

Utilities (Electricity Network Use of System Code) Determination 2010 (No 1)

Disallowable instrument DI2010– 300

made under the

Utilities Act 2000, s 59 (Determined codes) and s 63 (Public access)

EXPLANATORY STATEMENT

Purpose of Electricity Network Use of System Code

The Electricity Network Use of System Code is an industry code determined by the Independent Competition and Regulatory Commission (the Commission) under the *Utilities Act 2000* (the Utilities Act). The purpose of this Code is to:

- (a) impose an obligation on an Electricity Distributor and an Electricity Supplier (unless they are the same Person) to use best endeavours to enter into a Negotiated Use of System Agreement; and
- (b) deem a default Use of System Agreement to apply between that Electricity Distributor and Electricity Supplier in the absence of a Negotiated Use of System Agreement between an Electricity Distributor and an Electricity Supplier.

Legislative Provisions — Industry Codes

The Utilities Act provides a regulatory framework for utilities in the ACT. Section 21 of the Utilities Act provides that a person must not provide a utility service except in accordance with a licence. Licences are subject to a number of conditions with which utilities are required to comply. Section 25 of the Utilities Act requires all licensees to comply with any relevant industry or technical codes.

Provisions relating to industry codes are set out in Part 4 of the Utilities Act. An industry code ‘may set out practices, standards and other matters about the provision of a utility service’.

Section 59 of the Utilities Act provides for industry codes to be determined by the Commission. The Commission may determine an industry code if it has consulted with the Minister and the Minister responsible for technical regulation and is satisfied that the code is not inconsistent in material respects with another industry code or a technical code; and it is necessary or convenient to determine the code.

Section 60 of the Utilities Act sets out the public consultation requirements for industry codes.

Section 61 of the Utilities Act provides for variations to industry codes. It provides in section 61(3) that the Commission may determine a variation of an industry code under section 58 without the public consultation required by section 60 if it is satisfied that the variation is unlikely to adversely affect anyone and would not materially alter the code or if the Commission is satisfied that the variation is necessary or convenient because of an amendment of an Act or a subordinate law.

Section 62 of the Utilities Act provides that an industry code determined under section 59 of the Act is a disallowable instrument.

Section 63 of the Utilities Act sets out a number of requirements relating to public access to industry codes.

Revocation and redetermination of Electricity Network Use of System Code

The Disallowable Instrument revokes the industry code determined by the Commission under the Utilities (Electricity Network Use of System Code) Approval 2007 (No 1) (DI 2007-212) and determines the varied industry code as set out in the Attachment to the Disallowable Instrument.

The revocation and redetermination process has been followed for this variation to the Electricity Feed-in Code so that an authorised version of the industry code is available through the Legislation Register.

The variations between the industry code attached to DI2007-212 and the industry code attached to the disallowable instrument are set out below.

Consultation on variations to Electricity Network Use of System Code

In terms of section 60 of the Utilities Act, the Commission was satisfied that the variations set out in the varied industry code are unlikely to adversely affect anyone and would not materially alter the industry code. Consistent with section 61(3) of the Utilities Act, there was no requirement for the public consultation otherwise required by section 60.

In accordance with the requirements of section 59(1) of Utilities Act, the Commission consulted with the Minister and the Minister responsible for technical regulation on the variations. The Commission also consulted with each utility subject to the Electricity Network Use of System Code.

Outline of variations to Electricity Network Use of System Code

The variations to the industry code are detailed below. In summary, the varied industry code:

- is now assembled in the correct order
- is reformatted to make its structure more evident, and
- updates certain references to industry players, legislation and documents.

Reassembly and reformatting of the Electricity Network Use of System Code

The industry code that was attached to DI2007-212 was assembled in a way that had the title page and table of contents for the default use of system agreement appearing at the end of the package. This, together with formatting that made it difficult to distinguish the body of the code from the default agreement, was a source of confusion.

The varied industry code is assembled in a normal order. In addition, it has been reformatted to differentiate the body of the industry code from the default agreement more clearly. As an example, the default agreement now has a separate page numbering series and a different footer.

Updating provisions

Reflecting changes to the ActewAGL Distribution partnership since 2007, all references to Alinta GCA Pty Ltd are removed and replaced by references to Jemena Networks (ACT) Pty Ltd. The ABN number is unchanged. The address of ActewAGL House is also updated.

Reflecting the transitioning of the roles and functions previously performed by the National Electricity Market Management Company (NEMMCO) to the Australian Energy Market Operator (AEMO) on 1 July 2009, all references to NEMMCO are removed and replaced by references to AEMO.

All references to the former Essential Services Consumer Council are replaced by references to the ACT Civil and Administrative Tribunal. A new definition of the ACT Civil and Administrative Tribunal is inserted.

Clauses 13.1 to 13.3 of the Default Use of System Agreement are amended to reflect the passage of the *Australian Competition and Consumer Act 2010* (Cth), the system of statutory guarantees introduced by that legislation, and to state that nothing in the agreement is to be taken to exclude, restrict or modify any right or remedy that a retailer may have under that legislation.

A new definition of the term “ACT business to business protocols” (“business to business processes and procedures adopted and applied in the National Electricity Market as published by AEMO from time to time”) is adopted to replace a definition which relied on a website no longer available.

Minor changes

A reference to publication of ActewAGL’s standard customer contract for electricity connection services in clause 4.2(b) of the Default Use of System Agreement is changed to a reference to approval. This ensures consistency with relevant provisions of the Utilities Act.

Additional words are inserted into clause 7.6 of the Default Use of System Agreement to avoid any doubt that the charges referred to in that clause are electricity network charges.

The definitions of “National Electricity Law” and “National Electricity Rules” in the Default Use of System Agreement are revised.

The Code Amendment History is reformatted to reflect the additional information as to the nature of code amendments provided in the most recent variations to industry codes made under the Utilities Act. In addition, the opportunity was taken to correct an incorrect hyperlink that appeared in schedule 2 of the industry code that was attached to DI2007-212.

In addition, a number of formatting changes have been made, principally identification of expressions, by use of bolding or italicisation, as defined terms.

Public Access to the Electricity Network Use of System Code

Copies of the Electricity Network Use of System Code are available for inspection during ordinary office hours from the Commission, Level 2, 12 Moore Street, Canberra City ACT 2601. They are also available on the Commission’s website at www.icrc.act.gov.au. Electronic copies are available on request. No charge will apply.