19 April 2016

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Genesis Energy Limited

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Craig Evans
Electricity Authority
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By email: submissions@ea.govt.nz

Dear Craig,

Default agreement for distribution services

Genesis Energy Limited welcomes the opportunity to provide a submission to the Electricity Authority ("the Authority") on the consultation paper "Default agreement for distribution services" dated 26 January 2016 (the "Consultation Paper").

Genesis Energy supports the Default Distribution Agreement

Genesis Energy is strongly in favour of the proposal to create a Default Distributor Agreement for all networks ("DDA"). The current Model Use of System Agreement ("MUoSA") provides little efficiency benefit as negotiations under the MUoSA consume significant time and resource but do not result in materially different outcomes from one network to another. The short period of negotiation proposed for variations to the default agreement for distribution services ("DDA") allows scope for innovation while ensuring these agreements are entered into in a timely and consistent manner.

We have reviewed the submission by Electricity Retailers Association of New Zealand ("ERANZ") and fully support it.

Concern with the codification of the CGA indemnity

We would also reiterate the concern, expressed in the ERANZ submission, with the way the DDA text seeks to codify the quality of service guarantee and retailer indemnity provisions in sections 7B and 46A of the Consumer Guarantees Act 1993 (CGA). We consider Clause 26 of the DDA effectively undermines the application and purpose of the statutory indemnity in Section 46A of the CGA, and should be deleted. We have three key reasons why we consider Clause 26 should be deleted:

- Firstly, it undermines the purpose of the CGA acceptable quality guarantee and the retailer indemnity. These provisions were introduced to provide customers with a clear and timely redress for breaches of service quality. By allowing distributors to choose whether they take over a claim, Clause 26 introduces delay and ambiguity into the CGA claim process for consumers. Retailers are also dis-incentivised from settling a claim by the introduction of new criteria which seek to further limit the statutory indemnity.

- Secondly, although it is a general contractual principle that the person paying should be able to control a claim against them[1], this general principle is not immutable and we do not agree with its application in this situation. The primary claim in question is established under section 7B of the CGA and cannot be simply taken over by the distributor; it is between the retailer and the customer. Because it is a statutory obligation, the retailer cannot legally transfer this responsibility to the distributor.

- Thirdly, insofar as parties *can* agree to a process to manage claims under the CGA between themselves, the proposed provisions are inconsistent with the indemnity process in the CGA. Rather than improving the management of claims, or even simply restating the clear statutory process set out in Section 46A, the proposed clause 26 creates unnecessary ambiguity. In our view, it appears the clause seeks to ensure the distributor can easily dispute claims – ignoring CGA provisions that allow for the resolution of indemnity disputes between the retailer and the distributor.

We strongly urge the Authority to delete Clause 26 and make the consequential amendments to Clause 25 set out in Appendix 2 to the ERANZ submission.

If you would like to discuss this submission further, please contact me on 04 495 3348.

Yours sincerely

Rebekah Cain
Regulatory Advisor

[1] In the DDA drafting notes, at Clause 26, the Authority states that it considers it important, where an agreement includes an indemnity, to provide the party giving an indemnity the ability to take over a claim from the indemnified party.