

28 January 2025

Electricity Authority

To: ccc@ea.govt.nz



Re: Consultation Paper – Proposed Information Exchange Protocol EIEP 4A: Medically Dependent Consumer Information

Utilities Disputes Limited | Tautohetohe Whaipanga (UDL) welcomes the opportunity to comment on the Electricity Authority's (EA) consultation document, *Proposed Information Exchange Protocol EIEP 4A: Medically Dependent Consumer Information*.

UDL operates the mandated industry dispute resolution scheme for the electricity sector.¹ Its core purpose is to ensure that any person who has a complaint about a retailer or distributor has access to an independent process for resolving it.² UDL's Energy Complaints Scheme is free to consumers. Against this statutory framework the key points of our submission are:

1. While UDL supports the draft EIAP 4A form (draft form) for retailers to share information about Medically Dependent Consumers (MDCs)³ to distributors, we note that there are other ways in which this information can be provided with the existing file framework. We note that the form is a requirement of the new Consumer Care Obligations (CCOs),⁴ and such sharing information between retailers and distributors is in line with Australian practice.
2. The protocol should be viewed as one tool among many to ensure MDCs are not disconnected. However, the exchange protocol should not replace other tools such as retailers and distributors having ready points of contact for emergency cases. This is important as sometimes a person may not be registered as an MDC or may have a visitor who is an MDC and quick action is required.

The EA should review that such communication channels are in place either through the audit process, the CCO 11.A.4 report or the monthly *Information Notice*.⁵

3. The EA to assess the needs of MDCs may wish to consider surveying these consumers. The EA may wish to consider overseas models where the survey is actioned by the provider. Such surveys will also help the EA to gather data which can inform the EA's decision-making in protecting the interests of domestic consumers.⁶

¹ See Electricity Industry Act 2010 s 95.

² See Ibid. sch 4, clause 1.

³ For this abbreviation and others, the s is dropped where the singular is used.

⁴ See CCO 52.

⁵ See cls 2.16 to 2.24 of the Electricity Industry Participation Code 2010 (Code).

⁶ See s 15 of the Electricity Industry Act 2010.

4. The EA, retailers, and distributors may wish to discuss the issue of MDCs at the annual *Switching Forum* to discuss case studies and how this aspect of the CCOs is working in practice.

UDL – MDCs and Disconnections

UDL gives the highest priority to complaints about disconnections, especially disconnections involving MDCs. UDL has established phone channels with retailers and/or other points of contact to manage these complaints. These enable the issue of disconnection to be considered immediately. If there is no immediate danger to life, the issues of the complaint are then reviewed, and payment plans can be explored with the retailer (if they have not been discussed already with the consumer). The process is also typically successful in preventing potential disconnections from escalating to a disconnection.

Proposed disconnections of MDCs are infrequent, as retailers are generally aware of the obligation not to disconnect. Where it becomes an issue UDL will highlight the risk to public confidence in the electricity network if processes around MDCs are not fit for purpose.

In the last reporting year UDL considered 8,136 consumer queries, and 6,694 consumer complaints about electricity retailers (type 1 – the trader at the ICP is the retailer, and type 2 – the retailer is not the trader and there may or may not be an ICP) and distributors (which includes local networks and secondary networks⁷). Of these complaints about 600 had a disconnection related issue and approximately 3.5% of these involved an MDC customer in some form.

UDL notes the consultation discusses exchanges between retailers and distributors. We would like to see clarification and further guidance of the obligations on what participants are responsible to ensure they are enforceable. This clarification should take into account retailers that are traders, retailers that are not traders, traders, and secondary networks (note that customer networks are secondary networks).⁸

Customer networks include retirement villages, apartment buildings, and residential subdivisions. Customer networks do not have internal ICP identifiers or traders, but they may have an independent retailer, or the network owner may be the retailer. Some guidance on obligations for communication about MDCs in these instances should also be included.

The Draft Form

The draft form is a method to standardise the sharing of information between retailers and distributors, however, there are other less complex existing methods that might be considered as alternatives. UDLs concern is that the more separate communications that exist, the greater, is the risk of error. The importance of retailers and distributors sharing MDC information, is also seen in the Australian context, particularly in the Australian Energy Market Commission's *National Energy Retail Rules*, 29 August 2024, part 7.⁹

⁷ Refer to section 131A of the Electricity Industry Act 2010

⁸ Even considering the guidance of CCO 51.

⁹ See also Electricity Industry Act 2000 (Victoria) s 40SG-40SH..

There appear two further possible ways to convey MDC information that the consultation paper did not discuss, and these use processes are already standard in the industry.

a) Convey MDC status at an ICP to the relevant distributor

The proposed EIEP4A replicates the relevant fields in the current EIEP4 file. We note that the consultation comments that EIEP4 is not used by a number of retailers and distributors. However, we consider that distributors require customer contact details where:

- a. A service connection is being decommissioned because of the continuance of supply obligations in Section 105 of the Electricity Industry Act 2010.
- b. To manage electrical safety, a disaster and/or unplanned outage

Because of this, we would have expected all distributors to have required the contact details of customers connected to its network, and a viable alternative would have been to mandate the use of the existing EIEP4 with the appropriate validation rules.

b) Convey MDC status at an ICP to a gaining trader in a trader ICP switch

The MDC obligations¹⁰ require the gaining retailer in a trader ICP switch to ask the customer if an MDC is present, and to request the customer to contact the retailer if an MDC moves in.

