



1 December 2019

Win-backs Submissions  
Electricity Authority  
Level 7, Harbour Tower  
2 Hunter Street  
Wellington

**By Email**

**winbacks.submission@ea.govt.nz**

**Subject: Consultation Paper - Saves and win-backs Code amendment consultation paper 2019**

Dear review panel,

**Consultation: Saves & Win-backs**

Future Energy New Zealand Ltd, trading as energyclubnz, welcomes the opportunity to contribute to this critically important consultation of the Electricity Authority on the Electricity Pricing Review (ERP) recommendation to ban saves and win-backs.

We agree with the Authorities consultation paper that saves and win-backs (**win-backs**) can effectively be used to stifle small retailers from acquiring customers and discourage potential entrants, thereby reducing competition. Since launch in July 2017 win-backs have accounted for more than 5,000 new customer losses for energyclubnz (current active customers 10,000) and has resulted in significant wasted investment as the incumbents aim to prevent our gains. We estimate that this has cost our business in excess of \$250,000 of wasted investment since launch<sup>1</sup>.

As an example, new energyclubnz customers joining from Mercury Energy or Genesis Energy - who are the most aggressive retailers in the win-back space – have recently reported being contacted with the following win-back offers:

- **Mercury Energy will normally call and offer to double your prompt payment discount from 10% to 20% immediately (worth approximately an extra \$180-200 per year) and offer you a \$300 credit to stay with them.** If you hold out for about a week, but maintain some sort of contact, then we have even experienced an example where the credit has allegedly been increased to \$500.
- **Genesis Energy will also aggressively increase their prompt payment discounts in a similar fashion to Mercury Energy and add a significant credit to your account to stay (\$150+).**

If these savings were offered to **ALL** Mercury Energy and Genesis Energy customers, our estimations are that it would wipe out more than their entire levels of retail profitability and deliver a significant loss. In our opinion this activity clearly leverages a dominant market position, is likely to be 'below cost', limits competition and increases the cost of new entrant retailers. Consequently we support the Electricity Authority proposal to ban win-backs on the quickest possible timings.

Given that at least one of these retailers has been flagging to investors that they are only losing 'low value customers' they seem to be putting a lot of effort into getting them back at pricing 10-20% below their normal 'loyal customer' pricing to sustain their overall customer numbers. Separately energyclubnz would also welcome a Commerce Commission investigation into whether these prices are 'below cost' and subsequently limiting competition.

**We now believe that the Authority has no option but to call upon an immediate ban, pre-Christmas, without any time limits, across all customers types (residential and business).**

We are also bemused by the Electricity Authorities lack of meaningful action across the last 3 years (under the previous leadership) on win-backs including the failed 'Save Protection Scheme', the failure of MDAG to make effective recommendations to the Authority (which has now been totally undermined by the EPR) and the failure of the Save Protection breach system.

**energyclubnz agrees with the following parts of the proposal:**

- With the objectives of the proposed amendment **excluding** the switch protection period of 180 days
- Prohibiting retailer-initiated win-backs after a switch
- Clearly specifying (and potentially limiting) circumstances in which the losing retailer may contact a previous customer
- Prohibiting the losing retailer from passing a previous customer's information on to third parties
- A post implementation review after a 2 year period
- The benefits of the ban will far outweigh the costs of implementation of the scheme.

**The elements that we do not agree with are:**

**Q2: energyclubnz recommends that the Electricity Authority precludes the 180 day minimum period from the new regulations.** This does not prevent generic brand marketing, as part of a wider brand campaign, but should clearly exclude any specific account data that was used in the provision of services prior to the customer's agreement ending.

energyclubnz strongly believes that the interpretation of the Electricity Authorities view of the Telco Act is incomplete. In the Telco industry there is no time limitation on win-back calls but a prohibition on marketing activity, which is specifically targeted at the switching customer, where those activities are based on and in direct response to the losing telco receiving a transfer request.

