestable customer expressly gives notice of their desire to be disconnected from the network.

2.15 The ongoing supply to the contestable customer is guaranteed on the condition that the customer pays for the electricity received under the default arrangements. If the default tariff is not paid, the default retailer has the right to discontinue supplying electricity to the customer.<sup>2</sup>

2.16 The default tariff is not a regulated tariff, rather it is the unit price that a customer is required to pay for electricity consumed under a default supply arrangement and it is reflective of what the default retailer considers to be fair and reasonable in the circumstances. The default tariff may be determined by such things as:

- the ability for the arrangement to be terminated by the customer on short notice; and
- consideration that the default arrangements are supplied in the absence of an explicit, signed contract.

2.17 In setting a default tariff, therefore, the default retailer is allowed to take into account not only the cost of supplying the electricity but also the risks inherent in the short-term and 'deemed contract' nature of that supply.

2.18 The Draft Code proposes that the default tariff applying to a particular out-of-contract contestable customer be determined by the default retailer in accordance with principles published by the default retailer as part of the standard terms and conditions of supply. The tariff may be varied at any time after 20 business days written notice to the customer.

2.19 If a contestable customer felt that the default tariff they were being charged by the default retailer was not fair and reasonable in the circumstances, that customer could make a complaint to the Commission under the complaints provisions in the *Electricity Reform Act 2000* (sections 48-51).

2.20 These provisions allow a contestable customer to make a complaint to the Commission on the grounds that the default retailer is engaging in conduct that is contrary to one or more of its licence conditions or contrary to the objects of the *Electricity Reform Act 2000* or the *Utilities Commission Act 2000*. The Commission would investigate such a complaint – and decide on the action it would take to deal with the offending conduct – unless the Commission did not reasonably believe that the customer was being adversely affected by the alleged conduct or the customer had not made a genuine attempt to resolve the complaint with the default retailer.

2.21 Clause 6 of the Draft Code sets out the mechanics for the transfer of an out-of-contract contestable customer from a licensed retailer with which their negotiated contract has expired to the default retailer. The procedures represent what the Commission considers to be a reasonable approach to contracting customers who are out of contract.

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<sup>2</sup> Limitations on the obligation to sell to non-contestable customers are set out in section 29 of the *Electricity Reform Act 2000*.



**APPENDIX****A****DRAFT CONTESTABLE CUSTOMER SUPPLY CODE**

*The draft Contestable Customer Supply Code is published for circulation by the Utilities Commission of the Northern Territory pursuant to section 24 of the Utilities Commission Act 2000. It is envisaged, subject to any amendments in response to submissions received from interested parties, that the finalised version of the Code will take effect on 1 September 2002.*

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## Contestable Customer Supply Code

### 1. Authority

#### 1.1

- (a) This **Code** is made by the **Commission** under section 24 of the **Act** and in accordance with the authority granted to the **Commission** by Regulation (yet to be finalised) of the **Regulations**.
- (b) In making this **Code**, the **Commission** has had regard to the matters listed in section 6(2) of the **Act**.

### 2. Application

#### 2.1 This **Code** will apply to:

- (a) all **Electricity Entities** operating in the **Contestable Market** in the Northern Territory; and
- (b) all **Contestable Customers** in the **Contestable Market**,

as and from the **Commencement Date**.

### 3. Objectives

#### 3.1 The objectives of this **Code** are to:

- (a) promote and safeguard competition and fair and efficient market conduct in the **Electricity Supply Industry** including by promoting the simulation of competitive market conduct and preventing the misuse of market dominance;
- (b) require that **Electricity Entities** have in place arrangements which ensure the continuity of the supply of electricity to **Contestable Customers**; and
- (c) provide certainty to **Contestable Customers** and **Electricity Entities** regarding their respective roles in the supply of electricity.

### 4. Obligations on the Franchise Retailer

#### 4.1 For the purposes of this clause 4, the Franchise Retailer is the **Electricity Entity** which has been granted a licence by the **Commission** pursuant to Part 3 of the **Electricity Reform Act** for the supply of electricity to **Non-contestable Customers** in the **Electricity Supply Industry** in the Northern Territory.