Note that there is no guarantee that an MDC will remain in an installation after a trader ICP switch, or move in at the time of a switch and that is the reason why the gaining retailer must ascertain separately the presence of an MDC at the ICP.

To avoid privacy concerns, the use of AN files¹¹ could be mandated (currently these are existing and many retailers voluntarily use them), and add an explicit AN response code¹² to indicate an MDC at the ICP within the losing retailer's information. AN files were introduced to resolve the issue of asymmetry of information, where the losing trader in a trader ICP switch has information that the gaining trader does not have access to.

The advantage of using the AN file with an appropriate response code is that the customer is not identified, and the switch process can automatically halt until the MDC presence is resolved.

¹⁰ See CCO 11.

¹¹ Refer to Clause 3(a)(i) and 10(1)(a) of Schedule 11.3 if the Code, and RS-020 of the Electricity Authority registry functional specification

¹² Refer to SD-020 in the Electricity Authority registry functional specification

Privacy

The EA is rightly concerned with the privacy implications of the proposal. Yet the CCOs as forming part of the Electricity Industry Participation Code, appear to have the status of secondary legislation.¹³ Therefore as much as the Privacy Act 2020 may apply, the information collected within the draft form appears to be for the purpose which the information is collected. However, the submissions of retailers and distributors may assist in further clarifying the information needed to achieve the purposes of CCO 51. The EA as it considers appropriate is encouraged to obtain legal advice on any privacy issues arising from the standing of the CCOs, and the content, storage and transmission of the draft form.

In Australia some additional information is shared and/or gathered including sometimes the distributor directly receives information from MDCs.¹⁴ However New Zealand as discussed in the review of the CCOs has its own context, with its focus on the responsibilities of the retailer.¹⁵

The Retailer and Distributor Relationship

MDC information is to be provided to the distributor when the application is received or as soon as practicable (see CCO 51 (1)-(2), however there will be occasions when urgent contact may be required when the retailer suddenly becomes aware of an MDC living at residence that has been disconnected. UDL has previously highlighted the working relationship between retailers and distributors can be uneven in the context of investigating complaints about outages.¹⁶

Therefore, when these emergencies occur there is a need for retailers and distributors to have specialised lines of communication with each other and a good working relationship. Such contact points can quickly deescalate a situation. Such is the importance of these links between retailers and distributors the EA may wish to review they are in place, though the reconciliation participant and/or distributor audit process (will not work however with type 2 retailers), appropriate Code mandates, the CCO 11.A.4 report, or monthly *Information Notice*.

This issue may also be one that might benefit from an open discussion with retailers and distributors particular in the annual retailers *Switching Forum* where switching issues are discussed.

The forum may also be a place to review case examples. UDL is concerned about examples where an MDC is a resident of property but not an account holder. These MDCs appear vulnerable when the account holder moves but the MDC remains a resident at the original property. This should be picked up on sign up to the new retailer, but there appears some risk that this does not occur.¹⁷

¹³ See s 33 of the Electricity Industry Act 2010, and Privacy Act 2020, Privacy Principle 11.

¹⁴ See footnote 9, and *National Energy Retail Rules*, r. 124B.

¹⁵ See discussion EA, *Introducing the Consumer Care Obligations*, 3 December 2024, para 4.53-4.63.

¹⁶ See UDL, *Follow up Consultation – Proposed Changes to the Default Distributor Agreement*, 31 July 2024, 2.

¹⁷ See CCO 11.

Gathering of Data

The EA has raised concerns about its budgeting needs for 2025/26 and the costs of the administration of the CCOs.¹⁸ UDL in response has raised its concerns about how the EA may be duplicating some of the functions undertaken by UDL as the industry complaint handler. This duplication may lead to inefficiencies and may increase the likelihood of complaints being mishandled.¹⁹ This is even more the case in relation to MDCs, where a single process appears best practice.

However, to assess whether the draft form is achieving its purpose, and the new MDC obligations are having the required effect, the EA may wish to consider surveying MDCs. Overseas utility providers may provide a cost-efficient model for these consumer surveys, which are issued by the provider, who reports on them to the regulator.²⁰

There may also be opportunities for the EA to do a more thorough analysis of MDCs. For example, the *Australia Energy Foundation* has completed a study of their Life Support Customers (LSCs), which are a close equivalent to New Zealand's MDCs. Some key findings include: just over half of LSCs were 65, and a third did not have a carer or partner to support them. About a tenth of LSCs have trouble managing their bills, and only about 7% have access to back-up power. Only about a quarter found out about LSC registration from their retailer.²¹ This type of analysis for the New Zealand context will assist the EA to perform its additional objective to protect the interests of the domestic consumer not only in term of the CCOs but in the provision of electricity more generally.

Next Steps

Thank you for the opportunity to comment on the information exchange protocol. If you have any questions, please at the first instance contact me at: paulb@udl.co.nz



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¹⁸ See EA, *Proposed Levy-Funded Appropriations 2025/26*, 15 November 2024, 16.

¹⁹ See UDL, *Consultation Paper – Proposed Levy-Funded Appropriations 2025/26*, 13 December 2024, 3.

²⁰ See CCW & WSRA (UK), *Complaint Processes in Water – A Follow up Report*, October 2021, 5, 14, 19.

²¹ See Australia Energy Foundation, *Better Outcomes for Energy Consumers Using Life Support Equipment at Home*, August 2021, 23-24.