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ELECTRICITY INDUSTRY ACT 2004

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**ELECTRICITY INDUSTRY  
(CUSTOMER TRANSFER)  
CODE 2016**

**ISSUED BY THE MINISTER**

I, Dr Mike Nahan, Minister for Energy for the State of Western Australia, under section 39(2a) of the *Electricity Industry Act 2004* hereby issue the *Code* contained in this instrument in respect of the matter specified in section 39(2)(b) of the Act, which may be cited as the “Electricity Industry (Customer Transfer) Code 2016”.

M. NAHAN.

Dated at Perth this 5th day of September 2016.

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## ELECTRICITY INDUSTRY ACT 2004

## ELECTRICITY INDUSTRY (CUSTOMER TRANSFER) CODE 2016

## PART 1—PRELIMINARY

## 1.1 Commencement

This *Code* comes into operation upon the earlier to occur of—

- (a) the commencement of regulations made under section 12 of the Act that prescribe this *Code* as a term or condition of a licence; or
- (b) the commencement of a determination by the *Authority* under section 11 of the Act that this *Code* is a term or condition of a licence.

## 1.2 Application

Subject to clause 1.2A, this *Code* applies to—

- (a) a *network operator* to the extent that a condition of a licence under Part 2 of the Act, or of an exemption order under section 8 of the Act, requires the *network operator* to comply with this *Code*; and
- (b) a *retailer* to the extent that a condition of a licence under Part 2 of the Act, or of an exemption order under section 8 of the Act, requires the *retailer* to comply with this *Code*; and
- (c) *AEMO*, to the extent that the *market rules* provide; and
- (d) the *Authority*.

## 1.2A Code does not apply during Supply of Last Resort event

This *Code* does not apply to the *transfer* of a *contestable customer* under a last resort supply plan.

{Note: At the time this *Code* was made, the expression “last resort supply plan” was defined in Part 5 of the Act, and refers to a plan for the supply of *electricity* to customers whose retailer’s licence is cancelled, expires without renewal or is surrendered.}

## 1.3 Definitions

“**access arrangement**” has the meaning given to it in the *Access Code*.

{Note: At the time this *Code* was made, the definition in the *Access Code* was—

“ ‘**access arrangement**’ means an arrangement for *access* to a *covered network* that has been *approved* by the *Authority* under this *Code*.”}

“**Access Code**” means the code made by the Minister under Part 8 of the Act.

{Note: At the time this *Code* was made, the *Access Code* was the *Electricity Networks Access Code 2004*.}

“**access contract**” means an agreement between a *network operator* and a person for the person to have ‘*access*’ (as defined in section 103 of the Act) to ‘*services*’ (as defined in section 103 of the Act) on a *network*.

{Note: The person who has the contract with the *network operator* is called a “*user*”.

{Note: At the time this *Code* was made, the definition of the expression “access contract” in this *Code* is broader than the definition of the same expression in the *Access Code*, because it is not limited to agreements entered into under the *Access Code*. The expression “access contract” in this *Code* is thus basically the same as the expression “*contract for services*” in the *Access Code*.}

“**actual value**” means *energy data* for a ‘*metering point*’ (as defined in the *metering code*) which has physically been read (or remotely collected by way of a ‘*communications link*’ or an ‘*automated meter reading system*’, both expressions as defined in the *metering code*) from the *meter* associated with the metering point, but does not include a ‘*deemed actual value*’ (as defined in the *metering code*).

{Note: A deemed actual value arises when the *meter* is destroyed or otherwise permanently unreadable. The *network operator* can designate an estimated or substituted value to be the deemed actual value, and from then on it may be used in place of an actual value. However, this *Code* does not permit *transfer* to occur on the basis of a deemed actual value.

“**AEMO**” means the Australian Energy Market Operator Limited (ACN 072 010 327).

“**arbitrator**” has the meaning given to it in the *Energy Arbitration and Review Act 1998*.

{Note: At the time this *Code* was made, it referred to the Western Australian Energy Disputes Arbitrator appointed under section 62 of that Act.}

“**associate**” has the meaning given to it in the *Access Code*.

{Note: At the time this *Code* was made, the definition in the *Access Code* was—

“ ‘**associate**’, in relation to a person and subject to section 13.2 (of the *Access Code*, which extends the meaning of ‘*associate*’ to include any *other business* of the *service provider*), has the meaning it would have

under Division 2 of Part 1.2 of the Corporations Act 2001 of the Commonwealth if sections 13, 16(2) and 17 of that Act were repealed, except that a person will not be considered to be an associate of a *service provider* solely because that person proposes to enter, or has entered, into a contract, arrangement or understanding with the *service provider* for the provision of a *covered service*.

At the time this *Code* was made the following are examples of persons who are associates of a body corporate under the Corporations Act 2001 of the Commonwealth—

- (a) a director or secretary of the body corporate; and
- (b) a related body corporate of the body corporate; and
- (c) another body corporate that can control or influence the composition of the board or the conduct of the affairs of a body corporate.

“**Authority**” means the Economic Regulation Authority established under the *Economic Regulation Authority Act 2003*.

“**bidirectional point**” means a *transmission connection* or a *distribution connection* on a *network*—

- (a) at which *electricity* is transferred out of the *network* for supply to a *contestable customer*; and
- (b) which is “subject to bi-directional electricity flows” under clause 3.3A of the *metering code*.

{Note: At the time this *Code* was made, clause 3.3A(3) of the *metering code* provided that—

“... a *metering point* is ‘**subject to bi-directional electricity flows**’ at a time, if any of the following apply at the time—

- (a) bi-directional *electricity* flows occur at the *metering point*; or
- (b) any *generating works* are installed at the *customer’s* premises without adequate equipment being installed to ensure that bi-directional *electricity* flows cannot occur at the *metering point*.”}

“**business day**” means any day that is not a Saturday, a Sunday or a public holiday in the relevant area.

“**charges**” means all charges payable by a *retailer* to a *network operator* or, if applicable, *AEMO* in connection with the transfer or supply of *electricity* at a *connection point*.

“**checksum**” means a single digit numeric identifier that is calculated to reduce the frequency of *NMI* data entry errors which cause *transfer* errors.

“**Code**” means this Electricity Industry (Customer Transfer) Code 2016.

“**communication rules**”, in relation to a *network operator* and its *network*, means the ‘communication rules’ in effect for the *network* under the *metering code* or if there are no communication rules in effect for the *network*, the arrangements in effect under the *metering code* for communications between the *network operator* and ‘code participants’ (as defined in the *metering code*).

“**contact details**” means the *notified electronic* communication address, *notified* facsimile number, *notified* postal address and *notified* telephone number of a *network operator* or *retailer*, as applicable.

“**contestable**”, in relation to a *customer*, means a *customer* to whom the supply of *electricity* is not restricted under section 54 of the *Electricity Corporations Act 2005* or under another enactment dealing with the progressive introduction of *customer* contestability.

{Note: At the time this *Code* was made, the relevant instrument under section 54 of the *Electricity Corporations Act 2005* was the *Electricity Corporations (Prescribed Customers) Order 2007*, gazetted 29 June 2007.}

“**connection point**” means—

- (a) an *exit point*; or
- (b) a *bidirectional point*.

“**CTR**” or “**customer transfer request**” means a request by a *retailer* to a *network operator* made using the form published under clause 4.1 to transfer a *contestable customer* at a *connection point* in the *network operator’s network* from one *retailer* to another.

“**current retailer**”, in relation to a *CTR*, means the *retailer* currently supplying the *contestable customer*.

“**customer**” has the meaning given in section 3 of the Act.

{Note: At the time this *Code* was made, the definition in section 3 of the Act was—

“ ‘**customer**’ means a person to whom *electricity* is sold for the purpose of consumption.”}

“**data**” means *historical consumption data* or *standing data*, as applicable.

“**data request**” means a *request for historical consumption data* or a *request for standing data*, as applicable.

