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14 November 2023

Submissions

Nova Energy Limited
PO Box 3141, Wellington 6140

By email: DDA@ea.govt.nz

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

Nova supports the Authority's proposal to replace Recorded Terms in the Default Distributor Agreement (DDA) template with Core Terms.

The process of engaging in the DDA consultation process with distributors was somewhat more complex than anticipated. That was primarily due to the extent of variations adopted by distributors away from the Authority's template agreement. Recorded Terms which favoured the distributor were included in the DDA, while terms which favoured the retailer were omitted, or amended in such a way that retailers are exposed to potential claims from consumers.

Replacing the existing Recorded Terms with Core Terms will ensure more even-handed contracts and better consistency across all DDAs. They will also be easier for new entrant retailers to adopt, as per the Authority's intent when it sought to standardise agreements for distribution services.

Responses to the Authority's questions are appended to this letter.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Paul Baker", written in a cursive style.

Paul Baker

Commercial & Regulatory Manager

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

| Q No. | Question | Response |
|-------|--|--|
| 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? | <p>Yes.</p> <p>It became apparent during the process of ‘negotiating’ the DDAs that distributors were in many cases comparing their draft recorded terms and adopting any draft terms that minimised the responsibilities of the distributor. In some cases this led to agreements that are more favourable to the distributor than the original UoSA that the DDA replaced.</p> <p>Replacing Recorded Terms with Core Terms will also give more consistency across DDAs.</p> |
| 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? | <p>Nova proposes changes to Clause 9.10 of the DDA - Refund of charges.</p> <p>The practice of Distributors continuing to apply network charges during extended lines outages is a important issue in the context of the service that consumers receive and are paying for. The proposed changes and reasoning is as follows:</p> <ul style="list-style-type: none"> a) Force Majeure Events (Clause 21) - It is logical that Distributors should not be liable for third party costs caused by Force Majeure Events, but such events should also not give Distributors the right to continue to charge consumers for services that are not delivered or received. Clause 9.10 should therefore include a provision that network charges shall not continue for ICPs impacted by a Force Majeure Event. b) As raised by ERANZ, clause 9.10 should also be expanded to include declared states of emergency where a customer cannot access their electricity supply because their property is red or yellow stickered, irrespective of the condition of the network connection. The Distributor will generally have information about such designations, and when they change, before the Trader becomes aware. c) These propose amendments to clause 9.10 will provide the Distributor an incentive to maintain a higher level of resilience in their networks than they might otherwise deem reasonable. To the extent that Distributors face a loss of income through disasters they can cover a degree of those risks through insurance. |

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| | | <p>d) Traders should not be required to request that “the Distributor refund such charges”. The Distributor will be fully aware of faults on their network affecting customers for extended periods and the ICPs affected. They should not require a request from the Trader to refund any charges that would normally apply. (Distributors would still be welcome to check with Traders to confirm any data and ascertain whether in any particular circumstance the quantum of credits involved justify the work required to process the refund.)</p> <p>e) Naturally there would be an expectation that Traders would pass on any refund of network charges to the consumers affected by an extended fault or Force Majeure Event.</p> |
| Q3 | Do you agree Issue 2 is worthy of attention? | Yes. The process of submitting DDA’s to the Authority has largely achieved its objective. It is now appropriate to adopt a simpler process of supplying documents on request. Under the alternative, submitting a new round of amended DDAs will generate a lot more compliance activity for little benefit. |
| Q4 | Do you agree Issue 3 is worthy of attention? | <p>Yes. Nova also agrees with the problems identified in the Consultation Paper.</p> <p>Nova has been in favour, in principle of allowing distributors access to consumption data for network planning and management purposes. In practice, it has been problematic and time consuming to ensure both the appropriate documentation has been in place and the terms of an amended version of Appendix C of Schedule 12A.1 are consistent with the party’s expectations. It has also been an issue of ensuring the data can be delivered in a cost effective manner.</p> <p>It is more convenient from a retailer’s perspective to authorise the MEP to release the data to the distributor. When this is not an option, there is more complexity because Nova’s systems are not set up to efficiently extract and deliver the data to distributors, and acting as a commercial intermediary contracting the MEP to provide the data has its own complexities.</p> |
| Q5 | Do you agree with the objective of the proposed Code amendment? If not, why not? | Nova agrees with the objective. |

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| Q6 | Do you agree the benefits of the proposed Code amendment outweigh its costs? | <p>Yes, the benefits should be significant.</p> <p>The initial development of the DDA did help address some significant anomalies in a small number of UoSAs, but outside that, for the amount of work involved the gains were less than desired because of the way in which the Recorded Terms were determined.</p> |
| 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. | <p>Yes.</p> <p>It is important that the complexities of sharing retail consumption data are resolved, particularly as distributors need to plan for the number of EV chargers, solar PV installations etc. which are expected to be installed.</p> |
| Q8 | Do you agree the proposed Code amendment complies with section 32 of the Act? | Yes |
| Q9 | Do you have any comments on the drafting of the proposed Code amendment? | To ensure there is no room for doubt, the Code should specify that with any use of consumption data there must be protections in place to ensure confidentiality and that individuals' privacy is not breached. |