



MAJOR ELECTRICITY USERS' GROUP

20 May 2014

Dr John Rampton
General Manager Market Design
Electricity Authority
By email to submissions@ea.govt.nz

Dear John

Consultation Paper – More standardisation of use-of-system agreements

1. This is a submission by the Major Electricity Users' Group (MEUG) on the Electricity Authority consultation paper¹ "More standardisation of use-of-system agreements" dated 8th April 2014. Members of MEUG have been consulted in the preparation of this submission. This submission is not confidential.
2. MEUG members engage with distributors in a number of ways including conveyance contracts, direct be-spoke interposed contracts and indirect technical engagement with commercial arrangements and line charges directly passed through under a retailer contract. Discussions with distributors on technical matters tend to be constructive. MEUG members report trying to find mutually acceptable commercial terms with distributors can be "a nightmare" and can end in a take it or leave it ultimatum. It is expected more time-of-use (TOU) consumers will become direct market participants and hence friction on finding reasonable and consistent commercial terms for distribution contracts will increase. Hence MEUG support considering more standardisation.
3. In conclusion MEUG agrees further work on developing less voluntary measures is worthwhile. MEUG agree with the tentative conclusion by the Authority that option 4, requiring reset of all existing interposed agreements and introducing a default agreement for distribution service into the Code, has most merit though we remain open to considering all options. Detailed responses to the questions in the consultation paper are attached.

Yours sincerely

Ralph Matthes
Executive Director

¹ Document URL <http://www.ea.govt.nz/dmsdocument/17874> found at <http://www.ea.govt.nz/development/work-programme/retail/more-standardisation-of-use-of-system-agreements/consultation/>

Responses to EA questions

Question	MEUG response
1. Do you have feedback that would update the issues outlined in this section?	Discussions with distributors on technical matters tend to be constructive. MEUG members report trying to find mutually acceptable commercial terms with distributors can be “a nightmare” and can end in a take it or leave it ultimatum. It is expected more TOU consumers will become direct market participants and hence friction on finding reasonable and consistent commercial terms for distribution contracts will increase. Hence MEUG support considering more standardisation.
2. If you are a distributor, are you actively developing and negotiating UoSAs with retailers? If you are a retailer, are you actively engaged with any distributors in relation to UoSAs? Please provide information relating to your approach, experiences, successes and concerns.	See answer to question 1 above.
3. Are you aware of any new issues that have arisen since the Authority undertook monitoring and communication with participants relating to UoSAs in early 2013?	<p>Yes. MEUG expects growth in TOU consumers electing to become direct market participants (ie cleared through the Clearing Manager rather than having a retailer manage the interface with the wholesale spot market) and therefore there will be an increasing number of end consumers requiring direct contracts with distributors. Some of these TOU consumers are likely to have many sites across New Zealand and while they may be small, for example less than 3 to 5 GWh per annum per site, in total the enterprise may have many tens if not hundreds of GWh annual demand.</p> <p>MEUG has had reports that a distributor has refused to enter into contracts with relatively small TOU consumers that wish to become direct market participants. If true then this is a significant barrier to consumers electing to become direct market participants that should be considered.</p>
4. Are you aware of any new developments that would provide additional information or update the situation presented in section 4? If so, please provide relevant details.	See answer to question 3 above.

Question	MEUG response
5. Do you agree that the Authority is unlikely to achieve its objectives for UoSAs within a reasonable timeframe by persevering with largely voluntary measures? Please state the reasons for your view.	Yes.
6. What other options can you suggest that would be worth considering alongside the options identified in section 5.2 and explained in more detail in section 5.3? Please explain the key advantages of your suggested option(s).	Options 0 to 6 on pages 21 to 26 appear to cover the feasible range.
7. What feedback do you have on the design detail discussed in this section? What options amongst the design detail do you think would best meet the Authority's objective?	See answer to question 17 below.
8. Are you aware of any issues relating to the variation of network connection standards between distributors that the Authority should consider? Are there opportunities to provide greater standardisation of network connection standards? Why would network connection standards not be suitable for greater standardisation across distribution network areas?	No comment.
9. Do you agree that the extended options described in section 6.4 reasonably represent the range of options available to the Authority in seeking to meet its objectives for more standardised, efficient and pro-competitive UoSAs? If you disagree, please describe what other options should be considered and what advantages these options would provide?	Agree the options listed in paragraph 6.4.4 cover the range of alternatives in considering the degree of compulsion requiring distributors and retailers to transition to new UoSAs.
10. Do you agree with the Authority's initial assessment that option 4 (require reset of all existing interposed agreements and introduce a default agreement for distribution service into the Code) is the best approach to meet its objectives?	<p>MEUG agrees with the tentative conclusion by the Authority that option 4, requiring reset of all existing interposed agreements and introducing a default agreement for distribution service into the Code, has most merit though we remain open to considering all options.</p> <p>Paragraph 5.3.26 referring to the possibility that parties might mutually agree to make changes to the default terms asks the question:</p> <p>“In this case, consideration would be needed as to whether the Authority should have the ability to strike out such alternative arrangements on a</p>

