

# Electricity Industry Participation Code 2010

## Part 12A

### Distributor use-of-system agreements and distributor tariffs

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#### Schedule 12A.1

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

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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(c): revoked, on 1 February 2016, by clause 64 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.

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

Clause 12A.1(f): revoked, on 21 October 2013, by clause 4 of the Electricity Industry Participation (Revocation of Standard Tariff Codes Requirement) Code Amendment 2013.

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.

Clause 12A.1(g): amended, on 5 October 2017, by clause 327 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

### *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]*

Clause 12A.2(2): revoked, on 1 February 2016, by clause 65 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.

#### **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**.

Clause 12A.4: substituted, on 1 February 2016, by clause 67 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.

#### 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.

Clause 12A.4A: inserted, on 1 February 2016, by clause 68 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.

### 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.

Clause 12A.5(1)(b): amended, on 1 February 2016, by clause 69(2) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.

Clause 12A.5(3)(c): amended, on 1 February 2016, by clause 69(3) 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.

Clause 12A.5A: inserted, on 1 February 2016, by clause 70 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.

#### 12A.6 Distributor indemnity [*Revoked*]

Clause 12A.6: revoked, on 1 February 2016, by clause 71 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.

### *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]*

Clause 12A.7(1): amended, on 23 February 2015, by clause 75 of the Electricity Industry Participation Code Amendment (Distributed Generation) 2014.

Clause 12A.7(1): amended, on 5 October 2017, by clause 328 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Clause 12A.7(5): revoked, on 1 February 2016, by clause 72 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.

*[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(1): amended, on 21 October 2013, by clause 5(a) of the Electricity Industry Participation (Revocation of Standard Tariff Codes Requirement) Code Amendment 2013.

Clause 12A.8(2): revoked, on 21 October 2013, by clause 5(b) of the Electricity Industry Participation (Revocation of Standard Tariff Codes Requirement) Code Amendment 2013.

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]*

Clause 12A.9: revoked, on 16 December 2013, by clause 6(2) of the Electricity Industry Participation (Electricity Information Exchange Protocols) Code Amendment 2013.

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

Clause 12A.10: revoked, on 21 October 2013, by clause 6 of the Electricity Industry Participation (Revocation of Standard Tariff Codes Requirement) Code Amendment 2013.

### *Exchange of information*

Cross heading: inserted, on 16 December 2013, by clause 7 of the Electricity Industry Participation (Electricity Information Exchange Protocols) Code Amendment 2013.

### **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).

Clause 12A.11: inserted, on 16 December 2013, by clause 7 of the Electricity Industry Participation (Electricity Information Exchange Protocols) Code Amendment 2013.

Clause 12A.11(a): amended, on 23 February 2015, by clause 75 of the Electricity Industry Participation Code Amendment (Distributed Generation) 2014.

Clause 12A.11(a): amended, on 5 October 2017, by clause 329 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

### 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.

Clause 12A.12: inserted, on 16 December 2013, by clause 7 of the Electricity Industry Participation (Electricity Information Exchange Protocols) Code Amendment 2013.

Clause 12A.12(1): replaced, on 19 January 2017, by clause 14(1) of the Electricity Industry Participation Code Amendment (Extended Reserve) 2016.

Clause 12A.12(4): replaced, on 19 January 2017, by clause 14(2) of the Electricity Industry Participation Code Amendment (Extended Reserve) 2016.

Clause 12A.12(5): inserted, on 19 January 2017, by clause 14(2) of the Electricity Industry Participation Code Amendment (Extended Reserve) 2016.

### 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]*

Heading: amended, on 5 October 2017, by clause 330(1) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Clause 12A.13: inserted, on 16 December 2013, by clause 7 of the Electricity Industry Participation (Electricity Information Exchange Protocols) Code Amendment 2013.

Clause 12A.13(1): amended, on 5 October 2017, by clause 330(2) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Clause 12A.13(1A): inserted, on 5 October 2017, by clause 330(3) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Clause 12A.13(2): amended, on 1 February 2016, by clause 73(1) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.

Clause 12A.13(2): amended, on 5 October 2017, by clause 330(4) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Clause 12A.13(3), (4) and (5): amended, on 5 October 2017, by clause 330(5) and (6) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Clause 12A.13(6): inserted, on 15 May 2014, by clause 36 of the Electricity Industry Participation (Minor Code Amendments) Code Amendment 2014.

Clause 12A.13(6): revoked, on 1 February 2016, by clause 73(2) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.

#### **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: inserted, on 16 December 2013, by clause 7 of the Electricity Industry Participation (Electricity Information Exchange Protocols) Code Amendment 2013.

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.

Clause 12A.14(1): amended, on 5 October 2017, by clause 331(1) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Clause 12A.14(2): revoked, on 1 February 2016, by clause 74(2) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.

Clause 12A.14(3), (4), (5) and (6): inserted, on 1 February 2016, by clause 74(3) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.

Clause 12A.14(3): amended, on 5 October 2017, by clause 331(2) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Clause 12A.14(5): amended, on 5 October 2017, by clause 331(3) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Clause 12A.14(6): amended, on 5 October 2017, by clause 331(4) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

#### **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)



Clause 12A.15 Heading: amended, on 5 October 2017, by clause 332(1) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Clause 12A.15: inserted, on 16 December 2013, by clause 7 of the Electricity Industry Participation (Electricity Information Exchange Protocols) Code Amendment 2013.

Clause 12A.15 (1): amended, on 5 October 2017, by clause 332(2) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Clause 12A.15(2): inserted, on 5 October 2017, by clause 332(3) of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

### **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]*

Clause 12A.16: inserted, on 16 December 2013, by clause 7 of the Electricity Industry Participation (Electricity Information Exchange Protocols) Code Amendment 2013.

Clause 12A.16(2)(a): amended, on 5 October 2017, by clause 333 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2017.

Clause 12A.16(4): revoked, on 1 February 2016, by clause 75 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.

**Schedule 12A.1**

cl 12A.7

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

Schedule 12A.1: revoked, on 1 February 2016, by clause 76 of the Electricity Industry Participation Code Amendment (Code Review Programme) 2015.