

3 March 2020

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Submissions
Electricity Authority
PO Box 10041
Wellington 6143

By email: AwarenessOfUDandPS@ea.govt.nz

Re: Consultation Paper – Raising consumer awareness of Utilities Disputes and Powerswitch services

Nova Energy (Nova) supports developing efficient and cost effective means of informing consumers of their rights and the facilities available to them when purchasing and using electricity. It also believes that consumers deserve clear and concise communications, products that match their lifestyle choices, and prompt and constructive responses to their enquiries. Nova carefully manages the form and content of its communications with its customers in tune with the nature of each interaction.

Nova considers that the Authority's proposal and the draft code amendment and associated guidelines (as proposed) are:

- (a) too broad in scope, particularly the proposed application to "all consumer communications"; and
- (b) overly disruptive, obtrusive and (potentially) costly to retailers and distributors.

In particular:

- (a) The requirement to include details of Utility Disputes Ltd (UDL) and Powerswitch prominently on all consumer communications will likely create unnecessary uncertainty and confusion for consumers over the point of each respective communication. As such it is inconsistent with the Authority's stated principles that such communications should be "simple" and "appropriate". For example: In the case of a letter advising of a planned network outage; is the intent of the compulsory UDL/Powerswitch content to suggest that the consumer should switch retailers because of the outage, or perhaps contact UDL to complain about the outage? Does UDL want to receive calls in such events?
- (b) The scope of the proposed regulation and the associated compliance guidelines overlap in many places with existing Fair Trading Act requirements (e.g. the prohibitions around misleading and deceptive conduct, false, misleading and/or unsubstantiated representations etc.) as well as the proposed Fair Trading Act amendment which would introduce new prohibitions around "unconscionable conduct in trade". Having two sets of rules covering very similar subject matter and two regulatory enforcement agencies (i.e. the Commerce Commission and the Authority) will likely create unnecessary uncertainty and confusion for both consumers and retailers.

- (c) Increased operational and regulatory compliance costs are likely to impact on consumers. For example:
 - (i) where a retailer's customer communication systems and processes require extensive and costly changes to comply with the new regulation, these costs will likely be passed through to consumers in the long run; and/or
 - (ii) if retailers find a correlation between their communications and customers subsequently switching away or complaining to UDL, then the likely response would be to modify the form and/or frequency of customer communications (perhaps by minimising customer contact, or even by increasing contact to the point that the consumer takes no notice).

Instead of adopting the draft regulation as currently proposed, Nova recommends that:

- (a) the regulations need only to specify that certain specific communications from a retailer to a consumer must include contact details for UDL and Powerswitch; and
- (b) those details must be no less distinctive than the retailer's own contact details.

Such a requirement should meet the Authority's objectives and be simple to interpret and apply for all parties.

Nova's detailed response to questions raised in the Consultation Paper are attached. Nova is happy to meet with the Authority to further discuss its submission and to answer any questions that you may have. Please direct any questions or other matters regarding this submission, in the first instance, to the undersigned.

Yours sincerely



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Appendix - Raising awareness of Utilities Disputes and Powerswitch services

Questions	Response:
<p>Q1. Do you agree the issues identified by the Authority are worthy of attention?</p>	<p>UDL and Powerswitch provide a useful service, and as such it makes sense that consumers are made aware of those services. The level of awareness that should be targeted, and the amount of exposure they need to achieve those levels of awareness are somewhat subjective, however.</p> <p>The evidence that current levels of awareness are inadequate and that this directly results in consumers not using the UDL or Powerswitch services is weak. Because of this the Authority should take a cautious approach to promoting awareness and build on that, should that prove to be beneficial in terms of valid claims to UDL and consumers securing better deals through Powerswitch. If additional evidence is not forthcoming, the Authority should refrain from taking the measures proposed in the Consultation Paper and Guiding Principles.</p>
<p>Q2. Do you agree with the objectives of the proposed amendment? If not, why not?</p>	<p>The objective to improve consumer awareness of UDL and Powerswitch is reasonable. However, the paper provides no measurable analysis giving a target level of awareness, or any justification for reaching any prescribed level of awareness. If the current level of awareness is not adequate, then what level is adequate? Does this justify giving the services prominence on retailers every form of customer communication, including more than 21 million residential invoices per annum?</p>
<p>Q3. Do you agree the benefits of the proposed amendment outweigh its costs?</p>	<p>No.</p> <p>Many retailers provide a number of services, e.g. electricity, natural gas or LPG, and broadband services. Consumers want to see the key information on what they are paying for these services on the front page of their invoice. Crowding that information out with references to UDL and Powerswitch is unhelpful for the vast majority of consumers. The impact of message confusion in existing communications is not factored into the analysis; noting that UDL receives approximately one complaint per 8,000 invoices (not counting other forms of communications with residential consumers).</p>

