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To the Electricity Authority

### Consultation Paper – Raising consumer awareness of Utilities Disputes and Powerswitch Services

This submission is made on behalf of Meridian and Powershop. We welcome the opportunity to submit on the Electricity Authority's consultation paper dated 21 January 2020.

Meridian and Powershop **support** the Authority's efforts to raise awareness of Powerswitch and Utilities Disputes. We are concerned however that the Authority's proposed Code amendments go too far in requiring that clear and prominent information be included in **all** consumer communications. We believe that reference should be made in all key consumer communications but making it 'all' would impose a significant burden on retailers that would not in our view produce a commensurate benefit to electricity consumers (particularly if reference is already included in all key communications).

We note that the Code drafting which references 'all' consumer communications also conflicts with the "Guiding Principles" published by the Authority which are, according to the Authority, "for retailers and distributors to consider when complying with the proposed Code amendment." The Guiding Principles are clear that reference to UDL and Powerswitch need not be included in all communications. The combination of the proposed Code and Guiding Principles and the conflict between them would leave retailers and distributors in some uncertainty as to what they need to do to comply. We submit the Authority needs to address and remove this conflict before finalising the proposed Code amendments and / or the Guiding Principles. Our responses to the specific consultation questions are set out in the Appendix attached to this submission.

In addition, while we generally support this initiative, if it is to provide real benefits to consumers we believe that Powerswitch will need to lift its game. Meridian and Powershop have seen what we believe is a decline in performance by Powerswitch and we have a number of concerns about how Powerswitch currently operates that should be addressed before Powerswitch starts to be more heavily promoted to consumers. In particular we have seen what we believe is a decline in performance by Powerswitch as a tool for effectively encouraging customer switching. If left unaddressed we believe that in a worst-case scenario these deficiencies in performance could result in negative competitive outcomes and / or cause consumers to lose confidence in Powerswitch. Fortunately, we believe most of these matters can be addressed relatively quickly. They are:


1. From time-to-time, pricing isn't properly entered or displayed by Powerswitch. This happens more often than it should and seems to be the result of human error.
2. Powerswitch does not factor in the value of a welcome / join credit. However other less easily quantifiable offers or promotions such as Hour of Power are factored in based on various assumptions about anticipated consumer behaviour that may or may not prove to be correct. This is likely causing negative competitive

outcomes because Powerswitch is not enabling an 'apples for apples' comparison.

3. Powerswitch is unduly and consistently negative about fixed pricing terms without checking and distinguishing between situations where there is an actual consequence for customers from breaking the fixed term early (e.g. break fees or incentive recovery) and where there is none.
4. Importantly, Powerswitch fails to adequately flag-up to users of the site the differences between retailers in terms of non-price attributes e.g. customer service, sustainability, etc. Some customers value these things highly and as a result this may lead to inefficient switching.
5. In our experience Powerswitch are often slow to update their site. This is particularly an issue during price changes, when consumers arguably need it most to be accurate. We believe this is symptomatic of a larger issue around resourcing of the site.
6. This lack of resourcing also means development is sometimes behind current market offerings, for example Powershop have had a time of use offering in market since 2017 and have been unable to present it on the site.
7. There should be more transparency around commissions paid to Powerswitch by different retailers. The website lists various retailer that it says it is 'supported by'. We suggest that details of commission arrangements should be more clearly and prominently displayed.
8. In the medium to longer term, provision of the Powerswitch service needs to be made contestable. It is inappropriate for a regulatory body charged with promoting competition to be effectively creating and sustaining a monopoly position in the provision of website switching services. The Authority should in our view make some public statement about what its plan is over the medium to longer term for ensuring such contestability.

For any questions relating to this submission, please contact Jason Woolley or Sam Fleming.

