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Arrangements to manage a retailer default situation

Introduction

1. Vector welcomes the opportunity to respond to the Electricity Authority's (Authority) consultation paper titled, *Arrangements to manage a retailer default situation* (consultation paper), dated 18 June 2013. Please see Appendix A for Vector's responses to the Authority's consultation questions. No part of this submission is confidential and we are happy for it to be publicly released.
2. Vector's contact person for this submission is:
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3. Vector strongly supports the work done to date by the Authority and the Retailer Advisory Group (RAG) on managing retailer default situations. This is an important initiative to minimise consumer inconvenience and for ensuring the efficient operation of the industry. In an environment where consumers are not practicably able to be disconnected and distribution prudentials are severely restricted, it is essential that parties have assurance that losses will be minimised in an event of default.
4. Vector also appreciates the efforts the RAG and the Authority have taken to understand the E-Gas default, and the costs and consequences that the industry faced. In developing Code amendments to manage future defaults, it is important that past experiences and lessons learnt are recognised to help ensure a robust and well considered regulatory framework.

5. Overall, Vector supports the Authority's proposal to amend the Code to ensure a process for managing a retailer default situation. We consider the current proposal a substantial improvement from previous iterations, and appreciate the work involved in accommodating industry wide comments and recommendations. Vector also agrees that the benefits of the proposed arrangements would exceed the costs and are in the long-term best interests of consumers. There will always be a degree of unavoidable cost involved in a retailer default, but having a pre-agreed industry process that is well considered, codified and backed with the confidence of the industry provides certainty and is likely to be less costly than urgently made regulation in the event of default.
6. Vector's responses to specific consultation questions are set out in Appendix A (attached). Vector would also like to specifically comment on the following areas.

Event of default categories

7. Vector strongly supports the proposed categories for an "event of default", particularly the Authority's proposed distributor category. Vector considers that the proposal reflects distributor concerns raised at both the Retailer Default Workshop (23 April 2013) and in previous submissions. We appreciate the work undertaken to build these recommendations into the RAG's recommended default process.
9. However, we would like clarity and confirmation on category (b) of the distributor category of default. As discussed at the recent Retailer Default Briefing on 18 June 2013, it appears that condition (b), "no unresolved disputes remain between the retailer and distributor", should be amended to include words to the following effect, "no bona fide unresolved disputes in relation to the serious financial breach remain between the retailer and distributor". It is important that "no unresolved disputes" condition is qualified. Without a proviso distributors could be unreasonably prevented from invoking the Authority's default process, which would frustrate the Authority's objective and interfere with the long-term interests of consumers.
10. Vector **recommends** the Authority qualify "no unresolved disputes" to mean "no bona fide unresolved disputes in relation to a serious financial breach".

11. Pending confirmation on the above, Vector fully endorses the Authority's proposed new category default relating to distributors. We also strongly support the distributor discretion built in to the category, condition (e), to allow market mechanisms to take their course. This change is another marked improvement from the RAG recommendation and shows that the Authority has considered distributor recommendations and developed a solution that will not impede normal business practices and allow commercially viable solutions to take place where practicable.
12. To illustrate, distributors have bilateral contracts with retail customers and therefore also have commercial mechanisms to manage its relationship. These mechanisms will in some instances be more appropriate and better suited to parties seeking a resolution than the Authority's process for managing default.

Information sharing

13. The Authority proposes to amend the Code to require retailers, distributors and the registry to provide information upon request. Vector supports the provision of information and will make its best efforts to assist the Authority with any requests.
14. However, we seek clarity around two issues. Firstly, the consultation paper is silent on the likely time period within which parties may be required to provide the Authority with information. Vector considers that any request must be subject to a time frame that is *reasonable*, and takes account of the type of day (business or non-business day) on which the request was made.
15. Under the current drafting, if a party was unable to provide the information within the specified timeframe it would risk breaching the Code irrespective of whether the timeframe was unrealistic or unreasonable. Vector **recommends** that clause 3 of Schedule 11.5 be drafted to ensure that requests are subject to a reasonable timeframe, i.e. by inserting the word "reasonable" as follows: "...within a reasonable period as specified in the notice".
16. Secondly, the consultation paper is also silent on the format in which the requested information must be supplied. Vector assumes that the Authority will require the information to be provided in a standard format. However, we would like to point out that EIEP4 (Customer Information) is a voluntary

standard currently under consultation. Further, the format is only provided by retailers to distributors where required under the Use-of-Systems Agreement. Therefore, where this is not provided distributors would need to make system changes to extract the data, which would seem unnecessarily costly. If the Authority is unable to obtain the information from the retailer, we are not convinced that (in all circumstances) it will necessarily be the case that distributors could provide the information instead.

