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Default Agreement for Distribution Services

FINAL SUBMISSION

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EXECUTIVE SUMMARY

The Electricity Authority (Authority) has issued a consultation on adopting a default agreement for distribution services. The consultation proposes to introduce a default Use of System Agreement (UoSA) for all distributors using interposed distribution arrangements. Each distributor would be required to develop a "default distributor agreement" (DDA) using prescribed core terms, with operational terms in the DDA being required to comply with prescribed principles. The Authority proposes to implement its proposal by replace Part 12A of the Electricity Industry Participation Code (the Code) in its entirety and publishing a template for the DDA which must be used by each distributor.

The Authority's proposals do not recognise that many distributors have made a genuine effort to develop contracts based on the Model Use of System Agreement promulgated by the Authority. While the Authority's proposals may reduce the transaction costs of entering into a UoSA, they unnecessarily require those distributors that have developed appropriate agreements to again incur the cost of consultation and for both the distributors and retailers to incur the cost of re-contracting for little if any additional benefit. This also sends the undesirable signal that it is not worth complying with voluntary initiatives in the future.

Simply Energy suggests an alternative process where a DDA would not be required unless a trader could establish to the Compliance Committee that the distributor's existing agreement materially disadvantages the trader relative to what might be expected with a DDA. This would provide clear benefits to those distributors that have already meaningfully engaged with retailers and developed appropriate agreements.

This alternative process has the beneficial outcomes of (1) only requiring costs to be incurred when there is actually a problem; and (2) it is only those distributors that have not spent the time and effort developing a balanced agreement based on the Model Use of System Agreement (MUoSA) that would be likely to be required to develop a DDA. Those distributors that have already meaningfully engaged with retailers and developed an appropriate agreement would not be required to incur any further cost.

Simply Energy also suggests that the proposed rule 12A.10 requiring that alternative agreements only address distribution services is unnecessary. If a distributor and a retailer negotiate additional terms that address other matters, it is their prerogative whether those terms are included in the use of system agreement or in some other agreement. In many instances the variations that form the alternative agreement may be recorded in the form of a side-letter that records only the variations to the default agreement; in such a case it would be quite normal for the parties to include any non-distribution matters in the same side letter. Requiring the terms to be in a separate agreement could lead to inefficiencies in some instances.

Some distributors have demonstrated that they lack the incentives to provide the high quality level of service that would be provided by the discipline of a competitive market. As a consequence, those distributors may engage in practices that add considerable cost to a retailer. Simply Energy proposes that the relevant incentives could be provided by way of a process that allowed "operational breaches" to be notified to the Authority, who would rule on the validity of the claimed breach and publish a "league table" of the number of complaints against each distributor (and potentially also each retailer). Such an approach has been successfully used by the Electricity & Gas Complaints Commission. The right to participate in such a scheme could be specified in the core terms of the default agreement, but this is not a necessary requirement as this right could be specified in the Rules.

Collecting information on the number and type of operational breaches, and making this information transparently available, provides the Authority with a much clearer picture of the realities of interactions between retailers and distributors. The information would also provide a significantly more robust basis for deciding whether any further changes are required in future, ensuring that any changes made are focussed on only those areas where action is required.

Finally, formal dispute resolution can be costly, particularly for a small retailer in dispute with a large, well-resourced network. For dispute resolution to support efficient outcomes requires that the parties have equal power in the process; this is demonstrably not the case when the parties have widely disparate financial resources. Simply Energy therefore proposes that the dispute resolution process is supplemented with an initial step that allows a party to lodge a complaint via the breach process. This would provide a low cost means of resolving disputes that places both parties on an even footing. Such a dispute resolution mechanism has been employed for Distributed Generation, and has worked well. Similar mechanisms are also employed by Telecommunications Dispute Resolution (for consumers), the Privacy Commissioner (for individuals), and the Domain Name Commission (in respect of any party, usually a trading entity, over a .nz domain name).

1. INTRODUCTION

1.1. BACKGROUND

A use of system agreement (UoSA) is an agreement between an electricity retailer and an electricity distribution network that sets out the terms by which a retailer is able to "use" the distribution network to sell electricity to customers on that network. New Zealand has 29 electricity distribution companies, and a retailer has to enter an agreement with each network on which it wishes to trade.

The Electricity authority (Authority) has identified that many UoSAs are not based on the Authority's model use of system agreement (MUoSA), and that each of the estimated 311 UoSAs is effectively a bespoke agreement. While Simply Energy has been required to negotiate a new UoSA for each distribution network where it wishes to trade, it notes that many distributors have made a genuine effort to implement contracts based on the MUoSA.

UoSA may be either an "interposed" arrangement, where the consumer contracts with the retailer and the retailer contracts with the distributor; or a "conveyance" arrangement where the consumer contracts with both the retailer and the distributor. 27 of the 29 distribution companies utilise an interposed arrangement.

The Authority proposes to introduce a requirement for each distributor that utilises an interposed UoSA to (a) include specified core terms that must be adopted without modification, and (b) consult on "operational terms". The operational terms must comply with certain principles, and should be set after consultation with the existing traders on the network.

The resulting agreement would be called a Default Distributor Agreement (DDA), and each distributor would be required to publish its DDA. When a trader wishes to trade on a distribution network the parties may attempt to negotiate an alternative agreement, but the published DDA will apply if either party prefers the published DAA or the parties are unable to negotiate an alternative agreement within 2 months (3.5.6).

1.2. STRUCTURE OF THIS REPORT

Simply Energy commissioned Andrew Shelley Economic Consulting Ltd (ASEC) to prepare this report in response to the Authority's consultation paper.

This report is structured as follows:

- Section 2 provides a brief discussion of economic issues relevant to the adoption of default contracts;
- Section 3 provides Simply Energy's responses to the consultation questions;
- Section 4 provides comments on the detailed drafting of the Code amendment; and
- Section 5 provides comments on the detailed drafting of the DDA template.

2. ECONOMIC CONSIDERATIONS

The Authority has identified that it perceives the following problems exist with the way that UoSAs are currently developed, negotiated, and agreed:

- A distributor may offer retailers in similar circumstances different terms, meaning that retailers with less favourable terms may be at a competitive disadvantage;
- A distributor can impose inefficient terms on all retailers on its network, which can prevent retailers from innovating and providing new services in the face of evolving technologies, and restrict innovation and competition in related markets;
- Distributors and retailers face higher than necessary transaction costs from negotiating and administering many different UoSAs, which raises costs to consumers, and undermines retail competition by making it less likely that entrant retailers will expand to trade on new networks.

