



Summary of submissions

Arrangements to manage a retailer default situation consultation paper

8 November 2013

Introduction

- 1 The Electricity Authority (Authority) is proposing to amend the Electricity Industry Participation Code 2010 (Code) to establish arrangements for managing a situation where an electricity retailer does not meet its financial obligations or becomes insolvent (a retailer default situation). The Authority is also proposing to introduce guidelines describing the detailed processes and actions that would be taken in the event of a retailer default situation.
- 2 The need for introducing arrangements to manage retailer default situations arises from the work of the Retail Advisory Group (RAG). The RAG advised the Authority that there is no effective means under the current arrangements for managing a retailer default situation if commercial arrangements failed to achieve a managed exit by the retailer. The absence of an effective process to provide for an orderly retailer exit could result in a number of undesirable outcomes, including mass disconnections of very large numbers of customers.
- 3 The Authority's proposed amendments aim to achieve a number of objectives, but broadly it is expected that the introduction of arrangements for managing retailer default situations will facilitate a commercial solution to a retailer default situation, maintain the confidence of consumers and industry, and minimise the costs arising from a retailer default situation.
- 4 The Authority released a consultation paper, along with draft amendments to the Code and draft guidelines in June 2013. The consultation paper sought feedback on the Authority's proposed Code amendment. This paper provides a summary of the views and points raised by submitters in their submissions.

Submissions received

- 5 The Authority received sixteen (16) submissions on the consultation from the parties listed in Table 1 below.

Table 1 List of parties making submissions

Generator/retailers	Consumers	Network
Contact Energy	Major Electricity Users Group	Orion
Genesis		PowerCo
Meridian		PwC
Mighty River Power		Vector
Nova Energy		WELL
Pioneer Generation		WEL Networks

Generator/retailers	Consumers	Network
Pulse Utilities		
Simply Energy		
TrustPower		

Key themes in submissions

- 6 This section provides a summary of the key comments and themes in submissions:
- (a) Submitters support the proposed arrangements, although some submitters indicated broad support while suggesting changes to specific aspects of the proposal. No submitter identified developments or raised new information that might warrant the Authority making fundamental changes to the proposal.
 - (b) Submitters mostly agree with the Authority's objectives for the proposal.
 - (c) Submitters mostly agree with the criteria for triggering the retailer default process, including introducing a new category of event of default to enable distributors to use the retailer default process (with certain conditions). Some submitters (mostly distributors) suggested changes or clarifications to the conditions for the new category of event of default.
 - (d) Eight submitters support the 17 day period for resolving a retailer default. A number of submitters suggested that the Authority opt for a shorter period. Genesis and PwC believe that 17 days will not be sufficient in some circumstances and there should be scope to extend the period.
 - (e) Most submitters support the Authority keeping the market informed about a retailer default and advising customers of the failed retailer that they should switch. Pulse disagrees that the Authority should advise customers to switch because they would destroy the value of the failed retailer.
 - (f) There is strong support from submitters for the Authority having powers to require distributors and the registry to provide information about the defaulting retailer's customers to the Authority, if this information is not available from that retailer.
 - (g) There is mixed support for the process for allocating remaining customers of the failed retailer, with a number of submitters noting that the process would be overly complex and time-consuming.
 - (h) All individual connection points (ICP) should be allocated. Contact considers that the draft Code would not enable the allocation of un-contracted active-vacant and inactive ICPs for which the failed retailer is responsible.
 - (i) Submitters agree that the recipient retailer should be responsible for advising new customers of contractual terms and conditions, but there were suggestions that the recipient retailer only be required to take reasonable steps to contact their new customers, as they may only have partial information.
 - (j) The period for retailers to amend their customer contracts should be extended to 12 months. Contact considers that requiring retailers to update their contracts to give effect to the retailer default process within six months is impracticable and unreasonable.
 - (k) Several distributors raised concerns about the level of prudential security that distributors may require from retailers.

The Authority's proposed approach are well supported (Question 1)

- 7 All submitters expressed broad support for the Authority's proposed approach. Submissions suggest there is a consensus view amongst all submitters recognising the importance and need for a formal process for managing retailer default situations.
- 8 Whilst a number of submitters expressed the view that changes should be made to the Authority's proposed amendments, no submitter expressly disagreed with the underlying need for a formal retailer default process.
- 9 Further, no submitter expressed the view that there had been any developments since the commencement of the project which warranted the Authority reconsidering its view as to the nature of the problem.