Yours sincerely



**Jason Woolley**  
Head of Regulatory Affairs and Corporate Legal

## Appendix

### Responses to specific questions

<b>Question 1: Do you agree the issues identified by the Authority are worthy of attention?</b>
Yes
<b>Question 2: Do you agree with the objectives of the proposed amendment? If not, why not?</b>
Yes
<b>Question 3: Do you agree the benefits of the proposed amendment outweigh its costs?</b>
Not in its current form: <ol style="list-style-type: none"><li>1. The proposed amendment states that each retailer must provide clear and prominent information...in <b>all</b> consumer communications (emphasis added). This is unequivocal. In contrast the Guiding Principles document states at 2.23 "...it may not be appropriate to include [clear and prominent] information in every text message a retailer sends to consumers." This guidance conflicts with the proposed Code amendments. The Guiding Principles are also equivocal - "it <b>may</b> not be appropriate" (emphasis added). The Authority needs to clarify what is expected. Promulgating unequivocal Code and at the same time issuing guidance which hints that the Authority may not expect that Code to be complied with (while at the same time seemingly reserving the Authority's position to decide that it does need to be complied with) will leave retailers in an impossible position. This has the potential to drive significant compliance and enforcement costs.</li><li>2. Meridian and Powershop firmly believe that the view tentatively provided in the Guiding Principles is the better one i.e. that it will generally not be appropriate to include information about UDL and Powerswitch in every single consumer communication. The Guiding Principles mention television advertising campaigns as an obvious example. As another example must a member of a retailer's call centre team refer to UDL and Powerswitch in every conversation they have with a consumer? We don't believe that such an approach is sensible or likely to benefit consumers. We suggest that the proposed Code amendments should be altered to make compliance with something like the approach set out in the Guiding Principles the key – reference to UDL and Powerswitch needs to be made in all invoices and any other key communications. Requiring reference to be made in all communications will increase costs to retailers and to UDL without creating a commensurate benefit for consumers.</li><li>3. The proposed Code amendments are also not even-handed as between retailers and distributors. Increasingly Meridian and Powershop see distributors looking to communicate directly with consumers. When they do so there is no reason why they should not be subject to exactly the same regulatory requirements as retailers. Anything else would result in an uneven playing field. Meridian and Powershop suggest that proposed clause 11.30A should be amended by deleting 11.30A(2) and inserting the words "or <b>distributor</b>" after the word "retailer" in the two places it appears. There is no reason for the distinction drawn between retailers and distributors in the draft Code. They key should be consumer communications i.e. if you are communicating with a consumer and are an industry participant subject to the jurisdiction of UDL then you need to comply. The one possible difference is in relation to Powerswitch. It may be that references to Powerswitch only need to appear on retailer communications.</li><li>4. The Guiding Principles also suggest the Authority intends to adopt a 6 month "grace period" once the new Code comes into force i.e. that retailers and distributors will have 6 months to comply. This isn't reflected in the Code and if this is to be the Authority's official policy then it should be. The Authority is not the only party that is able to enforce the Code and it would not make sense for the Authority to be granting leeway while participants are simultaneously exposed to complaints from other participants about non-compliance with the Code.</li><li>5. We also believe the Authority's estimate of costs per retailer is likely to be significantly understated. The Authority estimates that each retailer with more than 150,000 ICPs will incur \$10,000 in costs to comply with the proposed Code. Meridian and Powershop believe that in our case the actual figure, if we are required to include the relevant material in all consumer communications per the current Code wording, is likely to be more like be around \$80,000. If these costs are replicated across the sector then the costs of the proposal are likely to be much higher than estimated by the Authority.</li></ol>

**Question 4: Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.**

Subject to addressing the points noted above, Meridian and Powershop agree the proposed amendments could be made now and that there is no need to wait until the Consumer Advisory Council is established (Alternative 1 in the Authority's paper) or to wait on an industry-developed solution (Alternative 2).

**Question 5: Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?**

At present no. But if the points raised in response to question 3 above are addressed, Meridian and Powershop believe the proposed amendment will comply with section 32(1) of the Act.

Although there is no consultation question related to it, we would also query the Authority's analysis of its Code amendment principles at page 15 of the consultation paper. In particular the statements in respect of principles 4, 5, 6, 7 and 8 that they are simply 'Not applicable' in this context are not supported by any reasoning and it is hard to see how the Authority has arrived at those conclusions.

**Question 6: Do you have any comments on the drafting of the proposed amendment?**

See response to question 3 above.

**Question 7: Do you have any comments on the proposed principles?**

See response to question 3 above.