

Electricity Industry Participation (Customer Compensation Schemes) Code Amendment 2011

Pursuant to section 38 of the Electricity Industry Act 2010, I make the following amendments to the Electricity Industry Participation Code 2010.

At Wellington on the 23rd day of February 2011



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22 February 2011



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Amendment

1 Title

This Amendment is the Electricity Industry Participation (Customer Compensation Schemes) Code Amendment 2011.

2 Commencement

This Amendment comes into force on 1 April 2011.

3 Principal Code amended

This Amendment amends the Electricity Industry Participation Code 2010.

4 Interpretation

- (1) Clause 1.1(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“**additional customer compensation scheme** means a scheme operated by a **retailer** under clause 9.26, in addition to the **retailer's default customer compensation scheme**

“**customer compensation scheme** means a **default customer compensation scheme** or an **additional customer compensation scheme**

“**default customer compensation scheme** means a scheme that complies with clause 9.24

“**official conservation campaign** is a campaign to encourage **electricity** conservation that—

“(a) is commenced by the **system operator**; and

“(b) lasts for 1 week or more; and

“(c) covers—

“(i) the South Island; or

“(ii) all of New Zealand

“**public conservation period** means—

“(a) any period during which an **official conservation campaign** is running;

“(b) any period during which a **supply shortage declaration** is in force for 1 week or more

“**qualifying customer** has the meaning set out in clause 9.21

“**qualifying date** means the day after the last day of a **public conservation period**”.

- (2) Clause 1.1(1) is amended by revoking the definition of **retailer** and substituting the following definition:

“**retailer** means as follows:

“(a) except as provided in paragraphs (b) and (c), a **participant** who supplies **electricity** to another person for any purpose other than for resupply by the other person:

“(b) in Parts 1 (except for the definition of specified participant), 8, and 10 to 15, a **participant** who supplies **electricity** to a **consumer** or to another **retailer**:

“(c) in subpart 4 of Part 9, the **retailer** defined in paragraph (a) who is recorded by the **registry manager** as being responsible for the **ICP** described in clause 9.21(1)(b)”.

5 New subpart 4 inserted

The following subpart is inserted after clause 9.18:

“Subpart 4—Customer compensation schemes

“9.19 Contents of this subpart

This subpart provides a framework under which each **retailer** must have a **customer compensation scheme** for all of the **retailer’s qualifying customers**, including—

“(a) a **default customer compensation scheme** that a **retailer** must have; and

“(b) **additional customer compensation schemes** that a **retailer** may have; and

“(c) determining when a **public conservation period** commences and ends, during which a **retailer** must make payments under its **customer compensation schemes**; and

“(d) a process by which the **Authority** can require that a **retailer’s** compliance with this subpart is **audited**.

“Requirement for retailers to have customer compensation scheme

“9.20 Retailer must have customer compensation scheme

“(1) Each **retailer** who has 1 or more **qualifying customers**—

- “(a) must, at all times, have a **default customer compensation scheme**; and
- “(b) may, in addition to a **default customer compensation scheme**, have 1 or more **additional customer compensation schemes**.
- “(2) Each of a **retailer’s qualifying customers** must be covered by the **retailer’s default customer compensation scheme**, unless the **retailer’s qualifying customer** has elected to be covered by 1 of the **retailer’s additional customer compensation scheme** (if any) in accordance with clause 9.27.
- “(3) A **retailer’s customer compensation scheme** may cover a **customer** who is not a **qualifying customer**.