This restriction is based on the principles of the Privacy Act 1993, where personal information should only be used for the purpose with which it was given. A customer gives information to a retailer for the purposes of providing services from that retailer during the period of their contractual relationship.

Once the customer switches away, their information can no longer be used to win that customer back as the contract is no longer in place and the retailer is no longer providing the service for which it was using the data for. Consequently the losing retailer should only be able to use information, post the switch, which is available to other participants in the Industry. The losing retailer should not be advantaged in any way, due to the Privacy Act, versus any other potential participant who is seeking to gain prospective new customers.

**Q4 Response. energyclubnz believes that the proposed 'good conduct' regulations are already covered in legislation. We do not agree that the 'good conduct obligations' are required in this Electricity Authority Code amendment.** energyclubnz believes this is already sufficiently covered in existing regulations, including the Fair Trading Act, and is actually outside the scope of the Electricity Authority and enters one of the remits already covered by the Commerce Commission.

**Q6 and Q7 Responses. We do not agree with either of the scenarios detailed.** Our recommendation is that there is no time period stated and once a customer has been lost it should automatically be treated as a new prospective customer under more general brand marketing campaigns without the use of any customer data gained from the previous relationship. Under the two stated scenarios we believe that there would be significant complexity introduced to the regulation that could result in a potential dilution of the impact of a change in the code.

**Other considerations:**

**Q9: Registry Changes: We would recommend option (b)** which would be a minor change to the Registry but would provide proactive reporting of switches back to the losing retailer. We would also recommend a build to this regulation that requires each retailers Board to sign off a quarterly report to confirm that there has been no win-back activities during the quarter that could limit competition.

**4.23(c): energyclubnz disagrees that these changes will create an increase in resources invested by retailers to acquire and retain customers.** Our expectation is that the average cost per acquisition will reduce by 40%, allowing us to acquire more customers at a lower cost (assuming the wholesale markets are fit for purpose) and we expect our retention to increase significantly based on how our customers rate the overall experience and service. However, we believe the view represented in this document reflects what would be experienced in an incumbency where they would have to work harder to better satisfy their customers - most of whom are paying a significant 'loyalty tax' – which would result in higher investment in innovating, satisfying, retaining for the incumbent retailers ultimately acquiring enough customers to off-set their potential significant customer losses in future years.

**4.26: energyclubnz believes the implementation costs for retailers is significantly overstated.** To implement this code amendment, outside of the Registry changes for the authority, the cost would be negligible and would effectively be only the reallocation of win-back staff within a few incumbents and some minor changes to automations associated to new registry codes in billing systems (if the billing system needs any changes at all). For energyclubnz the cost of this implementation is expected to be zero. However the benefit will be significant allowing accelerated growth (subject to wholesale markets) at a lower cost.

**Q12: The proposed changes (with minor amendments) are preferred versus the alternative options.** The alternatives presented in 4.31 are not credible alternatives. Maintaining the current 'Status Quo' (option A) would put the Electricity Authority against the views of well-respected and credible key stakeholders including the Minister, the Commerce Commission and even one of the incumbents (Contact Energy). Maintaining the 'Status Quo with improved monitoring' as proposed by MDAG also does not achieve the outcomes as stated in the Electricity Review. It should also be noted that MDAG has absolutely no credibility in their advice to the Authority on win-backs given the immense effort and resources that they have invested in trying to maintain the Status Quo across the last 3 years. Finally 'Option C' would be extending an existing scheme that has been evaluated by the Authority as failing to deliver the original intended outcomes. It should also be noted that there are no effective penalties for a breach. As a new retailer that has lodged 2 breaches against incumbent retailers we still have no conclusions to either breach despite one being lodged on 15 May 2019.

Under the new leadership of the Electricity Authority we now hope that James, and the new team, can quickly deliver one of the recommendations of the Electricity Pricing Review with an immediate ban, pre-Christmas, of winbacks – without any time limits.

I hope this is of use. I will be happy to answer any questions from your team directly.

Yours sincerely



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Founder

