UTILITIES COMMISSION
OF THE NORTHERN TERRITORY

Electricity Retail Supply Code Review

Draft Decision Paper

31 October 2022

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Abbreviations and acronyms

AER	Australian Energy Regulator
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
ANU	Australian National University (particularly the researchers who provided a submission to the Issues Paper)
Code	Northern Territory Electricity Retail Supply Code
Commission	Utilities Commission of the Northern Territory
EDL	EDL NGD (NT) Pty Ltd
EIP Code	Electricity Industry Performance Code
ERA	Economic Regulation Authority of Western Australia
ER Act	Electricity Reform Act 2000
ESC	Essential Services Commission of Victoria
Generator	an entity holding a generation licence granted by the Commission under the ER Act
IES	Indigenous Essential Services Pty Ltd, a not-for-profit subsidiary of PWC
Issues Paper	Electricity Retail Supply Code Review Issues Paper (June 2021)
MSATS	Market Settlement and Transfer Solutions
NECF	National Energy Customer Framework
NEM	National Electricity Market
NER	National Electricity Rules
NER (NT)	National Electricity Rules as amended for the Northern Territory
NERL	National Energy Retail Law
NERR	National Energy Retail Rules
Network provider	an entity holding a network licence granted by the Commission under the ER Act
NTCOSS	Northern Territory Council of Social Service
NTEM	Northern Territory Electricity Market
NTERR	Northern Territory Electricity Retail Review
NTESMO	Northern Territory Electricity and Market Operator
PV	photovoltaic
PWC	Power and Water Corporation
QEnergy	QEnergy Limited
Retailer	an entity holding a retail licence granted by the Commission under the ER Act
Rimfire Energy	Rimfire Energy Pty Ltd
RoLR	retailer of last resort
Territory Generation	Power Generation Corporation, trading as Territory Generation
UC Act	Utilities Commission Act 2000

Draft decision

In accordance with section 24(1) and (3) of the *Utilities Commission Act 2000* and regulation 2A of the Utilities Commission Regulations 2001, the Commission proposes to amend the Commission's Electricity Retail Supply Code (the Code) as detailed in this Draft Decision document. The Draft Decision outlines the Commission's reasoning for the amendments that it proposes to make to the Code.

Summary of the draft decisions, set out by chapter, follows:

Relevance of the Code (Chapter 2)

The Commission proposes to retain the Code and make amendments as considered necessary. It also intends to undertake further review of the Code in the future, as required.

Credit support requirements (Chapter 3)

The Commission proposes to amend the Code to:

- allow generators to request a retailer to provide credit support if they have poor payment history, even if they have an acceptable credit rating as defined in the Code
- define 'poor payment history' similar to that in clause 6B.B2 of the National Electricity Rules (NER), but modified to apply to a generator and retailer
- require return of the credit support similar to that in clause 6B.B4.2 of the NER, but modified to apply to a generator and retailer.

Coordination agreement (Chapter 4)

The Commission proposes to amend the Code to:

- provide a high level list of matters that must be included in a coordination agreement and approved by the Commission, and include a definition for coordination agreement in Schedule 1 that will refer to the updated clause
- make it clear that a retailer that does not supply electricity to customers is not required to enter into a coordination agreement.

Metrology (Chapter 5)

The Commission proposes not to amend the Code to remove clause 5.1.1 and not to amend the interval meter obligation to Type 1-4 meter.

Adoption of MSATS system (Chapter 6)

The Commission proposes to amend the Code to include:

- a new clause stating clauses 7.2.1 and 7.2.2, in relation to making Service Order Procedures, expire on the date of commencement of the Northern Territory Electricity System and Market Operator (NTESMO) Communications Guideline
- a new clause stating clauses 7.2.3 to 7.2.7, in relation to amending Service Order Procedures, expire on commencement of NTESMO's Communications Guideline
- a new clause stating clauses 8.2.1 to 8.2.19 and clause 8.2.21, in relation to customer transfer procedures, expire on the date of commencement of the NTESMO Communications Guideline
- new definitions be added to the Code in relation to NTESMO and the NTESMO Communications Guideline, and an amendment to the definition of customer transfer request form and Service Order Procedures.

Retailer of Last Resort (Chapter 7)

The Commission proposes to amend the Code to remove clause 9 in its entirety, including associated definitions.

Life support equipment (Chapter 8)

The Commission proposes:

- not to amend the Code to allow for exceptions to clause 10.6
- to amend the Code to include obligations on retailers and network providers to comply with their approved life support equipment procedures for outside major centres, and for retailers and network providers to review their life support equipment procedures at least once every three years and following a breach of approved life support equipment procedures.

Dispute resolution process (Chapter 9)

The Commission proposes to:

- amend clause 11 of the Code to include retailer and network provider internal dispute resolution obligations generally consistent with that in sections 81 and 82 of the National Energy Retail Law (NERL), amended for the Territory's circumstances
- add associated definitions in Schedule 1 of the Code for government owned corporation, NT Ombudsman and standard complaints and dispute resolution procedures.

Potential hardship policy obligations (Chapter 10)

The Commission proposes:

- to amend the Code to require retailers to develop, implement and comply with a Commission approved hardship policy for their residential customers that meets minimum requirements specified in the Code and add new definitions in Schedule 1 of the Code for prepayment meter, residential customer and standard meter
- this new obligation include a transitional provision whereby the retailer must submit its proposed hardship policy to the Commission for approval within six months of commencement of the new obligation.

Other matters identified through consultation (Chapter 11)

Prepayment meter customer hardship policy

The Commission proposes:

- to amend the Code to require a retailer with one or more prepayment meter customers to develop, implement and comply with a Commission approved hardship policy for their prepayment meter customers (which may be located within a retailer's broader hardship policy) that meets minimum requirements specified in the Code
- this new obligation include a transitional provision whereby the retailer must submit its proposed hardship policy in relation to its prepayment meter customers to the Commission for approval within six months of commencement of the new obligation.

Prepayment meter regulation

The Commission proposes not to amend the Code to further regulate the use of prepayment meter systems, other than that proposed above in relation to requiring retailers to have an approved hardship policy for their prepayment meter customers.

Family violence policy

The Commission proposes:

- to amend the Code to require retailers to develop a family violence policy, submit it to the Commission for approval, and publish, maintain and implement the policy as approved
- this new obligation include a transitional provision whereby the retailer must submit its proposed family violence policy to the Commission for approval within six months of commencement of the new obligation.

Metering requirements

The Commission does not propose to amend the Code in relation to this matter.

Correction of account errors

The Commission does not propose to amend the Code in relation to this matter.

Distributed energy resources – NER and NERR access and pricing incentives

The Commission does not propose to amend the Code in relation to this matter.

Clarification of roles and responsibilities related to solar PV export

The Commission does not propose to amend the Code in relation to this matter.

Definition of verifiable consent

The Commission proposes to:

- amend the definition of verifiable consent in the Code to provide for the instances contemplated in clause 10.4B.1(d)(ii) of the Code in relation to life support equipment required at a premises and clause 8.3.5(c) of the Code in relation to greenfield and other exit points
- amend the Code to allow verifiable consent to be obtained verbally, as long as the verbal consent can be verified, such as through a recorded phone call and by electronic communication generated by a customer.

Transitional arrangements (Chapter 12)

The Commission proposes transitional arrangements for the following proposed new obligations:

- a retailer to develop and submit to the Commission a hardship policy for its residential customers – six months from commencement of the provision
- a retailer to develop and submit to the Commission a hardship policy in relation to its prepayment meter customers – six months from commencement of the provision
- a retailer to develop and submit to the Commission a family violence policy – six months from commencement of the provision.

1 | Introduction

Background

In the Northern Territory, the Commission is authorised to make codes or rules (including varying or revoking codes) relating to the conduct or operations of a regulated industry or licensed entities, which includes retail supply in the electricity supply industry[1].

In 2011, the Commission made the Electricity Retail Supply Code (the Code) in accordance with the *Utilities Commission Act 2000* (UC Act) and regulation 2A of the Utilities Commission Regulations 2001.

Regulation 2A of the Utilities Commission Regulations 2001 states a code in relation to retail supply may deal with the following:

- transfer of customers between retailers
- credit support arrangements
- billing
- metrology
- service order arrangements
- retailer of last resort arrangements
- dispute resolution.

The Code was most recently amended in November 2019, following a lengthy review process that included significant consultation with stakeholders. Due to the urgency of some matters, the Commission was not able to address all potential issues with the Code during the 2019 review and committed to a stage 2 review of the Code (this review).

On 9 June 2021, the Commission published the Electricity Retail Supply Code Review Issues Paper (Issues Paper), seeking submissions from interested stakeholders. Submissions were received from the following stakeholders:

- Australian National University (ANU) researchers
- EDL NGD (NT) Pty Ltd (EDL)
- Jacana Energy
- Purple House
- Power and Water Corporation (PWC)
- QEnergy Limited (QEnergy)
- Rimfire Energy Pty Ltd (Rimfire Energy)
- Territory Generation.

Following receipt and consideration of the submissions, the Commission met with a number of stakeholders to discuss their submissions and or to seek their views on aspects of the Code and related matters. Stakeholders who met with the Commission include:

- ANU researchers
- Jacana Energy
- Northern Territory Council of Social Service (NTCOSS)
- PWC

[1] Section 24(1) and (3) of the Utilities Commission Act 2000 and Regulation 2A of the Utilities Commission Regulations 2001

- QEnergy
- Rimfire Energy.

The Commission has considered stakeholders' submissions and previous submissions relating to the 2019 review in making its draft decisions and this associated draft decision paper and draft amended Code.

While the Commission has endeavoured to address what it considers to be pressing and immediate regulatory issues through the stage 2 review of the Code, the Commission notes that the Code will require further changes as the Territory's electricity retail market continues to develop. As such, the Commission will undertake further review of the Code in the future, as required.

For further information on the stage 2 Electricity Retail Supply Code Review, and the previous 2019 review, please visit the Commission's website at http://www.utilicom.nt.gov.au.

Purpose of this review

The Commission is reviewing the Code to ensure its content and operation is of continued relevance and effectiveness for the electricity supply industry in the Territory.[2]

Terms of reference and scope of inquiry

The Commission is responsible for promoting and safeguarding competition and fair and efficient market conduct or, in the absence of a competitive market, the simulation of competitive market conduct and the prevention of the misuse of monopoly power.

The Commission has, among others, the following functions:[3]

- to develop, monitor and enforce compliance with and promote improvements in standards and conditions of service and supply under the relevant industry regulation Acts
- to make, monitor the operation of, and review from time to time, codes and rules relating to the conduct or operations of a regulated industry or licensed entities under relevant industry regulation Acts.

The Commission is authorised to make a code relating to retail supply in the electricity supply industry.[4] Accordingly, the Commission issued the Code on 3 August 2011, with amendments subsequently made in January 2016 and more recently, in November 2019.

The November 2019 amendment to the Code followed a lengthy review process that included significant consultation with stakeholders. Nonetheless, the Commission acknowledged in its 2019 Statement of Reasons that due to the urgency of some matters, primarily the need to provide for life support equipment customer protections, it was not able to address all potential issues or gaps in the Code at that time. As such, the Commission committed to a subsequent review of the Code from a first principles approach (this review).

Relevantly, the Commission also committed to considering amendments to the Code in its last three Northern Territory Electricity Retail Reviews (NTERR), in relation to a gap whereby there is no obligation on retailers to have internal dispute resolution procedures in line with Australian standards and electricity industry best practice. Further, the Commission recommended the Territory Government consider putting in place fit-for-purpose obligations on retailers to have an approved hardship policy as part of a broader customer protection framework. While the Commission is aware the Office of Sustainable Energy is working to address the Commission's recommendations, as the timing for government approval and implementation is not known, these are being considered for inclusion in the Code.

This review considers and addresses the known issues discussed above and other matters raised by stakeholders during consultation, as appropriate.

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[2] Section 24(9) of the UC Act.

[3] Section 6(1)(c) and (d) respectively of the UC Act.

[4] Regulation 2A of the Utilities Commission Regulations 2001.

Purpose of this paper

The purpose of this paper is to set out the Commission's proposed amendments to the Code, following consideration of submissions to its June 2021 Issues Paper, and to invite submissions on the proposed Code amendments.

Submissions

All interested parties (stakeholders) are invited to make submissions on the proposed Code amendments by **5pm Wednesday, 14 December 2022**.

To facilitate publication, submissions should be provided electronically by email to utilities.commission@nt.gov.au in Adobe Acrobat or Microsoft Word format.

Confidentiality

In the interests of transparency, the Commission will make all submissions publicly available on its website, with the exclusion of confidential information.

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

Submissions must clearly specify any information that a respondent considers confidential and advise why they would like the information treated as confidential. A version of the submission suitable for publication (that is, with any confidential information removed) should also be submitted to the Commission.

Timetable for review

The expected timeframe for publishing the amended Code is outlined below:

Action	Timing
Release of proposed amended Code and Draft Decision	2 November 2022
Consultation period ends/submissions due	14 December 2022
Final Decision to amend Code, including Notice of Variation in Gazette	Early to mid-2023
Amended Code commences	1 July 2023

2 | Relevance of the Code

The Issues Paper sought feedback from stakeholders on whether the Code is still relevant for the Territory's electricity supply industry.

Background

The Code was made by the Commission in 2011 to address a gap in the Territory's electricity supply regulatory framework whereby the framework did not contain any specific requirements to facilitate retail supply activities between electricity entities.

The Commission has previously acknowledged that the Code would be further developed over time, based on industry practice and the entry of retail competition. Most recently, in 2019, amendments were made to the Code to, among other things, reflect changes in the Territory's electricity supply industry, such as the Territory's adoption of the National Electricity Law and Rules, modified for the Territory (NER (NT)), and to introduce new protections for electricity customers that require life support equipment at their premises.

As discussed in the Issues Paper, electricity retail supply regulatory arrangements are in place in other jurisdictions, and all are more comprehensive than what is in place in the Territory, particularly from a customer protections perspective.

Relevantly, regulation 2A of the Utilities Commission Regulations 2001 does not limit the matters the Code may deal with, other than that they relate to retail supply in the electricity supply industry.

Submissions

Stakeholder feedback was received from EDL, Jacana Energy, PWC, Purple House, QEnergy and Territory Generation on the relevance of the Code.

EDL advises that in the absence of any other legislated customer relations framework, it believes the Code remains relevant.

Jacana Energy's submission states that the Code is still relevant to the Territory's electricity supply industry and increases in importance as the number of retailers operating in the Territory's electricity retail market (and competition for small customers) increases. Jacana Energy advises that there is a need for another regulatory instrument that regulates various aspects of the relationships between retailers and generators, and retailers and network providers, in the absence of a comprehensive system of regulatory arrangements similar to that applying in the national electricity market (NEM).

PWC states that an appropriate fit-for-purpose customer framework for the Territory will become increasingly important, and notes that the Office of Sustainable Energy intends on undertaking analysis to establish an energy customer protection framework but that this is likely to take some time. PWC advises that in the absence of any other codes, regulations or the adoption of the National Energy Retail Rules (NERR), the Code will continue to be important in supporting coordination between market participants, and that it will be necessary to continually review the Code and make further incremental changes as required.

