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# Careful balancing required to ensure consumer protections are well targeted

2degrees, Electric Kiwi, Flick Electric, and Pulse Energy (the Independent Electricity Retailers) support introduction of mandatory minimum Consumer Care standards. We have been highly engaged throughout the Authority's Consumer Care consultations reflecting the value and importance we place on protection of residential consumers in the provision of essential services; particularly the most vulnerable in society.

It is apparent the Authority, and Authority staff, have put a lot of effort into improving clarity and workability, including in response to stakeholder submissions, in a relatively brief period of time. We welcome that many of the clause-by-clause commentary in our last submission have been addressed.[1]

We have appreciated the Authority staff's prompt responses to our queries, and the opportunity to to discuss the proposals. It was disappointing though that the Consumer Care workshops were cancelled. We found previous workshops useful for understanding different stakeholder and consumer perspectives and shaping our own views. Our preference remains that the Authority adopt collaborative processes.

## The Authority needs to satisfy itself individual elements of the proposed Obligations satisfy the Authority's statutory objective

Subject to how the feedback in our submission is addressed, our view is that the proposed Consumer Care Obligations (Obligations) will most likely overall improve consumer protection. This does not mean all elements of the proposed Obligations should be adopted or would satisfy the Authority's statutory objective.

The Authority should be mindful that Concept's Cost Benefit analysis is an overall assessment of the costs and benefits of the proposed Obligations and is silent on the extent to which individual elements of the Obligations have positive net benefits. Our submission details some of the limitations of the Concept Cost Benefit analysis.

It is important to acknowledge that when the Guidelines were developed, they were done so under a different statutory objective, which did not include consumer protection, and the Authority did not undertake a review against its statutory objective.

[1] 2degrees, Electric Kiwi, Flick Electric, and Pulse Energy, Independent retailers support enhancement of the Consumer Care Guidelines, 2 October 2023.

It would be unsafe to assume the only changes that are needed are to improve workability and clarity of the Guidelines, as part of replacing them with mandatory new Obligations, or that each element of the proposed Obligations will satisfy the Authority's statutory objective.

The lengthy and prescriptive nature of the Obligations, as well as the substantial re-write, also means there is inevitably significant opportunity to improve elements of the proposed Obligations despite the Authority's best endeavours.

## Some elements of the proposed Obligations are poorly targeted

The Authority needs to satisfy itself individual elements of the proposed Obligations – particularly contentious/controversial elements – satisfy the Authority's statutory objective. We consider some elements of the Authority's proposals would be inefficient while providing poorly targeted consumer protections. For example:

- The proposed Obligations require retailers to repeatedly ask residential customers whether they have a medically dependent consumer, through the non-payment/disconnection process, even if they have received a response confirming that they do not.

- The proposed Obligations could necessitate up to 8 attempts to contact the customer before disconnection can occur.

- The proposed Obligations would inefficiently reward/encourage consumers at uncontracted premises NOT to sign up with any retailer, if they consider they may have a medically dependent consumer living at the premises, because the retailer won't be able to disconnect them.

- The requirement to monitor customer consumption (clause 30) and that the retailer contact the customer "If a retailer identifies a material decrease in electricity use over a period of more than one month" (30(3)) will inevitably result in communication where the change in consumption has nothing to do with payment difficulties/consumer welfare issues, such as changes to the number of people living in a household and household members travelling out of town for an extended period.

- We question whether the Obligations should require the retailer communicate with residential consumers other than the customer (and authorised individuals such as the alternative contact person). The Obligations envisage that the retailer would also communicate directly with (potentially) medically dependent consumers and their health practitioner/GP etc. The contractual relationship is between the retailer and the customer.

## A wholistic approach to energy affordability is needed

While the Consumer Care Guidelines/Obligations are important, they can't do anything about residential consumers having difficulty affording electricity or reducing electricity usage, e.g. heating, because of the cost of electricity.

The more affordable electricity is the less consumers will need to rely on protections in the Consumer Care Obligations.

We agree with the Energy Hardship Panel that "Ensuring we have competitive and efficient energy markets underpins wider efforts to reduce energy hardship". If the benefits of the proposed mandatory Obligations are high, the benefits from improved competition will be much higher still.

Competition is important – not just for helping make sure electricity is affordable – but also for ensuring consumers have choice and options that best meet their needs. For example, some consumers may find it helpful to switch electricity retailer so they can have weekly billing or to be on tariffs where they can reduce the amount they pay by managing how and when they use electricity e.g. only having the hot water cylinder being heated off-peak. Recent announcements highlight choice of electricity retailer can also impact the level of disconnection/reconnection fees regardless of Electricity Authority regulation.

## There is a clear line of sight between the severe competition problems in the electricity market, affordability and payment difficulties

There are very clear signs problems in the wholesale market and the damage it is causing to downstream retail competition is having an adverse impact on residential consumer pricing. 2025 onwards will look very different from 2020-25 when the Commerce Commission's network charge reductions offset increases at the retail-wholesale levels of the market.

We would like to see the Authority apply the same level of attention and detailed regulation to resolving issues with access to hedging products and other wholesale/retail market competition problems. The contrast, for example, between the clear and prescriptive mandatory Consumer Care Obligations versus the voluntary and weak Code of Conduct for participants in the Over the Counter (OTC) Electricity Market could not be starker.

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## Summary of the Independent Electricity Retailers' views

- The Independent Electricity Retailers support introduction of mandatory minimum Consumer Care standards.

- We consider that getting the Obligations right – and fully addressing the issues we and other stakeholders raise in this and the previous consultations – is more important than the Authority's intention to make final decisions in December and implement on 1 January.

- Subject to how the feedback in our submission is addressed, our view is that the proposed Obligations will most likely overall improve consumer protection. This does not mean all elements of the proposed Obligations should be adopted or would satisfy the Authority's statutory objective. We do not support all elements of the Authority's proposed Obligations

- The Authority should be mindful that Concept's Cost Benefit analysis is an overall assessment of the costs and benefits of the proposed Obligations and is silent on the extent to which individual elements of the Obligations have positive net benefits. This is disappointing as CBA done well can have an important positive role in getting the design of policy reforms right and for best promoting the interests of consumers (including protection of consumers). There are individual elements of the Obligations that are amenable to quantified assessment e.g. the extent to which they impact on retailer/customer debts and retailer working capital.

- It would be unsafe to assume changes to improve workability and clarity of the Guidelines, as part of replacing them with mandatory new Obligations, is all that is needed to ensure they satisfy the new statutory objective. The Authority needs to satisfy itself that individual elements of the proposed Obligations – particularly contentious/controversial elements – satisfy the Authority's statutory objective.

- Outstanding matters from the development of the Guidelines should be resolved before mandatory obligations are introduced – it's long overdue that the Authority addressed the issues raised around fraud and vacant premises. This should also include addressing the issues the Authority has identified with clause 27(h) of the proposed Obligations.

- A technical drafting consultation step before finalising the new Obligations would be prudent and good regulatory practice.

### A transition period will be needed/compliance from 1 January is not practicable

- Electricity retailers will not be able to be compliant with the new Obligations from 1 January 2025. As a minimum, there should be a 6-month transition period after the Obligations have been added to the Code.

- Given the intended timing of the Authority's decision (sometime in December) internal staff responsible for compliance/relevant policies/implementation etc may not be available to review the new Obligations until sometime in the new year. Initial steps towards compliance with the new requirements may not be possible until late January/February.

## The proposed Obligations can be improved

- We have provided a clause-by-clause commentary on the workability of the proposed Obligations and other issues that should be addressed.

- The trade-offs between efficiency and consumer protection, and between different aspects of consumer protection, should be explicitly addressed.

    - For example, it is unclear how the Authority has balanced different elements of consumer protection; including how to balance protection against disconnection and the risk that consumers will build-up debt levels that they will have difficulty managing and paying back.

