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Electricity Authority
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Proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses – Response to the Electricity Authority's Consultation Paper 3 October 2023

Part A

1. This is Vector's ("our", "we") response to the Electricity Authority's ("Authority") Consultation Paper on proposed changes to the default distributor agreement ("DDA"), consumption data template and related Part 12A clauses. Parts of this submission are confidential, and we have included these statements in square brackets. The remainder of this submission is not confidential and can be published on the Authority's website.

2. We support making the proposed changes to the consumption data template and associated Code amendments now. We agree that data is critical to unlocking the full potential and benefits of distributed energy resources. We also support the proposed changes to enable direct access to data from Metering Equipment Providers ("MEPs") for both consumption data and power quality data. We hope these proposed Code amendments enable more efficient access to data generally for the industry, so that the Authority can then turn its focus to other priority issues.

3. We appreciate the publication of the Distribution Sector Reform ("DSR") work programme in October, setting out timeframes for progressing the various projects under that. The outcomes from these projects and other related external work streams will help shape the regulatory settings for the future energy system and help New Zealand on its way to meeting its commitments under the Climate Change Response (Zero Carbon) Amendment Act 2019.

4. Understanding the future energy system and its complexities, for example balancing the tension between reducing costs for discretionary load aggregators vs ensuring distributors can maintain system security and putting in place the regulatory settings to enable all of this, is the purview of the DSR work programme. Demand management, the role of aggregators, flexibility services, and data and information sharing are all matters to be considered. The DDA contains provisions which cover or need to sit alongside all of these matters. Therefore, it makes most sense to us for the Authority to consider amendments or updates to the DDA alongside the DSR work programme, rather than now.

5. It is clear to us, and to many in the sector, that there are material issues in other parts of the DDA that require resolution. For example, clause 5 does not adequately address market evolution in the area of DER management and aggregation. The Authority identified a number of these contextual shifts in its DSR work programme[1], including:

> *Distribution networks have traditionally been built assuming diversified demand. Increasingly demand is becoming more coordinated (e.g., market signals for flexibility services), and this trend is likely to continue. This can create localised capacity issues for distributors and consumers. The emergence and activities of aggregators, which may not be visible to distributors, adds to this challenge.*

6. We are therefore surprised with this current round of DDA consultation, given that the DSR work programme is only just commencing and will definitely impact the DDA. The current proposed amendments to the DDA template don't attempt to address these contextual shifts at all, which is appropriate given the DSR work programme. However, we are concerned that the proposed amendments may lock in provisions that will not be fit for purpose once the DSR work programme has run its course and so will need to be unwound at a later date. We do not support that. For example, clauses 5.7 and 5.8 are more appropriate for a single load control solution, namely hot water managed via ripple control.

7. In the interests of resource and cost efficiencies, to avoid duplication of cost and effort, and to ensure the DDA remains fit for purpose, we therefore support a more substantive review of the DDA being undertaken later, that incorporates (a) the inclusion of carefully considered quality terms and (b) alignment of provisions with the DSR work programme, including those addressing the Authority's point above. This will ensure alignment of the DDA with that workstream and ensure the DDA remains fit for purpose and appropriately forward-looking.

8. The costs of making and implementing any changes to the DDA template are significant across the industry. This was certainly the case three years ago, when the DDA first had to be implemented. Distribution businesses will need to carefully consider the impact of any imposed changes on their existing business processes, systems and resources and the additional costs and/or risk the changes could impose. We have already incurred significant costs in exploring the true and complete range of consequences, both intended and unintended, of the proposed changes, in responding to this consultation paper. Further implementation costs will need to be incurred, to make the required changes to processes, systems and resource allocation.

9. The implementation costs have not been considered in the Authority's cost benefit analysis. We believe that these costs would be several orders of magnitude higher than the costs which have been considered in the paper i.e. the transaction cost associated with a new

[1] Delivering key distribution sector reform: Work programme. Paragraph 1.3 (b). Available online at https://www.ea.govt.nz/documents/3929/Work_programme_Oct_231406907.13.pdf

retailer negotiating a Distributor Agreement, which we disagree with in any case. **[Since April 2021, eight new retailers have signed onto Vector's Distributor Agreement, including the likes of Octopus Energy. Each of them returned executed Distributor Agreements to Vector soon after receiving them. We consider their "transaction" cost to execute our Distributor Agreement was a lot less than the $50,000, noted at page 18 of the paper.]**

10. The major benefit with the proposed amendments lies on the side of Data and we therefore agree with updating the Data Agreement Template and the further Code amendments to resolve data access now. Data is a priority for the industry and is one of the workstreams under the DSR work programme. We support and agree with all data-related work that the Authority is undertaking, as data is key to unlocking the full potential of distributed energy resources (and managing the issue identified by the Authority above).

