

Electricity Industry Participation Code 2010

Part 14A Prudential requirements

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14A.1 Purpose of prudential requirements

The purpose of this Part is to impose prudential requirements on each **participant** that has incurred or will incur financial obligations under this Code to ensure that the **participant** can meet those obligations.

14A.2 Participants to comply with prudential requirements

- (1) Before incurring any financial obligations under this Code, a **participant** must comply with prudential requirements in this Part.
- (2) A **participant** complies with prudential requirements in this Part in 1 of the following ways:
 - (a) by maintaining an acceptable credit rating under clause 14A.3:
 - (b) by providing acceptable security that complies with clause 14A.4.

14A.3 Acceptable credit rating

- (1) For the purposes of this Part, a person has an acceptable credit rating if—
 - (a) the person has a long-term credit rating no lower than—
 - (i) A3 (Moody's Investor Services Inc.); or
 - (ii) A– (Standard & Poor's Rating Group); or
 - (iii) B+ (AM Best); or
 - (iv) A– (Fitch Ratings); and
 - (b) in the case of a person who has a credit rating at the minimum level required under paragraph (a), the person is not subject to negative credit watch (or any equivalent arrangement) by the agency that gave the credit rating.
- (2) The **clearing manager** may require a **participant** whose compliance with prudential requirements in this Part depends on the credit rating of a person to provide evidence of the person's credit rating.
- (3) The **participant** must provide the evidence required by the **clearing manager**.

14A.4 Acceptable security

- (1) A **participant** provides acceptable security by—
 - (a) providing an acceptable form of security in accordance with Part 1 of Schedule 14A.1; and
 - (b) providing security for an amount that is no less than the amount required under clause 14A.6.
- (2) A **participant** that provides acceptable security must do anything the **Authority** requires to ensure that the security is valid, enforceable, and effective.

14A.5 Clearing manager to determine estimate of minimum security

- (1) At least once in every **business day**, the **clearing manager** must estimate the minimum amount for which security will be required to be provided by a **participant** under this Part on that **business day** and on each of the following 3 **business days** in accordance with Part 2 of Schedule 14A.1.
- (2) The **clearing manager** must formulate and **publish** a methodology for estimating the amounts under subclause (1).
- (3) The consultation and approval requirements set out in Schedule 14.2 apply to the methodology.

14A.6 Participant to provide minimum security required

- (1) Each **participant** that is required to provide acceptable security under this Part on a **business day** must provide security for an amount that is the lowest of all of the estimates determined by the **clearing manager** for the **participant** for that **business day**.
- (2) The **participant** must provide security for the amount required under subclause (1) no later than 1600 hours on the relevant **business day**.

14A.7 Participant may change form of security

The **clearing manager** must release a **participant's** existing security when the **participant** provides a different form of security under this clause, if—

- (a) the **participant** gives the **clearing manager** notice of its intention to substitute a different form of security for any security provided by it to the **clearing manager**; and
- (b) no **event of default** is continuing in relation to the **participant**; and
- (c) the **participant** satisfies the **clearing manager** that—
 - (i) the proposed new form of security is an acceptable form of security under Part 1 of Schedule 14A.1; and
 - (ii) the security provided by the **participant** will continue to be for an amount that is no less than the amount required under clause 14A.6.

Clause 14A.7: amended, on 1 November 2018, by clause 107 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2018.

14A.8 Reductions and releases

The **clearing manager** must reduce or release a **participant's** existing security to the extent requested by the **participant**, if—

- (a) the **participant** gives the **clearing manager** notice that it seeks a partial or complete reduction or release of any security provided by it to the **clearing manager**; and
- (b) no **event of default** is continuing in relation to the **participant**; and
- (c) the **participant** satisfies the **clearing manager** that, following the reduction or release of the security, the **participant** will—
 - (i) continue to meet the requirements in clause 14A.4; or
 - (ii) meet the requirements in clause 14A.3.

14A.9 Release of security on ceasing to be participant

The **clearing manager** must release a **participant's** existing security if the **participant**—

- (a) gives the **clearing manager** notice of it ceasing to be a **participant**; and
- (b) ceases to be a **participant** and the **Authority** advises the **clearing manager** that the person has ceased to be a **participant**; and
- (c) has paid all amounts that it owes under this Code (excluding any **washup** amount that has not yet been invoiced).

14A.10 Clearing manager to release security within 1 business day

- (1) If a **participant** becomes entitled under clause 14A.7 or 14A.8 or 14A.9 or 14A.23 to a reduction or release of any security, the **clearing manager** must reduce or release that security within 1 **business day** of the **participant** becoming entitled to the reduction or release.
- (2) If a **cash deposit** is to be reduced or refunded under subclause (1), the **clearing manager** must pay the amount of the reduction or refund to a **bank** account nominated by the **participant** for that purpose.

Cash deposits to be held on trust

14A.11 Cash deposit accounts

- (1) The **clearing manager** must establish, in the **clearing manager's** name, 2 or more interest bearing **cash deposit accounts**.
- (2) The **cash deposit accounts** must be—
 - (a) held with more than 1 **bank** that each has and maintains an acceptable credit rating in accordance with clause 14A.3(1); and
 - (b) clearly identified as such and be entirely separate from any other **bank** account of the **clearing manager**.
- (3) The **clearing manager** must obtain acknowledgement from each **bank** with which it has a **cash deposit account** that—
 - (a) the **cash deposits** are held on trust in the **cash deposit accounts** for **participants** (including the **clearing manager**) that become entitled to receive money from the **clearing manager** from time to time under clause 14A.13; and
 - (b) the **bank** has no right of set-off or right of combination in relation to the **cash deposits**.

14A.12 Cash deposits to be paid into cash deposit accounts

- (1) Every **cash deposit** received by the **clearing manager** must be paid by the **clearing manager** immediately into the **cash deposit accounts**.
- (2) Each **cash deposit** must be held between **cash deposit accounts** in approximately equal amounts.
- (3) If a **cash deposit** is debited under this Part, the **clearing manager** must ensure that approximately equal amounts of the **cash deposit** are debited from each **cash deposit account**.

