

Electricity Industry Participation Code 2010

Part 2

Availability of information

Title Heading: amended, on 1 August 2022, by clause 4 of the Electricity Industry Participation Code Amendment (Regular and Event-Driven Provision of Information to the Authority) 2022.

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Power to request Code information

2.1 Requests for Code information

- (1) A **participant** may request the **Authority** to make available to the **participant** (the requesting **participant**) any **Code information** held by the **Authority** or by any other **participant**.

- (2) The request must specify, with as much particularity as possible, the nature of the information sought and the name of the **participant** who is believed to hold the information.

Compare: SR 2003/374 r 15

Information held by Authority

2.2 Information held by Authority

If the **Authority** receives a request for the supply of **Code information** that the **Authority** holds, the **Authority** must—

- (a) consider and process the request in accordance with the Official Information Act 1982; and
- (b) if the **Authority** proposes to provide the information to the requester, give prior written notice to the **participant** that supplied the information to the **Authority**.

Compare: SR 2003/374 r 16

Clause 2.2(b): replaced, on 5 October 2017, by clause 8 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Information held by other participants

2.3 Information not held by Authority

The rest of this Part applies if the **Authority** receives a request for the supply of **Code information** that the **Authority** does not hold.

Compare: SR 2003/374 r 17

2.4 Authority must contact participant believed to hold requested information

The **Authority** must, as soon as practicable after receiving a request for **Code information** that it does not hold, send a written notice to the **participant** who the **Authority** believes holds the relevant **Code information**—

- (a) giving the **participant** written notice of the request made to the **Authority**, and the name and address of the requesting **participant**; and
- (b) requesting the **participant** to either—
 - (i) supply the information, together with a note of the **participant's** charges (if any) in relation to the supply of information; or
 - (ii) supply reasons for refusing to supply the information.

Compare: SR 2003/374 r 18

Clause 2.4: amended, on 5 October 2017, by clause 9(1) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Clause 2.4(a): amended, on 5 October 2017, by clause 9(2) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

2.5 Participant must consider request

A **participant** who receives a request under clause 2.4(b) must consider that request in accordance with clauses 2.6 to 2.8.

Compare: SR 2003/374 r 19

2.6 Code information should be made available to all participants unless good reason

- (1) The general principle to be followed by **participants** in relation to **Code information** is that **Code information** should be made available to all **participants** unless there is good reason for refusing to supply it.
- (2) A **participant** has good reason for refusing to supply **Code information** if the supply of the information would be likely to—
 - (a) breach a legislative, regulatory, or other legal requirement; or
 - (b) prejudice the maintenance and supervision of this Code, including the prevention, investigation, and detection of Code breaches and the right to a fair hearing before the **Rulings Panel**; or
 - (c) result in a disclosing **participant** breaching an obligation of confidentiality; or
 - (d) interfere with the privacy of natural persons; or
 - (e) create an improper gain or improper advantage for the requesting **participant** or any other **participant** or person; or
 - (f) commercially disadvantage the disclosing **participant** or any other **participant** or person, in a material manner; or
 - (g) prejudice the future supply of information that is required by a **market operation service provider** to perform any obligation under this Code.

Compare: SR 2003/374 r 20

2.7 Other reasons

A **participant** may also refuse to supply **Code information** if—

- (a) the information requested is, or will soon be, made available to the public; or
- (b) the information requested does not exist or cannot be found; or
- (c) the information requested cannot be made available without substantial collation or research and the **Authority** agrees that it is unreasonable to undertake the collation or research; or
- (d) the request is frivolous or vexatious or the information requested is trivial.

Compare: SR 2003/374 r 21

Clause 2.7(a): amended, on 5 October 2017, by clause 10 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

2.8 Transfer of requests

- (1) This clause applies if—
 - (a) a notice is sent to a **participant** under clause 2.4(b); and
 - (b) the information to which the request relates—
 - (i) is not held by the **participant** but is believed by the person dealing with the notice to be held by another **participant**; or
 - (ii) is believed by the person dealing with the notice to be more closely related to the activities of another **participant**.
- (2) The **participant** to which the notice was sent must promptly, and in any case not later than **10 business days** after the day on which the notice is received, transfer the notice to the other **participant**, and inform the **Authority** accordingly.

