8 November 2023

Electricity Authority
By email to: DDA@ea.govt.nz

Tēnā koutou,

Response to proposed changes to the default distributor agreement template, consumption data template and related Part 12A clauses

Thank you for the opportunity to respond to the Part 12A amendment proposal consultation paper.

We broadly support the changes proposed by the Authority, in particular:

- We support the removal of recorded terms from the default distributor agreement
- We support removing the requirement to provide the Authority with any new or varied distributor agreement
- We support the adoption of the ENA/ERANZ data template
- We support a streamlined process for the provision of data to market participants.

Attached to this letter we have provided further details on the consultation questions, and where we have found pain points. We have also noted a few extra areas for improvement, including:

- The costs of producing and conveying consumption data should be appropriately allocated amongst all parties requesting the data
- A few pragmatic amendments to Schedules 5 and 6
- We propose extending the timeframe for the deemed amendment to existing agreements in clause 13 of Schedule 12.A.4 to 40 business days to allow for a properly considered consultation with participants on any amendments to Distributors' operational terms consequent on this Code amendment
- A few pragmatic amendments to the Default agreement – provision of consumption data

Please contact me at brett.woods@contactenergy.co.nz if you wish to discuss further.

Ngā Mihi,

Brett Woods
Head of Regulatory and Government Relations
Contact Energy.

Question 1

Contact agrees with the Authority that issue 1, as described in paragraphs 2.21 to 2.32 and Appendix B is worthy of attention. We are supportive of the Authority's proposal to remove Recorded Terms from the Default Distributor Agreement template.

Part 12A of the Code was introduced by the Authority to achieve a higher degree of standardisation in the market and to address long-standing contract negotiation problems between Distributors and Traders due to the inequality of bargaining power.

Back in 2020/2021, Contact was heavily involved in the consultation process to support Distributors to develop their DDAs. Providing feedback on each Distributor's proposed DDA was far more burdensome than anticipated due to the significant variation between Distributors' approaches and the level of departure away from the Authority's template DDA. There was an expectation that there would be some minor variation to account for different operational practices of different Distributors, but Traders never anticipated having to review and feedback on 27 very different Distributor Agreements, as transpired. The Recorded Terms introduced inconsistencies across all our DDAs in relation to contractual terms which had in the past been consistent.

Contact's experience was that any Recorded Terms which favoured the Distributor were included in the Distributor's draft, whilst Recorded Terms which favoured the Trader were omitted or drafted in such a way that the cost/risk was allocated to the Trader rather than the party best placed to manage that risk. Furthermore, many of the provisions that were included as Recorded Terms by Distributors were not true quality standards - they were simply contractual rights and their inclusion as Recorded Terms was misplaced.

The Distributor's requirement to consult with Traders on proposed Distribution Agreements was limited to feedback on Operational Terms, and the Recorded Terms were not subject to consultation or to the Rulings Panel appeal process.

Contact sought to negotiate Alternative Agreements with some Distributors, but those requests were rejected. Distributors simply used clause 6(1) of Schedule 12A.1 to give notice for their DDAs (including all unacceptable Recorded Terms) to apply, and the DDAs became binding. Naturally, Distributors then had no incentive to negotiate an Alternative Agreement which would worsen its contractual position.

Replacing Recorded Terms with Core Terms this will ensure better consistency across all Distributor Agreements and a more even-handed approach to the drafting, as was intended by the Authority when they sought to standardise agreements for Distribution Services by introducing Part 12A of the Code.

Question 2

For the most part Contact agrees with the amendments proposed by the Authority in Appendix B and C. We have provided some additional context and suggestions for the Authority's consideration.

Clause 4.8 (Planned Service Interruptions): In many of Contact's DDAs, Distributors decided not to adopt this recorded term, or to the extent it was adopted it was amended to expressly remove any liability from the Distributor if the Distributor failed to meet its obligations under clause 4.8. Contact thinks this is a reasonable service standard and one which we would expect to be able to reflect with our customers. As the party responsible for planned outages on its network, a Distributor is best placed to minimise the outage's disruption to customers.