14A.13 Cash deposits to be applied subject to conditions

The **clearing manager** must hold each **cash deposit** in the **cash deposit accounts** on trust to be applied, subject to this Code, only in accordance with the following:

- (a) following any **event of default**, the **clearing manager** must use such amount of the defaulting **participant's cash deposit** as is necessary or available in order to satisfy (to the extent possible) any amounts that may be due and owing by the defaulting **participant** to the **clearing manager** under this Code:
- (b) if no **event of default** is continuing in relation to the **participant** that provided the **cash deposit**, the **participant** is entitled to be paid the part of the **cash deposit** that has not been transferred under paragraph (a) in accordance with clause 14A.7 or 14A.8 or 14A.9 or 14A.23:
- (c) to satisfy an amount payable under clause 14.31 if the **participant** satisfies the **clearing manager** that, immediately following the application of the **cash deposit**, it will continue to comply with prudential requirements in this Part:
- (d) the **participant** is not entitled to receive back any part of its **cash deposit**, other than in accordance with this clause, even if the **participant** is in liquidation, receivership, or subject to statutory management or other analogous situation.

14A.14 Interest on cash deposits

- (1) Subject to clauses 14A.13 and 14A.15, the **clearing manager** must credit to each **participant** on behalf of which the **clearing manager** holds a **cash deposit** all interest received by the **clearing manager** on the **cash deposit**, less any applicable deduction for tax purposes.
- (2) Subject to subclause (3), if a **participant** does not wish the interest to accumulate in the **cash deposit accounts**, the **clearing manager** must, at the request of the **participant**, pay the interest (less any applicable deduction for tax purposes) within 2 **business days** of the end of the month to a **bank** account nominated by the **participant** for this purpose.
- (3) Subclause (2) does not apply if an **event of default** has occurred in relation to the **participant** and is continuing.

14A.15 Fees and taxes payable by participants

- (1) A **participant** is liable to reimburse the **clearing manager** for all **bank** fees in relation to its **cash deposit** and any taxes that may from time to time be imposed either on its **cash deposit** or on interest earned on such **cash deposit**.
- (2) Such payments must be deducted by the **clearing manager** from any amounts paid to the **participant** under clause 14A.14(2).
- (3) If the amounts are less than the payments owed by the **participant** under this clause, the shortfall must be invoiced separately by the **clearing manager**.

Information, monitoring, and reporting

14A.16 Information required from new purchasers

Before a new **purchaser** purchases **electricity**, it must submit to the **clearing manager**—

- (a) historical records of the quantity of **electricity** purchased and sold by that person before that person became a **purchaser**; or
- (b) if the **clearing manager** is not satisfied with records provided under paragraph (a), or if there are no such records, a bona fide **business** plan prepared in good faith to permit a realistic estimate of the **purchaser's** future trading.

14A.17 Participants subject to prudential requirements must provide information to clearing manager

- (1) The **clearing manager** may require a **participant** that is required to comply with prudential requirements in this Part to provide, by any date specified by the **clearing manager**, any information that the **clearing manager** requires for the purposes of carrying out its functions under this Part.
- (2) A **participant** that is required to provide information to the **clearing manager** under subclause (1) must provide the information to the **clearing manager** by the date specified by the **clearing manager**.
- (3) Each **participant** that is required to comply with prudential requirements under this Part must provide the following information to the **clearing manager** immediately upon the **participant** becoming aware of the situation:
 - (a) if the **participant** is a **purchaser**, any significant change to that **purchaser's** **business**, including a merger or acquisition, loss or gain of a customer, or sale or purchase of assets, that could significantly affect the quantity of **electricity** purchased or generated by the **participant** in its capacity as a **purchaser** or **generator**;
 - (b) any change or likely change to the **participant's** credit rating (if the **participant** has a credit rating), regardless of whether or not the **participant** is relying on a credit rating as a prudential requirement in terms of clause 14A.3;
 - (c) if a letter of credit or guarantee or bond is provided in respect of the **participant** in accordance with Part 1 of Schedule 14A.1—
 - (i) any change or likely change to the credit rating of the provider of the guarantee, letter of credit, or bond such that the provider's credit rating would, as a result, not be an acceptable credit rating as defined in clause 14A.3; or
 - (ii) any claim by the provider of the guarantee, letter of credit, or bond that the guarantee, letter of credit, or bond has ceased to be valid and enforceable.
- (4) If, at any time, a **participant** believes that its ability to pay an amount owing to the **clearing manager** under this Code is or is likely to be materially adversely affected, the **participant** must provide the **clearing manager** with details of that fact immediately.

Clause 14A.17(3)(a): amended, on 1 November 2018, by clause 108 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2018.

14A.18 System operator to provide information

The **system operator** must provide the **clearing manager** with the following information immediately upon becoming aware of the information:

- (a) any likely significant change to any amount to be allocated to a **participant** in respect of **ancillary services** or **extended reserve**;
- (b) the amount incurred by a **participant** as a result of the **participant** causing an **under-frequency event**.

Clause 14A.18(a): amended, on 24 March 2015, by clause 31 of the Electricity Industry Participation Code Amendment (Extended Reserve) 2014.

14A.19 Clearing manager to keep information confidential

The **clearing manager** must keep all information received by it under clauses 14A.16 to 14A.18 confidential and must not disclose it to any other person except—

- (a) with the written consent of the person who provided the information; or
- (b) if the information is required to be disclosed to or by the **Rulings Panel** or the **Authority** under this Code, regulations made under section 112 of the **Act**, or any other law.

14A.20 Clearing manager to provide information about cash deposits

Each month the **clearing manager** must provide each **participant** that has provided a **cash deposit** with a statement regarding the balance of the **participant's cash deposit**.

