



Final Decision

**Amendments to the Electricity
Industry Code requiring prior notice
for price changes**

March 2010

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PREAMBLE

On 29 April 2009, the Associate Director General – Mines and Energy, Department of Employment, Economic Development and Innovation (DEEDI) wrote to the Authority, requesting it to commence a process to amend the minimum terms and conditions contained in Chapter 4 of the Code requiring retailers to give small customers written notice of any price increases prior to the increases taking effect.

This Final Decision, on amendments to the Electricity Industry Code in response to that request, broadly confirms the proposed amendments presented in the Authority’s Draft Decision, but includes some changes made in response to issues raised in submissions received in the response to the Draft Decision.

On balance, the Authority considers that the benefits of requiring advance notice of price changes to small customers on negotiated retail contracts, which would provide greater pricing certainty for these customers, outweigh the potential costs to retailers. The Authority has attempted to balance these interests by providing some options to retailers regarding the process of notification they might choose.

This Final Decision proposes that retailers be required to notify small market customers on negotiated retail contracts of price changes a minimum of 10 business days prior to the changes taking effect. Retailers have a choice between two notification processes – individual written communication or notification via a newspaper advertisement (provided certain other actions are taken).

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1. INTRODUCTION

1.1 Background

The Electricity Industry Code (the Code) provides a list of minimum terms and conditions required to be included in retail contracts in Queensland. Chapter 4 of the Code sets out the minimum terms and conditions for retail contracts entered into between retail entities and small customers in Queensland. Section 30O of the *Electricity Regulation 2006* defines a small customer as a customer who consumes less than 100 MWh of electricity per annum.

Small customers who do not enter a negotiated retail contract with an electricity retailer (non-market customers) remain on the standard retail contract set out in Annexure B to the Code and are subject to notified prices set out in the gazetted tariff schedule. The terms of the standard retail contract are designed to reflect the clauses in Chapter 4 of the Code.

For small customers who do enter a negotiated retail contract (market customers), their contract must also be consistent with the terms set out in Chapter 4 of the Code, except to the extent that clauses 4.2.3(a) and (d) together provide that a number of specified clauses in Chapter 4 may be varied in a negotiated retail contract.

Clause 4.2.3(c) of the Code also provides that, if requested by a retail entity to do so, the Authority can approve terms and conditions for a negotiated retail contract that do not conform with all, or any, of the provisions of Chapter 4.

Other than the exceptions noted above, the provisions of Chapter 4 of the Code must be included in all negotiated retail contracts in Queensland. To the extent that any negotiated retail contract is inconsistent with the terms and conditions specified in the Code it would be unenforceable.

Currently, there is no requirement in the Code for a retailer to provide a written notice to its small customers, either on a negotiated retail or standard retail contract, of price changes prior to the price changes coming into effect. Therefore, a retailer is currently able to retrospectively change the price charged to small customers on a negotiated retail contract. For small customers on the standard retail contract, retailers are unable to change the prices unless it is varied in accordance with the notified prices as set out in the gazetted tariff schedule.

1.2 Request to review and amend the minimum terms and conditions

On 29 April 2009, the Associate Director General – Mines and Energy, Department of Employment, Economic Development and Innovation (DEEDI) wrote to the Authority, requesting that it commence a process to amend the minimum terms and conditions contained in Chapter 4 of the Code so that retailers would be required to give small customers written notice of any price increases prior to the increases taking effect (**Appendix 1**).

In requesting the Code amendment, DEEDI noted an incident that had occurred in January 2009 where an electricity retailer (Queensland Electricity) had notified its customers on negotiated retail contracts of increases in its retail prices in mid-January and backdated the increase to apply from 1 January 2009. DEEDI expressed concern that under the current Code provisions, individual customers may be denied an opportunity to choose between alternative retailers if they are not informed of price changes in advance.

1.3 The Authority's review process to date

In accordance with section 120P of the *Electricity Act 1994* (the Electricity Act), the Authority initiated a process to amend the Code in order to introduce a requirement for electricity retailers

to give their small customers on negotiated retail contracts written notice of any prices changes, prior to enacting those changes.

The Code amendment process that the Authority must follow is set out in Division 2 Part 1A of Chapter 10 of the *Electricity Regulation 2006* (the Electricity Regulation).

Consistent with section 222H of the Electricity Regulation, the Authority released an Interim Consultation Notice on 20 June 2009 to provide an opportunity for interested parties to comment on the Code change proposal.

After consideration of submissions received in response to the consultation notice, the Authority released its Draft Decision, together with a draft version of its proposed amendments to the Code, on 11 December 2009 and invited further submissions.

1.4 Final Decision and Final Code Amendments

This report presents the Authority's Final Decision on amendments to the minimum terms and conditions entered into between retail entities and small customers on negotiated retail contracts in Queensland under the Code. Accordingly, **Appendix 2** of this report contains the final version of the proposed Code amendments that the Authority will make to give effect to its Final Decision as published in accordance with section 222O of the Regulation.

Before these amendments can take effect, the Authority must first seek Ministerial approval of the proposed Code amendments and, if granted, publish the amendments in the Queensland Government Gazette.

All documents in relation to this review, including non-confidential submissions and a full version of the Code with the amendments as contained in **Appendix 2** can be accessed from the Authority's website at www.qca.org.au.

2. THE DRAFT DECISION AND SUBMISSIONS

In its Draft Decision, the Authority proposed making Code amendments to require a retailer to notify its small customers of any impending price changes at least 10 business days in advance of the new prices taking effect.

Retailers and consumer representative groups provided a range of comments on the amendments proposed in the Draft Decision in their submissions. While retailers generally argued that the proposed Code amendments were unnecessary and would offer little benefit to consumers, consumer representative groups suggested that the proposed notice period and notice requirements did not go far enough to provide sufficient protection to consumers.

Key issues raised in submissions included:

- (a) whether there is a need for the Code amendments;
- (b) whether the notification requirements would apply to small customers on standard retail contracts;
- (c) whether the notification requirements apply to negotiated retail contracts where price changes are linked to changes in notified prices;
- (d) the appropriate timeframe for the price change notification;
- (e) the appropriate format for the price change notification;
- (f) the level information to be included in the notification; and
- (g) whether the timeframe that currently applies for notification of price changes to the Authority should be aligned with the minimum notification requirements to customers proposed in the amendments.

