
Report prepared for Vector

Economic analysis of variations between the Vector Use of System Agreement and Model Use of System Agreement

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18 March 2014

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Sapere Research Group is one of the largest expert consulting firms in Australasia and a leader in provision of independent economic, forensic accounting and public policy services. Sapere provides independent expert testimony, strategic advisory services, data analytics and other advice to Australasia's private sector corporate clients, major law firms, government agencies, and regulatory bodies.

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Contents

Glossary	v
Executive summary	vii
1. Introduction	1
1.1 Background	1
1.2 What we were asked to do	2
1.3 Structure of our report	2
2. Level of retail activity in the Vector network	3
2.1 What we were asked to do	3
2.2 Indicators of retail competition	3
3. Identify barriers to entry into the market and expansion into new areas	7
3.1 The challenge of obtaining competitive wholesale market cover	11
3.2 Transmission constraints	12
3.3 Complexity of nodal pricing	12
3.4 Market prudential requirements	13
3.5 Network credit support	13
3.6 Low Fixed User Charges (LFUC)	14
3.7 Standardisation of lines tariffs	15
3.8 Standardisation of data format and file transfer protocols	16
3.9 Standardisation of UoSAs	16
3.10 Significantly different UoSAs in each network area	18
3.11 Credit risk	18
3.12 Conclusion	19
4. Compare and contrast VUoSA and MUoSA	21
4.1 What we were asked to do	21
4.2 Our analytical approach to assessing the VUoSA variations	21
4.3 Impact on promoting competition	24
4.4 Impact on promoting reliability	31
4.5 Impact on promoting efficient operation	32
5. Qualitative analysis of the Use-of-system agreements	37
5.1 What we were asked to do	37
5.2 Our analytical approach	37
5.3 Comparison of the UoSAs	38
5.4 Assessment of mandated versus a negotiated approach	46
5.5 Conclusion	47
6. References	115

Appendices

Appendix 1 Analysis of variations between VUoSA and MUoSA.....	49
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Tables

Table 1 Assessment of variations on promoting competition	26
Table 2 Categories of benefits and costs	39
Table 3 Qualitative cost benefit analysis of VUoSA material variations against the MUoSA	40
Table 4 Assessment of variations against the statutory objective	49

Figures

Figure 1 Trends in retail market concentration (Herfindahl-Hirschman Index)	4
Figure 2 Regional consumer switching rates, 2012	5
Figure 3 Consumer choice – retail brands, 2012	6

Glossary

CBA	Cost benefit analysis
Code	Electricity Industry Participation Code
EDB	Electricity Distribution Business
HHI	Herfindahl-Hirschman Index
ICP	Installation control point
LFUC	Low Fixed User Charge
MUoSA	Model use-of-system agreement
the Act	Electricity Industry Act, 2010
UoSA	Use-of-system agreement
VUoSA	Vector use-of-system agreement

Executive summary

Toby Stevenson, Nives Matosin, Stuart Shepherd and Joanna Smith have been engaged by Vector to provide economic analysis in relation to the Electricity Authority's (Authority's) forthcoming consultation paper on *More Standardisation of the Use of Systems Agreement*. We understand the Authority's consultation paper will be published in the second quarter of 2014.

The scope of this project is to:

- (a) Observe the level of retail activity in the Vector network area relative to the national retail electricity market
- (b) Identify the variations between the VUoSA and MUoSA and any impacts these variations have for barriers to retail entry and expansion in the market, and for promoting reliability and security or the efficient operation of the market
- (c) Locate the analysis in (b) within the wider context of barriers to retail competition that exist or are likely to exist
- (d) Undertake a qualitative assessment on the option of making the MUoSA in its current form mandatory.

Our findings on comparison between VUoSA and MUoSA

On the impact on retail competition ...

In our analysis of the variations we have found no evidence to suggest that any of the individual clauses would hinder entry or expansion of a retailer into Vector's distribution area. In aggregate we consider that the majority of the variations contained in the VUoSA promote competition in the retail market and in the wider electricity market.

On the impact on reliability ...

In our view, a significant emphasis in the VUoSA is ensuring the continued security and reliability of the network. Changes related to this topic in the VUoSA enhance rather than impede this objective. In our view, none of the provisions that enhance reliability or security have any detrimental impact on retail competition.

On the impact on efficient operation ...

While many of the variations in our assessment are not material, the summation of the incremental variations lead us to conclude that the changes made to the MUoSA will, in our view, improve clarity of arrangements between the Retailer and Distributor, reduce transaction costs and improve operational workability. On balance we consider that the VUoSA will promote more efficient operation of the market relative to the MUoSA.

Qualitative assessment of a mandated MUoSA

Our qualitative analysis of the VUoSA against the MUoSA shows that in total, the VUoSA results in a net economic benefit relative to the MUoSA. Based on this finding, there would be no benefit to the consumers in Vector's area of reverting to the MUoSA; nor to mandating any of the individual clauses in the MUoSA.

In examining benefits and/or detriments of mandating the MUoSA at a national level, we found that the opportunity cost of mandating a UoSA is great. Standardisation of the MUoSA may reduce transaction costs but this benefit is outweighed by the lost opportunity for continual innovation, adaption and sustainability. Mandating the MUoSA is the least preferable option in our view.

Our conclusion

We note that the current negotiated approach has been in operation since September 2012 - which is a relatively short period for the Authority's wish for standardisation of UoSAs to occur.

In our view, the Authority's framework has been successful in encouraging distributors such as Vector to seek improvements to the MUoSA. Within the scope of the regulatory framework Vector has negotiated with retailers to improve the operational and commercial workability of the MUoSA. In that process, the three limbs of the statutory objective have not been impaired. Rather the VUoSA, in our view, will promote greater reliability and operational efficiency. There has been no impact on barriers to entry for small retailers. Enforcing a model would remove the ability for other parties to do what Vector (and the retailers) has done.

Under a mandated model, there will be loss of innovation and adaptability of the relationship and obligations between retailers and distributors. Mandating would be the least preferable option and would contradict several of the Authority's own Code amendment principles including:

- Principle 4 – Preference for small-scale 'trial and error' options
- Principle 6 – Preference for market solutions
- Principle 8 – Preference for non-prescriptive options.

In our view, we consider that over time, the UoSAs may well converge as the distributors and retailers 'cherry pick' the best attributes from the various negotiated UoSAs.

Based on our assessment of Vector's process, the level of acceptance of the final VUoSA with retailers and our findings on whether the VUoSA undermines the Authority's statutory objective we suggest that Vector maintain ongoing communication with the Authority over developments with the UoSA. Vector is in a position to use its learnings from this process to assist the Authority its goal of greater standardisation of UoSAs. In the perfect world standardisation of UoSAs would be promoted while also allowing for distributors and retailers to continue to improve and adapt.

1. Introduction

1.1 Background

The *Electricity Industry Participation Code*¹ (Code) sets out the regulatory framework for use-of-system-agreements. A use-of-system agreement is an agreement between a distributor and a retailer that allows the retailer to trade on the distributor's local network. The Code requires that a distributor and a retailer must negotiate the terms of a use-of-system agreement (including any amendment to a use-of-system agreement) in good faith.

In September 2012, the Authority published a Model Use-of-System Agreement (MUoSA) with the view that it would help create greater standardisation of retailer-distributor Use of System Agreements (UoSA) across distribution networks. The MUoSA regime is largely voluntary where parties are required to negotiate in good faith, with some specific issues specified as mandatory in the Code (e.g. prudential requirements).

Recently, the Authority has expressed the view that, based on feedback it has received on MUoSA uptake, the distributors and retailers are:

- not engaging in negotiations to update UoSAs; or
- varying from the provisions of the MUoSA in a manner that adversely affects competition. It is unclear whether this concern relates to varying terms or inhibiting standardisation of UoSAs, or both.

The Authority has expressed concern that its understanding of developments run contrary to its expectations and has led the Authority to carry out further work on standardising the MUoSA, with a consultation paper due in the second quarter of 2014.

The Authority has so far indicated that it will consider four options:²

1. setting the MUoSA as the default agreement
2. mandating the MUoSA
3. regulating specific matters of concern, and creating better incentives for distributors to deliver certain outcomes.
4. retaining the status quo.

We understand that Vector has heavily invested in renegotiating its contractual arrangements with retailers on the basis of the existing Code and the MUoSA regime. This has included a sequential process of negotiating with retailers and, once meeting agreement, having them sign off that version of Vector's UoSA, with a provision that any future amendments are available to those who have already signed. Each time a new version of the VUoSA is negotiated and agreed, all retailers on earlier versions of the VUoSA have the option to take

¹ Electricity Industry Participation Code, Part 12A Distributor use-of-system agreements and distributor tariffs.

² Concerns raised by the Electricity Authority can be found at <http://www.ea.govt.nz/our-work/programmes/market/consumer-rights-policy/model-arrangements/more-standardisation-of-use-of-system-agreements/>

up a later version of the VUoSA (refer to clauses 4.2 and 4.3 of the VUoSA). All large retailers have now signed these agreements and some smaller retailers, with a number still considering the document now. Our analysis has been undertaken on version 3 (known as version 1.3) of the VUoSA, which is the version recently signed by Contact Energy Ltd. We understand that a version 1.4 has been released. We also understand that some of the retailers who are yet to sign are simply waiting for the last version to come out.

1.2 What we were asked to do

Vector engaged Sapere to review the VUoSA and develop an independent view as to whether there was a case for changing the current MUoSA regime. Vector commissioned us to prepare evidence based analysis to:

- (a) Observe the level of retail activity in the Vector network area relative to the national retail electricity market
- (b) Identify the variations between the VUoSA and MUoSA and any impacts these variations have for barriers to retail entry and expansion in the market, and for promoting reliability and security or the efficient operation of the market.
- (c) Locate the analysis in (b) within the wider context of barriers to retail competition that exist or are likely to exist
- (d) Undertake a qualitative assessment on the option of making the MUoSA in its current form mandatory.

1.3 Structure of our report

The remainder of this report is structured as follows:

- Section 2 Level of retail activity in the Vector network
- Section 3 Barriers to entry in the NZ electricity retail market
- Section 4 Comparison and analysis of the VUoSA and MUoSA
- Section 5 Qualitative cost benefit analysis (CBA) of making MUoSA mandatory
- Appendix 1 Detailed comparison of VUoSA and MUoSA.

2. Level of retail activity in the Vector network

2.1 What we were asked to do

In light of comments made by the Authority about the impact of UoSAs on barriers to entry for retailers, we were asked by Vector to examine the level of retail activity in the Vector network area relative to the national retail electricity market. This is to provide context for a discussion of barriers to entry and our clause by clause assessment of whether the VUoSA in any way:

- inhibits retail competition by creating a barrier to entry or expansion; or
- frustrates the Authority's work of promoting competition as per the Authority's statutory objective.

2.2 Indicators of retail competition

Since the introduction of the Act in 2010, the Authority has progressed a number of initiatives targeting increases in retail competition. The Authority regularly reports on improvements in retail competition. It reports on the following measures:

- Retail market concentration.
- Consumer switching rates.
- Retailer activity.

2.2.1 Market concentration

The Authority publishes a widely used market concentration metric, the Herfindahl-Hirschman Index (HHI)³ for each region in New Zealand. One of the components of the HHI is the number of competing firms. The national picture and the trend from 2004 to 2012 are shown in Figure 1.

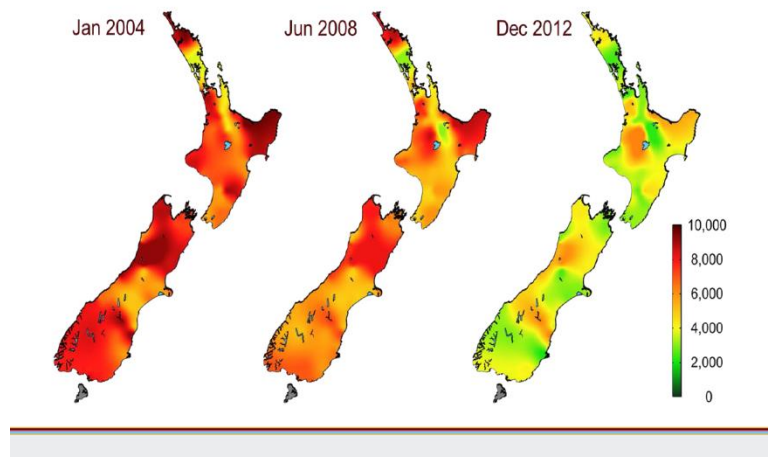
The HHI for the Auckland region was similar to the HHI for the whole of New Zealand. As at December 2012 the HHI for the country was 3,568 and for the Auckland region was 3,499.⁴

³ The Herfindahl-Hirschman Index (HHI) is a measurement of competitiveness measuring market concentration by using size and number of competing firms. On the HHI scale 10,000 means one firm has 100% market share and the lower the index is below 10,000 the higher the levels of competition.

⁴ Electricity Authority 2013, *What's My Number, Competition is Key – a review of the 2012 campaign*, August p.22.

Figure 1 Trends in retail market concentration (Herfindahl-Hirschman Index)⁵

A more competitive market structure is taking hold in the residential retail market



Source: Electricity Authority

2.2.2 Customer switching

The Authority has conducted a campaign to promote customer switching and publishes a review of the campaign. In its review of the 2012 campaign the Authority noted that during 2012, there were 24,209 additional switches over those recorded pre-What's My Number in 2010, with estimated average savings of \$175 per switch and an estimated annual national savings of \$4.24 million.⁶

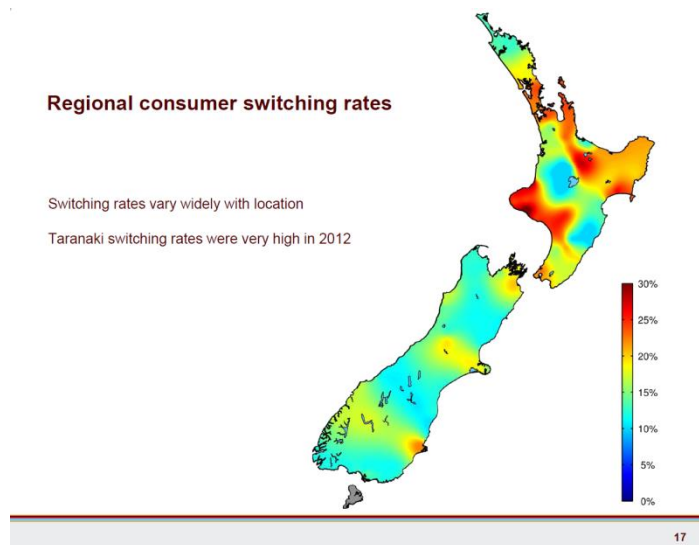
In December 2013, VaasaETT, an energy think-tank based in Finland which tracks customer switching trends in 38 competitive electricity markets, ranked the New Zealand electricity retail market as the most active in the world when it comes to customer switching. According to VaasaETT, New Zealand in 2013 was “*experiencing the highest annual switching levels ever seen in a competitive energy market anywhere in the World.*”⁷

As the Authority acknowledges, high levels of switching may not necessarily be a measure of competitive rivalry; for example, low switching rates may indicate a highly competitive market if it results from retailers offering very similar pricing and services, removing the incentive for consumers to switch.

Figure 2 shows the national switching activity and indicates the Vector network area has high switching rates.

⁵ Electricity Authority 2013b, *Overview of EA progress*. Presented to Commerce Select Committee 7 March 2013.

Figure 2 Regional consumer switching rates, 2012⁸



Source: Electricity Authority

2.2.3 Retailer activity

The Authority reports that nationally as at 31 December 2012⁹.

14 independent electricity retailers were retailing to residential consumers through 22 retail brands, an increase from 18 brands in 2010 and 20 brands in 2011 and a clear sign of increasing retail competition.

They also report nine parties in discussion with the Authority about entering the retail electricity market.

Figures for 2012 released by the Authority¹⁰ shows: there were 17 retailer brands operating in the Vector network area as shown in Figure 3. This is the highest number of brands in any region.

⁹ *Ibid*

¹⁰ Electricity Authority 2013, *What's My Number - Competition is key – a review of the 2012 campaign* August 2013.

Figure 3 Consumer choice – retail brands, 2012

Table 1: Consumer choice – retail brands, 2012

Rank	Region	0	2012 measure	22	Change from 2011
1	Auckland	17			↑ 2
2	Wellington	15			● 0
3	Manawatu-Wanganui	14			● 0
4=	Waikato	13			↑ 1
4=	Taranaki	13			↑ 1
6	Bay of Plenty	12			↑ 2
7	Hawke's Bay	11			● 0
8=	Canterbury	10			↑ 1
8=	Otago	10			↑ 2
10	Northland	9			↑ 1
11	Marlborough	8			● 0
12=	Gisborne	7			● 0
12=	Tasman	7			● 0
12=	Nelson	7			● 0
12=	West Coast	7			● 0
12=	Southland	7			↑ 1
	North Island	21			↑ 2
	South Island	13			↑ 3
	New Zealand	22			↑ 2
Change summary					
Number of regions increased					↑ 8
No change					● 8
Number of regions decreased					↓ 0

Note: The consumer choice measure is a count of brands operating on any network within the regional council boundary. These retailers may not be operating on all networks in the region and must supply more than three residential customer connections to be included in this table.

Source: Electricity Authority

We understand that from Vector's perspective there are 15¹¹ electricity retailers operating on Vector's network as at February 2014 with one other in a pilot stage. The number of retailers operating on Vector's network has increased from five in 1999. Five of these retailers have been small independent retailers who commenced operating in the past three years.

We understand that ten retailers have signed the VUoSA including the five new retailers. Vector is also in discussion with a new entrant retailer who intends to sign a VUoSA in the next 2 months.

2.2.4 Conclusion

The Authority actively monitors retail activity and has a work programme targeted at improving the level of retail competition. Based on the monitored indicators it appears that Vector is amongst the most competitive areas in New Zealand. That suggests there is more scope to improve competition outside the Vector network area than within it.

¹¹ The difference between the Authority's number of retailers and the Vector number of retailers is that Vector's figure is based on the number of contracted retailers as distinct from subsidiaries or brands. For example there are retailers who have different brands that are provided for under the same VUoSA. Specific examples include GloBug and Energy Online who are contracted under the Mighty River Power Limited and Genesis Energy Limited UoSAs respectively.

3. Identify barriers to entry into the market and expansion into new areas

The Authority is focusing on the degree and manner by which the VUoSA varies from the provisions of the MUoSA. The Authority's concern is the potential for those differences to undermine the project to standardise UoSAs and, as a result, undermine the expectation that standardisation would improve efficiency and promote competition.

We understand the Authority's imperative is to use standardisation around efficient and pro-competitive terms as a means to promote competition through reducing transaction costs and facilitating market entry. This section considers the costs and / or disadvantages facing new or expanding retailers and the extent to which they are barriers to retail competition or transaction costs that can be reduced. This provides a context for considering the current model arrangement with the ability for distributors and retailers to negotiate something fit for purpose in each network area.

For a definition of barrier to entry we have gone back to report prepared for the Electricity Commission on competition in the New Zealand electricity market:¹²

Barriers to entry are costs that must be borne by a potential entrant but were not borne by incumbents.

This definition distinguishes between a cost of entry that can be categorised as a barrier to entry and a cost of entry that is a transaction cost. This paper accounts for both the circumstances of a new entrant or a retailer wishing to expand to multiple network areas. A barrier to entry or a transaction cost in relation to the MUoSA and the VUoSA may therefore come from:

- specific terms in the negotiated VUoSA accepted by retailers
- the number of variations between the VUoSA and the MUoSA
- differences between the versions of UoSAs different retailers negotiate with Vector
- differences between VUoSA and negotiated UoSAs on other networks

Based on that definition the question for this paper in relation to barriers to entry or expansion is:

Do the differences between the MUoSA and the UoSA negotiated between Vector and retailers competing, or wishing to compete, on Vector's network impose a barrier to new

¹² Murray, Kieran and Toby Stevenson 2004, *Analysis of the state of competition and investment and entry barriers to New Zealand's wholesale and retail electricity markets*, Report prepared for the Electricity Commission, IECG & TWSC, 30 August. 2004. "The definition follows Stigler (1968) and is consistent with von Weizsacker' and Baumol and Willig (1981)" page 19.

retailers entering the market or a barrier to existing retailers expanding their activities in the market (with market in each case being assessed as the national market¹³).

This section considers whether perceived disadvantages for new or expanding retailers meet the definition and where differences between the MUoSA and a tailored VUoSA lie amongst those disadvantages.

The AEMC quotes Blunt with respect to the significance of barriers to entry for electricity retailers¹⁴:

The ability for new retailers to enter the market is essential to ensure competition between retailers and efficient price levels for customers. This is because the threat of entry will constrain incumbents to behave competitively.

The AEMC also observes¹⁵:

In electricity retail markets particularly, the liquidity in the financial contract market and the ability to manage the risk of exposure to the wholesale spot market is a critical requirement for existing and potential new entrant retailers.

In a report prepared for the AEMC¹⁶ six key barriers to entry were raised by electricity retailers in NSW:

1. Retail price regulation (imposed state by state) in the Australian retail electricity market.
2. The challenge of obtaining competitive wholesale market cover. This includes physical supply, hedge contracts and mechanisms to manage risks.
3. Market prudential requirements and network credit support.
4. The national energy customer framework intended to unify retailing between Australian states. NSW deferred the decision to participate which resulted in wasted expenditure and uncertainty.
5. Regulatory requirements such as green scheme and requirements to provide certain information on customer statements.
6. Legacy tariffs from previous regulatory requirements.

Other issues facing new and small retailers include economies of scale and the ability to be vertically integrated.

¹³ The phrase in brackets is included to indicate we are assessing the variations between the MUoSA and the VUoSA as if they applied in contracts that were or could be applied to the national electricity market.

¹⁴ Dr Maureen Brunt, "Australian and New Zealand Competition Law and Policy", *19th Fordham Conference on International Antitrust Law and Policy*, 1992 as quoted in ACCC, *Merger Guidelines*, 1999 at paragraph 5.125.

¹⁵ Australian Energy Market Commission "Review of Competition in the Retail Electricity and Natural Gas Markets in New South Wales" 13 December 2012

¹⁶ Kieran Murray, Nives Matosin and Eli Hefter Review of "Competition in the Retail Electricity and Natural Gas Markets in New South Wales" - *Report of Interviews with Energy Retailers Report prepared for the Australian Energy Market Commission* February 2013

The New Zealand 2009 Ministerial Review into the Electricity Industry¹⁷ drew the link between lines tariffs and business rules for use-of-system agreements and barriers to new entrant retailers in its supporting material:

153. The diversity of line tariff structures and business rules creates a cost barrier for retailers making offerings in a wide range of smaller regions. Incumbent retailer margins appear to be higher on many of the smaller networks, providing support for this claim.