14A.21 Clearing manager to provide information about required security

- (1) The **clearing manager** must provide each **participant** that is required to comply with prudential requirements under this Part with information about the amount for which security is required to be provided by the **participant** under clause 14A.6.
- (2) The **clearing manager** must—
 - (a) provide the information to the **participant** through **WITS**; and
 - (b) **publish** the information.

Clause 14A.21(2): replaced, on 5 October 2017, by clause 510 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

14A.22 Clearing manager to keep register of specified time periods

- (1) The **clearing manager** must keep a register of the following time periods for each **participant** that is required to comply with prudential requirements in this Part (except a **participant** to which subclause (2) applies):
 - (a) a prudential exit period determined in accordance with subclause (3);
 - (b) a post-default exit period determined in accordance with subclause (4).
- (2) The **clearing manager** is not required to keep a register of time periods for a **participant** that is required to comply with prudential requirements in this Part only because the **participant** has an obligation in relation to 1 or more **FTRs**.
- (3) The prudential exit period for a **participant** is the number of **trading days** that elapse over the sum of the following:
 - (a) 1 **trading day**;
 - (b) the post-default exit period for the **participant**.
- (4) The post-default exit period for a **participant** is as follows, unless the **Authority** has

- approved a shorter period requested by the **participant**:
- (a) for a **retailer**, 18 **trading days**;
 - (b) for a **direct purchaser**, 7 **trading days**;
 - (c) for a **participant** that is not a **retailer** or a **direct purchaser**, 7 **trading days**.
- (5) The post-default exit period for a **participant** begins from the day on which the **participant** advises the **clearing manager** or the **clearing manager** advises the **participant** under clause 14.43 that an **event of default** has occurred in relation to the **participant**.
- (6) A **participant** that has a shorter post-default exit period approved by the **Authority** may increase the period to no more than the number of **business days** set out in subclause (4) by giving 20 **business days'** notice to the **clearing manager**.
- (7) A shorter post-default exit period approved by the **Authority** takes effect 20 **business days** after the date of the **Authority's** approval.
- (8) If the **Authority** has approved a shorter post-default exit period for a **participant**—
- (a) the **participant** must immediately advise the **Authority** if the **participant's** circumstances change such that the criteria against which the **Authority** approved the shorter post-default exit period may no longer be met;
 - (b) the **clearing manager** must immediately advise the **Authority** if the **clearing manager** becomes aware that the **participant's** circumstances have changed such that the criteria against which the **Authority** approved the shorter post-default exit period may no longer be met;
 - (c) if the **Authority** considers the **participant's** circumstances have changed such that the criteria against which the **Authority** approved the **participant** having a shorter post-default exit period are no longer met, the **Authority** may—
 - (i) amend the **participant's** post-default exit period; or
 - (ii) rescind its approval of the shorter post-default exit period for the **participant**.
- (9) If the **Authority** amends or rescinds its approval of a **participant's** shorter post-default exit period, the **Authority** must—
- (a) give the **participant** at least 1 month's notice in writing before the amendment or the rescission comes into effect; and
 - (b) advise the **participant** of the reasons for amending or rescinding the approval.

Clause 14A.22(4): amended, on 1 November 2018, by clause 109(1) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2018.

Clause 14A.22(8) and (9): inserted, on 1 November 2018, by clause 109(2) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2018.

Disputes

14A.23 Disputes regarding prudential requirements

- (1) A **participant** that disputes a decision of the **clearing manager** under this Part may refer the dispute to the **Rulings Panel**.
- (2) Until such time as the **Rulings Panel** makes a decision on the dispute, all **participants** must comply with the relevant decision of the **clearing manager**.
- (3) If a dispute is referred to it under subclause (1), the **Rulings Panel** must, after hearing from the **participant** that disputed the **clearing manager's** decision and from the **clearing manager**, make a decision in accordance with this Part.

- (4) If the **Rulings Panel** overturns or varies a decision by the **clearing manager**, the **clearing manager's** original decision, and the process that led to that decision, is not a breach of this Code by the **clearing manager**, unless the **Rulings Panel** determines that the **clearing manager's** decision was made negligently or in bad faith.

Notices

14A.24 Notices

- (1) Except as expressly provided in this Code, a notice or demand given or required to be given under this Part may be given by being delivered or transmitted to the intended recipient at its address or electronic address as last advised in writing to the sender and may be posted to such address by prepaid post.
- (2) Subject to subclause (3),—
- (a) a notice or demand delivered by hand is deemed to be delivered on the date of such delivery; and
 - (b) a notice or demand delivered by post is deemed to be delivered on the 2nd **business day** following the date of posting; and
 - (c) a notice or demand transmitted through **WITS** is deemed to be delivered on the date it was transmitted.
- (3) Any notice or demand delivered, or deemed to be delivered, on a day that is not a **business day**, or after 1600 hours on a **business day**, is deemed to have been delivered on the next **business day**.

Clause 14A.24(2)(c): amended, on 5 October 2017, by clause 511 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Schedule 14A.1 Acceptable security

cl 14A.4

Part 1 Acceptable forms of security

1 Acceptable forms of security

A **participant** may provide acceptable security in any of the following forms:

- (a) a **cash deposit** (see clause 2):
- (b) an unconditional guarantee or letter of credit (see clause 3):
- (c) a security bond (see clause 4):
- (d) another form of security (see clause 5):
- (e) a combination of the forms of security listed in paragraphs (a) to (d) that in aggregate secures the required amount.

2 Cash deposit

- (1) A **participant** must pay a **cash deposit** into the **cash deposit accounts** or to the **clearing manager**.
- (2) The **participant** must provide and maintain an acceptable **participant's** security agreement in respect of the **cash deposit**.
- (3) A **participant's** security agreement must—
 - (a) be a security agreement as defined in section 16(1) of the Personal Property Securities Act 1999; and
 - (b) create a first ranking security interest in respect of the **cash deposit**; and
 - (c) secure the **participant's** payment and performance obligations to the **clearing manager** under this Code; and
 - (d) be in a form approved by the **Authority**.