11. In addition to the need to align the DDA template with the DSR work programme, the need to align any quality related changes with the Commerce Commission's regimes and the need to use resources and costs more efficiently overall, we also have serious concerns with some of the proposed amendments. We discuss these below. Please also refer to our response to Question 9 in Appendix A for further detail.

12. For clarity, we specifically object to the following proposed amendments:

    a. Clause 7.3 relating to price changes;
    b. 24.5(c) – in relation to liability, unless our proposed new clause 24.5(d) is included (see Appendix A); and
    c. Clauses 14.2 and S1.4 (schedule 1) – requiring proactive investigation and reporting of all power quality concerns and service level breaches.

Price Changes – clause 7.3

13. We reject the proposed amendment on the basis that pricing terms remain outside the Authority's jurisdiction. We consider clause 7.3 relates to pricing rather than quality. Clause 7.3 relates directly to price by restricting a distributor's ability to make pricing changes. The clause therefore trespasses on the Commission's role in setting maximum prices/revenues.

14. Further, we consider that the drafting proposed by the Authority is unnecessarily limiting. Distribution businesses should retain the discretion to change their pricing more than once per year. While this may not be the norm, this allows them to react to changes within a 12-month period that require a price increase. Also, we consider that the reference to "change in law" needs to be augmented to allow changes flowing from a decision or determination of a regulatory authority.

Liability – clause 24.5(c) and new clause 24.5(d)

15. The amendments to clause 24.5(c) materially change the potential risks to which a distributor is subject. Although our preference is for clause 24.5(c) to remain consistent with the wording currently contained in Vector's DDA, if the change to clause 24.5(c) is to be made, we request that a new clause 24.5(d) be added as set out in Appendix A below. This limits a distributor's liability in a much more specific and narrow way.

Investigations and Reporting – clause 14.2 and schedule 1

16. The requirements under clause 14.2 and S1.4 of schedule 1 are new and will require distributors to proactively investigate and report all power quality concerns raised and proactively report all service level breaches. A significant amount of time and resource would need to be dedicated to this level of investigation and reporting.

17. Moreover, we are reliant on retailers or MEPs providing us with power quality data to be able to investigate each instance. This information or data may not be readily available or cannot be provided in a timely manner, making it very difficult to carry out investigations in every instance. Many instances of power quality issues raised can be minor or trivial in nature, for example when there is a power surge at an ICP. Accordingly, we consider that the investigation of power quality concerns be left to the distributor's discretion, as is currently the case, to ensure only the more serious instances are investigated. Otherwise, the volume of work the current proposal will create is significant and unnecessary in our view. We also query whether retailers actually want all of this information relating to power quality concerns raised by consumers in particular.

18. The proposed requirement to report on all service standard breaches in schedule 1, could encourage some distributors to set longer restoration timeframes, than would otherwise be the case. This is obviously not ideal from a customer perspective as clear expectations around when power will be restored is critical to customers at such times. We suggest the Authority reconsider this requirement particularly in view of our comments below on the Commerce Commission's regime. Otherwise, the costs of reporting and investigating every instance of purported breach is likely to be high, distributors will need to update processes and systems accordingly, and they will be spending time and effort on investigations and reporting that would be much better spent elsewhere.

19. Finally, we take exception to the view expressed at paragraph 2.27 that *"distributors do not have sufficient further incentives to manage the quality and reliability of electricity supply or to minimise power disruption to consumers"*. We disagree entirely. Our consumers are at the very heart of what we do and the delivery of affordable, reliable and intelligent energy, so that consumers have more choice and control is at the core of our Symphony strategy.

20. The comment is also surprising, given that distributors are subject to the Commerce Commission's quality-incentive regime under the price-quality path. Under that regime, we are incentivised to restore power as quickly as possible and to plan outages as accurately as

possible through the default price-quality path's (DPP) quality incentive scheme. However, the expectation of that regime is that distributors be held to a high, but not impossible, standard. Distributors cannot guarantee that there will never be outages. Outages are very much a part of distribution services, including outage management and communication, as well as outage restoration services. Managing outages is a core role of the distributor.

21. Non-exempt distributors are also subject to quality standards, where their SAIDI and SAIFI performance is measured against specific targets set by the Commission. Meanwhile, all distributors (exempt or not) report annually via their electricity information disclosures (EID) on the cause of their interruptions outages and the main equipment involved. The reporting on SAIDI and SAIFI is also due to be expanded and will become further disaggregated through the Commission's targeted disclosures information review (their final decision on new requirements is due early 2024).

