

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY**

Disallowable instrument DI2007–212

Utilities (Electricity Network Use of System Code) Approval 2007 (No 1)

EXPLANATORY STATEMENT

To be circulated by
Jon Stanhope MLA
Chief Minister

Utilities (Electricity Network Use of System Code) Approval 2007 (No 1)

Disallowable instrument DI2007–212

made under the

Utilities Act 2000, section 58

EXPLANATORY STATEMENT

The Independent Competition and Regulatory Commission (the “Commission”) has revoked the Electricity Network Use of System Code (the “Code”), which was determined on 21 December 2000, under the Utilities (Industry Codes) Determination 2000 (DI2000-368). This Code required electricity distributors and suppliers to enter into agreements that address certain terms prescribed in the Code. However, the Code did not specify a time in which agreements were to be reached. Nor did it provide for the Commission to intervene in the event that agreement cannot be reached.

Despite extensive negotiations between the ACT’s electricity distributor, ActewAGL Distribution, and licensed electricity suppliers, a small number of the ACT’s electricity suppliers have still not signed network use of system agreements. This creates considerable uncertainty for both the network operator and the suppliers who have not entered into an agreement with the distributor, as well as a significant credit risk exposure for ActewAGL Distribution.

Accordingly, the Commission determined that the Code should be varied to provide more structure and guidance to the consultation and agreement process. The Commission therefore requested ActewAGL Distribution to submit to it draft variations to the Code to make the necessary amendments to the Code and to establish a default agreement. The Commission has consulted interested parties on the draft industry code in accordance with section 60 of the *Utilities Act 2000* (“the Utilities Act”).

The Commission has given due regard to the submissions made and is satisfied that the draft industry code is not inconsistent in material respects with another industry code or a technical code and that the draft industry code is appropriate.

The Commission has therefore approved the Electricity Network Use of System Code detailed in the *Utilities (Electricity Use of System Code) Approval 2007 (No1)* under section 58 of the Utilities Act.

Electricity Network Use of System Code

1 Application and Purpose of Code

The purpose of the Code has been amended to allow for the deeming of a default Use of System Agreement (“Agreement”) between ActewAGL Distribution and an electricity supplier in the absence of a negotiated Agreement.

2 Dictionary

This clause states that the dictionary at the back of the Code is part of the Code. This clause has not been amended.

3 Obligation to prepare an Agreement

ActewAGL Distribution and electricity suppliers must use best endeavours to negotiate an Agreement. Currently there is no requirement to use best endeavours.

4 Application of the Agreement

The Agreement is to apply from the date the Code variations take effect for existing licensees. For new licensees, the agreement is to apply from when the electricity supplier first becomes financially responsible for a connection point. If an Agreement is terminated and the circumstances that gave rise to the termination remedied, the Agreement takes effect from when the electricity supplier again becomes financially responsible for a connection point.

5 Termination or suspension of the Agreement

Clause 5 outlines the circumstances under which the Agreement is automatically terminated or suspended and the effect of the termination or suspension. A default agreement will not apply if a negotiated agreement is terminated because either ActewAGL or an electricity supplier cease to be registered with NEMMCO as a market participant.

6 Termination of a negotiated Use of System Agreement

This clause provides that the rights accrued by a party under a negotiated agreement continue despite the termination or expiry of that agreement and subsequent replacement with a default agreement. Similarly, despite the termination or expiry of a negotiated agreement, the dispute resolution procedure set out in that agreement will still apply for any disputes that were notified under it. The termination of a negotiated agreement is deemed to be a trigger event for the provision of credit support and ActewAGL Distribution may give the electricity supplier notice to provide credit support in these circumstances.

7 Changes to regulatory framework

If there are changes to the regulatory framework that render any of the terms of the Agreement invalid, a party may apply to the Commission to vary or revoke the

term(s). The Commission must consider the submission and if it determines to amend, revoke or replace the Agreement, it must give ActewAGL Distribution and electricity suppliers notice of the changes.

Dictionary

The Dictionary has been updated and amended to reflect the amendments to the Code.

Schedule 1: Matters that must be dealt with in the Agreement

The supplier of last resort obligations have been deleted from the list of matters that must be addressed in an Agreement as this is not an electricity distribution matter.

Schedule 2: Code Amendment History

The Schedule provides a summary of the Code's history.

Annexure A: Default Network Use of System Agreement

1 Introduction

The introduction includes the objectives of the Default Network Use of System Agreement (“Agreement”) and matters relating to definitions and interpretation. The introduction clarifies that ActewAGL Distribution's services do not include electricity supply. The introduction also outlines the procedure for dealing with network enquiries.

The Agreement makes it clear that it applies to customers attached to any NSW section of the electricity network as if they were in the ACT. The Agreement also foreshadows the adoption of national B2B procedures once they are introduced.

2 Term

The term of the Agreement is as specified in the Electricity Network Use of System Code (the Code).

