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Electricity Authority
By email:
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Dear Electricity Authority

Default agreement for distribution services

1. Wellington Electricity Lines Limited (**WELL**) welcomes the opportunity to respond to the Electricity Authority's (the **Authority**) consultation paper *"Default agreement for distribution services"* published on 26 January 2016 (**consultation paper**).
2. WELL supports the ENA submission. This submission provides additional context and concerns with the Authority's proposed changes to the Code and the introduction of the DDA template.
3. This submission is structured as follows:
    - Section 1 summarises WELL's overall concerns with the Authority's proposal.
    - Section 2 provides a suggested alternative that will result in the Authority's statutory objectives being met and will allow for increased transparency of agreements that are currently in place. In WELL's view the alternative proposed is superior to the changes proposed by the Authority in the consultation paper.
    - Attachment 1 describes WELL's detailed concerns with the Authority's proposal. These are:
        i. the crossover with the Commerce Act 1986 (Part 4), and the introduction of the Rulings Panel, including the removal of mediation while negotiating commercial market terms;
        ii. the proposal imposes significant transactions costs on the market participants;
        iii. potentially inhibits innovation through locking in terms of trade;
        iv. has a negative impact on competition; and
        v. potential transfer of costs from the traders operating in a competitive market to distributors operating in a regulated market.
    - Attachment 2 provides WELL's response to the consultation questions.
    - Attachment 3 sets out WELL's proposed changes to the Code.
    - Attachment 4 details WELL's proposed changes to the DDA template.

Section 1: Overall concerns with the Authority's proposal

4. WELL submits the proposal outlined in the consultation paper will not achieve outcomes that align with the Authority's statutory objectives. Specifically the Authority is required to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.[1] WELL submits that there is an alternative the Authority has not

[1] Sourced from the Authority's website.

assessed, that will deliver the Authority's statutory objectives in a significantly more efficient manner, resulting in greater benefits for consumers than those that will occur under the Authority's proposal (see Section 2 below for WELL's alternative).

5. The proposed regime will permanently embed a material crossover between the Authority (through the Code change processes) and the Rulings Panel (through being able to direct changes to contract terms that drive operational processes, costs and risks), and the ability of the distributor to recover costs and earn an appropriate rate of return, which is regulated by the Commerce Commission (the **Commission**). While the current interface between the Code and Part 4 is limited , the proposed regime creates a material and inefficient cross-over between the two regulatory mechanisms. Managing and responding to this crossover will impose additional ongoing costs on distributors that will ultimately be borne by consumers.

6. The construct described in the proposal also appears to remove costs from the competitive retail market, and require them to be recovered by distributors under Part 4 of the Commerce Act. This in WELL's view is not in the long term benefit of consumers.

7. WELL submits that where the market costs and risks are material, it is outside of the Authority's jurisdiction to impose such costs and risks on distributors who are limited in their ability to manage the transferred costs under separate Price Quality (part 4) legislation. The current proposal appears to have no limits or controls to prevent crossover between the Authority / Rulings Panel and Part 4 from occurring. By way of example, WELL notes the Authority's own legal advice as discussed in paragraph 3.5 of its November 2014 paper *"Response to legal/process issues raised in submissions"*[2]:

> *"This means that the Authority cannot regulate to require distributors to publicly disclose information or impose price-quality regulation other than by setting pricing methodologies (which is expressly permitted by section 32(2)(b)). What is less clear is what sort of matters fall within the scope of "price-quality regulation". For example, the regulation of matters such as connection standards and liability limits may not be "price-quality regulation", but the regulation of service standards could arguably be "price-quality regulation".*

8. And in paragraph 3.6:

> *"Any terms that are identified as being matters that the Commission is authorised or required to regulate would not be regulated by the Authority, and therefore would not be included in a default UoSA."*

9. Despite the assurances of the Authority mentioned above, WELL notes the proposal seeks to embed, by way of example, Guaranteed Service Standards within the Core terms of the proposed DDA and removes Good Electricity Industry Practice as a benchmark. WELL is financially incentivised to manage both the frequency and duration of interruptions through Part 4 SAIDI and SAIFI performance measures. The incentive regime is based on the historical levels of performance and is related to the expenditure allowances that distributors are able to charge in the market. The proposed service standards impose an additional cost over and above this.

10. In WELLs view the Authority's approach to mandating DDA terms is not supported by a meaningful and robust Cost Benefit Analysis (CBA) that results in long-term net benefits for consumers, with clear benefit over other alternatives. Contrary to the implication within the consultation paper, competition within the retail market appears to be thriving. For example, between 2013 and 2015 WELL had applications from six new traders to operate within the

[2] "More Standardisation of UoSAs – consultation paper. Response to legal / process issues raised in submissions", dated 14 November 2014

Wellington region, and even within the last week of preparing this submission, an additional application was received from another trader. WELL has not had an instance of a trader applying to trade on its Network and then deciding not to because the existing Use of Network Agreement is seen as a barrier to entry. Therefore, the evidence of what is actually occurring is incongruent with the arguments presented in the Authority's paper.

11. The proposal also implies significant transactional costs are not accounted for by the Authority. These include the embedding of additional costs of responding to and managing the four change processes within the proposal (Code changes, Rulings Panel, Consultation and standard commercial processes). This complex change process drives direct business costs for all traders and distributors across the market. The proposal is an example of a process which carries significant and material costs to all businesses across the industry.

12. WELL considers that the proposal will stifle innovation by locking in historic methods of undertaking business. With the pace of technology change increasing, including the roll out of photo voltaic cells combined with the increasing use of batteries and electric vehicles, pressure to change and adapt business models is considerable. The Authority's proposal risks slowing the ability of the industry (distributors and traders) to respond to such developments, and thereby inhibiting new business models and innovation.

13. The proposal could remove the ability of distributors to utilise load control in managing network security and peak demand. To be practicable, there must be recognition and consideration given to the impact on a distributors business costs and risks, as distribution services are regulated under Part 4. If traders are seeking additional services from distributors in the use of load control, then this could be covered in separate commercial arrangements.

14. The proposed introduction of extended Rulings Panel powers to determine agreement terms imposes risk and uncertainty for distributors and traders. This has the potential to impact on competitive outcomes through unexpected consequences from rulings for other participants. WELL considers that it must be made explicit that all traders operating on a network must be treated even-handedly.

15. As it stands, the proposal appears to have no additional benefit above the alternative set out in Section 2 below, but adds significant additional costs ultimately paid for by consumers.

16. Accordingly, WELL supports neither the proposed Code changes nor mandating the DDA template. Such an approach is a heavy handed form of regulation that is inconsistent with the progress already being made by distributors and traders towards more standardised terms, and inconsistent with the Authority's role in facilitating market based approaches.

17. While WELL understands the Authority's concerns with transparency and the ongoing nature of legacy agreements[3] that were established during the original split between distribution and retail in the 1990s, there does not appear to be any qualitative or factual evidence presented, other than a general concern, to support the Authority's claims. In particular, the leap from a Model agreement, which was well supported, through to mandated contract terms is questionable given there are alternatives which would address the Authority's implied concerns without incurring the significant costs and risks that mandated contract terms will entail.

Section 2: WELL's proposed alternative to meet the Authority's objectives

18. WELL recommends an alternative approach should be considered by the Authority. The alternative would further encourage the uptake of a distribution agreement template (previously

[3] WELL understands that the proposal in the Code (12A.12) to grant one party the right to override or exit an existing agreement is utilised to address the Authority's issue of legacy agreements.

the MUoSA). WELL's alternative involves strengthening the Code to ensure that the provision of distribution services provides both a level playing field upon which retail competition can occur and is practical for the efficient operation of a network. This option stops short of mandating the DDA, and thereby avoiding the concerns with the proposal presented above. The material elements of WELL's alternative include:

- the requirement for each distributor to provide the same distribution agreement to all traders. This will provide an equitable and transparent platform for trading on each network. The content of the agreement would vary by distributor but would be common to all traders on each network;
- the codification of principles that must be adhered to when making amendments to the distribution agreement template;
- reporting to the Authority on the rationale for any deviations from the distribution agreement template with reference to the principles;
- the publication of the new and existing legacy agreements to ensure arrangements are transparent;
- good faith negotiations and mediation on any disputed terms;
- creation of a joint Authority/ERANZ/ENA working group to develop reference principles for variations from the distribution agreement template;
- time bounded transition to a single distribution agreement; and
- enable the normal commercial practice of time bound termination and periodic review of clauses to enable the implementation of new business models and support innovation.

