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James Tipping
Chief Strategy Officer
Electricity Authority
Wellington

By e-mail: marketoperations@ea.govt.nz

Dear James

Independent retailers welcome the improvements made to the draft Consumer Care Guidelines

Ecotricity, Electric Kiwi, Flick Electric, Pulse and Vocus (the independent retailers) appreciate the opportunity to provide a technical submission on the revised draft of the proposed new Consumer Care Guidelines.

More drafting work required to ensure the Guidelines achieve their intended purpose

We acknowledge and appreciate the revised draft is a significant improvement on the 2020 version that was consulted on. However, despite the good work and effort that has gone into the drafting of the Guidelines, we consider further redrafting is needed before they are ready to be finalised. This will be important to maximise the likelihood they achieve their intended purposes and protect the interests of consumers. We reiterate we would rather see the Authority take the time to get the Guidelines right than to rush to finalise them.

Based on review of other stakeholder submissions there are, unfortunately, a number of technical drafting issues that remain a hang-over from the previous version of the draft Guidelines and still need to be resolved. There are also examples where the revisions won't necessarily achieve the attended outcome or affect. We also detail a number of areas where compliance, for various reasons, including lack of adequate clarity in the Guidelines, may be problematic.

It is clear there is consensus amongst incumbent and independent retailers the Guidelines are overly prescriptive and a lot of the issues that have been raised, including with the latest iteration, reflect the problems and risks caused by the level of prescription. The more detailed the Guidelines, the more important and challenging it can be to get the drafting right. As we have discussed with the Authority, if it is going to adopt a prescriptive approach it needs to be careful that it gets the wording right and that it doesn't result in unintended consequences.

By way of example, we consider it would be better if the Guidelines focussed on the amount of time between the invoice and when disconnection can occur, rather than prescribing the time for each step in the process. The requirement for 14 days between invoicing and payment, for example, effectively extends the credit terms on post-pay which would seem to go beyond consumer protection.

Some of the prescriptive requirements – particularly the upfront information requirements when signing a new customer – don't fit well with online business models – and could substantially increase the time and transaction costs for consumers considering switching supplier. This is

undesirable from a competition perspective which requires that the switching process is as quick and easy for the customer as possible.

We agree with ERANZ that "some of the more prescriptive aspects of the guidelines do not get the balance right – and as a result, become unworkable (and expensive) with little benefit". We also agree, by way of example, with Mercury's comments that "In their current form … the overly prescriptive nature of some parts of the Guidelines risks stifling competition and innovation. Instead of focusing on outcomes, the Authority has adopted a step by step approach which forces retailers to change existing processes at great cost even if their own solutions or existing processes align with the desired outcomes" and that the prescriptive nature of the Guidelines "will make it extremely difficult for retailers to achieve "complete alignment" and won't necessarily deliver the best outcomes or protections for consumers".

We also consider some of the elements of the draft Guidelines give rise to potential material privacy issues and the Authority should liaise with the Privacy Commissioner on the Guidelines before they are finalised.

We consider that while the drafting proposals are all well intended, much of the drafting still lacks sufficient precision or clarity. For example:

- What is meant by "contextual information on a customer's … household dynamics"? Likewise, what is intended to be meant by "life events"? Based on the discussion at the technical workshop,[1] we understand the Authority doesn't have a clear view on what these terms mean.

- The Guidelines are very precise about when disconnection of post-pay customers is permitted to occur, but in relation to pre-pay (clause 28) they simply say "disconnection will occur at some point" which is far too vague.

- As discussed at the workshops, how would a retailer know whether "new customers understand and agree to … the retailer's terms and conditions" particularly given very few customers read the terms and conditions.

- A requirement that "Retailers should have efficient processes for interacting with customers regarding non-payment" is far too imprecise to be useful.

