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Submission to DDA
Amendments

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Submission and contact details

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Release of information

This report contains no confidential information and can be publicly disclosed.

1 Introduction

Wellington Electricity Lines Limited (**WELL**) appreciate the opportunity to respond to the Electricity Authority's (**EA**) proposed changes to the default distributor agreement (**DDA**) template, consumption data template and related Part 12A clauses ('collectively referred to as the **The Papers**'). **WELL**'s submission can be read as supplementary to the Electricity Network Aotearoa's (**ENA**) and Chapman Tripp's responses.

Further development is needed

We support updating the data template with the version jointly developed and used by retailers and EDBs. Consumption data is an essential input into low voltage (**LV**) management tools that will provide EDBs visibility of their low voltage networks. This visibility will support the rapid connection of Distributed Energy Resources (**DER**) like Electric Vehicles (**EVs**) and the development of flexibility

services. As highlighted in Boston Consulting Groups, *'The Future is Electric'*¹, the Government's *'Emissions Reduction Plan'*², the FlexForum, *'Flexibility Plan 1.0'*³, and our own *'EV Connect Roadmap'*, Flexibility services are a core deliverable for enabling the electricity sector to meet our part in reaching New Zealand net carbon zero targets.

We note that the proposed changes to the DDA are only refining the current agreement, updating it for recent industry changes that impact its immediate operation. There are wider, more fundamental changes needed to support EDBs and the electricity sector to develop the tools and capability to provide and use flexibility services, to deliver the step change in demand required to electrify transportation, space heating and process heat, and to manage two-way power flows from new customer appliances. We provided the specific changes needed to the DDA in our response to the *'Updating the regulatory settings for distribution networks'* consultation. The key changes included:

- Expanding the DDA to include flexibility providers who are not retailers and to provide EDBs access to all flexibility services in emergency situations to ensure a secure electricity supply. Emergency situations being when direct intervention is needed to 'keep the lights on'. These would be rare events that would have a limited impact on competing flexibility services.
- Include rules that allow EDBs to manage the operation of flexibility services on their networks by third party flexibility providers to ensure the operation of flexibility services remains within the network's operational limits. This includes the System Operator calling on flexibility services operating in the reserves market. EDBs are responsible for delivering their quality strategy and must have visibility and oversight of all devices operating on their networks.
- Provide the ability for EDBs to apply and enforce connection standards for large devices connecting to their networks. If all large EV chargers connected to an LV network charge at the same time when the network is already busy, and EV penetration was greater than 30%, the network operating limits will be exceeded, potentially resulting in outages or unacceptably

¹ Boston Consulting Group. (2022, October). *The Future is Electric – A Decarbonisation Roadmap for New Zealand's Electricity Sector*. Available at <https://web-assets.bcg.com/b3/79/19665b7f40c8ba52d5b372cf7e6c/the-future-is-electric-full-report-october-2022.pdf>

² Ministry for the Environment. (2022, June). *Aotearoa New Zealand's first emissions reduction Plan*. Available at <https://environment.govt.nz/assets/publications/Aotearoa-New-Zealands-first-emissions-reduction-plan.pdf>

³ The Flex Forum. (2022, August). *The Flexibility Plan 1.0*. Available at https://assets.nationbuilder.com/seanz/pages/1484/attachments/original/1684101343/FlexForum-Flexibility-Plan-1.0_%281%29.pdf?1684101343

low voltage. EDBs need the ability to apply connection standards to ensure EV chargers operate within the available network capacity limits.

- Expand the data-sharing element of the DDA to provide the enduring provision of data to support LV management software. This includes direct access to data from meter providers, removing the need to ask permission to access data (all networks will need access so rather than rely on contractual agreements, obligations should be applied via the Code), removing the need to name everybody who will access data (this constantly changes as EDBs functions and roles change) and remove the need to destroy data (networks need to keep historic data to allow trend analysis).

Setting quality standards outside of price/quality regulation

We note the recent changes that clarify that the EA can apply quality targets and incentives but is prohibited from setting prices or revenue. While the EA has the authority to apply quality targets and incentivise a level of quality, we strongly disagree that it is appropriate to do so via the Electricity Participation Code (**the Code**). An essential premise of price/quality regulation is the ability to trade-off and choose what level of quality a customer wants at a price they are willing to pay for. The Commerce Commission (**Commission**) is responsible for making this explicit trade-off when they reset the price/quality path every five years. Applying quality mechanisms and incentives outside of the Commission price/quality path reset means that customers cannot decide whether they want to pay the additional cost for a quality improvement.

