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23 October 2018

VIA EMAIL: energymarkets@mbie.govt.nz

To the Electricity Price Review Secretariat,

Submission regarding the Electricity Price Review, First Report

Flick Energy Limited (Flick) appreciates the opportunity to comment on this First Report. Our submission encompasses this cover letter and the submission form **attached**. In this cover letter we have emphasised those issues of significant concern to us:

1. A view of a more sustainable energy future and why it is important to get the regulatory settings right;
2. The risk of missing this critical opportunity because of a poorly conducted review;
3. The two -speed market;
4. Vertical separation;
5. Concerns of market power in the wholesale market;
6. Poor regulation of the sector; and
7. Measures that we support for addressing energy affordability.

1. A view of a more sustainable energy future

This Government has a target of 100% renewable generation by 2035, this is a bold vision and it is patently clear that achieving it will require significant investment and change within the electricity sector. We need a strategy to support this transition. To develop an effective strategy this Review process needs to be critical and upfront about the challenges and trade offs. The current industry settings require reform. Without reform consumers will continue to pay the price of an industry with ineffective competition and gentailers who are prepared to exploit market power.

Fortunately, we are in a time when the economics of this sector are changing due to technological improvements. The economics of decentralised generation are beginning to stack-up. Consumer choice and control over their energy use and generation is becoming a reality as EV's, control technology, batteries and small scale generation are all falling in price and becoming more accessible. The

pressures of climate change and combination of technological improvements and changing economics mean that this sector should look fundamentally different by 2035.

Flick's model enables consumers to be true 'prosumers' and capture the benefits of adoption of new technology by providing clear and transparent pricing signals which consumers can use to make decisions about their use and adoption of technology.

The World Economic Forum outlined the potential benefits of digital transformation of the electricity sector noting that there is \$1.3 Trillion USD of private and societal value to be gained from these changes by 2025¹. New Zealand needs to be capturing this value now. However, the current barriers to competition and the existing market power are impeding the adoption of new technology and the success of new business models.

New Zealand's regulatory settings have a critical bearing on how successful this transformation will be - including if new businesses and technology can be adopted on their merits. But settings need to change to enable this transformation. If successful, the electricity sectors' transformation will have an impact on the productivity and the competitive advantage of New Zealand (and consequently our national wellbeing) - conversely, if not, it will put these in jeopardy.

2. Do not miss this critical opportunity to inform an effective strategy for the electricity sector

This Review is the opportunity to set the policy parameters and develop a strategy for a successful transformation that will deliver a more affordable and sustainable energy future for New Zealanders. We believe this critical opportunity is at risk because the Review Panel has failed to ask the necessary hard questions - and to undertake a level of basic analysis to inform this First Report.

There are glaring and fundamental gaps in the analysis. A review of this nature necessitates detailed analysis of market structures and competitive dynamics; in particular, consideration of market concentration and participant behaviour in both the retail and wholesale markets (spot and contracts). An obvious example of these gaps is that the First Report barely mentions the spot market, critically if the spot market is not working well then derivatives will not be efficient either. Market power will flow through the derivatives market to end consumers as higher prices, exacerbating affordability problems and hampering productivity.

Market structure and competitive dynamics are important factors to consider in order to define the 'problems' and come up with appropriate solutions and a cohesive strategy for the electricity sector. By contrast to this Review, the ACCC's review of electricity prices in Australia undertook detail analysis of these factors in both the generation and retail markets. The Review Panel must ensure equivalent work is undertaken for New Zealand and the findings made clear otherwise this Review will not be credible.

This First Report suggests that *'affordability should generally improve if prices reflect the cost of providing electricity at different times of the day.....'* In theory if there was effective competition this would be the case. However, given the lack of analysis undertaken, and the high levels of market power and barriers to retail expansion we observe in this market this is not a credible conclusion.

The New Zealand electricity industry is worryingly cosy (including the conflicting dual role of Government as policy setter and significant shareholder). We are also concerned that some participants have only provided data to the Review on the basis they will not be named. This is wrong, firms should be accountable for the way they conduct themselves in market. These influences must not

¹ https://www.accenture.com/t20170411T120540Z__w__/us-en/_acnmedia/Accenture/Conversion-Assets/WEF/PDF/Accenture-Electricity-Industry.pdf

impact the way this Review is conducted. In the interests of customers now and in the future we implore the Review Panel to be thorough, critical, to ask appropriate questions of participants and to be transparent about the findings.

