

Saves and win-backs

Practice note

26 June 2020



Version control

Version	Date amended	Comments
1.0	26 June 2020	Initial version

Disclaimer

This practice note provides guidance to help retailers comply with the Saves and Win-backs Electricity Industry Participation Code 2010 (Code) amendment that became effective on 31 March 2020.

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The Code places many obligations on a retailer and should be consulted in full. Some of those obligations are contained in this practice note, however many obligations may be specific to the type of activity a retailer wishes to take. It should also be noted that this practice note is not exhaustive, and it may be updated or changed from time to time. It reflects the Authority's current interpretation of the existing Code at the time of publication. Although the practice note is not mandatory, if a breach allegation is made, the onus is on the participant to show how any different interpretation complies with the Code. The Authority suggests if you are in doubt that you do consult the Code, ask the Authority and / or seek your own advice.

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1 Purpose of this practice note

- 1.1 This Practice Note is intended to provide guidance to retailers on the relevant sections of the Code that govern saves and win-backs by electricity retailers.

2 Definitions

- 2.1 The definitions below are used in this practice note. Those marked with an * are also defined terms as set out in Part 1 of the Code.
- 2.2 **Code** – Electricity Industry Participation Code 2010
- 2.3 **customer** – the person that an electricity retailer has an arrangement with for the supply of electricity
- 2.4 **losing retailer*** – the type 1 or type 2 retailer that a customer formerly contracted with
- 2.5 **losing trader** – the previous trader recorded in the registry as the participant responsible for settlement for an ICP
- 2.6 **gaining retailer*** – the type 1 or type 2 retailer that the customer intends (or has begun) to contract with (see also the definition in Part 1 of the Code)
- 2.7 **gaining trader** – the new trader recorded in the registry as the participant responsible for settlement for an ICP
- 2.8 **retailer*** – Refer to the definition in Section 7 of the Act, as well as Part 1 of the Code. Relevant to saves and win-backs requirements. Note that the Code differentiates between traders and retailers as the registry does not record the retailer that has an arrangement with a customer. The registry records the trader that is buying or selling with the clearing manager. For this reason, the Authority defines a further two classes of retailers as follows:
- (a) Type 1 retailer – a retailer that is recorded in the registry as the trader for an ICP identifier, that buys electricity from the clearing manager and sells that electricity directly to a customer
 - (b) Type 2 retailer - a retailer that is not recorded in the registry as the trader for an ICP identifier, and that buys electricity from the trader and sells that electricity directly to a customer.
- 2.9 **switch*** – the process of a customer of a losing retailer changing from receiving electricity from the losing retailer to receiving electricity from a gaining retailer.
- 2.10 **switch back** – a trader ICP switch where a customer switches back to its losing retailer within a relatively short period of time. This is usually because the gaining trader will not agree to a switch withdrawal.
- 2.11 **switch withdrawal** – the process a trader follows to unwind a switch in the registry (for example, a trader may withdraw a switch if they cannot provide services at an ICP because of the meter type). A switch withdrawal either reverses a switch in progress or a completed switch from the registry but can only be completed if the losing and gaining trader agree. If either one disagrees, the switch withdrawal does not proceed. This withdrawal process is separate to the prohibition upon saves and win-backs.
- 2.12 **switch protected period*** – The 180-day period following a switch (see the Code for a more precise definition of the start and end dates of this period). During a switch

protected period a losing retailer may not initiate contact to encourage a customer to switch back from the gaining retailer.

2.13 **trader** – the Code defines a trader as a retailer or a generator or a purchaser who—

- (a) buys electricity from the clearing manager; or
- (b) sells electricity to the clearing manager; or
- (c) enters into an arrangement with another retailer or generator or purchaser to buy or sell contracts (or parts of contracts) for electricity for the purposes of this Code.

For clarity, a trader could generate or consume electricity itself, sell electricity to another person to on-sell,¹ or be a retailer itself.

Each trader is assigned a 4-character participant identifier by the Authority. Where a trader has assumed responsibility for an ICP, the trader must update the registry with its participant identifier using the trader ICP switch process.

2.14 **trader ICP switch** – the process that both a losing trader and a gaining trader must follow to change the participant identifier associated with an ICP identifier in the registry.

¹ If a trader sells electricity to another person to on sell, the trader is acting as a purchaser and the other person is acting as a type 2 retailer.