“**data request form**” means a *request for historical consumption data* form or a *request for standing data* form, as applicable, published by the *network operator* under clause 3.1(1).

“**dispute**” has the meaning given to it in clause 7.1(1).

“**disputing party**” has the meaning given to it in clause 7.1(1).

“**distribution connection**” means a point at which *electricity* is transferred to or from the *distribution system*.

“**distribution system**” has the meaning given to it in the Act.

{Note: At the time this *Code* was made, the definition in the Act was—

“ ‘**distribution system**’ means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of *electricity* at nominal voltages of less than 66kv.”}

“**electricity**” has the meaning given to it in the Act.

{Note: At the time this *Code* was made, the definition in the Act was—

“ ‘**electricity**’ includes electrical energy of any kind however produced, stored, transported or consumed.”}

“**electronic**”, in relation to a *notice*, means a communication of information by means of guided or unguided electromagnetic energy, or both, by way of packet transfer between and within computer networks using the TCP/IP or other widely-accepted protocol for packet transfer.

“**erroneous transfer**” is a *transfer* that was made without the *verifiable consent* of the *contestable customer* that was *transferred*.

{Note: For example, a *transfer* to the wrong *retailer* or a *transfer* of the wrong *contestable customer*.}

“**exit point**”

(a) in relation to a ‘covered network’ (as defined in the *Access Code*)—has the meaning given to it in the *Access Code*; and

(b) otherwise—means a *transmission connection* or a *distribution connection* on a *network* at which *electricity* is more likely to be transferred out of the *network* than transferred into the *network*, but does not include a point at which *electricity* is transferred between the *transmission system* and the *distribution system*.

{Note: At the time this *Code* was made, the definition in the *Access Code* was—

“ ‘**exit point**’ means a point on a *covered network* identified as such in a *contract for services* at which, subject to the *contract for services*, *electricity* is more likely to be transferred out of the *network* than transferred into the *network*.”}

“**good electricity industry practice**” means the exercise of that degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably and ordinarily exercise under comparable conditions and circumstances consistent with applicable laws and applicable recognised codes, standards and guidelines.

“**historical consumption data**”, in relation to a *contestable customer*, means the metering data of the type set out in clause A4.2 of Annex 4 for the *contestable customer*.

“**incoming retailer**”, in relation to a *CTR* or *transfer*, means the *retailer* that will supply a *contestable customer* after the *transfer time*.

“**interval meter**” means an *electricity* meter that records *electricity* consumption at regular time intervals of no more than half an hour.

“**market rules**” has the meaning given to it in the Act.

{Note: At the time this *Code* was made, the definition of the Act was—

“ ‘**market rules**’ has the meaning given in section 123(1).”

At the time this *Code* was made section 123(1) of the Act read—

“Without limiting section 122, the regulations are to provide for there to be rules (the “**market rules**”) relating to the market and to the operation of the South West interconnected system setting out or dealing with such matters as are prescribed by the regulations.”}

“**meter**”, in relation to a *contestable customer* at a *connection point*, means the meter or meters at or about the *connection point* used to measure the supply of *electricity* to the *contestable customer*.

“**metering code**” means a code in relation to the matters in section 39(2)(a), made by the *Authority* under section 39(2) or the Minister under section 39(2a) of the Act.

“**metropolitan area**” means—

- (a) the region described in Schedule 3 of the *Planning and Development Act 2005*; and
- (b) the local government district of Mandurah; and
- (c) the local government district of Murray; and
- (d) the town sites, as constituted under section 26 of the *Land Administration Act 1997*, of—
  - (i) Albany;
  - (ii) Bunbury;
  - (iii) Geraldton;
  - (iv) Kalgoorlie;
  - (v) Karratha;
  - (vi) Port Hedland; and
  - (vii) South Hedland.

“**network**” means the *transmission system*, *distribution system* or both, as applicable, operated by the *network operator*.

“**network operator**” means a person who holds (or but for an exemption order under section 8 of the Act would be required by section 7 of the Act to hold) a distribution licence, integrated regional licence or transmission licence under Part 2 of the Act, and if any enactment has the effect of deeming the relevant licence to be held by a part of the person, then that part.

“**NMI**” or “**national meter identifier**” means the national meter identifier assigned to a *connection point*.

“**nominated transfer date**” has the meaning given to it in clause 4.7.

“**notice**” means a notice or other communication in *writing* under Part 6 and includes a *data request* or a *CTR*.

“**notified**”, in relation to a telephone number, postal address, facsimile number or *electronic communication address*, means *notified* under Part 6.

“**notify**” means to give a *notice*.

“**objection**” means a *network operator’s* objection to a *CTR* under Part 4.

“**previous retailer**”, in relation to a *transfer*, means the *retailer* that supplied the *contestable customer* before the *transfer time*.

“**publish**” has the meaning given to it in clause 1.6.

“**registered retailer**” means—

- (a) a *retailer* who has an *access contract*; and
- (b) a *retailer* or prospective *retailer* who has *notified* the *network operator* that it wishes to receive *notices* of things *published* by the *network operator* under this *Code*.

“**request for historical consumption data**” means a request for *historical consumption data* made by a *retailer* to a *network operator* under Part 3.

“**request for standing data**” means a request for *standing data* made by a *retailer* to a *network operator* under Part 3.

“**retailer**” means a person who holds (or but for an exemption order under section 8 of the Act would be required by section 7 of the Act to hold) a retail licence or integrated regional licence under Part 2 of the Act, and if any enactment has the effect of deeming the relevant licence to be held by a part of the person, then that part.

“**standing data**”, in relation to a *contestable customer*, means the standing data of the type set out in clause A4.1 of Annex 4 for the *contestable customer*.

“**trading day**” has the meaning given to it in the *market rules*.

{Note: At the time this *Code* was made, the definition in the *market rules* was—

“**trading day**’ A period of 24 hours commencing at 8 AM on any day after Energy Market Commencement, except where *AEMO* declares that part of a Trading Day is to be treated as a full Trading Day under clause 9.1.1, in which case that part is a Trading Day.”}

“**transfer**” means a transfer from one *retailer* to another under this *Code* of rights and obligations at a *connection point* in connection with the supply of *electricity* to a *contestable customer*.

“**transfer date**” means the date on which a *transfer* occurs under, as applicable, clauses 4.11(2), 4.11(3)(c) and 4.11(4).

“**transfer time**” means the time on which a *transfer* occurs under, as applicable, clauses 4.11(2), 4.11(3)(c) and 4.11(4).

“**transmission connection**” means a point at which *electricity* is transferred to or from the *transmission system*.

“**transmission system**” has the meaning given to it in the Act.

{Note: At the time this *Code* was made, the definition in the Act was—

“**transmission system**’ means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of 66kv or higher.”}

“**valid**”—

- (a) in relation to a *data request* means, subject to clauses 3.4(2) and 3.7(4), that the *data request* is complete and contains correct information; and
- (b) in relation to a *CTR* means, subject to clause 4.9(5), that the *CTR* has not been subject to an *objection* by the *network operator* under clauses 4.9(1) and 4.9(3).

“**verifiable consent**”, in relation to a *request for historical consumption data* or a *CTR*, means consent that is given by a *contestable customer*—

- (a) expressly; and
- (b) either—
  - (i) orally, if the oral consent is evidenced in such a way that it can be verified and made the subject of a record under clause 3.9(4); or
  - (ii) in *writing*; and
- (c) after the *retailer* obtaining the consent has in plain language appropriate to the *contestable customer* disclosed all matters materially relevant to the giving of the consent, including each specific purpose for which the consent will be used; and
- (d) by a person whom a *retailer* (acting reasonably) would consider competent to give consent on the *contestable customer’s* behalf; and
- (e) which has not expired under clause 1.5.

“**writing**” includes any electronic form capable of being reduced to paper form by being printed.