Two examples of quality improvements being proposed in the revised DDA that customers will not be able to balance the costs to provide additional quality with the quality improvement are:

- The requirement that EDBs must plan outages so that they will provide the least disruption to customers could mean implementing planned outages outside of normal working hours at a higher cost. Customers may be happy to be disrupted occasionally if it keeps costs lower.
- Reimbursing distribution tariffs for outages that are longer than 24 hours infers a higher level of quality than customers expect and EDBs are not currently funded to provide. Networks are designed to meet SAIDI and SAIFI targets (a maximum number and length of power outages) and not a maximum outage length (i.e. restoring power within 24 hours). Applying a different quality measure would require additional DPP allowances and new quality measures under the Information disclosures. Price/quality regulation also excludes major events that cause long outages to avoid EDBs building networks that are beyond customers' expectations (too

expensive). Networks would have to make a significant investment to ensure power is always restored within 24 hours and customers may not be willing to pay the additional cost.

It is important that quality changes are applied via price/quality regulation and are included in the Commission's upcoming Default Price Path (DPP) reset, rather than a Code amendment. This would also allow the Commission to reflect any changes in the Information Disclosure regime which includes the ongoing measurement of quality performance.

2 Consumption Data Template

An area of the consultation that WELL emphasize our support for is amending the consumption data template to incorporate ENA/ERANZ variation. This is a step in the right direction towards providing EDB's ICP consumption data as we have advocated for in our response to the EA's consultation on *'Updating Regulatory Settings Issues Paper'*⁴. As the concentration of emerging technologies is moving closer to ICP level by EV's, solar installations, and household batteries, it is vital that there is an ease of access to this data for EDBs.

The proposed changes offer small improvements by including a version of the data agreement in the Code that most EDBs were using anyway. As noted in our response to the *'Updating regulatory settings for distribution networks'* consultation and in the introduction to this submission, more substantial changes are necessary. We appreciate further analysis and consideration is required for a more general provision of ICP data and implore the Authority to escalate this as a priority for establishing flexibility services and DER management.

3 Regulatory Body Boundaries

There are clauses within the proposed DDA that are not within the scope of the EA's regulatory functions, and in its current form allow the EA to decide and apply quality targets and incentives outside of the Part 4 price/quality regulatory framework. Any quality improvement must be balanced with the recovery of the additional cost they might drive. This is the role of the Commission's price/quality path resets, not the Code. WELL believes the following proposed changes are implying

⁴ Wellington Electricity (2023, March). *Updating the Regulatory Settings for Distribution Networks – Submission to Electricity Authority*

an improved level of quality and therefore are in the Commission's remit and regulatory responsibility, not the EA.

3.1 Planned Service Interruptions – Clause 4.8, Distributor to schedule Planned Service Interruptions to minimize disruption:

To manage a network at a certain level of quality there are expected interruptions that are factored into the Commerce Commissions price/quality trade-off. If an EDB were required to minimize disruption from planned service interruptions an EDB may need to consider changes like undertaking planned work outside of normal working hours or have multiple smaller outages. This change does not give distributors flexibility over how they schedule interruptions and implicitly restricts the amount of work that can be done. An EDB would be limited by the time available to do planned work that could lead to a reduction in planned outages or significant cost increases to manage a higher level of quality.

Alternatively, networks could purchase a mobile generator or install a bypass to maintain power and “minimize disruption”. Again, this would be a significant cost increase and quality improvement that customers have not agreed to. During the DPP3 reset the Commission reviewed the quality incentive scheme that incentivised networks to make quality improvements where it was efficient to do so. This was designed to capture incentives for quality improvement measures like using generation and bypassing planned works. The proposed changes would force quality improvements that may not be efficient and would bypass the Part 4 quality incentives.

Making this decision independent of the additional cost it drives does not consider the customer’s willingness to pay for the quality improvement outside of price setting. Customers cannot balance the costs associated with the extra level of quality and the improvement they receive from this.

The customer-centric focus of this requirement assumes that the distributor must determine when interruptions would minimize disruptions to customers. However, as the retailer owns the relationship with the customer then this kind of customer engagement should be part of their “duty of care”, EDBs do not have the relationship with consumers to be able to decide or set what a ‘*minimum level of disruption*’ constitutes.

The current process gives the retailer a reasonable amount of time to negotiate alternative interruption times with the customer on behalf of the distributor requesting outage windows for their planned work. There are also sufficient incentives under the Commission’s price/quality regulation so that EDBs notify retailers in a timely manner so the retailer has an opportunity to liaise with their customers should they request a different date or time.

