Northpower, Top Energy and Counties Energy joint submission proposed changes to the default distribution agreement template

Submission to the Electricity Authority

1. Introduction

Northpower, Top Energy and Counties Energy appreciate the opportunity to submit to the Electricity Authority (**Authority**) on proposed changes to the DDA.

Northpower is a trust-owned company, our electricity distribution business connects consumers to our electricity network in the Whangarei and Kaipara districts, operating and maintaining a network to more than 62,000 connected customers.

Top Energy is a trust-owned electricity distribution company which distributes power to the consumers of the Far North operating a distribution and transmission network to 34,000 consumers.

Counties Energy is a trust-owned company that owns and operates the electricity distribution network that services over 49,000 homes, farms and businesses in a fast-growing, but diverse, region that stretches coast to coast between southern Papakura and Mercer and west of the Waikato River from Mercer to Waikaretu.

2. Executive Summary

We support the Electricity Networks Association submission.

We make further submissions. In summary, we:

- **support** the proposed changes regarding consumption data but we strongly recommend a major rehaul of the regime to achieve the intended benefits;
- **disagree** with the proposed changes to the recorded terms and schedule 1. Our position in relation to each clause is summarised in a table below; and
- **partly support** clarification to the processes handling changes to the DDA. We have concerns around the effective date and consultation process.

Our responses to the Authority's questions are set out in an **Appendix**.

3. Consumption Data

*We **support** the changes regarding consumption data but we strongly recommend a major overhaul of the regime to ensure distributors can plan and future-proof their networks for efficiency and the long-term benefit of consumers.*

We support the proposed changes to permit distributors to combine consumption data with other data or databases without requiring prior agreement, for the purpose of developing distribution prices and/or planning and managing the distributor's network to provide distribution services.

However, we believe this does not address the key issue and information that distributors need to better plan and manage their networks. To better understand the constraints on their networks, affordable access to voltage and current data are crucial in addition to kWh consumption data. The current approach, even with reform, is inefficient and prejudices consumers. Ultimately the end consumers will need to meet the costs and it is key to avoid or

minimise duplication where this can be achieved for the long-term interests of consumers while enabling distributors to access data key to supporting good network planning.

In addition, the current definition of “consumption data” in the DDA is not clear on whether it refers only to kWh data (used for retail billing purposes) or whether it also includes the associated voltage and current information captured by the metering devices. Changes to the DDA need to make it clear that distributors can access all network operational data from the metering providers under these DDA provisions, in order to enable distributors to effectively plan and manage their network.

We encourage the Authority to investigate the potential for the establishment of a central repository for the storage of consumption data as a sensible solution. This repository could be implemented, managed and maintained by the Authority and its contents could be readily accessed for use for approved purposes via API. Not only would such a central repository address the issues highlighted, it would also enable a smooth transition to timely, cost-effective data being available in circumstances where multiple traders provide services at a single ICP.

4. Recorded Terms

*We **disagree** with the proposed changes to the recorded terms and schedule 1 for various reasons. Our position in relation to each clause is summarised in a table below followed by further explanation of the position.*

Summary

Our position in relation to each clause is summarised below. The clauses in red are of significant concern to us.

	Outside Authority's jurisdiction	No evident/current issue	Poor cost benefit justification	Poor solution	Not opposed in principle
Clause 4.8 Distributor to schedule to minimise disruption		x	x		
Clause 4.11 Distributor to restore Distribution Services		x			x
Clause 4.12 Trader's remedy	x	x		x	
Clause 5.7 Maintenance of Load Control Equipment		x			x
Clause 5.8 Maintenance of Load Signalling Equipment		x			x
Clause 7.3 Price changes	x	x			
Clause 9.5 Other invoices		x			x
Clause 9.10 Refund of charges	x	x	x	x	
Clause 14.1 Provisions in Customer Agreements		x			x
Clause 14.2 Customer concerns about power quality		x	x	x	
Clause 24.5 Distributor not liable		x	x	x	
Clause 26.2 Claim against Trader in relation to breach		x			x
Clause 33.2 Definitions		x			x
Schedule 1 Service Standards		x	x	x	
Schedule 5 Service Interruption Communications		x			

Explanation of our position

Outside the Authority's jurisdiction

Some proposed changes regulate matters within the Commerce Commission's (Commission) jurisdiction under Part 4 of the Commerce Act 1986:

- clause 7.3 (price changes): is directly related to the Commission's power to determine prices and revenue; and
- clauses 4.12 (trader's remedy) and 9.10 (refund of charges): infringe on the Commission's exclusive jurisdiction in relation to determining prices and revenue because they prevent distributors from charging prices for providing distribution services to traders in circumstances where supply is interrupted.

