Electricity Industry Participation Code Amendment
(Retailer Default) 2025

Under section 38 of the Electricity Industry Act 2010, and having complied with section 39 of that Act, I make the following amendments to the Electricity Industry Participation Code 2010.

At Wellington on the ___14___ day of April 2025

Anna Kominik
Chair
Electricity Authority

Certified in order for signature:

Amy Williams
Senior Legal Counsel
Electricity Authority

Paul Comrie-Thomson
Partner
Cuncannon

10 April 2025

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Contents

Amendment

1   Title

This is the Electricity Industry Participation Code Amendment (Retailer Default) 2025.

2   Commencement
This amendment comes into force on 15 May 2025.

3   Code amended
This amendment amends the Electricity Industry Participation Code 2010.

4   Clause 1.1 amended (Interpretation)
(1)   In clause 1.1(1), revoke the definition of **serious financial breach**.
(2)   In clause 1.1(1), insert in their appropriate alphabetical order:
"**serious financial breach (distributor/trader)** means a failure by a **retailer**—
"(a)   to pay to a **distributor** an amount due and owing that exceeds the greater of $100,000 or 20% of the actual charges payable by the **retailer** for the previous month, unless the amount is genuinely disputed by the **retailer**; or
"(b)   to pay to a **distributor** 100% of the actual charges payable by the **retailer** for the previous two months, unless the amount is genuinely disputed by the **retailer**; or
"(c)   to comply with the prudential requirements under a **distributor agreement** between the **retailer** and a **distributor**

"**serious financial breach (trader/retailer)** means a failure by a **retailer**—
"(a)   to pay to a **trader** an amount due and owing that exceeds the greater of $100,000 or 20% of the actual charges payable by the **retailer** for the previous month, unless the amount is genuinely disputed by the **retailer**; or
"(b)   to pay to a **trader** 100% of the actual charges payable by the **retailer** for the previous two months, unless the amount is genuinely disputed by the **retailer**; or
"(c)   to comply with the prudential or security requirements under the agreement for the supply of **electricity** between the **retailer** and a **trader**".

5   Clause 11.1 amended (Contents of this Part)
(1)   In clause 11.1(g), replace "." with "; and".
(2)   After clause 11.1(g), insert:
"(h)   prevents **traders** from **electrically disconnecting** an **ICP** within 25 days of the termination of an agreement with a **retailer** relating to the supply of **electricity** at that **ICP**."

6   Clause 11.15B amended (Trader contracts with customers to permit assignment by Authority)
(1)   In the heading to clause 11.15B, after "Trader" insert "and retailer".
(2)   In clause 11.15B(1), replace "Each **trader** must at all times ensure that the terms of each contract under which a customer of the **trader** purchases **electricity** from the **trader** permit" with "Each **trader** or **retailer** must at all times ensure that the terms of each contract under which a customer of the **trader** or **retailer** purchases **electricity** from the **trader** or **retailer** permit".
(3)   Replace clause 11.15B(1)(a) with:
"(a)   the **Authority** to:
"(i)   assign the rights and obligations of the **trader** under the contract to another **trader** if the **trader** commits an **event of default** under paragraph (a) or (b) or (f) or (h) or (i) of clause 14.41(1); or
"(ii)   assign the rights and obligations of the **retailer** under the contract to a **trader** if the **retailer** commits an **event of default** under paragraph (j) of clause 14.41(1); and".

(4) Replace clause 11.15B(1)(d) with:
    "(d) the **trader** or **retailer** to provide information about the customer to the **Authority** and for the **Authority** to provide the information provided by:
        "(i) the **trader** to another **trader** if required under Schedule 11.5; or
        "(ii) the **retailer** to a **trader** if required under Schedule 11.5; and".

(5) Replace clause 11.15B(1)(e) with:
    "(e) the:
        "(i) **trader** to assign the rights and obligations of the **trader** to another **trader**; or
        "(ii) **retailer** to assign the rights and obligations of the **retailer** to a **trader**."

7 Clause 11.15C amended (Process for trader events of default)
(1) In the heading to clause 11.15C, after "trader" insert "or retailer".
(2) After clause 11.15C(1), insert:
    "(1A) This clause applies if the **Authority** is satisfied that a **retailer** has committed an **event of default** under paragraph (j) of clause 14.41(1)."
(3) Replace clause 11.15C(3) with:
    "(3) This clause ceases to apply, and the **Authority** and each **participant** must cease to comply with Schedule 11.5, if the **Authority** is advised under clause 14.41(2), 14.41(3), 14.43(3B), or 14.43(4A) that the relevant **participant** considers that the **event of default** has been remedied."

