

More standardisation of UoSAs - consultation paper

Summary of submissions

14 November 2014



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1 Introduction

- 1.1 The Electricity Authority (Authority) is examining a range of issues associated with the way in which distributors and retailers develop and enter into use-of-system agreements (UoSAs).¹
- 1.2 The Authority published a consultation paper on 8 April 2014 which sought feedback on proposal to achieve more standardisation of UoSAs. The Authority considered the adoption of more standardised UoSAs would provide long-term benefits to consumers by promoting competition in the retail market and by promoting more efficient operation of the electricity industry.
- 1.3 The consultation paper also sought feedback from interested parties on matters arising from the Authority's observations of participant responses following the publication of model UoSAs (MUoSAs) in September 2012. The consultation paper discussed a range of matters, including:
 - (a) the Authority's view of the observed behaviours relating to the uptake of the MUoSAs and expectations of more standardisation of UoSAs
 - (b) the consequences and implications of these behaviours on achieving the competition and efficiency objectives of the MUoSAs
 - (c) identification of a range of high-level response options the Authority is considering
 - (d) the Authority's preferred option (require reset of all existing interposed agreements and introduce a default agreement for distribution service into the Code), including preliminary views on the likely costs and benefits of that option.
- 1.4 The consultation paper is available on the Authority's website at:
<http://www.ea.govt.nz/development/work-programme/retail/more-standardisation-of-use-of-system-agreements/consultation/#c12201>.
- 1.5 The purpose of this paper is to provide a summary of the submissions received on the consultation paper. The consultation period for the consultation paper ran from 8 April until 20 May 2014.
- 1.6 The submissions are also available on the Authority's website at:
<http://www.ea.govt.nz/development/work-programme/retail/more-standardisation-of-use-of-system-agreements/consultation/#c12201>.

¹ Refer Electricity Authority, 2014/15 work programme, Table 1 (page 5), project 1.9. The work programme is available at, <http://www.ea.govt.nz/about-us/strategic-planning-and-reporting/our-work-programme/>.

2 Who made a submission?

2.1 The Authority received twenty submissions from the parties listed in Table 1.

Table 1: List of submissions

Retailers	Distributors	Consumers	Other
Contact Energy	Electricity Networks Association (ENA) (on behalf of 29 named member distribution businesses ²)	Auckland Energy Consumer Trust (AECT)	Business Engagement Ltd
Genesis Energy (parts of which are confidential)	Northpower	Major Electricity Users' Group (MEUG)	Pioneer Generation
Meridian Energy (also on behalf of Powershop)	Orion NZ		
Mighty River Power	Powerco		
Nova Energy	PricewaterhouseCoopers (PwC) (on behalf of 21 named distribution businesses ³)		
Simply Energy	Unison		
Trustpower	Vector (parts of which are confidential)		

² ENA's submission was on behalf of Alpine Energy, Aurora Energy, Buller Electricity, Centralines, Counties Power, Eastland Network, Electra, EA Networks, Electricity Invercargill, Horizon Energy Distribution, MainPower New Zealand, Marlborough Lines, Nelson Electricity, Network Tasman, Network Waitaki, Northpower, Orion, OtagoNet Joint Venture, Powerco, ScanPower, The Lines Company, The Power Company, Top Energy, Unison, Vector, Waipa Networks, WEL Networks, Wellington Electricity Lines and Westpower.

³ PwC's submission was on behalf of Alpine Energy, Aurora Energy, Buller Electricity, Counties Power, EA Networks, Eastland Network, Electra, Electricity Invercargill, Horizon Energy Distribution, MainPower New Zealand, Marlborough Lines, Nelson Electricity, Network Tasman, Network Waitaki, Northpower, OtagoNet Joint Venture, ScanPower, The Lines Company, The Power Company, Top Energy, Waipa Networks and Westpower.

Retailers	Distributors	Consumers	Other
	Wellington Electricity Lines Limited (WELL)		
	WEL Networks		

3 What did submitters say?

3.1 Submitters' comments are grouped into five main areas reflecting the structure of the consultation paper:

- (a) section 4 of this paper summarises submissions received about the Authority's approach to the more standardisation of UoSAs project, and focuses on legal and process issues raised
- (b) section 5 of this paper summarises submissions that relate to questions 1 to 4 of the consultation paper, which were about the issues identified by the Authority and the problem definition
- (c) section 6 of this paper summarises submissions that relate to questions 5 to 13 of the consultation paper, which were about the merits of the options to achieve more standardisation that were set out in the consultation paper
- (d) section 7 of this paper summarises submissions that relate to questions 15 to 16 of the consultation paper, which were about the Authority's preliminary assessment of the benefits and costs associated with moving to default terms for UoSAs
- (e) section 8 of this paper summarises submissions that relate to question 17 of the consultation paper, which was about the Authority's initial assessment of MUOSA terms that might be suitable to be core terms in a default UOSA.

3.2 Some of the questions in the consultation paper overlapped. Accordingly, some submitters' responses to questions overlap; and/or submitters' responses to one question were repeated for another question. Further, some submitters provided general comments that relate to two or more questions. Accordingly, some submissions may be summarised in more than one place in this document.

4 The Authority's approach to the more standardisation project

4.1 Sections 2 and 3 of the consultation paper provided background relevant to the consultation paper and set out the sequence of events and information gathering that led the Authority to conclude there may be competition and efficiency-related

- problems with the way that some participants were responding to the publication of MUoSAs in September 2012.
- 4.2 In section 2.5 of the consultation paper, the Authority set out its expectations following the publication of MUoSAs in September 2012.
- 4.3 In section 3 of the consultation paper, the Authority set out:
- (a) the steps it took in gathering information about the behaviours of distributors and retailers following the publication of MUoSAs in September 2012
 - (b) the behaviours it observed, which included:
 - (i) a large distributor offering UoSAs based on significantly amended versions of the interposed MUoSA and executing these UoSAs with a majority of its retailers
 - (ii) a refusal to engage with a distributor to negotiate a new UoSA by a majority of the retailers trading on that distributor's network
 - (iii) little evidence of activity around developing new more standardised UoSAs in most distribution network areas
 - (iv) little evidence of voluntary disclosures of UoSA information of distributors' websites.
- 4.4 Submitters' concerns about the Authority's approach fell into the following categories:
- (a) that the Authority does not have the jurisdiction to regulate, including concerns that specifically relate to:
 - (i) the overlap between the jurisdiction of the Commerce Commission and the jurisdiction of the Authority
 - (ii) the Authority's power to make Code amendments under the Electricity Industry Act 2010 (Act)
 - (iii) whether, in proposing to regulate UoSAs as it has, the Authority is acting consistently with its statutory objective
 - (b) that the Authority's process is flawed, including submissions that the Authority:
 - (i) has made mistakes of fact in respect of statements it made about Vector and breached Vector's natural justice
 - (ii) is biased or has predetermined its decision
 - (iii) has not clearly set out its expectations in relation to the MUoSAs published in September 2012
 - (iv) has changed its position on more standardisation
 - (c) issues relating to the information relied on by the Authority, including submissions that the Authority has relied on incorrect information and has presented misleading information.

Overlap with Commerce Commission jurisdiction

- 4.5 In its submission, Vector questioned whether the Authority has the jurisdiction to fix standard forms of contract. Vector submitted that the Authority is purporting to regulate matters the Commerce Commission is authorised to regulate under Part 4 of the Commerce Act 1986, as the Commission has “very clear jurisdiction to deal with supply terms in respect of electricity distribution businesses” through information disclosure regulation and price-quality regulation, which allows regulation of quality standards (for distributors that are not consumer owned). Vector submitted that the Authority is prevented from regulating UoSAs as it has proposed, because section 32(2)(b) of the Electricity Industry Act 2010 provides that the Code may not:

“purport to do or regulate anything that the Commerce Commission is authorised or required to do or regulate under Part 3 or 4 of the Commerce Act 1986 (other than to set quality standards for Transpower and set pricing methodologies (as defined in section 52C of that Act) for Transpower and distributors)”.

- 4.6 AECT’s submission questioned whether the Authority’s proposal raises any jurisdictional issues, either under the terms of the Authority’s governing statute, or as between the Authority and Commerce Commission in respect of the overlap in the regulation of the electricity industry.
- 4.7 Orion submitted that it was uncomfortable with the Authority’s expectations relating to contract disclosure that exceeded the Commerce Commission’s information disclosure requirements. It would, however, be comfortable with a limited disclosure of information to the Authority on a confidential basis if any affected party alleges that existing agreements provide materially superior terms.

Authority’s Code amendment powers under the Act

- 4.8 Vector, AECT, ENA and PwC questioned whether the proposed Code amendments are within the scope of the Authority’s Code amendment powers under the Act. AECT considered that the Authority was exceeding its jurisdiction under the Act in prescribing model terms.
- 4.9 Vector submitted that the Authority’s power to promote greater standardisation through a Code amendment is more limited than the options considered by the Authority would indicate. Vector submitted that:
- (a) the Authority’s Code amendment powers are not unrestricted
 - (b) the Authority’s proposals regulate non-price terms of supply, which is heavy handed (a number of other submitters made similar submissions)
 - (c) the Authority’s mandate to promote competition is limited to the development of market facilitation measures, and is unlikely to extend to include regulation of specific commercial terms

- (d) the Authority relies on monopoly bargaining power to justify intervention, but has not demonstrated that there is evidence of that.
- 4.10 AECT submitted that if Parliament intended the Authority to mandate the terms of a UoSA, it would have expressly provided so in the Act. By way of example, AECT noted that section 44 provides that the Code may require Transpower and participants to enter into transmission agreements. AECT submitted that section 44 demonstrates that if Parliament intended that commercial parties would have to be bound by mandatory provisions, it would provide for that expressly in the Act. On that basis, AECT submitted that the Authority cannot specify mandatory UoSA terms as there is no enabling provision equivalent to section 44. AECT also submitted that another example of Parliament expressly providing for the regulation of certain matters is section 42 of the Act, which includes a requirement that the Authority consider amending the Code to require that UoSAs include a provision indemnifying retailers in respect of liability under the [Consumer Guarantees Act 1993](#).
- 4.11 ENA submitted that the Authority has provided no rationale for it to have the "draconian power" to override alternative arrangements to the default terms arrived at by commercial negotiations.
- 4.12 AECT and PwC both made submissions relating to section 42(2)(f):
- (a) AECT submitted that the consultation paper confirms that the Authority's proposal to create a default UoSA flows from the requirement to address more standardisation in section 42(2)(f). AECT submitted that section 42(2)(f) is about ensuring that each individual distributor offers the same terms to all of its customers, and is not about all distributors offering the same terms. AECT submitted that ensuring that all distributors offer the same contractual terms is not the Authority's role
- (b) PwC submitted that the Authority's proposal is trying to address an issue the Authority has identified with retailer negotiating power, and distributors' ability to exercise monopoly power. In contrast, PwC submitted that the original intent of section 42(2)(f) was to address perceived barriers to new entrants related to standardisation of UoSAs.

Consistency with Authority's statutory objective

- 4.13 Both Vector and WEL Networks submitted that the Authority is not acting consistently with its statutory objective in proposing to regulate UoSAs as it has.
- 4.14 Vector submitted that the Authority has mistakenly focused on whether its expected outcomes of the standardisation process have been accomplished, rather than whether the Authority's statutory objectives are being achieved. Vector considered that asking whether distributors and retailers have adopted the MUoSA is the wrong question, and the Authority should be considering the state of competition, efficiency and reliability in the market. Vector considered that

those objectives have been achieved, and that a number of amendments it made to the MUoSA, including to load control provisions, were specifically targeted at ensuring the continued security and reliability of Vector's network.

- 4.15 WEL Networks made similar submissions. It submitted that:
- (a) the Authority has erred in focussing on whether the MUoSA has been adopted. WEL Networks considered the question the Authority should focus on is whether its statutory objective is being achieved, and whether this occurs through the adoption of the Authority's chosen model or other means is not relevant
 - (b) the Vector experience suggests that the Authority may take a very narrow view of what is acceptable, preferring the model even where negotiated alternative terms promote the Authority's objective, and focussing on adherence to the MUoSA rather than a broader view consistent with its statutory objective. WEL Networks submitted the Authority has not considered the prospect that the outcomes of a negotiated UoSA may be more pro-competitive and efficient.
- 4.16 ENA submitted that the Authority appears to have interpreted its statutory objective as meaning that Electricity Network Businesses (ENBs)⁴ should adopt the MUoSA with minimal amendments. However, ENA considered that variations from the MUoSA are not necessarily inconsistent with the Authority's statutory objective, and that scope for improvement and innovation was inherent in the MUoSA, which was intended to be a base for negotiated contracts.

