



# MAJOR ELECTRICITY USERS' GROUP

19<sup>th</sup> April 2016

Dr John Rampton  
General Manager Market Design  
Electricity Authority  
By email to [submissions@ea.govt.nz](mailto:submissions@ea.govt.nz)

Attention: Craig Evans

Dear Craig

## **Consultation Paper – Default agreement for distribution services**

1. This is a submission by the Major Electricity Users' Group (MEUG) on the Electricity Authority (EA) consultation paper "Default agreement for distribution services", 26<sup>th</sup> January 2016.<sup>1</sup>
2. MEUG members have been consulted in the preparation of this submission. This submission is not confidential. Some members may make separate submissions.
3. Distribution charges are material to MEUG members for two reasons. First MEUG members pay approximately \$19m per year for distribution services.<sup>2</sup> We are interested in lifting the productivity of distributors. That is we want optimised service for any given level of line charges and to find incentives for distributors to continuously ensure their costs to serve are as low as possible. Members are also interested in ensuring the direct costs of negotiating distribution service agreements or indirectly bearing those costs incurred by retailers' are efficient.
4. Second all consumers including MEUG members will benefit if barriers to retail competition arising from the current regime governing Use of System Agreements (UoSAs) are removed. A more vibrant retail sector will have flow on benefits of more choice and liquidity in the financial derivative and physical demand side response markets. Improvements in productivity and competition in the hedge and the demand side response markets, even indirect small effects, are important because MEUG members pay well in excess of half a billion dollars per year in energy costs.
5. Responses to questions in the consultation paper follow:

---

<sup>1</sup> Consultation paper including appendices at <http://www.ea.govt.nz/development/work-programme/wholesale/operational-enhancements-to-dispatchable-demand/consultations/#c15753>

<sup>2</sup> MEUG estimate based on survey of members. This does not include transmission charges passed through.

Question	MEUG response
<p>1. What is your view of the Authority's assessment of the arrangements that are currently in place governing the way distributors and retailers develop, negotiate, and agree UoSAs, and of the issues that the Authority has identified? Please provide your reasons.</p>	<p>MEUG agrees:</p> <ul style="list-style-type: none"> <li>• That there is a problem with the way Use of System Agreements (UoSAs) are developed, negotiated and agreed.<sup>3</sup></li> <li>• The problems are unlikely to be resolved voluntarily.<sup>4</sup></li> </ul> <p>Paragraph 4.1.2 of the paper succinctly summarises the policy problem:</p> <p style="padding-left: 40px;">“In summary the Authority considers there is a problem with the way that distributors and traders develop, negotiate, and agree agreements for distribution services. The current arrangements are based on a largely voluntary regime that gives rise to problems in relation to the competition and efficiency limbs of the Authority's statutory objective.”</p> <p>MEUG notes that the same problems facing traders described above and likely lack of progress to resolve those also apply to individual end consumers wishing to contract for distribution services directly with a line company. For this submission we describe these direct consumer to distributor arrangements contracts as “distribution service agreements with end consumers” as opposed to the DDA in the paper that is a distribution service agreement with traders.<sup>5</sup></p> <p>Distribution service agreements with end consumers are not just conveyance agreements used by 2 of the 29 distributors. The 27 distributors that have interposed distribution service agreements with traders usually have a few larger time-of-use consumers with specific distribution service agreements. It is these agreements MEUG believes should be considered within the scope of a DDA. We develop the case for that option in the responses below.</p>

<sup>3</sup> Consultation paper, paragraphs 2.4.1 to 2.4.8.

<sup>4</sup> Ibid, paragraphs 2.4.9 and 2.4.10.

<sup>5</sup> Some large time-of-use consumers with distribution service agreements are also direct market participants. That is they purchase electricity from the spot market directly from the Clearing Manager. In the Code these consumers are defined as “direct purchasers”. MEUG understands from a while label retailer providing services to direct purchasers that a distributor has refused to enter into a distribution agreement with end consumers' in their area wishing to become direct purchasers. The problem of distributors putting barriers in the way by way of high transaction costs to dampen increased direct market participation was noted in the MEUG “Guide for customers to be direct market participants”, 6<sup>th</sup> June 2014, refer <http://www.meug.co.nz/node/199>.