19. As noted in previous consultations WELL, like other distributors, has invested significant time and effort developing a new UoSA for consultation with traders based on the distribution agreement template. The publication of model arrangements, rather than mandating regulated terms, will bring efficiencies and also appropriately allow for commercial negotiations to occur between willing parties.

20. The distributor's incentive is to ensure that any distribution arrangements are practicable, do not impose additional costs on consumers or risks that are inconsistent with those allowed for under Part 4's workably competitive market, and allow for the efficient and ongoing operation of the network. Accordingly, WELL has a clear interest in providing a consistent set of distribution system requirements that maintain equitable service levels for the quality of supply received and mechanisms to address deviations from these standards (with Price and Quality standards regulated under Part 4). The distribution agreement is for all traders and a distributor has no incentive to act or incentivise anti-competitive behaviour.

21. These simple additional steps, as proposed above in paragraph 18, would have provided (and still can provide) emphasis for the distribution agreement template to be adopted, without imposing additional costs on the industry. They also provide the basis for competition and innovation to occur in a market centric manner. By not addressing such an alternative, the Authority has inappropriately closed a more efficient and effective avenue to advance their statutory objectives.

22. WELL would be happy to discuss this alternative further with the Authority.

Summary

23. As signalled over the last two years it seems the Authority's intent has been to intervene in the voluntary MUoSA process and mandate a DDA, thereby ceasing any voluntary move towards

more standard terms. WELL's experience is that traders have not been willing to enter into an updated agreement due to the uncertainty associated with the changing regulatory process.

24. For the reasons stated above, the underlying basis for the Authority's proposal is deficient and there is a clear lack of quantitative evidence for the costs and the benefits presented. WELL also supports the ENA's analysis of the Regulatory Impact Statement. WELL submits that the Authority's proposal appears to be primarily driven from the perceived need for transparency and removal of old legacy agreements. In WELLs view these issues are better dealt with in the alternative presented in Section 2 above which supports competitive outcomes with substantially lower transactional and ongoing management costs. However, if the Authority's proposal is to proceed, the Authority should first publish all relevant quantitative information used to define the problem, support their assumptions, and quantify the cost / benefit analysis (CBA) that is the basis for this proposal.

25. In regard to other aspects of the proposal, WELL agrees that distribution agreements should be restricted to distribution services only. It must also be recognised that load control and other forms of alternative investments, along with information provision form an integral component of providing the distribution service. The proposed terms in the DDA cannot remove these aspects without significant impact on the overall costs faced by consumers and the corresponding quality impact.

26. In summary, WELL considers that there are alternative steps that have significantly higher long term benefits for consumers than the option proposed by the Authority. The Authority has jumped directly to a heavy handed regulatory approach without sufficient justification and cost-benefit analysis. In the process the Authority has stifled any progress being made through market led negotiations. If the proposal is to proceed then there are a number of amendments that need to be made in order to ensure that the proposal is practicable and goes some way to achieve the Authority's statutory objectives. In addition, the proposed regime will permanently embed a direct crossover between the Authority (through a Code change process), the Rulings Panel (through being able to direct changes to operational terms) and the regulatory regime established under Part 4 of the Commerce Act. This will impose additional costs ultimately paid for by consumers, and will impact on the degree and speed by which innovation occurs.

27. Please do not hesitate to contact Howard Smith on hsmith@welectricity.co.nz if you have any queries.

Yours faithfully

Greg Skelton
Chief Executive Officer
Wellington Electricity Lines Limited

Attachment 1 – WELL's feedback on the key implications of the proposed implementation of a default distributor agreement

The concerns that arise with the Authority's proposal are expanded upon below, along with WELL's proposed solutions. For the avoidance of doubt, in WELLs view the recommendations presented below, where they differ from WELL's alternative, are inferior to the alternative presented in Section 2 of this submission. The recommendations are presented to inform the Authority as to the minimum of what is required.

There are five key concerns that need to be addressed. These concerns result from a mixture of the proposed Code changes, the DDA template, and practical operations of the network. The concerns are:

A. the crossover with Part 4 of the Commerce Act 1986;
B. the imposition of significant transactional costs on the market;
C. potentially inhibits innovation through locking in terms of trade;
D. the negative impact on competition; and
E. the potential transfer of costs from the traders operating in a competitive market to distributors operating in a regulated market.

Each of these is described in further detail below.

A. **The impact on price quality regulation under Part 4**. As already described, the proposal creates a significant crossover with the regulation of distributors by the Commission under Part 4. Examples of the crossover include:
    - the provision of powers for the Rulings Panel to determine Operational terms which could impose additional business risks and costs for operating and maintaining the network. Examples of such changes would be to billing systems, information provision or terms under which load control is enabled and provided for, all of which would impact, and potentially significantly alter the costs for distributors. Where traders seek additional load control services from distributors, these additional services will be managed through separate commercial agreements.
    - the removal of Good Electricity Industry Practice (GEIP) as an overarching provision within the DDA has the potential to change the interpretation of the risks and definition of the services provided;
    - contrary to the Authority's own intent, as outlined in paragraph 7 and 8 of this submission, the embedding of the Guaranteed Service Level Payments within the DDA strongly implies that the service provided by distributors is guaranteed. In reality a specific level of service cannot be guaranteed, as enshrined in the Electricity Act 1992. Quality provisions are already regulated for under Part 4 of the Commerce Act and distributors' revenue is reduced where quality targets are not achieved. This reduction in revenue is passed on to consumers and therefore it is entirely inappropriate to impose additional penalties within the DDA; and
    - locking in Core terms will limit the ability of distributors and traders alike to adopt energy efficiency initiatives and other innovations. For example, innovations sought by distributors through development of cost reflective pricing, the Commission and consumers (through lowering of delivered energy costs).

    Together the Rulings Panel powers to set terms, the removal of GEIP, and the mandated form of Service Level Guarantees results in a duplication of the price quality regime that is already governed by the Commission. This is clearly inappropriate and is inefficient regulation which should therefore be avoided. WELL submits that the alternative presented resolves this issue and is far more likely to result in an appropriate balance of costs and risk between the parties.

Recommendations

Changes to the proposed Code could be made to appropriately mitigate some, but not all, of the adverse impacts. These include:

- removal of the Rulings Panel authority over the Operational terms, the inclusion of arbitration and reinstatement of good faith negotiations as a process to resolve contract term issues;
- expansion of the principles within the Code, to ensure that both the regulation of distributors under Part 4 and current operational practices should be recognised, without the imposition of additional costs or risks;
- reinstatement of the GEIP as a principle within the definition of Distribution Services; and
- removal of Service Level Guarantees and Service Level Guarantee payments from the Core terms of the DDA.

WELL submits that while market entry and competition amongst traders may be improved by reducing the risks and costs faced by traders and transferring these to distributors, such an approach is unsustainable. It will over the long term result in consumers bearing the costs of inappropriately transferring costs and risks on the distributor.

Reference: recommended minimum Code changes, as set out in Attachment 3 to clauses 12A.1, 12A.3, 12A.4, 12A.5, 12A.6, Reinstate Old 12A.3; and recommended DDA changes, as set out in Attachment 4, to clauses 2.2, 2.3, 4.8, 4.10, 4.11, 5.1, 5.6, 5.9, 9, 9.5, 14.2, 21.6, 21.7, 22, 24.5, 24.7, 32.4, 33.1.

B. **The proposal imposes transaction costs on the market.** The proposal implies transactions costs which have not been accounted for by the Authority. These include the embedding of additional costs of responding to and managing four change processes (Code, Rulings Panel, Consultation and standard commercial processes). This complex change process drives direct business costs for all traders and distributors across the market. This consultation is an example of such a process.

The proposed Code obligations will also result in the issuing and reissuing of contracts every time there is a change to the Operational terms. This imposes additional costs without providing any additional incentive for innovation as the core terms are intransigent.

Recommendations

WELL submits that an efficient solution to the issue is the proposed alternative, as stated above, to keep the DDA template as a model.

Reference: recommended minimum Code changes, as set out in Attachment 3 to clauses 12A.1, 12A.3, 12A.4, 12A.6, 12A.9, 12A.10, 12A.12, Reinstate Old 12A.3; and recommended DDA changes, as set out in Attachment 4, to clauses 3.3, 4.7, 7.1, 7.4, 9, 9.10, 10, 10.27, 14.2, 18.6, 24.7.

