



## **Draft National Electricity Amendment (Retailer-Distributor Credit Support Requirements) Rule 2016**

under the National Electricity Law to the extent applied by:

- (a) the National Electricity (South Australia) Act 1996 of South Australia;
- (b) the Electricity (National Scheme) Act 1997 of the Australian Capital Territory;
- (c) the Electricity - National Scheme (Queensland) Act 1997 of Queensland;
- (d) the Electricity - National Scheme (Tasmania) Act 1999 of Tasmania;
- (e) the National Electricity (New South Wales) Act 1997 of New South Wales;
- (f) the National Electricity (Victoria) Act 2005 of Victoria;
- (g) the National Electricity (Northern Territory)(National Uniform Legislation) Act 2015; and
- (h) the Australian Energy Market Act 2004 of the Commonwealth.

The Australian Energy Market Commission makes the following Rule under the National Electricity Law.

John Pierce  
Chairman  
Australian Energy Market Commission

## **Draft National Electricity Amendment (Retailer-Distributor Credit Support Requirements) Rule 2016**

### **1 Title of Rule**

This Rule is the *Draft National Electricity Amendment (Retailer-Distributor Credit Support Requirements) Rule 2016*.

### **2 Commencement**

This Rule commences operation on [COMMENCEMENT\_DATE].

### **3 Amendment of the National Electricity Rules**

The National Electricity Rules are amended as set out in Schedule 1.

### **4 Amendment of the National Electricity Rules**

The National Electricity Rules are amended as set out in Schedule 2.

### **5 Savings and Transitional Amendments to the National Electricity Rules**

The National Electricity Rules are amended as set out in Schedule 3.

## Schedule 1      Amendment to the National Electricity Rules

(Clause 3)

### [1] Clause 6.6.1      Cost pass through

In clause 6.6.1(1), omit “*retailer insolvency costs*” and substitute “*retailer insolvency costs*”.

### [2] Part B of Chapter 6B      Credit support regime

Omit Part B of Chapter 6B in its entirety and the heading and substitute:

#### **Part B      Credit support required for late payment**

**Note:**

The *credit support* rules set out in Part B are conduct provisions for the purpose of the *NEL*.

### Division 1      Application and definitions

#### **6B.B1.1      Application of Part B**

This Part B (to be known as the *credit support rules*) applies to a *Distribution Network Service Provider* and a *retailer*:

- (a) in respect of *shared customers*;
- (b) in respect of charges for services for which the *retailer* pays the *Distribution Network Service Provider* in arrears in accordance with a *statement of charges* under clause 6B.A2.4.

#### **6B.B1.2      Definitions**

In this part:

**date of issue** has the meaning given in clause 6B.A1.2.

**default rate** has the meaning given in clause 6B.A1.2.

**due date for payment** has the meaning given in clause 6B.A1.2.

**network charges** has the meaning given in clause 6B.A1.2.

**shared customer** has the meaning given in clause 6B.A1.2.

**statement of charges**—see clause 6B.A2.4.

## **Division 2 Requirements for credit support**

### **6B.B2.1 Distribution Network Service Provider may require credit support in limited circumstances**

- (a) *A Distribution Network Service Provider may only require a retailer to provide credit support if within the previous 12 months, the retailer has failed to pay in full:*
- (1) *the charges contained in 3 statements of charges by the due date for payment; or*
  - (2) *the charges contained in 2 consecutive statements of charges by the due date for payment; or*
  - (3) *the charges contained in 1 statement of charges within 25 business days of the due date for payment.*

*and then only in accordance with the credit support rules.*

- (b) *A Distribution Network Service Provider may only require a retailer to provide credit support up to 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 6B.B2.1.*
- (c) *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 6B.A3.3 in respect of the dispute, the retailer will not be considered in default in payment of the disputed charges and the Distribution Network Service Provider will not be entitled to require the retailer to provide credit support.*

## **Division 3 Provision of credit support by retailers**

### **6B.B3.1 Retailer to provide credit support**

- (a) *A retailer must, on request by a Distribution Network Service Provider, under clause 6B.B.2.1 provide credit support to a Distribution Network Service Provider in accordance with the credit support rules.*
- (b) *The credit support provided by a retailer must be:*
- (1) *for an amount requested by the Distribution Network Service Provider, 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 6B.B2.1; and*

- (2) provided within 5 *business days* of the *Distribution Network Service Provider's* request; and
  - (3) an acceptable form of *credit support* in favour of the *Distribution Network Service Provider* (see clause 6B.B3.2).
- (c) A *retailer* must ensure that at all times the aggregate undrawn amount of the *credit support* is not less than the amount requested by a *Distribution Network Service Provider* in accordance with clause 6B.B2.1.

