

think differently



20 August 2013

Submission
Electricity Authority
PO Box 10041
Wellington 6143

By email: submissions@ea.govt.nz

Dear Sirs

Re: Consultation Paper – Arrangements to manage a retailer default situation

Thank you for the opportunity to provide feedback on the discussion paper on the arrangements to manage a retailer default situation.

Our response to the discussion paper is appended to this letter. Please feel free to contact me if you wish to discuss our views further.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Paul Baker".

Paul Baker
Commercial & Regulatory Advisor

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Submitter: Nova Energy

Number	Question	Response
Q 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?	-
Q 2	Do you agree with the objectives of the proposed amendment? If not, why not?	No. The objectives should also ensure that: <ul style="list-style-type: none"> a) There is no moral hazard created that insulates consumers from the choices that they make when selecting an electricity retailer, and b) The interests of providers of capital to retailers need to be taken into account in a default situation, i.e. if any value in a defaulting retailer's customer base is to be dissipated on default, then retailer's will find it harder to raise capital. The EA should be required to capture the best available value from the defaulting retailer's customer base.
Q 3	Do you agree with the proposed Code amendment which would introduce a new category of default when the following conditions are satisfied:	Yes
Q 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
Q 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?	-
Q 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
Q 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

Q 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
Q 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
Q 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
Q 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
Q 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
Q 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

Q 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, but only after the first seven days and in the event that the default retailer has not been able to sell its customer base. Otherwise the EA's communication will immediately devalue the default retailer's customer base and leave creditors of the defaulting retailer worse off.
Q 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
Q 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?	This requires more consideration as many commercial and industrial customer contracts specifically exclude any rights of transfer without the prior agreement of the customer.
Q 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?	No. Such a condition creates a moral hazard that electricity consumers do not need to take into consideration the potential viability of their supplier before switching. In the event the recipient retailer charges a premium, then they can expect to lose the retail account in any case, so competitive pressures can be expected to apply. Should wholesale prices be so high that retailers are reluctant to accept new retail customers, then their offered prices should reasonably be able to reflect that.
Q 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?	The process of tendering is appropriate, but as discussed in Q.2, the basis should be on extracting the highest value for creditors. The concept of the fixed term seems impractical as the retailer is unlikely to be able to recover any charges from customers that choose to switch early.
Q 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?	No. The allocation should be based on the highest price offered to procure the customers, irrespective of the tariffs that the recipient retailer intended charging. The issue of comparing terms is complex in any case, with different tariffs competitive at different customer types and demand profiles. Service levels and the financial strength of the retailer are also a significant part of the mix.
Q 20	Do you agree that, should the Authority be required to allocate customers of the retailer in default, it should do so on the	Yes

	basis of market share in the relevant networks but without any de minimus threshold? If not, why not?	
Q 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, however, the retailer should not have to substantiate the claim. That creates a requirement for a level of disclosure and financial risk that may in itself threaten the viability of the retailer in question.
Q 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.
Q 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?	Refer to Q.16. Some customers may wish to exclude such provisions from their contract with their retailer and they should have that right.
Q 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?	
Q 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?	Yes

Q 26	Do you agree that the benefits of the proposed arrangements would exceed the costs? If not, why not?	We are not sure if this is true because retailers may incur a higher cost of capital under the changes as proposed. These costs have not been factored into the calculations.
Q 27	Do you agree that the proposed arrangements meet the Authority's Statutory Objective? If not, why not?	Largely, however the discussion does not consider the retailer's cost of capital. A customer base represents a major asset for a retailer and if there is a risk that the value of this asset is lost in the event of default then creditors of the retailer will naturally discount that when providing capital to the retailer, i.e. the cost of capital goes up and the cost of competing in the electricity market is increased. This will have a flow on effect to retail margins.
Q 28	Do you have any comments on the drafting of the proposed amendment?	