The Authority has identified some specific matters it won't resolve before introducing the new Guidelines. We recognise this is a pragmatic approach that reflects the need to replace the existing Guidelines given their obvious and substantive short-comings and inadequacies. A possible consequence of this two-part process is that it may add additional costs for retailers and result in additional qualifications to some compliance disclosures. The Authority compliance monitoring expectations should provide for sufficient time after final decisions have been made on this matter for retailers to adjust their processes to comply (if their existing practices don't comply with the future requirements).

Standardisation

We note "the Authority encourages stakeholders to develop a customer care policy template for retailers to use in aligning with the guidelines. As a consumer care policy integrates with each retailer's processes, offers and systems, the policy facilitation measures are best developed and maintained by stakeholders, and not the Authority".

[1] 4 March 2021.

We are open to participating in and assisting with development of templates, but caution 'a one size fits all' approach won't necessarily reflect the diversity of different retail business models that now exist. Each retailer should be encouraged to tailor their approach to customer care to best meet the needs of their customer base.

Pass-through of costs imposed on retailers

We caution against using the cost of complying with the existing Guidelines as a justification for requirements in the new Guidelines.

We are particularly wary of a 'false equivalence' where the no change position (e.g. in relation to disconnection of vacant properties) reflects addendums that were made last year rather than pre-existing provisions in the Guidelines. In particular, the requirement for a physical site visit for disconnection has changed/been widened substantially – from a requirement to physically visit vulnerable consumers only to a requirement to potentially visit all customers.[2,3]

Regardless, the new Guidelines need to be justified in their own right.

Some submissions (e.g. David Close) failed to recognise that simply treating "additional costs … as an overhead business cost" would translate to higher prices, including to those that can least afford it.

A consensus view emerging amongst retailers is that (full) compliance would impose significant cost, and these costs would ultimately have to be borne by consumers. If inefficient or high costs are created by the Guidelines (existing or new) this will undermine their success in helping reduce financial difficulties and non-payment/disconnection issues. For example, we note Meridian's observation: "Some aspects of the Proposed Guidelines would result in significant initial and ongoing compliance costs for retailers which do not appear to be outweighed by the benefit to consumers, retailers, the Authority or other stakeholders (the indicative impact assessment certainly does not appear to indicate that benefits will outweigh the significant costs involved in compliance…)".

Technical drafting issues and areas that need clarification

We detail below a clause-by-clause technical commentary on the revised draft. The tight timeframe for submissions has limited the extent to which we have been able to provide the drafting amendments the Authority has asked for, beyond those we have provided in previous submissions. Many of the points highlight a need to ensure it is clear what is meant by the requirements:

- **CLARITY OF THE GUIDELINES:** ***Clause iii and elsewhere:*** We reiterate it would be useful to clarify residing "permanently" can include part-time residence e.g. where the consumer resides in more than one house. The rewording to reference "permanent and temporary" is intended to address this ambiguity, but we do not consider it does so. The Authority has stated it "Clarify[ied] that MDCs may be at premises on a temporary basis (e.g., instances of children spending time with each parent in separate households)". However, permanently living part-time in more than one place is not the same as being "at premises on a temporary basis".

[2] Refer to paragraph 7.23 of the Authority discussion paper.
[3] Based on discussion at the 4 March 2021 workshop, we understand the Authority has a different view on the interpretation of the existing Guidelines, including that physical site visit would be required to ascertain whether the consumer is vulnerable. This is dealt with in the requirements under "Identifying a vulnerable consumer" which doesn't include physical site visits.

- **CLARITY OF THE GUIDELINES: *Clause 5, 40, 56, 69, 79, 80, 101, and 101b:*** The Guidelines don't define what "deception" (new language) is intended to mean, but based on discussion at the 4 March workshop we understand it is intended to be wider than "fraud" (old language) and includes things like theft.

- **SCOPE OF THE GUIDELINES: *Clause 5:*** The Guidelines cannot 'regulate' consumers/customers but states "Customers engage with retailers in good faith and respond to retailer communications, to avoid or minimise non-payment issues".