18. Vector would also like to note that the physical addresses of customers are obtainable from the Registry. Therefore, we would expect that it would be efficient for the Authority to access these directly from the registry rather than indirectly from a distributor.
19. Vector would also like to highlight that while the consultation paper acknowledges the benefits of information sharing, it does not appear to entertain the idea of information sharing with the Gas Industry Company (GIC), who has recommended to the Minister of Energy and Resources the development of urgent regulations to address future gas retailer insolvencies. Although it is arguably less likely that a dual fuel retailer would go into default, both regulators should be prepared and have measures in place to facilitate information sharing in a timely manner.
20. Vector **suggests** that the Authority and the GIC consider developing a Memorandum of Understanding (MOU), or an information protocol, to help facilitate and promote co-ordinated efforts during situations of retailer default in recognition of their joint interests to minimise uncertainty and improve consistency across industries.

Long-term interests of consumers

21. Vector must raise a concern with a particular statement made in the consultation paper. Paragraph 2.2.7 states RAG's view that, "*Options that might distort or reduce competition would not be in the long-term interests of consumers.*" The Authority expressly endorse this view in paragraph 2.2.13. In our view this is phrased too strongly and we assume that this statement is not intended to be taken literally – if it is intentional, we would be concerned. The statement suggests that an option which, for example, was expected to increase the efficient operation of the electricity industry with an expected NPV

of +\$10 million but “might” reduce competition with an expected NPV of -\$1 would not be in the long-term interest of consumers. We do not believe this can be correct and emphasise that all of the components of the Authority’s objective statement need to be considered when assessing what will deliver the long-term benefit of consumers.

Yours sincerely,

A handwritten signature in blue ink that reads "B. Girdwood". The signature is cursive and includes a small flourish at the end.

Bruce Girdwood

Manager Regulatory Affairs

Appendix A: Vector’s responses to consultation questions

	Question:	Response:
Q1	Has there been any development since submissions were received on the problem definition developed by the RAG that might warrant the Authority reconsidering its view as to the nature of the problem?	No, Vector is not aware of any developments.
Q2	Do you agree with the objectives of the proposed amendment? If not, why not?	<p>Vector agrees with the objectives of the proposals.</p> <p>We also consider that the proposed amendments adhere to the objectives in Section 3.1 of the consultation paper. In particular, condition (e) of the distributor category of default recognises objective (a) – i.e. only triggering the Authority’s default process where feasible. Overall, the amendments as a whole provide the industry and consumers with the necessary confidence that electricity supply will not be interrupted, and that a practicable solution will be managed in a timely manner and at minimal cost.</p> <p>The experience of the E-Gas default on the gas industry highlighted this need to have certainty to minimise the effect of a retailer default to consumers and to the industry as a whole (including the reputation of the industry as a reliable source of energy).</p>
Q3	<p>Do you agree with the proposed Code amendment which would introduce a new category of default when the following conditions are satisfied:</p> <p>a) the retailer is no longer entitled to trade on a distribution network because its use of system agreement has been terminated due to a</p>	Vector strongly supports the introduction of a new category of default. However, we seek clarification and confirmation regarding condition (b) - please see above discussion (paragraphs 7-12).

	<p>'serious financial breach' by the retailer</p> <p>b) no unresolved disputes remain between the retailer and the distributor</p> <p>c) the retailer has not taken timely steps to arrange a customer switch</p> <p>d) the distributor has been unable to remedy the situation</p> <p>e) the distributor requests the Authority to initiate its process for managing an event of default.</p>	
Q4	<p>Do you agree that the proposed Code amendment should apply not only to the network or networks across which the event of default has occurred? If not, why not?</p>	<p>Vector considers that the proposed Code amendment should apply across all networks. Vector agrees with the Authority's view that applying the Code amendment to just the network/s where the default occurred may lead "struggling retailers to 'cherry pick' the processes".</p> <p>Further, it is likely that it would be a matter of timing with regards to where distributors are in their own commercial processes and the Authority could end up managing a "rolling" situation with the same retailer across different networks.</p>
Q5	<p>Do you agree that the trigger for the actions to be undertaken by the Authority should be limited to a breach of sub-clauses 14.55(a), 14.55(b), 14.55(f), and (the new) 14.55(h)? If not, why not?</p>	<p>Vector has no issues with limiting clause 14.55. We are pleased that the sub-clauses that are removed will not constitute a trigger for the proposed default process, and will be left to their normal business practices.</p> <p>Please note that the clause numbering is inconsistent in the consultation paper and the retailer default guidelines: it is "clause 14.55" in the consultation paper, and "clause 14.54" in the guidelines. Some clarity would be appreciated.</p>

