

27 November 2020

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Dear James and Ron,

Independent retailers support introduction of new Consumer Care Guidelines

Ecotricity, Electric Kiwi, Flick Electric, and Vocus (the independent retailers) appreciate the opportunity to submit on the Electricity Authority's proposed replacement of the Medically Dependent and Vulnerable Consumer (MD&VC) Guidelines with new Consumer Care Guidelines. We are available to meet with the Authority staff and advisors to discuss our submission and recommendations.

We appreciate the way the Authority and staff have engaged with stakeholders, including early engagement in the review process, through development of the new Guidelines. This will have been particularly challenging given the disruption caused by COVID19.¹ It is very clear Authority staff have worked hard to pull the proposed draft Guidelines together, and to take on board stakeholder feedback.

The review process and engagement has generally been robust and of a very high standard.^{2,3} We found it useful to be able to hear other perspectives at the workshops, particularly from stakeholders, such as Anglican Care, who do not normally participate in Authority consultations.

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

We welcome that the Authority has recognised the wider societal, health and consumer welfare (long-term) benefits to end-users from consumer protection and provision of electricity services. Where we refer to "consumer protection" this includes both disconnections and accumulation of debt, and the balancing of the twos .

The benefits of providing consumer protection go well beyond operational or economic efficiency which is the usual Authority focus. From an efficiency perspective, disconnection of power may be seen as little different to Sky TV disconnecting one of its customer's pay-TV services. A pure efficiency perspective may provide little or weak justification for the existing MD&VC Guidelines or the introduction and content of the proposed new Consumer Care Guidelines.

¹ Including the need to replace one of the main in-person workshops with a zoom meeting.

² The main process learning is that it would have been desirable to have provided more time for submissions, and more time between receipt of workshop material and the workshops. The tight workshop turnaround limited the extent to which internal engagement with operational staff etc was possible.

³ It is notable also the Authority has resolved most of the issues raised in submissions to the Electricity Commission which the Commission did not address at that time.

Next steps

While the Authority has done a good job of developing the new guidelines, we feel there are still material improvements that can and should be made to ensure they best achieve their objectives. After waiting 10 years before undertaking the review, we don't see a need to 'rush to the finish line' at the expense of the quality of the new Guidelines.⁴

We would be supportive if the Authority extended the time it is giving itself to complete the Guidelines' development. In some ways the Authority has been a victim of its own success, with the engagement process successfully eliciting a large amount of feedback. Even with an extension the process would compare extremely favourably against other Authority projects. A very large amount of progress has been made in a very short-period of time.

Depending on the nature and materiality of the feedback the Authority receives it may be useful to hold another workshop and/or undertake further targeted consultation. This may be particularly useful given the Authority has been clear it wants buy-in/consensus, and is relying on voluntary alignment with the Guidelines, much of which could not be mandated under Code change.

After the Authority has made final decisions on the Guidelines, it should undertake a brief (2 week) technical drafting consultation to minimise the risk of errors, anomalies and drafting that might not meet the policy intent of the Guidelines.

⁴ We would be more than comfortable with the Authority pushing out its target date for finalisation of the new guidelines.

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The underlying purpose and principles for protecting consumers could be further stripped to their core

The core requirements for protecting the welfare of consumers can be lost in the detail (30 pages) of the Guidelines. A (further) parred-back articulation of the purpose and principles behind the Guidelines might better help with: (i) explaining the rationale for the Guidelines;⁵ (ii) guiding how the Guidelines should be interpreted where there is scope for differing interpretations; and (iii) making clear the most important elements of the Guidelines are e.g. not disconnecting MDCs due to non-payment.

We welcome the inclusion of a purpose statement (clause 2). Stripped down to its core, we consider the purpose should fundamentally be that:⁶

Purpose

The purpose of the Consumer Care Guidelines is to help provide protection to consumers from the harm that can be caused from withdrawal of supply of electricity services, particularly for medically dependent consumers, and from the financial pressure that can arise relating to payment difficulties and debt accumulation.

Our suggested articulation of the purpose statement highlights that there are trade-offs and balancing that has to be done as part of any consumer care policy. If the Guidelines put too much weight on avoiding disconnection it could result in greater difficulties for consumers with accumulation of debt.

The Guidelines should reflect that their purpose isn't simply to minimise the risk of disconnection for non-payment of electricity bills but, consistent with the content of the existing Vulnerable Consumer Guidelines, to also minimise "the accumulation of debt" and "the accumulation of credit risk by retailers".⁷ The Medically Dependent Consumer Guidelines similarly state "A key concept underpinning this Guideline is that early intervention (i.e. when an electricity account first goes into arrears) is an important strategy for minimising debt accumulation by domestic consumers".⁸

It is important there is a common understanding that, when stripped to its core, the requirements for ensuring consumers are protected, particularly those who are most vulnerable and have medical dependence needs, are that:

- **Principle 1:** *All consumers are treated with respect and dignity.*
- **Principle 2:** *MDCs are not disconnected for reasons of non-payment/Retailers have processes in place for identifying MDCs.*
- **Principle 3:** *Retailers have systems in place so they can make alternative arrangements for consumers having difficulty paying their bills, and for ensuring they have access to the right (lowest cost) pricing plan/a plan that best meets their needs.*

⁵ We use the following principles to explain our recommendations.

⁶ While we agree it is desirable for "retailers to adopt behaviours and processes that foster positive relationships with domestic consumers" the principle focus and purpose of the Guidelines is to protect consumers from the harm caused by withdrawal (i.e. disconnection) of electricity services.

⁷ Electricity Authority, Guideline on arrangements to assist vulnerable consumers, Version 2.1, clause 2.

⁸ Electricity Authority, Guideline on arrangements to assist medically dependent consumers, Version 2.1, clause 8.

- **Principle 4:** Retailers provide reasonable notification to consumers that their electricity bill(s) has not been paid.
- **Principle 5:** Retailers make reasonable efforts to contact and notify consumers who have not paid their electricity bill(s) that they could be disconnected (including when).