- Some elements of the proposed Obligations are unduly prescriptive. Many of the clause-by-clause comments we provide are a direct consequence of the high/increased level of prescription in the proposed Obligations.

- Various elements of the proposed Obligations layer highly prescriptive rules with open-ended principles-based obligations, which will increase compliance costs while reducing the clarity of what is needed to comply with the Obligations.

    - For example, if checking with customers whether there may be a medically dependent consumer: (i) at time of sign-up; (ii) annually; (iii) when communicating with them because they are having payment difficulties; (iv) when the retail has "reasonable" information there might be a medically dependent consumer; (v) anytime the retailer reasonably considers it appropriate; (vi) in disconnection notices; (vii) when visiting the premises; and (viii) as part of a notice before disconnection, is not sufficient such that additional "best endeavours" requirements are also needed, then what would be sufficient to provide surety the retailer has complied with these Obligations?

- We consider that some elements of the proposed Obligations remain inappropriately intrusive, poorly targeted and/or are not necessarily well suited to "foster[ing] positive relationships with residential consumers" (clause 11A.1 Purpose).

    - For example, we have substantive misgivings about the requirement to monitor customer consumption (clause 30) and that the retailer contact the customer "If a retailer identifies a material decrease in electricity use over a period of more than one month" (30(3)). We consider this to be poorly targeted and will inevitably result in communication where there is no payment difficultly/consumer protection issue, such as changes to the number of people living in a household and household members travelling out of town for an extended period.

# Overarching comments on the proposed Obligations

The Independent Electricity Retailers welcome the time, thought and resourcing the Authority and Authority staff have clearly prioritised for review of the operation and workability of the existing Consumer Care Guidelines.

The lengthy and prescriptive nature of the Obligations, as well as the substantial re-write compared to the existing Guidelines, means there is inevitably significant opportunity to improve elements of the proposed Obligations despite the Authority's best endeavours.

We also consider that there are issues with some elements of the proposed Obligations being unduly prescriptive, the layering of highly prescriptive rules with open-ended principles-based requirements and parts of the Obligations which remain overly intrusive and/or are poorly targeted/would inefficiently increase costs.

## Care needed to avoid undue prescription

There was clear consensus amongst both incumbent and independent retailers that the Guidelines are too prescriptive.

Mercury warned "the overly prescriptive nature of some parts of the Guidelines risks stifling competition and innovation … forces retailers to change existing processes at great cost even if their own solutions or existing processes align with the desired outcomes" and "will make it extremely difficult for retailers to achieve "complete alignment" and won't necessarily deliver the best outcomes or protections for consumers".

The incumbent retailers collectively (ERANZ) commented that the Guidelines are too prescriptive.[2]

We doubt these views will have changed. We don't agree with Concept's assessment that the proposed changes "remov[e] prescriptions" or "provide retailers with more operational flexibility". The opposite is more likely.[3]

Many of the clause-by-clause comments we provide in this submission are a direct consequence of the high level of prescription in the proposed Obligations.

Various elements of the proposed Obligations layer highly prescriptive rules with open-ended principles-based obligations, which will increase compliance costs while reducing the clarity of what is needed to comply. This is discussed in the case study below and in the clause-by-clause commentary on the proposed Obligations.

## A case study of the problems with layering prescription with principles-based requirements – identification of medically dependent consumers

The proposed Obligations contain a ban on disconnecting residential premises that are known to have or may have a medically dependent consumer (clause (45)) and specifies prescriptive requirements for identifying whether a residential premise may have a medically dependent consumer including: (i) at time of sign-up; (ii) annually; (iii) when communicating with them because

[2] Including matters raised in the Electricity Authority, Review: Operational Review of the Consumer Care Guidelines, 28 February 2023.
[3] See discussion under "Higher compliance costs mean higher electricity prices and fees".

they are having payment difficulties; (iv) when the retail has "reasonable" information there might be a medically dependent consumer; (v) anytime the retailer reasonably considers it appropriate; (vi) in disconnection notices; (vii) when visiting the premises; and (viii) as part of a notice before disconnection.

Despite this level of prescription about not disconnecting medically dependent consumers, and how to determine whether there is a medically dependent consumer, these rules are overlaid with the additional, non-specific, "best endeavours" principles-based requirements:

- a retailer cannot disconnect a residential premise unless, "the retailer has used its best endeavours to satisfy itself that the customer, and any residential consumer who permanently or temporarily resides at the customer's premises, is not a medically dependent consumer" ((37(1)(e)); and

- "A retailer must use its best endeavours to avoid electrically disconnecting any residential premises at which a medically dependent consumer is residing" (clause 68).

| When retailers are required to check whether there may be medically dependent consumers | How the retailer is required to check | Clause |
|---|---|---|
| **Prescriptive rules-based requirements** | | |
| When first signing up a customer. | "request information" | 54(1)(a) |
| When contacting a customer under clause 19 (annually). | "request information" | 54(1)(b) |
| When communicating with a customer experiencing payment difficulties under clause 27. | "request information" | 54(1)(c) |
| "at any other time the retailer reasonably considers it appropriate". | "request information" | 54(1)(d) |
| If the retailer "becomes aware of information that a reasonable retailer would consider indicates that a customer or residential consumer who permanently or temporarily resides at a customer's premises may be a medically dependent consumer". | "request that they make an application" | 55 |
| As part of visits to uncontracted premises. | "reasonable endeavours to ascertain whether … there is, or may be, at least on medically dependent consumer residing at the premises" | 44(b)(i)) |
| As part of any Part 7 disconnection notice. | provide information on "where to obtain information on how to apply to be recorded as a medically dependent consumer" | 40 |
| As part of any visit by a retailer's representative to a post-pay customer's premises for the purpose of contacting the customer about the non-payment of an invoice. | "use reasonable endeavours to ascertain …" | 41(iv) |
| Before disconnecting an uncontracted premise. | The retailer must issue a notice containing information about "where | 43(3)(g) |

| When retailers are required to check whether there may be medically dependent consumers | How the retailer is required to check | Clause |
|---|---|---|
| | to obtain information on how to apply to be recorded as a medically dependent consumer and a summary of what it means to be a medically dependent consumer" | |
| **Principles-based requirements** | | |
| A retailer cannot disconnect a residential premise unless, "the retailer has used its best endeavours to satisfy itself that the customer, and any residential consumer who permanently or temporarily resides at the customer's premises, is not a medically dependent consumer". | | 37(1)(e) |
| "A retailer must use its best endeavours to avoid electrically disconnecting any residential premises at which a medically dependent consumer is residing". | | 68 |

The principles-based requirements in clauses 37(1)(e) and 68, as well as overlapping each other, indicate compliance with the prescriptive rules in the Obligations isn't necessarily enough for establishing whether there may be medically dependent consumers and additional, unspecified, steps may be required to satisfy "best endeavours". We consider that if the retailer has meet the requirements of clauses 40, 41, 43 44, 54 and 55 then they should be deemed to have made best and reasonable endeavours making clauses 37(1)(e) and 68 unnecessary.

The open-ended principles-based requirements undermine the clarity of the Obligations in relation to what retailers are required to do to identify medically dependent consumers.

If checking with customers whether there may be a medically dependent consumer: (i) at time of sign-up; (ii) annually; (iii) when communicating with them because they are having payment difficulties; (iv) when the retail has "reasonable" information there might be a medically dependent consumer; (v) anytime the retailer reasonably considers it appropriate; (vi) in disconnection notices; (vii) when visiting the premises; and (viii) as part of a notice before disconnection, is not sufficient such that additional "best endeavours" requirements are also needed, then what would be sufficient to provide the retailer surety they have complied with the most important element of the Obligations?

