

13 April 2012

Submissions
Electricity Authority
PO Box 10041
Wellington 6143

by email: submissions@ea.govt.nz

SUBMISSION ON MISCELLANEOUS CODE AMENDMENTS

- 1 Orion New Zealand Limited (**Orion**) welcomes the opportunity to comment on the “Miscellaneous code amendments” consultation paper (the **paper**) released by the Authority in March 2012.
- 2 This submission is restricted to addressing the Authority’s questions relating to the definition of ‘retailer’ for customer compensation.

Q1. Do you agree with the problem the Authority has defined with the definition of ‘retailer’ for the purposes of customer compensation? If not, please detail your concerns using the clause and schedule numbering from the Code as a reference where appropriate.

- 3 We agree that the Authority has identified a problem with the current drafting of the Code relating to the compensation scheme. However, we do not agree with the Authority’s proposed solution. We also believe that there are possibly other areas where potential confusion around the various definitions of “retailer” may be an issue. A recent example, which we identified in our submission on retailer default situations, illustrates a similar issue where it appears that an assumption has been made that the defined terms “purchaser” and “retailer” can be used interchangeably.

Q2. Do you agree with the proposed amendment to the definition of retailer in the Code? If not, please detail your concerns.

- 4 We agree that the proposed amendment to the definition of “retailer” in the Code will resolve the immediate problem the Authority has. However, we do not consider that it is an appropriate solution as we consider that the proposed change further complicates an already complicated definition. The term “retailer” already has different meanings in different parts of the Code and the proposal adds to this already



complicated definition by introducing into the definition of “retailer” the defined term “trader” which is itself defined using the defined term “retailer”. We consider that this proposed change makes the definition of “retailer” even more convoluted than it currently is and potentially circular in nature.

- 5 The Authority and its predecessor have, over the years, made a number of changes to the definition of “retailer” and a significant change to the definition of “trader”. We believe that when these changes are taken together with the replacement in many parts of the Code, of the term “retailer” with the term “trader”, the result is considerable confusion over the meaning of these terms. This situation is exacerbated by the difference in definitions of these same terms between the Code and the Electricity Industry Act 2010 and also by the difference in the use of the term “retailer” and “trader” in the Code compared to the common usage of the term retailer by the public, industry participants and other government agencies.
- 6 The changes have also led to confusion over the use of other defined terms such as “purchaser”. Prior to these relatively recent changes in definitions there was a logical separation that allowed for a sensible split between the functions of buying electricity from the clearing manager on the wholesale electricity market and any associated hedging arrangements by the “purchasers” and the rebundling of resulting wholesale offers by “purchasers” with distribution charges into retail products by the “retailers”. We consider that the change to the defined term “trader” to include a retailer who buys electricity from the clearing manager has destroyed this logical separation and added unnecessary complication and confusion to the Code.

Recommendation

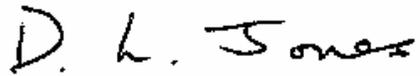
- 7 That the Authority introduce the proposed change for a set time period, say 12 or 18 months, to address the immediate issue that the Authority has identified. Within this period the Authority should undertake a fundamental review of definitions of “retailer”, “trader”, “purchaser” and their use throughout the Code with a view to clarifying the Code. The review should include consideration of
 - their relevance to the Electricity Industry Act 2010;
 - normal plain-English understanding of the terms
 - the need for any additional guidelines
 - whether “Type 2 retailers” should be included in the Code.

Q3. Do you agree with the Authority’s evaluation of the proposed Code amendment for the definition of retailer for customer compensation? If not, please detail your concerns.

- 8 No, see above recommendation.

- 9 Thank you for the opportunity to make this submission. Orion does not consider that any part of this submission is confidential. If you have any questions please contact Dennis Jones, DDI 03 363 9526, email dennis.jones@oriongroup.co.nz.

Yours sincerely

A handwritten signature in black ink that reads "D. L. Jones". The letters are cursive and slightly slanted to the right.

Dennis Jones
Industry Developments Manager