

DOMESTIC CONSUMER CONTRACTS AND DISTRIBUTED GENERATION: GUIDELINES AND MODEL CONTRACTS

This document has been produced to set out the Electricity Commission’s expectations for:

- a. the contents of domestic consumer contracts; and
- b. distributed generation terms.

As discussed in this document, the expectations for domestic consumer contacts will not come into effect until after the alignment exercise in paragraph 21 has been completed. The expectations in respect of distributed generation terms take effect in accordance with paragraph 23.

This document in no way reduces the requirement upon participants to know and comply with their obligations under the EGRs. Neither should it be interpreted as reflecting the Electricity Commission’s view on EGRs.

Abbreviations used in this document

Code	Electricity Consumer Code of Practice Edition 2
Consumer	Electricity consumer who consumes electricity for domestic purposes rather than business purposes
DG guidelines	Guidelines for terms for the purchase of small surpluses of electricity
DG terms	Terms for the purchase of small surpluses of electricity
Distributors	Electricity Distributors
Domestic Consumer Contracts	Contracts for the supply of electricity and/or electricity line services to domestic consumers
EC	Electricity Commission
EECA	Energy Efficiency and Conservation Authority
EGCC	Electricity and Gas Complaints Commission
EGRs	Electricity Governance Rules
GPS	Government Policy Statement for Electricity Governance (October 2004)

Models	Model Interposed Domestic Contract, Model Electricity Only Domestic Contract, and Model Delivery Only Domestic Contract
Interposed Domestic Contracts	Contracts for the supply of electricity and electricity line services to Consumers where the Retailer is interposed between the Distributor and the Consumer
MGB	Metering and Reconciliation Information Agreement Governance Board
Model Delivery Only Domestic Contract	Model Domestic Contract for Delivery Only
Model Electricity Only Contract	Model Domestic Contract for Electricity Only
Model Interposed Domestic Contract	Model Domestic Contract for Delivered Electricity (Interposed)
MRCPT	Model Retail Contract Project Team
Retailers	Electricity Retailers

INTRODUCTION

1. Paragraph 12 of the Government Policy Statement on Electricity Governance (October 2004) (GPS) provides that:

“The Electricity Commission should ensure that the terms and conditions of contracts between domestic consumers and electricity retailers (and where applicable, contracts between domestic consumers and electricity distributors) reflect the reasonable expectations of consumers. The Commission should develop, in consultation with the Ministry of Consumer Affairs and other relevant interests, model terms and conditions or guidelines for these contracts. It should recommend regulations if model arrangements or guidelines are not comprehensively implemented.”

2. The GPS also sets out other matters relevant to the content of such model arrangements or guidelines (see paragraphs 13, 14, 18 and 19).
3. In addition, under paragraphs 112 and 113 of the GPS, the Electricity Commission (EC) is required to develop non-regulatory arrangements to achieve the GPS objectives in respect of distributed generation, in particular in relation to the purchase of small surpluses of electricity generation. The GPS says if voluntary arrangements are unsuccessful in achieving these objectives, the EC should recommend regulations or rules.
4. This document sets out how the EC has decided to give effect to these objectives in respect of:
 - (a) domestic consumer contracts; and
 - (b) distributed generation terms.

BACKGROUND

5. The Metering and Reconciliation Information Agreement Governance Board (MGB) initially assumed responsibility for developing model retail contracts (Models) and it established the Model Retail Contract Project Team (MRCPT) in July 2003 to progress the work. The MRCPT ceased work on the Models in May 2004 and the MGB forwarded the draft contracts to the EC to progress. The EC issued the Models for consultation in September 2004.
6. The EC received a number of submissions from electricity retailers (Retailers), electricity distributors (Distributors), consumer representatives and the Electricity Complaints Commission (now the Electricity and Gas Complaints Commission - EGCC). The EC made changes to the Model Domestic Contract for Delivered Electricity (Interposed) (Model Interposed Domestic Contract) to take account of these submissions.

7. The EC also asked the Energy Efficiency and Conservation Authority (EECA) to develop provisions to achieve the GPS objectives in respect of the purchase of small surpluses of electricity generation from distributed generation. EECA drafted some clauses which the EC adjusted and included as a schedule to the Model Interposed Domestic Contract.
8. The EC published the revised Model Interposed Domestic Contract, an explanation of the changes made and a summary of submissions on its website on 15 April 2005.
9. The EC held a workshop on 22 April 2005 to discuss the main issues arising from submissions. Representatives of a number of Retailers and Distributors, the EGCC and consumer interest groups attended the workshop. Interested parties were invited to make further written submissions by 29 April 2005. The EC has developed guidelines and made further changes to the Models to reflect discussions at the workshop and the further written submissions.

REQUIREMENTS FOR DOMESTIC CONSUMER CONTRACTS

10. This section sets out the EC's expectations for the contents of contracts for the supply of electricity and/or electricity lines services to domestic consumers (Domestic Consumer Contracts). A domestic consumer is an electricity consumer who consumes electricity for domestic purposes rather than business purposes (Consumer).
11. Attached to this document are:
 - (a) Appendix A1: Guidelines for Domestic Contracts for Delivered Electricity (Interposed)¹;
 - (b) Appendix A2: Model Domestic Contract for Delivered Electricity (Interposed);
 - (c) Appendix B1: Guidelines for Domestic Contracts for Delivery Only;
 - (d) Appendix B2: Model Domestic Contract for Delivery Only;
 - (e) Appendix C1: Guidelines for Domestic Contract for Electricity Only;
 - (f) Appendix C2: Model Domestic Contract for Electricity Only; and
 - (g) Appendix D – Distributed Generation Guidelines
12. The effect of the guidelines and Models is explained below.