  While we note some other retailers, such as Mercury, have advocated for such provisions, they serve little or no useful purpose unless the Authority is clear about what the consequences are (what rights the retailers have) if the customer does not engage in good-faith or respond to retailer communications. As it stands, the consequence appears simply to be that disconnection is delayed and the retailer must make additional attempts to contact the customer. We consider that if the Authority wants to include a "good faith" clause, then it should detail repercussions such as if the customer does not engage with the retailer then the non-payment/disconnection process can be fast-tracked.

  The existing Vulnerable Consumer Guidelines adopts a better approach of focusing on the consequences of the consumer not acting in good-faith e.g. clause 48 states: "If a vulnerable consumer does not cooperate or, without good cause, materially breaches arrangements that have been agreed after the process outlined in this Guideline has been followed, the retailer may disconnect the consumer".

- **CLARITY OF THE GUIDELINES: *Clause 7dii:*** Is it the Authority intention to leave open interpretation of the "reasonable time [for customers] to receive assistance"? The Guidelines are prescriptive about timelines elsewhere.

- **CLARITY OF THE GUIDELINES: *Clause 14aii:*** Requiring Retailers to document "a customer's preferred day(s) or the week to be phoned … and the time(s) within (those) day(s)" is too prescriptive and is information which, if relevant to the customer at all, would likely become quickly out-of-date. The clause also does not appear to have any practical function. While the Guidelines require this information to be recorded, there are no provisions for when it should be applied e.g. what happens if the preferred day(s) don't correspond with 24 hour disconnection notice? This clause should be deleted.

- **COMPLIANCE WITH/CLARITY OF THE GUIDELINES: *Clause 14av:*** How would a retailer establish "a customer's level of confidence with reading the retailer's documentation" and how would compliance be measured? This is too prescriptive and (as per the comments on the Retailer's Terms and Conditions) fails to recognise most customers won't need or want to read the Retailer's documentation. This should be deleted.

- **CLARITY OF THE GUIDELINES: *Clauses 14avii and viii:*** These clauses distinguish between "alternate contact" and "support person" but the Guidelines are not clear about when a support person should be contacted. The only references to support persons are that: (i) the support person's contact details etc should be recorded (clause 14aviii), (ii) a requirement to "remind the customer they may nominate a support person" (clause 44d), and that (iii) if a customer has "a ksupport person, the retailer should contact the MDC/unverified MDC directly" (clause 83b) and not the support person (in contrast to an alternate contact which should be initially contacted (clause 83a). All references to the actual role of the support person have been removed from the revised draft of the Guidelines. We don't consider the changes have resolved Trustpower's

request “the Authority … further clarify the difference between a customer-nominated “support person” … and “alternate contact person””.

The Guidelines should either remove the reference to “support person” or otherwise clearly articulate their role, including when the retailer should make contact with the “support person” versus the “alternate contact”.

- **CLARITY OF THE GUIDELINES: *Clause 15d:*** What is meant by “contextual information on a customer’s energy use, primary heating sources and household dynamics” (“household dynamics”, in particular)? This appears to be overly invasive and to give rise to privacy issues.

- **DRAFTING TIDY-UP: *Clause 17:*** Addition of “and any subsequent changes to these laws” is superfluous.

- **CLARITY OF THE GUIDELINES: *Clause 17i:*** It isn’t apparent how a “customer record should be able to prove … the retailer has acted to meet the intent of these guidelines” e.g. for most existing customers who do not have payment issues the retailer may have a relatively passive relationship with the customer. The customer that is relevant here is only the customer/s with payment issues.

- **COMPLIANCE WITH THE GUIDELINES: *Clauses 21, 22, 23 and 31:*** The Guidelines should recognise the new customer may be signing up online, and the retailer’s “advice” may be information the customer relies on from the retailer’s website. We reiterate “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 signup 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 signup (the customer is pulling the information instead of the retailer being responsible for pushing it)”.