3.2 Clause 7.3 Price Changes

The proposed change pertains to an EDBs price and revenue collection which is explicitly the Commerce Commission's jurisdiction. As referenced in the *'2019 DDA Consultation Paper'*, the frequency that distributors can change their prices is an example of a recorded term used to prevent contradiction between EA and the Commission's regulatory limits. i.e. EDBs can amend the terms to ensure they align with their Part 4 regulatory obligations. Preventing more than one price increase in a 12-month period removes an EDBs ability to ensure the application of prices is consistent with Part 4 regulation. The Electricity Industry Act 2010 explicitly prohibits the Authority using the Code to *"purport to do or regulate anything that the Commerce Commission is authorised or required to do or regulate under Part 3 or 4 of the Commerce Act 1986"*. The ENA's submission provides further explanation of the judications of the EA and the Commission.

3.3 Clause 9.10 Refund of charges

Requiring EDBs to refund tariffs for outages that are longer than 24 hours implies a higher level of quality than what networks may not be funded to provide or that customers have agreed to pay for. The current DDA provides EDBs with the discretion to offer billing relief for customers that are affected by prolonged outages. This provides an EDB the ability to align their customer refund policy with the price/quality regulatory frameworks and their regulatory allowances.

For EDBs to guarantee a return to service within 24 hours implies a level of quality that does not align with the quality standards set by the Commission:

- Networks and asset management plans are designed to provide an average maximum number and length of power outages, rather than set restoration times that apply to each customer.
- Part 4 quality targets exclude major events, recognising the very high cost of providing network services that will withstand infrequent storms and other major events.

EDBs can design their networks so that power is restored within 24 hours, but it would come at a significant cost increase. Customers should be able to decide whether they are willing to pay for this service improvement. Quality improvement should be applied via price/quality regulation and included in the Commission's upcoming Default Price Path (DPP) reset, rather than by a Code amendment. This would allow the Commission, on a customer's behalf, to trade-off the higher level of quality with the increased costs.

Networks will also negotiate different quality levels directly with commercial customers who may want to provide their own backup power supply (i.e. standby generation), if they want a higher level of service. This provides the customer with a price/quality trade off to include alternatives that supplement the network connection. The proposed refund mechanisms would not capture these supplementary agreements.

Mandating a refund for interruptions also implies that there is no service being provided to the customer during prolonged interruptions. This is incorrect. Unlike retailers who can avoid the cost of purchasing electricity during an outage, EDBs will continue to incur the cost of operating and maintaining the network during an outage as part of their lines function services.

EDBs will also have to consider the mechanics of repaying the tariffs:

- If the repayment is a revenue transaction that can be captured under the revenue cap, then a repayment would be recovered from all customers later (via the washup account, assuming all other inputs and assumptions remain constant).
- If the repayment is an expense, then the EDB will need additional allowances to let them continue to earn a real return for their investments under Part 4 regulation. If EDBs cannot secure additional allowances, then they would have to fund the repayments from regulated profits and forego a real return on their investments at a time when the industry needs to attract new investors.

The proposed changes are also a pricing change that is outside of the jurisdiction of the EA (see our response to the proposed changes to clause 7.3). We recommend that the proposed quality improvement is passed on to the Commission to consider during the next quality reset. This will ensure that the change is included in the correct regulatory jurisdiction and any price impact can be considered (i.e. are customers happy to pay for the improved level of quality).

3.4 14.2 Customer concerns about power quality

The current wording of the clause would require EDBs to undergo investigations for all customer concerns, no matter the materiality or appropriateness. This would incur additional costs for EDBs to manage, process, and report every investigation within a certain timeframe. This would not be a prudent use of customer funding or efficient use of EDB time. As EDBs are the specialists, we are best placed to determine whether the customer concerns warrant further investigation.

For example, WELL has established an LV working group to manage and record customer power quality concerns. This group considers each customer concerns, and decides whether further action is needed, including an investigation. The team prioritise concerns based on their criticality and resolve easy to manage concerns on the spot using industry expertise. This approach avoids unnecessary investigations and the associated costs.

If the EA is concerned about voltage quality then those concerns should be raised with the Commission so that they can consider including voltage quality in their quality regime. This would allow the cost of applying quality measures to be balanced with the expected benefits.

Customers also have protection under the Consumer Guarantees Act (CGA) to “have a supply of electricity that is as safe and reliable as a reasonable consumer would expect, and the quality of electricity supplied must be such that it can be consistently used for things that a reasonable consumer would expect electricity for”. It is not necessary to include extra requirements for EBDs (and traders) around power quality that are not already covered by the CGA. The proposed change under clause 26.2 (claims against trader in relation to breach of service standard by distributor), follows WELL’s current DDA phrasing which we support. It preserves the responsibilities of the trader under the CGA as the appropriate legislation for managing customer relationships and streamlines the process for indemnity claims.