2.1 Need for the Code amendments

The Authority considered that the issue initially raised by DEEDI warranted further consideration and that resolution of that matter might lead to amendments to the Code. The Authority also received numerous complaints from small customers following the incident identified by DEEDI which suggested that small customers were aggrieved at finding their electricity costs had been increased retrospectively and that, by the time they were made aware of this change, even more time had passed, denying them the opportunity to switch to a lower cost retailer before significant additional costs had been incurred.

Submissions from consumer representative groups and advice from the Authority's Consumer Advisory Committee supported the view that small consumers may require further protections via the Code.

Given that the current Code provisions did not specifically prohibit retrospective price increases, small market customers, particularly residential customers, were potentially exposed to large variations in their electricity bills without reasonable notice.

In considering the appropriateness of making the amendment to the Code, the Authority investigated the requirements in other jurisdictions. While there was little consistency between jurisdictions, there appeared to be a trend towards greater protection for small customers that was provided in Queensland. **Appendix 4** provides a summary of current requirements applying in other jurisdictions with full retail contestability.

In reaching its Draft Decision, the Authority weighed up the potential costs and benefits of the proposed amendments to the Code, recognising that the proposed amendments would increase the regulatory and reporting burden for retailers, but also allow for more efficient decision-making by consumers.

The Authority considered that, in order to make informed and efficient consumption decisions, consumers should be given a reasonable amount of notice of impending price changes.

Submissions in response to the Draft Decision

Retailers generally argued that the Authority's proposed draft Code amendments were unnecessary and would only serve to introduce further regulatory costs for retailers without any potential benefits to consumers. In particular, AGL, EnergyAustralia and Origin Energy suggested that the current Code already provided a suitable level of protection to consumers on negotiated retail contracts. At most, they suggested that the only Code amendment which might be necessary would be to introduce a new provision requiring retailers to obtain explicit informed consent from small customers, regarding the ability of retailers to vary prices under the contract, at the time of signing their negotiated retail contract.

Conversely, consumer representative groups such as CCCL, FCAQ, the Queensland Consumers Association and QCOSS believed that the Code amendments were necessary to protect consumers in the interest of promoting ongoing retail competition in the small customer electricity market. In particular, they argued that budget constrained consumers need as much advance notice as possible of any impending electricity price increases so as to better enable them to manage their electricity consumption or seek alternative market offers to suit their budget.

The Authority's Position

The submissions received in response to the Draft Decision did not provide any new or compelling arguments to persuade the Authority that the current Code provisions are adequate to protect small customers from retrospective price changes. Nor does the Authority agree with the proposition that small customers on negotiated retail contracts will not benefit from prior notification of price changes.

While competitive market offers currently enable retailers to offer lower prices initially to sign on small customers under negotiated retail contracts, without a Code provision to prohibit retrospective price changes, retailers can effectively "claw back" any potential discounts offered to customers below notified prices. From the Authority's point of view, while not prevalent as yet, the risk of such a situation is unacceptable.

The ability of retailers to change prices retrospectively, in effect, also shifts much of the risk retailers face in their controllable retail costs in supplying electricity back onto customers. In particular, it removes a retailer's incentive to continue to offer competitive market offers below notified prices through efficient management of their controllable retail costs. This is clearly not conducive to promoting a competitive market outcome for customers and retailers alike.

Further, the Authority considers that the existing Code provisions do not adequately protect small customers who are already taking advantage of competitive market offers to exercise their right to choose between alternative retailers, or revert to notified prices under a standard retail contract, if they are not informed of price changes in advance.

The Authority has therefore maintained the view presented in its Draft Decision that the Code should be amended to prevent retrospective price changes and introduce the requirement for

retailers to provide advance notice of price changes to small customers on negotiated retail contracts.

2.2 Extension of notification requirement to standard retail contracts

In its Draft Decision, the Authority clearly indicated that it did not intend to apply the prior notification requirement to small customers on standard retail contracts, but only to small customers on negotiated retail contracts.

The Authority considered the likely benefits of extending the prior notification of price change requirement to small customers on standard retail contracts, who are subject to notified prices, would likely be outweighed by the administrative costs likely to be incurred by retailers in notifying them. In particular, the Authority considered that customers on notified prices already have adequate protections under the Code as retailers are obliged to charge the notified price applying at any point in time. While notified prices do change, they are only varied by an administrative decision of Government, not by any decision of the retailer. The Authority was therefore of the view that it would serve no useful purpose to introduce further regulatory compliance costs for retailers in relation to customers on standard retail contracts.

Submissions in repose to the Draft Decision

While Ergon Energy Queensland (EEQ) supported the Code amendment on the notification process, it queried whether the wording of the proposed Code amendments was consistent with the Authority's Draft Decision intent to apply the price change provision only to small customers on negotiated retail contracts. EEQ was concerned that the proposed Code amendment was ambiguous on this point and could be construed to apply to all small customers.

The FCAQ suggested that the prior notification requirements should be extended to small customers on standard retail contracts.

The Authority's Position

The Authority did not intend that the notification amendments would apply to small customers on standard retail contracts. However, it agrees with EEQ that this intent was not clear in the proposed amendments presented in the Draft Decision.

While the Authority has not changed its view on this issue, it has modified the Code amendment to clarify this position.

2.3 Negotiated contracts linked to changes in notified prices

While not a requirement under the Code, the linking of price increases in negotiated retail contracts to increases notified prices appears to be a common practice utilised by some retailers. With this term in place, retailers then pass through price increases in their market prices in line with changes in notified prices, which are generally adjusted on 1 July each year.

In its Draft Decision, the Authority was of the view that in these situations, retailers should still be required to provide prior notification of price changes to their small customers on negotiated retail contracts. However, the Authority conceded that these retailers should not be subjected to overly burdensome or costly notification requirements when changing prices in this circumstance.