The problem is broader than that identified by the Authority. From an economic perspective the concern is always to obtain a regulatory, contracting, and industry structure that provides the incentives to achieve the most efficient outcome possible. This concern is broadly encapsulated in the Authority's objective, set out in section 15 of the Electricity Industry Act 2010:

> *The objective of the Authority is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.*

This section discusses some of the issues involved in achieving this objective. The dynamic efficiency costs associated with inefficient terms in UoSAs includes seemingly mundane items such as data exchange and file formats, which are not mentioned in the consultation but (a) are determined by the terms of a UoSA, and (b) can result in significant ongoing costs. Similarly dispute resolution and operational breaches are not considered.

2.1. TRANSACTION COSTS OF NEGOTIATING CONTRACTS

An important consideration in assessing whether efficient outcomes are likely to be achieved in any industry is that of transaction costs, which are the costs associated with undertaking some action. In this consultation, the Authority is particularly concerned with the transaction costs associated with negotiating a UoSA. If there are significant differences between contracts offered by different distributors, then there will be significant transaction costs involved for retailers to understand and negotiate the different contracts, and there may be significant transaction costs for a retailer to modify their systems to accommodate the processes, data formats, and other requirements of the distributor. These costs may deter retailers from entering distribution network areas where they are not currently active.

As an industry is undergoing its initial stages of development it may be appropriate to allow a high degree of flexibility in contracts and contracting structures so that competition between the different contract clauses and contract structures can identify those clauses and structures that are optimal for the industry concerned. As an industry matures, however, there may be benefits in standardising contract terms to reduce the transaction costs involved in negotiating contracts.

2.2. TRANSACTION COSTS OF THE PROPOSED PROCESS

The Authority proposes to require all distributors to consult on the operational terms of a DDA and then publish a default agreement. This published DDA would provide the default terms for any retailer that wished to trade on the distributor's network but does not currently do so.

In addition, where there is an existing agreement between a distributor and a retailer, the Authority's proposals require that the parties renegotiate an alternative agreement within two months from the date at which 12A.12 come into force, or otherwise the existing agreement will be terminated with effect from that date and the published DDA will apply. Prior to that date, either party may require the other to re-contract using the distributor's published DDA.

Contrary, to the Authority's assertions, Simply Energy is of the view that many distributors have gone to considerable effort to implement contracts based on the MUoSA promulgated by the Authority. Most of those distributors have adopted operational terms that are reasonable and acceptable to traders operating on the relevant networks.

Requiring these distributors to consult and recontract again incurs these costs again for little additional benefit. This also sends the undesirable signal that it is not worth complying with voluntary initiatives in the future: ultimately it will be lower cost to ignore voluntary initiatives and wait until a regulated requirement is introduced.

The adverse incentive effects can be significantly reduced, and the Authority's intent achieved, by only requiring the distributor to develop a DDA when the distributor's existing agreement materially disadvantages a trader. This process would require a trader to allege via the breach process that a particular part or parts of the distributor's existing agreement resulted in a material disadvantage relative to what would exist in a DDA. The Authority's Compliance Committee would then arbitrate on the question, and if it was held that a material disadvantage did arise then the distributor would be required to develop a DDA using the processes proposed by the Authority in the current consultation.

This alternative process has the beneficial outcomes of (1) only requiring costs to be incurred when there is actually a problem; and (2) it is only those distributors that have not spent the time and effort developing a balanced agreement based on the MUoSA that would be likely to be required to develop a DDA. Those distributors that have already meaningfully engaged with retailers and developed an appropriate agreement would not be required to incur any further cost.

2.3. Bespoke Contracts or Alternative Agreements

The Authority also recognises that in some instances there will be benefits from allowing traders and distributors to negotiate bespoke contracts, particularly when a retailer proposes to offer an innovative set of services that require different operational contract terms. The Authority's proposal for a default contract with the ability to negotiate customised operational terms is appropriate in this regard; it will reduce transaction costs for the majority of the industry, but will not prevent new services and contract clauses from emerging.

The Authority is needlessly concerned with the form of alternative agreements. In particular, the proposed rule 12A.10 requires that alternative agreements "(a) address only the subject matter of the terms of the default distributor agreement; and (b) relate only to distribution services". It is important to ask what is the harm that would be caused if this rule was violated, and whether splitting the offending terms into a separate agreement would somehow magically alter the effect of those terms. If a distributor and a retailer negotiate an alternative agreement they do so willingly, and both must perceive a net gain relative to the default alternative (whether or not that is a DDA). If they choose to include terms that are not related solely to distribution services then that is their business and no harm is done. There is also no benefit to requiring the relevant clauses to be contained in a separate agreement.

From a practical perspective, alternative agreements are likely to often take the form of a side-letter that records only the variations to the default agreement; in such a case it would be quite normal for the parties would include any non-distribution matters in the same side letter. When alternative agreements take this form (i.e. side letters recording only variations), the variations are much easier for the parties to assess. Differences that are buried within a 70 page contract become more difficult to identify, which in turn means that significantly greater legal expense and time is required. Requiring non-distribution terms to be in a separate agreement could lead to inefficiencies in some instances, as additional comprehensive contracts may need to be negotiated.

One example might arise when a distributor is owned by a Consumer Trust, and the distributor wishes to contract with a retailer to pay an annual rebate to those customers who are beneficiaries of the Consumer Trust. The distributor, acting on behalf of the Consumer Trust, may also request that certain information about the rebate is provided to the consumer. The rebate is not related to distribution services; it is a payment in a similar manner to a dividend reflecting a beneficial interest in the company. The agreement concerning the payment of the rebate could be included in the terms of the distributor's alternative agreement, or it could be included in an entirely separate "additional agreement"; such an additional agreement likely make reference to the existence of the use of system agreement as a condition precedent. The additional agreement would also need to address all of the standard "boiler plate" matters, a process that is quite inefficient compared to simply including the operative clauses in the main agreement.

