



8 February 2024

Electricity Authority
Wellington
New Zealand

Email: policyconsult@ea.govt.nz

Submission - Code amendment omnibus two: December 2023

Introduction

1. Orion appreciates the opportunity to submit on the Authority Consultation Issues paper¹ seeking feedback on Code amendments and making Option E from the 2023 Winter Programme permanent.
2. The consultation paper has three discrete sections. These are:
 - proposed changes to Part 6A of the Code to ensure it covers all generation technology, including solar (PV) arrays and batteries connected to the distributor's network. This is to accommodate the move to a low- emissions economy to clarify regulatory issues for distributed energy resources.
 - a proposal to make the urgent Code amendment relating to Option E from the winter 2023 work programme permanent.
 - changes to Part 6A of the Code which are consequential to Parliament's decision to move the arms-length rules from Part 3 of the Act to the Code.

Summary

3. We have reviewed the consultation paper and welcome the fact that the Authority wants to update the Code to accommodate the changes in technology and clarify definitions to accommodate future developments in the market.
4. Orion has some concerns about the interpretation of the changes which could result in future amendments to clarify the intent of these Code changes.

Context

¹ https://www.ea.govt.nz/documents/4321/Omnibus-2_consultation_paper_-_December_2023.pdf

5. The responses contained in Appendix A are Orion's responses to the Authority's proposed changes of Option E and Part 6A:

- Option E – the intention to make option E permanent is based on visibility to all participants in the market on the price and demand side controllable load.
- Changes to Part 6A are to include all emerging technology with definition changes to future proof the Participation Code.
 - Amending Part 6A to include all generation technologies.
 - Availability of discretionary demand control.
 - Clarifying the scope effect of obligations.

Feedback

6. Orion's responses to the Authority's specific questions are included in Appendix A as well as other feedback we consider appropriate to the consultation.

7. In principle, Orion supports the Electricity Networks Aotearoa submission.

Concluding Remarks

Thank you for the opportunity to provide feedback. We do not consider any part of this feedback is confidential.

Please contact me if you have any questions or aspects of the submission which you would like to discuss.

Yours sincerely

Rob Tweedie

Regulatory Manager

Appendix A

Submitter	Orion New Zealand Limited
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Include all generation technology in Part 6A

Questions	Comments
<p>Q1.1. Do you support the Authority’s proposal to include all generation technology under Part 6A? Please explain your answer</p>	<p>Orion supports the Authority’s proposal to include all generation under Part 6A and agrees that:</p> <ul style="list-style-type: none"> currently non-rotating generation such as solar and batteries is not included when assessing a connected generator’s total capacity, and the distributor would be indifferent when promoting or inhibiting competition when the generation is rotating or non-rotating.
<p>Q1.2. Do you support the Authority’s proposal to create a new definition for “connected generator”? Please explain your answer</p>	<p>The Authority has suggested that “nameplate capacity” is no longer appropriate and the Code needs to address the total capacity definition and introduce the alternative, being ‘connected generation’.</p> <p>A generator’s “nameplate capacity” may be different to what can be generated to export back onto the network. The “connected generation” does not reflect well the ability to export onto the network. We propose that the Code requirement for “connected generation” includes recording maximum capacity the generator can generate when power goes off.</p> <p>In addition, we recommend including in “connected generation”:</p> <ul style="list-style-type: none"> Installed capacity – total (solar + batteries, etc.) Registered Capacity – inverter Export capacity – which is currently 5Kw per phase for smaller installations. <p>Orion supports this change to provide better transparency about the maximum amount of generation being offered into the market as energy or reserves, or ancillary services to the system operator.</p>

