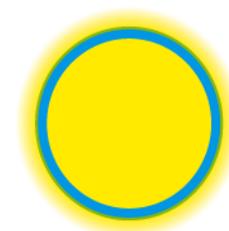


29 November 2016

Submissions  
Electricity Authority  
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**POWERCO**



Dear Sir/Madam

**Re: Electricity Authority code review 2016**

Powerco welcomes the opportunity to comment on the Electricity Authority's (the Authority) 2016 Code Review Programme provided in the consultation paper of 18 October 2016.

Our submission is in two parts:

1. General comments on the paper; and
2. Our response to questions raised in the Authority's consultation paper (provided as Appendix A).

**General Comments**

Powerco supports the Authority's review of the Electricity Industry Participation Code (the Code), and its efforts towards making continued improvements to the Code. We generally support the Authority's proposed changes and believe that the changes will improve the understanding and operation of the Code.

We have concerns with two of the Authority's proposals--

- the proposal to remove all references to the Authority acting reasonably; and
- the proposal to simplify terms about electricity supply.

**Removing references to the Authority acting reasonably**

The Authority is proposing to remove all references in the Code that refer to the Authority acting reasonably. The Authority, as a Crown entity, is required to act in accordance with administrative law principles when exercising its powers and functions under the Code. As these principles include a requirement to act reasonably, all references to reasonableness in the Code are redundant and can be removed.

Powerco considers that the Authority has failed to provide a clear problem definition or any meaningful objective for this change. In our opinion this change would create

unwelcome uncertainty and therefore work against the Authority's statutory objective of promoting the efficient operation of the electricity industry. .

### **Simplify terms about electricity supply**

We generally support the Authority's proposal to simplify terms about electricity supply. However, we have identified areas where we believe drafting changes are required to maintain the intended understanding and operation of the Code.

If you wish to discuss any points raised by this submission, please contact, Nathan Hill ph. 06 759 8582, or email [Nathan.Hill@powerco.co.nz](mailto:Nathan.Hill@powerco.co.nz).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Fletcher', written in a cursive style.

Richard Fletcher

General Manager Regulation and Corporate Affairs

## Appendix A Responses to consultation paper questions provided in the Authority’s specified format.

The following tables provide Powerco’s responses to the following proposed amendments:

- 2016 – 05 Removing references to the Authority acting reasonably
- 2016 – 12 Simplifying terms about electricity supply

**Table 1: 2016 – 05 Removing references to the Authority acting reasonably**

Reference	2016 – 05 Removing references to the Authority acting reasonably
	Question 1: Do you agree with the Authority's problem definition? If not, why not?
	<p>Disagree. The Authority does not provide a clear problem definition.</p> <p>The Authority has failed to identify a problem that its proposal is intended to resolve. In the absence of a problem this proposed Code amendment can be considered unwarranted as it cannot be shown to improve the application of the Code nor the Authority’s ability to meet its statutory objective.</p> <p>Powerco does not consider that the current references to the Authority acting reasonably are causing problems with the Code. In fact, our view is that these references enhance the Code by removing confusion.</p> <p>The Authority’s logic for its proposal is that it is under an administrative law obligation to act reasonably and therefore all references to reasonableness in the Code are redundant and can be removed. We consider this is a cursory justification for change.</p> <p>The fact that the Authority has an obligation under general administrative law does not mean that it is inappropriate to spell out specific obligations in legislation or subordinate legislation, Parliament often does exactly this. For example consider Part 4 of the Commerce Act; the Commerce Commission is clearly under an administrative law obligation to consult before exercising a statutory power of decision that affects individual interests, but Part 4 nonetheless expressly requires consultation in a number of sections.</p> <p>The inclusion of the obligation in legislation is certainly not cosmetic (as the Authority’s proposal indicates) and serves a distinct purpose.</p> <p>Given that administrative law obligations are contextual and flexible, the inclusion in legislation of a specific requirement removes uncertainty about whether or not a given obligation or standard applies. In the present case, despite asserting that the Authority is required by administrative law to act “reasonably”, it must be acknowledged that reasonableness is a highly contested concept in administrative law and the particular circumstances in which the reasonableness standard applies, and what it means, is open to interpretation. For this reason legislating for reasonableness improves the legislation as it removes any doubt that that is the standard that should apply.</p> <p>The administrative law concept of unreasonableness is a sliding scale. At its lowest level, it is taken to mean something like “irrational”. There is arguably a gap between a negatively-framed administrative law obligation to avoid irrationality and a positively-framed legislative obligation to be reasonable.</p> <p>In consideration of this gap, we suggest that the retention of the word reasonable in the Code imparts a higher standard than might apply under administrative law. The Authority’s proposal would remove this higher standard and would also create uncertainty as to the obligation or standard that applies.</p> <p>Furthermore, the word “reasonable” also appears in a variety of different contexts in the Code, and in each context it imparts a quite specific and nuanced meaning (e.g. “reasonable opinion”,</p>

