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Technical Consultation Paper – ACCES Quick Wins

Genesis Energy Limited (**Genesis**) welcomes the opportunity to respond to the Electricity Authority's (**Authority**) consultation paper *Technical Consultation Paper – ACCES Quick Wins* dated 29 October 2019.

Consumer data is valuable. Consequently, how companies treat it is an increasingly important issue both for consumers, and the companies that hold it. Consumer confidence in the treatment and privacy of their data is vital to our industry's social licence to access and use that data. Accordingly, Genesis supports initiatives that improve consumers access to their data while also ensuring that there are appropriate safeguards in place to ensure their confidence is not misplaced.

Genesis supports proposed changes

Genesis supports the proposed amendments to:

- (a) Clause 11.32E of the Electricity Industry Participation Code (**Code**);
- (b) Electricity information exchange protocols (**EIEPs**) 13A, 13B and 13C;
and
- (c) the EIEP Hub Terms and Conditions for Use (**Hub Conditions**),

subject to certain amendments described in the Schedule to this letter.

These amendments are principally to ensure that agents are incentivised to obtain the appropriate authorisation from consumers for the disclosure of their consumption data, and to provide the Authority with the ability to obtain assurance that agents who are not participants under the Code are complying with the authorisation requirements set out in the Code and imposed on them by the Hub Conditions.

Meaningful engagement

The Electricity Review Panel noted in its May 2019 report to the Government the need for regulators to improve their engagement with consumers and other stakeholders. Genesis welcomes and supports the Authority's efforts to engage with stakeholders and interested parties on proposals to improve consumers' access to data.

Evidence of more meaningful engagement includes:

- (a) The workshops following both the April 2019 consultation on the matter and the release of the current consultation paper.
- (b) The Authority's acceptance of recommendations that may not have been the Authority's preferred or identified options during its April 2019 consultation. We are pleased to see for example that:
 - (i) The Authority proposes to improve the existing EIEPs and use these for the communication of authorisations between a customer's authorised agent and their retailer rather than establish a new API.
 - (ii) The Authority proposes to mandate the use of the EIEP Hub for the exchange of this information and to ensure that warranties given by agents of consumers are enforceable by the retailers disclosing information under the Contract and Commercial Law Act 2017.
 - (iii) Although not the subject of this technical consultation, the Authority has stated that it is considering other initiatives put forward in previous consultations, including an accreditation regime for agents.

Summary

We reiterate our support for customers and their authorised agents being able to access their electricity consumption data easily and promptly, backed by appropriate safeguards to protect consumers and retailers from unauthorised access to, or the misuse of, consumer data. These safeguards support trust and confidence in our industry's continued access to, and use of, customer consumption data.

The proposed amendments to Clause 11.32E of the Code, EIEPs 13A, 13B and 13C and the Hub Conditions (with the amendments we propose) are a good step towards facilitating quick and standardised access to consumption data and providing these safeguards.

Please don't hesitate to contact me by email: warwick.williams@genesisenergy.co.nz or by phone: 09 951 9299, should you wish to discuss any of the matters in this submission further.

Yours sincerely

A handwritten signature in blue ink that reads "Williams". The signature is written in a cursive, flowing style.

Warwick Williams
Senior Counsel, Regulatory Affairs and Government Relations | Group Manager
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SCHEDULE RESPONSE TO CONSULTATION QUESTIONS

