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Contact Officer: Sarah Proudfoot  
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Date: 6 May 2020

Mr John Pierce  
Chair – Australian Energy Market Commission  
PO Box A2449  
SYDNEY SOUTH NSW 1235

Dear Mr Pierce

### **Request for rule change – extension of time for retailers to pay networks**

The Australian Energy Regulator (AER) submits the attached rule change proposal to the Australian Energy Market Commission (AEMC).

The proposed rule would provide an extended due date for retailers to pay electricity network charges in respect of electricity hardship customers and customers on other forms of deferred payment arrangements. We propose the new rule would apply to network charges incurred from 1 July 2020 through to 31 December 2020. These arrangements would follow on from voluntary measures being offered under Energy Networks Australia's Network Relief Package (the package) for the June quarter, 2020.

We consider this rule is necessary to support retailers faced with potentially significant interruptions to their revenue streams as a result of the COVID-19 pandemic and related economic shut down. While we welcome the support offered by network businesses to date, we consider the current circumstances warrant support through to the end of 2020 at a minimum. We note also that we would encourage adoption in all relevant jurisdictions of the approach taken by Victorian network businesses to implementing the package for its duration.

The scale of disruption to customers' ability to pay electricity bills remains unclear. Based on anecdotal evidence, the situation appears to be worsening and increasing numbers of customers are seeking assistance from retailers. Our Statement of Expectations made clear that retailers should assist residential and small business customers by offering payment plans and not disconnect customers for non-payment.<sup>1</sup> As a consequence, retailers' cash flows are being adversely impacted. The Retailer of Last Resort (RoLR) mechanism is

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<sup>1</sup> AER, *Statement of Expectations of energy businesses: Protecting consumers and the energy market during COVID-19*, 27 March 2020.

designed to provide continuity of services to electricity consumers in the event of retailer failure under normal circumstances. However, we believe it is prudent to take considered and reasonable additional steps now in support of retailers to mitigate the risk of multiple retailer failure.

This rule change proposal is consistent with Prioritisation Objective 1 from the Joint Market Body Prioritisation Framework submitted to Minister Taylor on 9 April 2020,<sup>2</sup> specifically, an 'Urgent need to address an immediate issue arising from the impact of COVID-19.'

Criteria for Prioritisation Objective 1 are:

- there is a direct security impact needing to be addressed immediately and implemented in a 6 – 12 month period
- urgent policy issues relating to the impact of COVID-19 on consumers arise, including in relation to affordability, reliability, access to energy, safety and treatment of vulnerable customers
- measures are needed to support market participant resilience given the impact of COVID-19.

In my view this proposal to make a rule meets the criteria for Prioritisation Objective 1 in that it would support the resilience of retailers adversely affected by the COVID-19 pandemic and mitigate risk of financial contagion. Further, retaining existing levels of competition within retail electricity markets will provide longer term benefits for customers in the aftermath of COVID-19.

The proposed rule change preserves the existing allocation of risk between retailers and networks. For this reason the effect of our proposed rule is temporary and would not adversely affect networks in the long term.

As drafted, the proposed rule encompasses all retailers. Narrowing the scheme to only those retailers vulnerable to restricted cash flows would reduce the costs of the scheme. As time is short, I consider the AEMC rule change process is best placed to gather and assess alternative views about narrowing the scope of the scheme. It may be feasible to limit the scope of the proposed rule to smaller retailers and to exclude government owned retailers, for example. However, such restrictions should be based on analysis which we have not yet had the time to complete.

This rule change would result in networks incurring additional financing costs. There are a range of options for networks to recover these costs, assuming they decide to do so. The options include charging interest to retailers for deferred network charges or seeking to pass through costs under regulatory mechanisms. Alongside this work, we are currently considering the broader impacts of COVID-19 on the sector. We expect to propose another rule change providing for regulatory determinations materially affected by the pandemic to be reviewed and, where appropriate, amended. These options, amongst others, are canvassed in the rule change proposal.

