Electricity Industry Participation Code 2010

Part 12A
Distributor use-of-system agreements and distributor tariffs

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12A.1 Contents of this Part

This Part—

(a) specifies requirements that must be complied with in negotiating use-of-system agreements; and

(b) specifies requirements that must be complied with if prudential requirements are included in use-of-system agreements; and

(c) [Revoked]

(d) requires that distributors who do not send accounts to consumers directly consult with traders about changes to the distributor's tariff structure; and

(e) [Revoked]
(f) [Revoked]

(g) provides that the Authority may prescribe EIEPs that distributors and traders must comply with when exchanging information.


Clause 12A.1(g): inserted, on 16 December 2013, by clause 5(b) of the Electricity Industry Participation (Electricity Information Exchange Protocols) Code Amendment 2013.


Use-of-system agreements

12A.2 Negotiating use-of-system agreements

(1) A distributor and a trader must negotiate the terms of a use-of-system agreement (including any amendment to a use-of-system agreement) in good faith.

(2) [Revoked]


12A.3 Mediation

(1) If a distributor or a trader considers that it is unlikely that it will agree the terms of a use-of-system agreement with the other party, the distributor or the trader may give written notice to the other party of that fact.

(2) The notice given under subclause (1) must—

(a) state that it is a notice given under subclause (1); and

(b) include a copy of subclause (1); and

(c) state that at the close of the 20th business day after the date of the notice, the distributor or trader (as the case may be) may require the other party to enter into mediation.

(3) No earlier than the close of the 20th business day after the date on which the notice referred to in subclause (2) is given, the distributor or the trader may, by written notice to the other party, require the other party to undertake mediation with the party who gave notice under this subclause.

(4) The notice given under subclause (3) must—

(a) state that it is a notice given under subclause (3); and

(b) include a copy of subclause (3).

(5) On receipt of a notice given under subclause (3), the distributor and the trader must attempt in good faith to agree on the following matters:

(a) the mediator;

(b) the date or dates for the mediation;

(c) the location of the mediation;

(d) the scope of the mediation;

(e) the allocation of the costs of the mediation.
(6) If, at the close of the 15th business day after receipt of the notice given under subclause (3), the distributor and the trader are in dispute regarding 1 or more of the matters specified in subclause (5), either party may refer the dispute to the Rulings Panel for determination.

(7) The Rulings Panel may make such determination as it thinks fit.

(8) The distributor and the trader must carry out the mediation in accordance with any agreement reached under subclause (5) and any determination made under subclause (7).

(9) [Revoked]

Clause 12A.3(9); revoked, on 1 February 2016, by clause 66 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.

12A.4 Prudential requirements

Clauses 12A.4A to 12A.5A apply in relation to a use-of-system agreement if—

(a) the distributor party to the use-of-system agreement has 1 or more consumers connected to its network to whom the distributor does not send accounts for line function services directly; and

(b) the distributor's charges for line function services are collected from consumers or paid by the trader party to the use-of-system agreement in accordance with the use-of-system agreement; and

(c) the distributor requires that the use-of-system agreement provides that the trader—

(i) must comply with prudential requirements; or

(ii) must comply with prudential requirements if required to do so by the distributor.


12A.4A Election of prudential requirements

(1) Subject to clause 12A.5A, if a use-of-system agreement provides that the trader party to the use-of-system agreement must comply with prudential requirements, including if required to do so by the distributor, the use-of-system agreement must provide that the trader may elect to comply with the prudential requirements in either of the following ways:

(a) the trader must maintain an acceptable credit rating in accordance with subclause (3); or

(b) the trader must provide and maintain acceptable security by, at the trader's election,—

(i) providing the distributor with a cash deposit; or

(ii) arranging for a third party with an acceptable credit rating to provide that security in a form acceptable to the distributor; or

(iii) providing a combination of the securities described in subparagraphs (i) and (ii).

(2) The use-of-system agreement must provide that the trader may change its election at any time.

(3) For the purposes of this clause, a trader or third party has an acceptable credit rating if it—
(a) carries a long term credit rating of at least—
   (i) BBB- (Standard & Poors Rating Group); or
   (ii) a rating that is equivalent to the rating specified in subparagraph (i) from a rating agency that is an approved rating agency for the purposes of Part 5D of the Reserve Bank of New Zealand Act 1989; and

(b) is not subject to negative credit watch or any similar arrangement by the agency that gave it the credit rating.