Coupled with these principles should be explicit limitations that:

- **Qualification 1:** Retailers cannot guarantee supply.⁹
- **Qualification 2:** Retailers have a right to (full) payment.¹⁰
- **Qualification 3:** Retailers don't have to supply any consumer (regardless of MDC status) that engages in fraud, vandalism, meter tampering etc.
- **Qualification 4:** The best way for consumers to reduce financial pressures/ensure their electricity supply arrangements best meet their particular needs can be to switch to an alternative/more competitive retailer.
- **Qualification 5:** Electricity retailers and the Electricity Authority are not substitutes for social or health agencies.

The independents recommend the Authority consider our suggested purpose as well as the principles and limitations listed above.

Even if these recommendations are not adopted, we suggest details in Part 1 need to be clarified. The heading under the three overarching principles, and the chapeau to the table, refer to 'intended outcomes' and 'contributing actions' and these words are bolded. The sections of the table relate to the three overarching principles but the bullets below these principles do not have a title – are these the 'intended outcomes' or 'contributing actions' or a combination of both? If the lists under the principles are retained it may be better to group them by intended outcomes and contributing actions, unless 'intended outcomes' is intended to be the same as the overriding principles?

⁹ The Guidelines should make explicit "The Guidelines do not imply a guaranteed supply of electricity to any consumer, even MDCs (from time to time temporary outages, both planned and unplanned, can occur)": Electricity Authority, Guideline on arrangements to assist medically dependent consumers, Version 2.1, clause 4.

¹⁰ Consistent with the existing provision that "It is also important to recognise that retailers have a right to be paid": Electricity Authority, Guideline on arrangements to assist vulnerable consumers, Version 2.1, clause 9 and (similarly at clause 10(e)(iii)).

We largely support the proposed new Consumer Care Guidelines

The independents are mostly supportive of the Authority's proposed draft Consumer Care Guidelines. We welcome that a significant number of our earlier submission points and feedback have been taken on board and are reflected in the proposals:

- **We support replacement of the MD&VC Guidelines:** We agree with the Authority that "The VC and MDC guidelines are not fit-for-purpose".¹¹ We have previously submitted there are substantial legacy issues with the drafting that pre-date the establishment of the Electricity Authority.
- **We support the adoption of a single, 'one-stop shop', set of Guidelines:** We have previously submitted we do not believe it is desirable to have two sets of overlapping Guidelines.
- **We support replacement of the Vulnerable Consumer category with protections that apply to all consumers:**¹² We agree with the Authority "Applying the guidelines (excepting Part 9) to all domestic customers also negates the need to set a definition for which customers may be labelled 'vulnerable'" and "Attempting to define vulnerability in the guidelines risks inadvertently leaving some consumers exposed to harm. This led the workshop participants and the Authority to recognise that the proposed guidelines should apply to *all consumers equally*".

We have previously questioned what (if any) protections should apply specifically to the Vulnerable Consumer category that should not also apply to all consumers, in various of the Authority fora and workshops.

- **We support the Guidelines restoring the position that they relate to the treatment of consumers by retailers** (and direct bill lines businesses) only.¹³
- **We support that the proposed new Guidelines recognise retailers are no longer homogeneous, in the way they were when the Electricity Commission Guidelines were established, and a 'one size fit all' solution won't work.** Mercury submitted in 2009 that "The Guidelines should be cognisant of the fact that different retailers will operate to different business models",¹⁴ which is truer now than ever.

By way of example, some customers prefer weekly billing to manage their finances and select their retailer based on which ones provide this option. This reflects competitive points of difference, and that some retailers' offering may suit certain consumers better than others. It does not mean all retailers should be regulated to provide the same services and product offerings. We agree with the Authority that "Consumers interacting with retailers receive a minimum [but not necessarily the same] standard of treatment regardless of the retailer and regardless of whether they are a customer of the retailer".

- **We have previously submitted that we support the Guidelines clarifying retailers should be able to seek verification of the MDC's place of residence as well as their MDC status.**¹⁵

¹¹ Our submission references the parts of the existing Guidelines we consider should be retained in some form.

¹² Consistent with our suggested Principle 1.

¹³ The Authority's 14 April letter effectively extended responsibility (including compliance monitoring) to MEPs which was inappropriate.

¹⁴ Mighty River Power, Consultation: Guideline on arrangements to assist vulnerable consumers and Guideline on arrangements to assist medically dependent consumers, 3 November 2009.

¹⁵ Part of our suggested Principle 2.

- **We have previously submitted the Guidelines should be clear about what happens if the consumer prevents verification i.e. the retailer does not have to treat the consumer as a MDC:**¹⁶ 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”.¹⁷ 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”.¹⁸

We support that the Guidelines (clause 89) provide if verification is not possible, “the retailer may not [necessarily] treat the MDC applicant as an MDC / potential MDC” but could do so if they choose.

¹⁶ Part of our suggested Principle 2.

¹⁷ Genesis, Vulnerable Consumer Guideline, 1 April 2009.

¹⁸ Powershop, Proposed changes to the Guideline on arrangements to assist low income and vulnerable consumer, 30 March 2009.

Enhancements to the proposed new Guidelines

While we consider the drafting of the proposed new Guidelines is of a high standard, they can still be further improved to help ensure protection of all consumers. Particular matters we would like to see further consideration on include:

- The Guidelines should confirm the principle that retailers should not be required to supply fraudulent customers;
- Retailers should not have to confirm MDC status, but should not be able to disconnect the customer if they haven't;
- There are other tidy-up clarifications for the MDC section of the Guidelines, including clarity around what "usually resides" means;
- The provisions for "uncontracted premises" should not reward consumers for not signing up with a retailer and should not impose undue costs on the retailer disconnecting a 'vacant' property;
- The non-payment/disconnection process requirements should avoid over-prescription, and avoid a process that risks excess debt accumulation and undue costs on the retailer;
- The Guidelines need to ensure adequate protection for all consumers, including households on pre-pay; and
- The Guidelines should not be used as a substitute for amendment of the Default Distributor Agreement.

