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Follow-up Consultation – Proposed Changes to the Default Distributor Agreement

Introduction

Utilities Disputes Limited Tautohetohe Whaipainga (UDL) welcomes the opportunity to comment on the Electricity Authority Te Mana Hiko's (EA) further consultation regarding the default industry agreement (DDA).¹

UDL

UDL is an independent, not-for-profit organisation that resolves complaints between utilities companies and their customers. We operate the government approved Electricity and Gas Complaints Scheme. We also are responsible for the government approved Broadband Shared Property Access Disputes Scheme, and voluntary schemes for water and telecommunications. Part of our role is to facilitate a strong relationship of trust between consumers and utilities organisations, with a focus on three aspects - Prevention, Education and Resolution.

It is therefore through the lens of consumer complaints and our extensive experience in the electricity sector that we comment on the proposed changes to the core terms of the DDA template and a suggested change to the Electricity Participation Code 2010 (the Code). Note a core term is one that must be included in a DDA.²

The proposed changes in the main concern payment for electricity supply (sometimes referred to as distribution charges or lines charges) when there is an outage. For ease of reference and for the outside reader the proposed clauses³ are set out above each set of questions provided by the EA.

¹ See template, Electricity Participation Code 2010 (the Code), schedule 12A.4, Appendix A.

² Ibid., cl 3(1).

³ There is also a proposal to change the definition of "use of money adjustment". This matter primarily concerns the relationship between retailers and distributors, and therefore UDL is of the view that the EA in conjunction with these parties is best placed to consider this matter.

9.10 Reduction of charges due to electricity supply interruption: If, as a consequence of a fault on the Network, there is a continuous interruption affecting a Customer's Point of Connection for 24 hours or longer, the Distributor must:

- a) advise the Trader of the ICPs that are so affected either as part of the invoicing information for the next monthly billing cycle or separately prior to the next month's billing cycle (for example by updating the registry status to "Inactive", or by sending a separate report); and
- b) in the next monthly billing cycle, reduce the Distribution Services charges paid by the Trader in respect of the ICP or ICPs for that Customer for the number of complete days during which supply of electricity was interrupted, by setting the billed quantities for each day during which the interruption continues and the day the interruption ends, except the first day during which the interruption began, to zero.⁴

EA Questions

- Do you consider the revised proposed approach in 9.10 is workable, efficient, and effective? Would you propose any alternative approaches? Please describe these approaches in your answer.

UDL routinely receives complaints about outages, for example in the past two years we have processed about 517 outage complaints. Out of those about 14 noted lines charges in some way.⁵

In our experience, the way retailers and distributors manage outages can vary. Operationally some retailers appear to have a toolbox of solutions, while others are more constrained. Some offer small customer service payments, others link customer service payments to the number of outages. Some retailers will analyse any request against the quality of supply guarantees in the Consumer Guarantees Act 1993 (CGA), although their familiarity with the guarantees themselves and analysis required can vary. For instance, they may not be aware⁶ that some business may be covered by the CGA and/or their contracting out provisions appear to require further reflection. The relationships between distributors and retailers can also be uneven which can be an issue, given the desire both entities will work together to manage and respond to a CGA issue.⁷

UDL recognises that a variety of approaches are permissible in terms of industry practice and the differing business models. Yet, at times this also can lead to confusion when people affected by the same outage are treated differently by their retailers. Consumers would therefore benefit from clear, consistent and accurate communications in relation to their rights when an outage occurs so they can make informed decisions.

⁴ EA, *Follow-up Consultation – Proposed Changes to the Default Distributor Agreement*, 2 July 2024, Appendix A, 19-20 (format amended).

⁵ A complaint is an "expression of dissatisfaction", most are able to be resolved by referral to the retailer and do not require the Commissioner to issue a decision.

⁶ See for example the discussion in *Contact v Moreau*, CIV 2017-485-962 [2018] NZHC 2884.

⁷ Support for the general expectation that retailers and distributors will work together when there is an outage see: *Contact v Jones*, HC, CIV 2007-485-2761 [24 April 2009], para 74. UDL also notes observations in the report where revised clauses appear to limit distributor responsibility: EA, *Proposed Changes to the Default Distributor Agreement Template, Consumption Data Template, and related Part 12A Clauses*, 3 October 2023, B. 3 – B. 14, 29-30.