“9.21 Qualifying customers

- “(1) A **retailer’s qualifying customer** is a person who, as at the end of the **qualifying date**, —
 - “(a) is a **customer** of the **retailer**; and
 - “(b) has a contract with the **retailer** for the supply of **electricity** in respect of an **ICP** at which—
 - “(i) there is a category 1 or category 2 **meter**; and
 - “(ii) there was consumption, in the previous **year**, of 3000 kWh or more.
- “(2) Despite subclause (1), a person is not a **qualifying customer** if the price of all of the **electricity** provided under the person’s contract with the **retailer** for the supply of **electricity** is determined by reference to the **final price** at a **GXP**.
- “(3) For the purposes of subclause (1)(b)(ii), if a **qualifying customer’s** previous **year’s** consumption at the **ICP** is not available to the **retailer**, the **retailer** must make a reasonable estimate of the consumption.
- “(4) To avoid doubt,—
 - “(a) there is no **qualifying customer** at an **ICP** if, at the end of the **qualifying date**,—
 - “(i) the premises to which the **ICP** is connected are vacant; or
 - “(ii) the **ICP** is disconnected:
 - “(b) a **retailer’s qualifying customers** includes a **customer** who switched—
 - “(i) to the **retailer** from another **retailer** on or before the **qualifying date**, including during a **public conservation period**; or
 - “(ii) from the **retailer** to another **retailer** between the **qualifying date** and the date on which the **retailer** pays compensation under the **customer compensation scheme**.

“9.22 Requirement to implement customer compensation schemes

- “(1) A **retailer** must make payments to its **qualifying customers**, in respect of **ICPs** described in clause 9.21(1)(b), under its **customer compensation schemes** during a **public conservation period**.
- “(2) Despite subclause (1), if a **public conservation period** is running because the **system operator** has commenced an **official conservation campaign** under clause 9.23(2), a **retailer** must make payments under its **customer compensation scheme** to its **qualifying customers** only in respect of **ICPs**, as described in clause 9.21(1)(b), in the South Island.

“Official conservation campaign

“9.23 System operator commences official conservation campaign

- “(1) The **system operator** must commence an **official conservation campaign** for the South Island—
- “(a) when a comparison of storage in the South Island hydro lakes with the South Island hydro risk curves, as that term is defined in the **security of supply forecasting and information policy**,—
 - “(i) shows a risk of shortage for the South Island of 10% or more; and
 - “(ii) forecasts that the risk of shortage for the South Island will be 10% or more for 1 week or more; or
 - “(b) despite paragraph (a), if it has agreed a date with the **Authority** for an **official conservation campaign** to commence for the South Island, on that date.
- “(2) The **system operator** must commence an **official conservation campaign** for New Zealand—
- “(a) when a comparison of storage in New Zealand’s hydro lakes with the hydro risk curves, as that term is defined in the **security of supply forecasting and information policy**,—
 - “(i) shows a risk of shortage for New Zealand of 10% or more; and
 - “(ii) forecasts that the risk of shortage for New Zealand will be 10% or more for 1 week or more; or
 - “(b) despite paragraph (a), if it has agreed a date with the **Authority** for an **official conservation campaign** to commence for New Zealand, on that date.
- “(3) The **system operator** must use reasonable endeavours to give each **participant** and the **Authority** at least 2 weeks’ notice of an **official conservation campaign** commencing.
- “(4) If the **system operator** has commenced an **official conservation campaign**, it must—
- “(a) during the period of the **official conservation campaign**, regularly review the steps that the **system operator** must take, and encourage **participants** to take, under the **emergency management policy**; and
 - “(b) end the **official conservation campaign**—
 - “(i) when a comparison of storage in the hydro lakes with the hydro risk curves, as that term is defined in the **security of supply forecasting and information policy**, shows a risk of shortage for New Zealand or South Island (as the case may be) of 8% or less; and
 - “(ii) despite subparagraph (i), if it has agreed a date with the **Authority** for an **official conservation campaign** to end, on that date.
- “(5) If the **system operator** and the **Authority** agree under subclause (1)(b) or (2)(b) that an **official conservation campaign** will commence, the **system operator** must make publicly available on its website the reasons for agreeing that the **official conservation campaign** will commence.
- “(6) The **system operator** must, as soon as practicable after ending an **official conservation campaign**, give notice to each **participant** and the **Authority** of the date on which the **official conservation campaign** ended.

