16 June 2020

James Tipping
Chief Strategy Officer
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By e-mail: marketoperations@ea.govt.nz

Dear James

Independent retailers support overhaul of the Medically Dependent and Vulnerable Consumer Guidelines

Ecotricity, Electric Kiwi, energyclubnz, Flick Electric, and Vocus (the independent retailers) appreciate the opportunity to submit in relation to the Electricity Authority's review of the Medically Dependent and Vulnerable Consumer (MD&VC) Guidelines, and the proposed MD&VC Guidelines Addendum.

We appreciate that the Authority has set a clear timeframe for completion of the project[1] (December 2020). We are seeking project plans and timetables for all Authority projects. We also appreciate the open and constructive way the Authority has engaged with stakeholders on this matter so far (including the webinar with stakeholders, and the staff availability to deal with queries etc).

Summary of the independent retailers' views

- **We support review of the MD&VC Guidelines.** The MD&VC Guidelines are out-of-date and were poorly drafted by the Electricity Commission. The extent to which changes to the Guidelines will necessitate changes to retailer practices depends on each individual retailer's existing practices.

- We agree the Authority should be seeking to obtain a significant level of buy-in. For the avoidance of doubt, significant buy in should be sought for both fast-tracked changes (if any) and replacement or revision of the Guidelines.

- **The review should recognise the (long-term) benefits to consumers from consumer protection are more than just "operational efficiencies"**. Consistent with the Authority's statutory objective, we agree with Mercury "social responsibility means there are minimum processes retailers should go through before disconnecting any domestic consumer for not paying their bill".[2]

- **The proposed Addendum would result in material and substantive changes** and warrant full review and consultation (not just a fast-tracked 2 week consultation) before any changes are made. We do not support the Authority's intention to introduce the changes by 30 June 2020.

[1] Excluding consideration of whether any of the Guideline requirements should be regulated.
[2] Mighty River Power, Consultation: Guideline on arrangements to assist vulnerable consumers and Guideline on arrangements to assist medically dependent consumers, 3 November 2009.

- **The proposed Addendums results in pancaking of expectations:** For example, the Authority's 8 April 2020 letter to retailers expanded the category of vulnerable consumers to include all of the retailer's residential customers, and the proposed Addendum expands this further to include "domestic premises [the retailer considers] to be vacant but the current patterns of metered consumption indicate that the premises is occupied by a domestic consumer".

- **We are cautious about unintended outcomes** from rushed or ad hoc changes to the MD&VC Guidelines. The proposed treatment of vacant properties is a particular concern. Risks which could arise from the proposed Addendums include that consumers who purposely use electricity without signing up to a retailer and ignore any attempted communication could be rewarded with greater protections against disconnection than those who have signed up.

  The addendum could also provide a perverse incentive for retailers to not apply discretion in relation to disconnection under prepayment arrangements.

- **Is the focus of the Addendum right?** It feels like the Addendum would result in less protection for probable vulnerable customers on pre-payment plans and more protection for vacant properties.

We support review of the MD&VC Guidelines

The MD&VC Guidelines are out-of-date and were poorly drafted by the Electricity Commission.

Review of the Guidelines is warranted irrespective of COVID19 public health pandemic and its implications for electricity consumers.

We agree with the Electricity Price Review that the current MD&VC arrangements do not provide sufficient protections.

We particularly welcome the Authority's early engagement on the review of the MD&VC Guidelines. It is appropriate the Authority seeks guidance from stakeholders on matters that should be addressed in the review from the outset. We look forward to engaging with the Authority and other stakeholders through each stage of the policy development process.

The long-term benefit of consumers is more than just (operational) efficiency

The review should be undertaken through a wider lense than "operational efficiency". From an operational efficiency perspective disconnection of power may be seen as little different to Sky disconnecting one of its customer's pay-TV services.

An operational efficiency only perspective could create a bias towards a more laissez faire approach to disconnection. The review should recognise the wider societal, health and consumer welfare (long-term) benefits to end-users from consumer protection and provision of electricity services.

