15 October 2019

Submissions
Electricity Authority
PO Box 10041
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By email: submissions@ea.govt.nz

Electricity Authority's consultation paper: Code amendment proposal: Default Distribution Agreement

Thank you for the opportunity to provide feedback on the proposed Default Distribution Agreement (DDA) and amendments to Part 12A of the Electricity Industry Participation Code.

Contact Energy (Contact) supports the Electricity Authority's (Authority's) proposal to create a standardised and flexible DDA for retailers and distributors. However, we believe further refinement is required, particularly with regard to the time frames proposed to allow parties to adequately evaluate, consult on, negotiate, and transition to the proposed new arrangement.

We consider the proposed approach to data sharing largely looks to resolve many of our long standing concerns, however, we note that there may be further changes implemented as a result of the Electricity Price Review.

Please note our support for the ERANZ submission. Contact's response to the questions in the consultation paper are attached in Appendix A. We are happy to discuss and provide further information on any of the matters raised in our submission. Please don't hesitate to contact me or my colleague Merinda-Lee Hassall: merinda-lee.hassall@contactenergy.co.nz.

Yours sincerely

Debby Abrahams
Commercial Manager

Appendix A

Submitter	Contact Energy Limited

Question	Comment
Q1. What are your views on the problem definition, specifically: **(a) the efficiency problem** **(b) the competition in related markets problem** (c) **the competition in related services problem**	**Question 1(a) – efficiency problem** A more standardised, efficient approach to contracts for distribution services will reduce transaction costs and be in the best interests of all customers. **Question 1(b) – competition in related markets problem** A standardised approach to the way in which distributors and retailers enter into agreements for lines services will be in the best interests of all customers. **Question 1(c) – competition in related services problem** We agree with the Authority that the use of Use of System Agreements (UoSAs) has enabled distributors to reduce workable competition in both related services and additional services. We don't believe the Authority's proposed changes to the DDA template, as discussed in clause 4.14 of the consultation paper, will have a meaningful impact on competition in the related and additional services markets. For example, hot water controlled load tariffs where distributors have: (a) invested in ripple plant using regulated funds, placing it at an advantage to third parties looking to provide demand response and other services to transmission, distribution and wholesale markets; (b) selected ripple technology as the only technology which customers can utilise if they wish to receive benefits from providing a service to the distribution network and as a result: (i) distributors have control over customers' hot water cylinders; (ii) customers are unable to participate in other markets e.g. reserves market and may be receiving less value for their flexible load than they would receive in a competitive market.
Q2. What are your views on the revised: **(a) Part 12A proposal** **(b) DDA template proposal**	**Question 2(a) – Part 12A Code Amendment** 1. **Schedule 12A.1, Clause 6(3) – 20 Business Days to negotiate the terms of a distributor agreement** It is impractical for retailers and distributors to negotiate and conclude a distributor agreement within 20 Business Days even if many of the clauses in the DDA are standardised. Operational terms vary between distributors due to different regional and network requirements and parties may also want to negotiate Collateral Terms, Related Services and Additional Services. We suggest allowing an open time frame to negotiate a distributor agreement, with either party being able to give 5 Business Days' notice at any time in the negotiation process for the DDA to take effect. This suggested approach would give sufficient flexibility to the negotiating parties whilst removing the need for the parties to incur unreasonable additional cost or lead to unreasonable delay. 2. **Schedule 12A.1, Clause 12(5) – transitional provision (2 months)** The DDA is valuable as a standardised 'backstop' approach if parties are unable to agree mutually acceptable terms for distribution services. However, if a distributor

	and retailer are both satisfied with their current arrangements, it is inefficient to mandate replacement with either the DDA or an agreed alternative. This approach would negate the value of the progress achieved by retailers and generators in reaching agreement on existing UoSAs. If existing UoSAs must be replaced by new DDAs, Contact considers two months too short to transition, we recommend the time frame be extended to six months because: (a) Contact's experience of working with local distributors to negotiate new UoSAs that are materially aligned with the 2012 Model Use of System Agreement; (b) a transparent process takes several rounds of negotiation; and (c) Contact has additional services which will need to be renegotiated alongside the DDA or as part of a proposed Alternative Agreement. 3. **Schedule 12A.1, Appendix C – provision of consumption data** (a) **Clause 3(4)(d), must not be transferred outside NZ** – It is not clear whether the reference to "must not be transferred outside New Zealand" has anticipated data storage "in the cloud" (where servers are most often than not, located off shore) and the implications of the Privacy Bill currently before Parliament. (b) **Clause 4(2), reasonable costs** – The reference to "out of pocket expenses" should be changed to "costs" to be consistent with other clauses. (c) **Clause 10(2)(h), unauthorised use or access to data** – A distributor should be required to notify a data breach "as soon as reasonably practicable after discovery" and should also extend to other forms of breach (such as access to, disclosure, alteration, loss or destruction of) as contemplated by the new Privacy Bill. (d) **Clause 13, audit rights** – We propose that each retailers' regulated reconciliation participant annual audit includes an audit of the distributor to ensure compliance with this Appendix. (e) **Frequency of data** – There is no restriction on the frequency of data requests from distributors. Requests to provide regular (perhaps monthly) volumes of data require considerable additional resource. (f) **Network management and planning** – This has been a contentious issue between retailers and distributors for some time. The industry would benefit from agreement on a definition of "network management and planning" and we encourage the EA to work with retailers and distributors to achieve this. 4. **Schedule 12A.3 – embedded network provisions** It is appropriate to place a similar requirement on embedded networks to align their distributor agreements with the DDA. The issues affecting the development of local network distribution agreements are the same for embedded network distribution agreements and, with the significant growth of embedded networks over the last few years, negotiating UoSAs has, in many instances, taken a lot of time. 5. **Schedule 12A.4, Clauses 6(2) – making DDAs available, consultation between participants on DDAs** Clause 6(2) requires distributors to consult each participant on its operational terms before making a DDA available on its website. Contact is concerned that the consultation process is not clearly prescribed and retailers may not be provided sufficient time to effectively consult on a distributor's proposed operational terms during the 90/150 day development phase. To provide clarity we propose the Authority consider the following: (a) adding further detail on what the consultation should involve, to ensure adequate consultation by distributors.

