Follow-up consultation – proposed changes to the default distributor agreement

Consultation paper

2 July 2024

ELECTRICITY AUTHORITY
TE MANA HIKO

Executive summary

The Electricity Authority Te Mana Hiko (Authority) is committed to ensuring regulations keep up with the transformation underway across the electricity sector.

We are also committed to supporting the reliable supply of electricity and efficient operation of the industry, all while protecting interests of consumers.

In October 2023, the Authority consulted on amendments to the default distributor agreement (DDA) template in the Electricity Industry Participation Code 2010 (Code).[1] The amendments aimed to address some issues with the DDA template and the consumption data template, which were, in the Authority's view, limiting some of the expected benefits from these templates, particularly benefits to consumers.

The DDA template sets out requirements for agreements between distributors and retailers wanting to operate on distributors' networks. It contains a set of default terms covering how distributors and retailers will work together to provide electricity to consumers effectively, efficiently and reliably. The DDA template is designed to simplify negotiations and clarify requirements, reducing costs to the parties and ultimately consumers. It also supports competition by reducing costs faced by retailers wanting to compete for customers on distributors' networks.

We expect our DDA improvements to benefit consumers by:

- lowering their electricity costs through increased efficiency and competition
- strengthening incentives on distributors to manage the quality and reliability of consumers' electricity supply to minimise outage disruption
- directly reducing consumer costs if distribution outages do occur.

The Authority has considered submissions on the Code amendment proposed in the October consultation paper. As a result of this feedback, we have enough information to progress to a decision on most aspects of this proposed amendment.

However, through the process of reviewing submitter feedback we have identified several additional improvements to enhance the DDA template that support reducing costs to consumers.

We are seeking views on four key revisions as set out in this paper, before making a final decision on the proposed Code amendment. These revisions include:

- revising DDA clause 9.10 (reduction of charges due to electricity supply interruption) so distributors are not unduly financially disadvantaged from interaction with Part 4 of the Commerce Act, and reducing the risk of increased costs to consumers
- adding a new DDA clause 9.11 (reduction of charges due to state of emergency) to ensure distributors will reduce distribution charges in situations where consumers are unable to consume electricity and have sought disconnection, but the installation control point (ICP)[2] cannot be accessed for disconnection

[1] Consultation paper - Proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses, 3 October 2023

[2] A point of connection at which the electrical installation for a retailer's customer is connected to an electricity network.

- revising DDA clause 33.2 (definition of 'use of money adjustment') to:
    - link the use of money adjustment to the due date of an original invoice and the due date of a revision invoice
    - simplify the interest calculation by compounding interest daily (at 1/365th of the annual rate)

  (we consider this will reduce potential implementation costs for some distributors should they ever need to apply a 'use of money adjustment', with flow-on consumer benefits)
- adding a new Code clause 12A.6 (retailers must pass-through reduction in distribution charges) to ensure consumers pay reduced distribution charges when electricity supply is disrupted for an extended period.

These revisions address potential gaps and improve the workability of the proposed amendment, without changing the policy intent. We consider these revisions will ultimately support improved consumer outcomes by ensuring, to the extent possible, they do not incur additional costs outside their control when their supply is disrupted for an extended period.

This is through the amendments being drafted to be practical and efficient for distributors and retailers to implement, thereby reducing compliance costs and effectively achieving their objectives. We expect this to flow through to reduced costs for consumers. In addition, the amendments will ensure reduced distribution charges are passed through to consumers.

Some of these revisions are material changes from what we originally consulted on and may have impacts or flow-on effects for stakeholders. Therefore, it is appropriate to give stakeholders the opportunity to share their views, which will inform the Authority's final decisions on the Code amendment.

For completeness, this consultation paper also provides a summary of the earlier feedback related to the proposals, and our assessment of this feedback.

Submissions

We welcome feedback on any or all sections of this consultation paper by 5pm, Wednesday 31 July 2024.

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1. Background

What this consultation is about

1.1. Following submissions on our initial consultation, and further engagement with the Commerce Commission, we have made changes to our proposed amendments to clauses 9.10 (refund of charges) and 33.2 (definition of 'use of money adjustment') of the DDA. We are also proposing a new clause 9.11 (reduction of charges due to state of emergency) of the DDA. Further, we propose a new stand-alone clause 12A.6 of the Code (retailers must pass-through reduction in distribution charges).

1.2. We propose making these additional improvements to the DDA template as we believe these changes will reduce costs to consumers and lead to a higher level of service.

1.3. It is important the Authority understands how these proposed changes may impact stakeholders, and we welcome submissions on these revisions, as outlined below.

1.4. Each proposed revision of a clause, or proposed new clause, is set out in a separate section of this paper. The changes address potential gaps and improve the workability of the previous proposed amendments without changing the policy intent. We consider the proposed changes will have a positive, but relatively small impact on the October 2023 cost benefit analysis.

1.5. The draft wording of each proposed Code amendment is included in Appendix A.

How to make a submission

1.6. The Authority's preference is to receive submissions in electronic format (Microsoft Word) in the format shown in Appendix B. Submissions in electronic form should be emailed to dda@ea.govt.nz with 'Consultation - DDA' in the subject line.

