Appendix A Final Code amendment

A.1 This appendix shows changes the Authority will make to the existing Code. Code amendments are displayed as follows:

(a) black underlined – for additions that were proposed in the consultation paper

(b) ~~black strikethrough~~ – for deletions that were proposed in the consultation paper

(c) red underlined – for additions made following consultation

(d) ~~red strikethrough~~ – for deletions made following consultation.

Electricity Industry Participation Code 2010

Schedule 11.5

Process for trader or retailer event of default

4 Failure by defaulting trader or defaulting retailer to remedy event of default

(1) This clause applies if—

(a) 7 days or more have elapsed since the **Authority** gave notice to the defaulting **trader** or defaulting **retailer** under clause 2(1); and

(b) the **Authority** considers that—

(i) the defaulting **trader** or defaulting **retailer** has not remedied the **event of default** or, in the case of an **event of default** under clause 14.41(1)(b) in respect of which there is an unresolved invoice dispute under clause 14.25, has not reached an agreement with the **Authority** to resolve the **event of default**; and

(ii) the defaulting **trader** or defaulting **retailer** still has 1 or more contracts under which a customer of the defaulting **trader** or defaulting **retailer** purchases **electricity** from the defaulting **trader** or defaulting **retailer** or is still recorded in the **registry** as being responsible for 1 or more **ICPs**.

(2) The **Authority** must—

(a) give written notice to the defaulting **trader** or defaulting **retailer** that the **Authority** considers that this clause applies; and

(b) unless the **Authority** considers there is good reason not to, attempt to advise customers of the defaulting **trader** or defaulting **retailer** that the defaulting **trader** or defaulting **retailer** has committed an **event of default** and one or more of the following:

(i) *[Revoked]*

(ii) the customer should enter into a contract for the purchase of **electricity** with another **trader** or **retailer** by the date that is:

(A) 13 days after the day on which the **Authority** gave written notice to the defaulting **trader** or defaulting **retailer** under clause 2(1) if the defaulting **trader** or defaulting **retailer** is recorded in the **registry** as being responsible for 1,000 or~~f~~ fewer **ICPs**; or

(B) otherwise 14 days after the day on which the **Authority** gave written notice to the defaulting **trader** or defaulting **retailer** under clause 2(1):

(iii) if the customer fails to enter into a contract with another **trader** or **retailer** by that date, the **Authority** may assign the defaulting **trader's** or defaulting **retailer's** rights and obligations under the customer's contract with the defaulting **trader** or defaulting **retailer** to another **trader** under clause 5:

(iv) any other information the **Authority** considers appropriate.

(3) *[Revoked]*

(4) *[Revoked]*

5 Authority may assign contracts and ICPs

(1) This clause applies if, by the end of the 17th day after the defaulting **trader** or defaulting **retailer** was given notice under clause 2(1), or the end of the 13th day after the defaulting **trader** or defaulting **retailer** was given notice under clause 2(1) if the defaulting **trader** or defaulting **retailer** is recorded in the **registry** as being responsible for 1,000 or fewer **ICPs**,—

(a) the defaulting **trader** or defaulting **retailer** has not remedied the **event of default** or, in the case of an **event of default** under clause 14.41(1)(b) in respect of which there is an unresolved invoice dispute under clause 14.25, has not reached an agreement with the **Authority** to resolve the **event of default**; and

(b) the defaulting **trader** or defaulting **retailer** continues to have 1 or more contracts under which a customer of the defaulting **trader** or defaulting **retailer** purchases **electricity** from the defaulting **trader** or the defaulting **retailer** or the defaulting **trader** is still recorded in the **registry** as being responsible for 1 or more **ICPs**.

(2) The **Authority** may—

(a) exercise its right under a contract under which a customer purchases **electricity** from the defaulting **trader** or defaulting **retailer** to assign the rights and obligations of the defaulting **trader** or defaulting **retailer** under the contract to a recipient **trader** in accordance with the contract; and

(b) assign an **ICP** to a recipient **trader** and direct the **registry manager** to amend the record in the **registry** so that the recipient **trader** is recorded as being responsible for the **ICP**; and

(c) specify the recipient **trader** to whom the rights and obligations under the contract or the **ICP** will be assigned.

(2A) When determining an assignment under subclause (2), the **Authority** may do 1 or both of the following:

(a) exercise its discretion to determine the recipient **trader** without going through a tender or other competitive process:

(b) undertake a tender or other competitive process to determine the recipient **trader**.

(3) The **Authority** must, by notice in writing to each recipient **trader**, direct the recipient **trader** to accept an assignment under subclause (2).