2.4. Service Quality and Transaction Costs

Quality is multi-faceted, and encompasses much more than the simple measures of SAIDI and SAIFI[1] monitored by the Commerce Commission and the service standards specified in Schedule 1 of the DDA Template. Service quality also impacts significantly on the relationship between traders and distributors. Quality service would see data always provided by distributors to support invoices (because otherwise invoices would be disputed), the data would be provided in standard formats delivered via standard protocols (because in a competitive industry the trader could choose to go to an alternative supplier), the data would be provided on time, and the data would be reconcilable or auditable.

As an example of poor quality service, distributor-to-retailer notifications of planned outages are sent via email in a wide variety of formats, almost exclusively not EIEP6 – fault notification and service requests. Some distributors may also provide data in spreadsheets, with formats that vary from month-to-month, and with an incomplete data set to support billing.

Poor service quality adds to ongoing transaction costs, whereas high levels of service can drive efficient processes, reduce errors, and contribute to efficient resolution of any issues that do arise. Just as some distributors have invested time and effort to develop a reasonable UoSA based on the MUoSA, some distributors have invested the time and effort to develop business processes that support quality service, while others act is if they are unconstrained monopolists.

1 SAIDI and SAIFI are measures required by the Electricity Distribution Information Disclosure Determination 2012 – (consolidated in 2015), 24 , p. 67 and pp. 105-106.

2.4.1. More Precision is Required in EIEPs

In some instances, a distributor may legitimately claim compliance with an EIEP, but given the variation possible within many EIEPs, the data format provided by one distributor using a particular EIEP may differ from the data format provided by another distributor using the same EIEP. Even the most fundamental EIEP – EIEP 1: *Detailed ICP billing and volume information* – provides for six different file types, which directly results in unnecessary complexity in billing systems, and additional system development and testing costs. The customisation of systems to meet the variations adopted by each distributor adds additional costs and deters entry by traders into new distribution network areas.

Some of these problems can be resolved by more precisely defining the EIEPs so that less variation is possible, and by mandating the use of more EIEPs. Where an EIEP provides for multiple different file types, a default file type should be specified in the event that the parties cannot agree on the appropriate type. Standardisation will translate directly into lower transaction costs, and enhance the ability for new parties to enter the retail market. In an efficient market it should be possible for an entrant to build software systems predicated around compliance with well-specified EIEPs, and staffing levels should be able to be planned on the assumption that only minimal rework will be required.

2.4.2. Absence of Competitive Pressure can lead to Poor Quality Service

The ability for some distributors to act in a manner where they are indifferent to the costs imposed on traders arises because the distributors are subject to neither competitive pressures nor regulated performance requirements. Drawing on the provision of meals in the airline industry (which at that time had regulated prices), White (1972) demonstrated that "a competitive industry under price regulation will offer more quality per unit of output than would a simple monopolist",[2] assuming profit-maximising behaviour. Distributors are subject to price regulation by the Commerce Commission precisely because they are (near) natural monopolies. White's conclusion therefore means that profit-maximising distributors will provide a lower level of quality than would a similar firm operating in a competitive industry.

Some distributors will, however, seek to improve service. Some will face competition from new technologies and seek to respond by improving service (while others may seek to respond by using price and non-price barriers to block the access of the new technologies). Other distributors may seek to improve service because they are genuinely customer-focussed and understand the impact that their service has on the end consumer.

Examples of situations where poor quality service maybe provided include:

- A retailer may spend considerable time on corrections and rebilling when a customer is incorrectly set up in the registry by a distributor.
- A distributor may fail to provide supporting data for billing, which may make it difficult or impossible for a retailer to reconcile billing information accurately, ultimately causing more time to be spent on these processes and preventing prices to the consumer from being as low as they might be.
- A retailer may provide poor quality or incorrect data that creates substantial re-work for the distributor.

2 White, L.J. (1972) "Quality Variation When Prices are Regulated", *Bell Journal of Economics and Management Science*, 3(2):425-436. Retrieved from http://www.jstor.org/stable/3003031.

In each case it is the recipient of the data rather than the supplier that faces the cost of the supplier's actions. Because the supplier does not face the cost of its actions, the purely profit-maximising supplier will not take sufficient precaution to avoid poor service (Shavell 1980).[3] Best endeavours are no longer appropriate, and there should be an incentive for compliance.

Further opportunity exists to incentivise the non-performing parties to act in a similar manner to what they would if they faced competition, and thereby to better align behaviour of both distributors and retailers with the Authority's statutory objective.

One of the characteristics of a competitive market is that information on price and product or service quality is readily available. In a perfectly competitive market such information is known instantaneously, at no cost, by all parties. In a workably competitive market such idealised conditions may not exist, but the efficiency of the market can be improved by making the relevant information available. The availability of information enables consumers to make appropriate choices regarding price and quality, and provides a strong incentive for suppliers to reduce price and/or improve quality to match the competition. In the context of data exchange between distributors and retailers, the supplier is the provider of the data and the consumer is the recipient of the data; both the distributor and retailer may be suppliers at different times, and both may require the incentives provided by information on service quality.

Simply Energy proposes that the relevant incentives could be provided by way of a process that allowed "operational breaches" to be notified to the Authority, who would rule on the validity of the claimed breach and publish a "league table" of the number of complaints against each distributor (and potentially also each retailer). Such an approach has been successfully used by the Electricity & Gas Complaints Commission. The right to participate in such a scheme could be specified in the core terms of the default agreement, but this is not a necessary requirement as this right could be specified in the Rules.

Information technology is at the heart of an effective distributor-retailer relationship, and the approach proposed is arguably also consistent with providing incentives for both parties to participate in internationally-accepted continuous improvement processes such as the Information Technology Infrastructure Library (ITIL) Continual Service Improvement process.[4] Other continuous improvement processes exist that could also be used, but at present there is little incentive to use them.

Collecting information on the number and type of operational breaches, and making this information transparently available, provides the Authority with a much clearer picture of the realities of interactions between retailers and distributors. The information would also provide a significantly more robust basis for deciding whether any further changes are required in future, ensuring that any changes made are focussed on only those areas where action is required.

