

Joint submission on the Electricity Price Review first report

1. The Electricity Authority and the Commerce Commission recognise that there are topics of common interest emerging from the Electricity Price Review first report. In this joint submission we have covered these topics of common interest. These topics appear in pages 76–80 of the first report.

We do have a number of areas of common interest

2. We have a number of areas of common interest due to the similarity of our purposes specifically relating to the electricity sector. We both ultimately work for the long-term benefit of consumers in the electricity industry, although the Commission's economic regulation under Part 4 of the Commerce Act is only in regards to the transmission and distribution part of the electricity sector. Both of our purposes encompass efficiency and reliability. The Authority is also tasked with promoting competition in the electricity industry. The Commission is also responsible for enforcing general competition laws, such as the laws relating to cartels and mergers.
3. We also have areas of common interest where there is not an overlap of purpose, but where one regulator's actions affect the other. For example, a change to the technical requirements of distributors set by the Authority could alter their costs, which would affect the Commission's price limit setting for distributors. Similarly the way in which the Commission regulates distributors may also affect distributors' behaviour in parts of the electricity sector where the Authority is responsible for promoting competition.

We take a coordinated approach to areas of common interest

4. We meet and discuss matters regularly at Board and staff level to ensure that we:
 - 4.1 take a coordinated approach to regulating distributors and Transpower;
 - 4.2 manage interactions, interdependencies and overlaps in pursuing our statutory objectives;
 - 4.3 coordinate monitoring and reporting of distributors and Transpower; and
 - 4.4 keep each other informed on matters and developments of common interest.
5. Working together at all levels is important because we can support and reinforce our mutual statutory objectives. For example, we coordinate in the following ways.
 - 5.1 We have established an 'electricity markets interface working group' where senior managers meet regularly to keep a close oversight of the interactions and interdependencies in pursuing our statutory objectives.

- 5.2 Members of the EA Board and senior managers have regular meetings with Commissioners and senior managers of the Commission every 4–6 weeks. At these meetings there is an agenda and papers from the Authority and Commission to focus discussion.
 - 5.3 The Commission has a permanent observer on the Innovation and Participation Advisory Group (IPAG). The IPAG is currently reviewing equal/open access to electricity networks which is an important area of interaction between both agencies.
 - 5.4 Staff arrange working-level meetings to have more detailed discussions on coordinating our approaches to regulation, and manage interactions and interdependencies in our statutory objectives. Examples include the recent review of Transpower’s Capex input methodology (IM), the review of related party rules, and our work related to open access.
 - 5.5 We are both active members of the Council of Energy Regulators, led by the Ministry of Business, Innovation, and Employment.
6. Our approach to coordination between ourselves was formally recorded in a memorandum of understanding in 2010.¹

We agree on the fundamental principles for regulating the electricity sector

- 7. We agree on the following fundamental principles, which are key to our regulation of the sector. We think these are particularly important given changes in the electricity sector arising from evolving consumer preferences, technology and innovation:
 - 7.1 We both generally agree that it is in the long term interest of consumers to promote competition in the supply of services in markets wherever practicable across the supply chain.
 - 7.2 Improving the efficiency of distributors and Transpower is in the long-term interests of consumers.
 - 7.3 If there is little or no competition, then incentive regulation (eg, information disclosure or price-quality regulation) of monopoly businesses is a proven means of promoting efficiency, and providing consumers with the reliability that they demand.
 - 7.4 Open access to distribution and transmission networks can promote competition across the electricity supply chain in an efficient way.
 - 7.5 Pricing is important in the electricity sector, and improvements to distribution and transmission pricing structures would benefit the economy.

¹ The memorandum of understanding is available on the Commission’s website: https://comcom.govt.nz/data/assets/pdf_file/0029/60788/MOU-Electricity-Authority-and-Commerce-Commission-December-2010.pdf.

