

April 30, 2018

Carl Hansen, CEO
The Board of Directors
Electricity Authority

By email: carl.hansen@ea.govt.nz

Re: Save Protection Scheme – response to your letter

Carl and the EA Board,

Thank you for your prompt reply to my letter of March 27, 2018.

We were warmed by your acknowledgments of Pulse’s position, in particularly your appreciation of the large financial impact and the myriad of related switching problems we face. Thank you for those comments as they were much appreciated.

Your letter was troubling in what it did not address however.

The preeminent point that you left unmentioned is that we face a severely negative outcome without a demonstrable consumer benefit. This is the rudimentary problem that we hoped you would acknowledge and the issue the current save protection scheme has failed to address. We also had hoped you would be announcing that you directed MDAG to include it in their deliberations.

Secondly, we expressed general concerns about MDAG’s mandate and you did not comment on your willingness to improve the mandate; specifically the concerns we had with the “problem definition”. The problem definition was targeting second-order problems and did not acknowledge the failures of the current scheme at all.

Thirdly, and unfortunately, since then we have become increasingly troubled. Early communications from the committee is emerging that has reinforced our initial concerns with the mandate. For example, we understand that MDAG has added to the list of items “an investigation into whether or not a winning retailer would have a leg-up” over a losing retailer. This has been flabbergasting to hear. After a winning retailer invests in salespeople, develops complex go to market strategies, pays for leads and channel costs, invests in brand awareness, invests in social media/TV/print advertising to cut through the noise and arrives at a place where a customer decides to switch against a strong urge to remain – then, and only then, the losing retailer makes a single phone call to unwind the deal. Somehow this led MDAG to consider if the initiative the winning retail embarked upon would create a “leg-up” over the losing retailer if they let the deal stand for a period of time. What is particularly flabbergasting is the mandate has not, from what we can tell, included notions such as whether or not a defacto “last right of refusal” has been constructed or whether or not a consumer benefit arises at all.

With this in mind, we respectfully request the following:

1. That you instruct MDAG to specifically articulate what consumer benefit occurs when a losing retailer makes contact (other than written notice and the final bill) prior to a 60-day prohibition period that is incremental to what contact they could make on day 61;
2. That you instruct MDAG to specify whether or not they believe a defacto “last right of refusal” is fair in an openly competitive market;

3. That you ask MDAG to opine on whether or not a 60-day prohibition would eliminate the risk that losing retailers might, at some point in time, fall into undesirable behaviours;
4. That you instruct MDAG to comment specifically on whether or not a losing retail has any restriction in making an attractive offer 60 days hence; either directly to the customer or indirectly in the market at large. In other words, is a consumer benefit always going to be available or does the “heat of the moment” materialise a specific consumer benefit, in itself.

Carl, we believe strongly that assessing the issues one example at a time in the Commerce Commission context is not the right approach here. Handing out speeding tickets for errant behaviours is not the problem. The EA must install speed bumps in this case; just as regulators did in the telecommunications industry, to eliminate the downside consequences. Only the EA can put in place preventive measures do ensure a Commerce Commission issue cannot arise.

As always, we are happy to meet in person to discuss further. In the meantime, we look forward to your response.

Best regards,

A handwritten signature in blue ink, appearing to read "Gary Holden", written in a cursive style.

Gary Holden
CEO Pulse Energy Alliance LP

Cc: Pulse Board of Directors