3 *All retailers must comply with the saves and win-back Code requirements*

- 3.1 “Saves and win-backs” is the term used to describe two ways a retailer may seek to win a customer back shortly after that customer has agreed to switch to another retailer.
- 3.2 The registry does not record retailers, it records the person (“trader”) who buys or sells from the clearing manager. Part 11 of the Code includes the rules that govern the management of ICPs by traders and the rules governing the switching of ICP identifiers between traders.
- 3.3 Clauses 11.15AA, 11.15AB, and 11.15AC of the Code place obligations on *retailers* in relation to customers who switch from a losing retailer to a gaining retailer.
- 3.4 A retailer sells electricity to a customer for that customer’s own consumption. Most retailers are also the trader that purchases the electricity from the clearing manager and are recorded in the registry as the traders for those ICPs. However, a trader may also sell electricity to a “type 2 retailer” (a person who on-sells electricity to a customer for that customer’s own consumption). In that case, the trader is not a retailer and the requirements of Clauses 11.15AA, 11.15AB, and 11.15AC of the Code do not apply as these clauses apply to the person who retails electricity to the customer.
- 3.5 It is important to be clear as to the obligations that apply. Generally, the rules around the switching process apply to traders but the prohibitions relating to saves and win-backs are focussed upon retailers. At times the party involved with the trader ICP switch may not be the retailer, however both traders and retailers must recognise the obligations set out in both their own contractual arrangements, and in the Code.

4 Background

Saves and win-backs Code amendment

- 4.1 Losing retailers become aware that a customer intends to switch to a gaining retailer either through a notification received from the registry that a switch has commenced (perhaps intermediated by a trader) or by direct communication from its customer. The receipt of this notification may trigger attempts by the losing retailer to win that customer back including by using information that the gaining trader did not have access to when making an offer to the customer.
- 4.2 The Authority considers that saves and win-backs can effectively be used to make it difficult for retailers to acquire customers and discourage potential entrants, thereby reducing competition.
- 4.3 The Authority considers that it is important that all retailers have an equal opportunity to compete for customers, and that saves and win-backs may impede efficient competition. To support this competition goal, the Authority amended part 11 of the Code to prohibit saves and win-backs for a period of 180 days (the ‘switch protected period’). The key elements of the amendment include:
 - (a) expanding the previous saves protection scheme to all retailers (rather than having retailers ‘opt-in’)

- (b) prohibiting a losing retailer from targeted marketing to a customer that has switched to another retailer (the gaining retailer) for a 180 day 'switch protected period'
 - (c) specifying limited circumstances in which a losing retailer may contact a previous customer
 - (d) prohibiting a losing retailer from using a switching customer's information during the switch protected period to attempt a win-back or to facilitate a switch by a retailer other than the gaining retailer
 - (e) requiring retailers to provide customers with accurate information as part of the trader ICP switching process and adhere to high standards of behaviour ('good conduct'),
 - (f) applying the amendment to all retailers
 - (g) applying the amendment to all household and business switches.
- 4.4 The Code amendment does **not** restrict customers from initiating contact with the losing retailer or any other retailer. The amendment focuses on the actions of the losing retailer. Customers should talk to their retailer and can also use the Powerswitch website to determine whether they are on the best or most well-suited available electricity plan and pricing.²
- 4.5 The Decision Paper for this amendment is on the Authority's website and sets out the Authority's reasons for its decision.³

Trader ICP switch process

- 4.6 As noted above, the prohibition on saves and win-backs sits alongside the trader ICP switch process and the prohibition may be triggered through the switch process.
- 4.7 The Code requires the trader that has an arrangement with a customer and/or embedded generator at an ICP to populate its participant identifier⁴ into the "trader" field in the registry against any ICP identifiers that the trader has a current arrangement to:
- (a) sell electricity to the customer at the ICP, or
 - (b) buy electricity from the embedded generator at the ICP.
- 4.8 The Code obliges that trader to manage all trader obligations relating to that ICP, (as prescribed in the Code) until the ICP is either decommissioned or is switched to another trader. The trader is responsible for:
- (a) ensuring the electricity conveyed through the point of connection⁵ at the ICP is accurately measured, and
 - (b) paying for the settlement of all electricity conveyed through the ICP.
- 4.9 Where a customer moves from one trader to another trader, the Code requires that the registry must be:

² <https://www.powerswitch.org.nz/>.

³ <https://www.ea.govt.nz/dmsdocument/26369-saves-and-win-backs-code-amendment-decision-paper>.

⁴ The participant identifier is a four-character code that is unique to each industry participant. It is used to trace all electricity market transactions in the registry.

⁵ A point of connection is a point at which electricity may flow into or out of a network.