We propose the scheme under this rule change may be extended for a further period subject to an administrative decision by the AER. We would be pleased to engage with the AEMC on the conditions under which that decision would be made and the potential criteria we would take into account.

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<sup>2</sup> AEMC, AEMO, AER, Letter: *Prioritising implementation timeframes: a more detailed view*, 9 April 2020.

We ask that this rule change proposal be administered as an urgent rule change. We intend this rule take effect from 1 July 2020.

Yours sincerely

A handwritten signature in black ink, appearing to be 'CS', with a long horizontal flourish extending to the right.

Clare Savage  
Chair

Sent by email on: 06.05.2020



# **RULE CHANGE PROPOSAL**

**Extension of time for retailers  
to pay network charges for  
eligible customers**

May 2020

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# 1 Request to make a Rule

## 1.1 Name and address of the person making the request

Australian Energy Regulator

GPO Box 520

Melbourne VIC 3001

AER contacts: Sarah Proudfoot 03 9290 6965

Moston Neck 07 3835 4669

## 1.2 Request to make an urgent rule

This is a request under section 92(1) of the new National Electricity Law for the making of a Rule. The AER requests that this rule change proposal be treated as an urgent Rule under National Electricity Law, clause 96(1)(c). We intend this rule change request take effect no later than 1 July 2020.

## 1.3 Document structure

This request to make a Rule is structured to address section 8(1) of the *National Electricity (SA) Regulations*. Section headings of this paper reflect 8(1)(a) to (e).

As required by section 8(2) of the *National Electricity (SA) Regulations* this request for the making of a Rule is made in writing.

## 2 Description of the proposed Rule<sup>1</sup>

Australia's response to the COVID-19 pandemic has resulted in many people losing some or all of their income. While the Government has taken steps to increase income support, it is clear many electricity customers are facing difficulties in paying their electricity bills. More than 20,000 electricity customers have registered for payment plans since early March 2020 and over a thousand customers per week are seeking assistance from retailers.

The AER's Statement of Expectations of energy businesses (SoE) outlines the support we expect energy retailers and distribution businesses to provide to customers during the COVID-19 pandemic. Specifically, we have encouraged retailers to provide payment plans and hardship arrangements, to residential and small business customers that require assistance and to deter retailers from disconnecting customers who may be in financial stress for non-payment of their electricity bills before 31 July 2020 and potentially beyond.

Notwithstanding any agreement for payment deferrals for customers in financial stress, the National Electricity Rules (NER) currently require retailers to make full payment of network charges as they fall due. The purpose of this rule change proposal is to alleviate cash flow pressure on electricity retailers. In particular, we are concerned that the COVID-19 pandemic could potentially undermine the operation of retail electricity markets leading to multiple retailer failures. We are mindful that the COVID-19 pandemic has created an unprecedented situation where retailers could be financially pressed between customers who are unable to pay their electricity bills, and the retailers' own obligations to pay wholesale and network energy charges. In these circumstances we consider it imperative that retailers do not bear the financial burden of COVID-19 alone.

Building on the voluntary measures undertaken by network businesses to assist retailers for the June quarter 2020, we are proposing a rule that will provide for retailers to pay some network charges incurred for the period of 1 July 2020 to 31 December 2020 on a deferred basis. The rule would apply to retailers with customers who are in financial stress as a result of the COVID-19 pandemic. Retailers would be able to defer charges for 6 months where the customer is subject to a **'COVID-19 customer arrangement'**, as defined in the draft rule. Customers in financial stress would include hardship customers, those on any payment plan or instalment arrangement, and those on any deferred debt arrangement entered into between 1 March 2020 and 31 December 2020.<sup>2</sup>

Retailers must normally pay network charges to distribution networks within 10 business days from the date of issue specified on a statement of charges. We propose network charges for customers on a COVID-19 customer arrangement be deferred by up to 6 calendar months. Network charge deferrals include distribution and transmission components. Distribution networks would in turn withhold a reasonable amount from transmission networks to account for transmission charge deferrals.