Question	MEUG response
<p>2. What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each distributor's DDA is a tailored benchmark agreement?</p>	<p>Section 3 of the paper sets out overall design features and implementation process for the EA's preferred option for a DDA. On the specification of the proposed DDA MEUG submit:</p> <p>a) As noted in response to Q1 above MEUG believe end consumers wishing to directly contract with a distributor face identical problems as those for traders. The paper excludes including distribution service agreements with end consumers in the DDA proposal as follows (text underlined for emphasis by MEUG):</p> <p>“... Nor is the Authority proposing to regulate arrangements such as when a party like a large consumer has a direct contractual relationship with the distributor” ... “That is because <u>different issues arise under those arrangements</u>, and so for simplicity and clarity, the Authority has not proposed regulating such arrangements.”<sup>6</sup></p> <p>No explanation is given or evidence provided to support the view that “different issues arise under those arrangements.” MEUG members are likely to provide submissions supporting many anecdotal reports that large-time-of-use consumers are as much prone to distributors setting rather than negotiating such be-spoke distribution service agreements as are traders. In the absence of the EA identifying issues that prevent the DDA including arrangements where end consumers wish to contract directly with a distributor then that option should be considered.</p> <p>In this submission this variation to the proposal in the paper is called the “DDA for traders and end consumers option”.</p> <p>b) Distributors must at various stages consult. For example on operational terms.<sup>7</sup> MEUG is concerned that the consultation obligations are restrictive rather than as broad and permissive as possible. Rather than the Code specifying current traders on its networks and “each participant the distributor considers might be affected by the DDA” to be consulted on operational terms we think it preferable to adopt an approach where distributors must publicise material being consulted on and directly contact parties they think may have an interest in making submissions.</p>

<sup>6</sup> Ibid, paragraphs 3.3.14 and 3.3.15.

<sup>7</sup> Ibid, paragraph 3.4.7.

Question	MEUG response
	<p>c) The criteria for allocating terms and conditions to either the core DDA or operational matters have not been adequately applied to the governance of outage information. As we understand it the distinction between core DDA and operational matters is as follows:</p> <p>“... the scope and detail of the operational term requirements is neither new nor expected to be controversial.”<sup>8</sup></p> <p>MEUG believes the governance of the quality and timeliness of outage information is very controversial. As a result the current agreements on outage information, just like the other terms in the core DDA, unnecessarily add costs to the supply chain with no foreseeable way the problem will be resolved. MEUG tried last year to get buy-in by distributors to have a whole of industry solution to improve planned and unplanned outage information without success.<sup>9</sup></p> <p>The problem of inefficiencies and poor quality outage information is not solely an issue for large TOU consumers, eg</p> <ul style="list-style-type: none"> <li>○ EA has noted “The Retailer Working Group (RWG) is also looking to improve processes for verification of medically dependent consumer’s (MDCs) and information provision to mitigate the risks to MDCs arising from unplanned power outages.”<sup>10</sup></li> <li>○ Meridian Energy has noted “Meridian would like to understand more about the specific topics expected to be covered in the intended review of retail data and data exchanges (item 2.7). In our view, greater standardisation of planned outage information will enable material operational efficiency-related improvements to be made. Is it the Authority’s intention to have outage information and usage of EIEP5A addressed as part of the review?”<sup>11</sup></li> </ul>

<sup>8</sup> Ibid, paragraph 3.4.17.

<sup>9</sup> MEUG letter to ENA, Outage communications, 23<sup>rd</sup> July 2015, refer <http://www.meug.co.nz/node/731>

<sup>10</sup> Refer EA Regulatory Managers and Consumer Representatives meeting of 11<sup>th</sup> February 2016 (slide 17) and 14<sup>th</sup> April 2016 (slide 19).

<sup>11</sup> Meridian Energy submission to EA on 2016/17 levy-funded appropriations and EA work programme, paragraph 5, 24<sup>th</sup> November 2015, <http://www.ea.govt.nz/dmsdocument/20203> at <http://www.ea.govt.nz/about-us/corporate-projects/201617-planning-and-reporting/consultation/#c15604>

Question	MEUG response
	<p>d) Paragraph 3.6.30 to 3.6.34 of the paper discuss the requirements in “clause 3 of the September 2012 Model UoSA for equal access to distribution services for retailers and for even-handed treatment of retailers”, how that clause has been controversial and the boundary between the EA and the Commerce Commission in relation to information disclosure requirements. MEUG agree this is an important topic and look forward to progress on the EA’s next step:</p> <p>“The Authority intends to further discuss information disclosure relating to distribution agreements with the Commerce Commission.”<sup>12</sup></p>
<p>3. What are your views of the Authority’s assessment of the likely levels of demand for new and replacement UoSAs in coming years? Please support your response to this question with reasons and your alternative quantified assessment, if any.</p>	<p>MEUG agrees the need for new and replacement UoSAs is more likely to increase than decrease relative to actual historic rates to date.</p> <p>Equally the need for new or replacement distribution service agreements with end consumers is unlikely to be dissimilar to recent history if current policies remain unchanged. There is latent potential for a higher level of end consumers wishing to enter into a distribution service agreement with a distributor should a DDA for traders and end consumers be available as this will decrease transaction costs.</p>
<p>4. What are your views on the regulatory statement set out in section 4?</p>	<p>The regulatory statement and the supporting CBA is reasonable apart from omitting the option of a DDA for traders and end consumers. MEUG suggest that relative to the proposal in the paper for a DDA for traders only the CBA for a DDA for traders and end consumers would be modified as follows:</p> <ul style="list-style-type: none"> <li>• Productive efficiency benefits would increase because savings in negotiating agreements for traders and distributors would also apply to savings for end consumers negotiating agreements. Similarly both allocative and dynamic efficiency would increase.</li> <li>• Establishment costs would be higher although the incremental cost relative to those of the proposal would be modest because there would be economies of scale.</li> <li>• The net benefit of a DDA for traders and end consumer’s option would, like the net benefit for the proposal, be substantially positive. The NPV of the DDA for traders and end consumers option would have a higher NPV than the proposal because:</li> </ul>

<sup>12</sup> Consultation paper, paragraph 3.6.35.