Question	Comment
<p>Q1. Do you have contrary views to those of Victoria Casey QC? If so please elaborate</p>	<p>We note Victoria Casey QC’s views that:</p> <ul style="list-style-type: none"> (a) While there is uncertainty as to whether customer consumption data is “personal information” under the Privacy Act, it is appropriate for retailers to take a cautious approach and proceed on the basis that such data is or may be personal information. (b) The “safe harbour” form of request and authorisation in Schedule 11.6 should be sufficient for the purposes of section 45 of the Privacy Act in the absence of “special circumstances”. (c) Where an agent is a known and reputable member of the industry who routinely acts for consumers in this role, the risk of the request not being properly authorised is very low. (d) Requests from an unknown agent could justify a retailer asking to see a signed or electronic authorisation – and absent “unusual circumstances” this should be sufficient for the purposes of section 45 of the Privacy Act. <p>We are keen for:</p> <ul style="list-style-type: none"> (a) Her view on what the “special circumstances” referred to in paragraph (b) and the “unusual circumstances” in paragraph (d) might be. (b) Her view on the relationship between Privacy Principle 6(1)(b), Privacy Principle 11(d) and Section 45 in this context. We note that the proposed clause 11.32EB(a) of the Code appears to be based on Privacy Principle 11(d). However, it is implicit from her opinion that Privacy Principle 11(d) is not relevant in this context, but would she confirm please.

	(c) Given her views summarised in paragraphs (c) and (d) above, an accreditation regime for agents to be implemented as soon as possible.
Q2. What are your views on the drafting of the proposed amendment to clause 11.32E of the Code	<p>We support the proposed changes subject to the amendments to:</p> <p>(a) the EIEPs, the Authority’s “Requests for Consumer Consumption Information Procedures” document and the EIEP Hub Terms and Conditions, discussed in our response to Question 3 below; and</p> <p>(b) clause 11.32 of the Code discussed in our response to Question 4 below.</p>
Q3. What are your views on the amendments to EIEP 13C, 13A and 13B?	<p>As previously submitted, we support the mandated use of the EIEP Hub for operational efficiency, cost and implementation reasons. It is imperative that the EIEP Hub is the sole delivery method - it uses existing infrastructure that most participants already have involvement with, means there are less likely to be failures in receiving /sending requests (which can happen with email) and provides a standardised method that over time will not only deliver efficiencies but confidence in the request and authorisation process and the data hub itself.</p> <p>Specific comments on the proposed changes:</p> <p><u>EIEPs</u></p> <p>EIEP 13C: Authority expiry date. This data is unnecessary. The agents should be ensuring that they have the authority to request the data for each data request. That they may have an agreement with a consumer to make data requests into the future is irrelevant to the retailer receiving the data request as the presence of the authority is confirmed with each request.</p> <p>EIEP 13C: Statement of written authority. There is no value in having ‘NO’ as valid data in this field. If the agent does not have written authority, they should not be requesting the data.</p>

EIEP 13C: Customer number. The supply of this must be mandatory (i.e. not NULL), as use of this not only makes the processing of requests more efficient, the supply of the consumer number strengthens the confidence of retailers that the agent has the authority to request that customer's information.

EIEP 13C: Business requirements 3. A request for consumption... *Requests in other formats may be submitted directly to retailers.* This last sentence is contrary to the standardisation (and thus efficiency and timeliness) being introduced by the rest of the changes and should be removed.

Requests for Consumer Consumption Information Procedures

Paragraph 16 does not reflect the mandatory use of the EIEPs and EIEP Hub. The words "*is encouraged to*" should be deleted and replaced with "*must*". Consequential changes to the final sentence in paragraph 16 will also be required following this change.

EIEP Hub Terms and Conditions

We are pleased that the Authority has accepted the principle that certain undertakings given by agents in relation to obtaining customer authorisation for the disclosure of their consumption data should be enforceable by those parties providing them with customer information.

