meridian

19 April 2016

Submissions
Electricity Authority
By email: submissions@ea.govt.nz

Default agreement for distribution services

Meridian welcomes the opportunity to provide feedback on the Electricity Authority's consultation paper 'Default agreement for distribution services'. This submission reflects the views of both Meridian and Powershop. All references to Meridian should be taken to include both Meridian and Powershop unless otherwise stated.

Meridian supports adoption of a Default Distribution Agreement (DDA)

We support the Authority's proposal to introduce a DDA. There are substantial costs associated with negotiating distribution agreements. Providing the option of a standardised agreement will reduce transaction costs and lead to more open and equal access to distribution services. Ultimately, this will lead to a more competitive retail market and benefits for consumers.

We also consider that the Authority's proposal provides an appropriate balance between standardisation and flexibility. The availability of a complete, well-considered DDA on each network will ensure avoided transaction costs are maximised, while the potential for a mutually agreed alternative agreement ensures that beneficial variations can be adopted and innovation is not constrained.

Overall, we consider the Authority's proposal will have significant benefits. We encourage the Authority to move ahead with its implementation as soon as possible.

Application to embedded networks

Meridian considers embedded networks should be covered by the proposal i.e. we think a DDA should also apply to embedded networks. In our experience, there is significant time and effort required to agree distribution agreements with embedded networks. As there are numerous embedded networks, and the number of customers on each network is small (relative to local networks), the transaction costs associated with these negotiations are relatively large. We

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think there is significant scope for greater efficiency from a more standardised process for agreeing embedded network distribution agreements.

Meridian considers an appropriate starting point may be to consider whether an embedded network should adopt the DDA of their parent network (or otherwise use their parent network's DDA as the basis for their own DDA). This would avoid the need for substantial additional consultation and negotiation processes.

We recognise that embedded networks may have some different requirements than local networks and additional work would be required to extend the proposal to cover embedded networks. We also note that the Retail Advisory Group is currently considering issues relating to secondary networks. We consider the Authority should progress a DDA for embedded networks as soon as possible, taking account of these matters.

Use of EIEP5 for outage notifications

Meridian would like to understand more about the Authority's intentions regarding the use of EIEP5 for outage information. The draft DDA states at S5.5A that information relating to an Unplanned Service Interruption must be provided in accordance with EIEP5. However, we note that this clause is an example operational term, and therefore subject to change by an individual distributor through the specified consultation process.

Meridian is aware mandating the use of EIEP5A has been considered but decided against by the Authority previously. This decision was announced without detailed reasoning and without further opportunity for industry to comment[1]. For Meridian, the 15 different distributor formats we deal with for unplanned outage information require manual processes that are time-consuming, inefficient, and introduce inappropriately high risks of inaccuracies. Greater standardisation in outage information is therefore favoured by Meridian from an efficiency and customer perspective. Effects on competition would be expected to be similar to those assessed by the Authority in requiring usage of EIEPs 1, 2, and 3[2].

If the Authority's current preference is for an optional approach for the EIEP5 format, we request the next stage of the DDA consultation is used to obtain further feedback from industry and undertake a detailed cost benefit analysis of compulsory adoption.

Detailed comments

Responses to the Authority's specific consultation questions are attached as Appendix A. Meridian's comments on the Code amendment are attached as Appendix B. Meridian's comments on the DDA template are attached as Appendix C.

[1] Refer 15 November 2013 *Second consultation on electricity information exchange protocols: Decisions and responses paper,* available: http://www.ea.govt.nz/dmsdocument/16019

[2] Claimed by the Authority to be of overall positive benefit to competition because the changes would allow participants to avoid the need to develop alternatives bilaterally and allow for more standardised systems and processes.

Please contact me if you have any questions regarding this submission.