Question	MEUG response
	<p>case-by-case basis, if the Authority considered they were inconsistent with the Authority's statutory objective."</p> <p>MEUG has concerns with this. The case for the Authority having per-emptive rights to intervene to change contract terms parties have mutually agreed should have a very high threshold. Leaving decisions on such intervention to the discretion of the Authority will create uncertainty and risk costly dispute resolution processes that give rise to further uncertainty on whether Court decisions will align or not with the original purpose of the Code. It may be better for the default position to be the Authority has no right to overturn terms parties have mutually agreed. Similarly existing agreements that parties do not wish to migrate to the new standardised terms should be allowed to stand.</p>
11. What other Code design details should be considered if option 4 were subsequently adopted for development?	No comment.
12. What information do you have that a problem exists in the way that distributors that adopt the conveyance approach establish contracts with retailers and consumers? Should standardisation of conveyance UoSAs be pursued as well?	MEUG members have reported difficulty in finding mutually acceptable commercial terms for conveyance agreements. MEUG suggest the Authority as part of considering developing less voluntary measures for MUoSA interposed agreement also consider similar for conveyance agreements.
13. What information do you have that a problem exists in the way that embedded network owners establish contracts with retailers? Should standardisation of embedded network UoSAs be treated the same as local networks?	No comment.
14. Based on your experience negotiating UoSAs, what is the average time and cost for a retailer and a distributor to negotiate and thereafter administer a UoSA on a local distribution network that the retailer is entering for the first time?	No comment.
15. Based on your experience adopting the UoSA clauses contained in Part 12A of the Code, what do you estimate the cost to be of adopting the default terms approach?	No comment.

Question	MEUG response
16. Based on your experience with electricity retail competition, and with reference to Figure 2, over the next two to five years on average what number of retailers (being retailers likely to enter into UoSAs) would you expect to see entering regions with less than 10 retail brands, under the following two scenarios: a) without a default terms arrangement in place, and b) with a default terms arrangement in place?	Not applicable.
17. The column headed "Suitable for inclusion in core terms?" in Appendix B provides the Authority's initial view of the parts of the interposed MUoSA that would be suitable for direct transfer into a default or mandatory agreement, if such an approach were adopted. Do you agree with the assessments provided here for each clause and schedule? Please reference your responses to specific clauses and schedules and provide reasons if you disagree.	Refer MEUG's initial comments in additional column on right hand side of replicated appendix B table below.

Appendix B Assessment of core terms replicated from consultation paper with MEUG comments

Interposed MUoSA clause	Content	Suitable for inclusion in core terms?	MEUG comments
Introduction			
A, B & C	Introductory citations and purpose of the agreement.	Yes but would need to be redrafted to establish the default agreement within the Code.	Agree.
Agreement			
1. Term of Agreement	Commencement and termination dates.	Yes but commencement and termination need to be referenced to the Code.	Agree.
2. Services	2.1 Distributor's services and obligations	Yes, for 2.1(a) – (l). 2.1(j) relating to Additional Services would not be appropriate for core terms.	Agree.
	2.2 Retailer's services and obligations	Yes, for 2.2(a) – (b) and (e) – (h). 2.2(c) – delete, since in a basic default agreement, the retailer does not provide any services to the distributor. 2.2(d) – remove the square bracketed part relating to providing service interruption service but retain the remainder of the clause. 2.2(i) – per 2.1(j), remove this provision relating to Additional Services.	Agree.
3. Conveyance only	Provides for some Consumers to be provided with Distribution Services under a Distributor's Agreement.	Yes. It is common for distributors to directly contract with large end-consumers. This section provides the flexibility to allow this to occur within an otherwise interposed model. 3.2(b) – select the relevant option.	Agree.
4. Equal access and even-handed treatment	Requires equal access to Distribution Services for all retailers and for the Distributor to treat all	Current view is that this would not be included in a default or mandatory agreement, rather the relevant provisions would	Agree.