1.7. If you cannot send your submission electronically, please contact the Authority info@ea.govt.nz or 04 460 8860 to discuss alternative arrangements.

1.8. Please note the Authority intends to publish all submissions it receives. If you consider that the Authority should not publish any part of your submission, please:

(a) indicate which part should not be published,

(b) explain why you consider we should not publish that part, and

(c) provide a version of your submission that the Authority can publish (if we agree not to publish your full submission).

1.9. If you indicate part of your submission should not be published, the Authority will discuss this with you before deciding whether to not publish that part of your submission.

1.10. However, please note all submissions received by the Authority, including any parts that the Authority does not publish, can be requested under the Official Information Act 1982. This means the Authority would be required to release material not published unless good reason existed under the Official Information Act to withhold it. The Authority would normally consult with you before releasing any material that you said should not be published.

When to make a submission

1.11. Please send in your submission by 5pm, Wednesday 31 July 2024

1.12. Authority staff will acknowledge receipt of all submissions electronically. Please contact the Authority info@ea.govt.nz or 04 460 8860 if you do not receive electronic acknowledgement of your submission within two business days.

2. Clause 9.10 (Refund of charges)

The problem definition under existing arrangements

2.1. Consumers can face power outages for various reasons. The Authority considers that consumers should not pay for electricity supply they do not receive, particularly if an outage is for a material amount of time. However, we need to balance that with allowing distributors sufficient time to restore supply.

2.2. The Authority proposed a threshold of 24 hours or longer (given that distributors charge daily). In addition to providing sufficient time for the distributor to restore supply, the financial impact of an interruption of less than 24 hours is likely to be small for individual consumers, particularly residential consumers, meaning the administrative costs involved in providing redress may outweigh the consumer benefits.

2.3. The October 2023 consultation paper noted some distributor agreements had changes to the DDA template's drafting suggestions that create inconsistent remedies for traders[3] and consumers. This is where a distributor fails to meet outage timeframes and/or where a continuous interruption affects a customer's point of connection for 24 hours or longer.

2.4. The Consumer Advocacy Council's 2023 'Put on hold' report captures consumer frustrations at the inconsistent, and in some cases lack of, compensation from retailers following outages due to Cyclone Gabrielle.[4]

The October 2023 proposal

2.5. The Authority proposed, amongst other things, to amend the status of several recorded terms on the DDA template to be core terms, including clause 9.10. The policy intent for this proposal was that in all cases, traders and consumers should be able to choose whether they want to pay for distribution services when there has been a continuous interruption affecting a customer's connection point for 24 hours or longer.

Feedback on October 2023 proposal

2.6. Several submitters[5] consider clause 9.10 (amongst other clauses) in the draft DDA template addresses matters the Commerce Commission is authorised or required to regulate under Part 4 of the Commerce Act 1986. They consider the Authority consequently cannot regulate these under the Code.

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[3] Part 12A of the Code uses the term 'trader' instead of 'retailer'.

[4] Consumer Advocacy Council, *Put on hold? Cyclone Gabrielle, Covid–19 disruption and business as usual – do our electricity consumer protections work when whānau most need them?,* June 2023, 48-49, Put-on-hold-report-June-2023.pdf (cac.org.nz).

[5] See, for example, the submissions of EA Networks, ENA, Firstlight Network, Horizon Networks, Orion New Zealand, Powerco, Vector, Wellington Electricity, WEL Networks, and the joint submission of Northpower, Top Energy, and Counties Energy.

2.7. Contact Energy agreed with the Authority's comments supporting the Code change and supported clause 9.10 being made a core term.

2.8. EA Networks submitted that making clause 9.10 a core term would affect the maximum prices or revenue it could charge and that this was outside the Authority's jurisdiction. Electricity Networks Aotearoa (ENA), Firstlight Network, Northpower, Top Energy and Counties Energy (in their joint submission), Orion, Powerco, and WEL Networks raised a similar concern.

2.9. EA Networks also considered:

(a) An outage for more than 24 hours would most likely be a symptom of a widespread external event, like severe winds or a snowstorm. In these situations, the distributor is likely to be going to considerable lengths and expense to restore supply to affected consumers. At these times, the service being provided to consumers is supply restoration.

(b) Its focus is always on restoring power quickly and safely, which can mean waiting until the weather event has eased. A financial penalty may incentivise unsafe practices by distributors.

(c) Improved reliability is already incentivised via the quality incentive in the default price path.

2.10. EA Networks was not aware of consumers seeking a refund. EA Networks has not had requests for refunds, nor received feedback in its surveys suggesting it should provide refunds for outages. EA Networks is concerned that mandating the refund of charges for a continuous interruption of more than 24 hours would undermine EA Networks' ability to adopt consumer preferences around the trade-off between network cost and network reliability.

2.11. The Electricity Retailers' Association of New Zealand (ERANZ) supported clause 9.10 being made a core term in cases where a consumer has not received a supply for 24 hours or longer. ERANZ recommended the Authority expand this clause to include declared states of emergency if a consumer cannot access their supply because their property is red or yellow stickered. This occurred most recently in Hawke's Bay during Cyclone Gabrielle where consumers were charged for supply they could not use, even if it was working.