#### 1.4 Interpretation

(1) Unless the contrary intention is apparent—

- (a) The *Interpretation Act 1984* applies to the interpretation of this *Code*.
- (b) A reference in this *Code* to a document or a provision of a document includes an amendment or supplement to, or replacement of or novation of, the document or provision.
- (c) A reference in this *Code* to a person includes the person’s executors, administrators, successors, substitutes and permitted assigns.



- (d) Where italic typeface has been applied to some words and expressions in this *Code*, it is solely to indicate that those words or expressions may be defined in clause 1.3 or elsewhere, and in interpreting this *Code* the fact that italic typeface has or has not been applied to a word or expression is to be disregarded. Nothing in this clause 1.4(1)(d) limits the application of clause 1.3.
  - (e) Where information in this *Code* is set out in braces (namely “{” and “}”), whether or not preceded by the expression “Note”, “Outline” or “Example”, the information—
    - (i) is provided for information only and does not form part of this *Code*; and
    - (ii) is to be disregarded in interpreting this *Code*; and
    - (iii) might not reflect amendments to this *Code* or other documents or written laws.
  - (f) **“Including”** and similar expressions are not words of limitation in this *Code*.
- (2) In this *Code*—
- (a) a reference to a *contestable customer’s connection point* is a reference to the *connection point* on the *network operator’s network* that is used for the supply of *electricity* to the *contestable customer*; and
  - (b) a reference to a *contestable customer’s meter* is a reference to a *meter* at the *contestable customer’s connection point*; and
  - (c) a reference to a *contestable customer’s data* is a reference to the *data* relating to the *contestable customer*; and
  - (d) a reference to a *contestable customer’s NMI* and *checksum* is a reference to the *NMI* and *checksum* assigned by a *network operator* to the *contestable customer’s connection point*.

### 1.5 Expiry of verifiable consent

*Verifiable consent* expires at the earlier of—

- (a) the time that either, as applicable, the *historical consumption data* is provided or the *transfer* occurs; or
- (b) the time specified in or ascertainable from the *verifiable consent* as the time of expiry of the *verifiable consent*; or
- (c) the first anniversary of the date the *verifiable consent* was first given.

### 1.6 Meaning of ‘publish’

If the *network operator* is required to **“publish”** a thing, the *network operator* must—

- (a) place the thing upon an internet website under the *network operator’s* control, and retain it there until the later of—
  - (i) the time the person ceases to be a *network operator* for the purposes of this *Code*; or
  - (ii) the 7th anniversary of its being placed on the website; and
- (b) send an *electronic notice* to each *registered retailer* advising the *registered retailer* that the thing has been placed on the internet website; and
- (c) make available a hard copy of the thing for inspection by the public, without cost, during normal office hours at its principal place of business in Western Australia; and
- (d) if reasonably requested by a person, make available within a reasonable time frame, and at a reasonable cost to the person (which cost is limited to the *network operator’s* direct costs and is to exclude any allowance for overheads and profit margin), a hard copy of the thing for removal from its principal place of business.

## PART 2—OBJECTIVES

### 2.1 Objectives

(1) The objectives of this *Code* are to—

- (a) set out rules for the provision of information relating to *contestable customers* and the process for *transferring contestable customers* from one *retailer* to another *retailer* in order to promote retail competition; and
- (b) protect the interests of *contestable customers* by ensuring that a *contestable customer’s verifiable consent* is obtained before—
  - (i) a *retailer* may request the *contestable customer’s historical consumption data*; or
  - (ii) a *transfer* of that *contestable customer* may proceed;
 and
- (c) specify the responsibilities and obligations of *retailers* and *network operators* in processing and implementing the *transfer* of a *contestable customer*.

(2) A *retailer*, a *network operator* and, if applicable, *AEMO* must have regard to the objectives of this *Code* when acting under this *Code*, whether or not the provision under which they are acting refers expressly to the objectives of this *Code*.

### 2.2 Network operator must treat retailers at arms-length

(1) A *network operator*—

- (a) must treat all *retailers* which are its *associates* on an arms-length basis; and

- (b) without limiting clause 2.2(1)(a), must ensure that no *retailer* which is its associate receives a benefit in respect of this *Code*, unless either—
- (i) the benefit is attributable to an arms' length application of this *Code* to the *retailer*; or
  - (ii) the *network operator* also makes the benefit available to all other *retailers*.

(1A) Clause 2.2(1) does not apply in respect of a *network*, while there is no more than one *retailer* on the *network*.

(2) Subject to—

- (a) the 'ringfencing objectives' (as defined in the *Access Code*) and any 'ringfencing rules' (as defined in the *Access Code*) made under the *Access Code*; and
- (b) any regulations made under section 62 of the *Electricity Corporations Act 2005*;

if the *network operator* is an 'integrated provider' (as defined in the *Access Code*), a reference in clause 2.2(1) to an *associate* of the *network operator* does not include the integrated provider.

### 2.3 Network operator must publish performance information annually

(1) A *network operator* must—

- (a) for the year ending on each 30 June, prepare a report setting out the information specified by the *Authority*; and
- (b) give a copy of the report to the Minister and the *Authority*, not less than 5 *business days* before it is *published* under clause 2.3(1)(c); and
- (c) *publish* the report in accordance with clauses 1.6 and 2.3(2).

(2) The *Authority* may determine the manner and form of a report under clause 2.3(1), and the dates on or before which it is to be submitted and *published*.

## PART 3—INFORMATION PROVISION

{*Outline: This Part—*

- *establishes the processes through which retailers can obtain information from network operators to assist them in providing quotations for the supply of electricity to contestable customers; and*
- *outlines obligations of retailers and network operators in requesting and providing this information; and*
- *ensures that contestable customers' historical consumption data is only provided to retailers with the verifiable consent of the contestable customer to the provision of the data.*}

### 3.1 Forms for data requests

(1) A *network operator* must *publish*—

- (a) a *request for standing data* form, which must comply with Annex 1; and
- (b) a *request for historical consumption data* form, which must comply with Annex 2.

(2) A *network operator* may from time to time *publish* an amended *data request form*, provided that the amended *data request form* complies with Annex 1 or Annex 2, as applicable.

### 3.2 Retailer may submit data request

(1) A *retailer* may request *data* in relation to a *contestable customer* from a *network operator* by completing a *data request form* and submitting it to the *network operator* under clause 3.4.

(2) Unless otherwise agreed between the *network operator* and the *retailer*, a separate *data request* must be submitted for each *connection point*.

### 3.3 NMI discovery

Annex 5 has effect.

### 3.4 Submitting a data request

(1) Unless otherwise agreed with a *network operator*, a *retailer*—

- (a) must submit a *data request* to the *network operator* *electronically*; and
- (b) must not submit to a *network operator* in a *business day*—
  - (i) more than 100 *requests for standing data*; and
  - (ii) more than 100 *requests for historical consumption data*.

(2) If on a *business day* a *retailer* has already submitted the maximum number of a type of *data request* permitted under clause 3.4(1)(b), then (unless the *network operator* and *retailer* agree otherwise) any further *data requests* of that type submitted by the *retailer* to the *network operator* on that *business day* are not *valid*.

### 3.5 Verifiable consent required for historical consumption data

(1) By submitting a *request for historical consumption data*, a *retailer* represents and warrants that it has the *contestable customer's verifiable consent* to obtain the *historical consumption data*.

(2) The *retailer* makes the representation and warranty in clause 3.5(1) on each day until the *network operator* provides the *historical consumption data*.

(3) If the *contestable customer's verifiable consent* ceases to apply before the *network operator* provides the *historical consumption data*, the *retailer* must withdraw the *request for historical consumption data* under clause 3.6.

{*Example: The verifiable consent of the contestable customer ceases to apply if it is withdrawn by the contestable customer.*}

(4) A *breach* of the representation and warranty in clause 3.5(1) is a breach of this *Code*.