3 Guarantee or letter of credit

- (1) A guarantee or letter of credit must be given in favour of the **clearing manager**.
- (2) A letter of credit is an acceptable form of security only if it is given by a **bank**.
- (3) A guarantee or letter of credit must be given on terms as follows, or as otherwise approved by the **Authority**:
 - (a) for a guarantee given by a **bank**, the terms in Schedule 14A.2:
 - (b) for a guarantee given by another person, the terms in Schedule 14A.3:
 - (c) for a letter of credit, the terms in Schedule 14A.4.
- (4) A guarantee or letter of credit is an acceptable form of security only while the person giving it has an acceptable credit rating as defined in clause 14A.3.

4 Security bond

- (1) A security bond must be given in favour of the **clearing manager**.
- (2) A security bond must be given on the terms in Schedule 14A.5 or as otherwise approved by the **Authority**.
- (3) A security bond is an acceptable form of security only while the surety has an

acceptable credit rating as defined in clause 14A.3.

5 Other security

- (1) Any other form of security is an acceptable form of security only if it has been approved by the **Authority**.
- (2) The **Authority** may approve another form of security if the **Authority** is satisfied that the form of security ensures that the relevant **participant** can meet its financial obligations under the Code to the same extent as if the **participant** provided a form of security specified in paragraphs (a) to (d) of clause 1.

Part 2 Minimum security

6 Determining minimum security

- (1) The minimum amount for which security is required to be provided by a **participant** under clause 14A.6 is—
 - (a) the sum of the following amounts:
 - (i) the general prudential requirement calculated in accordance with clause 7:
 - (ii) the **FTR** prudential requirement calculated in accordance with clause 11; minus
 - (b) any amount prepaid by the **participant** under clause 14.30 that is specified by the **participant** as being for a **billing period**—
 - (i) that has commenced but remains unsettled on the day for which the minimum security is being determined; or
 - (ii) any part of which falls within the prudential exit period for the **participant** (if any).
- (2) If the sum of the amounts under subclause (1) is negative, the minimum amount for which security is required to be provided is 0.

Clause 6(1)(b): substituted, on 24 March 2015, by clause 23 of the Electricity Industry Participation Code Amendment (Settlement and Prudential Security) 2014.

7 General prudential requirement

The general prudential requirement is the sum of the following amounts calculated in accordance with the methodology approved under clause 8:

- (a) the expected amount of the **clearing manager's** outstanding financial exposure to the **participant**; and
- (b) the exit period prudential margin for the **participant**.

8 Methodology for determining general prudential requirement amounts

- (1) The **clearing manager** must formulate and **publish** a methodology for determining the amounts specified in clause 7.
- (2) The methodology must comply with the requirements specified in clauses 9 and 10.
- (3) The consultation and approval requirements set out in Schedule 14.2 apply to the methodology.

9 Calculating clearing manager's outstanding financial exposure to participant

- (1) The expected amount of the **clearing manager's** outstanding financial exposure to a **participant** on any **trading day** is an estimate of all unsettled amounts owing by the **participant** to the **clearing manager** and by the **clearing manager** to the **participant** to the end of the previous **trading day**, including the **clearing manager's** estimate of the following amounts:
- (a) the amount owing to or by the **participant** for purchasing and selling **electricity**;
 - (ab) the amount owing to or by the **participant** in relation to **extended reserve**;
 - (b) the amount owing to or by the **participant** in relation to **ancillary services**;
 - (c) the net amount owing to or by the **participant** in respect of any **hedge settlement agreement** lodged with the **clearing manager** under clause 14.8;
 - (d) the amount of any **GST** payable by the **participant** in respect of the above amounts.
- (2) The **clearing manager** must use **final prices** in calculating amounts under subclause (1) unless—
- (a) **final prices** are not available, in which case the **clearing manager** must use **interim prices**; or
 - (b) neither **final prices** nor **interim prices** are available, or an **undesirable trading situation** has been claimed in respect of a **trading period** or **trading day** that is included in the **clearing manager's** estimate, in which case the **clearing manager** must use the price calculated in accordance with clause 10(2)(c) that is used in the methodology for determining the exit period prudential margin.
- (3) The **clearing manager** must take **washup** amounts that have been advised as owing under Part 14 into account in estimating the amounts described in this clause.

Clause 9(1)(ab): inserted, on 24 March 2015, by clause 32 of the Electricity Industry Participation Code Amendment (Extended Reserve) 2014.

Clause 9(3): amended, on 24 March 2015, by clause 24 of the Electricity Industry Participation Code Amendment (Settlement and Prudential Security) 2014.

10 Exit period prudential margin

- (1) The exit period prudential margin for a **participant** is the **clearing manager's** estimate of the amount that the **participant** will incur and earn during the prudential exit period for the **participant** in respect of the following:
- (a) the sale and purchase of **electricity**;
 - (ab) **extended reserve**;
 - (b) **ancillary services**;
 - (c) any **hedge settlement agreement** lodged with the **clearing manager** under clause 14.8;
 - (d) any **GST** payable in respect of the above amounts.
- (2) The estimated amounts to be incurred and earned by the **participant** in respect of the sale and purchase of **electricity** under subclause (1)(a) are based on—
- (a) the number of **trading days** in the prudential exit period for the **participant** determined under clause 14A.22(3); and
 - (b) the expected value of **electricity** to be purchased by the **participant** minus the expected value of **electricity** to be sold by the **participant** during that period