Clause 4.11 and 4.12 (Restoration of Distribution Services): Again, in many of Contact's DDAs, Distributors decided not to adopt this recorded term, or to the extent it was adopted it was amended to expressly

remove any liability from the Distributor if the Distributor failed to meet its obligations under clause 4.11 and 4.12. Contact considers this is a basic service standard and that as the party responsible for the restoration of distribution services on its network, the Distributor is best placed to manage the risk of an interruption extending beyond the original timeframe. We would expect a Distributor to be able to comply with an obligation to endeavour to restore distribution services as soon as practicable in accordance with Good Electricity Industry Practice.

Clause 7.3 (Price Changes): Distributors did not commit to adopt the suggested restriction on the frequency of a Distributor's ability to change pricing thereby adhering to the current annual price revision practice. It takes around 4 months to support a price change, and Traders need to provide price certainty to their customers and agree cost inputs with commercial and industrial customers which determine manufacture and production design.

Clause 9.10 (Refund of Charges): We agree with the Authority's comments at B28 – B30 and support this clause being mandated as a Core Term of the Agreement.

Clause 14.1 (Fluctuations): It is extremely difficult for a Trader to ask a customer to agree for surges or spikes not to be treated as interruptions. Contact has found this particularly challenging in agreements with our commercial and industrial customers. Customers *do* consider fluctuations and power quality issues to be interruptions. Contact believes that omission of 14.1(iii) would be more appropriate and that the key requirements in respect of momentary fluctuations and power quality are captured by 14.1(a)(i) and (ii) and 14.2. We do not consider that removal of this term from the distributor agreement should create controversy for either Distributors or Traders.

Clause 14.2 (Power Quality): We agree with the Authority that the Distributor is the appropriate party to investigate any power quality, reliability or safety issue related to a Customer's supply. It is not in the interests of consumers on a Distributor's network for the Distributor to lessen its incentive to investigate their concerns, by removing any liability and remedy associated with not undertaking an investigation.

Clause 24.5 (Distributor not liable):
Clause 24.5(c) of the Authority's template invited Distributors to include any exclusions from liability not already covered by clauses 24.5(a)–(b). When the template DDA was being developed, the expectation was that Distributors would adopt the example Recorded Terms as they did in the Use of System Agreements following the introduction of the model UoSA in 2012. Traders expected any further exclusions to liability added by Distributors in 24.5(c) would focus on including other quality standards (as that term is used in Part 4 of the Commerce Act). In practice, however, Contact encountered several different drafting suggestions in relation to this Recorded Term which sought to include blanket and expanded exclusions on a Distributor's liability which went far beyond anything analogous to the Authority's example in their template DDA.

Often the inclusions were not quality standards and therefore misplaced as Recorded Terms, and because the Distributor had been given the role of preparing the proposed DDA terms, the Trader was not able to reciprocate the exclusions sought by the Distributors or add any additional liability exclusions of its own.

This has resulted in liability provisions which are not even-handed and which transfer risk to the Trader relating to the failure of the network.

Clause 26 (Claims under the CGA): We agree with the Authority that this proposed amendment taken from some Distributors' Schedule 1 drafting, and explained in C21 and C22, represents a useful clarification to the DDA template.

Clause 33.2 (Definition of Interest Rate): Contact is supportive of amending the DDA templates suggested definition of 'Interest Rate' to refer to the free-to-air BKBM benchmark rate information published by the

NZFMA. Contact agrees that it is more appropriate to use the NZFMA website as the reference point, noting that this is readily accessible without a subscription.

Clause 33.2 (Definition of Use of Money Adjustment): In many of the Distributor's proposed agreements the Authority's suggested wording was not adopted. We agree with the Authority's comments at B18 – B22. Furthermore, the 0% rate is inconsistent with wash up amounts relating to RM normalised methodology mandated by the Authority effective 1 April 2021. Contact's view is that whichever party has the benefit of the money needs to make good with the other party who should receive a Use of Money Adjustment.