{Note: If this *Code* is being applied as a licence condition under sections 11 or 12 of the Act, a breach of this *Code* will be a breach of the relevant licence.}

{Note: In addition to any sanctions for breach of licence, a person who breaches the representation and warranty in clause 3.5(1) may be liable in other ways for example misleading or deceptive conduct in breach of the *Competition and Consumer Act 2010* of the Commonwealth.}

### 3.6 Withdrawing a request for historical consumption data

(1) Unless otherwise agreed with the *network operator*, a *retailer* may *electronically notify* a *network operator* that it withdraws a *request for historical consumption data* submitted by it to the *network operator* at any time before the *network operator* provides the *historical consumption data*.

(2) The *retailer* must pay any reasonable costs incurred by the *network operator* for work performed in relation to the *request for historical consumption data* until the earlier of—

(a) the time the *network operator* receives and is reasonably able to act upon the *notification* under clause 3.6(1); and

(b) the end of the *business day* that the *network operator* receives the *notification* under clause 3.6(1).

(3) Subject to clause 3.5(2), if a *retailer* withdraws a *request for historical consumption data* under clause 3.6(1) the *request for historical consumption data* is of no effect.

### 3.7 Invalid data requests

(1) Subject to clause 3.7(3) and unless otherwise agreed with a *retailer*, a *network operator* must *electronically notify* a *retailer* if its *data request* is not *valid*.

(2) The *network operator* must comply with clause 3.7(1) within—

(a) if the *data request* is one of up to 10 *data requests* submitted by the *retailer* to the *network operator* on the same *business day*—1 *business day* after the *business day* on which the *network operator* received the *data request*; and

(b) if the *data request* is one of more than 10 *data requests* submitted by the *retailer* to the *network operator* on the same *business day*—2 *business days* after the *business day* on which the *network operator* received the *data request*.

(3) The *network operator* may make reasonable endeavours to resolve with the *retailer* any omissions or errors in a *data request* before *notifying* the *retailer* under clause 3.7(1).

(4) If under clause 3.7(3) the omissions or errors are successfully resolved, the *data request* is—

(a) *valid*; and

(b) taken to have been submitted at the time the omissions or errors were resolved.

(5) If a *network operator notifies* a *retailer* under clause 3.7(1) that a *data request* is not *valid*, the *data request* is of no effect.

### 3.8 Network operator's obligations following receipt of a valid data request

(1) Following receipt of a *valid data request*, the *network operator* must (subject to clause 3.8(3)) use all reasonable endeavours to provide the requested *data* to the *retailer*.

(2) The *network operator* must (subject to clause 3.8(3)) provide the requested *data* under clause 3.8(1) *electronically*, in accordance with the *communication rules*.

(3) If—

(a) a *retailer* submits a *data request* under clause 3.4; and

(b) the *network operator* has not allocated a *NMI* for the *contestable customer's connection point*; and

(c) the *network operator* is unable to determine a single *connection point* to which the *data request* relates,

then—

(d) the *network operator* must within 1 *business day* after receiving the *data request electronically notify* the *retailer* of the *connection points* to which it is most likely that the *data request* relates, up to a maximum of the 10 most likely *connection points*; and

(e) the *network operator* is not required to comply with clauses 3.8(1) and 3.8(2) in respect of the *data request*.

### 3.9 Retailer's obligations following receipt of data

(1) A *retailer* may use *data* relating to a *contestable customer* only for either or both of the following purposes—

(a) providing the *contestable customer* with a quotation for the supply of *electricity* by the *retailer* to the *contestable customer*; and

(b) initiating a *transfer* in relation to the *contestable customer*.

(2) Despite clause 3.9(1), unless otherwise requested by the *contestable customer* a *retailer* may aggregate a *contestable customer's historical consumption data* with other *contestable customers' historical consumption data*, and may use the aggregated data for internal business development purposes.

(3) A *retailer* must not disclose a *contestable customer's data* to any other person without the *verifiable consent* of the *contestable customer* except if—

- (a) the disclosure is made—
  - (i) to a employee, officer, agent, contractor, consultant or technical advisor of the *retailer* who agrees to be bound by the undertakings under this clause 3.8(3); and
  - (ii) for a purpose permitted by this clause 3.8(3);
- or
- (b) the disclosure is required or allowed under an enactment, or a court or tribunal constituted under an enactment which has jurisdiction over the *retailer*; or
- (c) the *data* has entered the public domain other than by breach of this clause 3.8(3).

(4) A *retailer* must keep a copy of a *verifiable consent* given to it by a *contestable customer* in relation to—

- (a) a *request for historical consumption data* made by it in relation to the *contestable customer*; and
- (b) a disclosure made by it to another party under clause 3.9(3) in relation to the *contestable customer*,

for 2 years after the date the *verifiable consent* was given.

### 3.10 Charges for standing data and historical consumption data

- (1) A *network operator* must not charge for the provision of *standing data*.
- (2) A *network operator* may charge for the provision of *historical consumption data* and the charge—
  - (a) if the *metering code* provides a means for determining the charge—is to be determined under the *metering code*; and
  - (b) if the *metering code* does not provide a means for determining the charge—is to be determined by agreement between the *network operator* and the *retailer*, and should reflect the reasonable cost incurred by the *network operator* in providing the *historical consumption data*.

## PART 4—TRANSFER OF CONTESTABLE CUSTOMERS

{Outline: This Part—

- establishes the processes through which a *contestable customer* can be transferred from one *retailer* to another *retailer*; and
- outlines the obligations of *retailers* and *network operators* in requesting and effecting the transfer of a *contestable customer*; and
- ensures that the transfer of a *contestable customer* only occurs with the *verifiable consent* of the *contestable customer*.}

### 4.1 Form for a CTR

- (1) A *network operator* must *publish* a *CTR* form, which must comply with Annex 3.
- (2) A *network operator* may from time to time *publish* an amended *CTR* form, provided that the amended *CTR* form complies with Annex 3.

### 4.2 Retailer may submit a CTR

- (1) A *retailer* may request that a *network operator* transfer a *contestable customer* to the *retailer* by submitting a *CTR* to the *network operator* under clause 4.5.
- (2) Unless otherwise agreed between the *network operator* and the *retailer* a separate *CTR* must be submitted for each *connection point*.

### 4.3 Reason for transfer

The reason specified in the *CTR* form for the *transfer* must be either—

- (a) to *transfer* a *contestable customer* to the *retailer* which submitted the *CTR*; or
- (b) to reverse an *erroneous transfer*.

### 4.4 Prerequisites to submitting a CTR

- (1) Unless the *CTR* is to reverse an *erroneous transfer*, a *retailer* may only submit a *CTR* if it has an *access contract* for the *network*.
- (2) If a *CTR* is to reverse an *erroneous transfer*, the *retailer* that submits the *CTR* must—
  - (a) ensure (if necessary in consultation with the *contestable customer*) that the *contestable customer* was *transferred* to it or from it, as applicable, in error; and
  - (b) if it is the *incoming retailer* with respect to the *erroneous transfer*—confirm (if necessary and if applicable in consultation with the *network operator*, *AEMO* and *contestable customer*) the identity of the *previous retailer* with respect to the *erroneous transfer*.

### 4.5 Submitting a CTR

- (1) Unless otherwise agreed with the relevant *network operator*, a *retailer*—
  - (a) must submit a *CTR* to the *network operator* *electronically*; and
  - (b) must not submit to a *network operator*—
    - (i) more than 20 *CTRs* in a *business day*; or
    - (ii) more than 20 *CTRs* with the same *nominated transfer date*.

(2) If on a *business day* a *retailer* has already submitted the maximum number of *CTRs* permitted under clause 4.5(1)(b)(i) then (unless the *network operator* and *retailer* agree otherwise) any further *CTRs* submitted by the *retailer* to the *network operator* on that *business day* are not *valid*.

(3) If a *retailer* has already submitted the maximum number of *CTRs* with the same *nominated transfer date* permitted under clause 4.5(1)(b)(ii), then (unless the *network operator* and *retailer* agree otherwise) any further *CTRs* with the same *nominated transfer date* submitted by the *retailer* to the *network operator* are not *valid*.