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<sup>1</sup> *National Electricity (SA) Regulations*, s. 8(1)(a).

<sup>2</sup> To be clear, a retailer must not defer network charges for anyone on a hardship plan prior to 1 March 2020.

Importantly, the proposed rule is not intended to remove the obligation on retailers to seek payment from retail customers. The direct beneficiaries of the proposed rule change are retailers that would effectively obtain a short term loan from networks by deferring payment of network charges for eligible customers for 6 months. At the end of that period, network charges in respect of eligible customers must be paid by retailers regardless of whether the customer has paid the retailer.

### **Key dates and possible extension**

We propose the rule change commence on or shortly after 1 July 2020. This would permit retailers to defer network charges payable for the period of 1 July 2020 to 31 December 2020, subject to eligibility, for up to 6 months. Retailers would be required to pay all deferred network charges by mid-2021.

In summary:

- The proposed rule would apply to network charges incurred by retailers for the period of 1 July 2020 to 31 December 2020.
- The measure established by the proposed rule relates to hardship customers, those on any payment plan or instalment arrangement, and those on any deferred debt arrangement, entered into or varied between 1 March 2020 and 31 December 2020.
- The measure established by this proposed rule does not relate to customers who became hardship customers before 1 March 2020 nor those who become hardship customers after 31 December 2020.
- This measure will cease for network charges incurred after 31 December 2020.
- Given the 6 month deferment for paying network charges in respect of eligible customers, the effects of the proposed rule will conclude 6 months after the invoicing of the October to December quarter 2020 network charges – we expect this to be July-August 2021.

While we propose to establish an end date for the effect of this mechanism, as above, we also propose to retain a degree of flexibility to extend its effect if necessary. To that end, we seek to establish in the NER that this rule may be extended for a further period subject to an administrative decision by the AER. We would be pleased to engage with the AEMC on the conditions under which that decision would be made and the potential criteria we would take into account.

### 3 Nature and scope of the issue and an explanation of how the proposed Rule would address it<sup>3</sup>

The COVID-19 pandemic and related economic shut down means electricity retailers operating in Australia's National Electricity Market (**NEM**) are facing an unprecedented systemic interruption to customers' ability to pay power bills. At the same time retailers are expected, at least in the short term, not to disconnect customers for non-payment. This creates for retailers the risk of incurring ongoing costs without matching revenue streams to meet those costs.

The regulatory framework under which retailers operate includes a mechanism to deal with retailer failure. The Retailer of Last Resort (**RoLR**) scheme provides for customers to transfer to another retailer in the event of retailer failure and so ensure continuity of supply to those customers.

While the RoLR mechanism will remain available if required, the scale of disruption to customers' ability to pay electricity bills remains unclear. Based on anecdotal evidence, the situation appears to be worsening and increasing numbers of customers are seeking assistance from retailers. Our Statement of Expectations made clear that retailers should assist residential and small business customers by offering payment plans and not disconnect customers for non-payment. As a consequence, retailers' cash flows are being adversely impacted. The RoLR mechanism is designed to provide continuity of services to electricity consumers in the event of retailer failure under normal circumstances. However, we believe it is prudent to take considered and reasonable additional steps now in support of retailers to mitigate the risk of multiple retailer failure.

We note also that in a RoLR event, while customers are likely to be transferred smoothly and without losing power, they are transferred onto the receiving retailer's standing offer, which will be the default market offer (**DMO**) tariff, and may be higher than they were paying the failed retailer. The consequences for customers, including reduced options and poor price/service outcomes, could worsen the financial effects of the COVID-19 pandemic. We note also how long it can take for some customers to access alternative retail offers from the market, potentially postponing their return to tariffs commensurate with their previous retail package. Consumer confidence in retail markets may therefore be damaged. This suggests a more permanent impact on the structure and stability of the NEM

We therefore consider it is prudent to take considered and reasonable steps now to mitigate risk of multiple retailer failures by providing some financial relief to retailers. While network businesses have voluntarily offered assistance to retailers in the current June quarter 2020, in our view support will be needed for the remainder of 2020, and potentially beyond. We consider this proposal to make a rule is an appropriate and measured response.