C. **Potentially inhibits innovation through locking in terms of trade**. The ability for traders and distributors to innovate and adopt business models as technologies change is restricted by the proposed Code and DDA construct. This arises from the tension between the two

regulatory structures. Currently the Commission regulates distributors price and quality outcomes, while allowance is made for individual companies to manage their businesses accordingly. Innovation and efficiency improvements are expected to be demonstrated and will arise as allowed for under the regulatory structure. Further, the addition of a different regulatory structure that imposes how businesses are managed and what risks will be borne, through setting the terms of trade, is very likely to stifle any innovation opportunities.

WELL submits that the Code provisions restricting the development of Operational terms and the locking in of Core terms in the manner proposed creates unnecessary impediments leading to time and cost for distributors, traders and consumers. As a general rule, the mandating of regulated contract terms is not a well-known mechanism to encourage innovation and discontinuous improvements in service delivery from the businesses involved. In short, the Authority cannot expect that locking in terms in the manner proposed, while apparently efficient with current business practice, will allow for innovation to occur.

Recommendation

The Authority should develop a mechanism that is more market based. As the pace of technology change increases, agreements based on the new DDA structure could become known as legacy agreements within a short timeframe.

Reference: recommended minimum Code changes, as set out in Attachment 3 to clauses 12A.1, 12A.4, 12A.7, 12A.9, 12A.10, Reinstate Old 12A.3; and recommended DDA changes, as set out in Attachment 4, to clauses 3.1, 4.7, 5.1, 5.9.

D. **A negative impact on competition.** Aspects of the proposal will potentially inhibit competition. The proposal to expand the powers of the Rulings Panel to determine Operational terms that are in dispute creates uncertainty for both traders and distributors. For example, the proposal currently does not prevent a trader utilising the Rulings Panel process to simply lower its own costs, and thereby inappropriately imposing costs on other traders and the distributor. If, in this case, a single trader disputes a distributor's billing system resulting in the Rulings Panel enforcing a change to the distributor's system, this may in turn impact on all other traders having to change their billing system.

It is not clear how the Rulings Panel will account for the impact its decisions will have on the costs faced by consumers, or on traders that operate with different and innovative business models. This has the potential to impact on competition and innovation. The proposal fails to cater for the speed at which technology and business models are evolving. In short, the Rulings Panel process may result in reduced competition through forcing standardisation via an appeal from a few well-resourced traders.

WELL submits that to achieve its statutory objectives, the Authority must allow for both the even-handed treatment of traders on each network, and for the evolution of retail and distribution business models. Accordingly, the codification of contract terms and the Rulings Panel appeal process is very unlikely to allow for this evolution as it does not provide sufficient flexibility or the ability to evolve with the market. This will have competitive impacts. WELL submits that a superior option to support competition is to follow the alternative outlined in Section 2 above which cater for both these aspects.

Recommendations

WELL recommends that the Authority:

- embeds an arbitration process within the Code specific to resolving disputes on establishing terms;
- removes the Rulings Panel jurisdiction to determine terms; and
- strengthens the principles in the Code to provide guidance as to how standard distribution agreements should be developed. WELL proposes that the requirement to consider an even-handed approach be added to the principles.

WELL notes that the competition benefits resulting from the removal of legacy agreements (which constitutes the majority of the competition benefit cited by the Authority), relies upon granting one party the right to override and exit the legacy agreements. Should this be determined as unlawful or Ultra-Viries, or should the distributor decide not to exercise those rights[4], the competitive benefits from the proposal are negligible.

A related competition concern, is that with traders signing contracts at different stages as Operational terms evolve, some traders could find themselves on substantially different terms than others. WELL assumes that if the Core terms are changed by a Code amendment, then this will result in the requirement to make a further transition of all contracts that have already been signed, whatever the scale of the change. Currently this change process associated with Core terms does not exist in the proposal. In practice this will also impose additional transaction costs on the parties involved. WELL notes that this is normally dealt with through review provisions in a commercial contract or via the contract having a termination date.

Long term and / or evergreen contracts inevitably suffer these types of issues, and the proposal the Authority is promoting will fall into this category. In this case normal commercial practice (based around a model agreement) will offer greater benefits and the necessary flexibility than the proposal, as it enables both evolution and adoption of innovation and will have substantially lower transaction costs.

Reference: recommended minimum Code changes, as set out in Attachment 3 to clauses 12A.3, 12A.4, 12A.5, 12A.6, 12A.7, 12A.9, Reinstate Old 12A.3.

E. **The potential transfer of costs from the traders operating in a competitive market to distributors operating in a regulated market**. There are a number of instances within the proposed Code amendment and DDA terms where there is an imbalance between distributors and trader's interests. These have been marked up in the attachment to this submission. In particular, the principles included in the Code must appropriately reflect the linkage with Part 4.

Recommendations:

The authority should consider the relevant marked up changes in the attachment to this submission.

- ***Reference:*** recommended minimum Code changes, as set out in Attachment 3 to clauses 12A.4, 12A.7, 12A.11, 12A.12, Reinstate Old 12A.3; and recommended DDA changes, as set out in Attachment 4, to clauses 4.4, 4.7, 4.10, 5.9, 6.1, 6.6, 7.1, 7.7, 8.5, 8.7, 9, 9.4, 9.8, 9.10, 10.27, 11, 11.1, 18.6, 19.1, 21.7, 31.2, Schedule changes.

[4] by implication the Authority is suggesting that such contracts are favourable to traders and therefore it is assumed they would wish such contracts to continue.

Attachment 2 – WELLs response to the Consultation questions

Question Number	General comments in regard to the:	WELL's response
1	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.	Refer to the commentary in WELL's covering letter. In Summary, WELL considers that: • The issues presented by the Authority misrepresent the actual situation. The Authority's rationale relies upon suppositions that have not been substantiated and without evidence to support its argument. The extent and the degree of variation of current UoSA's from the Distribution agreement template nor what constitutes the presence of "inefficient terms" have been specified; • WELL has signed up six new traders between 2013 and 2015. The terms of WELLs UoSA have never been an issue and no trader has ever not signed due to terms of the agreement. Therefore, the terms have never created a barrier to entry. • WELL understands that the Authority's key issues are actually the transparency of the arrangements that exist and the on-going existence of legacy agreements agreed to during the electricity reforms during the 1990s. • Addressing these issues in the manner proposed by the Authority will impose costs and significantly dampen the ability of traders and distributors to innovate and adapt to the current speed of technology changes impacting on the electricity market. Regulation of specific contract terms has never been a good form to facilitate innovation and market evolution. • WELL's alternative option addresses the Authority's concerns without imposing additional and unnecessary costs on the market. The layering of two regulatory structures that may drive opposing incentives and requirements is a significant issue which the Authority must address within its proposal. Once again, WELL's alternative does not have the same limitations.
2	What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which	Refer to the commentary in WELL's covering letter. In Summary, WELL submits that: • The Authority should establish an Authority / ERNAZ / ENA working group to develop the terms of a Distribution Agreement rather than simply impose such terms that it solely might consider appropriate. The Authority's paper refers to its lack of understanding. Therefore, WELL would recommend that a joint approach is far more likely to result in a model agreement that would be more appropriate with greater buy in than is generated with the current process;

