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31 July 2024

Electricity Authority
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Follow-up consultation – proposed changes to the default distributor agreement template consultation paper 2 July 2024

Part A

1. This is Vector's ("our", "we") response to the Electricity Authority's ("Authority") follow-up consultation paper on proposed changes to the default distributor agreement ("DDA"). The submission is not confidential and can be published on the Authority's website.

2. We are surprised at the matters covered by this follow-up consultation, particularly with clauses 9.11, 33.2 (definition of use of money adjustment) and new clause 12A.6 covering very rare situations, or minor issues, in our view. We address our views on these proposed changes in our response to the consultation paper questions below. As we highlighted in our submission to the Authority of November 2023[1], there are much higher priority issues requiring resolution and further consultation, notably the liability provisions.

3. The only substantive issue to address is the proposed change to clause 9.10. We are strongly opposed to the proposed change because it is simply not in the long-term interest of consumers. Quite why the Authority considers it would be beneficial to add yet another layer of 'incentivisation' to distributors for outage restoration is unclear. The distribution price path quality incentive regime set out in Part 4 of the Commerce Act 1986 and the Consumer Guarantees Act 1993 (**CGA**) already provide distributors with much greater incentive or penalties to ensure these aspects of distribution services are well managed and efficient. Adding another layer adds nothing but cost.

4. The Authority has not indicated what aspects of the distribution price path, electricity information disclosure or CGA regimes that already govern this area are insufficient to protect customers. The Authority has also not provided any assurance from the Commerce Commission that it believes this change is necessary and is supported. This is particularly important given our view that the implementation costs of the proposed change far outweigh

[1] Available online at https://blob-static.vector.co.nz/blob/vector/media/vector-2023/vector-submission-ea-dda-amendment-consultation.pdf

the benefit (or average refund) to customers who would ultimately bear the costs of this proposal.

5. Additionally, the change is contrary to the Authority's statutory objective of promoting reliable supply by and the efficient operation of the electricity industry for the long-term benefit of consumers, for the following reasons:

    a. Reliable supply – EDBs already maintain and deliver a quality of supply or reliability that customers expect and are ultimately willing to pay for. Under that price-quality regime, set out in part 4 of the Commerce Act, distributors are incentivised to restore power as quickly as possible and to plan outages as accurately as possible. 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. The incentives and penalties imposed by the DPP regime, along with consumer redress under the CGA, are many orders of magnitude higher than the 'incentive' proposed by the Authority in clause 9.10, which is therefore totally unnecessary. 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. The proposed clause 9.10, on the other hand, lays responsibility and liability solely at the feet of EDBs, as the only party required to refund a customer for outages greater than 24 hours.

    b. Efficiency – the cost to implement the proposed change far exceeds the benefit (refund) to customers and is unlikely to lead to a corresponding longer-term benefit of increased reliability. Based on our RY22 and RY 24 data, the vast majority of customers would have been entitled to a refund of no more than 1 days' worth of fixed daily charges. This would have equated to $0.60c for residential low user customers (at least half of our residential customer base) and $1.40 for the remaining residential customers. This is before any retail administrative costs have been deducted as the Authority has generously allowed Traders, reducing the refund further. Mandatory and proactive refunds are simply not needed in our view and are in fact a cost burden to the customer who would ultimately pay for the implementation and administrative costs to facilitate refunds. EDB implementation costs are likely to be more significant than the Authority anticipates as there is a cost to acquiring additional sub-feeder level outage data, putting data management and collection in place on the LV network side, and the administrative costs of processing refunds. With the allowance for wash-ups as provided for at paragraph 2.43 of the paper, there is also a cross-subsidisation issue to consider if infrequently affected customers are paying for outages impacting customers more frequently affected due to location etc.

6. The Authority's implicit assumption that a consumer is not receiving a distribution service during an outage is incorrect. An EDB builds and maintains network infrastructure for the provision of (retail) electricity. This provision of distribution services does not stop during outages. Instead, at those times, parts of the distribution service become focused on network restoration or maintenance for the benefit of the consumers served. EDBs incur significant

costs during those periods. Whilst the focus of distribution services ebbs and flows based on network requirements and customer needs, the services provided by distributors remains consistent throughout.

7. This is no different to the broadband and infrastructure services provided by Chorus and Watercare in parallel industries. Neither entity is required to provide a customer a 'refund' for a 'drop' in services because they continue to provide their infrastructure and restoration services. We note more recently when a pylon fell over in Northland that Transpower was not required to provide customers any refunds. On principle therefore, we disagree with the Authority that the distribution sector should be treated any differently to other entities both within and outside the energy sector.

8. Finally, the proposed change appears not to have been considered alongside the Authority's other projects including Future System Operations. With the decentralised energy system, we are quickly transitioning to, the reality is that aggregators of flexibility may well be responsible for outages faced by customers, for example if they breach network voltage limits, or other signalled network constraints. How would the Authority reconcile responsibility or liability in this changed context, with the changes proposed to clause 9.10? This is especially the case for non-retailer aggregators, who are not party to the DDA and have no contractual or operational relationship with their host EDBs. The Commerce Commission is clearly thinking about these issues by providing a carve-out from the quality regime for projects funded by the INSTA (effectively innovation projects and flex). The Authority needs to quickly follow suit and ensure it is aligning its internal workstreams as well as aligning its thinking with other regulatory bodies. Otherwise, there is a cost and resource duplication.

9. The remainder of our submission responds to the specific consultation questions set out in the paper.

Consultation Questions

Q2.1. 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.

