

20 December 2024

Electricity Authority

To: connection.feedback@ea.govt.nz

**Re: Consultation Papers – Distribution Connection Pricing
Network Connections Project**

Utilities Disputes Limited | Tautohetohe Whaipainga (UDL) welcomes the opportunity to comment on the Electricity Authority's (EA) consultation documents, *Distribution Connection Pricing Code Amendment 25 October 2024 (Pricing paper)*, and *Networks Connection Project: Stage One Amendments, 25 October 2024 (Connection Amendment Paper)*.

The key points of our submission are:

1. UDL supports the EA's efforts to encourage a fair apportionment of capital investment and encourage enterprise through mechanisms such as a network connection pipeline, and a pioneer scheme methodology.
2. UDL joins with the EA in highlighting the importance of transparency in costing. UDL's experience is that some distributors can struggle to itemise and provide an explanation for their costs.
3. UDL notes the EA's consideration of a mandatory dispute resolution clause being inserted into contracts. The intention of this step is somewhat unclear, particularly what disclosure obligations are being considered. UDL encourages the EA to actively seek the advice of businesses¹ on their views, on this and other issues raised in the papers.
4. UDL encourages the EA to continue to work with distributors on an achievable timeline for the changes to coming into effect, and as needed continue² to ensure any changes are within the scope of the Electricity Industry Act 2010.
5. UDL suggest that the EA clarifies how both the proposal and the Code relate to all secondary networks, not just embedded networks.

¹ For example, reaching out to business representative organisations such as Chambers of Commerce.

² See *Pricing Paper*, fn. 78 and *Connection Amendment Paper*, fn. 88.

Utilities Disputes – Background

UDL operates the mandated industry dispute resolution scheme.³ Its core purpose is to ensure that any person who has a complaint about a retailer or distributor has access to a scheme for resolving a complaint.⁴ The complaints scheme is free to consumers.

In the last reporting year UDL considered 8,136 consumer queries, and 6,694 consumer complaints about electricity retailers and distributors (which includes secondary networks).

Complaints – Connections

UDL comments on the papers from the viewpoint of being the industry dispute resolution provider.

Fees

At the time of writing UDL notes the public disagreement between Vector and the EA about lines fees. As reported Vector's view is that the proposal will mean that the ordinary consumer will subsidise connections, as Vector will not be able to charge the full cost of the connection to the requestor.⁵ At its base the issue appears to be the apportionment of capital contributions and their inclusion/itemisation in connection fees. UDL supports this discussion.

At this stage UDL sees merit in the Reconciliation Pricing Methodology (RPC) which attempts to find a fair and reasonable apportionment of capital contributions for each connection. The RPC methodology identifies a zone of acceptability between what is termed the neutral and balance point, taking into account the type of connection or consumer group.⁶ This zone is worked out through an analysis of the categories of: incremental cost, incremental revenue, and the network cost.⁷ As the EA makes clear it is seeking to give consumers transparency in costings which may in turn lead to greater efficiencies:

“The cost reconciliation requirement does not directly alter how distributors set connection charges. However, it may:

- a) provide connection applicants with improved clarity as to the basis for their charges, especially for applicants who deal with multiple distributors
- b) assist distributors to assess and improve the efficiency of their connection charging, leading to greater consistency and fewer distributors with inefficiently low connection charges (ie, existing customers subsidising newcomers) or inefficiently high connection charges (ie, dampening connection growth).”⁸

Irrespective of the pricing model UDL supports requiring distributors to provide clear information about their connection costs. UDL's experience is that distributors sometimes

³ See Electricity Industry Act 2010 s 95.

⁴ See Ibid. sch 4, clause 1.

⁵ See Energy News, “Vector Launches Public Campaign Against EA Pricing Plan,” 10 December 2024.

⁶ See *Pricing Paper*, figure 7.1, para 7.59, 7.63, 7.66.

⁷ Ibid., 7.69 -7.77.