Question Number	General comments in regard to the:	WELL's response
	includes a DDA template, requirements to develop a DDA, and provisions that provide that each distributor's DDA is a tailored benchmark agreement?	• The proposal is inferior to a more market centric approach of requiring the use of the distribution agreement template, increasing transparency through publication of existing agreements, and requiring an explanation of any variations from the Distribution agreement template without going to the step of mandating a DDA. • The proposal permanently embeds a crossover between the Code and Part 4 provisions, which as the Authority has previously described, and in some instances seems to risk being outside its legal jurisdiction. • The Rulings Panel process imposes significant uncertainty, and therefore transaction costs and risks on the industry and may lead to uncompetitive bias in the Operational terms. This should be removed and provision for mediation on terms should be reinstated. • The principles included in the Code need to be enhanced to reflect the interaction with Part 4, the requirement to treat all traders even-handedly; and to reflect current business processes without limiting innovation opportunities. • The process for offering contracts to all traders, and seeking new sign-ups of terms for any change in Operational terms creates significant transaction costs. If the proposal is implemented without considering WELLs alternative, the ability to Post terms rather than continuously managing a re-sign process should be mandated. • However, the more efficient alternative to enable transparency through mandating publication of agreements in the Code and then allowing for commercial negotiations. • The proposed Code provisions will not ensure the cessation of the legacy agreement. If both the distributor and the trader agree to continue with the existing terms then the benefit the Authority attributes to the proposal will be unrealised, while the costs will be incurred.
3	What feedback do you have on the detail provided in section 3, which describes the Authority's proposal to introduce a DDA into Part 12A of the Code along with supporting processes that are designed to allow distributors' DDAs to act as tailored benchmark agreements?	Refer to the commentary in WELL's covering letter and the proposed changes in the Code and the DDA. In Summary WELL submits that: • There are specific terms that cross the interface between the Code and Part 4. By way of example these include the Rulings Panel process defined in the Code for imposing terms that drive costs and risks which are recovered under a price control regime, the removal of GEIP as an overarching standard, the inclusion of Service Guarantees and Service Guarantee payments referenced throughout the DDA and defined in Schedule 1, and locking in of Core terms for such aspects as load control that will hinder the adoption of technologies and innovation; • The proposal assumes that the Rulings Panel process will result in competitive beneficial outcomes. However, as drafted the process favours well-resourced traders and lacks any guiding principles which must be accounted for when making judgements on Operational terms; • Once signed there is no mechanism to evolve the structure of the agreements to account for innovations and required changes in the Core terms. The Core terms lock in current business practice and evergreen contracts can result in outdated arrangements very quickly in the light of the pace of technological change.

Question Number	General comments in regard to the:	WELL's response
		• The alternative proposed by WELL is a superior approach to resolving the Authority's concerns and it is recommended that the Authority consult with WELL prior to finalising the consultation process.
4	What are your views on the regulatory statement set out in section 4?	WELL considers that the analysis does not present a sufficient case for change, nor does it provide a meaningful quantitative cost-benefit analysis to assess long-term net benefits for consumers, and provides little or no evidence behind the assertions. WELLs experience is that the transaction costs associated with traders signing commercial agreements is substantially lower than that suggested, and there are many more costs imposed by the regime than accounted for. It also relies upon removal of the older legacy agreements from the market. Under the proposal this is not guaranteed to occur. In regard to the analysis of the RIS, WELL supports the ENA submission.
5	What are your views on the detailed drafting of the Code amendment provided in Appendix B and Appendix C?	Refer to the commentary in WELL's covering letter and the proposed changes in the Code and the DDA set out in the tables below.

Attachment 3 - Detailed comments on the proposed new Part 12A of the Code

The following is a definition of terms used in this attachment. The reasons for each change proposed has been referenced in accordance with the following terms:

Part 4 means there is a material crossover with regulation by the Commerce Commission under Part 4.

Efficiency means a change is required to reduce the costs ultimately borne by consumers

Innovation means a change is required to enable innovation and the adoption of new technology and business models

Competition means a change is required to avoid a potential to distort competition between traders.

Practicable means a change is required to ensure that the resulting regulatory framework is workable in reality. It also ensures that the resulting Code does not negatively impact on reliability outcomes.

Asymmetric means a change is required to reflect the balance between the legitimate interests of traders and distributors, and that costs are not inappropriately transferred from the competitive market to the regulated cost base of distributors.

WELLs alternative means the alternative described in the covering Submission letter. The alternative establishes Code provisions around the **standardised distribution agreement**. The **standardised distribution agreement** is a model agreement that a distributor will offer to all traders on their network, and is based upon the proposed DDA. Implementation of WELLs alternative removes the overlap with part 4, improves efficiency by reducing transactions costs, improves competitive outcomes by removing the potential for the Rulings panel process to result in biased outcomes, and allows for innovation as it does not lock in terms that are based on current arrangements.

WELL's recommended additions are shown in red and deletions in ~~red~~. The changes presented are relative to the new Code proposed by the Authority within the proposal.

Clause	General Comments in regards to the:	WELLs response
12A.1	1 Contents of this Part This Part— (a) requires each specified distributor to have a standardised distribution agreement ~~default distributor agreement~~ based on the ~~default d~~distribution agreement template in Schedule 12A.1; and (b) specifies requirements with which each distributor and trader must comply when entering into a distribution agreement;	Implements WELL's alternative. Reason for change: Part 4, Efficiency, Innovation
Subpart 1	~~Default d~~Distributor ~~ion~~ agreement template ~~and default distributor agreements~~	Implements WELL's alternative.
12A.3	12A.3 Principles for operational terms in default distributor agreements (1) This clause sets out principles that must be applied by — ~~(a)~~ each distributor when it sets operational terms in its default distributor agreement; and ~~(b) the Rulings Panel when it reviews 1 or more operational terms under clause 12A.5(3).~~ (2) The principles are that a distributor's operational terms must— (a) be consistent with the Authority's objective set out in section 15 of the Act; and (b) be consistent with the Commerce Commission's regulation of distributors price quality under Part 4 of the Commerce Act 1986; and (c) treat all traders who trade on the distributors network equally; and (d) reflect a fair and reasonable balance between the legitimate interests of the distributor and the requirements of traders trading on the distributor's network; and (e) reflect the interests of consumers on the distributor's network; ~~and~~ ~~(d) reflect the reasonable requirements of traders trading on the distributor's network and the ability of the distributor to meet those requirements.~~	Reason for changes: Part 4, Efficiency, Competition. Implements WELL's alternative: Removal of the Rulings Panel as an arbitrator of contract terms. Mediation is reinstated further below. Principles added to provide guidance for the development of any contract terms by Distributors when establishing the Standardised Distribution Agreement. Principles would also apply if the Rulings Panel jurisdiction remained as proposed by the Authority. Removed as it prejudices the outcome and is already covered in 12A.3(2)(d).

Clause	General Comments in regards to the:	WELLs response
12A.4	~~Default~~ Standardised distributor agreements (1) Each distributor must have a standardised ~~default~~ ~~d~~ distributor ~~ion~~ agreement that— ~~(a) includes—~~ ~~(i) each default core term set out in the default distributor agreement template; and~~ ~~(ii) operational terms that meet each of the requirements set out in the default distributor agreement template for operational terms that are italicised and in text boxes in the default distributor agreement template; and~~ (b) does not include any other services other than Distribution Services. ~~terms.~~ ~~(2) A distributor must not include an operational term in its default distributor agreement that is inconsistent with, or modifies the effect of, any default core term.~~ ~~(3)~~ (2) In setting ~~the operational terms in~~ its standardised ~~default~~ distributor agreement, a distributor must apply the principles set out in clause 12A.3(2). ~~(4)~~ (3) A distributor must make its standardised ~~default~~ distributor agreement available prominently on its website from the following date: (a) for Orion New Zealand Limited, Powerco Limited, Unison Networks Limited, and Vector Limited, ~~60~~ 120 business days after the date on which this clause comes into force: (b) for each distributor that is a distributor on the date on which this clause comes into force and is not named in paragraph (a), ~~120~~180 business days after the date on which this clause comes into force: (c) for each other distributor, from the later of the following: (i) 120 business days after the date on which this clause comes into force: (ii) 30 business days before the date on which the distributor commences engaging in the business of distribution on the	Reason for changes: Part 4, Efficiency, Competition, Innovation Implements WELL's alternative. Removes the need for enforcing specific terms but requires: • the development of rationale for the differences between the template and the standardised distribution agreement; • the agreement is for distribution services only; and • all existing agreements are published. Implements WELL's alternative. Reason for change to the timeframes are to ensure it is practicable.

Clause	General Comments in regards to the:	WELLs response
	basis described in clause 12A.2(a). ~~(5)~~ (4) A distributor must— (a) document the rationale for any differences between the standardised distribution agreement and the distribution agreement template in Schedule 12A.1; and (b) before making its default distributor agreement available on its website, consult each trader trading on the distributor's network, and each participant that the distributor considers is likely to be affected by the default distributor agreement, on the ~~operational~~ terms that the distributor proposes to include in its default distributor agreement; and (c) no later than ~~2~~ 5 business days after making the agreement available, advise each such trader ~~and participant~~ that the default distributor agreement is available on the distributor's website. (5) A distributor must publish all existing agreements it has with traders to trade on its network within 30 business days after the date on which this clause comes into force.	Implements WELL's alternative. Implements WELL's alternative
12A.5	~~Appeal against operational terms in default distributor agreements~~ ~~(1) No later than 10 business days after a distributor makes its default distributor agreement available on its website under clause 12A.4(4), a participant that participated in the consultation under clause 12A.4(5) may appeal to the Rulings Panel against the inclusion of 1 or more operational terms in the default distributor agreement by giving notice to the Rulings Panel and the distributor.~~ ~~(2) If the Rulings Panel receives a notice from a participant by the day specified in subclause (1), the Rulings Panel must, no later than 10 business days after receiving the notice, advise the participant that the Rulings Panel will—~~ ~~(a) review 1 or more of the operational terms to which the notice relates; or~~ ~~(b) decline to review 1 or more of any such terms, giving reasons.~~ ~~(3) In reviewing an operational term in a default distributor agreement, the Rulings~~	Reason for changes: Part 4, Competition. Implements WELL's alternative.