#### 4.2 The Franchise Retailer must:

- (a) at least 20 **Business Days** prior to the date the Franchise Retailer expects a **Non-Contestable Customer** to become, or is likely to become, a **Contestable Customer**:
  - (i) notify the **Non-contestable Customer** in a manner and form specified by the **Commission** of the date that it will become, or is likely to become, a **Contestable Customer**; and
  - (ii) notify the **Non-contestable Customer** of its applicable tariffs and charges; and

- (b) at least 20 **Business Days** prior to the date it expects a **Non-contestable Customer** to become, or is likely to become, a **Contestable Customer** request the **Non-contestable Customers** to give their written consent to the disclosure of their:
  - (i) name;
  - (ii) address; and
  - (iii) any other required contact details,to the **Commission** and by the **Commission** to other **Electricity Entities**;
- (c) for the purposes of clauses 4.2(a), 4.2(b), the Franchise Retailer must take reasonable steps to identify when the **Non-contestable Customer** will or is likely to become a **Contestable Customer**;
- (d) provide copies of that consent and information relating to the consenting **Contestable Customers** to the **Commission** for provision by the **Commission** to other **Electricity Entities**;
- (e) continue to offer to sell electricity to the **Contestable Customer** on the same tariff schedule as applicable to the **Contestable Customer** immediately before becoming a **Contestable Customer** for the **Grace Period** as specified in the Regulations to the **Electricity Reform Act**; and
- (f) at least 20 **Business Days** prior to the expiry of the **Contestable Customer's Grace Period**, take reasonable steps to give a **Contestable Customer** notice in a manner and form determined by the **Commission**.

4.3 An **Electricity Entity** must not execute a **Negotiated Contract** with a **Non-Contestable Customer** until at least 10 **Business Days** after the **Electricity Entity** has received information from the **Commission** under clause 4.2(d).

## 5. Obligations on the Default Retailer

5.1 For the purposes of this clause 5, a Default Retailer is the **Electricity Entity** which has been granted a licence by the **Commission** pursuant to Part 3 of the **Electricity Reform Act** for the default supply of electricity to **Contestable Customers** in the **Electricity Supply Industry** in the Northern Territory.

5.2 The Default Retailer must offer to sell electricity to an out-of-contract contestable customer on terms and conditions considered fair and reasonable in the circumstances by the Default Retailer.

5.3 In this clause, an out-of-contract contestable customer is a **Contestable Customer** who:

- (a) is not an **Electricity Entity**; and is either
- (b) an **Orphaned Contestable Customer**; or
- (c) a **Post-Grace Period Contestable Customer**.

5.4 The **Commission** will determine whether a **Contestable Customer** satisfies the criteria set out in clause 5.3 if there is a dispute.

5.5 Before the Default Retailer sells electricity to out-of-contract contestable customers, the Default Retailer must develop and publish standard terms and conditions governing the sale of electricity by the Default Retailer to out-of-contract contestable customers.

5.6 The standard terms and conditions developed and published by the Default Retailer under clause 5.5 are to include the principles to be used by the Default Retailer

to set the prices to be paid for electricity supplied to individual out-of-contract contestable customers.

5.7 The standard terms and conditions developed and published by the Default Retailer under clause 5.5 may be varied from time to time but such variations can only take effect with at least 20 **Business Days** written notice to out-of-contract contestable customers.

5.8 For **Post-Grace Period Contestable Customers**, at least 20 **Business Days** prior to the expiry of a **Contestable Customer's Grace Period**, the Default Retailer is to advise the **Contestable Customer** in writing of:

- (a) the exact date, with respect to the **Contestable Customer**, that the **Grace Period** will expire;
- (b) the offer to supply electricity to the **Contestable Customer** after the expiry of their **Grace Period**;
- (c) the price to be paid by the **Contestable Customer** for the electricity supplied to the **Contestable Customer**; and
- (d) any other terms and conditions under which electricity will be supplied.