Statements about Vector

- 4.17 Vector submitted that the Authority has made allegations and statements that imply improper behaviour by Vector without explicitly presenting those concerns directly to Vector, even though those matters relate to negotiations to which the Authority was not a party. Vector submitted that the Authority's processes "were far from best practice, were inconsistent with principles of natural justice and did not foster good relationships". Vector also submitted that the Authority implied that Vector applied undue pressure on Contact and possibly other retailers to sign its UoSA, which is "incorrect, offensive and unsupported by evidence". Vector submitted that it is not plausible it would have any "monopolistic bargaining power" [sic] over Contact, given Contact's size and resources and that disconnecting Contact's customers is not an option. It also submitted that some changes to its UoSA were made to alleviate Contact's concerns.
- 4.18 ENA, MRP, Orion, PwC, Unison, and WEL Networks also considered that the Authority's criticism of Vector was unwarranted and/or supported the approach taken by Vector in negotiating UoSAs with its customers.

⁴ ENA uses the acronym ENB, meaning electricity network business. In this paper this term is synonymous with "distributor".

4.19 Vector:

- (a) rejected the allegations and implications, including the allegation that its practice is to agree a UoSA with large retailers first and offer it to smaller retailers with limited scope for change, although smaller retailers do leverage off the negotiations of large retailers
- (b) disagreed that distributors can adopt a "take it or leave it" stance, which Vector considered is demonstrated by the fact it is up to version 1.4 of its UoSA (which Vector states was provided to the Authority), and that version contains significant changes from version 1.0
- (c) requested the Authority to withdraw its remarks urgently
- (d) requested the Authority to provide Vector with any evidence it has that Vector or any other party has misused its monopoly position so that it can be assessed through appropriate channels
- (e) recommended that the Authority reviews its processes for handling concerns and complaints to ensure that the principles of natural justice are adhered to and that complaints are resolved effectively
- (f) recommended that the Authority consults with any party it plans to "single out" for criticism in a consultation document.

4.20 Vector also requested the Authority to delay making any decisions until Vector has received the information it requested under the Official Information Act 1982, and provided a further submission to the Authority.

4.21 Vector also submitted that the emphasis in the consultation paper on its conduct "...has the strong appearance that the Authority is actually seeking to "correct" the actions of a single market participant, rather than seeking to act on the basis of an industry-wide initiative". Vector submitted that the Authority's paper refers to just two distributors out of 29, meaning its analysis is based on limited observations.

The Authority is biased or has pre-determined its decision

4.22 Vector submitted that the Authority is biased because in commenting on Vector's UoSA, the Authority has considered only departures from the MUoSA that favour distributors, and not considered departures from the MUoSA that favour or were requested by retailers.

4.23 Trustpower submitted that it is concerned that a question about core terms was included in the consultation paper, saying it implies that a decision to proceed with mandating has already been made by the Authority.

The Authority's expectations were not clear

4.24 Distributors, in either their own submissions or via submissions made on their behalf (such as the submissions made by ENA, PwC, Powerco and Orion),

considered that the Authority had not clearly set out its expectations in publishing MUoSAs in September 2012 and that distributors were acting on their understanding of the Authority's expectations. Contact also considered that the Authority's expectations were not explicit enough, and that this resulted in a less than optimal outcome for both retailers and distributors.

- 4.25 Vector considered that it agreed variations to the MUoSA in good faith and so was acting largely in accordance with the Authority's expectations.

The Authority has changed its position on more standardisation

- 4.26 A common theme in a number of submissions was that the Authority had changed its position on more standardisation.
- 4.27 A number of submitters commented that the Authority had initially indicated that the MUoSAs should be the basis for negotiating UoSAs, but that the MUoSAs were voluntary benchmark agreements only that could be varied by negotiation and agreement. Those submitters considered that there was never meant to be strict alignment of all UoSAs with the MUoSAs, and that the Authority has changed its position.
- 4.28 ENA submitted that the Authority intended that the MUoSA could be a base/model from which retailers and distributors could negotiate a commercially and operationally sensible contract, and that Vector (and others) did indeed use the model as a base.
- 4.29 Orion submitted that the consultation paper criticised Vector despite the fact that Vector followed the process designed by the Authority. In Orion's view, the Authority does not like the result of a process it designed, and "the rules have changed but the players have not been told".
- 4.30 Powerco submitted that the consultation paper expresses expectations as to the speed of migration to, and limited number of departures from, the MUoSA that are a change from the Authority's previous position. Powerco submitted that it is possible for the industry to react to those new expectations, but the model should be given more of a chance to work.
- 4.31 PwC submitted that the original intent of the MUoSA was that it was a voluntary benchmark agreement. PwC expressed surprise at the suggestion that UoSA terms should align strictly to the MUoSA, and considered that the Authority's shift in position favouring a default UoSA is premature and damages regulatory certainty.
- 4.32 Unison submitted that the Authority indicated that the MUoSAs would be a basis for enhanced standardisation, but that variations were expected if the retailer and distributor agreed an alternative approach. Unison considered it had been necessary to depart from the MUoSA because of learnings in the sector.

- 4.33 Vector submitted that given that it is acting consistently with the Authority's expectations, the Authority is acting prematurely and in a timeframe that is less than the Authority indicated it would need for meaningful change following publication of the MUoSAs. Vector also considered that the Authority indicated the MUoSA was a base to start commercial negotiations, which is how Vector utilised the MUoSA. Vector recommended that the Authority step back and reconsider its proposed regulation.
- 4.34 A number of submitters also commented that the Authority has changed its mind on what was an acceptable timeframe for more standardisation, which the Authority initially indicated was up to five years.
- 4.35 ENA submitted that a relatively short window has been allowed for change: 18 months compared with the two to five year timeframe that the Authority indicated in 2012 was a reasonable timeframe within which to achieve more standardisation.
- 4.36 Orion submitted that the consultation paper reaches conclusions that are inconsistent with both the timing and approach expectations set by the Authority in September 2012, when the Authority indicated a timeframe for achieving standardisation over five years. The timeframe set out in the September 2012 paper was considerably longer than the timeframe now being applied.
- 4.37 PwC accepted that the level of activity and completion of negotiations may have been slower than what the Authority might have expected, but submitted that some participants legitimately planned to adopt new UoSA agreements over a five-year period consistent with the Authority's expectations.
- 4.38 WEL Networks submitted that in 2012 the stated timeframe for reviewing and updating UoSAs was a reasonable two to five years, and that the Authority has acted prematurely.

Incorrect or misleading information

- 4.39 Vector submitted that the Authority's analysis is based on incorrect information. Vector stated that the Authority's analysis is based on version 1.1 of Vector's UoSA, when Vector is up to version 1.4 (which it had provided to the Authority). Because all retailers have an option of signing the latest version of Vector's UoSA, Vector submitted that the latest version must be the version on which any assessment is based for that assessment to be accurate. Vector also submitted that the Authority has wrongly categorised some amendments made by Vector to the MUoSA as being material, and that the Authority has not understood the effect of some of Vector's amendments.
- 4.40 Orion questioned the relevance of a diagram about retail competition, and stated "We note that this is the second time the Authority has presented information on competitive activity in a way that is somewhat misleading".

- 4.41 PwC submitted that Figure 2 of the consultation paper is misleading because for the majority of the period covered by Figure 2, the MUoSA had not been published.
- 4.42 Vector considered the Authority had overstated the negotiating power of distributors, and that the Authority has no evidence of any such negotiating power. Vector also considered that the Authority had incorrectly described the nature of the relationship. Vector submitted that distributors are strong supporters of retail competition on their networks, particularly those that are trust owned.

5 The issues identified and the problem definition

- 5.1 As outlined in section 4 above, sections 2 and 3 of the consultation paper provided background relevant to the consultation paper. These sections also set out the sequence of events and information gathering that led the Authority to conclude there may be competition and efficiency-related problems with the way that some participants were responding to the publication of MUoSAs in September 2012.
- 5.2 Section 4 of the consultation paper discussed the Authority's policy objectives and expectations when it published MUoSAs in September 2012 and the consequences of the participant behaviours the Authority has observed through its information gathering throughout 2013 and early 2014.
- 5.3 The Authority requested feedback on these matters from interested parties with the objective of developing an up-to-date picture of:
- (a) the issues presented in the consultation paper (question 1)
 - (b) the level of recent activity between distributors and retailers related to developing, negotiating and agreeing UoSAs (question 2)
 - (c) any relevant new issues that may have arisen (question 3)
 - (d) any new developments that would provide additional information or update the situation presented in section 4 of the consultation paper (question 4).
- 5.4 Sections 2, 3 and 4 of the consultation paper prompted submissions across a range of views. Some of these have already been summarised and responded to in section 4 of this summary of submissions paper.
- 5.5 This section summarises submissions organised by the questions asked in the consultation paper.

Question 1 – the issues outlined in the consultation paper

- 5.6 This question asked: "Do you have feedback that would update the issues outlined in this section?"

- 5.7 A range of views were submitted, and for clarity these are summarised by submitter rather than by topic.
- 5.8 AECT did not consider that the process used to develop the MUoSA, and the time taken and consultation involved, was sufficient to meet the requirement for a cost-benefit analysis.
- 5.9 Contact disagreed with the statement in the consultation paper that it has changed its stance by entering into a new UoSA with Vector after previously raising concerns about the extent to which Vector's UoSA differed from the MUoSA, and emphasised its expectation that all new UoSAs should be materially aligned with the MUoSAs. Contact outlined the process by which it negotiated and eventually executed a UoSA with Vector. Contact considered that the UoSA it executed with Vector (version 1.3) was more closely aligned with the MUoSA than version 1.0, which Vector initially offered to Contact. Contact also considered that both parties were incentivised to find common ground to enable the pan-Auckland change (which is unique to Vector) to proceed, leaving behind the operational and customer issues from having both interposed (North Shore) and conveyance (Auckland) arrangements. Contact also reported on its experience with some other distributors, most of which have adopted forms of UoSA materially aligned with the MUoSA, with one notable exception, which it considered had been derived from Vector's version 1.0 UoSA.
- 5.10 ENA noted progress it considered was being made by an unspecified number of distributors in accordance with the Authority's timeframe expectations. ENA noted that retailers were initially reluctant to negotiate new UoSA agreements with smaller distributors, such as Unison, until the retailers had negotiated updated UoSAs with larger distributors, which ENA considered to be entirely understandable. ENA suggested that now that retailers have had the experience of updating their UoSAs with Vector, the pace of progress to update UoSAs may increase.
- 5.11 In relation to the Authority's concerns about transaction costs for new entrant retailers, ensuring that retailers on a single network are treated even-handedly and subject to competitively neutral terms, and ENBs abusing their dominant position, ENA submitted that those concerns are likely to reduce over time under options 0 and 1. ENA also pointed to ENBs' practice of offering all retailers on their network the option to sign any new UoSA that is negotiated with a single retailer as mitigating those concerns.
- 5.12 ENA submitted that the lack of standardisation of UoSAs is not a material problem. ENA considered the transaction costs of variations to UoSAs are overstated and likely to be outweighed by the benefits of flexibility, and ensuring that contracts reflect actual commercial industry practice.