If retailers and distributors have a constructive relationship in which they can discuss matters such as supply costs and affected ICPs, aided by clear rules, all the better for the consumer.

Against this background UDL supports clause 9.10 in relation to supply charges as it will be a marker for the retailer and distributor, which in turn, in the context of the other amendments, assist the consumer.

UDL also approves of the suggested amendments to 9.11 and clause 12A.6. The approach appears to factor in that distributors, retailers, and consumers do not function in isolation or solely within bi-lateral relationships.⁸ The amendments concern *only one* of the costs of electricity, however it will be a ready aspect of the response of a retailer to a consumer when there is an outage.

The 24-hour window is a marker and appears an effort to rebalance the commercial aspect of electricity supply, in terms of the expectations of the consumer. Electricity is a particular type of good. While a commercial good it has a public aspect meaning the ordinary consumer is said to accept limitations of the network:

The evidence establishes that electricity distribution in New Zealand has certain characteristics which the consumer must be taken to know. They are: supply through overhead lines and/or supply that is dependent on a single circuit; planned outages for some maintenance; unplanned outages or voltage fluctuations related to fair wear and tear, environmental hazards such as birds, possums, contact with vegetation, storms, or excessive consumer loads; instability after outages; and third party damage.⁹

However these amendments may be seen as recognising that within the commercial understanding of electricity, it is equitable that there be some change in the consumer's billing when there is an outage.

UDL, acknowledges the work done by the EA in assessing the costs of the proposal and its view that it will not alter costs greatly.¹⁰ The EA has also attempted to manage the changes within existing procedures. However further submissions may continue feed into this analysis as to whether the change benefiting individual consumers in a small way is cost effective in terms of the *impact* for those same consumers and the costs to the network.

- *Do you consider it would incentivise distributors to restore electricity supply to consumers more quickly if they did not need to reduce charges for a longer outage period than 24 hours? If so, what time limit would you consider reasonable before charges should be reduced (eg, a maximum of 48 hours interruption)? How would this longer period incentivise quick restoration of electricity supply and balance the disruption to the consumer and the consumer's right to receive the electricity they are pay for?*

UDL's experience is that distributors work hard to restore power, although often communications between retailer, distributors and consumer could be improved. We do not

⁸ Note the Energy Scheme Rules do not allow UDL to consider an outage complaint against Transpower, see Appendix 2, clause 2. Outage complaints are considered under scheme rule 14 (a).

⁹ *Contact Energy Ltd v Jones* para 97.

¹⁰ See EA, *Follow-up Consultation*, 6.2, pg. 18.

believe the changes will necessarily incentivise distributors to restore supply more quickly, however, they can assist in providing some form of redress for consumers in relevant cases. In our experience most outages are much shorter than 24 hours. The 24 hour window appears to strike that balance between electricity being treated as commercial good, and as a public utility where some outages must be expected. UDL notes that the EA is careful not to define the window as a guarantee: “The Authority also notes clause 9.10 is not requiring distributors to guarantee power will be restored within 24 hours. However, a threshold of 24 hours provides a reasonable balance between a consumer’s right to have their charges reduced when electricity is not supplied.”¹¹

In terms of the UDL’s Commissioner’s role in resolving complaints against a fair and reasonable standard, the proposed clauses are likely to form part of that inquiry, as the Commissioner considers industry guidelines and practice.¹² More specifically contractual arrangements often require consideration in a CGA and/or negligence type complaint.¹³

9.11 Reduction of charges due to state of emergency: If, as a consequence of a declared state of emergency under the Civil Defence Emergency Management Act 2002, the Customer or the Trader on the Customer’s behalf requests disconnection, and the ICP or ICPs cannot be accessed to be disconnected, the Distributor must, in the next monthly billing cycle, reduce the Distribution Services charges paid by the Trader in respect of the ICP or ICPs for that Customer for the number of complete days from the date disconnection was requested, by setting the billed quantities for those days to zero.

EA Questions

- *Do you consider new clause 9.11 effectively addresses the identified problem? Would you propose any alternative approaches? If so, please describe these approaches in your answer.*

In an emergency, accurate and accessible information is important for consumers. Consistency in communication both across the industry and within the customer service points of a particular retailer becomes even more important.¹⁴

This clause therefore appears to set out a clear process for such occasions, requiring only that a customer request a disconnection. It would also be expected that the consumer be advised of: a) the ramifications of a disconnection and the costs of any later reconnection; and b) other resources available to the consumer.

