10 October 2014

Submissions
Electricity Authority
PO Box 10041
WELLINGTON

via email: submissions@ea.govt.nz

Dear Authority,

Thank you for the opportunity to provide feedback on the proposal "Implementing Retailer Default Code Amendments" consultation paper. Contact's responses are provided below:

Question no	Question	Comment
1	Do you agree with the issues identified by the Authority? Please give reasons.	No. **Issue 1 (Tier 2 Retailers (T2R)) and Issue 2 (T2R are not "retailers" as defined)** The underlying issue described in the paper seems to be that in some cases parties are selling electricity to customers and there is insufficient information about them/their customers in the registry. However, it is unclear from the paper how big an issue this is and how many parties this relates to or affects. Accordingly, Contact is not convinced, based on the information provided in the paper, that a significant Code change in relation to retailer default rules is justified. As currently proposed, the Code amendments would seem to require the majority of participants to incur additional obligations and costs in order to allow (what we assume to be) a small minority to act in a manner inconsistent with the Code rather than addressing the actual issue. We do not consider this is justified and a number of other solutions could be adopted instead. It is also not clear from the paper why Type 2 retailers can retail electricity to customers without having to comply with the Code in full or accept responsibility for the ICPs/customers to which they sell electricity so another option would be to amend the Code to cover them. As **Schedule 11.5, clause 4(3)(c)** would seem to mean a T2R can elect to become a Trader we see no reason for that not to become a requirement. This could also possibly be done simply by amending the definition of "Retailer". Alternatively, if there is some policy or other reason T2Rs should not have to sign up to the Code, then in our view it

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		should be only the specific Trader who agrees to enter an arrangement with a T2R who should be responsible for providing relevant information. This would avoid the need for rules applying to Retailers/Traders generally and focus the solution (and cost/effort of compliance) directly on the parties that cause the situation to arise in the first place; where it more properly belongs. In terms of the requirement to notify a T2R of the Trader's default (e.g. **para. 9** of the paper), in our view it would also be easy enough if there was a general notice requirement on the Authority to inform all known Traders/Retailers (including T2R) and other relevant parties as soon as a Trader commits a retailer default event, regardless of whether they are specifically recorded as having an interest in ICPs linked to the defaulting retailer. T2Rs could then take steps to manage their (and their customers' positions) once they've got this notice. We also wonder why if a change is made to replace "Retailer" with "Trader" throughout the relevant sections whether the Authority should be talking about "trader default" rather than "retailer default"? **Issue 3 (Notifications by Traders of Customer details, whether a Trader will trade at certain ICPs etc.) and Issue 4 (Trader assigned ICP in immediate breach)** Contact does not see why a Trader should be required to provide information for why it doesn't trade or operate in specific scenarios. In this respect, the scenarios listed in clauses **11.15D(a)** and **(b)** may also not be wide enough to cover all relevant scenarios anyway. It is also unclear why the Trader should be required to give a "**reason**" why it is unable to trade (**11.15D(1)(c)**) – that is a commercial matter for the relevant Trader. In our view, an express obligation in the Code on a Trader to provide a full customer list (containing relevant information) to the Authority, on demand, if it becomes affected by a retailer default event should be enough to cover the expressed concern. We do not think it is reasonable for Traders to have to provide additional information and then keep it up to date on an ongoing basis. We also note that, in terms of customer details, this seems to be limited to providing information "if [it is] known" to the Trader (see **para. 17**; **Schd. 11.1, 9(1)(jb)**). It is unclear to what extent there would be a duty on a Trader to seek out this information. If a Trader does not have to go looking for this information in our view there is probably only a limited chance that the information provided will be consistent, comprehensive and reliable. Another aspect that is unclear is the extent to which the Authority's notification obligations are actually intended to

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		apply. The Consultation Paper says the Authority "must" perform this activity (e.g. para. **2.2.22**) but the actual Code amendment wording only refers to it making an "attempt to" do so (see Schd **11.5, clause 4(2)(b)** and **4(3)**). We cannot see a justification for qualifying the obligation, if it is to exist at all. In relation to clause **5A**, there may be other Code clauses with which a Trader might not be able to comply (i.e. only 2 specific clause examples are stated and the list is closed not inclusive so it appears to be a very restricted exception or exemption). We believe the list should be inclusive. Finally in Contact's view the time period during which non-compliance is excused under clause **5A** is likely to be insufficient.
2	Do you have any comments on the functional specification provided in Appendix C for issue 3: information about ICPs at which traders cannot trade?	No comment.
3	Which option would you prefer (option1 or option 2) if providing customer information to the registry? Please give reasons.	Please see our response to question 1 above.
4	Do you have any comments on the proposed draft format for providing customer information in Appendix D?	Please see our response to question 1 above.
5	Do you agree with the objectives of the proposed amendment? Please give reasons.	No. Please see our response to question 1 above.
6	Do you agree with the proposed implementation timeframes for the proposed amendment? If not, why not?	No. Contact is concerned that the proposed time-frames for ensuring compliance with the Code are inadequate.

