

2 September 2024

s9(2)(a)

Tēnā kōrua s9(2)(a)

Thank you for your letter dated 16 August 2024, regarding your client Reliance Marketing Limited (Reliance).

Your letter suggests that you consider that the Electricity Authority Te Mana Hiko (Authority) may be making a change to the definition of retailer to expand its scope. You appear to have reached this conclusion due to two communications between the Authority and Reliance, one in 2021 and a second dated 22 April 2024 with the first resulting in Reliance being treated as not being a retailer, but the second suggesting that Reliance might be a retailer.

We can confirm that no change to the definition of retailer has been considered by the Authority at this time. Our communications with your client are the result of information being provided to the Authority about your client's activities. In each case the Authority looks at the information provided and assesses it against the definition of retailer in section 5 of the Electricity Industry Act 2010 (Act) to see if it fits that definition. If your client meets the definition of retailer, then it is a participant and required to register as a participant under the Act.

We recently received a copy of an invoice your client appears to have issued that suggests that it is selling electricity to a consumer. On the face of this information your client appears to be a business engaged in retailing which meets the definition of retailer in the Act. As we wrote in our 22 April 2024 letter, we are happy to receive an explanation from Reliance to describe why it considers it is not a participant. Alternatively, we would appreciate Reliance advising that it has registered.

We have considered under the Official Information Act 1982 (OIA) your request for the following information:

“Copies of any guidance, memoranda, research notes or similar material prepared or adopted by the Authority since 1 January 2021 relating to:

- a. Any proposed changes to the definition of “industry participant” or “retailer” in the Electricity Industry Act 2010 and the Electricity Industry Participation Code 2010;*
- b. The criteria against which the Authority would determine whether a party is a “retailer” or “retailing”;*
- c. The timeframe of when the Authority intends to implement any proposed changes to its energy participant criteria; d. The Authority’s position on the role of energy broker companies in the Industry; and*
- d. The Authority’s position on the role of energy broker companies in the Industry; and*
- e. Any other information relevant to the subject of this request that you think would assist our Client in understanding the Authority’s position.”*

Requests a, b, and c.

The Authority has not proposed changes to the definition of “industry participant” or “retailer” in the Electricity Industry Act 2010 (Act) and the Electricity Industry Participation Code 2010 (Code). There are no criteria to determine whether an organisation is a retailer beyond what is in the [section 5 of Act](#). Therefore, requests a, b, and c are declined under section 18(e) of the OIA as the information requested does not exist.

Request d.

The Authority does not have a position on the role of energy broker companies in the electricity industry. Therefore, request e is declined under section 18(e) of the OIA as the information requested does not exist.

Request e.

The Authority has recently [published a consultation paper on mandating the Consumer Care Guidelines](#). That consultation paper states:

- 3.8 Like the Guidelines, the proposed Consumer Care Obligations will apply to retailers as defined in the Act. Under the Act, ‘retailer’ means a business engaged in retailing, and ‘retailing’ means the sale of electricity to a consumer other than for the purpose of resale.*
- 3.9. This definition does not distinguish between network types (that is, whether electricity is sold on a local distribution network or a secondary network that is indirectly connected to the national grid). This means that any person who sells electricity to residential consumers as part of their business is a ‘retailer’ and will be subject to the proposed Consumer Care Obligations. This will include, for example, a person who buys electricity and on-sells it to residential consumers on a secondary network such as an apartment building or retirement village.*

The Authority is considering publishing guidance for retailers about the Consumer Care Obligations, which are proposed to come into effect from 1 January 2025. This may include further guidance on how to identify whether a person is a 'retailer' under the Act. However, at this stage no such guidance has been developed.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

If you wish to discuss this decision with us, please feel free to contact us by emailing oa@ea.govt.nz.

Nāku noa, nā,

A handwritten signature in black ink, appearing to read 'Airihi Mahuika', with a long horizontal flourish extending to the right.

Airihi Mahuika
GM Legal, Monitoring and Compliance