Submissions in response to the Draft Decision

Only two submissions specifically commented on this issue. Origin Energy and EnergyAustralia argued that the notification requirements should not apply to customers on negotiated retail contracts where the price changes are linked to notified prices.

Origin Energy suggested that the notification process should be targeted at preventing retailers from passing on large and unexpected price changes retrospectively. To this end, Origin Energy proposed that the prior notification requirement should only apply to unexpected price changes or price changes within a financial year for customers on negotiated retail contracts and that expected end-of-financial-year changes aligned with movements in notified prices should simply be passed on in the customers' next bill.

Origin Energy noted that, as the change in notified prices is public and transparent, price changes for negotiated retail contracts that are linked to changes in notified prices should not require the additional notification requirements as the changes will have already been publicised.

EnergyAustralia argued that requiring a new entrant (second tier) retailer to notify its small customers of price changes that are automatically linked to changes in notified prices would put them at a competitive disadvantage compared to the larger incumbent retailers. EnergyAustralia also argued that any delay in the gazettal of notified price would mean that second tier retailers would be unable to meet the proposed 10 business day prior notification without extending the commencement of their rates beyond that of the incumbents.

The Authority's Position

The Authority does not accept that the notification process should only be targeted at stopping retailers from passing on large and unexpected price changes retrospectively. The Authority is of the view that all customers on negotiated contracts are entitled to be notified of changes to their negotiated market price, regardless of how the retailer may choose to determine that price:

Exempting such price changes from the notification requirement may serve to encourage retailers to provide only linked market offers as these would not incur notification costs. This would not necessarily be a desirable outcome. There are also additional fees and charges, for example, merchant fees and late payment fees, which may apply to small customers under a negotiated retail contract which do not form part of the notified prices. Small customers on negotiated contracts would be entitled to be notified by their retailer if any of these other charges were increased, and the retailer's rationale for such increases, prior to the changes coming into effect.

In regard to the concerns raised by EnergyAustralia, the Electricity Act requires that the Authority gazette notified prices at least one month before the relevant tariff year commences. The Authority considers that this provides retailers with sufficient time to implement changes to their prices and comply with the proposed notification process. However, should the gazettal period be shortened for whatever reason, the Authority would take this into consideration in assessing a retailer's compliance with the notification requirements in the Code.

On the issue of second tier retailers being disadvantaged relative to incumbents, it is not clear why this would be the case. Both have small customers on negotiated retail contracts (incumbent retailers have the majority of these) and both would be required to provide advice to those customers in the same way.

For these reasons, the Authority has maintained its view that the notification requirements should apply to all price changes for small customers on negotiated retail contracts. As the

process and timetable to adjusting notified prices are generally known well in advance of the changes coming into effect, the options relating to the process of notification should minimise the costs to retailers when there are changes in notified prices.

2.4 The appropriate timeframe for notification

In its Draft Decision, the Authority considered that a minimum of 10 business days notice should be required for any price change for small customers on negotiated retail contracts.

The Authority was of the view that consumers would ideally need a reasonable length of time to absorb the information contained in their price change notice and, if necessary, plan their budget and modify their energy consumption pattern to minimise any future cost impacts.

In considering the preferred timeframe for prior notification of price changes in its Draft Decision, the Authority weighed up the suggestions made by consumer representative groups with the commercial realities and regulatory requirements of the electricity market. These included the need for retailers to be able to respond to changes in their costs or changes in market conditions by passing such costs through to their customers, the current gazettal process for notified prices under the Electricity Act and the proposed requirements for customers on standard contracts under the imminent National Energy Customer Framework.

Submissions in response to the Draft Decision

Most submissions from consumer representative groups suggested extending the minimum notification period beyond the proposed 10 business days.

For example, CCCL, QCOSS and FCAQ suggested that the minimum notification period should be from 14 to 20 business days. They argued that a longer period was required for customers to be able to make the necessary changes in their budgets and consumption patterns. They further argued that the Authority's proposed 10 business days could be inadequate to accommodate any reasonably foreseeable delays in receiving written notifications, especially if customers are located in regional and rural areas.

Others, such as the Queensland Consumers Association, supported retention of the 10 business day notification period proposed in the Draft Decision.

Some retailers suggested there should not be a minimum notification timeframe specified in the Code. For example, AGL and EnergyAustralia suggested that a simple requirement of prior notice would be sufficient to meet the objective of the Code amendment.

EnergyAustralia again noted its concern that a shortened gazettal timeframe for notified prices, could mean that the 10 business day period could potentially not be met by second tier retailers. This issue has been addressed above.

The Authority's Position

While the Authority appreciates the views expressed by consumer representative groups in support of extending the notification period, it is of the view that requiring more than 10 business days notice as a minimum requirement could be commercially unrealistic for retailers.

The Authority acknowledges that timely mail delivery can sometimes be an issue in regional areas, and customers located in these areas may be at a disadvantage in the time they may have left to respond to price changes before they would come into effect. However, the number of customers on negotiated retail contracts likely to be affected by such delays would be extremely small – since competitive market activity has been confined almost exclusively to South East Queensland. Small customers in regional and rural Queensland most likely remain on standard

retail contracts with EEQ as their non-market retailer in order to take advantage of notified prices under the Government's uniform tariff policy.

At the other extreme, the Authority considers the suggestion made by AGL and EnergyAustralia to not include a minimum notice period in the Code to be untenable. The objective of the Code amendments is not simply to require prior notice but rather to require sufficient notice that might allow affected customers to review their position and exercise their rights and options under the contracts they have entered into. Not establishing a minimum notice period could leave customers without sufficient time to review their position before the new price takes effect.

2.5 The appropriate format for price change notification

The notification process proposed in the Draft Decision is similar to that currently being enforced by the Independent Pricing and Regulatory Tribunal (IPART) in New South Wales. The process was designed to enable retailers to notify consumers of planned price increases with minimal cost, but prevent retailers changing prices retrospectively or without prior notice. While the notification process would increase the cost for a retailer that wished to change its price unexpectedly, these costs would appear reasonable in the context of keeping customers informed. The retailer would have to bare these costs in mind when deciding on the urgency of price changes.