Purple House states in its submission that it has limited capacity to comment on the corporate nature of the Code, but advises that it is aware of energy security inequity between town-camp and remote-living people and non-remote-living Territorians. Purple House suggests that in the context of community housing and the widespread use of prepayment metering, more needs to be done to realise the benefits of a transition to renewable energy sources locally to improve local energy security and address local priorities.

QEnergy advises that it believes the Code remains relevant and QEnergy's view is that it is preferable that any regulatory regime is not overly prescriptive and complicated. QEnergy suggests that rather than adopting regulatory frameworks from other jurisdictions, the Territory electricity market is best served by maintaining the least complicated framework possible.

Territory Generation states that the Code remains relevant until it is replaced by a new framework, noting the Office of Sustainable Energy is undertaking analysis of an appropriate customer protection framework for the Territory and this is expected to take some time to implement.

Commission's position and reasons

The Commission has considered stakeholder feedback and proposes to retain the Code and make amendments as considered necessary to ensure relevance for the Territory's electricity supply industry in the absence of an alternative, comprehensive, regulatory instrument or instruments, including a fulsome customer protection framework.

The Commission intends to undertake further review of the Code in the future, as required.

3 | Credit support requirements

The Issues Paper sought feedback from stakeholders on whether the Code should include a clause to allow generators to request a retailer to provide credit support if they have poor payment history, even if the retailer has an acceptable credit rating as defined in the Code.

The Issues Paper also sought stakeholder feedback on what an appropriate definition for 'poor payment history' might be and how the credit support amount should be determined.

Background

Clause 3.2 of the Code sets out credit support requirements between retailers and generators. Under clause 3.2.1 of the Code, a generator may require a retailer to provide credit support up to the Required Generation Credit Support Amount. Notwithstanding this, clause 3.2.2(a) of the Code states that if the retailer or its parent company has an acceptable credit rating, the Required Generation Credit Support Amount is nil. An acceptable credit rating is defined in the Code to mean a credit rating of BBB+ (or its equivalent) or higher from Standard and Poors, Fitch Ratings or Moody's Investor Services, a Dun & Bradstreet Dynamic Risk Score of Low or better, or a credit rating as otherwise specified in guidelines (there is currently no credit rating specified in guidelines).

In 2017, Territory Generation proposed amendments to the Code that would require retailers that are late on payments to be obliged to provide credit support to the relevant generator, regardless of the retailer's credit rating.

The Commission has previously consulted with stakeholders on Territory Generation's proposal and stated that a generator can address the risk of late payment from a retailer through their private contract arrangements. Nonetheless, the Commission committed in its November 2019 Final Amendments to Electricity Retail Supply Code Statement of Reasons to undertake further consultation with stakeholders on the matter as part of the next review of the Code (this review).

Submissions

The Commission received submissions from EDL, Jacana Energy, PWC, QEnergy, Rimfire Energy and Territory Generation in relation to this matter.

EDL's submission states that credit support requirements are best agreed between generators and retailers in private commercial arrangements, but that EDL considers it prudent for a market operator to secure credit support from retailers to ensure market liquidity, which is best addressed in corresponding market rules.

Jacana Energy's submission suggests that a generator should be able to require credit support from a retailer (where the retailer has an acceptable credit rating but a poor payment history) only in extreme and clearly identified circumstances. In Jacana Energy's view, these circumstances should be guided by Chapter 6B of the NER in relation to retailer-distributor credit support requirements. Jacana Energy also states the Code should set out when the generator is required to return the credit support to the retailer.

PWC states that generators should have the ability to protect their investment and commercial interests and that credit support arrangements provide an important mechanism for supporting the efficient operation of the market and preventing the risk of generator failure and withdrawal of generation availability from the market.

QEnergy states that the current credit support framework should not be amended as the current Code structure takes into account the objective creditworthiness of the retailer in question via finance industry standard credit ratings, and the proposed changes will lessen competition by creating uncertainty and increasing barriers to entry and the cost of operating in the market for prospective retailers. QEnergy also states that there are a number of areas where retailers assume total credit risk in the electricity supply chain and questions why another participant in a de-regulated market should be protected above and beyond the current framework.

Rimfire Energy states that the current Code structure takes into account the objective creditworthiness of the retailer which is widely accepted in other jurisdictions to assess credit in counterparties and is therefore appropriate and adequate.

Territory Generation states that it supports the proposed amendments verbatim in the Issues Paper with respect to credit support provisions. Territory Generation argues that although the current mechanism of linking a requirement for credit support to the credit rating of a retailer is reasonable for the establishment of a trading relationship, it bears no reflection on the actual performance of the retailer in settling their accounts in a timely manner. Territory Generation states a retailer with an acceptably strong credit rating so as not to require credit support arrangements who in practice does not settle their debts presents an unmanageable credit risk to the generator. Territory Generation also states that the proposed amendment is supported under the national energy framework where a distributor may request credit support from a retailer in certain circumstances.

Commission's position and reasons

The Commission has considered the mixed feedback received from stakeholders in relation to this matter and its draft decision is to amend the Code.

While the Commission agrees that credit matters are best determined in private commercial arrangements between retailers and generators, and notes a generator may be able to deal with a retailer's late or non-payment through agreed contractual terms, in reality, it is unlikely a generator would be able to disconnect a retailer's customers to stem its losses. Relevantly, and noting feedback from EDL, QEnergy and Rimfire Energy, the Territory does not have electricity market arrangements to ensure liquidity in the market like in the other jurisdictions – a retailer's late or non-payment for generation supply therefore presents a risk of generator failure that the Commission considers should be addressed in the Code.

The Commission considers the terms of Chapter 6B of the NER in relation to retailers providing credit support to distributors, consistent with Jacana Energy's suggestion, strikes a good balance in terms of when credit support should be required and the amount.

The Commission also agrees with Jacana Energy that the Code should set out when the generator is required to return the credit support to the retailer, as there is a risk that without such an obligation, the generator would not return the credit support even when the retailer's payment history had improved. The Commission proposes the timing for the return of credit support be consistent with that in Chapter 6B of the NER in relation to retailers and distributers.

Proposal to implement

The Commission proposes to amend the Code to:

- allow generators to request a retailer to provide credit support if they have a poor payment history, even if they have an acceptable credit rating as defined in the Code
- define 'poor payment history' similar to that in clause 6B.B2 of the NER, but modified to apply to a generator and retailer
- require return of the credit support similar to that in clause 6B.B4.2 of the NER, but modified to apply to a generator and retailer.

Proposed amendments:

3.2.6 Despite clause 3.2.2, a ***generator*** may require a ***retailer*** to provide ***credit support*** if within the previous 12 months, the ***retailer*** has failed to pay in full:

(a) the charges contained in 3 ***statements of charges*** by the due date for payment; or

(b) the charges contained in 2 consecutive ***statements of charges*** by the due date for payment; or

(c) the charges contained in 1 ***statement of charges*** within 15 ***business days*** of the due date for payment.

3.2.7 If a ***retailer*** fails to pay charges contained in a ***statement of charges***, but the charges are disputed, and the ***retailer*** has complied with the requirements of clause 11 in respect of the dispute, the ***retailer*** will not be considered in default in payment of the disputed charges and the ***generator*** will not be entitled to require the ***retailer*** to provide ***credit support***.

3.2.8 A ***retailer*** must, on request by a ***generator***, under clause 3.2.6 provide ***credit support*** to a ***generator*** in accordance with clause 3.2.6.

3.2.9 The ***credit support*** provided by a ***retailer*** under clause 3.2.8 must be:

(a) for an amount requested by the ***generator***, not exceeding an amount equal to the charges contained in the most recent ***statement of charges*** that gave rise to the requirement for the ***retailer*** to provide ***credit support*** under clause 3.2.6; and

(b) provided within 5 ***business days*** of the ***generator's*** request; and

(c) an acceptable form of ***credit support*** in favour of the ***generator*** (see clause 3.4).

3.2.10 A ***retailer*** must ensure that at all times the aggregate undrawn amount of the ***credit support*** is not less than the amount requested by the ***generator*** in accordance with clause 3.2.9.

3.2.11 A ***generator*** may only set off from, apply or draw on the ***credit support*** (as the case may be) if:

(a) the ***generator*** has given not less than 3 ***business days'*** notice to a ***retailer*** that it intends to set off, apply or draw on the ***credit support*** in respect of an amount due and payable by the ***retailer*** to the ***generator***, and that amount remains outstanding at the end of that period; and

(b) there is no dispute outstanding in relation to the ***retailer's*** liability to pay that amount.

3.2.12 If:

(a) a ***generator*** and a ***retailer*** no longer have any shared ***customers***; or

(b) in the 12 months since the ***credit support*** was provided, the ***retailer*** has paid in full the charges contained in each ***statement of charges*** issued in that 12 month period by the due date for payment,

the ***generator*** must pay, cancel or return to a ***retailer*** as appropriate, any balance of ***credit support*** outstanding after payment of all amounts owing by the ***retailer*** to the ***generator***.

Schedule 1 Definitions and interpretations

Statement of charges - means the statement of ***network charges*** provided by a ***network provider*** to a ***retailer***, or the ***statement of charges*** for ***generation services*** provided by a ***generator*** to a ***retailer***.

4 | Coordination agreement

The Issues Paper asked stakeholders to consider whether the matters (or terms) specified in clause 4.1.1 of the Code, which are to be included and approved by the Commission in a coordination agreement, are clear and appropriate.

The Issues Paper also asked stakeholders to consider whether there are any additional matters (or terms) that should be specified in clause 4.1.1 of the Code to be included and approved by the Commission in a coordination agreement.

Background

Clause 4.1 of the Code sets out the requirements for a coordination agreement between a retailer and network provider.

Under clause 4.1.1 of the Code, where Network Access Legislation applies, the retailer and network provider must enter into a coordination agreement for the provision of network access services and the coordination of various matters specified by the Commission in accordance with the network provider's licence, including, without limitation: customer billing, fault reporting, and notification of interruptions.

Clause 26 of PWC's network licence, in relation to a coordination agreement, requires it to enter into, and comply with, an agreement, on terms agreed by the Commission, with each electricity entity holding a retail licence or generation licence which provides services to the licensee's customers as to the coordination of the provision of services to those customers. This includes arrangements whereby the retailer has responsibility for taking up customer complaints about the quality of services being supplied. A corresponding condition is contained in retail licences.

The Commission advised in the Issues Paper that it considers that its oversight of some matters, through specifying and approving some coordination agreement matters (or terms) is appropriate, to protect customers. However, it noted that specifying some coordination matters in the Code and specifying other matters in network and retail licences may not be the best approach. It also may not be appropriate for the Commission to approve the entire coordination agreement, including terms relating to commercial matters.

The Commission has previously received informal feedback from licensees that the coordination matters (or terms) specified in clause 4.1.1 of the Code are not clear as to what specifically the Commission must approve and what would be considered a commercial matter between the two entities, particularly in relation to the coordination of customer billing.

Submissions

Submissions were received from EDL, Jacana Energy, PWC, and Purple House in relation to this matter.

EDL suggests in its submission that the Commission establish a default coordination agreement with approved terms which includes set timeframes for the Commission to approve, and that the network provider and retailers can then negotiate consideration of these terms. EDL also suggests that if a retailer does not supply electricity to any customers, there should not be any requirement to enter into a coordination agreement with the network provider.

Jacana Energy advises in its submission that the matters specified in clause 4.1.1 of the Code are general and broad and could be made clearer. Jacana Energy states it would be preferable for the obligations and requirements relating to the content and approval of a coordination agreement to be contained in one instrument (rather than in both the Code and licences). Jacana Energy suggests that it would be beneficial to amend the Code to include an exhaustive list of matters to be included in a coordination agreement and that ideally the Code would be amended to expressly include the obligations and requirements relating to coordination between the network provider and retailers (thus removing the need for a coordination agreement), with Part 5 of the NERR and Chapter 6B of the NER providing a clearly defined model. Jacana Energy recommends the Commission consider the impact of any Code amendments on the coordination agreements already in place between PWC and retailers, which may require transitional provisions in the Code.

PWC states in its submission that greater clarity could be provided on the process of establishing a coordination agreement, the duration of the coordination agreement and responsibilities around endorsement and enforcement of the coordination agreement. PWC also states that the Code should be amended to include a definition of coordination agreement in Schedule 1 to the Code. PWC further suggests that the Code should be amended so that the Commission is responsible for endorsing the entirety of the coordination agreement rather than a few aspects within the agreement.

Purple House's submission questions what efforts are being made to communicate the matters in a coordination agreement across remote communities.

Commission's position and reasons

The Commission has considered stakeholders' feedback and agrees the Code is not sufficiently clear in relation to what must be included in a coordination agreement and approved by the Commission.

The Commission acknowledges Jacana Energy's preference that the Code expressly include obligations and requirements relating to coordination between PWC and the retailer so that a coordination agreement will not be required, its suggestion that Part 5 of the NERR and Chapter 6B of the NER could be adopted (with amendments to make it appropriate for the Territory) as an alternative to requiring a coordination agreement, and that at a minimum there should be prescribed baseline requirements in the Code in relation to the content a coordination agreement must contain in order to be approved by the Commission. Similarly, PWC would like the Code to be more prescriptive in parts and EDL suggests the Commission establish a default coordination agreement with approved terms where the network provider and retailer can then negotiate the consideration of these terms.

The Commission's view on codifying detailed obligations and requirements is that while the Code should be clearer in terms of what must be included in a coordination agreement and approved by the Commission, the approach of requiring the parties to negotiate and agree detailed coordination matters where there is a shared customer provides more flexibility to accord for the parties' and the Territory's circumstances than adopting (and modifying) the prescriptive provisions in Part 5 of the NERR and Chapter 6B of the NER, noting the potential adoption of the national energy customer framework (NECF) and further application of the NER is a policy decision for the Territory Government.

While the Commission recognises the additional flexibility of the current approach may result in additional costs for the network provider and retailers in terms of negotiating and executing an agreement, and for the Commission in terms of having to consider and approve the agreement/s, it is not clear the benefits would outweigh the costs of putting in place more detailed and prescriptive obligations at this time, under current retail market conditions.

In terms of Jacana Energy's concern that negotiating a coordination agreement may see some retailers with more favourable arrangements than other retailers, the Commission notes that this has not been the case to date. Most recently, in August 2021, the Commission approved relevant clauses in PWC's proposed 'standard coordination agreement template' (subject to amendments as the Commission considered necessary), which was subsequently agreed and executed between PWC and each separate retailer operating in the Territory.

The Commission notes that rather than adopting (and modifying) Part 5 of the NERR and Chapter 6B of the NER, an option could be to replicate relevant provisions in the current 'standard coordination agreement template' between PWC and retailers in the Code. This option, if adopted at a detailed level may be suitable given all parties have agreed to the provisions, meaning inclusion in the Code would have little to no impact; however, the Commission is concerned this approach would not provide sufficient flexibility for the parties to negotiate different coordination approaches to accord for changes in the electricity supply industry, technology and customer preferences in the future. As such, the Commission proposes to amend the Code to only prescribe the high-level coordination matters that must be included in a coordination agreement, based on the current 'standard coordination agreement template', with the detail to be approved by the Commission as and when necessary.