However, no further analysis supporting the claim or discussion of any other barriers to electricity retailing is included in the reports prepared for the Ministerial Review. The review of submissions on this point noted that many submitters supported the recommendation to develop more standardised tariff structures and business rules for use-of-system agreements for lines businesses to facilitate access to retailers. The evidence provided in submissions points to the issue of standardisation of tariff structures being a greater barrier to retail competition than standardisation of the use of system agreement.¹⁸

For the purpose of identifying barriers to entry into the market and expansion into new areas in the New Zealand context we start with the AEMC's work in this area. Barriers to entry and expansion discussed in the NSW context not replicated in New Zealand include:

- Retail price regulation.
- The national energy customer framework.
- Legacy tariffs.

The barriers that do apply to existing and aspiring electricity retailers in the New Zealand market include:

- The challenge of obtaining competitive wholesale market cover.
- Market prudential requirements and network credit support.
- Regulatory requirements.

We have added to these points based on published submissions, presentations made in the public domain and interviews with some CEOs of small retailers. In particular presentations made by three small retailers at the recent Downstream Conference included lists of barriers or matters that aren't going particularly well for aspiring retailers.¹⁹ None of the three presenters mentioned adherence to the MUoSA or standardisation of UoSAs in their lists of

¹⁷ Electricity Technical Advisory Group and Ministry of Economic Development "Improving Electricity Market Performance Volume one: discussion paper" *report to the Ministerial Review of Electricity Market Performance* August 2009. See also volume two of 2 reports to the Ministerial Review.

¹⁸ Electricity Technical Advisory Group *Improving electricity market performance Summary note on recommendations taking account of submissions* Page 33 October 2009

¹⁹ Gary Holden, *Chief Executive Officer* Pulse energy, Fraser Jonker, *Chief Executive*, Pioneer Generation and Simon Young *Director* Opunake Hydro: *Competition in the market? Small retailers profile* New Zealand Downstream Conference March 2014 Presentations are available at <https://www.dropbox.com/sh/rp4pvdxb1ivxi2k/-4EnH7QryY>

concerns about being a new entrant or expanding retailer. Included in their presentations was the barrier:

- Ability to manage spot price risk i.e. secure competitively priced supply arrangements at multiple locations

Other points raised that are not necessarily barriers to entry as defined above but may be transaction costs (which are also of interest to the Authority) include:

- Balance sheet for prudential (to cover both energy and network/transmission costs)
- Asymmetry of ICP load information
- Code comprehension
- Uncertainty of regulatory environment
- Complexity at every level of the market (Dispatch v final prices, wash – ups, metering and network charges, amount of data, 200+ nodes all with different prices and risk profiles.)
- Bad debt
- Regulatory changes

The table below lists potential barriers to entry into the retail electricity market or inhibitors to retail competition in the New Zealand context that are considered in this section. New and small expanding retailers are typically resourced as leanly as possible both in terms of their costs and their staffing levels so may be vulnerable to some costs of being a retailer because of a lack of scale but economy of scale is not in itself a barrier to entry. Each of the potential barriers to entry or expansions listed below is considered separately with a discussion about whether they are a barrier to entry or expansion as defined (or rather not a barrier but nevertheless a cost of entry or expansion) and whether the differences between the MUoSA and VUoSA exacerbate them.

Potential barriers to entry or expansion considered in this section include:

- The challenge of obtaining competitive wholesale market cover.
- Transmission constraints.
- The complexity of nodal pricing.
- Market prudential requirements.
- Network credit support.
- Low Fixed Charge Tariff Regulations.
- Standardisation of lines tariffs.
- Standardisation of data format and file transfer protocols.
- Standardisation of UoSAs.
- Significantly different UoSAs in each network area.
- Credit risk.

3.1 The challenge of obtaining competitive wholesale market cover

Access to competitive supply is cited as the overwhelming barrier for new entrant retailers in any market and amongst existing retailers that don't have their own significant generation in the New Zealand market.²⁰ It is especially the case in a market such as New Zealand where 95% of wholesale purchases and 96% of generation comes from five vertically integrated generator/retailers.

After the Ministerial Review in 2009, the Electricity Commission undertook significant work to explore the barriers to retail entry and expansion (this was prior to the finalisation of the Electricity Industry Bill and the establishment of the Authority):²¹

Discussions with retailers revealed that the main barriers to retailer entry and expansion they face related to:

- (a) access to wholesale electricity supply contracts;*
- (b) the dominant retailer's pricing; and*
- (c) customer acquisition and servicing costs.*

3.1.1 Current developments

A great deal of effort has gone into making financial forward prices and records of forward trades visible. Forward contracts include contracts traded on futures markets i.e. futures contracts are able to be traded by any party who is able to lodge the necessary cash deposits. A great deal of effort has also gone into getting more liquidity into futures contracts based on New Zealand electricity prices. With the level of vertical integration in the New Zealand market the supply of forward contracts is most likely come from a competitor i.e. a vertically integrated generator retailer. The market makers in the futures market are also from amongst the vertically integrated generator retailers and daily volumes are relatively small so retail purchasers of forward contracts are still exposed to the spot market where purchases exceed hedge contract volumes. This barrier is regarded as a major barrier and sometimes the major barrier to retail competition (entry and expansion).²² This barrier remains an issue for emerging retailers as borne out by the results of surveys on the hedge market in New Zealand:

Opinions on whether there was a competitive hedge market were reasonably polarised. A majority of gentailers (8/11) said it was competitive and a majority of purchasers (16/24)

²⁰ CEOs of existing small retailer electricity companies such as Pulse and Simply Energy make these claims in public in a variety of forms. CEOs of lines companies also cite this as a reasons they will not enter the retailer electricity market

²¹ Electricity Commission *Information Paper More standardised line distribution tariff structures and use of system rules: key findings* 2 September 2010 section 1.1.13

²² Australian Energy Market Commission *ibid.* Also Murray, Kieran and Toby Stevenson *ibid* page 2.

said it was not. Other respondents were slightly more partial to believe the market was competitive.²³

3.1.2 Impact of VUoSA vs MUoSA

Differences between the VUoSA and the MUoSA do not impact on this barrier to entry.

3.2 Transmission constraints

Transmission constraints impose a cost on a retailer where a retailer supplies electricity to customers in a geographic area different to the physical or financial source of supply. The retailer is at risk when they are exposed to the spot market and prices reflect constraints between the two regions.

This issue applies equally to all retailers but may really only be considered as a barrier to entry or expansion where one retailer has generation on one side of a constraint and another one does not.

3.2.1 Current developments

The grid owner has expanded the grid capacity considerably over the past few years so there are fewer binding constraints in the market thereby reducing this issue to the extent it is a barrier to entry or expansion.

Financial transmission rights (FTRs) were introduced in 2013. These contracts give retailers the ability to manage the risk of contracting (financially or physically) in the North Island or South Island to service a retail base in the other island. Plans are afoot to introduce FTRs at other nodes which will increase the ability to contract supply in different geographic regions to a retail base and thereby reduce this issue as a barrier to entry

3.2.2 Impact of VUoSA vs MUoSA

Differences between the VUoSA and the MUoSA do not impact on this transaction cost or potential barrier to entry or expansion in the retail electricity market.

3.3 Complexity of nodal pricing

In addition to the risk of binding constraints affecting prices between regions retailers have to account for differences in transmission loss factors when setting tariffs at different locations.

This cost doesn't satisfy the test for a barrier to entry or expansion because it applies equally to all retailers. It could be argued that it creates a cost for a new entrant or expanding retail coming to grips with the complexity or risk in the wholesale market

²³ UMR research for Electricity Authority 2012, *Hedge Market Review A Quantitative and Qualitative Study* April 2012.

3.3.1 Current developments

Transmission loss factors vary and new entrant retailers have less resilience to that variability than vertically integrated generator retailers. This cost to retailers will remain as long as there is full nodal pricing in New Zealand.

3.3.2 Impact of VUoSA vs MUoSA

Differences between the VUoSA and the MUoSA do not impact on this cost of entry or expansion in the retail electricity market.

3.4 Market prudential requirements

Wholesale purchasers face unpredictable and volatile costs of meeting required prudential security levels which may impede retail competition. This issue has been consulted on by the Authority.²⁴

3.4.1 Current developments

The issue is the level of working capital required to retail electricity and the assertion is that it is a barrier to entry because it is “excessive”. I.e. working capital requirements for a new electricity retailer are greater than entry into other sectors. There is no question that a prudential regime is required and it could be thought of as a barrier in the sense that it creates costs on non-vertically integrated retailers that are not faced (or not faced as much) by vertically integrated generator retailers.

Following consultation the Authority has decided to²⁵ take a number of measures that will improve competition but the barrier will not be completely removed.

3.4.2 Impact of VUoSA vs MUoSA

Differences between the VUoSA and the MUoSA do not impact on this cost of entry or expansion in the retail electricity market.

3.5 Network credit support

In addition to the market prudentials retailers also have to satisfy prudential requirements with network companies in their UoSAs.

²⁴ Electricity Authority 2013, *Settlement and Prudential Security Review Consultation Paper*, June 2013.

²⁵ Electricity Authority 2013, *Decision Paper Settlement and Prudential Security Review*, 17 December 2013.

3.5.1 Current developments

Recent changes to the Code that restrict the level of prudential requirements distributors can require have relaxed that aspect of prudential requirements as a barrier for new and expanding retailers.

3.5.2 Impact of VUoSA vs MUoSA

Differences between the VUoSA and the MUoSA do not impact on this cost of entry or expansion in the retail electricity market.

3.6 Low Fixed User Charges (LFUC) ²⁶

The Electricity (Low Fixed Charge Tariff Option for Domestic Consumers) Regulations 2004, also known as LFUC, are often cited as a barrier to entry and expansion. Retailers report LFUC as being a barrier because of the level of compliance costs it creates around setting retail tariffs. In particular, double the number of tariffs and more than double the work is required because retailers have to manage the difference in regulations between tariffs. To the extent it creates a barrier to entry or expansion it does so by specifying a relativity between tariffs so some of the individual tariffs may not be cost reflective.

We do not consider the LFUC a barrier to entry as all retailers (and distributors) face the same regulatory requirement and it is a cost all retailers have to bear.

The Authority has released a project brief to consider the effects of LFUC in which they identify 4 key concerns raised by industry participants and consumer representatives ²⁷ including:

(b) barriers to retail competition (entry and expansion) from additional complication and costs of retail pricing and customer billing. The LFUC also create a material compliance burden on retailers and distributors

3.6.1 Current developments

The Authority's 2013/14 work programme identifies a project to investigate the effects on efficiency and competition of the LFUC regulations 2004 and other means of achieving the social welfare outcomes sought by government. The work programme states

Code amendments or market facilitation measures are not expected to be completed in 2014/15.

In response the Chair of the Retail Advisory Group (RAG) wrote to the Authority:²⁸

The RAG considers this to be a key project.

²⁶ Low fixed user charge "LFUC".

²⁷ Electricity Authority 2013, *Research Project: Effect of low fixed charges project brief*, September 2013.

²⁸ Letter from Peter Alsop Chairman of the Electricity Authority's Retail Advisory Group (RAG) to Electricity Authority 9 October 2013.

3.6.2 Impact of VUoSA vs MUoSA

Differences between the VUoSA and the MUoSA do not impact on this potential barrier to entry or cost of entry or expansion in the retail electricity market.

3.7 Standardisation of lines tariffs

Standardisation of lines tariffs is the subject of Electricity Industry Act s42 (2) (e)

requirements for distributors that do not send accounts to consumers directly, to use more standardised tariff structures

There is a question as to whether or not this issue is a barrier to entry as all retailers face the same distributor tariff schedules. However, a retailer wishing to enter a new network area has to come to grips with the distributor tariff that differs from other distributors and the incumbent in any area may not have incurred these adjustment costs if its business originated in that area, and for it this issue may be barrier to it entering other network areas. Lack of standardisation certainly imposes a transaction cost for all retailers.

3.7.1 Current developments

Following the 2009 Ministerial Review consultation process retailers softened their views on whether standardisation of lines company tariffs (and standardisation of UoSAs):²⁹

The large number of distribution tariff structures and UoSAs did affect retailers' cost to serve, but retailers said that it did not stop them expanding into areas where they had a business case to do so (i.e. where retailers could offer consumers a competitively-priced product). For some retailers, this was a change in position from that which they had put forward to the Ministerial Review and the Finance and Expenditure Committee on the Electricity Industry Bill, and was the result of additional analysis by retailers on this issue.

Based on those earlier reports and recent comments from CEOs of small retailers, we understand that this issue is now less of a concern than actually managing the information flow between the network companies and the retailers.

Code amendments have been made to provide for more standardisation, e.g. a requirement that distributors consult before making tariff structure changes, a requirement for distributors to negotiate in good faith or to enter into mediation if parties are unable to agree to terms, and distributor indemnities.

3.7.2 Impact of VUoSA vs MUoSA

Differences between the VUoSA and the MUoSA do not impact on this cost of entry or expansion in the retail electricity market.

²⁹ Electricity Commission 2010, *Information Paper More standardised line distribution tariff structures and use of system rules: key findings* 2 September 2010, section 1.1.14.

3.8 Standardisation of data format and file transfer protocols

CEOs of small retailers cite lack of rigorous and enforced standards for data formatting and electronic interchange as a barrier to entry.

We do not consider this a barrier to entry as all retailers face this issue.

3.8.1 Current developments

For small retailers it is the cost for managing multiple networks, lack of consistency with data formats and following up when formats fail that impose high costs relative to others aspects of retailing. In an ideal world there would be default protocols that could be reverted back to if files did not move smoothly based on bilaterally or multilaterally agreed formats.

Clause 29.3 in the VUoSA deals with incorrect information and it protects retailers relative to the MUoSA.

3.8.2 Impact of VUoSA vs MUoSA

There is no impact of the VUoSA versus the MUoSA other than clause 29.3 of the VUoSA (which deals with consumer information received in error by a retailer) which does not create a barrier to entry or expansion.

3.9 Standardisation of UoSAs

Standardisation of UoSAs is the subject of Electricity Industry Act s42 (2) (f)

requirements for all distributors to use more standardised use-of-system agreements, and for those use-of-system agreements to include provisions indemnifying retailers in respect of liability under the Consumer Guarantees Act 1993 for breaches of acceptable quality of supply, where those breaches were caused by faults on a distributor's network.

The Authority received the Minister's sign off that this matter (and all section 42 matters, under the Electricity Industry Act 2010) had been addressed to the Minister's satisfaction as at December 2011. The current attention is driven by the question of whether terms negotiated between retailers and the network company could undermine competition in several ways:

- By disadvantaging the retailer in favour of the distributor.
- Through the number of variations between the VUoSA and the MUoSA and the cost of having to have these checked legally.
- Creating an advantage for some retailers over other e.g. favouring existing retailers over new entrant retailers or large retailers over small retailers.
- Differences between VUoSA and negotiated UoSAs on other networks creating a legal cost of ensuring that many different agreements created for essentially the same purpose are acceptable to the retailer.

3.9.1 Current developments

The extent to which the MUoSA satisfies both retailers and network companies commercially is yet to be fully tested. Inevitably variations will be negotiated once the model agreement is viewed commercially by individual distributors wanting to negotiate with retailers seeking to operate in a specific network area. It is also likely that variations to establish commercially operable agreements will develop along similar lines once the process of negotiation works its way through the system. If that is borne out then a degree of standardisation will emerge. The question is whether the adoption of variations to the model creates barriers to entry or costs that warrant changes to the current regime.

The Authority's starting position on this issue appears in its 2011 consultation paper on standardisation of distribution agreements³⁰ which states its approach to more standardisation of UoSAs as:

2.1.17 The analysis undertaken by the Authority and its predecessor the Electricity Commission, combined with the findings of TrustPower's study, suggest that diversity of UoSAs is not a significant barrier to retailer entry.

The MUoSA was introduced in 2012. The Authority is currently considering whether this arrangement is working or whether early outcomes run against their objective of promoting competition. The Authority has:³¹

initiated a project to consider options for achieving our expectations for more standardisation of use-of-system agreements, including potentially setting the model use-of-system agreement as a mandatory or default agreement

3.9.2 VUoSA vs MUoSA

This issue of whether the variation between a bilaterally negotiated agreement and the model is anticompetitive is the subject of this paper. The two approaches we have taken are to

- test to each clause of the VUoSA to determine whether the difference between the VUoSA and the MUoSA is anti-competitive or inefficient.
- carry out a cost benefit analysis to determine whether forcing the VUoSA be replaced by the MUoSA is supported or not.

We rely on this detailed analysis to draw our conclusions. We also take into account the iterative process between Vector and the retailers and their preparedness to sign the final version of the VUoSA in our overall conclusions.

The clause by clause analysis of the MUoSA and VUoSA finds no evidence to support a view that the difference between the two agreements is a barrier to entry or expansion. This finding applies in terms of whether it creates an advantage for existing retailers over new entrant retailers (i.e. creates a barrier to entry) or large retailers over small retailers.

³⁰ Electricity Authority 2011, *Consultation paper – more standardisation of distribution arrangements: proposed amendments to the Code*, 26 May 2011, pp.7.

³¹ Electricity Authority 2013, *Market Commentary*, December 2013.

We accept that the changes may give rise to additional transaction costs as counterparties may elect to have these legally checked but do not find that possibility to be a barrier to entry or expansion as this applies to all retailers.

We also find that a negative cost/benefit would result by imposing a shift from the negotiated VUoSA back to the current form of the MUoSA if that were to be the outcome of the Authority's deliberations.

Based on our work we anticipate that in time some standardisation will emerge based around commercially operable UoSAs. The VUoSA signed between Vector and most retailers may have set a precedent. Each such agreement would still contain variations from each other to account for the unique circumstances that exist between retailers and each distribution network.

3.10 Significantly different UoSAs in each network area

Clearly a situation where a retailer has to negotiate unique UoSAs in each network creates more work in the form of a transaction costs than the case where all UoSAs are the same i.e. standardised. Further, the more variations amongst the different UoSAs the greater the costs will be for all retailers. However, a variation by itself doesn't create a barrier to entry as defined above.

We note that differences amongst UoSAs are a different issue from a situation where UoSAs *vary* from the MUoSA. The possibility exists that UoSAs for all 29 distributors vary from the MUoSA but remain markedly similar. We note that the rationale behind a number of Vector's variations is to ensure a commercially operable UoSA, without compromising the safety and reliability of the network. If that is the case other distributors may follow their lead.

3.10.1 Impact of VUoSA vs MUoSA

It is too soon to tell whether there will be great variations amongst UoSAs and how much the variations will differ from the MUoSA across the 29 network companies. Our expectation is that there will be a convergence around a form of contract that retailers get comfortable with and that is commercially operable from the distributors' perspective.

3.11 Credit risk

Credit risk is sometimes cited as a barrier to entry and expansion. A challenge for new and expanding retailers is how to grow the business while avoiding a bad debt problem on top of all of the other costs and risks they are taking. The high threshold for disconnection means that where a retailer attracts a high level of bad debts it can be a major distraction and a high cost to their business.

While this issue is a cost for new entrants it does not qualify as a barrier to entry as all retailer are exposed to this risk.

3.11.1 Impact of VUoSA vs MUoSA

Differences between the VUoSA and the MUoSA do not impact on this cost

3.12 Conclusion

Costs of electricity retailing, costs of entering the market and a lack of economies of scale are not necessarily barriers to entry in the sense of being anti-competitive or economically inefficient. We have relied on the Authority's previous work that barriers to entry impose a cost on the retailer (new or existing) that does not reflect the social cost of participating in the market, and hence cannot be captured in the market place.

The structure of the New Zealand market with a high degree of vertical integration amongst a small number of participants means other retailers (new or existing) are heavily reliant on terms of energy supply³² set by competitors and this appears to be a significant barrier to entry. Competitively priced supply is also cited as a significant issue in other markets. Compared with this issue, other matters cited as barriers to entry or expansion tend to be more costs of electricity retailing, costs of entering the market and a lack of economies of scale rather than barriers.

The two issues of diversity of line tariff structures and business rules create a cost barrier for retailers making offerings in a wide range of smaller regions. It is not absolutely clear whether either of these is a more pressing issue than the other but at the time of the 2009 Ministerial Review the emphasis in submissions was more on the number of lines tariffs rather than the business rules. We have seen indications that this is still the case and no indications that the emphasis has changed.

A quest to standardise lines tariffs and business rules arises because there are 29 lines companies. An independent agent such as the Authority can ensure that the model doesn't favour lines business or retail business and the substantial adherence to the model will make retailing across multiple networks less costly. Vector has negotiated a variation to the model as allowed for by the current arrangements. It has involved a series of iterations with retailers and there is a high uptake of the VUoSA including by new entrants. That uptake combined with our analysis set out in this paper leads us to the conclusion that the VUoSA does not form a barrier to entry in the Vector network.

We have not investigated whether other combinations of lines companies and retailers will err towards the MUoSA or something more like the VUoSA or something different again. It may be that others who go through the same process come up with something close to the MUoSA or close to the VUoSA. Either way the barrier to expansion is created by the existence of 29 lines companies. Our findings are that the process of negotiation between Vector and retailers has produced a UoSA that is more commercially operable than the MUoSA and that no clause in the VUoSA is anti-competitive or inefficient. On this basis we find it difficult to understand why Vector would be forced to adopt the MUoSA by mandate because there are 28 other lines companies. The most likely outcome of the process Vector

³² Energy supply used here captures physical and financial arrangements the most prominent of which is access to financial hedge contracts.

has followed is that it will be relied on by other parties as they negotiate UoSAs elsewhere. Other lines companies and retailers are therefore adopt either the MUoSA or something very similar to the VUoSA which would result in a high degree of standardisation.

Our conclusion is that the differences between the MUoSA and the UoSA negotiated between Vector and retailers competing, or wishing to compete, on Vector's network do not impose a barrier to new retailers entering the market or a barrier to existing retailers expanding their activities in the market (with market in each case being assessed as the national market).

4. Compare and contrast VUoSA and MUoSA

In this section of the report we compare the VUoSA against the MUoSA. Our approach was to firstly, identify the variations between the two UoSAs and then assess the materiality of the variations in relation to the three limbs of the Authority's statutory objective under the *Electricity Industry Act 2010* (the Act). Our assessment considers the materiality or implications of the variations against the three limbs of the statutory objective – being to promote competition, reliability and efficient operation of the electricity industry.

We conducted a thorough, clause-by-clause comparison of the two UoSAs which is set out in Appendix 1.³³

4.1 What we were asked to do

Sapere was engaged by Vector to undertake an independent analysis of the extent to which the VUoSA, where it varies from the MUoSA, had an impact on barriers to retail entry. In particular, we were asked to compare the MUoSA and the VUoSA outlining the reasons behind the variations and whether they are barriers to entry, including identifying variations of terms that provide greater benefits or efficiencies to retailers.

