

19 February 2010

Electricity Commission
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SUBMISSION ON DOMESTIC RETAIL CONTRACTING ARRANGEMENTS

- 1 Orion New Zealand Limited (**Orion**) welcomes the opportunity to respond to the Approach to domestic retail contracting arrangements – issues and options discussion consultation paper (**the paper**) released by the Commission in December 2009.
- 2 Our submission is in two parts:
 - 2.1 General comments on the paper, and
 - 2.2 As a schedule, responses to the Commission's specific questions.

The Commission's proposed approach to domestic contracting arrangements

- 3 The proposed approach – of specifying certain principles and minimum terms and conditions, and monitoring and reporting against these – represents a reasonable balance of the GPS requirements and the observation that most existing contracts align well with reasonable consumer expectations.
- 4 The remainder of our comments concern:
 - 4.1 the extent to which the reasonable consumer expectations listed are actually consumer expectations of retailers;

- 4.2 if they are, whether the Commission needs to do anything about them; and
 - 4.3 if the Commission chooses to act, whether the consumer contract is the appropriate regulatory instrument.
- 5 We also suggest an alternative to (or an addition to) the proposed approach for intervention in this area – specifically the idea of a consumer charter.

An alternative approach – “consumer charter”

- 6 Orion recommends that the Commission consider an approach based on a “consumer charter” (a bit like the EGCC codes of practice) with which retailers could choose to comply. Consumers could access a plain-English version of what this means, either from the retailer, the Commission and perhaps also Powerswitch. The charter could have the same effect as the codes of practice, in that in the event of any conflict between a retailer's terms and conditions, actions or behaviours and the charter, the charter is deemed to apply.
- 7 The charter could, more readily than a consumer contract, include statements of principle, what constitutes good or standard industry practice, and behavioural expectations. A charter may also be more easily aligned with industry developments over time, and it would enable distributors to ‘sign-up’ to relevant provisions.
- 8 In addition the Commission could:
- 8.1 list charter (and perhaps non-charter) retailers
 - 8.2 published assessments of charter (and perhaps non-charter) retailers’ adherence to the charter
 - 8.3 procure and publish the results of surveys of consumers perceptions or assessments of retailers (and we note with respect to this that Powerswitch already publishes a “service rating” of retailers).
- 9 Retailers who choose not to be bound by the charter would suffer to the extent that the charter provided a meaningful advantage to consumers and/or retailers.

The case for intervention

- 10 We are not convinced that the case for intervention has been made with respect to all of the issues discussed, nor that it has been established that the consumer contract is in all cases the best instrument for intervention. We consider that electricity, at least from a contractual perspective, is most akin to banking, insurance and telecommunications, where there are similar and often compelling reasons why providers tend to devise standard terms which apply to most consumers, and there is no meaningful individualised contracting.
- 11 The rationale for defining principles and developing minimum terms and conditions must be that the matter is not adequately dealt with by other laws, regulations or standards; that the issue is one where the experience of electricity consumers is materially worse than in comparable unregulated markets; and *then* that the consumer contract is the best way to address the issue.
- 12 In our view the Commission should also consider the possible negative impact, in terms of innovation and potential market entry, of the proposed intervention by way of the minimum terms and conditions.

The contracting process

- 13 In Orion's view, the Commission should start by thinking about what the contract formation process is (or should be) in a reasonably (and hopefully increasingly) competitive mass market with relatively few providers and hundreds of thousands of consumers. As with similar markets such as telecommunications, banking and insurance, this means that:
- 13.1 the contractual terms will not in any meaningful sense be negotiated with consumers, or indeed be practically able to be varied between consumers by a retailer;
- 13.2 the only meaningful course open to consumers who do not agree with a retailer's terms is to find a retailer whose terms they do accept;
- 13.3 many and perhaps most consumers will never read the consumer contract, even in the event that they have an issue with their supplier; and

13.4 in the case of electricity we can also add that consumers will not typically sign anything with their retailer.

- 14 Much of the paper seems to anticipate that the opposite of these things is the case. For example in the area of connections, there is an assumption of agreement of terms and conditions with the retailer, as if this is a negotiation process. This step is – or would be – unnecessary, inefficient, and potentially a barrier to competition.

