



15th August 2013

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Dear Sir or Madam

Mighty River Power appreciates the opportunity to respond to the Electricity Authority's: *Arrangements to manage a Retailer default situation dated 18 June 2013*. No part of this submission is confidential and we are happy for it to be made publicly available.

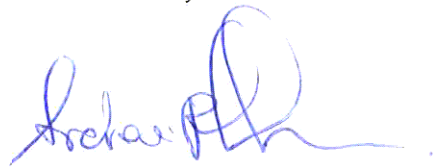
Overall our view is that the proposed arrangements to manage a retailer default situation are a considerable improvement on the current position under the Code and we appreciate the obvious efforts of the Electricity Authority and Retail Advisory Group in this area.

A couple of general comments are set out below, with our specific comments set out in the attached Appendix A. We consider:

- a) there would be merit in engaging with the Privacy Commission (to the extent that has not already occurred) to ensure the obtaining, sharing and disclosure of customer information to various parties, as contemplated by the proposed arrangements, complies with the Privacy Act and the Privacy Commission's statutory objectives; and
- b) that assigned customer contracts should be on a recipient retailer's 'normally offered' terms (including price), as offered at the date the Authority was notified of the default, or on more favourable terms. It should be made clear, through the amending Code, that in relation to pricing this should be interpreted as the retailers published headline price in the appropriate network region, and not any promotional or special price offered at that time.

Should you require additional information or wish to discuss our response further, please contact Monica Choy on (09) 308 8271 or [monica.choy@mercury.co.nz](mailto:monica.choy@mercury.co.nz)

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Andrew Peckham', with a large, stylized initial 'A' and a horizontal flourish extending to the right.

Andrew Peckham

Operations Manager

Question No.	General comments in regards to the:	Response
1	Has there been any development since submissions were received on the problem definition developed by the RAG that might warrant the Authority reconsidering its view as to the nature of the problem?	No
2	Do you agree with the objectives of the proposed amendment? If not, why not?	Yes
3	<p>Do you agree with the proposed Code amendment which would introduce a new category of default when the following conditions are satisfied:</p> <p>a. the retailer is no longer entitled to trade on a distribution network because its use of system agreement has been terminated due to a 'serious financial breach' by the retailer</p> <p>b. no unresolved disputes remain between the retailer and the distributor</p> <p>c. the retailer has not taken timely steps to arrange a customer switch</p> <p>d. the distributor has been unable to remedy the situation</p> <p>e. the distributor requests the Authority to initiate its process for managing an event of default.</p>	<p>Yes – however we consider the words in bold should be added to Q3(b) of the Consultation paper, with corresponding changes to the Code (see our response to Q28), so that it reads:</p> <p>"no unresolved disputes <b>in relation to the serious financial breach</b> remain between the retailer and the distributor"</p>

<b>Question No.</b>	<b>General comments in regards to the:</b>	<b>Response</b>
4	Do you agree that the proposed Code amendment should apply not only to the network or networks across which the event of default has occurred? If not, why not?	Yes. The proposed Code amendment should apply to all networks in which the retailer operates.
5	Do you agree that the trigger for the actions to be undertaken by the Authority should be limited to a breach of sub-clauses 14.55(a), 14.55(b), 14.55(f), and (the new) 14.55(h)? If not, why not?	Yes
6	Do you agree that the process for managing a retailer default should ensure that responsibility for all ICPs of the retailer in default, active and inactive, are transferred to another retailer? If not, why not?	Yes
7	Do you agree that the process should accommodate situations where the default might not be resolved but an acceptable resolution has been agreed and all payments that should have been made have been made? If not, why not?	Yes
8	Do you agree with the judgement arrived at by the RAG that a total period of 17 days for managing an event of default would provide a reasonable balance between the costs of too short a period and the costs of an extended period? If not, why not?	Yes

<b>Question No.</b>	<b>General comments in regards to the:</b>	<b>Response</b>
9	If a period of 17 days is maintained, should this time be allocated as follows: seven days for a retailer to resolve the dispute or transfer its customer base, seven days for customers to voluntarily switch to another retailer, and a maximum of three days for communication with customers and ensuring all switches are processed?	Yes
10	Do you agree that the Code should be amended to require a retailer in default to provide information on its customers to the Authority and for the Authority to obtain this information from distribution networks and the registry if the information is not forthcoming from the defaulting retailer? If not, why not?	Yes – see comments in our covering letter in relation to obtaining, disclosing and sharing information.
11	Do you agree that the Code should be amended to provide for the registry to complete the switch of any customer of a retailer in default that chooses to switch to another retailer, if the retailer in default does not meet its obligations under the switching rules? If not, why not?	Yes