- (a) end dated for the losing trader, and
 - (b) start dated for the gaining trader.
- 4.10 The process of end dating and start dating trader participant identifiers recorded at an ICP is termed the “trader ICP switch process” and is detailed in Part 11 of the Code⁶ and the registry functional specification.⁷

Switch withdrawal process for a trader ICP switch

- 4.11 The Code permits either the gaining trader or the losing trader to ask the other trader for consent to withdraw an ICP switch (using the appropriate registry process) up to two months after the switch event date, for one of the following reasons:
- (a) the customer or embedded generator at the ICP is cancelling the switch
 - (b) the ICP is being decommissioned
 - (c) the account holder did not authorise the switch request
 - (d) there is a metering issue at the ICP
 - (e) the wrong premises have been, or are being, switched (eg due to an error by the gaining trader)
 - (f) the requested ICP transfer date is more than 10 business days into the future
 - (g) the losing trader is not the responsible trader at the ICP—the ICP has been switched to another trader, and the registry has not been updated to reflect that switch
 - (h) the gaining trader is in a trader default situation.⁸
- 4.12 A switch withdrawal can only occur if both the gaining trader and the losing trader agree to it, and must be carried out via the registry. If both traders agree to the switch withdrawal, the registry unwinds the ICP switch and the losing trader remains responsible under the Code for the ICP.⁹

⁶ <https://www.ea.govt.nz/code-and-compliance/the-code/>

⁷ www.electricityregistry.co.nz

⁸ The trader uses a reason code within the “withdraw request” file to identify which of the reasons listed applies in the circumstances.

⁹ Refer to clause 18 of Schedule 11.3. Registry reports do not show the switch as ever occurring, although the registry history tables do record it.

5 Specific Saves and Win-back obligations in the Code

5.1 The Code provisions apply specifically to retailers and customers. It is important to note that:

- (a) it is customers and not ICPs that are the subject of the saves and win-backs Code obligation. Some customers have multiple ICPs and retailers should be able to identify those customers that have multiple ICPs and, when contacting a customer, ensure that the Code requirements are fulfilled
- (b) the Code provides obligations on all electricity retailers. Note that this includes any type 1 or type 2 retailer that lose a customer at an ICP. The Authority expects that type 2 retailers will ensure that their contracts with the participant it purchases electricity from comply with the requirements of the Code
- (c) The Code does not apply obligations to a “trader” unless they are also the retailer to a customer at an ICP.

There is a switch protection period

5.2 Gaining and losing retailers must be aware of the switch protection period for each customer,¹⁰ which starts from the earlier of:

- (a) the losing retailer receiving notice or becoming aware of the customer switching away. This could be through the registry (NT or CS files) or from the customer directly; or
- (b) the day the gaining retailer assumes responsibility for billing a customer for electricity.

5.3 The switch protection period applies to a losing retailer and continues for a period of 180 days (calendar **not** business days), but can end earlier in certain circumstances:

- (a) the gaining retailer receives a switch withdrawal request. The switch protection period will end once the losing retailer receives notice of the withdrawal from the registry manager (or once the trader associated with the losing retailer receives notice of withdrawal), regardless of the switch withdrawal being agreed by the other trader or not.

Note: If both parties are type 2 retailers only and use the same trader for ICP switching, the switch protection period will end once the losing retailer becomes aware that a customer is switching away.

- (b) the switch back to the losing retailer is due to an event of default.

Retailers are restricted in their use of customer information

5.4 During the switch protection period, losing retailers have restrictions on the use of customer information gathered before or during the switch protection period.¹¹ These restrictions are further discussed in the sections below.

5.5 Note that a losing retailer may not pass information to another retailer, or use a third party or agent acting on its behalf to contact the customer to attempt to persuade the customer to return to the losing retailer.

¹⁰ The Switch protection period is formally defined in Part 1 of the Code.

¹¹ See clause 11.15AC of Part 11 of the Code.

Certain activities ARE permitted by the Code

5.6 A losing retailer **MAY** contact a customer within the switch protection period for certain activities as set out in clause 11.15AB, provided that the losing retailer contact includes no enticement to switch ICPs back to the losing retailer.

5.7 Set out below are further details that may be useful in relation to a number of these activities:

(a) **Administrative activities.** These are activities that include customer contact that is necessary for a losing retailer to manage its business and include:

- (i) in the case of a move-in switch where the retailer responsible for the ICP was the retailer at another ICP for that customer within the last 180 days¹²
- (ii) checking with the customer that the customer did actually intend to switch to another retailer but note that this permitted activity should not be used to conduct market research as set out in paragraph 5.10 and/or should not be used to initiate a save or win-back.
- (iii) customer contact to discuss the effect of ceasing to provide electricity on other services (eg where electricity, gas or broadband are bundled). This contact is only permitted if the losing retailer contact focusses only upon the other services (see more on this below)
- (iv) in the case of a customer that has multiple ICPs, and one of those ICPs switch to a gaining retailer. This contact is only permitted if the losing retailer contact focusses only upon the services offered to the remaining ICPs, ie there is no enticement for the ICP/s that have switched to a gaining retailer
- (v) in the case of a customer that has switched one or more of its ICPs to a gaining retailer, discussions in relation to:
 - 1. any debt remaining with the losing retailer
 - 2. any dispute or complaint in progress, eg final meter readings
 - 3. items the losing retailer must return to the customer (eg keys or documents),are all permitted provided that the discussion does not include any unrequested offer or prompt to supply electricity to a lost ICP or any other requirement to switch back to the losing retailer.