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7	Do you agree the benefits of the proposed amendment outweigh its costs? Please give reasons.	No. As stated in our response to question 1 it is unclear how many T2Rs there are. Based on the information provided in the paper it is not clear that the benefits of the proposal outweigh the costs. We believe there are simpler solutions.
8	Do you agree with the Authority's assessment of costs in Appendix E? Please give reasons.	In our view the complexity and cost associated with the proposed options and processes outweigh the benefits. The requirement to provide on-going customer information to the registry will result in large and costly system changes, very large file sizes and information flows to the registry. This is not what the registry was intended for.
9	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 2010.	The alternative drafting on pages 3,4,11 and 12 respectively, treats the information referred to in clause **9(1)(jb)**, and timing of when that must be supplied, differently. This is stated to be to cover off Options 1 and 2 however it isn't clear why the options are suggested (e.g. what benefits one option offers over the other). More significantly, Contact can't see anything in the suggested drafting of the Code amendment that would facilitate the alternative approach provided for by **para. 2.2.42(b)** (Option 2) of enabling information to be stored in a secure location separate from the Registry: as far as Contact can see the drafting only provides for that information to be supplied on a different time basis (see Schd. **11.1, clause 9(2B)**). Please also see our response to question 1.
10	Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?	No. Please see our response to question 1.
11	Do you have any comments on the drafting of the proposed amendment?	Yes. At least part of the reason for the Code change being promoted is that the way "Retailer" is defined in the Code doesn't fit with the T2R scenario, in the context of retailer default. In our view it would be simpler to change that definition and have T2Rs involved in the retailer default solution from the outset. This may become even more relevant if Tier 2 Retailer arrangements become more common (in which event there could be other implications arising out of them in relation to different parts of the Code/market operations besides retailer default). It would be useful if the Authority could explain the reason why, in order to resolve the issues identified in the paper,

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		clause 11.15B(1)(a) has been modified by adding the words “under … 14.55”. As the paper only talks about amending that clause (and clause 14.55) to replace the term ‘retailer’ with ‘trader’ (e.g. para. 2.3.2). This seems an unrelated and unexplained change. There are places where it seems the mark-up may be inaccurate because a deleted word is not showing (e.g. at **4B(2)**, it states “defaulting trader” but there is no deleted word “retailer” (or whatever term was previously used there). There is a similar example at **5(1)**, on line 1). Finally there are also a couple of minor typo’s that should be picked up.
	General comments	**General comment 1** The Code amendment envisages the Authority could assign the T2R’s ICPs to another Trader - see **Schedule 11.5 clause 4(3)(c).** We do not believe any Trader should have to deal with a T2R if it does not want to, following an event of retailer default. In our view, Traders should be entitled to not have to enter into arrangements with a T2R as doing so raises a number of commercial and risk (including credit risk) issues. **General comment 2** Contact considers the current proposal to add/interface information to the registry under both options would be very system intensive and unnecessary to facilitate a situation that will rarely occur (or potentially ever be required). Contact would like the Authority to consider including this requirement in a similar way to the way the registry reconciliation process currently operates. Participants are required to have a process in place which isn’t monitored on an ongoing basis by the Authority however the process must be proven as part of the Trader’s annual (or initial) certification through the existing audit processes. The Trader would have to implement a method to extract the required information and be able to demonstrate this to the auditor which would be incorporated in the auditor/EA sign off process. Contact believes this is more than enough coverage for the likelihood of this information ever being required. In addition to customer information, Contact considers some information should be provided in relation to billing and meter reading data to assist a Trader/Retailer inheriting a defaulting retailer’s ICPs/customers (e.g. last actual meter reading and date, last bill date and reading etc.).

Please do not hesitate to contact me should you have any questions.

Yours sincerely

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