(4) Before the **Authority** gives notice to a recipient **trader** under subclause (3), the **Authority** may decide not to assign rights and obligations of the defaulting **trader** or defaulting **retailer** under a contract or an **ICP** to a recipient **trader** if the recipient trader satisfies the **Authority** that the assignment would pose a serious threat to the financial viability of the recipient **trader**.

(5) A recipient **trader** must comply with a direction given to it under subclause (3).

(6) The **registry manager** must comply with a direction given to it under subclause (2).

(7) Before the **Authority** exercises its right to assign rights and obligations or an **ICP** under subclause (2), the **Authority** must, if the **Authority** considers it is practicable, consult with the defaulting **trader** or defaulting **retailer** as to the need for the notice.

Part 14

Clearing and Settlement

14.34A Payment of residual funds from operating accounts

(1) In this clause,—

(a) applicable period means the period from the last date the **clearing manager** determined the amount of residual funds to be paid to each **participant** under subclause (3), if applicable, up to the date the **clearing manager** determines the amount of residual funds to be paid to each **participant** under subclause (3):

(b) residual funds means any monies left in the **clearing manager's operating accounts** after all amounts owed by the **clearing manager** have been paid in accordance with this Part, less—

(i) any applicable deduction for tax purposes; and

(ii) any amounts that are allocated to be paid to **participants** in accordance with this Part that have not yet been paid; and

(iii) any amounts required to pay any bank fees due for the next two months for the **operating account**; and

(iv) any amounts required to maintain a positive balance in each **operating account** at a level that the **clearing manager** considers is reasonably prudent.

(2) The **clearing manager** may use monies in the **operating accounts**, that are not paid or due to be paid to **participants** in accordance with this Part, to pay any bank fees due or applicable tax owing for the **operating accounts**.

(3) The **clearing manager** will determine the amount of residual funds to be paid to each **participant** in accordance with subclause (4) as follows:

(a) by determining the amount of residual funds available in its **operating accounts**:

(b) by identifying the **participants** that ~~the~~ have paid the **clearing manager** ~~has paid~~ in accordance with ~~clause 14.20(2)(a),~~ clause 14.19(2)(a), other than **grid owners**, in the applicable period:

(c) by allocating the residual funds available to the **participants** identified under paragraph (b), in direct proportion to the amount ~~the **clearing manager**~~ each **participant** has paid ~~each **participant**~~ the **clearing manager** in the applicable period compared to the total amount ~~the **clearing manager**~~ all **participants** identified under paragraph (b) have ~~has~~ paid ~~all **participants**~~ the **clearing manager** in accordance with ~~clause 14.20(2)(a)~~ clause 14.19(2)(a)~~, other than **grid owners**,~~ in that period:

(d) by deducting, from any residual funds allocated to a defaulting **participant** under paragraph (c), any amount the **clearing manager** sets-off against the unpaid amount payable by the defaulting **participant** to the **clearing manager** under clause 14.44(1)(c):

(e) by rounding down the amount allocated to each **participant** to the nearest cent.

(4) At least once in each six-month period, but no later than 1600 hours on the final **business day** in the months of March and September, the **clearing manager** must—

(a) advise each **participant** that has paid the **clearing manager** ~~has paid~~ in accordance with clause 14.19(2)(a) ~~14.20(2)(a)~~ in the **applicable period**, other than **grid owners**, of the amount of residual funds to be paid to that **participant**, as determined under subclause (3); and

(b) pay the residual funds to each **participant** in accordance with subclause (3).

Part 14A

Prudential Requirements

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.

(d) if the **participant** is a **retailer**, any change to the number of **ICPs** the **retailer** is recorded in the **registry** as being responsible for, if that change will result in the **retailer**:

(i~~i~~) being responsible for 1,000 **ICPs** or fewer, if the **retailer's** post-default exit period is currently determined under clause 14A.22(4)(a)(ii); or

(ii) being responsible for more than 1,000 **ICPs**, if the **retailer's** post-default exit period is currently determined under clause 14A.22(4)(a)(i).

(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.

14A.22 Clearing manager to keep register of specific 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**:~~,—

(i) 14 **trading days** if the **retailer** is recorded in the **registry** as being responsible for 1,000 **ICPs** or fewer; or

(ii) 18 **trading days** if the **retailer** is recorded in the **registry** as being responsible for more than 1,000 **ICPs**:

(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 **trading days** set out in subclause (4) by giving 20 **business days'** notice to the **clearing manager**.

(6A) A **retailer** to whom subclause (4)(a)(i) applies may increase the post-default exit period to no more than 18 **trading days** 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.

(7A) The post-default exit period under subclause (4)(a)(i) takes effect 20 **business days** after the date a **retailer** advises the **clearing manager** that it is recorded in the **registry** as being responsible for 1,000 **ICPs** or fewer.

(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.