

18 September 2023

Electricity Authority | Te Mana Hiko

By email: Aileen.Gallagher@ea.govt.nz

For the attention of: Sarah Gillies, Chief Executive

Dear Sarah,

RE: Proposed amendments to the Electricity Industry Participation Code 2010 – default distributor agreement templates

Thank you for your letter of 3 August 2023 seeking our feedback under s 54V(1) of the Commerce Act 1986 on the proposed amendments to the Electricity Industry Participation Code 2010 (the Code) relating to:

- the default distributor agreement (DDA) template in Schedule 12A.4, Appendix A of the Code
- the default agreement for providing consumption data in Schedule 12A.1, Appendix C of the Code.

We recognise the recent amendment to the Electricity Industry Act 2010, particularly the addition of s 32(4) which specifies the following two exceptions to the prohibition under s 32(2)(b) on the Code purporting to do or regulate anything that we are authorised or required to do or regulate under Part 4:

- setting quality or information requirements for Transpower or 1 or more distributors, in relation to access to transmission or distribution networks; and
- setting pricing methodologies for Transpower or 1 or more distributors.

We note one general point concerning the above Electricity Industry Act provisions: if one of the above exceptions does not apply, then s 32(2)(b) precludes any Code requirement that purports to do or regulate anything we are authorised or required to do or regulate under Part 4 – namely, regulating ‘prices’ (as defined in s 52C of the Commerce Act) or revenues of regulated services under Part 4. Where a Code requirement can be characterised as a ‘pricing methodology’ (as defined in s 32(4) of the Electricity Industry Act) as opposed to regulating ‘price’, however, the exception under s 32(4)(b) will apply.

Yours sincerely,



Andy Burgess
General Manager, Infrastructure Regulation