The Commission acknowledges PWC's suggestion that the Commission approve the entire coordination agreement, but considers this inappropriate as many of the matters included in existing coordination

agreements (the executed standard coordination agreement template) relate to commercial matters between the relevant parties.

The Commission also does not consider it necessary to prescribe the process for establishing a coordination agreement or the duration of a coordination agreement. The Code is clear when a coordination agreement must be in place and the Commission is agnostic as to the duration of an agreement. It is up to the parties to put in place their own processes to ensure they comply with their regulatory obligations, including allowing sufficient lead time to allow for negotiation and agreement, submitting to the Commission for approval, and execution.

In terms of PWC's feedback that the Code should be amended to include a definition of coordination agreement in Schedule 1 to the Code, the Commission agrees, noting it is proposed the definition simply refer to the updated clause.

With respect to listing matters that must be included in a coordination agreement in two separate instruments (the Code and some licences), the Commission agrees with Jacana Energy that it is preferable for the obligations and requirements to be in one instrument. Accordingly, the Commission considers the Code is the best instrument and thus as part of its licensing review will consider removing the associated licence condition/s in relation to a coordination agreement (and potentially updating the Code to accord for the licence condition removal at the appropriate time).

While it is unclear why a retail licensee would continue to hold a retail licence if the licensee does not supply electricity to customers, the Commission agrees with EDL's suggestion that a retailer should not be required to enter into a coordination agreement with the network provider if it does not supply electricity to any customers. The Commission proposes to amend the Code to this effect.

The Commission notes Purple House's feedback is not directly relevant to the coordination agreement obligation.

Proposal to implement

The Commission proposes to amend the Code to provide a high level list of matters that must be included in a coordination agreement and approved by the Commission, and include a definition for coordination agreement in Schedule 1 that will refer to the updated clause.

The Commission also proposes to amend the Code to make it clear that a retailer that does not supply electricity to customers is not required to enter into a coordination agreement.

Proposed amendments:

4.1 Coordination Agreement

4.1.1 Where *Network Access Legislation* applies the *retailer* and *network provider* must enter into a *Coordination Agreement* for the:

(a) provision of network access services; and

~~(b) the coordination of various matters specified by the *Commission* in accordance with the *network provider's* licence including without limitation, customer billing, fault reporting and notification of *interruptions*.~~

(b) the coordination of the following matters:

(i) assistance and cooperation between a *retailer* and *network provider*

(ii) provision of information between a *retailer* and *network provider*;

(iii) shared *customer* enquiries and complaints, and provision of information to shared *customers*;

(iv) new connections, disconnections and reconnections;

(v) notification of faults, and planned and unplanned *interruptions*; and

(vi) *meter* data, varied charges, adjustments and billing.

4.1.1A The provisions of the ***Coordination Agreement*** relating to the matters specified in clause 4.1.1(b) must be approved by the ***Commission*** prior to entering into the ***Coordination Agreement***.

4.1.1B For the avoidance of doubt, a ***Coordination Agreement*** may include additional matters that are not specified in clause 4.1.1.

4.1.1C A ***retailer*** and ***network provider*** are not required to enter into a ***Coordination Agreement*** where the ***retailer*** has no ***customers***.

Schedule 1 Definitions and interpretations

Coordination Agreement means an agreement entered into between a ***retailer*** and ***network provider*** in accordance with clause 4.1.1.

5 | Metrology

The Issues Paper asked stakeholders to consider whether the Code should be amended to allow a customer with an accumulation meter to be able to transfer to a new retailer without replacing their accumulation meter with an interval meter (i.e., removal of clauses 5.1.1 and 5.1.2 of the Code).

The Issues Paper also asked stakeholders to consider whether the requirement for an interval meter to switch retailers should be amended to require a Type 1-4 meter as defined in the NER (NT).

Background

Clause 5.1.1 of the Code states that a retailer must not initiate a transfer (to another retailer) unless the customer's exit point has an interval meter installed. For the avoidance of doubt, a customer with an accumulation meter or unmetered installations may not be transferred to another retailer.

The requirement for an interval meter to transfer to another retailer was originally included in the Code on the basis that PWC did not have the capability at the time to accommodate the transfer of customers with accumulation meters. The requirement was not intended to be a permanent solution, but rather a temporary one to enable a more suitable solution to be developed.

The Commission has previously acknowledged that requiring an interval meter to transfer retailers is a potential barrier to retail competition, noting the cost to a customer of upgrading their accumulation meter to an interval meter, at their request, is approximately $566 (ex GST).

The Commission also previously noted PWC's advice that removing the requirement for an interval meter to switch retailer would trigger the requirement for a complex settlement system that would be significantly more expensive than the current solution. Further, the Department of Treasury and Finance expressed concern with the costs for PWC to develop a Territory-specific system, which would likely flow to electricity consumers.

The Commission understands the number of interval meters connected to the Territory's power systems continues to grow, primarily due to PWC's new and replacement smart meter program, which was approved by the Australian Energy Regulator (AER) as part of its 2019-24 PWC distribution regulatory determination.[5] PWC has indicated to the Commission that around 8000 Type 1-4 meters have been installed under the new and replacement smart meter program as at 30 June 2022, with an additional 21,000 smart meters to be installed between July 2022 and June 2024 under the current regulatory period funding. The Commission understands there are around 24,000 Type 1-4 meters currently installed in the Darwin-Katherine, Alice Springs and Tennant Creek power systems, representing approximately 23% of total meters on the regulated networks.

Under clause 5.1.2 of the Code, the interval meter may be either manually or remotely read. PWC previously proposed that the term 'interval meter' be revised to require a 'Type 1-4 meter' to align the language and terms used in the Code with Chapter 7A of the NER (NT). This would in effect mandate that a customer must have a remotely-read smart meter and could not have a Type 5 manually-read interval meter.

Submissions

The Commission received submissions from Jacana Energy, PWC, Purple House, QEnergy and Rimfire Energy in relation to these matters.

Jacana Energy advises in its submission that it is not opposed to the concept of allowing customers to transfer retailer without an interval meter; however, deleting clauses 5.1.1 and 5.1.2 of the Code would require significant regulatory and practical changes. Jacana Energy states that because of the capabilities of interval meters, retail customers with interval meters receive more benefits than those without. Given the uptake level of smart meters in the Territory through PWC's new and replacement smart meter policy, and the long-term benefits to electricity consumers from shifting to interval meters, Jacana Energy considers

[5] Final decision | Australian Energy Regulator (aer.gov.au)

there is an argument that the current Code requirement should be retained on a cost-benefit analysis. Further, Jacana Energy considers that the requirement for an interval meter to switch retailers be amended to require a Type 1-4 meter as defined in the NER (NT).

PWC states that it is concerned with the Commission's proposal to remove the requirement for customer transfers to be permitted without an interval meter, as the current market settlement system has been designed and developed based on the requirement that transfers to a new retailer require interval meters and market reforms currently being consulted on by Department of Treasury and Finance are being designed based on the assumption that interval meters will be used for market settlements. PWC considers that the impacts to market settlement and the efficient operation of the Northern Territory Electricity Market (NTEM) of removing the requirement for interval meters will far outweigh any benefits to competition at this time, due to current metering and market settlement system limitations. PWC suggests it may be more appropriate to revisit this issue in two years' time once NTEM reforms have been finalised and PWC have implemented new metering and market settlement systems. PWC agrees the term interval meter used in the Code should be aligned with the NER (NT), specifically Type 1-4 meter.

Purple House states in its submission that a Type 1-4 meter is required for public reporting and accountability of providers and government to address energy poverty for Indigenous Territorians. Purple House suggests that more work needs to go into meter set-up, in order to ensure that each meter is set up to receive rooftop solar and apply an immediate feed-in tariff, and that prepayment meters need to have a greater diversity of payment mechanisms including direct purchase, direct debit from bank accounts, Centrepay deductions and income management deductions.

QEnergy suggests in its submission that the prohibition on the transfer of customers without the installation of an interval meter is a barrier to entry for new retailers to the small customer market, and supports removal of the restrictions contained in clauses 5.1.1 and 5.1.2 of the Code. QEnergy acknowledges that additional system benefits can be realised with wide-scale roll-out of remotely read interval meters and supports the installation of Type 1-4 meters as the default position for replacement meters, but not as a pre-requisite to the transfer of a small customer.

Rimfire Energy states the restriction on the transfer of customers without the installation of an interval meter is a barrier to enabling choice for Territory consumers as the restrictive cost associated with installation of interval type meters acts as a barrier to entry for new retailers to the small customer market.

Commission's position and reasons

The Commission has considered stakeholders' feedback and acknowledges that while the requirement for a customer to have an interval meter in order to switch retailer is a barrier to competition and ultimately limits customer choice in the retail market, the costs associated with removing clause 5.1.1 would likely exceed the benefits. As such, the Commission does not intend to amend the Code to remove the interval meter requirement to switch retailer.

The Commission notes one potential solution to this barrier to competition could be for PWC Power Services to consider enabling customers with an accumulation meter that wish to switch retailers access to a smart meter through its new and replacement smart meter program, rather than requiring the customers to pay more than $600 each for a new meter. This proposed approach would need careful consideration as it may result in unintended consequences, such as encouraging customers to switch retailers to get a 'free' upgrade meter before they would have otherwise received the smart meter under PWC's program. Nonetheless, the Commission encourages PWC to consider a potential solution given the current situation favours Jacana Energy and is primarily due to PWC's on-going system limitations, noting PWC already receives funding (revenue through its network charges) to cover the costs of providing smart meters under its new and replacement smart meter program.

In terms of potentially aligning the interval meter definition in the Code with that in the NER (NT) (i.e., changing 'interval meter' to 'Type 1-4 meter'), the Commission considers the use of the term 'interval meter' is clear and achieves the Commission's intent, and amending the ERS Code to align with the NER (NT) could result in unnecessary costs for customers that wish to change retailer.

The term 'interval meter' is intended to cover any Type 1-5 meter. The Commission acknowledges that under PWC's new and replacement smart meter program, all new and replacement meters will be Type 1-4

smart meters rather than Type 5 manually-read interval meters. However, any customers who have an existing Type 5 meter should not be required to pay to upgrade their meter to a Type 4 meter if they wish to change retailers, which would be the effect of amending the Code to refer to a 'Type 1-4 meter' instead of 'interval meter'.

Proposal to implement

The Commission proposes not to amend the Code to remove clause 5.1.1 and not to amend the interval meter obligation to Type 1-4 meter.

6 | Adoption of market settlement and transfer solution (MSATS) system

Business-to-Business Arrangements and Customer Transfers

The Issues Paper did not specifically discuss or ask questions regarding business-to-business arrangements and customer transfer provisions in the Code. Notwithstanding, PWC made a late submission to the Code review requesting the Commission consider making the following changes to the Code in relation to business-to-business arrangements and customer transfers:

- provide an end date to clauses 7.2.1 and 7.2.2 on the requirement for the network provider to publish a service order procedure (of 30 June 2023)
- include a clause 7.2.12 stating that from 1 July 2023 onwards all service orders are to occur as per the published NTESMO Communications Guideline
- cease clause 8.2.2 effective from 30 June 2023
- amend clause 8.2.2 to state that from 1 July 2023 all customer transfers are to be processed as per the NTESMO Communications Guideline
- replace 'customer transfer request form' with the phrase 'customer transfer request' throughout clause 8.

Background

PWC's second submission to the Issues Paper, received on 14 February 2022, advises that PWC in its role as NTESMO has considered the mechanisms for participant communication within the NTEM for business-to-business communication and customer transactions and intends to adopt the Australian Energy Market Operator's (AEMO) Market Settlement and Transfer Solutions (MSATS) system for these transactions. PWC states it will publish the required procedures to transact via MSATS through a communications guideline made under section 7A.1.3 of the NER (NT), noting the current rules for these matters are provided within clauses 7.2, 8.1 and 8.2 of the Code.

Clause 7 of the Code sets out business-to-business arrangements, including requiring a network provider to develop Service Order Procedures, defining what business-to-business services include, and requiring the network provider to use best endeavours to meet timeframes and the retailer to pay reasonable charges for the requested services. Business-to-business services include, but are not limited to, customer disconnection, customer reconnection, installing a new meter or changing an existing meter, and special meter reads.

Clause 8 of the Code sets out provisions regarding customer transfers, including specifications around the customer transfer request form and timing obligations, responsible retailers for greenfield and other exit points, and third party assistance.

NTESMO is currently consulting on its proposed Communications Guideline and MSATS Procedures as required under a Rules Consultation Procedure defined in clause 8.9 of the NER (NT). The associated NTESMO Issues Paper, published on 30 June 2022, discusses at a high level the proposed overlap of the business-to-business and customer transfer provisions in the Code, which should be addressed from NTESMO's perspective through amendments to the Code.

PWC's submission states that in order to implement the MSATS solution in the NTEM, PWC will engage AEMO under a services contract to provide the system and support for NTEM participants. PWC's submission identifies the Code clauses it considers require amendment to effectively 'point' to NTESMO's Communications Guideline and AEMO's associated system and remove any inconsistencies in obligations.

NTESMO's draft report and determination, published on 12 September 2022, indicates it will make a final decision on its Communications Guideline in November 2022, with the Communications Guideline and MSATS Procedures to commence on 2 October 2023. Relevantly, the NER (NT) does not require NTESMO's Communications Guideline to be approved by an independent body such as the AER or the Commission.

Submissions

The Commission encouraged PWC to make a late submission to the Code review proposing the business-to-business arrangements and customer transfers Code amendments, as the Commission was aware NTESMO's obligation to develop and publish a Communications Guideline under clause S7A.1.3 of the NER (NT) would likely result in inconsistencies with the Code.

As PWC's proposal was a late submission, stakeholders' submissions did not provide feedback on this matter. However, given the overlap, the Commission did review submissions made to NTESMO in relation to its proposed Communications Guideline and MSATS Procedures v1.0. Relevantly, some feedback to NTESMO raised concerns about inconsistencies with the Code.

Jacana Energy provided the Commission with a copy of its submission to NTESMO and discussed with Commission staff its concerns regarding inconsistencies. Specific inconsistencies noted by Jacana Energy between the proposed Communications Guideline and MSATS Procedures v1.0 and the Code include requirements to complete a customer transfer request form, the mechanisms for delivery and querying of meter data and life support obligations.

Jacana Energy recommends in its submission to NTESMO that inconsistencies between the Code and NTESMO's proposed procedures be addressed through NTESMO's consultation process and changes applied to the Code (where applicable) occur in conjunction to ensure all participants are clear on obligations.

Relevantly, Rimfire Energy's submission proposes an amendment to a clause in relation to customer transfers. Specifically, Rimfire Energy proposes clause 8.2.18(b) of the Code be amended to differentiate between the charge associated with the processing of a customer transfer between retailers from the various network charges associated with ongoing electricity supply and other network related services provided by the network operator to the retailer.

Commission's position and reasons

The Commission has considered PWC's proposed amendments to the Code and agrees with PWC and Jacana Energy that there are inconsistencies between the Code and NTESMO's obligation to develop a Communications Guideline under the NER (NT) that warrant amendments to the Code, including appropriate transitional provisions.