### **6B.B3.2 Acceptable form of credit support**

- (a) A *retailer* required to provide *credit support* under these *Rules* must provide the *credit support* in an acceptable form.
- (b) An acceptable form of *credit support* is:
  - (1) a form of *credit support* that the *retailer* agrees to provide, and the *Distribution Network Service Provider* agrees to accept; or
  - (2) an undertaking:
    - (i) substantially in the form set out in Schedule 6B.1; and
    - (ii) issued by a financial institution acceptable to the *Distribution Network Service Provider*.

## **Division 4 Other Rules relating to credit support**

### **6B.B4.1 Application of credit support**

- (a) A *Distribution Network Service Provider* may only apply or draw on the *credit support* if:
  - (1) the *Distribution Network Service Provider* has given not less than 3 *business days'* notice to a *retailer* that it intends to apply or draw on the *credit support* in respect of an amount due and payable by the *retailer* to the *Distribution Network Service Provider*, and that amount remains *outstanding*; and
  - (2) there is no unresolved dispute under clause 6B.A3.3 about the *retailer's* liability to pay that amount.

### **6B.B4.2 Return of credit support**

- (a) If:
  - (1) a *Distribution Network Service Provider* and a *retailer* no longer have any *shared customers*; or

- (2) 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 *Distribution Network Service Provider* 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 *Distribution Network Service Provider*.

### **6B.B4.3 Other retailer obligations**

- (a) A *retailer* must not take any steps to restrain (by injunction or otherwise):
  - (1) an issuer of *credit support* from paying out, or otherwise satisfying, a claim properly made by the *Distribution Network Service Provider* under the terms of the *credit support*; or
  - (2) the *Distribution Network Service Provider* from making a claim on the *credit support* in accordance with the *credit support rules*; or
  - (3) the *Distribution Network Service Provider* using the money obtained by calling on the *credit support*.
- (b) A *Distribution Network Service Provider* may disclose to its financiers, the *AER* or *AEMO* that it has required or called on *credit support* provided by the *retailer* under the *credit support rules*.

### **Schedule 6B.1 Prescribed form of unconditional undertaking for credit support**

(Clause 6B.B3.2)

In this deed:

- (a) ABC Ltd (ACN ... ..) is the *retailer*; and
- (b) DEF Ltd (ACN ... ..) is the *Distribution Network Service Provider*; and
- (c) GHI Ltd (ACN ... ..) is the Financial Institution.

The Financial Institution unconditionally undertakes to pay, on demand by the *Distribution Network Service Provider*, to the *Distribution Network Service Provider* any sum or sums up to a maximum aggregate of \$.....

The payment or payments are to be made forthwith and unconditionally, without reference to the retailer, and despite any instruction from the retailer not to make the payment or payments.

A demand for payment under this deed is to be made on behalf of the *Distribution Network Service Provider* by .....[*name of person authorised to act on behalf of the Distribution Network Service Provider*]

This deed is terminated if:

- (a) the *Distribution Network Service Provider* notifies the Financial Institution that it no longer requires the Financial Institution's undertaking; or
- (b) the Financial Institution pays to the *Distribution Network Service Provider* a sum or sums amounting to its maximum aggregate liability under this deed; or
- (c) the parties agree to terminate it.

Executed as a deed at ..... this ..... day of ..... 20.....

## Schedule 2      Amendment to the National Electricity Rules

(Clause 4)

### [1] Chapter 10      New Definitions

In Chapter 10, insert the following definitions in alphabetical order:

#### *retailer insolvency costs*

For a *Distribution Network Service Provider*:

- (a) *billed but unpaid charges*;
- (b) the actual amount of unbilled *network charges* accrued by a *failed retailer*; and
- (c) other costs that the *Distribution Network Service Provider* has incurred or is likely to incur as a result of a *retailer insolvency event*.

#### *failed retailer*

Has the meaning given in the *National Energy Retail Law*.