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<sup>3</sup> *National Electricity (SA) Regulations*, s. 8(1)(c).

## **Retailer eligibility**

A key question for this rule change is whether all retailers should be eligible for this support, or a sub-category only (and if the latter, how that group is identified).

We have drafted the rule change to include all NEM retailers. However, as the objective of the rule change is to prevent multiple retailer failure events, we consider there is potential merit in narrowing the application of the scheme to only those retailers facing financial stress. For example, the largest and most well established retailers, those with strong balance sheets, or perhaps those retailers owned by State governments, could be excluded from the scheme.

Further consultation should be undertaken to determine whether narrowing the application of the scheme is desirable and appropriate. We have given this issue some consideration in developing this rule change proposal and consider stakeholders will be better able to contribute through the rule change process than during the limited consultation we have been able to undertake in developing this proposed rule.

We note that in deciding this issue a range of considerations must be balanced. First, the severity of financial impacts on customers' ability to pay retail bills; this is currently unclear. Second, the financial positions of different categories of retailer and therefore their ability to manage revenue disruptions. Third, the impact on networks of disruptions to their revenue streams. And finally, the allocation of risk between retailers, networks and customers. We would like to work closely with the AEMC and other stakeholders through the consultation process to gather and assess appropriate information to inform a decision about the scope of this rule.

## 4 An explanation of how the proposed Rule will or is likely to contribute to the achievement of the national electricity objective<sup>4</sup>

The National Electricity Objective (**NEO**) as stated in the NEL is:

*“to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:*

- price, quality, safety and reliability and security of supply of electricity*
- the reliability, safety and security of the national electricity system.”*

The proposed rule will promote the reliability of the national electricity system by supporting the financial viability of retailers through the COVID-19 pandemic. This will contribute to the NEO by:

- mitigating the risk of multiple retailer failures, which could undermine the confidence and stability of the NEM for the duration of the COVID-19 pandemic.
- promoting retail competition and supporting continued retail competition at current levels within NEM retail markets.
- encouraging retailers to offer hardship arrangements to customers, especially those retailers under financial pressure as a result of the COVID-19 pandemic.

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<sup>4</sup> *National Electricity (SA) Regulations, s. 8(1)(d).*

## 5 An explanation of the expected benefits and costs of the proposed change and the potential impacts of the change on those likely to be affected<sup>5</sup>

In considering whether to intervene in the operation of retail electricity markets and networks' revenue streams, we have taken into account the allocation of risk between the retail and network sectors. Our network revenue determinations are undertaken on the basis of networks being exposed to a certain level of operational and financial risk. Retailers, on the other hand, generally operate in contestable markets and incorporate into their retail prices a margin reflecting the different level of risk they face in those markets.

### Impacts on networks

At the time of lodging this proposal to make a rule with the AEMC, the extent of COVID-19 impacts on customers' ability to pay retail electricity bills remains unclear. We expect it is significant. To date, retailers have reported tens of thousands of customers seeking deferred payment arrangements. While this has motivated our assessment of an appropriate and measured response, for networks this implies a potentially large temporary deferral of revenues under this proposed rule. It is, however, only a temporary deferral.

The impact of the proposed rule will be felt by networks in terms of their cash flow rather than their total earnings. The proposed rule will not change the total regulated revenues payable to networks. It does not change the allocation of risk between retailers and networks. Retailers remain responsible for managing the risk of customer default. Operation of the revenue cap form of control under which electricity networks are regulated will not be affected. Networks will remain entitled to recover the full amount of their regulated revenues as we have determined in our regulatory decisions.