Reasonable consumer expectations (RCEs)

- 15 Orion agrees that RCEs are a useful way to think about the relationship between consumers and retailers. However not all of the RCEs are obviously consumer expectations of their electricity retailers. For example, as we note below, RCEs 1 to 4 relating to meaningful choice could in fact be seen as RCEs of the Commission or public policy, rather than being consumer expectations of retailers.
- 16 While the Commission has itself assessed the degree of “relevance of good retail contracting arrangements” to realising the expectation, it does not appear to have always reflected this assessment in its detailed proposals (particularly Appendix 3). Nor in our view has the Commission provided a compelling case for its assessment with respect to all the RCEs. We would have thought, for example, that having established a “low” relevance for an RCE, then nothing more would be said about that RCE in a document about consumer contracts?
- 17 We suspect that in most situations of contention between consumers and retailers, that the consumer contract is seldom mentioned by either party. On that basis the efficacy of the contract as a means for meeting RCEs needs to be carefully considered.
- 18 Our brief assessment of each of the RCEs is shown in table 1 below.

Table 1

RCE	Intervention required?	Consumer contract appropriate instrument?	Text of RCE and comment.
1 to 4	No	No	<i>RCE 1. Companies offer a range of pricing plans, products and services for consumers to consider and make informed decisions RCE 2. There is ready access to good quality, comprehensive and easy to understand information on electricity options, electricity suppliers and alternatives to</i>

RCE	Intervention required?	Consumer contract appropriate instrument?	Text of RCE and comment.
			<p><i>electricity</i> RCE 3. <i>From the options available in the market, consumers are readily able to choose between electricity suppliers, products and services, and pricing plans, and to change their choice</i> RCE 4. <i>Consumers can be assured of finding an electricity supplier to provide them with service</i></p> <p>These RCEs are, if anything, reasonable expectations of the Commission or public policy, not of retailers.</p> <ul style="list-style-type: none"> • RCE 1: this can be left to the market to work out. As the RCE stands there is an implication that all retailers should "offer a range of pricing plans, products and services". Now they might, and many currently do, but a retailer might also choose to only offer very specific niche products, or for example "one-rate" pricing. This is certainly observed in other markets. • RCE 2: this is not a reasonable expectation of competitors with respect to each other, and therefore it should not be in a consumer contract. It sounds in fact more like what Powerswitch does. • RCE 3: this is again not obviously something that retailers can deliver, and in any case it is unclear that this is currently a problem? • RCE 4: is not obviously a sensible measure of any party, and there will be, and probably already are, potential consumers who are unable to find a retailer, usually for reasons of historical default. This might be a social policy problem, but that simply lends weight to the argument that a consumer contract is not the right solution.
5	No	Not really	<p><i>RCE 5. The connection process is timely and well managed</i></p> <p>This is mainly about the process of becoming a consumer, and by implication becoming a party to a consumer contract. It is odd then that the Commission sees this as being very relevant ("High" relevance) to the contract itself. It may be appropriate and desirable for retailers to deem the terms and conditions that apply when consumers move in to a property.</p>
6	Possibly	Possibly	<p><i>RCE 6. Arrangements for supply disconnections and terminations of the consumer contracts are reasonable, and disconnections are undertaken safely and in a timely and well-managed way</i></p> <p>We note that the guidelines for medically dependent and vulnerable consumers (MDCs and VCs) already cover this territory.</p>
7 to 10	No	No	<p><i>RCE 7. The supply of electricity is safe, reliable and 'fit for purpose'</i> RCE 8. <i>The consumer has access to a good standard of information in a supply interruption situation, and supply is restored within a reasonable timeframe</i> RCE 9. <i>Other services reasonably required as part of receiving electricity supply, such as call centre and</i></p>