In relation to clauses 7.2.1 and 7.2.2, the Commission agrees with PWC that the provisions will not be required once NTESMO's Communications Guideline commences, noting the clauses will need to be retained up to this date as there is a necessary reference to clause 7.2 in the definition of Service Order Procedures. The Commission considers this definition will also need to be amended from the date of commencement of the NTESMO Communications Guideline.

Given procedures in relation to service orders will be provided through NTESMO's Communications Guideline and associated MSATS Procedures, the Commission also considers there is no need to retain provisions in relation to amending Service Order Procedures (clauses 7.2.3 to 7.2.7 inclusive) in the Code, once NTESMO's Communications Guideline commences.

The Commission has reviewed clauses 7.2.8 to 7.2.11 of the Code in relation to retailer requests for business-to-business services with reference to NTESMO's Communications Guideline and MSATS Procedures v1.0 Draft Report and Determination[6] and considers no amendments are necessary to these clauses, other than to the definition of Service Order Procedures. The Commission proposes this definition be amended to refer to the NTESMO Communications Guideline from the date of its commencement. This approach will ensure there are not two separate instruments covering the same matters.

The Commission has considered PWC's proposal to remove obligations for customer transfer request forms and require customer transfers to be processed in accordance with NTESMO's Communications Guideline once it commences and Rimfire Energy's proposal in the context of the full clause 8.2 (customer transfers)

[6] NTESMO Communications Guideline and MSATS Procedures V1.0 second stage consultation

obligations in the Code and the NER (NT) more broadly, and notes most of the matters in the clause are covered in the Communications Guideline and associated MSATS procedures. While there are exceptions, such as no obligations to publish and pay charges for processing a customer transfer, the Commission notes these may no longer be necessary. For example, PWC publishes its AER approved Alternative Control Services charges, including for customer transfers, in accordance with the NER (NT). Accordingly, the Commission proposes only clause 8.2 subclauses related to customer protections should be retained following commencement of the NTESMO Communications Guideline, specifically, clause 8.2.20 in relation to a customer's verifiable consent and clauses 8.2.22 and 8.2.23 in relation to a cooling off period.

In relation to life support equipment obligations in the Code and Jacana's Energy's valid concerns regarding inconsistencies, the Commission notes NTESMO's Draft Report and Determination indicates the necessary changes will be made in the final Communications Guideline to align with the Code. The Commission does not intend to make any amendments to the Code in relation to life support equipment provisions to account for NTESMO's Communications Guideline and MSATS Procedures.

The Commission's proposed amendments to the Code are necessary to resolve the inconsistency between the current Code provisions and the NER (NT). The Commission does not have any role in approving NTESMO's proposed Communications Guideline and MSATS Procedures and these proposed amendments to the Code should not be interpreted as an endorsement of NTESMO's drafts of those documents.

Proposal to implement

The Commission proposes:

- a new clause stating clauses 7.2.1 and 7.2.2, in relation to making Service Order Procedures, expire on the date of commencement of the NTESMO Communications Guideline
- a new clause stating clauses 7.2.3 to 7.2.7, in relation to amending Service Order Procedures, expire on commencement of NTESMO's Communications Guideline
- a new clause stating clauses 8.2.1 to 8.2.19 and clause 8.2.21, in relation to customer transfer procedures, expire on the date of commencement of the NTESMO Communications Guideline
- new definitions be added to the Code in relation to NTESMO and NTESMO Communications Guideline, and an amendment to the definition of customer transfer request form and Service Order Procedures.

Proposed amendments:

7.2 Service Orders

Making Service Order Procedures

7.2.2A Clauses 7.2.1 and 7.2.2 expire on the date the ***NTESMO Communications Guideline*** commences.

Amending Service Order Procedures

7.2.7A Clauses 7.2.3 to 7.2.7 expire on the date the ***NTESMO Communications Guideline*** commences.

Retailer requests for business-to-business services

7.2.12 From the date of commencement of the ***NTESMO Communications Guideline***, the ***NTESMO Communications Guideline*** is deemed to be the ***Service Order Procedures***.

7.2.13 For the avoidance of doubt, from the date of commencement of the ***NTESMO Communications Guideline***, all ***Service Order Requests*** are to be made in accordance with the ***NTESMO Communications Guideline***.

8.2 Customer transfer procedures

8.2.24 Clauses 8.2.1 to 8.2.19 and clause 8.2.21 expire on the date the ***NTESMO Communications Guideline*** commences.

Schedule 1 Definitions and interpretations

Customer transfer request form – means:

(a) until the date of commencement of the ***NTESMO Communications Guideline***, the form published by a ***network provider*** under clause 8.8.2 in accordance with Annexure 3;

(b) from the date of commencement of the ***NTESMO Communications Guideline***, a change request as required by the ***NTESMO Communications Guideline*** to action a ***customer*** transfer.

NTESMO – has the meaning given in the ***National Electricity (NT) Rules***

NTESMO Communications Guideline – means the communications guideline developed and maintained by ***NTESMO*** as required by S7A.1.3 of the N***ational Electricity (NT) Rules***

Service Order Procedures – means procedures of that name prepared by a ***network provider*** and approved by the ***Commission*** in accordance with clause 7.2 until the date of commencement of the ***NTESMO Communications Guideline*** at which time the definition changes to the ***NTESMO Communications Guideline***.

7 | Retailer of last resort

The Issues Paper asked stakeholders to consider whether the Code should be amended to remove the retailer of last resort (RoLR) provisions at clause 9 of the Code so that a comprehensive RoLR scheme suitable for the Territory's circumstances can be provided for in legislation.

Background

Clause 9 of the Code provides RoLR provisions.

The purpose of RoLR provisions is to ensure that in the event of an electricity retailer failure arrangements are in place to ensure that relevant customers continue to receive electricity supply. A RoLR scheme is in place in the eastern and southern jurisdictions through the NERL and a Supplier of Last Resort arrangement is in place in Western Australia through the *Electricity Industry Act 2004*.

In the Territory, there is no RoLR arrangement provided for in legislation; however, regulation 2A(2)(f) of the Utilities Commission Regulations 2001 authorises the Commission to make a code about retail supply in the electricity supply industry that may deal with RoLR arrangements. Accordingly, the Code includes RoLR provisions, with Jacana Energy the designated RoLR.

The Commission considers the current RoLR provisions are ineffective as they are not contained in or authorised by legislation and aspects of the current RoLR provisions may therefore be unenforceable on the basis of inconsistency with relevant Commonwealth legislation. The Commission understands the Office of Sustainable Energy is progressing work to address this issue.

Submissions

The Commission received submissions from Jacana Energy and PWC in relation to this matter.

Jacana Energy is of the view that the RoLR provisions should remain in the Code, stating this will allow more flexibility to amend the provisions as competition in the Territory's retail market grows. Jacana Energy argues that it is important that customers have security of supply as more retailers enter the Territory market and there is an increased risk that a retailer in the Territory may fail or leave the market. Jacana Energy suggests specific amendments required may not be apparent until the RoLR scheme is tested through an actual event (if and when it happens).

PWC states that the RoLR provisions in the Code should not be removed before legislative arrangements are in place as this would result in a gap in measures for addressing the potential risk of a RoLR event; however, if it is determined that it is appropriate to elevate and codify the provisions in legislation then it would be appropriate to remove the provisions from the Code.

Commission's position and reasons

The Commission has considered the feedback from Jacana Energy and PWC, noting both are opposed to removing the RoLR provisions from the Code (at least before alternative legislative arrangements are in place), and nonetheless is of the view that removing the RoLR provisions in the Code is necessary.

Removing the RoLR provisions in the Code will not create a gap, as suggested in PWC's submission, as a significant gap already exists in the context of deficient provisions. The RoLR provisions cannot be amended under the current legislative framework to be effective and retaining ineffective provisions in the Code creates confusion and risk.

The Commission acknowledges that an effective, appropriate RoLR scheme is needed in the Territory and is committed to working with government towards this end.

Proposal to implement

The Commission proposes to amend the Code to remove clause 9 in its entirety, including associated definitions.

8 | Life support equipment

Prepayment meters

The Issues Paper asked stakeholders to consider whether the Code should allow for exceptions to clause 10.6 whereby a customer could provide their written explicit informed consent to retain a prepayment meter despite requiring life support equipment at their premises.

Background

Clause 10 of the Code provides protections to electricity customers requiring life support equipment at their premises through retailer and network provider obligations.

Clause 10.6 of the Code seeks to ensure that customers with persons at their premises requiring life support equipment do not have a prepayment meter. Notably, clause 10.6 was introduced following the 2019 review of the Code. The rationale was to avoid potentially life-threatening circumstances where a customer requiring life-support equipment at their premises is disconnected from electricity due to failure or inability to top-up their prepayment meter credit.

However, since the Code was amended to include clause 10.6, the Commission has been made aware of circumstances where a customer requiring life support equipment at their premises strongly preferred to retain a prepayment meter, indicating that it would cause hardship if they were forced to have a post paid meter.

Submissions

The Commission received submissions from researchers at the ANU, Jacana Energy, PWC and Purple House in relation to this matter.

The ANU researchers' submission argues that while greater payment options and choice for residents requiring uninterrupted access to life support equipment is desirable, 'consenting' to prepayment is synonymous with the customer exempting themselves from broader protections. The researchers consider that there should not be an 'out' for the provider – where choosing prepayment absolves them (the retailer) from the requirement to avoid any possibility for life support customers disconnecting.

Jacana Energy states it is not opposed to the concept of allowing life support customers to provide their explicit consent to retain a prepayment meter, but would prefer that the Commission is responsible for determining when such an exemption should be allowed. The submission suggests that written explicit informed consent to retain a prepayment meter system should have a limited, clear and specific application and only be allowed to be approved by the Commission as an independent body. Further an exception should not be granted until a customer's financial situation and life support equipment arrangements are thoroughly considered and assessed.

PWC is in favour of allowing an exception to clause 10.6, provided that the customer's consent contains at a minimum: acknowledgement that the customer is responsible for monitoring their prepayment meter balance and ensuring that their balance is in credit; customers must implement their own emergency plan and or have a backup power supply in the event that their credit runs out; and if the customer chooses to remain on a prepayment system, the network provider cannot be held liable if the customer's power switches off due to no credit.

Purple House's response indicates it supports allowing exceptions, stating that if an occupant requires medically essential equipment requiring electricity supply, moving to a post paid system puts the entire household at high risk of debt, and a single resident's desire not to impact the household's financial processes should be honoured. However, Purple House also suggests that further protections are required for prepayment meter customers, such as real time monitoring and notification through alarms directed to a local clinic and third party care givers when disconnections occur, protected circuits or uninterruptible power supply equipment.

Commission's position and reasons

Following consideration of feedback from stakeholders, the Commission's draft decision is not to amend the Code to allow for exceptions to clause 10.6 whereby a customer could provide their explicit informed consent to retain a prepayment meter despite requiring life support equipment at their premises.

The Commission considers that the risks of allowing a customer to retain a prepayment meter when life support equipment is required at their premises, including the risk of significant harm and death if the life support equipment is disconnected from electricity due to lack of credit, is too great to proceed.

The Commission notes stakeholders' feedback that there is a risk the requirement for a post payment meter may detrimentally effect some customers' financial security, but considers that this is outweighed by the potential for harm including death to the person requiring the life support equipment following from disconnection of electricity when their prepayment credit runs out.

The Commission considers that its proposed approach to amend the Code to include obligations on retailers to develop, maintain and implement an approved prepayment meter customer hardship policy (discussed further below) may go some way towards addressing stakeholders' concerns.

Proposal to implement

The Commission proposes not to amend the Code to allow for exceptions to clause 10.6.

Life support equipment procedures for outside major centres

The Issues Paper asked stakeholders to consider if the Code:

- should be amended to explicitly state that retailers and network providers must comply with their approved life support equipment procedures for outside major centres
- should include an obligation on retailers and network providers to regularly review their life support equipment procedures for outside major centres.

Background

Clause 10.7 of the Code sets out provisions to protect customers requiring life support equipment outside the major centres of Darwin-Katherine, Alice Springs and Tennant Creek (where Network Access Legislation does not apply).

Clause 10.7.2 of the Code requires a retailer and a network provider to develop and submit to the Commission for approval within three months of the commencement of version 3 of the Code (the current version of the Code) life support equipment procedures for each geographical area in which it sells electricity to customers for domestic use, or operates an electricity network that provides connection services to customers for domestic use, that seek to achieve similar outcomes to the life support equipment provisions in place for customers connected to the Darwin-Katherine, Alice Springs and Tennant Creek power systems.

Following the most recent update to the Code in 2019, the Commission has become aware that while all relevant licensees must comply with the Code in accordance with their respective licence conditions, the Code does not explicitly state that a retailer or network provider must comply with its approved life support equipment procedures.

Submissions

The ANU researchers agree the Code should be amended to explicitly state that retailers and network providers must comply with their approved life support equipment procedures for outside major centres. The ANU researchers also propose that the definition of approved life support equipment be expanded (in consultation with the Department of Health) to include any customer who is prescribed with a medication

that needs to be stored within defined temperature ranges and customers with health vulnerabilities exacerbated by extreme temperatures requiring air conditioning and/or heating.

The ANU researchers' submission also supports developing an obligation to regularly review the life support equipment procedures outside major centres and suggests that this could be every 24 months.

Jacana Energy states that it supports amending the Code to explicitly require compliance with approved life support equipment procedures for outside major centres, as this would avoid ambiguity and provide certainty as to a retailer's obligation. Jacana Energy advises that it is comfortable with the Code including an obligation to regularly review life support equipment procedures (noting that Jacana Energy currently does this in practice) and suggests that review should be undertaken at least once every three years.

PWC agrees in principle that non-regulated and Indigenous Essential Services Pty Ltd (IES) communities should have the same provisions and protections as customers on the regulated grid, but suggests that this is difficult to achieve in practice where retail centres are maintained by mining companies and PWC is not aware of planned works or maintenance being scheduled on either generation facilities or electrical grids. PWC states it is the retailer within these areas under legacy arrangements and has limited customer records for invoicing purposes which would make it difficult to maintain a life support register. PWC suggests it would be prudent to continually review the life support equipment procedures for outside major centres given the NTEM is still under development and to ensure the procedures take into account the rapid pace of market and technology changes. PWC suggests the procedures should be reviewed comprehensively every five years to align with the regulatory determination process under the NER (NT), as well as after any incidents.

Purple House states it is in favour of amending the Code to explicitly state that approved life support equipment procedures for outside major centres must be complied with, provided that the approved procedures are fit for purpose. Purple House is in favour of requiring retailers and network providers to regularly review the procedures, but states that this should not occur in isolation and that retailers cannot develop policy without reference to primary health care providers and stakeholders including tenants and consumers.

Commission's position and reasons

The Commission has considered the submissions received and proposes to proceed with amending the Code to explicitly state that retailers and network providers must comply with their approved life support equipment procedures for outside major centres and to include an obligation on retailers and network providers to review their life support equipment procedures for outside major centres at least once every three years and following a breach of approved life support equipment procedures.

The majority of stakeholders' responses in relation to this matter agree there should be an obligation on retailers and network providers to comply with their approved life support equipment procedures for outside major centres, provided the procedures are fit for purpose. Relevantly, the purpose of clause 10.7 is to provide retailers and network providers the flexibility to develop life support procedures that are fit for purpose where the retail operations are in relation to customers located outside the major centres. Notwithstanding, there is a limit to this flexibility. The procedures must seek to achieve similar outcomes for customers in the major centres.