3 Customer Relationship

Clause 3 affirms that parties must comply with electricity law. The clause clarifies that the Agreement applies to a customer from when a supplier becomes financially responsible for the customer's connection point and retrospectively, for customers who were already customers at the commencement of the Agreement. Clause 3 requires parties to keep up-to-date records as required by applicable electricity law for customers to which the Agreement applies.

4 Services

Clause 4 provides that ActewAGL Distribution will provide services to customers in accordance with the applicable customer connection contract and good electricity industry practice. ActewAGL Distribution will invoice the electricity supplier for

connection services. ActewAGL Distribution may also invoice customers directly for miscellaneous charges and for distribution services that are owing and have not yet been paid to the supplier on ActewAGL Distribution's behalf. Clause 4 authorises the supplier to issue invoices to, and collect payments from, customers on behalf of ActewAGL Distribution.

The clause also allows for ActewAGL Distribution to negotiate a contract on a customer's behalf with a supplier that has been appointed by the customer to act as their agent.

The Agreement specifies circumstances under which ActewAGL Distribution is no longer obliged to provide distribution and connection services.

5 Quality and frequency of electricity conveyed

The Agreement makes it clear that ActewAGL Distribution (not the electricity supplier) is liable for the quality and frequency of electricity supplied in accordance with the relevant customer connection contract.

6 Theft of electricity

Clause 6 outlines the responsibilities of an electricity supplier if they become aware of electricity theft.

7 Disconnection and reconnection of a customer's premises

Clause 7 specifies the circumstances under which, if requested by an electricity supplier, ActewAGL Distribution will disconnect a customer's premises. The clause also describes circumstances under which ActewAGL Distribution may initiate a disconnection. The Agreement requires ActewAGL Distribution to notify an electricity supplier if it declines to connect a customer's premises. It also requires ActewAGL Distribution to give notice to an electricity supplier of an imminent disconnection. Clause 7 addresses the payment of disconnection charges.

8 Charges

Clause 8 deals with a range of matters relating to charges, including calculation of charges, notice of changes, pass-through of taxes, duties and levies, payment of GST, and provision of information about distribution tariffs.

9 Billing and payment

Clause 9 outlines arrangements for the issue and payment of invoices, disputed invoices, adjustment and timing of charges.

10 Credit support

The Agreement defines credit support as being a guarantee, bank letter of credit or other form of security acceptable to ActewAGL Distribution. The Agreement

provides that ActewAGL Distribution may require credit support if a trigger event occurs, namely if an electricity supplier:

- does not have a credit of at least BBB or equivalent, or
- is placed under review by a credit agency, or
- if the supplier has failed to pay an invoice in accordance with the Agreement, or
- if NEMMCO (or another seller of electricity) calls on credit support from the supplier.

In addition, an electricity supplier must provide evidence of its credit rating to ActewAGL Distribution if requested and must also notify ActewAGL Distribution if its credit rating is downgraded below BBB. The amount of credit support is capped at the amount of charges ActewAGL Distribution reasonably anticipates to be payable by the electricity supplier in the next three months. The Agreement specifies that an electricity supplier's credit support may be used only to offset any amount owed to ActewAGL Distribution under the Agreement. An electricity supplier may request the release of credit support should its circumstances improve.

11 Termination and suspension

The Agreement terminates or is suspended in the circumstances outlined in the Code. The respective parties' rights and responsibilities relating to credit support, limitation of liability, confidentiality and dispute resolution survive despite the termination or suspension of an Agreement.

12 Force majeure

The Agreement provides for force majeure events and specifies how such an event may be claimed. Clause 12 makes it clear that charges for fixed services apply despite the occurrence of a force majeure event.

13 Limitation of liability

Clause 13 defines limitations of liability.

14 Confidentiality and privacy

Clause 14 outlines matters relating to the protection of confidential information.

15 Representations and warranties

Clause 15 requires an electricity supplier and ActewAGL Distribution to represent and warrant that it holds, and will continue to hold, a utilities licence. Electricity suppliers must also represent and warrant that they hold a valid and binding customer contract for the relevant connection points.

16 Dispute resolution

Parties are required to attempt to resolve any disputes according to the terms of the Agreement. Parties continue to be bound by their obligations under the Agreement,

despite any dispute. Parties have recourse to litigation only after they have first attempted to resolve a dispute themselves. A party may seek an urgent interlocutory injunction from a court at any time.

17 Notices

Clause 17 outlines matters relating to the provision and receipt of notices.

18 Miscellaneous

The Agreement deals with such miscellaneous matters as waiver, amendment and assignment of the Agreement, and inconsistencies.

Schedule 1 is a template for an unconditional undertaking by a supplier to provide credit support.

Schedule 2 outlines dispute resolution procedures for disputes not covered by the National Electricity Rules.

Schedule 3 outlines mediation procedures for disputes not covered by the National Electricity Rules.

Schedule 4 defines certain terms used in the Agreement.