Submissions in response to the Draft Decision

Generally, consumer representative groups did not support the optional requirement for retailers to use a newspaper advertisement to notify consumers of price changes. For example, CCCL, FCAQ, Queensland Consumers' Association and QCOSS argued that individual written notification was the most appropriate and most effective way to inform consumers of a pending price change as it would increase the extent to which consumers take in and use the information they are provided. Consumer groups also argued that newspaper notification is unreliable, shifts responsibility to the consumer and increases the likelihood that consumers will not be informed about changes to their electricity costs.

The Queensland Consumers' Association was also of the view that individual written communication would benefit competition in the Queensland electricity market by bringing price changes directly to the attention of consumers and aid them in critically assessing whether they are on an optimal contract.

CCCL recommended that individual written notice did not have to be in the form of standard mail. It suggested that retailers could use email or mobile text messaging services to notify individual customers of price changes. CCCL suggested that consumers should be allowed to choose the media by which they receive notification when they sign up to a market contract.

Retailers, on the other hand, were of the view that the appropriate notification format was, in line with the current requirements of the Code, on the customers' next bill. Submissions from retailers suggested that the cost of individual written communication would be prohibitively expensive especially where a mass mailout was required. Retailers also argued that the newspaper notification process proposed in the Draft Decision was overly complex, costly and may be confusing to customers. For example, AGL and Origin Energy, in particular, submitted that the proposed changes would be hard to comply with and could lead to potential, unintended breaches of the Code.

The Authority's Position

By and large, the Authority considers that the notification process proposed in the Draft Decision provides a suitable compromise between the interests of small customers and the additional costs faced by retailers. However, after consideration of the issues raised in the submissions the Authority has made some minor changes and additions to this approach.

The Authority agrees with consumer groups that individual written communication is likely to be the most effective form of communication to ensure that a customer actually receives prior notification of a price change.

In this respect, the Authority also sees merit in the suggestion from CCCL regarding the use of email or mobile text messaging services for individual customer notification where the nature of the information to be provided suits the medium (mobile text messaging may not be appropriate where a large amount of information is to be sent). An email or mobile text message notification of a price change is likely to be an equally effective means of bringing that price change to the attention of most customers. Furthermore, these electronic forms of notification are not subject to the same time constraints that standard mail is and should involve less cost to retailers than standard mail services.

Accordingly, in its Final Decision, the Authority has expanded the individual written communication process to allow for email or mobile text message notification as alternative to standard mail notification. However, before utilising this alternate form of notification the retailer would be required to obtain consent from the customer as required by clause 4.6.4.

The Authority acknowledges that notification of an impending price change via a newspaper advertisement may be costly (though retailers did not provide any estimates of the potential cost) especially where a retailer is required to provide information on each of its market offers. There may also be potential for customers to be confused, especially where large amounts of information are provided.

Nevertheless, as an alternative to individual written communication, where information is required to be provided to a large number of customers, a newspaper advertisement may provide a more cost effective solution. Further, a newspaper advertisement is likely to be accessible by a large number of consumers at a relatively low cost.

2.6 Details to be included in the notification

In preparing its proposal for the Draft Decision, the Authority considered it important for consumers to be informed of how they would be affected by price changes. To this end, the Authority proposed that retailers would be required to provide consumers with 'full details' of how the price change has affected the customer.

Submissions in response to the Draft Decision

QCOSS, CCCL, the Queensland Consumers' Association and FCAQ suggested that the Code should specify exactly what information is to be provided to customers and proposed a number of items that might be required including:

- (a) current and proposed tariff rates;
- (b) percentage change in tariff rate;
- (c) the date the price change will take effect;
- (d) a dollar figure estimate of how the increase will affect the customer;

- (e) how consumers can obtain information to reduce their energy usage;
- (f) the rights of consumers to switch energy providers;
- (g) details on early termination fees applying to the particular contract; and
- (h) font size, colour and type to be used.

However, both the Queensland Consumers' Association and EnergyAustralia noted that there was limited "white space" available on bills and that including more information could cause the information to become lost and may cause confusion. To remedy this, the Queensland Consumers' Association suggested that the notification of price change details (in the subsequent bill) should be provided as an attachment to the customers' bill.

EnergyAustralia proposed that the details to be provided should be general in nature and that any requirement to supply tailored individual customer information would add significantly to the cost of providing the notification. EnergyAustralia suggested that the minimum information to be provided should be similar to that required on the 'price fact sheets' retailers are already required to prepare under sections 8.2.2 of the Code. Price fact sheets provide estimates of total annual electricity costs associated with a market offer, based on a range of consumption bands – 2MWh (excluding off-peak hot water), 5MWh (excluding off-peak hot water), 8.5MWh (excluding off-peak hot water) and 1.5MWh of off-peak hot water. EnergyAustralia acknowledged that, to accommodate this current purpose, the price fact sheets would need to be modified to include information on the percentage and dollar increase in costs resulting from the price change.

EnergyAustralia suggested that, rather than being on the customers' next bill, this information should be provided in the newspaper advertisement, with consumers directed to the retailer's website for further details.

The Authority's Position

In light of these comments, the Authority has included a clause in the Code amendments to clarify and specify the information (full details) required to be provided to small customers. The Authority is of the view that this information should be in the form of an attachment to the customers' bill, rather than on the customers' bill itself.

The Authority agrees with EnergyAustralia that the information should be general in nature and that the current price fact sheets, required by Section 8.2.2 of the Code, but suitably amended to include price change information, would provide consumers with sufficient understanding of the changes to their annual electricity costs. As retailers are already required to prepare the price fact sheets under the Code, this should aid in minimising the cost imposition on retailers.

In addition to the information already required on the price fact sheets, the Authority is of the view that the attachment must also include the prior price in addition to the new price and the relevant percentage increase so that consumers can compare the changed rates and easily determine what their additional costs are likely to be. Furthermore, changes should be specified in terms of per unit and fixed daily charges as well as in total annual costs and all costs/charges should be inclusive of GST.