- 5.13 Genesis noted it had a team focused solely on UoSA negotiations and that in addition, considerable resources were required across many teams (for example, legal, retail operations, billing, new connections) to negotiate UoSAs.
- 5.14 Meridian considered that engagement from distributors on negotiating new UoSAs since development of the MUoSA has been generally poor, although there have been exceptions. Meridian has agreed new UoSAs with five distributors, four of which are substantively based on the MUoSA, and the other agreement is based on a version of the MUoSA that is so heavily modified it has little resemblance to the original. In other cases, Meridian stated that distributors had been reluctant to engage or have continued to offer old UoSAs as the basis for negotiation. Meridian considered that there had been an insufficient response in agreeing revised UoSAs.
- 5.15 MEUG described the matters on which its members engage with distributors. MEUG considered that discussions with distributors on technical matters tend to be constructive. MEUG stated that MEUG members report trying to find mutually acceptable commercial terms with distributors can be “a nightmare” and “can end in a take it or leave it ultimatum”. MEUG supported the Authority’s consideration of more standardisation.
- 5.16 MRP considered that the changes in the Vector UoSA were principally made to achieve the desired pan-Auckland arrangement and that other changes such as lengthened payment terms would be beneficial to smaller or new-entrant retailers. MRP stated it had not received a proposed UoSA from Network Tasman.
- 5.17 Nova provided commentary about how it considered distributors are maximising their customer reach and other benefits while minimising their risks within an interposed UoSA. It considered that retailers have minimal bargaining power to change this imbalance.
- 5.18 Orion stated that it had commenced with a “negotiated approach” but paused this after it noted the Authority’s response to Vector’s approach. Orion submitted it is not inclined to invest resource without much greater clarity from the Authority. Orion considered that Vector’s approach seemed well aligned with the expectations that the Authority set back in September 2012 and was surprised with the Authority’s response.
- 5.19 Orion questioned the Authority’s identification of issues. Orion spent the first year of the five-year time frame set by the Authority on preparatory activity, which it considered could explain the apparent lack of progress in developing new UoSAs. Orion further noted the consultation paper used only the two examples of Vector and Network Tasman to back up the Authority’s identification of other issues. Orion considered the consultation paper was unduly harsh on Vector and Network Tasman’s experience was “entirely understandable” given retailers’ incentives to not engage with distributors. Orion gave examples of those

- incentives, including for smaller retailers. Orion was sceptical that retailers are concerned about variation between distributor agreements, and advised it has a practice of offering all retailers the same agreement and offering any new agreements reached with new retailers to existing retailers.
- 5.20 Orion also questioned the arguments supporting the idea of having a MUoSA. Orion did not think that having a MUoSA reduces transaction costs, and did not think that existing agreements inappropriately favour distributors or fail to provide equal access on equal terms to retailers.
- 5.21 PwC offered reasons for why progress in adopting new UoSAs may have been slower than the Authority expected, specifically: the Authority indicated that participants would have five years to adopt new UoSAs, smaller distributors and retailers have been waiting for UoSAs with larger distributors to be finalised, distributors were focused on other more pressing regulatory commitments in 2013, and distributors and retailers became reluctant to progress UoSA negotiations after the Authority announced it would consult on changes to the MUoSA arrangements. PwC submitted that distributors need more time to progress their UoSAs.
- 5.22 PwC also submitted that distributors do not have incentives to reduce competition since no distributors have any major retail operations, and that there are other safeguards against anticompetitive behaviour. PwC submitted that when distributors seek to vary the standard terms of a UoSA, it is to make the UoSA operationally and commercially workable. PwC submitted that the Sapere report commissioned by Vector shows that such variations are pro-competitive. PwC submitted that Vector's negotiations demonstrate that the MUoSA has not been exposed to robust commercial and legal testing, and the original approach allows learnings from negotiations to be incorporated into, and continual development of, the MUoSA.
- 5.23 Simply Energy has “found the heavily modified [UoSA] process undertaken by some network companies frustrating, time consuming and expensive”. Simply Energy held off executing the earlier versions of Vector’s agreement due to their heavily one-sided nature but has since executed version 1.4. Simply Energy’s preference would have been the MUoSA, or a side letter to the MUoSA outlining the changes rather than a material re-draft. Simply Energy stated that it executed the Vector agreement out of pragmatism to be able to move forward and participate in the benefits from an amalgamated Vector and United Networks agreement from a billing and faults process.
- 5.24 Trustpower stated that it did not believe that the issues that the Authority has outlined actually exist or that, if they do exist, that they are reducing retail competition or affecting consumers in a negative way, and considered the Authority had provided no evidence that issues did exist. Trustpower submitted that the Authority needs to make a clear distinction between barriers to entry and

- transaction costs. Trustpower considered the provision of the MUoSA addresses any barriers that might exist.
- 5.25 Unison considered the MUoSA appeared to be forming the basis of negotiations for the majority of distributors, as evidenced by an activity survey that ENA had conducted. Unison noted, however, standardising agreements and taking up the MUoSA is a time-consuming process. Unison stated that it supported Vector's approach to developing and negotiating UoSAs and that these UoSAs have been made in good faith and have been negotiated and agreed to without coercion.
- 5.26 Wellington Electricity Lines Limited (WELL) submitted that it takes time for distributors to develop a new UoSA prior to starting negotiations with retailers, and that uncertainty created by the Authority in signalling its intention to take a less voluntary approach to the implementation of the MUoSAs had also contributed to delays to the negotiation process.
- 5.27 WEL Networks reported that it had signed agreements with three (one new and two expanding) retailers based on the MUoSA. WEL Networks was also negotiating with its existing retailers prior to the Authority announcing that it was reconsidering the MUoSA model framework. WEL Networks considered that this progress was in line with the timeframes that the Authority indicated were satisfactory when it published the MUoSA in September 2012. WEL Networks said that it had been advised by some retailers that they are only negotiating one UoSA at a time, and WEL Networks suspected that retailers wanted to deal initially with Vector. WEL Networks expected negotiations to progress more quickly now that all participants have had the opportunity to learn from the Vector UoSA negotiations.
- 5.28 WEL Networks referred to the Sapere report prepared for Vector, which indicated that variations between UoSAs are not a significant transaction cost for entering or expanding retailers. Vector also considered that the transaction costs arising from there being UoSA variations are overstated and do not take into account the benefits of flexibility.
- 5.29 Vector considered that its UoSA does not hinder competition and better promoted network security and efficient operation of the market than the MUoSA, and that this is demonstrated by the Sapere report and clause-by-clause analysis, as well as Vector's clause-by-clause analysis of the variations to the MUoSA in its UoSA, which sets out the reason for each clause variation. Vector also responded specifically to the Authority's comments on the ten material variations identified in the consultation paper, and provided a copy of version 1.4 of its UoSA, which shows the differences between Vector's UoSA and the MUoSA.
- 5.30 Vector also considered that its amendments are objectively justifiable and in line with the Authority's expectations for use of the voluntary MUoSAs. Vector also noted that retailers have been "as willing (in fact seemingly more so) to negotiate and sign up to the Vector UoSA as they have to a UoSA that is much closer to

the MUoSA". Vector considered this does not support a view that the Vector UoSA is biased towards distributors or that the MUoSA provides a contract that all parties are happy to support. Vector challenged the Authority's analysis that concluded that Vector's UoSA contains many material amendments to the MUoSA that were in Vector's favour, commenting that the Authority has either misunderstood the effect of the provision or the effect of the variation, and a number of variations are not material. Vector also considered that some of the amendments were in fact in the retailer's favour, and that the Authority's assessment did not acknowledge that.

- 5.31 Vector disagreed that distributors have no incentive to have more than one retailer on their networks. Vector stated that it supports strong retail competition, which is in the interests of consumers (including many of which are beneficiaries of the Auckland Energy Consumer Trust), and Vector – as it lowers energy costs for parties in Auckland. Vector considered that if a distributor refused to sign up more than one retailer to its network, or unreasonably refused access for new entrant retailers, it would likely receive complaints and be subject to political pressure. Vector also considered having only one retailer would concentrate credit risk, which would not be desirable for a distributor, and that its UoSA terms do not pose a significant barrier to entry for new entrant retailers. Vector commented that its network has more retailers trading on it than any other network.
- 5.32 Vector also submitted that the Authority should consider why many retailers and distributors might not see negotiating UoSAs as a priority, and considered the most likely explanation is that they do not see significant advantage in moving to the MUoSA. Vector considered that matters such as the availability of hedge contracts are more material to retailers' competitive positions.
- 5.33 Sapere (for Vector) was of the view that Vector's UoSA would not affect the ability of new entrants to enter and compete in Vector's distribution area. Sapere considered the differences between the MUoSA and Vector's UoSA clause by clause, and came to the view that the differences are not a barrier to new retailers entering the market or existing retailers expanding their activities in the market. Based on detailed analysis (which is presented in Sapere's paper) Sapere was of the view that none of the variations in Vector's UoSA would have a detrimental impact on retail competition. In relation to reliability, Sapere was of the view that there are 12 variations in the Vector UoSA that would promote reliability and security.
- 5.34 In support of Vector, Sapere was of the view that Vector's UoSA could be a useful precedent for a commercially operable UoSA.

Question 2 – activity relating to development and negotiation of UoSAs

- 5.35 This question asked: “If you are a distributor, are you actively developing and negotiating UoSAs with retailers? If you are a retailer, are you actively engaged with any distributors in relation to UoSAs? Please provide information relating to your approach, experiences, successes and concerns.”
- 5.36 Distributor responses to this question are most comprehensively summarised by a survey conducted by ENA, which represents all 29 distributors operating local networks. ENA stated that it received responses from 24 members but did not identify the members, meaning that reconciliation with individual distributor responses is not possible. ENA reported that:
- (a) 6 ENBs are undertaking a full review of UoSAs based on the MUoSA
 - (b) 3 ENBs are negotiating some UoSAs based on the MUoSA
 - (c) 1 ENB is negotiating some UoSAs based on the Vector model
 - (d) 6 ENBs are undertaking ‘other’ negotiations: most of these have started talks with retailers about either the Vector agreement or MUoSA but the talks have either stalled or retailers are not responding; one is undertaking an internal review in preparation for negotiation
 - (e) 8 ENBs are not currently negotiating any UoSAs, but the majority are intending to offer a UoSA based on the model
- 5.37 With respect to the number of retailers who have requested to negotiate a new contract since the September 2012 MUoSA was published by the Authority, ENA reported:
- (a) 5 retailers (1 ENB) – mix of new and existing
 - (b) 4 retailers (1 ENB) – all new
 - (c) 3 retailers (8 ENBs) – mix of new and existing
 - (d) 2 retailers (1 ENB)
 - (e) 1 retailer (5 ENBs)
 - (f) None (8 ENBs).
- 5.38 Orion reported that it had been considering its options internally, while sharing its process and thoughts with some retailers, and seeking their views in return. Orion reported it had subsequently placed its work in this area on hold pending the outcome of the Authority’s review. Orion described the agreements it has entered with new retailers since the MUoSA was finalised. Orion noted those agreements were entered into quickly, and were based on Orion’s original UoSA rather than the MUoSA. Orion reported that none of those new retailers sought an agreement based on the MUoSA or stated to Orion that its agreement was a barrier to entry.

- 5.39 Unison reported that it had engaged with Vector early on in its process and had developed its own UoSA based on the MUoSA with a small number of changes, some of which were clauses Vector had already agreed with retailers. Unison considered that the differences between the three UoSAs reflect diversity and innovation in the sector. At the time of making its submission, Unison was seeking multilateral retailer confirmation to engage in UoSA negotiation. In its submission, Unison outlined the benefits for Unison and retailers of its work towards developing a network-wide standard UoSA. In Unison's experience, retailers prioritised resources and negotiated with the largest distributors first, or were happy with existing UoSAs. Unison advised it had not had any contractual disputes with retailers that have needed to refer back to the UoSA.
- 5.40 WELL advised that during 2013, it had devoted significant internal and external resources to develop a new UoSA which largely reflected the MUoSA and where applicable Vector's new UOSA, recognising the progress Vector has made with its UoSA negotiations with retailers, who also trade on WELL's network. WELL noted a number of variations from the MUoSA were required to meet operational requirements and ensure workability of the agreement. WELL released its draft UoSA to retailers for consultation on 17 March 2014.
- 5.41 WEL Networks reported that it had developed a UoSA based on the MUoSA and had signed agreements with three new retailers. However WEL Networks' existing retailers were "relatively unresponsive" following the Authority's announcement that it would consult on further standardisation. WEL Networks advised it primarily uses in-house resources, with external legal support as required, and that this limits the number of negotiations that can take place at any single time. WEL Networks noted that Genesis, WEL Networks' incumbent retailer, withdrew from UoSA negotiations following the Authority's announcement.
- 5.42 Business Engagement, which provides services to embedded network owners, reported that previously "we have generally used the 'industry based' embedded network model that requires minimal customisation, is concise and cost efficient". Due to the scale of embedded networks now in operation, it had "found not all retailers (minority) willing to engage".
- 5.43 Contact encouraged the Authority to acknowledge the progress to negotiate and enter into new UoSAs since the MUoSAs were finalised. Contact reported that it had signed a new UoSA with Vector (version 1.3) in December 2013, following extensive negotiations between both parties incentivised by the desire to see the pan-Auckland development proceed. Contact's experience was that this process was "inefficient, costly and not to be repeated". Contact noted it had signed six new local network UoSAs since 1 January 2014 and all of these are materially aligned with the MUoSA, with a common set of amendments as well as some variations that reflect local differences in capability and processes. Contact had also signed two new embedded network UoSAs since 1 October 2013 and