Our analysis of the potential impacts of the proposed rule on network revenue streams has not been sufficient to make a decision on which retailers should be covered by this intervention. We propose that the eight weeks for the AEMC to make a determination on this proposal to make a rule, as an urgent rule change, be used to undertake additional analysis and consult with stakeholders on this issue. The broader the scope of the rule, the larger the impact on network revenue streams but the greater the level of support provided to the retail sector.

### Impacts on retailers

This proposal to make a rule would provide retailers with some financial relief. While the proposed rule will not alleviate retailers of their financial obligations to networks, it will better enable them to manage the current disruptions to their revenue streams.

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<sup>5</sup> *National Electricity (SA) Regulations*, s. 8(1)(e).

We anticipate that by the end of calendar 2020 the extent of the financial impacts of the COVID-19 pandemic and related economic shutdowns should be clearer. Our proposal to cease operation of the proposed rule on 31 December 2020 aligns with our expectations of when the scale of the financial impacts will be clearer.

For retailers, financial relief provided by this proposed rule will conclude mid-2021. That is, 6 months after network charges to 31 December 2020 are billed by networks to retailers. If the financial impact on retailers is not well controlled by late 2020, we may decide an extension of the assistance measures to retailers is required as outlined earlier.

## **Customers**

As this rule change is primarily concerned with the cash flows of retailers, the scheme has been designed to assist retailers rather than electricity customers. That is, the nature of the relationship between retailers and their customers should not be affected. However, retail electricity customers may indirectly benefit from the rule change to the extent that retailers under financial strain may be more able and therefore inclined to offer hardship assistance to their customers.

## **Cost recovery**

The costs of the rule change would initially be met by the networks, whose cash flows would be affected as retailers defer network charges. As noted above, we anticipate the deferrals will be repaid in due course by retailers but recognise network businesses would incur additional financing costs. The regulatory framework under which the networks operate allows them to recover their efficient costs, with different means by which that may be done. The options include:

1. Interest for late payment (default under current rules): networks could charge retailers for deferred network payments made after 10 business days at the default interest rate. Alternatively, a rate could be determined as part of this rule change that would be beneficial only to those retailers with higher financing costs. This approach could reduce deferrals by retailers with access to relatively low cost financing through parent companies (including State governments). Irrespective, either approach would result in costs being borne, eventually, by retailers that decide to defer network payments.
2. Cost pass through: the financing costs of deferrals could be passed through to network customers through existing cost pass through mechanisms. Our preliminary assessment is that the threshold may not be exceeded unless the impact on retailers is sustained and severe. However, we are developing an additional rule change proposal that could allow these costs to be recovered through network tariffs.

The objective of this rule change is to reduce the cash flow pressures on retailers while they provide deferred or extended payment arrangements and other assistance to customers experiencing financial stress. We recognise costs resulting from this rule change will be borne by all or a subset of networks or retailers, and ultimately their customers. However, we consider the longer term benefits of supporting consumer confidence and competition in energy markets, as well as the immediate benefits of the assistance currently available to customers, is particularly relevant at this time.

## 6B. Retail markets

### Part A Retail support

#### Division 1 Application and definitions

##### 6B.A1.1 Application of this Part

This Part:

- (a) applies to a *Distribution Network Service Provider* and a *retailer* who have *shared customers*; and
- (b) applies to the exclusion of Part J of Chapter 6 to a *Market Customer* who is a *retailer*; and
- (c) prevails over any inconsistent provisions in a distribution determination.

##### **6B.A1.1A Application of Division 4 of this Part**

Divisions 1, 2 and 3 of this Part are subject to the application of Division 4 of this Part.

##### 6B.A1.2 Definitions

In this Part:

**customer connection service** has the same meaning as in the *NERL*.

**date of issue** of a *statement of charges* means the date on which the *Distribution Network Service Provider* sends the statement to the *retailer*.