Questions	Response:
	<p>The financial costs to retailers of redesigning communications appears to be under-costed in the analysis. Not only are there design costs in initially changing invoices, outage notices, price change letters and other such communications, as well as changing the billing/CRM systems which generate those communications, but the cost of working in with the proposed Code may be repeated every time those communications need to change.</p> <p>The Guidelines are overly onerous in the way they include all communications. Some customers appreciate a simple text message or email reminding them that their energy bill is due for payment, or that there is a deadline coming up for a special pricing offer. It is totally impractical to include references to UDL or Powerswitch on such communications.</p> <p>Similarly, recorded messages are useful for channelling calls to the appropriate call centre or website; however, such messages need to be very concise. Adding a verbal message referring to UDL and Powerswitch to any recorded message is likely add to consumer frustration in waiting to speak to a real person, and potentially distract callers from the actual reason for their call.</p>
<p>Q4. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.</p>	<p>No</p> <p>The proposed regulation is not a 'relatively simple and low risk intervention' as claimed. It has the potential to impose significant operational and regulatory compliance costs on retailers that will inevitably be passed through to consumers in the long run.</p> <p>Nor is the proposal a 'flexible and iterative approach that would enable the Authority to work with consumers and industry...', instead it bluntly imposes changes to every communication from a retailer to a customer, regardless of the specific purpose of that communication.</p> <p>The scope of the proposed regulation and the associated compliance guidelines overlap in many places with existing Fair Trading Act requirements (e.g. the prohibitions around misleading and deceptive conduct, false, misleading and/or unsubstantiated representations etc.) as well as the proposed Fair Trading Act amendment which would introduce new prohibitions around "unconscionable conduct in trade". Having two sets of rules covering very similar subject matter and two regulatory enforcement agencies (i.e. the Commerce Commission and the</p>

Questions	Response:
	<p>Authority) will likely create unnecessary uncertainty and confusion for both consumers and retailers.</p> <p>Should the Authority proceed with this amendment, Nova believes that at some stage the Consumer Advisory Council will realise that the new requirement increases consumer confusion in interpreting communications for little benefit. That will likely lead to a reversal of the policy and more changes for retailers.</p> <p>Nova's proposed amendments, as per Q.6 below, is far more straightforward than the options put forward by the Authority and could be implemented at considerably less cost. Should that solution not meet the Authority's objective (whatever that is, given it has not quantified an objective), then the requirements under the Code could be reviewed again in future. That would be a far more flexible and iterative approach.</p>
<p>Q5. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?</p>	<p>No. The objective is not adequately quantified and as such the efficiency gains are not clear.</p> <p>The costs to retailers appear to be under-estimated, and no provision is made for the cost (financial or otherwise) to consumers who wish to receive clear, unencumbered communications from their retailer.</p>

Q6. Do you have any comments on the drafting of the proposed amendment?

Nova would amend the proposed Code as follows:

11.30A Promotion of dispute resolution scheme and electricity plan comparison website

~~(1) Each **retailer**, or **distributor** which sends accounts for **line function services** directly to a residential **consumer**, must provide clear and prominent contact information for the dispute resolution scheme identified under clause 3 of Schedule 4 of the Electricity Industry Act 2010 and the **Authority** prescribed electricity plan comparison website, with at least the same level of prominence as the **retailer's** or **distributor's** own contact details, on all invoices and on all personalised print materials concerning the **consumer's** energy plan that are sent to the residential **consumer**, and on any website maintained by, or on behalf of the **retailer**.~~

~~(a) on a website maintained by, or on behalf of the **retailer**; and~~

~~(b) in all **consumer** communications (including every invoice or associated document relating to the sale of **electricity**).~~

~~(2) 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 identified under clause 3 of Schedule 4 of the Electricity Industry Act 2010 on every invoice or associated document relating to the supply of **line function services**.~~

~~(3) When providing information under this clause, **participants** specified in subclauses (1) and (2) must have regard to any guidance the **Authority** may publish to assist **participants** in complying with this clause.~~

Under this revised Code change, no Guiding Principles would be necessary.

Q7. Do you have any comments on the proposed principles?

As per the comments above, they are excessively onerous and impractical, particularly in respect of verbal communications.

The Code change and proposed principles make no mention of the requirements on Retailers to comply with the Fair Trading Act 1986. Given the Commerce Commission's oversight of this Act, and the approach by the Courts to any misleading communications by Retailers, every piece of customer communication

	<p>is carefully vetted by Nova before it is approved for release. As well as invoices, standard communications include price change or renewals letters, outage notices, friendly reminders for bill payments, disconnection notices and final notices of disconnection. Complying with the Guiding Principles could in some circumstances be regarded by the Courts as deliberately obscuring the true message in the communication, for example if the details of a contract renewal are carried over onto the a back page of a letter.</p>
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