4.2 Our analytical approach to assessing the VUoSA variations

To assess the implications of the variations in the VUoSA from the MUoSA, we have aligned our analysis with the analytical approach taken by the Authority under the Act. We developed an analytical approach for comparing the VUoSA against the MUoSA that tested for the materiality of the variations against the statutory objective of the Authority under the Act, using the following two steps.

Step 1: Assessment of variations against the statutory objective

Our first step was to test for the materiality of the variations in the VUoSA to the MUoSA against the Authority's statutory objective. Section 15 of the Act provides the Authority with a single statutory objective:

To promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.

Our assessment process was guided by several of the Authority's documents including *Interpretation of the Authority's statutory objective* (2011) and *Consultation Charter* (2010). The

³³ In Appendix 1 we have identified variations between the MUoSA and VUoSA. This is not an exhaustive list of all variations. We omitted variations that in our view were less substantive in nature.

Authority interprets its statutory objective as requiring it to exercise its functions in ways that, for the long-term benefit of electricity consumers:³⁴

- *facilitate or encourage increased competition in the markets for electricity and electricity-related services, taking into account long-term opportunities and incentives for efficient entry, exit, investment and innovation in those markets;*
- *encourage industry participants to efficiently develop and operate the electricity system to manage security and reliability in ways that minimise total costs whilst being robust to adverse events; and*
- *increase the efficiency of the electricity industry, taking into account the transaction costs of market arrangements and the administration and compliance costs of regulation, and taking into account Commerce Act implications for the non-competitive parts of the electricity industry, particularly in regard to preserving efficient incentives for investment and innovation.*

While the scope of our engagement was to consider barriers to entry and impact on retail competition, the Authority must consider the three limbs of the statutory objective, namely competition, reliability and operational efficiency, as a whole. As such we expanded our analysis to incorporate not only the impact of the VUoSA on competition, but also the impact on reliability and operational efficiency.

The Authority's *Consultation Charter* sets out Code amendment principles that are intended to give industry participants greater predictability about decision-making on likely amendment to the Code.

A number of the principles have particular relevance to the types of concerns raised by the Authority. In assessing future regulatory approaches to the UoSAs (such as setting the MUoSA as the default agreement, mandating the MUoSA, or regulating specific matters of concern, and creating better incentives for distributors to deliver certain outcomes) we consider the following Code amendment principles to be of particular relevance:

- Principle 2 – Clearly identified efficiency gain or market or regulatory failure
- Principle 4 – Preference for small-scale 'trial and error' options
- Principle 6 – Preference for market solutions
- Principle 8 – Preference for non-prescriptive options.

In preparing our comparison matrix (located in Appendix 1) we have taken into consideration these Code amendment principles.

The approach we took in assessing the variations was to undertake a clause-by-clause analysis of the two UoSAs. We made an assessment/judgement as to whether each variation was material or not and to which of the statutory objective limbs the variation was relevant. Our definition of materiality depended on the extent of the impact on the retailer party to the UoSA and whether the impact was detrimental or positive for the retailer.

We did not employ a strictly legal definition of materiality. Generally, in relation to the competition limb, we considered that a variation was material where the retailer was likely to

³⁴ Electricity Authority 2011, *Interpretation of the Authority's statutory objective*, 14 February 2011, paragraph 2.1.1.

incur a financial cost that it did not incur under the MUoSA and that the incremental cost could in our view hinder its ability to enter or compete in Vector's distribution area. Materiality in relation to reliability and operational efficiency depended on the extent of improvement or detriment.

The variations that are identified as being material under the statutory objective were considered in the second step of the analysis.

Step 2: Assessment of the variations against each limb of the statutory objective

We further assessed each of the material variations as identified in step 1 and Vector's rationale for the variation. For this task we worked closely with Vector and its advisers to ensure an accurate description.

In the next task we made an independent assessment of the impact of each variation as to whether it was enhancing, neutral or impeding the promotion of competition; reliability and/or efficient operations. Our assessment was guided by the Authority's *Interpretation of the Authority's statutory objective* (2011) and Code amendment principles.

Impact on promoting competition

In considering the variations that impact on retail competition we specifically paid attention to impacts on the ability of retailers to enter and expand (compete) in Vector's area. For example, an increase in financial costs to the retailer may impact on the retailer's ability to enter or compete in the market. We took on board concerns raised by the Authority about the VUoSA including concerns about the ability of small new retailers to enter into the market.³⁵

Other related issues we considered included the impact of the variations on other aspects of retail competition, such as product and service innovation.

For each matter we provided our independent explanation of the rationale for our assessment.

Impact on promoting reliability

Our assessment of the impact of variations on reliability and system security was two-pronged. Would the variation be beneficial or detrimental to reliability, and further, what would be the cost implication for retailers, if any?

Impact on promoting efficient operations

In a similar manner to the two-pronged approach in assessing the impact on system security and reliability, our assessment of promoting efficient operations considered whether the variation would be beneficial or detrimental, and the cost impacts on retailers.

³⁵ Concerns raised by the Electricity Authority can be found at <http://www.ea.govt.nz/our-work/programmes/market/consumer-rights-policy/model-arrangements/more-standardisation-of-use-of-system-agreements/>

Our findings in relation to the impact of the variations on retail competition, reliability and deficient operations are presented in Appendix 1 and summarised in section 4.3.

4.3 Impact on promoting competition

In our view, the VUoSA would not have any direct or indirect impact on the ability of retailers to enter and compete in Vector's distribution area. We could find no variation that would have a detrimental impact on retail competition.

There were a few variations that may cause some disadvantage to retailers relative to the MUoSA. One variation that seems disadvantageous to the Retailer is the requirement for the Retailer to cover the cost of the communicating the first notification for a Planned Service Interruptions to Consumers (clause 5.10). The cost of further re-notifications to Consumers, however, will be covered by the Distributor. This does increase costs to the Retailer. However, variations to the Unplanned Service Interruptions provisions (clauses 2.2(d) and 5.5) provide for the Retailer to provide this service unless the Distributor provides written notice to the Retailer that the Distributor is responsible for providing this service to any or all Consumers. In other words, whilst the MUoSA provides for the Retailer, the Distributor or both to provide this service, the VUoSA contemplates that the Distributor can take over the provision of this service – thus reducing operating costs to the Retailer. We understand that Vector intends to assume responsibility for providing this service to all consumers that are connected to its networks as part of the proposed transition of the model of delivery on the Auckland Network from a conveyance only model to an interposed model (discussed further in section 4.5).

If Vector does provide the service related to Unplanned Service Interruptions then it would most likely counteract the disadvantage of having to pay for the cost of the first Planned Services Interruption notification.³⁶ Further, this provision is a minor matter relative to the non-VUoSA barriers to entry discussed in section 3.

The MUoSA contemplated a liability regime whereby the maximum total liability of each of the Distributor and the Retailer under or in connection with that agreement for any single event or series of connected events would not in any circumstances exceed the lesser of \$10,000 for each ICP on the network, or \$2,000,000.

The VUoSA provides for a per-event liability cap and an annual aggregate liability cap, where the latter is proportionate to the percentage of the total number of ICPs connected to the Distributor's network that the Retailer is supplying as at 1 July each year. The cap on the Retailer's limitation of liability to the Distributor (clause 26.8) has been varied so that for retailers that supply more than 5% of the ICPs on Vector's network, the cap moves from \$1.4m to a corresponding range of \$2.1m to \$9.1m.

On the other hand, for retailers that have below 5% of active ICPs, the aggregate liability limitation has fallen (from \$2 million to \$1.4 million). This variation is beneficial to these

³⁶ We understand that Vector currently provides the Unplanned Service Interruption service for three retailers as at the date of this report and that is an arrangement under legacy contract paid for by the retailers. Under the VUoSA, we understand that Vector intends to provide the service for all retailers at no charge.

smaller retailers. Overall, the Retailer's potential liability exposure to the Distributor under the VUoSA could be considered to be more commercially even-handed than the position under the MUoSA.

The variation reflects an attempt by Vector and Retailers to negotiate commercial arrangements that suit their risk profiles by linking the liability levels for Retailers to their level of activity on the network, and from Vector's perspective, by implementing a structure where its aggregate liability does not increase solely due to there being more retailers on its network.

On balance, we consider that the variation to the Retailer's limitation of liability will not act as a barrier to entry for retailers, as it lowers the cost to retailers with small market share (<5% of total ICPs) who represent the new entrants.

We assessed a number of other variations as contributing to promoting competition in other respects. The VUoSA contains provisions that facilitate the load control by parties other than the Retailer or Distributor. Clause 6.11 contemplates third party involvement in Consumer controlled load. This variation is, in our view, 'future-proofing' the VUoSA by putting in place arrangements that increase understanding of the requirements and obligations. This in our view reduces scope for future uncertainty and disputes. The VUoSA promotes competition in third party provision of controlled load. The variation ensures that the Distributor will be able to manage the controllable load in certain circumstances which will promote system security in the event that a Consumer engages a third party for the control of its load.

The VUoSA contains an innovative approach to managing financial risks associated with Events of Default (clause 20.4) and Insolvency Events (clause 20.6). The VUoSA variation provides an option of giving the Retailer a chance to trade its way out of financial trouble rather than terminating the agreement (as set out in the MUoSA). As a safeguard, the variation stops the Retailer from supplying electricity to existing and new connections in the Event of a Default. This has the effect of limiting the financial risk of the Retailer without terminating the VUoSA with the Retailer. This variation promotes retail competition by providing the Retailer some reprieve as opposed to the blunt instrument of termination which is the only option in the MUoSA.

The VUoSA contains provisions for handling Consumer information received in error by Retailer (clause 29.3). The provision requires that information received in error is treated as confidential by the recipient and as such protects the commercial interest of the Retailer of the Consumer(s). This variation improves the workability of the market as well as promoting and protecting retail competition.

Our analysis of the variations is presented in full in Appendix 1 and the assessment of variations on promoting competition are summarised in Table 1 below.

In our analysis of the variations we have found no evidence to suggest that any of the individual clauses would hinder entry or expansion of a retailer into Vector's distribution area. In aggregate we consider that the VUoSA promotes a greater level of competition in the retail market and in the wider electricity market than the MUoSA.

Table 1 Assessment of variations on promoting competition

Analysis and Assessment	
Clause	Sub-clause. 2.2(d) Retailer's services and obligations and clause 5.5.
Variation	<p>The MUoSA provides for the Retailer to provide a 24 hour, seven day a week, Unplanned Service Interruption information service and provide service interruption information in accordance with schedule 5. (The MUoSA also provides for the Distributor to provide this service in clause 2.1(d)). The VUoSA varies this provision by adding that the Retailer provides this service except in relation to any Consumers or categories of Unplanned Service Interruption in respect of which the Distributor has notified the Retailer pursuant to clause 5.5 that it will provide such service and information. This variation allows the Distributor to take over the responsibility for informing Consumers about Unplanned Service Interruptions.</p>
Rationale	<p>As Vector is the party that maintains and operates its electricity distribution network, it is sensible and likely to be more cost-effective for Vector to communicate with consumers in relation to Unplanned Service Interruptions, as it can provide this across all consumers on its network. As noted in footnote 36 we understand that Vector, under legacy arrangement, provides the Unplanned Service Interruption service to three retailers who pay for the service. Under the VUoSA, we understand that Vector intends to provide the service for all retailers at no charge.</p>
Assessment	<p>The Retailer will need processes (such as operating a call centre to field questions from consumers) to comply with this provision. This may result in some cost to the Retailer. Any such cost is likely to be outweighed by the benefits of not having to incur costs for managing Unplanned Interruptions. This variation is likely to be helpful to smaller retailers.</p> <p>On balance this variation is likely to reduce costs to the Retailer and at the same time promotes more efficient operation in the market, by allowing for the Distributor to manage communications for Unplanned Service Interruptions across its network.</p>
Clause 5.10 Planned Service Interruptions – Costs of communication.	
Variation	<p>Under the MUoSA, if the Distributor asks the Retailer to notify Consumers in accordance with schedule 5, the Distributor will meet the reasonable costs incurred by the Retailer in complying with such requests, unless agreed otherwise in writing.</p> <p>Under the VUoSA, if the Distributor asks the Retailer to notify Consumers of a Planned Service Interruption in accordance with schedule 5, the Retailer will</p>

Analysis and Assessment	
	comply with <u>such requests at its own cost, except where</u> re-notification of the Planned Service Interruption to Consumers is required solely due to the act or omission of the Distributor or its contractors, or where agreed otherwise in writing. (emphasis added).
Rationale	The variation reallocates costs of the first communication notice for Planned Service Interruptions to the Retailer. The Distributor will cover the cost of subsequent communications.
Assessment	This variation is likely to increase costs to the Retailer relative to requirements under the MUoSA.
Clause 6. Load management	
	<p>In general, VUoSA clauses 6.1 to 6.4 provide greater clarity about load control arrangements between the Retailer and Distributor than the MUoSA.</p> <p>The VUoSA facilitates a framework for competition with regards to load control.</p>
Variation	<p>Distributor may control load: Under the MUoSA (clause 6.1) if the Distributor provides a Price Category or Tariff Option that provides a non-continuous level of service by allowing the Distributor to control part of, or all of, the Consumer's load (a "Controlled Load Option"), <u>and the Consumer elects to</u> take up the Retailer's corresponding price option that incorporates the Controlled Load Option, the Distributor may control the relevant part of the Consumer's load in accordance with this clause 6 and schedule 8 (emphasis added).</p> <p>Clause 6.1. Under the VUoSA, the Distributor may control the consumer's load if the Distributor provides a Price Category or Tariff Option for a non-continuous level of service in respect of part of or all of the Consumer's load (a "Controlled Load Option"), <u>and charges the Retailer</u> on the basis of the Controlled Load Option with respect to the Consumer. (emphasis added).</p>
Rationale	<p>Under the MUoSA arrangement it appears the Retailer can opt to take up the Controlled Load Option or not. Under the VUoSA variation, it appears that the Retailer is required to do so.</p> <p>This variation ensures that any arrangement between a Distributor and a Consumer to control load will be adhered to by the Retailer.</p>
Assessment	The arrangement facilitates competition in provision of Load Control services to

Analysis and Assessment	
	Consumers.
	Clause 6.3 Control of load by the Retailer if some load is controlled by the Distributor:
Variation	<p>Under the MUoSA (clause 6.3), the provisions refers to Control of load by an Entrant if some load is controlled by an Incumbent.</p> <p>Under the VUoSA (clause 6.3), if the Retailer wants to control part of a Consumer's load at a Consumer's ICP, but the Distributor has obtained the right to control part of the load at the same ICP in accordance with clause 6, the Retailer may only control the part of the Consumer's load that: (a) the Consumer has agreed the Retailer may control under a Consumer Contract or another agreement; and (b) is separable from, and not already subject to, the Distributor's right to control part of the Consumer's load at the ICP obtained in accordance with clause 6.1, unless the Distributor and the Retailer agree otherwise in writing.</p>
Rationale	This provision allows for both the Retailer and the Distributor to agree in writing as to the Control of load at an ICP.
Assessment	The effect of the clause in the VUoSA is effectively the same as that in the MUoSA, but the VUoSA also allows for the parties to agree to other arrangements in writing.
	Clause 6.11 Inclusion in Consumer Contracts.
Variation	<p>The Retailer will include in each of its Consumer Contracts a requirement for the Consumer to ensure that, if it enters into any agreement or arrangement with <u>any third party</u> in relation to control of its load: (a) the load is not already subject to the Distributor's right of control; (b) the third party does not interfere with or damage the Distributor's or the Retailer's Load Control Systems; (c) if any damage occurs due to the actions of the third party, the Consumer will promptly and at its own cost remove the source of the interference and make good the damage; (d) the third party makes the load available to the Distributor to enable it to fulfil its performance obligations as an asset owner in respect of managing System Security in accordance with the Code and to meet the Service Standards for Distribution Services; and (e) prior to controlling the load, the third party has entered into an agreement with the Distributor which sets out the protocols for the use of the load, including the coordination with the Distributor of the disconnection and reconnection of load.</p>

Analysis and Assessment	
Rationale	<p>This clause contemplates third party involvement in Consumer controlled load. This variation is, in our view, ‘future–proofing’ the VUoSA.</p> <p>The variation puts in place arrangements that will facilitate third party provision of load control in a manner that does not interfere or damage Load Control Systems; and allows the Distributor to fulfil its performance obligations; and requires protocols for the use of the load.</p> <p>We note that the practice note for this clause in the MUoSA discusses the development of possible third party entry into the market for load management services.</p>
Assessment	<p>Putting in place the variation in arrangements and obligations promotes competition in third party provision of controlled load. In addition, the variations in the VUoSA are consistent with the scope for third party entry into the market for load management services contemplated by the Authority in the practice note for this clause in the MUoSA. This variation is, in our view, ‘future–proofing’ the VUoSA.</p> <p>The variation ensures that the Distributor will be able to manage the controllable load in certain circumstances which will promote system security in the event that a Consumer engages a third party for the control of its load.</p> <p>Clarity about load control arrangements with third parties enhances operational efficiency of the market.</p> <p>The Distributor requires that this type of provision is inserted in the Retailer’s Consumer Contract because the Distributor has no direct contract with the Consumer.</p>
Clause 20.4 Notification of Events of Default and clause 20.6 Insolvency Event.	
Variation	<p>Clause 20.4. In the Event of Default, the VUoSA provides Vector additional (compared to the MUoSA) ability to:</p> <p>(e) if the Retailer is the Defaulting Party, the Distributor may: (i)<u>undertake a Temporary Disconnection</u> of some or all of the ICPs supplied by the Retailer, in which case the Retailer will take all steps necessary to allow those disconnections to be made and will provide the information required by the Distributor in relation to such ICPs; and/or (ii)<u>prohibit the Retailer from using the Network to supply any Point of Connection which is not currently supplied by it.</u> (emphasis added).</p> <p>Clause 20.6. Insolvency Event. The same variations are made for Insolvency Events.</p>

Analysis and Assessment	
Rationale	<p>This variation provides the Distributor with an option that avoids the termination of the agreement and notification the Authority. Termination of the agreement is a fairly blunt action.</p> <p>The VUoSA variation provides an option of giving the Retailer a chance to trade its way out of financial trouble. As a safeguard, the variation stops the Retailer from supplying electricity to existing and new connections in the Event of a Default. This has the effect of limiting the financial risk of the retailer without terminating the VUoSA with the Retailer. Provides a means for the Distributor to manage the financial risk arising from the Event of Default.</p> <p>This variation, promotes competition by providing some reprieve to the Retailer.</p>
Assessment	This variation enhances administrative efficiency for both parties in the event that the VUoSA is terminated.
Clause 26.8. Retailer's limitation of liability.	
Variation	Under the VUoSA, the maximum total liability of the Retailer to the Distributor is the inverse of the Distributor's maximum total liability to the Retailer as in clause 26.7. The variation contains a table that sets a maximum annual aggregate liability of \$700,000 to \$9,100,000; depending on the number of active ICPs supplied by the Retailer as a percentage of the total number of ICPs connected to the Network at the commencement of the year (starting at 0-2.5% up to > than 30%).
Rationale	The limitation for the Retailer's liability is the inverse of the Distributor's liability limitation. The limitation of liability is relative to the Retailer's proportion of total ICPs. As the proportion of total ICPs increases so does the value of the liability. This approach appears to align with the objective of treating retailers on an even-handed basis. We note that Vector has the largest number of retailers trading on its network of varying sizes.
Assessment	We understand that a high proportion of the retailers operating on Vector's network are quite small. Therefore for retailers that are below 5% of active ICPs the aggregate liability limitation has fallen (from \$2 million to \$1.4 million). For retailers with more than 5% of the total ICPs the value of the liability has increased.
Clause 29.3 Consumer information received in error by Retailer:	
Variation	The VUoSA inserts the provision that the Retailer undertakes and agrees that in

Analysis and Assessment

	the event that it or anyone acting on its behalf receives any information relating to consumers on the Network directly or indirectly from the Distributor that does not relate to Consumers the Retailer is supplying at that time, it will keep such information confidential and will not use that information for any purpose. The Retailer acknowledges and agrees that this clause 29.3 shall also be for the benefit of other retailers and enforceable by each of those retailers in accordance with section 4 of the <i>Contracts (Privity) Act 1982</i> .
Rationale	Receiving consumer information about consumer that it does not supply could provide commercial advantage to the Retailer. Having this provision safeguards the commercial advantage of the Retailer who is supplying the Consumer. We understand that this variation was requested by a retailer during the VUoSA negotiations.
Assessment	This variation protects commercial information of the Retailer thereby protecting the Retailer. In addition, the inclusion of such a provision is an administrative improvement that enhances operational efficiency.

4.4 Impact on promoting reliability

In our view, a significant emphasis in the VUoSA was ensuring the continued security and reliability of the Network. In our assessment, none of the provisions that enhanced reliability or security has any detrimental impact on retail competition. In total, we found that there were around 12 variations that sought to improve provisions related to network reliability and security.

A primary focus of the variations in our view was to better comply with “Good Electricity Industry Practice”, which is a defined term in the MUoSA and generally well understood in the industry, to set a clear benchmark against which the Distributor will be held to account under the VUoSA. The VUoSA adopts the same definition of Good Electricity Industry Practice. From the outset in describing the Distributor’s services and obligations (clause 2.1) the VUoSA refers to Good Electricity Industry Practice in an overarching manner in setting out the Distributor’s services and obligations. The term Good Electricity Industry Practice is added to a number of other clauses under the VUoSA. In our view, this is an improvement over the MUoSA which only refers to the Good Electricity Industry Practice in a limited number of clauses.

Other variations appear to be designed to improve reliability in relation to load control. As discussed in the previous section, the VUoSA anticipates and facilitates control of a Consumer load by third parties. The variation under clause 6.11 (Inclusion in Consumer Contracts) puts in place arrangements that will facilitate third party provision of load control in a manner that does not interfere or damage Load Control Systems; and allows the Distributor to fulfil its performance obligations; and requires protocols for the use of the

load. The variation ensures that the Distributor will be able to manage the controllable load in certain circumstances which will promote system security while continuing to allow a Consumer to engage with a third party for the control of its load.

In addition, variations in clauses 6.6 and 6.7 remove the requirement for a protocol to be developed between the Distributor and Retailer and instead requires the Retailer to make available the load that it has the right to control, if the Distributor requires control of that load for specific purposes. We consider that there is no disadvantage to the Retailer to make its controllable load available to the Distributor in circumstances where it is required for the management of system security; and network security in response to emergency situations, as the Retailer's customers will suffer outages if there is an interruption to supply. This variation most likely enhances the management system security and network security.