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3 Shavell, S. (1980) "Strict Liability versus Negligence", *Journal of Legal Studies*, 9(1):1-25. Note that although Shavell's argument is posed in terms of accidents, the same argument can be directly applied to poor service, where the harm is the additional cost that is incurred by the trader.

4 The ITIL framework was developed by the Central Computer and Telecommunications Agency (CCTA) of the UK Government to provide a framework for the efficient use of information technology resources and delivery of information technology services to the UK Government. The framework was to apply to all government departments and agencies, and to all private sector contractors providing information technology services to the Government agencies. This could be an appropriate framework for improvement of IT service delivery across the electricity industry.

In many instances poor performance is the result of poor systems (such as over-reliance on spreadsheets), but there is no incentive at the moment to invest in better systems. In fact, the regulatory regime imposed by the Commerce Commission under Part 4 of the Commerce Act could provide an incentive not to invest in better systems, as this would provide the distributor with a lower cost base and higher profits (and this will be true whether weighted average price cap regulation or revenue cap regulation is employed).

By providing incentives for improved distributor behaviour, the measures proposed above would:

- promote competition, by further standardising the arrangements facing traders, thereby facilitating entry of traders into distribution networks where they do not currently trade;
- promote reliable supply, by providing incentives for distributors to accurately notify outage information to traders, and for requiring traders to provide notifications to distributors in a consistent format (electronically, using an EIEP);
- promote efficient operation of the electricity industry, again by standardising arrangements and reducing transaction costs.

2.5. COSTLY DISPUTE RESOLUTION INHIBITS EFFICIENCY

The dispute resolution clause in the proposed core terms is appropriate, but formal dispute resolution can be costly, particularly for a small retailer in dispute with a large, well-resourced network. A high cost mechanism, such as through the courts, or even an arbitral process that requires the parties to utilise lawyers, will result in many breaches and service quality issues being unaddressed.

If dispute resolution is to support efficient outcomes then the parties have equal power in the process; this is demonstrably not the case when the parties have widely disparate financial resources. Simply Energy therefore proposes that the dispute resolution process is supplemented with an initial step that allows a party to lodge a complaint with the Authority's compliance unit via the breach process. This would provide a low cost means of resolving disputes that places both parties on an even footing. In order for this mechanism to work effectively, both the compliance unit and Compliance Committee must be prepared to consider disputes that might in other circumstances be considered not material. It is possible that there may be a few initial appeals to the Rulings Panel that would establish precedent, but in general it should be expected that the matter would go no further than the Compliance Committee.

Such a dispute resolution mechanism was employed under the *Electricity Governance (Connection of Distributed Generation) Regulations 2007* (the "DG Regulations"), and subsequently under Part 6 Connection of Distributed Generation to the Electricity Industry Participation Code 2010. This dispute resolution mechanism has worked well, providing small parties with an effective means of disciplining larger parties who would otherwise refuse to comply with the relevant rules. Similar dispute resolution mechanisms are also employed by Telecommunications Dispute Resolution (for consumers), the Privacy Commissioner (for individuals), and the Domain Name Commission (in respect of any party, usually a trading entity, over a .nz domain name).

2.6. Consultation Process for Operational Terms

The Authority proposes that distributors would consult on the proposed operational terms with those retailers that currently trade on their network. While it might be envisaged that this would largely be a process of simply transferring existing operational terms across to the new DDA framework, it will inevitably be necessary to consider each clause carefully to ensure that there are no unintended consequences from what might seem to be minor wording changes.

The process proposed by the Authority would see the four largest distributors consulting on operational terms over a 60 day period, with the remaining 23 distributors having 120 days for this same process. A trader that is active on multiple networks may therefore be engaged in consultation with the four large distributors and several of the smaller distributors at the same time. Parallel negotiations may be difficult for a retailer that trades on multiple distribution networks. While this problem is noted by the Authority (in paragraph 3.4.11), it is not obvious that the Authority's proposed process adequately addresses the problem.

The alternative approach proposed in 2.2 above is likely to significantly reduce this problem: those distributors that already have a UoSA acceptable to the contracted retailers would not need to consult on operational terms for a DDA; instead, it would only be those distributors for which a retailer can demonstrate a material benefit from a DDA that would be required to embark on the Authority's consultation process.

2.7. Right to Contract

If retailers are to be able to push distributors to improve service, potentially lodging complaints with the Authority's compliance unit, they need to have confidence that there will not be retaliatory action from either the distributor in question or any other distributor. For example, an entrant retailer that has a reputation of pushing for service improvements may be refused connection by another distributor because that distributor does not want the risk of the retailer raising issues with its service levels. Allowing distributors to act in this manner would allow distributors to restrict competition and to continue with inefficient processes. It is therefore important that distributors should be required to contract with retailers using their standard agreement (whether that is a DDA or a customised version of the MUoSA). Termination should only be available in the event of non-payment of an undisputed invoice or the retailer has demonstrated an inability to meet health and safety obligations to an extent that creates liabilities to the distributor.

3. RESPONSES TO CONSULTATION QUESTIONS

The following table provides answers to the consultation questions in the format requested by the consultation paper:

Question No.	Question	Response
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.	Simply Energy agrees with the issues that the Authority has identified, and the Authority's description of the way that UoSAs are currently negotiated and developed. However, as detailed in section 2.4, there are many more issues relating to service quality (and therefore transaction costs) that the Authority has not identified. In addition, there is currently no obligation on a distributor to enter a UoSA, and Simply Energy is aware of situations where a distributor has refused to enter into a UoSA with an industrial consumer, or has been reluctant to enter into a UoSA with Simply Energy because of its small size. The ability of distributors to behave in this manner adversely affects the competitiveness and efficiency of the retail market.
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?	The level of tailoring available to distributors should be kept to the minimum possible. Many of the operational terms will be the key contractual terms that drive transaction costs within the trader's business. Transaction costs can be minimised by further clarifying the EIEPs so that they become standards, and mandating the use of more EIEPs. For a small retailer, modifying systems and processes (and hiring additional staff) to accommodate the idiosyncrasies of each distributor can be extremely costly.
3	What are your views of the Authority's assessment of the likely levels of demand for new and replacement UoSAs in coming years? Please support your response to this question with reasons and your alternative quantified assessment, if any.	The Authority has assumed that niche traders, currently trading on only 1 distribution network, do not seek to expand their operations to other networks on the basis that they have not yet expressed a desire to do so. There are 7 niche traders, 5 of whom only trade on the Vector network. It is reasonable to assume that the niche traders are seeking to build critical mass on the network where they are currently active, and would more readily seek to trade on other networks if there was improved consistency

