

15 October 2010

Mr Gary Henry  
Queensland Competition Authority  
GPO Box 2257  
Brisbane QLD 4001



Dear Mr Henry

**Submission on Queensland Competition Authority's Draft Decision –  
Review of Credit Support Arrangements – September 2010**

ENERGEX welcomes the opportunity to provide comment on the draft credit support guidelines (draft guidelines) developed by the Queensland Competition Authority (QCA) in recognition of the imminent proclamation of legislative amendments to the *Electricity Act 1994* (the Act).

ENERGEX appreciates the pragmatic approach of the QCA in adopting, for the most part, the credit support provisions proposed under the National Energy Customer Framework (NECF). However, ENERGEX is of the view that the credit support arrangements cannot be considered in isolation of the broader regulatory framework.

The adoption for the most part of the NECF credit support provisions prior to the implementation of the NECF package in Queensland leaves distributors ultimately in a less favourable risk position than afforded by the Standard Co-ordination Agreement. ENERGEX believes that the draft guidelines result in a decline in credit support cover, and in the event of a retailer failure, it is highly unlikely that distributors will be able to recover unpaid network charges under the current regulatory determination. It is the intention of the NECF package for distributors to be able to recover unpaid network charges.

As articulated in ENERGEX's response to the QCA's consultation paper in May 2010, ENERGEX believes there are a number of shortcomings to the proposed NECF credit support arrangements. Given that the draft guidelines do not depart significantly from the draft NECF, these shortcomings continue to be of concern; namely the complexity of the arrangements, lack of risk mitigation mechanisms available to distributors and the treatment of credit support disputes. These issues are further discussed below.

ENERGEX acknowledges that the draft guidelines represent an improvement on the draft NECF as they provide some further clarity particularly around the trigger and calculation of credit support. However, ENERGEX is concerned that credit support amounts to be provided by retailers may decline under these draft guidelines compared with the arrangements under the current Standard Co-ordination Agreement. In effect it is highly unlikely that retailers with a credit rating lower than BBB- who are currently required to provide credit support will be required to do so under the draft guidelines as these

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retailers will have a credit allowance of up to approximately \$43 million. Despite the QCA's findings that the current credit support arrangements are not a barrier to competition, the arrangements under the draft guidelines will result in reduced levels of protection for distributors and ultimately may increase market costs.

Importantly, the legislative amendments to the Act provide for the provision of credit support (in accordance with the draft guidelines) to be a condition of a retail authority. ENERGEX understands that the Regulator under the Act (i.e. the Director General of Department of Employment, Economic Development and Innovation) is able to take disciplinary action to cancel, suspend or amend a retail authority. While ENERGEX appreciates that this regulatory response is beneficial in these circumstances, the procedure for disciplinary action may take some time and protocols regarding notification of failure to comply, or market mechanisms to support disciplinary action are yet to be developed.

Given that there may be situations where the retailer failure occurs rapidly, ENERGEX continues to promote more timely and prudent risk mitigation measures being available to limit market exposure. ENERGEX has previously raised the issue of a jurisdictional objection code to allow distributors a risk mitigation mechanism whereby distributors, under very limited circumstances, can object to customer transfers to retailers where insufficient credit support has been provided.

ENERGEX envisages that there may be considerable potential scope for disputes, particularly around the calculation of distribution service charge liability. This is because distributors will forecast daily Distribution Service Charges for customers based on estimates of consumption patterns or other measures. Given that estimates are by their very nature imprecise, retailers could challenge the derivation of the distribution service charge liability particularly if they consider the credit support outcomes to be unfavourable.

While ENERGEX's concerns regarding the dispute resolution process have not been addressed under the draft guidelines, it is presumed that any credit support disputes will be dealt with under section 117 of the Electricity Act. However, these procedures do not appear to provide any greater certainty with regard to timeframes than the existing arrangements.

ENERGEX considers that the draft guidelines can be strengthened by clarifying provisions with respect to a retailer's credit rating, the return of credit support and other retailer obligations. For the QCA's consideration, attached are the draft guidelines with proposed amendments and the reasons for such amendments.

ENERGEX understands that there have been some further amendments to the NECF second exposure draft credit support provisions prior to its introduction into South Australian parliament. In the interests of reduced compliance costs and consistency, ENERGEX supports the alignment of the guidelines with any further changes to the final NECF provisions.

If you wish to discuss this submission further, please contact Leigh Henderson in the first instance on 32231786 or [leighhenderson@energex.com.au](mailto:leighhenderson@energex.com.au).

Yours sincerely



Kevin Kehl  
Executive General Manager Strategy and Regulation

### 3.3 Credit Rating for Retailer

- (a) In determining a **Credit Allowance** for a **Retailer**, a **Distributor** must use a credit rating advised by the **Retailer**.
- (b) The **Retailer** must advise the **Distributor** of its credit rating within 10 **business days** following a **Distributor's** request.
- (c) Unless the **Retailer** is providing its guarantor's credit rating under Clause 3.4, a **Retailer** must advise a **Distributor** of its credit rating which may be:
  - i. A Standard & Poor's, Fitch or Moody's credit rating; or
  - ii. Where a **Retailer** does not have such a rating, the Dun and Bradstreet Dynamic Risk Score
- (d) A **Retailer** must advise a **Distributor** of any change to its credit rating immediately on becoming aware of that change.
- (e) A **Distributor** may obtain relevant credit rating information about a **Retailer** and monitor ongoing changes to the **Retailer's** credit rating.
- (f) If the **Distributor** identifies a change in the **Retailer's** credit rating which the **Retailer** has not advised the **Distributor** of, the **Distributor** may request the **Retailer** to advise the **Distributor** of its current credit rating within 10 **business days** in accordance with 3.3 (d).
- (g) If the **Retailer** does not have a credit rating of the type described in Clause 3.3(b) or the **Retailer** does not provide its credit rating or current credit rating to the **Distributor**, then its **Credit Allowance Percentage** is zero.

