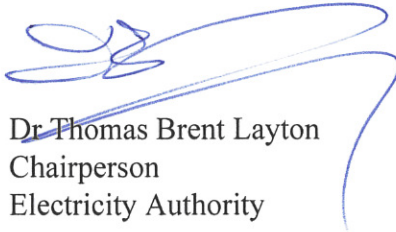



**Electricity Industry Participation Code (Distributor Use-of-
System Agreements and Distributor Tariffs) Amendment
2011**

Pursuant to section 38 of the Electricity Industry Act 2010, I
make the following amendments to the Electricity Industry
Participation Code 2010.

At Wellington on the 26th day of October 2011


Dr Thomas Brent Layton
Chairperson
Electricity Authority

Certified in order for signature:


Ross Hill
General Manager Legal and Compliance
Electricity Authority


Susie Kilty
Partner
Buddle Findlay

26th October 2011

26th October 2011

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Amendment

- 1 **Title**
This is the Electricity Industry Participation Code (Distributor Use-of-System Agreements and Distributor Tariffs) Amendment 2011.
- 2 **Commencement**
This amendment comes into force on 1 December 2011.
- 3 **Principal Code amended**
This amendment amends the Electricity Industry Participation Code 2010.
- 4 **Interpretation**
Clause 1.1(1) is amended as follows:
 - (a) by inserting the following definitions in their appropriate alphabetical order:
 - "category 1 metering installation means a metering installation that—
 - "(a) includes 1 or more whole current **meters**; and
 - "(b) does not include a **meter** that is not a whole current **meter**; and
 - "(c) is single phase or three phase; and
 - "(d) has a maximum voltage of no more than 400 volts; and
 - "(e) has a maximum primary current rating of 100 amps per phase; and
 - "(f) has a maximum error rate of plus or minus 2.5% (including uncertainty)

"category 2 metering installation means a **metering installation** that—

- "(a) includes a current transformer-connected **meter**; and
- "(b) has a maximum voltage of no more than 400 volts; and
- "(c) has a maximum primary current transformer rating of 500 amps per phase; and
- "(d) has a maximum error rate of plus or minus 2.5% (including uncertainty)

"EIEP12 means the document titled "Electricity Information Exchange Protocol 12" that is incorporated by reference in this Code under clause 12A.9(2)

"use-of-system agreement means an agreement between a **distributor** and a **trader** that allows the **trader** to trade on the **distributor's local network**"

- (b) by amending the definition of **distributor** by inserting "in Part 12A, and" after "except" in paragraph (a);
- (c) by amending the definition of **line function services** by inserting "and in Part 12A" after "**distributor**".

5 Installation of meters and access to metering information
Clause 4 of Schedule 6.2 is amended by revoking subclause (3) and substituting the following subclause:

"(3) If the **meter** is part of a **category 2 metering installation**, or a **category 3 metering installation**, or a **category 4 metering installation**, or a **category 5 metering installation**, or a **category 6 metering installation**, the **distributor** may require that **reactive metering** be installed."

6 Qualifying customers
Clause 9.21(1)(b)(i) is amended by omitting "category 1 or category 2 **meter**" and substituting "**category 1 metering installation** or a **category 2 metering installation**".

7 Class B approved test houses
Clause 4(1)(c) of Code of Practice 10.2 of Schedule 10.1 is amended by omitting "category 1-3 **metering installations**" and substituting "**category 1 metering installations**,"

category 2 metering installations, and category 3 metering installations".

8 General requirements for approval

Clause 5(15) of Code of Practice 10.2 of Schedule 10.1 is amended by omitting "category 1, 2 and 3 **metering installations**" and substituting "**category 1 metering installations, category 2 metering installations, and category 3 metering installations**".

9 Certification and recertification of metering installations

Clause 4(2) of Code of Practice 10.3 of Schedule 10.1 is amended by omitting "New **metering installation** categories 1, 2 and 3 as defined in **Code of Practice** 10.1, and installations of any other category that consume" and substituting "Each new **category 1 metering installation, category 2 metering installation, and category 3 metering installation, and any other metering installation** that consumes".