“Default customer compensation scheme

“9.24 Requirements of default customer compensation schemes

- “(1) A **retailer’s default customer compensation scheme** must provide for the **retailer**—

- “(a) during an **official conservation campaign** for the South Island, to pay each of its **qualifying customers** in the South Island at least the minimum weekly amount of compensation, determined by the **Authority** under clause 9.25, for each week of the **official conservation campaign**; and
- “(b) at any other time during a **public conservation period**, to pay each of its **qualifying customers** at least the minimum weekly amount of compensation, determined by the **Authority** under clause 9.25, for each week of the **public conservation period**; and
- “(c) to pay at least the minimum weekly amount—
 - “(i) to each of its **qualifying customers** in the South Island or New Zealand (as the case may be), for each of the **qualifying customer’s ICPs** described in clause 9.21(1)(b):
 - “(ii) no later than the end of 2 **billing periods** after the **qualifying date**.
- “(2) Each **retailer’s default customer compensation scheme** must provide that if a **public conservation period** runs for more than a whole number of weeks, the **retailer** must, in addition to making payments in accordance with subclause (1) for each whole week of the **public conservation period**, pay at least the minimum weekly amount of compensation at a pro rata daily rate for the number of days that exceed the whole number of weeks of the **public conservation period**.
- “(3) For the purposes of this clause—
 - “(a) compensation includes—
 - “(i) money:
 - “(ii) a credit on the **qualifying customer’s electricity** account with the **retailer**; and
 - “(b) the form of the compensation is to be determined by the **retailer**.

“Minimum weekly amount of compensation

“9.25 Authority must determine minimum weekly amount

- “(1) In determining the minimum weekly amount that each **retailer** must pay to its **qualifying customers**, the **Authority** must take into account—
 - “(a) the estimated value, in dollars/MWh, of the savings that the **Authority** expects all **qualifying customers** in the South Island or New Zealand, as the case may be, of all **retailers**, will achieve during an **official conservation campaign**; and
 - “(b) any other factors that the **Authority** considers relevant.
- “(2) The **Authority** must—
 - “(a) **publicise** the minimum weekly amount; and
 - “(b) review the minimum weekly amount—
 - “(i) after each **public conservation period** ends; and
 - “(ii) at least once every 3 calendar years; and
 - “(c) following a review under paragraph (b), ensure that it gives **participants** at least 3 months’ notice if it determines a new minimum weekly amount.

“Additional customer compensation schemes

“9.26 Retailer may have additional customer compensation schemes

A **retailer** may have 1 or more **additional customer compensation schemes**.

“9.27 Qualifying customer may elect to be covered by additional customer compensation scheme

“(1) If a retailer has 1 or more additional customer compensation schemes, each of the retailer’s qualifying customers is covered by—

“(a) 1 of the retailer’s additional customer compensation schemes only if the qualifying customer elects to be covered by the additional customer compensation scheme; or

“(b) in the absence of an election, the retailer’s default customer compensation scheme.

“(2) Before accepting a qualifying customer’s election, a retailer must ensure that it informs the qualifying customer of—

“(a) the details of the additional customer compensation scheme; and

“(b) the differences between the retailer’s default customer compensation scheme and the additional customer compensation scheme.

“(3) A retailer must keep a record of each qualifying customer’s election.

“(4) A qualifying customer’s election must not—

“(a) be part of the contract between the qualifying customer and the retailer for the supply of electricity; or

“(b) affect the tariff options that the retailer offers to the qualifying customer; or

“(c) be affected by the tariff option in the qualifying customer’s contract with the retailer.

“9.28 Publishing description of additional customer compensation schemes

A **retailer** who has 1 or more **additional customer compensation schemes** must—

“(a) make a description of its additional customer compensation schemes publicly available, at no cost, on an Internet site maintained by or on behalf of the retailer, at all reasonable times; and

“(b) on request from a customer, provide a written description of the additional customer compensation schemes.