  Consistent with our comments, Mercury has also submitted “Part 4 of the Guidelines provides that where a retailer declines to enter into a contract with a consumer the retailer must give information about alternative payment tools that might suit the consumer, pricing plan comparison websites and the reason the retailer has declined a contract. This recommendation is very specific in its requirements and whilst it may work for consumers who sign up through traditional channels it is completely unworkable for online offerings. A consumer chooses to sign up online because it gives them access to cheaper electricity plans and/or because they prefer a contactless product. Introducing requirements that necessitate an element of human intervention would inevitably result in an increase in electricity prices”.

- **CLARITY OF THE GUIDELINES: *Clause 22:*** We reiterate “It is ambiguous how a retailer would comply with some aspects of the Guidelines” e.g. how would a retailer know whether “new customers understand and agree to … the retailer’s terms and conditions”? As discussed at the workshops last year, very few customers would read the terms and conditions and there is no reason to expect them to. We consider clause 22 should be deleted.

  We note Mercury’s comments on this matter: “There is no commercial organisation we are aware of that is required to go to these lengths. This would in effect be asking retailers to explain to every consumer prior to signing up the potential impact of a lengthy legal document. Our customer representatives are not trained as legal advisors and retailers cannot be expected to meet the costs of resourcing this recommendation for little or no commercial benefit. The

obligation should extend to retailers providing all information in plain English and staff in customer facing roles knowing where to refer a consumer who may have difficulties understanding but no further."

- **COMPLIANCE WITH THE GUIDELINES: *Clause 24a:*** We reiterate "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 acting in good faith liaising with and actioning the advice or assistance received from a support/social agency".

- **COMPLIANCE WITH THE GUIDELINES: *Clause 24b:*** The requirement to obtain information about "historic financial pressures or other life events" would be incredibly invasive and give rise to privacy issues. It is also unclear what the Authority intends by "life events"? All the upfront sign-up requirements in the Guidelines are liable to put consumers off switching. The Authority should avoid anything that increases the time and transaction costs for consumers considering switching supplier.

- **COMPLIANCE WITH THE GUIDELINES: *Clause 25:*** We agree with Mercury that the Authority needs to consider "how the many online-only offerings in the electricity retail sector will be able to achieve alignment with this proposed clause. Currently, Mercury customers who attempt to join online and do not meet a satisfactory credit check are declined online through an automatic process. In order to align, this automatic process would need to be disestablished or a declined online customer would have to be referred to the contact centre to discuss their situation and be provided with the recommended information and advice. Some retailers do not have contact centres which is the reason they are able to keep electricity prices so low. Further, a customer who chooses to use an online service is often doing this because it is fast and efficient and removes the need for human contact. The Authority should be mindful of the different way that retailers and customers interact with online products and should avoid placing undue restrictions on future innovation in this area."

- **COMPLIANCE WITH THE GUIDELINES: *Clause 25ai/31b:*** These clauses should be deleted. We do not consider it appropriate to require a retailer to have to advise customers/prospective customers about other retailers' service offerings. It also raises questions about what the retailer should do if another retailer's "types of payment plans … may suit the person's circumstances better" but the pricing is a lot higher? The Guidelines should recognise the electricity retail market is intended to be competitive and there is some onus on the customer to identify which retailer will best suit their needs e.g. some customers may decide they only want to be supplied by retailers that offer weekly billing, so will need to identify those retailers. This is no different to customers needing to shop around for the cheapest deal.

  This issue was raised in various submissions but the Authority has not addressed it e.g. Contact submitted "It is inappropriate and risky for CSR's to be providing information on other retailers pricing plans or payment plans therefore we recommend removing this clause". Genesis: "We do not consider it is practical to require retailers to recommend plans other than what they offer, as a retailer cannot be expected to be fully informed of the costs and benefits of these plans creating a risk of inadvertently misleading customers. It is not feasible for a retailer be aware of other plans and options offered by competitors."

- **CLARITY OF THE GUIDELINES: *Clause 28b:*** "disconnection will occur at some point" is too vague.