#### 4.6 Retailer's representations and warranties in relation to a CTR

(1) Unless the *CTR* is to reverse an *erroneous transfer*, by submitting a *CTR* to a *network operator* the *retailer* represents and warrants that—

- (a) it will assume the rights and obligations regarding the supply of *electricity* to the *contestable customer* that is the subject of the *CTR* from the *transfer time*; and
- (b) if the *retailer* requests in the *CTR* that a new *meter* be installed or the *transfer* of the *contestable customer* requires the installation of an *interval meter*—it will pay the costs of the installation, to be determined under the *metering code*; and
 

{Note: if a *retailer* requests that a new *meter* be installed in a *CTR*, as well as being a *CTR* for the purposes of Part 3 of this *Code*, the *CTR* will also constitute a 'metering service order' under the *metering code*.}
- (c) it has the *verifiable consent* of the *contestable customer* to effect the *transfer* to which the *CTR* relates.

(2) The *retailer* makes the representations and warranties in clause 4.6(1) on each day until the *transfer* occurs or the *CTR* is withdrawn under clause 4.8.

(3) If the *contestable customer's verifiable consent* ceases to apply before the *transfer* occurs, the *incoming retailer* must withdraw the *CTR* under clause 4.8.

{Example: The *verifiable consent* of the *contestable customer* ceases to apply if it is withdrawn by the *contestable customer*.}

(4) A breach of a representation and warranty in clause 4.6(1) is a breach of this *Code*.

{Note: If this *Code* is being applied as a licence condition under sections 11 or 12 of the Act, a breach of this *Code* will be a breach of the relevant licence.}

{Note: In addition to any sanctions for breach of licence, a person who breaches the representation and warranty in clause 4.6(1) may be liable for misleading or deceptive conduct in breach of the *Competition and Consumer Act 2010* of the Commonwealth.}

#### 4.7 Nominated transfer date

(1) Unless the *CTR* is to reverse an *erroneous transfer*, an *incoming retailer* must nominate a *transfer date* ("**nominated transfer date**"), which must be—

- (a) if the *connection point* is in a *metropolitan area*—
  - (i) if effecting the *transfer* requires a visit to the *contestable customer's* premises to read or change the *meter*—at least 8 *business days* after the date the *CTR* is submitted; and
  - (ii) otherwise—at least 3 *business days* after the date the *CTR* is submitted;
 and
- (b) if the *connection point* is not in a *metropolitan area*—
  - (i) if effecting the *transfer* requires a visit to the *contestable customer's* premises to read or change the *meter*—at least 15 *business days* after the date the *CTR* is submitted; and
  - (ii) otherwise—at least 5 *business days* after the date the *CTR* is submitted;
 and
- (c) in any case—no more than 50 *business days* after the date the *CTR* is submitted.

#### 4.8 Withdrawing a CTR

(1) Unless otherwise agreed with the *network operator*, a *retailer* may *electronically notify* a *network operator* that it withdraws a *CTR* submitted by it to the *network operator* at any time before the *transfer* occurs.

(2) The *retailer* must pay any reasonable costs incurred by the *network operator* for either or both of providing and installing a *meter* until the earlier of—

- (a) the time the *network operator* receives and is reasonably able to act upon the *notification* under clause 4.8(1); and
- (b) the end of the *business day* that the *network operator* receives the *notification* under clause 4.8(1).

(3) Subject to clause 4.8(2) if a *retailer* withdraws a *CTR* under clause 4.8(1), the *CTR* is of no effect.

#### 4.9 Objections to a CTR

(1) Subject to clause 4.9(4), a *network operator* must *object* to a *CTR* if one or more of the following applies—

- (a) the *retailer* does not comply with clause 4.4(1); or
- (b) information provided by the *retailer* in the *CTR* is inconsistent with the *network operator's* records in respect of the *contestable customer*; or

- (c) the *meter* type at the connection point is inconsistent with that required under a *metering code* before the *contestable customer* may transfer, and the *CTR* does not request a new *meter*; or
  - (d) the *nominated transfer date* does not comply with clause 4.7; or
  - (e) the *CTR* is not *valid* under clause 4.5(2) or 4.5(3).
- (2) A *network operator* must not otherwise *object* to a *CTR*.
- (3) If a *network operator* *objects* to a *CTR* under clause 4.9(1), it must within 2 *business days* after the *CTR* was submitted, give an *electronic notice* to the *retailer* which submitted the *CTR* which—
- (a) sets out all the reasons for the *objection*; and
  - (b) if clause 4.9(1)(a) applies—advises the *retailer* of the steps it needs to follow to enter into an *access contract*; and
  - (c) if clause 4.9(1)(b) applies—identifies the data that is inconsistent with the *network operator's* data; and
  - (d) if clause 4.9(1)(c) applies—advises the *retailer* of the *meter* change required under the *metering code* and gives an estimate of the likely costs of doing so; and
  - (e) if clause 4.9(1)(d) applies—advises the *retailer* why the *nominated transfer date* does not comply with clause 4.7.
- (4) A *network operator* may make reasonable endeavours to resolve with a *retailer* any potential grounds for *objection* prior to *objecting* to the *CTR*.
- (5) If under clause 4.9(4) the potential grounds for *objection* have been successfully resolved then, subject to clause 4.9(6), the *CTR* is—
- (a) *valid*; and
  - (b) taken to have been submitted at the time the potential *objection* was resolved.
- (6) If (due to the time taken to resolve potential grounds for *objection*) the operation of clause 4.9(5)(b) would result in the original *nominated transfer date* not complying with clause 4.7, then the resolution of the potential grounds for *objection* must include an agreement on a revised *nominated transfer date* which complies with clause 4.7.
- (7) If a *network operator* notifies a *retailer* of an *objection* to a *CTR* under clause 4.9(1), the *CTR* is of no effect.

#### 4.10 Network operator's obligations following receipt of a valid CTR

- (1) Following receipt of a *valid CTR*, but subject to clauses 4.10(2) and 4.10(3), the *network operator* must—
- (a) within 1 *business day* after it receives the *CTR*, *electronically notify* the *current retailer* of the *nominated transfer date*; and
  - (b) ensure that any new *meter* installation and new service installation required to effect the *transfer* is undertaken on or before the *nominated transfer date*; and
  - (c) ensure that either a scheduled meter read or a special meter read, as applicable, is conducted for the *contestable customer* on the *nominated transfer date*; and
  - (d) otherwise use all reasonable endeavours to effect the *transfer* under this Part 4.
- (2) If the *network operator* considers that it is unlikely to be able to meet the obligations under clause 4.10(1) within the timetable required under clause 4.10(1), then, subject to clause 4.10(3)—
- (a) the *network operator* must within 2 *business days* after receiving the *CTR* *electronically notify* the *retailer* which submitted the *CTR* of the reasons why the timetable will not be met and its proposed timetable for the *transfer*; and
  - (b) the *retailer* which submitted the *CTR* may agree to the *network operator's* proposed timetable for the *transfer*, in which case the agreed timetable applies; and
  - (c) if a timetable for the *transfer* agreed under clause 4.10(2)(b) involves a different *nominated transfer date*, the *network operator* must *electronically notify* the *current retailer* of the new *nominated transfer date* within 1 *business day* after agreement is reached under clause 4.10(2)(b); and
  - (d) if the *retailer* which submitted the *CTR* does not agree to the timetable proposed by the *network operator*, then the *network operator* must, acting in good faith and in accordance with *good electricity industry practice*, endeavour to enable the *transfer* to occur on the *retailer's* *nominated transfer date*.
- (3) If—
- (a) a *retailer* submits a *CTR* under clause 4.5; and
  - (b) the *network operator* has not allocated a *NMI* for the *contestable customer's* *connection point*; and
  - (c) the *network operator* is unable to determine a single *connection point* to which the *data request* relates,
- then—
- (d) the *network operator* must within 1 *business day* after receiving the *CTR* *electronically notify* the *retailer* of the *connection points* to which it is most likely that the *CTR* relates, up to a maximum of the 10 most likely *connection points*; and

- (e) the *network operator* is not required to comply with clauses 4.10(1) and 4.10(2) in respect of the *CTR*.
- (4) If a *current retailer* receives a *notice* under clause 4.10(1)(a) or 4.10(2)(c) in circumstances where clause 4.12(1)(a)(ii) applies, then the *current retailer* must promptly forward the *notice* to the other person referred to in clause 4.12(1)(a)(ii).