Set out below (**Tables 1 and 2 and following dot points**) is an example of the minimum information that the Authority would expect to be provided to each small customer on a negotiated retail contract in an attachment to their first bill following the price change coming into effect and for each market offer on the retailer's website.

Table 1: Change to charge or tariff type

<i>Charge Type</i>	<i>Before Price Change</i>	<i>Percent change</i>	<i>After Price Change</i>
		%	
Fixed monthly charge (\$)	7.25	10	7.97
Peak Energy (c/kWh)	18.84	10	20.73
Off Peak Energy (c/kWh)	7.69	10	8.46

Table 2: Annual impact of price change

<i>Consumption</i>	<i>Annual Electricity Costs Before Price Change</i>	<i>Percent change</i>	<i>Annual Electricity Costs After Price Change</i>
	\$	%	\$
2MWh (excluding off-peak hot water)	558	10	614
5MWh (excluding off-peak hot water)	1,029	10	1,132
8.5MWh (excluding off-peak hot water)	1,689	10	1,858
1.5MWh of off-peak hot water	115	10	127

- (a) the amount (and change if applicable) of any loyalty rebate;
- (b) the amount (and change if applicable) of any entry rebate;
- (c) the amount (and change if applicable) of any account establishment fees;
- (d) the amount (and change if applicable) of any exit or early termination fees;
- (e) the amount (and change if applicable) of any direct debit rebate;
- (f) the amount (and change if applicable) of any other fees and charges;
- (g) the date from which the new prices are/were applicable;
- (h) how or where customers can obtain information to manage their energy usage; and
- (i) the rights of customers to switch energy providers.

2.7 Notification of price changes to the Authority

While not specifically discussed in the Draft Decision, three of the eight submissions received in response to the Draft Decision suggested that the Authority amend the Code to also require retailers to notify the Authority prior to any price change.

Submissions in response to the Draft Proposal

CCCL, FCAQ and QCOSS each suggested that, in order to keep the Authority's price comparator up to date, the Authority should also be notified of price changes prior to the price change taking effect. The price comparator is a service provided on the Authority's website that compares all the market offers of retailers currently available to small residential customers in Queensland. A number of submissions expressed concern that, unless the Authority's price comparator is up to date, consumers using the service would obtain incorrect or out of date information.

The Authority's Position

The Authority is required under clause 8.4 of the Code to develop and maintain a price comparator on its website. Retailers are required under clause 8.3.2 of the Code to inform the Authority any change to prices (and other charges) applying to negotiated retail contracts within 24 hours of the changes taking effect.

If customers are to be made aware of price changes no less than 10 business days before the changes come into effect, it is likely affected customers will be seeking information on alternate market offers from the date of notification. The Authority's web based price comparator has been an important source of such information for small customers.

To continue to be useful in times of changing market offers, the Authority needs to be able to update the information in its price comparator at the same time as customers are made aware of changes.

It is the Authority's view that it would be reasonable and consistent with the intent of the Code changes proposed in the Draft Decision for clause 8.3.2(a) to also be amended to require notification of price changes to the Authority at least 10 business days prior to the changes coming into effect. This would enable the Authority to update its price comparator at the time when consumers are likely to require it most – after they have received a notification of a price increase and they are interested in identifying their options.

As the information would be used by consumers accessing the Authority's price comparator, the Authority considers that notifying it of price changes is, in effect, notifying the customer of that price change.

2.8 Other Issues

There were three additional issues raised in submissions that require some comment.

Status of non-compliant price changes

In its submission, CCCL requested that the Authority include additional clauses in the Code to specify the status of proposed price changes if the retailer has not complied with the notification requirements in the Code. While CCCL acknowledged that non-compliant price changes would constitute a breach of the Code, it suggested that, in its current form, the proposed amendments failed to clarify the rights of consumers in circumstances of non-compliance.

The Authority's Position

The Authority's approach to Code contraventions is set out in its *Guidelines for Pursuing Civil Penalties and Referring Matters to the Regulator in Relation to Contraventions of the Electricity and Gas Industry Codes*. This document can be accessed on the Authority's website: www.qca.org.au.

As noted in the guidelines, the Authority will investigate potential contraventions of the Code on a case by case basis. The actions the Authority may take in response to a Code contravention matter will depend on a number of factors including whether the issue has been resolved, how many customers were affected, to what extent those customers were affected, what caused the contravention and whether the retailer contravened the Code intentionally. If necessary, the Authority can require certain action to be taken by the retailer which the Authority considers is necessary to remedy the contravention.

Customer initiated changes.

Ergon Energy sought clarification on whether the proposed amendments to the Code were designed to include customer initiated changes or only retailer initiated changes. Ergon Energy submitted that the proposed amendments to Clause 4.12.6 could capture instances where the customer has requested a tariff change.

The Authority's Position

The intent of the Code amendments was to require prior notice from retailers of price changes they initiated. Customer initiated requests would be outside this scope. The Authority has changed the Code amendments to make this clear.

Early Termination Fees

QCOSS and the Queensland Consumers' Association both raised the issue of the relationship between early termination fees and price changes. QCOSS submitted that early termination fees should either be prohibited, or waived in instances where retailers increase prices during the term of contract. The Queensland Consumers' Association was of the view that early termination fees should be limited to the reasonable costs to a retailer of losing the customer.

The Authority's Position

While the Authority acknowledges the views of QCOSS and the Queensland Consumers' Association that early termination fees can limit the options available to customers affected by retailer initiated price changes during a negotiated contract period, it also accepts that early termination fees are a reasonable protection for retailers who, for example, may have provided up front benefits on the assumption that customers would remain with them for the period of the contract.

As this issue is much wider than that being considered under this current Code change process, the Authority is not inclined to pursue this matter further at this time.

3. FINAL DECISION

The Authority's Final Decision broadly confirms its Draft Decision. The Code amendments proposed in the Draft Decision have been amended in response to issues raised in submissions received in response to the Draft Decision and discussed in this Final Decision.

On balance, the Authority considers that the benefits of requiring advance notice to small customers on negotiated retail contracts of pending price changes, which would provide greater pricing certainty for customers, outweigh the potential costs to retailers. Pricing certainty allows consumers to make informed choices about their electricity consumption.