There was general agreement over the objectives of the proposed amendment (Question 2)

- 10 The Authority considers that the proposed amendments to the Code will achieve the following objectives:
- (a) facilitate, where feasible, a commercial solution to an event of retailer default
 - (b) maintain the confidence of consumers that a retailer default situation will not interrupt their electricity supply
 - (c) maintain the confidence of industry participants that a retailer default situation will be resolved in a finite time period, thereby limiting the potential financial losses to other participants in the supply chain
 - (d) minimise, to the extent practicable, the need for participants to individually adopt costly or less efficient measures to mitigate the financial risk of an unresolved event of default
 - (e) minimise the costs to current and future consumers.¹
- 11 The majority of submitters agreed with the objectives of the proposed amendment.² However, three submitters (Meridian, Nova, and Pulse) proposed amendments to the objectives, and one submitter (Orion) expressed limited support.
- 12 Meridian considers that objective (a) should be rephrased by adding in "timely" such that objective (a) would read "facilitate, where feasible, a timely commercial solution to an event of retailer default."³
- 13 Nova Energy expressed the view that the objectives should be enhanced to ensure:
- (a) There is no moral hazard created when consumers go through the decision-making process for their electricity retailer; and
 - (b) The interests of providers of capital to retailers is considered – that is, the Authority should be required to capture the best available value from defaulting retailer's customer base.⁴
- 14 Pulse proposed adding to objective (c) that improving confidence would reduce the need for excessive prudential requirements, and that (d) is superfluous in the context of other objectives.⁵
- 15 Orion expressed qualified support for the proposed objectives, stating that it does not agree with all of the objectives. In particular, Orion considers that in some cases, customer disconnection may be the appropriate response (for example, where a retailer is unable to absorb new customers).⁶

¹ Electricity Authority, 2013, Arrangements to manage a retailer default situation – Consultation Paper

² Contact, Genesis, MEUG, Meridian, Mighty River Power, Pioneer Generation, Pulse, TrustPower, WEL Networks

³ Meridian, p. 5

⁴ Nova, p. 2

⁵ Pulse, p. 3

⁶ Orion, p. 7

Submitters mostly agree with the scope of proposed amendments (Questions 3 – 7)

- 16 As part of its proposal to introduce a formal process for managing retailer default situations, the Authority proposed:
- (a) to amend the Code to introduce a new category of default when certain conditions are satisfied (Question 3);
 - (b) that the proposed Code amendment should apply not only to the network (or networks) on which the event of default has occurred (Question 4);
 - (c) a limited set of trigger events which would allow for initiation of the process to manage retailer default (Question 5);
 - (d) the process should provide for the transfer of all ICPs to a new retailer, not just active ICPs (Question 6); and
 - (e) the process should accommodate situations where the default may not be resolved but an acceptable resolution has been reached (Question 7).

New category of default – ‘serious financial breach’

- 17 Eleven submissions expressed support for the introduction of a new category of event of default (Contact, MEUG, Meridian, MRP, Nova, Orion, PowerCo, PwC, TrustPower, Vector, WEL Networks).
- 18 However, support was not unqualified, with a number of submitters making comments on specific issues in relation to the new category of default.
- (a) PwC expressed the view that “...*the current proposal has a number of short-comings, particularly in relation to the requirement to terminate a UoSA before an Event of Default can be notified.*”⁷ In particular, PwC contend that:
 - (i) terminating a UoSA is likely to be a lengthy process which could prolong the resolution of a retailer default situation;
 - (ii) will mean the distributor will be in breach of section 77 of the Electricity Industry Act 2010;
 - (iii) creates legal and compliance issues and ambiguity if the retailer continues to trade after the termination of the UoSA; and
 - (iv) may affect a distributor’s legal rights to recoup its costs going forward.⁸
 - (b) Contact, Pioneer, Meridian, Mighty River Power, and Pulse commented on the need to include a definition of ‘serious financial breach’ in the Code, noting that whilst the Model Use of System Agreement (MUoSA) defines ‘serious financial breach’, many of the individual UoSAs between retailers and distributors do not adopt the same wording or definitions as the MUoSA.
 - (c) WEL Networks expressed concern that the threshold for ‘serious financial breach’ is too high, noting the absence of a similar threshold on payments to the clearing manager would mean a retailer would favour paying the clearing manager over electricity distribution businesses.⁹
 - (d) Several submitters (Contact, Pioneer,) suggest that the drafting of the condition should clearly connect the “no unresolved dispute” condition with the serious financial breach – that is, there are no unresolved disputes in relation to the serious financial breach that triggered the termination.