RCE	Intervention required?	Consumer contract appropriate instrument?	Text of RCE and comment.
			<p><i>metering services, are readily available and 'fit for purpose'</i></p> <p><i>RCE 10. The contractual terms and conditions of supply of electricity to the consumer are lawful, fair and reasonable, while accurately reflecting any reasonable upstream conditions or constraints</i></p> <p>Already covered by good industry practice and specific legislation or regulation, or driven by use of system agreements.</p>
11	Possibly	Possibly	<p><i>RCE 11. The contractual terms and conditions are complete, easy to understand, and clearly set out the respective obligations of the company and the consumer</i></p> <p>But in our view this is more appropriately covered via a "consumer charter".</p>
12	Possibly	No	<p><i>RCE 12. The delivered price for electricity supply is fair and reasonable, and is reflective of the cost of supply</i></p> <p>This is a statement of a regulatory outcome, but one that is beyond the scope of this work stream.</p>
13	No	No	<p><i>RCE 13. The company does not impose additional or unexpected costs on the consumer</i></p> <p>Electricity is not in this respect different to other goods and services. A 'reasonable consumer' will expect that there may well be fees for some additional services, and will ask for details of fees if they request a service.</p>
14	Possibly	Possibly	<p><i>RCE 14. Consumers receive timely and accurate bills for electricity and associated services, and the bills are easy to understand and check</i></p> <p>Electricity bills are not evidently more complex than many other bills that consumers receive, for example supermarket 'bills'. We further note that some retailers, for example Powershop, do not bill in the traditional sense.</p>
15	Possibly	No	<p><i>RCE 15. Consumers have access to appropriate mechanisms for making payment that take account of consumer circumstances</i></p> <p>The guidelines for MDCs and VCs already cover much of this territory. The actual payment options available will differ from retailer to retailer, and this should largely be left to market arrangements.</p>
16,17,19	Possibly	No	<p><i>RCE 16. The company is honest and open, and acts with integrity in all its dealings with the consumer.</i></p> <p><i>RCE 17. The company will either directly answer where possible, or otherwise assist in obtaining an answer, to consumers' enquiries about all aspects of their supply, billing and contracting arrangements in a timely, courteous and accurate manner.</i></p> <p><i>RCE 19. The company will act courteously, considerately and professionally at all times when requiring access to consumers' premises</i></p>

RCE	Intervention required?	Consumer contract appropriate instrument?	Text of RCE and comment.
			Behavioural statements do not in our view fit well with a consumer contract. Intervention would need to be based on evidence that electricity retailer behaviour was materially worse than that of suppliers in other similar markets.
18	Possibly	No	<i>RCE 18. Apart from safety, maintenance and similar actions under the electricity regulations 1997, the company does not take any action to alter or terminate the supply of electricity without providing reasonable notice to the consumer and an opportunity for the consumer to remedy any failing on their part which may have triggered that action.</i> Covered under disconnections
20	Possibly	No	<i>RCE 20. The company will give the consumer reasonable notice of its requirement to access the consumer's premises, including the intended timing, nature and purpose</i> Possibly more appropriately covered via a "charter".
21 & 22	Possibly	Possibly	<i>RCE 21. Consumers have access to suitable arrangements for dealing with any complaints in a timely manner, and for obtaining appropriate remedies</i> <i>RCE 22. Consumers have access to the information necessary to help resolve complaints</i> Consumers do have access to suitable arrangements which are governed separately from the consumer contract.

19 The following sections discuss some of the RCEs in more detail.

- ***Connections, disconnections and termination (RCEs 5 and 6)***

- o ***RCE 5 - The connection process is timely and well managed***

20 In our view the Commission should consider the *formation* of contractual arrangements with respect to three distinct cases:

- 20.1 **New connections.** In this case most of the "pre-contractual" discussion will probably be with the network company, and may or may not involve the actual original consumer - it might be a property developer - or the retailer. The developer or consumer will be the party that makes any required capital contribution to the

network company.¹ The consumer will nominate an intended retailer as part of this process, but that is not a commitment. The network company should not live the connection until it meets all regulatory requirements, and a retailer has accepted it on the Registry, which implies formation of a consumer contract.

20.2 **Move ins.** In this case a consumer, who may or may not have (or have had) an arrangement with an existing retailer at another property, wishes to commence supply at the property. The retailer at the property (according to the Registry) may or may not be the retailer preferred by the consumer, and may or may not have left the power on when the previous consumer moved out,² and in either case will not usually know in real time whether electricity is being consumed. It is a 'reasonable retailer expectation' that the new consumer will contact a retailer (or possibly a number of retailers) *prior to* moving in. Should the new consumer use electricity without contacting a retailer, then under the EGRs the Registry retailer is responsible for the energy consumption, and will also often be liable for network charges as well. In our view the Registry retailer is entitled to be paid by the consumer if no other arrangement is made. The principle that the retailer "takes all reasonable steps to ensure the Consumer Contract is agreed as soon as possible"³ is not even-handed and unclear as to which of the many possible retailers it applies. It places the onus on only one party (or perhaps many – again it is not clear), arguably the wrong one(s).

20.3 **Switches.** In this case the consumer by definition has terminated the agreement with one retailer, and entered into an agreement with a new retailer, although normal practice is that only the new retailer needs to be advised by the consumer. The new retailer will effectively contract with the consumer as part of the switching process, and again this will normally be a deeming process. While the new retailer will probably make the terms of the consumer contract available, it is unlikely that these will be read before the

¹ And note there is no legal requirement for a network to provide a new connection.