¹ The Model Interposed Domestic Contract shows the changes made to the version of this Model published on the EC's website in April 2005.

Effect of guidelines

13. The guidelines reflect the specific content required by the GPS to be included in Domestic Consumer Contracts and the EC's view of the reasonable expectations of Consumers (based on the development and consultation process outlined above). The guidelines also incorporate the Electricity Consumer Code of Practice Edition 2 (Code).
14. Following completion of the alignment exercise discussed in the 'Alignment with other supply chain contracts' section below, the EC will publish updated guidelines (and Models). **The EC will expect Domestic Consumer Contracts to implement the updated guidelines.** In particular, Domestic Consumer Contracts should:
 - a. contain provisions consistent with the applicable guidelines; and
 - b. not contain any provisions inconsistent with the applicable guidelines.
15. Domestic Consumer Contracts may include:
 - a. provisions additional to those set out in the guidelines, provided these additional provisions are not inconsistent with the applicable guidelines; or
 - b. provisions which are more favourable to Consumers than those set out in the applicable guidelines.
16. Twelve months after the updated guidelines are published, the EC intends to undertake a review of Domestic Consumer Contracts to determine whether they implement the guidelines. If the EC considers that Domestic Consumer Contracts do not comprehensively implement the guidelines, the EC will be obliged by the GPS to consider recommending regulations. Before recommending regulations the EC would follow the process required by the Electricity Act 1992, including section 172F.

Effect of Models

17. The Models are examples of how the guidelines could be implemented. The EC considers that where a Retailer or (where applicable) Distributor adopts the applicable Model, the Retailer or Distributor will have comprehensively implemented the guidelines.
18. As long as a Domestic Consumer Contract implements the guidelines, however, the EC does not expect such contract to be in the form of the applicable Model. For example (without limitation):
 - a. where clauses have been included in the Models to provide a complete agreement rather than to reflect the guidelines, a Retailer or (where applicable) Distributor may wish to include its own provisions instead. Footnotes have been included in the clauses in the Model which implement a paragraph of the guidelines (or a requirement of the Code,

- which is incorporated into the guidelines). If no footnote is included in a clause, the clause does not reflect a paragraph of the guidelines;
- b. subject to compliance with the guidelines, a Retailer or (where applicable) Distributor may wish to:
 - i. combine a Model with their terms for small business customers (the EC understands this reflects some Retailers' practice of having 'mass-market' terms);
 - ii. restructure a Model to match its business processes or business model; or
 - iii. take a different approach to the Model to reflect innovative product offerings.
19. The foreword to each Model Domestic Consumer Contract is optional and may be amended or removed (i.e. inclusion of the foreword is not required in order to be considered to have adopted the applicable Model). Where the foreword is removed, however, the EC encourages Retailers and (where relevant) Distributors to provide equivalent information in a separate document and make this available to Consumers in the same way as the Retailer's/Distributor's Domestic Consumer Contract terms are made available.

Alignment with other supply chain contracts

20. In addition to the Models, the EC is also currently working on a draft transmission benchmark agreement and draft model distribution agreements. The benchmark agreement will cover the arrangements between Transpower and transmission customers. The model distribution agreements will cover the arrangements between Distributors and Retailers.
21. The EC intends to review the Models generally to address alignment issues once the transmission and distribution agreements are produced. Alignment of these three sets of agreements will be an iterative process. The provisions in the Models which the EC expects will need to be revisited to ensure alignment contain a footnote "to be aligned with model distribution agreement". If necessary, the guidelines will also be updated to reflect such alignment issues.
22. The EC expects this alignment exercise will occur in the fourth quarter of this year. The EC will publish updated guidelines and updated Models when that exercise has been completed.

DISTRIBUTED GENERATION

23. The EC sets out in Appendix D the "Guidelines for Distributed Generation Terms" (DG guidelines). The EC will publish on its website the date from which it expects Retailers to offer terms for the purchase of small surpluses of

electricity (DG terms) which implement those guidelines. In particular, Retailers' DG terms will be expected to:

- a. contain provisions consistent with the DG guidelines; and
 - b. not contain any provision inconsistent with the DG guidelines.
24. Not less than 3 months after the effective date of the DG guidelines, the EC intends to undertake a review of Retailers' DG terms to determine whether they implement the DG guidelines. If the EC considers that DG terms do not comprehensively implement the DG guidelines, the EC will be obliged by the GPS to consider recommending regulations. Before recommending regulations the EC would follow the process required by the Electricity Act 1992, including section 172F.
25. When the regulations for connection of distributed generation, which are currently being prepared by the Ministry of Economic Development, are finalised, the EC may publish updated DG guidelines and if so the EC will expect Retailers' DG terms to implement those updated DG guidelines within 3 months of their publication.
26. As noted in paragraph 3 of the DG guidelines, Retailers are free to develop their own DG terms provided they are no less favourable to Consumers in effect than Schedule 1 of the Model Interposed Domestic Contract. For example (without limitation) a Retailer may wish to:
- a. have a separate invoicing process for payment for electricity supplied by the Retailer on the one hand and electricity exported into the network by the Consumer on the other (rather than adopting the net invoice approach taken in Schedule 1);
 - b. have stand alone DG terms rather than adopting the approach in the Model Interposed Domestic Contract of combining terms relating to the supply of electricity by the Retailer and the export of electricity by the Consumer. In relation to Domestic Consumer Contracts, therefore, Schedule 1 is optional;
 - c. cover additional matters in its DG terms than are covered by Schedule 1 (e.g. terms dealing with safety, although the EC would expect safety to be covered in the Connection Contract with the Distributor);
 - d. enter into interposed arrangements under which the DG terms cover connection and lines services for exporting electricity in addition to payment for electricity exported to the network by the Consumer.