- **CLARITY OF THE GUIDELINES: *Clause 37:*** How would a retailer demonstrate it has complied with the requirement to "make sure their representatives … are trained to build rapport with

customers …" This is an example where the draft Guidelines are overly prescriptive. Retailers are already commercially incentivised to employ representatives who have good rapport.

- **CLARITY OF THE GUIDELINES:** ***Clause 38:*** How would a retailer demonstrate it has complied with the requirement to "have efficient processes for interacting with customers regarding non-payment"? From a pure efficiency perspective, the requirements in Parts 6 and 7 may not be considered efficient/may result in additional or unnecessary accumulation of debt before the non-payment issue is resolved e.g. the required number of attempted contacts may not be considered to be efficient compared to benchmarks based on other services e.g. SKY TV. While there have been changes/improvements to the draft Guidelines, we reiterate "The non-payment/disconnection processes could impose inefficient costs".

  Again, we consider this to be an example where the draft Guidelines are overly prescriptive with requirements that are not readily quantifiable/it could be difficult to prove compliance with. Why do the Guidelines have to include this requirement when there are commercial incentives for retailers to have processes to deal with non-payment and to be "efficient"?

- **COMPLIANCE WITH THE GUIDELINES:** ***Clause 42 (and elsewhere):*** It would be better if the Guidelines focussed on the timeline between the invoice and when disconnection can occur. It seems odd for the Guidelines to extend the credit terms on post-pay, while the Authority is happy customers are required to pay in advance on pre-pay. This highlights some of the discriminatory elements of the Guidelines favouring certain business models.

  Where the Guidelines refer to the retailer making contact with the customer, they should refer to the retailer making "reasonable attempts" to contact the customer. We consider this would be a better approach than referring to "attempted contact" and "completed contact".

- **COMPLIANCE WITH THE GUIDELINES/DRAFTING TIDY-UP:** ***Clause 42:*** Clause 42 states that "<u>after day 24</u>, the retailer should contact the customer", but the following paragraph says that "at or <u>after day 21</u>, the retailer should make at least three separate attempts to contact the customer" [emphasis added].

- **COMPLIANCE WITH THE GUIDELINES:** ***Clause 44:*** There may be no "relevant pricing plans the retailer offers which, based on the customer's average consumption over the past 12 months … would result in a lower delivered cost of electricity". This would mean that a retailer that already has its customers on the best plans would technically be in breach of clause 44. We reiterate this clause "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"".

- **DRAFTING TIDY-UP:** ***Clause 44d:*** Should be "and/or" unless the Authority intent is that the customer cannot nominate both an alternate contact and support person.

- **COMPLIANCE WITH THE GUIDELINES:** ***Clause 44h:*** We reiterate it may not be reasonably practicable to comply with this clause if the customer won't engage with the retailer: "Most customers that default do not engage with their retailer. The replacement of "make sure" with "satisfy themselves" does not address our concern. It would be better If the Guidelines simply required the communication with the customer, as part of the non-payment/disconnection process included advise about budgeting/social agencies.

- **SCOPE OF/COMPLIANCE WITH THE GUIDELINES:** ***Clause 45 (67f and 74ii)):*** We do not consider this requirement to be reasonably practicable. We also consider that this clause is overly prescriptive and would add complexity and distraction to any dialogue with the customer over bill non-payment/debt. The focus of the retailers should be on helping the customer manage the problems they are having paying their bills, not artificially distinguishing between what label should be given to subcomponents of the debt. It also effectively amounts to over-reach by the Authority, as the Guidelines are extending into services other than electricity e.g. gas and telecommunications.

- **COMPLIANCE WITH THE GUIDELINES:** ***Clause 47 (and 50):*** The way this clause is written appears to suggest retailers should monitor every individual customer's consumption. This gives rise to substantive privacy issues.

- **COMPLIANCE WITH THE GUIDELINES:** ***Clause 47a (and 50):*** It may be better to require the retailer to alert the customer to the change in consumption level, e.g. as part of the billing cycle (Watercare does this), rather than make (invasive) "enquiries with the customers to identify potential reasons for the increase". Again, this gives rise to substantive privacy issues.