² And indeed that retailer might not be aware that the previous consumer has moved out! Although smart metering may reduce the cost of the disconnection / reconnection process in the future, in most cases this still requires a site visit or visits, which is a significant cost. Retailers take different approaches to disconnection on final, but it would be unfortunate if model arrangements made it more likely that they disconnected, as this will inevitably lead to reconnection costs for consumers.

³ Appendix 3, p5, Reason 2.19 (b).

switch is agreed, and as noted above probably not afterwards either.

21 The Commission's position that a contract is not formed by the "taking of electricity"⁴ in a move-in situation is not necessarily an advantage for the consumer, as there is still an obligation to pay for any electricity used - a "fair rate" may be charged. Orion sees no obvious problems - and significant advantages - with a deeming arrangement in such cases, as we believe that the onus should be on consumers to act reasonably with respect to arranging supply. It is not at all unusual in other markets for deemed (sometimes called 'posted' terms) to apply where no specific agreement has been made, and we would note that, presumably, the Registry retailer is entitled - where there is no contract - to disconnect a property at any time after the previous customer final. Deeming would reduce the risk of this because the proposed minimum terms do not permit a retailer to disconnect without good reason.

- ***RCE 6 - Arrangements for supply disconnections and terminations of the consumer contracts are reasonable, and disconnections are undertaken safely and in a timely and well-managed way***

22 The "Payment" section is very focussed on non-payment, when the presumption, at least on the retailer's behalf at the point of contract, will be that the consumer will pay. It is unlikely, and possibly undesirable for the consumer contract to "set out" any charges that will apply in event of disconnection for non-payment, as the contract tends to have a more enduring life than specific charges. Most consumers pay their bills, and it is more appropriate to advise them of any fees at the time that disconnection becomes an actual possibility. It is probably also true that most other services are provided only very infrequently, and so it would be normal practice, as for many other services in other markets, for both the consumer and the supplier to clarify terms close to the time of service provision.⁵

- ***Electricity supply and related services (RCEs 7 to 9)***

- ***RCE 7 - The supply of electricity is safe, reliable and 'fit for purpose'***

⁴ An interesting choice of words!

⁵ And for example bank fees are sometimes waived at the point of service provision.

- 23 We note that distributors - and to some extent Transpower - are the key parties with respect to quality, reliability and safety. This is therefore an area that has significant overlap with distributor use of system agreements, and an area where different distributor arrangements inevitably result in retailers using generic terms.
- 24 Depending on how service standards are defined, it can be difficult for a supplier (a retailer) to know that service standards are not being complied with. In many cases it will be a customer enquiry or complaint that provides the notification, and in some cases only the distributor knows – for example when supply has not been restored within some time frame.
- 25 For other services listed, such as call centre services, Orion sees no need for the Commission to comment, and we note that no minimum terms and conditions are proposed in relation to this.
- ***RCE8 - The consumer has access to a good standard of information in a supply interruption situation, and supply is restored within a reasonable timeframe***
- 26 In our view RCE8 is the appropriate area in which to consider minimum notice of planned shutdowns (the paper has placed this under RCEs 5 and 6). While we are comfortable with four (business?) days as a general expectation, we note that any notice is usually better than none, and it is the nature of managing networks that from time to time network operators become aware that immediate maintenance is required or there will be an unplanned outage. We do not believe the intent of the consumer contract is to discourage notification, even if at short notice, of planned outages, and so the requirement might be better expressed with a “where possible” qualification.
- 27 The consumer contract cannot meaningfully state where up to date information about unplanned interruptions is going to be, as this will vary by network area, and will possibly change over time.
- ***RC9 - Other services reasonably required as part of receiving electricity supply, such as call centre and metering services, are readily available and ‘fit for purpose’***
- 28 The Commission states with respect to metering that this is a source of many complaints. We are not sure if this is the metering so much as the reading of the meter, but in any case metering is covered by the EGRs, and it is not obvious that the consumer contract needs to establish additional obligations, particularly as these are often, and inevitably, technical in nature.

29 Regarding load management, there is considerable variation between the load management practices of distributors, who are the main parties that initiate load management. This means that retailers descriptions of load management at a contract level will, as a practical matter, need to be quite generic. We also take the view that the consumer contract is not the place to state whether the specific consumer tariff reflects entities rights to manage load (as proposed in 3.10(b)). The pricing plan that will apply is usually determined by the load management equipment currently at the connection, and in many cases this is not known by the retailer until the final stage of the switching process, so it cannot form part of the contract. In addition changing the load management equipment usually involves a site visit and associated fees.

