

2 October 2023

Submissions
Electricity Authority

Nova Energy Limited
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By email: ConsumerCareConsultation@ea.govt.nz

Re: Options to update and strengthen the Consumer Care Guidelines

Nova Energy (Nova) appreciates the Authority's giving retailers the opportunity to provide feedback on its Consultation Paper: *Options to update and strengthen the Consumer Care Guidelines*.

Overall, Nova supports the proposal to make parts of the Consumer Care Guidelines (**Guidelines**) mandatory, provided the Guidelines are fair, reasonable and practical to implement. In Nova's opinion, there is work to be done in improving the current Guideline's workability before parts are made mandatory – as explained in the high-level comments below and the specific comments appended to this letter (responding to each question asked by the Authority in the Consultation Paper).

Nova therefore recommends the Authority adopts **Option 2** initially, followed by Option 3, in time.

Current Guidelines:

Nova was involved in the original development of the Guidelines and is proud of its track record in adhering to the Guidelines, particularly in respect of its record of dealing compassionately with its customers when they strike difficulty with paying their bills.

In March 2021 the Authority chose to adopt the Guidelines that had been developed by members of ERANZ and overlay on those the expectations of various social agencies. Those social agencies expressed little interest in the costs of compliance in the amended version of the Guidelines, and Nova argues it is misleading to state that "*the Guidelines were a product of general industry consensus when published in 2021*". Nova made the following submission on the Guidelines in March 2021:

Given the guidelines focus heavily on process rather than outcomes, Nova supports the Guidelines being voluntary, and the Authority monitoring outcomes. The Guidelines, in their current form, stand to add significantly greater costs for retailers; without necessarily improving outcomes.

The Authority's focus should be on incentivising retailers to adopt innovative solutions to engaging with customers. Whether the development of a scorecard will help achieve this will depend on what is to be measured. Nova encourages a strong emphasis on results rather than a strict compliance with the processes outlined in the Guidelines.

The Current Proposal:

The Authority now proposes to make parts, or all, of the Guidelines compulsory (by way of Codification), despite the following:

- a) The Authority has not, in Nova's view, had an open, two-way, dialogue with retailers to hear and acknowledge some of retailers' concerns with interpreting and practically applying the current guidelines, or about the options now being proposed. This goes against the Authority's own overarching principal B of the Guidelines (i.e., that respect and constructive engagement underpin both the consumer and retailer experience).
- b) Nova disagrees that available data is insufficient to clearly link the Guideline's introduction to achieving intended outcomes¹, or that the Guidelines have failed to deliver on their purpose or intended outcomes for consumers. In Nova's view, the Authority has made up its mind too quickly that the Guidelines are not delivering their intended outcomes, or that retailer implementation and alignment with the Guidelines has not been as consistent as expected. For example:

¹ Section 3.24 of the Consultation Paper.

- (i) There has only been one complete review of the self-assessment to date.²
 - (ii) The Consultation Paper includes an out-of-date table (Table One) that misrepresents the current extent of alignment with the Guidelines.
- c) In Nova's opinion, one of the key things that needs to be addressed (before Codification is considered) are the issues retailers have in interpreting and applying certain aspects of the Guidelines, as noted by the Authority at clause 3.21 of the Consultation Paper. Indeed, despite these issues being known to the Authority for some time, the Authority is proposing to go straight to Codification of a document that is not yet fit for purpose.

Given these concerns (which are widely held by retailers), Nova requests that before any further work on the Guidelines (or the proposed Codification of any aspect of the Guidelines) is conducted, the Authority should first:

- explore with retailers the reasoning behind their responses to their review of alignment completed in 2023 and complete its 2023 review of retailer alignment with the Guidelines;
- publish all data it holds on disconnections (given avoiding and minimising harm by disconnection is a key outcome of the Guidelines); and
- consider and consult on clarifying, updating and amending key clauses in the Guidelines that require attention to ensure they can be effectively and consistently interpreted and implemented by retailers.

As noted above, Nova does support the proposal to make parts of the Guidelines mandatory, but we're also keen to see they are properly understood and practical to implement before this happens.

For example, it is entirely appropriate retailers should help support families that find themselves in financial difficulties, but Nova equally believes codifying the Guidelines will leave the sector's good operational intentions open to abuse and create excessive costs and non-sensible outcomes. Retailers are already encountering situations where consumers take avoidance actions to prevent the receipt of debtor's notices.

Further comment is appended to this letter, in response to each specific question asked by the Authority in the Consultation Paper.

Nova notes that ERANZ is separately submitting on this consultation, and that submission will include an analysis of key clauses in the current Guidelines that require attention.