- considered that both are materially aligned with the MUoSA as appropriate to embedded networks. Contact considered these eight negotiations have followed an efficient process. Contact stated that it is keen to negotiate up-to-date UoSAs with any distributor as long as the process, time and cost of doing so are not unreasonable or onerous.
- 5.44 Genesis advised that it operates in 28 networks and it had signed one UoSA based on the September 2012 MUoSA. Genesis advised that some distributors had taken a relatively proactive approach to realising some efficiency benefits in negotiations, starting with the MUoSA. However, Genesis considered this wasn't the norm. [Confidential material redacted]
- 5.45 Genesis advised that a large part of the delay in negotiating some non-standard UoSA's was due to new language used in the agreements, but also acknowledged that some negotiated clauses provided a better result for retailers than those in the MUoSA. [Confidential material redacted]
- 5.46 Meridian reported that it had signed five new UoSAs and was negotiating with four other distributors. Meridian had "found engagement from distributors to be variable (including difficulties with those distributors that have engaged)". Meridian considered engagement on negotiating new UoSAs since development of the MUoSA was generally poor.
- 5.47 Meridian reported that Powershop had signed one new UoSA since the Authority's monitoring began and had been presented with two others for review. "The distributor with which Powershop agreed the new UoSA was highly engaged but the negotiation process was unnecessarily protracted due to the number of amendments to the MUoSA." Powershop rejected one of the other two UoSAs on the basis that it did not reflect the MUoSA and did not offer any additional benefit to Powershop than the existing agreement. Powershop had not yet reviewed the other UoSA due to limited resources.
- 5.48 Although MRP agreed with the Authority's general findings that there had been little activity in developing new UoSAs in most distribution network areas, MRP stated that in the last few months, MRP had seen increased activity in this area across its retail brands. MRP reported that it is presently negotiating new UoSAs with at least eight different networks. MRP stated that its general approach was to "compare the proposed UoSA with the MUoSA. Any differences and operational changes/requirements are considered internally and then negotiated (as needed) with the distributor". MRP stated that its negotiations always seek to minimise changes and variations.
- 5.49 Nova Energy reported that it had been actively negotiating new and replacement UoSA agreements with distributors. Nova Energy had been presented with agreements ranging from very old contracts with references to the NZEM, MARIA etc. to new comprehensive and demanding drafts quite different to the MUoSA. Nova Energy stated that:

- (a) contentious areas have included termination conditions, liability caps, and the extent of customer information expected, as well as the term, dispute provisions, the obligations of each party in respect of fault management, customer contact, etc, and obligations regarding equivalency of terms as compared to other retailers
 - (b) some distributors view that if a major retailer has agreed to the form of contract then it should be acceptable to all retailers
 - (c) there is also some reluctance by distributors to change a term if that change creates an obligation to offer the revised agreement to every other retailer contracted with the distributor.
- 5.50 Nova Energy submitted that the MUoSA can be improved on in many of those areas, and has not made it easier to settle on key terms with distributors when they choose to deviate from the MUoSA on key points.
- 5.51 Powerco submitted that increased standardisation of terms following development of the MUoSA has enhanced its engagement with retailers. The voluntary nature of the regime has provided a useful degree of flexibility, enabling both parties to tailor arrangements to local and retailer-specific needs.
- 5.52 Vector reported that it had signed agreements with 12 of the 15 retailers operating on its network, and noted that in line with clause 4 of its UoSA, all retailers that have signed or wish to sign a UoSA are offered the terms in the most recent version of the Vector UoSA (although none who signed an earlier version have taken up the opportunity to move to the newer version). Vector considered it had not applied undue pressure on any retailer to sign or taken a “take it or leave it” stance. As new retailers approach Vector with a view to operating on its network, Vector considered it will “continue to negotiate in good faith and consider carefully any amendments [the retailers] wish to put forward in relation to the Vector UoSA”. Vector further considered it “actively support[s] new entrants to help them understand the commercial requirements and the practical obligations of supplying electricity via our network”. Vector also stated that if there is convincing evidence that a clause in its UoSA may not be in the interests of consumers, it will happily consider amending it. Vector commented that it appears that Vector and Network Tasman have both made efforts to negotiate new UoSAs, and Vector inferred that retailers have been as willing (in fact seemingly more so) to negotiate and sign up to the Vector UoSA as they have to a UoSA that is much closer to the MUoSA. Vector noted the Network Tasman UoSA is closer to the MUoSA than the Vector UoSA.

Question 3 – any new issues or concerns that may have arisen

- 5.53 This question asked: “Are you aware of any new issues that have arisen since the Authority undertook monitoring and communication with participants relating to UoSAs in early 2013?”

- 5.54 Contact considered that it had identified a common set of amendments to the MUoSA that it was happy to include in any replacement UoSAs that distributors sought to negotiate. However, it was concerned that it had recently been provided with a draft new local network UoSA that is materially misaligned with the MUoSA. Contact reported that it had communicated its expectations to distributors that “all new UoSAs should be materially aligned with the MUoSA and not with Vector’s UoSA (version 1.3 or subsequent version)”.
- 5.55 ENA stated that it was not aware of any other new issues. It reported that Vector was negotiating version 1.4 of its UoSA with retailers.
- 5.56 Meridian considered an issue arose because feedback received from some distributors since the release of this consultation suggests that they may be reluctant to negotiate new UoSAs until the Authority decides on its approach to standardising UoSAs. Accordingly, Meridian encouraged the Authority to make a decision and establish clear time frames for implementation as soon as possible, to avoid an extended period of uncertainty, which would further slow progress in establishing new UoSAs.
- 5.57 MEUG considered that an increasing number of time-of-use consumers would elect to become direct market participants (ie cleared through the Clearing Manager rather than having a retailer manage the interface with the wholesale spot market) and therefore foresaw an increasing number of end consumers requiring direct contracts with distributors.
- 5.58 MRP noted that a growing number of embedded networks are being created, without UoSAs being proposed by the network owners. MRP considered that some work needs to be done in the area of standardised embedded network UoSAs.
- 5.59 Nova Energy noted that one issue it considered needs to be addressed is the obligation on the distributor to continue to provide services to a retailer in the event of a dispute unrelated to the use of the network. Nova Energy had been in dispute with a distributor over this issue and provided relevant background and its view of a suitable remedy by including a new Code provision.
- 5.60 Orion was not aware of any new issues but considered the pending changes to the Consumer Guarantees Act may be relevant to some of the MUoSA clauses.
- 5.61 Simply Energy reported that there had been confusion as it was informed that the Authority would rule that should parties not be able to agree to modified terms, the MUoSA would be the default.
- 5.62 Similar to MRP, Trustpower also highlighted a view in respect of the “proliferation of embedded networks and new customer networks that are being created for no consumer benefit”. It considered these added substantial administrative costs to the industry and should be addressed by the Authority.

- 5.63 PwC submitted that the Authority's announcement that it would consult on changes to the MUoSA arrangements made distributors and retailers reluctant to progress UoSA negotiations.
- 5.64 Unison and WEL Networks noted that there were no new issues.

Question 4 – any new developments that would provide additional information or update the situation presented in section 4 of the consultation paper

- 5.65 This question asked: “Are you aware of any new developments that would provide additional information or update the situation presented in section 4? If so, please provide relevant details”.
- 5.66 Business Engagement considered that the Authority’s proposed approach for embedded networks (ie publishing drafting guidelines to adapt the MUoSA for use on embedded networks) would not be efficient due to the scale and unique characteristics of these networks.
- 5.67 Contact considered that either the Authority did not clearly set out its expectations around timing and material alignment, or its expectations have been misunderstood by the industry. It considered this is the cause of the slow progress in refreshing UoSAs observed to date.
- 5.68 ENA considered that the Authority is taking an overly narrow view of efficiency and pro-competitive benefits by not considering that the negotiated terms in Vector’s UoSA may give rise to better (ie more efficient and pro-competitive) outcomes. It considered there is no evidence to suggest the Vector approach has been inefficient and challenged the Authority’s assertion that the Vector UoSA inefficiently redistributed risk. In ENA’s view, the willingness of retailers (that were under no obligation) to sign the UoSA runs contrary to the Authority’s view. WEL Networks provided similar comments along these lines.
- 5.69 ENA questioned whether UoSAs are hindering competition, given the large number of new entrants coming into the New Zealand market in recent times. ENA cautioned that regulatory risk perceptions increase when regulators make assertions that are not backed up by evidence.
- 5.70 Meridian and MEUG had nothing more to add to their responses to questions 1 – 3.
- 5.71 MRP submitted a similar view to ENA's view on Vector's UoSA, summarised above, and considered that Vector’s UoSA may be unique to its network but this is necessarily so, to allow a smooth commercial and operational transition of the Vector Central network from a conveyance arrangement to an interposed one. MRP considered that an outcome of Vector’s approach was that it in fact promotes efficiency and competition across Auckland.

- 5.72 Nova Energy reported that it had recently received a new draft UoSA with over 120 amendments to the MUoSA. Nova Energy considered this will require an extensive review to understand the implications of the proposed changes. Nova Energy submitted that there is a trend of distributors becoming closer to the customer. Nova Energy considered customers benefit from greater awareness of services as a result of this trend, although the ability of the distributor to dictate the terms of the engagement, and their right to become involved in retailing energy, means that distributors and retailers are unable to develop a real partnership in delivering cost effective and quality services to the consumer. Nova Energy considered that the Authority needs to look at the whole relationship between retailers and distributors with a view to minimising the costs of engagement and risks for both parties.
- 5.73 Orion cited the Vector agreement as the most significant new development. In Orion's view, the Vector agreement represents a timely and commercially grounded case study in taking the MUoSA forward. Orion cited Vector's liability capping provisions as being superior to the equivalent provisions in the MUoSA and considered that other amendments made by Vector were superior to the MUoSA. Orion suggested that the Authority should consider the Commerce Act's Part 4 regime for non-exempt distributors, particularly in respect of the allocation of more risk to distributors without compensation. Orion noted that the consultation paper contains no indication that the Authority has consulted with the Commerce Commission. Orion submitted that the argument that the MUoSA helps correct uneven bargaining power ignores regulatory developments that prevent distributors from behaving like monopolists and the reality that any terms in the MUoSA that weaken distributors' position are an uncompensated "regulatory taking".
- 5.74 Powerco submitted that in response to the Authority's changed expectations in the consultation paper, it has done further work on its UoSAs to reduce the number of departures from the MUoSA to a minimum, where they are objectively justified. Powerco outlined the basis for its remaining departures.
- 5.75 PwC submitted that there are increasing levels of engagement on new UoSAs. PwC noted that new UoSAs on the Vector network represent 25% of all consumers. PwC's survey of the distributors that supported its submission showed that a large proportion of distributors are progressing new UoSAs.
- 5.76 Vector submitted that the Authority appears to be relying on information predominantly gathered in the first half of 2013. It considered that information is not sufficient to make decisions on whether to further regulate UoSAs, particularly as it does not take into account UoSAs Vector has recently signed with retailers. Vector recommended that the Authority undertake to consult on a second-year formal review of MUoSA uptake before making a decision.

- 5.77 Vector also considered that Part 12A of the Code requires retailers and distributors to negotiate UoSAs in good faith, and that any retailer could have complained to the Authority or the Authority could have investigated if it thought that Vector was not complying with that requirement. Vector also noted Part 12A provides for mediation, but neither Vector nor the 12 retailers with whom it negotiated a UoSA chose to take the negotiations to mediation. Vector considered that demonstrates that the parties negotiated in good faith and were able to reach agreement.
- 5.78 WELL submitted that it is not unreasonable to expect that parties will negotiate terms that they consider necessary to ensure the proper functioning of the commercial relationship given their business specific operational requirements and allowing sufficient flexibility for innovative business practices to be accommodated in the future. WELL did not agree with the Authority's statement that distributors can apply a 'take it or leave it' approach to negotiations. WELL considered some retailers are strong negotiators and influencers, and WELL noted it places a high value on maintaining positive working relationships with its retailers.
- 5.79 In addition to the ENA responses that WEL Networks reinforced, WEL Networks reported that to date its total external spend (ie not including staff costs) is less than \$50k, which included the development of its UoSA based on the MUoSA, three signed agreements with new retailers and the beginnings of three negotiations with existing retailers. WEL Networks considered this to be an acceptable level of spend for the outcomes so far produced.

6 The merits of the options identified in the consultation paper

- 6.1 Sections 5 and 6 of the consultation paper discussed the Authority's preliminary conclusions following its information gathering work. The Authority concluded in that paper that less participant discretion might be required in the way that distributors and retailers form UoSAs. Sections 5 and 6 also outlined the range of options currently being considered by the Authority to achieve more standardised UoSAs.
- 6.2 The Authority requested feedback on:
- (a) the Authority's view that its objectives for more standardised UoSAs are unlikely to be achieved by persevering with largely voluntary measures (question 5)
 - (b) any options that would be worth considering in addition to those identified in the consultation paper (question 6)

- (c) the design detail provided in the Authority's description of the options (question 7)
- (d) whether there are any issues relating to variations in network connections standards between distributors (question 8)
- (e) whether the options intended to require distributors and retailers to transition to new UoSAs represent the range of options available to the Authority, and whether any other options should be considered (question 9)
- (f) the Authority's initial assessment that option 4 is the best approach to meet its objectives (question 10)
- (g) what other Code design details should be considered if option 4 were subsequently adopted for development (question 11)
- (h) whether a problem exists in the way that distributors that adopt the conveyance approach establish contracts with retailers and consumers, and whether standardisation of conveyance UoSAs should be pursued as well (question 12)
- (i) whether a problem exists in the way that embedded network owners establish contracts with retailers, and whether standardisation of embedded network UoSAs should be treated the same as local networks (question 13).

6.3 Sections 5 and 6 of the consultation paper prompted submissions across a range of views.

Question 5 – is persevering with voluntary measures likely to achieve efficiency and competition objectives for UoSAs?