10. We do not think the revised approach to 9.10 is workable, efficient or effective, for the reasons noted above. It is misaligned with the Authority's statutory objective of promoting reliable supply and efficiency, and is not in the long-term interests of consumers. Costs would far outweigh any benefit to customers as noted above.

11. In RY23, our network was severely impacted firstly by the Auckland Anniversary floods in January 2023, and later by Cyclone Gabrielle. Whilst a much larger number of customers were affected by outages and some by longer duration outages, the average refund would still not have exceeded $1.92 for the average residential customer. This supports our submission to the Authority's preceding DDA consultation in October 2023, that **retailers**

ought to request refunds for customers under this clause, either at the behest of the customer or following significant weather or other events, provided that any refund is passed through to the customer as proposed by clause 12A.6(1).

12. We disagree with cause 12A.6(2) which permits only a retailer to deduct its administrative costs. Distributors should also be allowed to deduct their administrative costs.

13. If the Authority wishes to proceed anyway, despite the counter-factual noted above, then the most sensible alternative approach is to retain the current wording in clause 9.10 that requires retailers to seek refunds on behalf of their customers. However, the Authority should also require any corresponding time-based retail component of electricity charges (e.g. daily fixed charges) to similarly be refunded, otherwise the Code change risks providing a windfall to retailers. There is no reason why this should be isolated to distributors. We also reiterate the need for the Authority to ensure any proposed changes are aligned with other projects and regulatory regimes in the interests of resource and cost efficiencies, especially the existing regime of the Commerce Commission.

Q2.2 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?

14. No, for the reasons noted above. It could in fact have a perverse outcome, whereby some distributors could prioritise the restoration of large commercial customers with high fixed daily charges due to large, connected capacity, ahead of restoration to low-user mass market customers on lower fixed daily charges.

Q2.3. If so, what time limit would you consider reasonable before charges should be reduced (e.g. a maximum of 48 hours interruption?

15. See our response to Q2.1 and Q2.2.

Q2.4. How would this longer period incentivise quick restoration of electricity supply and balance the disruption for the consumer and the consumer's right to receive the electricity they pay for?

16. See our response above.

Q3.1. 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.

17. Although we support the policy intent behind new clause 9.11, we query the need for Code intervention and the practical implications of making these changes via the Registry. Both the retailer and distributor will undoubtedly be working in good faith for the best interests of customers affected by these extraordinary circumstances. We do not believe Code changes are needed.

18. The proposed clause 9.11 allows for either the customer or trader to notify the EDB if a property becomes inaccessible for disconnection. We believe such notification or request must come from the trader as EDBs do not hold up to date customer data and cannot verify the identity of the customer if contacted to ensure they are authorised to make such a notification. This is a critical flaw in the current proposal.

19. We also have concerns that the use of the inactive registry flag to identify premises captured by new clause 9.11 may lead to unacceptable safety risks for our field services crew. If the ICP is flagged as inactive in the Registry but is still electrically live, then that poses a serious risk to our crews who would be working at pace to restore mass outages following a state of emergency. If a separate ICP status is to be introduced in the Registry, then a new field ought to be created, indicating that an ICP is electrically live but not being billed because of a state of emergency.

Q4.1. Do you consider new clause 12A.6 is practical to implement and will deliver benefit to consumers? Please explain why or why not.

20. No, we do not think it is practical to implement for the reasons noted earlier. There is very little benefit to the consumer under new clause 12A.6(1), compared to the implementation and administrative costs for this new regime.

21. We also disagree with the principle of clause 12A.6(2). If a retailer is permitted to deduct its costs to process refunds, then that should also apply to distributors.

Q4.2. Do you see any issues or have alternative ideas? If so, please explain what these are.

22. As noted above, clause 9.10 should be removed entirely. Alternatively, the clause should remain as currently contained in the DDA which requires retailers to proactively request refunds for customers from distributors. As noted above, EDBs are not best-placed to receive and verify in-bound requests from consumers.

Q5.1. Is the revised approach to clause 33.2 appropriate and practical to implement without the need for significant system changes? Please explain you views.

23. Vector already applies a use-of-money adjustment at interest rate + 2%, compounded monthly per our Vector Distributor Agreement. The change proposed by the Authority will create new implementation costs for us, due to the 2% compounding interest being applied differently i.e., daily vs monthly. Invoices are created with a due date into a following month. BKBM interest rates are not known for the future month. For that month these rates will have to be estimated. This will require further manual work-around and costs for no apparent gain.

24. Vector considers Traders and distributors ought to be left to negotiate their own interest rate between themselves, as long as it is not zero, by making this definition an operational rather than core term.

Q5.2. Does the revised approach to clause 33.2 reduce potential implementation costs? Please explain your views. Do you have any comments on the drafting of the proposed Code amendment?

25. As above, it increases implementation costs for Vector. We suggest the term be made operational with the Authority specifying that it cannot be zero.

Q6.1. Do you agree with the analysis presented in this Regulatory Statement? If not, why not?

26. We do not consider the proposed changes to clause 9.10 are consistent with the Authority's objective as earlier noted. In addition, the cost benefit analysis is severely understated. There will be significant costs to implement these 'proactive' refunding changes for the reasons noted at paragraph 5 above. Any benefit to the customer will quickly be eroded by distributor implementation costs that will ultimately be borne by the customer. The proposal is not for the long-term benefit of consumers.

Yours Sincerely
For and On Behalf of Vector Limited,

Monica Choy
Senior Regulatory and Pricing Partner