Compare: SR 2003/374 r 22

Clause 2.8(1)(b)(ii): amended, on 5 October 2017, by clause 11(1) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Clause 2.8(2): amended, on 5 October 2017, by clause 11(2) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

2.9 Participants must not enter contracts that prejudice supply of Code information

A **participant** must, so far as is reasonably practicable without materially affecting its business or its ability to meet its obligations under this Code, avoid entering into an obligation with a person that would have the effect of prejudicing that **participant's** ability to comply freely with the provisions of this Part.

Compare: SR 2003/374 r 23

2.10 Decision about supplying information

A **participant** must, as soon as practicable after considering a request, inform the **Authority** and the requesting **participant** of whether it agrees or refuses to supply all or part of the **Code information** requested.

Compare: SR 2003/374 r 24

2.11 Process if participant agrees to supply information

- (1) If a **participant** agrees to supply all or part of the **Code information** requested, the **participant** must, as soon as practicable,—
 - (a) inform the **Authority** and the requesting **participant** of the information that will be supplied, and the amount of any charges to be paid for the supply of that information under clause 2.12; and
 - (b) supply that information, with any deletions authorised by clause 2.13, to the **Authority**.
- (2) The **Authority** must, as soon as practicable after receiving the information, and any charges required to be paid in respect of it by the requesting **participant**, send the information to the requesting **participant**.

Compare: SR 2003/374 r 25

2.12 Charges payable

- (1) A **participant** that supplies **Code information** may charge the requesting **participant** for—
 - (a) the reasonable cost of labour and materials involved in supplying the information to the requesting **participant**; and
 - (b) any additional costs incurred as a result of a request for urgent availability.
- (2) The **participant** that supplies the **Code information**, or the **Authority**, may require the whole or any part of the charge to be paid in advance by the requesting **participant**.

Compare: SR 2003/374 r 26

2.13 Documents may include deletions

If the **Code information** requested is contained in a **document**, and there are good reasons for refusing to supply some of the information contained in the **document**, the **participant** supplying the information may supply a copy of the **document** with any deletions or alterations that are necessary.

Compare: SR 2003/374 r 27

2.14 Process if participant refuses to supply information

- (1) If the **participant** refuses to supply all or any of the **Code information** requested, the **participant** must, as soon as practicable, give written notice to the **Authority** and the requesting **participant** of both the refusal and of the reasons for the refusal.
- (2) The **Authority** must, as soon as practicable after receiving the notice, advise the requesting **participant** of its rights to appeal under clause 2.15.

Compare: SR 2003/374 r 28

Clause 2.14(1): amended, on 5 October 2017, by clause 12(1) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Clause 2.14(2): amended, on 5 October 2017, by clause 12(2) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

2.15 Appeal

A requesting **participant** who receives written notice under clause 2.14 that another **participant** refuses to supply any **Code information** may appeal that refusal by notice of appeal to the **Rulings Panel**.

Compare: SR 2003/374 r 29

Clause 2.15: amended, on 5 October 2017, by clause 13 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Regular and event-driven provision of information to the Authority

Subheading: inserted, on 1 August 2022, by clause 6 of the Electricity Industry Participation Code Amendment (Regular and Event-Driven Provision of Information to the Authority) 2022.

2.16 Authority may specify information that participants must collect, collate and/or provide regularly or in response to events

- (1) The **Authority** may **publish** a notice specifying information that a **participant** must, on a regular basis or as a result of an identified event, provide to the **Authority**.
- (2) The **Authority** may specify information under subclause (1) only for the purposes set out in section 45(a) of the **Act** being to carry out the **Authority's** monitoring functions which are to—
 - (a) monitor compliance with the **Act**, the regulations and the **Code** under section 16(1)(c) of the **Act**; or
 - (b) undertake and monitor the operation and effectiveness of market-facilitation measures under section 16(1)(f) of the **Act**; or
 - (c) undertake industry and market monitoring, and carry out and make publicly available reviews, studies, and inquiries into any matter relating to the electricity industry, under section 16(1)(g) of the **Act**.
- (3) The **Authority** may not specify information under subclause (1) for the purpose of investigating or enforcing compliance with the **Act**, the regulations and the **Code** except that it may use information obtained under a notice **published** under subclause (1) in the course of making a decision to appoint an investigator under regulation 12 of the Electricity Industry (Enforcement) Regulations 2010.