<p>Q1.3. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010</p>	<p>Orion agrees that the proposed amendment is generally preferable in Part 6A subject to comments below as when it was originally written it did not account for changes in technology discussed in the Omnibus.</p> <p>In terms of the option to amend the definition of total capacity, we do not think that it is desirable to amend a statutory definition to allow for a bespoke approach in the Code. This could create confusion. Either the statutory definition applies, or it does not.</p> <p>We also do not see the need for a full review of Part 6A at this time. However, when a full review is undertaken, we recommend that it includes whether there really is merit in capping EDB ownership of renewable generation, especially where this provides continuous power supply and supports the quality targets set by the Commerce Commission.</p>
<p>Q1.4. Do you agree with the analysis presented in this Regulatory Statement? If not, why not?</p>	<p>We agree with the analysis that distributors who own generation will need to reassess their generation, if any, and that the primary purpose is to ensure competition is not inhibited.</p> <p>We acknowledge that a full review of Part 6A may take up to 18 months to complete and that investment uncertainty may prevail but understand that the Authority would try and resolve this as soon as possible.</p>
<p>Q1.5. Do you have any comments on the drafting of the proposed amendment?</p>	<p>There are a few typing errors in the red line version:</p> <p>Appendix A: 6A.2 Interpretation</p> <p>(a) There appears to be a drafting error in paragraph (a) of the definition of connected generation where the proposed text refers to "offered into to, ...". The word "into" and "," should be deleted.</p> <p>(b) The reference in paragraph (b) of the definition of connected generation to the generation receiving payment is an odd turn of phrase as the generator receives payment, not the generation as such. We recommend that this states "generator is not receiving payment..."</p>

Clarify use and availability of discretionary demand control

Questions	Comments
<p>Q2.1. Do you support the Authority's proposal to permanently implement the intent of the urgent Code amendment, Electricity Industry Participation Code Amendment (Discretionary Demand Control) 2023? Please explain your answer.</p>	<p>Orion supports the Authority's proposal to permanently implement the Code amendment.</p> <p>Option E from the winter 2023 work programme operated as desired and provided visibility to market participants of the discretionary demand through the market schedules.</p> <p>We also support this change as soon as possible. The current temporary Code amendment expires this month, in February 2024 as the supply demand balance will continue to be a challenge into 2024.</p>
<p>Q2.2. Do you support adopting the term controllable load? Please explain your answer.</p>	<p>Orion supports the adoption of the term 'controllable load' as opposed to 'discretionary demand', as this implies that it can be offered to the market at the discretion of the participant.</p> <p>We recommend that the controllable load definition be extended to provide clarity that;</p> <ul style="list-style-type: none"> • the load notified as controllable is available at the time of notification e.g. at time of WRN , and • the load which remains available at the time of the GEN may be less or more than notified at the time of the WRN if the distributor has controlled (or reduced control, although less likely) for distribution reasons.
<p>Q2.3. Do you support the use of the term 'resources' over 'quantity of demand'? Please explain your answer.</p>	<p>Orion supports the use of the term 'resources' over 'quantity of demand' as it encompasses a wider range of technologies available in the market than purely demand.</p>
<p>Q2.4. Do you support the proposal to introduce two price-bands? Please explain your answer</p>	<p>Orion supports the introduction of the 2 price bands, which will enable distributors to :</p> <ul style="list-style-type: none"> • signal what would be available to control load when a formal notice is issued ('Requested Controllable Load'). The load could also be instructed under a GEN (Grid Emergency Notice), but the intention would be for this load to be requested under a WRN (Warning Notice) first

	<ul style="list-style-type: none"> • signal the load that will only be controlled when instructed, under a Grid Emergency Notice (GEN) <p><i>Note: EDBs offer controllable load without compensation</i></p>
<p>Q2.5. Do you support pricing requested controllable load at \$0.01/MWh? Please explain your answer</p>	<p>We support \$0.01/MWh for Warning (WRN) and Cautionary (CAN) notices as this is pre-emergency notice giving the system operator visibility and market participants sight of supply bids into the market.</p> <p>Scarcity will only occur at a Grid Emergency (GEN) stage and signal the need for additional capacity investment. We therefore agree that \$9,000/MWh is then appropriate.</p> <p>At this stage EDBs are not compensated for assisting in a Grid Emergency. In some cases, EDBs resource to provide the system operator with this information but receive no further feedback. We believe that some form of feedback should be provided that indicates when the notice has been cancelled, is completed or no longer active. Given the work and deferral of investment in capacity likely to be achieved, we submit that there should be compensation for distributors participating in and providing the load management service.</p>
<p>Q2.6. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010</p>	<p>We agree that the proposed amendment provides more clarity than the alternatives which would increase complexity in managing a tight supply situation in a situation which reflects scarcity conditions.</p>
<p>Q2.7. Do you agree with the analysis presented in this Regulatory Statement? If not, why not?</p>	<p>We agree that returning to the original Code would mean the controllable load would not be visible to all participants, and this would not be a desirable position for grid management.</p> <p>The permanent Code change will provide ongoing transparency of load management, which will also facilitate efficient price signals to the market.</p>