Retailers should not be required to supply fraudulent customers

The Guidelines should not protect MDCs who engage in fraudulent activity from disconnection.¹⁹

We support the existing "Disconnection and reconnection standards" provision that "For the avoidance of doubt, this section concerns disconnection for reasons of non-payment for electricity. It does not deal with other causes of disconnection such as for fraud, vandalism, or safety issues".²⁰

We do not support the drafting in clause 95 that "Retailers should ... not disconnect a post-pay customer's premises for non-payment of debt regardless of whether the non-payment is through fraudulent activity, if an MDC or potential MDC is usually resident at the premises, including where the customer or a consumer usually resident at the premises". We consider that clause 95 should be deleted.

It is also unclear why the requirement not to disconnect for reasons of non-payment regardless of fraudulent activity applies to post-pay but not to pre-pay? This was a thread of the discussion at the 3 November workshop.

Similarly, we consider clause 37a should either be deleted or amended to provide that a retailer can progress directly to disconnection in the case of fraudulent activity and theft: "A retailer may

¹⁹ Consistent with our suggested Qualification 3.

²⁰ Electricity Authority, Guideline on arrangements to assist vulnerable consumers, Version 2.1, clause 27.

progress a customer in debt to “Part 7: Progressing to disconnection for non-payment of electricity invoices and reconnection” where: a. the retailer reasonably suspects that the customer is fraudulently using electricity and has reasonable evidence to support this belief ...”

Suggested changes in relation to MDC provisions

a) There should be more flexibility in the verification process for MDC

The Authority has made good improvements to the drafting of the MDC verification process requirements, but they still remain an example where exceeding the minimum requirements of the Guidelines could result in technical breach of the Guidelines.

Retailers should not be required to verify any claim a consumer is an MDC, as long as they are willing to accept they cannot disconnect unless, or until, they have undertaken a verification process and determined the consumer is not an MDC. We note and support the existing Guidelines’ principle that “Prior to commencing a disconnection process, retailers should have established a process to ascertain whether the domestic consumer is potentially a vulnerable consumer or a medically dependent consumer when the disconnection is imminent” [footnote removed].²¹

Some retailers may decide they prefer to accept the consumer’s word they are an MDC or are comfortable with forms of verification that aren’t recognised in the Guidelines.

Some retailers may determine it is operationally efficient to seek verification if a consumer is, or might be about to, enter the non-payment or disconnection processes, particularly to the extent only a small minority of MDCs may have payment issues.

While the draft Guidelines section on fees is consistent with the existing MD&VC Guidelines’ provision that “It is expected that a domestic consumer will pay for all costs associated with gaining potential MDC status”²² we are mindful of the desirability of avoiding consumers incurring unnecessary costs and inconvenience if a retailer doesn’t feel the need to seek verification.

These retailers could technically be in breach of elements of Part 8 of the proposed new Guidelines even though they are offering better care for MDCs than if they complied with the Guidelines e.g. if the retailer does not require verification it will fail (clause 75b) “to collect the following information: ... ii. the name of the actual/potential MDC’s GP, and/or iii. the name of the health practitioner with an appropriate scope of practice who has verified the customer or consumer as medically dependent by completing a valid HP Notice iv. the date on which the valid HP Notice was issued, and any review or termination date contained in the HP Notice”.

Similarly, by way of example, the retailer could technically be in breach of clause 88 if they haven’t asked the MDC applicant for a valid HP Notice verifying MDC status. These elements of the Guidelines should be tidied up to ensure that going beyond the Guidelines isn’t a technical breach of the Guidelines.

The Guidelines should adopt a principles-based approach and simply specify that retailers cannot disconnect customers for non-payment where the consumer is MDC, or claims to be MDC, and the retailer has not verified whether or not the consumer is actually medically dependent (and/or resides at the premises). The Guidelines don’t need to include requirements on retailers to verify the MDC status, just a requirement not to disconnect without it. The Guidelines should specify:

²¹ Electricity Authority, Guideline on arrangements to assist vulnerable consumers, Version 2.1, clause 28.

²² Electricity Authority, Guideline on arrangements to assist medically dependent consumers, Version 2.1, clause 25.

- retailers do not have to verify a consumer is an MDC (and could simply register the consumer as having unverified MDC status);
- 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 customers and retailers; and
- retailers cannot disconnect customers for non-payment where the consumer is MDC or claims to be MDC and the retailer has not verified whether the consumer is actually medically dependent (and/or resides at the premises).

Based on discussions we have had with the Authority, and the way the drafting has evolved, it is our understanding this kind of approach is intended to be compliant with the Guidelines/or going beyond the minimum requirements of the Guidelines to better meet the interests of customers (by avoiding unnecessary and costly verification).

b) Information and records relating to consumer care

It's not necessarily possible to get all the details about an MDC person, or their nominated support person, unless the MDC person is the authorised account holder or authorised person on the account. Further, unless the MDC is the customer there isn't a reason for the retailer to contact them or their nominated support person. Clauses 76 and 77 should be deleted.

c) Reconfirmation process

The reconfirmation provisions in the draft proposed Guidelines should explicitly provide for the HP notice to specify whether medical dependence is permanent or may be temporary/non-permanent. Relatedly, clause 91 that "Retailers may choose to confirm the validity of a HP Notice verifying a customer or a consumer usually resident at the customer's premises as medically dependent, but no more frequently than once every 12 months" should be amended to reflect verification of medical dependence cannot be done on a periodic basis (e.g. every 12 months) if the dependence is permanent, but verification the MDC still resides at the premises is permissible.²³

d) Interpretation of "MDC usually resides at the premises"

The threshold that a "MDC usually resides at the premises" is referred to throughout the Guidelines (e.g. clause 75) but is open to interpretation. From the discussions we have had with the Authority our understanding is this is intended to recognise different people are in different circumstances and a consumer or MDC can reside in more than one premise. We consider this should be clarified to ensure MDC applications aren't rejected because, for example, the MDC has another place of residence.²⁴

The provisions for "uncontracted premises" risk unintended consequences

It is common practice for supply to premises to continue after a customer has cancelled supply and vacated the premises, on the basis it is expected there will be a new customer and

²³ 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: Meridian, Proposed changes to the Guidelines on arrangements to assist low income and vulnerable consumers, 31 March 2009.

²⁴ Consistent with our suggested Principle 2.

disconnecting supply would result in unnecessary costs/delays in the new customer receiving electricity supply.