⁷ PwC, p. 4

⁸ PwC, p. 4

⁹ WEL Networks, p. 1

- (e) Vector proposed that the threshold should be “no bona fide unresolved disputes”, allowing the default provisions to be triggered in the case of a ‘bona fide’ dispute.
 - (f) PwC submit that distributors should have the discretion to trigger the default process even where dispute exists, as retailers might have an incentive to raise contractual issues to delay the process.
- 19 Genesis took the position that *“on balance, we do not oppose this additional category if the ‘serious financial breach’ and all other prerequisite requirements set out in the paper apply.”*¹⁰
- 20 Two submitters (Pioneer and Simply Energy) did not specifically comment on this issue.

Network coverage

- 21 Two submitters (Genesis and Pulse) opposed this approach submitting that the risk of ‘cherry picking’ was overstated. The approach was supported by nine submitters, with a further 4 submitters not commenting explicitly on the provision. In addition to the supporting the reasoning in the Consultation paper, submitters noted that a default on one network may simply be a matter of timing and would work against efforts to create standard terms or a single contract across networks (e.g., where the networks are owned by the same entity).
- 22 Ten submitters (Contact, MEUG, Meridian, Mighty River Power, Nova, Orion, PowerCo, TrustPower, Vector, WEL Networks) supported the Authority’s view that the proposed process should apply not only to the network on which the event of default has occurred but across all the networks on which is operates.
- (a) For example, Meridian commented *“Meridian agrees the amendment should apply across all networks on which the defaulting retailer trades, irrespective of whether the default event is constrained to one (or some other lesser number) of networks.”*¹¹
- 23 Only two submitters (Genesis, Pulse) took the view that the default process should be limited to the network (or networks) on which the default event occurred.
- (a) For example, Genesis consider that limiting the application of the default process in this way would avoid *“...a disproportionate response to issues confined to a single distribution network and also reduces the risk of creating a commercial negotiating advantage for distributors.”*¹²
- 24 Four submitters (PwC, Pioneer Generation, Simply Energy and WELL) did not comment specifically on this issue.

Limited set of trigger events

- 25 Ten submitters (Contact, Genesis, MEUG, Meridian, MRP, PowerCo, Pulse, TrustPower, Vector, WEL Networks) agreed with the Authority’s proposal for a limited number of trigger events for the default process.
- 26 Six submitters (Nova, Orion, Pioneer Generation, PwC, Simply Energy and WELL) did not comment on this specific issue.

Transfer of all ICPs

- 27 The Authority’s proposed default process provides for the transfer of all ICPs, active and inactive, to another retailer. Of the eleven submissions that commented on this issue, all expressed support for this position (Contact, Genesis, MEUG, Meridian, Mighty River Power, Nova, Orion, PowerCo, Pulse, TrustPower, Vector, WEL Networks).

¹⁰ Genesis, p. 4

¹¹ Meridian, p. 7

¹² Genesis, p. 4

28 Four submitters (Pioneer Generation, PwC, Pulse, WELL) did not comment on this specific issue.

Process should be flexible

29 Nearly all the submitters expressed the view that any formal process that is implemented should be flexible enough to recognise that sometimes defaults may be resolved without using the formal process.

- (a) For example, PowerCo noted that *“by initiating the proposed retailer default arrangement when it is not a genuine case of a retailer breaching one of the trigger clauses, the Authority is in danger of negatively affecting the confidence of customers and industry participants. As long as the Authority is notified and can observe the rectification of the error it should be acknowledged by nothing more.”*¹³

30 Only three submitters (Pioneer, Simply Energy, WELL) did not comment specifically on this issue.

Submitters would like as timely a process as possible (Questions 8 and 9)

31 The Authority’s proposed Code amendment and allocated the time allocated for managing a retailer default situation as follows:

- (a) seven days for a retailer to resolve the dispute or transfer its customer base
- (b) seven days for customers to voluntarily switch to another retailer
- (c) a maximum of three days for communication with customers and ensuring all switches are processed.

32 In responding to the Authority’s proposal, submitters expressed their views in relation to both the total length of time allocated for managing a retailer default situation, and how the time was allocated between the different phases.

