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17 December 2020

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WELLINGTON

By email: andy.doube@ea.govt.nz
Copy to: daniel.tulloch@ea.govt.nz

Dear Andy,

**Concerns with proposed Default Distribution Agreements (DDAs)
provided by certain distributors and consultation timetable**

Introduction

1. The new Part 12A provisions to the Electricity Industry Participation Code (**Code**) were introduced to achieve standardised distribution services arrangements for local networks with interposed arrangements.
2. These provisions introduced:
 - (a) “Core Terms” written by the Authority and which distributors cannot change.
 - (b) “Operational Terms” which should reflect the distributor’s local practices and policies and must be subject to consultation.
 - (c) “Recorded Terms” which relate to quality standards under the Commerce Act and while they may be included in the DDA, fall outside the jurisdiction of the Authority and are not subject to consultation.
 - (d) “Collateral terms” which are terms that fall outside the three categories above, and which require the agreement of both distributors and retailers.

3. The five largest distributors are currently consulting with traders on the content of their proposed DDAs and are required to make their final DDAs available on their websites by 17 December 2020.
4. The 22 smaller distributors will then follow, with their DDAs scheduled to be made available by 15 February 2021.

Purpose of Letter

5. We write because of concerns with:
 - (a) Vector Limited (**Vector**) seeking to use the Recorded Terms to require, among other things, the provision of customer and consumption data.
 - (b) The approach taken by the five largest distributors in relation to the Recorded Terms.
 - (c) The ability for effective consultation with the 22 smaller lines companies under the current DDA deadlines.

Inclusion of data provisions in Recorded Terms

6. We commend the Authority's statements of intent in its letter to Contact dated 11 December 2020, responding to concerns raised by Contact with Vector's approach to the Recorded Terms.
7. In its initial draft DDA, Vector proposed to include in Recorded Terms as an opportunity to incorporate additional terms in Schedule 1 (Service Standards) regarding "Network Operational Data", "Customer Information", and "Consumption Data" to be provided by traders (**Additional Terms**).
8. We agree with the Authority's approach. We note that:
 - (a) The nature and scope of Recorded Terms are clear from the Code and the consultations which the Authority held on the DDA. Simply put, the Additional Terms are not quality standards and therefore are not Recorded Terms.
 - (b) Even if there were ambiguity in the scope of the Recorded Terms, a consideration of:
 - (i) the purpose of these terms, and the context in which the Recorded Terms was developed; and
 - (ii) the framework for the provision of consumer and consumption data set out in Schedule 12A.1 to Part 12A of the Code,

show that it cannot have been the intention to have provisions such as the Additional Terms form part of the Recorded Terms. The regulatory intent cannot have been that these would not be subject to consultation and agreement, or that the obligations and protections provided in Schedule 12A.1 should not apply to the provision of consumer and consumption data.

9. Vector's removal of the Additional Terms is helpful, and the right outcome. The Authority's response is likely to have been a factor that persuaded Vector to do so.
10. As you know, the Authority has facilitated discussions between retailers and distributors on the default data agreement for the provision of consumption data set out in Appendix C of Schedule 12A.1 (**Data Agreement**).
11. Progress is being made on the combination of databases issue in the Data Agreement, and we remain optimistic that the industry will find a pragmatic solution and one that, if it requires a Code change, would be broadly supported and quickly implemented.
12. Another issue that has arisen in discussions with one of the large distributors is whether the provision of customer information for purposes outside those in Appendices A and B should:
 - (a) be incorporated into the Data Agreement; or
 - (b) have its own default agreement (with the same safeguards as the other Appendices) reflecting the nature of that information and the specific purpose for which it is being provided.

Given the nature of the information, a standardised approach is preferable rather than leaving this to bespoke arrangements between retailers and distributors. We would therefore support the Authority posing both options to the industry and amending the Code if required to reflect the option with the broadest support. From a Genesis perspective, we would prefer the option which provides clarity and best protects customer information.

Extension request given learnings from large 5 distributors approach to DDAs

13. Although the new Part 12A provisions came into force in July 2020, it was not until 26 November 2020 that traders received the last of the draft DDAs (Wellington Electricity Lines Limited), leaving only two weeks for traders to review and provide comments, and one week for Wellington Electricity to respond to traders' initial comments and any further traders' comments that arise from Wellington Electricity's responses (assuming Wellington Electricity is open to additional comments).

14. Further, prior to receiving the draft DDAs from the five largest distributors, it was our expectation that the draft DDA reviews would primarily focus on variations in the Operational Terms reflecting local differences in operating practices, and terms for additional services that the distributors and retailers may agree on.
15. The rationale for this expectation was that the Code only requires distributors to consult on the Operational Terms, and that distributors could reasonably be expected to adopt the example Recorded Terms as they did in the 10 or so Use of System Agreements (UoSAs) negotiated and signed since the model UoSA was finalised in 2012.
16. What has instead occurred is that:
 - (a) In many cases, the Recorded Terms being offered by the distributors are a significant backward step for retailers and customers (compared to the terms in all UoSAs based on the 2012 model UoSA), with the terms of most value to them, and which should record service expectations marked, as “not applicable” or softened by amending the example terms to render the obligations meaningless or obsolete.
 - (b) Significantly more effort has had to go into dealing with the differences in the distributors' interpretation and drafting of Recorded Terms, and providing useful feedback in the interests of endeavouring to ensure the overall DDA terms are reasonable (to the extent we can influence the outcome) and comply with the Code.
 - (c) There have been significant differences between the draft DDAs received, and several complexities which have arisen that retailers have had to review and respond to.
17. The 22 smaller distributors are due to make their final DDAs available by 15 February 2021. Given the experience with the five large distributors, we are concerned with the consultation period for their DDAs and ask that the Authority extend the deadline. We suggest that a one-month extension is reasonable and would support a more effective consultation and reduce the likelihood of disputes and Rulings Panel reviews.

Summary

We reiterate our support for the Authority's approach to Recorded Terms as set out in its 11 December 2020 letter to Contact. While progress is being made on the consumption data issues, consideration should be given to others that have arisen during the consultation as discussed above, and where there is broad support amongst retailers and distributors, Code changes made to resolve these. Given the learnings from the current DDA consultations, we ask that the Authority extend the 15 February 2021 deadline for the 22 smaller distributors to publish their DDAs by a month.

We look forward to discussing the above further with you at your earliest availability.

Yours faithfully

GENESIS ENERGY LIMITED

A handwritten signature in blue ink, appearing to read 'Williams', with a stylized initial 'W'.

Warwick Williams

Senior Regulatory Counsel and Group Insurance Manager