EA networks
connecting our community

0800 430 460

22 JB Cullen Drive
Ashburton Business Estate
Ashburton

Private Bag 802
Ashburton 7740
New Zealand

eanetworks.co.nz

14 November 2023

Submissions
Electricity Authority
PO Box 10041
**Wellington 6143**

by email: DDA@ea.govt.nz
(subject line "Consultation Paper—Proposed changes to the DDA template consumption data template, and related Part 12A clauses")

**Submission on proposed changes to the Default Distributor Agreement template**

Thank you for the opportunity to provide feedback on the Electricity Authority's (the Authority) Proposed changes to the default distributor agreement template (DDA), consumption data template, and related Part 12A clauses (the Consultation Paper) dated 3 October 2023.

The main issues that affect us in the Consultation Paper are the proposals to convert recorded terms into core and operational terms, and to amend the consumption data template. We provide our comments on the relevant aspects below.

In addition to our more focused feedback, EA Networks also supports the feedback provided by the Electricity Networks Association.

**Some recorded terms may still be needed**

The original basis for recorded terms was to accommodate areas where the Authority did not have jurisdiction to regulate. We note from the Authority's 2019 consultation paper on this topic:

> *"The purpose of recorded terms is to provide for distributors to record particular rights or obligations that might be expected to be seen in a complete contract for distribution services, but that relate to matters the Commission may have the jurisdiction to regulate under Part 4 of the Commerce Act and cannot be regulated by the Code."*

Further, we understand that some of the provisions were identified as recorded terms on the basis that they related to prices or revenues, and we note the Authority's comments in the same 2019 consultation paper:

> *"For example, a provision that limits how frequently distributors can change their prices may fall within the Commerce Commission's jurisdiction."*

We understand that the amendments to section 32 of the Electricity Industry Act 2010 (Act) allow the Authority to regulate quality or information requirements, and to set pricing methodologies, but the Authority is still not able to use the DDA to regulate maximum prices or revenues that distributors may charge.

We are of the view that several clauses that the Authority is proposing to mandate as core terms will affect the maximum prices or revenue that we can charge, and should therefore not be mandated. These include:

- Price changes (clause 7.3) – the restriction to only allow one price change in any 12 consecutive months, if it were to ever actually prevent a price change, would affect our total revenue.
- Applying interest on wash-ups (clause 33, definition of Use of Money Adjustment) – the requirement to apply a use of money adjustment on wash ups will affect our total revenue.
- Refund following interruptions (clause 9.10) – the requirement to refund charges following an interruption of more than 24 hours effectively prevents us from charging traders in certain circumstances, preventing us from collecting total revenue.

In relation to these matters, our concerns relating to the approach that the Authority is proposing to mandate are not trivial, and have been raised by the industry in response to previous consultations. We submit that the Authority has reached beyond its jurisdiction to regulate in these areas and should instead retain the "recorded terms" approach for these items.

While we reserve our position to challenge regulation in these areas, if the Authority elects to go ahead with amendments, then we reiterate concerns that have been raised with the Authority previously, and provide (again) alternative approaches that might address the issue more appropriately in the following sections.

**Inappropriate restriction on price changes**

Clause 7.3, which is now proposed as a mandated core term, would inappropriately prevent some price changes:

- where it provides for mid year price increases in certain circumstances, it would then inappropriately, prevent a price increase the following 1 April, effectively locking in an annual cycle of price changes that deviates from 1 April,
- while it provides for price decreases at any time, it then prevents a subsequent price increase for 12 months,
- if a price for a specific customer was changed, it would prevent all other price changes for 12 months.

The issue is that allowable price changes are not carved out of the restriction on subsequent price changes in the following consecutive 12 months.

Consistent with previous consultation responses to the Authority, we propose that this restriction be redrafted as:

> "7.3 Price changes: Unless otherwise agreed with the Trader, the Distributor may not change its Prices more than once in any 12-month period ending on 31 March, unless a change:
>
> (a) results from a material change in a cost that is a pass-through cost or a recoverable cost specified in a determination of an input methodology by the Commerce

Commission under Part 4 of the Commerce Act 1986 in respect of the services provided by the Distributor;

(b) relates to the Distributor providing new Distribution Services or materially changing existing Distribution Services, provided that any proposed Price change must only apply to ICPs affected by the new or changed Distribution Services; or

(c) results from a change in the law.