⁸ See discussion *Pricing Paper*, para 7.79.

struggle to itemise fees. This may be due to their historical non-public facing role. However, like any business such itemisation should be routine.⁹

An example of the difficulties in itemisation, is the UDL Case Study “Incorrect Fees” where the distributor struggled to provide fulsome evidence supporting charges for traffic management, the passing on of council fees, and the work done.¹⁰ This was a case when it was necessary to issue a proposed recommendation, however often UDL has been able to reality test with the distributor about such information gaps, acquire further itemised information and/or help the parties reach a negotiated settlement.

This issue has appeared in various types of complaints, for example itemisation has been challenging for the distributor in certain tree complaints, where the distributor has charged for the removal of the owner’s trees. In part the distributor has had to rely on the information of a contractor. However, the lack of any information in such cases is a business process issue, not a consumer issue, the consumer as with the supply of any good or service can expect fees to have a demonstratable rational basis on request.

The drive for increased clarity by the EA around pricing may be seen as ensuring distributors are held to the same consumer standards as retailers, who are used to, and required to provide a whole range of fee information, due to the Consumer Care Guidelines and industry practice.¹¹

Contracts and Contract Negotiation

The EA’s efforts to assist parties seeking a new connection is supported by UDL. UDL does receive complaints by small business about connections. Often these are resolved through negotiation. The sources of these complaints range from alleged: unmet expectations in terms of timeliness; issues in contract formation arising from quotes, estimates, and plans; alleged property damage by contractors; inadequate breakdown of fees; and/or poor customer service.

While the proposals do not directly address some of these matters head on, the EA’s attempts to provide further clarity in the process and ensuring access to information can prevent such issues arising and address any imbalances in the contractual relationship.

UDL is generally supportive of the changes in processes regarding distributed generation and load applications. UDL approves of the greater reliance on data analysis for assessing capacity in distribution generation, and for the setting out of discrete processes for differing loads. As the EA observes greater data monitoring through meter data and IT algorithms are already helping some distributors respond to customer’s needs.¹²

The proposed network connection pipeline, pioneer scheme methodology, and network costing requirements inclusive of supplying least cost alternatives can also be seen as further efforts by the EA to spread capital costs and/or promote efficient investment. UDL, at this stage, approves

⁹ See discussion *Pricing Paper*, para 7.71.

¹⁰ <https://www.udl.co.nz/en/support-and-information/case-examples/>

¹¹ See for example Consumer Care Guidelines, 34, 107-113.

¹² See *Connection Amendment Paper*, paras 5.223-5.224.

of the attempt to shift from basing costs on a project-based approach, where all costs are borne by the person requesting an upgrade, to a published rates approach.¹³

Dispute Resolution

UDL notes the discussion around an alternative dispute resolution clause inserted into contracts. We understand the EA wishes to gather information, about the actions of industry participants, and a way to do this may be to require any resolution outcome to be reported to the authority.¹⁴

We understand the intention of the clause is not to contract out of the Energy Complaints Scheme but provide an alternative that may help some consumers, this will be especially the case where the disputed amount is in excess of the Energy Complaints Scheme limit. UDL can consider complaints where the total claimed does not exceed \$50,000 and with the permission of the provider may consider claims up to \$100,000.¹⁵ However without the permission of the industry participant we cannot look at price of itself, but UDL can look at the correctness of billing.¹⁶

The *Pricing Paper* suggests industry participants and non-participants can make a complaint to UDL.¹⁷ This is not correct. UDL can consider complaints only from consumers. We can only consider indemnity disputes between participants that relate to limited issues and participants are barred from making complaints against each other for good reason.

We do not consider the proposed dispute resolution clauses prevent UDL from considering a complaint. However, we expect most, if not all, relevant contracts between participants and non-participants are likely to already include a dispute resolution clause. It is unclear whether the intention behind the insertion of a clause of this nature is to include a mandatory obligation to provide the EA with details of the outcome of any dispute resolution, however, the reference in 7.132 requiring the disclosure of arbitration decisions appear to indicate this. If this is correct, it appears to raise issues as to the confidentiality that would ordinarily attach to these processes and the fact the EA has no ability to impose disclosure obligations on non-participants which it is essentially seeking to do. Any attempt to impose disclosure obligations in this context may be contrary to the intent of the process and undermine the confidentiality that is normally attached to it. It may actually have an adverse impact non-participants, and we question whether the EA cannot rely on existing code obligations requiring participants to report an issue. The EA should provide more detail on the purpose of the proposed changes and any disclosure obligations. It should also seek input from businesses about what may operate best for them. In the future some mandatory surveying by distributors of those using their services may provide added insight into the needs of businesses. Overseas models may be able to provide some guidance on how this can be done in a cost-effective way.¹⁸

¹³ See discussion *Pricing Paper*, paras 7.20-7.24.