Clause	General Comments in regards to the:	WELLs response
	~~Panel must apply the principles set out in clause 12A.3(2).~~ ~~(4) If the Rulings Panel reviews an operational term, the Rulings Panel must, no later than 20 business days after advising the participant under subclause (2),—~~ ~~(a) confirm the operational term; or~~ ~~(b) amend the operational term, in which case clause 12A.6 applies; or~~ ~~(c) direct the distributor to reconsider, either generally or in respect of any specified matter, the operational term, within such time as the Rulings Panel must specify, and give the distributor any such directions as the Rulings Panel thinks fit concerning the reconsideration of the operational term, in which case clause~~ ~~12A.7 applies.~~	
12A.6	~~Amendment to operational term by Rulings Panel following appeal~~ ~~(1) This clause applies if the Rulings Panel amends 1 or more operational terms of a~~ ~~default distributor agreement under clause 12A.5(4)(b).~~ ~~(2) Each such operational term in the default distributor agreement is deemed to be amended accordingly.~~ ~~(3) The distributor must—~~ ~~(a) make an updated version of its default distributor agreement that includes each amended operational term available prominently on its website no later than 5 business days after the date of the Rulings Panel's decision; and~~ ~~(b) advise each trader trading on the distributor's network, and each participant that the distributor considers is likely to be affected by the default distributor agreement, that an updated version of the agreement is available on the distributor's website no later than 2 business days after making the agreement available on its website.~~ ~~(4) For each operational term that the Rulings Panel amends, the Rulings Panel must stipulate 1 of the following in respect of each distribution agreement that the distributor has with a trader that includes the operational term:~~	Reason for changes: Part 4, Efficiency, Competition Implements WELL's alternative.

Clause	General Comments in regards to the:	WELLs response
	~~(a) that the distributor or the trader may elect to amend the distribution agreement~~ ~~to include the amendment by giving notice to the other party:~~ ~~(b) that the distributor may elect to amend the distribution agreement to include the amendment by giving notice to the trader:~~ ~~(c) that the trader may elect to amend the distributor agreement with the~~ ~~distributor by giving notice to the distributor.~~ ~~(5) A notice given under subclause (4)(a), (b), or (c) must be given no later than 10 business days after the date on which the distributor gives notice under subclause (3)(b).~~ ~~(6) If a notice is given under subclause (4), each distribution agreement to which the notice relates is deemed to be amended accordingly from the date of the notice.~~ ~~(7) Subclauses (4) to (6) do not apply in respect of a distribution agreement in which the~~ ~~operational term has been amended or omitted.~~	
12A.7	Amendment to ~~operational~~ terms by distributor ~~following appeal~~ (1) If a distributor amends 1 or more ~~operational~~ terms of its ~~standardised default~~ distributor agreement ~~after being directed to reconsider the term by the Rulings Panel under clause 12A.5(4)(c),~~ the distributor must— (a) make an updated version of its default distributor agreement that reflects the amendment available prominently on its website no later than 5 business days after making the amendment; and (b) no later than ~~25~~ business days after making the agreement available, advise each trader trading on the distributor's network, ~~and each participant that the distributor considers is likely to be affected by the default distributor agreement,~~ that an updated version of the agreement is available on the distributor's website. ~~(2) Clause 12A.5 applies (with all necessary modifications) in respect of an amendment to a default distributor agreement made under subclause (1).~~	Reason for changes: Competition, Innovation, Practicable Implements WELL's alternative. Ensures that the standardised agreement is offered to all traders on the network and that it is transparent to all traders. Reason for change to the timeframes are to ensure it is practicable. Implements WELL's alternative – 12A.5 is deleted.

Clause	General Comments in regards to the:	WELLs response
12A.9	Negotiating distribution agreements (1) A trader that wishes to trade on a distributor's network must give notice to the distributor of that fact at least 20 business days before the trader proposes to commence trading on the distributor's network. (2) The trader and the distributor must seek to agree the terms of the Distribution Agreement in good faith. (3) In the event that an alternative agreement is made other than the standard, the Agreement must be published on the distributors web site within 5 days and all Traders must be notified that an alternative agreement has been entered into. (4) The Distributor must offer the alternative agreement to all Traders operating on the network. (5) Traders have 20 business days to accept the alternative agreement as the basis for the provision of distribution services. ~~(2) If, after a distributor has made its default distributor agreement available on its website under clause 12A.4(4), a distributor receives a notice that a person wishes to trade as a trader on the distributor's network, the distributor must, no later than 5 business days after receiving the notice, offer to contract with the person on the terms set out in the default distributor agreement.~~ ~~(3) A person that has given a notice under subclause (2) may withdraw the notice at any time before it enters into, or is deemed to have entered into, a binding contract with the distributor, by giving notice of the withdrawal of the notice to the distributor.~~ ~~(4) At any time before the default distributor agreement applies as a binding contract between the distributor and the person under subclause (6), either the distributor or the person may give the other party notice that the distributor or the person wishes to contract with the other party on the terms set out in the default distributor agreement.~~ ~~(5) If either party gives a notice under subclause (4), the default distributor agreement~~ ~~applies as a binding contract between the parties with effect from— (a)~~	Reason for changes: Efficiency, Competition, Innovation Implements WELL's alternative.

Clause	General Comments in regards to the:	WELLs response
	the later of— (i) the 5th business day after the date on which the notice is given; or (ii) the day on which the person that wishes to trade as a trader on the distributor's network becomes a participant; or (b) any other date agreed by the parties. (6) If, at the expiry of 20 business days after a notice is received by a distributor under subclause (1), the distributor and the person have not agreed on the terms of a distribution agreement and neither party has given a notice under subclause (4), the default distributor agreement applies as a binding contract between the distributor and the person with effect from— (a) the later of— (i) the expiry of the period; or (ii) the day on which the person that wishes to trader as a trader on the distributor's network becomes a participant; or (b) any other date agreed by the parties.	
12A.10	Alternative agreements (1) A distributor and a trader may enter into a distribution agreement on terms that differ from the terms set out in the distributor's default distributor agreement (an "alternative agreement"). (2) However, a distributor and a trader that enter into an alternative agreement must ensure that the terms of the alternative agreement — (a) address only the subject matter of the terms of the default distributor agreement; and (b) relate only to distribution services.	Reason for changes: Efficiency, Innovation. Implements WELL's alternative
12A.11	Amending operational terms in default distributor agreements (1) A distributor may amend 1 or more of the operational terms in its default distributor agreement by making its default distributor agreement with the amended operational terms available prominently on its website.	Reason for changes: Practicable Implements WELL's alternative. 12A.11 is now already covered in proposed 12A.7

Clause	General Comments in regards to the:	WELLs response
	~~(2) Before a distributor amends its default distributor agreement, it must consult each trader trading on the distributor's network, and each participant that the distributor considers is likely to be affected by the amendment.~~ ~~(3) Clause 12A.5 applies (with all necessary modifications) in respect of an amendment to a~~ ~~default distributor agreement made under subclause (1).~~ ~~(4) The amending of a default distributor agreement under subclause (1) does not affect a distribution agreement between a distributor and trader that came into force before the day on which the default distributor agreement was made available under subclause (1).~~	
12A.12	12A.12 Transitional provisions for existing agreements (1) This clause applies to a distributor and a trader that have an agreement for distribution services that was entered into before the date on which the distributor made its default distributor agreement available on its website under clause 12A.4(4) ("existing agreement"). (2) The distributor must publish all existing use of system agreements and other agreements for distribution services it has with Traders on its website. ~~, no later than 10 business days after the date on which the distributor makes its default distributor agreement available on its website, offer to contract with the trader on the terms set out in the default distributor agreement.~~ ~~(3) At any time before the default distributor agreement applies as a binding contract between the distributor and the trader under subclause (5), either the trader or the distributor may give the other party notice that the trader or distributor wishes to contract with the other party on the terms set out in the default distributor agreement.~~ ~~(4) If either party gives a notice under subclause (3), the default distributor agreement applies as a binding contract between the distributor and the trader with effect from the 5th business day after the date on which the notice is given, or any other date agreed by the parties.~~ ~~(5) Subject to subclause (4), if the distributor and the trader cannot agree on the terms of a distribution agreement to replace the existing agreement at the expiry of 2 months after the date on which this~~	Reason for changes: Efficiency. Maintains the parties' rights and obligations under the contracts. Change is incentivised through publication rather than by providing a party with the unilateral right to terminate a commercial contract. Implements WELL's alternative