Schedule 1 (Service Standards):
Many Distributors elected not to include any Service Standards covering the subject matter examples provided by the Authority, or there were no meaningful consequences associated with a breach. Some Distributors stated that they would use their Asset Management Plan or implement additional reporting, but these network-level measures do not address the reduced commitment to consumers which for the most part already existed in current distribution agreements.

Traders need confidence that we contractually have something to benchmark service quality and timing expectations against and this is lacking at present.

We also support the Authority's suggested further clarification at C18 for the reasons set out by the Authority.

Schedule 5 (Service Interruption Communication Requirements):
We found that Distributors were reluctant to be overly prescriptive in this Schedule and sign up to onerous notification timeframes. Often, Contact advocated for further detail to be included.

In relation to the proposed paragraph 5.25 we suggest 5 Working Days would be more practical as Traders will be reliant on Customer feedback, which may take longer to receive. This is particularly a cause for concern given the additional wording now incorporated into paragraph 5.26 which requires a Trader's request for an alternative date and time to be lodged "in accordance with the timeframe in paragraph 5.13". We are unsure if this is the correct reference, and may be intended to refer to paragraph 5.25.

Schedule 6 (Connection Policies):

- The wording in S6.5 should be amended to align with Code obligations and current practice. We do not expect this update to be contentious. If the Distributor undertakes the electrical connection to the Network, they should notify the Trader within 2 Working Days. However, if the Trader undertakes the electrical connection to the Network, the Trader will notify the Registry within 5 Working Days (as we are required to do under the Code). We suggest that the wording be updated to read: "The Distributor or the Trader (if authorised by the Distributor) must arrange for the ICP to be electrically connected to the Network by a Warranted Person once approval has been granted by the Distributor. Where:
  a) The Distributor undertakes the electrical connection, the Distributor must notify the other party within 3 Working Days of the ICP being electrically connected; or
  b) The Trader undertakes the electrical connection, the Trader must notify the Registry in accordance with the Code and provide to the other party a copy of a certificate of compliance and record of inspection for the site under the Electricity (Safety) Regulations 2010, where relevant."
- At S6.17, the obligation should be a "may" rather than a "must". It is not mandated by the Code, may not be appropriate in the circumstances, and such action has associated financial implications. We do not expect this update to be contentious.
- Paragraph S6.23 conflicts with the Continuance of Supply provisions in the Electricity Industry Act 2010. A Distributor cannot decommission an electrical installation without the permission of the property owner. At S6.23 (a) use of "Customer" does not work as a tenant is not able to make this

request. We agreed with many Distributors to change this to "appropriately authorised Customer". We do not expect this update to be contentious. S6.23 (d) should be removed. Decommissioning of this nature should only take place in the circumstances described by S6.23 (a).

- S6.26 Contact suggests adding the underlined words to provide some flexibility where there is an administrative error. "If an ICP has legitimately been given the status of "Decommissioned" on the Registry, the ICP identifier must not be used again and the process for new connections must be followed if supply is required again at the property."

Question 3

Contact is supportive of the Authority's proposal to remove the administrative burden of having to provide the Authority with any new or varied distributor agreement. We agree that this provision served a purpose at the time to enable the Authority to monitor the provisions of the distributor agreements being entered into, but that it makes sense to remove this obligation going forward. We agree with the proposed obligations to provide the agreements upon request by the Authority.

Question 4

Contact agrees with the Authority that issue 3 is worthy of attention. We have encountered the difficulties described in paragraph 4.12, where some Distributors have been confused over whether to use the data template included in the Code or the ENA/ERANZ variation to it.

Whilst Contact does have in place several Alternative Data Agreements with Distributors, all of which are based on the ENA/ERANZ variation, there are still Distributors with whom we do not have data agreements in place. Amending the data template to incorporate the ENA/ERANZ variation, with some amendments, will undoubtedly reduce the cost of negotiating future agreements for the exchange of consumption data.

Question 5

Contact agrees with the objective of the proposed Code amendment as outlined by the Authority.