## Care needed to avoid overly intrusive Obligations

We are concerned that some elements of the proposed Obligations, while well meaning, are inappropriately intrusive and/or are not necessarily well suited to "foster[ing] positive relationships with residential consumers" (clause 11A.1 Purpose). Care is needed to ensure consumer protection does not spill into paternalism.

We provide three examples below.

1. It should be recognised that for the vast majority of residential customers the matters dealt with in the Consumer Care Obligations, such as disconnection processes, simply won't be relevant to

them. We would not necessarily expect new residential customers would welcome or appreciate being told about what would happen if they don't pay their bills (clause 13).

Consumers may want to know there is a process retailers go through if they don't pay their bills but not the exact details of it. Starting a consumer relationship off like this this would be a very poor way of establishing the relationship.

2. We have substantive misgivings about the requirement to monitor customer consumption (clause 30) with a requirement (30(3)) that the retailer contact the customer "If a retailer identifies a material decrease in electricity use over a period of more than one month". We consider this to be poorly targeted and will inevitably result in communication where the change in consumption has nothing to do with payment difficulties/consumer welfare issues, such as changes to the number of people living in a household and household members travelling out of town for an extended period.

The Authority should consider the amount and nature of communication with customers it is directing retailers to undertake that go beyond the communications that would normally be expected. This includes not just the Consumer Care Obligations but other rules and requirements, such as requirements to provide information about the electricity plan comparison platform etc. If retailers over-communicate, customers will disengage and may miss important communications.

3. We question whether there should be a requirement for the retailer to liaise with potentially and confirmed medically dependent consumers, rather than engaging directly with the residential customer they have a contractual relationship with.

We would not assume all residential customers or consumers would welcome this extension of communication requirements; particularly depending on the particular circumstances/vulnerable nature of the medically dependent consumer. The Authority should review the extent to which it would be appropriate or necessary for the retailer to directly liaise directly with medically dependent consumers and social agencies.

## Clause-by-clause commentary

We consider that there is significant opportunity to improve the proposed Obligations:

- Various tidy-ups are needed e.g. some terms are bolded without definition (e.g. “prescribed form”), some terms are bolded that should not be (e.g. “confirmation of status form prescribed”), there is a mix of use of numerical (“7”) and letter for number of days (“seven”), it appears that “business days” is used in some places where “days” was intended (e.g. “21 business days”).

- Clause 11A.1: The clause refers to both “residential consumers” and “domestic consumers”.

- Clauses 11A.2 and 11A.4: The definitions of “confirmation of status form” and “reconfirmation reform” refer to a bolded “prescribed form” but there is no definition provided. Clause 11A.4 refers to a different “prescribed form” again without including a definition.

- Clause 11A.2: The Obligations don’t define “permanently” and “temporarily resides”. Our expectation is that the provisions are intended to reflect that a medically dependent consumer may reside at more than one property, but this is not made clear. Nor is it clear what minimum length duration would qualify as “temporary”.[4]

  The Obligations should also be clear if the residence is temporary the medical dependence status will automatically lapse after this time. This is important, for example, if a medically dependent consumer was staying at someone’s house for a short period of time, this would not necessarily need to impact the non-payment/disconnection process if they would not be at the house by the time the 44-day process had been completed. While the Obligations are highly prescriptive, they also have gaps such as what happens when a house transitions from having a medically dependent consumer to not having one.

- Clause 11A.2/5(a) etc: The definition of “support agency” is very open-ended and could include a large number of organisations with variability in terms of how helpful they may be in providing assistance to low-income residential consumers/residential consumers facing payment difficulties. This could also give rise to interpretation issues with retailers potentially having differing views about what and who are “support agencies” vis-à-vis the view of other retailers, support agencies themselves and the Electricity Authority.

  We consider that the Obligations should provide that retailers can refer customers to WINZ/MSD. They are better placed to make an assessment about what support the customer needs/will have a more comprehensive idea of support available. Retailers should not be made responsible for working out which support agencies would have the right financial advice and such like.

- Clause 11A.4: The Authority should explicitly require that compliance will now be required as part of the Electricity Authority audit schedule to help ensure consistent compliance reporting. We have seen the disparity in the levels of compliance when retailers self-assess and think it would be good that everyone is audited based on the same interpretation from an independent auditor.

[4] 2degrees, Electric Kiwi, Flick Electric, and Pulse Energy, Independent retailers support enhancement of the Consumer Care Guidelines, 2 October 2023.

- Clause 11A.4(3) and (5): It is unclear what the difference is between "not misleading or deceptive" and "not likely to mislead or deceive". If something is not misleading it won't be likely to mislead.

- Clause 11A.4(8): See our commentary on the need for a transition period. Electricity retailers will not be able to be compliant with the new Obligations from 1 January 2025. Clause 11A.4(8) should be amended to reflect an appropriate and workable transition for electricity retailers to become fully compliant with the Obligations.

- Clause 11A.5: The requirement that retailers and distributors provide certain information "within the timeframe specified by the Authority" should specify a minimum period that the Authority will be required to provide, and that the Authority will consult with the retailer/distributor to determine a suitable amount of time. This would safeguard against inadvertent breaches of the Obligations where the Authority requires the information within an unreasonable short/unworkable timeframe. The clause should also provide that any requirement to provide information must be notified in writing.

  The Electricity Authority's information gathering powers under section 46 of the Electricity Industry Act require a "reasonable time specified by the Authority".

- Clause 11A.7 – independent person: The Obligations should define what is meant by "independent" or "independent person" Based on Commerce Commission precedent "independent … means neither in a relationship with, nor having an interest in, [the electricity retailer] that is likely to involve him, her or it in a conflict of interest between his, her or its duties to [the electricity retailer] and his, her or its duties to the [Electricity Authority]".[5]

- Clause 11A.8: Subclause (1)(b) requires the retailer to nominate an independent person "within a reasonable timeframe" but subclause (3)(1) effectively limits this to "within five business days". We do not consider that 5 business days is a reasonable timeframe for a retailer to find and nominate an independent person.

- Clause 11A.10(2): Whether 10 business days is a reasonable or practicable timeframe for producing the information required by the independent person would depend on the nature of the information requested. The timeframe should be subject to a reasonableness requirement.

- Clause 3(1): Each retailer should be required to publish a Consumer Care Policy but it is not clear why residential consumers would want to know "how the retailer meets each of the Consumer Care Obligations". This is a matter for compliance monitoring and doesn't belong in retailer Consumer Care Policies. The more extraneous material the policies have the less accessible and useful they will be for consumers.

- Clause 3(2)(d): The requirement that the Consumer Care Policy explain "how the retailer will assist customers to understand the most suitable pricing plan for their circumstances" could be interpreted as a Best Plan obligation even though, as far as we are aware, the Authority has not made a policy decision to mandate Best Plan obligations.

  The clause should be tightened to clarify that providing direction about to the/a "electricity plan comparison platform" meets this requirement.

[5] Transpower Input Methodologies Determination 2010: https://comcom.govt.nz/__data/assets/pdf_file/0020/91181/Transpower-Input-Methodologies-Determination-consolidated-as-of-23-April-2024.pdf.

- Clause 3(3): The expectation that "a retailer must seek to avoid disparate outcomes arising from differences in language, ethnicity, educational achievement, culture, gender, disability, age, health, income and wealth" has more of a feel of a purpose statement than regulated obligation. It is unclear how a retailer could demonstrate it had complied with this as a mandatory obligation; particularly as it could be largely subjective.

- Clause 4: The clause should be amended to read "and if the retailer considers it necessary or desirable update".