#### *billed but unpaid charges*

means, in respect of a *Distribution Network Service Provider*, *network charges* that have been billed to a *failed retailer* by the *Distribution Network Service Provider*, but that the *failed retailer* has not yet paid (whether before or after the relevant due date for payment).

### [2] Chapter 10      Substituted definitions

In chapter 10, substitute the following definitions:

#### *materially*

For the purposes of the application of clause 6.6.1, an event results in a *Distribution Network Service Provider* incurring materially higher or materially lower costs if the change in costs (as opposed to the revenue impact) that the *Distribution Network Service Provider* has incurred and is likely to incur in any *regulatory year* of a *regulatory control period*, as a result of that event, exceeds 1% of the *annual revenue requirement* for the *Distribution Network Service Provider* for that *regulatory year*.

For the purposes of the application of clause 6A.7.3, an event (other than a *network support event*) results in a *Transmission Network Service Provider* incurring materially higher or materially lower costs if the change in costs (as opposed to the revenue impact) that the *Transmission Network Service Provider* has incurred and is likely to incur in any *regulatory year* of a *regulatory control period*, as a result of that event,



exceeds 1% of the *maximum allowed revenue* for the *Transmission Network Service Provider* for that *regulatory year*.

In other contexts, the word has its ordinary meaning.

***positive change event***

For a *Distribution Network Service Provider*:

- (a) a *pass through event*, other than a *retailer insolvency event*, which entails the *Distribution Network Service Provider* incurring *materially* higher costs in providing *direct control services* than it would have incurred but for that event, but does not include a *contingent project* or an associated *trigger event*; or
- (b) a *retailer insolvency event*.

For a *Transmission Network Service Provider*, a *pass through event* which entails the *Transmission Network Service Provider* incurring *materially* higher costs in providing *prescribed transmission services* than it would have incurred but for that event, but does not include a *contingent project* or an associated *trigger event*.

**[3] Chapter 10 Omitted definitions**

In chapter 10, omit the following definitions: "*credit allowance*", "*network charges liability (or NCL)*" and "*required credit support amount*"

## Schedule 3 Savings and Transitional Amendments to the National Electricity Rules

(Clause 5)

### [1] Chapter 11 New Part [xxx]

In Chapter 11, after Part [xxx], insert:

#### Part [xxx] Retailer-Distributor Credit Support Requirements

##### 11.[xx] Rules consequent on the making of the National Electricity Amendment (Retailer Distributor Credit Support Requirements) Rule 2016

###### 11.[xx].1 Definitions

for the purposes of this rule 11.[xx]:

**Amending Rule** means the National Electricity Amendment (Retailer Distributor Credit Support Requirements) Rule 2016.

**effective date** means [insert date which is the Commencement Date of Schedules 1, 2 and 3 of the Amending Rule].

**new Chapter 6B** means Chapter 6B of the *Rules* and all related definitions in the *Rules* as in force on and from the effective date.

**old chapter 6B** means Chapter 6B of the *Rules* and all related definitions in the *Rules* as in force immediately before the effective date.

###### 11.[xx].2 Continued operation of old Chapter 6B

The *credit support* rules in old Chapter 6B continue to apply to any *credit support* held by a *Distribution Network Service Provider* immediately before the effective date.

###### 11.[xx].3 Interaction with Chapter 6

(a) For the purposes of subclause 6.6.1(6)(iii)(A) of the *Rules*, *credit support* means where the context requires:

- (1) any *credit support* held by a *Distribution Network Service Provider* under the old Chapter 6B; and/or
- (2) any *credit support* held by a *Distribution Network Service Provider* under new Chapter 6B.

- (b) For the purposes of subclause 6.6.1(6)(iii)(B) of the *Rules*, a reference to the *credit support* rules means where the context requires:
  - (1) the *credit support* rules under the old Chapter 6B; and/or
  - (2) the *credit support* rules under new Chapter 6B.

#### **11.[xx].4 Application of new Chapter 6B**

For the avoidance of doubt, “the previous 12 *months*” referred to in subclause 6B.B2.1(a) of new Chapter 6B may include *months* prior to the effective date.

#### **[2] Clause 11.55 of Chapter 11 Transitional provisions for NSW/ACT Distribution Network Service Providers**

In clause 11.55.2 insert:

- (a) in clause 6.6.1(l) of transitional Chapter 6, omit “retailer insolvency costs” and substitute “retailer insolvency costs”.