2.12. Horizon Networks considered:

(a) The proposed core term in clause 9.10 is unnecessarily prescriptive and will introduce extra cost, due to the need for Horizon Networks to update its billing system, without this providing any additional benefit to consumers.

(b) Fixed daily charges for residential consumers are typically very small amounts.

(c) The consultation paper's comparison with the equivalent clause in the transmission benchmark agreement is not valid as distribution services are far more susceptible to isolated outages and affect numerically fewer consumers. This means Transpower would be unlikely to incur substantial administrative costs to issue credits.

2.13. Horizon Networks further considered the prescriptive requirements for the refund of daily fixed charges for an outage ignores established industry processes that efficiently achieve the same outcome for consumers. Horizon Networks noted it does not charge traders for ICPs on the network that have an 'inactive' status in the ICP registry. This is regardless of whether the site's 'inactive' status was due to a fault on the network or another reason.

2.14. Northpower, Top Energy and Counties Energy (in their joint submission) did not agree that a process for refunds needed to be mandated, particularly since distributors that currently

do not offer refunds would set the refund amount at $0. These submitters considered this clause oversimplifies matters by making no distinction between customer groups and the differing levels of service they pay for. The clause also takes a simplistic view of the causes of service interruptions, which are often outside the control of the distributor.

2.15. Northpower, Top Energy and Counties Energy further noted that, in many cases, the transaction cost to process small refunds will be higher than the refund itself. Also, there is no obligation in the DDA template for traders to pass on repayments to their customers, which defeats the purpose of the clause. Even if this was mandated, traders would also face the issue of the transaction cost to them being too great, ultimately having the effect of driving up prices to consumers.

2.16. Nova Energy supported ERANZ's submission on clause 9.10 noting that force majeure events should also not give distributors the right to continue to charge consumers for services that are not delivered or received. Clause 9.10 should therefore include a provision that network charges should not continue for ICPs impacted by a force majeure event. Nova Energy also submitted that traders should not have to request charge refunds from distributors, but rather distributors should proactively apply refunds. Finally, Nova Energy agreed it is reasonable to require traders to pass on any refunds of distribution charges to consumers.

2.17. Orion considered making clause 9.10 a core term would:

(a) be costly to implement in billing systems, and to administer

(b) provide an immaterial consumer benefit for periods of lengthy service interruption.

2.18. Powerco submitted that providing lines services does not stop during an outage and in many instances will increase as distributors look to restore power. Powerco also considered the significant compliance costs of monitoring and processing refunds far outweigh the benefit to consumers of receiving (potentially very small) refunds. Lastly, Powerco noted the proposed change to clause 9.10 did not include an obligation on the trader to pass on refunds to affected customers, which Powerco assumed was an error.

2.19. WEL Networks considered the proposal to be administratively burdensome and highly inefficient.

2.20. Wellington Electricity submitted that distributors may not be funded to provide the level of quality implied by the proposal, or that consumers may have agreed to pay for a lower level of quality. Wellington Electricity considered a return to service within 24 hours implied a level of quality that does not align with the quality standards set by the Commerce Commission.

2.21. Wellington Electricity also considered mandating a refund for interruptions would imply there is no service being provided to the consumer during prolonged interruptions, which it considered was incorrect.

2.22. Vector did not object to making clause 9.10 a core term, but suggested a further provision be added to the clause to ensure any credit or refund is passed on to the consumer by the trader.

Our assessment

2.23. The Authority disagrees with the view that it cannot regulate matters addressed in clause 9.10. Section 32 of the Electricity Industry Act 2010 permits the Authority to set quality or information requirements for distributors regarding access to distribution networks and pricing methodologies for distributors in the Code, which encompasses the DDA. The Authority considers its proposed clause 9.10 falls under one or both these provisions.

2.24. Specifically, the proposed clause mandates the approach to a component of pricing in particular circumstances. Therefore, the Authority considers it is a methodology for setting prices for individual services. This is the case regardless of its form or location in the DDA as opposed to the rest of the Code.

2.25. The Authority also notes clause 9.10 is not requiring distributors to guarantee power will be restored within 24 hours. However, a threshold of 24 hours provides a reasonable balance between a consumer's right to have their charges reduced when electricity is not supplied, against the distributor being given adequate time and incentive to restore the supply.

2.26. However, after considering submitters' points on the proposed change to the status of clause 9.10, from a recorded term to a core term, the Authority has revised the clause. This is to place the responsibility with the distributor to advise the retailer of ICPs that are affected by an electricity supply interruption.

2.27. The distributor will have this information as part of managing affected ICPs through the transformer, feeder, and low voltage network information it holds. Each affected retailer may have some consumer complaints. However, the retailer is unlikely to be able to identify all the affected ICPs unless advised by the distributor.

2.28. The proposed clause gives distributors' discretion regarding how they want to comply with this requirement. This could be either by updating the registry status to "Inactive" with the appropriate reason code in the registry, as part of invoicing information for the next monthly billing cycle, or separately prior to the next month's billing cycle. In practice the distributor could add identifying information on the invoice, send a separate report, or update the registry. As part of this proposed amendment, we would change the registry functionality to allow distributors to change the status to "Inactive" with the appropriate reason code, and back to "Active".