- **Costs (RCEs 12 and 13)**

- **RCE12 - The delivered price for electricity supply is fair and reasonable, and is reflective of the cost of supply**
- **RCE 13 - The company does not impose additional or unexpected costs on the consumer**

30 The section on notice of price changes assumes a traditional model of periodic (for example annual) price change. While this is currently applicable in most cases, there are retailer business models, for example Powershop, where pricing is potentially much more dynamic, and notification is not meaningful in a traditional sense. Moreover it is possible to conceive of "market linked" products that reflect spot price movements, where again 30 days advance notification is not meaningful. The Commission should be encouraging such innovation.

31 While we consider that 30 days notice was reasonable in a traditional situation, and that this is the period that was in the Codes of Practice, we note that this may have reflected switching times from some years ago, of up to 23 business days. In other words the 30 days notice was sufficient for a consumer to be notified of price changes by Retailer A, shop around and switch to Retailer B in time to avoid Retailer A's price changes. With the actual shortening of average switching times over the last few years to an average of less than 10 days, and the proposed further shortening where the ICP has Smart metering, perhaps 30 days is no longer necessary for the "shopping around" period?

CONCLUDING REMARKS

- 32 Thank you for the opportunity to make this submission. If you have any questions relating to this submission, please contact Bruce Rogers (Pricing Manager) DDI 03 363 9870 email bruce.rogers@oriongroup.co.nz.

Yours faithfully

A handwritten signature in black ink, appearing to be 'BR', written in a cursive style.

Bruce Rogers
Pricing Manager

Schedule: Responses to specific questions

Q No.	Question	Response
1	Do you agree that this represents the set of reasonable customer expectations? If not what changes do you propose?	<p>We do not agree that</p> <ul style="list-style-type: none"> • all of the expectations are reasonable consumer expectations of retailers, • all of them are appropriately dealt with via a consumer contract <p>The body of our submission provides more detail on each RCE.</p>
2	Are there any other criteria that should be included in the assessment framework? If so, what additional criteria would you propose?	<p>Yes. The assessment framework should recognise that:</p> <ul style="list-style-type: none"> • many of the areas being assessed are covered by general and specific law, regulation and standards • a consumer contract will in most cases not be read by the consumer • not all of the expectations will be equally well addressed via the consumer contract • there is some risk that intervention in this area could discourage innovation and market entry
3	Do you agree with the Commission's assessment that there is a reasonably strong case for intervening in some manner? If not what assessment would you make?	<p>Yes, but the "in some manner" is important. However with respect to many of the RCEs we do not believe that the consumer contract is the appropriate intervention instrument.</p> <p>It is not clear that the negotiating position of electricity consumers is any weaker than the position of consumers with respect to comparable markets, for example, telecommunications, banking and insurance.</p> <p>We note the GPS requirement, but believe this should be interpreted widely rather than literally. The industry has changed significantly since the GPS first mentioned model retail contracts. (This also suggests that the GPS itself could usefully be reviewed in this respect.)</p>
4	What comments do you have on the Commission's assessment of the options?	<p>We have no comments on the assessment, although we suspect retailers might regarding commercial requirements.</p> <p>We believe the Commission should consider introducing a consumer charter – either as well as or instead of its proposed approach - which retailers can opt to be bound by (like the EGCC Codes of Practice).</p>
5	What comments do you have on the Commission's preferred approach to addressing domestic retail	<p>However as noted above the scope of the areas addressed needs to be confined to those areas where the consumer contract is judged the appropriate regulatory instrument.</p>

Q No.	Question	Response
	contracting issues?	
6	<p>What comments do you have on the Commission's draft set of suggested principles and terms? In particular:</p> <ul style="list-style-type: none"> • To what extent will the draft set of suggested principles and terms meet reasonable consumer expectations? • Are there any omissions, inconsistencies, or unintended consequences of the proposed principles and terms? • Is each relevant term or principle practicable, particularly in view of any upstream and downstream contracting requirements (e.g. retailer distributor contract requirements)? • What drafting comments do you have? 	<p>See the body of our submission.</p> <p>See the body of our submission. Not all of the principles and terms are required.</p> <p>See the body of our submission. Not all of the principles and terms are required.</p> <p>None</p>