**default rate** means the *bank bill rate* (as in force from time to time) plus two percentage points per annum.

**due date for payment** means 10 *business days* from the *date of issue* specified on a *statement of charges*.

**network charges** means charges that a *Distribution Network Service Provider* is entitled to claim for *customer connection services* in respect of *shared customers* under these *Rules*.

**retail billing period** means a calendar month or any other period agreed between a *Distribution Network Service Provider* and a *retailer*.

**shared customer** has the same meaning as in the *NERL*.

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

#### Division 2 Billing and payment rules

##### 6B.A2.1 Obligation to pay

Subject to this Part, a *retailer* must pay to a *Distribution Network Service Provider* the *network charges* payable in respect of each *shared customer* by the *due date for payment*.

**Note:**

This clause is a conduct provision for the purpose of the NEL.

**6B.A2.2 Direct customer billing and energy-only contracts**

- (a) Where a *Distribution Network Service Provider* and a *shared customer* agree that the *customer* will be responsible for paying *network charges* directly to the *Distribution Network Service Provider* (a **direct billing arrangement**), the *Distribution Network Service Provider* may issue a bill to that *customer* for any or all of the *customer connection services* provided to that *customer's* premises.
- (b) The *Distribution Network Service Provider* must notify the *retailer* of the *direct* billing arrangement as soon as reasonably practicable after commencement of the agreement.
- (c) A *retailer* has no liability to pay *network charges* that have been, or are to be, billed to the *shared customer* under a *direct* billing arrangement.
- (d) Where a *retailer* and a *shared customer* enter into a contract for the sale of electricity only, the *retailer* must notify the relevant *Distribution Network Service Provider* as soon as reasonably practicable after commencement of the contract.

**6B.A2.3 Calculating network charges**

*Network charges* must be calculated in accordance with these *Rules* and a *Distribution Network Service Provider's* distribution determination.

**6B.A2.4 Statement of charges**

- (a) A *Distribution Network Service Provider* must provide a statement of *network charges* (a **statement of charges**) to a *retailer* as agreed between the parties but no later than the 10th *business day* of the *retail billing period* next following the *retail billing period* to which the charges relate.
- (b) The *statement of charges* must include:
  - (1) the *network charges*, separately identified, in respect of each *shared customer's* premises for which *metering data* was received, or a service request was completed, during that *retail billing period*;
  - (2) the *date of issue* of the *statement of charges*, and the *due date for payment*;
  - (3) where applicable, the *metering data* for each *shared customer's* premises;
  - (4) any adjustments to *network charges* from previous *retail billing periods*; and

**Note:**

See clause 6B.A3.1.

- (5) where applicable, any credits for GSL payments that the *Distribution Network Service Provider* is required to make in respect of a *shared customer's* premises.

- (c) Subject to these *Rules* and the *Retail Market Procedures*, the format of the *statement of charges* must be as agreed between the *retailer* and *Distribution Network Service Provider* or, in default of agreement, as reasonably determined by the *Distribution Network Service Provider*.
- (d) In this rule:
  - GSL payment** means a payment by a *Distribution Network Service Provider* in respect of non-compliance with a *distribution service* standard or *distribution reliability* standard.
  - service request** means a request by a *retailer* to a *Distribution Network Service Provider* for a *customer connection service*.

#### **6B.A2.5 Time and manner of payment**

- (a) Subject to clause 6B.A3.3(c), a *retailer* must, by the *due date for payment*, pay the full amount specified in a *statement of charges* without set-off.
- (b) Payment must be made into the *Distribution Network Service Provider's* nominated bank account.