#### 4.11 The transfer

- (1) A *transfer* may only occur on a day on which an *actual value* is obtained from the *contestable customer's meter*.
- {Note: The actual read may comprise a special read or a scheduled read.}
- (2) If the *contestable customer's meter* is read on the *nominated transfer date*, the *transfer* occurs at the start of the *trading day* on the *nominated transfer date*.
- (3) If the *contestable customer's meter* is not read on the *nominated transfer date* then—
- (a) the *network operator* and the *incoming retailer* must work together to set a new *nominated transfer date* which (unless, subject to clause 4.7(c), the *incoming retailer* requests a later day) must be as close as practicable to the original *nominated transfer date*; and
  - (b) the *network operator* must within 1 *business day* after the *nominated transfer date* electronically notify the *current retailer*—
    - (i) that the *meter* was not read on the *nominated transfer date*; and
    - (ii) of the new *nominated transfer date* agreed between the *network operator* and *incoming retailer* under clause 4.11(3)(a);
- and
- (c) this clause 4.11 applies afresh in respect of the new *nominated transfer date* agreed between the *network operator* and *incoming retailer* under clause 4.11(3)(a).
- (4) If a *CTR* is to reverse an *erroneous transfer* then the *transfer* occurs at the start of the *trading day* on the date of the *erroneous transfer*.

#### 4.12 Effect of a transfer on an access contract

- {Note: The intention of this clause 4.12 is to—
- provide a mechanism for the *connection points* specified in a *retailer's access contract* to be automatically updated to accommodate a *transfer*; and
  - override any provisions in a *retailer's access contract* which act to hinder or frustrate the *transfer* or are otherwise inconsistent with the objectives of this *Code*; and
  - allow other provisions in a *retailer's access contract* which relate to the addition or removal of *connection points* to apply so long as these do not act to hinder or frustrate the *transfer*.}
- (1) On and from the *transfer time*—
- (a) if the person entitled under an *access contract* to transfer *electricity* from or to the *network* at the *contestable customer's connection point* is—
    - (i) the *previous retailer*—the *previous retailer's access contract* is by force of this *Code* amended to remove the *contestable customer's connection point*; or
    - (ii) a person other than the *previous retailer*—subject to clause 4.12(1A), the other person's *access contract* is by force of this *Code* amended to remove the *contestable customer's connection point*;
- and
- (b) the *incoming retailer's access contract* is by force of this *Code* amended to include the *contestable customer's connection point*.
- (1A) If immediately before the *transfer time* the *previous retailer* had a contract with more than one *direct customer* (where “**direct customer**” means a *customer* who is party to a contract with the *previous retailer* for the supply of *electricity* transferred through the *contestable customer's connection point*), then the amendment in clause 4.12(1)(a)(ii) does not take effect until each *direct customer* agrees in *writing* to the amendment.
- (2) Clause 4.12(1) applies despite any provision to the contrary in an access contract or, if applicable, an access arrangement, but if the access contract or access arrangement, provides a mechanism for, or consequence of, the operation of clause 4.12(1), then the mechanism or consequence continues to apply except to the extent that it—
- (a) hinders or frustrates the operation of clause 4.12(1); or
  - (b) is otherwise inconsistent with the objectives of this *Code* under clause 2.1.
- (3) The parties to the *access contract* must negotiate in good faith any necessary amendments to the *access contract* consequential to the amendments made by clause 4.12(1) and, if applicable, clause 4.12(2).
- (4) If the parties cannot agree amendments under clause 4.12(3) within 10 *business days* after the *transfer*, then—
- (a) Part 7 applies; and
  - (b) the *arbitrator* when acting under Part 7 in connection with this clause 4.12 must, to the extent practicable in the circumstances, apply the principles which would be applied by the ‘arbitrator’ (as defined in the *Access Code*) when arbitrating an ‘access dispute’ (as defined in the *Access Code*) under the *Access Code* in respect of the same subject matter.

#### 4.13 After the transfer

The *network operator* must within 2 *business days* after the *transfer date* give an *electronic notice* of the *transfer* and *transfer date* to—

- (a) the *incoming retailer*; and
- (b) the *previous retailer*; and
- (c) if applicable, *AEMO* for the purposes of allowing *AEMO* to meet its obligations under the *market rules*.

{Note: It is intended that the notice obligations under clause 4.13(c) and under the *market rules* may be satisfied by the same notice.}

#### 4.14 Settlement

Following a *transfer*, the *network operator* and, if applicable, *AEMO* must do all that is necessary to ensure that—

- (a) *charges* up to the *transfer time* are paid by or charged to the *previous retailer*; and
- (b) *charges* from the *transfer time* are paid by or charged to the *incoming retailer*.

#### 4.15 Rectifying an erroneous transfer

In relation to a *transfer* to reverse an *erroneous transfer*, all affected *retailers*, the *network operator* and, if applicable, *AEMO* must act in good faith to ensure that the rights and obligations of the affected *contestable customer* are as they would have been if the *erroneous transfer* had not occurred.

{Note: This clause 4.15 only applies to the rights and obligations of a *contestable customer* than has been *transferred* as a result of an *erroneous transfer*. It does not address the situation where a *contestable customer* should have been *transferred* but for some reason was not. In the latter case the prospective *incoming retailer* must submit a new *CTR* for the *contestable customer* under this Part 4.}

#### 4.16 Incoming retailer must retain copy of verifiable consent

Unless the *CTR* is to reverse an *erroneous transfer*, an *incoming retailer* must keep a copy of a *verifiable consent* given to it by a *contestable customer* in relation to the lodgement of the *CTR* for 2 years after the date the *verifiable consent* was given.

#### 4.17 Previous retailer must not bill past transfer time

Except in the case of an *erroneous transfer*, a *previous retailer* must not bill a *contestable customer* for *charges* incurred after the *transfer time*.

#### 4.18 Charges for metering services

If a *network operator* must provide a metering service in connection with a *CTR*, the *network operator* may charge the *retailer* which submitted the *CTR* for the metering service if it is permitted to do so by, and in accordance with, the *metering code*.

### PART 5—COMMUNICATION RULES

#### 5.1 [Deleted]

#### 5.2 Metering code's communication rules apply

A *network's communication rules* apply in respect of *data* and information communication between the *network operator* and a *retailer* under this *Code*.

### PART 6—NOTICES

#### 6.1 Requirements for valid notice

To be a valid *notice* under this *Code*, a notice or other communication must be given in *writing* in accordance with this Part 6 and—

- (a) by post, to the recipient's *notified* postal address; or
- (b) by facsimile, to the recipient's *notified* facsimile number; or
- (c) *electronically*, to the recipient's *notified electronic* communication address.

#### 6.2 Notices under Part 3 or Part 4 must identify connection point

A *notice* in relation to a *data request* or a *CTR* under Part 3 or Part 4 must identify the *connection point* to which it relates.

#### 6.3 Network operators

(1) A *network operator* must use reasonable endeavours to ensure that a *retailer* can give it a *notice* by each of the following means—

- (a) post; and
- (b) facsimile; and
- (c) *electronic* communication,

and the *network operator* must *notify* the *retailer* of a telephone number for voice communication in connection with this *Code*.

(2) A *network operator* must *notify* each *retailer* of its initial *contact details*, and of any change to its *contact details* at least 3 *business days* before the change takes effect.