The Authority is of the view that this Final Decision is in accordance with the objectives of the Code, which is to promote efficient investment in, and use of, electricity services for the long term interests of customers in relation to price, quality, reliability and security of supply (clause 1.1.1 of the Code).

The Authority proposes a notification process whereby customers are notified a minimum of 10 business days prior to any change in electricity prices coming into effect. Notification can be via:

- (a) individual written communication including full details of the price change via standard postal mail (or, where appropriate given the nature of the notice, via email or mobile text messaging services provided this form of communication has been agreed with the small customer); or
- (b) newspaper advertisement, provided that:
 - (i) the small customer is notified of the date of an impending price change in a bill message (or email or mobile text message, provided this form of communication has been agreed with the small customer) prior to the change, stating when (date) and where (website, press notification and any other location) full details of the price change will be available;
 - (ii) no less than 10 business days prior to the date of the price change, publish the new prices (including the percentage increase from the existing prices) in a newspaper/s circulating throughout Queensland;
 - (iii) no less than 10 business days prior to the date of the price change, publish the new prices and full details of the impact of the price change on the retail entity's website; and
 - (iv) full details of how the price change has affected small customers is attached to the next bill received by the customer.

Specific amendments proposed by the Authority to implement this Final Decision are contained in **Appendix 2**.

3.1 Gazettal and Implementation

So that retailers have sufficient time to prepare for the introduction of these Code amendments, the Authority will make these amendments to the Code such that they come into effect from 1 July 2010. This commencement date will also coincide with other Code amendments already scheduled to commence on that same date and will avoid possible confusion which might be created by introducing new Code versions in close succession.

The Authority is required to seek approval from the Minister for Natural Resources, Mines and Energy and Minister for Trade for the proposed Code amendments and, if granted, publish the amendments in the Queensland Government Gazette prior to the amendments taking effect. The Minister has 20 business days to either approve or reject the Authority's proposed amendments, after which time the Authority's proposal is deemed approved.

APPENDIX 1 – CODE CHANGE REQUEST

QLD COMPETITION AUTHORITY

- 5 MAY 2009

DATE RECEIVED



Your Ref:
Our Ref: ADG12

29 APR 2009

Mr John Hall
Chief Executive
Queensland Competition Authority
GPO Box 2257
BRISBANE QLD 4001

Dear Mr Hall

I am writing to you requesting that the Queensland Competition Authority (QCA) commence a process, under Division 5 Part 1A of Chapter 5 of the *Electricity Act 1994*, to amend the Electricity Industry Code (the Code).

The proposed amendment is to Chapter 4 of the Code (Customer Retail Services), to include in the minimum terms and conditions of a negotiated retail contract with a small customer a requirement that a retail entity must give the customer prior written notice of any price increase.

The proposed amendment is in response to concerns arising from recent action by Queensland Electricity Pty Ltd (QE) to increase its prices for customers on market contracts retrospectively. Specifically, on 13 January 2009, QE advised the former Department of Mines and Energy of its decision to increase prices to all its market contract customers by 13.63 percent, effective from 1 January 2009. QE wrote to all its affected customers in mid-January 2009, informing them of the price increase. These price increases were applied to QE's market customers and backdated to 1 January 2009.

At the request of the former Minister for Mines and Energy, the Energy Ombudsman Queensland has investigated whether the retrospective price increase was allowable under the market contracts. The Department has been provided with a copy of EOQ's report, which concluded that QE's retrospective price rise was in accordance with the terms of its market contracts with customers.

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Specifically, clause 3.6 of the QE Negotiated Contract Terms and Conditions states that QE “may amend your energy charges but will provide you with notice of any change. The notice will be given to you as soon as practicable, and in any event no later than your next bill.”

The EOQ report advises that Clause 3.6 would seem unambiguous in giving QE the right to vary its charges to the customer. By providing customers with a letter advising them of the price increase, QE appears to have met its obligation under that clause. EOQ has not found any evidence of misleading conduct by QE in terms of customers being incorrectly advised that prices would not change during the term of the contract. Further, EOQ does not consider that QE’s response and explanation regarding the increase in network costs over time to be unreasonable or misleading.

I am concerned that whilst QE appears to have met its obligations under its contracts and the Code, the application of retrospective price increases does not align with the intent of the Code, particularly in relation to providing adequate consumer protection for small customers in a competitive retail market.

I am particularly concerned that, while in this case QE’s retrospective application was for two or three weeks before notice was given to customers, there appears to be nothing to prevent market contracts which allow retrospective price increases to be applied for a much longer period.

Further, by ensuring customers are informed in advance of any price increases, customers have an opportunity to exercise their rights to look for an alternative contract with another retailer, if they so choose.

I would appreciate QCA progressing its consideration of the proposed amendment to the Code as a matter of high priority.

Should you have any further enquiries, please contact Mr Darren Schneider, Director, Industry and Client Services of Mines and Energy on telephone 3237 1131.

Yours sincerely



DAN HUNT
Associate Director-General

APPENDIX 2 – AMENDMENTS TO THE CODE

This Appendix contains the amendments that the Authority will make to the Electricity Industry Code (the Code) to give effect to its Final Decision regarding the processes to apply when a retailer makes a change to its energy tariffs under Section 4.12 of the Code.

The following paragraphs contain the amendments to the Code proposed by the Authority (marked in **bold**):

4.1.1 Application of this Chapter

(a) This chapter applies to:

- (i) all *retail entities*
- (ii) in respect of clause 4.2.10(b), all distribution entities;
- (iii) subject to paragraph (b) in relation to retail contracts with all *small customers*; and**
- (iv) in respect of clauses 4.12.6, 4.12.7 and 4.12.8, *negotiated retail contracts with all small customers made before or after the date this code takes effect.***

4.12.1 Obligations on retail entities

Subject to clauses 4.12.6, 4.12.7 and 4.12.8, where during a billing cycle a small customer changes from one type of tariff to another type of tariff for customer retail services, the retail entity must (if it is necessary to do so due to the change in the type of tariff applying to that small customer):

- (a) obtain a meter reading (or metering data) at the time the type of tariff changes; and
- (b) calculate the *small customer's* bill using the type of tariff applying:
 - (i) the old type of tariff up to but not including the date of the meter reading; and
 - (ii) the new type of tariff from and including the date of the meter reading.