Nothing in this clause prevents the Distributor from changing a Price at any time with the agreement of the Trader."

We are of the view that this alternative would address the Authority's concern without the unintended consequences or possible future litigation when parties might interpret the Authority's proposed wording in different ways.

**Interest on wash ups**

Clause 33, definition of Use of Money Adjustment is now proposed as a core term, mandating a 2% interest rate be applied to wash ups. We are not aware of the issue that is being addressed here. As a recorded term, distributors have had the ability to protect their interests if needed, and most have elected to set the interest rate to nil. In most situations, where estimates are required, it is traders that establish those estimates, so traders have a measure of control over the accuracy of those estimates.

I have been involved in retailer billing process for a very long time, and I don't recall even one instance where a retailer has requested interest on a wash up. We acknowledge that there is a provision for the parties to agree not to apply the adjustment, but it is not realistic to expect we will get all our 28 traders to agree (or even respond to a request to agree). If just one trader decides not to agree, then we must establish systems and processes to apply the adjustment.

While I'm not opposed to the concept, and the adjustment does provide appropriate incentives, it does come at a considerable cost. Notable issues include:

- The interest adjustment is an item that is not subject to GST. All other service components are subject to GST so billing systems would need to be adapted to accommodate non-GSTable items. In addition to the cost of change, invoices would become more complicated, and there would be an administrative overhead responding to both internal and external queries.
- We are required to deduct resident withholding tax (RWT) when we make interest payments to parties that don't hold an RWT exemption certificate. Most of our traders (by number) do not hold an RWT exemption certificate. The administrative burden and complexity of calculating, showing, accumulating and paying this to IRD is considerable.
- The proposal that the interest is calculated daily and compounded at the end of each month is burdensome. It would require a part month calculation for the first and last month, and full month calculation (based on the number of days in each month) in between. A simple daily compounding approach, or a non-compounding approach would provide a much more elegant solution.

- It requires us to track the date an invoice is paid in our billing system. Most distributors use specific billing engines that are separate from their core finance systems. The billing system issues invoices with a due date, but after that the debtor account and any checking or chasing of payment is administered under the finance system. Calculating the adjustment would require the billing system to be enhanced to track when payments and part payments are made.

We submit that the definition in clause 33 should be amended to:

> "**Use of Money Adjustment**" means an amount payable at the Interest Rate plus 2% from the due date of the original invoice to the due date of the Revision Invoice or any other related credit or debit which relates to the same Distribution Services charges calculated and compounded daily (at 1/365$^{th}$ of the annual rate).

And that clause 9.3(f) be amended to:

> (f) 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 the Distributor may apply a Use of Money Adjustment credit or debit (respectively) on the condition that, if the Distributor applies any debits, it must also apply all credits for all revision invoices issued in the same month.

**Refund following interruptions**

Our service is characterised by the provision of a network. It is widely recognised that the most efficient network is one that fails from time-to-time. It is prohibitively expensive to construct a distribution network with sufficient back-up and security to ensure an uninterrupted supply. We regularly survey our customers on the trade-off between cost and reliability, and they tell us that we have the balance about right.

The proposal to mandate the requirement to refund charges where there is a continuous interruption of more than 24 hours undermines our ability to adopt customer preferences when setting this balance.

While this concern relates to our wider customer base, we have a specific concern in relation to our larger customers where charges are based on actual equipment installed for their supply, and often they will select a cheaper, lower security option where this meets their needs. A mandated contractual requirement to refund fixed charges (and for our larger customers, all charges are fixed daily charges), would prevent us from providing this option.

In addition to this point:

- We note that a 24+ hour outage would most likely be a symptom of a widespread external event (like a windstorm or snowstorm). In these situations, we are likely to be going to considerable lengths and expense to restore supply to affected customers. At these times our service is one of restoration, and it is inappropriate that we would be contractually prevented from charging.

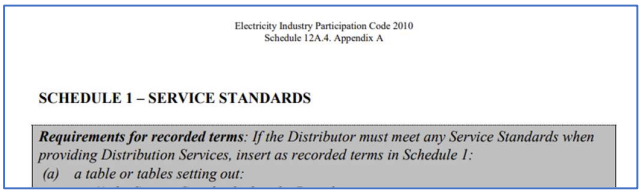
- Our focus is always to restore power quickly, but, importantly, to do it safely. This can mean waiting until weather event has eased. A financial penalty may incentivise unsafe practices.
- Improved reliability is already incentivised via the quality incentive in the default price path.
- We are not aware that customers are seeking a refund arrangement – we have not had requests for refunds, and we have not received feedback in our surveys suggesting that we should provide refunds. We understand that customers want to get the power back on, and they recognise that this comes at a cost.