One of the messages at the 3 November workshop in Auckland was that the introduction of new obligations (with associated costs) applying to “vacant premises that may be occupied by a domestic consumer”²⁵ could result in more frequent disconnection immediately after a customer cancels supply. There was a clear message the Authority’s proposals would be administratively burdensome and operationally inefficient.

The proposed new provisions for “uncontracted premises” also appear to provide consumers that do not sign up with a retailer some protections consumers who contact for supply don’t receive. The Guidelines should not reward consumers who purposely use electricity without signing up to a retailer and ignore any attempted communication.

Our experience is that some consumers move into a property with no intention of signing a contract.

The Authority is also proposing new requirements to ascertain whether the “uncontracted premises” include MDCs (clause 55). We consider it reasonable to assume any genuinely MDC would act prudently and ensure they have guaranteed supply (by contract with a retailer immediately upon, or prior to, moving into new premises).

We recommend the Authority consider parring back the “uncontracted premises” clauses to a principles-based requirement that:

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.

The non-payment/disconnection processes could impose inefficient costs

We agree the Guidelines should require retailers to take reasonable steps to ensure customers are aware if there is a non-payment problem, and the consequences of non-payment, including that disconnection could occur as a last resort (and when disconnection might occur later in the non-payment/disconnection process).

The Authority should be careful not to be more prescriptive than necessary about what those reasonable steps might look like. This could vary depending on the retailers’ individual business models.

The Authority should also take into account that if it imposes steps which prolong the process or materially add to the costs of the non-payment/disconnection process this could result in higher debts and exacerbate, rather than help relieve, the financial difficulties the customer faces. It is important not to lose sight of the principle in the existing Guidelines that “A key concept underpinning this Guideline [sic] is that early intervention (i.e. when an electricity account first goes

²⁵ Including that disconnection cannot occur for at least 15 days after the retailer become aware of consumption at the premises (clause 54(f)), and the retailer must send a representative to the premises when it is being electrically disconnected, or use another method to prove the customer, or consumer occupying the uncontracted premises, received and understood the notifications of disconnection (clause 54(3)).

into arrears) is an important strategy for minimising debt accumulation by electricity consumers” [emphasis added].²⁶

The draft Guidelines would result in unduly high costs/delays through the non-payment/disconnection process which would result in higher debt and costs for customers already in financial difficulty.²⁷

Potential examples of problems with the draft Guidelines include the number of notifications/attempts to contact the customer a retailer is required to provide during the non-payment/disconnection process before disconnection can occur (up to 13²⁸) and that this cannot be done within the minimum of 45 days prescribed in the Guidelines before disconnection can occur (clause 52c)). The draft requirement that a retailer make up to 13 attempts²⁹ to contact the customer during the non-payment/disconnection process or for physical visits before disconnection can occur would fail an operational efficiency test.³⁰

Our interpretation of the draft non-payment/disconnection process requirements is that it could entail up to all of the following:

| Clause | Activity/customer contact | Day | Cumulative attempted contacts | Corrected version |
|--------|---|-----|-------------------------------|-------------------|
| 38 | Invoice | 1 | | |
| | Non-payment process | | | |
| 38 | Late payment notice | 15 | 1 | 1 |
| 38 | Contact the customer | 22 | 2 | 2 |
| 38 | Three separate attempts to contact the customer | 32 | 5 | 5 |
| | Disconnection process | | | |
| 52a | Five attempts to contact before disconnection | 33? | 10 | 5 |
| 52b | In person notice | 34 | 11 | 6 |
| 52c | Final notice | 44 | 12 | 7 |
| 60 | Immediately prior to disconnecting attempt to contact the customer. | ? | 13 | 8 |

The Authority has expressed concern “Some consumers are using loopholes in the processes under the [existing] guidelines to delay or avoid paying their electricity bills, imposing costs on retailers and eventually on other consumers”. We feel the proposed approach the draft new Guidelines take to “uncontracted premises” could act as an enabler for this type of ‘gaming’.

This timeline and these engagement steps could be extended considerably further if, for example, the consumer claimed they are MDC but refused to provide evidence to verify their MDC status. Clause 88 alone would add at least 40 business days. We consider clause 88 should include a maximum of 15 days. In the meantime, the customer’s debt level could rise to unsustainable levels.

²⁶ Electricity Authority, Guideline on arrangements to assist vulnerable consumers, Version 2.1, clause 8.

²⁷ Consistent with our suggested Qualification 2.

²⁸ Based on discussions with the Authority, we understand that this reflects errors or omissions in the drafting with clauses 38 and 52a duplicating 5 contact attempt steps. We consider that 8 would still be more than should be required by the minimum standards in the Guidelines.

²⁹ Based on discussions with the Authority, we understand that this reflects errors or omissions in the drafting with clauses 38 and 52a duplicating 5 contact attempt steps. We consider that 8 would still be more than should be required by the minimum standards in the Guidelines.

³⁰ It is likely to anyway given the potential costs in reconnection fees etc this could result in the consumer incurring if they are disconnected (consistent with the Part 9: Bonds and fees requirements).

While it is not a new issue, a site visit before or when disconnection occurs, including to “uncontracted premises”, is an expensive cost that needs to be recovered. The Authority should recognise it is not appropriate for the person doing the disconnection to engage with the customer about their circumstances, and that specialist staff are needed for these site visits (extended to “uncontracted premises”).³¹

Compliance with the proposed new Guidelines Part 9: Bonds and fees provisions (e.g. clause 103) would necessitate that fees are cost-reflective³² and should avoid “cross-subsidies across other goods or services or with other customers”. The Authority is effectively requiring disconnection/reconnection costs to be passed through in full to the customer that has been disconnected/reconnected.

We recommend the Authority par back the non-payment/disconnection process clauses to a more principles-based requirement that the retailer notify the customer their electricity bill is overdue, that alternative payment options etc are available and the process the retailer goes through for non-payment/disconnection, and then to make reasonable efforts to contact the customer to warn them they risk disconnection (including when) if their electricity bill is not paid or alternative arrangements are not agreed by [specified] date.