<p>“within a reasonable period of time”). The inclusion of the word in its particular context creates a more specific and concrete obligation than would be the case were we to rely on the general concept of reasonableness in administrative law.</p>
<p>Question 2: Do you agree with the Authority's proposed solution? If not, why not?</p>
<p>We do not consider that the Authority has established that there is a problem therefore we cannot agree with the proposed solution.</p>
<p>Question 3: Do you have any comments on the Authority's proposed Code drafting?</p>
<p>We believe that any concerns that the Authority has regarding the references to the Authority acting reasonably in the Code can be managed in a more appropriate manner, compared to the proposal the Authority has suggested.</p> <p>In many instances, the word “reasonable” is likely used because it was difficult (or thought unnecessary) to come up with a more concrete proposal (just the same way “reasonable” is sometimes used as a compromise in contract drafting when the parties cannot agree on a more specific formulation). In those instances, rather than just remove the word reasonable, a better approach would be to clarify the obligation in a concrete way. For example:</p> <ul style="list-style-type: none"> <li>a) “within a reasonable period of time” – specify the number of working days within which the obligation must be met;</li> <li>b) “reasonable endeavours” – specify the specific steps and/or criteria that the Authority must meet in carrying out this function;</li> <li>c) “reasonable satisfaction” – specify the criteria to which the Authority must have regard when forming its view;</li> <li>d) “reasonably require” – specify the limits of what the Authority may require of industry participants in satisfaction of this obligation.</li> </ul> <p>Removing all references to reasonableness also implies some change in interpretation that the Authority should consider. We note that the Courts are reluctant to conclude that legislative language means nothing and are also reluctant to conclude that a change to legislative language has no effect; consequently there is the possibility that a Court may view the proposed change as significant.</p>
<p>Question 4: Do you agree with the objectives of the proposed amendment? If not, why not?</p>
<p>Disagree. We believe there is an absence of any meaningful objective.</p>
<p>Question 5: Do you agree the benefits of the proposed amendment outweigh its costs? If not, why not?</p>
<p>NA</p>
<p>Question 6: Do you agree the proposed amendment is preferable to the other options? If not, please explain your preferred option in terms consistent with the Authority’s statutory objective in section 15 of the Electricity Industry Act 2010.</p>
<p>Disagree. Our recommendation would be for the Authority to undertake an exercise (like that described in our response to question three) which clarifies the obligation in a concrete way. This approach will provide certainty and enhance the Authority’s ability to meet its statutory objective of efficient operation of the electricity industry for the long term benefit of consumers.</p>

