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Electricity Authority
Wellington
New Zealand

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The DDA should not be used to regulate electricity retailers

Electric Kiwi does not consider that the default distribution agreement (DDA) is the appropriate vehicle for introducing mandated distribution pricing methodology requirements[1] or for imposing regulation (including price regulation/pricing methodology regulation[2]) on electricity retailers (proposed clause 12.6A). The Authority's proposals go well beyond the role of the DDA to regulate the contractual arrangements of electricity distributors for access to their networks.

While we would be unimpressed if some electricity retailers did not pass-through (in some form) reduction in distribution prices due to supply interruptions or declared states of emergency – under the Authority's proposals – it doesn't follow that the Authority should regulate both (monopoly) distribution and (competitive or potentially competitive) retail pricing to achieve this. Electric Kiwi considers that if some electricity retailers did not pass-through such reductions it would open up opportunity for competitive market responses just as over-pricing of competitive market services creates opportunities for other retailers.

The Authority should be very cautious about regulating competitive or potentially competitive market activity or pricing.[3]

The consultation paper includes the assertion that "We expect our DDA improvements to benefit consumers by … lowering their electricity costs through increased efficiency and competition" but this assertion is neither explained or supported in the paper. The earlier consultation included the premise[4] that reducing retailer costs would promote competition but the proposals in the latest consultation would increase retailer (compliance) costs.[5]

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[1] The Authority has a separate workstream on distribution pricing where any distribution pricing methodology issues should be addressed. We note that none of the Authority distribution pricing review updates mentioned the distribution pricing methodology changes being considered as part of the DDA review.

[2] If the proposed requirements on distributors is pricing methodology regulation, which the Authority has suggested in the consultation, then it follows that the mirror requirements for retailers is also pricing methodology regulation, the difference being that the latter is price regulation on competitive parts of the market.

[3] We reiterate that "Price regulation of competitive/potentially competitive parts of the market is inappropriate" and that "Price control is appropriately applied to electricity distributors under Part 4 Commerce Act given there is "little or no competition" and "little or no likelihood of a substantial increase in competition" (section 52G Commerce Act). These conditions for price regulation are not met for electricity retailing."

2degrees and Electric Kiwi joint submission, Distribution pricing reform welcome, 15 August 2023, available at: https://www.ea.govt.nz/documents/3579/2degrees_-_Electric_Kiwi__-_Targeted_Reform_of_Distribution_Pricing_-_Submissi_omjFWC9.pdf#page10

[4] e.g. at paragraph 1.5.

[5] The previous consultation paper at paragraph 2.26 also stated that "inappropriately allocating costs and risks … does not promote competition" but did not explain why this this "lessens the incentive … to compete".

We note that the Authority cites the joint submission of Counties, Northpower and Top Energy and the submission of Powerco in support of its proposed clause 12.6A but both submissions raise concerns about (from Powerco) "the significant compliance costs of monitoring and processing refunds far outweigh the benefit to consumers of receiving (potentially very small) refunds." Counties et al commented that:

> "… Even if mandated, traders would also face the issue/be concerned about the transaction cost to them being too great and ultimately having the effect of driving up prices to end consumers.
>
> "We do not agree either clause will provide a net benefit to customers, who will through pricing, fund these refunds as a collective through higher operating costs for distributors."

If clause 12.6A is adopted it should be drafted to minimise compliance/administrative costs

If the Authority goes ahead with the proposed clause 12.6A, it should consider the most efficient/lowest compliance cost approach to adopt i.e. a requirement for retailers to apply a credit to each customer's account would be much simpler than reduction/change in retail charges (same outcome for consumers).

The Authority's priority should be on matters that would genuinely improve competition

The introduction of regulated DDAs was intended to facilitate competition/market entry into the electricity retailer market but the latest proposals are far divorced from this. We reiterate our long-standing view that the Authority should focus on addressing wholesale electricity market competition problems, including availability of hedging products needed by retailers to compete.

Concluding remarks

We do not consider that the proposed clause 12.6A can be justified on competition, reliability or efficiency grounds.

Electric Kiwi considers the proposal reflects an (implicit) trade-off between efficiency (increased retail administration/compliance costs) and equity/fairness and wealth transfer considerations (see para 4.5). We note wealth transfer considerations didn't influence the Authority's loss constraint excess (LCE) and TPM decisions, both of which resulted in substantial adverse wealth transfers for end-consumers, and the Authority never undertook the investigation into whether the 2020 distribution price reductions were passed through (a magnitude more significant than the current consideration).

Yours sincerely,

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