Note that surveys and other communications seeking customer feedback **are not** an administrative activity nor an activity permitted by the other provisions of clause 11.15AB(1)(b). See also paragraph 5.10 below.

5.8 In all these permitted administrative contacts, retailers need to ensure that they do not exploit the customer contact to initiate offers to supply electricity during switch protected periods.

¹² For example, a retailer might need to contact the new customer at the ICP if the premises is electrically connected.

Multi-product and multi-location customer contact is permitted subject to CAVEATS

- (a) Retailers may continue to contact customers receiving other goods or services, such as gas or telecommunications, but such contact should **NOT** be used to initiate offers to supply electricity during switch protected periods.
- (b) Retailers that continue to supply electricity to multi-ICP customers may contact its customer, but such contact must **NOT** be used to initiate offers to supply electricity during switch protected periods for any ICPs of that customer that were lost by the retailer.

Certain activities ARE NOT permitted by the Code

- 5.9 The following list indicates activities that the Authority considers are **NOT** permitted by the Code. The list is not exhaustive and Retailers should take their own legal advice where they are unsure, taking the individual circumstances into account.
- 5.10 A losing retailer, or its agent or third party, **MUST NOT** contact a customer during the switch protected period,¹³ where, as a result of the customer switch, the losing retailer wants to ascertain the reason that the customer switched away. To ensure compliance with the Code, the Authority recommends that market research to ascertain why a customer switched away should be conducted after the conclusion of the switch protected period. Within the switch protected period retailers need to ensure that they do not prompt or otherwise initiate a save or win-back
- 5.11 A losing retailer, or its agent or third party, **MUST NOT** contact a customer to make an offer during the switch protected period,¹⁴ where:
 - (a) a customer that is a current customer of a type 1 or type 2 retailer advises the losing retailer of its intent to switch to another retailer in any form including verbal, writing, initiating a switch, etc.
 - (b) a gaining retailer commences a switch of an ICP regardless of the gaining retailer having the customer consent
 - (c) a customer has been a previous customer of a type 1 or type 2 retailer at any ICP that a retailer retailed electricity to, but the ICP had switched to another trader
- 5.12 Clause 11.15AB(1)(d) prevents the losing retailer from contacting a customer and, in any way, prompting the customer to seek a counter-offer from the losing retailer. There are several ways this limitation may apply, including:
 - (a) Incorporating the counter-offer or prompting a request for a counter-offer for electricity as part of the terms for providing other services (this will likely also be in breach of clause 11.15AB(1)(b));
 - (b) Requesting the reasons the customer switched away or other survey requests.
 - (c) Making any offers to supply electricity to multi-ICP customers for any ICPs of that customer that have switched away from the retailer within the last 180 days. Retailers should carry out their own checks and ascertain from multi ICP customers whether they have recently switched any ICPs to another retailer (to try

¹³ Switch protection period is defined in Part 1 of the Code.

¹⁴ Switch protection period is defined in Part 1 of the Code.

to ascertain whether switch protection periods might currently apply), before making an offer to the customer.

- (d) Offering cash incentives or a beneficial price plan to resolve a dispute where a customer has either expressed an intention to switch retailer, or has actually switched retailer.
- (e) The inclusion of terms in any contract for the supply of electricity requiring that the customer seek a counter-offer in the event of switching would be inconsistent with the prohibition.

In relation to clause 11.15AB(1)(e) – any **non-targeted and public** marketing activity is acceptable, even if that marketing activity will contact a customer that has within the last 180 days:

- (i) made the retailer aware of an intention to switch retailer that could be by phone, email, or notification from another retailer of a switch commencing
- (ii) switched away from the losing retailer
- (iii) moved ICP,

but only if that market activity continues to be non-targeted and public.

Further updates to practice note

- 5.13 The Authority has identified instances that may be non-compliant with the saves and win-backs Code amendment. However, we acknowledge that there may be other instances we have not discussed. If there are any additional circumstances requiring clarification please advise the Authority, as this will also enable us to update this practice note.