Regarding PWC's submission that in practice it is difficult to achieve the same provisions and protections for customers in non-regulated and IES communities as those for customers on the regulated grid, due to legacy arrangements, the Commission notes that PWC already has in place life support equipment procedures for its customers outside major centres, which PWC developed and the Commission approved. The Commission's expectation is that PWC comply with these procedures.

In relation to the ANU researchers' proposal that the definition of life-support equipment customer be expanded. The Commission notes the definition of life support equipment in the Code includes a category for 'other' being any equipment that a medical practitioner considers is essential for their patient. On this basis, the Commission does not consider expanding the definition necessary.

Feedback from stakeholders on how often retailers and network providers should review their life support equipment procedures for outside major centres ranged from every two to five years, although PWC also

considered there should be an obligation to review the procedures following an incident and Purple House indicated the review should not be undertaken in isolation.

In relation to the timing, the Commission considers a good balance to ensure the procedures account for any changes that may have taken place in the geographical areas covered is once every three years and following an incident, noting the three year timeframe would 'reset' if an incident occurred during the three-year timeframe.

In terms of PWC's proposal of a comprehensive review of the life support equipment procedures every five years to align with its regulatory determination process under the NER (NT) and AER, the Commission notes clause 10.7 of the Code is not relevant to the AER process as Clause 10.7 only applies where Network Access Legislation (the NER (NT)) does not apply.

The Commission agrees with Purple House that a review of life support equipment procedures should not be undertaken in isolation. The review should include consultation with appropriate stakeholders.

Proposal to implement

The Commission proposes to amend the Code to include obligations on retailers and network providers to comply with their approved life support equipment procedures for outside major centres, and for retailers and network providers to review their life support equipment procedures at least once every three years and following a breach of approved life support equipment procedures.

Proposed amendments:

10.7.10 A ***retailer*** and ***network provider*** must comply with its approved ***life support equipment*** procedures.

10.7.11 A ***retailer*** and ***network provider*** must review its ***life support equipment*** procedures at least once every three years and following a breach of approved ***life support equipment*** procedures.

9 | Dispute resolution process

The Issues Paper asked stakeholders to consider whether the Code should be amended to include internal dispute resolution obligations on retailers and or network providers that are similar to that in the NERL, amended for the Territory's circumstances.

Background

Clause 11.1 of the Code sets out a dispute resolution process for disputes between a network provider and a retailer; retailers; a network provider and the system controller; a retailer and the system controller; and a retailer and a generator. However, the Code does not set out a dispute resolution process for disputes between a customer and their retailer or network provider, nor is this provided for in any other Territory code, rule, regulation or act.

The Commission has previously highlighted in its annual NTERRs that there is no legislated obligation on retailers in the Territory to have in place internal dispute resolution procedures in line with Australian standards and electricity industry best practice. Therefore retailers are left to determine what is appropriate regarding the handling of disputes, which may not be in the best interests of consumers.

The Commission has previously recommended that government implement a broader consumer protection framework including such an obligation on retailers, as well as access to an appropriate external dispute resolution scheme for customers of non-government retailers who do not currently have access to dispute resolution by the NT Ombudsman. In its 2019-20 NTERR, the Commission stated it would consider internal dispute resolution procedures in its updated Code if not implemented by government. Accordingly, the Issues paper asked stakeholders for feedback on this potential gap in the Territory's electricity retail customer protection framework.

Submissions

The Commission received submissions from EDL, Jacana Energy, PWC, Purple House and QEnergy in relation to this matter.

EDL, Purple House and Jacana Energy consider the Code should be amended to include internal dispute resolution obligations on retailers and or network providers.

Jacana Energy states that the requirements of the NERL in relation to dispute resolution are standard requirements across many different industries and adopting the NERL requirements would be consistent with Jacana Energy's internal decision to transition towards the NERL and NERR requirements in its standard small customer contract. Jacana Energy also notes it would be beneficial for customers in the Territory if the same dispute resolution requirements applied to all retailers and consequently all customers.

PWC agrees that where alignments can be made easily and without additional or multiple changes to existing codes and regulations in use across the Territory, adopting the national approach will be beneficial to customers and electricity entities across the Territory.

QEnergy advises that it is beneficial for retailers to publish complaints handling procedures for small customers on their website and make these widely available to customers.

Commission's position and reasons

The Commission has considered stakeholders' feedback and proposes to amend the Code to include internal dispute resolution obligations on retailers and network providers for handling customer complaints and disputes consistent with that in the NERL, amended for the Territory's circumstances.

Section 81 of the NERL requires every relevant retailer and distributor to develop, make and publish on its website a set of procedures detailing the retailer's or distributor's procedures for handling small customer complaints and disputes. The procedures must be substantially consistent with the Australian Standard AS ISO 10002 2006 (*Customer satisfaction — Guidelines for complaints handling in organizations*) as amended and updated from time to time.

A review of Territory electricity retailers' and the network provider's websites found notable differences in the level of information available to customers on how to make a complaint and the associated complaint resolution process. Some appeared to be aligned, at least at a high level, with the Australian Standard AS ISO 10002 2006, others not.

The Commission's view is that putting in place obligations to have internal dispute resolution procedures in line with Australian standards and electricity industry best practice will help ensure customer interests are protected in the dispute resolution process. Further, the Commission agrees with Jacana Energy that there is benefit if the same dispute resolution requirements are applied to all retailers and consequently all customers, subject to the requirements being appropriate for the Territory's circumstances.

In terms of PWC's feedback, the Commission is not aware of any further codes or regulations that would need to be changed if the Commission amends the Code to include retailer and network provider internal dispute resolution obligations, noting regulation 2A(2)(g) of the Utilities Commission Regulations 2001 provides that the Commission may make a code about retail supply in the electricity supply industry that may deal with dispute resolution. In terms of easy alignment, the Commission considers the NERL provisions relatively straightforward to replicate in the Code with minor amendments to, among other things, account for there being no energy ombudsman in the Territory.

Proposal to implement

The Commission proposes to:

- amend clause 11 of the Code to include retailer and network provider internal dispute resolution obligations generally consistent with that in sections 81 and 82 of the NERL, amended for the Territory's circumstances
- add associated definitions in Schedule 1 of the Code for government owned corporation, NT Ombudsman and standard complaints and dispute resolution procedures.

Proposed amendments:

11.4 Standard complaints and dispute resolution procedures

11.4.1 Every ***retailer*** and every ***network provider*** must develop, make and publish on its website a set of procedures detailing the ***retailer's*** or ***network provider's*** procedures for handling ***customer*** complaints and disputes, to be known as its ***standard complaints and dispute resolution procedures***.

11.4.2 The procedures must be regularly reviewed and kept up to date.

11.4.3 The procedures must be substantially consistent with the Australian Standard AS ISO 10002-2022 (*Customer satisfaction – Guidelines for complaints handling in organizations*) as amended and updated from time to time.

11.5 Complaints made to retailer or network provider for internal resolution

11.5.1 A ***customer*** may make a complaint to a ***retailer*** or ***network provider*** about a relevant matter, or any aspect of a relevant matter, concerning the ***customer*** and the ***retailer*** or the ***network provider***.

11.5.2 The ***retailer*** or ***network provider*** must deal with the complaint if it is made in accordance with the ***retailer's*** or ***network provider's standard complaints and dispute resolution procedures***, including any time limits applicable under those procedures for making a complaint.

11.5.3 The complaint must be handled in accordance with the ***retailer's*** or ***network provider's standard complaints and dispute resolution procedures***, including any time limits applicable under those procedures for handling a complaint.

11.5.4 The ***retailer*** or ***network provider*** must inform the ***customer*** of the outcome of the complaint process, and of the ***retailer's*** or ***network provider's*** reasons for the decision regarding the outcome, as soon as reasonably possible but, in any event, within any time limits applicable under the ***retailer's*** or ***network provider's standard complaints and dispute resolution procedure***s.

11.5.5 A ***retailer*** or ***network provider*** that is a ***government owned corporation*** must inform a ***customer***:

(a) that, if the ***customer*** is not satisfied with the outcome, the ***customer*** may make a complaint or take a dispute to the ***NT Ombudsman***; and

(b) of the telephone number and other contact details of the ***NT Ombudsman***.

Schedule 1 Definitions and interpretations

government owned corporation – means a statutory corporation that is declared to be a government owned corporation by its constituting Act.

NT Ombudsman – means the person holding or occupying the office of Ombudsman for the Northern Territory established under section 9 of the Ombudsman Act 2009.

standard complaints and dispute resolution procedures – means the procedures developed, made and published by the ***retailer*** or ***network provider*** under clause 11.4.1.

10 | Potential hardship policy obligations

The Issues Paper asked stakeholders to consider whether the Code should be amended to include an obligation on retailers to have an approved hardship policy for small customers, and if so, should the Commission consider and approve a retailer's proposed hardship policy based on alignment with the AER's Customer Hardship Policy Guideline, but with flexibility to provide for the Territory's circumstances.

Background

Despite the Electricity Industry Performance Code (EIP Code) requiring retailers to report to the Commission on indicators regarding debt, payment plans, hardship, disconnections for non-payment and prepayment meters for small customers, there is no legislative requirement for a retailer to have a hardship policy in place. Retailers in the Territory are therefore left to determine what is appropriate regarding hardship provisions, which may not always result in the best outcome for customers or alignment with best practice.

Nationally, all jurisdictions except the Territory have customer protection obligations in relation to hardship. For example, in relation to NECF jurisdictions, under the NERL, retailers must develop, maintain and implement customer hardship policies for their residential customers. The AER is obligated by the NERR to produce and publish a customer hardship policy guideline, and retailers are required to submit a customer hardship policy to the AER for approval which complies with the AER's Customer Hardship Policy Guideline and the minimum requirements specified in the NERL. Under the NERR, retailers must publish their customer hardship policies on their websites.

In Western Australia, the Code of Conduct for the Supply of Electricity to Small Use Customers (WA Electricity Code) requires electricity retailers who supply electricity to residential customers to have a financial hardship policy and hardship procedures to assist their customers in meeting their financial obligations and responsibilities to the retailer. The WA Electricity Code sets out the minimum requirements, noting that although the Economic Regulation Authority (ERA) is not required to approve financial hardship policies, it publishes Financial Hardship Policy Guidelines and a retailer must carry out a review of its financial hardship policy if requested by the ERA and submit a copy of the results of the review and a copy of its policy to the ERA. Under the WA Electricity Code, the retailer's financial hardship policy must be available on the retailer's website.

The Commission's 2020-21 NTERR acknowledged Jacana Energy has proactively worked towards best practice in relation to customer protections, including aligning customer hardship support processes with the AER's Statement of expectations for energy businesses: Protecting customers and the energy market during COVID-19[7] despite no obligation to do so. Further, its website informs customers of, and provides access to, its Hardship Policy – Stay Connected Program[8].

In relation to other Territory retailers, the Commission notes PWC, which has residential customers in remote areas (outside the regulated networks) provides some information on its website about its Stay Connected Program, generally directing customers to community welfare agencies and advising it will discuss with customers any difficulties they may be having in paying bills and negotiate payment arrangements. Rimfire Energy's website does not indicate it has a customer hardship policy, noting as stated above, it has no obligation to do so.

Through the Issues Paper, the Commission advised stakeholders that it is committed to continuing to work within its powers and with the Territory Government to understand its position, and where appropriate, assist in the implementation of its hardship policy recommendation.

[7] https://www.aer.gov.au/publications/corporate-documents/statement-of-expectations-of-energy-businesses-protecting-customers-and-the-energy-market-during-covid-19

[8] Hardship Policy – Stay Connected.pdf (jacanaenergy.com.au)

Submissions

Stakeholders, including researchers at the ANU, Jacana Energy, PWC, Purple House and QEnergy provided responses to this issue, and all agreed at a high level that the Code should be amended to require retailers to have an approved hardship policy for small customers.

The ANU researchers state the Code should be amended to include an obligation on retailers to have an approved hardship policy for small customers. Further, the ANU researchers support the Commission's recommendation to government that it put in place formal fit-for-purpose obligations on retailers to have an approved hardship policy for small customers, but state that being appropriate for the Territory's circumstances should not mean watering down critical consumer protections for (predominately Aboriginal) prepayment meter customers. The ANU researchers argue that definitions of hardship should be based not on income thresholds, but on recognised concepts such as energy poverty and energy insecurity – that is, a household is facing energy-related hardship if they are having to make trade-offs between paying for energy and paying for other basic necessities. The submission also states that there is a need to provide information about increased risk of disconnection for customers who are choosing to be prepayment meter customers. The submission agrees that the Commission should consider and approve a proposed hardship policy based on alignment with the AER's customer hardship guideline, but notes that consumer protections should apply equally regardless of where in the Territory the customer lives.

Jacana Energy supports amending the Code to include an obligation for retailers to have an approved hardship policy and suggests the Code should specify the minimum requirements that should be included in the hardship policy to ensure consistency between retailers, and that these minimum requirements should be based on the AER's customer hardship guideline. Jacana Energy states that the implementation of minimum requirements for a hardship policy should be consistent with the approach taken in the NECF.

PWC agrees that customers in the Territory should have consistent protections regardless of their retailer, ensuring consistency for those experiencing financial difficulties. PWC states that adopting the AER's guidelines will allow for a more consistent approach across the Territory, and will make it easier for interstate market participants to expand into the Territory as this would promote greater consistency with national arrangements.

Purple House supports including an obligation on retailers to have an approved hardship policy in the Code and states that the hardship policy needs to clearly include procedures for prepayment meter customers. Purple House further states that while policy development can be cross-referenced to national policy, the hardship policy should be developed locally in collaboration with stakeholders including knowledgeable agencies and community representatives. Purple House states the current system is not working and this is best recognised by remote and regional energy consumers not retailer employees.

QEnergy states that maintaining formal hardship policies for small customers is beneficial for both retailers and customers, but suggests that rather than aligning with the AER's customer hardship guideline, the Commission should implement the least complicated guideline. QEnergy also states that a central focus of any hardship framework should be encouraging early customer engagement with retailers.

Commission's position and reasons

The Commission has considered stakeholders' feedback and proposes to amend the Code to include an obligation on retailers to develop, implement and comply with a Commission approved customer hardship policy for their residential customers that meets minimum requirements specified in the Code, which will generally align with that specified in the NERL.

The Commission does not propose to publish a customer hardship policy guideline, but recommends retailers consider the AER's customer hardship policy guideline as best practice and seek to align their policies with that guideline, as appropriate for the circumstances.

The Commission notes that stakeholder feedback to the Issues Paper was consistent in the desirability of including such an obligation in the Code in the absence of government putting in place a fulsome customer protection framework; however, there are varied views as to the preferred structure and scope of this obligation. The Commission agrees that consumer protections, such as a requirement for retailers to have

and comply with a hardship policy for their customers, should apply regardless of where the customer lives and that minimum requirements should be consistent across retailers.