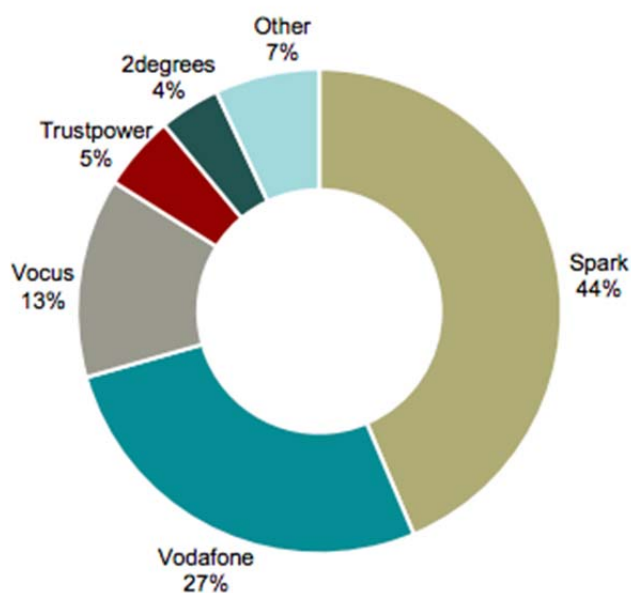
3. Two speed market - ineffective competition

Entrant retailers have long held the view that there are structural barriers to growth in this market, and that consequently many New Zealanders are paying more than they need to for electricity. The observation that there is a two speed market reflects these concerns.

There is price discrimination that can be blatantly unfair, for example customers that have switched to Flick have reported being offered a prompt payment discount 10% greater than standard, plus a \$350 credit - an approximately \$500 discount on what they (and presumably many others) were previously paying.

In contrast to electricity, where the Big 5 still hold 90% of the market share, in a much shorter time entrants to the telecommunications market have been able to enter and erode Spark's market share. In that market the benefits of competition have been 'socialised' with generalised downward pressure on pricing (i.e not just for switchers). There is also proactive retention of customers (eg. offers for upgrade of broadband speed and data allowances) and vigorous price based above the line competition².

Figure 9: Estimated broadband retailer market share by connections



In contrast to the telecommunications sector electricity retailers face the following barriers to growth:

1. Uneven access to the wholesale market (Refer section below on vertical separation);
2. Information advantages and price discriminations - the switching rules give rise to an opportunity for the outgoing retailer to save/ winback the customer;

² https://comcom.govt.nz/_data/assets/pdf_file/0020/63821/2017-Annual-Telecommunications-Monitoring-Report-20-December-2017.PDF

3. A regulator that does not actively promote or police competition and is heavily influenced by incumbents (Refer section below on regulation).

We believe that these barriers can, and should be, eliminated as a result of the Review. We also think the Government has an opportunity to address the inequities created for customers as a result of the two speed market and 'accelerate' competition in the slow part of the market. We are weary of restrictive tariff regulation that has been adopted in Australia and the UK, they would inhibit the operation of innovative offerings and have negative impact on competition.

Instead, our proposed solution is for Housing New Zealand (with the possibility of widening it to Ministry of Social Development clients ~ 300,000 individuals) to run a tender for supply of all properties (63,000 sites), and that for the first tender round participation should be restricted to independent entrants. This approach would have the benefit of delivering savings (upward of \$25M) to some of the most vulnerable New Zealanders and stimulating competition.

In addition, Housing New Zealand could work with a partner to develop community scale generation to serve these communities. The development of more decentralised generation will also create more competition and improve the resilience of communities. The generation held by communities of interest will be an important part of a fairer and more sustainable energy future.

4. Vertical separation

The gentailer structure stymies competition in this sector. The Government must move to vertically separate gentailers and to implement stronger measures to address market concentration/market power.

Vertical integration could be considered beneficial if the benefits of the 'natural hedge' were been passed on to consumers by way of lower prices, but this is not the case for the vast majority of incumbent gentailer customers who are paying higher prices than they need to be.

Vertically integrated firms are leveraging their position in the wholesale market to gain advantage over, or to foreclose competitors in the retail market and vice versa. These actions are evidenced by current market behaviour including:

1. **Aggressive levels of price discrimination exercised defensively** -i.e as a save or winback rather than proactive retention before switching. Customers are commonly reporting receiving offers of \$350 plus a 10% discount on their current tariff. Gentailers have made public statements to the effect that this competition is unsustainable and they expect there to be industry consolidation - this begs the question of whether these unsustainable offers are predatory?
2. **The difficulty some independent retailers face accessing hedge contracts on reasonable terms** These concerns have been identified by independent retailers on many occasions.³
3. **The market power currently being exercised in the spot market** (which we discuss further below on wholesale market performance).

We know that there are suggestions that vertical integration is beneficial because of New Zealand's hydro dominance and because it lowers the cost of capital for building new generation. However we have seen nothing that would substantiate that this benefits consumers (it obviously benefits vertically integrated incumbents). Arguably, better competition outcomes could be achieved through a deeper and more liquid forward contracts market that would evolve out of vertical separation.