- based on the prices in paragraph (c); and
- (c) the sum of the following amounts:
- (i) the prices of **electricity** expected to apply during the quarter to which the calculation relates in accordance with subclauses (3) and (4):
 - (ii) an amount determined as set out in subclause (5).
- (3) In determining the prices under subclause (2)(c)(i), the **clearing manager** must use prices of **electricity** futures products that are available and that the **clearing manager** considers provide a reasonable estimate of the average price of **electricity** for the relevant quarter.
- (4) The **clearing manager** must determine the prices under subclause (2)(c)(i)—
- (a) for each quarter beginning 1 January, 1 April, 1 July, and 1 October; and
 - (b) no later than 2 months before the beginning of each quarter.
- (5) The amount determined under subclause (2)(c)(ii) must—
- (a) be an amount expressed in \$/MWh of not less than \$0/MWh; and
 - (b) be determined on the basis that the exit period prudential margin for a hypothetical **purchaser** that purchases a constant proportion of total **electricity** purchased from the **clearing manager** for every **trading period** is greater than the general exit period exposure for the **purchaser** on 75% of the days in a modeling period of 3 to 10 years selected by the **clearing manager**.
- (6) The **clearing manager** must determine the amount under subclause (2)(c)(ii)—
- (a) once for each calendar year; and
 - (b) no later than 2 months before the beginning of each calendar year.
- (7) The methodology must specify how the clearing manager will estimate the initial amount of security for **ancillary services** for a new **participant**.
- (8) The expected amounts to be incurred and earned by the **participant** in respect of a **hedge settlement agreement** must be based on the price determined by the **clearing manager** under subclause (2)(c).

Clause 10(1)(ab): inserted, on 24 March 2015, by clause 33 of the Electricity Industry Participation Code Amendment (Extended Reserve) 2014.

Clause 10(5)(b): amended, on 24 March 2015, by clause 25(1) of the Electricity Industry Participation Code Amendment (Settlement and Prudential Security) 2014.

Clause 10(6)(a): amended, on 24 March 2015, by clause 25(2) of the Electricity Industry Participation Code Amendment (Settlement and Prudential Security) 2014.

11 FTR prudential requirement

The **FTR** prudential requirement for a **participant** is the sum of the following amounts:

- (a) the **clearing manager's** estimate of an amount to be incurred or earned by the **participant** in respect of any **FTR** in respect of which the **participant** is named in the **FTR register**, calculated in accordance with the methodology approved by the **Authority** under clause 12:
- (b) the amount of any **FTR acquisition cost** in respect of an **FTR** held by the **participant**:
- (c) any amount payable by the **participant** to the **clearing manager** under clause 13.249(4) minus any amount payable by the **clearing manager** to that **participant** under clause 13.249(7).

12 Methodology for determining minimum security required in respect of FTRs

- (1) The **clearing manager** must formulate and **publish** a methodology for determining the minimum amount for which security is required to be provided in relation to a matter set out in clause 11(a).
- (2) The methodology formulated by the **clearing manager** under subclause (1) must comply with the principle that the amount taken into account under clause 11(a) is an estimate of the **FTR hedge value** (being an amount that may be positive or negative) of the **FTR** at the time that the estimate is made and the potential for that value to change before the **clearing manager** is able to realise the value of the **FTR** following an **event of default** occurring in relation to the holder of the **FTR**.
- (3) The consultation and approval requirements set out in Schedule 14.2 apply to the methodology.

13 Information to be considered by clearing manager

In estimating the amounts described in this Part, the **clearing manager** may take into account a substantial change to a **participant's business**.

Schedule 14A.2 Guarantee

Schedule 14A.1, cl 3

To: [Clearing manager] (the "Clearing Manager")
[address]

Attention: [name]

Dear Sir/Madam

1. [Bank] (the "Bank") refers to each obligation of [Participant] (the "Principal") to pay amounts the Principal, now or at any time, owes to, and is invoiced by, the Clearing Manager (whether as principal or agent) together with default interest, if any, in relation to such amounts (the "Obligations") under the Electricity Industry Participation Code 2010 (the "Code").
2. The Bank unconditionally guarantees to pay the Clearing Manager an amount specified in each such demand provided that—

[a) [the Bank's liability under this guarantee will not exceed \$[insert amount] (the "Maximum Amount"); and]

[Note: Bank to elect either this paragraph or the following paragraph].

[a) the Bank's liability under this guarantee will not exceed the Maximum Amount as defined below—

- (i) The sum of the amounts calculated for all trading periods to which this guarantee applies in any period to which a demand under this guarantee relates in accordance with the following formula:

$$A*B$$

where

A is [X] MWh

B is the final price for the trading period at the [specify] [grid injection point/grid exit point/reference point]; and

- (ii) For the purposes of paragraph 2(a)(i), this guarantee applies to every trading period within any period to which a demand under this guarantee relates as follows:

A. From the "Starting Date", being the later of—

1. the start of the period; and
2. [date]; and

B. Until the "Final Date", being the earlier of—

1. the end of the period; and

2. the Final Date as notified to the Clearing Manager under paragraph 2(a)(iii); and
 3. [date]; and
- (ii) Despite anything in this guarantee or in the Code, the Bank may give the Clearing Manager notice of the Final Date for the purposes of paragraph 2(a)(ii)B. The Final Date is the later of the date specified in the notice or two business days after the date on which the Clearing Manager receives the notice; and]
- (b) the Clearing Manager's demand is made in writing and is signed by or purported to be signed by an authorised signatory; and
 - (c) a certificate signed by or purported to be signed by the Clearing Manager's authorised signatory and certifying that the Principal has failed, in whole or in part, to fulfil the Obligations accompanies the demand, such certificate will be conclusive proof of such failure.
3. The Bank's liability under this guarantee will not be affected, discharged, or diminished by any act, omission, or matter, which, but for this provision, would have affected, discharged, or diminished a guarantor's liability, but would not have affected, discharged, or diminished the Bank's liability had it been a principal debtor, including:
- (a) the insolvency, liquidation, or dissolution of the Principal or any other person, the appointment of any receiver, manager, inspector, trustee, statutory manager, or other similar person in respect of the Principal or any other person, or any change in the Principal's status, function, control, or ownership; and
 - (b) any of the Obligations, or the obligations of any person under any security or guarantee held in relation to any of the Obligations, being or becoming in whole or in part void, voidable, defective, illegal, invalid, or unenforceable in any respect or ranking after any other security; and
 - (c) any time, credit or other indulgence or other concession being granted or agreed to be granted by the Clearing Manager to, or any composition or other arrangement made with or accepted from, the Principal in respect of any of the Obligations or the obligations of any person under any security or guarantee held in relation to the same; and
 - (d) any variation of the terms of any of the Obligations or of any security or guarantee (including under this guarantee) held in relation to the same; and
 - (e) any failure to realise or fully realise the value of, or any release, discharge, exchange, or substitution of, any security or guarantee held in relation to any of the Obligations; and
 - (f) any failure (whether intentional or not) to take, fully take or perfect any security now or in the future agreed to be taken by the Clearing Manager in relation to any of the Obligations; and
 - (g) any other act, event or omission that, but for this clause 3, would or might operate or discharge, impair, or otherwise affect any of the obligations of the