Clause 2.16: inserted, on 1 August 2022, by clause 6 of the Electricity Industry Participation Code Amendment (Regular and Event-Driven Provision of Information to the Authority) 2022.

2.17 Requirements that the Authority must or may specify in a notice under clause 2.16

- (1) In a notice **published** under clause 2.16, the **Authority** must specify the following information requirements:
 - (a) the **participant** who must provide the information;
 - (b) the information the **Authority** requires the **participant** to provide, to a reasonable level of detail;
 - (c) either:
 - (i) the time and/or the frequency at which the **participant** must provide the information to the **Authority**; or
 - (ii) the event following which the **participant** must provide the information to the **Authority** and the time by which the **participant** must provide the information
 - (d) the manner in which the **participant** must provide the information to the **Authority**;
 - (e) the date from which the notice applies, which can be different dates for different **participants**.
- (2) In a notice **published** under clause 2.16, the **Authority** may specify 1 or more standard formats in which the **participant** must provide the information to the **Authority**.
Clause 2.17: inserted, on 1 August 2022, by clause 6 of the Electricity Industry Participation Code Amendment (Regular and Event-Driven Provision of Information to the Authority) 2022.

2.18 Authority must consult before publishing notice

- (1) Before **publishing** a notice under clause 2.16, the **Authority** must provide to the **participant** to whom the proposed notice applies—
 - (a) the proposed notice; and
 - (b) the **Authority**'s purpose in setting the information requirements in the proposed notice; and
 - (c) the **Authority**'s assessment of the likely benefits of the **Authority** obtaining the information required in the proposed notice and whether those benefits are expected to outweigh the likely costs.
- (2) The **Authority** must give that **participant** a reasonable opportunity to make submissions to the **Authority** on the proposed notice and take into account those submissions in deciding whether to—
 - (a) make any reasonable changes to the information requirements to be included in the **published** notice; and
 - (b) **publish** the notice.
- (3) The **Authority** may, but is not required to, consult with any other person the **Authority** wishes, following whatever consultation process the **Authority** considers appropriate.
- (4) If, following the consideration of submissions under subclause (2), the **Authority** proposes to extend the number of **participants** to whom it proposes the notice will

apply, the **Authority** must consult with those additional **participants** following the process in subclauses (1) and (2) if it has not already.

Clause 2.18: inserted, on 1 August 2022, by clause 6 of the Electricity Industry Participation Code Amendment (Regular and Event-Driven Provision of Information to the Authority) 2022.

2.19 Factors the Authority must consider before publishing notice

- (1) Before **publishing** a notice under clause 2.16, the **Authority** must be satisfied that—
 - (a) the benefits of the **Authority** obtaining the information outweigh the costs of the information requirements set out in the proposed notice; and
 - (b) the information requirements set out in the proposed notice promote the **Authority's** objective in section 15 of the **Act**.
- (2) Before **publishing** a notice under clause 2.16, the **Authority** must consider the impact of the proposed information requirements on each **participant** to whom it is proposed the notice apply.

Clause 2.19: inserted, on 1 August 2022, by clause 6 of the Electricity Industry Participation Code Amendment (Regular and Event-Driven Provision of Information to the Authority) 2022.

2.20 Participants must provide information to Authority

- (1) If the **Authority publishes** a notice under clause 2.16, each **participant** to whom the notice applies must—
 - (a) collect and record the information specified in the notice; and
 - (b) collate from its own systems, records and/or information the information specified in the notice; and
 - (c) provide to the **Authority** the information specified in the notice; and
 - (d) meet the other information requirements specified in the notice.
- (2) A **participant** does not need to provide any information to the **Authority** under subclause (1)(c) if—
 - (a) the **participant** has legal professional privilege in respect of the information; or
 - (b) it is not reasonably possible for the **participant** to obtain that information, including because the person that holds the information may lawfully refuse to provide the information to the **participant**.

Clause 2.20: inserted, on 1 August 2022, by clause 6 of the Electricity Industry Participation Code Amendment (Regular and Event-Driven Provision of Information to the Authority) 2022.

