
Submission

Raising consumer awareness of Utilities Disputes
and Powerswitch services

3 March 2020



Table of Contents

1 Introduction 3

2 Concerns with proposed approach..... 3

3 Utilities Disputes Scheme Rules 3

4 Quasi-regulation-making-power 4

5 Drafting of the proposed Code amendment and Guiding Principles 4

6 Regulatory certainty 4

1 Introduction

Aurora Energy welcomes this opportunity to comment on the Electricity Authority's consultation paper "Raising consumer awareness of Utilities Disputes and Powerswitch services" (the Consultation Paper).

No part of our submission is confidential and we are happy for it to be publically released.

If the Authority has any queries regarding this submission, please do not hesitate to contact:

Alec Findlater
General Manager Regulatory & Commercial
Aurora Energy Limited
alec.findlater@auroraenergy.nz
027-222-2169

2 Concerns with proposed approach

While we are supportive of measures to ensure that consumers are aware of the services that are available to them, we harbour three major concerns regarding the proposed approach that the Authority has set out in the Consultation Paper:

- there are already requirements in place under the Energy Complaints Scheme operated by Utilities Disputes Limited (UDL) (Energy Complaints Scheme), which require providers to promote the scheme to consumers;
- the incorporation of the "Guiding Principles" into the Code creates a quasi-regulation-making-power for the Authority; and
- there are significant inconsistencies between the proposed Code amendment and the Guiding Principles, and within the Guiding Principles themselves,

all of which result in a lack of certainty and clarity as to the compliance obligations. We therefore do not agree that the proposed Code amendment should be implemented.

3 Utilities Disputes Scheme Rules

In our view, the obligations to promote UDL are appropriately covered by the "General and Scheme Rules for the Energy Complaints Scheme" (Scheme Rules) which govern operation of the Energy Complaints Scheme. These obligations, in our view, present a wide-range of opportunities to promote the Scheme to consumers as they require providers to:

- promote the scheme on any invoice to customers;
- promote the scheme in other relevant customer information;
- provide UDL's contact details to complainants when they first make a complaint to the provider;
- provide UDL's contact details to complainants when advising the complainant of the outcomes of the provider's complaints handling system;
- provide UDL's contact details to complainants when the complaint has reached deadlock; and
- advise complainants that they may complain to Utilities Disputes if they are not satisfied with that outcome.

The result of the Authority regulating these same matters would be a situation where there is dual regulation.

4 Quasi-regulation-making-power

We are concerned that the Authority, by incorporating Guiding Principles into the proposed Code amendment, is establishing a quasi-regulation-making-power.

This concern is exacerbated by:

- the wording of clause 11.30A(3) which places a strict obligation on participants to have regard to the Guiding Principles, a breach of which would result in a Code breach; and
- the Authority's statements in the Guiding Principles that "*The Authority expects affected participants to implement these principles as soon as possible*"¹ and "*The Authority expects participants to be fully aligned with these principles within six months of the Code amendment coming into force*"². The language that the Authority is using here implies that there is an expectation of more than simply having "regard" to the Guiding Principles.

The Guiding Principles are not subject to the same regulatory discipline and robust regulatory development process as other regulatory instruments and therefore, in our view, participants are at risk of being subjected to unilateral regulatory decision making when it comes to changes to the Guiding Principles.

5 Drafting of the proposed Code amendment and Guiding Principles

There are significant inconsistencies in the drafting between the proposed Code amendment and Guiding Principles, and within the Guiding Principles themselves.

Proposed clause 11.30A(2) states that "*If a distributor sends accounts for line function services directly to a consumer, it must provide clear and prominent information about the dispute resolution scheme ... on every invoice or associated document relating to the supply of line function services.*" The Guiding Principles contradict this obligation in several places:

- table 2 of paragraph 3.2 implies in one row that distributor communications with consumers who are directly billed are considered in scope while in another row all consumer communications are considered in scope, not just consumers the distributor has a contractual relationship with;
- paragraph 3.3 implies that distributors that only direct bill a small number of consumers are excluded from providing clear and prominent information;
- paragraph 3.5 goes on to state that "*The Authority expects all distributor's websites to include clear and prominent information on the Powerswitch and Utilities Disputes services*" (this introduces an obligation around Powerswitch on distributors); and
- paragraph 3.7 refers to the need for distributors to provide information on UDL and Powerswitch if they are interacting with a consumer one-on-one regarding electricity related matters.

In our view, the Guiding Principles are not clear and, in many instances, are overly prescriptive.

6 Regulatory certainty

Each of the concerns that we have raised above creates, in our view, significant uncertainty for regulated businesses:

- creating regulation when another body also regulates that space exposes regulated businesses to potentially conflicting obligations as one regulatory framework may differ from the other;

¹ Paragraph 3.17 of the Guiding Principles

² Paragraph 3.18 of the Guiding Principles

- establishing a quasi-regulation-making-power creates, again, significant uncertainty for participants and is not good regulatory practice; and
- poorly drafted Guiding Principles create an uncertain operating environment for regulated businesses.

Furthermore, we do not agree that the proposal set out in the Consultation Paper would result in an outcome that is consistent with the objective of the Authority, being the *“efficient operation of, the electricity industry for the long-term benefit of consumers”*³ and urge the Authority to more fully evaluate the proposal.

³ Section 15 of the Electricity Industry Act 2010