6.4 This question asked: "Do you agree that the Authority is unlikely to achieve its objectives for UoSAs within a reasonable timeframe by persevering with largely voluntary measures? Please state the reasons for your view".

6.5 Responses to the question were broadly divided as to whether the submitter considered that perseverance with a largely voluntary approach would meet the Authority's objectives or not.

Submissions supporting perseverance with voluntary approaches (option 0 or 1)

6.6 Contact considered the Authority's objectives were not currently being met and that the main cause was that the MUoSAs were not promoted in a way that facilitated their early and wide adoption, rather than because of anything intrinsically wrong with them. Contact considered the best approach from here was to "encourage parties at all levels to ensure contracts are up to date and reflect good industry practice. This approach is consistent with adopting option 1 from the consultation paper. If voluntary means were not persisted with, of the remaining options discussed in the consultation paper, Contact stated it would support a default approach (options 3 or 4) over a mandatory one (options 5 or

- 6). Contact considered that any non-voluntary approach would require significant development effort.
- 6.7 ENA considered that the Authority's objective and expectations had shifted since the September 2012 publication of MUoSAs and that the Authority now expected adoption of UoSAs based on largely unaltered MUoSAs. ENA considered the Authority's "original objectives" could still be achieved if the Authority provides a stable regulatory environment in which contract negotiations can occur. ENA also considered that the Authority largely undermined the process by expressing concern very early in the process and, indicating the prospect of further intervention in mid-2013. ENA was surprised that the Authority had made Vector such a target given that it operated within the rules as they were written and the objectives to the extent they were articulated. ENA further considered that:
- (a) the model clearly has shortcomings, highlighted by the Vector process
 - (b) Vector had a right to work through a process that would yield a commercially operable agreement
 - (c) most retailers have voluntarily signed the latest agreement
 - (d) "we now have the benefit of that process to draw on with any new arrangements".
- 6.8 ENA further submitted that developing a mandatory agreement would impose unwarranted costs in terms of lost innovation and operational flexibility.
- 6.9 ENA did not agree that UoSAs hinder competition, and submitted that in terms of the Authority's Code Amendment principles there is no material efficiency concern with allowing the current voluntary process to continue. Instead, ENA considered any attempt by the Authority to regulate the commercial terms between distributors and retailers was likely to cause substantial harm to investor confidence.
- 6.10 Northpower supported option 1 (status quo with communication) in order to give distributors further time to continue negotiations with retailers in a stable regulatory environment. Northpower submitted that during 2013 it (like many other distributors) had committed considerable resources to managing the implementation of the new Part 10 requirements. With these resources now available, Northpower is committed to commencing negotiations with its retailers (most of whom are on an agreement based on the 2005 MUoSA) with a view to moving towards a UoSA that incorporates learnings since 2012, reflects up to date industry practices and processes and is commercially and operationally appropriate for the Northpower network.
- 6.11 Powerco considered that a voluntary approach is the best way to achieve the Authority's objectives of greater standardisation. Powerco submitted the Authority has changed its expectations about the speed of adoption of the MUoSA and parties' ability to depart from the MUoSA. Powerco suggested there is insufficient

- reason to believe that the Authority's expectations cannot be met if the industry has an opportunity to respond. Powerco noted it has already taken steps to respond to the Authority's expectations as expressed in the consultation paper.
- 6.12 PwC submitted that it is prudent to let the model approach run its course and to continue to assess uptake on an annual basis.
- 6.13 Orion disagreed with the Authority's view that the Authority was unlikely to achieve its objectives for UoSAs within a reasonable time by persevering with largely voluntary measures. Orion considered that the timeframe for achievement of the Authority's objectives had shortened considerably. Orion considered that any move to non-voluntary measures would run significant risk of unintended consequences.
- 6.14 Trustpower disagreed with the Authority's view and considered that enforcing the MUoSA under the pretence of solving some undefined issue is interfering in commercial arrangements. Trustpower submitted that options 2 to 6 introduce unnecessary transaction costs for all participants, and that placing more mandatory conditions in the Code will hinder the sector's ability to react in an efficient manner to technological changes and pass on any subsequent advantages to consumers. Trustpower submitted that some participants have already incurred considerable cost as a result of pressure to move to the MUoSA, and any option that mandates part or all of the MUoSA will mean significant additional costs and the loss of investment to date in current negotiations.
- 6.15 Unison disagreed with the Authority's view and considered that the Authority needs to be realistic about the time it will take for the industry to implement more standardised agreements. Unison described a situation in which it recently approached a particular retailer to renegotiate its UoSA and was told that the retailer was already considering 18 other UoSAs. Unison also pointed to the new Part 10 as an example of developments that have consumed key resources and contributed to delays in developing new UoSAs.
- 6.16 Vector considered there is value in options 0 and 1, although also considered they may not promote uptake of the MUoSA because variations to the MUoSA like those in Vector's UoSA are likely to be superior. Vector considered that the advantages of options 0 and 1 are:
- (a) they give parties flexibility and the chance to innovate
 - (b) a standardised approach would mean amendments would have to be made through a regulated process, which will limit the scope of amendments, be costly, and cause delays
 - (c) they allow parties to agree terms that reflect commercial practice.
- 6.17 Vector did not support options 2 to 6, (noting it preferred the 7 options in the order they are presented in the consultation paper) and submitted:

- (a) because the Vector UoSA is better than the MUoSA, a move to standardise the MUoSA would have a negative effect on consumers
 - (b) if there was a default contract, parties may choose not to enforce compliance with the default terms they do not want
 - (c) codifying the MUoSA is impractical and would make the Code unwieldy
 - (d) if the MUoSA was codified, codifying only a few clauses would be preferable (ie option 2)
 - (e) it is not clear how options 3 and 4 would be implemented, what the transitional arrangements would be, and whether Vector would have to renegotiate its UoSAs signed since the MUoSA was published (which Vector considered the parties should be able to retain)
 - (f) the Authority needed to be mindful of the risk and costs involved in making MUoSA terms default, given that operating systems would need to be changed, and the MUoSA may not reflect the most optimal operating system.
- 6.18 Sapere (for Vector) was of the view that, on a clause by clause analysis, there would be no benefit to consumers in making any part of the MUoSA mandatory. Further, Sapere was of the view that mandating a UoSA would have great opportunity costs: it would have the potential to reduce transaction costs but this would be outweighed by the lost opportunity for innovation, adaption and sustainability.
- 6.19 In addition, Sapere (for Vector) was of the view that, based on switching rates and the level of customer choice, Vector's network area is already amongst the most competitive areas in New Zealand.
- 6.20 WELL did not support mandating all or part of the MUoSA. WELL considered that the Authority should allow more time for distributors and retailers to undertake the UoSA re-negotiation process that was originally envisaged. WELL considered progress towards negotiation of its new UoSA had stalled as a result of the uncertainty created by the Authority's intention to change the rules. WELL and many other industry participants had already committed significant resources to re-developing and re-negotiating new UoSAs based on the MUoSAs, including setting up a working group between distributors and retailers to discuss the introduced Authority's requirement for a load control market. WELL noted this process underpins participants' cooperation to reach and settle agreement on new concepts outside of further regulatory intervention. WELL submitted now that a number of new agreements have been reached the momentum for change should increase.
- 6.21 WELL considered it is reasonable to expect that now that retailers have completed negotiations with the largest distributor, they should be more willing and have more resources available to commence engagement with other

distributors. WELL supported option 1 of the consultation paper which retains the voluntary nature of the MUoSA and allows the industry to continue with its current process of revising and renegotiating new UoSA based on the MUoSA. WELL considered efficiency would be achieved under this option, with the MUoSA providing a useful benchmark from which distributors and retailers can negotiate a commercial agreement, consistent with good business practice.

- 6.22 WEL Networks disagreed with the Authority and considered the voluntary process was making reasonable progress until the Authority undermined it by announcing that it considered there were issues with it. WEL Networks considered the best course was to let the current approach run its course (option 1). WEL Networks submitted that if the Authority provided a stable regulatory environment, a model-based framework would succeed at promoting a competitive environment.

Submissions supporting consideration of less voluntary approaches (options 2 to 6)

- 6.23 Genesis considered stronger measures for achieving greater standardisation of UoSAs are needed to both address the underlying problem – dealing with multiple monopoly electricity distributors and unequal bargaining power between distributors and retailers – and to bring greater efficiencies to the operation of the electricity sector. Genesis considered a mandated agreement (option 5 or 6) is the best approach (as it will reduce costs to retailers and distributors, reduce uneven bargaining power, and create an even and transparent playing field for new entrant retailers), and that a default whole agreement is a bare minimum. However, Genesis also said that standardisation can reduce innovation and lead to unnecessary costs, and some UoSA provisions are best confirmed between the parties (eg provisions relating to billing, which are specific to the retailer and distribution businesses).
- 6.24 Meridian agreed that there is an insufficient incentive and obligation on distributors (and retailers) to agree to revised UoSAs and considered that maintaining voluntary measures will not achieve the Authority's objectives.
- 6.25 MEUG agreed that further work on developing less voluntary measures is worthwhile.
- 6.26 MRP "partially" agreed that the Authority is unlikely to achieve its objectives for UoSAs within a reasonable timeframe by persevering with voluntary measures. It considered:
- (a) that the Authority's objectives in respect of competition are being met, citing its own expansion into regions via sub-branded offerings (that leverage MRP UoSAs previously executed) in support of this
 - (b) other factors were of greater significance to further regional retail competition than was the need to negotiate a UoSA.

- 6.27 However, MRP considered the Authority’s objectives in respect of efficiency may not be achieved in reasonable time by persevering with largely voluntary measures and that a default regime could result in the earlier adoption of new UoSAs and achieve the objectives of standardisation and increased efficiency. MRP would support a default regime if it:
- (a) excluded UoSAs signed after September 2012 (when the MUoSA was published)
 - (b) allowed parties to negotiate and otherwise agree alternative operational/commercial terms (such as term of agreement, ability to terminate and similar clauses).
- 6.28 Nova Energy agreed with the Authority’s conclusion and considered that entrant retailers were incentivised to adopt the agreement supplied on the best terms available, but would usually compromise on most points in order to get an agreement in place. When faced with the prospect of considering a UoSA which varied considerably from the MUoSA to replace an existing agreement, Nova Energy considered “there is little incentive for the retailer to spend time and resources to adopt a new agreement that is most likely to disadvantage the retailer versus its existing UoSA.
- 6.29 Simply Energy agreed with the Authority's view and considered that a default whole agreement is the only option that will meet the Authority's objectives. Simply Energy said that the Authority must take a lead and mandate this process that the MUoSA is the default where the parties cannot mutually agree to changes that benefit both parties”. Simply Energy considered that without a default UoSA, small and new entrant retailers have to manage a large number of agreements that are different in structure and substance, which is costly and discourages retailing outside the major networks.

Question 6 – other options to be considered

- 6.30 This question asked: “What other options can you suggest that would be worth considering alongside the options identified in section 5.2 and explained in more detail in section 5.3? Please explain the key advantages of your suggested option(s)”.
- 6.31 A number of additional options were suggested by submitters. For the most part, these described further detail that would broadly fit within one or more of the options described in the consultation paper.
- 6.32 Contact considered more standardisation of distribution arrangements to be a “fundamental principle” and that this would be achieved through a MUoSA-based agreement that is:
- (a) revised to reflect recently agreed amendments it agrees with, including some negotiated during its interaction with Vector

- (b) updated to reflect local differences in capability and process, so long as they do not inhibit efficiencies and consistency arising from more standardisation.
- 6.33 Contact suggested regulating a requirement for material alignment of new UoSAs with the MUoSA, rather than a default or mandated UoSA. Contact further considered there may also be merit in exploring a hybrid of options 1 and 4, which would incentivise both distributors and retailers to replace legacy UoSAs with up-to-date UoSAs on a timely basis. Contact suggested this option would involve establishing a representative group of distributors, retailers and the Authority to attempt to see if a common set of amendments to the MUoSAs can be agreed. Contact considered if this were achieved, an enhanced set of expectations and communication required to support buy-in and delivery of the hybrid option would be jointly developed. Contact suggested the following process:
- (a) a new timeframe could be established to allow distributors and retailers to continue the task of negotiating new UoSAs
 - (b) once agreement is reached with at least three of the five major retailers, the default UoSA at that point of time for retailers that have not signed or for new retailers would become the last UoSA signed
 - (c) changes to the default alternative agreement for that distributor could be made through the amendment provisions creating a new alternative agreement once signed by one retailer
 - (d) all existing signatories would then get the opportunity to move to the latest alternative agreement
 - (e) if agreement is not reached with at least three of the five large retailers, the default becomes the MUoSA, with the only amendments being those necessary to reflect the status quo for the network where options exist (eg as to which party is responsible to take unplanned service interruption calls from consumers).
- 6.34 ENA suggested making all new UoSAs public and having the Authority provide a commentary on variations, which would provide guidance to the industry.
- 6.35 Nova Energy suggested a requirement for parties to an agreement to seek approval from the Authority for any variations from the MUoSA". Nova Energy considered this would allow variations to model terms to be made to enable evolution of terms through time.
- 6.36 In opposing all options that make the MUoSA or any part of it default or mandatory, Orion suggested an alternate three-stage process that it considered would better address the Authority's concern about equal access for retailers and identify whether equal access really is a concern. Orion also suggested that the Authority separately review whether there are any outstanding operational