Yours sincerely,

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Appendix A: Meridian response to consultation questions

	Question	Comment
1	What is your view of the Authority's assessment of the arrangements that are currently in place governing the way distributors and retailers develop, negotiate, and agree UoSAs, and of the issues that the Authority has identified? Please provide your reasons.	Meridian agrees with the Authority's description of the background and issues with current arrangements for negotiating distribution agreements. As noted by Meridian in our submission to the Authority in May 2014, our experience is that adoption of the MUoSA has been slow to non-existent, with negotiations often leading to significant deviations from the MUoSA terms. This has continued to be our general experience overall, although we would like to acknowledge that there are exceptions and engagement from some distributors has been positive. We agree with the Authority's description of the transaction costs and competition impacts of the current approach to negotiating distribution agreements. On this basis, we continue to support greater standardisation of distribution agreements. We note also that progress in negotiating new distribution agreements has slowed given uncertainty arising from the Authority's ongoing work in this area. Meridian encourages the Authority to progress its proposal as soon as possible to ensure any further delays are minimised.
2	What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each distributor's DDA is a tailored benchmark agreement?	As noted in our cover letter, Meridian supports the Authority's proposal. We would like to make the following specific comments: • Meridian notes that the 60 and 120 busines day timeframes to consult on and publish DDAs are relatively condensed and that substantial interactions may be necessary over this period. We suggest the Authority keep industry well informed on the potential go-live date for this proposal so participants can ensure resources are mobilised and ready to participate in these processes. • We note the Authority has set out in the consultation paper details of what an effective consultation process by distributors would involve. Meridian considers it would be worth adding such a description to the Code to ensure that adequate consultation processes are undertaken. For example, we consider it would be helpful if distributors were to publish all submissions to their consultations.

	Question	Comment
		• Meridian notes that when the Model Use-of-System Agreement (MUoSA) was devised, the Authority published a table setting out which clauses in the MUoSA would require changes to retailers' customer contracts (see Schedule 4 of http://www.ea.govt.nz/dmsdocument/11214). This table was very helpful. Could the Authority produce a similar table for the DDA?
3	What feedback do you have on the detail provided in section 3, which describes the Authority's proposal to introduce a DDA into Part 12A of the Code along with supporting processes that are designed to allow distributors' DDAs to act as tailored benchmark agreements?	Meridian's feedback is set out in our response to Question 2 above.
4	What are your views on the regulatory statement set out in section 4?	Meridian supports the regulatory statement set out by the Authority. In particular: • We consider the Authority's assessment of potential new distribution agreements is reasonable; • We consider the Authority's estimate of costs savings per negotiation ($5,000-$50,000) arising from the proposal to be reasonable. We refer back to our submission of May 2014 in which we supported the Authority's estimate of total costs to negotiate a distribution agreement ($30,000 - $60,000). In this context we support the Authority's estimate of potential cost savings; • We agree that the Authority's estimate of productive efficiency benefits arising from the proposal ($0.2m-$3.2m) is reasonable; • We agree with the Authority that there are potentially significant dynamic efficiency benefits from the proposal arising from lower barriers to entry and improved retail competition; • We agree there are likely to be net benefits associated with the proposal.
5	What are your views on the detailed drafting of the Code amendment provided in Appendix B and Appendix C?	As noted in our comments above, Meridian considers the Code drafting could be amended so that guidance around distributor consultation processes is incorporated in the Code.

	Question	Comment
		Additional specific drafting changes are included below in Appendix B.

Appendix B: Meridian comments on Code amendment

Clause	General comments	Meridian response
12A.3(2)	The criteria in 12A.3(2) could be simplified. In (d) the ability of the distributor to meet a trader's requirements should not be a separate relevant consideration if the trader's requirements are otherwise 'reasonable'. The assessment of 'reasonableness' must necessarily take into account how easy or hard it would be for the distributor to comply with the relevant requirements. If the word 'reasonable' is added to (b) then (d) can be deleted entirely.	Amend 12A.3(2)(b) as follows: *(b) reflect a fair and reasonable balance between the legitimate interests of the **distributor** and the reasonable requirements of **traders** trading on the **distributor's network**; and* Delete 12A.3(2)(d) entirely.
12A.5(1)	The appeal timeframe in 12A.5(1) should run from when the distributor notifies a participant under clause 12A.4(5)(b). Otherwise there is no consequence for the distributor of failing to comply with the notification requirement in 12A.4(5)(b) and in fact the appeal timeframe could run out before participants are notified by distributors of the availability of a DDA. Also it's not clear what "participated in the consultation" means. Suggest that this is clarified.	Amend 12A.5(1) as follows: *No later than 10 **business days** after a **distributor** ~~makes its~~ advises a participant in accordance with 12A.4(5)(b) that a **default distribution agreement** is available on its website, a **participant** that made a written or verbal submission to the **distributor** ~~participated~~ in the consultation under clause 12A.4(5)…*