### **Division 3 Matters incidental to billing and payment**

#### **6B.A3.1 Adjustment of network charges**

- (a) If a *retailer* is not permitted to recover *network charges* from a *shared customer* under the *NERL* or the *NERR*, then neither is the *Distribution Network Service Provider* permitted to recover those charges from the *retailer*.
- (b) Subject to paragraph (a), *network charges* contained in a *statement of charges* may be adjusted to account for any error in, or correction or substitution of:
  - (1) *metering data*; or
  - (2) any other amount or factor that affects the calculation of the *network charges*.
- (c) An adjustment under paragraph (b) may be made by a *Distribution Network Service Provider* by including, in a subsequent *statement of charges*, the amount required to be paid by, or credited to, the *retailer* together with an explanation of the adjustment.

**Note:**

See also clause 6B.A3.3.

#### **6B.A3.2 Tariff reassignment**

- (a) A *retailer*:
  - (1) must, if a *shared customer* informs the *retailer* of a *change* in use of electricity consumption at the *customer's* premises as a result of which the *retailer* reasonably considers that the existing tariff applying to the *customer* should no longer apply; and

- (2) may, for any other reason, but not more than once in any 12 *month* period in respect of the same premises,  
request the *Distribution Network Service Provider* to review the tariff to which the *customer* is assigned.
- (b) The request is to include:
  - (1) the reasons for the request; and
  - (2) any relevant information provided by the *customer*; and
  - (3) the tariff proposed by the *retailer*.
- (c) On receipt of the request, the *Distribution Network Service Provider* must decide whether the tariff should be *changed*.
- (d) The *Distribution Network Service Provider* must inform the *retailer* of its decision and, if the decision is not to *change* the tariff or to assign a tariff other than that proposed by the *retailer*, the *Distribution Network Service Provider* must also inform the *retailer* of its reasons for the decision.
- (e) If the *Distribution Network Service Provider* decides to *change* the tariff, it must make the *change* in accordance with:
  - (1) the requirements of the *NERL* and the *NERR*;
  - (2) any provisions of the *Distribution Network Service Provider's* distribution determination governing the assignment or re-assignment of *retail customers* to tariffs; and

**Note:**  
See clause 6.18.4.

  - (3) the *Rules* and the *Retail Market Procedures*.

### 6B.A3.3 Disputed statements of charges

If a *retailer* disputes an amount (the **disputed amount**) set out in a *statement of charges*, the following provisions apply:

- (a) The *retailer* must give written notice to the *Distribution Network Service Provider* of the disputed amount and the reasons for disputing payment.

**Note:**  
A *retailer* may also give notice pursuant to this clause if it seeks an adjustment under clause 6B.A3.1 or where it disputes an adjustment made under that clause.
- (b) Payment by the *retailer* of all or part of an amount set out in a *statement of charges* does not affect the right of the *retailer* to dispute the amount.
- (c) If the *retailer* has given notice under paragraph (a) and payment of the charges to which the statement relates has not yet been made, the *retailer* must pay the *Distribution Network Service Provider* by the *due date for payment* (unless the *Distribution Network Service Provider* agrees otherwise) the greater of:
  - (1) the undisputed component of the *statement of charges*; or
  - (2) 80% of the total amount due under the disputed *statement of charges*;

- (d) The *retailer* must, if the dispute is not resolved by agreement of the parties within 10 *business days* after the date the *retailer* gave notice under paragraph (a), immediately submit the dispute for resolution or determination in accordance with Chapter 8.
- (e) If the *retailer* fails to submit the dispute for resolution or determination in accordance with paragraph (d), the *Distribution Network Service Provider* may submit the dispute for resolution or determination in accordance with Chapter 8.
- (f) Subject to any determination of the *DRP*, if following resolution or determination of the dispute in accordance with Chapter 8, the amount due to the *Distribution Network Service Provider* is:
  - (1) more than the amount already paid by the *retailer*, the *retailer* must pay the difference to the *Distribution Network Service Provider* within 3 *business days* of the resolution or determination of the dispute, together with interest on the amount of the difference at the *default rate* for each *day* from the original *due date for payment* to the actual date of payment; or
  - (2) less than the amount already paid by the *retailer*, the *Distribution Network Service Provider* must pay the difference to the *retailer* within 3 *business days* of the resolution or determination of the dispute, together with interest on the amount of the difference at the *default rate* for each *day* from the date the *retailer* made the overpayment to the *Distribution Network Service Provider* to the actual date of repayment of the amount of the excess by the *Distribution Network Service Provider*.