<b>Question No.</b>	<b>General comments in regards to the:</b>	<b>Response</b>
12	Do you agree that the Code should be amended to provide for the Authority to direct the registry not to complete the switch of any customer to a retailer in default after the Authority has advised the customers of that retailer that their retailer is in default and they should transfer to another retailer? If not, why not?	Yes. However, we see no reason to wait until day 7 of the process. In our view the retailer in default will have reached a "point of no return" at day 1 of the process. Allowing switching to continue until day 7 of the process simply allows the scale of the customer base, which will eventually be unwound, to grow.
13	Do you agree that the Authority should advise retailers and other interested parties that an event of default has occurred, and if it considers appropriate, identify the entity in default, to enable these parties to make necessary preparations? If not, why not?	Yes. This will enable retailers to prepare for a likely increase in switching related activities and also enable retailers to consider their intentions if tenders were invited by the Authority.
14	Do you agree that the Code should provide for the Authority to communicate directly with the customers of the retailer in default, including via mass media? If not, why not?	Yes. Other retailers should be informed first so that their customer service channels (call centres, Web, mobile etc) can expect and prepare for a potential increase in customer contact volumes.
15	Do you agree that the Code should provide for the Authority to provide customer information to the retailers to whom it transfers customers, should a mandatory transfer be required? If not, why not?	Yes – see comments in our covering letter in relation to obtaining, disclosing and sharing information.

<b>Question No.</b>	<b>General comments in regards to the:</b>	<b>Response</b>
16	Do you agree that the Code should be amended to require that contracts between the retailer and its customers provide for the Authority to assign the contract to another retailer if an event of default is unresolved after 17 days? If not, why not?	Yes
17	Do you agree that the terms offered by recipient retailer (who is assigned customers by the Authority) should be those terms (including price) normally offered by the recipient retailer at the date the Authority was notified of the default? If not, why not?	Yes. Provided that "normally offered" is interpreted to be the retailers published headline price in the appropriate network region, but not any promotional or special price offered at that time. Taking a very large number of customers at a promotional or special price could unbalance a retailer's portfolio and place undue financial burden or risk on the recipient retailer.
18	Should the arrangements for managing an event of default provide for the Authority to tender the remaining customer base of the retailer in default after the Authority had exercised its rights to assign the contract on the terms of the recipient retailer? If not, why not?	Yes
19	If a tender arrangement is provided for, should the Authority invite tenders on the basis of the prices that would be charged to the customers by the recipient retailer (but no higher than standard terms offered by that retailer) with the Authority assigning the customers on the basis of the lowest priced retailer? If not, why not?	Yes. But the mechanism for deciding allocation needs to be clearer.

<b>Question No.</b>	<b>General comments in regards to the:</b>	<b>Response</b>
20	Do you agree that, should the Authority be required to allocate customers of the retailer in default, it should do so on the basis of market share in the relevant networks but without any de minimus threshold? If not, why not?	<p>We believe that the RAG's 10% de minimus threshold should be retained. It is likely that even the most highly competitive networks will still have one or two retailers who have more than 10% share, accompanied by portfolio strength to take on a defaulting retailer's customers.</p> <p>Perhaps the 10% de minimus threshold should be ignored where it is a retailer with more than say 25% share which fails. We believe that this would help spread the "portfolio shock" more evenly among retailers in the event that the failed retailer is among the largest retailers on the network.</p>
21	Do you agree that the arrangements for managing a retailer default should provide an opportunity for any retailer that is assigned customers to object on the basis that the assignment would threaten its financial viability, with the onus on the retailer to substantiate such a claim? If not, why not?	Yes
22	Do you agree that the Code should require that the recipient retailer is responsible for notifying their assigned customers that they were now a customer of the recipient retailer, and advising the terms and conditions of their new contract? If not, why not?	Yes



<b>Question No.</b>	<b>General comments in regards to the:</b>	<b>Response</b>
23	Do you agree that the Code should require that contracts between retailers and their customers should include provisions that: provide for the retailer to give customer details to the Authority in the event of a default; allow the contract to be assigned by the Authority in the event of default, with the terms and conditions to be replaced by the recipients retailers terms and conditions; provide for the retailer to assign the contract? If not, why not?	Yes
24	Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act? If not, why not?	Yes
25	Do you agree that a period of 17 days strikes the right balance to achieve the benefits of an arrangement for managing an event of default while minimising the costs of achieving those benefits? If not, what period of time should be specified and why?	We have no reason to suggest an alternate analysis of economic cost or associated timings. The proposed timeline seems reasonable.
26	Do you agree that the benefits of the proposed arrangements would exceed the costs? If not, why not?	Yes
27	Do you agree that the proposed arrangements meet the Authority's Statutory Objective? If not, why not?	Yes

Question No.	General comments in regards to the:	Response
28	Do you have any comments on the drafting of the proposed amendment?	<p>Yes. We consider the following change ought to be made:</p> <p>The words <i>"in relation to the serious financial breach"</i> should be added after the word "termination" in clause 14.55(h)(ii) of the draft proposed Code</p>