Appendix C: Meridian comments on Default Distribution Agreement template

Clause	General comments	Meridian response
6.5	We note that the "non-technical" aspect of non-technical losses is not defined. Meridian understands this refers to Unaccounted For Energy (UFE).	We support the clause on the basis that "non-technical losses" refers to UFE.
7.5(b)	We note that this clause does not make clear whether the distributor must give the trader a mapping table which relates to all affected ICPs on the distributor's network or only the affected ICPs for which the particular trader is responsible. Meridian's preference is for the distributor to provide information relating to all affected ICPs. This will ensure that traders can provide accurate price quotes to prospective customers in situations where there has been a distributor price change but that changes have not yet been reflected in the registry (a time period which can span up to 40 working days). This will improve service to customers and competition.	Amend clause 7.5(b) to make clear that the distributor must give the trader a mapping table which relates to all affected ICPs on the distributor's network when a price change results in ICPs being allocated to a different price category.
7.7	We consider that the last sentence of this clause should be amended to reflect that a distributor may only correct an error without following the processes under clause 7.4 or clause 7.5(a) where it does not have a material affect on the trader or its customer.	Clause 7.7. should be amended to: *"…provided that the correction of the error must not have a material affect on the trader or its customer."*
8.3	Clause 8.3 requires a trader to notify a distributor of a change to a price option "using the appropriate EIEP within 10 working days after the change." Meridian's current process is for such EIEP files to be generated once a month, which would not comply with this timeframe. We ask the Authority to consider amending this clause to provide for notification of a change to a price option within one month after such a change.	Amend clause 8.3 to provide for a trader to notify a distributor of a change to a price option within one month after such a change.
10.2	Clause 10.2 appears to provide that the distributor can specify which of the subsequent prudential requirements a trader has to satisfy. This is directly inconsistent with clause 10.4 which makes it clear that the trader can elect	Clause 10.2 should be amended to: *"The Trader may elect to comply with the prudential requirements in either of the following ways:* *(a) …."*

	how it will comply with the prudential requirement. We note also that clause 12A.4(2) of the Code allows a trader to elect which prudential requirement it will satisfy.	
10.3 10.4 10.5	Clauses 10.3, 10.4 and 10.5 should reference clause 10.2 rather than 10.1.	Amend clauses 10.3, 10.4 and 10.5 to reference clause 10.2 rather than 10.1.
12.8(b)	Clause 12.8(b) requires a trader to notify a distributor if it has reasonable grounds to believe that a Distributed Generator does not have a Connection Contract with the distributor. As a trader, Meridian notes that we generally do not have visibility of a Connection Agreement between a distributor and a customer. This clause may therefore be ineffectual.	We recommend the Authority consider redrafting clause 12.8(b).
12.9	Clause 12.9 requires a trader or distributor to notify the other party if it discovers instances of interference, damage or theft. We recommend the Authority clarify what is covered by the term "theft" e.g. does this cover vacant property consumption?	We recommend the Authority consider clarifying what is covered by the term "theft" (and any other potentially ambiguous terms in this clause).
12.10	Meridian notes that there is a lack of clarity around which party should bear the cost if additional meter board space is required to install new metering equipment. The DDA may be an appropriate place to clarify this.	The Authority should consider clarifying in the DDA procedures and cost allocation around installing new metering equipment where there is no available meter board space.
17.4	Clause 17.4 of the DDA specifies that the distributor and the trader must comply with the notice requirements specified in the Medically Dependent Customer (MDC) guidelines and the Vulnerable Customer (VC) guidelines with respect to temporary disconnection. We note that the MDC guidelines do not incorporate any notice requirements for temporary disconnection, only specifying that it is the customer's responsibility to have in place a backup plan. The VC guidelines provide for a minimum of 7 days notice of disconnection. We note that both the MDC and VC guidelines are voluntary. We question	We recommend clause 17.4 is amended to read: "*…in respect of any proposed Temporary Disconnection of the Customer, and must <u>have regard to</u>~~comply with~~ the notice requirements specified in those guidelines ~~to the fullest extent practicable in the circumstances~~."*