22. We also note that distributors are incentivised to manage quality and reliability by the Consumer Guarantees Act 1993 (**CGA**). The electricity-specific provisions of the CGA apportion the respective liability of distributors and retailers for electricity supply faults, and the process to be utilised between them in determining the same, following Parliament having specifically considered the appropriate electricity and gas specific regime to apply.

23. The Authority has not indicated why it considers it needs to intervene or what aspects of the DPP, EID or CGA regimes it considers to be insufficient, such that the proposed changes at schedule 1 need to be made. Overall, this raises a number of significant questions for us, including:

    a. Is the Authority implying that the Commission, and the quality regime it oversees, are not delivering optimal network planning and management outcomes, that are in the long-term benefit of consumers? If not, why not? Has the Authority discussed these deficiencies with the Commission?
    b. There seems a material risk that the quality standards and the reporting benchmarks being introduced by the Authority may come into conflict with those of the Commission already in play. What should distributors do in the case of inconsistency? Which should we prioritise addressing?
    c. The Authority's new quality standards may incentivise and necessitate spending and behaviour by distributors, in terms of capital and operating expenditure, that have not been funded by the Commission. If changes are made that have that effect, will the Authority commit to instigating a formal process of notifying the Commission and requesting it updates distributors' allowances to reflect the quality outcomes the Authority is seeking?

24. We suggest these questions and any changes be discussed and aligned with the Commerce Commission's regime. Further, the Authority should reconsider its proposed amendments given that efforts will be unnecessarily duplicated and may possibly conflict.

Conclusion

25. Overall, we do not support amending the DDA template at this time for the reasons outlined.

26. If the Authority does decide to procced with amendments to the DDA at this time, which we don't support for the reasons noted, then we strongly oppose the particular proposed amendments outlined at paragraphs 12 to 24.

27. The Authority notes in its DSR work programme, at paragraph 1.3, the challenges distributors are currently facing (including that quoted above), and yet those challenges appear not to be considered in this consultation paper. There is a lack of alignment and joined-up thinking between the different workstreams and indeed between the different regulators, which needs to be resolved quickly.

28. The remainder of our submission responds to the specific consultation questions set out in the paper. Our response to Questions 8 & 9 is set out at Appendix A of our submissions.

Part B

Q1. Do you agree Issue 1, summarised in paragraph 2.21 and described in paragraphs 2.21 to 2.32 and Appendix B, is worthy of attention?

29. We disagree that Issue 1, the use of recorded terms in the DDA template, is worthy of attention now. We have outlined the reasons for our view above. In short, we think this programme of work should be brought under the DSR work program to ensure alignment and in the interests of resource and cost efficiencies. Further, we object to some of the proposed amendments, as described at Part A of our submissions and in Question 9, at Appendix A.

Q2. Do you have any feedback on the Authority's assessments of changes to recorded terms as set out in Appendix B and Appendix C?

30. Please refer to our response at Question 9 in Appendix A for our views on particular proposed changes.

31. In general, either we do not agree that the Authority's view on what they describe as "changes that do not allocate costs and risks to the party best placed to manage them", "changes that create ambiguity, duplication or inconsistency of approach", and "changes that are unnecessary" is correct or we consider that any minor incremental benefit in making the proposed changes is outweighed by the time and effort required to update the DDA, particularly at a time when other workstreams will likely result in appropriate changes needing to made to the DDA in future.

Q3. Do you agree Issue 2 is worthy of attention?

32. We do not consider this a priority and do not have a strong view on the issue. However, we are happy to support the proposal that any new or varied distributor agreements should only be provided to the Authority upon request.

Q4. Do you agree Issue 3 is worthy of attention?

33. As above, we agree issue 3, relating to data access, is worthy of attention. Data is key to unlocking the full potential of distributed energy resources and is an important work stream under the DSR work programme as well. Nearly all participants would agree that data access is the issue to address now and not the DDA template.

Q5. Do you agree with the objective of the proposed Code amendment? If not, why not?

34. We disagree with the objectives set out at paragraph 5.1(a) and (b). The Authority has not shown any evidence of a problem with recorded terms or disadvantage to any parties from these terms.

35. We are also concerned with the limited extent of the consultation between the Authority and the Commerce Commission on the specific changes proposed. We suggest the Authority carefully consider whether any quality terms it seeks to include, cut across the Commerce Commission's regime as discussed above. We suggest these terms be properly considered in view of the effort costs, risk of duplication and the funding implications that could create, before the Authority seeks to include them in the DDA.