10 Full certification - fully calibrated installations

- (1) Table 4 in clause 5(16) of Code of Practice 10.3 of Schedule 10.1 is amended by omitting "category 1" and substituting "**category 1 metering installation**".
- (2) Subparagraph (iii) under the heading "Notes" in clause 5(16) of Code of Practice 10.3 of Schedule 10.1 is amended by omitting "category 1 installations" and substituting "**category 1 metering installations**".
- (3) Clause 5(18) of Code of Practice 10.3 of Schedule 10.1 is amended by omitting "category 1 **installations**" and substituting "**category 1 metering installations**".

11 Recertification of metering installation

Clause 7(7) of Code of Practice 10.3 of Schedule 10.1 is amended by omitting "category 1 **metering installations**" and substituting "**category 1 metering installations**".

12 Full certification - selected component installations

- (1) Clause 8(1) of Code of Practice 10.3 of Schedule 10.1 is amended by omitting "New and existing **metering installation** categories 1, 2 and 3" and substituting "**Category 1 metering installations, category 2 metering installations, and category 3 metering installations**".
- (2) Clause 8(2) of Code of Practice 10.3 of Schedule 10.1 is amended by omitting "**metering installation** categories 1, 2 and 3" and substituting "**category 1 metering installations,**

category 2 metering installations, and category 3 **metering installations**".

- (3) Clause 8(13) of Code of Practice 10.3 of Schedule 10.1 is amended by omitting "category 1 **metering installations**" and substituting "**category 1 metering installations**".

13 Inspection requirements

Clause 9(4) of Code of Practice 10.3 of Schedule 10.1 is amended by omitting "For categories 1 and 2" and substituting "For **category 1 metering installations** and **category 2 metering installations**".

14 Traders to provide ICP information to registry

Clause 9(1) of Schedule 11.1 is amended by revoking paragraph (d) and substituting the following paragraph:

"(d) the highest category of **metering installation** listed in the table in clause 1 of **Code of Practice 10.1** of Schedule 10.1 to which the **ICP** is connected or, if the **ICP** is not connected to a **metering installation**, that the **meter installation** category is 0:".

15 New Part 12A inserted

Part 12A, which is set out in the Schedule of this amendment, is inserted after Part 12.

"12A.1	Contents of this Part
	<i>"Use-of-system agreements</i>
"12A.2	Negotiating use-of-system agreements
"12A.3	Mediation
"12A.4	Prudential requirements
"12A.5	Requirements if distributors require additional security
"12A.6	Distributor indemnity
	<i>"Changes to tariff structures</i>
"12A.7	Distributors must consult concerning changes to tariff structures
	<i>"Changes to tariff rates</i>
"12A.8	Changes to tariff rates
"12A.9	Requirement to comply with EIEP12
"12A.10	Requirement to use standard tariff codes

"12A.1 Contents of this Part

"This Part—

- 6

- changes to the **distributor's** tariff structure; and
- "(e) requires that **distributors** who do not send accounts to **consumers** directly, and **traders**, comply with **EIEP12**; and
- "(f) requires **distributors** to use standard tariff codes.

"Use-of-system agreements

"12A.2 Negotiating use-of-system agreements

- "(1) A **distributor** and a **trader** must negotiate the terms of a **use-of-system agreement** (including any amendment to a **use-of-system agreement**) in good faith.
- "(2) This clause does not apply to an amendment to a **use-of-system agreement** if—
 - (a) the **use-of-system agreement** was in force before 1 December 2011; and
 - (b) the amendment is made before 1 July 2013.

"12A.3 Mediation

- "(1) If a **distributor** or a **trader** considers that it is unlikely that it will agree the terms of a **use-of-system agreement** with the other party, the **distributor** or the **trader** may give written notice to the other party of that fact.
- "(2) The notice given under subclause (1) must—
 - "(a) state that it is a notice given under subclause (1); and
 - "(b) include a copy of subclause (1); and
 - "(c) state that at the close of the 20th **business day** after the date of the notice, the **distributor** or **trader** (as the case may be) may require the other party to enter into mediation.
- "(3) No earlier than the close of the 20th **business day** after the date on which the notice referred to in subclause (2) is given, the **distributor** or the **trader** may, by written notice to the other party, require the other party to undertake mediation with the party who gave notice under this subclause.
- "(4) The notice given under subclause (3) must—
 - "(a) state that it is a notice given under subclause (3); and
 - "(b) include a copy of subclause (3).
- "(5) On receipt of a notice given under subclause (3), the **distributor** and the **trader** must attempt in good faith to agree on the following matters:
 - "(a) the mediator:
 - "(b) the date or dates for the mediation:
 - "(c) the location of the mediation:
 - "(d) the scope of the mediation:

- "(e) the allocation of the costs of the mediation.
- "(6) If, at the close of the 15th **business day** after receipt of the notice given under subclause (3), the **distributor** and the **trader** are in dispute regarding 1 or more of the matters specified in subclause (5), either party may refer the dispute to the **Rulings Panel** for determination.
- "(7) The **Rulings Panel** may make such determination as it thinks fit.
- "(8) The **distributor** and the **trader** must carry out the mediation in accordance with any agreement reached under subclause (5) and any determination made under subclause (7).
- "(9) This clause does not apply to an amendment to a **use-of-system agreement** if—
 - (a) the **use-of-system agreement** was in force before 1 December 2011; and
 - (b) the amendment is made before 1 July 2013.

"12A.4 Prudential requirements

- "(1) This clause and clause 12A.5 apply to a **use-of-system agreement** if—
 - "(a) the **distributor** party to the **use-of-system agreement** has 1 or more **consumers** connected to its **network** to whom the **distributor** does not send accounts for **line function services** directly; and
 - "(b) the **distributor's** charges for **line function services** are collected from **consumers** or paid by the **trader** party to the **use-of-system agreement** in accordance with the **use-of-system agreement**; and
 - "(c) the **distributor** requires that the **use-of-system agreement** provides that the **trader** must comply with prudential requirements.
- "(2) Subject to subclause (7), the **use-of-system agreement** must provide that the **trader** can elect to comply with the prudential requirements under the **use-of-system agreement** in either of the following ways:
 - "(a) the **trader** must maintain an acceptable credit rating in accordance with subclause (4); or
 - "(b) the **trader** must provide and maintain acceptable security by, at the **trader's** election,—
 - "(i) providing the **distributor** with a cash deposit; or
 - "(ii) arranging for a third party with an acceptable credit rating to provide that security in a form acceptable to the **distributor**; or
 - "(iii) providing a combination of the securities described in subparagraphs (i) and (ii).
- "(3) The **use-of-system agreement** must provide that the

trader—

- "(a) must make the elections referred to in subclause (2) before the commencement of the **use-of-system agreement**; and
 - "(b) may change an election at any time.
- "(4) For the purposes of this clause, an acceptable credit rating means that the **trader** or the third party (as the case may be)—
- "(a) carries a long term credit rating of at least—
 - "(i) BBB- (Standard & Poors Rating Group); or
 - "(ii) a rating that is equivalent to the rating specified in subparagraph (i) from a rating agency that is an approved rating agency for the purposes of Part 5D of the Reserve Bank of New Zealand Act 1989; and
 - "(b) if the **trader** or the third party (as the case may be) carries a credit rating at the minimum level required by paragraph (a), is not subject to negative credit watch or any similar arrangement by the agency that gave it the credit rating.
- "(5) Subject to clause 12A.5, the value of the acceptable security described in subclause (2)(b) must be the **distributor's** reasonable estimate of the **line function services** charges that the **trader** will be required to pay to the **distributor** in respect of any period of not more than 2 weeks.
- "(6) A **use-of-system agreement** must specify that, if the **trader** elects to provide acceptable security as described in subclause (2)(b), the **distributor** must—
- "(a) hold any security provided by the **trader** in the form of a cash deposit in a trust account in the name of the **trader** at an interest rate that is the best on-call rate reasonably available at the time; and
 - "(b) pay interest earned in respect of the cash deposit to the **trader** on a quarterly basis, net of account fees and any amounts that are required to be withheld by law.
- "(7) Despite subclauses (2) to (6), a **distributor** and a **trader** may agree prudential requirements that are less onerous on the **trader** than the requirements described in subclauses (2) to (6).
- "(8) This clause and clause 12A.5 do not apply, until 1 May 2012, to a **use-of-system agreement** that was in force before 1 December 2011.