	whether it is appropriate to mandate aspects of these guidelines through the DDA. If notification timeframes are mandated, we recommend this clause provides an exception for where notification timeframes cannot be met for safety reasons.	
23	Meridian notes that in the event of mediation not resolving a dispute (or Chief Executives failing to resolve a dispute but neither party opting to refer the dispute to mediation) the DDA makes provision for both an arbitration process (23.7) and court proceedings (23.10). The drafting of section 23 does not make it clear what the relationship is between these two forms of dispute resolution and what would happen if one party opted for one form while the other party opted for the other. Meridian notes that the MUoSA included a practice note that the parties should delete either the arbitration clause or the court proceedings clause on entering into the agreement. Is the intention that the same would happen under the DDA?	Meridian's preference is for disputes to be ultimately resolved by arbitration only, as this generally provides a faster, less expensive means of dispute resolution while maintaining confidentiality. We therefore recommend clause 23.10 is deleted.
24.4	Clause 24.4 excludes liability between the trader and the distributor except where expressly provided in other clauses. Meridian considers it is not good practice to exclude liability in such a way in a default agreement. This clause also appears to be inconsistent with clause 24.7 which limtis liability. It is not clear why a cap should be imposed on liability when it has already been broadly excluded under clause 24.4	Clause 24.4 should be deleted.
24.10	We understand the Commerce Commission is currently engaging with the Authority in relation to this provision and how it impacts consumer contracts in light of the new unfair contract term regime. We anticipate that clause 24.10 may require further amendments as a	The Authority should discuss this clause with the Commerce Commission in light of the unfair contract term regime, and amend if necessary.

	result of concerns highlighted by the Commerce Commission and we will be happy to review any further amendments to this provision.	
S1.3	Meridian notes that not all distributors are subject to Service Guarantee Payments. In our experience, such payments are very effective at driving good distributor performance. While this may not be a matter to consider in the DDA process, we encourage the Authority to look at promoting more widespread adoption of Service Guarantee Payments.	We encourage the Authority to look at promoting more widespread adoption of Service Guarantee Payments.
S1	Service measure 5.1 in the table in Schedule 1 (Investigations of customer complaints) contains inconsistencies with procedures set out under the Electricity and Gas Complaints Commission (EGCC) scheme: • The DDA specifies the distributor has five working days after being notified of a complaint to investigate and respond to the trader or customer. The EGCC scheme recommends two working days. • The DDA specifies that upon completition of its investigation, the distributor must provide information to the trader so that the trader can offer a resolution to the customer. Under EGCC guidelines, distributors are encouraged to resolve their complaints directly with the customer.	While we acknowledge these are example operations terms and therefore subject to change, we consider an appropriate starting point would be to use terms consistent with the EGCC guidelines.
S6.18	Clause S6.18 requires that restoration of supply following a Temporary Disconnection occurs no later than 3 working days after conditions for reconnection have been satisfied. This clause does not appear to provide for a situation where a longer reconnection timeframe is set at the customer's request.	Amend clause S6.18 to note that a reconnection can occur later than 3 workings days after conditions for reconnection have been satisfied if this is at the customer's request.
S6.29	Clause S6.29 requires a party performing a decommissioning to notify the other party within 2 working days of the decommissioning having	Amend clause S6.29 to make clear that a trader can comply with the requirement to notify a distributor by updating the Registry.

	been completed. As a trader, Meridian sometimes undertakes notification by updating the Registry which in turn notifies a distributor. We recommend this clause is amended to make it clear that this approach fulfills the requirement for notification.	