2.29. The revised clause 9.10 would mean distributors could use or adapt established industry processes to process any charge 'refunds' (now effectively charge 'reductions' as explained further below). Therefore, the Authority considers it would avoid distributors needing to materially invest in new systems and processes.

We have allowed for charge reductions in states of emergency

2.30. The Authority does not fully support adopting ERANZ's request for clause 9.10 to explicitly include reductions due to declared states of emergencies, but we do support the general policy intent. Revised clause 9.10 does, therefore, provide for charge reductions to occur in these situations, where consumers cannot use electricity.

2.31. However, we consider it is preferable if the consumer, or retailer on their behalf, retains the ability to request disconnection and therefore subsequent cessation of charges, or not. This supports consumer choice, for example in situations where the consumer may want their connection to continue if they still wish to use electricity.

2.32. However, there is a unique situation where, due to a declared state of emergency under the Civil Defence Emergency Management Act 2002, a customer does not want to consume electricity at one or more of its ICPs, and the circumstances do not permit access for a technician to disconnect the ICP.

2.33. In this case, and consistent with the general policy intent, the Authority considers the consumer should not pay for electricity supply, and the distributor's charges should cease. To provide for this, we propose a new clause 9.11 as further detailed in Appendix A.

2.34. In declared states of emergency, the following approaches can be taken under proposed clause 9.10:

(a) Where the supply is interrupted, the distributor can advise the retailer(s) and charge reductions to the consumer will automatically follow.

(b) If the supply is not interrupted and a consumer's premises are 'yellow stickered' or 'red stickered', the consumer can request disconnection, after which the trader can change the status of the consumer's ICP to "Inactive" in the registry and charge reductions will automatically follow.

(c) If the relevant organisations do not permit access for the disconnection technician to perform the customer's requested disconnection, the distributor must treat the property as disconnected, and the trader can change the status of the consumer's ICP to "Inactive" with the appropriate reason code in the registry. This is covered by new proposed clause 9.11.

Our approach means distributors are not disadvantaged through application of Part 4 of the Commerce Act

2.35. The Authority also proposes to revise clause 9.10 so distributors are not disadvantaged through application of Part 4 of the Commerce Act. These changes have been proposed following discussion with Commerce Commission staff.

2.36. It was apparent that clause 9.10 as originally drafted may not have allowed distributors to recover lost revenue from refunding a trader for an outage under Part 4 of the Commerce Act. This meant price-quality regulated distributors may have faced financial 'double jeopardy' through potentially incurring another penalty under the Part 4 quality incentive scheme in addition to providing a 'refund'.

2.37. The revised clause 9.10 also has the advantage of aligning the approach more with the equivalent provision in Transpower's Default Transmission Agreement (clause 41.4). This means the 'refund' would be recognised under Part 4 as an effective reduction in revenues, rather than as operating expenditure (which could arise from using a credit note). We have also changed the heading of the clause from 'refund' of charges to 'reduction' of charges to reflect this change.

2.38. The differences between Transpower's and distributors' price-quality path wash-up mechanisms, including the way prices are recognised, are reflected in the drafting. This includes the approach explicitly reducing billed quantities rather than prices.

2.39. We have also clarified that the reduction in charges relates to the interruption to electricity supply, rather than the supply of distribution services. This acknowledges that distribution services may be ongoing even when electricity supply is interrupted.

2.40. The revised clause 9.10 ultimately means any reduction in distributor revenue can be 'washed up' and recovered later under the Part 4 regime. Distributors will still potentially face appropriate quality incentive scheme-related revenue reductions under the Part 4 regime.

2.41. We also propose removing the requirement on traders to request refunds (now reductions). The is to prevent any misalignment in incentives that might arise given the Authority is now proposing traders (retailers) be required to pass-through reductions in charges to end customers (see section 3 below).

Revised proposal

2.42. We propose clause 9.10 becomes a core term, with additional drafting changes to improve its workability without changing the policy intent. One change requires distributors to advise traders of ICPs affected by continuous interruptions of 24 hours or longer.

2.43. Further changes clarify that any reduction in distributor revenue can be ‘washed up’ and recovered later under the price-quality regimes in Part 4 of the Commerce Act 1986. This avoids distributors facing financial ‘double jeopardy’ through potentially incurring a penalty under the quality incentive scheme as well as reduced revenue.

2.44. A final change removes the requirement on traders to request refunds (now reductions). This aligns incentives with the requirement on traders to pass-through reductions (see below).

2.45. The Authority’s policy intent for clause 9.10 is that consumers do not pay for electricity they do not receive. However, we also want distributors to be incentivised to restore service to consumers as quickly as possible during interruptions. We are therefore also interested in feedback on whether the threshold of 24 hours, after which reductions are required, is appropriate.

2.46. If you consider a longer threshold period (eg, 48 hours) is more appropriate, the Authority is interested in how a longer period for continuing charges would:

(a) incentivise quick restoration of services

(b) balance the disruption to the consumer and the consumer’s right to receive the electricity supply they are paying for.