Implications of the Electricity Price Review

The Government Electricity Price Review decisions included that mandatory minimum standards be set to protect vulnerable and medically dependent consumers. This decision was not referred to in the Authority's consultation paper, but clarification was provided at the 10 June webinar. We agree with the Authority that an appropriate way to address this direction may be to split the Guidelines into minimum standards (potentially codified) and a practice note.

Efficacy of fast-tracking the proposed Addendum changes is uncertain

We would be sympathetic to urgent changes to the MD&VC Guidelines, such as the three elements proposed in the Addendum, if we thought they would provide genuine benefits to consumers.

The adoption of the proposed Addendum would result in electricity retailers having six separate documents to navigate to comply with the Authority's expectations and the MD&VC Guidelines. As well as the separate "Guideline on arrangements to assist medically dependent consumers" and "Guideline on arrangements to assist vulnerable consumers", there is also already the directions contained in the letter "Electricity retailers' duty of care for domestic consumers during Covid-19" (8 April 2020), the letter to Metering Equipment Providers (MEPs) (14 April 2020) and the "Letter to electricity retailers: ongoing industry response to COVID-19" (22 April 2020). The April letters serve as de facto addendums in which, for example:

- The Authority has directed electricity retailers to treat all consumers as if they are vulnerable consumers (8 April 2020 letter);

- "We [the Authority] encourage MEPs to ascertain from retailers and invoicing distributors that before performing a credit or vacant electrical disconnection of an electrical installation that provides electricity services to domestic consumers, the retailer or invoicing distributor has followed the guidelines" (14 April 2020 letter); and

- "We [the Authority] expect retailers to review all their fees – such as for disconnection, reconnection or late payment – and ensure they are justified, clearly communicated and understood. Such fees should only reflect the reasonable costs associated with the provision of the service" (20 April 2020 letter).

This is resulting in a pancaking of requirements. For example, the 8 April 2020 letter expanded the category of vulnerable consumers to include all of the retailer's residential customers,[3] and the proposed Addendum expands this further to include "domestic premises [the retailer considers] to be vacant but the current patterns of metered consumption indicate that the premises is occupied by a domestic consumer".

There is a risk of unintended outcomes if the Addendum is introduced ahead of the full review of the MD&VC Guidelines

We are cautious about the risk of unintended outcomes from rushed or ad hoc changes to the MD&VC Guidelines. Retailers have a responsibility to avoid customers building up debt they cannot manage. If this is not done, the flow on impact is that they cannot access other services either.

Risks that could arise from the proposed Addendums include a higher number of so called 'voluntary' disconnections of vulnerable and medically dependent consumers on pre-payment plans, particularly given the proposals could encourage greater use of automatic disconnection and less application of retailer discretion.

The proposed approach to vacant properties could also have unintended affects and is of particular concern.

[3] It is unclear when this expectation will expire, as the Authority directed that their expectation would remain in place "While Covid-19 continues to affect the country".

Consumers who purposely use electricity without signing up to a retailer and ignore any attempted communication (most likely via mail to the address or physical contact, if there is no customer account) could be rewarded by protections against disconnection that actual retail customers don't have. Some consumers move into a property with no intention of signing a contract. Retailers allow a certain period for consumers to sign up before disconnecting the premise.

If the Addendum is adopted, we recommend paragraph 8(e) be replaced with the following:

> In the situation that the retailer considers domestic premises to be vacant but the current patterns of metered consumption indicate that the premises is occupied by a domestic consumer, the retailer could remotely disconnect the site only after making reasonable efforts to contact the consumer, where reasonable efforts to contact the customer could include sending a disconnection notice to the occupier at the premise.

This would be the same 'reasonable efforts' test as the Authority is proposing in paragraphs 10(d) and (e) of the Addendum.