"12A.5 Requirements if distributors require additional security

- "(1) A **distributor** may require that its **use-of-system**

agreement provides 1 or both of the following:

- "(a) that if the **trader** elects to provide acceptable security as specified in clause 12A.4(2)(b), the **trader** must provide acceptable security that is additional to the amount provided for in clause 12A.4(5):
 - "(b) that the **distributor** may, during the term of the **use-of-system agreement**, require the **trader** to provide such additional security.
- "(2) If a **use-of-system agreement** has a provision provided for in subclause (1), the **distributor** must ensure that the total value of additional security specified in the **use-of-system agreement** must be such that the total value of all security required to be provided by the **trader** must not be more than the **distributor's** reasonable estimate of the **line function services** charges that the **trader** will be required to pay to the **distributor** in respect of any 2 month period.
- "(3) If a **use-of-system agreement** has a provision provided for in subclause (1), the **distributor** must ensure that the **use-of-system agreement** provides the following:
- "(a) if any additional security provided by the **trader** is in the form of a cash deposit, the **distributor** must pay a charge to the **trader** for each day that the **distributor** holds the additional security at a per annum rate equal to the sum of the bank bill yield rate for that day plus 15% on the amount of additional security held on that day:
 - "(b) if any additional security provided by the **trader** is in the form of security from a third party, the **distributor** must pay a charge to the **trader** for each day that the **distributor** holds the additional security at a per annum rate of 3% on the amount of additional security held on that day:
 - "(c) any money required to be paid by the **distributor** to the **trader** in accordance with paragraph (a) or paragraph (b) must be paid by the **distributor** to the **trader** on a quarterly basis.
- "(4) For the purposes of this clause, the bank bill yield rate is—
- "(a) the daily bank bill yield rate (rounded upwards to 2 decimal places) published on the wholesale interest rates page of the website of the Reserve Bank of New Zealand (or its successor or equivalent page) on that day as being the daily bank bill yield for bank bills having a tenor of 90 days; or
 - "(b) for any day for which such a rate is not available, the bank bill yield rate is deemed to be the bank bill

yield rate determined in accordance with paragraph (a) on the last day that such a rate was available.

"12A.6 Distributor indemnity

- "(1) Every **use-of-system agreement** must include the clause specified in Schedule 12A.1.
- "(2) Every **use-of-system agreement** that does not include the clause specified in Schedule 12A.1 is deemed to include that clause.
- "(3) A **distributor** may include in a **use-of-system agreement** an indemnity that is more favourable to the **trader** than the indemnity specified in Schedule 12A.1, and, in that case, subclauses (1) and (2) do not apply to the **use-of-system agreement**.
- "(4) This clause does not apply to a **use-of-system agreement** if the **distributor** and the **trader** who are parties to the **use-of-system agreement** agree to omit the clause specified in Schedule 12A.1 from the **use-of-system agreement**.
- "(5) Subclause (1) does not apply, until 1 May 2012, to a **use-of-system agreement** that was in force before 1 December 2011.

"Changes to tariff structures

"12A.7 Distributors must consult concerning changes to tariff structures

- "(1) This clause applies to each **distributor** who has 1 or more **consumers** connected to its **network** to whom the **distributor** does not send accounts for **line function services** directly.
- "(2) The **distributor** must consult with each **trader** trading on the **distributor's network** in respect of the **distributor's** tariff structure for the **consumers** referred to in subclause (1) before making a change to the tariff structure that materially affects 1 or more **traders** or **consumers**.
- "(3) For the purpose of subclause (2), changes to a **distributor's** tariff structure that may materially affect 1 or more **traders** or **consumers** include, but are not limited to, any of the following:
 - "(a) a change by the **distributor** to the eligibility criteria for 1 or more of the **distributor's** tariff rates:
 - "(b) a change by the **distributor** to the **distributor's** tariff structure by the introduction of a new tariff rate:
 - "(c) a change by the **distributor** to the **distributor's** tariff structure that means that 1 or more of the **distributor's** tariff rates are no longer available .

- "(4) However, the fact that a change is listed in subclause (3) does not mean that a **distributor** is required to consult on the change if the change will not materially affect **traders** or **consumers**.
- "(5) This clause does not apply to a change to a tariff structure that is made by a **distributor** before 1 May 2012.

"Changes to tariff rates

"12A.8 Changes to tariff rates

- "(1) Clauses 12A.9 and clause 12A.10 apply if a **distributor** who has 1 or more **consumers** connected to its **network** to whom the **distributor** does not send accounts for **line function services** directly, changes the **distributor's** tariff rates, including by introducing or removing 1 or more tariff rates, in relation to any such **consumer** who has—
 - "(a) a **category 1 metering installation**; or
 - "(b) a **category 2 metering installation**.
- "(2) Clause 12A.9 and clause 12A.10 do not apply until 1 July 2013.