Question No.	Question	Response
		between UoSAs. On the other hand, the Authority has also assumed that the 18 active traders each seek to operate on all 27 distribution networks using interposed arrangements. Given an average of 11.52 traders on each interposed network, this suggests a demand for an additional 175 UoSAs. If all distributors were to adopt a UoSA that was identical, the only factor restricting whether a retailer chose to trade on a particular distribution network would be whether that retailer's business model relies on sales staff on the ground. For those retailers who rely on the internet and call centres there would be no barrier to serving all distribution network areas. However, those retailers who rely on staff on the ground would be less active in distribution network areas with a relatively low population density and dispersed population. It is likely, therefore, that not all retailers would be active in all distribution network areas. Activity levels can then be reduced further on the basis that the new DDA will still differ in operational terms between distributors, so there is likely to still be additional costs associated with customising software systems and processes for each distribution network area that the retailer serves. It seems likely, therefore, that the 175 new UoSAs is an upper estimate. At least some of the 7 niche traders are likely to want to expand, and are more likely to do so when there is greater consistency between UoSAs, but all 18 active retailers are unlikely to trade on all 27 distribution networks. It should be noted though that the ease of entry and exit is an important source of competitive market discipline. Retailers that are active on at least some distribution networks provide a competitive constraint on retailers in other distribution network areas provided that entry is low cost. The greater the standardisation of UoSAs the lower the cost of entry, and the more readily competitive forces will influence retailer behaviour.

Question No.	Question	Response
4	What are your views on the regulatory statement set out in section 4?	Simply Energy supports the regulatory statement set out in Section 4 of the consultation paper. Furthermore, if the proposals in Section 2.4 of this report were implemented (i.e. more mandated standardised EIEPs, an ability to appeal operational breaches of UoSA terms to the Authority, a league table of distributor performance, and an efficient dispute resolution process) then the efficiency gains from the introduction of DDAs would be even greater.
5	What are your views on the detailed drafting of the Code amendment provided in Appendix B and Appendix C?	See responses in sections 4 and 5 below.

4. COMMENTS ON THE DETAILED DRAFTING OF THE CODE AMENDMENT

Clause number	Clause	Comment
12A.3 Principles for operational terms in default distributor agreements clause 12A.3(2).	The principles are that a **distributor's operational terms** must— (a) be consistent with the **Authority's** objective set out in section 15 of the **Act**; and (b) reflect a fair and reasonable balance between the legitimate interests of the **distributor** and the requirements of **traders** trading on the **distributor's network**; and (c) reflect the interests of **consumers** on the **distributor's network**; and (d) reflect the reasonable requirements of **traders** trading on the **distributor's network** and the ability of the **distributor** to meet those requirements.	This is appropriate, but more could be achieved from this starting point, and to this end Simply Energy suggests that (a) the distributor is only required to develop a DDA if a trader can demonstrate to the Compliance Committee that the distributor's existing standard agreement presents a material disadvantage relative to the regulated default agreement, and (b) breaches of the operational terms can be referred to the Authority's Compliance unitThe rational for this is discussed in section 2.4 above.
12A.8 Obligation to enter into distribution agreement	(1) A **trader** trading on the **distributor's network** must have a **distribution agreement** with the **distributor**. (2) A **trader** must ensure that a **distribution agreement** comes into force on or before the day on which the **trader** commences trading on the **distributor's network**.	The obligation should go both ways, i.e. a distributor must have an obligation to enter into a distribution agreement with a Trader or a Direct Market Participant. Cold Storage Nelson has been denied a contract to enter into a UoSA with a network. Simply Energy has had other networks express reluctance to enter into UoSA because they are small. Such reluctance is a direct barrier to the expansion of smaller

Clause number	Clause	Comment
		retailers, impeding the ability of those retailers to effectively compete and thereby reducing the efficiency of the market. A distributor with appropriately designed systems should have no concerns about having additional retailers active on its system. Data should be exchanged via standard EIEP formats, so a new retailer should mean nothing more than changing the retailer code against one or more ICPs and receiving additional data files each month.
12A.9 Negotiating distribution agreements		This goes some way to addressing the point above. However what happens if a distributor gives notice on the UoS agreement? Can a Trader just start the process to enter into a contract again? Events constituting a default that could lead to termination of a contract should be tightly defined. This might include - **Serious financial breach**; and - Issues impacting liability associated with health and safety A breach that could lead to termination should exclude breaches of operational terms, which would be better dealt with by way of appeal to the Authority and the "league table" suggested in section 2.4. -
Distribution agreements in respect of	**12A.13 Application of this subpart** This subpart applies to—	

Clause number	Clause	Comment
embedded networks	(a) each **distributor** that— (i) conveys **electricity** to 1 or more **consumers** on the **distributor's embedded network**; and (ii) does not have a contract in respect of the conveyance of **electricity** with 1 or more of those **consumers**; and (b) each **trader** that— (i) is a **retailer**; and (ii) wishes to trade or is trading at an **ICP** on the **network** of a **distributor** described in paragraph (a). **12A.14 Obligation to enter into distribution agreement** (1) A **trader** trading on the **distributor's network** must have a **distribution agreement** with the **distributor**. (2) A **trader** must ensure that a **distribution agreement** comes into force on or before the day on which the **trader** commences trading on the **distributor's network**. (3) A **trader** that wishes to trade on a **distributor's network** must give notice to the **distributor** of that fact at least 20 **business days** before the **trader** proposes to commence trading on the **distributor's network**.	There should be a reciprocal requirement for distributors to enter into a distribution agreement, as discussed in section 2.7.

