

23 April 2021

Phillippa Fox  
Ministry of Business, Innovation and Employment  
By email to [energymarkets@mbie.govt.nz](mailto:energymarkets@mbie.govt.nz)

Dear Phillippa

### **Compliance framework review of electricity regulatory governance**

1. This is a submission from the Major Electricity Users' Group on the MBIE consultation paper "Compliance Framework: Electricity" emailed to interested parties on 12<sup>th</sup> March 2021. Paragraphs referred to from the consultation paper are in square brackets.
2. MEUG members have been consulted in the preparation of this submission. This submission is not confidential. Members may lodge separate submissions.
3. MEUG agreed it was worth considering further the Electricity Price Review (EPR) Options paper of 18<sup>th</sup> February 2019 recommendation F5, "Update the EA's compliance framework and strengthen its information-gathering powers."<sup>1</sup> That recommendation was agreed by government. The MBIE consultation paper implements that decision by seeking feedback on EA compliance framework policy issues, options, and MBIE's preferred approach.
4. For each of the three issues considered:
  - Institutional structure.
  - Adequacy of maximum penalty, and ambiguity around continuing and recurrent breaches, etc.
  - Laying a complaint directly to the Rulings Panel.

MEUG supports the key recommended approaches by MBIE<sup>2</sup>:

- Not splitting the rulemaking and enforcing functions undertaken by the EA.  
As an aside it is worth noting that the newly commenced separate Rulings Panel web site, refer <https://www.electricityrulingspanel.govt.nz/> is a good initiative by the EA to reinforce the independent role of the Rulings Panel from the EA.
- The proposed combination of higher penalties and clearer rules [40], retaining limits on liability at their current level [50], and allowing greater discretion for the panel to award costs [54].

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<sup>1</sup> Refer MEUG to EPR, 22<sup>nd</sup> March 2019, p10, <http://www.meug.co.nz/node/991>.

<sup>2</sup> Key recommended approaches listed in this submission do not cover all the MBIE proposals to retain the status quo.

- Affected participants can lay a complaint directly with the Rulings Panel if the EA declines to investigate a breach of the Code [71] and other changes to improve the efficiency of the compliance regime such as investigators “may” rather than “must” attempt to reach a settlement [74].
5. The last question in the consultation paper asks, “Are there any other issues that we need to consider in relation to the compliance framework for the electricity industry?” MEUG raised three issues with the Electricity Price review related other regulatory framework issues rather than compliance framework as set out in the appendix in the next page.<sup>3</sup> Those three regulatory framework issues are still relevant:
- The EA should be able to set levies for specific purposes.
  - With changes to the sector likely with new technology and climate change policy effects, separating the system operator and grid operator functions of Transpower should be reconsidered.
  - MBIE must set and meet more frequent updates of the Electricity Demand and Generation Scenarios.

Yours sincerely



Ralph Matthes  
Executive Director

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<sup>3</sup> Refer MEUG to EPR, 23<sup>rd</sup> October 2018, p22, <http://www.meug.co.nz/node/958>.

33 *What are your views on the assessment of other matters for the regulatory framework?*

There are three other matters the review could consider:

- The Commerce Commission, after consultation and provided a net benefit is demonstrated, can set levies for specific purposes. The Commission has not exercised that option for Part 4 energy regulated businesses. The same option was not included for the EA when it was established in 2010. We think that was an oversight and any legislative changes arising from the review should include a provision to allow the EA to set levies for specific purposes subject to market consultation. For example, there may have been a case when the FTR market was being developed that the cost of implementing and subsequently operating that market could have been recovered from participants in the FTR market rather than the cost being uniformly spread across all consumers. The EA has previously proposed this as a legislative change and MEUG has supported that proposal.<sup>9</sup> Because the change is relatively small it has not been a priority for Ministers. Hence including this change with other electricity related legislative changes would be appropriate.
- MEUG opposed the system operator being granted a statutory monopoly in the reforms of 2010. We still believe that to have been a poor decision. With the uncertainty of the role of the national system operator and distribution network operators in the future, reverting to the prior position whereby the system operator had an ever-green contract with the EA subject to either party giving 7-years notice of expiry (but not excluding the option of Transpower tendering for the future contract) may provide more flexibility and options for different models to evolve.
- MBIE has failed to publish timely Electricity Demand and Generation Scenarios (EDGS) and revisions required by Transpower when preparing applications or approval of Major Capex and Listed projects. More recently Transpower's RCP3 proposal to the Commerce Commission has used Transpower's variations to the first and only EDGS that is now several years out of date. We seem to have reverted to the problem we had several years where Transpower decides the demand for their services even though they have an incentive to inflate the need for those rather than, as the 2010 legislative reforms proposed, MBIE prepare EDGS as a subset of a broader view of forecast demand and supply across all sectors of the economy. Either MBIE needs to step up and publish independent robust EDGS or another regulator or regulators such as the Commerce Commission or EA should be required to take on the responsibility.

<sup>9</sup> Refer MEUG letter to EA of 21 December 2012 at <http://www.meug.co.nz/node/523>