The proposed Addendum merits further drafting work and consideration

We have a number of specific issues with the drafting of the proposed Addendum which should be addressed as part of the more holistic review of the existing MD&VC Guidelines and mean it is unlikely to be to the long-term benefit of consumers for the changes to be fast-tracked, for example:

- **We do not support the pre-payment Addendum:** The proposed distinction between automatic and manual disconnection in relation to pre-payment plans would create an artificial incentive for electricity retailers to apply automatic disconnections when a customer runs out of credit as this would "not [be] considered a disconnection for non-payment".

  We have a general concern Mercury considers its GLOBUG pre-payment product to be a mechanism for dealing with vulnerable consumers[4] and this is resulting in 'voluntary' disconnections of vulnerable and medically-dependent consumers when they cannot afford to add credit, which aren't being measured or treated as disconnections as part of the Authority's monitoring work.

- **There appears to be a conflict between proposed Addendum's Guidelines 8(d)(i) and 8(e):** Guideline 8(d)(i) states "Retailers should only carry out remote disconnections at occupied domestic premises if … The retailer has a contract with the account holder for the point of connection …". The circumstance in 8(e) where the "retailer considers domestic premises to be vacant" is also a situation where the retailer does not have a contract at the point of connection, so 8(d)(i) would appear to apply in conjunction with 8(e). A problem is that 8(d)(i) says don't disconnect, while 8(e) appears to contradict this saying the retailer can disconnect but after following the existing Guidelines' process. The only way to comply with both requirements simultaneously would be appear to be by not disconnecting.

- **Addendum Guidelines 8(d)(i) and 8(e) have also been drafted in way that appears to be ambiguous about what happens when there isn't an account holder.** The intention appears to be that 8(e) would apply if the consumer is an account holder of the retailer (explicit) and if there is no account holder. However, Guidelines 8(d)(i) and 8(e) are silent (implicit at best) about what happens when there is no account holder. The Addendum Guidelines could reasonably be interpreted as meaning disconnection cannot occur because "The retailer [doesn't have] a contract with the [non-existent] account holder".[5] This would result in an anomalous situation where it could be more difficult to disconnect a customer if they don't have an account with anyone (particularly if they ignore any attempt at communication).

For the avoidance of doubt, we support the Authority position that "provided the pattern of consumption does not indicate that a domestic consumer is in residence, then a remote disconnection can be performed".[6]

- **If Appendix B of the MDC Guidelines shouldn't be relied on why not just delete it?** Guideline 9(b) of the Addendum tells retailers not to rely solely on Appendix B of the MDC Guidelines, and they "should instead rely on the "Notice of Potential MDC Status"". It isn't clear why the Authority doesn't simply amend Appendix B rather than include an over-ride in the Addendum.

- **The Addendum appears to address matters that are not MD/VC specific** e.g. it is unclear why there should be specific provision that "remote connection ... should only take place where the account holder has advised that the domestic premises is safe to reconnect" in relation to MD&VCs but not other customers. Likewise, where any customer (not just "in the instance that an MDC/VC") "has been remotely disconnected in error, reconnection should happen as soon as possible".

- **It is unclear how some of the Guidelines in the proposed Addendum fit into the existing MD&VC Guidelines:** For example, does section 3 of the Addendum on the Retailer – Customer – Consumer – Premises relationships replace the Expectations section in the Vulnerable Consumer Guidelines (paragraph 10)? For example also, does Guideline 7 of the Addendum replace paragraphs 37 and 38 of the MDC Guidelines on prepayment meters? We recommend the Guidelines be published in track changes with the Addendum details inserted and/or replacing existing wording to ensure clarity.

- **Duplication and overlap with other regulatory requirements should be avoided:** It is unclear why the Addendum includes recommendations to comply with elements of the Code. This is unnecessary duplication. For example, Guideline 8(b)(i) summarises two parts of clause 10.33A of the Code. Point 1 clearly relates to clause 10.33A(3) but it is not clear what clause in the Code is being summarised in point 2. Guideline 8(b)(ii) also refers to clause 10.33A(a) which does not exist in the Code.