- matters that might merit a standardisation discussion (such as connection agreements).
- 6.37 Pioneer Generation suggested default standards for information exchange between all network companies and retailers as well as a default single transport mechanism. Pioneer considered there would be significant economic efficiency gains in a default information exchange standard because significant resources are required to convert information received from each network a retailer has customers on into a common format that the retailer then uses. Pioneer considered that this would reduce transaction costs (once in place), and was supportive of smaller new entrant retailers expanding into new network areas and bringing innovation.
- 6.38 Powerco's preferred option was continuation with the status quo. However, if the Authority does regulate UoSAs, Powerco submitted it would support mandatory core terms, provided they are amended as Powerco suggests, with operational terms being left to distributors and retailers to negotiate in good faith. If they cannot reach agreement within a set period of time, Powerco considered that a distributor's default operational terms should apply, which would be required to be the same across a distributor's retailer customers. Powerco suggested this option could include a review by the Authority of distributors' default operational terms, to ensure that distributors are sensibly approaching their good faith negotiation obligations and default terms. Powerco also submitted that the Authority should consider using Vector's UoSA as the base for, or in addition to, the MUoSA. Powerco considered the Vector UoSA has become more aligned to the MUoSA, but still differs in areas that are important to the industry and where the MUoSA is deficient.
- 6.39 Simply Energy also considered that there should be a single standard for information exchange, which would reduce the cost of information processing.
- 6.40 WEL Networks suggested that augmenting the voluntary MUoSA process with a requirement to publish UoSAs and monitoring alignment of these with the Authority's well-articulated expectations, in a similar manner to the monitoring of the *Distribution pricing principles and information disclosure guidelines*, would be a less intrusive and lower cost approach than default contract terms.
- 6.41 Meridian, MEUG, MRP, Trustpower and Unison had no further options to suggest.

Question 7 – feedback on design detail

- 6.42 This question asked: "What feedback do you have on the design detail discussed in this section? What options amongst the design detail do you think would best meet the Authority's objective?".

- 6.43 Contact disagreed with some of the assessments in Table 2 of the consultation paper of what MUoSA terms should be core or operational terms and provided examples.
- 6.44 ENA considered that a further process is required to develop a commercially viable default agreement from the MUoSA, and that such a process would also confirm which terms are core or operational terms. ENA provided examples of terms it considered would require revision to become suitable for application within a default agreement. ENA further considered that the MUoSA does not provide flexibility to deal with changing technology and network management practices, nor does it comprehensively cover all arrangements between retailers and distributors, and provided examples of this.
- 6.45 Meridian did not support options that would require the separation of terms into core and operational and considered such a distinction would likely be contentious. Meridian cautioned that if there is no clear obligation on the content of operational terms, there is a risk that those terms will be used to erode or weaken some of the core term provisions.
- 6.46 MRP considered that an assessment of what are core terms and what are operational terms would require input from interested parties, which may take time to agree.
- 6.47 Vector did not support the introduction of a default agreement, but considered that if UoSAs are to be standardised, a version closer to Vector's UoSA should be preferred to the MUoSA. Vector considered that there are a number of terms missing from the MUoSA and a number of provisions that would have to be amended to be workable, examples of which were provided. Vector submitted that the MUoSA was insufficiently future-proof, in that it was not robust enough to handle evolution of technology and industry practices during the term of the agreement. Vector submitted that this view is supported by the Sapere report.
- 6.48 Similar to ENA, Genesis, Nova Energy, Orion, Powerco, Unison, Vector and WELL considered the current MUoSA would require work, including further consultation with participants, to make it fit for purpose if it were to be a default agreement. Key clauses suggested for further development included:
- (a) liability
 - (b) load control provisions
 - (c) identification of non-standard clauses (for example, billing methodology)
 - (d) clauses relating to even-handedness
 - (e) indemnity and Consumer Guarantees Act claims
 - (f) confidentiality
 - (g) force majeure

- (h) billing information
 - (i) refund of charges
 - (j) charges continue
 - (k) consumer contracts
 - (l) consumer information received in error by retailer
 - (m) auditing
 - (n) non-compliance.
- 6.49 Unison also considered there would need to be further work done on the disposition of recently concluded UoSAs and the process for transitioning older UoSAs.
- 6.50 Genesis suggested the Authority establish a technical group with expertise from both sides of the negotiations to progress this work, with the Authority as a facilitator. Genesis considered this would encourage greater industry buy-in and ensure the standard agreement is robust and commercially relevant. Genesis also suggested:
- (a) the transition process for existing UoSAs would need to be clear
 - (b) an ongoing five-yearly review process for assessing the effectiveness of the standard agreement, to ensure it is up to date and is enabling of innovation (both in the retail consumer services space, and in the distribution asset management space)
 - (c) a process for review for extraordinary events or review for exemptions, for example, Code changes that need to be reflected in the standard agreement.
- 6.51 Powerco opposed regulation of UoSAs, but agreed that if the Authority does choose to regulate UoSAs the MUoSA is a good starting point. However, Powerco submitted that because the MUoSA was designed to be a model only, the MUoSA leaves certain hard issues unresolved or unclear and therefore cannot be made binding without further review and amendment. Powerco recommended certain amendments to the MUoSA, which it considered to be the minimum changes necessary before any regulations adopt the MUoSA. Powerco also recommended the establishment of a working group to improve the legal drafting of the MUoSA in areas where the MUoSA does not clearly inform each party of their rights and obligations. Powerco suggested the terms of reference of that working group should exclude making changes to the substance of the MUoSA. Powerco also suggested its own option, as discussed under question 6.
- 6.52 Powerco further submitted that it would be inappropriate to refer operational terms on which a distributor and retailer cannot agree to the Rulings Panel. Powerco considered the Rulings Panel to be ill-placed to determine such

disputes and arbitration to be inappropriate, and that in such circumstances default terms set by the distributor should apply. Powerco considered the Authority could provide for a regime for operational terms to be reviewed three years after introducing such a regulation, to ensure that distributors are responsibly approaching their obligation to negotiate in good faith and the setting of default terms.

Question 8 – potential issues relating to network connection standards

- 6.53 This question asked: “Are you aware of any issues relating to the variation of network connection standards between distributors that the Authority should consider? Are there opportunities to provide greater standardisation of network connection standards? Why would network connection standards not be suitable for greater standardisation across distribution network areas?”.
- 6.54 Contact raised a concern that some network connection standards are used to mandate unreasonable obligations on retailers. Other than this, Contact considered network connection standards are best determined by distributors at their discretion.
- 6.55 ENA had not formed a view on network connection standards but noted that these are a reflection of network-specific characteristics that are entrenched in network operating and architecture decisions, and may therefore be difficult to standardise. Unison had a similar view.
- 6.56 Meridian reported that it had not sought to make substantial changes to network connection standards when negotiating UoSAs with distributors, but considered there would be substantial operational efficiency gains from greater standardisation of network connection standards. Meridian provided examples of its experience with network connection processes and encouraged the Authority to investigate how a more standardised approach to network connection standards could work.
- 6.57 MRP had a similar view to Meridian and pointed out that there were differences in processes, timeframes and expectations from network to network particularly in respect of new connection processes. Nova Energy shared a similar view to this.
- 6.58 Orion and WEL Networks considered there may be opportunities for standardisation but viewed this as appropriately a separate project.
- 6.59 Simply Energy likened connection of new consumers with connection of distributed generation, and considered that commercial and industrial customers when connecting and taking supply through the retailer should have a clear framework for connection costs and on-going connection charges. Simply Energy noted that there are a number of network companies that have “special pricing” for large connections and that this can be open to abuse as the party wishing to

connect does not necessarily have choice about where they locate and/or upgrade their business.

- 6.60 Trustpower was not aware of any issues and considered there were existing MEP and Part 10 requirements that provide for all parties to be involved in discussions around metering installation design, and to establish good practices to ensure customers are connected in an efficient and safe manner.

Question 9 – options for requiring distributors and retailers to transition to new UoSAs

- 6.61 This question asked: “Do you agree that the extended options described in section 6.4 reasonably represent the range of options available to the Authority in seeking to meet its objectives for more standardised, efficient and pro-competitive UoSAs? If you disagree, please describe what other options should be considered and what advantages these options would provide?”. Section 6.4 sets out 7 options identified by the Authority.
- 6.62 Contact agreed with the primary issue outlined in paragraph 6.4.4(b) of the consultation paper, which considered that the issue is one of mismatched/miscommunicated expectations between the Authority and participants.
- 6.63 ENA, Unison and WEL Networks generally agreed with the statement in the question but considered that the option of retaining (ie not interfering with) UoSAs executed since September 2012 should be provided for under options 2 – 6, if the parties agree. In relation to legacy agreements, Unison submitted that there needs to be a sufficient transitional period to allow those agreements to be reviewed and renegotiated, considering the number of UoSAs that would need to be negotiated.
- 6.64 Meridian considered that the Code should be amended to require all distributors and retailers to replace their UoSAs with new default, alternative or mandatory UoSAs within 12 months, else a default agreement would be deemed to apply. Alternatively, Meridian considered an “opt-in” approach could be adopted, whereby either party could choose to trigger a renegotiation process based on the default UoSA.
- 6.65 MEUG, MRP, Nova Energy and Simply Energy agreed with the statement in the question.
- 6.66 Orion considered a “posted terms” approach could be worth considering but stated that it had not given this idea detailed consideration.
- 6.67 Powerco opposed any move away from the current voluntary approach, but if the Authority does regulate, Powerco considered that the Authority needs to specify the transition of existing legacy contracts to a regulated MUoSA. Powerco also considered the Code would need to stipulate the transitional rules. Powerco suggested that if the Authority chooses to move to a model with mandatory core

terms and default operational terms determined by the distributor, a transition period of no more than a year would be appropriate.

- 6.68 PwC submitted that if the Authority moves to the default option (which PwC opposed), the Authority will need to clarify the status of historical UoSAs. PwC considered it would seem inefficient to reopen negotiations for UoSAs signed since September 2012 that were based on the MUoSA, in order to align them to default terms that would be materially similar to the current MUoSA.
- 6.69 Trustpower disagreed with the statement in the question without further elaborating, but considered that the real issue is not the UoSA but the increasing number of networks that Trustpower has to deal with”.

Question 10 – is option 4 the best approach?

- 6.70 This question asked: “Do you agree with the Authority’s initial assessment that option 4 (require reset of all existing interposed agreements and introduce a default agreement for distribution service into the Code) is the best approach to meet its objectives?”.
- 6.71 AECT submitted that more standardisation of UoSAs would not necessarily lead to benefits to consumers and that a full consumer welfare based cost-benefit analysis of the positive and negatives effect of the options is required. AECT also suggested that a default agreement would not be able to cater to the individual concerns of each retailer, which would mean a loss of consumer welfare. AECT also submitted that the MUoSA features restrain the potential for the participants to later naturally “tune” the contract as they learn in more detail what is best and what might better suit changing or emerging circumstances. AECT submitted that there would need to be a low-cost way of revising and updating UoSAs so that they remain suitable.
- 6.72 Business Engagement disagreed with option 4 because it did not consider that interposed agreements for embedded networks should be reset.
- 6.73 Contact disagreed that the Authority’s objectives and expectations had been well communicated over a considerable period of time. Contact did not favour adoption of option 4 but prefers option 1, which it considered would clarify objectives and expectations and allow the parties to negotiate new agreements amongst themselves. However, Contact considered there remained issues with this option in that parties would not be compelled to negotiate and that new UoSAs could be offered by distributors that were not materially aligned with the MUoSA. Contact considered that option 4 would potentially inhibit some provisions being agreed that are in the long term interests of consumers, eg ‘retailer load management’.
- 6.74 Genesis considered a mandated approach for UoSAs (option 5 or 6, or some other variant) would provide the most benefit to the sector, and ultimately to consumers.