¹⁴ See *Pricing Paper*, para 7.132.

¹⁵ See *Energy Scheme Rules*, section 2, rules 7 and 8.

¹⁶ *Ibid.*, rule 15.

¹⁷ See *Pricing Paper*, para 7.123, but see *Connection Amendment Paper*, para 5.244.

¹⁸ See CCW & WSRA, *Complaint Processes in Water – A Follow up Report*, October 2022, 5, 14, 19.

Embedded Networks

The EA seeks to set apart embedded networks from the fast-track measures.¹⁹ This is understandable. However, UDL takes this opportunity to briefly highlight the significance of all three types of secondary networks. This area is often poorly understood, and UDL takes an educative approach to ensuring secondary distributors and/or retailers are members of the Energy Complaints Scheme.²⁰

UDL reminds the EA that Section 131A of the Electricity Industry Act 2010 was amended on 1 July 2017 with the addition of Subpart 2A, Section 131A. Prior to this amendment, the term "distributor" in the Act, Regulations and the Code referred solely to local networks. However, following the amendment, we believe the term "distributor," as used in the Act, Regulations, Code or EA guidelines, now applies to both local networks and secondary networks. While the EA has established a threshold for embedded networks in the pricing guideline, the other two types of secondary networks—customer networks and network extensions—are not specifically addressed. We suggest that the EA clarify the proposal regarding the alignment required from secondary network owners and ensure that all secondary network owners are made aware of the relevant requirements not only for this proposal, but also for other obligations such as set out in Parts 6, 6A, 10, 11, 15 and 16A of the Code.

Consumers, both individuals and businesses often have a poor understanding of their rights and obligations. While the secondary retailers and distributors are sometimes relying on minimal contractual terms to navigate their relationships with their customers including the setting of price.

UDL recently considered a complaint where a company sought to invoice consumers for past billing periods, as it appeared not to have received the savings budgeted for. However, no pricing mechanism for electricity consumption had been communicated to the complainant, prior to the invoicing period. The complaint raised a number of contractual and industry issues. The invoices were set aside.

Therefore, while these particular proposals may not be relevant, UDL encourages the EA to continue to do work in this area, especially where appropriate taking opportunities to educate and inform secondary retailers and distributors of their obligations.

Procedural Matters

UDL notes the complexity of some of the proposals. Therefore, it would seem important for the EA to work out a timeline with distributors for when any changes come into force, as some of the changes would involve amending processes, communications, and liaising with third parties.

¹⁹ See *Pricing Paper*, paras 7.161-7.162.

²⁰ Note there is some work being done on the review of the Retirement Villages Act 2003 by Ministry of Housing and Urban Development, see UDL, *Submission on the Review of the Retirement Villages Act 2003: Options for Change*, 20 November 2023, see re electricity, page 5. For a recent update of the review by the Minister see: Hon Tama Potaka, *Priorities set for Retirement Villages Act Review*, 16 October 2024, <https://www.beehive.govt.nz/release/priorities-set-retirement-villages-act-review> The issue of managing complaints and disputes remains under consideration.

Section 32 of the Electricity Industry Act 2010, allows the EA a wide ambit to amend the Code, inclusive of addressing pricing methodologies.²¹ Yet an ongoing review of any crossover with the Commerce Commission responsibilities, and/or whether these changes place an obligation on non-participants will be required.²²

Next Steps

Thank you for the opportunity to comment on the *Pricing Paper* and *Connection Amendment Paper*. If you have any questions, please at the first instance contact Paul Byers, Legal and Policy Officer, paulb@udl.co.nz



Neil Mallon
Toihau Commissioner

²¹ See Electricity Industry Act 2010, s 32(4).

²² See Electricity Industry Act 2010, s 32(2). See also Commerce Act 1986 ss 52G-N.