(4) Subject to clause 12A.5, the value of the acceptable security described in subclause (1)(b) must be the distributor's reasonable estimate of the line function services charges that the trader will be required to pay to the distributor in respect of any period of not more than 2 weeks.

(5) A use–of–system agreement must specify that, if the trader elects to provide acceptable security as described in subclause (1)(b), the distributor must—
   (a) hold any security provided by the trader in the form of a cash deposit in a trust account in the name of the trader at an interest rate that is the best on-call rate reasonably available at the time the trader provides the cash deposit; and
   (b) pay interest earned in respect of the cash deposit to the trader on a quarterly basis, net of account fees and any amounts that are required to be withheld by law.


12A.5 Requirements if distributors require additional security

(1) A distributor may require that its use-of-system agreement provides 1 or both of the following:
   (a) that if the trader elects to provide acceptable security as specified in clause 12A.4A(1)(b), the trader must provide acceptable security that is additional to the amount provided for in clause 12A.4A(4):
   (b) that the distributor may, during the term of the use-of-system agreement, require the trader to provide such additional security.

(2) If a use-of-system agreement has a provision provided for in subclause (1), the distributor must ensure that the total value of additional security specified in the use-of-system agreement must be such that the total value of all security required to be provided by the trader must not be more than the distributor's reasonable estimate of the line function services charges that the trader will be required to pay to the distributor in respect of any 2 month period.

(3) If a use-of-system agreement has a provision provided for in subclause (1), the distributor must ensure that the use-of-system agreement provides the following:
   (a) if any additional security provided by the trader is in the form of a cash deposit, the distributor must pay a charge to the trader for each day that the distributor holds the additional security at a per annum rate equal to the sum of the bank bill yield rate for that day plus 15% on the amount of additional security held on that day:
   (b) if any additional security provided by the trader is in the form of security from a third party, the distributor must pay a charge to the trader for each day that the distributor holds the additional security at a per annum rate of 3% on the amount of additional security held on that day:
(c) any money required to be paid by the distributor to the trader as specified in paragraph (a) or (b) must be paid by the distributor to the trader on a quarterly basis.

(4) For the purposes of this clause, the bank bill yield rate is—

(a) the daily bank bill yield rate (rounded upwards to 2 decimal places) published on the wholesale interest rates page of the website of the Reserve Bank of New Zealand (or its successor or equivalent page) on that day as being the daily bank bill yield for bank bills having a tenor of 90 days; or

(b) for any day for which such a rate is not available, the bank bill yield rate is deemed to be the bank bill yield rate determined in accordance with paragraph (a) on the last day that such a rate was available.

Clause 12A.5(1)(a): amended, on 1 February 2016, by clause 69(1)(a) and (b) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.


12A.5A Agreement to less onerous terms

Despite clause 12A.4A, a distributor and a trader may agree prudential requirements that are less onerous on the trader than the requirements described in clauses 12A.4 to 12A.5.


12A.6 Distributor indemnity [Revoked]


Changes to tariff structures

12A.7 Distributors must consult concerning changes to tariff structures

(1) This clause applies to each distributor who has 1 or more consumers connected to its network to whom the distributor does not send accounts for line function services directly.

(2) The distributor must consult with each trader trading on the distributor's network in respect of the distributor's tariff structure for the consumers referred to in subclause (1) before making a change to the tariff structure that materially affects 1 or more traders or consumers.

(3) For the purpose of subclause (2), changes to a distributor's tariff structure that may materially affect 1 or more traders or consumers include, but are not limited to, any of the following:

(a) a change by the distributor to the eligibility criteria for 1 or more of the distributor's tariff rates:

(b) a change by the distributor to the distributor's tariff structure by the introduction of a new tariff rate:
(c) a change by the distributor to the distributor's tariff structure that means that 1 or more of the distributor's tariff rates are no longer available.

(4) However, the fact that a change is listed in subclause (3) does not mean that a distributor is required to consult on the change if the change will not materially affect traders or consumers.

(5) [Revoked]

[Revoked]
Changes to tariff rates cross heading: revoked, on 16 December 2013, by clause 6(1) of the Electricity Industry Participation (Electricity Information Exchange Protocols) Code Amendment 2013.

