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Submission on Electricity Authority's Consultation Paper – Driving efficient solutions to promote consumer interests through winter 2023

Introduction

Utilities Disputes Limited | Tautohetohe Whaipainga (UDL) welcomes the opportunity to comment on the Electricity Authority's *Driving efficient solutions to promote consumer interests through winter 2023* consultation paper.

Summary of submission

We have confined our comments to Qs 4 and 14.

About us

UDL is an independent, not-for-profit company that provides fair and independent resolution of complaints and disputes between utilities companies and their customers when they are unable to be resolved between the parties. We also resolve indemnity disputes between scheme members.

We operate three dispute resolution schemes: The Government approved Electricity and Gas Complaints Scheme, Broadband Shared Property Access Disputes Scheme, and a voluntary Water Complaints Scheme.

We facilitate a strong relationship of trust between consumers and utilities organisations and focus on three aspects - Prevent, Educate and Resolve.

Q4 – Proposed Evaluation Criteria

We agree with the proposed evaluation criteria and fully support the strong focus on consumers.

Q14 – Compensation payments for forced power cuts

The paper suggests forced power cuts due to insufficient generation will reduce retailer's spot market costs and create a misalignment between retailers' incentives and the interests of their customers. It proposes this misalignment could be addressed by allowing customers who are willing to tolerate interruptions to negotiate a lower tariff or be paid compensation payments, with these options incorporated into their contracts with the retailer.

The paper then draws parallels to the compensation offered to consumers during "official public conservation campaigns" for voluntarily reducing consumption during periods of low hydro storage levels. In that process retailers pass the benefits of lower costs on to consumers by prescribed compensation payments.

We appreciate the proposed solution is one suggested way to address the complex issue of available generation and provide incentives for generators and retailers to ensure there is sufficient electricity available to meet consumer demand. We do not intend to comment in detail in relation to this issue and confine our comments to the potential consumer impact at the level of interaction between consumer and retailer.

In our view, there is little to suggest the approach adopted in relation to "official public conservation campaigns" would address the issue highlighted. It does not appear any official conservation campaigns have occurred since the introduction of payments in 2011.

The EA Code sets out minimum provisions of retailer's default customer compensation schemes, including how consumers with an ICP are to be compensated. Clause 9.21 of Part 9 sets out the definition of a "qualifying customer" to receive compensation as being a customer at an ICP. We understand that there may be a number of consumers without an ICP who would not be due for compensation, e.g. retirement villages, apartment blocks etc that are operated as a customer network, we consider that these consumers should also be compensated.

It is likely any payments made under this mechanism by a retailer would depend on the retailer being appropriately hedged in practice, to ensure the financial risk is managed which may limit its operation. While this type of compensation has had a beneficial effect in the past, the requirement to provide this compensation may penalise independent retailers who do not utilise hedging with electricity generators.

At present, the main source of recourse for consumers who have been impacted through outages is the Consumer Guarantees Act 1993 (CGA). The CGA applies a 'reasonable consumer' test to determine whether the guarantees provided in relation to quality of supply have been breached. The guarantees are subject to the reasonable constraints a consumer is expected to be aware of in terms of the issues that can affect supply, such as factors that are outside of the reasonable control of the retailer or distributor, the fact the quality of supply can vary by location and the impact any remedial steps may have on the overall cost of supply.

It seems there is likely to be a significant overlap between the factors that need to be considered when assessing what obligations a retailer and generator has under the CGA and

any potential Code provision requiring compensation to be paid for outages due to insufficient generation.

If that is the case, any compensation scheme or contractual solution (effectively allowing consumers to trade off an acceptable level of uninterrupted supply for compensation or a lower tariff) would need to be accompanied by a significant amount of information to allow consumers to make an informed choice. The CGA does not explain what level of quality of supply is deemed to be acceptable, relying on the 'reasonable consumer' test. This test is difficult to apply as there is a lack of information available to inform consumers what is an acceptable level of outages based on their location and the external factors that can affect their electricity supply which are outside of a distributor or retailers control. If the proposed solution were to be advanced, we suggest complementary work be done to generate this type of information to ensure consumers are able to make an informed choice and any request for compensation made to distributors and retailers can be judged quickly and effectively.

Consumers would benefit from the establishment of objective standards that can be used to assist in determining whether the CGA or Code has been breached by insufficient generation in the same way third party, weather and other causes are judged.

Offering a set schedule of compensation (perhaps one that consumers could individually choose to opt into, in effect signing up to be compensated for a lower quality of supply due to forced power cuts) would provide consumers with certainty as to any compensation they are entitled to.

If you require any further information about anything raised in this submission, please contact Paul Moreno, Research and Reporting Manager at paul@udl.co.nz

Ngā mihi nui



Mary Ollivier

Commissioner: Toihau

Utilities Disputes Limited: Tautohetohe Whaipainga