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By email: submissions@ea.govt.nz

Issues and options Paper – Review of secondary networks

Submissions
 Electricity Authority
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Electricity and Gas Complaints Commissioner’s office (EGCC) submission – Retail Advisory Group – Review of secondary networks

Thank you for the opportunity to comment on the Retail Advisory Group’s issues and options paper called ‘*Review of secondary networks*’ dated 21 April 2015. I am making this submission as Electricity and Gas Complaints Commissioner.

	Question
1	Please provide any comments and views on the description of the characteristics of customer networks, embedded networks and network extensions. Please provide evidence on your comments and views, where possible.
	I believe the typical types and characteristics of secondary networks have been well described.
2	Please provide any comments and views on the description of the legal framework for customer networks, embedded networks and network extensions. Please provide evidence on your comments, where possible.
	<p>I believe the Retail Advisory Group (RAG) has described the legal framework for secondary networks well. I agree with the finding of the RAG that secondary network owners are industry participants as defined in section 7 of the Electricity Industry Act 2010 (EIA).</p> <p>I have concerns about the extent to which secondary network owners are aware of the legal framework and their obligations as industry participants. This is evidenced by my office’s interactions with secondary network owners. Secondary network owners generally do not</p>

consider themselves to be distributors or retailers, highlighting a general lack of awareness among secondary network owners of their obligations. This means customers on secondary networks are not likely to be receiving the same protections as other customers – these include:

- low user tariffs
- obligations on industry participants under the Code
- general consumer protection law
- membership of the Electricity and Gas Complaints Commissioner Scheme (EGCC)

Low fixed charge tariff option

At 2.7.3 the issues and options paper outlines the requirement on industry participants to make available a low fixed charge tariff option for domestic consumers.

From my experience, I am not confident secondary network owners are aware of their obligation and are actively making this tariff option available to their customers.

Obligations under the Code

At 2.7.11 the issues and options paper says the Code does not specifically establish obligations on customer network owners. It is unclear whether obligations under the Code apply to Customer networks in their capacity as electricity retailers (or potentially distributors or lines owners.)

General consumer protection law

Secondary network owners who direct bill consumers on their networks are subject to general consumer protection law including the Commerce Act, Consumer Guarantees Act, and Fair Trading Act (including unfair contract terms legislation). These were identified in appendix B of the issues and options paper.

While I acknowledge the Commerce Commission is mandated to enforce these consumer protection laws (as outlined in appendix B of the issues and options paper), it is possible many secondary network owners are unaware of their responsibilities under these pieces of legislation.

EGCC legal framework

Electricity retailers and distributors are required to belong to the EGCC as the approved scheme. An outline of the EGCC legal framework as it relates to membership of secondary networks can be found in appendix 1.

The Minister of Consumer Affairs declined applications for a class exemption for secondary network owners from membership of the EGCC. This may indicate the Minister expects secondary networks are not exempted from consumer protection elements of the legal framework.

3	Please comment on the issues identified with customer networks, embedded networks and network extensions. Please provide evidence where possible.
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I have some comments on issues identified by the RAG in the issues and options paper, and comments on additional issues relating to secondary networks not discussed in the issues and options paper.

Comments on issues identified by the RAG

Consumers on customer networks do not have a choice of retailer

At 3.4.2, the issues and options paper identifies three reasons why the benefits of a customer network offset the cost of not being able to choose a retailer.

- *Customer networks can be an efficient and convenient way of supplying electricity services at a multi-tenanted location*

- *The customer network owner may also be able to negotiate a volume discount with retailers, resulting in consumers on the customer network paying less than if they were individually contestable*
 - Has the RAG considered further investigation to collect empirical evidence supporting its view that savings are passed on to consumers in customer networks?

- *The customer network owner can avoid the capital and operating costs of providing certified metering installations for each consumer on the customer network by taking responsibility for supplying electricity services and thus reduce pass through costs to consumers*
 - I believe certified metering installations are not only important for market efficiency and reconciliation purposes, but also to ensure consumers are billed accurately for the electricity they consume

I have received complaints from consumers on customer networks who are unable to switch electricity retailer. While the EGCC only has a small number of documented cases, this may be in part explained by the fact that until recently, no customer network owners were EGCC members. This means it is likely many consumers on customer networks are unaware of the EGCC. This makes it difficult to estimate how many consumers believe they are negatively impacted by not being able to choose their own retailer.

Comments on issues not identified by the RAG

Secondary networks which are structurally different to the three types identified by the RAG

The EGCC has three members who distribute and retail electricity outside the national grid that are not covered by the RAG's paper. These members are New Zealand Energy (Haast village), Stewart Island Electricity Authority, and Chatham Islands Electricity Trust. While customers in these areas are understandably unable to switch supplier, the issue of coverage by the consumer protection framework remains.