#### 6B.A3.4 Interest

If requested, a *Distribution Network Service Provider* and a *retailer* must pay interest at the *default rate* on any amount due to the other under this Chapter that remains unpaid after the *due date for payment*, until the date on which that amount is paid in full.

#### 6B.A3.5 Notification of changes to charges

- (a) A *Distribution Network Service Provider* must notify a *retailer* of:
  - (1) any proposed *changes* in the *Distribution Network Service Provider's* price lists under Chapter 6 (**preliminary information**) no later than 2 *business days* after the date on which the *changes* are notified to the *AER* under these *Rules*; and
  - (2) any *changes* in the *Distribution Network Service Provider's* price lists approved by the *AER* no later than 2 *business days* after the date on which the *AER* notifies the *Distribution Network Service Provider* of the approval; and
  - (3) any *change* in the level of a *network charge* (other than a *network tariff*) as soon as reasonably practicable after the *Distribution Network Service Provider* becomes aware of that *change* and, if the *change* requires the approval of the *AER* under these *Rules*, no later than 2 *business days* after the *AER* advises the *Distribution Network Service*

*Provider that the change (or the resulting charge) is approved by the AER.*

- (b) *A retailer must treat preliminary information notified under paragraph (a)(1) as confidential information.*
- (c) *A Distribution Network Service Provider has no liability where proposed changes contained in preliminary information provided under paragraph (a)(1) are subsequently not approved, or are modified, by the AER.*

## **Division 4 Covid-19**

### **6B.A3.6 Application of this Division**

- (a) This Division applies to a Covid-19 customer arrangement entered into between a retailer and a shared customer.
- (b) This Division prevails over any inconsistent provisions in this Part.

### **6B.A3.7 Interpretation**

(a) In this Division, a **Covid-19 customer arrangement** means:

- (1) Any payment plan or instalment arrangement, within the meaning of the *National Energy Retail Law* or the *National Energy Retail Rules*;
- (2) Any arrangements for a *shared customer* of a *retailer* as a *hardship customer* of the *retailer*, within the meaning of the *National Energy Retail Law*; and
- (3) Any *deferred debt arrangement*;

entered into between a *shared customer* and a *retailer* in the period commencing 1 March 2020 and ending 31 December 2020.

(b) In this Division, a **deferred debt arrangement** means any arrangement by which the payment of a debt owed or expected to be owed by a *shared customer* to a *retailer* for the supply of energy is deferred.

### **6B.A3.8 Extended due date**

(a) If:

- (1) a *retailer* has entered into a *Covid-19 customer arrangement* with a *shared customer*; and
- (2) a *Distribution Network Service Provider* has provided a *statement of charges* to a *retailer* and the *statement of charges* includes *network charges* payable under clause 6B.A2.1 in respect of the *shared customer* for the period of 1 July 2020 to 31 December 2020 (or such further period as determined by the AER),

then, for the purposes of this Part, the *due date for payment* for the *network charges* payable in respect of the *shared customer* is to be taken to be 6 months from the *date of issue* specified on the *statement of charges*.

(b) The AER may determine a further period for the purposes of subclause (a)(2) provided:

- (1) the AER is satisfied that it is reasonably necessary in all the circumstances; and
- (2) the determination is made before the expiration of the period mentioned in that subclause.
- (c) If the AER determines a further period under subclause (b), it must make available on its website a notice of that further period as soon as practicable after making the determination.

## 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.B1.1A Application of Part A, Division 4

The *credit support* rules do not apply 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 Part A, Division 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 15 *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(a).
- (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.B2.1 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.....