4.12.2 Change of tariff within a billing cycle

Subject to clauses 4.12.6, 4.12.7 and 4.12.8, where during a billing cycle the tariff rate or charge applying to a small customer changes, the retail entity must calculate the bill on a pro rata basis using:

- (a) the old tariff rate or charge up to but not including the date of change; and
- (b) the new tariff rate or charge from and including the date of the change to the end of the billing cycle.

8.3.2 Changes to negotiated retail contracts

- (a) the retail entity must inform the QCA of any changes to the information provided under clause 8.3.1 **and the date the changes take effect no less than 10 business days prior to the price changes taking effect.**

Insert additional clauses 4.12.6, 4.12.7 and 4.12.8 as follows:

4.12.6 No retrospective price changes

Excluding applications made under Clause 4.12.3 of the Code, if a price change applying to a small customer under a negotiated retail contract is proposed by the retail entity, the

retail entity must provide a notice to the *small customer* in accordance with Clauses 4.12.7 and 4.12.8 at least 10 *business days* before the *price change* takes effect.

4.12.7 Notification of *price changes*

In respect of Clause 4.12.6, a *retail entity* must notify a *small customer* of a *price change* under a *negotiated retail contract* by:

- (a) individual written communication including full details of the *price change* via standard postal mail (or via email or mobile text messaging services provided this form of communication has been agreed with the *small customer*); or
- (b) newspaper advertisement, provided that:
 - (i) the *small customer* is notified of the date of an impending *price change* in a bill message (or via email or mobile text messaging services provided this form of communication has been agreed with the *small customer*) prior to the *price change*, stating when (date) and where (website, press notification and any other location) full details of the *price change* will be available;
 - (ii) no less than 10 *business days* prior to the date of the *price change*, publish the new prices (including the percentage increase from the existing prices) in a newspaper/s circulating throughout Queensland;
 - (iii) no less than 10 *business days* prior to the date of the *price change*, publish the new prices and full details of the impact of *price change* on the *retail entity's* website; and
 - (iv) full details of how the *price change* has affected *small customers* is attached to the next bill received by the customer.

4.12.8 Full Details

In respect of Clauses 4.12.6 and 4.12.7 the notification of 'full details' should include as a minimum:

- (a) a table outlining the tariff rates and charges relating to the *negotiated retail contract* prior to and subsequent to the *price change* and the percentage change in these tariff rates and charges.
- (b) a table outlining the estimated annual cost of the *negotiated retail contract* prior to and subsequent to the *price change* and the percentage change in costs incurred due to the *price change* (assuming consumption is spread evenly over the year and excluding rebates or fees listed below in paragraphs (c) to (h)) for a *small customer* with an annual electricity consumption level of:
 - (i) 2MWh (excluding off-peak hot water);
 - (ii) 5MWh (excluding off-peak hot water);
 - (iii) 8.5MWh (excluding off-peak hot water); and
 - (iv) 1.5MWh of off-peak hot water;
- (c) the amount (and change if applicable) of any loyalty rebate;
- (d) the amount (and change if applicable) of any entry rebate;
- (e) the amount (and change if applicable) of any account establishment fees;
- (f) the amount (and change if applicable) of any exit or early termination fees;
- (g) the amount (and change if applicable) of any direct debit rebate;

- (h) the amount (and change if applicable) of any other fees and charges;
- (i) the date from which the new prices are applicable;
- (j) how or where consumers can obtain information to manage their energy usage;
and
- (k) the rights of consumers to switch energy providers.

Insert definitions in 10.1.1 Definitions:

Price Change includes any change to a tariff rate or charge or type of tariff applying to a *small customer* but excludes any change to *distribution non-network charges*.

APPENDIX 3 – LIST OF STAKEHOLDERS**Table A3.1: Submissions received in response to the Draft Decision**

<i>Submission no.</i>	<i>Organisation</i>
1	AGL
2	Credit Commercial and Consumer Law Program
3	EnergyAustralia
4	Ergon Energy
5	Financial Counsellors' Association of Queensland
6	Origin Energy
7	Queensland Council of Social Service
8	Queensland Consumers Association

Table A3.2: Submissions received in response to the Interim Consultation Notice

<i>Submission no.</i>	<i>Organisation</i>
1	AGL
2	Australian Power and Gas
3	Financial Counsellors' Association of Queensland
4	Integral Energy
5	Origin Energy
6	Queensland Council of Social Services
7	TRUenergy

APPENDIX 4 – OTHER JURISDICTIONS

New South Wales

Clauses 22 and 23 of the *Electricity Supply (General) Regulation 2001 (NSW)*, as set out below, expressly prohibit retailers in NSW making retrospective changes to the prices they charge market customers.

22 - Variation of charges under a negotiated customer contract

(1) *A variation in the rates of charges for connection services provided or electricity supplied by a licence holder under a negotiated customer contract with a small retail customer has no effect, and may not be imposed, unless a written notice setting out particulars of the variation is served on the customer.*

(2) *The particulars to be set out in such a notice must:*

(a) *specify the date on or after which the variation is to take effect being a date that is later than the date the notice is served, and*

(b) *include a statement of the new rates or the amount of the variation.*

23 - Variation may not operate retrospectively

A variation in the rates of charges for connection services provided or electricity supplied under a customer contract for which notice is required to be given under this Division operates from the date specified in the relevant notice of the variation and does not operate retrospectively.

The intent of these provisions is to prevent retailers from retrospectively changing the prices they charge their small customers. Clause 22(2)(a) above specifically states that the date on which the variation is to take place must be later than the date the customer is notified of the price change. Clause 23 further states that variations in the rates and charges retailers apply to their customers cannot change retrospectively.