Total amount of time

33 Submitters expressed mixed views on the proposed 17 day time period for resolving retailer defaults: some argued it was appropriate, whilst others suggested it should be shortened, and some called for the option for it to be extended in certain circumstances.

34 Contact, MEUG, Meridian, Mighty River Power, Nova, Orion, PowerCo and Simply Energy all agreed 17 day was an appropriate period of time.

35 However, amongst those that took this position, some also said they would like to see it shortened. For example, both Orion and Simply Energy noted that whilst they agreed with 17 days as the default position, a shorter time period would be better. Simply Energy suggested that it would be desirable to have arrangements allowing for a maximum of 7 calendar days in certain situations.

36 Pulse and TrustPower did not agree with the proposed time period. Pulse stated that 7 days should be the maximum, whilst TrustPower took the view that the process should be less than 14 days, with a maximum of 15 days. Whilst not objecting to the time period, both WELL and WEL Networks took the view that the timeframe should be minimised.

37 Genesis and PwC suggest that in some situations, 17 days may not be long enough to manage the retailer default and the process should allow for extensions of the time period in these cases.

38 One submitter (Pioneer Generation) did not comment on this specific issue.

¹³ PowerCo, p. 4

Allocation of days between phases

- 39 Submitters expressed mixed views as to how the 17 days should be allocated between the different phases (notwithstanding their comments in response to Question 9).
- (a) Contact, MEUG, Meridian, Mighty River Power, Nova and PowerCo all expressed agreement with the allocation of the 17 days, with some minor conditions.
 - (i) For example, Contact expressed a desire to see some clarity around terminology in the draft amendment.¹⁴
 - (ii) Meridian consider the allocation is only reasonable “...provided the process, at a minimum, embeds a 2 business day warning for retailers of the possible commencement of the voluntary switching phase.”¹⁵
 - (b) Genesis, Orion, Pulse, TrustPower, Vector and WEL Networks submitted that the allocation of the 17 days was not appropriate.
 - (i) In relation to Phase 3, Genesis take the view that “...the 3 day timeframe proposed is simply not workable” and that it “...must be at least three working days.”¹⁶ Orion¹⁷ and Vector¹⁸ also share the view that 3 days for the tender process would be unworkable.
 - (ii) Pulse wish to see Phase 2 removed, on the basis that it would destroy the value of the customer base.¹⁹
 - (iii) TrustPower consider 7 days for Phase 1 is too long and this could be trimmed to 5 days, and that if a 17 day period is maintained, it should be 5/9/3 days, rather than 7/7/3.²⁰
- 40 Three submitters (Pioneer, Simply Energy and WELL) did not comment on this specific issue.

There is general support for the Authority to have information gathering and communication powers to manage retailer defaults (Questions 10, 13 – 15)

- 41 As part of the proposal, the Code amendments provide the Authority with certain information gathering and customer communication powers in retailer default situations.
- 42 There was strong support for the Authority having power to require distributors and the registry to provide information about the defaulting retailer’s customers to the Authority, if the Authority cannot obtain that information for the retailer in default.
- 43 Ten submitters (Contact, Genesis, MEUG, Mighty River Power, Meridian, Nova, Orion, PowerCo, TrustPower, Vector, WEL Networks) all expressed support for the Code to be amended to require retailers to provide relevant customer information to the Authority.
- (a) Two submitters, Pulse and PwC expressed qualified support.
 - (i) Pulse consider that the information should only be used by the new retailer to communicate with customers, and should not be directly used by the Authority to send customer notices.²¹

¹⁴ Contact, p. 6

¹⁵ Meridian, p. 9

¹⁶ Genesis, p. 2

¹⁷ Orion, p. 5

¹⁸ Vector, p. 8

¹⁹ Pulse, p. 1

²⁰ TrustPower, p. 3

²¹ Pulse, p. 4

- (ii) PwC consider the Code should be amended to specify a 'hierarchy of preferred information providers' such that information should first be sought from retailers, then the registry, and finally distributors.²²

(b) Pioneer, Simply Energy and WELL did comment on this specific issue.

44 There was strong support for the Authority to be responsible for advising retailers and other interested parties that an event of default has occurred, with all submitters who commented on this issue agreeing with the Authority's proposal (Contact, Genesis, MEUG, Meridian, Mighty River Power, Nova, Orion, PowerCo, Pulse, TrustPower, Vector, WEL Networks).