“Statutory declaration

“9.29 Each retailer must provide statutory declaration

“(1) Each retailer must provide the Authority with a declaration confirming that—

“(a) its customer compensation scheme complies with this subpart; and

“(b) it has provided compensation to its qualifying customers, to the extent required by this subpart.

“(2) The declaration provided under subclause (1) must be—

“(a) a statutory declaration; and

“(b) in the form specified by the Authority; and

“(c) signed and dated by—

“(i) 2 directors of the **retailer**; or

“(ii) the **retailer’s** chief financial officer, or a person holding an equivalent position; or

“(iii) the **retailer’s** chief executive officer, or a person holding an equivalent position.

“(3) A **retailer** must provide declarations as follows:

“(a) within 7 months of the end of a **public conservation period**:

“(b) subject to subclause (4), within 1 month of receiving a request to do so by the **Authority**.

“(4) The **Authority** must not request a declaration under subclause (3)(b) before 1 October 2011.

“Audit

“9.30 Audit of compliance

“(1) The **Authority** may, in its discretion, carry out an **audit** to determine whether a **retailer** has complied with this subpart.

“(2) If the **Authority** decides to **audit** a **retailer** under subclause (1), the **Authority** must require the **retailer** to nominate an appropriate **auditor**.

“(3) The **retailer** must nominate an **auditor** within a reasonable timeframe, and the **Authority** must appoint the nominated **auditor**.

“(4) If the **retailer** fails to nominate an appropriate **auditor** within a reasonable timeframe, the **Authority** may appoint an **auditor** of its own choice.

“9.31 Retailer must provide information to auditor

“(1) A **retailer** subject to an **audit** under this subpart must, on request from the **auditor**, provide the **auditor** with information relating to its compliance with this subpart in the previous 12 months or such other period specified by the **auditor**.

“(2) The **retailer** must provide the information within 20 **business days** after receiving a request from the **auditor**.

“9.32 Auditor must provide audit report

“(1) The **auditor** must provide the **Authority** with an **audit** report on the **retailer’s** compliance with this subpart.

“(2) Before the **auditor** provides the **audit** report to the **Authority**, the **auditor** must refer any non-compliance to the **retailer** for comment. The **retailer** must provide comments within a time specified by the **auditor**.

“(3) The **auditor** must include the **retailer’s** comments, if any, in the **audit** report.

“(4) The **auditor** must not provide the **Authority** with a copy of any of the information provided by the **retailer** to the **auditor** under clause 9.31 unless requested by the **Authority**.

“9.33 Payment of auditor’s costs

“(1) If an **audit** establishes, to the **Authority’s** reasonable satisfaction, that a **retailer** has not complied

with this subpart (whether or not the **Authority** appoints an investigator to investigate the alleged breach), the **retailer** must pay the **auditor's** costs.

- “(2) If the **Authority** considers that the **retailer's** non-compliance is minor or relates to some (but not all) of the clauses in this subpart, the **Authority** may, in its discretion, determine the proportion of the **auditor's** costs that the **retailer** must pay, and the **retailer** must pay those costs.
- “(3) If an **audit** establishes to the **Authority's** reasonable satisfaction that a **retailer** has complied with this subpart, the **Authority** must pay the **auditor's** costs.”

Explanatory Note

This note is not part of the Code Amendment, but is intended to indicate its general effect.

This amendment to the Electricity Industry Participation Code 2010 comes into effect on 1 April 2011. The amendment inserts a new subpart 4 into Part 9 of the Code, which requires each retailer to operate a customer compensation scheme.

Each retailer must have a customer compensation scheme that complies with the default requirements, and may also have additional schemes. A customer is covered by a default compensation scheme unless the customer elects to be covered by an additional compensation scheme.

Each retailer must compensate its qualifying customers under its customer compensation schemes during periods when an electricity conservation campaign is in force. The minimum weekly amount of compensation to be paid under a default scheme will be determined by the Electricity Authority.

Retailers must provide a declaration that they are complying with these requirements, and their compliance can be audited at the Electricity Authority's request.

Date of notification in the *Gazette*: 24 February 2011