While the Commission also agrees there is benefit in consistency with national arrangements, the Commission has reviewed the NERL customer hardship provisions and the AER's associated customer hardship guideline and notes it would not be possible to simply require retailers to comply with these as written for the NECF retailers, noting the NERL and NERR do not apply in the Territory. As such, the Commission recommends Territory retailers seek to align their hardship policies with the AER's customer hardship policy guideline, with some flexibility allowed for the Territory's circumstances.

Relevantly, under this approach, if a retailer operating in a NECF jurisdiction sought to operate in the Territory, its AER approved customer hardship guideline would likely meet the minimum requirements proposed for the Code, meaning the obligation would not be a barrier to entering the Territory's electricity supply industry. For other retailers seeking to operate in the Territory or already operating in the Territory, the Commission considers as part of good business in a competitive market they should already have a customer hardship policy that aligns with best practice, noting it will only be an obligation for retailers with residential customers, being those customers the Commission considers most vulnerable and requiring its protection.

The Commission notes regulation 2A of the Utilities Commission Regulations 2001 states the Commission is authorised to make a code relating to retail supply in the electricity industry, and while customer hardship is not listed in regulation 2A(2) as a matter the Code may deal with, the regulation makes it clear the Commission is not limited to those matters listed.

The Commission is aware that retailers will need time to develop (and be able to implement) their customer hardship policies for the Commission's consideration, and proposes a six-month transitional provision from commencement of the revised Code.

Given the differences between post payment (electricity bills received after electricity is consumed) and prepayment arrangements, the Commission has addressed feedback received on customer hardship where the customer has a prepayment meter separately, in Chapter 11 (Other matters identified through consultation).

Proposal to implement

The Commission proposes to amend the Code to require retailers to develop, implement and comply with a Commission approved customer hardship policy for their residential customers that meets minimum requirements specified in the Code and add a new definitions in Schedule 1 of the Code for prepayment meter, residential customer and standard meter.

The Commission proposes this new obligation include a transitional provision whereby the retailer must submit its proposed customer hardship policy to the Commission for approval within six months of commencement of the new obligation.

Proposed amendments:

12 Hardship policy – standard meter customers

12.1.1 Clause 12 applies in relation to a ***retailer*** and its ***residential customers*** with a ***standard meter*** only.

12.1.2 The purpose of a ***retailer's*** hardship policy is to identify ***residential customers*** experiencing payment difficulties due to hardship and assist those ***residential customers*** to better manage their electricity bills on an ongoing basis.

12.1.3 A ***retailer*** must within 6 months of commencement of clause 12 or 3 months of being granted a ***retail licence*** by the ***Commission*** under Part 4 of the ***ERA*** if the ***retailer*** did not hold a retail licence on commencement of clause 12:

(a) develop a hardship policy in respect of ***residential customers*** of the ***retailer***;

(b) submit the hardship policy to the ***Commission*** for approval;

(c) publish the policy, as approved by the ***Commission***, on the ***retailer's*** website as soon as practicable after it has been approved; and

(d) maintain and implement the policy.

12.1.4 The ***Commission*** may direct the ***retailer*** to review the policy and make variations in accordance with any requirements set out by the ***Commission*** and the ***retailer*** must:

(a) vary the policy in accordance with the ***Commission's*** requirements;

(b) submit the varied policy to the ***Commission*** for approval;

(c) publish the policy, as approved by the ***Commission***, on the ***retailer's*** website as soon as practicable after it has been approved; and

(d) maintain and implement the policy.

12.1.5 A ***retailer*** may vary its hardship policy independently of a direction referred to in clause 12.1.4, but only if the variation has been approved by the ***Commission*** and the varied policy is published on the ***retailer's*** website after the ***Commission*** has approved the variation.

12.1.6 The minimum requirements for a ***retailer's*** hardship policy are that it must contain:

(a) processes to identify ***residential customers*** experiencing payment difficulties due to hardship, including identification by the ***retailer*** and self-identification by a ***residential customer***; and

(b) processes for the early response by the ***retailer*** in the case of ***residential customers*** identified as experiencing payment difficulties due to hardship; and

(c) flexible payment options for the payment of electricity bills by hardship ***residential customers***; and

(d) processes to identify appropriate government concession programs and appropriate financial counselling services and to notify hardship ***residential customers*** of those programs and services; and

(e) an outline of a range of programs that the ***retailer*** may use to assist hardship ***residential customers***; and

(f) general information to ***residential customers*** on how they may be able to improve their electricity efficiency.

12.1.7 The Commission must, in considering whether to approve a hardship policy under clause 12.1.7, have regard to the following principles:

(a) that the ***supply*** of electricity is an essential service for ***residential customers***;

(b) that ***retailers*** should assist hardship ***residential customers*** by means of programs and strategies to avoid disconnection solely due to an inability to pay electricity bills;

(c) that disconnection of premises of a hardship ***residential customer*** due to inability to pay electricity bills should be a last resort option;

(d) that ***residential customers*** should have equitable access to hardship policies and that those policies should be transparent and applied consistently.

12.1.8 A ***retailer*** must:

(a) inform a ***residential customer*** of the existence of the ***retailer's*** hardship policy as soon as practicable where it appears to the ***retailer*** that non-payment for an electricity bill debt is due to the customer experiencing payment difficulties due to hardship; and

(b) provide a ***residential customer*** with a copy of the hardship policy on request and at no expense.

12.1.9 A ***retailer*** must give effect to the general principle that de-energisation (or disconnection) of premises of a hardship ***residential customer*** due to inability to pay electricity bills should be a last resort option.

Schedule 1 Definitions and interpretations

prepayment meter – means a ***meter*** that requires a ***residential customer*** to pay for the supply of electricity prior to consumption.

residential customer – means a ***customer*** who purchases electricity for domestic purposes on residential premises.

standard meter – means a ***meter*** that is not a ***prepayment meter***.

11 | Other matters identified through consultation

The Issues Paper asked stakeholders if there are any matters that should be removed or added to the Code to make it more relevant or effective given the current state of the Territory's electricity supply industry. The Issues Paper also asked if there are any issues or other matters not identified in the paper the Commission should consider as part of the Code review.

There were a number of matters identified by stakeholders, which are discussed below.

Prepayment meter customer hardship policy

Background

Prepayment meter customer hardship emerged as a salient issue following from stakeholder consultation. The ANU researchers and Purple House argue specifically for the development of prepayment meter customer protections in their submissions, among other things. More generally, Jacana Energy states the Code should be amended to further regulate the use of prepayment meter systems.

The Commission's 2020-21 NTERR found that the number of prepayment meter disconnection events in the Territory, including on a per prepayment meter basis, and the average duration of disconnection events, appeared very high in both 2019-20 and 2020-21 (the only years for which the Commission has relevant data). Accordingly, the Commission made a recommendation that the Territory Government consider putting in place consumer protections for prepayment meter customers which are suitable for the Territory's circumstances. The 2020-21 NTERR also advised that the Commission, as part of the Code review, would examine options for increased protections for prepayment meter customers.

Part 8 of the NERR includes obligations on retailers relating to prepayment meter customer payment difficulties and hardship. Part 9 of WA's Electricity Code includes obligations on the retailer in relation to prepayment meters where there are payment difficulties or financial hardship.

Appendix C of Jacana Energy's Terms and Conditions for Standard Retail Contracts[9] applies where the customer has a prepayment meter. It includes provisions in relation to payment difficulties, noting there is no regulatory obligation for Jacana Energy do to so.

Submissions

Both the ANU researchers and Purple House indicate in their submissions to the Issues Paper that the Code should be amended to require retailers to have an approved customer hardship policy for customers with a prepayment meter, among other things. Below is a summary of their feedback specifically in relation to a hardship policy, noting the substantial and broader feedback received from the ANU researchers and Purple House on the need for prepayment meter customer protections is addressed in the next section titled 'Prepayment meter regulation'.

As mentioned above, the ANU submission states a hardship policy for small customers being appropriate for the Territory's circumstances should not mean watering down critical consumer protections for (predominately Aboriginal) prepayment meter customers. The ANU researchers state the definition of hardship should not be based on income thresholds, but on recognised concepts such as energy poverty or energy security.

Purple House's submission states the hardship policy needs to clearly include procedures for prepayment meter customers.

Jacana Energy does not specifically mention the need for the Code to be amended to require retailers to have an approved customer hardship policy for prepayment meter customers, and states its practices and contractual requirements relating to prepayment meter systems broadly align with Part 8 of the NERR. However, Jacana Energy's submission does acknowledge prepayment requirements are different in the Territory compared to the NEM jurisdictions and states there is a uniqueness compared to the NEM

[9] Terms-and-conditions-for-standard-retail-contracts.pdf (jacanaenergy.com.au)

jurisdictions in terms of the number of prepayment meters used and the demographics of customers that use prepayment meter systems, indicating appropriate regulatory requirements in relation to prepayment meters is desirable.

Commission's position and reasons

The Commission has considered the feedback received and agrees with stakeholders that the Code should provide generally equivalent (to the extent possible) consumer protections for prepayment meter customers compared to post payment customers. From a Code perspective, and noting billing and other arrangements are very different between post and prepayment customers, this means a proposed obligation for electricity retailers to have an approved customer hardship policy (or policies) that covers prepayment meter customers. The Commission's dispute resolution proposal in Chapter 9 above also apply to both prepayment and post payment customers.

The Commission considers that adopting the prepayment meter customer hardship provisions from the NERR or WA's Electricity Code may not be appropriate for the Territory's circumstances, particularly given current system limitations. As such, the Commission proposes to require retailers to develop a hardship policy for prepayment meter customers that is approved by the Commission.

The Commission acknowledges that both Jacana Energy and PWC have prepayment meter customers and that they will need time to develop (and be able to implement) an appropriate prepayment meter hardship policy. This may be relatively straightforward for Jacana Energy, given Jacana Energy has already developed prepayment meter provisions in Appendix C of Jacana Energy's Terms and Conditions for Standard Retail Contracts, which could inform its hardship policy. PWC, which has prepayment meter customers in IES (remote) communities, may require longer to develop a suitable hardship policy. On this basis, a six-month transitional provision is proposed.

The Commission notes regulation 2A of the Utilities Commission Regulations 2001 states the Commission is authorised to make a code relating to retail supply in the electricity industry, and while customer hardship is not listed in regulation 2A(2) as a matter the Code may deal with, the regulation makes it clear the Commission is not limited to those matters listed.

Proposal to implement

The Commission proposes to amend the Code to require a retailer with one or more prepayment meter customers to develop, implement and comply with a Commission approved customer hardship policy for their prepayment meter customers (which may be located within a retailer's broader hardship policy) that meets minimum requirements specified in the Code.

The Commission proposes this new obligation includes a transitional provision whereby the retailer must submit its proposed customer hardship policy in relation to its prepayment meter customers to the Commission for approval within six months of commencement of the new obligation.

Proposed amendments:

13 Hardship policy – prepayment meter customers

13.1.1 Clause 13 applies in relation to a ***retailer*** and its ***prepayment meter customers***.

13.1.2 The purpose of a **retailer's** hardship policy for ***prepayment meter customers*** is to identify ***prepayment meter customers*** experiencing payment difficulties due to hardship and assist those ***prepayment meter customers*** to better manage their electricity costs and level of ***prepayment meter*** credit on an ongoing basis.

13.1.3 A ***retailer*** with one or more ***prepayment meter customers*** must within 6 months of commencement of clause 13 or 3 months of first supplying a ***prepayment meter customer*** if the retailer did not supply any ***prepayment meter customers*** on commencement of clause 13:

(a) develop a hardship policy in respect of ***prepayment meter customers*** of the ***retailer***;

(b) submit the policy to the ***Commission*** for approval;

(c) publish the policy, as approved by the ***Commission***, on the ***retailer's*** website as soon as practicable after it has been approved; and

(d) maintain and implement the policy.

13.1.4 For the avoidance of doubt, a ***retailer's*** hardship policy for its ***prepayment meter customers*** may be situated within the ***retailer's*** broader customer hardship policy.

13.1.5 The ***Commission*** may direct the ***retailer*** to review its hardship policy for ***prepayment meter customers*** and make variations in accordance with any requirements set out by the ***Commission*** and the retailer must:

(a) vary the policy in accordance with the ***Commission's*** requirements;

(b) submit the varied policy to the ***Commission*** for approval;

(c) publish the policy, as approved by the ***Commission***, on the ***retailer's*** website as soon as practicable after it has been approved; and

(d) maintain and implement the policy.

13.1.6 A ***retailer*** may vary its hardship policy for ***prepayment meter customers*** independently of a direction referred to in clause 13.1.5, but only if the variation has been approved by the ***Commission*** and the varied policy is published on the ***retailer's*** website after the ***Commission*** has approved the variation.

13.1.7 The minimum requirements for a ***retailer's*** hardship policy in relation to its ***prepayment meter customers*** are that it must contain:

(a) processes to identify ***prepayment meter customers*** experiencing payment difficulties due to hardship, including identification by the ***retailer*** and self-identification by a ***prepayment meter customer***; and

(b) processes to contact ***prepayment meter customers*** identified as experiencing payment difficulties due to hardship to discuss options to address their difficulties in maintaining an adequate amount of credit on their ***prepayment meter***; and

(c) processes to notify ***prepayment meter customers*** experiencing hardship of appropriate government concession programs and appropriate financial counselling services; and

(d) general information to ***prepayment meter customers*** on how they may be able to improve their electricity efficiency.

Prepayment meter regulation

Background

As mentioned above, substantial feedback was received from the ANU researchers and Purple House on the need for prepayment meter customer protections, and on prepayment meter regulation more broadly.

Jacana Energy's submission states the Code should be amended to further regulate the use of prepayment meter systems, with Part 8 of the NERR providing a potential model.

In the NECF jurisdictions, requirements relating to prepayment meter arrangements are set out in Part 8 of the NERR. This includes requirements relating to the information a prepayment meter must display, the times at which a prepayment meter is able to self-disconnect, and provision of emergency credit, among other things. Part 8 of the NERR also requires certain information to be provided to prepayment meter customers, including operating instructions for prepayment meters and, on request, certain consumption information. Certain requirements relating to prepayment meter customer payment difficulties and hardship are also prescribed in Part 8 of the NERR.

Part 9 of WA's Electricity Code sets out similar requirements for prepayment meter arrangements, noting it also limits the provision of prepayment meters to areas declared by the minister.

Currently, there is no regulatory framework for prepayment metering arrangements in the Territory. Nonetheless, Jacana Energy has proactively adopted aspects of Part 8 of the NERR, as evidenced in its published Terms and Conditions for Standard Retail Contracts[10].

Submissions

Feedback proposing increased prepayment meter regulation was received from the ANU researchers, Purple House and Jacana Energy.

The ANU researchers state prepayment metering upends the well-established principle that disconnection should only ever be a measure of last resort and that no one should be disconnected from energy – an essential service – because of an inability to pay, and that prepayment should not be an option for those who report frequent disconnection unless there are remedial processes and policies to protect prepayment meters from disconnecting. The ANU researchers provided statistics on the high frequency and duration of prepayment meter disconnections (as stated in Tangentyre Council's submission to the Homelessness Inquiry[11]), and recommend developing additional consumer protections for remote residents and service standards for small-scale and off-grid consumers.

