19 April 2016

Submissions
Electricity Authority
PO Box 10041
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By email: submissions@ea.govt.nz

Submission on Default agreement for distribution services

WEL Networks Limited (WEL) welcomes the opportunity to make a submission to the Electricity Authority (Authority) on the proposed adoption of Default Distributor Agreements (DDA) as outlined in the Default agreement distribution services consultation paper dated 26 January 2016 (Consultation Paper). Detailed answers to the Authority's questions are appended.

The Electricity Networks Association (ENA), on behalf of its members, will make a detailed submission to the Authority on the Consultation Paper. WEL was represented and actively involved in the detailed drafting of that submission. The content of the ENA submission is endorsed by WEL and rather than repeat its content, this submission should be viewed as supplementary to the points made and focuses on WELs specific experience and any additional views.

WEL has 17 traders on its network. With these traders WEL has a combination of contractual agreements in place including eight legacy contracts put in place in the 1990's, three contracts based on the Electricity Commission model, and six traders (including five new entrant traders) on an agreement based on the MUoSA (WUoSA).

As noted to the Authority in our last submission on this topic WEL has invested in and developed a WUoSA. We do not believe there is any issue with competition nor efficiency of our arrangements and we were well advanced, albeit in some instances awaiting traders resource availability (i.e. waiting in a queue) to transition all traders on legacy agreements to our WUoSA. New entrant traders have not expressed material concerns with either the process or the terms of our WUoSA. We therefore remain of the view that there is a clear lack of a problem with the process or negotiated modifications by ourselves, Vector, other distributors and traders. Some of the recent revisions to our WUoSA are as the result of trader initiated clarifications and improvements.

Given WEL's involvement in the ENA submission, our in depth review of the proposed Code and DDA terms and Sapere's independent competition, reliability and efficiency review[1], we have formed a view that the problem definition is that the MUoSA has not been updated to reflect industry

[1] Toby Stevenson and Nives Matosin Sapere Research Group Response to consultation paper Default agreement for distribution services April 2016

developments, rather than with the negotiated variations which are clearly improvements to the MUoSA. This problem will be exacerbated under the proposed DDA approach and will become the Authority's responsibility to ensure the Code and core terms in the DDA remain fit for purpose in the context of an evolving market and new technology.

WEL believes the case for regulatory intervention, in the form proposed in the Consultation Paper, has not been made and that a comprehensive Cost Benefit Analysis (CBA) analysis would not support such an austere approach.

It is WELs recommendation that the Authority should regulate distributors and traders by setting a reasonable timeframe and sensible process under the Code to prohibit non-MUoSA agreements. The MUoSA should be updated based on submissions on the Consultation Paper and with further input from distributors and traders to ensure a reasonable commercial balance is struck. The updated MUoSA should remain a model to allow for sensible operational variations to be agreed by distributors and traders.

If you have any questions regarding WEL's submission please contact Kevin Sharp, Commercial Manager on 07 850 3375 or by email kevin.sharp@wel.co.nz.

Yours faithfully

Kevin Sharp
Commercial Manager
WEL Networks Ltd

Appendix 1

Questions	**WEL Comments**
Q1. 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.	WEL agrees with the detail of the ENA submission. In addition, WEL’s particular view and characterisation of the issue is that the Authority‘s objective for more standardisation has not been met to date due to a lack of incentives to move off legacy (pre 2012) agreements. The distinction drawn on what the issue is, is significant because more standardisation has occurred and was planned amongst the parties transitioning to a UoSA based on a voluntary approach and the MUOSA. A survey of distributors, undertaken by the ENA, and provided to the Authority validated this. It is our view that the outcome of the progress to date had been to remove variation caused by legacy agreements i.e. more standardisation. Clearly this process was not occurring fast enough to meet the Authority’s objective but we consider the proposed course of action outlined in the Consultation Paper an austere solution to the current issues. A less complex regulatory intervention would be to require remaining parties to move off legacy agreements within a defined timeframe. As previously submitted, WEL’s experience since 2012 has been that all new entrant traders wanting to commence trading on WEL’s network have not raised material issues with our WUoSA and the process has not been unduly lengthy or costly excluding the initial overhead to create the WUoSA to reflect developments by others and our own reasonable and unique circumstances. The Authority seems concerned that both distributors and traders have varied the MUoSA. The MUoSA had never been practically nor commercially tested and it should have been anticipated that some variation was necessary and reasonable. The adoption of some of the negotiated terms in the draft DDA is evidence of that. The process of transition to MuoSA did have a slow beginning. In our view due to the fact that the largest parties in the industry needed to carefully work through the MUoSA and revised it to meet their requirements and unique circumstances. If this process had been allowed to settle a number of parties could have followed suit with confidence and the resulting agreements being fit for purpose requiring less intense effort to finalise amongst all remaining parties.