³ <https://www.ea.govt.nz/development/advisory-technical-groups/mdag/meeting-papers/2018/15-march-2018/>

The behaviours above demonstrate that gentailers actions are not fair or reflective of effective competition. As a result vertical integration poses too much risk of predation and inefficiencies as we go through a period of change. It is critically important that there is a regulatory framework that provides opportunity for each new technology to be adopted on its merits. This requires a level playing field for all competitors and clear incentives. Clear boundaries between each part of the value chain (generation, transmission, distribution, retail and metering) will make it easier to identify opportunities for innovation, and allow regulatory frameworks to be adapted appropriately as needed through a period of change.

This transparency will also create tension and scrutiny on each part of the value chain by regulators and participants vertically above and below. This tension has an important role in improving the effectiveness of regulation and the efficiency of the sector. By way of example, the vertical separation of Telecom means considerable and vocal scrutiny of Chorus's conduct and efficiency by retail participants which is informing the Regulator and influencing outcomes. In our market the gentailer structure and dominance means this tension does not currently exist.

5. Wholesale market performance

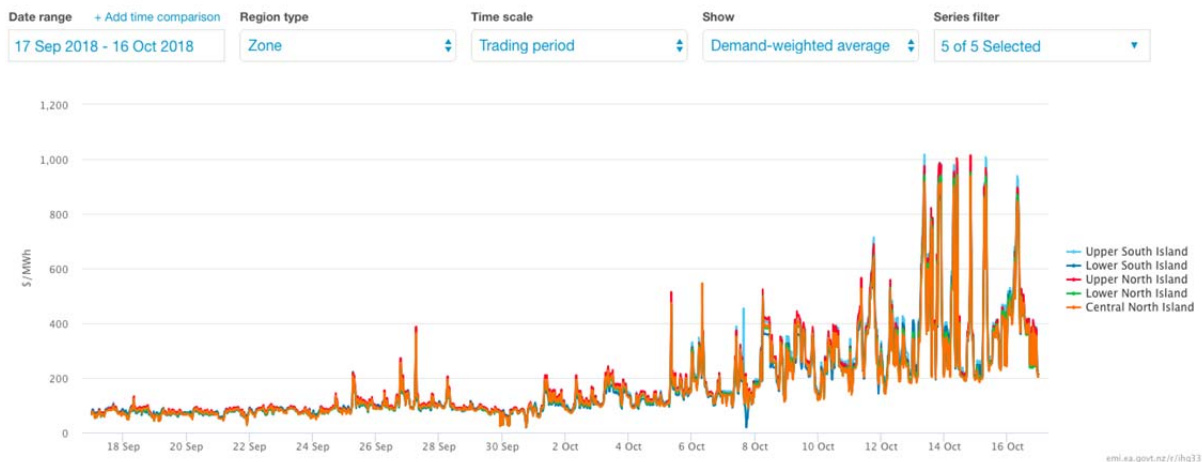
The NZEM relies on effective competition to achieve efficient outcomes. It is important to consider whether the wholesale market is sufficiently competitive and consequently are pricing outcomes in the wholesale spot market efficient and fair?

Given expected increases in demand, and more intermittent renewables, tight supply circumstances are likely to become more commonplace. So it is essential that we have a market design that produces fair and efficient outcomes as our economy transitions more of its energy use to electricity.

There is significant concern that the high degree of market concentration creates market power and ineffective competition in generation. We are also concerned that this market power will compromise the transition to an increasingly electrified and lower carbon economy, and it will exacerbate affordability and negatively impact economic productivity.

As we write this submission we are observing the market through a period of sustained high prices - it is an alarming picture. It is not likely to be short lived, there is a real possibility the conditions over the past fortnight persist till the end of November. The chart below shows the demand weighted prices

over the past month⁴.



In the mix there is:

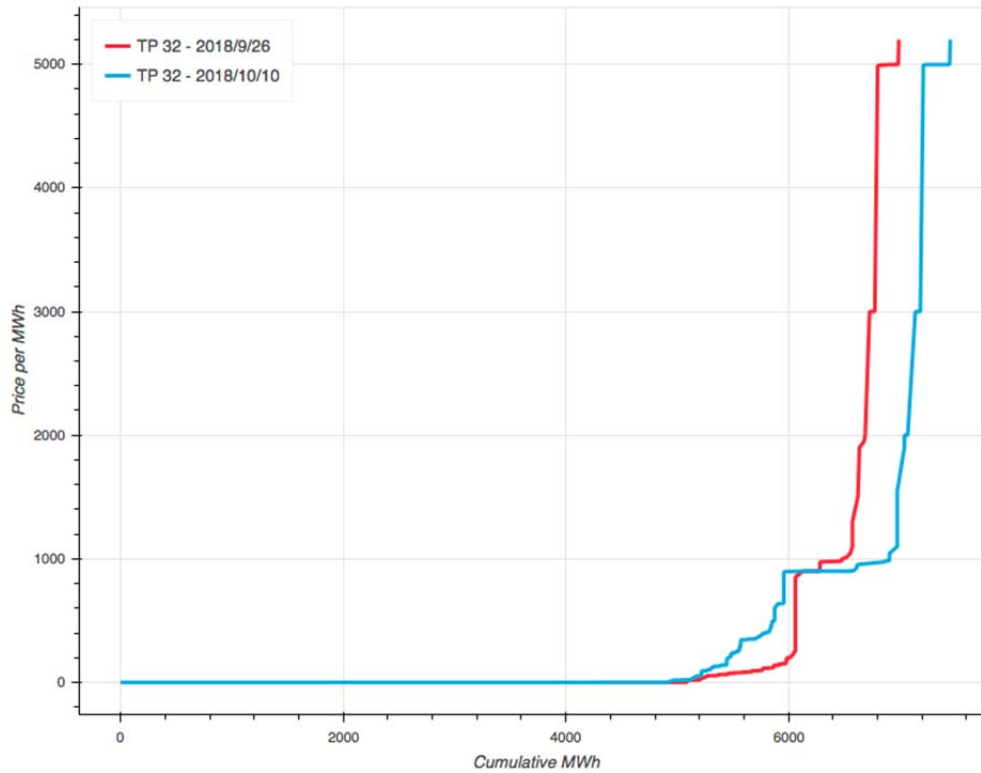
- National hydrological storage at 73% of average for this time of year
- Pohokura gas field outages
- Thermal generation plant outages

There has been very limited (and delayed) information disclosed to the market about the gas and thermal plant outages - obviously this is concerning- and questions have to be asked as to why the Electricity Authority has not done more to clarify what is happening.

Lack of transparency aside, the Electricity Authority has responsibility for monitoring security of supply and they have not implemented security of supply measures - market power is driving these incredibly high prices. Given the lack of competition in the market, generators are not facing the downward pressure necessary to drive efficient pricing outcomes. This is illustrated by the market supply curves for the 30min period -*Supply curve in TP 32 on 26/9/2018 and 10/10/2018*. The market supply curves incline sharply beyond the approximate point of gentailers matched demand, and this curve moves in or out depending on the quantity of demand in a suspiciously uniform way as illustrated by *Daily cleared energy and offer stack on 10/10/2018*.