5.9 For **Orphaned Contestable Customers**, if the Default Retailer receives a request from a **Contestable Customer**, within 5 **Business Days** of the receipt of the request the Default Retailer is to advise the **Contestable Customer** in writing of:

- (a) the offer to supply electricity to the **Contestable Customer** after the expiry of their **Negotiated Contract**;
- (b) the price to be paid by the **Contestable Customer** for the electricity supplied to the **Contestable Customer**; and
- (c) any other terms and conditions under which the electricity will be supplied.

5.10 The price to be paid by an out-of-contract contestable customer for the electricity supplied to the **Contestable Customer** can only be varied with 20 **Business Days** written notice to the **Contestable Customer**.

5.11 The Default Retailer must continue to sell electricity to an out-of-contract contestable customer for as long as the **Contestable Customer**:

- (a) pays the price set by the Default Retailer for the electricity supplied to the **Contestable Customer**; and
- (b) complies with any other terms and conditions under which the electricity is being supplied.

5.13 The obligation on the Default Retailer under clause 5.2 to sell electricity to out-of-contract contestable customers ceases when that **Contestable Customer** is supplied electricity under a **Negotiated Contract** with an **Electricity Entity**.

## 6. Obligations on Contestable Retailers

6.1 For the purpose of this clause 6:

- (a) "Expiry Date" of the **Negotiated Contract**, if known, means the date specified or agreed between the Current Retailer and the **Contestable Customer** for the expiry of supply or, if the date is not known, the Current Retailer must provide the **Contestable Customer** with reasonable notice – being not less than 10 **Business Days** – of their intention not to continue with the **Negotiated Contract**;

- (b) “Current Retailer” refers to the **Electricity Entity** with which the **Contestable Customer** holds a **Negotiated Contract** immediately prior to the Expiry Date of that **Negotiated Contract**;
- (c) “Default Retailer” is the **Electricity Entity** granted a licence by the **Commission** pursuant to Part 3 of the **Electricity Reform Act** for the default supply of electricity to **Contestable Customers** in the **Electricity Supply Industry** in the Northern Territory;
- (d) “New Retailer” refers to the **Electricity Entity** with which the **Contestable Customer** holds a **Negotiated Contract** with immediately after the Expiry Date of the **Negotiated Contract** between the Current Retailer and the **Contestable Customer**; and
- (e) “Network Service Provider” means a person granted a licence by the **Commission** pursuant to Part 3 of the **Electricity Reform Act** to provide electricity network services.

6.2 The Current Retailer must, at least 20 **Business Days** prior to the expiry of the **Negotiated Contract**, inform the **Contestable Customer** of:

- (a) their rights to the continuity of electricity supply; and
- (b) any associated obligations on the **Contestable Customer**.

6.3 If the **Contestable Customer** holds the desire to be disconnected from the electricity network at the expiry of the **Negotiated Contract** between the **Contestable Customer** and the Current Retailer, the **Contestable Customer** holds an obligation under clause 6.2(b) to expressly advise the Current Retailer of that desire.

6.4 Until the **Contestable Customer** has discharged any obligation arising under clause 6.2(b) the **Contestable Customer** will remain responsible for all network and energy charges accrued by the Current Retailer to ensure continuity of supply to the **Contestable Customer** after the Expiry Date of the **Negotiated Contract**.

6.5 As the **Negotiated Contract** approaches its Expiry Date, the Current Retailer must continue to negotiate in good faith with the **Contestable Customer** until:

- (a) the Current Retailer forms and communicates to the **Contestable Customer** the view that further negotiations for supply will not be successful in reaching agreement of a **Negotiated Contract** and that the current **Negotiated Contract** will terminate on its Expiry Date; or
- (b) the **Negotiated Contract** is renegotiated with the Current Retailer; or
- (c) the Current Retailer is informed by the **Contestable Customer** that the **Contestable Customer** has formed a **Negotiated Contract** with an **Electricity Entity**; or
- (d) the **Contestable Customer** informs the Current Retailer of their desire to be disconnected from the electricity network.