- Clause 5: Clause 5 is very loosely worded in relation to issues of how it is determined who would be an appropriate support agency to refer the customer to (see commentary on the definition of "support agency" (clause 5(a)), and what the trigger should be for referring a customer to the support agency (clauses 5(a) and 5(b)). The threshold/trigger that "a customer may be experiencing payment difficulties" is a potentially very low bar and may capture situations where it is not necessary or appropriate to refer the customer to a support agency. The clause is also loosely worded in terms of how the retailer should refer the customer (clause 5(b)).

  It is also not clear what would be considered to be a "reasonable time" for customers to seek and receive assistance (clause 5(b)) or what could of action should be undertaken to "use reasonable endeavours to work with support agencies and any health practitioners" (clause 5(c)). It is also unclear how this "reasonable time" period fits it with the non-payment/disconnection processes and timeframes in the proposed Obligations.

  These types of arrangements are usually for the outstanding debt, what about future debts? For example, for some customers, WINZ will only assist when there's a disconnection notice.

- Clause 6(1)(c): It would be inappropriate, including from a health and safety perspective, to require that each retailer includes "contact details for the individual or individuals within the retailer's organisation responsible for ensuring the retailer's compliance with the Consumer Care Obligations" on their website. This clause needs to be deleted.

- Clauses 11 and 20 refer in bold to "electricity plan comparison platforms" but this is not defined.

- Clauses 12(b) and 13: These requirements should be able to be met by advising the customer of the existence of the retailer's Consumer Care Policy (12(a)) so they should be redundant.

  For the vast majority of residential customers, the matters dealt with in the Consumer Care Obligations, such as disconnection processes, simply won't be relevant. We would not necessarily expect new residential customers would welcome or appreciate being told about what would happen if they faced payment difficulties (clause 12(b)) or don't pay their bills (clause 13).

  If the Authority intends for something beyond advising the new customer with the Consumer Care Policy then we would continue to question whether it is "reasonable to expect the retailer to advise all customers of this given non-payment issues will only apply to a small minority of customers? Would it be better to advise the customer at the time non-payment occurs?"[6] We consider this to be a poorly targeted protection.

[6] 2degrees, Electric Kiwi, Flick Electric, and Pulse Energy, Independent retailers support enhancement of the Consumer Care Guidelines, 2 October 2023.

The consultation states "While some retailers raised concerns that this obligation is unnecessary, we consider this is an important protection that should be retained" but doesn't explain how or why it is an important protection.

- Clauses 15(1) and (3): The added need for confirming the customer's preferred contact channel, time and language and the ability to match this with the required communication through the non-payment process will add unnecessary/inefficient costs to both the retailer and customers. This is something that is not easy to implement and deliver. We recommend that this clause is removed.

- Clauses 15(1)(b) and 26(3): The proposed Obligations should clarify what happens if "the customers preferred day or days of the week to be phoned by the retailer and the suitable times within those days" conflicts with the clause 26(3)(a) requirement to attempt to contact the customer "at different times of the day" i.e. the times that the customer directs would be "suitable" to attempt to contact them may not include "different times of the day".

- Clause 15(1)(c): Care needs to be given with this kind of clause. The reference to "matters which may be relevant" is very open-ended and open to differing interpretations. It is unclear how the Authority would deal with this clause from a compliance monitoring perspective.

  It also could create unrealistic expectations if a retailer is required to record the customer's preferred language but has no capability to engage with the customer in that language. The Obligations could put a customer in the invidious situation where they have difficulty communicating in English but they decide an alternate contact person is not needed because their retailer has recorded that their preferred language is not English. This would do a disservice to both the customer and the retailer.

- Clause 15(1)(e) and 23(c)(i): We don't consider the proposed Obligations have resolved Trustpower's request "the Authority … further clarify the difference between a customer-nominated "support person" … and "alternate contact person"".

  For example, clause 15 requires the retailer to request the contact details of the alternate contact, but not the support person, and clauses 17 and 72 (and elsewhere e.g. clause 64(2)) details what the retailer's engagement with the alternate contact must be but there are no equivalent provisions for the support person. The Guidelines simply provide that the retailer must ascertain whether the customer wishes to use a support person (15(e)) and also requires the retailer to remind them of this if they have payment difficulties (27(c)(i)) – both of which would create the impression the retailer would then engage directly with the support person. The Authority has stated that "A support person is authorised by a customer or medically dependent consumer to assist them with any issues related to their electricity supply" which also suggests that they can talk to the retailer on the customer's behalf. If so, this should be made clear in the Obligations.

  As it stands, the proposed Obligations require the retailer to record that the customer wishes to use a support person but does not provide any direction on what the retailer should do with that information/how they should engage with the support person. Simply recording the information is all that is required from a compliance perspective.

- Clause 15(2): Clause 15(2)(a) recognises, probably redundantly, that if a retailer offers more than one invoicing frequency option, the retailer must ask the customer what their preference is. Similar should apply to (b) and (c) to reflect the retailer may not necessarily offer different

options for when invoices are sent or required to be paid and may not offer more than one way of sending invoices e.g. they may be online only.

- Clause 20(c): We recommend that this clause be removed. If an existing customer wants to change plans or product offerings, the retailer should not have to advise them of external comparison websites e.g. Powerswitch.

  There are already existing requirements in clause 11.30B in the Code for provision of information on electricity plan comparison site.

- Clause 21 is also redundant as it is covered in the reconciliation participant audits/parts 11 and 15 of the Code/etc.

- Clause 23: This would involve large changes to internal systems for some retailers and is unnecessary. Retailer invoice cycles are commercial decisions. The debt cycle is considered and supports customers in need. To make changes such as this across the board would be a cost and system change that would take a significant amount of time.

  In the existing Consumer Care Guidelines these provisions are specific to payment difficulties and not a blanket requirement for all customers.

- Clause 24(2)(c): This clause should reflect that the threshold for when electrical disconnection will occur for prepay may or may not be zero i.e. a retailer may allow the credit to go into deficit before disconnection.

- Clause 25(2)(c): This is an example of an open-ended principles-based obligation that lacks clarity. The subclause vaguely refers to "information that … indicates anticipated or actual payment difficulty", including "customer interactions" and "consumption changes" (which as discussed elsewhere can be due to many normal changes which have nothing to do with payment difficulties.

  We suggest clause 25(2)(c) is amended to bring it in line with (a) and (b): "the customer makes only a partial payment towards an invoice or the customer has had payments overdue within the past 12 months."

- Clause 26: The clause refers to "7 days" while elsewhere the proposed Obligations refer to "seven days".

- Clause 26: In the Authority's "quick-guide for consumers" it comments that "Providing flexibility in the timing of certain steps a retailer must take when a customer is in payment arrears, so retailers can choose to give a customer more time to make a payment before initiating the process for missed payments" and "… retailers don't need to follow the steps for customers experiencing payment difficulties for every customer who misses a single payment". This recognises that one missed payment could be for reasons unrelated to payment difficulties." Clause 26 should be amended to align with these statements.

- Clause 26(1): This clause should be amended to make clear that the retailer must make at least 3 separate attempts to contact the customer <u>before</u> they can go to the next step in the non-payment/disconnection process, rather than simply requiring the retailer to make at least 3 separate attempts regardless.

- Clause 26(1)(b): It is unclear why the Authority has removed reference to attempting to contact the customer "via both the customer's preferred communication channel and alternate contact person" and changed it to "via the customer's preferred communication channels".

- Clauses 26(1)(b) versus 37(1)(f)(i) – attempts to contact the customer: Clause 37(1)(f)(i) refers to 5 attempts to contact. Clause 26(1)(b) refers 3 attempts. This proposed Obligations attempt to marry these clauses up with 37(2)(a) which states that the 3 attempts under clause 26(1)(b) can count as 3 of the 5 attempts under 27(1)(f)(i).

