

**Electricity Industry Participation Code Amendment
(COVID-19 Deferred Payment of Distribution Charges) 2020**

Under sections 38 and 40 of the Electricity Industry Act 2010, I make the following amendments to the Electricity Industry Participation Code 2010.

At Wellington on the _____ day of May 2020

Dr Thomas Brent Layton
Chair
Electricity Authority

Certified in order for signature:

Katie Wyllie
Senior Legal Counsel
Electricity Authority

Tony Dellow
Partner
Buddle Findlay

____ May 2020

13 May 2020

Contents

1	Title	1
2	Commencement and expiry	1
3	Code amended	2
4	New clauses 12A.5B to 12A.5E inserted	2
	12A.5B Application of clause 12A.5C	2
	12A.5C Amendments to payment terms for COVID-19 response	3
	12A.5D Prudential requirements during COVID-19 period	3
	12A.5E Revocation of clauses 12A.5B to 12A.5E	3

Amendment

- 1 Title**
This is the Electricity Industry Participation Code Amendment (COVID-19 Deferred Payment of Distribution Charges) 2020.
- 2 Commencement and expiry**
(1) This amendment comes into force on 20 May 2020.
(2) This amendment expires on the close of 20 February 2021.

3 Code amended

This amendment amends the Electricity Industry Participation Code 2010.

4 New clauses 12A.5B to 12A.5E inserted

After clause 12A.5A, insert:

“12A.5B Application of clause 12A.5C

“(1) Clause 12A.5C applies to a **trader’s** agreement with a **distributor** for the provision of **distribution** services if—

“(a) an accountant appointed by the **Authority** has certified that the criteria specified in subclause (2) are met in relation to the **trader**; and

“(b) the **distributor** is one of the following:

“(i) Orion New Zealand Limited:

“(ii) Powerco Limited:

“(iii) Unison Networks Limited:

“(iv) Vector Limited:

“(v) Wellington Electricity Lines Limited:

“(vi) WEL Networks Limited; and

“(c) the **trader** was not, as at 1 May 2020,—

“(i) a listed company or a **subsidiary** of a listed company; or

“(ii) a **subsidiary** of a company that has capacity to provide additional capital or loans sufficient to address the situation described in subclause (2)(b)(i) so that the criteria in subclause (2) would not be met, as determined by an accountant appointed by the Authority.

“(2) The criteria referred to in subclause (1) are—

“(a) the value of receivables invoiced by the **trader** to **consumers** for **electricity** but not paid to the **trader** by the due date for payment (“overdue receivables”) in a month is at least 25% greater than—

“(i) the **trader’s** overdue receivables in the same month in 2019; or

“(ii) if the **trader** was not trading in the same month in 2019, or the **trader’s** revenue has increased by more than 25% since the same month in 2019, the **trader’s** overdue receivables in March 2020; and

“(b) in the opinion of the accountant giving the certificate—

“(i) the **trader** has, or in the next 6 months immediately following the date of the certificate is likely to have, significant liquidity problems; and

“(ii) the liquidity problems are, or will be, a result of the effects of COVID-19 on any one or more of the **trader**, the **trader’s** creditors, and the **trader’s** debtors; and

“(iii) the **trader** satisfied the solvency test as set out in section 4 of the Companies Act 1993 as at 31 December 2019; and

“(iv) it is more likely than not that the **trader** will be able to pay its due debts within 12 months.

“(3) For the purposes of this clause—

“(a) “accountant” means a chartered accountant as defined in section 2 of the New Zealand Institute of Chartered Accountants Act 1996; and

“(b) “listed company” means a company whose shares are quoted on NZX Limited or on an official list of a recognised exchange in New Zealand or overseas.

“(4) The costs of an accountant appointed by the Authority under this clause must be paid as follows:

- “(a) by the **trader** requiring the certificate, \$500 plus \$1 for each **ICP** for which the **trader** is responsible, up to a maximum of \$7,500 (all amounts exclusive of GST); and
- “(b) if the costs are greater than the amount that the **trader** must pay under paragraph (a), the remainder by the **Authority**.

“12A.5C Amendments to payment terms for COVID-19 response

- “(1) Subject to subclause (2), any requirement under a **trader’s** agreement with a **distributor** to which this clause applies, that the **trader** pay an amount to the **distributor** in respect of the supply by the **distributor** of **distribution** services by a date, is deemed to be amended so that the payment is due 60 days after that date.
- “(2) Subclause (1) does not prevent the **distributor** and the **trader** from agreeing that the payment is due on any other date.

“12A.5D Prudential requirements during COVID-19 period

- “(1) This clause applies to a **trader’s** agreement with any **distributor** for the provision of **distribution** services if the **trader** is a **trader** to which clause 12A.5C applies.
- “(2) If an agreement to which this clause applies requires the **trader** to provide security or additional security as at 1 May 2020, the **distributor** must not increase the amount of security or additional security from the amount that the **trader** was required to provide on that date.
- “(3) If an agreement to which this clause applies did not require the **trader** to provide security or additional security as at 1 May 2020, the **distributor** must not require the **trader** to provide security or additional security.
- “(4) If a **distributor** has, before the commencement of this clause, required a **trader** to provide security that, if required after that commencement would have breached this clause, the **distributor** must refund or release the amount of any security that exceeds what is permitted under this clause.
- “(5) A **distributor** must make the refund or execute the release required under subclause (4) no later than 5 **business days** after the commencement of this clause.

“12A.5E Revocation of clauses 12A.5B to 12A.5E

Clauses 12A.5B to 12A.5D, and this clause, are revoked on 20 February 2021.”

Explanatory Note

This note is not part of the amendment, but is intended to indicate its general effect.

This amendment to the Electricity Industry Participation Code 2010 (Code) comes into force on 20 May 2020 and expires on 20 February 2021.

The amendment makes changes to Part 12A of the Code to:

- (a) provide for qualifying traders (which meet specified criteria, including in relation to facing liquidity problems as a result of the COVID-19 pandemic) to have an additional 60 days to pay amounts for the provision of distribution services under their agreements with the following distributors:
 - (i) Orion New Zealand Limited;

- (ii) Powerco Limited;
 - (iii) Unison Networks Limited;
 - (iv) Vector Limited;
 - (v) Wellington Electricity Lines Limited; and
 - (vi) WEL Networks Limited; and
- (b) restrict the ability of all distributors to change the prudential security required from the qualifying traders during the period that the changes are in force.

Date of notification in the *Gazette*: __ May 2020