Clause	General Comments in regards to the:	WELLs response
	~~clause came into force—~~ ~~(a) the default distributor agreement applies as a binding contract between the distributor and the trader with effect from the expiry of that period; and~~ ~~(b) the provisions of the existing agreement that directly or indirectly relate to distribution services are deemed to have been terminated with effect from that date.~~ ~~(6) Clause 12A.10 applies in respect of any distribution agreement that the parties agree to replace an existing agreement that is not the default distributor agreement.~~	
Old 12A.3	Reinstated, and changed to Arbitration **12A.3 Arbitration** (1) If a **distributor** or a **trader** considers that it is unlikely that it will agree the terms of a ~~**use-of-system agreement**~~ standardised distribution agreement with the other party, the **distributor** or the **trader** may give written notice to the other party of that fact. (2) The notice given under subclause (1) must— (a) state that it is a notice given under subclause (1); and (b) include a copy of subclause (1); and (c) state that at the close of the 20th **business day** after the date of the notice, the **distributor** or **trader** (as the case may be) may require the other party to enter into mediation. (3) No earlier than the close of the 20th **business day** after the date on which the notice referred to in subclause (2) is given, the **distributor** or the **trader** may, by written notice to the other party, require the other party to undertake arbitration with the party who gave notice under this subclause. (4) The notice given under subclause (3) must— (a) state that it is a notice given under subclause (3); and (b) include a copy of subclause (3). (5) On receipt of a notice given under subclause (3), the **distributor** and the **trader** must attempt in good faith to agree on the following matters:	Reason for changes: Part 4, Efficiency, Competition, Innovation Implements WELL's alternative. Provides a workable alternative to the Rulings Panel that lowers the costs, provides opportunities for innovation and avoids the overlap with Part 4. Arbitration also provides a strong incentive for the parties to self-mediate prior to initiating an arbitration process rather than abdicating to the Rulings Panel.

Clause	General Comments in regards to the:	WELLs response
	(a) the arbitrator: (b) the date or dates for the arbitration: (c) the location of the arbitration: (d) the scope of the arbitration: (e) the allocation of the costs of the arbitration. (6) If, at the close of the 15th **business day** after receipt of the notice given under subclause (3), the **distributor** and the **trader** are in dispute regarding 1 or more of the matters specified in subclause (5), either party may refer the dispute to the **Rulings Panel** for determination. (7) The **Rulings Panel** may make such determination as it thinks fit. (8) The **distributor** and the **trader** must carry out the arbitration in accordance with any agreement reached under subclause (5) and any determination made under subclause (7). (9) The Arbitrators decision shall be binding.	

Attachment 4: Detailed comments on the DDA template

The following is a definition of terms used in this attachment. The reasons for each change proposed has been referenced in accordance with the following terms:

Part 4 means there is a material crossover with regulation by the Commerce Commission under Part 4.

Efficiency means a change is required to reduce the costs ultimately borne by consumers

Innovation means a change is required to enable innovation and the adoption of new technology and business models

Competition means a change is required to avoid a potential to distort competition between traders.

Practicable means a change is required to ensure that the resulting regulatory framework is workable in reality. It also ensures that the resulting Code does not negatively impact on reliability outcomes.

Asymmetric means a change is required to reflect the balance between the legitimate interests of traders and distributors, and that costs are not inappropriately transferred from the competitive market to the regulated cost base of distributors.

Worksafe means a change is required to account for an actual or potential crossover with regulation under the Health and Safety at Work Act 2015

WELL's recommended additions are shown in red and deletions in ~~red~~.

Clause	General Comments in regards to the:	WELLs response
2.2	**Summary of Distributor's general obligations**: In summary, this Agreement requires the Distributor to provide Distribution Services in accordance with Good Electricity Industry Practice, to the Trader as follows:	The reference to in "accordance with Good Electricity Industry Practice (GEIP)" should be reinserted. We understand that clauses 2.2 & 2.3 do not in themselves apply any obligation to the parties, but they do set the tone of the agreement. **Reason for change:: Part 4**
2.3	Summary of Trader's general obligations: In summary, this Agreement requires the Trader to perform obligations, in accordance with Good Electricity Industry Practice, as follows:	The reference to in accordance with Good Electricity Industry Practice (GEIP) should be reinserted. We understand that clauses 2.2 & 2.3 do not in themselves apply any obligation to the parties, but they do set the tone of the agreement. **Reason for change: Part 4**

Clause	General Comments in regards to the:	WELLs response
3.1	Distributor may enter into a Direct Customer Agreement with a Customer. ~~at the Customer's written request, provided that any existing Customer Agreement between the Trader and the Customer is not a fixed term agreement.~~ The Distributor acknowledges that its entry....	There are occasions where the Distributor may want to enter into a conveyance arrangement with a Customer. For example, where a large Customer may have a significant impact on the network which has potential risks around quality of supply. Although the Distributor will engage with the Customer, it will not be at the Customer's written request. It is feasible that the Customer may refuse to provide a written request. This clause may impact on the Distributor's ability to introduce innovation. **Reason for change: Innovation**
3.3	Valid Direct Customer Agreement: The Trader must not ~~knowingly~~ supply electricity on a Conveyance Only basis to an ICP unless there is a valid Direct Customer Agreement in force in relation to the ICP.	The Trader can easily find out this information via the registry, so 'knowingly" is not relevant. **Reason for change: Efficiency**
4.4	Maintain security and safety: to maintain the security and safety of the Network in order to: (i) maintain a safe environment, consistent with the Distributor's health and safety policies and public safety policies;	Added for clarity. The additional text also acknowledges the Health and Safety at Work Act 2015. **Reason for change**: **Worksafe**
4.7	~~Customer requests for restoration of Distribution Services: During any Unplanned Service Interruption, unless the Distributor requests otherwise, the Trader must forward to the Distributor any requests it receives from Customers for the restoration of the Distribution Services as soon as practicable, and the Distributor must acknowledge such receipt unless the Trader requests otherwise.~~	This is an operational provision in schedule 5. This should not be a core term applicable to all Distributors. Having it as a core term does not accommodate various Distributor and Trader operations and systems, and may inhibit innovative new processes. Also, not all Distributor Systems will support acknowledgement of receipt. **Reason for change: Efficiency, Innovation, Practicable**
4.8	Distributor to schedule Planned Service Interruptions to minimise disruption: The Distributor must, as far as is reasonably practicable in accordance with Good Electricity Industry Practice, schedule Planned Service Interruptions to minimise disruption to Customers.	The reference to in "accordance with Good Electricity Industry Practice (GEIP)" should be inserted to provide an element of reasonability. This type of work will necessarily impact Customers and GEIP will ensure that the work can be scheduled to support supply reliability. **Reason for change: Part 4**

Clause	General Comments in regards to the:	WELLs response
4.9	Distributor **and Trader** to comply with communication policies: The Distributor and the Trader must comply with the requirements set out in Schedule 5 in relation to the notification of Planned Service Interruptions.	Distributors and Traders are both involved in the planned outage communication processes so should be equally required to comply. **Reason for change: Asymmetric**
4.10	Distributor to restore Distribution Services as soon as practicable: In the case of a Service Interruption, the Distributor must endeavour in accordance with Good Electricity Industry Practice to restore the Distribution Services: (a) for Unplanned Service Interruptions, as far ~~soon~~ as is reasonably practicable within ~~possible and no later than~~ the timeframes set out in Schedule 1; and (b) for Planned Service Interruptions, as ~~soon as possible~~ far as is reasonably practicable and within ~~and no later than~~ the timeframe set out in the notice for Planned Service Interruptions sent to the Customer.	There is a variety of external factors outside of the Distributor's control that can impact on supply restoration. On that basis the Distributor cannot guarantee restoration times. The wording as proposed has the ability to overlap the Health and Safety at Work Act 2015 and Part 4 of the Commerce Act **Reason for change: Part 4, Worksafe**
4.11	Trader's remedy: ~~Except as provided in clause 9.10,~~ tThe Trader's only remedy if the Distributor fails to meet the timeframes in clause 4.10 is the payment of any Service ~~Guarantee~~ Payments in accordance with Schedule 1, if applicable.	All reference to Service Guarantee Payments should be removed: • The Distributor cannot guarantee continuous service. • The Distributor is already subject to service quality payments through Part 4 of the Commerce Act **Reason for change: Part 4**