  The problem though is that the clause 37 contacts are to inform the customer of pending disconnection, but the clause 26 contact is at the earlier non-payment of invoice stage. The clause 26 contacts would not therefore qualify as "attempts to contact the customer to inform them of the pending electrical disconnection of their premises" and so would not quality as 3 of the 5 contacts under clause 37 UNLESS the retailer started threatening disconnection early in the non-payment process which is presumably not the Authority's intention.

  What this means is that the proposed Obligations would necessitate up to 8 attempts to contact the customer before disconnection can occur. We consider this to be inefficient and excessive. This would also result in inefficient disconnection costs/higher "reasonable" costs which can be recovered through disconnection fees (clause 78(1)(a)).

  The circumstances in which 8 attempts would be needed would most likely be where the customer is NOT acting in goodfaith and is avoiding engagement with the retailer. We do not consider the proposed Obligations should be permissive towards/reward customers that don't act in goodfaith.

- Clause 26(3)(a)(ii): this should should state that the contact attempts should be "spread over seven or more days".

- Clause 27(h): We note that in relation to 27(h) the consultation states:

  > "Some stakeholders were concerned that it is not practical or reasonable to expect confirmation from support agencies within the current 7 day timeframe. We acknowledge these concerns, however, we do not propose changes to these timeframes without conducting further policy work to understand the potential unintended consequences of extending the minimum timeframes, including implications of debt accumulation for customers."

  We consider this should be addressed and consulted on before mandating the Obligations.

- Clause 27(i): It is unclear how it would be determined what a "payment plans that a reasonable retailer would consider" would be determined/how compliance would be determined.

- Clause 28: We recommend that this clause be removed. Bundled customers should not be able to determine which part of their debt is covered by part payment. When bundled customers sign up to plans they agree to terms including bundled invoices. This would require a large system change adding unnecessary costs to the business and customers.

  We do not consider that clause 28 is workable or reflects the commercial reality of bundled products. While tariffs and invoices separate out the different components of the product being offered, albeit that treatment of aspects like bundle discounts can be somewhat notional, the account balance is not broken down by product and it would not be meaningful to say payment is for element x but not element y.

Trying to comply with clause 28 would result in substantial compliance cost (large system changes) and inefficiency and would be more likely to cause confusion and problems for customers who may already be distressed. A better approach would be for the Authority to liaise with the Telecommunications Commissioner and the GIC on how each of the respective regulator's consumer protection rules should work together. It would not make any sense for a retailer offering bundled products, for example, to go through different notices/notice periods and warnings etc, but that is the direction notional separation of customer arrears/debt could take us.

We also note that while Appendix B claims "No material changes proposed", there is in fact a substantial difference between existing clause 41 ("Retailers should allow customers to elect to have part payments clear debt related to electricity supply or distribution services first") which relates to electricity supply only and new proposed Obligation 28(2) ("the retailer must … provide the customer with the opportunity to elect whether they wish to apply any part payments to clear the customer's debt related to electricity supply first") which applies to both electricity and non-electricity services.

- Clause 30: We have substantive misgivings about the requirement to monitor customer consumption. We consider this clause is poorly/inefficiently targeted and should be deleted in its entirely. While the clause may be well meaning it is paternalistic and overly intrusive. We are cautious about anything that would suggest the retailer knows better who the customer should manage their own affairs.

  There are any number of reasons why a customer's consumption may change which has nothing to do with payment difficulties etc e.g. there can be changes in the number of household members, members of the household may be travelling out-of town/hospitalised for an extended period, and weather micro events (beyond normal seasonal changes) can mean large differences in electricity consumption, for example, between a mild (2024) and colder than normal winter (2023).

- Clause 32: We note the "representatives" may be either internal or 3rd party suppliers, such as debt collection agencies. This isn't entirely clear from the wording in the clause.

- Clause 34(1): Why do the proposed Obligations provide a maximum, rather than minimum, timeframe (5 business days) by which they must contract the customer if they fall behind in their repayments?

- Clause 36: Does the Authority consider disconnection or engaging a debt collection agency a measure of last resort? Does the Authority intend that disconnection should be applied after (as implied by "last resort") pursuing other means to obtain payment such as debt collection agencies or court orders?[7]

- Clause 37(1)(f)(iii): Does requiring 44 days before final notice of disconnection (clause 37) provide an optimal balance between efficiency and consumer protection, or an optimal balance between the risk of disconnection and the risk of accumulating excessive debt that the customer will have difficulty managing and paying back?

  We would question, for example, whether a 44 minimum would be superior to, say, a minimum of 30 days, even if in reality the actual time-period for most customers may be longer. A 30-day

[7] 2degrees, Electric Kiwi, Flick Electric, and Pulse Energy, Independent retailers support enhancement of the Consumer Care Guidelines, 2 October 2023.

minimum would allow a more case-by-case approach. It would allow retailers to better manage the debt situation of customers that are already having payment difficulties and, may, for example have moved to a week-by-week payment arrangement to help manage payments. It would also better allow addressing customers that don't engage/have built up a large debt.

- Clause 37(1)(f)(iv): The Obligations should not require "the person visiting the premises to action the electrical disconnection" is the person that provides the customer with a copy of the final notice of disconnection. Retailers should have discretion to use staff with the type of training reflected in clause 32 or the 32(3)(c) representative to provide the customer with a final notice.

- Clause 37(2)(c): The clause should clarify that this may include the person visiting the premises to action the electrical disconnection if clauses 37(1)(f)(iv) stands.

- Clause 37(3): The clause should clarify successful communication includes an open read receipt from an e-mail.

- Clause 38(3)(a): 40 business days is excessive and inefficient. It is well over the 44 days in clause 37(1)(f) for disconnection. Then 40 business day period could undermine consumer protection by resulting in the customer building up a large debt they may then have difficulty repaying.

- Clauses 41, 43 and 44: If the site visit can be the contractor visiting for disconnection then the requirements on what they have to discuss with the customer go past the realm of what their role and responsibility is. We question the appropriateness of requiring the contractor to discuss support agency options with customers and believe that these clauses need to be reviewed to avoid unnecessary site visits and costs.

- Clause 43: Where a premise is uncontracted the focus should be on establishing whether there is someone residing at the premises and, if so, determining whether the retailer (or some other retailer) will sign them up. Details such as applying for medical dependent status is dealt with at the signing up stage and should not be part of, or duplicated during, the process for establishing whether a premise is vacant. The references to medical dependence and sub-clauses 43(3)(c) – (g) should be deleted.

- Clause 43(1)(b)(iii): The clause should clarify that the visit may be the contractor disconnecting the property.

- Clauses 43 and 45(b) (and clauses 37(1)(e) and 68): The proposed Obligations create a scenario where a medical dependent consumer can choose to stay in a vacant site and not sign up with any retailer and power must stay on. It would be untenable for a premise to be able to continue to be supplied electricity indefinitely without signing up to a retailer regardless of their circumstances. This is quite distinct from not disconnecting a premise with a medical dependent consumer for not paying their electricity bill.

  Just as the proposed Obligations make gaining medical status contingent on a verification process the Obligations should also make it contingent on signing up with a retailer.

  It is reasonable to expect that the rights provided to consumers in the Obligations also come with an expectation consumers will act in goodfaith. It is also reasonable to assume that if a household had a genuinely medically dependent consumer they would sign up to a retailer rather than risking disconnection as a vacant/uncontracted premise.

The Obligations should clarify that: (i) retailers are required to provide an opportunity for consumer(s) at the premise to sign-up with the retailer for electricity supply; and (ii) be given the opportunity to seek medical dependent status; but (iii) continued supply/gaining medical dependent status requires that consumer(s) at the premise sign-up for electricity supply.