2.47. We also propose a new provision in clause 9.11 to address the situation where a state of emergency is declared, and the technician is prevented from performing a physical disconnection at a customer’s request.

Q2.1 Do you consider the revised proposed approach in 9.10 is workable, efficient, and effective? Would you propose any alternative approaches? If so, please describe these approaches in your answer.

Q2.2 Do you consider it would incentivise distributors to restore electricity supply to consumers more quickly if they did not need to reduce charges for a longer outage period than 24 hours?

Q2.3 If so, what time limit would you consider reasonable before charges should be reduced (eg, a maximum of 48 hours interruption)?

Q2.4 How would this longer period incentivise quick restoration of electricity supply and balance the disruption to the consumer and the consumer’s right to receive the electricity they pay for?

3. New DDA template clause 9.11 (Reduction of charges due to state of emergency)

The existing arrangements

3.1. The DDA template does not currently specify whether a distributor must reduce distribution services charges due to a declared state of emergency under the Civil Defence Emergency Management Act 2002. This is specifically where a customer is unable to use electricity at an ICP in this situation, the customer or the retailer on the customer's behalf has requested disconnection, and the ICP cannot be accessed to be disconnected.

Problem definition

3.2. An issue exists where a consumer may not be able to use electricity at an ICP due to a state of emergency, and seeks disconnection, but a technician is unable to access the ICP. In this case, the consumer may still face distribution services charges as the ICP has not been disconnected, nor identified as "Inactive" in the registry.

New proposal

3.3. In line with the policy intent of revised clause 9.10, we consider consumers should not be charged for distribution services in the situation described above because an ICP cannot be disconnected.

3.4. We therefore propose a new clause 9.11 that, in this situation, requires distributors to reduce their distribution services charges for the affected ICPs to zero, for the number of complete days from the date of the request for disconnection.

3.5. The Authority also consider this new clause encourages a more reliable electricity supply for consumers by incentivising distributors to restore supply as quickly as possible.

Q3.1. Do you consider new clause 9.11 effectively addresses the identified problem? Would you propose any alternative approaches? If so, please describe these approaches in your answer.

4. New Code clause 12A.6 (Retailers must pass-through reduction in distribution charges)

The existing arrangements

4.1. The Code does not currently specify how reduced distribution charges, or a refund, should be passed on to consumers when they decide not to pay for distribution services they have not received for 24 hours or longer due to a network fault.

Problem definition

4.2. Several submissions on clause 9.10 considered retailers should be required to pass any credit or refund reductions on to the consumer.[6]

4.3. The absence of such a requirement risks undermining the policy intent that in all cases, traders and consumers should not have to pay for distribution services where there has been a continuous interruption affecting a customer's connection point for 24 hours or longer. Where consumers choose not to pay for distribution services they are not receiving, the Authority considers the consumer should receive the refund or credit.

4.4. The above situation is also inconsistent with the current requirements under Schedule 1 of the DDA template, where s1.4 requires a trader to pass on any service guarantee payment from a distributor to the affected customer.

New proposal

4.5. The Authority agrees consumers must receive the benefit from reduced distribution charges and not be unduly charged for an electricity service they are not receiving. However, we also acknowledge there are likely to be administration costs for retailers when passing on reductions, and this should be considered.

4.6. Proposed clause 12A.6 would require retailers to pass-through electricity supply interruption charge reductions to consumers. The clause would allow retailers to reduce customers' reductions by an amount reflecting the reasonable costs incurred by the retailer to process the reduction, but no more than 50% of the reduction for the first day of the supply interruption.

4.7. The retailer would have discretion on how this reduction is passed through (eg, as a "miscellaneous credit", or a direct reduction in the number of days for the daily fixed charge). This is to minimise the retailer's costs for system changes and operational costs for each supply interruption.

4.8. We have placed this as a stand-alone clause in the Code to support our enforcement. This means a retailer would breach the Code if it did not pass through a reduction, rather than breaching the contract under the DDA. The Authority would consequently be able to address the breach under its Code compliance regime.

4.9. As above, given this is a new clause with implications and potential costs for retailers, we are consulting further to seek feedback.

Q4.1. Do you consider new clause 12A.6 is practical to implement and will deliver benefit to consumers? Please explain why or why not.

Q4.2 Do you see any problems or have alternative ideas? If so, please explain what these are.

[6] Northpower, Top Energy, Counties Energy, Powerco.

5. Code clause 33.2 (definition of ‘use of money adjustment’)

The problem definition under existing arrangements

5.1. The Authority has identified several recorded terms in distributor agreements that have the effect of not allocating costs and risks to the party best placed to manage them. One of these recorded terms is the definition of ‘use of money adjustment’. The use of money adjustment is the interest rate paid on money owed beyond its due date for payment.

5.2. The use of money adjustment is the sum of the “Interest rate” plus 2%. The “Interest rate” is the Bank Bill Benchmark Rate (BKBM) rate[7] displayed on the Reuter’s screen page. The practice in some distributor agreements is to set the adjustment to the BKBM rate to 0%.