- There is also clear, but inexact, duplication of clauses/actions in the proposed Addendum and existing MD&VC Guidelines. For example, Guideline 10(e) of the Addendum states "each retailer should act reasonably and ensure it has all the relevant information in making decisions on MDC/VC status" while existing Guideline 10(e) of the existing MDC Guidelines states "retailers should exercise all reasonable due care and diligence and be as fully informed as possible when making the decision as to whether a domestic consumer is a MDC … "

- **It is unclear how the Addendum would assist retailers to avoid discrimination:** The Addendum states "The procedures recommended in the MDC Guideline and this addendum are designed to assist retailers not to act in a discriminatory way" but it is unclear how either do this.

[5] Confirmed in e-mail from James Tipping to Robert Allen, Remote disconnection for 'vacant' properties, 5:50pm, 5 June 2020.

[6] Confirmed in e-mail from James Tipping to Robert Allen, Remote disconnection for 'vacant' properties, 5:50pm, 5 June 2020.

The existing MD&VC Guidelines warrant overhaul and replacement

Our expectation is that review of the MD&VC Guidelines should result in overhaul and replacement of the existing Guidelines. There are substantial legacy issues with the drafting that pre-date the establishment of the Electricity Authority, and the Guidelines are out-of-date.

The following are our initial thoughts on the types of changes/areas the Authority review should focus on. They aren't comprehensive due to the limited 2-week consultation period. Stakeholder views, including our own, are likely to evolve and develop as the review progresses:

- **There should be a single, 'one-stop shop', set of Guidelines:** We do not believe it is desirable to have two sets of Guidelines. A single set of Guidelines would help address duplication and overlap between the Guidelines e.g. some of the requirements in relation to MDCs are included in the Vulnerable Consumer Guidelines.

- **The review should draw on experience with different interpretations and application of the existing Guidelines:** The Authority has noted "inconsistencies in the way retailers are applying the Guidelines". It would be useful for the Authority to detail what these inconsistencies are to help identify areas where the Guidelines are unclear and open to inconsistent interpretations. It would also help establish a common view on industry best practice and what the Guidelines should require.

- **The existing Guidelines are poorly drafted/unclear** e.g. "domestic consumers using a smoothed payment option should still be able to access prompt payment discounts where appropriate". It is not clear, when it is considered to be appropriate/inappropriate for consumers to access Prompt Payment Discounts? Another example, is that the VC Guidelines are ambiguous about what happens when the retailer has made reasonable endeavours to make contact with the customer but has been unable to make contact.

- **The Guidelines could be amended to be a lot clearer about what communication should be attempted before disconnection** and to recognise that much of modern communication is via e-mail and apps (and not by facsimile).

- **The definition of Vulnerable Consumer is problematic and may not be needed:** The Authority should consider whether the category of Vulnerable Consumer: (i) is needed at all (we don't believe it is), and/or (ii) whether medical/health issues component should be removed; and/or (iii) the medical/health component overlaps or is intended to be distinct from the definition of MDC. It is currently unclear whether the definitions of Vulnerable Consumer and Medically Dependent Consumer overlap or not.

  We consider the best approach is likely to be to remove the concept of Vulnerable Consumers from the Guidelines and make the Vulnerable Consumer Guidelines a minimum set of standards for the disconnection/debt repayment process for ALL domestic consumers.

- **The Guidelines should offer more flexibility around the verification process:** Consideration should be given to when retailers should have to contact their customers to ascertain whether they are MD or VC e.g. the MDC status principally matters when the retailer would otherwise initiate a disconnection process. The Guidelines should be clear: (i) retailers do not have to verify a consumer is a MDC (and could simply register the consumer as registering as a MDC), and (ii) where a retailer has not verified a consumer as MDC they can opt to do so at the point when they would otherwise initiate the disconnection process. This would help lower compliance costs both for consumers and retailers.