Customer concerns about quality also relate to the importance of accelerating EDB access to consumption data for flexibility services. Some quality implications are attributed to customer behaviour driven by retailers free power deals, such as timing all appliances to turn on at exactly 9pm. The ability to manage these types of fluctuations on the network will become more difficult or result in traditional wire solutions being less efficient where a potential non-wire solution may be more cost-effective.

Education and behaviour of customers is an area EDB’s require further cooperation and collaboration with retailers to ensure new network demand is not added during peak congestion periods and therefore lead to voltage quality problems.

4 Risk Allocation

4.1 24.5 Distributor not liable

The proposed change creates a significant shift of risk that makes EDBs unable to exclude liability from some events outside of an EDBs control and would require an EDB to rely on the force majeure clause to demonstrate that they are either:

- a 'natural disaster' that could not reasonably have been foreseen, or resisted; or
- an event or circumstance beyond the Distributor's control.

Courts have traditionally interpreted force majeure clauses narrowly, meaning EDBs cannot expect automatic protection. We disagree that EDBs will be able to prevent or mitigate risks in the way that the EA have assumed.

The ENA's submission, including the supporting advice from Chapman Tripp, provides further details on this important issue. We believe the intent of the original drafting should be retained which ensures EDBs are not liable for risks outside of their control.

5 Service Standards

WELL agrees that a breach of service level standard should not warrant a breach of the DDA and provides some level of certainty of the cost exposure that a distributor would have in relation to 'Trader's Remedy' and service guarantee payments if they choose to provide them.

However, the investigatory changes to Schedule 1 are not inconsequential. The requirement to investigate and advise traders/or customers of actual and suspected service standard breaches will need more resources to manage and process. This is closely related to our response to clause 14.2 (the additional resource requirements necessary to investigate all customer power quality concerns). This subjects EDBs to potential time wasting by investigating breaches that have an inconsequential impact on consumers. As with many of the proposed changes, the cost impact of the quality improvement has not been considered.

6 Consultation Questions

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

The recorded terms were originally included to ensure a network could align the regulatory obligations under the Code with their Part 4 regulatory responsibility. As outlined in the body of this submission, we disagree with the issues raised in 2.25 and 2.26. An EDBs quality performance (and the liability for non-performance) is provided by Part 4 regulation so that the cost of providing that level of quality can be balanced with the cost of doing so. The current version of the DDA does not remove an EDBs obligations to customers, an EDB still have obligations to meet its quality targets under Part 4 of the Commerce Act.

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

See this response to the specific core terms and the ENA's submission, including the supporting Chapman Tripp analysis of the changes.

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

We do not believe this is a material issue. The cost of providing copies of the agreements is low so we are comfortable implementing the change.

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

This is a useful change which will formalise what EDBs are already doing. We also note that further important changes are needed. These changes are provided in the body of this submission.

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

We agree with objectives B, and D. We do not believe that C is an issue (the cost of providing agreements is low).

WELL disagrees with removing all recorded terms. They provided a useful way of aligning our regulatory responsibilities between the Code and Part 4 regulation. Having recorded terms was a pseudo-compromise that allowed EDBs to tailor to specific risks on their network that are built on the price/quality setting enforced by the Commission. Several of the proposed changes are blurring regulatory responsibilities.

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

These types of cost benefit analysis rely on subjective time estimates that generally do not provide an accurate estimate of the benefits. We also note there are significant expenses and risks that have not been considered. For example, the additional costs of providing a higher level of quality have not been included.

The cost of providing planned works outside of normal working hours, the cost of administering a customer bill reimbursement scheme, the potential costs of forgone revenue from outages longer than 24 hours (although this could be recoverable under the revenue cap) and the cost of investigating every voltage complaint (noting many voltage issues are not caused by the distribution network) and outages longer than 24 hours, will be material. Likewise, the benefits of quality improvements have not been included.

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

Alternative options are provided in the body of this submission and in the ENA's submission.

Quality improvements should be made under Part 4 regulation to ensure the costs of the changes are appropriately considered. Rather than Code changes, quality changes should be passed to the Commission to consider as part of the next price-quality reset.

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

As outlined in further detail in the ENAs submission, the proposed changes under 7.3 and 9.1 breach the Electricity Industry Act as they regulate maximum revenues and prices which is outside of the EA's regulatory responsibilities.

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

No further comments.