The Guidelines should provide examples of what reasonable efforts to contact the customer may include, and shy away from requiring up to 13 attempts (or 8 if the duplication between clauses 38 and 52a is removed) to contact the customer before disconnection. A better approach would be for the Guidelines to specify:

- The retailer should attempt to notify/contact the customer that their electricity bill is overdue, using different contact mechanisms where they are available, before moving to the disconnection stage;
- The retailer should then attempt to notify/contact the customer that they will be disconnected if they do not pay their electricity bill or enter alternative arrangements with the retailer, using different contact mechanisms where they are available, before disconnection can occur; and
- At least 30 working days, with 6 attempts to contact the customer, is provided for the non-payment/disconnection process.³³

We also note issues were raised at the 3 November workshop about the practical requirements of the clause 59d requirement to ensure the “customer or consumer ... received and understood both the notifications of disconnection and the outcome of not responding to the retailer’s contact attempts” [emphasis added]; particularly in relation to how it could be verified that the customer “understood” what they were told. At a minimum, clause 59d should be amended to remove the “understood” requirement.

Ultimately, if the customer refuses to engage or respond to the retailer, including any physical site visit, it would not be technically possible to meet the clause 59d requirement to ensure the customer “understood” the notifications or outcome.

³¹ This issue was also raised in submissions to the Electricity Commission.

³² The requirement that “All fees charged should bear a proper relation to the cost of providing the good or service” acts as a ceiling and a floor.

³³ At a minimum, the Guidelines should be clarified/amended such that the steps in clauses 38 and 52 all count towards the five attempts to contact before disconnection referred to in clause 52a.

Households on pre-pay are not adequately protected³⁴

We do not feel the draft Guidelines offer adequate protections for customers who are on pre-pay meters.³⁵ We have previously voiced our concerns about so called ‘voluntary’ disconnections and the potential for these to rise as a consequence of the permissiveness of the proposed Guidelines (and the addendum) to automated disconnection.

We agree with the Authority that “the consumer care guidelines should be for all New Zealanders and that the best way to prevent and reduce harm is to embrace everyone”. This is clearly reflected in the Guidelines setting minimum standards that are intended to apply to All consumers (negating the need for a Vulnerable Consumer category).

The purpose to “help domestic consumers minimise harm caused by insufficient access to electricity, or by payment difficulties” will not be achieved if the Guidelines do not offer meaningful protections for customers on pre-pay and effectively exempt retailers providing pre-pay services.

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

According to clause 68 of the draft Guidelines “If a retailer has met the expectations of these guidelines, a disconnection resulting from a prepayment meter running out of credit is not considered a disconnection for non-payment. This is because the customer has understood and accepted the risks associated with being on a prepayment meter where disconnection will occur if the prepayment meter runs out of credit”.

The Guidelines could equally say “If a retailer has met the expectations of these guidelines, a disconnection resulting from a post-pay customer failing to pay their electricity bill is not considered a disconnection for non-payment. This is because the customer has understood and accepted the risks associated with not paying their bills that a disconnection will occur after the non-payment and disconnection processes have been completed”. One of the clear themes at the 3 November workshop was that the different or discriminatory treatment of pre-pay versus post-pay in the proposed new Guidelines is not well explained or justified.

We have similar comments about the narrative added to the definition of “Prepayment meter” that “This definition does not include pay-ahead pricing plans, which are pricing plans for which a regular contribution is paid to a retailer by the customer, with the retailer managing ‘unders and overs’. Although an excessive negative credit balance may ultimately result in the customer being disconnected, the decision to disconnect is a decision that must be made by the retailer (rather than automatically occurring via the electricity meter).” [emphasis added]. The distinction between a manual and automatic disconnection is artificial. Systems could easily be put in place for post-pay plans to mirror pre-pay automatic disconnection.³⁶

The issue of customers being disconnected due to non-payment cannot be resolved by defining the issue away or artificial distinctions between automated and manual systems.

³⁴ Consistent with our suggested Principles 1 and 2.

³⁵ Consistent with our suggested Principles 1 and 2.

³⁶ The concerns we raised about the distinction between automatic versus manual disconnection in the MD&VC Addendum consultation remain: Independent retailers support overhaul of the MD&VC Guidelines, 16 June 2020.

The Authority should include protections for pre-pay customers in the Guidelines, including the following pre-pay service standards:³⁷

- a non-discrimination requirement that retailers ensure customers are not made worse off (higher electricity bills for any given level of electricity consumption) by being on a pre-pay product;^{38,39}
- the qualification “subject to communications allowing” should be removed from clause 32. Retailers providing pre-payment services should ensure that they have a means of alerting the customer that they have a low credit balance;
- customers have a 24 hour grace period after their credit runs out before they are disconnected;^{40,41}
- ensuring customers are not effectively ‘forced’ onto pre-pay plans.⁴² We also consider that the Guidelines should specify retailers cannot require customers who have an MDC living at their house to have a pre-payment meter;
- strengthening of clause 45 to reflect that regular or periodic “self-disconnection” doesn’t have to be weekly to be a major problem, and that the duration of the outages can also signal a problem which should be addressed;⁴³
- if a customer is regularly or semi-regularly running out of credit, the retailer should be required to discuss alternative options, including post-pay, that may be more suitable and avoid disconnection;
- strengthening the clause 71 requirement that “Retailers should ensure that reconnection of a prepayment meter occurs as soon as reasonably practicable after the customer has purchased credit” to prescribe reconnection should occur within a set time period;⁴⁴ and
- requiring public disclosure of all pre-pay disconnections, including details of frequency and duration.⁴⁵

The Guidelines should not substitute for amendment of the DDA

If the Authority considers Distribution Agreements should provide for matters such as service level agreements in relation to MDCs (clause 83) then this should be covered in the Default Distribution Agreement (DDA) as a mandatory requirement. As it stands, the DDA includes, about to become, out-of-date references to “Medically dependent and vulnerable Customers: The Distributor and the

³⁷ Consistent with the Electricity Price Review recommendation that the Guidelines include pre-pay service standards: Electricity Price Review, FINAL REPORT, 21 May 2019.