Guarantor under this guarantee or any of the rights, powers, or remedies conferred upon the Clearing Manager by the rules or by law.

4. Subject to paragraph 5 below, this guarantee will continue in force until the date at which the Principal ceases to be bound by the Code and has discharged its obligations to the Clearing Manager under the Code, at which time the Clearing Manager will return this guarantee to the Bank.
- [5. Despite anything else in this guarantee, the Bank may at any time pay the Clearing Manager the Maximum Amount less any amount or amounts the Bank may previously have paid under this guarantee or such lesser sum as the Clearing Manager may require. Upon payment of that sum, this guarantee shall be cancelled and the Bank shall have no further liability.]

[Note: Bank to elect either this paragraph or the following paragraph as a method of cancellation.]

- [5. Despite anything else in this guarantee, the Bank may cancel this guarantee by giving 90 days' notice in writing to the Clearing Manager. Following cancellation of this guarantee, the Bank remains liable for any Obligations incurred before the effective date of cancellation, but shall not be liable for any Obligations incurred after that date.]
6. This guarantee may be assigned by the Clearing Manager without the Bank's consent. It will bind the successors and assigns of the Bank.
7. This guarantee is governed by New Zealand law and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

[insert execution block for Bank]

Schedule 14A.2: replaced, on 1 November 2018, by clause 110 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2018.

Schedule 14A.3 Deed of guarantee and indemnity

Schedule 14A.1, cl 3

DATED

BY

1. [Guarantor] (the "Guarantor")

IN FAVOUR OF

2. [Clearing manager] (the "Beneficiary")

1. **Guarantee and indemnity**

1.1 The Guarantor—

- (a) unconditionally and irrevocably guarantees to the Beneficiary the due performance and observance by [Participant] (the "Debtor") of each obligation the Debtor may now or in the future have to the Beneficiary to pay amounts it owes to, and is invoiced by, the Beneficiary (whether as principal or agent) together with default interest, if any, in relation to such amounts (the "Obligations") under the Electricity Industry Participation Code 2010 (the "Code"); and
- (b) indemnifies the Beneficiary against any loss incurred by the Beneficiary as a result of any failure by the Debtor to fulfil the Obligations. This indemnity shall apply to any of the Obligations (or any amount which, if recoverable, would have formed part of the Obligations) which is not or may not be enforceable, recoverable, or recovered for any reason; and
- (c) shall pay the Obligations (and any other amounts owing under this Deed) on demand.

1.2 The total amount payable by the Guarantor under this Deed must not exceed the aggregate of \$[insert amount] (the "Maximum Amount") and any sums payable under clauses 1.3 and 9 of this Deed.

1.3 If any moneys payable by the Guarantor under this Deed are not paid on demand, the Guarantor must pay to the Beneficiary interest on such unpaid moneys (both before and after judgment) at the rate determined in accordance with clause 1.4 of this Deed from the date of demand to the date of their actual receipt by the Beneficiary calculated on a daily basis and capitalised as the Beneficiary will determine.

1.4 The interest rate will be 5% per annum plus the then prevailing settlement bid rate for 90 day bills displayed on Reuters Screen BKBM at 10:45am on the date of demand or, if for any reason that rate is not displayed, the rate determined by the Beneficiary to be the nearest practicable equivalent.

2. Preservation of rights

- 2.1 The obligations of the Guarantor and the rights, powers and remedies conferred on the Beneficiary under this Deed are in addition to, and not in substitution for, any other security or guarantee that the Beneficiary may at any time hold in respect of the Obligations and may be enforced without the Beneficiary first having recourse to any such security and without the Beneficiary first taking steps or proceedings against the Debtor.
- 2.2 The Guarantor's liability and the rights, powers, and remedies conferred on the Beneficiary under this Deed will not be affected, discharged, or diminished by (and the Guarantor waives notice of) any act, omission or matter which, but for this clause 2.2, would have affected, discharged or diminished the Guarantor's liability to the Beneficiary or the Beneficiary's rights, powers and remedies with respect to the Guarantor or would have otherwise provided a defence to the Guarantor (in each case, in whole or in part), including—
- (a) the insolvency, liquidation, or dissolution of the Debtor or any other person, the appointment of any receiver, manager, inspector, trustee, statutory manager, or other similar person in respect of the Debtor or any other person, or any change in the Debtor's status, function, control, or ownership; and
 - (b) any of the Obligations, or the obligations of any person under any security or guarantee held in relation to any of the Obligations, being or becoming in whole or in part void, voidable, defective, illegal, invalid, or unenforceable in any respect or ranking after any other security; and
 - (c) any time, credit or other indulgence or other concession being granted or agreed to be granted by the Beneficiary to, or any composition or other arrangement made with or accepted from, the Debtor in respect of any of the Obligations or the obligations of any person under any security or guarantee held in relation to the same; and
 - (d) any variation of the terms of any of the Obligations or of any security or guarantee (including under this Deed) held in relation to the same; and
 - (e) any failure to realise or fully realise the value of, or any release, discharge, exchange, or substitution of, any security or guarantee held in relation to any of the Obligations; and
 - (f) any failure (whether intentional or not) to take, fully take or perfect any security now or in the future agreed to be taken by the Beneficiary in relation to any of the Obligations; and
 - (g) any other act, event or omission that, but for this clause 2.2, would or might operate or discharge, impair, or otherwise affect any of the obligations of the Guarantor under this Deed or any of the rights, powers, or remedies conferred upon the Beneficiary by the rules or by law.
- 2.3 If any payment to the Beneficiary under this Deed is avoided by law, the Guarantor's obligation to make the payment will not be affected, discharged, or diminished, and the Guarantor must on demand indemnify the Beneficiary against all costs sustained or incurred by the Beneficiary as a result of it being required for any reason to refund all or part of any amount received or recovered by it in respect of such payment and must in