Medically Dependent Consumer and Vulnerable Consumer (MDVC) guidelines

I believe it is likely a large number of secondary network owners (particularly customer networks) are unaware of and do not follow the MDVC guidelines.

The Authority is responsible for monitoring compliance with guidelines around arrangements to assist medically dependent and vulnerable consumers¹ (MDVC). Based on a review in 2012², the Authority did not believe amendments to the Code were necessary to ensure compliance.

The review in 2012 showed satisfactory compliance among electricity companies who had a minimum of several thousand consumers. There is no information on the extent to which secondary networks comply with MDVC guidelines.

The MDVC guidelines are an important consumer protection mechanism, which should apply to all electricity retailers including those retailing on secondary networks. There is a risk that an incident on a secondary network could result in serious harm which may compromise the integrity of the industry and the reputation of the Authority.

EA Contracting Principles and Minimum terms

The Authority issued a guideline on contracting principles and minimum terms³ for retailers. While the principles and minimum terms are not mandatory, I believe they represent good industry practice, and provide a benchmark for retailers.

In my experience, the contractual relationships between retailers on customer networks and their customers do not comply with the EA's guideline. This is because those retailers do not see themselves as electricity retailers and their contractual relationships have a different focus, for example a lease or tenancy agreement.

If the Authority does not monitor compliance with the guideline, this could be regarded as tacit exemption for secondary networks from the guideline.

Registration of secondary network owners

Identification and registration of secondary networks is important to assist the Authority fulfil its mandate to monitor and enforce compliance of industry participants with Code requirements, Authority guidelines and other legislation. Non registered participants are unlikely to be included in the Authority's monitoring and compliance regime.

At 2.7.2, the issues and options paper confirms all secondary networks owners are industry participants. At 2.7.3, the issues and options paper identifies the requirement that all industry participants register with the Authority by providing

¹ EA Website <https://www.ea.govt.nz/operations/retail/retailers/retailer-obligations/medically-dependant-and-vulnerable-customers/>

² Compliance with Electricity Authority guidelines on arrangements to assist medically dependent and vulnerable consumers 29 May 2012

³ Final Principles and Minimum Terms and Conditions for Domestic Contracts for Delivered Electricity (Interposed)

	<p>details of the secondary network.</p> <p>At 2.7.4, the issues and options paper explains the EGCC is actively attempting to identify customer network owners that should be a member of the scheme. In 4.1.1 the RAG suggests the process of the EGCC pursuing secondary network owners is assisting these parties to understand their obligations under the Code and the EIA more generally. Our approach to customer networks is focussed on EGCC membership. It may be that this process alerts secondary networks to their broader regulatory obligations, but this cannot be relied upon.</p> <p>The issues and options paper is silent on whether or not the Authority intends to undertake to increase compliance among secondary network owners. My office is happy to cooperate with the Authority to help identify secondary networks which are not readily visible. A list of secondary networks (including embedded networks and customer networks) that have joined as members of the EGCC can be found in appendix 2.</p>
4	Please comment on the description of the problems relating to reduced competition, efficiency and reliability of supply
	No comment.
5	Do you agree that a default embedded network UoSA will promote retail competition by making it easier and less costly for retailers to supply consumers on embedded networks? Please give reasons for your view.
	No comment.
6	Do you agree with the statement of the objectives of the proposal?
	No comment.
7	Do you agree with mandating a minimum notice period for converting an embedded network or network extension through amending the Code? Please give reasons for your view.
	A minimum notice period would be a useful mechanism to ensure retailers do not breach their own terms and conditions with customers on secondary networks.
8	Do you consider there are other viable options, in addition to those considered by the RAG, for improving operational efficiency in respect of secondary networks? Please give reasons for your view.
	No comment.
9	Do you agree the secondary network guidelines should specify expectations on secondary networks (particularly network extensions) to identify and allocate responsibility for business to business interactions, for example responsibility for fault management? Please give reasons for your view.
	No comment.
10	Do you consider there are viable options, in addition to those already considered by the RAG, for improving reliability of supply on secondary networks? Please give reasons for your view.