8 Clause 11.37 added (Restrictions on electrical disconnection)
(1) After clause 11.36 add the heading "*Restrictions on electrical disconnection*".
(2) After the heading, add the following clause:
    "**11.37 Restrictions on electrical disconnection**
    "(1) This clause applies if:
        "(a) a **retailer** has a contract to supply **electricity** to a **consumer** at an **ICP**; and
        "(b) the **retailer** is not the **trader** recorded in the **registry** as being responsible for the relevant **ICP** (the responsible **trader**).
    "(2) The responsible **trader** must not electrically disconnect the **ICP**:
        "(a) if its agreement with the **retailer** for the supply of **electricity** to the relevant **ICP** has not been terminated; or
        "(b) earlier than 25 days after the date the agreement for the supply of **electricity** to the relevant **ICP** is terminated if the responsible **trader** terminates its agreement with the **retailer** for the supply of **electricity** to the relevant **ICP** for **serious financial breach (trader/retailer)**."

9 Schedule 11.5 amended (Process for trader event of default)
(1) In the heading to Schedule 11.5, after "trader" insert "or retailer".
(2) In the heading to clause 2, after "trader" insert "or retailer".
(3) Replace clause 2(1) with:
    "(1) The **Authority** must give written notice to a defaulting **trader** or defaulting **retailer** who has committed an **event of default** of the kind referred to in clause 11.15C that—
        "(a) the defaulting **trader** or defaulting **retailer** must—
            "(i) remedy the **event of default**; or
            "(ii) for a **trader** that has committed an **event of default** under clause 14.41(1)(a) or (b) or (f) or (h) or (i), assign its rights and obligations under every contract under which a customer of the defaulting **trader** purchases **electricity** from the defaulting **trader** to another **trader**, and assign to

another **trader** all **ICPs** for which the defaulting **trader** is recorded in the **registry** as being responsible; or

"(iii) for a **retailer** that has committed an **event of default** under clause 14.41(1)(j), assign its rights and obligations under every contract under which a customer of the **retailer** purchases **electricity** from the **retailer** to a **trader**; and

"(b) if the defaulting **trader** or defaulting **retailer** does not comply with the requirements set out in paragraph (a) within 7 days of the notice, clause 4 will apply."

(4) Replace clause 2(2) with:

"(2) The **Authority** may give written notice to the defaulting **trader** or defaulting **retailer** requiring the defaulting **trader** or defaulting **retailer** to provide to the **Authority**, within a time specified by the **Authority**, information about the defaulting **trader's** or defaulting **retailer's** customers."

(5) In clause 2(3) after "**trader**" add "or defaulting **retailer**".

(6) After clause 2(3), add the following clause:

"**3A Authority may require notifying trader to provide information**

"(1) The **Authority** may, by notice in writing to the **trader** that notified the **Authority** under clause 14.41(1)(j), require the **trader** to provide to the **Authority** the information specified in the notice about the defaulting **retailer's ICPs** within the period specified in the notice.

"(2) If the **trader** holds the information, the **trader** must provide the information to the **Authority** within the time specified by the **Authority**."

(7) Replace clause 4 with:

"**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(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 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."

(8) Replace clause 5 with:

"**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),—

"(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(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 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."

10 **Clause 14.41 amended (Definition of an event of default)**

(1) In clause 14.41(1)(h) after "**serious financial breach**" add "**(distributor/trader)**".

(2) In clause 14.41(1)(i), replace "." with ":".

(3) After clause 14.41(1)(i), add the following clause:

"(j)   termination of a **trader's** agreement with a **retailer** for the supply of **electricity** at an **ICP** because of a **serious financial breach (trader/retailer)** if—

"(i)   the **retailer** continues to have a customer or customers purchasing **electricity** from the **retailer**; and

"(ii)   there are no unresolved disputes between the **trader** and the **retailer** in relation to the termination; and

"(iii)   the **trader** has not been able to remedy the situation in a reasonable time; and

"(iv)   the **trader** gives notice to the **Authority** that this subclause applies."

(4)   After clause 14.41(2), add the following clause:

"(3)   If a **trader**, having given notice under subclause (1)(j)(iv), considers that an **event of default** no longer exists, the **trader** must advise the **Authority** that it considers that the **event of default** has been remedied."

Explanatory Note

This note is not part of the amendment but is intended to indicate its general effect.

This amendment to the Electricity Industry Participation Code 2010 (Code) comes into force on 15 May 2025.

The amendment amends Parts 1, 11, and 14 the Code as part of the Authority's Code amendment omnibus number five by:

a.   introducing a "serious financial breach (trader/retailer)" provision, with similar thresholds to that of a distributor serious financial breach which would permit a trader to trigger the trader default process if a retailer defaults on its payments;

b.   introducing a prohibition on traders from disconnecting the retailer's customers prior to or during the trader default process;

c.   making certain consequential amendments, including to permit the Authority to issue appropriate notices to the defaulting retailer and to assign the defaulting retailer's contracts and any associated ICPs as part of the trader default process.