- Clause 45(1)(c): We remain of the view that the Authority should provide greater clarity around how this clause should be interpreted. In our last submission, we raised the example of what the Authority expects should happen "in the middle of winter in the South Island where it could be interpreted the disconnection at any time could "endanger the wellbeing of the customer or any consumer at the premises"?"[8]

- Clause 46: The wording has changed from the current Guidelines which states: "an MDC person or a person who has an MDC application underway." The new clause states: "a person who is, or maybe a medically dependent consumer." This is quite vague. The clause also requires the reconnection to be at no cost – even if the consumer turns out not to be medically dependent/doesn't follow the verification process for medical dependence. We do not support the Authority's proposal to regulate or ban fees.

- Clause 47: It would be useful to clarify that the retailer can be reasonably satisfied the premises can be safely reconnected remotely if, for example, they ask the customer if it would be and/or give the customer sufficient notice to turn anything off that needs to be.

- Part 8, clauses 37, 40, 41, 43, 44, 54 and 55 and elsewhere: The Obligations should clarify that if a retailer has checked whether there may be a medically dependent consumer reasonably recently (however measured), and has been told by the customer that there is not or the verification process determined there was not a medically-dependent consumer, the retailer does not have to duplicate/repeat this check through each of the non-payment/disconnection process stages/steps.

  We consider that repeatedly asking a customer the same question they have already been asked would not be efficient, would do little or nothing for consumer protection, and would undermine the purpose of the Obligations to "foster positive relationships with residential consumers".

  A 'belts and braces' approach to this issue would be to amend the Obligations to make clear that the retailer does not need to repeat a question they have already asked, and received a response to, until they get to the final disconnection notice (clause 40).

- Part 8 and elsewhere: identification of medically dependent consumers: The Authority should review the consistency of the language in terms of the actions retailers are required to undertake to identify medically dependent consumers – clause 54 refers to "request information", clause 55 refers to "request … application", clauses 40 and 43 refers to providing information about "where to obtain information on how to apply to be recorded as a medically dependent consumer", and clauses 41 and 44 refer to making "reasonable endeavours to ascertain" (without specifying how to ascertain).

  We think that these clauses could be made less inefficient/compliance more straightforward if they were limited to requesting information about whether there may be a medically dependent

[8] 2degrees, Electric Kiwi, Flick Electric, and Pulse Energy, Independent retailers support enhancement of the Consumer Care Guidelines, 2 October 2023.

consumer (remove reference to “application” and “reasonable endeavours to ascertain”) and providing information about medical dependence.

- Part 8: The Obligations could clarify that where a medically dependent consumer lives in more than one household and has confirmed medical dependence with one of the retailers, that verification can be used in relation to the other household/retailer without having to go through the Obligations proposed full application/verification process.

- Clauses 54(2)(d) and 55: It is unclear what circumstances clause 54(2)(d) is intended to capture for identifying medically dependent consumers “at any other time the retailer reasonably considers it appropriate” that would not be captured by clause 55: where the retailer “becomes aware of information that a reasonable retailer would consider indicates that a customer or residential consumer who permanently or temporarily resides at a customer’s premises may be a medically dependent consumer”.

- Clause 54(2)(d) is too open-ended and should either be deleted or made discretionary (“may” rather than “must”) to make it clear that retailers can request information to determine whether there is a medically dependent consumer at any time. Again, this is an example where highly prescriptive rules are overlaid with open-ended principles-based requirements.

- Clause 54(3)(b), clause 1 definition of alternate contact person/support person, clause 4 etc: The retailer has a relationship with the residential customer. We question whether the Obligations should require the retailer communicate with residential consumers other than the customer. The contractual relationship is between the retailer and the customer.

  We would not assume all residential customers or consumers would welcome this extension of communication requirements; particularly depending on the particular circumstances/vulnerable nature of the medically dependent consumer.

- Clause 54(3)(c): We question the need to obtain information such as the potential medically dependent consumer’s General Practitioner. The Obligations should be clear it would not be appropriate for the retailer to communicate with the General Practitioner and be clear about what this information would/could be used for.

- Clause 57(1)(b)(i): If a customer or residential consumer has applied for medically dependent status it should be able to be inferred that they have consented to recording and holding relevant information relating to the application. Clause 57(1)(b)(i) is a superfluous step and should be deleted.

- Clause 59(1)(a): This clause requires that the retailer advise the applicant, if they haven’t provided consent in relation to clause 57(1)(b)(i), that “the retailer may decide to decline the application”. If consent has not been granted then the retailer would not be able to record or hold the information needed to inform the applicant’s health practitioner. We also consider that it would be over-reach on the part of the retailer to be contacting the health practitioner over a matter that should be between the applicant and their health practitioner/GP.

  Another problem is that the retailer may decide it would not be necessary or consistent with consumer protection to decline the application. It would not make sense for the retailer to have to notify the applicant the application may be declined if the retailer has no intention of declining the application.

Clause 60(2) has more appropriate qualification which could address this issue: "and is considering declining the application".

- Clause 59/60(4): The Obligations should clarify that if application has been declined then the household does not fall under the category of premises that "may" have a medically dependent consumer (relevant to various clauses throughout the Obligations).

- Clause 59(1)(b) states that "the applicant should, as soon as practicable, inform their health practitioner that the retailer may not treat the applicant as a medically dependent consumer." The Independent Electricity Retailers consider that the Obligations should be Obligations on retailers (and where applicable distributors) NOT on consumers. From our compliance reporting this would qualify as 'not applicable'.

- Clauses 60(2), 62 and 73(c): We assume the reference to "21 business days" was intended to be "21 days", otherwise 21 is an odd number of business days.

- Clause 64(2): This clause states the "retailer must … ask … if [the customer or residential consumer] still consider themselves a medically dependent consumer". As we have previously submitted, the Authority's Consumer Care requirements should recognise medical dependence could be a permanent condition. In relation to 64(2), this means the retailer should be able to request confirmation that a medically dependent consumer continues to reside at the premises (64(2)(a)(i) but not force the retailer to also ask whether they consider themselves to still be medically dependent (64(2)(a)(ii)).

- Clause 64(5): We do not support retailers being required to cross-subsidise potentially medically dependent consumers cost of reconfirming medical dependent status – effectively requiring all residential customers to subsidise a subset of customers. The Authority has offered no explanation of this funding proposal or assessment against efficiency objectives.

- Clause 64(6)(b)(i): Typo "0".

- Clause 65: If the retailer has asked whether there may be a medically dependent consumer at the residence, and the new customer says there is not then it would seem redundant for the retailer to provide information about the retailer's obligations in relation to medically dependent consumers etc. This clause could also apply to uncontracted premises. The Authority should not be introducing requirements to cross-subsidise consumers in uncontracted premises.

- Clause 68: Clause 68 should be amended to make clearer the relationship between the absolute ban on disconnection if "the retailer knows that a medically dependent consumer may be permanently or temporarily residing at the premises" (clause 45(1)) and the broader obligation that "A retailer must use its best endeavours to avoid electrically disconnecting any residential premises at which a medically dependent consumer is residing" (clause 68). What clause 68 seems to indicate is that even if the retailer has met the letter of all the other specific requirements in the Obligations this may not be enough to satisfy clause 68 and to disconnect the residential premise; this puts a lot of importance on how "best endeavours" is interpreted.

  More generally, while the requirements are well-intended, we are wary of the use of a combination of highly prescriptive rules with open-ended principles-based requirements layered on top of these. This approach increases compliance costs while reducing the clarity of the Obligations.

