



14 November 2023

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

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

Meridian appreciates the opportunity to provide comment on the Electricity Authority's proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses.

Meridian is broadly supportive of the Authority's proposed changes. Our responses to the specific consultation questions are set out below.

Question 1

Do you agree Issue 1, summarised in paragraph 2.21 and described in paragraphs 2.21 to 2.32 and Appendix B, is worthy of attention?

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

The existence of recorded terms and the way in which those terms have been unilaterally modified by distributors has in our opinion prevented the DDA process from meeting its original standardisation objectives. Furthermore, our experience has been that the recorded terms were frequently used to shift risks and responsibilities away from distributors and onto parties not as well placed to manage them. Meridian considers that replacing recorded terms with core or operational terms will go a long way to ensuring both national consistency, and that the risk positions under the DDAs are aligned with the Authority's intentions.

Question 2

Do you have any feedback on the Authority's assessments of changes to recorded terms, as set out in Appendix B and Appendix C?

Meridian is broadly content with the Authority's proposals.

Question 3

Do you agree Issue 2 is worthy of attention?

Meridian supports the Authority's proposal that agreements are required only upon request.

Question 4

Do you agree Issue 3 is worthy of attention?

Meridian supports the proposal to adopt the ENA-ERANZ variation to the Appendix C data template. Meridian finds this to be the most widely used alternative to the Code template.

Question 5

Do you agree with the objective of the proposed Code amendment? If not, why not?

Meridian agrees with the proposed objective.

Question 6

Do you agree the benefits of the proposed Code amendment outweigh its costs?

Meridian agrees that the benefits of the proposed Code amendment outweigh its costs. Meridian considers that the amendments proposed will bring significant efficiency benefits.

Question 7

Do you agree the proposed Code amendment is preferable to other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objectives in section 15 of the Act.

Meridian generally agrees that the proposed amendments are the preferable solution to the issues identified.

Meridian notes two issues related to Appendix C which the proposed amendments do not currently address:

- (1) There is little practical guidance for distributors on how the Appendix functions. Meridian often receives correspondence from distributors who have agreed Appendix C with Meridian but are unclear on how to go about using Appendix C (or have not understood that Appendix C already addresses the substance of their request). The current

amendments could be an opportunity to also provide guidance to distributors on their use of the amended Appendix C. This would assist in the efficient operation of the industry by helping to minimise any difficulty navigating data requests.

The most common source of confusion we see is around the form of a data request. Under the Appendix C data template, a distributor may request consumption data simply by giving written notice to a trader under clause 2 which must set out specified information. Clause 4 of the data template also sets out an ability to enter into a separate “Data Agreement” if a distributor seeks data on terms that are different, i.e. if the data will be used for something other than Permitted Purposes, shared with non-permitted persons, or is to be provided on a greater frequency. In Meridian’s experience, distributors often seek data by:

- asking Meridian to sign a separate clause 20 agreement, when in fact the data fits within the standard terms of clause 2 and can be requested by a simple notice; or
- requesting data without providing all the specified information required under clause 2.

In addition to guidance, one way to address this confusion would be to have a single process for data requests under the Appendix C data template. The clause 20 form could be used as the notice in all cases, but it could be made clear that signed agreement of the trader is only required if the request does not conform with the permitted purpose requirements in clause 3. For conforming notices, i.e. for permitted purposes, the trader must supply the data on notice (or provide authorisation for the data to be procured from the MEP).

- (2) There may also be a benefit in having a default data agreement to govern the distributor / Metering Equipment Provider (MEP) relationship. This would be useful where the distributor is seeking data from the MEP directly. Some of Meridian’s responses to Question 9 below are concerned with ensuring that the trader is not responsible under Appendix C where the parties have agreed that the distributor will deal with the MEP directly – given that the trader may have a limited ability to ensure that certain Appendix C requirements are met by the MEP. A default MEP / distributor data agreement would help to enable the more efficient operation of the industry by streamlining the process for distributors seeking data from MEPs directly.

Question 8

Do you agree the proposed Code amendment complies with section 32 of the Act?

Meridian agrees that the proposed amendments fit within the exceptions in s 32(4) of the Act.

Question 9

Do you have any comments on the drafting of the proposed Code amendment?

Meridian has several suggestions in respect of the drafting of Appendix C of Schedule 12A.1 of the Code (the data template), which are set out below:

- **Clause 2:** Per our comments above in response to question 7, Meridian suggests that there may be benefit in a standard form written notice request for data which addresses all the matters in clause 2 (and preferably with clear statements around proposed data combinations) which distributors could complete and send. This could be combined with the clause 20 form so that there is a single process to request data.
- **Clause 2(e):** In clause 2(e) it could be preferable to delete “at monthly intervals” and replace with “and at what interval that Data is to be supplied”, or similar wording, so that the distributor has the flexibility to set the periods of the ongoing supply.
- **Clause 3(1):** it may be preferable for the trader to be allowed to provide the requested data itself (i.e. without involving the MEP), if it is able to do so quickly and efficiently. Suggested wording is to add “supply or” to the beginning of clause 3(1)(a). It also may be preferable to require that the obligation to meet the request is on the trader in the first instance, unless the trader agrees that the distributor will procure directly from the MEP. Suggested wording is to add “, if the trader agrees, “ between the words “or” and “authorise”.
- **Clause 3(2):** In clause 3(2) it may be preferable for the distributor to be able to set the frequency of ongoing supply (as opposed to being restricted to monthly intervals).
- **Clause 3(2) and (3):** Meridian notes that these responsibilities are difficult for the trader to meet if the data is being obtained directly from the MEP – particularly where the distributor has simply been authorised to procure the data from the MEP. The drafting should clearly state that the Trader is not responsible for the matters under clause 3 where data is procured directly from a MEP. This would be equivalent to the acknowledgement in clause 3(4) that the trader is not responsible for delays beyond their control.
- **Clause 3A:** This clause is drafted to cover requests under clause 2 but then refers to requests under clause 4 as well. This appears to be an error. The additional text in subclauses (a) and (b) should be deleted to avoid the internal inconsistency. Meridian also considers that it is preferable for this clause to be positively framed (i.e. “must be provided if the following are met”).
- **Clause 6:** As the MEP is not a party to Appendix C, the drafting of clause 6 should not put an obligation on the MEP to provide a quote. It may also be preferable for this clause to not apply where the Distributor has been authorised to procure from the MEP directly (in which case those two parties should be left to sort out cost arrangements on their own terms).

Meridian also notes that as currently drafted, distributors are required to update their DDAs within 15 days of the amendments (under new 11A, 12(1A), and 12B of Schedule 12A.4), but are also subject to obligations to consult with participants under 6(2) and 12(2) of Schedule 12A.4. These obligations may be difficult for distributors to balance and Meridian notes that it would be content with distributors being given more than 15 days to update their DDAs and make them available on websites.

On the related topic of the adoption of the amended Appendix C, Meridian's understanding is that clause 7(2) of Schedule 12A.1 allows the trader or distributor to adopt the amended Appendix C by notice to the other party (as if for any other data arrangement adoption). We do not understand there to be anything in the proposed amendments governing how alternative data arrangements will be impacted specifically and so this clause 7(2) mechanism is how the Appendix C modifications are intended to make their way into practice. If this is not the intention, then we suggest that clarification of how the changes should be adopted would be a useful thing to have from the Authority.

Concluding remarks

This submission is not confidential and can be released in full. I can be contacted to discuss any of the points made.

Nāku noa, nā



James France

Legal / Regulatory Counsel