- 6.75 ENA reiterated that its preference was for option 1 but considered the Authority had undermined the success of this option with its communications (a view supported by Vector). ENA cited the costs of fully developing the current MUoSA into a commercially viable default agreement or of limiting the choice of ENBs' operational decisions. ENA considered the benefits had been overstated and the costs of adopting default operational terms in terms of retailers' and ENBs' operations and systems, and lost innovation, had been understated or not fully considered. Although ENA's preference was for option 1, ENA's preferred option of the less voluntary approaches, if the Authority chooses not to continue to persevere with a voluntary approach, was a default agreement for core terms (option 3). ENA submitted a default agreement that included all terms would limit ENBs' ability to choose their commercial systems. ENA further submitted it is costly to alter pre-existing operational systems, and the Authority could prevent innovation and reduce dynamic efficiency if it does not select the optimal system.
- 6.76 Meridian agreed that option 4 is the best approach and would best meet the Authority's objectives and realise significant transactional and operational efficiencies. It considered that providing the opportunity for participants to mutually agree alternative agreements would provide flexibility to incorporate local differences and positive innovations. Meridian considered that avoiding the need to distinguish between core and operational terms would avoid possible contention. Meridian expected that the Authority would further consult in developing the MUoSA into a form suitable for use as a default agreement. Meridian considered that persisting with options 0 or 1 would lead to increased divergence from the MUoSA over time and that a significantly modified UoSA offered by a large distributor would become an alternative "model". Meridian noted a recent example of this approach being taken.
- 6.77 MEUG also agreed with the Authority's initial assessment of options but noted that it remained open to considering all options. MEUG stated its concerns with the Authority's statements in paragraph 5.3.26 of the consultation paper relating to the question of whether the Authority should have the power to strike out terms agreed between participants that the Authority considered were not consistent with its statutory objective. It also considered that existing agreements the parties were happy with should be allowed to stand.
- 6.78 MRP also agreed with the Authority's initial assessment of options but considered that any agreements signed since September 2012 should be allowed to stand. MRP submitted that considerable effort and cost has gone into arriving at those agreements.
- 6.79 Nova Energy also agreed with the Authority's initial assessment of options but understood that option 4 would not involve a reset of all existing interposed agreements. Nova Energy considered that option 4 would provide assurance to new retailers that they will be able to settle on the default agreement if they cannot reach agreement on distributors' bespoke terms, and provide a back-stop

- for existing retailers with an established customer base that the value of its customer base will not be compromised by any failure to enter into a replacement agreement following termination of the existing agreement. Nova Energy added that it was important that there is some incentive for both parties to be prepared to negotiate variations to the MUoSA to match particular circumstances.
- 6.80 Orion preferred option 1, but questioned the need for a MUoSA in the first place. Orion submitted the Authority needs to be clear about parties' scope for negotiation. If the choice is between defaulting and mandating, Orion's next preference was for option 5. Orion considered that options 3 and 4 were not superior to options 5 and 6 because it believed that negotiation of an agreement that materially differs from the MUoSA will not survive long in the face of Authority disapproval or subsequent use of the default by another retailer. Orion considered that option 4 would not address the issue of replacing legacy agreements that favoured some retailers (if they in fact exist). Orion also considered that option 4 would require standardisation of operational processes across all distributors, with significant cost implications. Orion submitted that in most, if not all, cases, the distributor should choose the variant.
- 6.81 Pioneer Generation supported the introduction of a default UoSA (which could have appendices able to be negotiated) as this would reduce transaction costs for the counterparties and may encourage more engagement about a more desirable agreement. Pioneer considered a default UoSA would be analogous to the default benchmark agreement for transmission customers or the default connection agreement in Part 6 of the Code.
- 6.82 Powerco submitted that the Authority has changed its expectations as to the speed of migration to, and the number of departures from, the MUoSA. Powerco considered the industry can react to those changed expectations, but needs time to do so. Powerco favoured a continuation of the status quo, where industry participants will be informed by the Authority's expectations as to timing and consistency with the MUoSA.
- 6.83 As noted earlier, Powerco submitted that if the Authority decides to regulate, the MUoSA is a good starting point if changes are made to make it workable. If those changes are made, Powerco would support the imposition of generic mandatory core terms that do not need to be tailored to particular distributors or retailers. Powerco opposed the imposition of mandatory or default operational terms. Powerco submitted that if the Authority does regulate, distributors and retailers should be required to negotiate in good faith for a set period and, if those negotiations fail, operational terms determined by the distributor should apply by default.
- 6.84 PwC preferred option 1. For the reasons set out in PwC's submission, it considered the model approach should be allowed to run its course, and uptake should continue to be assessed on an annual basis. PwC considered enhanced

- disclosure requirements are only necessary on a temporary basis to assess uptake. If the Authority favours a default approach, PwC submitted option 3 is the next best alternative. PwC considered distributors need sufficient flexibility to address matters in their UoSA that might be specific to their circumstances.
- 6.85 Simply Energy agreed with the Authority's initial assessment of options.
- 6.86 Trustpower disagreed with the Authority's initial assessment of options. If the Authority considers option 0 is unacceptable, Trustpower's preferred option was option 1. Trustpower suggested more specific guidelines might assist negotiating parties, but no further work in the area is required.
- 6.87 Unison disagreed with the Authority's initial assessment of options because it considered there were too many operational differences between distributors that would require alignment under the default whole agreement option. Unison preferred option 1, as it considered option 1 meets the Authority's objectives, does not undermine the work already done to negotiate MUoSA-based UoSAs, gives the industry more time to negotiate and implement UoSAs and allows for flexibility and innovation. If the Authority decides that further action is needed, Unison's next preference was for option 3.
- 6.88 As noted earlier, Vector did not consider that option 4 was the best approach. Vector disagreed with the Authority's assessment of the options, for the reasons outlined elsewhere in this summary of submissions.
- 6.89 WEL Networks also disagreed with the Authority's initial assessment of options and considered the preliminary analysis of costs and benefits included in section 7 of the consultation paper was "inadequate to justify this heavy-handed regulation". WEL Networks considered that the Authority was not well-placed to determine the optimal set of systems or the optimal contract for all distributor-retailer contracts. WEL Networks considered the costs of limiting operational choices by distributors and retailers, and of cumbersome review processes, had not been fully considered. WEL Networks considered the Authority had failed to consider that negotiated terms may yield improved outcomes for the long-term benefit of consumers. WEL Networks preferred option 1, because option 1 would allow negotiations for new UoSAs to resume, and that process could be augmented by mandatory publication of UoSAs. WEL Networks suggested the Authority could then survey the UoSAs against the Authority's restated, clear expectations. Of options 2-6, WEL Networks preferred option 3.

Question 11 – design details for option 4

- 6.90 This question asked: "What other Code design details should be considered if option 4 were subsequently adopted for development?"
- 6.91 Contact restated its preference for option 1 with a regulated requirement that UoSAs should 'materially align' with the MUoSA. However, it considered the differences between a default agreement and its preferred option were not great,

- as both would establish a baseline for negotiation. Contact considered “the difference is a default UoSA would require a lot more work and cost to develop beyond the current MUoSA, and maintain” and noted that the MUoSA had already taken over 10 years to develop. Contact agreed the design issues listed in paragraph 6.5.10 of the consultation paper would require further consideration and provided some more detailed views as to how implementation and timing issues might be addressed. Contact also identified an issue in defining when default provisions would apply, in other words what rights would either party have to call a halt to negotiations and thus invoke the default terms.
- 6.92 ENA and WEL Networks considered with respect to terminating existing agreements that parties should be able to agree to retain existing agreements entered into since September 2012 and that all other agreements should be subject to the new regime. Both ENA and WEL Networks preferred option 1, followed by option 3, over option 4.
- 6.93 If the Authority proceeds with option 4, ENA and WEL Networks strongly objected to the suggestion that the Authority have the power to override terms that commercial parties negotiate with one another as an alternative to default terms. They considered such a power would undermine regulatory certainty and confidence, and the Authority would need to provide clear criteria for such action so that ENBs and retailers know where regulatory risks lie.
- 6.94 ENA also considered that the Authority has underestimated the time required to implement new contracts (regardless of what option is pursued). ENA suggested the Authority should allow six to nine months to develop default core terms based on the MUoSA, and a further five years for ENBs and retailers to complete negotiations regarding contract revisions.
- 6.95 Meridian considered that to maximise transparency and transactional efficiencies, it should be required that any proposed variations to the default UoSA are shown in tracked changes by the party proposing them and that all executed UoSAs are published on distributors’ websites.
- 6.96 MEUG, Simply Energy and Trustpower had no further suggestions.
- 6.97 As stated earlier, MRP agreed that option 4 appeared to be the best option but considered that MUoSAs signed post-September 2012 should be allowed to stand.
- 6.98 Nova Energy considered the default agreement should be able to be adopted by either party but that this would need to be conditional on the parties meeting a number of preconditions. An example of a precondition was that the party wishing to adopt the default agreement met the prudential requirements.
- 6.99 Orion considered it important to consider how the default agreement is codified, and then how it is adapted over time. To the extent that operational

standardisation is included, Orion considered the timeframe for implementation will need to be considerably longer.

6.100 Unison considered that:

- (a) distributors need to retain the flexibility to negotiate away from the default MUoSA, providing both parties are in agreement
- (b) distributors need to have the ability to preserve 'new' UoSAs that have been introduced post September 2012
- (c) there needs to be a long transition period allowed for distributors and retailers to replace existing legacy UoSAs with either the default core term agreements or 'new' UoSAs
- (d) new and expanding retailers should have the option of accessing the default UoSA or any post-September 2012 UoSA executed by another retailer or of negotiating a new agreement
- (e) the Authority needs to make a quick decision on the preferred option, because the current regulatory uncertainty means retailers are delaying UoSA discussions.

6.101 While WEL Networks opposed any default or mandatory agreement, it considered, if the Authority decides to regulate, default terms should only apply if after a reasonable period of time and negotiating in good faith, parties fail to reach an agreement. WEL Networks considered the Authority should be unconcerned if parties find it mutually beneficial to vary terms. WEL Networks suggested the Authority should clarify how default terms would be reviewed to keep up with industry and technological changes. WEL Network considered some sections of the MUoSA should include multiple acceptable choices, but even then could impose costs and reduce efficiency.

Question 12 – conveyance arrangements

6.102 This question asked: "What information do you have that a problem exists in the way that distributors that adopt the conveyance approach establish contracts with retailers and consumers? Should standardisation of conveyance UoSAs be pursued as well?"

6.103 Responses were generally divided along lines of whether or not the respondent considered that conveyance agreements should be part of the Authority's review.

6.104 Contact supported a MUoSA for conveyance arrangements, and considered that the problems with conveyance arrangements are likely to be driven by onerous requirements that distributors can unilaterally determine.

6.105 ENA stated that it had no evidence that there is a problem with conveyance arrangements.

- 6.106 Meridian considered that the Authority should adopt a default UoSA approach for conveyance agreements to ensure “equal treatment across all networks and maximise transactional and operational efficiencies”. It felt that inconsistent treatment may bias distributors’ choices of approach. Meridian also considered that including conveyance within the current review would complement any move to adopt minimum terms and conditions for conveyance agreements with customers that is currently being considered by the Retail Advisory Group. Simply Energy expressed a similar view.
- 6.107 MEUG reported that members have reported difficulty in finding mutually acceptable commercial terms for conveyance agreements. MEUG suggested that the Authority also consider developing less voluntary measures for conveyance MUoSAs.
- 6.108 MRP considered that consistency between conveyance and interposed agreements is desirable from a consumer and industry perspective, and that standardisation of conveyance UoSAs should be pursued.
- 6.109 Nova Energy advised that it has not encountered specific difficulties in the way that distributors that adopt the conveyance approach establish contracts.
- 6.110 Orion considered the interposed MUoSA was adequate to deal with “conveyance from a retailer perspective” and noted its UoSA provisions are consistent with this.
- 6.111 PwC considered a separate MUoSA for conveyance networks to be a legitimate contractual arrangement. PwC was of the view that standardisation of conveyance agreements is likely to be of less importance to retail competition, since only two distributors use such agreements. PwC submitted conveyance UoSAs deal only with ancillary services to retailers, so any competition or efficiency benefits from moving to default arrangements will be limited.
- 6.112 Simply Energy agreed that standardisation of conveyance agreements should be pursued. Simply Energy reported that retailers find conveyance agreements operationally challenging because of the requirements that can be imposed on retailers’ billing systems, and gave an example of such a requirement. Simply Energy was concerned that networks might adopt conveyance agreements to avoid having to comply with a default interposed MUoSA.
- 6.113 Trustpower advised that it had no information that a problem exists.
- 6.114 WEL Networks submitted that it uses an interposed approach for all of its contracts and is not aware of any problem with conveyance contracts.

Question 13 – embedded networks

- 6.115 This question asked: “What information do you have that a problem exists in the way that embedded network owners establish contracts with retailers? Should

standardisation of embedded network UoSAs be treated the same as local networks?”.