5.3. A use of money adjustment of 0% means that under those DDAs, the use of money rate is equal to the BKBM rate. This means the party with use of the other party’s money beyond the due date is, in effect, borrowing the money at a lower interest rate than what the party would pay if it was borrowing from a trading bank.

5.4. This practice is a departure from the DDA template’s drafting suggestion for the definition of ‘use of money adjustment’. It is also inconsistent with the model use-of-system agreement template that pre-dated the DDA template for many years.

5.5. A positive use of money adjustment is necessary to avoid an incentive on the parties to a distributor agreement to shift costs onto each other by treating each other as a bank.

The October 2023 proposal

5.6. The Authority proposed amongst other things to amend the status of several recorded terms on the DDA template to be core terms, including the clause 33.2 definitions of ‘Interest rate’ and ‘use of money adjustment’.

Submitters’ views

5.7. Contact Energy noted in many proposed DDAs, the Authority’s suggested wording had not been adopted. Contact Energy agreed with the Authority’s comments at paragraphs B18–B22 in the 3 October 2023 consultation paper, that a positive use of money adjustment is necessary to avoid an incentive on the parties to a distributor agreement to shift costs onto each other by treating each other as a bank.

5.8. Furthermore, Contact Energy considered the 0% rate is inconsistent with wash-up amounts relating to the reconciliation manager (RM) normalised methodology mandated by the Authority and effective since 1 April 2021. Contact Energy’s view is that whichever party has the benefit of the money should compensate the other party via a use of money adjustment.

5.9. EA Networks considered the Authority’s proposal to mandate the definition of use of money adjustment in clause 33 would affect the maximum prices or revenue that it can charge. Therefore, EA Networks considered this clause should not be mandated.

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[7] The BKBM rate is the rate at which New Zealand’s five largest trading banks are willing to borrow from, or lend to, one another for a term of one to six months. This rate is lower than the borrowing rate a party to a distributor agreement would be expected to have access to, due to the creditworthiness of the five trading banks being higher than that of the party.

5.10. EA Networks also considered a use of money adjustment would come with a considerable cost, including amending billing systems to accommodate no GST on the adjustment, deducting resident withholding tax when making the adjustment for traders that do not hold a resident withholding tax exemption certificate, and tracking when payments and part payments are made. In addition, calculating the interest daily and compounding it at month end would be burdensome. This would require a part-month calculation for the first and last month, and full month calculation (based on the number of days in each month) in between. A simple daily compounding approach, or a non-compounding approach, would provide a much more straightforward solution.

5.11. EA Networks submitted proposed changes to the definition of 'use of money adjustment' that would reduce the implementation costs of making this definition a core term. EA Networks also proposed a change to clause 9.3(f) to let the distributor decide whether to pay a use of money adjustment on invoiced amounts linked to reconciliation wash-ups in the wholesale electricity market.

5.12. Orion did not support prescribing the amount of the use of money adjustment, raising largely the same issues as EA Networks. Orion considered implementing this change would come with a significant overhead for distributors that currently provide for a 0% use of money adjustment. Orion considered that, if the Authority decided to proceed with this proposed change, more thought needed to be given to the definition of 'use of money adjustment'. Orion believed the definition only made sense if the adjustment was applied from the date of payment of the original invoice until the date of payment of the Revision Invoice.

Our assessment

5.13. The Authority disagrees with EA Networks' suggestion that the Authority cannot regulate the matters addressed by the definition of 'use of money adjustment' in clause 33.2. For the reasons set out in paragraphs 2.23-2.24, the Authority considers it falls within our ability to set pricing methodologies for distributors under section 32(4)(b) of the Electricity Industry Act.

5.14. Three clauses in the DDA template refer to a use of money adjustment: Clause 9.3 (issuing of tax invoices), clause 9.7 (disputed invoices), and clause 9.8 (incorrect invoices). In these clauses, the use of money adjustment applies to both the distributor and the trader.

5.15. The Authority notes clause 9.3(f) allows the parties to a distributor agreement to agree to waive application of the use of money adjustment for a revision invoice issued using revised reconciliation information or additional consumption information. We agree with EA Networks' point that if one trader decides not to agree, then a distributor must have in place systems and processes to apply a use of money adjustment under clause 9.3(f). However, we also note EA Networks' observation that industry practice is for traders to not request interest on revision invoices related to reconciliation wash-ups.

5.16. In relation to clauses 9.7 and 9.8, we note a use of money adjustment will only need to be included, and a distributor will only incur possible implementation costs where it has previously issued incorrect invoices (which distributors should naturally look to avoid). Having said this, we consider there is merit in EA Networks' and Orion's submissions that the definition of use of money adjustment may make applying the adjustment more complex than it needs to be.

5.17. Having considered the points raised by EA Networks and Orion, the Authority proposes to amend the definition of use of money adjustment in the DDA template, to:

(a) remove the time period when the use of money adjustment applies, with this instead being described in the relevant clauses of the DDA template (ie, clauses 9.3(f), 9.7 and 9.8)

(b) simplify the interest calculation by compounding interest daily (at 1/365th of the annual rate).