(3) If a *retailer* has not provided the *network operator* with its *contact details*, then the *network operator* may comply with clause 6.3(2) in respect of the *retailer* by placing a reasonably prominent advertisement in a newspaper which has circulation throughout the State.

#### 6.4 Retailers

(1) If requested by a *network operator* with whom it has entered into an *access contract*, a *retailer* must *notify* its *contact details* to the *network operator* within 3 *business days* after the request.

(2) A *retailer* must *notify* any change to *contact details* it *notified* to a *network operator* under clause 6.4(1) at least 3 *business days* before the change takes effect.

#### 6.5 Receipt

(1) A *notice* sent by post within Australia is deemed to have been received by the intended recipient 3 *business days* after it was sent.

(2) A *notice* sent by facsimile transmission which is transmitted—

- (a) on or before 15:00 hours on a *business day* is deemed to have been received by the intended recipient on that *business day*; and
- (b) after 15:00 hours on a *business day*, or on a day which is not a *business day*, is deemed to have been received by the intended recipient on the first *business day* following the date of transmission,

provided that the sender of the *notice* is able to produce a transmission report produced by the machine from which the facsimile was sent showing successful uninterrupted facsimile transmission of all pages of the relevant *notice* to the facsimile number of the intended recipient.

(3) A *notice* sent *electronically* is deemed to have been received by the intended recipient in accordance with the *communication rules*.

#### 6.6 Electronic communication

If under this *Code* a *network operator* or *retailer* must or may send a thing *electronically*, the *network operator* or *retailer* must send that thing to the *network operator's notified electronic communication address* or *recipient's notified electronic communication address*, as applicable, in accordance with the *communication rules*.

### PART 7—DISPUTE RESOLUTION

#### 7.1 Dispute resolution procedures

(1) If any dispute or difference arises in respect of any matter under or in connection with this *Code* (“**dispute**”) between—

- (a) a *network operator* and a *retailer* or *retailers*; or
- (b) a *retailer* and another *retailer* or *retailers*; or
- (c) a *network operator* and *AEMO*; or
- (d) a *retailer* or *retailers* and *AEMO*,

(“**disputing parties**”)

then (subject to clause 7.2(3)) representatives of the *disputing parties* must meet within 5 *business days* after a request by any of the *disputing parties* and attempt to resolve the *dispute* by negotiations in good faith (“**representative negotiations**”).

(2) If the *representative negotiations* do not resolve the *dispute* within 10 *business days* after their first meeting, the *dispute* must (subject to clause 7.2(3)) be referred to the *senior executive officer* of each *disputing party* who must attempt to resolve the *dispute* by *negotiations* in good faith (“**CEO negotiations**”).

(3) If the *dispute* is resolved by *representative negotiations* or *CEO negotiations*, the *disputing parties* must

- (a) prepare a written record of the resolution and sign the record; and
- (b) adhere to the resolution.

#### 7.2 Referral of disputes to the arbitrator

(1) If a *dispute* is not resolved within 20 *business days* after the *dispute* is referred to *CEO negotiations*, then any *disputing party* may by *notice* to each other *disputing party* refer the *dispute* to the *arbitrator*.

(2) A *disputing party* may request the *arbitrator* to conduct a *dispute* resolution before *representative negotiations* or *CEO negotiations* if the *disputing party* considers that the *dispute* is of an urgent nature.

(3) The *arbitrator* may deal with any request under clause 7.2(2) in its absolute discretion.

(4) The *disputing party* referring the *dispute* to the *arbitrator* must give *notice* to the *arbitrator* of the nature of the *dispute*, including—

- (a) the breach, act, omission or other circumstance forming the basis for the *dispute*; and
- (b) the provision within this *Code* or other basis for the *dispute*.

### 7.3 Informality and expedition

(1) Subject to the rules of natural justice, the *arbitrator* must conduct a *dispute* resolution with as little formality and technicality, and with as much expedition, as the requirements of this Part 7, and a proper hearing and determination of the *dispute*, permit.

(2) The *disputing parties* must at all times conduct themselves in a manner which is directed towards achieving the objective in clause 7.3(1).

### 7.4 Arbitrator may determine own procedures

Subject to the rules of natural justice, the *arbitrator* may from time to time specify procedures (either of general application or in respect of all or some part of a particular *dispute*) for a *dispute* resolution including—

- (a) the manner of any submissions by the *disputing parties*; and
- (b) whether, and if so the extent to which, legal representation is permitted; and
- (c) regulating the conduct of the *disputing parties*.

### 7.5 Powers of the arbitrator

Subject to the rules of natural justice, the *arbitrator* may—

- (a) inform itself independently as to facts and if necessary technical matters to which the *dispute* relates; and
- (b) receive written submissions and sworn and unsworn written statements; and
- (c) consult with such other persons as the *arbitrator* thinks fit; and
- (d) take such measures as the *arbitrator* thinks fit to expedite the completion of the *dispute* resolution.

### 7.6 Orders which may be made

Subject to the Act and this *Code*, in determining a *dispute* the *arbitrator* may make any order which it considers expedient to justly dispose of the *dispute*.

### 7.7 Timing of dispute resolution

The *arbitrator* must make a determination of the *dispute* within 20 *business days* after its appointment or such further period as the *disputing parties* may agree. If any of the *disputing parties* considers that the *dispute* is of an urgent nature and needs to be resolved within a shorter period, then that *disputing party* may apply to the *arbitrator*, and the *arbitrator* may reduce the period of 20 *business days* to such lesser period as the *arbitrator* considers appropriate having regard to the interests of all *disputing parties* and this *Code*, being not less than 10 *business days*.

### 7.8 Written determination

The *arbitrator* must deliver a written determination which sets out the reasons for the determination and the findings of fact on which the determination is based.

### 7.9 Dispute resolution to be held in Perth

Unless the *disputing parties* agree otherwise, the *dispute* resolution must be held in Perth, Western Australia.

### 7.10 Arbitrator's finding is final

The findings of the *arbitrator* are final and binding on the *disputing parties*.

### 7.11 Costs of the arbitrator

(1) The *arbitrator* is, in relation to a *dispute*, entitled—

- (a) to be paid for his or her work at the rate provided for in his or her conditions of office under the *Energy Arbitration and Review Act 1998*; and
- (b) to be reimbursed any expenses reasonably incurred in connection with the *dispute*.

(2) The *arbitrator* may direct by whom and in what manner the whole or any part of the costs it is entitled to recover under clause 7.11(1) are to be paid.

### 7.11A Arbitrator may withhold determination until payment made

The *arbitrator* may refuse to communicate his or her determination to the *disputing parties*, either orally or in *writing*, until the *arbitrator* has been paid the amount he or she is entitled to under clause 7.11(1).

### 7.11B Costs of disputing parties

(1) Subject to clause 7.11B(2), *disputing parties* bear their own costs in relation to the resolution of a *dispute*.

(2) If the *arbitrator* is satisfied that a *disputing party* (“**first party**”) incurred costs in the resolution of a *dispute* because of frivolous or vexatious conduct of, or unfounded submissions by, another *disputing party* (“**second party**”), the *arbitrator* may determine that the *second party* must pay some or all of the *first party*'s costs.

(3) If the *arbitrator* makes a determination under clause 7.11B(2), the *arbitrator* must—

- (a) decide the amount of costs the *second party* must pay to the *first party*, and the date by which the payment must be made; and
- (b) give reasons for its decision; and
- (c) communicate the decision and reasons in *writing* to *disputing parties*.

### 7.12 Referral to the arbitrator does not affect the obligations of the parties

The referral of any matter to the *arbitrator* does not relieve any party from performing its obligations under this *Code* pending the determination of the *dispute*.

## PART 8—CODE AMENDMENT

### 8.1 Amendment & review

(1) The *Authority* on its own initiative or in response to a proposal by a *retailer*, *network operator* or other interested person may recommend to the Minister an amendment to this *Code*, if the *Authority* considers the proposed amendment would better achieve the objectives of this *Code* under Part 2.