Clause number	Clause	Comment
12A.19 Distributors to consult concerning changes to pricing structures	(1) A **distributor** must consult with each **trader** trading on the **distributor's network** in respect of the **distributor's** pricing structure for the **consumers** with whom the **distributor** does not have a contract in respect of the conveyance of **electricity** before making a change to the pricing structure that materially affects 1 or more **traders** or **consumers**. (2) For the purpose of subclause (1), changes to a **distributor's** pricing 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** prices: (b) a change by the **distributor** to the **distributor's** pricing structure by the introduction of a new price: (c) a change by the **distributor** to the **distributor's** pricing structure that means that 1 or more of the **distributor's** prices are no longer available. (3) However, the fact that a change is listed in subclause (2) does not mean that a **distributor** is required to consult on the change if the change will not materially affect **traders** or **consumers**.	The key concern is what is meant by "materially"? The distributor is being asked to make a judgement over whether its change will affect a business that it only has the most superficial knowledge of. Suggest deleting the word "materially" and require consultation if the change in the pricing structure may affect 1 or more traders or consumers. Subclause (3) would also be deleted.

Clause number	Clause	Comment
12A.20 Distributor or trader may require provision of information	(1) The **distributor** may, by notice in writing, require the **trader** to provide information to the **distributor**, to enable the **distributor** to invoice and reconcile charges for **distribution** services. (2) The **trader** may, by notice in writing, require the **distributor** to provide information to the **trader**, to enable the **trader** to invoice and reconcile charges for **distribution** services. (3) A **trader** or **distributor** that receives a notice under subclause (1) or subclause (2) must provide the information no later than 15 **business days** (or such other date as agreed between the parties) after receiving the notice. (4) Nothing in this clause prevents the **distributor** and the **trader** agreeing to provide **volume information** to each other for a purpose other than to enable invoicing and reconciling of charges for **distribution** services.	This clause is potentially very important, as the data is critical for billing. A trader requires data in a standard form that supports each invoice received from a distributor, so that the distributor invoice can be reconciled with the trader's billing. However, as drafted the clause is not particularly useful because it does not specify that the information must be provided in the requested format. Simply Energy's experience is that obtaining data in a standard format is very difficult. Distributors may provide a range of file types and spreadsheets, with formats varying between distributors, and sometimes even varying from month-to-month for a given distributor. This means that significant work maybe required each month to ensure that files are processed correctly. The core provisions should provide for data to be provided in the form of a standard form electronic file(s) per invoice with granularity to the ICP and Tariff (for GXP billing it could be NSP and Tariff) e.g. EIEP1.
Subpart 3 Exchange of information	**12A.22 Authority may publicise EIEPs that must be used** (1) The **Authority** may **publicise** 1 or more **EIEPs** that set out standard formats that **distributors** and **traders** must use when exchanging information. (2) When **publicising** an **EIEP** under subclause (1), the **Authority** must specify the date on which the **EIEP** will come into effect. (3) The information to which an **EIEP publicised** under	The standardisation of information exchange formats makes a significant difference to improving efficient operation of the electricity industry by reducing transaction costs. Simply Energy considers that more could be done to improve standardisation and improve efficiency: • The Authority should mandate the use of EIEP (planned outage notifications) because of the work and liability the flows from non-notifications

Clause number	Clause	Comment
	subclause (1) may relate includes, but is not limited to, the following information: (a) **ICP** level billing information: (b) summary level billing information: (c) **half hourly** billing information: (d) **distributor** tariff rate change information. (4) Before the **Authority publicises** an **EIEP** under subclause (1), or amends an **EIEP** it has **publicised** under subclause (1), it must consult with the **participants** that the **Authority** considers are likely to be affected by the **EIEP**. (5) The **Authority** need not comply with subclause (4) if it proposes to amend an **EIEP publicised** under subclause (1) if the **Authority** is satisfied that— (a) the nature of the amendment is technical and non-controversial; or (b) there has been adequate prior consultation so that the **Authority** has considered all relevant views.	• An EIEP is required in respect of unplanned outage notifications and a requirement for electronic exchange. • In the event of disagreement on the form of EIEPs then there should be a default standard e.g. EIEP1 to MMAB, (to avoid having to run duplicate customer and network billing processes). As suggested in section 2.4 of this report, the primary reason for distributors not being willing or able to provide data in the required formats is that they have inadequate systems that do not support the standard EIEP formats, and there is little incentive to upgrade those systems.
12A.23 Distributors and traders to comply with EIEPs	(1) If the **Authority publicises** an **EIEP** under clause 12A.22, the **distributor** and the **trader** must, when exchanging information to which the **EIEP** relates, comply with the **EIEP** from the date on which the **EIEP** comes into effect. (2) However, a **distributor** and a **trader** may, after an	There must be a consequence for non-compliance, otherwise the clause has no effect. To the extent that the data is required to support an invoice from a distributor to a trader, an appropriate consequence would be that the trader has no obligation to pay the invoice until the supporting data is provided. In such circumstances, non-payment would not be a

Clause number	Clause	Comment
	EIEP has been **publicised**, agree to exchange information other than in accordance with the **EIEP**, by recording the agreement in the **distribution agreement** between the **distributor** and **trader**. (3) An agreement to exchange information other than in accordance with an **EIEP** is not effective in relieving a **distributor** and a **trader** of the obligation to comply with subclause (1), unless the agreement comes into effect on or after the date on which the relevant **EIEP** comes into effect. (4) An agreement under subclause (2) is not affected by the **Authority publicising** an amendment to the **EIEP**.	**serious financial breach**. In other circumstances the appropriate consequence should be the affected party making a complaint to the Authority, which can then investigate, require any corrective action, and publish the number and types of complaints in a "league table".
14.41 Definition of an event of default	Each of the following events constitutes an **event of default**: (h) termination of a **trader's distribution agreement** with a **distributor** because of a **serious financial breach** if— (i) the **trader** continues to have a **customer** or **customers** on the **distributor's network**; and (ii) there are no unresolved disputes between the **trader** and the **distributor** in relation to the termination; and (iii) the **distributor** has not been able to remedy the situation in a reasonable time; and (iv) the **distributor** gives notice to the **Authority** that this clause applies.	It seems that the clause "(iii) the **distributor** has not been able to remedy the situation in a reasonable time; and " should actually be "(iii) the **trader** has not been able to remedy the situation in a reasonable time; and" In addition, Simply Energy suggests that where a breach of health and safety requirements which expose the distributor to liability could also be treated as an event of default.