6.6 If the **Contestable Customer** forms a **Negotiated Contract** with a New Retailer, the New Retailer must advise the Current Retailer within a reasonable period of the date of the commencement of the **Negotiated Contract** between the **Contestable Customer** and the New Retailer.

6.7 For the purposes of clause 6.6:

- (a) a reasonable period is no more than 3 **Business Days** after the **Negotiated Contract** with the New Retailer has been formed or 1 **Business Day** prior to the end of the **Negotiated Contract** with the Current Retailer, whichever comes first; and

- (b) the date of commencement of the **Negotiated Contract** is the date of the transfer of responsibility for the **Contestable Customer** from the Current Retailer to the New Retailer.

6.8 Notwithstanding the expiry of the **Negotiated Contract** between the **Contestable Customer** and the Current Retailer, the **Contestable Customer** will continue to be supplied electricity unless the **Contestable Customer** expressly notifies the Current Retailer of their desire to be disconnected from the electricity network.

6.9 The Current Retailer will be responsible for all network and energy charges arising on account of the continued electricity supply to the **Contestable Customer** under clause 6.8 until the Current Retailer notifies the Default Retailer of the transfer of the **Contestable Customer** from the Current Retailer to the Default Retailer.

6.10 If the **Contestable Customer** makes a request to the Current Retailer to be disconnected from the electricity network, the Current Retailer must notify the Network Service Provider within a reasonable period of the disconnection of the **Contestable Customer** from the electricity network.

6.11 For the purposes of clause 6.10, a reasonable period is at least 1 **Business Day** prior to the expiry of the **Negotiated Contract** with the Current Retailer.

6.12 Until notice of the **Contestable Customer's** disconnection from the electricity network is given to the Network Service Provider by the Current Retailer in accordance with clause 6.10, the Current Retailer remains responsible for all network and energy charges associated with continuing supply of electricity to the **Contestable Customer**.

6.13 If the **Contestable Customer**:

- (a) explicitly states to the Current Retailer that they wish to continue supply of electricity; or
- (b) does not request to be disconnected from the electricity network,

and the Current Retailer is not able to renegotiate the **Negotiated Contract** for supply of electricity with the **Contestable Customer**, the Current Retailer must give the Default Retailer reasonable notice that responsibility for the supply of the **Contestable Customer** is to transfer from the Current Retailer to the Default Retailer.

6.14 For the purposes of clauses 5.9 and 6.13, reasonable notice given by the Current Retailer to the Default Retailer is deemed to be a request for supply from the **Contestable Customer**.

6.15 For the purposes of clause 6.13, a reasonable notice period is at least 1 **Business Day**.

6.16 When notice is given under clause 6.13 the responsibility for the **Contestable Customer** will pass from the Current Retailer to the Default Retailer on:

- (a) the expiry of the **Negotiated Contract** with the Current Retailer; or
- (b) at the expiry of the reasonable notice period if that is after the expiry of the **Negotiated Contract**.

6.17 If responsibility passes from the Current Retailer to the Default Retailer under clause 6.16(b), the Current Retailer will remain liable for all network and energy charges associated with continuing supply to the **Contestable Customer** for the duration of the reasonable notice period.

## 7. Adding to or amending this Code

7.1 The **Commission** may at any time vary or revoke this **Code** (or any part of this **Code**) in accordance with section 24 of the **Act**.

7.2 A **Contestable Customer** or an **Electricity Entity** may request that the **Commission** vary or revoke any part of this **Code**. Unless the **Commission** considers that the application has been made on trivial or vexatious grounds (in which case the **Commission** may reject the application without further notice) an application to vary or revoke any part of this **Code** will be dealt with by the **Commission** in accordance with the procedure set out in this clause 7.

7.3 Without limiting the powers of the **Commission** under section 24 of the **Act** to vary or revoke the **Code**, the **Commission** may vary the **Code** to require that an **Electricity Entity** comply with an obligation which differs from or is in addition to the minimum obligations set out in clauses 4 and 5.