Q6. Do you agree the benefits of the proposed Code amendment outweigh its costs?

36. We disagree. Please see our comments at paragraphs 7 to 10 above. We think the cost-benefit analysis is incomplete and has not adequately considered the costs of implementing these changes. They are likely to be significant and will far outweigh the costs that have been considered, namely estimated transaction costs for negotiating the DDA.

37. We have no comment on the cost-benefit analysis for data, other than to say this appears to be where the major benefit lies and so we support this change being made now.

Q7. Do you agree the proposed Code amendment is preferable to other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objectives in section 15 of the Act. Are there other options you think the Authority should consider for connection pricing?

38. We agree with respect to the objectives expressed at clause 5.1(c) and (d) but disagree with objectives set out at 5.1(a) and (b). As expressed above, a better alternative would be to bring the amendment of the DDA under the DSR work stream as a stand-alone project and to

address quality-related terms and alignment with the DSR workstream at the same time. This has a number of advantages over the current proposal, as discussed in Part A.

Q8. Do you agree the proposed Code amendment complies with section 32 of the Act.

39. For the reasons noted elsewhere in this submission, we do not consider that the proposed Code amendment complies with section 32 of the Act – in particular, we do not consider the amendments will:

- promote competition in the electricity industry; we are not aware of any retailers who consider the DDA terms to be a barrier to competition;
- promote the reliable supply of electricity to consumers beyond the very real incentives we already have to provide reliable supply;
- promote the efficient operation of the electricity industry, given the costs involved in considering and implementing the changes are far greater than the current costs to enter into the current forms of DDA; although we acknowledge that there may be more efficient operation of the industry if the barriers to accessing data are reduced;
- protect the interests of domestic and small business consumers beyond the protections and incentives already in place.

40. As noted above, we consider that some of the amendments, and in particular the amendments to clause 7.3, are outside of section 32(4) of the Act as they relate to pricing, rather than quality, information requirements and pricing methodologies.

Q9. Do you have any comments on the drafting of the proposed Code amendment?

Please refer to Appendix A for our comments.

Yours Sincerely
For and On Behalf of Vector Limited,

Mark Toner
Chief Public Policy Regulatory Officer

Appendix A

Q9: Do you have any comments on the drafting of the proposed Code amendment.

Please see our comments below on some of the proposed amendments to the DDA template.

Clause	Vector comment	Proposed re-draft
5.7 and 5.8	We consider these terms risk locking in one type of load management only (i.e. hot water) and prefer that such a clause is not locked in now, only to be amended later.	We propose these provisions remain recorded terms (and are left as is in each distribution business' DDA) and that these clauses are then amended as appropriate to align with the outcomes of the DSR work programme.
7.3	As noted in our comments above, this amendment relates to a pricing term and it is not within the Authority's jurisdiction to include any amendments to this term in the DDA. Further, we consider that our current drafting of clause 7.3 better reflects the needs of a distribution business in relation to pricing. While we agree that "the Authority and the Commerce Commission do not have the power to direct a change in pricing", a direction, determination or decision by such regulator could still result in a material increase.	7.3 **Price changes**: Unless otherwise agreed with the Trader, the Distributor may not change its Prices more than twice~~once~~ in any period of 12 consecutive months, unless a change is a material increase to 1 or more existing Prices and results from a change in: (a) 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) 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) the law; or~~.~~ (d) any determination, direction or decision of a regulatory agency Nothing in this clause prevents the Distributor from decreasing a Price at any time, or from increasing a Price with the agreement of the Trader.
9.10	There is no obligation for the retailer to ensure the Consumer receives the refund. We expect this is	9.10 **Refund of charges**: If, as a consequence of a fault on the Network, there is a continuous interruption affecting a Customer's Point of Connection for 24

	the Authority's intention and is certainly the right outcome in our view.	hours or longer, the Distributor must issue a Credit Note and refund, in the next monthly billing cycle, for 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 was interrupted, provided that the Trader requests that the Distributor refund such charges no later than 60 days after the interruption and undertakes to the Distributor that the refund of such charges will be passed on in full by the Trader to the relevant Customer as soon as reasonably practicable following receipt by the Trader of the refund from the Distributor.
14.2	For the reasons noted above, there should be some discretion as to the power quality concerns that must be investigated. In addition, power quality data is required before concerns can be investigated and that data is not always forthcoming or available e.g. for a power surge. Therefore, it should be left to the distributor to appropriately investigate the more substantive concerns raised, on condition that the MEP is able to provide data relating to the relevant investigation and within a reasonable timeframe.	No drafting comments.
24.5(c)	See our comments above in this regard and our proposed amendment	24.5 **Distributor not liable**: Except as provided in clause 25(but despite any other provision in this Agreement), the Distributor will not be liable for: . . . (c) any momentary fluctuations in the voltage or frequency of electricity conveyed or nonconformity with harmonic voltage and current levels; or (d)

