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Submissions
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Re: Consultation Paper – Default agreement for distribution services

Thank you for proposing the introduction of a default agreement for distribution services between Traders and electricity distribution companies (EDBs).

It is Nova Energy's experience that Traders need access to a default distribution agreement (DDA) as a back-up option when negotiating terms with EDBs. Negotiating agreements can be a time consuming and expensive process, involving core operational and legal staff negotiating terms and cross checking against various different templates.

This includes replacing existing agreements; dated agreements tend to be retained for longer than ideal because of the cost of updating them, and the newer agreements frequently include terms and conditions that are either unsatisfactory or less favourable than existing arrangements.

By codifying a set of core terms and a default set of operational terms for each network, Traders will be able to enter a new network region quickly and on an equal footing with existing Traders. It is also important that alternative agreements can be negotiated between the parties should they prefer. Such negotiations are far more likely to be successful given that both parties have the option of discontinuing with the DDA in any case. The proposal also gives room for the operational terms to be updated over time as circumstances change.

Nova Energy's primary concern with the proposed DDA is the automatic right the DDA confers to EDBs to receive detailed customer information. This is irrespective of a Trader's concerns over how that data is likely to be used or managed. Nova Energy believes that both:

- a) The confidentiality clause in the DDA should be strengthened, and
- b) The Trader should have the right to withhold customer information if, in its own opinion, the EDB has not given satisfactory undertakings over the protection of that data.

Overall, Nova Energy supports the introduction of the default distributor agreement. Our detailed response is attached. Please feel free to contact me if you wish to discuss our views further.

Yours sincerely



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Nova Energy submission

Appendix A1

Responses to the discussion paper

Q	Comment	Response
1.	<p>What is your view of the Authority's assessment of the arrangements that are currently in place governing the way distributors and retailers develop, negotiate, and agree UoSAs, and of the issues that the Authority has identified? Please provide your reasons.</p>	<p>Nova Energy agrees that the EA has accurately identified the issues.</p> <p>When the EDBs introduce standard contracts they frequently add alternative terms or conditions to existing templates. It can require extensive discussion to firstly understand the need for the changes, and secondly resolve different views on the applicability of those terms.</p> <p>Furthermore, some EDBs have tended to work on the basis that if they can agree a UoSA with one or more of the major retailers, then the agreement is satisfactory for all parties and they do not need to make any further concessions, irrespective of the merits of proposed changes, i.e. adopting a 'take it or leave it' attitude.</p> <p>Overall, there is definitely a need for a better mechanism for overcoming deadlocks in discussions for access to networks.</p>
2.	<p>What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each distributor's DDA is a tailored benchmark agreement?</p>	<p>The basic concept behind the construct of the DDA is sound, with the DDA being capable of being adopted by either party.</p> <p>Nova Energy supports the exclusion of 'other services' from the DDA as these should be capable of being negotiated by the parties.</p> <p>There is no adequate reason, however, why existing agreements should be overwritten by Part 12A, or why such agreements should default to the DDA in the event that the parties have not agreed a new bespoke agreement within two months of the DDA being finalised.</p> <p>That 'this provision is proposed so as to provide clarity about the scope of a distribution agreement under Part 12A' is insufficient justification for overruling commercial arrangements that both parties may be happy to work with, and likely improve, over a longer time frame than that specified in the draft Code.</p> <p>As long as the DDA is equally available to both parties to adopt as a binding agreement, then those parties should be free to discuss and agree alternative contracts as they see fit. Either party should for instance, be able to adopt the DDA immediately in the absence of a satisfactory existing agreement; then engage with the other party with a view to agreeing on alternative terms and the wider service relationship. Once they agree they should be able to terminate the DDA (if they have one in place) and adopt the alternative agreement. This does not seem to be catered for in the EA's approach.</p>