Good crisis management which informs consumers may be understood as an expression of: “adopting behaviours and processes that foster positive relationships with domestic

¹¹ EA, *Follow-Up, Consultation – Proposed Changes to the Default Distributor Agreement*, 2 July 2024, para 2.25, 9.

¹² See *Energy Scheme Rules*, rule 24.

¹³ See discussion for example in *Vector v UDL*, CIV 2017-404-000605, [2018], NZHC 3096, para 76.

¹⁴ See the discussion of the experience of some consumers captured in *FinCap, Put on Hold?: Cyclone Gabrielle, Covid-19 Disruption and Business as Usual – Do our Electricity Consumer Protections Work when Whānau Most Need Them?* (June 23), 5,24-25, 45-49, 54.

consumers”; and “helping consumers minimise harm caused by insufficient access to electricity.”¹⁵

Change to the Code

12A.6 Retailers must pass-through reduction in distribution charges

- 1) A retailer whose distribution charges are reduced in accordance with any provision in a distributor agreement to account for electricity supply interruptions or declared states of emergency must reduce the charges of those of its customers affected by the electricity supply interruption or declared state of emergency to reflect the reduction in the retailer’s distribution charges.*
- 2) When reducing a customer’s charges under subclause (1), the retailer may withhold an amount that reflects the reasonable costs incurred by the retailer to process the reduction, provided that amount does not exceed 50% of the reduction to the customer’s charges the customer would otherwise have received for the first day of any interruption. To avoid doubt, the retailer may not withhold any amount in respect of second or subsequent days of any interruption.*

EA Questions

- Do you consider new clause 12A.6 is practical to implement and will deliver benefit to consumers? Please explain why or why not. Do you see any issues or have alternative ideas? If so, please explain please explain what these are.

As discussed above UDL generally supports the pass-through Code change and its balancing of consumer and commercial interests in respect of the unique nature of electricity as a good.

UDL has considered this issue previously in a proposed recommendation. In the complaint there were several outages over two-year period which exceeded the distributor’s service standards. The Commissioner of the day determined it was fair and reasonable that the lines charges be reversed.

UDL would also like to emphasise that this measure should be viewed by retailers and distributors as an addition to their toolbox of remedies, and not replace existing mechanisms of credits that are often available to compensate consumers. UDL welcomes a consistent approach for all consumers but would be concerned if these more substantial forms of consumer redress were scaled back by retailers and distributors in response to this limited change.¹⁶

UDL notes that the proposed clause does not specify how any reduction should be passed on to the consumer.¹⁷ In this regard UDL encourages the reflection and conversations being had in relation to a model power bill.¹⁸ As a minimum, consumers should be able to:

¹⁵ See EA, *Consumer Care Guidelines*, part 1, 3.

¹⁶ See for example Vector, *Residential Service Standards Brochure*, <https://www.vector.co.nz/personal/electricity/about-our-network/our-service-standards>; and Aurora Energy, *2021 Aurora Energy Customer Charter*, <https://www.auroraenergy.co.nz/who-we-are/our-customers>.

¹⁷ See EA, *Follow-up Consultation*, 4.7, pg. 12.

¹⁸ See Consumer Advocacy Council, <https://www.cac.org.nz/our-work/research/electricity-billing/model-electricity-bill> (29 July 2024).

a) understand what is happening on their account; b) what is being charged for; c) what is being credited; and d) how the credit is passed on. Guidance should be issued to achieve these aims as it will be to likely decrease inquiries on this issue for UDL and retailers.

Taking a wider lens the proposals consider one small aspect of a customer bill namely supply charges. However, to learn from events such as Cyclone Gabrielle is likely to involve continued work about what is required when such events occur in terms of: customer service, consistency in communications, and enabling access to electricity.¹⁹

Next Steps

If UDL can be of further assistance please contact Paul Byers, Legal and Policy Officer, paulb@udl.co.nz

Yours sincerely



Neil Mallon
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Tautohetohe Whaipanga: Utilities Disputes Limited

¹⁹ Various electricity actors have been doing this for example the FinCap report noted above and also see Electricity Networks Aotearoa, *Electricity Distribution Sector: Cyclone Gabrielle Review*, 13 July 2023, <https://electricity.org.nz/resources/electricity-distribution-sector-cyclone-gabrielle-review/>