12A.8 Changes to tariff rates [Revoked]
Clause 12A.8: revoked, on 16 December 2013, by clause 6(2) of the Electricity Industry Participation (Electricity Information Exchange Protocols) Code Amendment 2013.

12A.9 Requirement to comply with EIEP12 [Revoked]

12A.10 Requirement to use standard tariff codes [Revoked]

Exchange of information

12A.11 Application of clauses 12A.12 to 12A.14
Clauses 12A.12 to 12A.14 apply to —
(a) a distributor who has 1 or more consumers connected to its network to whom the distributor does not send accounts for line function services directly; and
(b) a trader trading on the network of the distributor described in paragraph (a).
12A.12 Distributor or trader may require provision of information
(1) The distributor may, by notice in writing, require the trader to provide information to the distributor, to enable the distributor—
   (a) to invoice and reconcile charges for line function services; or
   (b) to provide information to the extended reserve manager.
(2) The trader may, by notice in writing, require the distributor to provide information to the trader, to enable the trader to invoice and reconcile charges for line function services.
(3) A trader or distributor that receives a notice under subclause (1) or subclause (2) must provide the information within 15 business days (or such other date as agreed between the parties) after receiving the notice.
(4) The distributor may use volume information to—
   (a) enable invoicing and reconciling charges for line function services:
   (b) enable the distributor to provide information to the extended reserve manager.
(5) Nothing in this clause prevents the distributor and trader agreeing to provide volume information to each other for any other purpose.


12A.13 Authority may prescribe EIEPs that must be used
(1) The Authority may prescribe 1 or more EIEPs that set out standard formats that distributors and traders must use when exchanging information.
(1A) The Authority must publish an EIEP it prescribes under subclause (1).
(2) When prescribing an EIEP under subclause (1), the Authority must specify the date on which the EIEP will come into effect.
(3) The information to which an EIEP prescribed under subclause (1) may relate includes, but is not limited to, the following information:
   (a) ICP level billing information:
   (b) summary level billing information:
   (c) half hourly billing information:
   (d) distributor tariff rate change information.
(4) Before the Authority prescribes an EIEP under subclause (1), or amends an EIEP it has prescribed under subclause (1), it must consult with the participants that the Authority considers are likely to be affected by the EIEP.
(5) The Authority need not comply with subclause (4) if it proposes to amend an EIEP prescribed under subclause (1) if the Authority is satisfied that—
   (a) the nature of the amendment is technical and non-controversial; or
   (b) there has been adequate prior consultation so that the Authority has considered all relevant views.
(6) [Revoked]
12A.14 Distributors and traders must comply with EIEPs

(1) If the Authority prescribes an EIEP under clause 12A.13, the distributor and the trader must, when exchanging information to which the EIEP relates, comply with the EIEP from the date on which the EIEP comes into effect.

(2) [Revoked]

(3) However, a distributor and a trader may, after the Authority prescribes an EIEP, agree to exchange information other than in accordance with the EIEP, by recording the agreement in each use-of-system agreement between the distributor and trader.

(4) An agreement to exchange information other than in accordance with an EIEP is not effective in relieving a distributor and a trader of the obligation to comply with subclause (1), unless the agreement comes into effect on or after the date on which the relevant EIEP comes into effect.

(5) An agreement under subclause (3) is not affected by the Authority prescribing an amendment to the EIEP.

(6) Subclause (1) does not apply to an EIEP prescribed under clause 12A.15.


Clause 12A.14(1): amended, on 1 February 2016, by clause 74(1)(a) and (b) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.


12A.15 Authority may prescribe voluntary EIEPs

(1) The Authority may prescribe 1 or more EIEPs that set out standard formats that distributors and traders may, but are not required to, use when exchanging information.

(2) The Authority must publish an EIEP it prescribes under subclause (1)

12A.16 Transitional provision relating to EIEPs

(1) This clause applies to any EIEP that a distributor or trader was required to comply with immediately before this clause came into force.

(2) An EIEP to which this clause applies—
   (a) is deemed to be an EIEP prescribed under clause 12A.13(1); and
   (b) despite clause 12A.13(2), comes into effect on the date on which this clause comes into force.

(3) The Authority need not comply with clause 12A.13(4) in respect of an EIEP to which this clause applies, unless the Authority proposes to amend the EIEP.

(4) [Revoked]

Schedule 12A.1

Distributor indemnity in use-of-system agreements [Revoked]