Clause 6.10 of the VUoSA provides for the Distributor to obtain information from the Retailer about Consumer demand and energy. Energy and demand information is an important input for the Network to assist with network planning. The Distributor will pay for the Retailer's costs of providing the information. There is no disadvantage to the Retailer from this variation. This variation provides the Distributor with information that we expect should enable it to enhance the medium to long term reliability of the network.

Variations under clause 14.4 (Interference or Damage to Retailer's Equipment or Consumer's Installations) make it clear that the Distributor can take action, even if it damages equipment or installations, if it is done to maintain system and/or network security. This variation enhances system and network security. In addition, the VUoSA contains a provision for the Retailer to notify the Distributor of any incident that may have an adverse effect the Network.

On balance, the provisions in the VUoSA contain arrangements that will improve system and network security and reliability. More detailed analysis is presented in Appendix 1.

4.5 Impact on promoting efficient operation

In comparing the differences between the MUoSA and the VUoSA, our assessment is that many of the variations made in the VUoSA were intended to improve the workability of the agreement. Improving the workability seemed to occur in response to identifying improvements that could be made to the MUoSA; adding new processes that were not included in the MUoSA; and responding to situations that arose since the introduction of the MUoSA over two years ago where the MUoSA was not adequate. The majority of variations are designed to improve the workability of the agreement which flows through to more efficient operation of the market.

Of note, Vector is voluntarily moving the delivery of electricity under its existing UoSA relating to the Auckland Network from a conveyance model to an interposed model. This will create a number of benefits for retailers, particularly with regard to billing and payment processes and operational matters. A number of variations under clause 11 (Billing Information and Payment) relate to setting out the different arrangements specific to Vector's Auckland and Northern Networks. They also include changes to ensure cash-flow neutrality for retailers operating on the two Networks when the model of delivery on the Auckland Network is transitioned from a conveyance only model to an interposed model. The variation to clause 2.2(d) (Retailer's services and obligations) provides for the

Distributor to assume responsibility for informing Consumers about Unplanned Service Interruptions. As Vector is the party that operates and maintains that network, it is likely to be more cost-effective for Vector to communicate Unplanned Service Interruptions to all customers on its network. Vector has entered into contracts with three retailers to manage outages on its Northern Network. Although Vector currently charges these retailers for this service, it intends to provide this outage management service to retailers free of charge under the VUoSA.

We understand that of the 105 embedded networks in New Zealand³⁷, around half are located within Vector's network. The insertion of a new clause 2.4 (Retailer's obligation in relation to embedded networks) and a new Schedule 9 (Embedded Network Provisions) under the VUoSA add provisions that specifically relate to embedded networks and which were not covered in the MUoSA. It also addresses matters that specifically affect Vector more than other Electricity Distribution Businesses (EDBs). In our view, inserting a provision that deals with ensuring transparent Retailer obligations in relation to embedded networks creates greater certainty in the market, and as such enhances efficient operation of the market.

As discussed earlier, clause 6.11 (Inclusion in Consumer Contracts) sets out arrangements for Consumer load control arrangements by third parties. The establishment of such arrangements relates to future-proofing the VUoSA and enhancement of operational efficiency for market participants and Consumers.

Variations to clause 8.1 (Performance Reports), remove the requirement to publish reports unless requested by the Retailer. This variation avoids duplication in producing performance reports given that the Distributor already publishes a number of reports under other legislative requirements. The variation promotes operational efficiency by reducing costs of producing reports that have not been requested by the Retailer and vice versa.

Clause 12.16 (Distributor or Retailer to effect changes in value or type of security) provides that the Distributor or the Retailer, as appropriate, will satisfy the requirement to increase or decrease the value of security or change to the type of security, within 5 Working Days of notice requiring the same under the agreement. The VUoSA varies this requirement so that where the Distributor requires the Retailer to provide additional security or requires the value of security to be increased following the Distributor's review of the value of security, the Retailer is granted 15 Working Days to comply. The VUoSA provides more time for the Retailer to effect the changes in the value or type of security. This is clearly beneficial to the Retailer, and is particularly beneficial to smaller retailers who we understand requested the change.

There is a range of other variations that in our view improve the workability of the VUoSA compared to the MUoSA. These are summarised below:

- **Clause 9.3. Notice of Tariff Rate change.** The VUoSA provides for an extra 20 Working Days' notice for Tariff Rate changes giving Retailers more notice of tariff rate changes.

³⁷ Electricity Authority 2011, *Electricity in New Zealand*, 2011, p.25.

- **Sub-clause 11.12(c). Other invoices/credits.** This variation provides for invoicing of other miscellaneous charges such as reconnection charges.
- **Clause 11.16. No refunds.** The variations in clause 11.16 provide for a carve-out of the no set-off provisions. The variation allows for deductions in payments in the event of a Serious Financial Breach by the Retailer or during an Insolvency Event affecting either the Retailer or Distributor. This provision recognises the commercial reality of having to minimise credit risk in the event of a party being subject to Serious Financial Breach (Retailer) or an Insolvency Event (Retailer or Distributor). There is no disadvantage to retailers arising from this variation. In the event of financial breaches or insolvency the impact is more on other creditors.
- **Clauses 14.3 and 14.5. Costs of making good any damage.** The two variations ensure that regardless of the reason for the damage, if the Distributor causes damage to the Retailer's or Consumer's equipment then the Distributor will pay the cost of making good the damage. This is reciprocated if the Retailer causes damage to the Distributor's equipment. This variation ensures that regardless of the reason for the damage, the party that caused the damage to the equipment will pay the cost of making good the damage. This variation is more equitable and in so is more operationally efficient as it reduces the scope for disputes.
- **Clause 14.12. The Network.** The VUoSA varies this provision by requiring the Retailer to include in its Consumer Contracts agreement (rather than a simple acknowledgement) by the Consumer to sub-clauses 14.12 (a) to (c). The variation increases the legal strength of the provision because a party cannot be sued on the basis of an acknowledgement. The MUoSA provision as drafted is legally hollow. The variation corrects poor drafting in the MUoSA.
- **Clause 14.12(c). The Network.** This variation clarifies the ownership/property right in relation to Metering Equipment.
- **Clause 20.4. Notification of Events of Default and clause 20.6. Insolvency Event.** As discussed above, these clauses have been varied so that the regime for dealing with Retailers who are in Serious Financial Breach or insolvent under the VUoSA are consistent with the retailer default management regime contemplated by the Code. We note that the Code has been amended following the publication of the MUoSA to specifically deal with retailer default situations. These clauses also provide additional rights exercisable by the Distributor following an Event of Default or Insolvency Event affecting the Retailer, so that the Distributor can manage its credit risk in these circumstances in a sensible manner (e.g. so that the Retailer does not supply additional points of connection while it is insolvent).
- **Sub-clause. 21.1(a). Either party may terminate this agreement:** The MUoSA contemplates that either the Distributor or the Retailer may terminate the agreement at will by giving 120 Working Days' notice to the other party (although this notice cannot be given in the first 4 years and 6 months after the commencement date of the agreement). The VUoSA variations ensure that if the Retailer wishes to continue to use the Network to supply consumers following termination of the VUoSA, the parties will negotiate any amendments to the Standard Use of Network Agreement in good faith during the 120 Working Day notice period with a view to entering into the new agreement with effect from the termination of this agreement. This provision allows for negotiation of the Standard Use of System Agreement rather than having it presented as a *fait accompli*. We understand that this variation was specifically requested

by a retailer during negotiations with Vector. It reduces uncertainty for the Retailer and enhances administrative efficiency for both parties in the event that the VUoSA is terminated.

- **Sub-clause 23.1. Force Majeure Event.** The variations adopt Good Electricity Industry Practice as a benchmark for determining whether an event is a Force Majeure event or not. Good Electricity Industry Practice is a defined term in the MUoSA and the VUoSA. The MUoSA used subjective terms, such as triggers of “natural causes”, in formulating the definition of a “Force Majeure Event”. The variations to the definition of “Force Majeure Event” in the VUoSA enhance operational efficiency by enabling the occurrence of a Force Majeure Event to be determined in a more objective manner, by reference to the standard of Good Electricity Industry Practice (which is well understood by the industry).
- **Clause 23.6. Charges continue.** This new provision clarifies the charges which will be payable by the Retailer to the Distributor during a Force Majeure Event. The occurrence of a Force Majeure Event does not mean that the Distributor is not performing its services. The Distributor expends considerable resources during a Force Majeure Event to ensure that operation of the network can be restored and it makes commercial sense for it to recover its fixed charges during this period. The Distributor may not, however, recover its fixed charges where access to any consumer’s premises is prevented by law or a regulatory authority. We understand that this suspension of charges was requested by a retailer to deal with situations such as the Christchurch Earthquakes. This provision clarifies the continuation of charges and so enhances operational efficiency.
- **Clause 26.4. No liability in tort, contract etc:** The VUoSA includes a new provision that except as expressly provided in clause 26, the Distributor’s liability to the Retailer and the Retailer’s liability to the Distributor, whether in tort (including negligence), contract, breach of statutory duty, equity or otherwise arising from the relationship between them and of any nature whatsoever relating to the subject matter of this agreement is excluded to the fullest extent permitted by law. This clause, which applies to both the Retailer and the Distributor, seeks to codify the circumstances in which liability may arise under the VUoSA for both the Retailer and the Distributor. The variation enhances operational efficiency by making responsibilities more transparent and reducing the risk of costly disputes.
- **Clause 26.11. Claims for which the Retailer wishes to be indemnified for under the Distributor’s Indemnity.** The VUoSA includes provisions to apply where a Consumer makes a claim against the Retailer under the *Consumer Guarantees Act 1993* in relation to the supply of electricity in relation to which the Retailer wishes to be indemnified by the Distributor under the Distributor’s Indemnity under clause 26.10. The VUoSA provides a clear process to apply between the Retailer and the Distributor to deal with Consumer claims, as this process is not set out in the legislative framework. A clear process whereby the parties communicate with each other is beneficial to both the Retailer and Distributor. It may help to ensure that a Retailer does not make a payment to the Consumer unless the Distributor agrees that there is a case for the Consumer claim, thus reducing the scope for costly disputes over payments of indemnities. A clear process for consumer claims enhances operational efficiency. This type of process is not contained in the MUoSA.

- **Clause 27.3. Retailer to indemnify Distributor.** Under this provision the Retailer indemnifies the Distributor for direct loss or damage incurred by the Distributor as a result of the Retailer's failure to meet its obligations under clause 27.1 (Retailer to include provisions in Consumer Contracts) and clause 27.2 (Changes to Consumer Contracts during term). Under the variation, the Distributor is required to give notice of such claims, and keep the Retailer informed of progress and take into account the reasonable views of the Retailer. It constrains the Distributor as it is required to take into account the reasonable views of the Retailer. This provision is a benefit to the Retailer in the event of a third party claim, and we understand was inserted at the request of a Retailer during Vector's negotiations on the VUoSA.

In conclusion, while many of the variations in our assessment are not material, the variations taken as a whole lead us to conclude that the VUoSA, relative to the MUoSA, improves workability and reduces transaction costs and thereby promotes the efficient operation of the market. Our review of the VUoSA did not identify any variation to the MUoSA which we consider would result in barriers to retailers, large or small, entering or competing in the electricity market.

5. Qualitative analysis of the Use-of-system agreements

5.1 What we were asked to do

A key part of this project was to provide a cost benefit analysis (CBA) of making the MUoSA mandatory. The CBA was to be largely qualitative.

The qualitative CBA was to: identify which MUoSA provisions (if any) would provide net benefits if mandated. And, if the MUoSA were to be fully mandated or set as the default agreement, identify what the costs and benefits would be to distributors, retailers and consumers.

5.2 Our analytical approach

In general, this cost benefit analysis is based on assessing the impact of the MUoSA (be it mandated or adopted uniformly in its current form) against the impact of the VUoSA on the long term benefit of consumers.

In conjunction with the clause-by-clause analysis we have considered the wider implications of moving from the existing ‘negotiated’ framework that uses the MUoSA as the starting base to mandating the MUoSA as the instrument to be adopted by retailers and distributors.

The criteria for the assessing the impact on the long term benefit of consumers includes economic efficiency.

Consistent with the Code Amendment Principles, a quantitative CBA is required for Code amendments, with the Authority being required to assess the net benefits of initiatives in terms of improvements in economic efficiency. The three main components of economic efficiency benefits are:³⁸

- **Allocative efficiency** – driven by price and quantity of electricity supplied.
- **Productive efficiency** – driven by reducing the cost of supplying electricity (‘cost-to-serve’).
- **Dynamic efficiency** – driven by investment and innovation to pursue reductions over time in the cost of supplying electricity.

Our analysis is based on identifying and describing the costs and benefits of changes to the non-mandatory MUoSA framework to a mandated or more mandated one.

³⁸ Electricity Authority 2011, *Consultation paper – more standardisation of distribution arrangements: proposed amendments to the Code*, p.138.

5.3 Comparison of the UoSAs

5.3.1 Problem definition

In setting out the problem definition we note the comments made by the Authority in earlier consultations on this topic that standardisation by imposing requirements in the Code has been contemplated as a potential solution to:

- problems surrounding costs associated with having multiple contractual arrangements in operation in the different network areas in New Zealand; and
- addressing situations where particular approaches may be inappropriate, because the outcomes are not considered to be in the long-term interests of consumers. Examples include arrangements that adversely impact on retail competition in one form or another, or arrangements which send inefficient price signals to participants.³⁹

The Authority concluded at the time that the challenge facing standardisation approaches is that there will be cases where there are good reasons to have different arrangements in different network areas to reflect different situations. Therefore, while standardisation may deliver net benefits in some areas, it may deliver net costs in others.

We understand that the Authority's objectives in achieving more standardisation of UoSAs are to promote efficiency and competition by:

1. Reducing transaction costs for retailer and distributors by providing UoSA templates which parties can adopt largely unchanged.
2. Facilitating retailer entry into the market and expansion into new areas by increasing standardisation of UoSA around efficient and pro-competitive terms.

The problem is, therefore, whether the changes contained in the latest version of the VUoSA (as signed by 10 out of 14 retailers operating on the Vector network) increases the transaction costs for new or expanding retailers through:

- Creating costs because of having to analyse so many variations
- Creating complexities and as a result costs having to assess other UoSAs that are different
- Creating anti-competitive barriers by virtue of the costs inhibiting some retailers' aspirations and not others.

Our CBA would have assessed the impact clauses within the VUoSA that created barriers to entry. However, we have not identified any such clauses. Therefore, our CBA focuses on whether there is an economic cost associated with the number and extent of variations, thereby justifying a move away from the MUoSA being voluntary.

³⁹ Electricity Authority 2011, *Consultation paper – more standardisation of distribution arrangements: proposed amendments to the Code*, August 2011, p.5.

5.3.2 Options

In this analysis we compare the outcomes of the VUoSA against the base case of the adoption of the MUoSA. Under this approach we assess the impact of withdrawing the VUoSA from use in Vector's area and replacement with the MUoSA.

We also compare the costs and benefits of the impacts of reverting to the adoption of the MUoSA against the VUoSA.

5.3.3 Identify the costs and benefits

The categories of costs and benefits are based on those used by the Authority. These are set out in Table 2 Categories of benefits and costs below.

For comparability, we have used the same categories of costs and benefits as used by the Authority in its analysis of standardisation of use of system agreements with the inclusion of any additional categories as we consider appropriate. In particular we have included:

- Monitoring and compliance costs (borne by the Authority)
- Transition costs (e.g. moving from existing contracts to the Model agreement)
- Costs of disputes between the negotiating parties.⁴⁰

We have also added reliability as a category of cost or benefit.

Table 2 Categories of benefits and costs

Category	Description
Implementation costs	<p>Implementation costs (savings) are those involved in moving to a different framework:</p> <ul style="list-style-type: none"> • Regulatory costs (i.e. effort analysing and consulting on the issues and options, costs associated with drafting and implementing Code amendments. These costs are repeated over time as amendments are made. • Regulatory costs of ongoing compliance monitoring • Transition costs (e.g. moving from existing contracts to the Model agreement).
Transaction costs (benefits).	<p>These are the cost (savings) of operating under the framework that is in place:</p> <ul style="list-style-type: none"> • Participants' costs of systems changes (benefits) (e.g. IT capex) • Operational costs (savings) (e.g. operations staff, IT operational costs). • Costs of ongoing negotiations under negotiated UoSA framework • Costs of implementing renegotiated UoSA under the negotiated framework.
Competition benefits (costs)	<ul style="list-style-type: none"> • Arising from reduced (increased) barriers to retailer new entry • Other market benefits (costs).

⁴⁰ Disputes costs was a category used by the Authority in its recent cost benefit analysis of the Transmission Pricing Methodology. Refer to Electricity Authority 2012, *Transmission Pricing Methodology: issues and proposal: Consultation Paper*, 10 October 2012.

Category	Description
Disputes costs	<ul style="list-style-type: none"> Legal and administrative costs of disputes.
Dynamic efficiency	<ul style="list-style-type: none"> Impact on longer term incentives for innovation Impact on longer term incentives to invest in ways to improve service quality and reduce costs.
Reliability	<ul style="list-style-type: none"> Impact on system and network reliability.
Unintended consequences	<ul style="list-style-type: none"> Outcomes not anticipated in the original decision-making. Lost flexibility in responding to changed circumstances (i.e. as a regulated contract will be harder to change).

5.3.4 Qualitative assessment of costs and benefits

The approach to the qualitative assessment is to compare the incremental economic cost or benefit in moving away from the VUoSA to the MUoSA option. The way to read the table is to consider - if the current variation in the VUoSA was removed and replaced with the corresponding provision in MUoSA – what would be the costs or benefits? We make an assessment of the net benefit or cost in the final column of the table.

Where we find that there is a net benefit in returning to the MUoSA then this indicates the clauses that may be worth mandating or seek to discuss with the Authority.

We have structured the analysis according to the four main parts of the UoSAs.

At this stage we have not sought to quantify the costs or benefits.

Table 3 Qualitative cost benefit analysis of VUoSA material variations against the MUoSA

Variation	Costs of moving to MUoSA	Benefit of moving to MUoSA	Net benefit or cost
Part 1 Services			
Clause 2.1 Distributor's services and obligations. In setting out the Distributor's services and obligations, the VUoSA refers to the Distributor meeting the listed requirements) in accordance with Good Electricity Industry Practice.	Without the overarching reference to Good Electricity Industry Practice there may be an increase the number and scope of disputes between the Retailer and the Distributor.	No benefit.	Potential net cost of moving to the MUoSA.

Variation	Costs of moving to MUoSA	Benefit of moving to MUoSA	Net benefit or cost
Clause 2.2(d) Provides for Distributor (rather than Retailer) to inform Consumers about Unplanned Service Interruptions as agreed with Retailer.	Likely to be more efficient for the Distributor to manage this service. Increase operating costs to Retailer if move to MUoSA.	No benefit. Arrangement is negotiated with the Retailer and Distributor	Net economic cost of moving to the MUoSA.
Clause 2.4 Retailer's obligations in relation to Embedded Networks. Schedule 9: Embedded Network Provisions. Establishes arrangement between the Distributor, Retailer, Embedded Network Owners and Embedded Network Customers.	Less transparency of Retailer obligations in relation to Embedded Networks. Likely to create greater uncertainty in the market and reduce efficient operation of the market.	No benefit.	Net cost of moving to the MUoSA.
Load Management by third parties. Clause 6.11 Inclusion in Consumer Contracts. Retailer is required to include provisions relating to third party involvement in Controlled Load in its Consumer Contract. Other variations in clauses relating to Load control include clauses 6.1 and 6.2.	Less transparent process for third party involvement likely to increase costs of disputes; reduce reliability and security.	Having fewer requirements on third parties would make entry into the load control market easier.	On balance safety and security of the network likely to outweigh any benefit of easier access by third parties to load control.
Clause 8. Service Performance Reporting Performance reports: are by request rather than mandatory.	Increases operational cost of publishing performance reports.	Retailers may have ability to obtain more information but unless retailers want this information there is no benefit as information will be	On balance, no economic benefit of moving to the MUoSA

Variation	Costs of moving to MUoSA	Benefit of moving to MUoSA	Net benefit or cost
		processed that parties do not want.	
Part II Payment obligations			
Distribution services Process and Process for Changing Prices Clause 9.3 Notice of price changes. Under the VUoSA the Distributor will provide 60 Working Days' notice of a Tariff Rate change. The MUoSA provides for 20 Working Days' notice.	The MUoSA provides a shorter time period for notice about Tariff Rate changes which would result in higher implementation costs for the Retailer. More resources would be required to effect the changes in the shorter time frame.	No benefit.	Net economic cost of moving to MUoSA.
Billing Information and Payment Clause 11.7: Wash-ups. Distributor and the Retailer recognise that due to the cyclical nature of meter reading it is impractical to provide completely accurate data for consumption and demand (as applicable) in relation to each ICP within the timeframe required for the provision of data by the Retailer under clause 11.3 (Provision of data by Retailer).	Provision of completely accurate data in accordance with 11.3 is not likely to be possible at all times without incurring unreasonable systems costs. The variation offers a practical solution to avoid unreasonable IT costs.	No benefit.	Net economic cost of moving to MUoSA.
Prudential requirements Clause 12.6. Distributor or Retailer to effect changes in value or type of security. The VUoSA provides that the	The MUoSA provides a shorter time period to effect changes in the value or type of security.	No benefit.	Net economic cost of moving to

Variation	Costs of moving to MUoSA	Benefit of moving to MUoSA	Net benefit or cost
Distributor or the Retailer, as appropriate, will take all actions necessary to satisfy the requirement for the increase or decrease in the value of security or change to the type of security, within 15 Working Days The MUoSA provides for changes within 5 Working Days.	The shorter time frame is more onerous and likely to be more costly to implement in terms of resources and ability to negotiate a better deal with the parties providing security.		MUoSA.
Part III Operational Requirements			
Clause 14.8 Notification of interference, damage or theft: The VUoSA adds to this provision the requirement that the Retailer will notify the Distributor of any other incident or matter that has, or could have, an adverse effect on the Network or the supply of electricity to or from the Network.	This variation could have significant economic benefits if it results in reducing or preventing adverse effects on the Network or electricity supply.	No benefit.	Net economic cost of moving to the MUoSA.
Part IV Other rights			
Breaches and Events of Default Clause 20.4 Notification of Events of Default. In the Event of Default, the VUoSA provides an alternative approach to terminating the UoSA with the Retailer which would result in the Authority taking action to terminate the Retailer.	The removal of this variation by moving to the MUoSA could result in more retailers exiting the market that may have otherwise been able to trade their way out of financial trouble under the VUoSA. The termination of the Retailer will result in transaction costs by the Authority, market operator and	The benefit of the MUoSA is that it may terminate those retailers who have no scope to trade their way out of financial trouble.	On balance, the MUoSA is likely to result in a net economic cost.