7.4 In deciding whether to vary or revoke this **Code** (or any part of this **Code**) under clauses 7.1 or 7.2, or impose any additional or varied obligation on an **Electricity Entity** under clause 7.3, the **Commission** will have regard to:

- (a) the matters listed in section 6(2) of the **Act**; and
- (b) in the case of a variation to the **Code** which imposes an additional or varied obligation on an **Electricity Entity**, the general principle that the administrative cost to the **Electricity Entity** of complying with the additional or varied obligation should not, or should not be likely to in the opinion of the **Commission**, outweigh the benefits to the general public from compliance with that additional or varied obligation.

7.5 Before varying or revoking this **Code**, or imposing any additional or varied obligation on an **Electricity Entity**, under this clause 7, the **Commission** will consult with each **Electricity Entity** in accordance with the procedure set out in clause 8 and otherwise comply with the other requirements of the **Act** and clause 8.

7.6 An **Electricity Entity** must comply with any additional or varied obligation imposed upon that **Electricity Entity** under this clause 7 as and from the date upon which that obligation takes effect under section 24 of the **Act**.

## 8. Procedures for adding to or amending obligations

8.1 The **Commission** must, before varying or revoking this **Code** (or any part of this **Code**) or imposing an additional or varied obligation on an **Electricity Entity**, inform each person known to the **Commission** (whom the **Commission** believes has a sufficient interest in the matter) that the **Commission** is considering varying or revoking this **Code** (or any part of this **Code**) or imposing an additional or varied obligation on an **Electricity Entity** by publishing a written notice which at least:

- (a) states the nature of the proposed variation, revocation or additional or varied obligation; and
- (b) requests submissions by a date specified in the notice (not being a date earlier than 30 **Business Days** after the date of the notice).

8.2 The **Commission** will also give a copy of any notice published in accordance with this clause 8 to each **Electricity Entity** to which it is considered by the **Commission** that the notice relates.

8.3 The **Commission** must consider any submissions received by the date specified in the notice published under clause 8.1(b) and may (but is not obliged to) consider any submissions received after that date.

8.4 Within 30 *Business Days* (or such longer period as the **Commission** notifies) after the last day for submissions specified in the notice published under clause 8.1(b), the **Commission** must issue a draft decision stating whether or not it intends to proceed with the proposed variation, revocation or additional or varied obligation.

8.5 The **Commission** must:

- (a) provide a copy of its draft decision to each **Electricity Entity** as well as any person who made a submission on the matter and any other person who requests a copy; and
- (b) request submissions from persons to whom it provided the draft decision by a specified date (not being a date earlier than 30 *Business Days* after the date the draft decision was issued).

8.6 The **Commission** must consider any submissions it receives by the date specified by the **Commission** under clause 8.5(b) and it may (but is not obliged to) consider any submissions received after that date.

8.7 Within 30 **Business Days** (or such longer period as the **Commission** notifies) after the last day for submissions on the draft decision specified by the **Commission**, the **Commission** must issue a final decision stating:

- (a) whether or not it will proceed with the proposed variation, revocation or additional or varied obligation; and
- (b) the final form of that proposed variation, revocation or additional or varied obligation.

8.8 A notice in relation to a variation, revocation or additional or varied obligation will have effect 30 **Business Days** after the notice is given to each **Electricity Entity** and published in the **Gazette** (or such later date as the **Commission** specifies in the notice).

## 9. Preservation of other obligations

9.1 Nothing in this **Code** will derogate from any obligation imposed upon an **Electricity Entity** under any **Applicable law** including the **Act**, the **Electricity Reform Act**, any Regulations made under those Acts, any condition of a licence issued by the **Commission** to the **Electricity Entity** or any other code made by the **Commission** under the **Act**.