We consider however that:

- (a) Clarification is required to ensure that agents are incentivised to obtain the appropriate authorisation from consumers, and to provide the Authority with the ability to obtain assurance that agents who are not participants under the Code are complying with the authorisation requirements set out in the Code and imposed on them by the Hub Conditions.
- (b) The changes proposed to the Hub Terms and Conditions – on their face – go significantly further than what is required to implement the changes required by clause 11.32 of the Code. We do not support, for example, the proposed indemnity and audit rights, unless these are amended to clarify that they apply to non-agent participants and the use of the hub for requests and transfer

	<p>of customer consumption data by those agents. The Authority has not provided any evidence that these provisions should apply to participants more generally and as drafted, these raise potential issues of interpretation with existing Code provisions.</p> <p>(c) The Authority should consolidate in a distinct section or Schedule, the provisions that deal specifically with customer data requests and transfer by non-agents. Currently, dispersed throughout the document as they are, there is a risk that some of the additional terms may be interpreted (incorrectly) as applying to all data transferred via the hub.</p> <p>(d) Specific comments:</p> <ul style="list-style-type: none"> (i) Clause 2.1 - the requirement for existing users to reapply for continuing use is unnecessary and should be removed. (ii) Clause 2.5 should be replaced with: <p style="margin-left: 40px;">2.5 In making a request on behalf of a customer referred to in clause 2.4(a), you severally warrant and undertake to the Authority and the Party to whom a request is made through the Hub, that you hold the authority required by clause 2.4 and that you will comply with clause 2.4(b), (c) and (d). You agree that this warranty and these undertakings may be enforced by the other Party under section 12 of the Contract and Commercial Law Act 2017.</p> (iii) Clause 2.6 appears to duplicate clause 2.4(d). (iv) Clause 2.14 is unnecessary and duplicates provisions already in the terms and conditions (see for example the compliance with law undertaking in clause 2.7). The entire clause should be removed unless its application is limited to non-participant agents. (v) Clauses 3.1, 3.2 and 6.3 should be limited to non-participant agents. Participants are already subject to audit provisions under the Code. If this is proposed for participants
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	<p>further consultation is required to ensure consistency with audit provisions set out in the Code (including, for example, in relation to timeframes) and to deal with concerns relating to the indemnity.</p>
<p>Q4. Do you have any comments on the drafting of the proposed amendment?</p>	<p>Clause 11.32E(d) – this should be deleted. There is no need to restate compliance with Privacy Act (to the extent that it applies).</p> <p>Clause 11.32EB(1)(c)(ii) – insert after the words “in any other situation”, the following: “<i>the retailer cannot be satisfied of the matters in paragraphs (a) or (b) or</i>”.</p> <p>Clause 11.32ED (1)(a)(i) and (ii) should be amended to read:</p> <ul style="list-style-type: none"> (i) the request includes a statement ... (being an authority that remains in force at the date the request is made); <i>and</i> (ii) the agent separately provides a written authority ... (being an authority that remains in force at the date the request is made) <i>if requested by the Retailer</i>, and <p>The current wording conflicts with the rest of the changes (that are driving efficiency and timeliness of data exchange through standardisation and consistency of process) by introducing the opportunity for an agent to step outside that process by not using the mandated statement of authority in the request.</p> <p>Clause 11.32EF - Sub clause (1) is redundant as the notification that there is no authorisation to supply data in relation to a particular request is handled within the response to the data request. There would be significant costs imposed on retailers if they were mandated to introduce procedures assist with the management of the agent/consumer relationship when there is no active request.</p> <p>Clause 11.32EF - Sub clause (2) should be amended as follows:</p>

	<p>(2) If an agent that is a participant receives notification from a consumer that the consumer has revoked the agent's authority <i>after it has sent the data request but before it has received the data</i>, the agent must notify the retailer within 2 business days that the authority is revoked. <i>Should data be received by the agent after the consumer has revoked the agent's authority, the data must be not be used by the agent and must be destroyed by the agent.</i></p> <p>Other than when they are processing a data request, a retailer has no need to know whether a consumer has revoked an authority as an agent confirms they hold authority with each request.</p> <p>Definition of EIEP transfer hub in clause 1(1) of the Code: The proposed definition is too restrictive. The hub is used by multiple participants to transfer far more information than just consumer data requests and responses.</p> <p>We suggest:</p> <p><i>EIEP transfer hub means the web portal operated by the Authority that is used to request and transfer information between participants and other hub users.</i></p>
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