Variation	Costs of moving to MUoSA	Benefit of moving to MUoSA	Net benefit or cost
	<p>Distributor in transferring the customer base of the Retailer.</p> <p>The exiting of a Retailer that may otherwise have been redeemed under the VUoSA reduces retail competition.</p>		
Clause 20.6 Insolvency Event. In the event of Insolvency the VUoSA provides an alternative approach to terminating the UoSA with the Retailer.	Same as above	Same as above	On balance, the MUoSA is likely to result in a net economic cost.
Clause 21.1 Either party may terminate this agreement: In provisions relating to terminations “At will”, the VUoSA adds that where the Distributor issues a notice of termination to the Retailer under this clause 21.1(a), the Distributor will at the same time provide to the Retailer a copy of the <u>Standard Use of Network Agreement</u> it proposes will apply between the Distributor and the Retailer after the termination of this agreement	<p>The MUoSA does not contain such a provision which is likely to lead to increased uncertainty for the Retailer. It may also result in higher costs of negotiating a new agreement because without the Standard Use of Network Agreement as a fall back it may feel compelled to speed up negotiations with the Distributor which may be at an increased cost.</p>	No benefit in moving to the MUoSA.	Potential for a net economic cost.
Clause 23.1 Force Majeure Events. The VUoSA provides clearer definition of the meaning of Force Majeure.	<p>The unclear and subjective terms used in the MUoSA may increase the scope for disputes. For instance the meaning of “due to natural causes, directly or indirectly and</p>	No benefit.	Net cost of moving to MUoSA.

Variation	Costs of moving to MUoSA	Benefit of moving to MUoSA	Net benefit or cost
	exclusively without human intervention” is ambiguous.		
<p>Clause 27.6 Distributor’s limitation of liability.</p> <p>The VUoSA sets out a more granular approach to limitation of liability by distinguishing between single event (and series of connected events); and events or circumstances during a 12 month period.</p> <p>Maximum liability to the Retailer during a 12 month period depends on the Retailer’s proportion of ICPs to total CPs on the network.</p>	<p>Under the VUoSA the Distributor’s aggregate liability will not increase solely due to an increased number of Retailers on its network. This is appropriate as its services are the same irrespective of the number of Retailers trading on its network.</p> <p>Moving to the MUoSA will increase the scope of the aggregate liability which increases the riskiness of the Distributor and of the electricity sector in general.</p>	No benefit in reverting to MUoSA.	Net economic cost of reverting to MUoSA.
<p>Clause 27.8 Retailer’s limitation of liability.</p> <p>The maximum total liability of the Retailer to the Distributor reflects to same level of liability as in clause 26.7.</p>	<p>The variation could be considered it to be more commercially even-handed between the retailers compared to the MUoSA. It is beneficial to small retailers with less than 5% of total ICPs on the network.</p>	No benefit in reverting to MUoSA.	No economic benefit in reverting to the MUoSA.

This analysis demonstrates that there is no clause in the MUoSA that was more beneficial than the variation in the VUoSA. In total, the VUoSA result in a net economic benefit relative to the VUoSA.

Based on this finding, there would be no benefit to the consumers in Vector’s area of reverting to the MUoSA. Nor would there be any benefit in mandating any of the individual clauses in the MUoSA.

5.4 Assessment of mandated versus a negotiated approach

In this section we examine at a national level the benefits and/or detriments in greater standardisation through mandating the MUoSA (as proposed by the Authority), compared with maintaining the current negotiated framework provided for under the MUoSA. The categories of the benefits and detriments are set out in Table 2 above.

We refer to the categories of cost and benefits as the framework for the comparison between the two approaches.

5.4.1 Implementation costs

We consider that the costs of implementing a mandated MUoSA will involve greater regulatory costs, including the cost of increased analysis and regular consulting on variations, as well as costs associated with drafting and implementing Code amendments. These costs will be repeated over time as amendments are made. A mandated approach is also likely to involve some form of ongoing compliance monitoring by the Authority to ensure participants have complied with the mandated approach.

Further, participants will incur costs of changing from current arrangements to the MUoSA. These costs will involve the direct legal and administrative costs of shifting to the MUoSA including costs associated with changes to billing and other internal systems.

In both cases, the implementation costs will depend on the number and scope for changes made either through a regulated approach or the negotiation route.

5.4.2 Transaction and other costs

The negotiated framework provides for ongoing changes to be made to the UoSA between and Retailer and a Distributor and adoption of the latest version by other retailers. The potential for continual change to the UoSA will likely involve higher transaction costs such as legal and policy reviews compared to a mandated approach. We refer to these as transaction costs as they form part of the existing negotiated framework.

If these types of transaction costs are high they could possibly deter entry into a market. However, there is no evidence to suggest that the transaction costs under the current framework have resulted in a barrier to entry. (We note of the 15 retailers operating on Vector's network, five are small independent retailers who commenced operating in the past three years. This seems to suggest that the UoSA process undertaken by Vector has not deterred entry for these retailers.

Costs related to opportunity for ongoing negotiations will be lower under a mandated approach as there is no scope for negotiation between the parties. However, there will be regulatory implementation costs under the mandated approach as discussed above.

We consider that the costs of disputes arising from operating under a negotiated framework are likely to be lower than under the mandated MUoSA.

As we found in our clause-by-clause analysis, the variations in the VUoSA improved the workability of a number of provisions in the MUoSA and added new provisions, such as,

arrangements for embedded networks. The variations improve clarity and transparency in areas where the MUoSA is ambiguous or silent. For these reasons, we consider that there is likely to be greater certainty regarding responsibilities between the retailers and distributors where the industry has discussed and negotiated on responsibilities. This in our view will result in fewer disputes between retailers and distributors under a negotiated framework.

5.4.3 Innovation and dynamic efficiency

The greatest cost of a mandated approach, in our view, is the lack of ability to make improvements over the MUoSA. Dynamic efficiency through innovation is a process that results in reduction in costs of service and/or improvements in service. Dynamic efficiency is achieved through continually making improvements to commercial and operational arrangement and costs to serve. This type of innovation is not possible under a mandated approach as the parties are stifled in their ability to change and adapt.

Our analysis shows that the VUoSA, compared to the MUoSA, is a more operationally and commercially workable instrument. For instance, the indemnity provisions are a direct attempt to manage risk in an even-handed and commercially sustainable way.

This is not a criticism of the MUoSA, but recognition that the MUoSA is the starting point rather than the end point.

The opportunity cost of mandating a UoSA are great and outweighs any benefit in reduced transaction costs. Thus, in our view, mandating the MUoSA is the least preferable option.

5.5 Conclusion

Our qualitative analysis of the VUoSA against the MUoSA shows that in total, the VUoSA results in a net economic benefit relative to the MUoSA. Based on this finding, there would be no benefit to the consumers in Vector's area of reverting to the MUoSA; nor to mandating any of the individual clauses in the MUoSA.

In examining benefits and/or detriments of mandating the MUoSA at a national level, we found that the opportunity cost of mandating a UoSA is great. Standardisation of the MUoSA may reduce transaction costs but this benefit is outweighed by the lost opportunity for continual innovation, adaption and sustainability. Mandating the MUoSA is the least preferable option in our view.

Appendix 1 Analysis of variations between VUoSA and MUoSA

In table 4 we have identified variations between the MUoSA and VUoSA. This is not an exhaustive list of all variations as we omitted variations that in our view were less substantive in nature.

Table 4 Assessment of variations against the statutory objective

Variation	Description	Material	Limb of the statutory objective			Comment
Clause in VUoSA	Variation from MUoSA	Yes/No	Competition	Reliability	Efficient operation	Positive and negative
	Introduction					
cl. A.	The VUoSA adds a clause to the introduction. <i>The Distributor owns and operates the Network and the Retailer wishes to supply electricity to Consumers on the Network.</i>	No			•	The variation adds context to the UoSA by describing the nature of the relationship and makes clear that Vector owns and operates the network.
Part 1 Service Commitments						

Variation	Description	Material	Limb of the statutory objective			Comment
cl. 2.	Services					
cl. 2.1	<p>Distributor's services and obligations. In setting out the Distributor's services and obligations, the VUoSA refers to the Distributor meeting the listed requirements in sub-clauses 2.1(a) to (j) in accordance with Good Electricity Industry Practice. Good Electricity Industry Practice is a defined term in both UoSA.</p> <p>The MUoSA does not refer to Good Electricity Industry Practice in setting out the Distributor's services and obligations but does refer to it in a number of clauses.</p>	Yes		•	•	<p>Reference to Good Electricity Industry Practice is appropriate as it makes it explicit that it will be applied to the Distributor's services and obligations. It sets a benchmark for operational relationship between the Retailer and Distributor which is beneficial for reliability and operations in the electricity sector.</p> <p>The MUoSA does refer to Good Electricity Industry Practice but only in some provisions.</p>
sub-cl. 2.1(b)	<p>Distributor's services and obligations. The MUoSA sets out that the Distributor will deliver electricity to the quality level specified in the Service Standards, but does not <u>guarantee</u> delivery of electricity that is free from defects and interruptions. (Emphasis in <u>underline</u> added).</p> <p>The VUoSA varies this provision by saying that the Distributor will deliver electricity in accordance with the Service Standards, but does not <u>promise</u> delivery of electricity</p>	No		•		<p>The use of the term "promise" rather than "guarantee" is more appropriate where the primary obligator (in this case Vector) has an obligation to provide distribution services.</p> <p>A guarantee is more appropriately used where a party is ensuring that</p>

Variation	Description	Material	Limb of the statutory objective			Comment
	that is free from defects and interruptions.					another party will do something. The impact on promoting reliability is neutral.
cl. 2.2	Retailer's services and obligations. In setting out the Retailer's services and obligations, the VUoSA refers to the Retailer meeting the requirements listed in sub-clauses 2.2(a) to (j) in accordance with Good Electricity Industry Practice. Good Electricity Industry Practice is a defined term in both UoSA.	No				This variation ensures a reciprocal position to the qualification of Vector's services and obligations with the Good Electricity Industry Standard in clause 2.1. It sets a benchmark for the operational relationship between the Retailer and Distributor which is beneficial for reliability and operations in the electricity sector. Reference to Good Electricity Industry Practice is appropriate as it makes it explicit that it will be applied to the Retailer's services and obligations.

Variation	Description	Material	Limb of the statutory objective			Comment
Sub-cl. 2.2(d)	<p>Retailer's services and obligations. The MUoSA requires the Retailer to provide a 24 hour, seven day a week, Unplanned Service Interruption information service and provide service interruption information in accordance with schedule 5.</p> <p>The VUoSA varies this provision by adding that the Retailer provides this service except in relation to any Consumers or categories of Unplanned Service Interruption in respect of which the Distributor has notified the Retailer pursuant to clause 5.5 that it will provide such service and information.</p> <p>Note our discussion of clause 5.5 further on.</p>	Yes – beneficial to Retailer	•		•	<p>This variation allows the Distributor with the responsibility for informing Consumers about Unplanned Service Interruptions.</p> <p>As Vector is the party that maintains and operates that network, it is sensible and likely to be more cost-effective for Vector to communicate Unplanned Service Interruptions. Vector has entered into contracts with three retailers to operate the Faults on the distribution network. Vector currently charges three retailers for this service on its Northern network, but will not charge any Retailer for this service under VUoSA.</p> <p>The Retailer will need processes to comply with this provision. This may result in some cost to the Retailer. Any such cost is likely to be outweighed by the benefits of not having to incur costs for managing Unplanned Service</p>

Variation	Description	Material	Limb of the statutory objective			Comment
						<p>Interruptions. This variation is likely to be helpful to smaller retailers.</p> <p>On balance this variation probably reduces costs to the Retailer and at the same time promotes more efficient operation in the market.</p>
sub-cl. 2.2(e)	Retailer's services and obligations. Added the clause that the Retailer is not to enter into any arrangements whereby the Retailer agrees to procure Distribution Services for, or otherwise provide or subcontract Distribution Services to, any other retailer.	No	•			The implication is that only the Distributor can enter into arrangements with retailers for the provision of distribution services on its network. This clarification is lawful as the Distributor owns and operates the network.
sub-cl. 2.2(f)	Retailer's services and obligations. Added the clause that the Retailer enables the Distributor to provide Load Management Services on the Distributor's Network to the extent required by clause 6.	Yes		•		Discussed in the discussion under clause 6.
sub-cl. 2.2(h)	Retailer's services and obligations. Under the MUoSA the Retailer is required to investigate and minimise, in accordance	No			•	The VUoSA reduces the requirement to minimise non-technical Losses. Minimising

Variation	Description	Material	Limb of the statutory objective			Comment
	<p>with Good Electricity Industry Practice, non-technical Losses.</p> <p>The VUoSA removes the requirement to minimise non-technical Losses.</p>					<p>losses may be a difficult requirement for Retailers to implement and its removal has real impact on changing loss factors. This removes a burden on Retailers.</p>
sub-cl. 2.3	<p>Retailer's obligations - Consumers: The VUoSA inserts a clause that (subject to clauses 27 and S9.4), the Retailer will ensure that it has a Consumer Contract with each Consumer for the supply of electricity that contains terms that have substantially the same effect as schedule 4.</p>	Yes			<ul style="list-style-type: none"> • 	<p>The clauses with the actual obligations and rights that the Retailer must include in every Consumer Contract are referenced in schedule 4. These are discussed throughout the matrix.</p>
cl. 2.4	<p>Retailer's obligation in relation to Embedded Networks. VUoSA adds a provision relating to Retailer's obligations in relation to Embedded Networks: If the Retailer supplies electricity to an Embedded Network Consumer, the Retailer will comply with the provisions of schedule 9.</p>	Yes			<ul style="list-style-type: none"> • 	<p>The VUoSA variation sets out arrangement between the Distributor, Retailer, Embedded Network Owners and Embedded Network Customers.</p> <p>Clear and transparent arrangements enhance operational efficiency of the market.</p>

Variation	Description	Material	Limb of the statutory objective			Comment
						We consider Schedule 9 in more detail further on.
3 cl. 3.1	Conveyance Distributor's agreement with a consumer. VUoSA acknowledges that the Agreement between the Distributor and Consumer does not override obligations of the Consumer to the Retailer during the term of any Electricity Supply Agreement.	No			•	Minor variation.
4. cl. 4.1	Equal access and even-handed treatment Equal access and even-handed treatment. The variation in the VUoSA clarifies that the Distributor will give all retailers equal access to the Distribution Services and will treat all retailers even-handedly in relation to Distribution Services. Provided that the reference to "all retailers" in this clause 4 will be construed as a reference to all retailers who have entered into a "Use of System Agreement – Electricity" with the Distributor. Further that nothing in clause 4.1 will create any right or benefit to or for any retailer other than the Retailer, and in particular, the provisions of the Contracts (Privity) Act 1982 are excluded.	No			•	In our view this clause seeks to clarify that even-handed treatment applies to the Retailer who is party to the contract. The provisions in the <i>Contracts (Privity) Act</i> that confer rights to a third party related to the Retailer is excluded. This clause is limiting the scope of Vector's even handed treatment under the VUoSA to retailers who have entered into a VUoSA. There are no competition impacts

Variation	Description	Material	Limb of the statutory objective			Comment
						but it is legally and operationally more efficient because it reduces scope for disputes by retailers not party to the VUoSA.
5 cl. 5.1	Service Interruptions Communications policies. Rather than saying that the parties <u>will</u> comply with the communication policies set out in schedule 5, the VUoSA variation is that the parties will <u>use their reasonable endeavours</u> to comply. (emphasis added)	No				The variation is less onerous on the Retailer and Distributor. It may not be in the interest of Consumers if it results in less responsive communication from the Retailer and Distributor. We examined the variations in Schedule 5 and found them to be minor.
cl.5.3	Protocols for service interruptions. Instead of developing and publishing a policy on managing load during a System Emergency Event as set out in the MUoSA, Vector has developed a protocol on the priorities for Load Shedding, restoration of load, or other similar events where security of load may be compromised which will be made available to the retailer upon request.	No		●	●	Under clause 9.6 of the Code, the System operator must require specified participants to develop participant rolling outage plans. The link to Vector's published plan is here http://www.vector.co.nz/corpora

Variation	Description	Material	Limb of the statutory objective			Comment
						te/disclosures/electricity/electricity-outage-plan We consider that the variation in the VUoSA for all intents and purposes is consistent with the MUoSA. The variation avoids duplication of having to prepare two documents that essentially have the same purpose. The variation is likely to promote efficient operation of the market by avoiding duplication of protocols.
cl. 5.5	Retailer to receive Unplanned Service Interruption calls. Under this variation, if the Distributor provides to the Retailer 60 Working Days' written notice that the Distributor is responsible for receiving and managing communication <u>with any or all</u> Consumers in relation to any or all Unplanned Service Interruptions. In this case the Retailer shall ensure that references to Vector's phone number and website (website reference is effective from 1 June 2014) are included on Tax Invoices to Consumers.	Yes - positive			<ul style="list-style-type: none"> • 	This provision is related to clause 2.2(d). As discussed above, the Retailer will need processes to comply with this provision. This may result in some cost to the Retailer. Any such cost is likely to be outweighed by the benefits of not having to incur costs for managing Unplanned Service Interruptions. This variation is

Variation	Description	Material	Limb of the statutory objective			Comment
						<p>likely to be helpful to smaller retailers.</p> <p>On balance this variation probably reduces costs to the Retailer and at the same time promotes more efficient operation in the market.</p> <p>Amendments to Tax Invoices sent to Consumers by the Retailer will impose a one off cost to the Retailer.</p>
cl. 5.10	<p>Planned Service Interruptions – Costs of communication.</p> <p>Under the MUoSA, if the Distributor asks the Retailer to notify Consumers in accordance with schedule 5, the Distributor will meet the reasonable costs incurred by the Retailer in complying with such requests, unless agreed otherwise in writing.</p> <p>Under the VUoSA, if the Distributor asks the Retailer to notify Consumers of a Planned Service Interruption in accordance with schedule 5, the Retailer will comply with <u>such requests at its own cost, except</u> where re-notification of the Planned Service Interruption to Consumers is required solely due to the act or omission of the Distributor or its contractors.</p>	Yes	•		•	<p>The variation reallocates costs of the first communication notice for Planned Service Interruptions to the Retailer. The Distributor will cover the cost of subsequent communications.</p> <p>This variation is likely to increase costs to the Retailer relative to requirements under the MUoSA. We do not have a sense of the materiality of these costs.</p>

Variation	Description	Material	Limb of the statutory objective			Comment
	(emphasis added).					
cl. 5.12	<p>Retailer's remedy: Except as provided in clause 11.17 (Refund of Charges), the Retailer's only remedy if the Distributor fails to meet the timeframes in clause 5.11 (Distributor to restore Distribution Services as soon as practicable) is recovery of a Service Guarantee in accordance with schedule 1, if applicable.</p> <p>The VUoSA includes the provision that nothing in this clause 5.12 shall limit the obligations of the Distributor or any right or remedy available to the Retailer, under clause 26.10 (Distributor indemnity).</p>	No			•	Minor variation clarifying the right of the Retailer under clause 26.10 (Distributor indemnity).
	<p>Load Management</p> <p>Distributor may control load: Under the MUoSA(clause 5), (subject to clause 5.3), if the Distributor provides a Price Category or Tariff Option that provides a non-continuous level of service by allowing the Distributor to control part of, or all of, the Consumer's load (a "Controlled Load Option"), <u>and the Consumer elects to take up the Retailer's corresponding price</u> option that incorporates the Controlled Load Option, the Distributor may control the relevant part of the Consumer's load in accordance with this clause 6 and</p>	No			•	<p>Under the MUoSA the Consumer elects to take up the Retailer's corresponding price option that incorporates the Controlled Load Option. Under the MUoSA arrangement it appears the Retailer can opt to take up the Controlled Load Option or not.</p> <p>Under the VUoSA variation, it</p>

Variation	Description	Material	Limb of the statutory objective			Comment
VUoSA clause 6. cl. 6.1	<p>schedule 8 (emphasis added).</p> <p>Distributor may control load. Under the VUoSA, the Distributor may control load if (a) the Distributor provides a Price Category or Tariff Option for a non-continuous level of service in respect of part of or all of the Consumer's load (a "Controlled Load Option"), <u>and charges the Retailer</u> on the basis of the Controlled Load Option with respect to the Consumer. (emphasis added). and</p> <p>(b) the Distributor provides any other service in respect of part of or all of the Consumer's load advised by the Distributor to the Retailer from time to time (an "Other Load Control Option") with respect to the Consumer (who elects to take up the Other Load Control Option).</p>					<p>appears that the Retailer is required to do so.</p> <p>This variation ensures that any arrangement between a Distributor and a Consumer to control load will be adhered to by the Retailer. It enhances the ability of the Distributor to provide load control services to Consumers.</p>
cl. 6.2	<p>Retailer may control load. Under the MUoSA, (subject to clause 6.3), if the Retailer offers to a Consumer, and the Consumer elects to take up, a price option that provides a non-continuous level of service by allowing the Retailer to control part of or all of the Consumer's load, the Retailer may control the relevant part of the Consumer's load in accordance with this clause 6 and schedule 8.-</p> <p>The VUoSA adds (to the above MUoSA clause), that prior to</p>	Yes		•		<p>We understand that currently there is no system (Load Control System) available that would facilitate the requirement. That is, there is not system for communicating with the Retailers</p>

Variation	Description	Material	Limb of the statutory objective			Comment
	<p>operating its Load Control System, the Retailer will enter into an agreement with the Distributor which sets out the <u>protocols for the use of the load</u>, including the co-ordination with the Distributor of the disconnection and reconnection of load, such protocols being intended to ensure that the security, safety and integrity of the Network is not adversely affected by such load control. The Distributor will consult with the Retailer for a reasonable period (which may be undertaken jointly with other retailers) in relation to such protocols, and the parties will act in good faith in negotiating and seeking to agree the same. If the parties cannot agree such protocols within 40 Working Days, then either party may raise a Dispute to be determined in accordance with the Dispute resolution process in clause 25. The Retailer shall ensure that such protocols are followed when operating its Load Control System. Without limiting the foregoing, the Retailer will ensure that it does not operate its Load Control System in a manner that it knows will or may adversely affect the security, safety or integrity of the Network. (emphasis added).</p>					<p>in an emergency situation.</p> <p>In the event that a retailer develops such a system then Vector will develop a protocol along the lines of the variation.</p> <p>This variation is “future-proofing” the VUoSA by flagging that in the event of a retailer having a Load Control System that Vector will seek to establish a protocol that is intended to ensure that the security, safety and integrity of the Network is not adversely affected by such load control. That is it limits to scope of the protocol to safety security and integrity of the Network and not the commercial application of the load control by the Retailer.</p> <p>The ability to refer to Dispute Resolution is a protection for the Retailer.</p>