However, the current legislation creates some challenges in coordinating regulation

8. The current legislative framework of the Electricity Industry Act 2010 and the Commerce Act 1986 creates some challenges to establishing and implementing a full and seamless package of regulation across the industry from us as the two regulators. This primarily arises from s 32(2)(b) of the Electricity Industry Act, which precludes the Authority from doing or regulating anything (under the Electricity Industry Participation Code) that the Commerce Commission is authorised or required to do or regulate (under Part 3 or 4 of the Commerce Act).²
9. We recommend consideration of whether s 32(2)(b) of the Electricity Industry Act can be improved to address ambiguities in responsibility of the Authority and Commission identified in the EPR First Report, and to allow the Authority to perform its functions and achieve its statutory objective. Additionally, we recommend considering a legislated process for the two regulators to address any ambiguities, resolve any regulatory overlaps, and particularly close any regulatory gaps as required without unnecessary court action. This process could be based on the one established by s 54V of the Commerce Act for interface with the Electricity Industry Act.
10. Without change, participants can continue to operate within the existing and potential regulatory gaps. This behaviour may have a negative overall effect on the electricity industry, to the extent it inhibits efficient and competitive deployment of innovative and new technologies and business models. We also note that any risk of inadvertent effects of any legislative change to address regulatory gaps should be considered.

We are undertaking work together on access to distribution networks

11. A key common interest that we are currently working on is access to distribution networks. A key objective is to promote competition in energy-related markets adjacent to the regulated electricity distribution service. Competitive input markets can play an important role in improving monopoly distributors' expenditure efficiency—promoting efficiency is part of both of our roles. Workable competition can also have a role in revealing the efficient cost of providing line services.
12. There are two broad types of adjacent markets: those that sell inputs to distributors (eg, aggregating distributed energy resources to sell network support services), and those that buy the distribution service as an input to produce an energy-related service (eg, retailers or providers of electric vehicle charging services). The ability to access energy networks (including access to network-related information such as constraints) and the terms of access are important features in promoting competition in these markets. Therefore, both the Authority and the Commission support open access to monopoly networks in ways that promote the long term benefits of consumers. We strongly agree that this doesn't necessarily require preventing distributors' participation in these adjacent contestable markets.

² There are some specific exceptions to this preclusion.

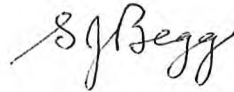
13. We agree that well-functioning competitive markets are a proven way to deliver long term benefits to consumers. Distributors have always had the option to self-supply the inputs they need to deliver an efficient service. A well-functioning competitive input market opens up new opportunities for distributors to purchase their inputs to deliver an efficient service. It also provides a way for distributors to benefit from the productive and dynamic efficiency benefits from using competitive markets. The prospect of using competitive input markets has increased significantly with technology and innovation in the electricity industry.
14. We agree that there should be no presumption that—as part of a competitive input market—distribution businesses should be precluded from self-supplying inputs to their own distribution network services. But we are interested in understanding whether there are circumstances where self-supply could impact the development of a competitive input market, eg, by lessening competition.
15. We agree that further work is required to better understand whether there are problems associated with the current regulatory arrangements for self-supply, and the scope for improving these arrangements to prevent barriers to well-functioning competitive input markets developing. We are working closely together on a joint work programme to understand this, and collaborating alongside the very important work IPAG is doing in this area. The Commission and the Authority are approaching the programme of work from their skills in both regulation and competition.
16. If we find that the arrangements for self-supply are a problem that needs to be addressed, as identified in the Electricity Price Review first report, we agree that it would be worth considering introduction of additional flexibility to use third tier rules to apply well-targeted and proportionate remedies if required.
17. We note that some stakeholders have suggested that there are a number of provisions in the Commerce Act which should be reconsidered. In their view—when combined with the broader s 52C definition of ‘consumer’ under the Commerce Act—these provisions tend to steer the Commission to regulate in a way that best promotes the interests of electricity consumers in their role as consumers of regulated distribution services, rather than in their role as end consumers of electricity. These provisions include the following.
 - 17.1 Section 52T(3)—a provision that requires the Commission’s cost allocation rules to avoid unduly deterring investment by a distributor in the provision of other goods or services.
 - 17.2 Section 54Q—a section which requires the Commission to promote incentives, and avoid imposing disincentives, for suppliers of electricity lines services to invest in energy efficiency and demand side management, and to reduce energy losses.
 - 17.3 S 52A—the purpose of economic regulation, which refers only to the consumer of electricity lines services, without explicitly giving the

Commission the option of considering the consumer of electricity more generally.

18. A careful consideration of the advantages and disadvantages (including any unintended consequences) of any legislative change should be undertaken. A predictable and stable regime is important.

A handwritten signature in blue ink, appearing to be 'Brent Layton', with a long, sweeping underline.

Dr Brent Layton
Chair, Electricity Authority

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

Sue Begg
Deputy Chair, Commerce Commission