Question	MEUG response
	<ul style="list-style-type: none"> <li>○ The incremental cost of modifying the DDA for both traders and end consumers now would be much less than implementing the DDA as proposed and then at a later date re-considering and then implementing a DDA for traders and end consumers; and</li> <li>○ There would be benefits forgone by delaying introduction of DDA terms for end consumers.</li> </ul> <p>Hence a combination of the economies of scale of the costs of implementing a DDA for traders and consumers now combined with realising benefits earlier makes the DDA for traders and end consumers option preferable.</p>
5. What are your views on the detailed drafting of the Code amendment provided in Appendix B and Appendix C?	Refer appendices 1 and 2 respectively.

6. MEUG looks forward to the EA maintaining momentum on this project because delays that could have been avoided affects all consumers.

Yours sincerely



Ralph Matthes  
Executive Director

Appendix 1: Comments on drafting of Code<sup>13</sup>

Clause	General comments in regards to the:	Your response
12A.2	Clause titled "Application of this subpart"	<p>Revise to include consumers that wish to become a "direct purchaser" and contract directly with a distributor rather than contract with a retailer (refer response to Q1 above and footnote 5).</p> <p>All other parts of the Code should be revised to align with this change. For example in cl. 12A.8 Obligation to enter into distribution agreement amend text as follows:<sup>14</sup></p> <ol style="list-style-type: none"> <li>(1) A <b>trader</b> trading on <u>or a <b>direct purchaser</b> connected to the <b>distributor's network</b></u> must have a <b>distribution agreement</b> with the <b>distributor</b>.</li> <li>(2) A <b>trader</b> must ensure that a <b>distribution agreement</b> comes into force on or before the day on which the <b>trader</b> commences trading on the <b>distributor's network</b>.</li> <li>(3) <u>A <b>direct purchaser</b> must ensure that a <b>distribution agreement</b> comes into force on or before the day on which the <b>direct purchaser</b> commences purchasing from the <b>Clearing Manager</b> on the <b>distributor's network</b>.</u></li> </ol>
12A.4(5)(a)	This clause requires distributors to consult with certain parties in preparing a DDA. Those parties are existing traders on their network "and each participant that the distributor considers is likely to be affected by the DDA, <b>on</b> the operational terms that the distributor propose to include in its DDA."	<p>First the word "on" underlined in quote on RHS should be "or".</p> <p>Second distributors are not required to consult with end consumers or their representatives such as MEUG. MEUG believe this is a problem. This generic topic on consultation is discussed in response b) to Q2 in the cover letter. Recommend a solution be found whereby distributors have a requirement for a more inclusive and broader consultation.</p>
12A.19	This clause is titled "Distributors to consult concerning changes to pricing structures."	Distributors need not consult with end consumers or their representatives. This is the same problem as above and the same solution is suggested.

<sup>13</sup> For simplicity quoted clauses sometimes use abbreviated terms whereas the full text does not.

<sup>14</sup> Uses convention of text in bold font are terms defined in the Code and proposed new text underlined and text to be removed struck-out.

**Appendix 1: Comments on drafting of Code - continued**

Clause	General comments in regards to the:	Your response
12A.20	This clause is titled "Distributor or trader may require provision of information" and relates to data to allow a distributor to prepare invoices and for traders and direct purchasers to reconcile those invoices.	We expect both distributors and traders would agree with direct purchasers that deciding what information is needed, the format that information is exchanged and when is critical to ensure upstream and downstream processing costs are efficient and to minimise the downtime and expense of having to resolve reconciliation problems. All of this needs to be prescribed in the default mandatory terms and conditions. To ensure there is no ambiguity that these terms and conditions are mandatory unless parties opt out MEUG suggest the Code make that clear also. In that way say, for example, a distributor that fails to provide prescribed data in a timely manner would not only breach the DDA but also the Code and the consequences should accordingly reflect the seriousness of the breach.
12A.22(3)	This clause lists EIEP's that may be published and required to be used.	MEUG recommend the EA include an EIEP for planned and unplanned outage information. The topic is discussed in response subparagraph c) to Q2 in the cover letter.

**Appendix 2: Comments on drafting of the DDA**

Clause	General comments in regards to the:	Your response
Schedule 5	Title "service interruption communication requirements"	Make this a mandatory requirement in the DDA not an operational matter. Refer MEUG response c) to Q2 in the cover letter and above proposed change for a mandatory EIEP in appendix 1 above, comment on proposed Code cl. 12A.22(3).