Interposed MUoSA clause	Content	Suitable for inclusion in core terms?	MEUG comments
	retailers even-handedly.	be carried directly into the Code. This section provides the fundamental underpinnings for retail competition on an equal access basis under the voluntary M UoSA approach	
5. Service interruptions	5.1 – 5.4 General section	5.1 – yes, parts of schedule 5 are suitable as core terms 5.2, 5.4 yes 5.3 – to improve clarity, redraft this clause to require inclusion of this policy at agreement formation as a schedule, rather than after the commencement date.	Agree.
	5.5 – 5.7 Unplanned Service Interruptions	5.5 – The choice of party to receive Unplanned Service Interruption calls is an operational term, to be decided prior to agreement formation. 5.6 – yes, parts of schedule 5 are suitable as core terms 5.7 – yes	Agree.
	5.8 – 5.10 Planned Service Interruptions	5.8 – yes 5.9 – yes, parts of schedule 5 are suitable as core terms 5.10 – costs of communication. The choice of party to undertake Planned Service Interruption notifications is an operational term, to be decided prior to agreement formation.	Agree.
	5.11 – 5.12 Restoration of Distribution Services	Yes	Agree.
6. Load management	Sets requirements relating to load management, which can be carried out by either party	Yes. Review to see if some of schedule 8 is suitable to be transferred into clause 6.	Agree.
7. Losses and loss factors	Sets requirements relating to loss factors	Yes	Agree.
8. Service performance	Sets requirements relating to service	Yes but amend clauses to reflect that there are no retailer	Agree.

Interposed MUoSA clause	Content	Suitable for inclusion in core terms?	MEUG comments
reporting	performance reporting	services in the default agreement.	
9. Distribution services prices and process for changing prices	Processes for setting and changing prices	Yes 9.5 Note that the requirement to use standard tariff codes is under review and consequentially, this clause may require amendment commensurate with the outcome	Agree.
10. Allocating price categories and tariff options to ICPs	Processes for allocating and changing ICP tariffs from eligible options and for dealing with credit following corrections	Yes	Agree.
11. Billing information and payment	Calculating invoices	11.1 – this clause requires the retailer to provide the distributor with the consumption information needed to calculate a monthly invoice for distribution services. The clause as drafted provides options for two pricing methodologies (ICP-based and GXP-based) and, if ICP-based, three billing information methodologies (as-billed, incremental normalised, replacement normalised and incremental replacement normalised). A method is required for the distributor to elect which billing information methodology(s) applies. This election could be specified in a new schedule 10 and is an operational term. 11.2 – 11.10 yes, except 11.5(a)(i), remove the reference to invoices for Additional Services	Agree.
12. Prudential requirements	Requirements relating to credit security	Yes 12.7 – 12.8 Retain these clauses, despite the practice note which explains that these two clauses are optional. This will provide maximum flexibility in respect of Additional Security.	Agree.
13. Access to the	Rights of access to consumer's premises	Yes	These sections are

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consumer's premises			within Part III of the MUoSA, operational requirements. We agree they should though be in core terms.
14. General operational requirements	Interference and damage by consumers. Connection of distributed generation. Additional metering equipment.	Yes	
15. Network connection standards	Consumers to comply with network connection standards	Yes	
16. Momentary fluctuations	Spikes and surges are not interruptions	Yes	
17. Consumer service lines	Consumer responsible for service lines	Yes	
18. Tree trimming	Consumers to comply with tree regulations	Yes	
19. Connections, disconnections and decommissioning ICPs	Links to detailed processes contained in schedule 6.	Yes	
20. Breaches and events of default	Terms relating to breaches of the agreement and events of default	Yes	
21. Termination of agreement	Rights of parties to terminate the agreement	As for agreement formation, at least some (possibly all) of the provisions in this clause should be transferred directly into the Code. 21.6 – delete reference to Alternative Contract, which is no longer relevant.	Agree.
22. Confidentiality	Obligations relating to confidential information. No limit of liability on breach.	Yes	Agree.
23. Force majeure	Definition of a force majeure event and party's	Yes	Agree.

