

30 August 2013

Electricity Authority
PO Box 10041
Wellington 6143

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

To Whom it May Concern,

Pulse Utilities New Zealand Limited is pleased to provide feedback on the Electricity Authority's arrangements to manage a retailer default situation consultation paper.

Pulse appreciates the efforts of the Electricity Authority to remove barriers to competition and improve the efficiency of the operation of the industry. We believe that providing industry participants with certainty on the processes to be followed in the event of a retailer default will deliver positive results. In particular in respect to the current process uncertainty that is resulting in the level of security required of participants being excessive.

Pulse is generally in support of the suggested changes. In brief we request the following improvements:

1. We request that a maximum of seven day exit period is allowed for, which would maintain market security whilst increasing competition. We have observed common practice in the industry to switch customers to an earlier pre-determined date. Any time delay required by a tender process and re-assignment of customers to retailers could therefore be resolved by requiring the switch date for customers to new retailers to be the date of default. This could arguably completely remove the need for security to cover an exit period.
2. Pulse requests that the suggested phase 2 of the process, being notification by the Authority to customers be removed. We believe that the suggested notifications from the Authority to customers could destroy the value of the customer base. Pulse recommends that the process moves directly to the proposed phase 3 tender and reassignment step.
3. Pulse objects to the addition of breaches under distributor use of system agreements being included as a retailer event of default.

Distributors are monopoly businesses, with protected revenue and an ability to contract directly with customers if they so elected. It is therefore not reasonable to provide distributors with more market power than any other commercial supplier. A financial breach with a distributor does not jeopardise the wider operation of the market settlement processes. Distributors are already able to initiate action against a retailer by means of normal commercial practices.

The existing market design does not recognise the additional risks to retailers under the current code that enables distributors to call up to 2 months of security on a 5 day notice. In our view the ability of a distributor to increase its security requirements from nil to 2 months

on a 5 day notice is impractical and adds an unnecessary financial risk to smaller retailers and the industry.

Pulse remains in favour of limiting distributor's security to 2 weeks as was suggested by the Authority in the initial consultation on distributor prudentials.

Kind regards



John Cilliers
Chief Financial Officer

Question	Response
Q1 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?	Not to our knowledge
Q2 Do you agree with the objectives of the proposed amendment? If not, why not?	Yes. We would suggest including in item (c) that improving the confidence of industry participants would also reduce the need for excessive prudentials. We suggest removing item (d) as it is superfluous in the context of the other objectives.
Q3 Do you agree with the proposed Code amendment which would introduce a new category of default when the following conditions are satisfied: 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 b. no unresolved disputes remain between the retailer and the distributor c. the retailer has not taken timely steps to arrange a customer switch d. the distributor has been unable to remedy the situation e. the distributor requests the Authority to initiate its process for managing an event of default.	No, we disagree. Distributors are monopoly businesses, with protected revenue and an ability to contract directly with customers if they so elected. It is therefore not reasonable to provide distributors with more market power than any other commercial supplier. A financial breach with a distributor does not jeopardise the wider operation of the market settlement processes. Distributors are already able to initiate action against a retailer by means of normal commercial practices, including initiation of liquidation actions. Additional risk is created for retailers under the current code that enables distributors to call up to 2 months of security on a 5 day notice. In our view the ability of a distributor to increase its security requirements from nil to 2 months on a 5 day notice adds an unnecessary financial risk to smaller retailers and the industry. Failure to meet such a call is considered a serious financial breach but is not a reliable indicator that a retailer is unable to pay its debts.
Q4 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?	No, we disagree. The suggestion that retailers would intentionally shift uneconomic network areas into the default process to "cherry pick" profitable customers is an overly simplistic view. A retailer would suffer significant brand damage if the default process is initiated, even if limited to a network.
Q5 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, but not the addition of 14.55. Please refer Q3
Q6 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.
Q7 Do you agree that the process should accommodate situations where the default might not be resolved but an acceptable resolution has been agreed	Yes

	and all payments that should have been made have been made? If not, why not?	
Q8	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?	No. Pulse is requesting a total of 7 days. The notice by the Authority to customers could be removed, thereby reducing the period needed.
Q9	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?	No. The Authority sending a notice to customers, would destroy much of the value in the customers to the defaulting retailer and also to any acquiring retailer. We request that the Authority notice to customers be removed and that the process advances directly to tender and reassignment of customers.
Q10	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, as long as it is used to support notices being sent to customers from the newly assigned retailer and not for notices from the Authority.
Q11	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.
Q12	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?	No. We support the amendment to provide the Authority with the ability to direct the registry to initiate the switch. The second part of the question does not appear correct though. The customer will need to know who their new retailer will be and therefore should have received notice from their new retailer, not from the Authority.
Q13	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.
Q14	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?	No. Such communication would destroy the value in the customers to the defaulting retailer and also to any acquiring retailer. Value is best preserved if the customer is only contacted by the winning retailer of a tender or re-allocation, but this may be on the basis of wording as agreed with the Authority.
Q15	Do you agree that the Code should	Yes.

	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?	
Q16	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.
Q17	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.
Q18	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?	<p>Yes</p> <p>Pulse is concerned that the automatic assignments of remaining ICP's at the end of the process would mean that retailers would not bid to purchase the customers as they can reasonably expect to get the customers for free if the tender process is unsuccessful.</p> <p>The tender process should therefore be confidential. The Authority may also consider determining a minimum value to be paid per customer assigned, which would still result in a relatively low cost per customer acquisition for winning retailers.</p>
Q19	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?	<p>No.</p> <p>The assignment of customers by the Authority should not be based on the lowest priced retailer, but rather on the highest payment value offered.</p> <p>The objective of the tendering process should be to maximise value in the sale of the customers as this maximises the value recoverable to all affected parties.</p> <p>Market competition should not be an objective of the tender. A winning retailer would in any event not be able to hold on to the customers purchased if its terms were uncompetitive.</p>
Q20	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?	Yes
Q21	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
Q22	Do you agree that the Code should require that the recipient retailer is	Yes

	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?	
Q23	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
Q24	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
Q25	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?	No. The 17 day period allows for a separate notice from the Authority to customers which Pulse considers inappropriate. Removal of this step and allowing for customers transferred to be switched backdated to the date of default, would allow for a much shorter period and deliver greater value to all affected participants.
Q26	Do you agree that the benefits of the proposed arrangements would exceed the costs? If not, why not?	Yes
Q27	Do you agree that the proposed arrangements meet the Authority's Statutory Objective? If not, why not?	Yes
Q28	Do you have any comments on the drafting of the proposed amendment?	Pulse requests deletion of the following proposed paragraphs: <u>Part 11</u> 11.15A(1)(c) 11.5.4(2)(b) 11.5.8(1) <u>Part 14</u> 14.55 (h)