Supply curve in TP 32 on 26/9/2018 and 10/10/2018

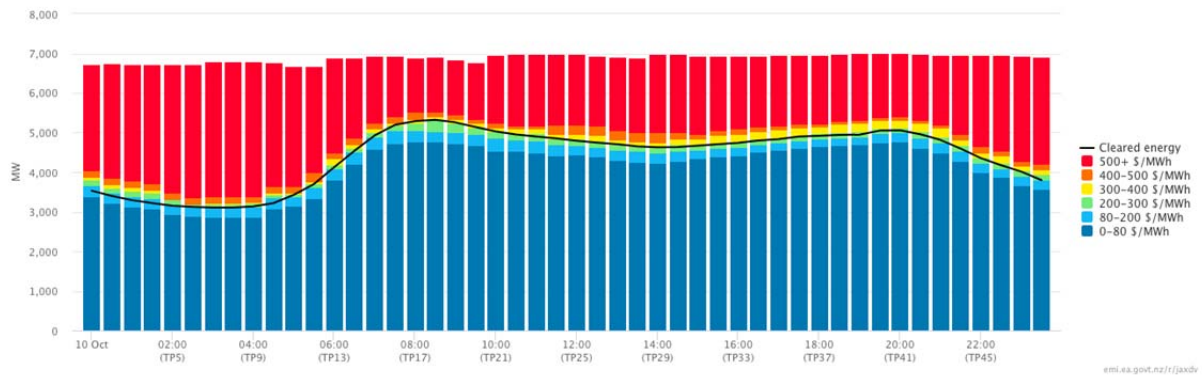
4



Daily cleared energy and offer stack on 10/10/2018

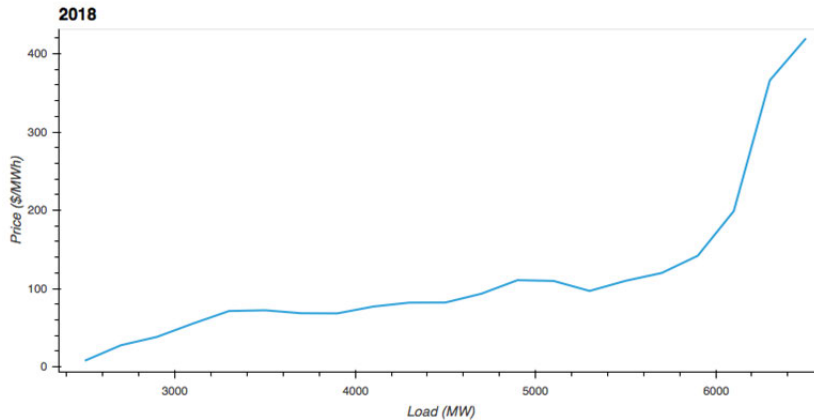
Date:
 Region type:
 Region:
 Band 1 max:
 Band 2 max:

Band 3 max:
 Band 4 max:
 Band 5 max:



NZ Market Supply Curve 2018⁵

⁵ This curve was generated with data from:
https://www.emi.ea.govt.nz/Wholesale/Datasets/Final_pricing/Load_Generation_Price/.

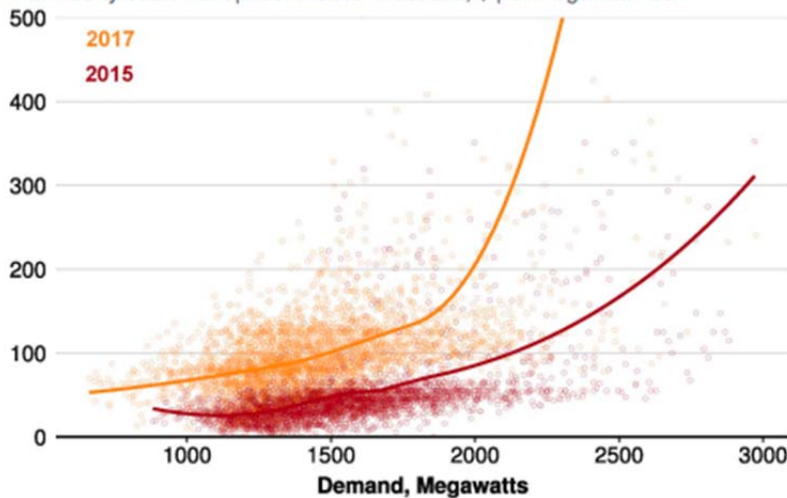


The NZ Market Supply Curve 2018 above for the year to date is very similar to the supply curve for South Australia (and Queensland) in the chart below. These are also markets with concentration and market power problems. It is pertinent that the ACCC has seen similar market outcomes in South Australia and Queensland as cause to implement measures to disaggregate generation because of the obvious and damaging levels of market power.

A.2 South Australia

Figure A.5: Supply curves have moved up and left in South Australia as input costs rise and generators close

Half-hourly settlement price in South Australia, \$ per megawatt hour



Notes: The faint circles represent the settlement price and demand for each half hour in that 12-month period. The lines are the average of all these half-hour settlement periods, or the 'supply curves'.

Source: Grattan analysis of AEMO (2018a).

We strongly believe market concentration and market power issues need to be addressed as part of this review.

6. Regulation of the sector

We believe the Electricity Authority is failing to regulate this sector with the independence and vigour necessary to fulfil its responsibility for promoting competition and the interests of consumers. The Electricity Authority has done a great job supporting entry to this market. However they have failed to follow through and ensure that the regulatory settings allow growth and support effective competition.

Here are some of the concerns we have about the Electricity Authority:

1. The operating approach of the Electricity Authority relies too heavily on working groups dominated by incumbent representatives. It is not serving the interests of entrants or consumers well and they are too open to capture by the incumbents. An example is the lack of consideration of entrant and consumer perspectives as part of the Saves and Winback's debate.
2. They have failed to acknowledge, or have minimised issues related to the effectiveness of retail competition:
 - a. The First Report notes the potential for systematic discounting to commercial customers and this was not investigated further by the Electricity Authority.
 - b. The 'two speed' market has not been flagged as an issue requiring attention, even in briefings to Ministers.
 - c. Potential savings from switching have been minimised by choosing data in a way that does not paint an accurate picture by looking at open term contracts only - as demonstrated by this table from the Review's *Analysis of Retailer Billing*

Table 1: Estimated average savings (\$/year) available to consumers from switching

Region	Savings based on 'X'th percentile			Electricity Authority estimate
	10 th	5 th	1 st	
New Zealand	240	280	400	
North Island	230	270	380	195
South Island	250	310	440	242