	No comment.
11	Based on your experience, what is the average time and cost for a retailer and an embedded network owner to negotiate and thereafter administer an embedded network UoSA when the retailer is entering the embedded network for the first time.
	No comment.
12	What estimated cost saving would your organisation receive from the use of a default embedded network UoSA?
	No comment.
13	What would be the cost saving or additional cost to your organisation if embedded network owners were required to use EIEP 1, 2, 3 and 12?
	No comment.
14	What would be the cost saving to your organisation from adopting the notice period in the RAG's preferred option?
	No comment.
15	What would be the cost saving or additional cost to your organisation from clarifying with consumers on embedded networks that the embedded network owner has responsibility for the management of faults, not retailers or local network owners
	No comment.
16	Do you agree that the adoption of a default embedded network UoSA will enhance retail competition on embedded networks? Please give reasons supporting your answer.
	No comment.
17	What is the cost estimate for your organisation to review and comment on a draft default embedded network UoSA, prepared using the Authority's model local network UoSA and the Authority's guidelines for drafting embedded network UoSAs
	No comment.

Yours sincerely



Judi Jones
Electricity and Gas Complaints Commissioner

Appendix 1: Legal framework of EGCC Scheme membership relating to secondary networks

- Part 4 of the EIA sets out requirements for a Dispute Resolution Scheme to which electricity retailers and distributors must belong.
 - S95(1) says ‘any person may make a complaint to the dispute resolution scheme concerning Transpower (except in its capacity as system operator) or any distributor or retailer.
 - S96(1) requires retailers, distributors and Transpower to be a member of the approved scheme. In 2010, the EGCC became the only approved scheme. A person commits an offence and is subject to a fine up to \$100,000 if they knowingly refuse or fail to become a member of the dispute resolution scheme.
 - S96(3) provides for exemptions from the requirement to belong to the scheme, either as a class of industry participants or by issuing an individual exemption notice.
 - Four years ago the Minister of Consumer affairs received five requests from persons applying for a ‘class exemption’ as a secondary network. In December 2014, the Minister advised the persons applying he was not granting a class exemption for secondary networks
 - Until the Minister made his decision on the class exemption for secondary networks, the EGCC did not take any specific action to contact secondary networks about the requirement to join the scheme
 - Since December 2014, the EGCC has been identifying and advising those persons operating a secondary network of the legislative requirement to join the EGCC. To date, we have added 35 secondary network members⁴ and provided access to the Scheme for those consumers being supplied electricity or line function services by a secondary network.
- Embedded networks are scheme members as distributors, customer networks are members as retailers and distributors. While no network extensions are currently members, the expectation is that they will join as distributors.
 - Customer networks often have no specific terms and conditions relating to the supply of electricity with its customers. It is the EGCC experience that secondary networks generally do not provide information to their customers about the EGCC Scheme. The most likely explanation for this is that secondary networks are unaware of their obligation to provide this information.

Secondary network owners are also unaware of other regulation, including making a low fixed tariff option available, and other guidelines issued by the Authority, including MDVC guidelines.

⁴ See appendix 2 for list of secondary network EGCC scheme members

Appendix 2: List of secondary network EGCC scheme members as at 19 May 2015

Member	Network type	Customer network numbers (on joining or otherwise stated)
Birmingham Properties Ltd	Customer	5
Electricity Direct Ltd	Customer	1200
GMT Property Holdings Ltd	Customer	17
Hobsonville Marina Ltd	Customer	500
K Power Ltd	Customer	as at 28/02/15, 214
Mall Services Ltd	Customer	3
Med Service Invest Ltd	Customer	14
Prime Energy Ltd	Customer	as at 28/02/15, 554
Rolleston Retail Ltd	Customer	7
Rolleston Square Ltd	Customer	16
Southpark Utilities Ltd	Customer	249
Summit New Zealand Ltd	Customer	5
Switch Utilities	Customer	618
Tinline Properties (Canterbury) Ltd	Customer	60
Tinline Properties (Tauranga) Ltd	Customer	41
Tinline Properties Ltd	Customer	72
Trafalgar Sq Equities Ltd	Customer	24
Viaduct Quay Holdings Ltd	Customer	9
DNZ Property Fund Ltd	Embedded and customer	9
ESD Power Ltd	Embedded and customer	120
PSPIB Waiheke Inc.	Embedded and customer	225
105 The Terrace Ltd	Embedded ⁵	
Body Corporate 169679	Embedded	
CBRE Ltd	Embedded	
Eastgate Shopping Centre Ltd	Embedded	
Kinetic Networks Ltd	Embedded	
New Zealand Airways Ltd	Embedded	
Pace Property Management Trust	Embedded	
Polo Properties (2000) Ltd	Embedded	
Robt.Jones Electricity Network Ltd	Embedded	
Sabina Ltd	Embedded	
South City Holdings Ltd	Embedded	
The Embedded Network Company Ltd	Embedded	
Tuaropaki Kaitiaki Ltd	Embedded	
Tuihana Networks Ltd	Embedded	
Viewmount Orchards Ltd	Embedded	

⁵ For embedded networks, ICPs are all currently listed on the electricity registry