## 10. Interpretation

10.1 In this **Code**, words appearing like **this** will have the meaning set out in clause 10.2.

10.2 In this **Code**, unless the contrary intention appears:

“**Act**” means the *Utilities Commission Act 2000*;

“**Applicable law**” includes any Act reasonably connected with the **Electricity Supply Industry**, and, in relation to relevant industry regulation acts, any code, guideline or regulation made under that Act;

“**Business Day**” means a day on which banks are open for general banking business in Darwin, excluding a Saturday or Sunday;

“**Code**” means this Contestable Customer Supply Code;

**“Contestable Customer”** means a customer classified by the Regulations to the *Electricity Reform Act* as a **Contestable Customer**;

**“Contestable Customer Certificate”** means the certificate granted to **Non-Contestable Customers** to symbolise their shift in status to a **Contestable Customer** in accordance with the Regulations to the *Electricity Reform Act*;

**“Commencement Date”** means the date set out in the notice published in the *Gazette* making this **Code** from which date this **Code** will take effect;

**“Commission”** means the Utilities Commission of the Northern Territory established under the *Utilities Commission Act 2000*;

**“Electricity Entity”** has the same meaning as is given to that term in the *Electricity Reform Act*;

**“Electricity Reform Act”** means the *Electricity Reform Act 2000*;

**“Electricity Supply Industry”** means the industry involved in the generation, supply and sale of electricity or other operations of a kind prescribed by the Regulations to the *Electricity Reform Act*;

**“Gazette”** means the *NT Government Gazette*;

**“Grace Period”** means the period, as specified in the Regulations to the *Electricity Reform Act*, in which the *Electricity Entity* issued with a licence by the *Commission* under Part 3 of the *Electricity Reform Act* with an obligation to sell electricity to **Non-Contestable Customers**, must offer to sell electricity to **Contestable Customers** on the same tariff schedule that applied to those customers immediately before becoming **Contestable Customers**;

**“Negotiated Contract”** includes any contract, agreement or understanding between the Current Retailer or the New Retailer and the **Contestable Customer** which may be written, oral or implied by conduct;

**“Non-contestable Customer”** means any customer that is not a **Contestable Customer**;

**“Orphaned Contestable Customer”** means a **Contestable Customer** that was previously sold electricity under a **Negotiated Contract** which has expired or been terminated and has not subsequently entered into a **Negotiated Contract** with an *Electricity Entity*;

**“Post-grace Period Contestable Customer”** means a **Contestable Customer** that was previously sold electricity by the *Electricity Entity* issued with a licence by the *Commission* under Part 3 of the *Electricity Reform Act* with an obligation to sell electricity to **Non-Contestable Customers** during the **Grace Period** applying to the **Contestable Customer** and has not entered into a **Negotiated Contract** with an *Electricity Entity* by the expiry of their **Grace Period**;

**“Regulations”** means the regulations made under the *Act*.

10.3 In this **Code**, unless the context otherwise requires:

- (a) if a term is defined in the *Electricity Reform Act* and is not otherwise defined in clause 10.2, that term will have the same meaning as is given to that term under the *Electricity Reform Act*;
- (b) headings are for convenience only and do not affect the interpretation of this **Code**;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing a gender include any gender;

- (e) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency and vice versa;
  - (f) a reference to any thing includes a part of that thing;
  - (g) a reference to a clause, Schedule or part of a clause or Schedule is a reference to a clause, Schedule or part of this **Code**;
  - (h) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, ordinances, by-laws and determinations issued under that statute;
  - (i) other parts of speech and grammatical forms of a word or phrase defined in this **Code** have a corresponding meaning;
  - (j) mentioning an example or anything after the words “include”, “includes” or “including” will not limit what else might be included;
  - (k) a period of time:
    - (i) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
    - (ii) which commences on a given day or the day of an act or event is to be calculated inclusive of that day;
  - (l) a reference to:
    - (i) a day is a reference to a period commencing immediately after midnight and ending the following midnight; and
    - (ii) a month is a reference to a calendar month.
- 10.4 Where this **Code** authorises the making of an instrument or decision;
- (a) the power includes the power to amend or repeal the instrument or decision; and
  - (b) the power to amend or repeal the decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.