- **COMPLIANCE WITH THE GUIDELINES:** ***Clause 47b (and 50):*** This clause is too broad and would cover things like the household members going on extended holidays, and turning off their hot water and other unnecessary appliances. We consider that the clause gives rise to privacy issues and should be deleted.

  We agree with Genesis that "The requirement for retailers to check on a customer's declining electricity usage is well-intentioned" but "there is a vast range of potential causes of declining usage, many or most of which would not relate to any difficulty in meeting costs. These circumstances include household members leaving, household members changing their behaviour, installing energy- efficient appliances, the household installing gas or solar, significant renovations, and holidays or changes in occupancy habits".

- **COMPLIANCE WITH THE GUIDELINES:** ***Clause 47d:*** We assume this clause is intended to refer to debt repayment plan, but the reference to "payment plan" is generalised and could be interpreted as referring to any post-pay payment arrangement.

- **COMPLIANCE WITH THE GUIDELINES:** ***Clauses 42 to 48 versus 49 & 50:*** It is unclear why there are minimum requirements for notice/communication attempts before disconnection of post-pay, but for pre-pay the requirement is simply to monitor the frequency of disconnections. If this reflects the policy intent it would be helpful if the Authority was clear about this.

- **COMPLIANCE WITH THE GUIDELINES:** ***Clause 56:*** Some retailers consider it is more efficient/lower cost to read meters bi-monthly where the meter is not a smart meter. The requirement that the notification process for disconnection cannot occur on the basis of an estimated invoice could delay the already lengthy process in the Guidelines for disconnection. This could also result in the customer building up further debt, resulting in greater financial difficulties.

- **CLARITY OF THE GUIDELINES:** ***Clause 57:*** It is unclear whether the 5 attempts to contact the customer (clause 57a) include or are additional to the requirements to attempt to contact the customer in clauses 57b and 57c. If it is intended that they are additional, we consider a requirement to contact the customer 7 times before disconnection is particularly excessive.

- **CLARITY OF THE GUIDELINES:** ***Clause 57b:*** Clause 57b does not appear to make sense, and it is unclear what it is intended to require.[4] It isn't helped that the clause does not follow from the chapeau: "Retailers should, before disconnecting a post-pay customer's premises for non-payment of an electricity invoice: … where a traceable form of contact with the customer …" The following is not coherent either "… where a traceable form of contact with the customer … has not been completed, and includes as one of their five attempts a representative visiting the premises to provide a notice of disconnection to the customer in person …" [emphasis added).

  Speculatively, it appears clause 57b is intended to convey that one of the 5 attempts to contact the customer (clause 57a) should include a traceable form of contact with the customer or a physical visit to the premises by a representative to provide notice of disconnection to the customer?

- **CLARITY OF THE GUIDELINES:** ***Clause 57c:*** The clause should clarify that the retailer is required to make "reasonable attempts" to provide the customer with a final disconnection notice by either of the mechanisms in i. or ii. but disconnection can still go ahead if the customer does not respond (this point also goes back to the point about the customer being required to act in good-faith where, for example, the customer chooses not to respond or communicate).

- **DRAFTING TIDY-UP:** ***Clause 61:*** Clause 61 appears to be redundant and duplicates clause 57c.

- **DRAFTING TIDY-UP:** ***Clause 62a:*** The clause is circular: "Retailers should satisfy themselves that any of their representatives who visit a … customer's premises or uncontracted premises for the purpose of contacting the customer … make a reasonable effort … to contact any customer or consumer at the premises". The site visit itself is presumably the reasonable effort?

- **COMPLIANCE WITH THE GUIDELINES:** ***Clause 65d:*** Clause 65d(ii)(a) is still problematic for vacants as it requires retailers to have a traceable form of contact when we don't know who the consumer is. Therefore, it is likely to still lead to a requirement for a visit. This reinforces the previous submission point that the Authority proposals will incentivise immediate disconnection of vacant properties. We consider that the requirement should be limited to attempting to contact the consumer at a vacant property by a traceable form of contact or a physical visit, but that there be no requirement the attempt is successful. We are comfortable for the Authority to revisit this issue at a later date and use data to understand the costs and benefits of its proposal. The decision paper talks about the Authority's concerns but isn't backed up by data or evidence that there is a material problem.