## Limitations of the Cost Benefit analysis should be recognised

Subject to how the feedback in our submission is addressed, our view is that the proposed Obligations will most likely overall improve consumer protection. However, we consider that the consultation material and Cost Benefit analysis oversells the size of the potential benefits. There are trade-offs between different elements of consumer protection (notably between protecting consumers against disconnection versus build-up of debt). There will also be negative impacts on efficiency and competition.[9]

We consider that the Appendix C Cost Benefit analysis is of limited use for assessing the proposals and silent on whether specific elements of the proposals are optimal. This is disappointing as CBA done well can have an important positive role in getting the design of policy reforms right and for best promoting the interests of consumers (including protection of consumers):

- The Cost Benefit analysis essentially assumes the value of improved consumer protection is large relative to compliance costs – including some benefits that are unlikely to be relevant to consumers who struggle to pay their bills i.e. benefits related to electrification/uptake of electric vehicles. This parallels the Authority's first transmission pricing methodology (TPM) CBA which made a quantified assumption about the size of the benefits. If you assume benefits will be large relative to costs you will get a positive CBA.

- The Cost Benefit analysis does not recognise the trade-offs between efficiency and consumer protection, or the trade-offs between different elements of consumer protection. The Cost Benefit analysis also seems to treat the only cost of the proposed Obligations as retailer compliance costs. Efficiency impacts are otherwise not considered/or treated as positive.

- It is possible consumers are willing to pay more for increased consumer protection, but this should not be assumed and cannot reasonably be inferred based on submissions the Authority has received. Any such conclusions would require use of formal consumer surveys. Consumer surveys would need to factor in that any such price increases would be additional to upward pricing pressures due to increased network charges (from 1 April next year) and from cost pressures caused by the sustained elevated spot prices over the last several years etc.

- We are cautious about the Cost Benefit analysis assumption regulatory intervention will result in better relationships between retailers and their customers e.g. "we expect improved engagement between retailers and customers". We have identified various examples where we consider the Obligations could harm the relationship. If the Authority considers it is in a position where it knows better than retailers how best to manage their relationships with customers, it should be clear about the market failures that gives rise to this situation.

- It is confusing that the Cost Benefit analysis is qualitative,[10] but the conclusion that "The net present value of the proposal is likely to be positive" is based on quantitative NPV analysis of expected "total benefits across 10 years, discounted at a rate of 7% per annum" and that "the average annual benefits need to be around 25% higher than average annual costs to achieve a positive NPV."[11]

[9] We also don't consider that there will be reliability benefits. Whether a customer is disconnected for non-payment is not a legitimate measure of reliability.
[10] "This report qualitatively assesses the costs and benefits of the Authority's proposal".
[11] Concept has assumed "50% of compliance costs are incurred in the first year following implementation" while "benefits are more evenly spread over time". It is unclear why Concept consider such a large proportion of the costs are one-off, but these assumptions don't validly bridge the gap between a qualitative analysis and quantitative conclusion. This would require understanding the scale of the costs and benefits which requires quantitative analysis.

## Higher compliance costs will result in higher electricity prices and fees

Increased compliance costs will translate to higher electricity prices for residential consumers.

As Concept note "Assuming a competitive and efficient market, we note that over time increased compliance costs for retailers can be expected to be passed on to consumers in the form of higher retail prices." The consultation paper obfuscates with the suggestion "the competitive nature of the retail market is expected to mitigate the extent to which these costs are passed on to consumers, as retailers will strive to maintain competitive pricing." The Authority should not assume competition would result in retailers pricing below cost or that this would be a good/efficient outcome.

Concept suggested "These costs are likely to be very low for the majority of retailers who are already fully aligned with the Guidelines". This statement does not address that a major reason the Authority is mandating the Guidelines is concerns about compliance or the removal of clause ix.

The statement also fails to recognise the proposed Obligations are largely a rewrite of the existing Guidelines. We are working through the compliance implications of these changes, but the combination of highly prescriptive rules and open-ended principles-based requirements will raise compliance costs. Removal of the clause ix option to deviate from the Guidelines will also limit the opportunity for retailers to innovate and find lower cost options that equally (or better) meet the purpose and outcomes of the Guidelines. Most retailers will have been complaint or done the best for customers in other ways while aligning with the objectives of the Guidelines.

The inclusion of open-ended principles-based requirements also undermines the intended benefit from prescriptive rules of "greater clarity".

We have given various examples in the submission of elements of the proposed Obligations that would result in inefficiently high compliance costs and/or are poorly targeted, including the way vacant premises are dealt with (costly process to attempt contact plus various requirements that may be appropriate when signing on a new customer/not when there is no customer), what happens when a customer refuses access to the meter (this substantially increases the amount of time before disconnection can occur), the amount of times the retailer will need to attempt to contact the customer before disconnection (intended to be up to 5 but could actually be up to 8) and the length of time before disconnection can occur. These warrant specific scrutiny and cost benefit testing; particularly as they raise the "reasonable" cost of disconnection and therefore raise potential disconnection fees which the Authority has acknowledged concerns about.

Any proposed Obligation which delays when payment can be required (clause 23) or is permissive to increased build-up of debt will directly and substantially heighten the cost of electricity retailing.

The Authority needs to be careful about the risk the inefficiencies/costs resulting from the Consumer Care Obligations (existing or new) could undermine their success in helping reduce financial difficulties and non-payment/disconnection issues. Any costs resulting from consumer protection rules will ultimately be borne by consumers. For example, the Authority proposed policy is that fees (which include for disconnection and reconnection) "must … not exceed reasonable estimates of the costs the fee is identified as contributing to" (clause 78) and the rules for disconnection/reconnection in the proposed Obligations will increase those costs.

## There are trade-offs between efficiency and consumer protection, and different aspects of consumer protection

We reiterate "The Authority should explicitly consider the trade-offs between different elements of consumer protection and between consumer protection (equity) and efficiency."[12] The consultation (and the Cost Benefit analysis) does not address efficiency impacts beyond compliance.

It is inevitable there are difficult trade-offs to make, in the setting of Consumer Care Obligations, between efficiency and consumer protection and between different elements of consumer protection.

For example, the process for non-payment/disconnection (length of time, number of attempted customer contacts etc) in the existing Guidelines and proposed Obligations could not be reasonably justified on efficiency grounds – if they were efficient you would expect to see similar practices in unregulated workably competitive markets.

Likewise, for example, retailers have a responsibility to help their customers avoid building up debt they cannot manage. There is a balance between protecting consumers against disconnection and protecting them against accumulating excessive debt which they will have difficulty paying later. The Authority should consider, for example, whether requiring 44 days before final notice of disconnection (clause 37) provides an optimal balance between efficiency and consumer protection, or an optimal balance between the risk of disconnection and the risk of accumulating excessive debt that the customer will have difficulty managing and paying back.

## The proposals won't promote competition

The claim that mandating Consumer Care will "promote … competition in the electricity industry for the long-term benefit of consumers, by creating a level playing field and requiring all retailers to comply with the Consumer Care Obligations" is unsafe. The opposite is more likely. The claim is also in conflict with Concept's comment that "Some non-aligned retailers may exit the market if the cost of complying with the Obligations is too high for them."

We also question the Authority's claim that the proposed Obligations will promote competition by "creating a level playing field".

Equal rules do not necessarily translate to equal opportunities or a level playing field. This is evident, for example, in relation the Commerce Commission's market study into banking – which identified that the Reserve Bank requirements for the amount of capital banks hold was stymying competition between the big and small banks (same rules/different impacts). Much of the costs of complying with the proposed Consumer Care Obligations will be fixed in nature and result in higher effective costs per customer for smaller and new entrant electricity retailers/retailers with low-cost business models relative to large, incumbent electricity retailers.

Furthermore, the more the Obligations standardise/homogenise retailer practices, the less (non-financial) benefits there will be for consumers to choose a retailer/switch retailer on the basis of whether the retailer's product offering better services their needs e.g. a consumer that does not want to incur disconnection/reconnection fees might choose a retailer with no/low fees, but if the Authority moved to ban or cap fees this competition benefit was disappear.