(a) Four submitters did not directly comment on this issue (Pioneer, PwC, Simply Energy and WELL)

45 Similarly, most submitters agree the Authority should be allowed to communicate directly with the customers of the retailer in default, and for the Authority to be able to provide customer information to the retailers to whom the customer transfers to in the event of a mandatory transfer.

There is broad agreement with the proposed role of the registry (Questions 11 and 12)

46 The Authority's proposal contained amendments in relation to two aspects of the role of the registry:

(a) First, 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; and

(b) Second, 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.

47 In respect of the first proposed amendments, there was near uniform support amongst those that responded on the issue. Contact, Genesis, MEUG, Meridian, Mighty River Power, Nova, Orion, PowerCo, Pulse, TrustPower, Vector and WEL Networks all agreed with the Authority's proposed amendment.

48 The second proposed amendment on the role of the registry was slightly less well supported, with only eight submitters expressly agreeing with the Authority (Contact, MEUG, Meridian, Nova, Orion, PowerCo, TrustPower, Vector).

(a) Mighty River Power said that it agreed with the proposed amendment but that the Authority should be directing the registry not to complete any switches from day 1, and not wait until day 7.²³

(b) Pulse took issue with the second part of the second proposed amendment in relation to the role of the registry, suggesting that customer should be notified by their new retailer about the switch and not the Authority.²⁴

Retailer contracts should reference the proposed retailer default process (Questions 16, 17 and 23)

49 Submitters were generally supportive of the Authority's proposed Code amendments in relation to retailer contracts referencing retailer default situations and the terms and conditions a customer is offered when transferred to a new retailer under a default situation.

50 Contact, Genesis, MEUG, Meridian, Mighty River Power, Orion, PowerCo, Pulse, TrustPower, Vector, WEL Networks all agree the Code should be amended to require that contracts between the retailer and its

²² PwC, p. 6

²³ Mighty River Power, p. 4

²⁴ Pulse, p. 4

customers provide for the Authority to assign the contract to another retailer if an event of default is unresolved after 17 days.

- (i) Nova responded that this needs more consideration. The remaining submitters did not comment on this issue.

51 There were mixed views on whether the terms offered by the recipient retailer should be those terms (including price) normally offered by the recipient retailer.

- (a) Contact, MEUG, Meridian, Pulse, Vector all agreed with the Authority's proposal.
- (b) Genesis, Mighty River Power, PowerCo, and WEL Networks expressed support for the proposed amendment, but with some qualifications.
 - (i) Genesis consider the *“retailer recipient must have the flexibility to match the customer type with the terms and conditions that would usually be applied by the recipient retailer.”*²⁵
 - (ii) Mighty River Power offer their support for the proposed amendment, but only on the basis that ‘normally offered’ is *“...interpreted to be the retailers published headline price in the appropriate network region, but not any promotional price or special price offered at that time.”*²⁶
 - (iii) PowerCo agree this is a fair compromise for retailers and consumers, but that *“...consumers should retain the option to switch retailers at any time after the transfer without penalty.”*²⁷
 - (iv) WEL Networks expressed the view that this should only apply for customers that are switched as part of the remaining customers and ICPs after default day 17.²⁸
- (c) Nova, Orion and TrustPower did not agree with the Authority's proposal in this regard.
- (d) Pioneer, PwC, Simply Energy and WELL did not comment on this issue specifically.

52 Amongst the submitters who responded to question 23, there was unanimous support for the Authority's proposal, with Contact, Genesis, MEUG, Meridian, Mighty River Power, PowerCo, Pulse, TrustPower, Vector and WEL Networks all expressing agreement with the Authority's position.

- (a) Orion did, however, suggest there may be some clarity of the language needed.

53 Pioneer, PwC, Simply Energy and WELL did not respond to this question.

Views are mixed as to the best way to allocate customers (Questions 18 – 21)

54 The Authority sought submitter views on four issues in relation to the allocation of customers:

- (a) The adoption of a tender process for allocating customers;
- (b) The basis on which the value of a tender offer should be determined;
- (c) The use of retailer market share to determine the allocation (including the use of a de minimus threshold); and
- (d) Whether retailers should be given the opportunity to reject to being allocated customers if it impacts the financial viability of the recipient retailer.