3. The Electricity Authority are failing to scrutinise market behaviour and pricing outcomes in a timely and public way. They have failed to provide transparency over gas supply and thermal plant operation issues this year.
4. The processes for ensuring compliance with the market rules are inappropriately casual. We recently submitted Breach Notices alleging Contact and Genesis had failed to comply with their obligations to disclose material changes to the market. We were subsequently telephoned by an Electricity Authority staff member who asked us to withdraw these allegations because they had had an initial look and were not convinced there was a problem. This strikes us as an inappropriate approach to compliance, if there is in fact no breach we would expect the Electricity Authority to formally notify this finding.
5. They are reluctant to acknowledge market power can be incredibly damaging and where there have been issues of 'bad trading behaviour' the response has been too slow and light touch, and as a result lacks the necessary deterrent effect. For example Meridian Energy was given a warning for its 2 June 2016 failure to meet trading standards.

6. The Electricity Authority are too slow in progressing improvements to industry arrangements. For example, a Model Distribution Agreement has been on the work program since the Authority was formed.

We believe the industry needs a stronger independent regulator, this requires more robust monitoring and independent decision making.

7. Affordability

Energy affordability is a real problem that needs targeted measures to fix it. This needs to be a combination of actions by Government and Industry. The table below summarises some of the changes that would improve energy affordability:

Industry	Government
<ul style="list-style-type: none"> ● Improve competition (eliminating saves and winbacks, addressing vertical separation) so there is downward pressure on prices for all consumers. ● Require late payment fees to reflect the reasonable costs rather than being punitive. ● Name and shame those companies that price discriminate unreasonably between their long standing and their new customers. ● Make Powerswitch more user friendly. Use actual data and rid it of confusing content. ● Make sure tariffs are communicated in common and sensible formats. For example headline rates for residential customers should include GST. ● Require Network Companies to offer a TOU/ off peak- on peak rate option, this will allow price conscious consumers to benefit from shifting their usage to off peak times. 	<ul style="list-style-type: none"> ● Improve the quality of housing <ul style="list-style-type: none"> ○ HNZ properties should be exemplars of energy efficiency and energy technology ○ Rental WOF ○ Targeted insulation grants ● Use the Government’s bargaining power to negotiate the best rates for HNZ/ MSD clients. By eliminating the late payment/ disconnection/ reconnection costs for these customers and having them on a competitive rate we believe there would yield massive savings - it is plausible that \$400 could be saved per customer p.a, for the 63,000 HNZ properties this is about \$25M in saving (and a lot of stress and anxiety avoided) for some of the most vulnerable consumers. The Government should also limit this to entrant retailers who have not been the cause of the injustice in the ‘two-speed’ market where incumbent retailers have prices discriminated. ● Review the impact of the winter energy payment.

We are concerned about suggestions from some for an ‘affordability’/ default tariff for low income consumers that is subsidised by other energy users. We believe this is also likely to have a distortionary impact and increase energy costs for all other users, like the Low Fixed Charge arrangements currently do. As a principle social subsidies should be the remit of Government and not industry.

We are eager to work with the Review Panel to ensure that the most is made of this opportunity to set New Zealand up for a more sustainable and fairer electricity industry. If you have any questions about this submission please contact me.

Yours sincerely,



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ELECTRICITY PRICE REVIEW

SUBMISSION FORM

How to have your say

We are seeking submissions from the public and industry on our first report into the state of the electricity sector. The report contains a series of questions, which are listed in this form in the order in which they appear. You are free to answer some or all of them.

Where possible, please include evidence (such as facts, figures or relevant examples) to support your views. Please be sure to focus on the question asked and keep each answer short. There are also boxes for you to summarise your key points on Parts three, four and five of the report – we will use these when publishing a summary of responses. There are also boxes to briefly set out potential solutions to issues and concerns raised in the report, and one box at the end for you to include additional information not covered by the other questions.

We would prefer if you completed this form electronically. (The answer boxes will expand as you write.) You can print the form and write your responses. (In that case, expand the boxes before printing. If you still run out of room, continue your responses on an attached piece of paper, but be sure to label it so we know which question it relates to.)

We may contact you if we need to clarify any aspect of your submission.

Email your submission to energymarkets@mbie.govt.nz or post it to:

Electricity Price Review

Secretariat, Ministry of Business, Innovation and Employment

15 Stout Street

PO Box 1473

Wellington 6140

Contact details

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Use of information

We will use your feedback to help us prepare a report to the Government. This second report will recommend improvements to the structure and conduct of the sector, including to the regulatory framework.

We will publish all submissions in PDF form on the website of the Ministry of Business, Innovation and Employment (MBIE), except any material you identify as confidential or that we consider may be defamatory. By making a submission, we consider you have agreed to publication of your submission unless you clearly specify otherwise.