  We note Mercury's submission that "The requirement for traceable contact also applies to disconnections of vacant premises. This to us is even more problematic as Mercury's current processes only require a site visit where there is a health or safety concern. Otherwise disconnections for vacant premises are carried out remotely once the requisite notifications have been sent to an uncontracted occupier. This is a quick and seamless process that avoids prolonging the process and putting additional costs on retailers. Remote disconnection is also the most effective trigger for reminding a consumer who has moved into premises to open an account with a retailer. The traceable contact requirement for vacant premises would increase retailer costs, prolong the disconnection process and make smart meter technology pointless if a physical presence is required regardless of remote capabilities."

[4] This was raised by more than one stakeholder at the 4 March workshop, but the intention of the clause wasn't able to be clarified at the workshop.

- **CLARITY OF THE GUIDELINES:** ***Clause 67c:*** What does the Authority consider to be "a very cold day"? What about regions such as Queenstown where it may be cold throughout the entire winter period? Does the definition/threshold vary across different (colder versus warmer) parts of the country? Again, we think this is an example where the Guidelines are well meaning but overly prescriptive, and the clause should be deleted.

- **COMPLIANCE WITH THE GUIDELINES:** ***Clause 67d:*** We agree with Genesis that "The requirement that retailers have ensured consumers have "understood" the notifications is impossible to fulfil. Neither the retailer nor the individual customer can claim with certainty that notifications and their consequences have been understood."

  Trustpower similarly commented "The requirement to ensure a customer has understood any piece of information is quite a high, and difficult, burden of proof for retailers to meet and is untenable in the context of these Guidelines. If consumers are aware that 'an understanding' is required for any disconnection processes (for example) to be legitimate, there is a much higher likelihood that they can use their 'lack of understanding' to game the system. It is very easy for a consumer to say they did not understand certain information or a piece of correspondence from a retailer. On the contrary, it is very difficult for that retailer to prove otherwise".

  Amending the clause from "ensured" to "satisfied itself (acting reasonably) that" does not resolve these issues. As Mercury noted "If a retailer is unable to get in contact with a consumer, a retailer will never be able to confirm that a consumer has received or understood the disconnection notifications or understands the outcomes and will effectively be deadlocked from disconnecting the premises". The wording "satisfied itself (acting reasonably) that" is very different from, say, Genesis' recommendation that the wording include "reasonable steps". Consistent with Genesis, we consider the requirement should be that "the retailer make reasonable attempts to ensure the customer or consumer (in respect of uncontracted premises) received and understood both the notifications of disconnection and the outcome of not responding to the retailer's contact attempts".

- **COMPLIANCE WITH THE GUIDELINES:** ***Clause 74aii:*** The "e.g." of "public holiday" etc may be redundant if the retailer has systems allowing 24/7 reconnection.

- **SCOPE OF THE GUIDELINES:** ***Clause 89:*** We reiterate "The Guidelines should not be used as a substitute for amendment of the Default Distributor Agreement". The Authority is responsible for regulating distribution agreements, including service level agreements. This clause should be dealt with via changes to the Default Distributor Agreement (DDA).

  We note Mercury's submission "Agreements between retailers and distributors for distribution services have been prescribed by the Electricity Industry Participation Code via the "Default Distribution Agreement"(DDA). Planned electricity outages are covered in a category called "Recorded Terms" which can be prescribed by each distributor in its respective DDA. Any amendment to a distributors' Recorded Terms requires the agreement of the relevant Distributor that has drafted the terms. Therefore, following publication by distributors of their DDA, retailers have very little bargaining power to influence the terms relating to electricity outages. Mercury suggests this obligation sits better with distributors than with retailers."