²⁵ Genesis, p. 4-5

²⁶ Mighty River Power, p. 5

²⁷ PowerCo, p. 7

²⁸ WEL Networks, p. 5

Adoption of a tender process

- 55 There are mixed views as to the Authority's proposal to adopt a tendering approach to allocate customers in the event of a retailer default, with a substantial number of submitters opposing the Authority's proposed tender process. Even amongst submitters who agreed with the approach, agreement was somewhat conditional.
- 56 The tender option was supported by Genesis, MEUG, Mighty River Power and WEL Networks. Meridian supported the tender option for domestic customers, but expressed the view that further consideration was required as to how the tender option could apply to commercial customers. PwC appear to also support the tender arrangements.
- 57 Nova also support the tender option, but only if it is applied in order to achieve the highest value for the customer base.
- 58 Similarly, Pulse agree with the adoption of a tender process but consider it should be on a confidential basis and that the Authority should consider determining a minimum value to be paid per customer assigned.
- 59 The key concern amongst those submitters that opposed the tender process is the risk that the proposed arrangements could lengthen the process for managing the default, and add complexity to the process. This view was expressed by Contact, TrustPower, PowerCo and Vector.
- 60 Simply Energy and Pioneer did not comment specifically on this issue

Determining the value for a tender offer

- 61 Four submitters (Contact, Genesis, MEUG, PowerCo) agreed with the Authority's proposed approach for inviting tenders on the basis of prices that would be charged to the customers by the recipient retailer, and the Authority assigning customers on the basis of the lowest priced retailer.
- 62 A further four submitters expressed qualified support for this approach.
- (a) Meridian consider the approach should only apply to domestic customers, and that further consideration on the arrangements to apply to commercial customers is needed given it is common practice for retailers to provide customised quotes for business customers.²⁹
 - (b) Mighty River Power support the proposed approach but believe the mechanism for deciding allocation needs to be clearer.³⁰
 - (c) Orion take the view that this seems like a *"reasonable method in principle"* but are *"unsure that a tender is a practical solution in the times available."*³¹
 - (d) WEL Networks support a tender approach but caution that both price and terms and conditions need to be looked at, otherwise *"...a retailer could tender on a very low price only to increase them a short time later and potentially they could be on a fixed contract which would not benefit the customer."*³²
- 63 Three submitters (Pulse, TrustPower, PwC) expressed opposition to the Authority's proposed arrangements for determining tender value.
- (a) Pulse consider *"the assignment of customers by the Authority should not be based on the lowest priced retailer, but rather on the highest payment value offered."*³³ Pulse take the view that the purpose of the tender should be to maximise value in the sale of customers, not market competition.³⁴

²⁹ Meridian, p. 15

³⁰ Mighty River Power, p. 5

³¹ Orion, p. 14

³² WEL Networks, p. 5

- (b) TrustPower oppose the tender process overall, arguing the tender process is a waste of time.³⁵
- (c) PwC consider that “...recipient retailers should not be constrained in submitting tenders: tenders based on the lowest price offered to customers and/or the highest price offered to the defaulting retailer (or its receivers) should be accepted and considered as part of the proposed arrangements.”³⁶

64 Pioneer, Simply Energy, WELL and Vector did not comment on this issue.

Use of retailer market share to determine allocation

65 Eight submitters (Contact Energy, Genesis, MEUG, Meridian, Nova, Orion, PowerCo, Pulse) agreed with the Authority’s proposal that if the Authority is required to allocate customers, it should do so on the basis of market share in the relevant networks without using a de minimus threshold.

- (a) WEL Networks also agreed with this aspect of the Authority’s proposal, but suggest this would be a fair method only after all process have been exhausted.³⁷

66 Four submitters (Mighty River Power, Pioneer, TrustPower, Vector) consider a de minimus threshold should be used when determining customer allocations. Generally it was felt that a de minimus threshold is needed because very small retailers may not be in a position to absorb additional customers in short timeframes, but that flexibility should be retained for altering what the threshold is.

- (a) Vector³⁸ suggested the threshold should be 5%, whilst TrustPower³⁹ and Mighty River Power⁴⁰ proposed it should be 10%.

67 PwC, Simply Energy and WELL did not provide any comments on this issue.

Retailer ability to object to customer allocation

68 The majority of submitters (MEUG, MRP, Nova, Orion, PowerCo, Pulse, Vector, Simply Energy, Pulse) agreed with the Authority’s proposal that retailers should be given the opportunity to object to an assignment of customers on the basis of financial viability, and that the onus should be on the retailer to substantiate the objection.