any event pay to the Beneficiary on demand the amount so refunded by it. The Beneficiary and the Guarantor will, in any such case, be deemed to be restored to the position in which each would have been and will be entitled to exercise the rights they respectively would have had if that payment had not been made.

- 2.4 After a demand has been made by the Beneficiary under this Deed, and so long as the Guarantor is under any actual or contingent liability under this Deed, the Guarantor must not—
- (a) exercise in respect of any amount paid by the Guarantor under this Deed any right of subrogation or any other right or remedy that the Guarantor may have in respect of such amount paid; or
 - (b) except with the Beneficiary's consent in writing, claim or receive payment of any other moneys for the time being due to the Guarantor by the Debtor or exercise any other right or remedy that the Guarantor may have in respect of the same; or
 - (c) unless so required by the Beneficiary, prove in the liquidation of the Debtor in competition with the Beneficiary for any moneys owing to the Guarantor by the Debtor on any account.

Any moneys obtained by the Guarantor from the Debtor with such consent or as so required or in breach of this clause must, in each case, be held by the Guarantor upon trust to pay such moneys to the Beneficiary in or towards discharge of the Guarantor's obligations under this Deed.

- 2.5 Any moneys received by the Beneficiary that may be applied in or towards discharge of any of the obligations of the Guarantor under this Deed must be regarded as a payment in gross so that, in the event of the liquidation of the Guarantor, the Beneficiary may prove in the liquidation for the whole of such moneys.

3. **Representations and warranties**

The Guarantor represents that—

- (a) it is duly incorporated and validly existing under the laws of the jurisdiction in which it was incorporated, capable of suing and being sued and has the power to enter into and perform this Deed, and has taken all necessary corporate action to authorise it to enter into, execute, deliver, and perform its obligations under this Deed; and
- (b) its entry into, execution, delivery, and performance of this Deed will not contravene any law or regulation to which the Guarantor is subject or any provision of its constitutional documents and all things (including the obtaining of consents) requisite for such entry, execution, delivery, and performance have been taken, fulfilled, and done, and are in full force and effect; and
- (c) no obligation of the Guarantor under this Deed is secured by, and the execution, delivery and performance of this Deed will not result in the existence of, or oblige it to create, any mortgage, charge, pledge, lien or other encumbrance over any of its present or future revenues or assets; and
- (d) the execution, delivery of and performance of the Guarantor's obligations under this Deed will not cause the Guarantor to be in breach of or in default under any agreement binding on the Guarantor or any of its assets and no material litigation

or administrative proceeding before any court or governmental authority is pending or (so far as the Guarantor knows) threatened against the Guarantor or any of its assets which, if decided against the Guarantor, would have a material adverse effect on the ability of the Guarantor to meet any or all of the obligations in this Deed.

4. Payments

All payments to be made by the Guarantor to the Beneficiary under this Deed must be made without set-off or counterclaim and without any deduction or withholding. If the Guarantor is obliged by law to make any deduction or withholding from any such payment, the amount due from the Guarantor in respect of such payment will be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Beneficiary receives a net amount equal to the amount the Beneficiary would have received had no such deduction or withholding been required to be made.

5. Continuing security

This Deed will be a continuing security to the Beneficiary in respect of each Obligation and must not be (or be construed so as to be) discharged by any intermediate discharge or payment of or on account of the Obligations or any settlement of accounts between the Beneficiary and the Debtor or anyone else.

6. Cancellation

[Despite anything else in this Deed, the Guarantor may at any time pay to the Beneficiary the Maximum Amount less any amount or amounts the Guarantor may previously have paid under this Deed or such lesser sum as the Beneficiary may require. Upon payment of that sum, this Guarantee shall be cancelled and the Guarantor shall have no further liability.]

[Note: Guarantor to elect either this clause or the following clause as a method of cancellation.]

[The Guarantor may cancel this Deed by giving 90 days' notice in writing to the Beneficiary. Following cancellation of this Guarantee, the Guarantor remains liable for any Obligations incurred before the effective date of cancellation but shall not be liable for any Obligations incurred after that date.]

7. Assignment

This Deed may be assigned by the Beneficiary without the Guarantor's consent. It will bind the successors and assigns of the Guarantor.

8. Notices

- 8.1 Any demand made on the Guarantor by the Beneficiary under this Deed must be in writing and delivered to the registered office of the Guarantor or to any other address in New Zealand from time to time notified by the Guarantor to the Beneficiary in writing.
- 8.2 The Guarantor must immediately notify the Beneficiary of any change in the above address.

9. Costs and expenses

The Guarantor indemnifies the Beneficiary for all costs and expenses (including legal fees and any taxes or duties) incurred by the Beneficiary in the enforcement and protection of its rights under this Deed.

10. Governing law

This Deed is governed by New Zealand law, and the Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand.

[insert execution block for Guarantor]

Schedule 14A.3: replaced, on 1 November 2018, by clause 111 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2018.