Clause	General Comments in regards to the:	WELLs response
5.1	Distributor may control load: Subject to clause 4.3, if the Distributor provides a Price Category or Price Option that provides for a non-continuous level of service by allowing the Distributor to control part or all of the Customer's load (a "Controlled Load Option"), and the Customer elects to take up the Trader's corresponding price option that incorporates the Controlled Load Option, the Distributor may control the relevant part of the Customer's load in accordance with this clause 5, Schedule 1 and Schedule 8.	Wording should be revised to: • Ensure that the Distributor's non-continuous supply Price Category is passed on the Customer by the Trader, and • provide for future load management innovation (ie the "Other Load Control Option") 6.1 Distributor may control load: If: (a) the Distributor provides a Price Category or Tariff Option for a non-continuous level of service in respect of part of or all of the Customer's load (a "**Controlled Load Option**"), and charges the Trader on the basis of the Controlled Load Option with respect to the Customer; and the Trader charges the Customer on the basis of this Controlled Load Option, or (b) the Distributor provides any other form of load control in respect of part of or all of the Customer's load advised by the Distributor to the Trader from time to time (an "**Other Load Control Option**") with respect to the Customer (who elects to take up the Other Load Control Option), the Distributor may control the relevant part of the Customer's load in accordance with clause 6 and schedule 7. **Reason for change: Part 4, Innovation**
5.6	Trader to make controllable load available to the Distributor for management of system security and Network security:	System security and Network security are separate functions and should be identified separately. **Reason for change: Part 4**
5.9	Assignment of load control rights: A party that has obtained the right to control a Customer's load in accordance with clauses 5.1 or 5.2 may assign that right to another party, provided that the rights holder has obtained the right to make such an assignment from the Customer, and the agreement includes an obligation to fully comply with Clause 5 and Schedule 8 of this agreement.	Compliance with the relevant clauses of the DDA should be a pre-requisite for any party accessing Customers' load. This is to support the Customer's and the Network's supply reliability. **Reason for change: Part 4, Innovation, Practicable**

Clause	General Comments in regards to the:	WELLs response
6.1	Trader to provide information to enable calculation of Loss Factors by Distributor: The Distributor ~~must~~ may obtain information from the reconciliation manager for the purpose of calculating Loss Factors. The Trader must provide the Distributor with any additional information that the Distributor may reasonably require to enable the Distributor to calculate Loss Factors within 15 Working Days of the request from the Distributor.	This re-wording provides the Distributor with the flexibility to obtain information from any source necessary to calculate losses. **Reason for change: Practicable**
6.6	The draft DDA places a general obligation on Distributors to investigate adverse trends in losses.	Draft DDA clause 6.5 provides: *The Trader must investigate and minimise, in accordance with Good Electricity Industry Practice, non-technical Losses).* The reciprocal clause 6.6 should read: *The Distributor must investigate and minimise, in accordance with Good Electricity Industry Practice, technical Losses).* Each party will investigate the area of Losses that it is in the best position to investigate **Reason for change: Practicable, Asymmetric**
7.1	Distribution Services pricing information: The Distributor's Pricing Methodology, and a schedule of Price Categories, Price Options (if any), and Prices, are available as described ~~set out~~ in Schedule 7.	Wellington Electricity, and probably most other Distributors, set out their Price Categories and Pricing Options on their website. Having these in the DDA will entail annual updates as pricing changes. Schedule 7 will contain a link to the relevant area of the Distributor's website. **Reason for change: Practicable, Efficiency**

Clause	General Comments in regards to the:	WELLs response
7.4	Process to change Pricing ~~Methodology~~ Structure:	"Pricing Methodology" is a term used in relation to Distributor disclosures as required by the Commerce Commission. Wellington Electricity believes that the Electricity Authority intended this clause to deal with changes to pricing *structures*. That is, where, for example, there is a change of Pricing Options within a Pricing Category. Pricing Methodology, as Distributors understand the term, explains how Distributors calculate prices based on the requirements of the Electricity Authority (eg Pricing Principles, LFC regulations, etc) and the Commerce Commission (eg recovery under a Default Price Path, etc). It is clearly inappropriate for Distributors to consult with Traders in relation to its obligations under Part 4 of the Commerce Act. Once again, Wellington Electricity believes that the intention of this clause is that Distributors must consult around changes to pricing *structures.* **Reason for change: Part 4, Efficiency**
7.7	Changes containing an error	The provisions of this clause should be reciprocal. Either party is able to identify an error. **Reason for change: Asymmetric**
8.5	Credit following correction: If the Distributor allocates a Corrected Price Category to an ICP following notice from the Trader given under clause 8.4, the Distributor must: (a) commence charging the Trader in accordance with the Price(s) that applies to the Corrected Price Category with immediate effect; and (b) subject to clause 8.6, and by issuing a Credit Note Tax invoice payable in the next monthly billing cycle, credit the Trader with an amount (if positive) equivalent to:	This is asymmetrical – Trader notified reallocations are implemented with immediate effect, Distributor notified reallocations are implemented after 40 Working Days. One or the other should apply to both parties. Applying a Corrected Price Category may result in an increase in line charges. **Reason for change: Asymmetric**

Clause	General Comments in regards to the:	WELLs response
8.7 (b)	..... and may commence charging the Trader for Distribution Services in accordance with that Price Category after a further 40 Working Days; and	As 8.5 above: this is asymmetrical – Trader notified reallocations are implemented with immediate effect, Distributor notified reallocations are implemented after 40 Working Days. **Reason for change: Asymmetric**
9.	**BILLING INFORMATION AND PAYMENT**	Billing and payment functions should be in the operational section of the DDA as each Distributor and each Trader may have different billing and payment processes. Keeping billing and payment provisions in the core terms may impose significant costs on to either or both parties, and will inhibit future billing innovation. **Reason for change: Part 4, Efficiency, Practicable**
9.4	Due date for payment: The settlement date for each Tax Invoice issued by the Distributor must be the 20th day of the month in which the Tax Invoice is received, or if the 20th day of the month is not a Working Day, the first Working Day after the 20th day. However, if the Distributor fails to send a Tax Invoice to the Trader within 10 Working Days after the last day of the month to which the Tax Invoice relates, the due date for payment is extended by 1 Working Day for each Working Day that the Tax Invoice is late unless the delay is due to the Trader not meeting its obligations in accordance with Schedule 2. In this latter circumstance no extension will be provided to the Trader.	The Distributor should not be responsible for a delay caused by the Trader. **Reason for change: Practicable**
9.5	Other invoices: (a)If applicable, the Distributor may issue the Trader with: (i) a Tax Invoice for payment for any other sums due to the Distributor under this Agreement; and (ii) a Credit Note for payment of Service Guarantee Payments due to the Trader.	All reference to Service Guarantee Payments should be removed: • The Distributor cannot guarantee continuous service. • The Distributor is already subject to service quality payments through Part 4 of the Commerce Act **Reason for change: Part 4**

Clause	General Comments in regards to the:	WELLs response
9.8	..... Use of Money Adjustment on the overcharged or undercharged amount, provided that there will be no right to ~~open~~ adjust Tax Invoices if more than.....	The changed text makes it clearer that the relevant invoices will not be adjusted (up or down) after the period. "Re-open" is imprecise in this context. **Reason for change: Practicable**
9.10	**Refund of charges**: If, as a consequence of a fault on the Network, there is a continuous interruption affecting a Customer's Point of Connection for 24 hours or longer, the Distributor must issue a Credit Note and refund, in the next monthly billing cycle, for the Distribution Services charges paid by the Trader in respect of the ICP or ICPs for that Customer for the number of complete days during which supply was interrupted, provided that the Trader requests that the Distributor refund such charges no later than 60 days after the interruption.	This clause should be removed. A Low User Customer would receive a 15c refund of charges for a 24-hour loss of supply. Wellington Electricity understands the "natural justice" intent, but implementation as above would be impractical. **Reason for change: Practicable, Efficiency**
10	**PRUDENTIAL REQUIREMENTS**	The proposed Code changes take the provisions of part 12A.4 & 12A out of the Code and into the DDA. Wellington Electricity cannot understand where there is any benefit, in terms of encouraging competition, reliability or efficiency in this proposed move. **Reason for change: Efficiency**
10.27	**Trust Account Rules**	Cash bonds are rare and typically small amounts. The cost of managing a Trust Account is an unnecessary burden for Distributors and will be passed on to Customers. **Reason for change: Efficiency, Practicable**