No evident/current issue

The proposal assumes that maximising consistency in recorded terms will lower the costs faced by traders wanting to compete for customers on distributors' network but there is no evidence that the current DDA terms have resulted in negative outcomes.

On the contrary, since the DDA was introduced, we have not had any experience in which traders have undertaken lengthy negotiations or raised concerns with clarity, duplication, or ambiguity in relation to the recorded terms.

Further, the paper appears to target consistency at the expense of the full statutory objective which is to achieve long term benefits for customers. On the contrary:

- Customisation in recorded terms allows distributors to set terms that support an efficient operation of the network. Each distributor's network is unique with its own environmental conditions, socio economic conditions, rural/commercial/residential numbers and spread.
- For example, Northpower, Counties Energy and Top Energy regularly seek feedback from end consumers on pricing and levels of service and quality expected through annual consumer satisfaction surveys. The results consistently show that consumers want Northpower, Counties Energy and Top Energy to maintain the current service levels at the same price.

We also disagree with the Authority's logic that one distributor's decision to offer a recorded term that is considered favourable by the Authority justifies imposing it on all distributors or is evidence that there is an issue that needs to be regulated for in the DDA. As noted above, decisions regarding recorded terms are made by distributors in the context of all circumstances, including the preferences of their consumers.

Poor cost benefit justification

Whilst we acknowledge the Authority's assessment of the costs and benefits of the proposed changes, we have concerns regarding the approach.

First, the cost benefit analysis has taken an aggregated approach rather than focusing on the costs and benefits of each change and, as a result, individual clause changes appear to be justified when in fact the cost exceed the benefits. By way of example, even if the analysis is accepted, there would be a net cost if the benefit from the consumption data amendment is separated out. We do not support the strategy whereby justified consumption data changes

are used to prop up unjustified other changes. Each proposed change needs to stand on its own merit.

Secondly, the analysis has not considered the cost of a number of key changes. For example,

- to meet the requirements under proposed clause 9.10 (refund of charges), the costs to set up and enhance our faults and billing system to be able to capture such accurate and detailed data in order to issue refunds have not been considered by the Authority and it will be much higher than the amount of refund itself which could be as low as few dollars per ICP. We predict our costs could be materially significant. We note net cost increases will be on charged to customers through increased operating expenses. We cannot see any evidence that this is in their long-term benefit or that it improves competition or efficiency.
- to meet the requirements under proposed clause 4.8, 14.2 and schedule 1, distributors will need to incur additional planning and resources to schedule planned service interruptions as required and to investigate all concerns raised by traders and customers, costs of which have not yet considered by the Authority's cost benefit analysis. Similar to above, the cost increase will be on charged to customers which is not in their long-term benefit particularly when this does not present any current issue.

Poor solution

Liability provisions

While we generally support clarification of the liability provisions in the DDA (noting customisation across distributor's DDA's is itself not an issue), we consider that the change proposed to clause 24.5 only perpetuates the existing issues and does not solve the underlying issue. We would support an appropriate review and overhaul of the liability drafting or even engagement with/direction from the Authority as to what the current drafting is intended to mean.

If clause 24.5 is to be amended, we request that the wording be adjusted and a new clause 24.5(d) be added as follows (highlighting identifies adjustment/new wording):

*24.5 **Distributor not liable:** Except as provided in clause 25 (but despite any other provision in this Agreement), the Distributor will not be liable for:*

(c) any momentary fluctuations in the voltage or frequency of electricity conveyed or nonconformity with harmonic voltage and current levels; or

(d)

(i) any liability arising out of a claim against the Trader by a Customer to the extent the liability could have been avoided had any contract between the Trader and Customer excluded, to the extent permitted by law, all liability of the Trader in respect of the provision of services, or conveyance of electricity, to the Customer; or

(ii) any liability to the extent that it arises out of the Trader's breach of this Agreement, negligence or failure to exercise Good Electricity Industry Practice.

Remedy and refund

Clauses 4.12 and 9.10 are also a poor solution. We do not agree that the Authority needs to mandate a process for refunds, particularly given that distributors who do not currently offer refunds will set the quantum at $0. In any event, there are already solutions in primary legislation (such as the Consumer Guarantees Act) to protect customers who cannot absorb/price their risk commercially.

Further, these provisions take a simplistic view of different customer groups and causes of service interruptions:

- The proposed clause makes no distinction between customer groups. However, the network has evolved to meet security of supply levels sought by customers over decades. For example, commercial customers choose the level of service that they require and pay accordingly for it. Those that require additional resiliency will have engaged with the network for options, including paying for n-1 security.
- Service interruptions are due to a number of reasons, often outside of the control of the distributor (including adverse weather, third party interference, vegetation). The proposed clauses provide no carve out for these events and fail to recognise that during these events the distributor is incurring significant cost to remedy the damage to the network to restore service. For example, during Cyclone Gabrielle, the costs to remedy were well over $7M collectively for our networks. Adding an additional service credit on top of that only adds to the cost burden recovered from consumers.