Variation	Description	Material	Limb of the statutory objective			Comment
cl. 6.3	<p>Control of load by the Retailer if some load is controlled by the Distributor:</p> <p>Under the MUoSA (clause 6.2), the provisions refers to Control of load by an Entrant if some load is controlled by an Incumbent.</p> <p>Under the VUoSA this has been changed to if the Retailer wants to control part of a Consumer's load at a Consumer's ICP, but the Distributor has obtained the right to control part of the load at the same ICP in accordance with clause 6, the Retailer may only control the part of the Consumer's load that:</p> <p>(a) the Consumer has agreed the Retailer may control under a Consumer Contract or another agreement; and (b) is separable from, and not already subject to, the Distributor's right to control part of the Consumer's load at the ICP obtained in accordance with clause 6.1, unless the Distributor and the Retailer agree otherwise in writing.</p>	Yes	•			<p>This provision recognises that both Vector and the Retailer cannot control the same load at the same time.</p> <p>This provision enhances the operational efficiency of dealing with interruptible load by allowing parties to negotiate other arrangements.</p>
cl. 6.6	<p>Retailer to make controllable load available to the Distributor for management of system security</p> <p>Under the MUoSA (clause 6.5), if the Retailer has obtained the right to control part of any Consumer's load the Retailer will</p> <p>(b) unless the Distributor agrees otherwise, and within 60 Working Days of providing the notice in paragraph (a), <u>develop and agree jointly with the Distributor (such agreement</u></p>	No		•		<p>The VUoSA variation removes the requirement for a protocol to be developed between the Distributor and Retailer and instead requires the Retailer to make available the load that it has the right to control, if the</p>

Variation	Description	Material	Limb of the statutory objective			Comment
	<p><u>not to be unreasonably withheld by either party</u>), a protocol to be used by the parties to this agreement that: (i) is consistent with the Distributor's emergency load management policy established in accordance with clause 5.3; (ii) is for the purpose of coordinating the Retailer's controllable load with other emergency response activities undertaken by the Distributor during a System Emergency Event, such purpose having priority during a System Emergency Event over other purposes for which the load might be controlled; (iii) assists the Distributor to comply with requests and instructions issued by the System Operator when managing System Security in accordance with the Code during a System Emergency Event; and (iv) assists the Distributor to manage Network system security during a System Emergency Event; (emphasis added).</p> <p>(c) during a System Emergency Event, operate its controllable load in accordance with the protocol developed in accordance with paragraph (b).</p> <p>Under the VUoSA, the above provision is replaced with</p> <p>(b) <u>make available</u> to the Distributor at all times, without charge, and in <u>accordance with Good Electricity Industry Practice</u>, all of the load that the Retailer has the right to control, if the Distributor requires control of that load (b) to enable it to: (i) comply with requests and instructions issued</p>					<p>Distributor requires control of that load for specific purposes.</p> <p>We consider that there is no disadvantage to the Retailer to make its controllable load available to the Distributor in circumstances specified. That is, where it is required for the management of system security; and network security in response to emergency situations, as the Retailer's customers will suffer outages if security of supply is not maintained.</p> <p>The removal of the requirement to arrange a protocol under the VUoSA reduces the transactions costs for both the Distributor and Retailer.</p> <p>The Retailer is required to operate in accordance with Good Electricity Industry Practice which</p>

Variation	Description	Material	Limb of the statutory objective			Comment
	by the System Operator so as to manage System Security in accordance with the Code; and (ii) manage security on the Network in response to emergency situations, such purposes having priority over all other purposes for which load may be controlled. <u>(emphasis added)</u> .					enhances reliability.
cl. 6.7	<p>Limitations if Distributor elects to control the Retailer's load</p> <p>In relation to VUoSA clause 6.6 (as discussed in the line above), if the Distributor elects to control the Retailer's controllable load in accordance with clause 6.6, it will do so: (a) only to the extent and for the duration necessary to fulfil its performance obligations as an asset owner in respect of managing System Security or managing the security of the Network; and (b) in accordance with <u>any</u> protocol agreed with the Retailer and developed in accordance with Good Electricity Industry Practice.</p>	No				<p>Under the variation, the development of a protocol is optional, whereas the development of a protocol is mandatory under the MUoSA.</p> <p>This reflects a similar situation as in clause 6.2 whereby a protocol will be developed if the Retailer has a Load Control System. Currently there are no such systems, so there is no need for a protocol.</p> <p>This provision sets out limitations to the Distributor's ability to control the Retailer's controllable load.</p>

Variation	Description	Material	Limb of the statutory objective			Comment
cl 6.10	Access to demand and energy information. Variations provides for the Distributor to request Consumers' demand and energy information from the retailer (where such information has been obtained from Consumers) to assist the Distributor in managing and planning the Network. The Retailer will comply with such request as soon as practicable and the Distributor will pay the Retailer's reasonable out of pocket costs.	Yes		•		This clause is allows for information to be obtained from the Retailer about Consumers. In particular, for Consumers with large loads, this type of information would be very important to assist the Distributor with planning the network. The Distributor will pay for the Retailer's costs of providing the information.
cl. 6.11	Inclusion in Consumer Contracts. The Retailer will, subject to clause 27.1, include in each of its Consumer Contracts a requirement for the Consumer to ensure that, if it enters into any agreement or arrangement with <u>any third party</u> in relation to control of its load: (a) the load is not already subject to the Distributor's right of control; (b) the third party does not interfere with or damage the Distributor's or the Retailer's Load Control Systems; (c) if any damage occurs due to the actions of the third party, the Consumer will promptly and at its own cost remove the source of the interference and make good the damage; (d) the third party makes the load available to the Distributor to enable it to fulfil its performance obligations as an asset owner in respect of managing System Security in accordance with the Code and to meet the Service	Yes - positive	•	•	•	This clause contemplates third party involvement in Consumer controlled load. This variation is, in our view, 'future -proofing' the UoSA. The variation puts in place arrangements that will facilitate third party provision of load control in a manner that does not interfere or damage Load Control Systems; and allows the Distributor to fulfil its performance obligations; and

Variation	Description	Material	Limb of the statutory objective			Comment
	Standards for Distribution Services; and (e) prior to controlling the load, the third party has entered into an agreement with the Distributor which sets out the protocols for the use of the load, including the coordination with the Distributor of the disconnection and reconnection of load.					<p>requires protocols for the use of the load.</p> <p>The variation, by putting in place these arrangements and obligations promotes competition in third party provision of controlled load.</p> <p>The variation ensures that the Distributor will be able to manage the controllable load in certain circumstances which will promote system security where a Consumer elects to engage a third party for the control of its load.</p> <p>Clarity about load control arrangements with third parties enhances operational efficiency of the market.</p> <p>The Distributor requires that this type of provision is inserted in the Retailer's Consumer Contract because the Distributor has no direct contract with the</p>

Variation	Description	Material	Limb of the statutory objective			Comment
						Consumer.
7. MUoSA cl 7.5	<p>Losses and Loss Factors</p> <p>Distributor to investigate adverse trends in Losses. MUoSA cl 7.5 requires the distributor to investigate adverse trends in loss factors.</p> <p>This provision to investigate adverse trends in loss factors is excluded from the VUoSA. MUoSA clause 7.5 is omitted from VUoSA and omitted from sub-clause 2.1(f).</p>	No			•	<p>Distributors have limited ability to investigate trends in loss factors and it is not clear that distributors are well placed to facilitate these discussions.</p> <p>We understand that guidelines for loss analysis are still being developed, and that the guidelines will guide investigation into loss factors in the future.</p>
8. 8.1	<p>Service Performance Reporting</p> <p>Performance reports: Clause 8 of the MUoSA requires each party (unless required by law) to publish performance reports.</p> <p>The VUoSA required that either party (the “Requester”) may from time to time request that the other party (the “Provider”) provide performance reports.</p>	Yes			•	<p>Vector publishes various performance reports under its regulatory information disclosure requirements. The VUoSA variation removes the requirement to publish reports unless requested by the Retailer.</p> <p>This variation avoids duplication in producing performance reports</p>

Variation	Description	Material	Limb of the statutory objective			Comment
						<p>given that the Distributor already publishes a number of reports. It also removes a requirement on both parties to publish reports that the other party may not in fact want – thus reducing costs for both parties.</p> <p>The variation promotes operational efficiency by reducing costs of producing/duplicating reports.</p>
	PART II Payment Obligations					
9. MUoSA cl. 9.1	Distribution Services Process and Process for Changing Prices VUoSA excludes the provision in the MUoSA that references <i>Distributor's Pricing Policy and Methodology</i> , and a schedule of Price Categories, Tariff Options (if any), and Tariff Rates, are set out in schedule 9.	No				Distributors are subject to: <ul style="list-style-type: none"> - Electricity Authority's <i>Distribution Pricing Principles and Information Disclosure Guidelines (Pricing Principles)</i>; and - Commission's <i>Commerce Act (Electricity Distribution Services Information</i>

Variation	Description	Material	Limb of the statutory objective			Comment
						<p><i>Disclosure) Determination 2012.</i></p> <p>Every year Distributors are required to publish and notify retailers of an updated version of its prices.</p> <p>The VUoSA has amended these provisions to reflect that Vector already publishes its prices and pricing methodology under other regulatory obligations. It would not be of any benefit to publish the methodology in the VUoSA. Instead Schedule 8 includes a link to the Vector prices on its website.</p>
cl. 9.2	<p>Process to change tariff structures. VUoSA sets out that the change tariff structure may include a change to the eligibility criteria for one or more of the Tariff Rates, the introduction of a new Tariff Rate, or a change that means one or more Tariff Rates are no longer available but excludes any change in the Tariff Rate that is solely a change in price.</p> <p>VUoSA requires the Distributor to <u>endeavour</u> to comply with the Tariff Consultation Guidelines; and publish the final tariff structure as set out in clause 9.4. MUoSA specifies distributors</p>	No	•		•	<p>Wording changes are consistent with the wording of clause. 12A.7 of the Code.</p> <p>But using the word “endeavour” to comply is less onerous for Vector compared to “will comply”. We note that the Tariff Consultation Guidelines are just guidelines rather than mandatory</p>

Variation	Description	Material	Limb of the statutory objective			Comment
	<p>will comply.</p> <p>VUoSA removes reference to pricing principles in Schedule 7. MUoSA Schedule 7 Pricing Principles are deleted from the VUoSA.</p>					<p>requirements. It could be considered that requiring compliance to an instrument that is a guideline would be overbearing. Therefore replacing the term “will comply” with “endeavour to comply” is more appropriate.</p>
cl. 9.3	<p>Notice of prices changes. Vector will provide the Retailer with 60 Working Days’ notice of a Tariff Rate change.</p> <p>The MUoSA provides 40 Working Days’ notice.</p>	No			<ul style="list-style-type: none"> • 	<p>The VUoSA provides the Retailer with 60 rather than 40 Working Days’ notice of a Tariff Rate change which is favourable to retailers but more onerous for Vector. We understand that this change was made by Vector at the request of Retailers.</p>
cl. 9.5	<p>Tariff structure change and Tariff Rate change disputes. VUoSA contains the sentence – “The Retailer agrees that the pricing methodology and factual basis used to determine the Tariff Rate will not be subject to challenge or dispute in any way, including by means of the Dispute resolution procedure under clause 25”.</p>	No			<ul style="list-style-type: none"> • 	<p>Vector is subject to regulatory requirements in the way it sets its prices. As it is subject to a legislative process it would be inappropriate for a Retailer to have the ability to challenge prices that have been subject to</p>

Variation	Description	Material	Limb of the statutory objective			Comment
						regulatory scrutiny. There is no disadvantage to the Retailer from this variation.
10 cl. 10.2	Applying Price Categories to ICPs Retailer may request allocation of an alternative eligible Price Category to an ICP: The clause allows that the Retailer may request that the Distributor allocate an alternative Price Category to an ICP, at any time. The VUoSA limits this change to no more than once a Year (unless supply at the ICP has changed to a new Consumer).	No			●	Provides an incentive for the Retailer to select the correct Price Category for an ICP. Reduces scope for frivolous changes.
Sub-cl. 10.5(b)	Credit following correction. VUoSA includes the clause (iii) the amount of the charges to be credited to the Retailer under this clause 10.5 (if any) shall be calculated through the “wash-up” adjustment described in clause 11.7.	No			●	Clause 11.7 wash-up is a type of adjustment account to address cyclical nature of the meter reading. Amendment to use an adjustment account in this way seems reasonable.
11	Billing Information and Payment Payment methodology: The Distributor and the Retailer					This variation sets out the types of

Variation	Description	Material	Limb of the statutory objective			Comment
11.1	have agreed that the Distributor's charges for Distribution Services will be invoiced using a methodology known as [RM Normalised][As-Billed Normalised].	No			•	invoicing methods to be adopted and is an operational matter.
cl. 11.2	Pro forma Tax Invoice – Northern Network A pro forma Tax Invoice is issued for Northern Network: but no pro forma for is issued by the Distributor in respect of the Auckland Network. Under clause 11.5, before the end of each month, the Distributor will issue an actual Tax Invoice for Northern Networks.	No			•	We understand that due to system constraints Vector cannot move away from having a pro forma tax invoice for the Northern Network.
cl. 11.5	Issuing of actual Tax Invoice – Northern Network. This provision works in conjunction with clause 11.2 and relates to arrangements for the Northern Network. Sub-clause 11.5(b) is similar to the MUoSA.	No			•	The variations relating to the Northern Network are specific to Vector's circumstances. This is a matter where the mandating of the MUoSA would be unlikely to meet the needs of Vector and retailers operating on its network.
cl. 11.6	Issuing of actual Tax Invoice – Auckland Network. This provision relates to invoicing arrangements for the Auckland Network. Sub-clause 11.6(b) is similar to the	No			•	The variations relating to the Auckland Network are specific to Vector's circumstances. This is a matter where the mandating of the

Variation	Description	Material	Limb of the statutory objective			Comment
	MUoSA.					MUoSA would be unlikely to meet the needs of Vector and retailers operating on its network.
cl. 11.7	Wash-ups. The VUoSA contains an additional provision for “wash-ups” on the basis that both the Distributor and the Retailer recognise that due to the cyclical nature of meter reading it is impractical to provide completely accurate data for consumption and demand (as applicable) in relation to each ICP within the timeframe required for the provision of data by the Retailer under clause 11.3. The parties therefore agree that it is necessary to provide a structure for a subsequent “wash-up” adjustment to be made following the updated data being provided to the Distributor	No			•	The provision for a “wash-up” is a practical approach to dealing with the vagaries of data that occurs for monthly billing.
cl. 11.9	Due date for payment of actual Tax Invoice – Northern Network. Under the VUoSA the settlement date for the actual Tax Invoice (relative to the pro forma Tax Invoice) the Distributor will credit the Retailer’s account with the amount paid by the Retailer in respect of the relevant pro forma Tax Invoice so that only the net amount is payable by the Retailer to the Distributor pursuant to this clause. If the amount for payment in the new Tax Invoice is less than the Credit Note issued pursuant to clause 11.5 then <u>the Distributor will off-set the difference against future invoices issued to the Retailer, or</u>	No			•	Off-setting any difference seems to be a practical way to deal with any amount to be credited. It is unlikely that there will be large differences involved.

Variation	Description	Material	Limb of the statutory objective			Comment
	<u>will issue a refund within 6 Working Days upon written request from the Retailer.</u> (emphasis added)					
cl. 11.10	<p>The due date for payment of Tax Invoice – Auckland Network: The settlement date for each Tax Invoice for the Auckland Network issued by the Distributor pursuant to clause 11.6 will be the 9th day of the month following the date of that Tax Invoice.</p> <p>Under clause 11.5 of the MUoSA, the settlement date for the payment of invoices is 20 Working Days.</p>	No			<ul style="list-style-type: none"> • 	We understand that Vector is voluntarily moving the agreement for the Auckland Network from a conveyance to interposed model. Therefore retailers will be billing customers rather than Vector. The extension to settlement date is intended to ensure that cash flow neutrality is achieved for the Retailer between the current conveyance model for the Auckland Network and the new interposed model.
Sub-cl. 11.12(c)	<p>Other invoices/credits. The VUoSA contains an additional provision that, if applicable, the Distributor may issue a Tax Invoice or a Credit Note to the Retailer for <u>other charges or credits set out in the Distributor's pricing schedule and policy</u> set out or referred to in schedule 8 in the manner advised by the Distributor to the Retailer from time to time.</p>	No			<ul style="list-style-type: none"> • 	This is a reasonable variation. It is intended to apply to other miscellaneous charges such as reconnection charges etc.

Variation	Description	Material	Limb of the statutory objective			Comment
cl. 11.16	<p>No set off. The MUoSA and VUoSA contain a provision that both parties will make the payments required to be made to the other under this agreement in full without deduction of any nature whether by way of set off, counterclaim or otherwise.</p> <p>However, the VUoSA variation qualifies this. If the Retailer has committed a Serious Financial Breach, this clause will not apply to the Distributor and if either party is subject to an Insolvency Event, this clause will not apply to the party that is not subject to the Insolvency Event.</p>	No			●	<p>This variation is a carve out from the no set-off provisions. This variation reduces the risk of non-payment (reduce credit risk) under specific circumstances, namely, the Serious Financial Breach by the Retailer; and Insolvency Event, by the Retailer or Distributor.</p> <p>There are no concerns with this as it recognises the commercial reality of having to minimise credit risk in the event of a party being subject to Serious Financial Breach or an Insolvency Event.</p>
cl. 11.17	<p>Refund of charges: The MUoSA and VUoSA provide for the refund, if as a consequence of a fault on the Network, there is a continuous interruption affecting a Consumer's Point of Connection for 24 hours or longer.</p> <p>The VUoSA contains a variation that the fault does not include a Force Majeure Event or resulting from third party damage to the Network.</p>	Yes			●	<p>This variation acknowledges that the Distributor should not be held accountable for events that are beyond its control. This seems to be a reasonable variation.</p>

Variation	Description	Material	Limb of the statutory objective			Comment
12	Prudential requirements					
cl. 12.7	<p>Additional security: The VUoSA provides that the Distributor and the Retailer agree that the Distributor may, by notice to the Retailer, require the Retailer to provide further additional security in accordance with clause 12A.5 of the Code.</p> <p>The MUoSA does not require any agreement between the Distributor and Retailer.</p>	Yes			<ul style="list-style-type: none"> • 	This provision for the Distributor and the Retailer to reach agreement relating to additional security is beneficial to the Retailer.
sub-cl. 12.8(d)	<p>Additional security requirements. VUoSA contains the additional provision that if the level of any Additional Security actually provided by the Retailer <u>is greater than the level of Additional Security required by the Distributor</u>, the charges referred to in sub-clause (a) will not be payable by the Distributor under this clause 12.8 in relation to the excess.</p>	No			<ul style="list-style-type: none"> • 	There is no reason for a retailer to provide any excess Additional Security. Given any excess amount is at the discretion of the Retailer this is not a material issue but provides a disincentive for Retailers to “invest” excess funds in additional security requirements.
cl. 12.16	<p>Distributor or Retailer to effect changes in value or type of security. The MUoSA and VUoSA provide that the Distributor or the Retailer, as appropriate, will take all actions necessary to satisfy the requirement for the increase or</p>	Yes - positive			<ul style="list-style-type: none"> • 	The variation is more favourable to the Retailer relative to the MUoSA. This type of concession would be helpful to smaller

Variation	Description	Material	Limb of the statutory objective			Comment
	<p>decrease in the value of security or change to the type of security, within <u>5 Working Days</u> of specified notification under relevant clauses.</p> <p>The VUoSA variation allows for changes within <u>15 Working Days</u> for the notifications under clauses 12.14(a) and 12.14(b).</p>					<p>retailers.</p> <p>We understand from Vector that the change was requested by a smaller retailer.</p>
sub-cl. 12.24(a)	<p>Trust Account Rules. The VUoSA provides that if the Distributor receives a Cash Deposit, it will be held in trust for the benefit of both the Distributor and Retailer.</p> <p>The MUoSA names the Retailer only as the beneficiary.</p>	No				Not a material issue because the Distributor establishes the Trust account.
sub cl. 12.24(f)	<p>Trust Account Rules. The VUoSA provides that if the agreement is terminated that the Cash Deposit will be refunded unless the Retailer is subject to an Insolvency Event in which case clause 12.18 applies.</p>	No				Not a material issue because the sub-clause is consistent with and refers to a previous clause dealing with the event of insolvency.
	Part III Operational Requirements					
13	Access to Consumer's Premises					
cl. 13.1	<p>Right of entry onto Consumer's Premises. Both agreements set out provisions requiring the Retailer to include</p>	No				This provision appears to be unfavourable to Consumers in the

Variation	Description	Material	Limb of the statutory objective			Comment
	<p>in each of its Consumer Contracts a requirement that the Consumer provide the Distributor and its agents with safe and unobstructed access onto and within the Consumer's Premises for a range of purposes.</p> <p>The VUoSA excludes the provision relating to an upgrade and also excludes the protection to the Consumer that the upgrade does not have any material adverse effect on the relevant Consumer or Consumer's Premises.</p>					<p>event that the Consumer of their Premises is damaged in the event of an upgrade by the Distributor.</p> <p>However, this is counterbalanced by clause 14.5 (Costs of making good any damage) whereby if the Retailer's Equipment or the Consumer's Installation is damaged by the Distributor or the Distributor's employees, agents or invitees, the Distributor will pay the cost of making good the damage to the Retailer or the Consumer (as the case may be). This clause 14.5 is for the benefit of the Consumer and may be enforced by the Consumer under the <i>Contracts (Privity) Act 1982</i>.</p>
cl. 13.2	<p>Exercise of access rights. The clauses requires that in exercising its rights under clause 13.1, the Distributor provide notice to the Consumer if it intends to access the Consumer's Premises for any reason except. The VUoSA contains the variation except for reasons relating to System Security or the</p>	No		•		<p>This variation provides the Distributor with permission to access premises without notice under specified circumstances.</p> <p>This provision enhances system</p>

Variation	Description	Material	Limb of the statutory objective			Comment
	security of the Network, or in an emergency situation).					security and possibly network security in the case of an emergency.
sub-cl. 14.1(d)	General Operational Requirements Interference or damage to Distributor's Equipment by Consumers: The VUoSA includes the variation that the Retailer include in each of its Consumer Contracts a requirement that, during the term of the Consumer Contract and until the end of the period ending 6 months after the termination of the Consumer Contract, the Consumer will provide the Distributor with a reasonable opportunity to recover the Distributor's Equipment prior to any destruction of the Consumer's Premises.	No			<ul style="list-style-type: none"> • 	There is no material impact of this variation on the Retailer. It results in greater operational efficiency as the Distributor can reclaim equipment that can be reused elsewhere.
sub-cl. 14.2(b)	Interference or damage to Distributor's Equipment or Network by the Retailer: The VUoSA adds the clauses that the Retailer will ensure that it and its employees, agents and invitees do not: interfere with the Network or cause or permit any person, material or device to do so.	No		<ul style="list-style-type: none"> • 		This variation enhances Network reliability.
cl. 14.3	Costs of making good any damage: The VUoSA provides that if any of the Distributor's Equipment is damaged by an	No			<ul style="list-style-type: none"> • 	The variation reflects different standards. It ensures that

Variation	Description	Material	Limb of the statutory objective			Comment
	<p>act or omission of the Retailer or the Retailer's employees, agents or invitees, then the Retailer will pay the cost of making good the damage to the Distributor.</p> <p>The MUoSA has a similar clause but is limited to where the damage occurs through <u>negligence or a wilful</u> act or omission. (emphasis added).</p>					<p>regardless of the reason for the damage, if the Retailer causes damage then the Retailer will pay the cost of making good the damage.</p> <p>This provision is reciprocated in clause 14.5.</p> <p>This variation enhances operational efficiency as the risk is allocated to the person best able to manage it.</p>
cl. 14.4	<p>Interference or damage to Retailer's Equipment or Consumer's Installations. The MUoSA and VUoSA provide that the Distributor will ensure that it does not interfere with or damage the Retailer's Equipment or the Consumer's Installation except to the extent that emergency action has to be taken to protect the health or safety of persons.</p> <p>The VUoSA varies this provision by adding to the exception <u>reasons relating to System Security or the security of the Network</u>.</p>	No		●		<p>This variation makes clear that the Distributor can take action, even if it damages equipment or installations, if it is done to maintain system and/or network security.</p> <p>This variation enhances system and network security.</p>
cl. 14.5	<p>Costs of making good any damage: The VUoSA provides</p>	No			●	<p>This variation ensures that</p>

Variation	Description	Material	Limb of the statutory objective			Comment
	<p>that if any of the Retailer's Equipment or Consumer's Equipment is damaged by an act or omission of the Distributor or its employees, agents or invitees, then the Distributor will pay the cost of making good the damage to the Retailer or Consumer.</p> <p>The MUoSA has a similar clause but requires the damage to occur through <u>negligence or wilful</u> act or omission by the Distributor.</p>					<p>regardless of the reason for the damage, if the Distributor causes damage to the Retailer's or Consumer's equipment then the Distributor will pay the cost of making good the damage.</p> <p>This variation reciprocates the arrangement in clause 14.3.</p> <p>This variation enhances operational efficiency as the risk is allocated to the person best able to manage it.</p>
cl. 14.8	Notification of interference, damage or theft: The VUoSA adds to this provision the requirement that the Retailer will notify the Distributor of any other incident or matter that has, or could have, an adverse effect on the Network or the supply of electricity to or from the Network.	Yes		•		This variation enhances network security and reliability of supply by placing onus on the Retailer to notify the Distributor of any adverse incident.
Sub-cl. 14.10(b)	Responsibility for damages: The MUoSA and VUoSA contain provisions relating to responsibility for damages resulting from a party ("First Party") installing or maintaining <u>additional</u> Metering Equipment. If the damage invalidates the existing Metering Equipment certification, and the other party	No				The variation clarifies the types of costs but does not have a material impact.