#### Reason

The inclusion of additional provisions is to strengthen requirements on retailers to provide their credit rating or changes to their credit rating. Without the retailers' credit rating, distributors are unable to determine whether credit support is triggered and/or calculate credit support requirements.

### 3.4 Calculating Credit Allowance for Guarantor

- (a) This Clause applies where a person (a guarantor) provides an unconditional guarantee in favour of a **Distributor** for the financial obligations which the **Retailer** has to the **Distributor**.
- (b) In determining a **Credit Allowance** for a **Retailer**, a **Distributor** must use a credit rating advised by the **Retailer**.
- (c) The **Retailer** must advise the **Distributor** of its guarantor's credit rating within 10 **business days** following a **Distributor's** request.
- (d) A **Retailer** may advise a **Distributor** of its guarantor's credit rating, which may be:
  - i. a Standard & Poor's, Fitch or Moody's credit rating; or
  - ii. where a guarantor does not have such a rating, the Dun and Bradstreet Dynamic Risk Score.

- (e) A **Retailer** must advise a **Distributor** of any change to the credit rating of its guarantor immediately on becoming aware of that change.
- (f) A **Distributor** may obtain relevant credit rating information about a **Retailer's** guarantor and monitor any ongoing changes to the guarantor's credit rating.
- (g) If the **Distributor** identifies a change in the guarantor's credit rating which the **Retailer** has not advised the **Distributor** of, the **Distributor** may request the **Retailer** to advise the **Distributor** of its guarantor's current credit rating within 10 business days in accordance with 3.4 (e).
- (h) If the **Retailer** does not provide its guarantor's credit rating or current credit rating to the **Distributor**, its **Credit Allowance Percentage** is zero.
- (i) If a **Retailer** advises a **Distributor** of its guarantor's credit rating under Clause 3.4(c), it must also advise the **Distributor** that the credit rating is that of its guarantor. If its guarantor provides a guarantee to more than one **Retailer**, the guarantor must also advise the amount of the guarantor's **Credit Allowance** which has been allocated to the **Retailer** under Clause 3.4(e).
- (j) Where a guarantor provides a guarantee to more than one **Retailer**, the guarantor's **Credit Allowance** must be calculated in accordance with Clause 3.1 as though the guarantor were a **Retailer** and the **Credit Allowance** of the guarantor must be divided by the guarantor amongst each of the **Retailer's** on behalf of which the guarantor provides a guarantee.

**Reason**

The inclusion of additional provisions is to strengthen requirements on retailers to provide their guarantor's credit rating or changes to their guarantor's credit rating. Without the guarantor's credit rating, distributors are unable to determine whether credit support is triggered and/or calculate credit support requirements.

**5.4 Return of Credit Support**

- (a) This Clause applies where a **Distributor** and a **Retailer**.
  - i. No longer have any **Shared Customers**; or
  - ii. If the **Required Credit Support Amount** of a **Retailer** is zero.
- (b) A **Distributor** 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 **Distributor**.
- (c) A **Retailer** may request a review of the requirement for credit support by the **Distributor** where the **Retailer** can demonstrate that Clause 5.4(a)(i) or 5.4(a)(ii) no longer apply.

**Reason**

The proposed amendment is to address a drafting error.

**5.5 Other Retailer Obligations**

- (a) Where a **Distributor** has acted in accordance with these Guidelines, a **Retailer** must not take any steps to seek an injunction or otherwise restrain:
- i. Any issuer of credit support from paying the **Distributor** pursuant to that credit support;
  - ii. The **Distributor** from taking any steps for the purpose of making a demand against the credit support; or
  - iii. The **Distributor** from using the money obtained in the calling of the credit support.
- (b) A **Distributor** may disclose to its financiers, the Australian Energy Regulator (AER), AEMO or the **Regulator** that it has required or called on credit support provided by the **Retailer** under these Guidelines.

**Reason**

This proposed amendment is to allow the Distributor to disclose to the Regulator that credit support is required or called on credit support. This will allow the Regulator to monitor compliance with the conditions of a retail authority.

**Appendix A – Glossary**

**Regulator** means Regulator under the *Electricity Act 1994*

**Reason**

The proposed amendment to include Regulator in the Glossary is for completeness.

**Appendix C – Prescribed Form of Unconditional Undertaking for Credit Support**

At the request of ..... ACN.....("the Retailer") and in consideration of .....ACN.....("The Distributor") accepting this undertaking in respect of the provision of connection and ongoing supply services for shared customers .....ACN .....("the Financial Institution") unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Distributor to a maximum aggregate sum of \$.....(.....).

**Reason**

The proposed amendment to include ongoing supply services is for completeness.