Yours sincerely



Paul Baker

Commercial & Regulatory Manager



² Nova raised with the Authority the misdirection of communications reminding Nova to complete the Review in 2022. It understands all medium to large retailers responded in 2023.

Nova submission: Options to update and strengthen the Consumer Care Guidelines

Q No.	Question	Response
1	<p>Do you agree or disagree with our view that the Guidelines are not delivering on their purpose or intended outcomes? Please provide any supporting evidence.</p>	<p>Across 1.9 million households, there will always be situations where communications between the retailer and consumer have been unsatisfactory. That is not evidence of a systemic failure of the Guidelines to deliver on their purpose or intended outcomes.</p> <p>Nova requests the Authority publishes the data it holds on disconnections and completes its 2023 review of alignment with the Guidelines before making allegations that the Guidelines are not delivering on their purpose or intended outcomes.</p> <p>Nova notes that the review of retailers' self-assessed alignment with the Guidelines, published by the Authority in June 2023, misstated multiple facts and created an incorrect impression of widespread non-compliance with the Guidelines that was widely picked up in the media, by some government agencies, and community groups.</p> <p>In Nova's view, the Guidelines have been successful in achieving a great deal in terms of positive customer outcomes, particularly in terms of protections for vulnerable and medically dependant consumers (MDC).</p>
2	<p>Do you agree the policy objective should be delivering the purpose and intended outcomes of the Guidelines? If not, why not?</p>	<p>Yes. although some of the process requirements within the Guidelines add little in terms of benefit at the cost of significant resources which will most likely to be passed through to consumers in the prices they pay.</p>
3	<p>Do you consider the Guidelines' recommendations, purposes, and intended outcomes continue to reflect general industry consensus? Note in this question we are seeking your views on the Guidelines' content; not whether they should be mandatory.</p>	<p>Yes, to an extent.</p> <p>Nova supports the Guidelines in principle. However, Nova has always contended that some parts of the Guidelines are not practical and if followed prescriptively would lead to some negative and unintended outcomes, including increased costs for retailers, higher prices for consumers, lessening competition, and more customer complaints.</p>
4	<p>What do you think about our approach to limit options to areas covered by the current Guidelines?</p>	<p>Nova agrees the current options proposed should focus on the areas currently covered by the Guidelines. However, in Nova's view, some of the issues that the current Guidelines are meant to address fall out of the scope of the normal contract between a seller and buyer, and as such, require wider discussion and resolution between interested parties before codification occurs.</p>

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5	<p>What issues that fall outside of the current Guidelines would you like to see us consult stakeholders on in an issues paper to be released by mid-2024? If possible, please provide any initial evidence on these issue areas.</p>	<p>Any discussion on widening the Guidelines should include a discussion on the impediments created by the low fixed charge regulation and the resources that both retailers and network companies have put into phasing out those tariffs. Much of any existing dissatisfaction expressed by consumers may stem from the fact that there are winners and losers involved in withdrawing the cross subsidy that has applied to customers on the low fixed charges.</p> <p>There are principles of law involved that should be considered further, i.e. when a retailer is to be bound to a supply agreement where the consumer used deception to get the retailer to agree to initially supply or uses deception to get the retailer to continue to supply.</p>
6	<p>Are there other interpretation issues or areas of the Guidelines that you consider need to be clarified, that do not significantly amend or extend the Guidelines?</p>	<p>Yes.</p> <p>Refer to ERANZ separate submission in this regard.</p>
7	<p>Do you agree that parts two, six, seven and eight are the parts of the Guidelines preventing the greatest harm from occurring to domestic consumers?</p>	<p>Yes.</p> <p>However, these are also the areas Nova believes, if codified in their current form, would have the greatest unintended consequences. For example, retailers may not take on or “compete” for new MDC or vulnerable customers, given that they may be taking on excessive credit risk, even if only a small percentage of these customers knowingly take advantage of, or abuse their non-disconnection status. Similarly, retailers would have little recourse to disconnect for theft or wilful equipment damage where someone on the property has MDC status.</p> <p>Such requirements are impractical and only lead to greater retailers’ costs being passed on to all residential consumers, including those that do not create those costs. While the additional costs spread across all consumers may be small on a per consumer basis, it will still have a heavy impact on some consumers.</p>
8	<p>Are there any other options you think we should consider?</p>	<p>Yes, Option 2 should be progressed in the first instance, followed by Option 3 in time.</p> <p>Nova also notes that instead of opting to immediately make parts 2, 6, 7 and 8 of the Guideline mandatory (based on conjecture and poor data), and in conjunction with first updating and amending key clauses in the Guidelines that require attention to ensure they can be effectively and consistently implemented by retailers, the Authority could conduct spot audits of cases where consumers are disconnected and carry out an assessment of how each case was handled. While this would be expensive, it would most likely be cheaper than some of the other expectations in the Guidelines. The Authority could give itself authority to claim costs from the retailer in situations where the retailer is deemed to have acted unreasonably.</p>