5.18. We have made consequential amendments to clauses 9.3(f) and 9.8 to specify the time period when the use of money adjustment applies. For clause 9.3(f), this is the period starting on the due date of the original tax invoice and ending on the due date of the revision invoice (unless the parties agree otherwise). For clause 9.8, this is the period starting on the date of the original payment and ending when re-payment is made.

5.19. We note that if an invoice issued under clause 9.3 was not paid by the due date, the amount invoiced would be subject to default interest, at the default interest rate (being the "Interest rate" plus 5% per annum).

5.20. The Authority considers these proposed amendments retain the policy intent of the definition while materially reducing potential implementation costs for some distributors should they ever need to apply a use of money adjustment.

5.21. In relation to EA Networks' proposed changes to clause 9.3(f) of the DDA template, the Authority has decided not to include such an amendment currently because doing so is outside the scope of this Code amendment. However, the Authority has put this on our Code amendment register for future consideration.

5.22. The Authority has also considered the basis for using 2% as the use of money adjustment. Over several years this percentage amount has quite often been reasonably close to the average debt premium estimated by the Commerce Commission for estimating distributors' expected weighted average cost of capital (WACC).

5.23. A corporate entity's debt premium, estimated by the Commerce Commission, is the difference between:

(a) the yield of a vanilla New Zealand dollar denominated bond issued by a supplier of electricity distribution or gas pipeline services, that is publicly traded, has a credit rating of BBB+, and a term to maturity of five years, and

(b) the contemporaneous yield of New Zealand government New Zealand dollar denominated nominal bonds.

5.24. Many distributors do not issue publicly traded bonds. Therefore, in estimating the debt premium, the Commerce Commission has regard to the debt premiums of five types of publicly traded vanilla bonds issued in New Zealand in New Zealand dollars, with these five types of bonds differentiated based on credit rating, issuer, and ownership.

5.25. The greatest weight is given to bonds:

(a) issued by suppliers of regulated electricity line and gas pipeline services

(b) rated BBB+ by Standard and Poors (the Commerce Commission's notional benchmark credit rating for suppliers of regulated electricity lines and gas pipeline services)

(c) with a time to maturity closest to five years

(d) that are issued by entities that are not 100% Crown- or local authority-owned.

5.26. Aside from suppliers of electricity distribution and gas pipeline services, these companies typically include some larger electricity traders such as Contact Energy, Genesis Energy, Mercury and Meridian Energy.

5.27. Given this, the Authority is satisfied the additional 2% rate included in the Code amendment is appropriate. However, we recognise there may be merit in linking the use of money adjustment to the average debt premium for distributors, as calculated by the Commerce Commission. The Authority has decided not to include such an amendment currently because doing so is outside the scope of this Code amendment. However, the Authority has put this on our Code amendment register for future consideration.

Our revised proposal

5.28. The definition of 'use of money adjustment' in clause 33.2 becomes a core term with drafting changes to improve the workability of the clause without changing the policy intent. Specifically, these drafting changes are to:

(a) link the use of money adjustment to the due date of an original invoice and the due date of a revision invoice

(b) simplify the interest calculation by compounding interest daily (at 1/365th of the annual rate).

5.29. There are also consequential amendments to clauses 9.3(f) and 9.8 to specify the time period when the use of money adjustment applies:

(a) for clause 9.3(f) this is the period starting on the due date of the original tax invoice and ending on the due date of the revision invoice (unless the parties agree otherwise)

(b) for clause 9.8 this is the period starting on the date of the original payment and ending when re-payment is made.

5.30. We expect reductions to implementation costs for distributors from this change to ultimately flow through to consumers through reduced costs.

Q5.1 Is the revised approach to clause 33.2 appropriate and practical to implement without the need for significant system changes? Please explain your views.

Q5.2 Does the revised approach to clause 33.2 reduce potential implementation costs? Please explain your views.

6. Regulatory statement

Objectives of the proposed amendments

6.1. The Authority considered submissions on its initial proposals in the October 2023 consultation paper. As a result of this feedback, we are seeking views on the four key revisions (and two associated revisions) to the proposed Code amendment in this consultation paper. These revisions address a potential gap and improve the workability of the proposed amendments without changing the policy intent.

Evaluation of the cost and benefit of the proposed amendment

6.2. The proposed revisions in this paper come from submissions on the October 2023 consultation paper – *Proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses*. These revisions are intended to improve the workability of two aspects of the Code amendment previously proposed and address a potential gap that could result in lower benefits for consumers.

6.3. We consider the proposed revisions will have a positive, but relatively small impact on the October 2023 cost benefit analysis.

Assessment against Code amendment principles

6.4. The proposed revisions set out above are consistent with the Authority's statutory objectives, and with section 32(1) of the Electricity Industry Act and the Code amendment principles as required by the Authority's Consultation Charter.

Q6.1	Do you agree with the analysis presented in this Regulatory Statement? If not, why not?

Appendix A Proposed Code amendments

Clause 9.10 of the DDA

Previously consulted core term:

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 the Trader requests the Distributor refund such charges no later than 60 days after the interruption.