Question 6

The work required to actively engage in consultation with Distributors to develop their new distributor agreements in 2020 was mammoth. In most cases, even after extensive consultation, Traders were forced to accept terms in their Distributor Agreements which did not allocate the cost or risk to the party best placed to manage it.

The cost to make these minor updates to distributor's agreements required as a result of this proposed Code amendment will be outweighed by the significant benefits which will be achieved in delivering the benefits that were intended and expected by the Authority when they introduced Part 12A of the Code.

Question 7

The intent of the Data Template, which the industry helped to develop, is to allow Distributors access to "Consumption Data" for "Permitted Purposes" on reasonable terms. At the time this template was drafted, it was still very early in the roll-out of sharing "Consumption Data" and the industry was still getting to grips with, and developing processes for, sharing non-anonymised data. Since that time, parties have become more comfortable with the way in which the data is being used and protected by Distributors and so we agree it is now prudent to further streamline data sharing.

Contact would be comfortable for Distributors to obtain consumption data directly from MEP(s), provided that the same controls and assurances that Retailers have in place today are incorporated into any future

arrangements or direct data sharing framework. It is important to protect customer consumption information by ensuring the party receiving the data is utilising it for the agreed purpose, transmits data securely and has appropriate data retention and destruction policies and procedures in place. It would also be good industry hygiene to include within the existing participant audit framework an assessment of consumption data recipients processes, data policies and systems. This would ensure recipients of consumption data are handling this data appropriately. We would be open to negotiating contractual arrangements with MEPs for them to provide data directly to Distributors, where appropriate.

If the code permits MEPs to provide data directly to distributors, then it should also require the costs of producing and conveying this data to be appropriately allocated amongst all parties requesting and consuming the data, ie traders, distributors and other participants.

Question 8

Contact considers that the terms that are proposed to become core terms all sit neatly within the two exceptions in s32(4) of the Electricity Industry Act 2010 to the prohibition under s32(2)(b) on the Code purporting to do or regulate anything that the Commerce Commission is authorised or required to do or regulate under Part 4.

Question 9

On current drafting that there may be an issue with the timeframes proposed in clause 13 of Schedule 12A.4 which deems all amendments effective from the 15th business day after the distributor agreement is made available on the Distributor's website pursuant to clause 11A. This provides little time for consultation with participants on any updates to operational terms, as required in 6(2) and 12(2) of Schedule 12A.4. To allow distributors to meaningfully consult and consider responses it may be necessary to extend the timeframe in clause 13 to 40 business days.

We have the following additional suggestions for improvements to the Appendix C data template, which we have agreed with several Distributors in our Alternative Data Agreements and which we would like to see the Authority include in the new template data agreement:

- The title and introduction of the document is expanded to include "provision **and use** of" consumption data.

- In clause 2(e) and 3(2) it may be better to delete "at monthly intervals" and replace with "at specified intervals" to allow Distributors the flexibility to request data at various frequencies, as desired. In Contact's experience, only one distributor has requested monthly data. Other Distributors have preferred to request historical data or ongoing data on a quarterly, six-monthly or annual basis. At present, Contact's systems and processes for provision of consumption data to Distributors means that the cost to provide monthly data is similar to the cost to provide quarterly or six-monthly data. Whilst we could look at enhanced solutions down the track that may reduce those costs, if a Distributor only needs quarterly, six-monthly or annual data they may not want to assume the additional costs associated with provision of data on a monthly basis.

- In clause 3(3)(d) in the first part of the sentence, replace "does not introduce" with "Does not knowingly introduce".

- Addition of a new clause 9(1)(d) "to a Customer, if the Consumption Data relates to that Customer, and that Customer has requested the information." This is consistent with the provision in the DDA, and is a requirement where the information is personal information under the Privacy Act.

- At the end of the first paragraph of Clause 21A (the Data Combination Schedule) the following words should be added “in accordance with the process outlined in clause 5A of Schedule 12A.1 Appendix C of the Code” to ensure that this schedule can only be updated in accordance with the provisions in clause 5A, as intended.