The ANU researchers' submission states:

- consumers should be able to access historical electricity usage data easily and freely, including by the hour if they have a smart meter
- retailers should monitor and report on prepayment meter involuntary self-disconnection, including average kilowatt hour usage of prepayment customers, average expenditure of prepayment customers, total number of involuntary self-disconnection events, and average duration of self-disconnection events
- it is important for prepayment customers to see how much credit remains on their meter from a display conveniently located and visible inside their home, and which does not rely on internet access
- there is need for a greater diversity if payment mechanisms for prepayment customers
- there is a greater diversity of languages needed when communicating with remote and regional First Nations consumers
- the Commission should consider establishing a remote energy security working group, with membership potentially comprising of representative, community controlled organisations, the Department of Education, and key health, social service and advocacy groups.

Purple House's submission discusses the link between energy security and health and wellbeing, and also discusses the high frequency and duration of prepayment meter disconnections (as stated in Tangentyre Council's submission to the Homelessness Inquiry). Purple House states, among other things, there is a need for public reporting and accountability of the provider and government to address energy poverty in Indigenous Northern Territory, and highlights that innovative solutions to energy security in remote houses are possible, such as the household user interface developed by Bushlight that allows residents to identify energy consumption and critical energy-dependent infrastructure that will never disconnect. Purple House states that prepayment metering has shifted the burden of energy hardship away from the utility towards remote-living consumers and makes nine specific recommendations:

- the Commission should recommend to the Territory Government that the most recent National Construction Code Energy Efficiency Requirements be applied universally in the Territory and that the Territory Government should work towards universal implementation of Healthy Living Practices 8 (Controlling the temperature of the living environment)[12]

[10] Our customer contract | Jacana Energy.

[11] House of Representatives Inquiry into Homelessness in Australia 2021 (2nd Supplementary).pdf (cdn-website.com).

[12] Safety and the 9 Healthy Living Practices » Healthabitat

- for remote communities, the issue of energy provision should be viewed from a greater social and economic perspective than just consumer fiscal responsibility
- a 10 cents per kilowatt hour price for electricity in remote communities
- rooftop solar coupled with prepayment meters should be available to consumers in remote communities
- prepaid smart meters should ensure a contract between provider and consumers, rather than provider and meter
- prepayment meters should be linked to dwelling address rather than meter identification number in order to allow any resident of the house (rather than just the holder of the card with the identification number) to credit the meter
- payment methods for prepayment meters should take into account community circumstances, including limited access to internet, credit cards and telephones
- payment methods should allow for all consumers to automatically direct debit from welfare payments at regular intervals, and this should be negotiated with households in more innovative ways
- as significant health vulnerabilities are the norm and not the exception in remote community dwellings, policy and practice should ensure that all dwellings are protected from energy disconnection, without imposing friendly credit, when environmental conditions are dangerous to human health.

Jacana Energy's submission states that the Code should be amended to further regulate the use of prepayment meter systems, and that the Territory would benefit from having something similar to Part 8 of the NERR in the Code with an accompanying guideline. Jacana Energy acknowledges prepayment meter requirements are different in the Territory compared to the NEM jurisdictions, but suggests Part 8 of the NERR is a good starting point and notes that its current practices and contractual requirements relating to prepayment meters are already broadly aligned with Part 8 of the NERR. Jacana Energy is of the view that appropriate regulatory requirements may take some time to develop and states it would be preferable for the Code to allow for the Commission to make guidelines regulating the use of prepayment meter systems and that the Code should specify what details should be set out in such a guideline.

Commission's position and reasons

The Commission has considered the feedback received and proposes not to amend the Code to further regulate prepayment meter arrangements, other than that proposed above in relation to requiring retailers to have an approved hardship policy for their prepayment meter customers.

The Commission acknowledges the valid issues raised and associated recommendations made by the ANU researchers and Purple House relating to prepayment meter customers, primarily those living in remote areas, including in relation to poor quality housing, energy efficiency requirements, electricity pricing, limited internet access, prevalence of health vulnerabilities and the establishment of a remote energy security working group.

The Commission agrees these are important policy matters for consideration; however, they are outside the scope of the Code and the Commission's responsibilities, and are best considered and addressed by the Territory and or Commonwealth governments as appropriate. As such, the Commission has written to the Territory Government's Treasurer (the minister responsible for the UC Act), Minister for Housing and Homelands and the Minister for Essential Services advising of the matters raised and associated recommendations made in these submissions.

Relevantly, the Commission is aware of progress on one issue raised in Purple House's submission, in relation to allowing prepayment meter customers to have rooftop solar photovoltaic (PV) systems. In December 2021, a house in Tennant Creek with a rooftop solar PV system and a prepayment meter was successfully connected to the Tennant Creek power system as part of a technical trial, which the Commission understands will be used to inform Jacana Energy's, and the broader Territory Government's, renewable energy policy relating to prepayment meter customers.

In terms of prepayment meter reporting, the Commission notes there are already some reporting obligations on retailers with customers connected to the Territory's regulated networks (Darwin-Katherine, Alice Springs and Tennant Creek) under the EIP Code. While the Commission acknowledges there are no reporting

obligations to capture prepayment meter information where the prepayment meters are not connected to the regulated networks, such as in some town camps and remote communities, the Commission understands that the relevant licensees have done their best to assist various parties in providing this information. Further, the expansion of reporting requirements in relation to prepayment meter customers may be considered as part of the Commission's staged EIP Code review.

The Commission acknowledges Jacana Energy's feedback that the Code should be amended to further regulate the use of prepayment meters given there are currently very limited regulatory requirements, the number of prepayment meters systems in the Territory and the demographics of the customers that use prepayment systems, but considers that the development of a comprehensive regulatory regime for the use of prepayment meter systems is a matter for the Territory Government to address, noting the provision of prepayment meters in the Territory is generally not a customer choice but rather a government or other decision body's policy.

The Commission notes that Jacana Energy has in effect introduced its own regulation of prepayment meter arrangements, including imposing obligations on itself and its customers, through its Terms and Conditions for Standard Retail Contracts[13], which aligns with Part 8 of the NERR to an extent. Relevantly, the Commission does not have visibility of the contractual terms and conditions between IES, a not-for-profit subsidiary of PWC and the Territory Government in relation to the provision of electricity in remote communities and homelands, including where there are prepayment meters.

Proposal to implement

The Commission proposes not to amend the Code to further regulate the use of prepayment meter systems, other than that proposed above in relation to requiring retailers to have an approved hardship policy for their prepayment meter customers.

Family violence policy

Background

As part of its review of the Code, the Commission received a submission from QEnergy which in part reflects on the importance of family violence policies. QEnergy states it has had experience in giving effect to its family violence policy, noting it also operates in the NEM, and believes it is an area where electricity retailers can have a real impact on preventing potentially harmful outcomes for victims.

Victoria was the first Australian jurisdiction to require energy retailers to have a family violence policy, through the Essential Services Commission's (ESC) Energy Retail Code. The requirement emerged from the Victorian Royal Commission into Family Violence (2016) which found that despite being in payment difficulty, customers experiencing family violence (affected customers) often could not access existing hardship programs. Further, it found that affected customers face unique safety challenges in their dealings with retailers. For example, affected customers often find it difficult to produce evidence of their circumstances, while auto-generated communications from retailers may disclose an affected customer's secure location. Standard hardship policies focusing solely on payment difficulty were therefore deemed to be insufficient in mitigating the risks experienced by affected customers.

The ESC's Energy Retail Code mandates that electricity retailers must have family violence policies that build on existing financial hardship policies through a prescribed set of minimum standards, including that the retailer must:

- provide specialised family violence training for staff on topics such as the nature and consequences of family violence and appropriate customer engagement
- take reasonable steps to elicit an affected customer's preferred method of communication and offer alternatives if the preferred method is not practical

[13] Terms-and-conditions-for-standard-retail-contracts.pdf (jacanaenergy.com.au)

- provide for a secure process designed to avoid the need for an affected customer to repeatedly disclose their experiences
- consider whether other persons are responsible for debt, as well as the potential impacts of debt recovery on affected customers
- provide affected customers with information about external family violence support services and publish contacts on its website.
- seek limited forms of documentary evidence of family violence only when considering debt management or disconnection
- recognise family violence as a cause of payment difficulty with family violence an explicit criterion for access to a financial hardship program.

On 15 September 2022, the Australian Energy Market Commission (AEMC, in relation to New South Wales, Queensland, South Australia, Tasmania and Australian Capital Territory) made a final rule that amends the NERR to introduce new measures to protect customers experiencing family violence[14]. Key elements of the final rule are that:

- retailers have a separate family violence policy
- retailer staff must understand the nature and consequences of family violence and be able to identify, engage appropriately and effectively with and assist customers affected by family violence
- retailers must provide a secure method to identify affected customers and minimise the need for customers affected by family violence to repeatedly disclose their experiences
- retailers must have regard firstly to the safety of an affected customer and must take into account their personal circumstances in any dealing that they have with that customer
- family violence must be considered a likely cause of payment difficulties and hardship
- before retailers take action to recover arrears of payment from an affected customer, or sell the debt to a third party, they must take into account the impact of debt recovery action on an affected customer and whether other people are jointly or severally liable for the energy usage that resulted in the accumulation of arrears
- retailers must not disclose confidential information about an affected customer to another person (and must procure their contractors and agents not to disclose this information) without the customer's consent
- retailers must take reasonable steps to identify and use a safe method of communicating with customers. Once identified this preferred method takes precedence over all other communication requirements in the NERR
- customers cannot be required to provide documentary evidence as a precondition for receiving family violence protections
- retailers are to refer customers to one or more external family violence support services, at a time and in a manner that is safe, respectful and appropriate for affected customers' circumstances
- a retailer and affected customer are not in breach of the standard or market retail contract if they communicate with each other using that customer's preferred communication method
- a retailer's family violence policy takes precedence over its market retail contract and neither the retailer nor the customer will be in breach of the retail contract for complying with the family violence rules.

The AEMC's final rule applies to both residential and small business customers. It uses the term 'family violence' for consistency with the Victorian code, but relies on the South Australian definition of domestic abuse, which provides broad coverage of the types of relationships within which abuse may occur, including where one person is the carer of the other. The AEMC's draft rule commences on 1 May 2023.

[14] Protecting customers affected by family violence | AEMC

In December 2021, Western Australia's ERA published its draft decision following a review of the WA Electricity Code. Its review included consideration of potential new protections for residential customers affected by family violence. The ERA's draft decision proposes retailers be required to develop and publish a family violence policy. The policy would require the retailer to:

- provide for staff training about family violence, with the training to be developed in consultation with, or delivered by, relevant consumer representatives
- help protect a customer's account information from third persons. This includes, for example, taking reasonable steps to establish a safe method of communication with the customer. Any method agreed with a customer will take precedence over a prescribed method of information delivery under the Code
- establish a process that avoids a customer having to repeatedly disclose or refer to their experience of family violence
- consider before commencing debt recovery the possible effect of debt recovery on the customer, and whether another person is responsible for the debt. The policy must also require the retailer to consider reducing and or waving fees, charges and debt
- consider a customer's circumstances before commencing disconnection for failure to pay a bill.[15]

Further, the ERA proposes in its draft decision to prohibit, through amendments to the WA Electricity Code, retailers from requesting written evidence of family violence, except where the retailer is considering debt or disconnection action and the evidence is reasonably necessary to assess what measures to take, prescribe the types of written evidence that a retailer may request, and that any request must be limited to one piece of evidence and introduce a nine-month prohibition on disconnection of a customer affected by family violence.

In relation to the Territory, Jacana Energy has proactively developed a Domestic and Family Violence Policy, which is available on its website[16]. QEnergy's website indicates it has a QEnergy Family Protection Policy; however, it was not able to be accessed on the date attempted by the Commission (15 September 2022). Next Business Energy has an accessible family violence policy on its website for its Victorian customers. PWC's and Rimfire Energy's website does not indicate it has a family violence policy.

Submissions

QEnergy advises in its submission of recent experience giving effect to its family violence policy, stating that the existence of a family violence policy, together with appropriate training for call centre staff means that, where identified, the potential impact of at least one form of abuse can be mitigated.

QEnergy appears to indicate a family violence policy should be considered in the review of the Code.

Commission's position and reasons

Following QEnergy's feedback, the Commission undertook research and analysis to assist it in considering whether there is a need for a family violence policy in the Territory.

Relevantly, the Australian Bureau of Statistics publishes the annual victimisation rate for recorded family and domestic violence related assault for all jurisdictions excluding Queensland and Victoria. In 2021, the Territory had the highest victimisation rate (2331 per 100 000 people), and was well above Western Australia, which had the second highest victimisation rate (853 per 100 000 people)[17], noting this rate refers to family and domestic violence related assault only and does not take into account sexual assault and homicide. This statistic indicates there are affected customers in the Territory that may benefit from a retailer family violence policy.

The Commission notes there appears to be a lack of research and evaluation on whether or not family violence policies are effective in the electricity retail market. However, the Commission considers it would

[15] Draft-decision---Electricity-Code-review-2019-to-2022.PDF (erawa.com.au)

[16] Domestic and Family Violence Policy - Stay Connected Program.pdf (jacanaenergy.com.au)

[17] https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2021

be out of step with other Australian jurisdictions if it did not consider, in consultation with stakeholders, putting in place an obligation on retailers to have a family violence policy.

Accordingly, the Commission through this draft decision proposes to amend the Code to include an obligation on retailers to have a family violence policy for its customers approved by the Commission. The proposed Code obligation provides flexibility to enable retailers to develop a family violence policy that is suitable for the Territory's circumstances and their customers, noting the Commission would expect a retailer's family violence policy to be generally consistent (at a high level) with family violence policies in other Australian jurisdictions.

The Commission notes regulation 2A of the Utilities Commission Regulations 2001 states that Commission is authorised to make a code relating to retail supply in the electricity industry, and while family violence retail customer protections is not listed in regulation 2A(2) as a matter the Code may deal with, the regulation makes it clear the Commission is not limited to those matters listed.

The Commission acknowledges that retailers will require time to develop (and be able to implement) their family violence policies to submit to the Commission for approval and proposes a six-month transitional provision from commencement of the revised Code.

Proposal to implement

The Commission proposes to amend the Code to require retailers to develop a family violence policy, submit it to the Commission for approval, and publish, maintain and implement the policy as approved.

The Commission proposes this new obligation include a transitional provision whereby the retailer must submit its proposed family violence policy to the Commission for approval within six months of commencement of the new obligation.

Proposed amendments:

14 Family violence policy

14.1.1 Clause 14 applies in relation to a ***retailer*** and its ***residential customers***.

14.1.2 The purpose of a ***retailer's*** family violence policy is to identify, engage with and assist ***residential customers*** affected by family violence.

14.1.3 A ***retailer*** must within 6 months of commencement of clause 14 or 3 months of being granted a ***retail licence*** by the ***Commission*** under Part 4 of the ***ERA*** if the ***retailer*** did not hold a ***retail licence*** on commencement of clause 14:

(a) develop a family violence policy in respect of ***residential customers*** of the ***retailer***;

(b) submit the family violence policy to the ***Commission*** for approval;

(c) publish the policy, as approved by the ***Commission***, on the ***retailer's*** website as soon as practicable after it has been approved; and

(d) maintain and implement the policy.