In many cases, the transaction cost alone to process minor refunds will be higher than the refund itself. There is no obligation in the DDA for traders to pass on repayments to end customers, which defeats the purpose of the clause. Even if mandated, traders would also face the issue/be concerned about the transaction cost to them being too great and ultimately having the effect of driving up prices to end consumers.

We do not agree either clause will provide a net benefit to customers, who will through pricing, fund these refunds as a collective through higher operating costs for distributors.

In addition, many distributors are quality controlled and are regulated by the Commerce Commission for acceptable quality standards. The Authority should not be mandating refunds where the overall quality may be acceptable within other regulatory limits. There is also a risk that some distributors may pay twice for some outages which is not justifiable.

Power quality

The proposed change to clause 14.2 and schedule 1 would require distributors to take on unreasonable cost and process to investigate any and every concern raised about power quality. The clause does not provide a threshold or discretion for distributors to decline to investigate clearly vexatious or trivial issues or a sliding scale to reflect that different events would require different levels of investigation.

Not opposed in principle

Despite the above, we do not oppose certain changes in principle. However, this is not agreement that the changes themselves are appropriate or necessary – for example, these

changes seek to solve perceived problems that do not exist and therefore is poor regulatory practice.

5. Proposed changes to Schedule 12A.4 (processes of handling changes to DDAs)

*We **support** the proposed changes to Schedule 12A.4 as it further clarifies the processes of handling changes to DDAs by the Authority.*

However, we are concerned around the timeframe and practicality of the effective date of changes where the proposal states that existing agreements are deemed to be amended accordingly with effect from the 15th business days (or such longer period as the Authority may allow). In cases where the Authority does not allow longer period, 15 business days is insufficient for Distributors to implement any changes to meet new requirements which often involves new process/system design, implementation and testing that can take from a few months to even a few years depending on the scale of the change. Therefore, we believe, at a minimum, the Authority should engage further with EDBs to understand what reasonable periods would be.

In addition, we question the necessity of EDBs being required to consult with affected participants when the changes of operational terms are initiated by the Authority as the Authority will undergo extensive consultation as part of the Code change process. Therefore, we believe distributors should only consult with affected participants when the proposed change of an operational term is initiated by the distributors themselves.

6. Appendix Consultation Paper Questions

Questions	Comment
Q1. 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?	Whilst we support the Authority's intended approach to ensure that amendment is justified before the Authority and participant resources are committed to change, we do not agree with Issue 1. We are concerned that many proposed changes react to issues which it seems the Authority perceives exist but of which there is no evidence. Distribution businesses should be able to customise recorded terms to reflect their unique circumstances including the: - preferences and socio-economic status of their consumer-base; - ratio, density and location of consumer types (residential/rural/industrial); - the natural resources, environmental factors and hazards; and - the connected infrastructure of other industry participants. Further feedback is provided above under Section 4 - No evident/current issue
Q2. Do you have any feedback on the Authority's assessments of changes to recorded terms, as set out in Appendix B and Appendix C?	Yes. Please see above Section 4.
Q3. Do you agree Issue 2 is worthy of attention?	Yes, we support the change although we note that the compliance costs savings are probably low and immaterial.
Q4. Do you agree Issue 3 is worthy of attention?	Yes, we consider that the current process for the provision of consumption data is inefficient and that any improvement to allow Distributors efficiently obtain and use data to properly plan their networks will benefit all. Please refer to Section 3 above for further feedback.
Q5. Do you agree with the objective of the proposed Code amendment? If not, why not?	We do not agree with 5.1 (a) as outlined above in Q1 and Q2. We disagree with 5.1(b) if it is used to justify the imposition of customised terms on all distributors, restricting the ability for distributors to operate and plan their networks to suit the relevant network environment / circumstances and consumer feedback. We agree with 5.1 (c) but note the net benefit to the change is immaterial. We agree with 5.1(d).
Q6. Do you agree the benefits of the proposed Code amendment outweigh its costs?	We do not agree. Please refer to Section 4 – Poor cost benefit justification for further details.

Q7. 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.	We think the proposed Code amendment should be limited to issues that, on an individual basis, have a clear evidenced justification for change and a clear net benefit.
Q8. Do you agree the proposed Code amendment complies with section 32 of the Act?	No, please refer to the main body of this submission. There are areas we believe that are outside of the Authority's jurisdiction and areas that do not present a current issue, or do not improve the outcomes to consumers, therefore it would be inefficient to change something that is working which would also result in a net cost in the cost benefit analysis.
Q9. Do you have any comments on the drafting of the proposed Code amendment?	Please refer to the main body of this submission.

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