		(i) any liability arising out of a claim against the Trader by a Customer to the extent the liability could have been avoided had any contract between the Trader and Customer excluded, to the extent permitted by law, all liability of the Trader in respect of the provision of services, or conveyance of electricity, to the Customer; or (ii) any liability to the extent that it arises out of the Trader's breach of this Agreement, negligence or failure to exercise Good Electricity Industry Practice.
Schedule 1	In addition to our comments above on the investigation and reporting of service level breaches, which we consider unnecessary, we are also concerned that the proposed requirements now include specifying Service Measures in Schedule 1 "*for each Price Category and Price Option, the time periods in which electricity supply is normally available to Customers*". Vector considers that, in the current circumstances, this approach runs counter to the EA's objective to promote "*reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers*". To maximise outcomes for consumers, the industry will need to move quickly to create the right signals to consumers and retailers in respect of demand response, which may include the creation of new Price Categories and Price Options. Including the time periods for these as operational terms in the DDA means that any such change must go through further review, must be	**SCHEDULE 1 – SERVICE STANDARDS** Introduction S1.1 If the Trader becomes aware of or suspects a breach of a~~the~~ Service Standard~~s~~ that is subject to a Service Guarantee Payment by the Distributor, the Trader must give the Distributor notice of the breach or the reasons why it suspects that there has been a breach. S1.2 If the Trader gives the Distributor notice under clause S1.1 regarding an actual or suspected breach of the Service Standards, the Distributor must investigate and advise the Trader of the results of the investigation including confirming whether a Service Guarantee Payment is to be made in respect of any breach. S1.3 If a Customer advises the Distributor of a breach or a suspected breach of a~~the~~ Service Standard~~s~~ that is subject to a Service Guarantee Payment, the Distributor must: (a) give notice to the Trader responsible for the Customer as soon as reasonably practicable; and (b) investigate and advise the Customer and the Trader of the results of the investigation including confirming whether a Service Guarantee Payment is to be made in respect of any breach.

	consulted on with all retailers and could be challenged leading to expensive and unnecessary review proceedings. This inclusion will disincentivise the making of Price Category changes when they would otherwise be desirable, will slow the process of making such changes, and adds unnecessary transaction costs on both retailers and distributors in relation to the process.	~~S1.4 If the Distributor breaches a Service Level, it must notify the Trader as soon as reasonably practicable and no later than 10 Working Days after becoming aware of the breach. The notification must include: (a) the ICP identifier(s) or the Network locality affected by the breach; and (b) the reason for the breach.~~ S1.4~~5~~ If the Distributor breaches a Service Level that is subject to a Service Guarantee Payment, it must notify the Trader as soon as reasonably practicable and no later than 10 Working Days after becoming aware of the breach. The notification must include: (a) the ICP identifier of each ICP affected and the Service Guarantee Payment owed by ICP and in total (if applicable); (b) the reason for the breach; and (c) a Credit Note or order number (if the Trader requires a Tax Invoice from the Distributor for the amount payable in respect of the breach, the Distributor must send the Tax Invoice in the next payment cycle). S1.5~~6~~If the Distributor makes a Service Guarantee Payment in respect of an ICP, the Trader must pass that payment on to the relevant Customer or Customers but may deduct an amount that reflects its reasonable cost of administering the payment. S1.~~7~~6Despite clauses S1.4~~5~~ and S1.5~~6~~, where the Distributor breaches a Service Level that is subject to a Service Guarantee Payment and a Customer whose ICP has been affected makes a request directly to the Distributor for an applicable Service Guarantee Payment to be made to the Customer, in the interests of prompt resolution, the Distributor must pay the Service Guarantee Payment directly to the Customer. S1.7~~8~~The parties acknowledge that the Service Guarantee Payments are set at a level to provide reasonable compensation to affected Customers in respect of

		the Distributor's failure to meet the relevant Service Level, and are not a penalty. S1.89 The Distributor's failure to meet any Service Standard or Service Level (or any associated procedural requirements in this Schedule) will not constitute a breach of this Agreement, and the Trader will have no remedy for such failure except to the extent the Trader is expressly entitled to claim a Service Guarantee Payment for the failure in accordance with this Agreement.