Q6	Do you agree that the process for managing a retailer default should ensure that responsibility for all ICPs of the retailer in default, active and inactive, are transferred to another retailer? If not, why not?	<p>Yes, Vector agrees that the process for managing retailer default should include responsibility for transferring all ICPs, active and inactive.</p> <p>The E-Gas default illustrated the need to ensure both active and inactive ICPs are adequately managed and catered for under regulation. We are pleased that the Authority has taken these considerations on board and addressed this omission.</p>
Q7	Do you agree that the process should accommodate situations where the default might not be resolved but an acceptable resolution has been agreed and all payments that should have been made have been made? If not, why not?	<p>Yes, Vector agrees that the process for managing default should be accommodating (to a reasonable degree).</p> <p>One of the objectives of the proposal is to facilitate a commercial solution <i>where feasible</i>. This should include accommodating situations where it would not be feasible for the Authority's process to intervene and, as the case may be, unreasonably interfere with a manageable situation. For instance, there may be situations which could easily be resolved and rectified between parties – e.g. technical defaults.</p>
Q8	Do you agree with the judgement arrived at by the RAG that a total period of 17 days for managing an event of default would provide a reasonable balance between the costs of too short a period and the costs of an extended period? If not, why not?	Vector endorses the Authority's recognition of resolving a situation as soon as possible – to this end, 17 days seems reasonable. However, we consider that 17 days should be a maximum , with the ability to shorten time frames if the situation allows.
Q9	If a period of 17 days is maintained, should this time be allocated as follows: seven days for a retailer to resolve the dispute or transfer its customer base, seven days for customers to voluntarily switch to another retailer, and a maximum of three days for communication with	See above response to Question 8. As discussed at the recent workshop, we consider three days to be impractical to undertake the work required in Phase 3.

	customers and ensuring all switches are processed?	
Q10	Do you agree that the Code should be amended to require a retailer in default to provide information on its customers to the Authority and for the Authority to obtain this information from distribution networks and the registry if the information is not forthcoming from the defaulting retailer? If not, why not?	<p>Vector agrees that the retailer in default should provide information on its customers to the Authority. Vector also agrees to work with the Authority as best it can to provide relevant information and help minimise the impact of defaulting retailers.</p> <p>However, we would like clarity around some issues that do not appear to be considered in the consultation paper. Please see above paragraphs 13-20 for this discussion.</p>
Q11	Do you agree that the Code should be amended to provide for the registry to complete the switch of any customer of a retailer in default that chooses to switch to another retailer, if the retailer in default does not meet its obligations under the switching rules? If not, why not?	Vector agrees. This is a practical solution and will help the Authority achieve its objective of facilitating an efficient and effective solution, while minimising costs for consumers.
Q12	Do you agree that the Code should be amended to provide for the Authority to direct the registry not to complete the switch of any customer to a retailer in default after the Authority has advised the customers of that retailer that their retailer is in default and they should transfer to another retailer? If not, why not?	Vector also agrees that this is a practical solution to minimise further cost and disruption for retailers and consumers. Further, upon triggering the Authority's process, the retailer in default will, to all intents and purposes, be exiting the industry. They are unlikely to rectify the default within the first seven days.
Q13	Do you agree that the Authority should advise retailers and other interested parties that an event of default has occurred, and if it considers appropriate, identify the entity in default, to enable these parties to make necessary preparations? If not, why not?	<p>Yes, Vector considers that there is no practical alternative for ensuring that the process is workable.</p> <p>The Authority needs to advise all participants, particularly if they are expecting them to assist and / or participate during the 17 day period.</p> <p>As stated above, the Authority should also develop an MoU or information sharing protocol with the GIC, including during an event of default,</p>

		to reduce uncertainty and improve consistency across industries.
Q14	Do you agree that the Code should provide for the Authority to communicate directly with the customers of the retailer in default, including via mass media? If not, why not?	Yes, Vector agrees. It would be practical for the Authority to do so. It is also a message that is best communicated by a neutral party to help ensure that consumers are protected and that the message is adhered to.
Q15	Do you agree that the Code should provide for the Authority to provide customer information to the retailers to whom it transfers customers, should a mandatory transfer be required? If not, why not?	Yes, the Code should. This would be practical given the solution which the process seeks to achieve. Communication and information sharing is necessary to facilitate and ensure a smooth process can be managed.
Q16	Do you agree that the Code should be amended to require that contracts between the retailer and its customers provide for the Authority to assign the contract to another retailer if an event of default is unresolved after 17 days? If not, why not?	Vector agrees that the contract should provide for the Authority to transfer a customer to a new retailer in situations of default.
Q17	Do you agree that the terms offered by recipient retailer (who is assigned customers by the Authority) should be those terms (including price) normally offered by the recipient retailer at the date the Authority was notified of the default? If not, why not?	Vector agrees that this would be a sensible approach. This would maintain normal market conditions and not artificially change what a consumer would normally experience.
Q18	Should the arrangements for managing an event of default provide for the Authority to tender the remaining customer base of the retailer in default after the Authority had exercised its rights to assign the contract on the terms of the recipient retailer? If not, why not?	<p>This does not directly affect Vector. However, Vector is not convinced that there is compelling evidence to suggest that benefits will result from tendering remaining customers of the defaulting retailer.</p> <p>We also consider that the possibility to tender will potentially make it more difficult for the defaulting retailer, and less attractive for</p>