- **CLARITY OF/COMPLIANCE WITH THE GUIDELINES:** ***Clause 110c:*** The new qualification "unless to do so would hinder the achievement of the purpose of these guidelines" changes the clause from a clear and precise requirement to a vague and ambiguous requirement. What situations does the Authority have in mind where it might consider "cross-subsidies" would be consistent

with the purpose? In one reading of this clause, the exception would apply to all disconnection fees etc because not charging a disconnection fee would help "prevent harm caused by disconnection" and "prevent accumulating debt over electricity supply" etc. We consider that the amendment to the clause should be reversed or the Authority should consider removing the de facto price control provisions (Part 9) from the draft Guidelines altogether.

- **COMPLIANCE WITH THE GUIDELINES: *Clause 111:*** Linking fees to "the customer's average monthly cost during the past 12 months" would require fees to be bespoke to individual customers AND bespoke to different points in time (since the average will change over-time). A flat fee is more reasonable or a fixed percentage of an average customer's bill.

- **COMPLIANCE WITH THE GUIDELINES: *Clause 126:*** A retailer may choose to not fully align with the new Guidelines for various reasons (including because the approach they adopt better protects consumer interests[5]), but this clause is predicated on the reasons narrowly being limited to that the retailer "cannot align". The clause should simply require the retailer detail any areas where it has deviated from the Guidelines, and the reasons for doing so.

Meridian's politicisation of its engagement on Consumer Care

We are disappointed with Meridian that, instead of focussing on ensuring the Consumer Care Guidelines protect the interests of consumers, they have used the engagement as an opportunity to make pejorative comments about the "limited" "incentive for smaller retailers to align" compared to larger retailers, and the suggestion smaller retailers might not "bother to comply". Independent and new entrant retailers are, by definition, building a customer base from scratch so providing exemplary customer service is essential for attracting each customer. Our position differs from incumbents who can rely on an established customer base of which a high proportion haven't ever switched.

As independent retailers, each of us are proud of the benefits we have delivered to consumers, including through lower prices which help ease financial difficulties and hardship.

Our recognition of the importance of the Consumer Care Guidelines is reflected in the simple fact that, despite our collective and individual small size, our engagement with the Authority consultation has been substantive and extensive throughout the process.

Concluding remarks

The Consumer Care Guidelines have an important consumer protection function.

The independents are mostly supportive of the revisions to the draft Consumer Care Guidelines.

However, there are a number of improvements that still can and must be made before the new Guidelines are finalised. The importance of the Consumer Care Guidelines is such the Authority needs to ensure their quality isn't sacrificed by a desire to expediate the replacement of the existing Gudielines. Our submission has focussed on the scope to tighten up and clarify the drafting of the Guidelines, and provide better certainty about what is needed to comply with the Guidelines.

There are also important issues the Authority has flagged won't be resolved before the Guidelines are finalised. This results in a material qualification to the extent the Guidelines can be said to be

[5] For example, contracting a specialist to make a visit to the household, rather than the person who is going to do the disconnection, is in breach of the existing Vulnerable Consumer Guidelines, but clearly a more appropriate approach for retailers to adopt.

"based on general industry consensus". Resolving these issues will likely necessitate further amendments in the (near) future. We look forward to engaging with the Authority and other stakeholders on the Authority's intended process for addressing these matters.

Yours sincerely,

<table>
<tr>
<td>Al Yates
Chief Executive
alyates@ecotricity.co.nz
 </td>
<td>Luke Blincoe
Chief Executive
luke.blincoe@electrickiwi.co.nz
 </td>
<td>Steve O'Connor
Chief Executive Officer
steve.oconnor@flickelectric.co.nz
 </td>
</tr>
<tr>
<td>Fraser Jonker
Acting Chief Executive Officer
fraser.jonker@pioneerenergy.co.nz
 </td>
<td colspan="2">Emily Acland
General Counsel and Regulatory GM
emily.acland@vocusgroup.co.nz
 </td>
</tr>
</table>