**Table 2: 2016 – 12 Simplifying terms about electricity supply.**

Reference	2016-12 Simplifying terms about electricity supply
	Question 1: Do you agree with the Authority's problem definition? If not, why not?
	Powerco agrees with the Authority's problem definition.
	Question 2: Do you agree with the Authority's proposed solution? If not, why not?
	We generally support the proposed changes and believe that the changes will improve the understanding and operation of the Code. However we have identified a few suggested drafting changes that will provide clarity and meet the needs of all participants to the Code. These changes are provided in our response to question three.
	Question 3: Do you have any comments on the Authority's proposed Code drafting?
	<p>Powerco has the following comments on the Authority's proposed code drafting, specifically with respect to the definitions of:</p> <ul style="list-style-type: none"> <li>• Decommissioning;</li> <li>• Electrically connect, connecting and connected; and</li> <li>• Disestablished, electrically isolated and interconnect.</li> </ul> <p><b><u>Defining Decommissioned</u></b></p> <ol style="list-style-type: none"> <li>1. On page 150 of the consultation document, the definition of <b>decommissioning</b>, part (a) refers to the permanent removal of metering assets as a decommission. Part (b)(ii) refers to changing the allocation of electrical loads between points of connection making the point of connection obsolete, as a decommission. In both situations the Installation Control Point has not necessarily been removed from the network. While the events described may make the need for the ICP Identifier obsolete for other participants, it is still required for the distributor until the point of connection is removed. We suggest that those parts of the Code should be preceded by the words 'where the sole means of electrically disconnecting the individual installation is via a function of a smart meter.'</li> <li>2. The above point also applies on page 210 of the document, part 20(2)(b) states that decommissioning occurs when there is a change in the allocation of electrical loads between ICPs with the effect of making the ICP obsolete. We suggest that this part of the Code should also be preceded by the words 'where the sole means of electrically disconnecting an individual installation is via a function of a smart meter'.</li> </ol> <p><b><u>Defining electrically connect, connecting and connected</u></b></p> <ol style="list-style-type: none"> <li>3. Currently <b>electrically connecting</b> has a definition under Part 1. It is proposed (refer page 151 of the consultation document) that this current definition will be replaced with 'electrically connect' as shown in the screenshot below.</li> </ol>

~~electrically connecting means connecting, or permitting the connection of, a new point of connection to a network, for the purposes of an activity regulated under Parts 11 or 15 and electrically connect and electrically connected have corresponding meanings~~

electrically connect means to operate a device so that electricity is able to flow, including through a point of connection, and electrically connected, electrically connecting, electrical connection, and similar phrases have corresponding meanings

4. We anticipate that the proposed change to the definition of ‘**electrically connect**’ could create uncertainty in determining a “ready status”.
5. The proposed changes in definition will still have separate meanings in relation to Active and Ready, because ‘electrically connected’ will determine Active and ‘connected’ will determine Ready. Participants will need to make sure that all their staff is aware of the changes to avoid confusion in the early stages. An example of this confusion is page 210 of the consultation document as discussed in point 6 below.
6. On page 210 of the document, part 14(1)(a) the term ‘connecting’ is used. This term used should be ‘electrically connecting’ instead of ‘connecting’. The Ready status indicates the distributor is ready to hand over control of the ICP to the trader. This cannot occur until the process of the connection has been completed and the installation is ready and able to be electrically connected.
7. On page 151-152 of the document, the definition of embedded network uses the term ‘**electrically connected**’. This suggests that an embedded network only exists as long as its ICPs are in an Active status. The definition should use the term ‘connected’ so that it still applies if the connections are in Ready or Inactive Registry states.
8. On page 198 of the document, part 10.28(7) should still use the term ‘**electrically connected**’. It has been changed to ‘connected’, but that means it contradicts part 10.28(4) and duplicates the intent of part 10.31. A network operator should be able to connect a new point of connection to its network provided a trader has accepted the consumer, but they must not electrically connect it without instruction from the trader or MEP.

#### Disestablished, electrically isolated and interconnect

- a) On page 66 of the document, the second to last bullet point (provided below for convenience) lists three terms that it says will be replaced by new terms; however we have noticed that there are four new terms instead of three. We would find it useful if the Authority can provide further details on the new proposed term ‘electrical conductors’. In particular, what does the new proposed term ‘electrical conductors’ relate to in the existing terms?

*to replace references to ‘disestablished’, ‘electrically isolated’ and ‘interconnect’ in the Code with, respectively, ‘decommissioned’, ‘electrical conductors’, ‘electrical separation’ and ‘connect.’*

Question 4: Do you agree with the objectives of the proposed amendment? If not, why not?

We agree that the objectives of the proposed amendment.

Question 5: Do you agree the benefits of the proposed amendment outweigh its costs? If not, why not?

Powerco agrees the expected benefits of the proposed amendment outweigh the expected costs.

Question 6: Do you agree the proposed amendment is preferable to the other options? If not, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.

Our preferred options are detailed in our response to Question 3 and aim to improve operational efficiency through more clarity of definition and intent.