New proposed core term:

9.10 **Reduction of charges due to electricity supply interruption**: 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:

(a) advise the Trader of the ICPs that are so affected either as part of the invoicing information for the next monthly billing cycle or separately prior to the next month's billing cycle (for example by updating the registry status to "Inactive", or by sending a separate report); and

(b) in the next monthly billing cycle, reduce 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 of electricity was interrupted, by setting the billed quantities for each day during which the interruption continues and the day the interruption ends, except the first day during which the interruption began, to zero.

New clause 9.11 of the DDA

New proposed core term:

9.11 **Reduction of charges due to state of emergency**: If, as a consequence of a declared state of emergency under the Civil Defence Emergency Management Act 2002, the Customer or the Trader on the Customer's behalf requests disconnection, and the ICP or ICPs cannot be accessed to be disconnected, the Distributor must, in the next monthly billing cycle, reduce the Distribution Services charges paid by the Trader in respect of the ICP or ICPs for that Customer for the number of complete days from the date disconnection was requested, by setting the billed quantities for those days to zero.

Clause 33.2 of the DDA, definition of 'use of money adjustment'

Previously consulted core term:

'**Use of money adjustment**" means an amount payable at the Interest Rate plus 2% from the date of payment to the date of repayment (in the case of a Credit Note or other repayment) or from the due date of the original invoice to the date of payment (in the case of a Debit Note or other payment) accruing on a daily basis and compounded at the end of every month.

New proposed core term:

'**Use of money adjustment**' means an amount payable at the Interest Rate plus 2%, calculated and compounded daily (at 1/365th of the annual rate);

Associated new proposed amendments (in red):

9.3 **Issuing of Tax Invoices**: The Distributor must issue Tax Invoices for Distribution Services as follows:

[…]

(f) if the information received by the Distributor in accordance with Schedule 2 includes revised reconciliation information or additional consumption information, the Distributor must provide a separate Credit Note or Debit Note to the Trader in respect of the revised consumption information ("**Revision Invoice**"), and a Use of Money Adjustment applying from the due date of the original invoice to the due date of the Revision Invoice (unless the parties agree otherwise);

9.8 **Incorrect invoices**: If it is found that a party has been overcharged or undercharged, and the party has paid the Tax Invoice (~~which includes~~ or a Revision Invoice, as applicable) containing the overcharge or undercharge, within 20 Working Days after the error has been discovered and the amount has been agreed between the parties, the party that has been overpaid must refund to the other party the amount of any such overcharge or the party that has underpaid must pay to the other party the amount of any such undercharge, in both cases together with a Use of Money Adjustment on the overcharged or undercharged amount applying for the period commencing on the date of the original payment and ending when re-payment is made, provided that neither party has the right to receive a compensating payment in respect of an overcharge or undercharge if more than 18 months has elapsed since the date of the Tax Invoice containing the overcharge or undercharge.

New Code clause 12A.6 (Retailers must pass-through reduction in distribution charges)

12A.6 Retailers must pass-through reduction in distribution charges

(1) A **retailer** whose distribution charges are reduced in accordance with any provision in a **distributor agreement** to account for electricity supply interruptions or declared states of emergency must reduce the charges of those of its customers affected by the electricity supply interruption or declared state of emergency to reflect the reduction in the retailer’s distribution charges.

(2) When reducing a customer’s charges under subclause (1), the **retailer** may withhold an amount that reflects the reasonable costs incurred by the **retailer** to process the reduction, provided that amount does not exceed 50% of the reduction to the customer’s charges the customer would otherwise have received for the first day of any interruption. To avoid doubt, the **retailer** may not withhold any amount in respect of second or subsequent days of any interruption.

Appendix B Format for submissions

Submitter/Organisation	

Part 12A clause 9.10 (refund of charges)

Questions	Comments
Q2.1 Do you consider the revised proposed approach in 9.10 is workable, efficient, and effective? Would you propose any alternative approaches? Please describe these approaches in your answer.	
Q2.2 Do you consider it would incentivise distributors to restore electricity supply to consumers more quickly if they did not need to reduce charges for a longer outage period than 24 hours? Q2.3 If so, what time limit would you consider reasonable before charges should be reduced (eg, a maximum of 48 hours interruption)? Q2.4 How would this longer period incentivise quick restoration of electricity supply and balance the disruption to the consumer and the consumer's right to receive the electricity they are pay for?	

New Part 12A clause 9.11 (Reduction of charges due to state of emergency)

Q3.1. Do you consider new clause 9.11 effectively addresses the identified problem? Would you propose any alternative approaches? If so, please describe these approaches in your answer.

New Code clause 12A.6 (retailers must pass-through reduction in distribution charges)

Questions	**Comments**
Q4.1. Do you consider new clause 12A.6 is practical to implement and will deliver benefit to consumers? Please explain why or why not.	
Q4.2 Do you see any issues or have alternative ideas? If so, please explain please explain what these are.	

Code clause 33.2 (definition of 'use of money adjustment')

Questions	Comments
Q5.1 Is the revised approach to clause 33.2 appropriate and practical to implement without the need for significant system changes? Please explain your views.	
Q5.2 Does the revised approach to clause 33.2 reduce potential implementation costs? Please explain your views.	

Regulatory statement

Questions	Comments
Q6.1 Do you agree with the analysis presented in this Regulatory Statement? If not, why not?	