	(b) approving distributors proposed DDAs (compliance with the new Part 12 requirements) before presenting to retailers for consultation; (c) including at least a 3 month consultation period (separate from the distributors' DDA development period) from when the distributor notifies participants of their DDA on their website. 6. **Schedule 12A.4, Clause 7 – Participants may appeal operational terms** The time frame to appeal operational terms will likely vary from distributor to distributor and as a number of operational terms will be published by distributors simultaneously during the transition process, we propose extending this time period to 40 Business Days. It is also unclear what "participated in the consultation" means. This should be replaced with "made a written submission to the Distributor". 7. **Schedule 12A.4, Clause 12 – amending operational terms** This process does not contemplate retailers suggesting amendments to operational terms. This right should be added. 8. **Load control** Load management has played, and will continue to play an increasingly important role in the development of a reliable, efficient and sustainable New Zealand electricity market. In order to drive innovation in customer products and services we believe it is timely to review the role of the DDA in facilitating competitive market arrangements. The proposed DDA template with regard to load control does not change the existing arrangements. Distributors appear to be offering more cost reflective pricing (e.g. TOU tariffs) and we consider it important for customers whose distributors load control during peak/off-peak/shoulder times should have TOU tariffs for the management of that specific controlled portion. With respect to clause 2.5 of the consultation paper, it is not clear why controlling load to support electricity at the transmission level (whether through providing reserves, demand response or voltage support) would be classified as a 'related service', yet controlling load to participate in the wholesale market would be classified as an 'additional service'. These services are all independent of the distribution service and should be classified as 'additional services' in the proposed Code amendments.
	Question 2(b) – Proposed DDA template 1. **Clause 5 – Load control** Clause 5.6 of the DDA (which requires the retailer to make controllable load available to the Distributor for management of system security) appears to be the only clause related to core distribution services and should be in the main body of the DDA dealing with load control. The remaining sub-clauses in clause 5 and the information in table 1 on Service Standards related to Controlled Electricity Supply Categories should be included as additional services in a new Appendix to Part 12A.1. We also propose clauses 8.1 and 8.2 in Schedule 8 be incorporated into clause 5.6 with any remaining provisions incorporated, where relevant, in a new Appendix to Part 12A.1 of the Code.

	2. **Clause 7.7 – Price changes due to error** Contact requests that the DDA be amended to require distributors to comply with clause 7.4(a)-(c) in instances such as that contemplated in clause 7.7 as retailers still need sufficient time to notify customers of such price changes after an error has been identified and allow them to make the relevant changes (e.g. move to another price category, change their metering) as a result of the price change. 3. **Clause 8.9(b) – Price category changes** The 10 Working Days' time frame should be increased to 30 Working Days to allow retailers to challenge a distributor's notification of the reason why a price category has been incorrectly allocated. This would accommodate the fact that in most instances after receiving such notification, the retailer needs to arrange a site visit to check the customer's main switch fusing and/or refusing of the main switch. 4. **Clause 14 – Momentary fluctuations and power quality** Where a momentary power quality event causes a customer's protection equipment to trigger this is an interruption from a customer's perspective. It is not useful for a retailer to ask a customer to acknowledge otherwise, as proposed by clause 14.1(a)(iii). Propose this sub-clause be removed from the draft DDA. Clause 14.2 implies that the obligation to monitor power quality only exists where a customer or retailer raises a concern, however we consider there would be value in distributors being required to monitor power quality on all parts of their network to help provide transparency and consistency across networks. 5. **Clause 17 – Connections, disconnections and decommissioning** Due to the large number of issues participants have with Unmetered Load (UML), Contact proposes including a requirement in the DDA for distributors (when assessing whether an ICP is to be put onto an UML tariff) to not agree to the installation of any new UML on their network unless the installation of a meter is not reasonably practicable. 6. **Clause 24(7) – Liability caps** Contact considers that the proposed liability caps are too low to cover likely loss and damage in the current market. They are currently at the higher end of the average UoSAs today, however these caps were taken from agreements where retailers had little bargaining power to negotiate. We propose the caps are raised to at least $25k per ICP and $5 million plus some form of index adjustment to ensure the caps are future fit. We propose damages that are payable as consequence of failing to meet quality and services standards (e.g. distributor fails to fix meter fault within the agreed four hour time limit) set out in the Recorded Terms should be expressly excluded from the cap. 7. **Schedule 5 – Service Interruption Communication Requirements** S5.3 - Contact requests that the reference to EIEP5 be amended to protocol EIEP5**b**, to ensure we do not have unplanned outages automatically being processed through our planned outage channel (which is EIEP5**a**).

	S5.7 - Requires a retailer to log a call with a distributor through EIEP5. This is a single direction exchange file (distributor to retailer) and we consider this is not an appropriate mechanism to record this type of transaction.
Q3. What are your views on the draft Code, appended to this paper, which would introduce the proposal	Our comments are included in the answers to Q2.
Q4. What are your views on the Regulatory statement, specifically: **(a) the efficiency costs and benefits** **(b) the costs and benefits in the retail market** **(c) the costs and benefits in the related-services market**	No comment.