Release of information

Please indicate on the front of your submission whether it contains confidential information and mark the text accordingly. If your submission includes confidential information, please send us a separate public version of the submission.

Please be aware that all information in submissions is subject to the Official Information Act 1982. If we receive an official information request to release confidential parts of a submission, we will contact the submitter when responding to the request.

Private information

The Privacy Act 1993 establishes certain principles regarding the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information in your submission will be used solely to help develop policy advice for this review. Please clearly indicate in your submission whether you want your name to be excluded from any summary of submissions we may publish.

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Summary of questions

Part three: Consumers and prices

Consumer interests

1. *What are your views on the assessment of consumers' priorities?*

- We agree there is no typical customer. Customers have different needs, preferences and priorities.
- We see customers engaging with Flick in a variety of ways from checking their price and consumption many times a day to not being engaged and everything in between.
- In general we are seeing an increasing awareness of emerging energy technology. We've already provided the Electricity Price Review Panel survey data supporting this.

2. *What are your views on whether consumers have an effective voice in the electricity sector?*

- The Electricity Authority is our main regulator. The approach to regulation devolves a large amount of influence and decision framing to working groups that are dominated by industry representatives. As a result the EA have not been strong independent advocates for consumers or competition. We note that the EA has made a point of providing opportunity for 'consumer representatives' to participate in working groups. Although well -intentioned this it is not an effective way of hearing the customer voice. The electricity industry is full of technical complexities. It is unrealistic to expect a consumer representative without industry experience to contribute effectively to complex discussions about technical issues. Efforts have also been made to include new entrant retailers in working groups but because of the very nature of these businesses they do not have the scale to participate that the incumbents enjoy.
- The EA has an objective to regulate in the long term interests of consumers, unfortunately they haven't done this with the vigour expected (for example, why have they not focused on why so many customers are paying over the odds, or the two speed market as issues). We believe it would be appropriate to set customer outcome related targets. It would also be appropriate to rethink the use of working groups. We believe the EA should take a stronger role in developing rules drawing on the advice of the working groups for technical aspects rather than devolving responsibility to them.
- Our view is that a 'Customer Champion' with an understanding of the industry should be appointed. We have had interactions with Energy Consumers Australia (ECA). They do a great job mediating the complexity of industry requirements and consumer needs and representing customer interests in policy forums. The role of the 'Customer Champion' should be modelled on the ECA.

3. *What are your views on whether consumers trust the electricity sector to look after their interests?*

- Consumer New Zealand's research suggests 48% of consumers do not think energy providers have their best interests at heart. The survey has limitations because of sample size and skew but the result is nevertheless concerning.
- Customer views are obviously mixed. The observations that 'prompt payment discounts' are unfair and obfuscating, that loyal customers are often paying over the odds, and it's hard to compare tariffs, are valid reasons for consumers to distrust the industry. The incumbent gentailers actions often do not align with their public statements of being socially responsible.
- At Flick we make the components of a customer's price transparent and the vast majority of Flick customers are on a spot based tariff. Over the past year we have found it very challenging to explain why some series of high prices have occurred. We are of course concerned that these prices may in fact be driven by market power rather than underlying supply and demand. The exploitation of market power obviously results in unfair and inefficient pricing outcomes which undermine consumer confidence. We have found the Electricity Authority to be complacent in this area, demonstrating an attitude 'that it is simply the market - that's the game so live with it' without any demonstrable statement that market power can be detrimental to customers or competition (Flick and other customers buying spot product face this detriment in short term price rises, and the remainder of retail customers more generally suffer this detriment through higher prices over the long term).
- More needs to be done to make the activities and profits of different players in the sector transparent, and to address any exploitative behaviours.

Prices

4. *What are your views on the assessment of the make-up of recent price changes?*

The assessment reflects the macro price trends. It would be valuable to pick the price movements apart and analyse what is driving them - and who is paying for them in more detail.

We are surprised the estimated retail costs are about 5c per KWh on average, our own are about 4c per KWh (including metering) and given we are currently focused on residential consumers we would have expected other retailers may have economy of scale advantages.

There are aspects of industry structure that also influence whether the prices paid are reflective of value. We believe the efficiency of industry structures could be improved (and this would reduce costs, which ultimately flow through to consumers) including the following areas:

- Removing barriers to effective competition that drive lower prices for the whole market (refer comments on removing saves and winbacks opportunities and vertical separation).
- We are strong advocates for predictable and cost reflective pricing methodologies. We can demonstrate that the network pricing approach such as used in Orion, which is GXP based, drives a 'risk/ uncertainty' premium which is paid by consumers. This needs to be addressed
- Standardising metering charges.
- Addressing decentralised and replicated market and network reconciliation processes (moving these functions to an efficient centralised model like Australia).
- Ensuring all customers have smart meters.