Interposed MUoSA clause	Content	Suitable for inclusion in core terms?	MEUG comments
	obligations		
24. Amendments to agreement	Process for amending agreement	No. Default or mandatory terms may not be amended by agreement. Default terms may be replaced with an alternative agreement if the parties agree. The Code should incorporate a process to change the default agreement, otherwise every amendment will require a Code amendment. Remove the provisions relating to Variable Provisions and de minimis changes. 24.1(e) and 24.5 yes (retain) – provides for changes to GXP's.	Agree.
25. Dispute resolution procedure	Processes for resolving disputes	Yes but include both arbitration and court proceedings as options for resolving the dispute. Consider making these provisions more robust – c.f. the transmission benchmark agreement, which is more detailed than the MUoSA provisions in this area.	Agree.
26. Liability	Limitation of liability, indemnities and warranties.	Yes 26.8 Distributor indemnity – clause 12A.6 of the Code currently applies. Clause 12A.6 (and other relevant parts of Part 12A) would require review if a default or mandatory agreement approach was adopted.	Agree.
27. Consumer contracts	Requirement for retailer to include certain provisions in consumer contracts for benefit of the distributor	Yes	Agree.
28. Notices	Process for sending notices	Yes	Agree.

Interposed MUoSA clause	Content	Suitable for inclusion in core terms?	MEUG comments
29. Electricity Information Exchange Protocols	Requirement to use EIEPs	Yes 29.1 – possibly some minor rewording needed, as the agreement would now be a default or mandatory agreement.	Agree.
30. Miscellaneous	Miscellaneous legal clarifications	Yes Consider specific drafting in accordance with the Code that would be necessary to establish the Code framework for the agreement.	Agree.
31. Interpretation	Definitions	Yes Consider specific drafting in accordance with the Code that would be necessary to establish the Code framework for the agreement. Also, some definitions would become redundant in a default or mandatory agreement (for example, commencement date).	Agree.
Schedules			
Schedule 1: Service Standards	Details service standards, measures and levels. Provides reporting obligations and any service level guarantees.	Schedule is needed but the content in the tables would be operational terms at the distributor's discretion. The current draft is generally a good model covering many common service measure categories.	Agree.
Schedule 2: Additional services	Provides terms relating to additional services and draft provisions relating to retailers passing through distributor rebates	No. Additional Services are discretionary services that should be subject to a separate agreement that is not mandated in the Code. Nevertheless, the MUoSA schedule as drafted remains a useful model for rebate agreements.	Agree.
Schedule 3:	Clarifies which EIEPs are to be used by parties	No. The need to agree which explicit EIEPs are in use would still need to be provided for but these are operational terms.	Agree.

Interposed MUoSA clause	Content	Suitable for inclusion in core terms?	MEUG comments
EIEPs		Consider replacing the part of this schedule that is simply a copy of the Authority's existing schedule of currently published EIEPs with a reference to the relevant part of the Authority's website.	
Schedule 4: Consumer contracts	Cross references the specific UoSA clauses that are to be included in consumer contracts	Possibly. The purpose of this schedule is as a useful (but not essential) cross-reference of relevant clauses.	Agree.
Schedule 5: Service interruption communications policies	Process detail for communication about planned and unplanned outages	Yes. With some minor operational details, this schedule is generally suitable as part of a default agreement. The schedule would require review to decide the extent to which the distributor can modify the options provided.	Agree.
Schedule 6: Connection policies	Detail relating to new, upgraded and decommissioned network connections. Also provides rights and obligations relating to disconnections and reconnections.	The initial view is that this entire schedule is suitable as core terms, even though there is a lot of process detail included.	Agree.
Schedule 7: Pricing principles	Provides the distributor's pricing principles (or links to that information)	No. Provide instead a relevant external link.	Agree.
Schedule 8: Load management	Provides detail relating to load management process and services	Yes	Agree.
Schedule 9: Pricing information	Provides pricing schedules and methodology (or links to that information)	No. Provide instead a relevant external link.	Agree.