5. COMMENTS ON THE DETAILED DRAFTING OF THE DDA TEMPLATE

8.2 **Trader may request allocation of an alternative eligible Price Category to an ICP**:	At any time, the Trader may request that the Distributor allocate an alternative Price Category to an ICP, and must provide any information necessary to support its request. If the Distributor, acting reasonably, agrees that the ICP meets the eligibility criteria for the requested alternative Price Category, the Distributor must apply the change (but not retrospectively, unless it agrees otherwise) and advise its decision to the Trader within 5 Working Days after receipt of notice of the Trader's request. If the Distributor declines the request, it must provide the reasons for its decision. 8.3 **Trader to select Price Option to match meter register configuration**: If the Distributor provides options within a Price Category that correspond to alternative eligible meter register configurations ("**Price Options**"), the Trader must select the Price Option that corresponds to the configuration of each meter register installed at the relevant ICP and notify the Distributor of that selection within 10 Working Days after its selection using the appropriate EIEP. If the meter register configuration at an ICP is changed at any time, the Trader must change the Price Option to match the new configuration and notify the Distributor of the change using the appropriate EIEP within 10 Working Days after the change.	A distributor should be required to publish criteria for a particular price category code and be required to comply with that criteria. Simply Energy is aware of situations where distributors have refused to supply a consumer under a given price category even though the consumer met the published criteria. The retailer should be able to sell to a consumer on the basis of the published criteria, and not have to check whether the distributor will agree in each instance (adds unnecessary time and cost, creating inefficiency). It is therefore suggested that the wording of this clause is modified to read: At any time, the Trader may request that the Distributor allocate an alternative Price Category to an ICP, and must provide any information necessary to support its request. If the ICP meets the eligibility criteria published **in the annual pricing notification** for the requested alternative Price Category, the Distributor must apply the change.

9. BILLING INFORMATION AND PAYMENT	9.3 **Issuing of Tax Invoices**: The Distributor must issue Tax Invoices for Distribution Services as follows: (a) the Distributor must invoice the Trader within 10 Working Days after the last day of the month to which the Tax Invoice relates; b) at the same time as it provides a Tax Invoice, the Distributor must provide to the Trader, in accordance with the relevant EIEP, sufficiently detailed information to enable the Trader to verify the accuracy of the Tax Invoice; (c) if late, incomplete, or incorrect information is provided and the Tax Invoice is estimated in accordance with clause 9.2 on the basis of that information, the Distributor must issue a Credit Note or Debit Note in the month after it receives additional or revised consumption information, at the same time as the Distributor issues a Tax Invoice to the Trader for its Distribution Services charges for that month; (d) if the information received by the Distributor in accordance with Schedule 2 includes revised reconciliation information or additional consumption information, the Distributor must provide a separate Credit Note or Debit Note to the Trader in respect of the revised consumption information ("**Revision Invoice**"), and a Use of Money Adjustment; (e) if a Revision Invoice is required, the Distributor must issue the Revision Invoice in the month after the Distributor receives the revised reconciliation information or additional consumption information, at the same time as the Distributor issues a Tax Invoice to the Trader for its	It is critical that invoices should always be supported by data that can be added to match the total of the invoice. Some distributors supply incomplete data so that it is not possible to reconcile the invoice. Others might supply data in a format that requires processing by the retailer to obtain the specific data that is used for the invoice. For example, Simply Energy has been asking one distributor for standard format consumption data to verify invoices. The distributor's response was "*four other retailers … have all built their own systems to verify the Network charges*". Rather than supplying the actual volume data used for the billing, the distributor's response was: "*All you have to do to determine the Day purchases –is apply the loss factors on each ICP (ignoring any adjustments) . If you want to calculate the Total purchases – use only ICP's that are listed on the EIEP HHRAB file and then get the Total purchases from the HH files that you have forwarded to us and apply the loss rate.*" This would be unacceptable in any other industry, and Simply Energy submits that it should unacceptable in the electricity industry. Data should always be provided to support any invoice, without exception. It should always be possible to obtain the invoice total by simple addition of the data provided. The values may be subject to additional verification through various calculations, but the very first step is that data provided should sum to the invoice total. Simply Energy therefore suggests that subclause (b) should be modified to read: b) at the same time as it provides a Tax Invoice, the Distributor must provide to the Trader, in a standard file

	Distribution Services charges for that month; and (f) at the same time it provides a Revision Invoice, the Distributor must provide to the Trader, in accordance with the relevant EIEP, sufficiently detailed information to enable the Trader to verify the accuracy of the Revision Invoice.	format compliant with the relevant EIEP, sufficiently detailed and complete information to enable the Trader to verify the accuracy of the Tax Invoice by simple addition; A subclause should also be added to provide the trader with the ability to dispute the invoice if **insufficient information** in the **required form** from the network

APPENDIX A: CURRICULUM VITAE

Andrew Shelley

Consultant

MA (first class honours) Economics
Massey University

B.B.S. Information Systems
Massey University

Andrew Shelley is a regulatory economist with over 20 years' experience analysing complex economic and regulatory issues for energy-intensive, network and infrastructure industries. He also has 4 years' experience working in the information technology industry.

Andrew has particular expertise in the electricity and telecommunications industries. He has advised on electricity transmission and distribution regulatory issues such as asset valuation, cost of capital, revenue requirements, pricing structure, and cash flow modelling. In addition to providing regulatory advice he has appeared as an expert witness in commercial arbitrations relating to New Zealand's electricity market, and developed expert evidence for a number of court cases. He has also advised firms in industries such as gas transmission and distribution, forestry, postal services, and rail networks.

Andrew's previous employment includes the positions of Principal at CRA International, Senior Consultant at PHB Hagler Bailly Asia Pacific Ltd, Costing & Economics Manager at Telecom New Zealand Ltd, and Strategic Analyst and Pricing Analyst at Transpower New Zealand Ltd. Mr Shelley is located in Wellington, New Zealand.

Andrew is a member of the New Zealand Institute of Directors and a member of the New Zealand Safety Council.