		<p>recipient retailers, to transfer customers in any of the phases prior to Phase 3.</p> <p>For instance, as soon as the Authority's process is triggered, it will not only effectively exit a retailer but the value of its customer base will be diminished and retailers will have a greater incentive to acquire customers from the defaulting retailer in Phase 3 (via tender), rather than providing assistance in Phase 1.</p>
Q20	<p>Do you agree that, should the Authority be required to allocate customers of the retailer in default, it should do so on the basis of market share in the relevant networks but without any de minimus threshold? If not, why not?</p>	<p>Vector disagrees. We suggest that a de minimus threshold be applied, but that this threshold should not be codified to leave room for flexibility. I.e. the threshold should be determined according to the particular default situation at hand – e.g. with regard to the particular region/s where the default has occurred. This allows flexibility where the default process involves only small retailers.</p> <p>This is because there are some very small retailers within the market who do not have the systems or capacity to absorb customers within a very short time period. This may cripple their ability to compete or put them out of business which would seem to be against the Authority's statutory objective to promote competition for the long-term benefit of consumers.</p> <p>If the Authority feels that it must codify a de minimus threshold we consider 5% to be a sensible and workable threshold.</p>
Q21	<p>Do you agree that the arrangements for managing a retailer default should provide an opportunity for any retailer that is assigned customers to object on the basis that the assignment would threaten its financial viability, with the onus on the retailer to substantiate such a claim? If not, why not?</p>	<p>Vector agrees in principle. However, we are unsure how in practice a retailer could substantiate such a claim, particularly within the timeframes proposed.</p>
Q22	<p>Do you agree that the Code should require that the recipient retailer is responsible for notifying their</p>	<p>Vector agrees. This is a practical solution. However, this would also be dependent on</p>

	assigned customers that they were now a customer of the recipient retailer, and advising the terms and conditions of their new contract? If not, why not?	Question 15 where the Authority would need to provide the information to the recipient retailer.
Q23	Do you agree that the Code should require that contracts between retailers and their customers should include provisions that: provide for the retailer to give customer details to the Authority in the event of a default; allow the contract to be assigned by the Authority in the event of default, with the terms and conditions to be replaced by the recipients retailers terms and conditions; provide for the retailer to assign the contract? If not, why not?	Vector agrees and considers this a sensible approach. Vector is particularly pleased to see that transferred customers will have their contracts replaced by the recipient retailers terms and conditions.
Q24	Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act? If not, why not?	Vector agrees, as illustrated by our comments in this submission.
Q25	Do you agree that a period of 17 days strikes the right balance to achieve the benefits of an arrangement for managing an event of default while minimising the costs of achieving those benefits? If not, what period of time should be specified and why?	Vector agrees with keeping the process as efficient as possible, and to this end finds 17 days to be a reasonable balance. However, as discussed in our response to Question 8 we consider that it should be a maximum of 17 days.
Q26	Do you agree that the benefits of the proposed arrangements would exceed the costs? If not, why not?	Yes, Vector agrees that the benefits of the proposed arrangements would exceed the costs. There will always be a degree of unavoidable costs involved – and distributors will incur costs if required to provide the Authority with customer information. However, having a pre-agreed

		<p>industry process that is well considered, codified and backed with the confidence of the industry is far less costly than urgently made regulation in the event of default.</p> <p>These arrangements also allow participants to have contingency plans in place, thought through and prepared prior to an event of default being triggered.</p>
Q27	Do you agree that the proposed arrangements meet the Authority's Statutory Objective? If not, why not?	Vector agrees. Particularly with regards to limb 2 and 3.
Q28	Do you have any comments on the drafting of the proposed amendment?	<p>Please see our responses above, to Questions 8, 10, 16, 23 & 25; and paragraphs 8-11 above, where Vector recommends sub-clause (b) of clause 14.55(h) should be redrafted to mean:</p> <p><i>Clause 14.55(h)(b) "no bona fide unresolved disputes in relation to a serious financial breach."</i></p> <p>As discussed at the Workshop (13 April 2013), Vector would also like to point out that the proposal to assign customers by non-half hourly (NHH) and half-hourly (HHR) customer market shares needs to be revisited to reflect smart metering data. We suggest that the definitions be drafted to reflect metering categories.</p>