³⁸ This is similar, for example, to the Electricity (Low Fixed Charge Tariff Option for Domestic Consumers) Regulations 2004 requirement (section 9(1)) that “average consumers pay no more per year on a low fixed charge tariff option than on any alternative tariff option”.

³⁹ Consistent with our suggested Principle 3.

⁴⁰ Compared to several weeks in relation to post-pay.

⁴¹ Consistent with our suggested Principles 1 and 2.

⁴² Consistent with our suggested Principle 3.

⁴³ Consistent with our suggested Principles 1 and 2.

⁴⁴ Consistent with our suggested Principles 1 and 2.

⁴⁵ Consistent with our suggested Principles 1 and 2.

Trader must comply with any guidelines issued by the Electricity Authority the requirements of the Code relating to medically dependent Customers or vulnerable Customers (if any)".

It is not appropriate, or operationally efficient, for the Authority or the Guidelines to require retailers to negotiate with distributors that Distribution Agreements include certain matters such as inclusion of "service level agreements" which "require the distributor to:

- i. coordinate with retailers if MDCs are affected by a planned outage or disconnection
- ii. not vary the time or date of a planned outage or disconnection without conferring with the retailers whose MDC customers are affected."

The Authority's Guideline proposal would require approximately 40 different retailers to "use reasonable endeavours" to negotiate with 29 distributors (ignoring non-traditional distributors). This could equate to 1,200 sets of duplicate retailer-distributor negotiations or discussions with no certainty that the service level provisions would be obtained. The Guideline proposal would also require each retailer to effectively negotiate arrangements between the distributor and other retailers i.e. clause 83aii relates to the distributor and all "retailers whose MDC customers are affected".

Other matters

- **Consumer sign up requirements (Part 4) should recognise the different ways customers choose to engage with retailers:** Some of the clauses in Part 4 imply retailers should take an action to ensure a customer receives the offer that best meets their needs, to make customers aware of a range of electricity pricing plans, understand T&Cs, are aware of the customer care policy when the retailer is not in a position to directly check the customers' awareness or that they have done this because they are joining a retailer via a web portal. These clauses should be redrafted to require the retailer to make information easily accessible / available so that the customer makes informed decisions when they sign up (the customer is pulling the info instead of the retailer being responsible for pushing it).
- **The Authority should not make switching more time-consuming and complex:** This is critical in terms of both the competition and operational efficiency limbs of the Authority's statutory objective. We do not support, by way of example only, the requirements in clauses 18 and 19 which would increase the process steps requires when a residential consumer wants to switch supplier. The Guidelines should recognise that the new customer interface may not necessarily be via phone call where the retailer gets to talk to the prospective customer directly, which could limit the nature or extent to which they can "work with each prospective customer".
- **It is ambiguous how a retailer would comply with some aspects of the Guidelines** e.g. how does a retailer comply with the clause 20 requirement: "Retailers should ensure new customers understand and agree to: a. the retailer's terms and conditions"? At the 3 November workshop it was discussed that it was not reasonable to expect a residential consumer to have read the terms and conditions which presumably would be needed for them to understand them. It would be better to have a principles-based requirement that the terms and conditions are readily accessible and written in plain English.
- **Some of the clauses raise privacy and information asymmetry issues** e.g. retailers do not necessarily have any way of knowing "whether the person is in good faith liaising with and actioning the advice or assistance received from a support/social agency" (clause 22). Clause 22 should be deleted.

- **Retailers should not be required to advise their customers that a competitor may have a better payment plan (clause 29 should be deleted):** At the 3 November workshop, retailers expressed that it was not tenable to be required to form views about whether a different retailer may offer a better payment plan or to have to advise customers of this. It was also noted that the reference to “pricing plan”, “service plans” and “payment plans” in the clause is confusing.
- **The Guidelines should avoid duplication with other Guidelines:** The Authority should avoid repetition of regulatory requirements in different sets of regulatory documents e.g. clause 31 of the Guidelines requiring that “Retailers should help customers better understand their electricity invoices by adopting the invoicing provisions set out in the Authority’s ‘Voluntary good contracting principles and minimum terms and conditions for domestic contracts’”. The entire clause 31 should be deleted.
- **Advise should be provided on the best tariff options:** It is unclear why clause 40g provides for the retailer to “advise the customer of up to three relevant pricing plans the retailer offers” [emphasis added]. Clause 40g should be replaced with a requirement that “Where a customer is having difficulty paying their bills, and they may not be on the best tariff for their consumption, the retailer should advise the customer of all tariff options available and assist them to move to the most appropriate tariff”.⁴⁶
- **The Guidelines should recognise some customers that default won’t engage with their retailer, regardless of what the retailer does:** Part 6 clauses 40 h. and i. include the words “make sure” and “offer and discuss”. Most customers that default do not engage with their retailer - which is reflected in point b “encourage the customer to engage with the retailer over resolving the payment issues”. We recommend “make sure” and “offer and discuss” be deleted.
- **The person undertaking the physical disconnection isn’t necessarily the right person to contact the consumer:** Clause 61 is an example where exceeding the minimum requirements of the Guidelines could result in technical breach of the Guidelines. If clause 61 is retained it shouldn’t have to be the representative undertaking the disconnection that has to “make a reasonable effort to contact any customer or consumer at the premises (unless there is a health and safety risk to the representative or the customer or consumer)”. The Guidelines should permit retailers to use specialist staff for physical contact with the customer.⁴⁷

⁴⁶ Consistent with our suggested Principle 3.

⁴⁷ Consistent with our suggested Principle 1.

Recommendations

For the convenience of the reader, the recommendations contained in this submission are repeated in full below.

We don't think the Guidelines have the balance and interrelationship between principles and prescription quite right.

The approach we have taken in our recommendations is that each Part of the Guidelines should start out with the underlying principles they are trying to achieve and then get into the specific prescription to the extent it is needed. For example, the underlying principle for Parts 6 and 7 should be that the retailer makes reasonable efforts to contact the customer during the non-payment/disconnection processes. The underlying principle for Part 8 should be that retailers cannot disconnect customers for non-payment where the consumer is MDC or claims to be MDC and the retailer has not verified whether or not the consumer is actually medically dependent (and/or resides at the premises).

