

19 November 2019

Electricity Authority  
PO Box 10041  
**WELLINGTON 6143**

(by email to [acces@ea.govt.nz](mailto:acces@ea.govt.nz))

## Technical consultation paper

Cortexo appreciates the ability to comment on the proposed amendments to clause 11.32E of the Electricity Industry Participation Code and EIEP's 13A, 13B and 13C.

Cortexo is a non-market participant providing 3rd party services in the electricity supply chain. All of our services rely on data, either from the market generally or from individual users. Access to consumer data has been a continual issue for our organisation and customers as outlined in our earlier submission "*Quick wins for increasing access to electricity services*" on 10 June 2019.

Recently, the governments Electricity Price Review (EPR) has been completed and that recommendation C3 is to "*Develop a streamlined way to process customer requests for consumption data*". We note the following comments made on page 35 of the EPR; "*Retailers are already required to give consumers or their agents usage data within five working days for no fee. Some retailers provide instant access, but not all do so. In any case, five days is too long. Consumers expect real-time responses via smart devices*". This technical consultation does not address this point, 5 days is too long where machine-to-machine communication was always envisaged in the original "Access to Consumer Data" project.

Regarding privacy, the EPR also states "*Another problem is that retailers decide individually what criteria and processes to apply in deciding whether an agent is properly authorised. This complicates, or even hinders, agents' access. The Electricity Authority said different interpretations of, and idiosyncratic approaches to, the Privacy Act 1993 significantly slow the exchange of data. Our view, like that of the Electricity Authority, is retailers should not hide behind the Act as a way to frustrate a consumer's wishes.*"

It is clear from both the government's own independent review (EPR) and the legal opinion of Victoria Casey QC, that some Retailers are, possibly unwittingly, using processes that contravene the very legislation they consider they are upholding, the Privacy Act.

We are specifically concerned with any process that requires a customer to take any additional steps, other than giving necessary information like retailer, account, and ICP details which are easily available to them on their monthly bill. It is well understood that electricity is a low engagement area for consumers. Any barrier put in place, for example the need for a unique one-time only access code available on a website that the customer may have never accessed, may cause that customer to disengage as the

process is “too hard”. We see such a process as falling into the category outlined in the legal opinion where it is stated “[...] *an agency that had a policy of refusing to disclose personal information unless the request was made in a certain form or accompanied by certain identification requirements on the grounds that this was the only way the agency could be satisfied that the information would go to the correct individual would most likely be in breach of s 30 and Principle 6*”.

As we outline below in our submission, there is the distinct possibility of a “loophole” in section 11.32EA(2) where a retailer might consider the provision of a onetime access code (or similar identifying data) from its online customer portal is *further information that could reasonably be provided by the agent* and require that access code to be included in the EIEP13C as a Consumer Authorisation Code. The Authority must make is very clear what is justifiable “further information” in terms of Section 11.32EA(2).

We look forward to the speedy implementation of these changes to for fill the requirements and expectations of consumers and the government alike.

Yours faithfully,



**Terry Paddy**  
Managing Director

Cortexo's response to specific questions raised in the consultation:

Submitter	Cortexo
<p>Q1. Do you have contrary views to those of Victoria CaseyQC? If so, please elaborate.</p>	<p>NO</p>
<p>Q2. What are your views on the drafting of the proposed amendment to clause 11.32E of the Code?</p>	<p>As outlined in our covering letter we have significant concerns over the interpretation of 11.32EA(2), the ability to requests additional information.</p> <p>The legal opinion points to a difference between a new and therefore unknown 3<sup>rd</sup> Party Agent and one "<i>Where the agent is a known and reputable member of the industry who routinely acts for consumers in this role</i>". It is clear in this context that the additional information requested of a 'new' 3<sup>rd</sup> Party Agent could be to physically provide authorisations from consumers until the retailer considers the agent 'known'. We would argue that the new requirements and terms and conditions for non-participant agents to use the Registry messaging system and EIEP13 process should be enough for the agent to be a <i>known and reputable member of the industry</i>.</p> <p>There should be no reason, in an "additional information" request, to ask for anything further to identify a customer if the account name, account number, ICP have been correctly provided and clearly identify the customer (account name, account number, ICP all individually do so). As outlined in the legal opinion, "<i>A retailer who receives a request from or on behalf of an existing customer will have customer details on file and can cross check, for example, a name against the property address held in their records. That <u>should be sufficient</u> to allow the retailer to be satisfied of the identity of the individual and, absent special circumstances, <u>a retailer [is] unlikely to be justified in requiring further verification</u> of identity from the customer</i>" (our emphasis).</p> <p>The Authority must make clear what 11.32EA(2) is referring to as far as additional information, it should not be any further identity information, such as a unique code provided by the retailer through it's online customer portal, that further identifies the customer.</p> <p>To clarify this, 11.32EB(2) should be extended from just prohibiting requests in a certain form to also prohibiting additional customer identification information not contained in the "Forms for Authorisation" in Schedule 11.6</p>

<p>Q3. What are your views on the amendments to EIEPs 13C, 13A and 13B?</p>	<p><u>EIEP13C Request file.</u>  Clarification is required on the conditional “Consumer Authorisation Code”. A unique character code that links the consumer’s authorisation of the data to the data file if an authorisation code has been previously agreed with the retailer. Mandatory where a code has been agreed otherwise BLANK.</p> <p>Customer name, customer number, installed address and ICP are already mandatory fields in the EIEP13C</p> <p>There is an implication in this field that a retailer can require an additional identification code from a consumer such as a unique code only available by contacting the retailer or via an online customer portal. This would be contrary to the legal opinion provided and to the purpose of having one streamlined process.</p>
<p>Q4. Do you have any comments on the drafting of the proposed amendment?</p>	<p>Schedule 11.6 needs to allow for consumers requesting data from retailers they have contracted with in the preceding two years. Currently the declarations in both forms only refer to the “current” retailer when the Code allows for the provision of data from historic retailers in the last two years.</p>