		<p>Under such an approach, there is no need for a specific timeframe for the negotiations to be completed.</p> <p>Nova Energy agrees with the principal in sections 3.6.30 – 3.6.33 of the Discussion Document that agreements should not provide a competitive advantage to any single, or class of retailers. It is not necessary however force parties to adopt the DDA to achieve this. Any bespoke agreement offered by the EDB should also be available for all retailers to adopt.</p> <p>Nova Energy believes that some terms are best left to the Code rather than be incorporated within the DDA. In this way, terms can be enforced through the EA audit and rulings process requirements rather than in the DDA. The DDA can only be enforced between the parties to the contract. For instance Nova Energy believes that clause 6.5 'non-technical losses' should be in the Code only.</p>
3.	What are your views of the Authority's assessment of the likely levels of demand for new and replacement UoSAs in coming years? Please support your response to this question with reasons and your alternative quantified assessment, if any.	<p>Nova Energy agrees with para. 3.6.32 that this proposal '<i>provides an opportunity to lock in significant value...</i>'</p> <p>While Nova Energy now has UoSA in place with almost all New Zealand EDBs, it is still actively engaged with four replacement agreements and has at least five that it would prefer to renegotiate in the near term. A number of others also warrant replacement if Nova Energy had an expectation of reaching an acceptable agreement. This suggests that the EA's estimate in 4.4.13 that there are a further 124 UoSA to renegotiate across the market is on the low side.</p>
4.	What are your views on the regulatory statement set out in section 4?	Nova Energy agrees that there is a significant overall net benefit of introducing the DDA.
5.	What are your views on the detailed drafting of the Code amendment provided in Appendix B and Appendix C?	Refer below.

Appendix A2

Drafting of the Code

Clause	Comment	Response
12A.12(5)	Existing agreements	There is no compelling reason given as to why existing agreements should default to the DDA after two months. This sub-clause should be deleted.

Appendix A3

Detailed drafting of the DDA template

Clause	Comment	Response
6.5	Non-technical losses	<p>The wording of this clause is much stronger than the clause in the existing MUoSA.</p> <p>It is more appropriate to include this as a Code requirement, where consideration can be given in terms of how this requirement is applied, particularly given there is no simple way of determining if the Trader is meeting its contractual commitment to the EDB on this point.</p>
24.7	Limitation of liability	<p>The liability clause, as it is expressed, is not entirely clear whether the cap applies as \$10,000 per ICP, or \$10,000 times the number of ICPs. The difference is important in terms how the Trader caps its liability to commercial or industrial consumers, which could reasonably expect a higher liability cap than \$10,000 for a negligent act by an EDB. The cap should be clear on being a total of \$10,000 times the number of ICPs that the Trader trades on.</p> <p>Another option is to link the cap to the annualised consumption for the Trader's ICPs, e.g. \$1.00 per kWh supplied p.a. This would automatically provide cover where the Trader has just a few industrial or commercial customers in a network.</p>
	Billing information	<p>There are an excessive number of EDBs in New Zealand The cost of this is amplified by EDBs that are unwilling to fit with the majority in terms of their pricing structure (ICP pricing), or billing information formats. The DDA should specify a limited number of billing information formats only, and if necessary, allow the outlying EDB's a limited time frame for complying with the standard formats.</p> <p>This is a technical area that requires further discussion and falls outside of the DDA negotiation process.</p>
26.4	Management and defence of Claim	<p>The proposed change is an improvement. However Nova Energy favours providing the Customer with the discretion over who they prefer to deal with in respect of any claim they may make.</p>

Clause	Comment	Response
31.2	Customer Information	<p>Nova Energy believes that this clause gives the EDB excessive freedom on how it can use Customer information. Nova Energy has experienced complaints from customers where they have been contacted on confidential phone numbers by EDBs, in one case by a third party contractor for the purpose of a customer survey. Nova Energy believes this clause must be strengthened.</p> <p>The following amendment has already been accepted already by some EDBs, the addition in italics:</p> <p><i>... necessary to enable the Distributor to fulfil its obligations in accordance with this Agreement. This includes carrying out Consumer surveys (in relation to the provision of Distribution Services), communicating with Consumers in relation to planned service interruptions, unplanned service interruptions, engagement regarding construction of new assets and network configuration, network complaints, tree trimming requirements and safety concerns. The Distributor will not use this information for the purpose of electricity retailing or any other non-network service offering. The information must...</i></p> <p>Such a clause has been accepted already by some EDBs as it does not impinge on their business operations. Even with this clause strengthened in such a way, it is extremely difficult to monitor how EDBs manage customer information and determine if it has been accessible to their wider operating group conducting non-network related activities.</p> <p>Nova Energy holds therefore, that Traders should be given the right to withhold customer information if, in their own opinion, the EDB has not given satisfactory undertakings over the protection of that data.</p>