[12] 2degrees, Electric Kiwi, Flick Electric, and Pulse Energy, Independent retailers support enhancement of the Consumer Care Guidelines, 2 October 2023.

# Next steps and implementation

We consider getting Obligations right, including fully addressing the issues we and other stakeholders raise in this and previous consultations, is more important than the Authority's self-imposed intention to make final decisions sometime in December and implement on 1 January.

It is important to acknowledge that when the Guidelines were developed, they were done so under a different statutory objective, which did not include consumer protection, and the Authority did not undertake a review of the Guidelines against its statutory objective. It would be unsafe to assume changes to improve workability and clarity of the Guidelines, as part of replacing them with mandatory new prescriptive Obligations, is all that is needed to ensure they satisfy the new statutory objective, or that each element of the proposed Obligations will satisfy the Authority's statutory objective.

The Cost Benefit analysis does not full this significant gap. The Cost Benefit analysis is an overall assessment of the proposals, with significant limitations, and is silent on whether individual elements of the proposals are optimal. The Authority needs to satisfy itself that individual elements of the proposed Obligations – particularly contentious/controversial elements – satisfy the Authority's statutory objective.

### Outstanding matters should be resolved before finalising the Obligations

The Authority should undertake review of the policies on fraudulent behaviour and vacant premises it had committed to at the time it was developing the Guidelines.[13,14] This is long overdue and should be consulted on before mandating the Obligations. There was essentially consensus opposition amongst incumbent and Independent Electricity Retailers to these elements of the Guidelines.

The discussion on clauses 43 and 45(b) (and clauses 37(1)(e) and 68) above highlight an example of the type of situations the Authority is creating by not addressing these issues; including that the proposed Obligations would inefficiently reward/encourage consumers at uncontracted premises to act in bad-faith and NOT to sign up with any retailer, if they consider they may have a medically dependent consumer living at the premises, because the retailer won't be able to disconnect them.

We also consider that the issues the Authority has raised in relation to clause 27(h) of the proposed Obligations should be addressed and consulted on before mandating the Obligations:

> "Some stakeholders were concerned that it is not practical or reasonable to expect confirmation from support agencies within the current 7 day timeframe. We acknowledge these concerns, however, we do not propose changes to these timeframes without conducting further policy work to understand the potential unintended consequences of extending the minimum timeframes, including implications of debt accumulation for customers."

### The Authority should consider the impact on disconnection/reconnection costs

Given the commitment made to look at disconnection/reconnection fees,[15] the Authority should consider the impact of the Guidelines/proposed Obligations on the cost of disconnection/reconnection, and the extent to which fees do or do "not exceed reasonable estimates of the costs the fee is identified as contributing to".

[13] Refer to Electricity Authority, Consumer Care Guidelines Decision (draft), 23 February 2021, and Consumer Care Guidelines Decision, 30 March 2021.
[14] e.g. Ecotricity, Electric Kiwi, Flick Electric, Pulse and Vocus (joint Independent Electricity Retailer submission), Independent retailers welcome the improvements made to the draft Consumer Care Guidelines", 10 March 2021.
[15] https://www.ea.govt.nz/documents/5427/CE_response_to_CGA_petition.pdf

The Authority should also confirm it has jurisdiction (we have questions about whether both the Commerce Commission and Electricity Authority have price control powers) and, if so, consider the potential implications of adopting price-regulation in markets that are workably competitive/supposed to be workably competitive. The proposed Obligations include regulation (zero price) for disconnection/reconnection in certain circumstances.

## The Authority should review how clause ix has been applied

The Authority has removed the clause that "Retailers can align with the guidelines by adopting the recommended actions and/or taking alternative actions that achieve the purpose and outcomes in Part 1." Removal of this clause is not discussed in the consultation. This change could have the affect of increasing compliance costs/precluding lower cost options or alternatives that better protect consumers.[16]

We consider that the Authority should undertake a review of the current application of clause ix and test whether some of the retailers' alternative practices should be permitted under the mandated Obligations.

We also suggest the Authority consider a 'hybrid' option in which retailers can apply to the Authority for authorisation to deviate from the Obligations if doing so is consistent with the objectives of the Obligations. Guideline 2 of the mandatory TPM Guidelines, for example, provides that "The TPM may differ in its details from the particular requirements in these Guidelines (but not their intent, including as set out in the Authority's intent section of these Guidelines), if Transpower considers, in its reasonable opinion, that doing so would better meet the Authority's statutory objective than complying with these Guidelines in their entirety."

## A technical drafting consultation step should be added

Given the large number of changes from the Consumer Care Guidelines to the proposed Obligations (principally a rewrite), including additional changes following this consultation, it would be prudent and good regulatory practice for the Authority to undertake a technical drafting consultation before finalising the Obligations.

## A transition period is needed

The Authority has decided that the mandated Obligations would be enforced from 1 January but did not consult on this timing or whether it is practicable.[17,18] The Authority should consult on what transition arrangements should be adopted in parallel with its review of submissions on the current consultation. Transition arrangements will be needed as retailers will not be able to fully comply from 1 January.

We consider that, as a minimum, there should be a 6-month transition period.

[16] The Authority's current consultation on changes to the residual charge under the Transmission Pricing Methodology (TPM) highlights the benefits of such clauses, as the Authority is relying on provision (clause 2 of the Guidelines) to make changes that deviate from the TPM Guidelines as long as they are consistent with the Guidelines' intent and promote the statutory objectives.

It is notable one of the key reasons for clause 2 of the TPM Guidelines was the risk that their highly prescriptive nature meant there is heightened risk of unintended outcomes.

[17] Electricity Authority, Updating and strengthening the consumer care guidelines Decision paper, 1 February 2024.

[18] The timing of implementation and potential transitional arrangements were not discussed in the prior consultation: Electricity Authority, The Options to update and strengthen the Consumer Care Guidelines, Consultation paper, 4 September 2023.

Once the new Obligations are published, electricity retailers will need to assess what changes they need to make – including to their Consumer Care Policies, non-payment and disconnection processes and systems etc – to comply.

There are significant differences between the existing Guidelines and the proposed Obligations which have undergone a major rewrite. There are also varying degrees of compliance with the existing Guidelines and varying degrees of reliance on clause ix to deviate from the requirements in the existing Guidelines. The Authority has commented that "A review of retailers' self-assessed alignment with the Guidelines, published in June 2023, showed that retailer alignment with the Guidelines was variable".[19]

It will take all retailers time to get in a position where they can be fully compliant with the Obligations. This will not be able to be done immediately or in the less than a month – over the Christmas period – between release of the decision sometime in December and 1 January.

Given the intended timing of the Authority's decision (sometime in December) it won't necessarily be the case that internal staff responsible for compliance/relevant policies/implementation etc will be available to review the new Obligations until sometime in the new year. Initial steps towards compliance with the new requirements may not be possible until late January/February.

[19] Electricity Authority, The Options to update and strengthen the Consumer Care Guidelines, Consultation paper, 4 September 2023.

## Concluding remarks

The Independent Electricity Retailers are acutely aware electricity is an essential service which comes with social responsibilities, and there are wider societal, health and consumer welfare (long-term) benefits to Kiwi households and consumers from provision of electricity services.

The Independent Electricity Retailers welcome the thorough operational review the Authority has conducted but consider broader policy work should be undertake before the new Obligations are finalised and mandated.

The Authority needs to satisfy itself individual elements of the proposed Obligations – particularly contentious/controversial elements – satisfy the Authority's statutory objective. This should include explicit consideration and engagement with stakeholders on how to balance efficiency and consumer protection objectives, as well as how to balance different aspects of consumer protection.

The Authority should also have at front and centre of its priorities that stronger competition is the best way to protect consumers; including whether they have payment difficulties and/or reduce electricity consumption because of affordability issues (both of which are a function of electricity prices).

Yours sincerely,


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