(2) The *Authority* must *notify* all *retailers* and *network operators* if it proposes to recommend an amendment to this *Code*, and provide an explanation of why it considers the amendment will better achieve some or all of the objectives of this *Code* under Part 2.

(3) Unless the *Authority* is satisfied on reasonable grounds that an amendment is urgently required, the *Authority* must not recommend an amendment to this *Code* unless—

- (a) *retailers* and *network operators* have been given a reasonable opportunity to make representations to the *Authority* concerning the proposed amendment; and
- (b) the *Authority* has taken those representations into account.

(4) Before recommending an amendment to this *Code*, the *Authority* may also seek representations from other interested persons, and if it does so, the *Authority* must have regard to those representations.

### 8.2 Other amendments

Nothing in this Part 8 limits—

- (a) a person's ability to propose a *Code* amendment to the Minister; or
- (b) the Minister's discretion to propose, consider or make a *Code* amendment.

## PART 9—REPEAL OF *ELECTRICITY INDUSTRY CUSTOMER TRANSFER CODE 2004*

### 9.1 Repeal of *Electricity Industry Customer Transfer Code 2004*

The *Electricity Industry Customer Transfer Code 2004* is repealed.

### 9.2 References to *Electricity Industry Customer Transfer Code 2004*

(1) A reference in an instrument to the *Electricity Industry Customer Transfer Code 2004* should be read as a reference to this *Code*, unless—

- (a) if the instrument is a written law, the *Interpretation Act 1984* (WA) requires otherwise; or
- (b) if the instrument is not a written law—
  - (i) express provision is made to the contrary; or
  - (ii) the intention of the instrument, or something in the subject or context of the instrument, is inconsistent with such reading.

## ANNEX 1—REQUEST FOR STANDING DATA FORM

{See clause 3.1(a).}

A *network operator's request for standing data* form must require a *retailer* to provide the following information—

- (a) either or both of the name and, if applicable, identification number or code of the *retailer* submitting the *request for standing data*; and
- (b) either
  - (i) if the *network operator* has not allocated a *NMI* for the *connection point*—the *contestable customer's*—
    - A. lot number and, if applicable, unit number; and
    - B. street number; and
    - C. street; and
    - D. suburb,

or

- (ii) if the *network operator* has allocated a *NMI* for the *connection point*—the *contestable customer's NMI* and *checksum*.

{Note: Once a *connection point* has been assigned a *NMI*, all communication between the *network operator* and the *retailer* should be through reference to the *NMI* and the *checksum* associated with the *NMI*. This will reduce potential for errors. However, *NMIs* are not expected to be allocated to *connection points* until the implementation of the Metering Business System by Western Power. For this reason it is necessary to provide, as a transitional measure, for the *retailer* to provide the information outlined in Annex 1(b)(i) and equivalent provisions in the other Annexes.}

**ANNEX 2—REQUEST FOR HISTORICAL CONSUMPTION DATA FORM**

{See clause 3.1(1)(b).}

A *network operator's request for historical consumption data* form must require a *retailer* to provide the following information—

- (a) either or both of the name and, if applicable, identification number or code of the *retailer* submitting the *request for standing data*; and
- (b) either—
  - (i) if the *network operator* has not allocated a *NMI* for the *connection point*—the *contestable customer's*—
    - A. name; and
    - B. lot number and, if applicable, unit number; and
    - C. street number; and
    - D. street; and
    - E. suburb; and
    - F. meter number(s),
  - or
  - (ii) if the *network operator* has allocated a *NMI* for the *connection point*—the *contestable customer's NMI* and *checksum*.

**ANNEX 3—CUSTOMER TRANSFER REQUEST FORM**

{See clause 4.1(1).}

A *network operator's CTR* form must require a *retailer* to provide the following information—

- (a) either or both of the name and, if applicable, identification number or code of the *retailer* submitting the *CTR*; and
- (b) either—
  - (i) if the *network operator* has not allocated a *NMI* for the *connection point*—the *contestable customer's*—
    - A. name; and
    - B. lot number and, if applicable, unit number; and
    - C. street number; and
    - D. street; and
    - E. suburb; and
    - F. *meter* number(s);
  - or
  - (ii) if the *network operator* has allocated a *NMI* for the *connection point*—the *contestable customer's NMI* and *checksum*; and
- (c) the reason for the *transfer*, under clause 4.2(2) of this *Code*; and
- (d) either or both of the name and, if applicable, identification number or code of the *retailer* to whom the *customer* is to be *transferred*; and
- (e) the *nominated transfer date*, which must comply with clause 4.7 of this *Code*; and
- (f) whether a new *meter* is required to enable *transfer*, or for any other reason, and if so, a request for the installation of a particular type of suitable *meter*; and
- (g) estimated annual *electricity* consumption of the *customer*; and
- (h) if applicable, details of the *incoming retailer's access contract* to which the *CTR* is proposed to relate; and
- (i) if applicable, the proposed network access pricing structure or arrangement to be agreed between the *network operator* and the *retailer* to apply for the *customer* to be *transferred*.

**ANNEX 4—STANDING DATA AND HISTORICAL CONSUMPTION DATA**{See definitions of “*standing data*” and “*historical consumption data*” in clause 1.3.}**A4.1 Standing data**

If a *retailer* submits a *request for standing data* to the *network operator*, the *network operator* must provide, if available, the following information—

- (a) *NMI* and its status (connected or disconnected); and
- (b) full details of the address; and
- (c) sub-station name; and
- (d) distance from sub-station; and
- (e) voltage; and
- (f) distribution loss factor; and
- (g) network tariff description; and

- (h) *meter* type; and
- (i) *meter* number(s); and
- (j) last and next scheduled meter read date or day number; and
- (k) whether a new *meter* (or communications) is required under the *metering code* before the *contestable customer* may transfer.

#### **A4.2 Historical consumption data**

If a *retailer* submits a *request for historical consumption data* to the *network operator* then—

- (a) the *network operator* must provide, if available, metering data for the *contestable customer* for at least the previous 12 months (but nothing limits the parties' ability to agree to a longer period); and
- (b) all data must be provided as interval data unless unavailable, in which case accumulation data must be provided; and
- (c) the type of data which must be provided under clause A4.2(a) is dependent on the capabilities of the *meter* at the *connection point* (for example, Peak/Off peak kWh, Peak/Off peak kW, All time kWh, kVAh, kVA).

### **ANNEX 5—NMI DISCOVERY PROCEDURE**

{See clause 3.3.}

#### **A5.1 NMI discovery procedure**

- (1) This Annex 5 does not apply in respect of a *network* until a date *notified* by the *network operator* to all *relevant retailers* and, if applicable, *AEMO*.
- (2) A *retailer* may under this Annex 5 request the *network operator* to provide, for each *connection point* at a *contestable customer's* premises, either—
  - (a) a *NMI* and *checksum* for the *connection point*; or
  - (b) *notice* that a *NMI* has not been allocated to the *connection point*.
- (3) A request made by a *retailer* under paragraph (2) may be made by reference to a—
  - (a) *meter* number(s); or
  - (b) street address.
- (4) The *network operator* may reject a request under paragraph (2) if there is no *contestable customer* at the address or supplied using the *meter* specified under paragraph (3).
- (5) A *network operator* must respond to a request under paragraph (2) from a *retailer* for a *NMI* and *checksum* for an *connection point* within 1 *business day* after the *retailer's* request.
- (6) If a request made under paragraph (2) does not return a single *NMI* and *checksum*, the *network operator* must provide most likely matches to the *retailer* up to a maximum of 99 likely matches.
- (7) If a request made under paragraph (2) returns a single *NMI* and *checksum*, the *network operator* must, unless otherwise advised by the *retailer*, provide the *NMI* and *checksum* for the relevant *connection point*.

### **ANNEX 6—[DELETED]**

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