Part 1 recommendations

- **The Authority should consider adopting a parred back purpose/Part 1:** We suggest the Authority consider adopting the following purpose and principles:

| | |
|--|---|
| Purpose | |
| The purpose of the Consumer Care Guidelines is to help provide protection to consumers from the harm that can be caused from withdrawal of supply of electricity services, particularly for medically dependent consumers, and from the financial pressure that can arise relating to payment difficulties and debt accumulation. | |
| Guiding Principles | Limitations |
| <ol style="list-style-type: none"> 1. All consumers are treated with respect and dignity. 2. MDCs are not disconnected for reasons of non-payment/Retailers have processes in place for identifying MDCs. 3. Retailers have systems in place so they can make alternative arrangements for consumers having difficulty paying their bills, and for ensuring they have access to the right (lowest cost) pricing plan/a plan that best meets their needs. 4. Retailers provide reasonable notification to consumers that their electricity bill(s) has not been paid. 5. Retailers make reasonable efforts to contact and notify consumers who have not paid their electricity bill(s) that they could be disconnected (including when). | <ol style="list-style-type: none"> 1. Retailers cannot guarantee supply. 2. Retailers have a right to (full) payment. 3. Retailers don't have to supply any consumer (regardless of MDC status) that engages in fraud, vandalism, meter tampering etc. 4. The best way for consumers to reduce financial pressures/ensure their electricity supply arrangements best meet their particular needs can be to switch to an alternative/more competitive retailer. 5. Electricity retailers and the Electricity Authority are not substitutes for social or health agencies. |

- **Retailers cannot guarantee supply:** The Guidelines should make explicit “The Guidelines do not imply a guaranteed supply of electricity to any consumer, even MDCs (from time to time temporary outages, both planned and unplanned, can occur)” (see limitation 1 above).
- **The Guidelines should not require continuation of supply where there has been fraudulent activity:** We support the existing “Disconnection and reconnection standards” provision that “For the avoidance of doubt, this section concerns disconnection for reasons of non-payment for electricity. It does not deal with other causes of disconnection such as for fraud, vandalism, or safety issues”.⁴⁸

As in limitation 3 above, the Guidelines should make it clear they do not apply to persons who are fraudulent users of electricity. This should override all other provisions in the Guidelines. Clause 95 should be deleted. Clause 37a should either be deleted or strengthened to provide that a retailer can progress directly to disconnection in the case of fraudulent activity and theft.

It is also unclear why the requirement not to disconnect for reasons of non-payment regardless of fraudulent activity applies to post-pay but not to pre-pay?

Part 4 recommendations

- **Consumer sign up requirements (Part 4) should recognise the different ways customers choose to engage with retailers:** The Part 4 clauses should be redrafted to recognise customers may sign up to a retailer via a web portal etc rather than directly ‘communicating’ with the retailer, and require the retailer to make information easily accessible / available so that the customer makes informed decisions when they sign up (the customer is pulling the info instead of the retailer being responsible for pushing it).
- **The Authority should not make switching more time-consuming and complex:** We do not support requirements in clauses 18 and 19 which would increase the process steps requires when a residential consumer wants to switch supplier.
- **It is ambiguous how a retailer would comply with some aspects of the Guidelines** e.g. clause 20 should be replaced with a principles-based requirement that the terms and conditions are readily accessible and written in plain English.
- **Some of the clauses raise privacy and information asymmetry issues** e.g. clause 22 should be deleted as retailers do not necessarily have any way of knowing “whether the person is in good faith liaising with and actioning the advice or assistance received from a support/social agency”.

Part 5 recommendations

- **Retailers should not be required to advise their customers that a competitor may have a better payment plan.** Clause 29 should be deleted.
- **The Guidelines should avoid duplication with other Guidelines:** Clause 31 should be deleted.

⁴⁸ Electricity Authority, Guideline on arrangements to assist vulnerable consumers, Version 2.1, clause 27.

Part 6 recommendations

- **The Guidelines should recognise some customers that default won't engage with their retailer, regardless of what the retailer does:** Most customers that default do not engage with their retailer in which case it won't be possible to comply with the Part 6 clauses 40 h. and i. requirements to "make sure" and "offer and discuss". These requirements should be deleted.
- **Advise should be provided on the best tariff options:** Clause 40g should be replaced with a requirement that "Where a customer is having difficulty paying their bills, and they may not be on the best tariff for their consumption, the retailer should advise the customer of all tariff options available and assist them to move to the most appropriate tariff".
- **The Guidelines should not discriminate in favour of, or advantage, consumers in "uncontracted premises":** We recommend the Authority consider parring back the "uncontracted premises" clauses to a principles-based requirement that:

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.

- **The Authority should take care about imposing costs on retailers that could have to be passed on to customers who are having difficulty paying their bills and in risk of being disconnected:** The Authority should consider taking a less prescriptive approach and a more principles-based approach to the requirement that retailers take reasonable steps to ensure customers are aware if there is a non-payment problem, and the consequences of non-payment, including that disconnection could occur as a last resort (and when disconnection might occur, later in the non-payment/disconnection process).

Part 6 & 7 joint recommendations

- **The Guidelines should avoid requiring operationally inefficient non-payment/disconnection process requirements:** We recommend the Authority consider parring back the non-payment/disconnection process clauses to a more principles-based requirement that the retailer notify the customer their electricity bill is overdue, that alternative payment options etc are available and the process the retailer goes through for non-payment/disconnection, and then to make reasonable efforts to contact the customer to warn them they risk disconnection (including when) if their electricity bill is not paid or alternative arrangements are not agreed by [specified] date.