14.1.4 The ***Commission*** may direct the ***retailer*** to review the policy and make variations in accordance with any requirements set out by the ***Commission*** and the ***retailer*** must:

(a) vary the policy in accordance with the ***Commission's*** requirements;

(b) submit the varied policy to the ***Commission*** for approval;

(c) publish the policy, as approved by the ***Commission***, on the retailer's website as soon as practicable after it has been approved; and

(d) maintain and implement the policy.

14.1.5 A ***retailer*** may vary its family violence policy independently of a direction referred to in clause 14.1.4, but only if the variation has been approved by the ***Commission*** and the varied policy is published on the ***retailer's*** website after the ***Commission*** has approved the variation.

14.1.6 The minimum requirements for a family violence policy of a ***retailer*** are that it must contain:

(a) processes to ensure the ***retailer's*** staff are able to:

(i) understand the nature and consequences of family violence

(ii) identify and engage appropriately with ***residential customers*** who may be affected by family violence

(iii) assist ***residential customers*** who may be affected by family violence in accordance with this clause 14 and the ***retailer's*** family violence policy.

(b) for the purposes of subclause (a), staff includes the ***retailer's*** employees, contractors and agents who:

(i) may engage with ***residential customers*** by any means of communication;

(ii) is a manager of staff identified in subclause (b)(i); or

(iii) is responsible for systems and processes that guide interactions with ***residential customers***.

(c) processes to readily identify ***residential customers*** that may be affected by family violence

(d) processes on how the ***retailer*** will engage with and assist ***residential customers*** that may be affected by family violence, including:

(i) avoiding the need for the ***residential customer*** to repeatedly disclose or refer to their experience of family violence;

(ii) having regard firstly to the safety of the ***residential customer***, as far as the customer's safety is impacted by them being affected by family violence;

(iii) taking into account the particular circumstances of the ***residential customer***, including before taking action to recover arrears from the ***residential customer***, transferring the ***residential customer's*** debt to a third party debt collector or disconnecting the ***residential customer's*** supply address for failure to pay a bill;

(iv) considering the provision of financial assistance to a ***prepayment meter customer*** that may be affected by family violence;

(v) identifying and using the ***residential customer***'s preferred method of communication to the extent practicable;

(vi) taking reasonable steps to protect the ***residential customer***'s information, including information about their whereabouts, contact details, or financial or personal circumstances; and

(e) a list of one or more external family violence support services.

14.1.7 A ***retailer*** must not require a ***residential customer*** or a third party acting on behalf of a ***residential customer*** to provide any documentary evidence of family violence as a precondition to applying this clause 14 or the ***retailer's*** family violence policy.

Metering requirements

Background

Jacana Energy states in its submission that the Commission should consider as part of its review of the Code putting in place additional metering requirements.

Jacana Energy states that every Australian jurisdiction except the Territory has a regulatory instrument that sets out detailed metering requirements (whether it be through a metering code or metrology procedures). Jacana Energy considers that the introduction of clear metering requirements in the Territory will be beneficial for facilitating retail competition and providing consistency and predictability for consumers.

In Western Australia, metering provisions are set out in the Electricity Industry (Metering) Code made by the minister in accordance with the *Electricity Industry Act 2004*. The provisions relate to provision, ownership, installation and maintenance, accuracy and specifications, the metering database, provision of and charges for metering services, collection, processing and provision of data, security of, ownership and right of access to data and dispute resolution process. The ERA enforces provisions of this code, including those around the development of procedures.

Metering provisions in the NEM are set out in Chapter 7 of the NER and include roles and responsibilities, metering installation requirements, metering data services and the metering database, metering register requirements, security and rights to access, procedure requirements and business to business arrangements. The AER is responsible for enforcing obligations under the NER.

In the Territory, metering provisions are set out in Chapter 7A of the NER (NT), which is a modified version of Chapter 7 of the NER. While the contents of Chapter 7A of the NER (NT) are similar to that in the NER in that it includes provisions relating to roles and responsibilities, metering installation requirements, metering data services and the metering database, metering register requirements, security and rights to access and procedure requirements, a significant number of obligations on the Territory's metering data provider do not apply until 1 January 2024, noting this timing includes a two year extension actioned by the Territory Government in December 2021 through the National Electricity (Northern Territory)(National Uniform Legislation)(Modification) Amendments Regulations 2021.

Relevantly, some Chapter 7A provisions are currently in force. For example, up until 1 January 2024 the NER (NT) requires the metering data provider to use its best endeavours to maximise the quality of metering data and transparency in processes for verifying, validating, calculating and estimating metering data. Further, the Commission has been allocated functions under the NER (NT), including responsibility for auditing metering installations when requested by a registered participant or NTESMO.

In addition to Chapter 7A of the NER (NT), the Commission notes PWC and all Territory retailers have coordination agreements in place that include provisions regarding metering data.

Submissions

Jacana Energy's submission states the introduction of clear metering requirements in the Territory will be beneficial for facilitating retail competition and providing consistency and predictability for consumers. Jacana Energy notes that Chapter 7A of the NER (NT) currently regulates some aspects of metering but that it is unclear as to when the underlying metrology requirements from the NEM (suitably modified to reflect the circumstances of the Territory's electricity industry) will commence to apply in the Territory electricity industry.

Commission's position and reasons

The Commission has considered Jacana Energy's proposal and while it agrees there is a lack of clarity on when the 'full' Chapter 7A metrology provisions will commence in the Territory, it does not propose to amend the Code to include metering requirements.

The Territory Government has taken responsibility for putting in place the regulatory framework for metering in the Territory, including the timing for commencement of obligations on PWC as the metering data provider, through its adoption of Chapter 7A of the NER (NT) and associated transitional arrangements. Any metering requirements retailers consider are needed to fill the gap between now and the commencement of the 'full' Chapter 7A of the NER (NT) is a policy decision for government.

Proposal to implement

The Commission does not propose to amend the Code in relation to this matter.

Correction of account errors

Background

Jacana Energy states in its submission that the Commission should consider as part of its review of the Code prescribing requirements in relation to correcting account errors.

Jacana Energy's 2020-21 Annual Report reported a significant variance in its financial performance between its statement of corporate intent and actual outcome due in part to $2.1 million of PWC network billing errors and $0.398 million of over-charged generation costs due to PWC metering errors.[18]

As discussed above, Chapter 7 of the NER includes comprehensive metering provisions in the NEM, which helps to ensure accurate and timely metering data provision to retailers, necessary for customer billing. Not all comparable provisions have commenced in the Territory under Chapter 7A of the NER (NT).

Submissions

Jacana Energy states that as retailers operate on a very low margin, it is paramount that they have a clear understanding of their expenses, noting the correction of network charges after a significant time has passed can have a detrimental impact on a retailer's cash flow. Jacana Energy states cash flow and cost certainty is critical to small start-up retailers and introducing mechanisms to limit the impact of these errors will help to increase retail competition in the Territory.

Jacana Energy is of the view that consideration should be given to prescribing (in the Code) requirements relating to more accurate metering and data records, more detailed obligations relating to billing requirements and accuracy, and a time limit for the correction of account errors.

Commission's position and reasons

The Commission has considered Jacana Energy's proposal and notes that Chapter 7A of the NER (NT) seeks to ensure accurate metering and data records, albeit with a protracted transition period.

In relation to Jacana Energy's proposal that the Code be amended to include a time limit for the correction of account errors, the Commission considers this would be best negotiated and agreed between the relevant parties, potentially as part of coordination agreements between PWC and retailers. The Commission notes that PWC's current template coordination agreement with retailers imposes a nine month limit on charges to correct for previous undercharging errors.

Proposal to implement

The Commission does not propose to amend the Code in relation to this matter.

Distributed energy resources – NER and NERR access and pricing incentives

Background

PWC states in its submission that the Commission should consider whether further amendments to the Code are required to reflect outcomes under the AEMC's distributed energy resources access and pricing rule change.

The AEMC's final determination amended the NER and NERR to put in place obligations on distribution businesses to support energy flowing both ways and to offer a basic export level in all their tariffs, to introduce customer safeguards to help transition to export pricing and to require the AER to undertake a

[18] Annual Report 2020-21.pdf (jacanaenergy.com.au)

review considering incentive arrangements for distribution businesses to deliver efficient levels of export service and performance, among other things.

Submissions

PWC's submission states the NER rule change will introduce new requirements around distributed energy resource access and pricing arrangements in the Territory; however, as the NERR does not apply in the Territory, changes to jurisdictional arrangements may be required to support the implementation of the rule to ensure it delivers intended customer benefits.

Commission's position and reasons

The Commission has considered PWC's proposal and notes the adoption of the NER, and potentially the NERR in the future, is a Territory Government policy matter. As such, the Commission considers this is not appropriate to address as part of the Code review.

Proposal to implement

The Commission does not does propose to amend the Code in relation to this matter.

Clarification of roles and responsibilities related to solar PV export

Background

PWC states in its submission that the Commission should consider amending the Code to clearly define the responsibility of market participants in relation to solar PV export and feed-in-tariffs. More specifically, PWC considers the Code should define that feed-in-tariffs are the responsibility of the customer's retailer and that export data is the responsibility of the network service provider.

A feed-in-tariff is a rate paid by an electricity retailer to an electricity customer for electricity the customer puts into the grid, such as excess energy generated by rooftop solar PV infrastructure. Retailers in the Territory that offer a feed-in-tariff include Jacana Energy and Rimfire Energy.

Submissions

PWC's submission states that clarifying roles and responsibilities in the Code in relation to solar PV exports and feed-in-tariffs will help promote the efficient operation of the electricity market by ensuring that market participants have greater clarity and transparency of roles and responsibilities.

Commission's position and reasons

The Commission has considered PWC's proposal and notes there is no regulatory obligation for retailers to offer customers a feed-in-tariff and the responsibilities PWC is seeking to codify are consistent with the general responsibilities of a retailer and meter data provider, being the retailer is responsible for billing, tariffs and dealing directly with customers and PWC (as the meter data provider) is responsible for providing the data to retailers to enable billing. On this basis, the Commission considers amendment to the Code is not necessary.

Proposal to implement

The Commission does not intend to proceed with amending the Code in relation to this matter.

Definition of verifiable consent

Background

PWC states in its submission that it has identified a need to amend the definition of verifiable consent to account for the reference in clause 10.4B.1(d)(ii) of the Code in relation to life support equipment required at a premises and to clarify that verifiable consent can be in written form or a recorded phone call.

Clause 10.4B of the Code provides network provider obligations in relation to customers requiring life support equipment at their premises. This includes, at clause 10.4B.1(d), that in the case of an interruption that is a planned interruption, from the date the life support equipment will be required at the premises, that the network provider must give the customer at least four business days written notice of the interruption to supply at the premises or obtain the customer's verifiable consent to the interruption occurring on a specified date.

Verifiable consent is defined in Schedule 1 to the Code as 'in relation to a request for historical consumption data request form or a customer transfer request form means consent that is given by a customer:

(a) expressly;

(b) in writing;

(c) after the retailer obtaining the consent has in plain language appropriate to the customer disclosed all matters materially relevant to the giving of the consent, including each specific purpose for which the consent will be used;

(d) by a person whom a retailer (acting reasonably) would consider competent to give consent on the customer's behalf; and

(e) expires on the earlier of:

(i) the time that either, historical consumption data is provided or the transfer of a customer occurs;

(ii) the time specified in or ascertainable from the verifiable consent as the time of expiry of the verifiable consent; or

(iii) the first anniversary of the date the verifiable consent was given.

The definition of verifiable consent in Schedule 1 to the Code does not specifically refer to a customer's verifiable consent to a planned interruption on a specified date where the customer requires life support equipment at their premises, as per clause 10.4B.1(d)(ii).

Submissions

PWC's submission indicates there is a need to amend the definition of verifiable consent in Schedule 1 of the Code to accord for the reference in clause 10.4B.1(d)(ii) in relation to life support equipment required at a premises and to reflect that a recorded phone call is sufficient to meet the requirement, noting a recorded phone call is common practice in other jurisdictions.

Commission's position and reasons

The Commission has considered PWC's proposal and agrees there is a gap whereby the definition of verifiable consent in Schedule 1 to the Code does not cover the instance referred to in clause 10.4B.1(d)(ii) of the Code in relation to life support equipment required at a premises. The Commission agrees the definition of verifiable consent should be amended to provide for this.

In relation amending the definition, the Commission has identified one further provision in the Code that refers to verifiable consent where the definition does not cover the instance. This is clause 8.3.5(c) in relation to making reasonable steps to obtain verifiable consent to establish a formal electricity supply contract where a retailer is the responsible retailer at a greenfield exit point or an exit point at which the retailer's electricity supply contract with a customer has terminated or expired and the retailer will be

seeking to bill a customer using data accessed under clause 8.3.4 of the Code. The Commission proposes to also address this gap through amending the definition of verifiable consent.

The Commission has considered PWC's proposal that verifiable consent may be through a recorded phone call, and notes that while the NECF uses a different term, being explicit informed consent as detailed in Division 5 section 39 of the NERL, it may be given in writing, verbally (as long as verbal consent is evidenced) or electronically. On this basis, the Commission supports PWC's proposal to amend the Code to clarify that a recorded phone call is a suitable record of verifiable consent and proposes to amend the definition to be more in line with the NERL.

Proposal to implement

The Commission proposes to amend the definition of verifiable consent in the Code to provide for the instances contemplated in clause 10.4B.1(d)(ii) of the Code in relation to life support equipment required at a premises and clause 8.3.5(c) of the Code in relation to greenfield and other exit points.

The Commission proposes to amend the Code to also allow verifiable consent to be obtained verbally, as long as the verbal consent can be verified, such as through a recorded phone call and by electronic communication generated by a customer.

Proposed amendments:

Verifiable consent - ~~in relation to a request for ***historical consumption data request form*** or a ***customer transfer request form***~~ means consent to a transaction that is given by a ***customer***:

(a) expressly;

(b) either ~~in writing~~;

(i) in writing signed by the ***customer***;

(ii) verbally, so long as the verbal consent is evidenced in such a way that it can be verified, such as a recorded phone call;

(iii) by electronic communication generated by a ***customer***;

(c) after the ***retailer*** or ***network provider*** obtaining the consent has in plain language appropriate to the ***customer*** disclosed all matters materially relevant to the giving of the consent, including each specific purpose for which the consent will be used;

(d) by a person whom a ***retailer*** or ***network provider*** (acting reasonably) would consider competent to give consent on the ***customer's*** behalf; and

(e) expires on the earlier of:

(i) where the consent relates to a specific transaction, the time that ~~either, historical consumption data is provided or the transfer of a customer occurs~~ the transaction occurs; or otherwise

(ii) the time specified in or ascertainable from the verifiable consent as the time of expiry of the verifiable consent; or

(iii) the first anniversary of the date the verifiable consent was first given.

12 | Transitional arrangements

Transitional provisions are proposed to be provided for the following proposed new obligations:

- a retailer to develop and submit to the Commission a hardship policy for its residential customers six months from commencement of the provision
- a retailer to develop and submit to the Commission a hardship policy in relation to its prepayment meter customers six months from commencement of the provision
- a retailer to develop and submit to the Commission a family violence policy six months from commencement of the provision.