Variation	Description	Material	Limb of the statutory objective			Comment
	<p>incurs costs because of its use of the Metering Equipment during the period of non-certification, the First Party will reimburse the other party for those costs.</p> <p>The VUoSA specifies that the incurred costs include any fines or penalties imposed on the indemnified party under the Code and cost associated with defending against any such fines or penalties.</p>					
cl. 14.12	<p>The Network: The MUoSA sets out that the Retailer will, include in its Consumer Contracts <u>acknowledgement</u> by the Consumer that:</p> <p>(a) the Network, including any part of the Network situated on Consumer's Premises, is and will remain the sole property of the Distributor; and</p> <p>(b) no provision of the Consumer Contract nor the provision of any services by the Distributor in relation to the Network will confer on the Consumer or any other person any right of property or other interest in or to any part of the Network or any Distributor's Equipment that is used to provide any such services.</p> <p>The VUoSA varies this provision by requiring the Retailer to include in its Consumer Contracts <u>agreement</u> (rather than acknowledgement) by the Consumer to sub-clauses 14.12 (a)</p>	Yes			<ul style="list-style-type: none"> • 	<p>The variation increases the legal strength of the provision because a party cannot be sued on the basis of an acknowledgement. The MUoSA provision is hollow.</p> <p>The provision in the VUoSA corrects poor drafting.</p>

Variation	Description	Material	Limb of the statutory objective			Comment
	to (c).					
Sub-cl. 14.12(c)	The Network: The VUoSA contains the additional sub-clause that the Retailer will include in its Consumer Contracts agreement by the Consumer that no provision of the Consumer Contract nor the provision of any services by the Distributor in relation to the Network will confer on the Consumer or any other person any right of property or other interest in or to any part of the Metering Equipment owned by any person other than the Consumer.	No			•	This variation clarifies the ownership/property right in relation to Metering Equipment.
	Part IV Other Rights					
cl. 20.4	<p>Notification of Events of Default. In the Event of Default, the VUoSA</p> <p>Removes the clause <u>the other party may issue a notice of termination in accordance with clause 21.2 and, if the breach is a Serious Financial Breach by the Retailer, the Distributor may notify the Electricity Authority in writing that the Retailer is in breach of this agreement and, if relevant, notify the clearing manager in accordance with Part 14 of the Code</u></p> <p>And replaces it with the provisions that provide Vector additional (compared to the MUoSA) ability to:</p>	Yes - positive	•		•	This clause has been varied so that the regime for dealing with Retailers who are in Serious Financial Breach under the VUoSA are consistent with the retailer default management regime contemplated by the Code. We note that the Code has been amended following the publication of the MUoSA to specifically deal with retailer default situations. These clauses also provide

Variation	Description	Material	Limb of the statutory objective			Comment
	<p>(e) if the Retailer is the Defaulting Party, the Distributor may: (i) <u>undertake a Temporary Disconnection</u> of some or all of the ICPs supplied by the Retailer, in which case the Retailer will take all steps necessary to allow those disconnections to be made and will provide the information required by the Distributor in relation to such ICPs; and/or (ii) <u>prohibit the Retailer from using the Network to supply any Point of Connection which is not currently supplied by it.</u> (emphasis added)</p>					<p>additional rights exercisable by the Distributor following Serious Financial Breach by the Retailer, so that the Distributor can manage its credit risk in these circumstances in a sensible manner (e.g. that the Retailer does not supply additional points of connection while it is in Serious Financial Breach).</p> <p>This variation provides the Distributor with an option that avoids the termination of the agreement and notification of the Authority. Termination of the agreement is a blunt action.</p> <p>The VUoSA variation provides an option of giving the Retailer a chance to trade its way out of financial trouble. As a safeguard, the variation stops the Retailer from supplying electricity to existing and new connections in the Event of a Default. This has the effect of limiting the financial</p>

Variation	Description	Material	Limb of the statutory objective			Comment
						<p>risk of the retailer without terminating the Retailer. Provides a means for the Distributor to manage the financial risk arising from the Event of Default. This variation, clearly promotes competition by handing the Retailer some reprieve.</p> <p>If the variation prevents the Retailer from being terminated then it enhances operational efficiency by avoiding costs of the Authority having to sell the business.</p>
cl. 20.6	<p>Insolvency Event. In the event of an Insolvency Event and the Retailer is the party subject to an Insolvency Event, the VUoSA provides Vector additional (compared to the MUoSA) ability to:</p> <p>(b) if the Retailer is the party subject to an Insolvency Event, the Distributor may: (i) <u>undertake a Temporary Disconnection of some or all of the ICPs</u> supplied by the Retailer, in which case the Retailer will take all steps necessary to allow those disconnections to be made and will provide the information</p>	Yes - positive	•		•	The variation is consistent with variations in clause 20.4(e) referred to above.

Variation	Description	Material	Limb of the statutory objective			Comment
	required by the Distributor in relation to such ICPs; and/or (ii) <u>prohibit the Retailer from using the Network to supply any Point of Connection which is not currently supplied by it.</u> (emphasis added).					
21 Sub-cl. 21.1(a)	Termination of agreement Either party may terminate this agreement: In provisions relating to terminations “At will”, the VUoSA adds that where the Distributor issues a notice of termination to the Retailer under this clause 21.1(a), the Distributor will at the same time provide to the Retailer a copy of the <u>Standard Use of Network Agreement</u> it proposes will apply between the Distributor and the Retailer after the termination of this agreement. If the Retailer wishes to continue to use the Network, the <u>parties will negotiate any amendments to the Standard Use of Network Agreement in good faith during the 120 Working Day notice period</u> with a view to entering into the new agreement with effect from the termination of this agreement. (emphasis added).	Yes - positive			●	This provision reduces uncertainty for the Retailer and enhances administrative efficiency for both parties in the event that the VUoSA is terminated. We understand that this change was requested by a retailer.
cl.21.3	Notice to Consumers. The VUoSA includes the addition of a provision for a Notice to Consumers: Either party may copy any notice given under clause 21.2 (termination of agreement) to any or all of the Consumers (notwithstanding the provisions of clause 22), provided that the information contained in that	No	●		●	This information reduces transaction costs to consumers who otherwise would have to search for information about events or remain unaware of

Variation	Description	Material	Limb of the statutory objective			Comment
	notice is not inaccurate or misleading.					<p>them.</p> <p>This provision while not directly influencing competition, does enhance information to consumers about the status of their retailer. With this information, consumers are in a better informed and in a better position to decide what action they wish to take.</p> <p>Overall, the variation is beneficial to Consumers.</p>
cl. 21.5	Retailer remains liable for charges for remaining Consumers: The VUoSA includes an added requirement that the if this agreement is terminated, the Retailer remains liable to pay any charges for Services that arise in relation to connected Consumers that have not been switched to another retailer, or whose ICPs have not been disconnected by the Distributor <u>within 5 Working Days of this agreement being terminated, the Retailer must notify the Distributor of all ICPs that have not been disconnected or switched to another retailer.</u> The Distributor may charge for such Services at the prices that apply at the time of termination, <u>including any</u>	No			<ul style="list-style-type: none"> ● 	<p>This provision enhances operational efficiency by putting in place administrative arrangements for payment by retailers.</p>

Variation	Description	Material	Limb of the statutory objective			Comment
	<u>applicable disconnection fees.</u>					
cl. 21.6	<p>Obligations to continue until termination: The MUoSA and VUoSA provide that parties will continue to meet their responsibilities under this agreement up to the effective date of termination.</p> <p>The VUoSA adds that if the Distributor continues to charge the Retailer for Services after the effective date of termination of this agreement in accordance with clause 21.5, then the Retailer will continue to be bound by all of the terms of this agreement as if the agreement had not been terminated for so long as the Retailer is liable to pay such charges.</p>	No			•	This provision is administrative in nature and provides certainty about the status of agreement.
cl. 22.3	<p>Limit for breach: The VUoSA contains the provision that where clause 22.5(b) (relating to information being transferred other than in relation to the File Transfer Process) applies, the Distributor's liability for breach of this clause 22 (Confidentiality) in relation to any error or omission in the provision of the requested information will be limited by clause 26 (Liability).</p>	No			•	This variation changes the MUoSA by limiting the liability for breaching clause 22.5(b) to the Liability provision in clause 26.
cl. 22.5	<p>File Transfer Process.</p> <p>The VUoSA provides, that as soon as practicable after</p>	No			•	The inclusion of the File Transfer Process includes provisions for dispute resolutions and for the

Variation	Description	Material	Limb of the statutory objective			Comment
	execution of this agreement, the Distributor and the Retailer will act in good faith and seek to agree a set of secure file transfer processes to be followed by the Distributor in providing information relating to Consumers to the Retailer (“File Transfer Processes”).					retailer to seek additional information. This provision enhances operational efficiency.
23 Sub-cl. 23.1	<p>Force Majeure</p> <p>Force Majeure Event. The VUoSA varies from the MUoSA by adding that a Force Majeure event occurs if a party fails to comply with or observe any provision of the agreement and such failure is caused by any act of God, that if it was reasonably foreseeable, the failure did not occur as a result of the party invoking this clause 23 failing to act in accordance with <u>Good Electricity Industry Practice</u>. (Sub-cl 23.1(b)(i)(c))</p> <p>And also that:</p> <p>(Sub-clause 23.1(b)(v) the failure of the Network or any part of it which can be reasonably proven by the Distributor to be an event that did not arise from the Distributor’s failure to act in accordance with Good Electricity Industry Practice.</p>	Yes			<ul style="list-style-type: none"> • 	<p>The MUoSA used terms such as triggers of “natural causes directly or indirectly and exclusively without human intervention” which could be considered to be subjective and other unclear language (especially in MUoSA clause 24.1(c)). The variations adopt Good Electricity Industry Practice as a benchmark for determining whether an event is a Force Majeure Event or not. That is, failure to act according to Good Electricity Industry Practice is not a Force Majeure event. The term defined in the MUoSA and adopted in the VUoSA.</p> <p>The clarification in the VUoSA</p>

Variation	Description	Material	Limb of the statutory objective			Comment
						enhances operational efficiency.
cl. 23.6	<p>Charges continue: The VUoSA includes a provision that if a Force Majeure Event occurs:</p> <p>(a) the occurrence of such Force Majeure Event will not affect the parties' obligations in relation to the calculation and payment of fixed charges in relation to the Services (whether or not, in the case of charges relating to ICPs, the relevant ICP received a supply of electricity during the period of the Force Majeure Event); but</p> <p>(b) any variable charges applicable to ICPs will not be payable to the extent that the consumption of, or demand for, electricity at the ICP is reduced due to the Force Majeure Event, provided that where access to any Consumer's Premises is prevented by law or a regulatory authority, other than due to any action or inaction on the part of the relevant Consumer, fixed charges will not be payable for the period during which such access is prevented.</p>	No			<ul style="list-style-type: none"> • 	This provision, which reflects that the occurrence of a Force Majeure Event does not mean the Vector is not performing its services and that Vector will in fact expend considerable resources in a Force Majeure situation, clarifies the continuation of charges and so enhances operational efficiency.
24 Sub-cl.	<p>Amendments to Agreement</p> <p>Changes to agreement: In the provisions to make a change to this agreement, the VUoSA includes discretion for the</p>	No			<ul style="list-style-type: none"> • 	Greater scope for consultation enhances operational efficiency in the market.

Variation	Description	Material	Limb of the statutory objective			Comment
24.4(a)	Distributor to consult with all retailers (including the Retailer) jointly about the proposed change.					
Sub-cl. 24.4(e)	Changes to agreement The VUoSA includes provisions for a procedure for changes if the parties have not agreed.	No			•	A clear procedure for changes to the agreement if the parties have not agreed enhances operational efficiency in the market.
cl. 24.7	Enactment of the Consumer Law Reform Bill. Under the VUoSA the parties acknowledge that at the time this agreement was entered into, the Consumer Law Reform Bill has been reported back from the Commerce Select Committee but not yet been enacted. The parties agree that changes may be required to be made to clauses 26.10 to 26.12 as a result of any further changes made to the Consumer Law Reform Bill prior to its enactment and any Code amendments that are made in connection with the enactment of the Consumer Law Reform Bill. Notwithstanding clauses 24.1(d) and 24.4. The provision sets out a process to be followed in determining the changes (if any) to be made to this agreement in connection with any such changes or amendments.	No			•	The VUoSA sets out a process for administrating changes to the VUoSA as a result to the Consumer Law Reform Bill. Setting out a process ahead of the enactment of the legislations provides parties with greater commercial certainty. This provision will be deleted because the bill has since been passed.
25	Dispute resolution procedure	No			•	The procedure in the MUoSA is

Variation	Description	Material	Limb of the statutory objective			Comment
cl. 25.2	<p>Right to refer dispute to mediation: If the Dispute cannot be resolved by the Chief Executives within 15 Working Days of the matter being referred to them, The VUOSA provides that the parties may agree that the Dispute be referred to mediation.</p> <p>The MUOSA allows either party to give notice to the other requiring that the Dispute be referred to Mediation.</p>					<p>vague.</p> <p>The variation provides for a more certain process for referring matters to mediation.</p>
26 cl. 26.4	<p>Liability</p> <p>No liability in tort, contract etc: The VUOSA includes the provision that except as expressly provided in this clause 26, <u>the Distributor's liability to the Retailer and the Retailer's liability to the Distributor</u>, whether in tort (including negligence), contract, breach of statutory duty, equity or otherwise arising from the relationship between them and of any nature whatsoever relating to the subject matter of this agreement <u>is excluded</u> to the fullest extent permitted by law.</p>	No			<ul style="list-style-type: none"> • 	<p>This provision seeks to clearly limit liability for both the Retailer and the Distributor to the provisions in the VUOSA as permitted by law). This is a reasonable approach given the VUOSA is a negotiated agreement.</p> <p>The limitation is applicable to Retailer and Distributor. Given that the effect of the variations is reciprocated, it is unlikely to be perceived as unfair to a Retailer.</p>
Sub-cl. 26.5(b)	<p>Distributor not liable. VUOSA includes an additional provision that limits liability for any failure to convey</p>	No			<ul style="list-style-type: none"> • 	<p>Good Electricity Industry Practice appears to be a key benchmark in</p>

Variation	Description	Material	Limb of the statutory objective			Comment
	electricity to the extent. (vii) such failure has arisen notwithstanding that the Distributor has acted in accordance with Good Electricity Industry Practice,					the UoSAs.
MUoSA cl.27.6	Limitation of Liability. Under the MUoSA, subject to certain clauses but otherwise notwithstanding any other provision of this agreement, the <u>maximum total liability</u> of each party under or in connection with this agreement (whether in contract, tort (including negligence) or otherwise) for any single event or series of connected events will not in any circumstances <u>exceed the lesser of \$10,000 for each ICP on the Network at which the Retailer supplied electricity on the day of the event, or \$2,000,000.</u>	Refer below clauses				The MUoSA limits the maximum liability to \$2,000,000 for both the Retailer and Distributor. The VUoSA sets out a more granular approach to limitation of liability. A key part of the approach is to separate limitations for the Distributor and Retailer. (Discussed immediately below in VUoSA clauses 26.7(b) and 26.8).
Sub-cl. 26.7(b)	Distributor's limitation of liability. Under the VUoSA, subject to certain clauses but otherwise notwithstanding any other provision of this agreement, the maximum total liability of the Distributor to the Retailer under or in relation to this agreement (whether in contract, tort (including negligence) or otherwise) will: (a) subject to the further limitation of the maximum total	Yes	●		●	The VUoSA sets out a more granular approach to limitation of liability by distinguishing between single event (or series of connected events); and events or circumstances during a 12 month period.

Variation	Description	Material	Limb of the statutory objective			Comment
	<p>liability of the Distributor to the Retailer in any Year under sub-clause (b), in respect of a single event or series of connected events, not in any circumstances exceed, in respect of each ICP on the Network, the lesser of:</p> <p>(i) \$10,000, where the ICP is a Residential ICP or \$20,000, where the ICP is a Non-Residential ICP; and</p> <p>(ii) the amount of the claimable loss or damage suffered; and</p> <p>(b) in respect of all events or circumstances during the period from 1 July each year until 30 June the following year (“Year”) under all use of system agreements between the Distributor and the Retailer in respect of the Network, not in any circumstances exceed the lesser of the amount of the claimable loss or damage suffered and the amount determined in accordance with a set table. The table sets a maximum aggregate liability if the Distributor from \$700,000 to \$9,100,000; depending on the number of active ICPs supplied by the Retailer as a percentage of the total number of ICPs connected to the Network at the commencement of the year (starting at 0-2.5% up to > than 30%).</p>					<p>The limitation of liability for single events distinguishes between residential and non-residential consumers. The VUoSA caps non- residential liability for single events at \$20,000.</p> <p>The variation limits the liability relative to the Retailer’s proportion of total ICPs. As the proportion of total ICPs increases so does the value of the Distributor’s liability limitation. This approach appears to align with the objective of treating retailers on an even-handed basis. It also means that Vector’s aggregate liability will not increase solely due to an increased number of Retailers on its network. This is appropriate as its services are the same irrespective of the number of Retailers trading on its network.</p> <p>The variation limits the aggregate liability over a 12 month period</p>

Variation	Description	Material	Limb of the statutory objective			Comment
						<p>which is not included in the MUoSA. The approach in the VUoSA removes ambiguity in the MUoSA over the time period for the limitation of liability.</p> <p>The scaling of liability limits the liability of the Distributors to Retailers to \$9.1m for the largest Retailer for a 12 month period.</p>
cl. 26.8	<p>Retailer's limitation of liability.</p> <p>Under the VUoSA, the maximum total liability of the Retailer to the Distributor reflects to same level of liability as in clause 26.7.</p>	Yes	•		•	<p>The limitation for the Retailer's liability is the inverse of the Distributor's liability limitation as discussed immediately above.</p> <p>The limitation of liability is relative to the Retailer's proportion of total ICPs. As the proportion of total ICPs increases so does the value of the liability. This approach appears to align with the objective of treating retailers on an even-handed basis. We note that Vector has the largest number of retailers trading on its network of</p>

Variation	Description	Material	Limb of the statutory objective			Comment
						<p>varying sizes.</p> <p>A large number of the retailers operating on Vector's network are quite small. Therefore for retailers that are below 5% of active ICPs the aggregate liability limitation has fallen (from \$2 million to \$1.4 million). For other retailers it has increased. While this may be perceived as unfair for these retailers it could also be considered it to be more commercially even-handed between the retailers compared to the MUoSA.</p>
sub-cl. 26.10(a)	<p>Distributor indemnity. The VUoSA is the same as the MUoSA except for one provision. If:</p> <p>(iv) the Failure was not a result of action taken by the System Operator under the Act, provided that this clause 26.10(a)(iv) shall only apply if the Consumer Law Reform Bill in existence at the Commencement Date is enacted so as to include a provision in the CGA which has substantially the same effect as this clause 26.10(a)(iv);</p>	No			<ul style="list-style-type: none"> • 	<p>This provision clarifies that the Distributor is exempted from indemnifying the Retailer if the Failure is due to the actions of the System Operator. This seems reasonable.</p> <p>This provision is contained within the Consumer Guarantees Act but</p>