Clause	General Comments in regards to the:	WELLs response
11	11.ACCESS TO THE CUSTOMER'S PREMISES 11.1 Rights of entry onto Customer's Premises: The Trader must, subject to clause 29.1, include in each of its Customer Agreements a requirement that the Customer provide the Distributor and its agents with safe and unobstructed access onto the Customer's Premises for all of the following purposes: (a) to inspect, install, maintain, repair, replace, operate or upgrade (provided that the upgrade does not have any material adverse effect on the relevant Customer or Customer's Premises) the Distributor's Equipment;	The additional text is to provide clarity and to ensure the Distributor can gain access for all the functions it requires. **Reason for change: Practicable**
11.1 (h)	to ascertain the cause of any interference to the quality of services being provided by the Distributor to any person.	This additional sub-clause should be added to ensure that the Distributor can gain access to the premises on one Customer, who's activities are interfering with the quality of supply to another Customer (eg by applying unusually high instantaneous loads to the Network). **Reason for change: Practicable**
13.	**NETWORK CONNECTION STANDARDS**	
14.2	If a Customer, or the Trader on behalf of a Customer, raises a concern with the Distributor regarding the power quality (i.e. frequency or voltage), reliability or safety of the Customer's supply, the Distributor must investigate those concerns, and, if appropriate, install equipment at the Customer's Point of Connection to measure power quality, and provide the results of such measurements to the Trader. If such installation requires the Distribution Services to be interrupted, the Distributor must restore the Distribution Services as soon as reasonably practicable. If the Trader has data or information that will assist the Distributor with its investigations the Trader must provide this to the Distributor at no cost to the Distributor.	This provision gives the Distributor access to metering data held by the Trader to facilitate power quality investigations by the Distributor **Reason for change: Part 4, Efficiency**

Clause	General Comments in regards to the:	WELLs response
18.6	Insolvency Event: Despite clause 18.1, if either party is subject to an Insolvency Event, the other party may: (a) immediately issue a notice of termination in accordance with clause 19.2; (b) exercise any other legal rights available to it; and (c) if the Insolvency Event involves a Serious Financial Breach by the Trader, the Distributor may notify the Electricity Authority and/or the clearing manager that clause 14.41(h) of the Code applies. Additionally, if the Trader is the party subject to an insolvency event, the Distributor may: a) undertake a Temporary Disconnection of some or all of the ICPs supplied by the Trader, in which case the Trader will take all steps necessary to allow those disconnections to be made and will provide the information required by the Distributor in relation to such ICPs; and/or b) prohibit the Trader from using the Network to supply any Point of Connection which is not currently supplied by it; In exercising its rights under this clause 18.6 the Distributor shall ensure that that its notification to the Electricity Authority and/or the clearing manager is not inaccurate or misleading.	The additional wording (in Red) should be inserted. The Code requires that active ICPs must be assigned to a Trader. ICPs connected and consuming with no Trader are in breach of the Code. While the EA has guidelines around managing Trader default situations, the Distributor must be able to comply with the Code with immediate effect if necessary. **Reason for change: Efficiency, Practicable and to ensure compliance with the Code requirements**
19	**TERMINATION OF AGREEMENT**	

Clause	General Comments in regards to the:	WELLs response
19.1	This clause should have an additional sub-clause: (g) by either party for any reason on 120 days' notice	This additional wording is necessary to enable the Trader or Distributor to independently move to a later or more beneficial version of the Distributor's DDA. This additional wording also provides for the Distributor to terminate the agreement with the Trader in the event that it converts its supply arrangement to a conveyance model. Requiring Trader agreement would hinder a Distributor from changing its business model. **Reason for change: Practicable**
21.6	This clause should have an additional sub-clause: **21.6 Payment**: the occurrence of a Force Majeure event will not affect the party's obligations in relation to the calculation and payment of fixed and variable line charges in relation to the Distribution Services (whether or not, in the case of charges relating to ICPs, the relevant ICP received supply of electricity during the period of the Force Majeure event). For the avoidance of doubt, any variable component of charges applicable to ICPs will continue to be payable to the extent that the consumption of, or demand for, electricity at the ICP continues.	This additional wording provides clarity that normal billing obligations apply during a FM event. The Orion experience shows that continued revenue is required to facilitate fast restoration of supply and network rebuild after a major event. Continuation of charges supports improved supply reliability. **Reason for change: Part 4**
21.7	**Service Standards**: for the avoidance of doubt both parties accept that the Service Standards detailed in this agreement may not apply during a Force Majeure event.	The agreement should recognise that normal Service Standards may not be achievable during a major event. **Reason for change: Part 4, Practicable**

Clause	General Comments in regards to the:	WELLs response
22	**AMENDMENTS TO AGREEMENT**	UoSAs negotiated within the Authority's MUoSA framework include an overarching standard of Good Electricity Industry Practice (GEIP). GEIP is an objective and well defined standard applying widely to the obligations of both Traders and Distributors. This overarching standard benefits Customers and the industry by providing certainty around the factors against which a party will be judged during its decision making. This overarching standard is consistently applied in negotiated UoSA Force Majeure and liability clauses, providing a level of certainty around each party's liability exposure and giving certainty when 'extraordinary' situations occur. **Reason for change: Part 4**
24.5	**Distributor not liable**: ..... (d) Where such failure occurs in spite of Distributor exercising Good Electricity Industry Practice (GEIP)	Additional sub-clause linking liability to the recognized service standard of Good Electricity Industry Practice (GEIP). This critical caveat is lost in the DDA, widening the scope for uncertainty and increased risk. **Reason for change: Part 4**

Clause	General Comments in regards to the:	WELLs response
24.7	Liability amounts should be agreed between the parties	Clause 24.7 does not provide for an annual liability cap of any type. Liability should be subject to an annual amount provided in the operational schedule as its absence will impact insurance costs, and therefore costs passed to Customers. Annual caps provide certainty for both the Distributor and the Trader. Wellington Electricity notes that the EA has not offered any justification for providing only a 'per event cap'. Wellington Electricity's legacy Use of Network Agreement applies liability caps on a 'per event' and 'annual cap' basis. These caps are based on the number of ICPs per Trader so that liability is proportional to the level of activity of each Trader on the Network. This approach was accepted through commercial negotiations so is a more appropriate approach than what is proposed. **Reason for change: Part 4, Efficiency**
31.2	Customer information: The Trader must on reasonable written request from the Distributor, and within a reasonable timeframe, provide the Distributor with such Customer information as is reasonably available to the Trader and necessary to enable the Distributor to exercise its rights or fulfil its obligations-in accordance with this Agreement. The information must be treated by the Distributor as Confidential Information and the Distributor expressly acknowledges and agrees that it is not authorised to, and must not, use such information in any way or form other than as permitted by this clause 31.2.	Additional wording added for clarity. **Reason for change: Practicable**

Clause	General Comments in regards to the:	WELLs response
32.4	Where the Trader is seeking to assign any benefit or burden under or in relation to this agreement, it shall not be reasonable for the Distributor to refuse its consent to such assignment where the Trader and/or the proposed assignee demonstrates, to the Distributor's reasonable satisfaction, that the proposed assignee is able to meet the requirements of clause 12. (prudential requirements).	Added for clarity. Addition to 32.3, or new additional 32.4 **Reason for change: Part 4**
33.1	**"Distribution Services"** means the provision, maintenance and operation of the Network for the conveyance of electricity to Customers, in accordance with Good Electricity Industry Practice;	The reference to in "accordance with Good Electricity Industry Practice (GEIP)" should be added to set the standards against which the provision of these services shall be measured **Reason for change: Part 4**

Additionally, WELL notes that there are terms in the proposed DDA Operational Terms that embody DDA Core Terms which, in effect, make all or parts of those Operational Terms regulated and mandatory, ie:

- Schedule 1 (S1.1 to S1.3)
- Schedule 3.1
- Schedule 7.1
- Schedule 8.1

These Core terms should be Operational terms and not Core.

Reason for change: Part 4, Innovation, Efficiency