Schedule 14A.4 Letter of credit

Schedule 14A.1, cl 3

To: [Clearing manager] (the "Clearing Manager")
(to be advised through [Bank], SWIFT: [Code])
[address]

Attention: [name]

Dear Sir/Madam

IRREVOCABLE TRANSFERABLE STANDBY LETTER OF CREDIT NO. [number]
DATED [date]

We, [Bank] (the "Bank") issue in favour of the Clearing Manager this irrevocable transferable standby letter of credit (the "Letter of Credit") as follows:

The Account Party: [Participant] (the "Account Party")

Beneficiary: The Clearing Manager (the "Beneficiary")

Issued in Connection With: Each obligation of the Account Party to pay the amounts it, now or at any time, owes to, and is invoiced by, the Beneficiary (whether as principal or agent) together with default interest, if any, in relation to such amounts (the "Obligations") under the Electricity Industry Participation Code 2010 (the "Code").

Maximum Amount: \$[insert amount] (the "Maximum Amount").

Expiry: This Letter of Credit expires on the earliest of—

- (a) the date at which the Account Party has ceased to be bound by the Code and has discharged its obligations to the Beneficiary under the Code; or
- (b) the date of satisfaction of this Letter of Credit in accordance with its terms; or
- (c) [the date on which the Bank makes payment to the Beneficiary of the Maximum Amount either at its sole discretion or following demand by the Beneficiary under this Letter of Credit in accordance with its terms,]

[Note: Bank to elect either this clause or the following clause as a method of cancellation.]

- (c) [90 days after notice in writing of cancellation of this Letter of Credit has been given by the Bank to the Clearing Manager, provided that the Bank remains liable for any Obligations incurred before the effective date of cancellation but shall not be liable for any Obligations incurred after that date,](the "Expiry Date").

Payable at: [Sight or by demand using SWIFT]

Available at: [address]

By demand on: The Bank.

Enfaced: Drawn under [Bank] Irrevocable Transferable Standby Letter of Credit No. [number] dated [date].

Returnable to: The Bank upon expiry.

The proceeds of this Letter of Credit are transferable by the Beneficiary. A claim may be made under this Letter of Credit by delivering to the address at which this Letter of Credit is expressed to be available, by no later than [time] New Zealand time on or before the Expiry Date, a draft drawn on the Bank (enfaced as specified above) accompanied by—

- (a) this Letter of Credit; and
- (b) a certificate signed by an authorised signatory of the Beneficiary in the following form:

To [Bank] [date]

[Clearing manager] of [address] (the "Beneficiary") hereby makes claim under the [Bank] Irrevocable Transferable Standby Letter of Credit No. [number] (the "Letter of Credit"). Words and expressions defined in the Letter of Credit will have the same meaning in this Certificate.

[Participant] (the "Account Party") has failed, in whole or in part, to fulfil the Obligations.

As at the date of this Certificate, the amount owed to the Beneficiary by the Account Party in respect of the Obligations is the sum of \$[amount outstanding].

Accordingly, the Beneficiary is entitled to claim and requests payment by [date] of the amount of \$[amount claimed] to be credited to:

Bank: [Beneficiary's bank]

Account number [Beneficiary's trust account number]

Bank's SWIFT Code [Bank's SWIFT Code]

The signatory or signatories is/are authorised by the Beneficiary to make the statements in this Certificate on behalf of the Beneficiary.

Signed.....

Authorised Signatory

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 [and the Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation 2007], except as otherwise provided in this Letter of Credit. Subject to that, this Letter of Credit will be governed by New Zealand law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

The Bank agrees with the Beneficiary that drafts drawn under, and in compliance with, this Letter of Credit and up to the Maximum Amount will be paid on presentation in the manner provided in this Letter of Credit.

[insert execution clause for Bank]

Schedule 14A.4: replaced, on 1 November 2018, by clause 112 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2018.

Schedule 14A.5 Surety bond

Schedule 14A.1, cl 4

To: [Clearing manager] (the "Clearing Manager")
[address]

From: [Surety] (the "Surety")
[address]

Bond Number: [number]

1. [Participant] (the "Principal") has obligations under the Electricity Industry Participation Code 2010 (the "Code") to pay the Clearing Manager amounts invoiced to the Principal by the Clearing Manager ("Obligations").
2. On written demand by the Clearing Manager, the Surety agrees to pay to the Clearing Manager any outstanding amounts invoiced to the Principal, together with any default interest payable in respect of those invoiced amounts. Such written demand must be delivered to the Surety at its above address and certify that the Principal has failed, in whole or in part, to fulfil the Obligations.
3. The Surety's total liability under this Bond shall not exceed \$[insert maximum amount] ("Maximum Amount").
4. [The Surety may at any time pay to the Clearing Manager the Maximum Amount less any amount or amounts the Surety may previously have paid under this Bond or such lesser sum as the Clearing Manager may require. Upon payment of that sum, this Bond will be cancelled and the Surety shall have no further liability.]

[Note: Surety to elect either this proviso or the following proviso as a method of cancellation.]

4. [The Surety may cancel this Bond by giving 90 days' written notice to the Clearing Manager. Following cancellation of this Bond, the Surety remains liable for any Obligations incurred before the effective date of cancellation but shall not be liable for any Obligations incurred after that date.]
5. This Bond is not affected, discharged, or diminished by any act or omission that would, but for this provision, have released a surety but would not have affected, discharged, or diminished the Surety's liability had it been a principal debtor.
6. This Bond may be transferred or assigned by the Clearing Manager without the Surety's consent.
7. Upon cancellation, the Bond will be returned to the Surety.
8. This Bond is governed by New Zealand law, and the Surety agrees to submit to the non-exclusive jurisdiction of the courts of New Zealand.

[insert execution clause for Surety]

Electricity Industry Participation Code 2010
Schedule 14A.5

Schedule 14A.5: amended, on 24 March 2015, by clause 26 of the Electricity Industry Participation Code Amendment (Settlement and Prudential Security) 2014.

Schedule 14A.5: replaced, on 1 November 2018, by clause 113 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2018.