69 A number of submitters provided qualified positions on the issue.

- (a) Contact expressed agreement with the proposal, but seek clarification on “...what a retailer would need to do in order to ‘substantiate’ a claim; for instance, who determines whether the claim is valid and on what basis?”⁴¹
- (b) Genesis agree with the Authority’s proposal but consider the threshold should be “threat to the financial viability of the recipient retailer” rather than “serious threat to the financial viability of the recipient retailer.”⁴²

³³ Pulse, p. 5

³⁴ Pulse, p. 5

³⁵ TrustPower, p. 5

³⁶ PwC, p. 6

³⁷ WEL Networks, p. 5

³⁸ Vector, p. 11

³⁹ TrustPower, p. 6

⁴⁰ Mighty River Power, p. 6

⁴¹ Contact, p. 9

⁴² Genesis, p. 4

- (c) Meridian agree with the Authority's position but commented that the Authority should ensure retailers are only allocated customers on GXPs they serve and on compatible meter types.⁴³
 - (d) Pioneer suggest placing the onus on retailers to prove to the Authority that an allocation of customers would threaten their financial viability is only an option for medium sized retailers, but not small retailers.⁴⁴
- 70 TrustPower argue there should be "...a mechanism for retailers to opt out of the assignment process" and that "...the Authority should not be the judge of the financial impact." TrustPower view the decision as to whether a company takes on or rejects customers as being one for the company and its directors to make.⁴⁵
- 71 WEL Network opposed providing retailers with the opportunity to reject customer allocations on the basis this may lead to retailers 'cherry picking' customers.⁴⁶
- 72 Two submitters (WELL and PwC) did not comment on this specific issue.

New retailer should be responsible for informing customers of transfer (Question 22)

- 73 Most submitters agree that under the proposed arrangements, the new (recipient) retailer should be responsible for notifying their assigned customers that they are now a customer of the new retailer, and advising them of the terms and conditions of the new customer contract (Contact, Genesis, MEUG, Mighty River Power, Nova, Orion, PowerCo, Pulse, Vector). Some submitters qualified their support.
- (a) Meridian agrees the responsibility for advising new customers of contractual terms should rest with the new retailer, but that the obligation "...should only extend so far as taking reasonable steps to ensure customers are advised of their new terms."⁴⁷
 - (b) WEL Networks submitted that this is appropriate only if the Authority's proposal to amend the Code to provide for the Authority to provide customer information to the retailers to whom it transfers customers should a mandatory transfer be required, is also agreed to.⁴⁸
- 74 TrustPower consider the Authority should play a bigger role in the introduction of a new retailer to a customer, as customers may be unaware of their circumstances, or dismissive of their new company if they have not been advised previously as to what is happening.⁴⁹

⁴³ Meridian, p. 15

⁴⁴ Pioneer, p. 2

⁴⁵ TrustPower, p. 6

⁴⁶ WEL Networks, p. 5

⁴⁷ Meridian, p. 16

⁴⁸ WEL Networks, p. 5

⁴⁹ TrustPower, p. 6

Benefits are likely to outweigh the costs, but both are difficult to quantify (Questions 24 – 26)

75 The Consultation Paper sought submitter views on whether the benefits of the Authority's proposal were likely to outweigh the costs, and whether the Authority's proposal was preferable to other options for managing retailer default situations.

Authority's amendment is preferable to other options

76 Generally, most submitters consider the Authority's proposed Code amendments for managing retailer default situations are preferable to other options.

- (a) Genesis, MEUG, Meridian, Mighty River Power, PowerCo, Pulse, TrustPower, Vector, and WEL Networks all expressly agreed with the Authority in response to Question 24.
- (b) Orion limited their support somewhat by saying that this was the best option in terms of avoiding customer disconnection.
- (c) Contact consider the amendment has some flaws, but did not expressly disagree with the Authority's proposed amendments.

77 Five submitters did not specifically comment on this question (Nova, Pioneer, PwC, Simply Energy and WELL).

Proposed time period strikes a balance between benefits and costs

78 Nine submitters (Contact, MEUG, Meridian, Mighty River Power, Nova, Orion, PowerCo, Vector) agreed the 17 day time period for resolving retailer default situations strikes a reasonable balance between the benefits and costs, although some submitters (WEL Networks, Vector) reiterated that the 17 days should be an upper limit or maximum, and the option to have the timeframe reduced needs to be maintained.