We submit that clause 9.10 should be deleted. Distributors that wish to make a similar (or more limited or focussed) undertaking, can instead include a collateral term to support the undertaking.

**Changes to Schedule 1 Service standards**

The Consultation Paper suggests that the provision that many distributors have added to allow (and limit) changes to schedule one is unnecessary and creates ambiguity on the basis that the Code provides for changes to "operational terms".

Our understanding is that Schedule 1 is a recorded term, rather than an operational term. Checking the Code as it is currently published appears to confirm this:



Electricity Industry Participation Code 2010
Schedule 12A.4. Appendix A

**SCHEDULE 1 – SERVICE STANDARDS**

***Requirements for recorded terms**: If the Distributor must meet any Service Standards when providing Distribution Services, insert as recorded terms in Schedule 1:*
*(a) a table or tables setting out:*

In previous consultations the industry pointed out that the Code provided no mechanism to alter recorded terms (and the risks and issues that arise through perpetual undertakings). In our view, the amendment was both necessary and unambiguous. It addressed the issue and balanced the impact on traders with a limit on how often changes could be made.

Having said that, we confirm that the mechanism for adjusting operational terms in the Code (if schedule 1 is to become an operational term) is adequate. However, it is unclear what would happen if both operational terms are changed (which are deemed to apply) and collateral terms are changed (which only apply with the agreement of the other party). We may reach a situation where bits and pieces of different agreements apply, in an overall inconsistent construct.

**Cost to change exceeds benefits**

Having been involved in the consultation on operational terms and recorded terms when default distributor agreements were put in place, it is not clear that the changes are actually being sought by either party to these agreements. The cost to go through another round of consultation with all parties will surely exceed the benefits for the few traders that join each year.

This initial cost appears to have been significantly under-represented in the cost benefit table. To suggest that all distributors could prepare updated DDAs for $4,000 is not credible. Preparing consultation documentation, justification, arranging discussions, summarising feedback, seeking legal review where our approach is challenged will vastly exceed this sum, just for us alone.

We note that the vast majority of benefits come from the amendments to the data agreement, so perhaps those changes should be considered under a separate cost benefit assessment. With this approach, we expect that the changes to the DDA may show a net cost.

**Changes to the data template**

In our view, the Authority has understated the impact of the restriction on combining data. The Authority has noted a range of datasets that we would be unable to use as a result of the restriction on merging data (like weather, or census data). However, the biggest restriction is that we could not merge data provided by one trader with data provided by another trader, and could not merge it with our own geospatial network models. This is the most restrictive aspect, as it prevents us from building a complete picture of our network.

The amendments that were jointly developed by ENA and ERANZ effectively addresses this issue. However, we have only been able to put data agreements in place with a small number of traders, and one trader requested variations to the ENA/ERANZ template which led to a lengthy interaction and legal review.

We are pleased to see that the Authority is looking to adopt the ENA/ERANZ template. However, for us (and we suspect for many others) the changes do not go far enough.

A particular concern for us is that data provided under the data agreement can only be accessed by members of a data team. To qualify to be a member of a data team, the person must not be involved in any activity that is not regulated under Part 4 of the Commerce Act (clause 3(b) and clause 6). We simply do not have any staff that are not involved in activities beyond those regulated under Part 4 of the Commerce Act. All other regulation permits and deals with activity that is beyond the scope of lines function services, and we think that the data agreement can also accommodate this, without undermining the interests of traders.

We are also concerned with the prices that we are being quoted for supply of metering information by metering equipment providers. Customers are already paying for their metering service, and any additional cost that is loaded on networks will filter through as an additional cost for customers. Open data that is appropriately protected is essential to the running of the industry and our networks. We need this data at least cost and least friction to enable better customer outcomes.

**Concluding remarks**

Thank you again for the opportunity to provide feedback. If you have any queries regarding these comments, please feel free to contact me on 027 248 8614 or at anisbet@eanetworks.co.nz.

Alex Nisbet
Pricing **Manager**