<p>Q2.8. Do you have any comments on the drafting of the proposed amendment?</p>	<p>We are concerned about the risk outlined in 3.15 on page 13. While we do not consider that it will affect EDBs, we would welcome a workshop to run scenarios and provide explanations of how this may be a risk.</p>
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Updating and clarifying the scope and effect of Part 6A obligations

Questions	Comments
<p>Q3.1. Do you agree the problems identified need addressing? Please explain your answer</p>	<p>Yes, we agree that the problems identified by the Authority should be addressed and that the Code should be consistent with the requirements of the Electricity Industry Act 2010 (“the Act”).</p>
<p>Q3.2 Do you agree with the proposals? Please explain your answer</p>	<p>In principle, we agree with the re-drafting of various clauses to clarify to whom the code obligations apply, and to remove references to the requirement for a mental element (i.e. ‘mens rea’) to establish a breach.</p> <p>This will clarify who has obligations under, the Part 6A rules and remove the requirement to establish a breach which aligns with the information disclosure obligations.</p> <p>As mentioned above, industry participants will have obligations in Part 6A, to participants directly rather than directors and managers. We would like to clarify that these obligations will not extend to all, but the most senior employees in a business. Only those in positions of authority and associated decisions-makers should be held accountable in terms of these provisions.</p>
<p>Q3.3. Do you agree with the analysis presented in this Regulatory Statement? If not, why not?</p>	<p>Regulated businesses are already governed by arms-length rules and related party transactions with the Commerce Commission disclosure requirements. Further regulatory arm’s length requirements should be considered carefully in light of the cost of corporate separation requirements if the Authority intends to impose such obligations.</p> <p>While we appreciate that these proposed changes are consequential to Parliament’s decision to shift the arm’s length rules from the Act to the Code, we are unsure that it will make it easier for participants to understand their obligations nor that it would streamline the Authority’s administration of Part 6A.</p>

	Market participation at a NZX level would need an arms-length relationship in order to avoid any market manipulation with generation prices. Although these participants would already have compliance obligations to the NZX.
<p>Q3.4. Do you have any comments on the drafting of the proposed amendment?</p> <p><i>(Clarifying the scope and effect of Part 6A obligations)</i></p>	<p>We make the following minor drafting comments in Appendix C:</p> <ul style="list-style-type: none"> • Clause 6A.4 Distribution agreements (4A), (4B) and (5) should be revoked and replaced with a new (4), (5), and (6) to simplify the numbering. • Clause 6A.8 Reporting Directors must report compliance with arm’s-length rules (1A), (1B), (1C), (2) and (3) should be revoked in full and replaced with a new (2) to (6) to simplify the numbering. • Schedule 6A.1 Arm’s-length rules Clause (1) should refer to “connected generators and other specified persons”.

Feedback on the omnibus format

Questions	Comments
<p>Q4.1 Do you consider the omnibus format should be continued as a way of consulting on several small but independent separate Code amendments?</p>	<p>The format works well for smaller Code amendments; the Authority should consider to what extent Omnibus consultations are used and at which point this type of consultation is no longer appropriate.</p>
<p>Q4.2. Do you have any comments on the omnibus format or suggestions to improve the omnibus format?</p>	<p>In some instances, a short workshop (online or face-to-face) might help to give participants the opportunity to ask questions and provide more educated responses.</p> <p>Where an Omnibus amendment proposes amendments to the same part of the Code but for different reasons, it would be useful to have only one version of the tracked changes to the Code that collates all of the proposed amendments. In the current consultation, there are two</p>

	<p>separate tracked Code changes for Part 6A. Readers are required to work out what the consolidated amended version might look like if both proposals are adopted. It would be more helpful if the consultation document contained a consolidated version e.g. it is preferable to read the tracked changes as a whole.</p>
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