- **The Guidelines should provide for the retailer to be able to require verification of the MD/VC place of residence as well as their MD/VC status.**

- **There should not be re-verification of medical dependence where dependence is permanent**: Meridian Energy previously submitted there should be a distinction between consumers who are temporarily medically dependent and those who are permanently dependent, and the Guidelines should make it clear re-verification of medical dependence should not be required where the dependence is permanent.[7]

- **The Guidelines should be clear about what happens if the consumer prevents verification:** Genesis Energy previously submitted "retailers are entitled to assume that a consumer's refusal to verify their medically dependent status (by furnishing a certificate …) means that they are not a MDVC".[8] Similarly, Powershop previously submitted: "If a consumer has not indicated to a retailer that he or she (or a member of the household) is a medically dependent vulnerable consumer despite being given all the opportunities required under the Guidelines, then retailers should be entitled to disconnect after proceeding through all the steps required under the Guidelines".[9]

- **Reconnection of medically dependent Consumers should be as soon as reasonably practicable:** The Guidelines should provide that where a customer has been disconnected and it is subsequently determined that the household includes an MDC reconnection should occur as soon as reasonably practicable.

- **The Guidelines should recognise most disconnections are not physical disconnections**, and even where they are the agent undertaking the physical disconnection may not be the most appropriate person to make contact with the customer (clause 43 of the VC Guidelines). Mercury has previously commented that it has "used specialists to make the house visit before disconnection, rather than relying on the person doing the disconnection. While this exceeds the requirements of the Guidelines it is also (technically) in breach of the requirement "that the retailer's representative who goes to disconnection the property … makes an effort to contact the consumer …""[10]

- **The Guidelines should restore the position that they relate to the treatment of consumers by retailers** (and direct bill lines businesses) only. The Authority's 14 April letter effectively extended responsibility (include compliance monitoring) to MEPs which was inappropriate and should be reversed.

- **The Guidelines should recognise 'one size doesn't fit all'** in terms of different payment type arrangements e.g. there are disadvantages with smooth payment options, including that it can result higher power bills during the Christmas period when some households are financially stressed.

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[7] Meridian, Proposed changes to the Guidelines on arrangements to assist low income and vulnerable consumers, 31 March 2009.
[8] Genesis, Vulnerable Consumer Guideline, 1 April 2009.
[9] Powershop, Proposed changes to the Guideline on arrangements to assist low income and vulnerable consumer, 30 March 2009.
[10] Mighty River Power, Consultation: Guideline on arrangements to assist vulnerable consumers and Guideline on arrangements to assist medically dependent consumers, 3 November 2009.

- **The Guidelines should recognise most retailers' business models do not include provision of pre-payment services**. This is particularly important if the Guidelines become mandatory. Mercury previously submitted "The Guidelines should be cognisant of the fact that different retailers will operate to different business models. Some retailers may, for example, not want to use pre-payment meters".[11] Similarly Genesis has been proven correct in their submission to the Electricity Commission that "As the electricity retail market evolves, there is likely to be an increasing number of retailers for whom prepayment meters don't fit their business model. In particular, online-only retailers and some advanced meter-only retailers may find it difficult to support prepayment meters".[12]

- **Other pre-payment issues:** We consider the Guidelines should specify retailers (i) cannot require customers who have a MDC living at their house to have a pre-payment meter; and (ii) where a pre-payment meter arrangement is imposed as part of debt repayment etc, the tariff/charges for consumers should not exceed the total charges that the customer would face if they were not on a pre-payment meter.

Concluding remarks

We welcome the opportunity to engage with the Authority and other stakeholders from the beginning of the Authority's review process. The MD&VC Guidelines have an important consumer protection function, and there is considerable scope to improve them.

Yours sincerely,

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[11] Mighty River Power, Consultation: Guideline on arrangements to assist vulnerable consumers and Guideline on arrangements to assist medically dependent consumers, 3 November 2009.
[12] Genesis, Vulnerable Consumer Guideline, 1 April 2009.