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		The Authority could then facilitate representatives from interested parties meeting on a regular basis to discuss case studies.
9	Do you agree with our criteria to assess options? Are there any other criteria you think the Authority should use?	<p>No.</p> <p>The issue is too important to have decisions dictated by timeliness (proposed criterion four). Of course parties will want to see changes implemented in a timely and efficient manner, but that should not be used as an excuse to proceed without due process.</p> <p>For instance, Nova requests the Authority facilitate effective two-way consultation with retailers to properly hear their concerns, suggested improvements, and other feedback. The short one-way teleconference conducted with retailers in respect of this Consultation Paper did not allow proper discourse or easy feedback from retailers.</p>
10	Do you agree criteria four and five should be weighted less than the first three criteria?	<p>Criterion four should be deleted.</p> <p>Criterion five, the Authority cost, is a misnomer as the Authority's costs are levied against retailers in any case, i.e. any cost of compliance or enforcement should be factored into Criterion three. It must be recognised that any broad-based costs incurred by retailers must be recovered from electricity consumers in the long-run.</p>
11	Do you agree with our assumption that retailers already following the Guidelines should not experience a significant increase in their compliance costs if any part of the Guidelines is mandated?	<p>No, Nova disagrees with this.</p> <p>If codified, certain parts of the Guidelines will almost certainly lead to higher costs for retailers. These include increased debtors outstanding, credit management costs, debt write offs and call handling times. Refer Q14 below.</p>
12	Do you agree that under the status quo, concerns regarding retailer alignment with the Guidelines are likely to continue?	<p>No.</p> <p>As noted in the covering letter, Nova believes the Authority has been premature in its assessment that the Guidelines are not delivering their intended outcomes, or that retailer implementation and alignment with the Guidelines has not been as consistent as expected.</p> <p>Nova believes the Authority could answer any concerns by conducting more proactive monitoring of consumer outcomes and engagement with retailers that appear to give cause for concern. Nova also recommends the Authority could improve many aspects of any reported non-compliance by holding more regular industry forums to address concerns.</p>

Q No.	Question	Response
13	What impacts to competition, innovation and efficiency in the retail market would you expect to see for options three and four respectively?	<p>Options three and four would lead to higher costs for reasons outlined above and below, as well as reduced competition in selected areas and customer segments.</p> <p>There would potentially be greater innovation in the form of targeting consumer segments that has been seen by smaller retailers in the past, e.g. online access and marketing only, accompanied by weekly direct debits for payment of invoices.</p>
14	For retailers, broken down by Guidelines part, what would the estimated costs to your business be of codifying parts of the Guidelines under option three or four (for example implementation and compliance costs)?	<p>Estimating the cost of compliance requires making a wide range of assumptions, and as such Nova is happy to work through those and its cost estimates directly with the Authority.</p> <p>At a minimum, based on customer notices sent in September 2023, literal compliance with the CCG would cost Nova an additional \$10 per residential customer per year.</p>
15	What do you think the benefits to domestic consumers will be under options two to four?	<p>Option two is Nova's preferred option at this time.</p> <p>Nova believes Option 2, along with better governance from the Authority would promote more practical operational Guidelines and best deliver on their intended outcomes.</p> <p>As noted, Nova considers moving straight to codification of the existing Guidelines (Options 3 and 4) would be detrimental to domestic consumers.</p> <p>That said, Nova is not opposed to codification, provided that key clauses in the Guidelines that require attention are first clarified and updated/amended to ensure they can be effectively and consistently interpreted and implemented by retailers.</p>
16	Do you agree with our initial assessment of the options against the status quo? If not, what is your view and why?	<p>No.</p> <p>Nova's view is the Authority is being premature in responding to influence from a small number of parties who do not have up-to-date statistics, or a pragmatic understanding of the costs involved in the some of the more problematic prescriptive elements in the Guidelines. For instance, an increase in the working capital required to cover delayed debtor collections is not of minor consequence.</p>
17	Do you agree with our preliminary view? If not, what is your view and why?	<p>No.</p> <p>Nova's view is the Guidelines are, on the whole, achieving the desired outcomes. As such, Nova asks the Authority to:</p> <ol style="list-style-type: none"> a) publish the industry disconnection statistics it holds. That is a key measure of several areas the Guidelines address;

Q No.	Question	Response
		<ul style="list-style-type: none">b) have a proper dialogue with retailers about their views about the Guidelines with a view to understanding the practicality and the unintended consequences that would be caused if they were to be mandated; andc) facilitate regular industry forums to discuss adherence to the Guidelines and how better consumer outcomes can be achieved.