	Distributors and traders involved in this process should be commended for their efforts. Again our own observations and participation in industry working groups is that many parties have now reviewed the MUoSA variation and were poised to proceed to adopt similar UoSAs based on the refinements and their own reasonable and unique circumstances. In relation to the introductory section of the consultation paper and of particular concern to WEL is the use of the number of distributors to support the case for efficiency e.g. *"a retailer that operates nationally must enter into UoSA with each of 29 distributors"*[2]. This concern is compounded by the Authority attributing the number of embedded networks to a problem of efficiency in relation to the number of UoSA's required. The number of distributors is not causing inefficiency. It is actually the increasing number of traders against a static number of distributers that is driving the additional number of contractual arrangements used the Consultation Paper CBA. This is also not inefficient. To be inefficient there must be some ideal number of distributors or traders capable of being achieved. The questions of efficiency in this context are a structural issue that the Authority has no jurisdiction over. With respect, WEL requests the Authority discontinues using the number of distributers to support arguments of market inefficiency. It is our hope that the Authority will reflect on the issues and consider alternative and less disruptive measures that give effect to the previous voluntary approach e.g. add incentives to remove legacy agreements, to give effect to its objective to improve standardisation. In our view this means removing legacy agreements by implementing a less complex regulatory approach by defining a timeframe and process under the Code. The advantage of this approach over that proposed would be to preserve the work done to date to update the MUoSA and allows the parties to continue to evolve their agreements keeping pace with market and technological developments. The Authority should update the MUoSA to reflect negotiated outcomes and remove any perception that this is a source of unacceptable variation and cost.
Q2. What feedback do you have on the information in section 3, which describes the	WEL agrees with the detailed comments provided in the ENA submission.

[2] Electricity Authority Consultation Paper *Default agreement for distribution services 26 January 2016 para 1.1.3. (a)*.

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?	In the event the Authority continues with its current course of action there is scope to improve the new part 12A in respect of a requirement to offer a DDA when default termination has occurred (to avoid undermining the termination provisions) and in respect of a process to update DDA and operational terms as will no doubt be required from time to time. We are also concerned about the remedies available under a breach of a DDA which was established under the Code by default. On this latter point, WEL understands that in order for the parties to rely on remedies in Tort there would need to be a clear contractual relationship established and it is currently unclear to us that this will be established under a default situation. To complicate matters this may add to incentivise for either a default or alternative contractual arrangements if the remedies available to parties differ. It is our recommendation that the Authority, if it proceeds, provide a clear requirement to actually enter contracts rather than rely on any default mechanism.
Q3. 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? (As per appendix A)	See our answer above.
Q3 (2). 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. (As per page 44 – refers to 4.4.1 to 4.4.14 inclusive)	WEL agrees with the detailed ENA submission. As noted above we believe the problem definition is the lack of the removal of legacy agreements. It is therefore not the number of new agreements required as the retail market expands that is relevant, as this is a requirement in any case, but rather the lack of incentive to remove variation from the MuoSA cause by the continuance of legacy agreements. Consistent with this view the number of legacy agreement needs to be quantified as the relevant number of agreements to apply in any CBA. A CBA framed in this way would highlight the cost of replacing UoSA based on the MUoSA with the proposed approach which would incur the addition cost of creating a DDA for those parties well advance in adopting a MUoSA under the voluntary approach. WEL's own experience was that we were well on track under the voluntary arrangement to remove our legacy agreements at a reasonable cost. It seems inefficient for us to have to incur additional costs

	associated with establishing, consulting on a DDA and operational terms given the expense of work already done on our WUoSA.
Q4. What are your views on the regulatory statement set out in section 4?	WEL agrees with the detailed assessment contained in the ENA submission. A case has not been made that there is a problem with the way distributors and traders develop, negotiate and agree agreements. As a party that has been through this process, we are not aware of any such problems. We suggest the problem is actually with those parties that have not developed, not negotiated and not agreed agreements based on the MUoSA or may be continuing to enter legacy agreements that have slowed the gains possible from alignment with the MUoSA. Those that have, have contributed to increasing standardisation as required by the Authority. In regard to the CBA, again WEL agrees with the detailed assessment provided in the ENA submission. We would add that our own experience as noted to the Authority in our last submission is that our earlier sunk investment to prepare and offer our WUoSA requires very little incremental cost for each additional retailer. Our observation has been that retailers similarly, once they have initially come to terms with the MUoSA, the Vector and other party variations, can efficiently enter subsequent MUoSA based agreements.
Q5. What are your views on the detailed drafting of the Code amendment provided in Appendix B and Appendix C?	The ENA submission includes our own detailed views. A summary WEL's key issues are: • Termination provisions, both lack of termination by notice and lack of consideration for termination by default within the proposed replacement Part 12. • Liabilities – WEL believes the liability limits should be operational terms. They benefit both parties and there is no benefit to consumers from increasing these or excluding annual caps, as is common in legacy agreements and included in our WUoSA. Any increase in liability above current amounts in legacy agreements or our WUoSA, will require distributors and traders to increase their insurance coverage and costs accordingly imposing additional costs on consumers. • Drafting quality. The drafting quality of core terms has in some places accidently captured operational terms. • Lack of mechanisms for updating core and operational terms with the new Part 12. • Lack of a clear requirement to enter a DDA. We are concerned about the potential for inconsistent access to remedies as it is untested whether a breach of a DDA can be remedied in Tort, where clearly any alternative agreement can be.

	• Schedule 1 – we are deeply concerned with the direction and implications of Schedule 1. We have been verbally advised that our current practices in relation to operational terms do not need to change. But, the approach to core term drafting, use of example operational terms and introduction of the ruling panel powers, means that alternative approaches may not be able to be maintained. In particular, WEL has a form of what we generally understand to be known within the industry as a Charter Payment for breaching our self-imposed loss of supply restoration timeframes. We make these payments direct to customers and can see no good reason to change this well established and efficient practice.