IPART recently reviewed its enforcement of these requirements, informing retailers as follows:

IPART has recently reviewed the price notification requirements set out in clause 22 of the Electricity Supply (General) Regulation 2001 and the Gas Supply (natural Gas Retail Competition) Regulation 2001. In an attempt to address issues of inconsistencies with other jurisdictions and reduce regulatory costs that are ultimately borne by consumers, IPART has decided to adopt the following compliance policy in respect to this clause.

IPART will not strictly enforce the requirements of Clause 22, provided that, as a minimum, retailers:

- *Notify customers of the date of an impending price rise in a bill message prior to the rise, and where possible up to three months prior to the price rise, stating when (date) and where (e.g. website and press notification) further details on the rates or variations in rates will be available,*
- *Within 10 business days after the date of the price rise, publish the new rates or the amount of the average variation in rates for each customer class supplied in:*
 - *A newspaper or newspaper circulating throughout NSW or in a daily newspaper circulating in the area in which the variation is to take effect; and*

On the retailer's website:

- *Provide full details of the price increase impacting a customer in the customer's next bill after the variation.*

- *IPART will not take enforcement action for non-compliance with clause 22 notification provisions if the minimum approach for price notification outlined above is followed. However, while no enforcement action will be taken by IPART, retailers adopting this alternative approach should still report this matter as a breach in their Annual Compliance Report which is submitted at the end of August each year. In this report, retailers should confirm that the minimum notifications requirements stated above have been followed in lieu of full compliance with clause 22 requirements. (Issued via e-mail to Energy Regulatory Managers on 19 March 2009, IPART)*

Victoria

Retailers in Victoria are able to change their prices retrospectively, if they do so in accordance with an express term or condition in the contract and they obtained *explicit informed consent* from the customer in relation to that term or condition.

The Victorian Energy Retail Code (Version 5 – January 2009) sets out the minimum terms and conditions required in retail contracts in Victoria. Part 6 of that Code relates to Market Contracts and variations to these market contracts. Specifically, clause 20 states that:

20. Variations Require Customer's Agreement

- (a) *The tariff and any terms and conditions of an energy contract between a customer and a retailer may only be varied by agreement in writing between the customer and the retailer.*
- (b) *If the amount of the tariff changes in accordance with a term or condition of an energy contract previously agreed between the customer and the retailer, no further agreement is required between the retailer and the customer to effect such tariff change, provided that, where the contract is a market contract, the customer had given its explicit informed consent to the inclusion of the relevant term or condition in the energy contract.*
- (c) *Also for the avoidance of doubt, if the tariff and terms and conditions of a dual fuel contract vary on disconnection by a retailer of a domestic customer's gas in accordance with and as contemplated by a disconnection warning, no further agreement is required.*

Clause 20(b) effectively allows a retailer to change the price only in accordance with a formula or on a basis that was already explained, and agreed to, by the customer. Any other type of price change requires a new, written agreement between the customer and the retailer, according to section 20(a).

South Australia

Retailers in South Australia are able to retrospectively change prices so long as the change is made in accordance with a written disclosure statement outlining the manner in which the price change will occur, agreed to by the customer at the time the contract was entered into.

The South Australian Energy Retail Code (March 2004) sets out the obligations that retailers must comply with in dealing with small customers. Clause 6.7.2 of that Code states:

6.7.2. Change of tariff within a billing cycle

Where during a billing cycle the tariff rate or charge applying to a small customer changes, the retailer must calculate the bill on a pro rata basis using:

- (a) *the old tariff rate or charge up to and including the date of change; and*
- (b) *the new tariff rate or charge from the date of the change to the end of the billing cycle.*

Clause 9.3 of that Code also contains the following condition included in the standard offer contract used in South Australia:

9.3. Variations to the customer's tariffs and charges

We may only vary our tariffs and charges in accordance with the requirements of the Electricity Act or other applicable regulatory instruments and any variation will be published on our website and in the South Australian Government Gazette.

If the conditions applying to our tariffs and charges change so that your previous tariff and charges no longer apply to you at your supply address, we can decide which tariffs and charges will apply.

Clause 14.1(e) of the Energy Marketing Code (March 2004) states that:

14. WRITTEN DISCLOSURE STATEMENT

14.1 When a marketing contact results, or is intended to result, in a small customer entering into a customer sale contract, the following information must be provided in writing to the small customer by the marketer in a written disclosure statement at the time the customer sale contract is entered into:

(e) if the prices, charges, tariffs or service levels are able to be changed by the retailer under the customer sale contract, the manner in which any such change may be effected;

National Framework

The Ministerial Council on Energy (MCE) has agreed to create a National Energy Customer Framework (NECF) for regulating the sale and supply of energy (both electricity and gas) to retail customers.

The legislative package for the NECF is expected to be introduced into the South Australian Parliament¹, in spring 2010. The NECF is expected to come into effect in South Australia on 1 July 2011. The NECF is expected to be rolled out in other jurisdictions over the period to 1 July 2013.

The First Exposure Draft of the NECF included a requirement for retailers to notify standard (non-market) customers of price changes a minimum of 10 business days prior to a price change coming into effect.

However, the Second Exposure Draft of the NECF reduced the complexity of this obligation. Under the proposals in the Second Exposure Draft, retailers would only have to provide details of price changes on their websites 10 business days prior to the change taking effect, with written notification coming on the customer's next bill.

On 24 June 2009, the *Trade Practices Amendment (Australian Consumer Law) Bill 2009* was put before the House of Representatives. The Australian Consumer Law (ACL) is expected to commence on 1 January 2010 and be fully implemented by all of the states by 1 January 2011.

Section 4 (a-n) of the Bill describes 14 examples of the kinds of terms of a consumer contract that may be unfair. Two of these terms ((e) and (f)) are relevant to this review:

(e) a term that permits, or has the effect of permitting, one party (but not another party) to vary the terms of the contract; and

(f) a term that permits, or has the effect of permitting, one party to vary the upfront price payable under the contract without the right of another party to terminate the contract.

¹ The South Australian Parliament is the designated lead legislature for the AEMO reforms.

However, the ACL will not come into effect until 1 July 2010 and even then will not apply to existing contracts until they are varied, and then only in so far as they are varied, which will provide no protection for existing customer contracts.