Variation	Description	Material	Limb of the statutory objective			Comment
	the Distributor indemnifies the Retailer for the Remedy Cost.					not in the Code. This clarification enhances operational efficiency.
cl. 26.11	<p>Claims for which the Retailer wishes to be indemnified for under the Distributor's Indemnity: The VUoSA includes provisions for situations if a Consumer makes a claim against the Retailer in relation to which the Retailer wishes to be indemnified by the Distributor under the Distributor's Indemnity under clause 26.10.</p> <p>The provisions provide for the Retailer to notify the Distributor (a) The Retailer will:</p> <p>(i) give written notice of the Claim to the Distributor, as soon as reasonably practicable, specifying the nature of the Claim in reasonable detail and will make available to the Distributor all information that it holds that is reasonably required by the Distributor; and</p> <p>(ii) subject to clause 26.11(b), not make any determination, admission, settlement or compromise in respect of the Claim, without first consulting with the Distributor in respect of the Claim.</p> <p>(b) If the Distributor is notified of any potential Claim, the</p>	Yes			<ul style="list-style-type: none"> • 	<p>The VUoSA provides a clear process for Consumer claims against the Distributor where it was at fault.</p> <p>A clear process whereby the parties communicate with each other is beneficial to both the Retailer and Distributor.</p> <p>A clear process for consumer claims enhances operational efficiency.</p> <p>This is a process that is not contained within the MUoSA.</p>

Variation	Description	Material	Limb of the statutory objective			Comment
	<p>Distributor will be entitled to:</p> <p>(i) communicate directly with the relevant Consumer in relation to the Claim; and</p> <p>(ii) assume management and defence of the Claim.</p> <p>The Distributor will advise the Retailer as soon as practicable after being notified of the Claim whether or not it intends to assume the management and defence of the Claim. Etc.....</p>					
sub-cl. 26.12(a)	<p>General. Under the VUoSA the parties agree that the Distributor's Indemnity (together with the provisions of clauses 26.11 and this 26.12) shall apply instead of the form of indemnity specified in Schedule 12A.1 of the Code, which the parties agree pursuant to clause 12A.6(4) of the Code will be omitted from this agreement.</p>	No			<ul style="list-style-type: none"> • 	<p>Part 12A.1 of the Code requires that an indemnity be included in each UoSA unless otherwise agreed.</p> <p>Clauses 26.11 and 26.12 are the agreed indemnity provisions.</p> <p>The clause clarifies that Part 12A.1 is replaced.</p>
Sub-cl. 26.12(d) to (e)	<p>General: The VUoSA contains additional clauses:</p> <p>(d) Without limiting clause 26.11(b), any <u>dispute</u> between the Distributor and the Retailer relating to the allocation of liability</p>	No			<ul style="list-style-type: none"> • 	<p>These clauses add a dispute resolution procedure to the UoSA.</p> <p>It dovetails the Dispute</p>

Variation	Description	Material	Limb of the statutory objective			Comment
	<p>under the Distributor's Indemnity shall be dealt with in accordance with clause 25, until such time as the terms of reference for the Dispute Resolution Scheme are amended to provide for the resolution of disputes in relation to such allocation of liability, after which time either party may elect that the dispute be dealt with under the Dispute Resolution Scheme instead of under clause 25.</p> <p>(e) Notwithstanding clause 26.11(d), any adjudication of a Claim where the parties have not agreed and it has not otherwise been determined as to whether the indemnity in clause 26.10 does, or does not, apply will not prejudice the right of the Retailer or the Distributor (as applicable) to assert that the Distributor's Indemnity does, or does not, apply.</p>					<p>Resolution Scheme under the VUoSA with an emerging legislative dispute resolution scheme.</p> <p>This provision enhances operational efficiency.</p>
sub-cl. 26.12(f)	General Clauses 26.11(b), 26.11(c), 26.11(d) and 26.12(e) do not apply where a complaint has been made to the Dispute Resolution Scheme under section 95 of the Act.	No				Minor technical change.
sub-cl. 26.13(a)	Consumer Guarantee Act. The VUoSA states that subject to clause 27.1, the Retailer will, including where the Consumer is acquiring, or holds itself as acquiring, electricity for the purpose of a business, exclude from all its Consumer Contracts (which includes a contract between the Retailer and a purchaser of electricity that is not an end user) all warranties, guarantees or obligations imposed on the Distributor by the	No			<ul style="list-style-type: none"> • 	The wording of the VUoSA provides clarification that the exclusion applies to business consumers.

Variation	Description	Material	Limb of the statutory objective			Comment
	CGA or any other law concerning the services to be provided by the Distributor under this agreement (“Distributor Warranties”), to the fullest extent permitted by law. The MUoSA does not refer to business consumers.					
sub-cl. 26.14(b)	Distributor liabilities and Consumer agreements. The MUoSA states that the Retailer will include in its Consumer Contracts clear and unambiguous clauses to the effect that to the extent permitted by law, the Distributor will have no liability to the Consumer in contract, tort (including negligence) or otherwise in respect of the supply of electricity to the Consumer under the Consumer Contract. The VUoSA adds that the Distributor will have no liability in respect of supply <u>or non-supply</u> of electricity.	No			<ul style="list-style-type: none"> • 	<p>This variation clarifies the drafting in the MUoSA.</p> <p>The variation is a clarification that would avoid any misunderstanding that “supply” may not apply in situations where electricity is not supplied.</p>
sub-cl. 26.15(a)(i)	The Distributor will be indemnified. The VUoSA adds that the Retailer will indemnify the Distributor in the case of disconnection by the Retailer, or disconnection requested by the Retailer, of any Consumer’s Premises in accordance with this agreement <u>except where the disconnection is effected by the Distributor and is not undertaken in accordance with Good Electricity Industry Practice. (variation highlighted).</u>	No			<ul style="list-style-type: none"> • 	<p>This variation excludes indemnity for the Distributor where a disconnection is contrary to Good Electricity Practice. The variation links the indemnity with the obligation of the Distributor.</p> <p>This provision is favourable to the Retailer.</p>

Variation	Description	Material	Limb of the statutory objective			Comment
sub-cl. 26.16(a)(i)	The Retailer will be indemnified. The VUoSA adds that the Distributor will indemnify the Retailer except where the disconnection by the Distributor of any Consumer's Premises in accordance with this agreement which <u>is not made in accordance with Good Electricity Industry Practice.</u> (variation highlighted).	No			●	This variation excludes indemnity for the Distributor where a disconnection is contrary to Good Electricity Practice. The variation links the indemnity with the obligation of the Distributor. This provision is favourable to the Retailer.
sub-cl. 26.16(b)	The Retailer will be indemnified. The VUoSA adds that the Distributor will indemnify the Retailer arising out of any recovery of activity of the Retailer in respect of any unpaid charges or interest payable under this agreement <u>provided that the indemnity under this clause 26.16 shall not apply where any direct loss or damage suffered or incurred by the Retailer relates to any warranties, guarantees or obligations imposed on the Retailer by the CGA or any other law concerning the electricity to be supplied by the Retailer under the Consumer Contract (each a "Retailer Warranty") where the Retailer could have lawfully excluded the relevant Retailer Warranty from its Consumer Contracts (which includes a contract between the Retailer and a purchaser of electricity that is not an end user), including where the Retailer could have lawfully excluded the Retailer Warranty in respect of a Consumer that was acquiring, or holding itself as acquiring, electricity for the purpose of a</u>	No			●	This provides a disincentive for the Retailer to add provisions to its Consumer Contracts that would favour the Consumer, knowing that the Retailer may be indemnified by the Distributor. Although this could be viewed as affecting retail competition, to the extent that it may affect the types of warranties offered by the Retailer to Consumers, it is not commercially unreasonable for Vector to make it clear that any such warranties offered by Retailers should be at their cost.

Variation	Description	Material	Limb of the statutory objective			Comment
	<u>business. {variation highlighted}.</u>					But mostly, the variation provides clarification which in turn improves operational efficiency.
cl. 26.17	Conduct of claims. The VUoSA inserts a process for the conduct of claims for a party with the right of indemnity under clause 26.15 and 26.16. .	No			●	Inclusion of a claims process improves operational efficiency. This provision operates in an even-handed way by setting out a claims process for the Retailer and Distributor.
27 Sub-cl. 27.1(b)	<p>Consumer Contracts</p> <p>Retailer to include provisions in Consumer Contracts.</p> <p>The UoSAs include provisions that require the Retailer to vary the Consumer Contract that has been entered into prior to the Commencement Date at the next review date or if able to unilaterally amend vary it, within 12 months after the Commencement Date.</p> <p>The VUoSA has the variation that the parties agree that any failure by the Retailer to comply with its obligations under clause 27.1(b) during the period from the commencement date of the first “Use of System Agreement – Electricity” entered into by the Retailer to 16 June 2014 (and only during that</p>	No			●	<p>Variation seeks to set a timeframe for amendment to the Retailer’s Consumer Contracts.</p> <p>It allows the Retailer to change its Consumer Contract once rather than twice. This saves costs for the Retailer.</p>

Variation	Description	Material	Limb of the statutory objective			Comment
	period) shall not constitute a breach of this agreement by the Retailer, provided that the Retailer complies with such obligations by 16 June 2014.					
cl. 27.3	<p>Retailer to indemnify Distributor: Both UoSAs provide that the Retailer indemnifies the Distributor against any direct loss or damage incurred by the Distributor as a result of the Retailer's failure to meet its obligations in accordance with clauses 27.1 (Retailer to include provisions in Consumer Contracts) and 27.2 (Changes to Consumer Contracts during term).</p> <p>The VUoSA adds that: provided that if the Distributor seeks to be indemnified by the Retailer under this clause 27.3 in relation to any third party claim that may result in such loss or damage being incurred by the Distributor, the following will apply:</p> <p>(a) The Distributor will give notice of such third party claim (including reasonable details) to the Retailer.</p> <p>(b) The Distributor will keep the Retailer fully informed of the Distributor's progress in defending such third party claim and of any related proceedings.</p> <p>(c) The Distributor will, at the Retailer's request, consult with, and take account of the reasonable views of, the Retailer</p>	Yes			<ul style="list-style-type: none"> • 	<p>Under this provision the Retailer indemnifies the Distributor .under clause 27.1 (Retailer to include provisions in Consumer Contracts) and 27.2 (Changes to Consumer Contracts during term), Under the variation, the Distributor is required to give notice of such claims, and keep the Retailer informed of progress and take into account the reasonable views of the Retailer.</p> <p>It constrains the Distributor as it is required to take into account the reasonable views of the Retailer.</p> <p>This provision is a benefit to the Retailer in the event of a third party claim.</p>

Variation	Description	Material	Limb of the statutory objective			Comment
	so far as reasonably possible in the Distributor's defence of such third party claim and any related proceedings.					
cl. 27.4	Evidence of compliance: The VUoSA adds the clause that if the Distributor requests the Retailer to do so, the Retailer will provide the Distributor as soon as practicable with such evidence as the Distributor may reasonably request to satisfy the Distributor that the Retailer is complying with its obligations under this clause 27, provided that the Retailer may refer the Distributor to the Retailer's website if the evidence reasonably requested by the Distributor for the purpose of this clause 27.4 is located and accessible to the Distributor on the Retailer's website.	No			<ul style="list-style-type: none"> • 	Vector has a significant commercial interest in understanding whether the clause 27 arrangements are in place and the Retailer must indemnify Vector in the case of any breach, the provision is not unreasonable. It may result in Vector being able to detect non-compliance and encouraging rectification rather than having to resort to legal remedies with potentially significant financial impact on Retailers.
cl. 27.5	Declaration as unfair contract term: The VUoSA inserts the provision that: (a) Notwithstanding anything else in this agreement, if the Retailer has complied with its obligations under clauses 27.1 and 27.2, and a provision in a Consumer Contract that is required to be included in the Consumer Contract under those clauses is declared by a court to be an unfair contract term,	No			<ul style="list-style-type: none"> • 	Administrative matter. Ensures that the Retailer is kept informed of changes. This is beneficial the Retailer. In particular, may be beneficial to smaller retailers who may not have the resources to monitor

Variation	Description	Material	Limb of the statutory objective			Comment
	<p>then:</p> <p>(i) the Retailer and Distributor will immediately amend this agreement to remove any requirement on the Retailer to include the term (or so much of the term as has been declared unfair) in its Consumer Contracts; and</p> <p>(ii) the Distributor will not apply, enforce or rely on the requirement on the Retailer to include the term (or so much of the term as has been declared unfair) in its Consumer Contracts.</p> <p>(b) The Retailer will notify the Distributor promptly if the Commerce Commission advises the Retailer that it considers any provision in a Consumer Contract that is required to be included in the Consumer Contract under clauses 27.1 and 27.2 to be an unfair contract term.</p>					adjudication of unfair contract terms.
cl.29 cl. 29.3	<p>Electricity Information Exchange Protocols</p> <p>Consumer information received in error by Retailer:</p> <p>The VUoSA inserts the provision that the Retailer undertakes and agrees that in the event that it or anyone acting on its behalf receives any information relating to consumers on the Network directly or indirectly from the Distributor that does not relate to Consumers the Retailer is supplying at that time,</p>	No	●		●	Receiving consumer information about consumer that it does not supply could provide commercial advantage to the Retailer. Having this provision safeguards the commercial advantage of the Retailer who is supplying the Consumer.

Variation	Description	Material	Limb of the statutory objective			Comment
	it will keep such information confidential and will not use that information for any purpose. The Retailer acknowledges and agrees that this clause 29.3 shall also be for the benefit of other retailers and enforceable by each of those retailers in accordance with section 4 of the Contracts (Privity) Act 1982.					This is an administrative matter that enhances operational efficiency and protects commercial information of the Retailer.
cl. 29.4	Auditing information provided. The MUoSA and VUoSA contain provisions enabling either party to the agreement to have reasonable access to books and records to verify the accuracy of information provided. The VUoSA contains the variation that if the Retailer is the Provider and any relevant metering or consumption data is held in a third party Metering Equipment owner or operator, the Retailer will procure access to the third party Metering Equipment owner or operator's books and records for the benefit of the Distributor.	No			<ul style="list-style-type: none"> • 	<p>This variation addresses situations where the information is required from a third party. It provides certainty that the Distributor will be able to obtain required information regardless of which party holds the metering data.</p> <p>This is an administrative matter that enhances operational efficiency</p>
cl. 29.8	<p>Non-Compliance: The VUoSA contains the provision that if a review of the Provider's Records under clause 29.4 (Auditing information provided) or 29.6 (Independent auditor) by the Verifier or the Auditor (as the case may be) identifies any material inaccuracy in the Records provided by the Provider to the Verifier under this agreement, the Provider will:</p> <p>(a) as soon as possible agree with the Verifier the remedial</p>	No				This variation provides for remedial action to be taken following the finding of a material inaccuracy. This process may also identify deficiencies in the Provider's systems, processes and controls.

Variation	Description	Material	Limb of the statutory objective			Comment
	<p>action to be taken and take such steps (including providing the Verifier or its agent (including the Auditor) with access to the Records and other relevant information following the remedial action being taken) as are necessary to enable the Verifier to satisfy itself that the Records and other information provided by the Provider to the Verifier under this agreement are materially accurate and that any deficiencies in the Provider's systems, processes and controls that gave rise to the material inaccuracy have been adequately addressed; and</p> <p>(b) bear the reasonable costs of the Verifier and/or its agent (including the Auditor) incurred in relation to the exercise of its rights under this clause 29.8.</p>					<p>The provision for the Provider to bear reasonable costs of the Verifier, provides a financial incentive on parties to the agreement to ensure that their information systems, processes and controls are meet the requirements of the agreement.</p> <p>The MUoSA did not provide scope for remedial action which made the MUoSA provisions ineffective. The variation is an administrative improvement that enhances operational efficiency.</p> <p>We understand this variation was made in response to experience with a retailer's information.</p>
30	Miscellaneous					
cl. 30.6	Extension of indemnities. The VUoSA adds the indemnities provided under this agreement in favour of a party will be	No			●	Minor clarification.

Variation	Description	Material	Limb of the statutory objective			Comment
	construed as also applying to the directors, officers, employees, agents, representatives and advisers of that party and are intended to be capable of enforcement by such persons in accordance with the Contracts (Privity) Act 1982.					
Sch. 1	Service Standards As referred to in clauses 5.11, 5.12, sub-clause 31.1(g).					
S1.5	The variation in the VUoSA omits the retailer's ability to deduct an amount that reflects its reasonable cost of administering the payment in situations when the Distributor makes a Service Guarantee payment in respect of an ICP, the Retailer will pass that payment on to the Consumer.	No			<ul style="list-style-type: none"> ● 	<p>Intuitively, this variation would reduce disputes about the amount to be deducted by the retailer. It also provides an incentive for the retailer to minimise transaction costs.</p> <p>On the other hand, the inability for retailers to deduct a payment may be perceived as unfair to retailers.</p>
S1.7	The VUoSA adds the clause that the parties acknowledge that notwithstanding any other provision of this agreement, the column "Service Guarantee" in the following table of Service Standards sets out the sole remedy (if any) of the Retailer in	No			<ul style="list-style-type: none"> ● 	Provides clarification that the sole remedy (if any) of the Retailer in respect of the Distributor's failure to meet the relevant Service

Variation	Description	Material	Limb of the statutory objective			Comment
	respect of the Distributor's failure to meet the relevant Service Standard. Any failure of the Distributor to meet the Service Standards does not constitute a breach of this agreement, including clause 2.1(b). Service Standards do not apply during a Force Majeure Event (with such term being construed disregarding clause 23.1(a)), except for any Service Standards relating to communication between the Distributor and the Retailer (which apply to the extent that such Force Majeure Event itself does not prevent the Distributor from meeting such Service Standards). Nothing in this clause shall limit any right or remedy of the Retailer in relation to any other breach of this agreement if that occurs (such breach, for clarity, not including a failure to meet a Service Standard or a breach of clause 2.1(b)), where such breach arises from the same action or inaction of the Distributor that gave rise to the failure to meet the Service Standard.					Standard.
S1.8	The parties agree that the Distributor may only issue a Change Notice to effect a change to this schedule (including any changes to the Service Levels, Service Standards and Service Guarantees contained in this schedule) under clause 24.1(a) if such proposed change is in accordance with Good Electricity Industry Practice, as contemplated by clause 24.3, and the same Change Notice is issued to all retailers (provided that the reference to "all retailers" in this clause S1.8 will be construed	No			●	Provides clarification about circumstances in which a Change Notice can be issued.

Variation	Description	Material	Limb of the statutory objective			Comment
	in the same way as it is in clause 4.1).					
Sch. 1 table Item A	Items for service standards relating to electricity supply Distributor's Service Standards relating to Electricity Supply Variations included inserting SAIDI has the Service Performance Reporting Measure; and clarifying that the Distributor will comply with its statutory reporting requirements under the law, including the Code, except if the Distributor is subject to default/customised price-quality regulation under the Commerce Act 1986	No				Vector is subject to the default price path.
Sch. 2	Additional Services As referred to in sub-clauses 2.1(j) 2.1 Distributor's services and obligation, 2.2(j) 2.1(j) Retailer's services and obligation and clause 31.2 (definitions).	No				
S2.	Additional Services The MUoSA includes provisions for Distributors owned by a consumer trust to remit discounts and rebates to Consumers.	No			•	Minor change to reflect ownership of Vector.

Variation	Description	Material	Limb of the statutory objective			Comment
	The VUoSA inserts the name of the Auckland Energy Consumer Trust into the Schedule.					
S2.14	<p>The MUoSA and VUoSA contain provisions so that the trust will pay the Retailer for the full amount of the Dividends to be credited by the Retailer within 5 Working Days (or an alternative agreed date) of the AECT' confirming the total amount credited to Consumers' accounts.</p> <p>The VUoSA adds that the amounts to be credited will be paid but before the Retailer credits those amounts.</p>	No			<ul style="list-style-type: none"> • 	This variation ensures the retailer is not out of pocket. It is fairer to the retailers.
MUoSA S2.13	<p>The VUoSA omits the following clause:</p> <p style="padding-left: 40px;">The Distributor will meet the Retailer's reasonable costs for providing any services requested, and if requested the Retailer will provide a quote for the services in advance. The Distributor will pay the Retailer's invoice for the services by the 20th of the month following the invoice date.</p> <p>Related clauses in the MUoSA S2.16 to S2.17 on the form of compensation a retailer's costs are also omitted.</p>	Yes			<ul style="list-style-type: none"> • 	<p>This variation means that Retailers may incur costs on behalf of the Distributor. This variation is not favourable to Retailers, and in particular, to smaller retailers.</p> <p>We understand from Vector that the assumption by Retailers of this cost forms part of the total value proposition to them of a transition of the Auckland Network from a conveyance model to an interposed model.</p>

Variation	Description	Material	Limb of the statutory objective			Comment
MUoSA S2.21	<p>The VUoSA omits the following clause contained in the MUoSA:</p> <p>The Distributor will reimburse the Retailer's reasonable costs for supplying the information requested, and, if requested, the Retailer will provide a quote for supplying the information in advance. The Distributor will pay the Retailer's invoice for supplying the information by the 20th of the month following the invoice date.</p>	Yes			•	<p>This variation means that Retailers may incur costs on behalf of the Distributor. This variation is not favourable to Retailers, and in particular, to smaller retailers.</p> <p>We understand from Vector that the assumption by Retailers of this cost forms part of the total value proposition to them of a transition of the Auckland Network from a conveyance model to an interposed model.</p>
Sch. 4 S4.2	<p>Consumer Contracts</p> <p>The VUoSA adds that the Retailer must include in every Embedded Network Consumer Contract the requirements set out in clause S9.3 of schedule 9.</p>	Yes - positive		•	•	Clear requirements for Embedded Network Consumers enhances reliability and operational efficiency.
Sch. 9	<p>Embedded Network Provisions</p> <p>This schedule sets out the obligations of the Retailer in relation to the supply of electricity to Embedded Network Consumers.</p>	Yes - positive		•	•	Clear requirements for Embedded Network Consumers enhance reliability and operational efficiency.

Variation	Description	Material	Limb of the statutory objective			Comment
	<p>The Retailer acknowledges and agrees that as Embedded Networks are not owned or operated by the Distributor, the Embedded Network Owner (and not the Distributor) is responsible for the conveyance of electricity via the Embedded Network and that, to the fullest extent permitted by law, the Distributor shall have no liability to the Retailer of any kind, whether in contract, tort (including negligence) or otherwise, in relation to any Embedded Network.</p> <p>Definitions have been added to clause 32 for Embedded Network, Embedded Network Consumer, Embedded Network Consumer Contract, Embedded Network Owner.</p>					
Sch. 10	Transitional Provisions					
	<p>32.2 Transition Date: For the purpose of this agreement, “Transition Date” means the date that is 40 Working Days (or such lesser period as may be agreed in writing between the parties) after the day on which the Distributor notifies the Retailer in writing that the scope of the agreement will be expanded to include the Auckland Network as well as the Northern Network.</p>					Administrative matter, which relates to the transition of the Auckland network to an interposed model.

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