2.21 Participants may identify confidential information

- (1) In supplying information under clause 2.20, a **participant** may identify any information for which confidentiality is sought by reason that—
 - (a) disclosure of the information would unreasonably prejudice the commercial position of the **participant** or the person who is the subject of that information; or
 - (b) confidentiality is necessary to protect information which is itself subject to an obligation of confidence; or
 - (c) if clause 2.20 did not apply, disclosure of the information by the **participant** would be in breach of law.

Clause 2.21: inserted, on 1 August 2022, by clause 6 of the Electricity Industry Participation Code Amendment (Regular and Event-Driven Provision of Information to the Authority) 2022.

2.22 Authority dealing with information identified as confidential

- (1) If a **participant** identifies to the **Authority** any information under clause 2.21, the **Authority** will determine whether—
 - (a) there are reasons for keeping the information confidential; and
 - (b) if there are reasons to keep the information confidential as determined by the **Authority**, those reasons are outweighed by other considerations which render it desirable for the **Authority** to make all or any part of the information publicly available in order to give effect to the objective of the **Authority** in section 15 of the **Act** and for the purposes of any of the **Authority**'s functions in either:
 - (i) section 16 of the **Act**; or
 - (ii) section 14 of the Crown Entities Act 2004.
- (2) If the **Authority** does not consider under subclause 1(a) that there are reasons for keeping the information confidential, the **Authority** is not required to keep the information confidential.
- (3) If the **Authority** considers that it is desirable under subclause 1(b) to make all or any part of the information publicly available, the **Authority**—
 - (a) is not required to keep the information confidential; and
 - (b) will inform the **participant** of that decision, provided that doing so is reasonably possible in the circumstances and does not compromise the reasons for making the information publicly available.
- (4) If the **Authority** considers under subclause 1(a) that there are reasons for keeping the information confidential and does not consider that it is desirable under subclause 1(b) to make all or any part of the information publicly available, subject to subclause (5), the **Authority** must keep the information identified by a **participant** under clause 2.21 confidential.
- (5) Subclause (4) does not prevent the **Authority** from—
 - (a) using the information identified under clause 2.21 for any purpose in connection with the objective of the **Authority** out in section 15 of the **Act** or the **Authority**'s functions in section 16 of the **Act** or section 14 of the Crown Entities Act 2004; or
 - (b) disclosing the information to any person in connection with a purpose referred to in paragraph (a) in anonymised form or in consolidated form with other information such that the reasons for keeping the information confidential are not compromised; or
 - (c) disclosing the information where the **participant** who supplied the information or the person who is the subject of the information (if different from the **participant**) either:
 - (i) has consented specifically to the disclosure of that information; or
 - (ii) has consented generally to the disclosure, even where the **participant** identifies the information as confidential under clause 2.21, of:

- (A) information specified in the notice **published** under clause 2.16 under which the **participant** supplied the information to the **Authority**; or
 - (B) a category of information specified in the notice **published** under clause 2.16 under which the **participant** supplied the information and the **Authority** reasonably considers the information that it intends to disclose comes within that category; or
 - (d) disclosing the information as required by or under law.
- Clause 2.22: inserted, on 1 August 2022, by clause 6 of the Electricity Industry Participation Code Amendment (Regular and Event-Driven Provision of Information to the Authority) 2022.

2.23 Privilege against self-incrimination

The **Authority** must comply with section 48(2) and 48(3) of the **Act** in respect of information that is subject to privilege against self-incrimination.

Clause 2.23: inserted, on 1 August 2022, by clause 6 of the Electricity Industry Participation Code Amendment (Regular and Event-Driven Provision of Information to the Authority) 2022.

2.24 Authority may amend notice

- (1) The **Authority** may amend a notice **published** under clause 2.16 following the procedure set out in clause 2.18 and complying with clause 2.19.
- (2) The **Authority** does not need to consult under clause 2.18 on a proposed amendment to a notice if it is satisfied on reasonable grounds that—
 - (a) the nature of the amendment is technical and non-controversial; or
 - (b) there is widespread support for the amendment among the **participants** to whom the notice applies and to whom the proposed amendment will apply; or
 - (c) there has been adequate prior consultation (for instance, by or through an advisory group) so that all relevant views have been considered.

Clause 2.24: inserted, on 1 August 2022, by clause 6 of the Electricity Industry Participation Code Amendment (Regular and Event-Driven Provision of Information to the Authority) 2022.