The Guidelines should provide examples of what reasonable efforts to contact the customer may include, and shy away from requiring up to 13 attempts to contact the customer before disconnection:

- The retailer should attempt to notify/contact the customer that their electricity bill is overdue, using different contact mechanisms where they are available, before moving to the disconnection stage;
- The retailer should then attempt to notify/contact the customer that they will be disconnected if they do not pay their electricity bill or enter alternative arrangements with

the retailer, using different contact mechanisms where they are available, before disconnection can occur; and

- At least 30 working days, with 6 attempts to contact the customer, is provided for the non-payment/disconnection process.⁴⁹

Part 7 recommendations

- At a minimum, clause 59d should be amended to remove the “understood” requirement.
- **The person undertaking the physical disconnection isn’t necessarily the right person to contact the consumer:** If clause 61 is retained it should provide that it doesn’t have to be the representative undertaking the disconnection that has to “make a reasonable effort to contact any customer or consumer at the premises (unless there is a health and safety risk to the representative or the customer or consumer)”.

Part 8 recommendations

- **The intended interpretation of “MDC usually resides at the premises” should be clarified (clause 75 and elsewhere),** to make clear it is intended to recognise different people are in different circumstances and a consumer or MDC can reside in more than one premise.
- **Information and records relating to consumer care (for MDCs):** Unless the MDC is the customer there isn’t a reason for the retailer to contact them or their nominated support person. Clauses 76 and 77 should be deleted.
- **The Guidelines should not address Distribution Agreements or matters not covered in the current DDA in the Guidelines:** If the Authority considers Distribution Agreements should provide for such matters such as service level agreements in relation to MDCs (clause 83) then this should be covered in the DDA as a mandatory requirement.
- Clause 88 should specify no more than 15 working days, and not 40 working days.⁵⁰
- **The proposed Consumer Care Guidelines should be revised to offer protection for customers who are on pre-pay,** including the following:
 - a non-discrimination requirement that retailers ensure customers are not made worse off (higher electricity bills for any given level of electricity consumption) by being on a pre-pay product;
 - the qualification “subject to communications allowing” should be removed from clause 32. Retailers providing pre-payment services should ensure that they have a means of alerting the customer that they have a low credit balance;
 - customers have a 24 hour grace period after their credit runs out before they are disconnected;

⁴⁹ At a minimum, the Guidelines should be clarified/amended such that the steps in clauses 38 and 52 all count towards the five attempts to contact before disconnection referred to in clause 52a.

⁵⁰ We also note that the Guidelines use a mix of references to numbers of days, and numbers of working days. A consistent approach should be applied through the Guidelines, with all references to working days.

- ensuring customers are not effectively ‘forced’ onto pre-pay plans. We also consider that the Guidelines should specify retailers cannot require customers who have an MDC living at their house to have a pre-payment meter;
 - strengthening of clause 45 to reflect that regular or periodic “self-disconnection” doesn’t have to be weekly to be a major problem, and that the duration of the outages can also signal a problem which should be addressed;
 - if a customer is regularly or semi-regularly running out of credit, the retailer should be required to discuss alternative options, including post-pay, that may be more suitable and avoid disconnection;
 - strengthening the clause [66] requirement that “Retailers should ensure that electrical reconnection of a prepayment meter is as soon as reasonably practicable after the customer has purchased credit” to prescribe reconnection should occur within a set time period e.g. within [15] minutes; and
 - requiring public disclosure of all pre-pay disconnections, including details of frequency and duration.
- **The Guidelines should offer more flexibility around the MDC verification process:** The Guidelines don’t need to include requirements on retailers to verify the MDC status, just a requirement not to disconnect without it.

Consideration should be given to when retailers should have to contact their customers to ascertain whether they are MDC. The MDC status principally matters when the retailer would otherwise initiate a disconnection process. The Guidelines should include the principle that retailers cannot disconnect customers for non-payment where the consumer is MDC or claims to be MDC and the retailer has not verified whether or not the consumer is actually medically dependent (and/or resides at the premises) (our Guiding Principle 2), and be amended such that:

- retailers do not have to verify a consumer is an MDC (and could simply register the consumer as having unverified MDC status);
- 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; and
- retailers cannot disconnect customers for non-payment where the consumer is MDC or claims to be MDC and the retailer has not verified whether the consumer is actually medically dependent (and/or resides at the premises).

These changes would mean various of the verification clauses could be removed or should be amended e.g. clauses 75b and 88.

- **Frequency of verification of medical dependence should be tightened:** The Guidelines should explicitly provide for the HP notice to specify whether medical dependence is permanent or may be temporary/non-permanent.

Clause 91 that “Retailers may choose to confirm the validity of a HP Notice verifying a customer or a consumer usually resident at the customer’s premises as medically dependent, but no more frequently than once every 12 months” should be amended to reflect verification of medical

dependence cannot be done on a periodic basis (e.g. every 12 months) if the dependence is permanent, but verification that the MDC still resides at the premises is permissible.

Concluding remarks

We note the Authority is consulting on the Consumer Care Guidelines and UTS at the same time (with the same submission due date). While these topics are notionally distinct, they are both critical to ensuring consumers are protected and electricity supply is affordable. If prices in the wholesale electricity market are higher than they should be then retail tariff prices will be higher than they should be and there will be more payment difficulties.

The independents are mostly supportive of the Authority's proposed draft Consumer Care Guidelines and the protection they are intended to provide for consumers. We consider that the Authority has done a very good job of drafting new Guidelines, which was necessary given the poor standard of the existing, legacy, Guidelines.

There are improvements that still can and should be made before the new Guidelines are finalised. We have included recommendations in our submission about the way we think our concerns could be best resolved. Our recommendations would tighten up the underlying purpose and principles the Guidelines are trying to achieve, as well as making clear the underlying principle(s) of each Part of the Guidelines, with prescription used to define what compliance with the underlying principles requires.

The main areas we would like to see addressed include:

- there are a number of administratively difficult/operationally inefficient elements in the Guidelines which should be addressed;
- clarifying the Guidelines do not protect MDCs who engage in fraudulent activity from disconnection;
- streamlining the Guidelines with respect to MDC customers/confirmation of MDC status;
- ensuring the Guidelines do not result in unduly inefficient costs/delays through the non-payment/disconnection process which could result in higher debt and costs for customers already in financial difficulty;
- ensuring the Guidelines do not provide extra protections to consumers who are using electricity at "uncontracted premises" without seeking a supply contract from an electricity retailer; and
- improving the protections for customers who are on pre-pay meters, and to reflect that being without power on a regular basis is not a suitable way to manage electricity costs.

Yours sincerely,

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