"12A.9 Requirement to comply with EIEP12

- "(1) The **distributor** and each **trader** trading on the **distributor's network** must comply with **EIEP12**.
- "(2) For the purposes of subclause (1), **EIEP12** is incorporated by reference in this Code.
- "(3) Subclause (2) is subject to Schedule 1 of the **Act**, which includes a requirement that the **Authority** must give notice in the *Gazette* before an amended or substituted **EIEP12** becomes incorporated by reference in this Code.
- "(4) Subclause (1) does not apply if the **distributor** and the **trader** agree to exchange information about tariff rate changes in any other way.

"12A.10 Requirement to use standard tariff codes

- "(1) The **distributor** must assign a tariff code to the tariff rate that is changed that complies with the following format:

"xyzzzz

"where

"x if the **distributor** has an alphanumeric zone identifier, is that zone identifier, or, in every other case, is the letter U

"y is a **consumer** type identifier

"zzzz" is a rate series identifier.

- "(2) In assigning a tariff code under subclause (1), the **distributor** must—
 - "(a) use the **consumer** type identifier from the list of **consumer** type identifiers in the Standard Tariff Codes that most accurately describes the **consumer** to whom the change applies; and
 - "(b) use the rate series identifier from the list of rate series identifiers in the Standard Tariff Codes that most accurately describes the tariff rate being changed.
- "(3) For the purposes of subclause (2), the Standard Tariff Codes is the document titled Electricity Authority - Standard Tariff Codes, which is incorporated by reference in this Code.
- "(4) Subclause (3) is subject to Schedule 1 of the **Act**, which includes a requirement that the **Authority** must give notice in the *Gazette* before an amended or substituted Standard Tariff Codes becomes incorporated by reference in this Code.

"Distributor indemnity in use-of-system agreements

"Every **use-of-system agreement** is deemed to include the following clause:

"Distributor indemnity

- "(1) If—
- "(a) there has been a failure of the acceptable quality guarantee in section 6 of the Consumer Guarantees Act 1993 in the supply of electricity to a Consumer by the Retailer (a "failure"); and
 - "(b) the failure was wholly or partially the result of an event or condition associated with the Distributor's Network; and
 - "(c) the failure was not a result of the Distributor complying with a rule or order with which it was legally obliged to comply; and
 - "(d) the Consumer obtains a remedy under Part 2 of the Consumer Guarantees Act 1993 in relation to the failure against the Retailer; and
 - "(e) that remedy is a cost to the Retailer (a "remedy cost"),
- "the Distributor indemnifies the Retailer for the remedy cost.
- "(2) The amount of the Distributor's liability under this indemnity is limited to the proportion of the remedy cost that is attributable to the event or condition associated with the Distributor's Network.
- "(3) However,—
- "(a) if the Distributor pays compensation to a Consumer ("payment A") in respect of a service provided directly by the Distributor to the Consumer; and
 - "(b) the Retailer incurs remedy costs in relation to the Consumer for a failure of acceptable quality that arose from the same event or circumstance that led to the payment of payment A; then
 - "(c) the amount that the Retailer would otherwise recover from the Distributor in respect of that Consumer must be reduced by the amount of payment A.
- "(4) If a Consumer makes a claim against the Retailer that the Retailer wishes to be

indemnified for under this indemnity (a "claim"), the Retailer will:

- "(a) as soon as reasonably practicable, give written notice of the claim to the Distributor specifying the nature of the claim in reasonable detail; and
- "(b) consult with and keep the Distributor informed in relation to the claim.

Explanatory Note

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

This amendment to the Electricity Industry Participation Code 2010 comes into force on 1 December 2011. This amendment requires distributors who do not send accounts to consumers directly to use more standardised tariff structures, requires distributors to use more standardised use-of-system agreements, and requires that those use-of-system agreements include provisions indemnifying retailers in respect of liability under the Consumer Guarantees Act 1993 for breaches of the acceptable quality guarantee, to the extent that those breaches were caused by events or conditions on the distributor's network.

Date of notification in the *Gazette*: 28 October 2011.