- 6.116 Business Engagement considered that embedded networks have unique characteristics because of their size, scale, and type of operation. Because of those characteristics, Business Engagement considered that existing embedded network UoSAs should be allowed to be retained and that the best template for an embedded network model agreement is the one already developed by the industry and not the Authority’s MUoSA adapted using the guidelines published by the Authority.
- 6.117 Contact considered that embedded network owners should have the same obligations as local network owners to replace legacy UoSAs with new UoSAs materially aligned with the MUoSA for embedded networks. Contact reported on a number of issues it had experienced in its dealings with secondary network owners. It considered addressing these issues should be a priority for the Authority and suggested an approach to the regulated notice.
- 6.118 ENA submitted that it had no evidence that there is a problem with arrangements in embedded networks. ENA considered that specific clauses related to embedded networks should form part of a UoSA, which refers to the need for additional clauses to be added to the existing MUoSAs to provide for embedded networks. WEL Networks reported that it had adopted this approach in its own UoSAs.
- 6.119 Genesis considered that arrangements for embedded networks are not ideal, but that the issues with embedded network distributors are different to the issues with larger distribution businesses. For that reason, Genesis suggested that any work on embedded networks is best addressed via a separate work stream.
- 6.120 Meridian and Nova Energy reported on a number of issues they had experienced with embedded network owners and supported adopting default embedded network UoSAs.
- 6.121 MRP was of the view that embedded network UoSAs should be treated the same as local networks.
- 6.122 Orion advised that it was not aware of any problems in the way that embedded network owners establish contracts. Orion considered that any regulation needs to be reasonably consistent to avoid perverse incentives to create embedded networks. Orion preferred to directly contract with embedded network owners.
- 6.123 Simply Energy advised that it had not experienced any problems, and recommended that the Authority focus on the primary networks as they impact a greater volume of ICPs and customers.
- 6.124 Trustpower considered that the Authority needs to undertake a cost-benefit analysis to demonstrate a proven consumer good before an embedded network is allowed to be created.

- 6.125 Vector considered that UoSAs should include provisions that address supply customers who are connected to an embedded network, and the fact that the MUoSA does not include such provisions is an inefficient oversight.
- 6.126 WEL Networks did not consider there to be a problem, for either embedded networks or non-embedded networks. WEL Networks advised that it had added clauses for embedded networks to its UoSA, which it considered to be appropriate.

7 Preliminary assessment of benefits and costs of default terms

- 7.1 Section 7 of the consultation paper set out the Authority's preliminary assessment of the benefits and costs associated with moving to default terms for UoSAs.
- 7.2 The Authority requested feedback from interested parties on the assessment of costs and benefits and, particularly, submitters' views on:
- (a) the average time and cost for a retailer and a distributor to negotiate and administer a UoSA on a local distribution network that the retailer is entering for the first time (question 14)
 - (b) the likely cost of adopting the default terms approach (question 15)
 - (c) the number of retailers likely to enter regions with less than 10 retail brands, with and without a default terms arrangement in place (question 16).

Question 14 – time and cost for entrant retailers negotiating UoSAs

- 7.3 This question asked: "Based on your experience negotiating UoSAs, what is the average time and cost for a retailer and a distributor to negotiate and thereafter administer a UoSA on a local distribution network that the retailer is entering for the first time?"
- 7.4 Contact considered the question was not relevant to it but reported that it had cost information relevant to its own contract management function.
- 7.5 ENA considered the negotiation costs would depend on whether the agreement is already well-established or not.
- 7.6 Meridian reported on costs relevant to its own contract management function. It considered the range of costs were difficult to estimate precisely, and depended on the distributor with which it was negotiating. It considered the Authority's estimate of negotiation costs (\$30,000 - \$60,000) to be broadly accurate.
- 7.7 MRP reported on recent experience with its engagement in the UoSA standardisation process and through its regional expansion of the GloBug and

- Tiny Mighty Power retail brands. However, it considered average time and costs would be difficult to estimate (at this stage).
- 7.8 Nova Energy considered it required about five days total input from different parties within the organisation per agreement. Because the process can drag on over an extended period, due to resource constraints with both the retailer and distributor, the process tends to be rather inefficient.
- 7.9 Orion reported that “[w]here a retailer pretty much accepts our standard agreement, and this is our experience, our costs would be less than \$1,000”, so costs cannot be reduced by \$30,000-\$60,000 per agreement as stated in the consultation paper. While this estimate related to agreements based on Orion’s standard agreement, it considered a new MUoSA-based agreement would still cost Orion around the same amount to execute an agreement. It considered on-going administration costs were normally “minor”.
- 7.10 Simply Energy reported that the UoSA it recently negotiated with Vector would have taken at least 5 days of an internal persons’ time and cost plus circa 1.5 days of an external lawyer's time and cost.
- 7.11 Trustpower considered that negotiating UoSAs is just one of the costs that any commercial operation needs to consider in a competitive market, but did not suggest what those costs might amount to.
- 7.12 PwC submitted that a default approach will not completely eliminate all variation and negotiating costs. PwC considered a default approach might not promote efficiency, because transaction cost savings are just one efficiency consideration. PwC suggested negotiated terms that make a UoSA more workable might produce more one-off and ongoing efficiencies than boiler plate terms.
- 7.13 Unison considered the costs varied depending on whether the retailer sought to negotiate specific clauses or chose to sign up to one of the existing agreements. It reported that the combined time spent on negotiations is no less than 40 hours in total spread out over a period of weeks, sometimes months.
- 7.14 WEL Networks reported that to date WEL’s total external spend (ie not including staff costs) is less than \$50k, which included the development of WEL Networks' MUoSA-based UoSA, three signed agreements with new retailers (one new entrant and 2 expanding) and the beginnings of negotiations with three existing retailers. It considered that the negotiating timeframes with a new retailer have been minimal and unproblematic.

Question 15 – likely cost of adopting the default terms approach

- 7.15 This question asked: “Based on your experience adopting the UoSA clauses contained in Part 12A of the Code, what do you estimate the cost to be of adopting the default terms approach?”.

- 7.16 Some submitters considered that the Part 12A experience was not particularly relevant to the question posed.
- 7.17 Contact considered that the cost of adopting default terms would depend on any new obligations not currently included which may require system or process changes or changes to Contact's standard customer terms and conditions, and whether some unreasonably onerous obligations in the MUoSA are amended before the default is finalised. Contact highlighted the additional costs it would face if its customer terms and conditions had to be amended for any reason.
- 7.18 ENA considered that it did not think a default terms approach will be materially different to the current voluntary process, as there will still need to be a lengthy process to work through all the contracts that will need to be signed, with operational matters being the key area of focus. MRP offered a similar view.
- 7.19 ENA submitted that a decision by the Authority to regulate the commercial terms between distributors and retailers is likely to cause substantial harm to investor confidence by increasing the perceived regulatory risk. ENA considered the Authority should quantify the increase in EDBs' weighted average cost of capital that would result as an efficiency cost in its cost benefit analysis.
- 7.20 Meridian considered an incremental cost estimate of \$7,500 - \$10,000 per distributor and retailer to be reasonable. It noted that these costs would be one-off, while it expected a more standardised approach to UoSAs would bring significant on-going benefit in the future.
- 7.21 Nova Energy considered that the cost of adopting the default terms is relatively minor, and just a matter of ensuring the default terms are included in the agreement".
- 7.22 Orion did not offer an estimate of costs but considered that some core aspects of the MUoSA could impose significant costs on Orion, while including operational aspects would impose even greater costs. WEL Networks had a similar view, referring to the costs and time associated with replacing systems already in place so that they meet default requirements. Orion submitted that transaction costs associated with existing agreements are very low for both parties and that the transition costs associated with moving to a default MUoSA make it highly unlikely there is a net benefit available. Orion suspected that consultative requirements for changing a default or mandatory MUoSA would increase the cost of innovation and therefore reduce or even stifle innovation. Orion submitted that the Authority needs to factor in the costs of lost dynamic efficiency. Further, neither of the further gains identified in paragraph 7.3.8 seem "plausibly material" to Orion.
- 7.23 Simply Energy considered that reviewing and accepting mandatory default terms would take 0.5 – 1 days' to review and implement.

- 7.24 Trustpower did not offer an estimate of costs but considered that the cost is significantly higher than its existing costs.
- 7.25 Unison considered the costs would be not significantly different.

Question 16 – number of retailers likely to enter into regions

- 7.26 This question asked: “Based on your experience with electricity retail competition, and with reference to Figure 2, over the next two to five years on average what number of retailers (being retailers likely to enter into UoSAs) would you expect to see entering regions with less than 10 retail brands, under the following two scenarios: a) *without* a default terms arrangement in place, and b) *with* a default terms arrangement in place?”.
- 7.27 Contact considered that a default UoSA will have little if any impact and that other considerations will have a greater influence. MRP, Trustpower, Unison and WEL Networks expressed similar views. WEL Networks reported that three small retailers at the Downstream Conference in March discussed barriers and issues they were facing, and none raised non-standard UoSA as a concern.
- 7.28 ENA considered that non-standardisation of UoSAs is not a material transaction cost; UoSAs are readily agreed between distributors and retailers when new entrants express interest in competing on a network. ENA did not consider default terms will make any difference whatsoever to the number of retailers competing on a network.
- 7.29 Meridian considered that a default UoSA will reduce barriers to entry for new retailers, and promote retail competition. However, it did not consider it is possible to accurately estimate the difference in the number of new entrants that could be expected from such a change. Meridian considered this is because a range of other factors would also influence a retailer’s decision to enter a new network region, including population size, available margins, business strategy and wholesale risk.
- 7.30 MEUG did not consider the question applicable to itself.
- 7.31 Nova Energy could “only guess at what this might be”. It guessed:
- (a) 30 new retail UoSA
 - (b) 50 new retail UoSA.
- 7.32 Orion stated that it was confused by Figure 2 and offered reasons for this. Orion did not believe that the form of the agreement will make any material difference to the number of retailers with whom we have agreements, as its experience with retailers regarding concluding contracts has been that it is generally seen as a formality. Orion expressed concern that the Authority had again presented information on competitive activity in a way it considered was “somewhat misleading”.

- 7.33 Based on the experiences of several distributors, PwC submitted that variations in UoSA terms across distributors are not a material factor in a retailer's decision to enter a network, and pointed out that the MUoSA had not been published for the majority of the period covered by Figure 2. PwC further submitted that the default approach appears to target the Authority's concerns over retailer negotiating power, but does not directly address perceived barriers to new entrants related to standardisation of UoSA.
- 7.34 Simply Energy submitted it would expect to experience up to two to three new direct connect customers or retailers per network.

8 Assessment of core terms

- 8.1 Appendix B of the consultation paper provided a clause by clause assessment of whether the interposed MUoSA terms would be suitable as core terms, if the Authority were to proceed with a default or mandatory approach.
- 8.2 The Authority requested feedback from interested parties on its initial assessment (question 17).

Question 17 – UoSA core terms

- 8.3 This question asked: “The column headed “Suitable for inclusion in core terms?” in Appendix B provides the Authority’s initial view of the parts of the interposed MUoSA that would be suitable for direct transfer into a default or mandatory agreement, if such an approach were adopted. Do you agree with the assessments provided here for each clause and schedule? Please reference your responses to specific clauses and schedules and provide reasons if you disagree”.
- 8.4 Contact, Nova Energy, Orion, Trustpower and Unison considered that detailed analysis would be better performed after a preferred option is selected. ENA and WEL Networks had a similar view and suggested that a separate participant-led process is required to develop default core terms based on the MUoSA. MRP had a similar view and considered that some of the terms identified as ‘core’ terms may in fact prove to be detrimental to the Authority’s objectives. WEL Networks provided examples of clauses it negotiated as alternatives to, or additional to, the MUoSA.
- 8.5 Northpower considered any move to a default agreement should be a last resort, but that, if this option is ultimately pursued, such an agreement should be the result of a new participant-led process.
- 8.6 Meridian generally agreed with the Authority’s initial views as set out in Appendix B but expressed a number of clarifications it considered should be made to the Authority’s assessments.
- 8.7 MEUG generally agreed with the Authority's views.

- 8.8 ENA and Orion provided some specific comments on the detail in Appendix B.
- 8.9 Powerco opposed regulation of UoSAs, but agreed with the Authority's distinction between core and non-core terms and the Authority's high level classification of each MUoSA term. Powerco considered certain core terms as they currently stand to be unworkable as far as they set the rights and obligations of each party, and in need of further review and amendment. Powerco proposed amendments to three clauses and identified other clauses that need further clarification. Powerco considered changes to those clauses to be the minimum changes necessary.
- 8.10 PwC submitted that if a default approach is adopted (which PwC opposed), more detailed analysis needs to be undertaken and consulted on to define the core and non-core terms. PwC considered it would be beneficial to incorporate the learnings from Vector's UoSA and other negotiations when updating the MUoSA's boiler plate terms.
- 8.11 Trustpower was concerned that including this question in the consultation paper implied that the Authority had already made a decision on the outcomes of its review.
- 8.12 Unison submitted that further consultation needs to be undertaken to agree on the best possible default core terms. Unison considered implementation of the MUoSA to date shows that it is not workable in its current format. Unison submitted it is important that the sector agrees to the approach in the first instance, before establishing whether terms are core or operational.