79 Three submitters did not agree the 17 day period strikes an appropriate balance.

- (a) Pulse believes the time period should be shortened by removing the step allowing for the Authority to provide separate notice of the customer transfer to customers.⁵⁰
- (b) Simply Energy suggested "...the lowest cost solution for the industry and consumers is to give traders the option to agree bespoke exit periods."⁵¹
- (c) TrustPower believe the process can be completed in 14 days.⁵²

80 Four submitters (Genesis, Pioneer, PwC and WELL) did not expressly comment on this issue.

Benefits of proposed arrangements outweigh the costs

81 Broadly, most submitters believe the benefits of the proposed arrangements will outweigh the costs, but there are some minor differences in opinions.

- (a) Contact consider the costs of implementing are likely to be understated.
- (b) MEUG consider the costs of default are likely to be overstated.
- (c) PowerCo and Orion noted the difficulties in quantifying the costs and benefits.

⁵⁰ Pulse, p. 6

⁵¹ Simply Energy, p. 2

⁵² TrustPower, p. 7

The proposed amendments meets the Authority’s statutory objective (Question 27)

- 82 There was general agreement by submitters that the proposed amendments meet the Authority’s Statutory Objective (Contact, MEUG, Meridian, Mighty River Power, Orion, PowerCo, Pulse, TrustPower, Vector).
- 83 Nova expressed the view that the proposed arrangements ‘largely’ met the Authority’s Statutory Objective but that the discussion does not consider the retailer’s cost of capital, which is linked to the value of its customer base (which will be impacted during a retailer default situation).⁵³
- 84 WEL Networks contend the “*objective will only be met if all potential losses are contained within the industry*” and that the risk needs to be borne by the party who creates it. WEL Networks consider that under the proposed arrangements, customers may end up bearing the risk.⁵⁴
- 85 Genesis, Pioneer, PwC, Simply Energy and WELL did not comment on the specific question.

A number of submitters proposed changes to the drafting of the proposed amendment (Question 28)

- 86 Seven submitters provided comments in relation to the technical drafting of the proposed amendments.
- (a) Contact proposed changes to the drafting in relation to the definition of ‘serious financial breach’, the length of time retailers are given to amend their customer contracts (should be 12 months), and the allocation of customers (proportional to market share).⁵⁵
 - (b) Meridian proposed amendments in relation to the process for retailer events of default, the ability of the Authority to assign contracts, terms of assigned contracts, and the definition of an event of default.⁵⁶
 - (c) Mighty River Power requested the addition of “in relation to the serious financial breach” after the word termination in clause 14.55(h)(ii) of the draft proposed Code.⁵⁷
 - (d) PowerCo sought further clarification of the meaning and purpose of proposed clauses 11.15A.1(c) and 14.55(h)(iii).⁵⁸
 - (e) Pulse requested the deletion of the proposed amendments 11.15A(1)(c), 11.5.4(2)(b), 11.5.8(1) (largely relating to terms of assigned contracts) and 14.55(h).⁵⁹
 - (f) Vector recommended that sub-clause 14.55(h)(b) be redrafted such that it only relates to ‘bona fide unresolved disputes’.⁶⁰
 - (g) WEL Networks reiterated its view that the threshold for meeting ‘serious financial breach’ needs to be reduced.⁶¹

⁵³ Nova, p. 6

⁵⁴ WEL Networks, p. 6

⁵⁵ Contact, p. 13-14

⁵⁶ Meridian, p. 19-22

⁵⁷ Mighty River Power, p. 8

⁵⁸ PowerCo, p. 10

⁵⁹ Pulse, p. 6

⁶⁰ Vector, p. 13

⁶¹ WEL Networks, p. 6

Appendix A Consultation paper questions

	Question
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
Q2	Do you agree with the objectives of the proposed amendment? If not, why not?
Q3	Do you agree with the proposed Code amendment which would introduce a new category of default when the following conditions are satisfied:
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.
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?
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?
Q7	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.
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?
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?
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?
Q11	Do you agree that the Code should be amended to provide for the registry to complete the switch or 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?
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?
Q13	Do you agree that the Code 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?

	Question
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?
Q15	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?
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?
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?
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?
Q19	If a tender arrangement is provided for, should the Authority invite tenders on the basis of 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?
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?
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 a claim? If not, why not?
Q22	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?
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?
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?
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?

	Question
Q26	Do you agree that the benefits of the proposed arrangements would exceed the costs? If not, why not?
Q27	Do you agree that the proposed arrangements meet the Authority's Statutory Objective? If not, why not?
Q28	Do you have any comments on the drafting of the proposed amendment?