PROFESSIONAL HISTORY

2013 – **current**	President, Fly DC3 New Zealand Inc Director, Flight 2000 Ltd
2010 – **current**	Director, Aviation Safety Management Systems Ltd Senior Consultant, The Lantau Group
2008 – **current**	Director, Andrew Shelley Economic Consulting Ltd Senior Consultant, Oakley Greenwood Pty Ltd
2008 – 2010	Consultant, CRA International
2001 – 2008	Senior Associate, Associate Principal, and Principal, CRA International
1999 – 2000	Senior Consultant, PHB Hagler Bailly – Asia Pacific Ltd
1998 – 1999	Costing and Economics Manager, Network Group, Telecom New Zealand
1995 – 1998	Pricing Analyst and Strategic Analyst, Transmission Services, Transpower New Zealand Ltd
1995	Analyst Programmer, Foodstuffs (Wellington)
1993 – 1994	Study for Master of Arts
1990 – 1993	Analyst Programmer, Farmers' Mutual Insurance Group

SELECTED CONSULTING EXPERIENCE

- Advising three Distributed Generation providers in negotiations concerning prices for connection to a distribution network.
- For the Independent Electricity Generators Association of New Zealand, preparation of a submission to the New Zealand Electricity Authority on transmission pricing.
- Advising Vector Ltd on various aspects of pricing for electricity distribution and gas transmission and distribution.
- For Buller Electricity Ltd (BEL), valuing the benefit to BEL's consumers of enhanced retail competition from BEL's ownership stake in Pulse Energy.
- For the Independent Electricity Generators Association of New Zealand, preparation of a report on Avoided Cost of Transmission (ACOT) payments for Distributed Generation.
- For Contact Energy, preparation of a report analysing whether the balance of Transpower's "economic value" (overs and unders) account was consistent with what would be expected in a workably competitive market.
- Advising Unison Networks Ltd in its responses to the New Zealand Commerce Commission's implementation of the price control provisions contained in the Commerce Amendment Act.
- For Energex distribution network (Brisbane), development of a cost-based pricing model for regulated distribution services. This project also included the provision of advice on pricing policy, particularly with regard to developing prices that reflected the impact of demand growth on capital expenditure
- On behalf of Unison Networks Ltd, preparation of a submission in response to the New Zealand Commerce Commission's initial proposals for resetting the price path and quality thresholds in 2009.
- Advising Vector Ltd on economic issues arising from the New Zealand Commerce Commission's draft decisions on price control for gas distribution services.
- For the Electricity Networks Association, preparation of a submission to the New Zealand Electricity Commission on Transpower's proposed transmission pricing methodology, and on proposed changes to the Benchmark Transmission Agreements.
- Preparation of a series of expert reports for Unison Networks Ltd in response to the New Zealand Commerce Commission's draft intention to declare control of Unison, and for use by Unison in its subsequent Administrative Settlement negotiations. This work included analysis of the cost of capital, cash flows, financial ratios, and capital expenditure under various price control scenarios, as well valuation issues.
- Advising a New Zealand electricity retailer and generator on economic issues related to the Ministerial Inquiry into the Wholesale Electricity Market.
- For a New Zealand electricity lines business, providing expert testimony in a commercial contract arbitration on the relationship between transmission charges and embedded generation.

- For the Electricity Networks Association, preparation of a submission to the New Zealand Electricity Commission on Transpower's proposed transmission pricing methodology, and on proposed changes to the Benchmark Transmission Agreements.

SELECTED PUBLIC CONSULTING REPORTS

Submission on TPM Options Paper for the IEGA, Final Report, Prepared for the Independent Electricity Generators Association, 11 August 2015.

Review of Secondary Networks: TENCO EBS Submission, Final Report, Prepared for TENCO EBS, 28 May 2015.

TPM Problem Definition: Interconnection and HVDC, Final Report, Prepared for the Independent Electricity Generators Association, 22 October 2014.

Selection of the WACC Percentile in the Context of Risks faced by Electricity Distribution, Final Report, Prepared for Unison Networks Ltd, 29 April 2014.

Use of The Loss & Constraints Excess to Offset Transmission Charges, letter to the Electricity Authority, 3 March 2014.

Value of Pulse Energy to Residential Consumers of Buller Electricity Ltd, Final Report, Prepared for Buller Electricity Ltd, 14 February 2014.

Avoided Cost of Transmission (ACOT) payments for Distributed Generation, Final Report, Prepared for the Independent Electricity Generators Association, 31 January 2014.

with Heather Andrews, *Submission in Response to "Safety Regulation of Aviation: Considering a Risk Management Approach"*, Submission to the Civil Aviation Authority, 8 July 2013.

with Heather Andrews, *Review of Joining Procedures at Uncontrolled Aerodromes*, prepared for the Civil Aviation Authority, 2 July 2013.

Cost of Capital and Leverage, Final Report, Prepared for Unison Networks Ltd, 2 September 2010.

Rents, Regulatory Commitment and the Role of Long Term Contracts, Final Report, Prepared for Unison Networks Ltd, 19 August 2010.

Regulated Returns for Australian and New Zealand Electricity Distribution, Final Report, prepared for Unison Networks Ltd, 15 August 2010.

Balance of the EV Account for Transpower's HVDC Assets, Prepared for Contact Energy, 8 August 2010.

Comments on Cost Allocation and the Regulatory Asset Base, Prepared for Unison Networks Ltd, 15 March 2010.

Implementing the Deferred Tax Approach, letter to Unison Networks Ltd, 26 January 2010.

Input Methodologies: Economic Issues, Prepared for Unison Networks Ltd, 13 August 2009.

with Anna Kleymenova and Tim Giles, *WACC for TPI's Iron Ore Railway*, Prepared for Economic Regulation Authority, 11 June 2009.

with Mike Thomas, *Regulatory Provisions of the Commerce Act*, Prepared for Unison Networks Ltd, 16 February 2009.

with Lewis Evans, Jeremy Hornby, and James Mellsop, *Comments on Commission's Draft Decisions Paper on Supply of Gas Distribution Services*, Prepared for Vector Ltd, 29 November 2007.

with Jeremy Hornby and Michael Thomas, *Discount Rate for the Grid Investment Test*, Final Report, prepared for Transpower NZ Ltd, 29 March 2007.

with Jeremy Hornby and James Mellsop, *The Costs and Benefits of Regulating Transpower*, Final Report, prepared for Transpower NZ Ltd, 27 February 2006.

with Michael Thomas, *Net Benefits of Transmission Alternatives*, Final, Prepared for Meridian Energy Limited, 22 July 2005.