5. *What are your views on the assessment of how electricity prices compare internationally?*

Energy markets internationally vary so much in terms of population, generation source, storage capacity, interconnection, geography, market design and related policy it is obviously very difficult to compare prices between them and make conclusions about comparative performance.

That said it is valuable to look at other markets that do have lower costs than New Zealand and consider if there are any aspects of their market design and industry configuration that we could replicate.

On the face of it the fact that New Zealand electricity prices have risen faster than most in the OECD is concerning.

6. *What are your views on the outlook for electricity prices?*

This section lacks considered analysis, it seems speculative to make simple conclusions about the price trajectory.

Given the many variables that could influence price we believe it would be valuable to look at a series of demand and supply scenarios that could eventuate, and from that work identify price trends and emerging issues.

If the last 6 months spot prices are anything to go by the outlook is worrying - as supply tightens there can be sustained high prices and what on the face of it looks like tacit collusion. Harm will flow through to end consumers from this.

Affordability

7. *What are your views on the assessment of the size of the affordability problem?*

Flick agrees with the assessment that affordability 'is a real problem and it needs targeted measures to fix it'. It is clearly multifaceted and both industry and government have a role in addressing it.

8. *What are your views of the assessment of the causes of the affordability problem?*

As mentioned above energy poverty is a multifaceted problem and there is a role for industry and Government to play in addressing it.

We support the assessment made of factors impacting the price paid by consumers, there are areas where it may be possible to improve outcomes through industry change.

However there are also many other factors that are outside the electricity industry's control which may have a significant role in reducing the affordability problem - for example the housing stock or the Ministry for Social Development's processes for supporting clients that resolve cash-flow and credit risk issues. It would be valuable to collect data in these areas both to identify if there are improvements that could be made, but also so improvements can be tracked as solutions are trialed.

9. *What are your views of the assessment of the outlook for the affordability problem?*

We agree with the observations that the benefits of technology advances may not be accessible for low-income households. We believe this is where the Government has a role in supporting adoption of new technology through targeted policies when the economics stack up - for example solar and battery systems on Housing New Zealand properties.

The impact of pricing structures needs more consideration, cost reflective pricing is not in and of itself entirely negative. The Lines Company is one example of how tariff design can create significant winners and losers, however other versions of cost reflective pricing are not as punitive or unpredictable. Most Flick customers are exposed to dynamic wholesale market pricing, many of our customers make significant savings by shifting their flexible consumption (eg switching off hot water cylinders, running the washing machine) to lower cost times of the day. Consumers can be incentivised (through tariff structures) and encouraged to take these simple actions.

Summary of feedback on Part three

10 *Please summarise your key points on Part three.*

- Consumers could be given a better voice.
- There are sound reasons why consumer trust in the sector has been eroded and that is driven by the behaviour of incumbents.
- International market comparisons are not valuable for determining performance of the market because there are too many difference between markets. It is however worth considering what characteristics drive lower costs - and borrowing from those markets.
- Affordability is a complex issue that requires action from both industry and Government.
- The outlook for prices will be influenced by industry structure and competition as much as by technology change.
- The benefits of new technology adoption may not be equitable, this may warrant targeted Government measures to support adoption by low income households.

Solutions to issues and concerns raised in Part three

11 *Please* briefly describe any potential solutions to the issues and concerns raised in Part three.

Consumer interests

1. Flick would support funding an expert to advocate for consumers. This person should have a deep understanding of electricity markets and economics so they can advocate effectively for consumers in complex discussions. They should also have a responsibility for engaging with consumer groups.
2. Review the operating model of Electricity Authority so that they act as an independent regulator championing the interests of consumers, rather than the current mode of being wedded to incumbency.
3. We believe it would be appropriate to set customer outcome related targets for the Electricity Authority. This is likely to sharpen their focus on advocating for the consumer.

Prices

1. Improve competition dynamics and downward pressure on prices for all consumers. There are a number of measures that we believe would support this including:
 - o Requiring vertical separation of retail and generation activities so that costs are transparent and incentives uncompromised.
 - o Prohibiting saves and winbacks and use of consumer data by a retailer once a consumer has decided to leave that retailer. In the New Zealand telecommunications market where saves and winbacks do not occur, consumers have benefited from increased above the line price competition and proactive retention activity based on price. This has resulted in socialisation of the benefits of competition unlike the two speed market that has evolved in the retail electricity market.
2. Undertake analysis to determine the extent to which incumbent gentailers are price discriminating and how this links to customer tenure and switching behaviour.
3. Name and shame those that unreasonably price discriminate.
4. Remove the Low Fixed Charge regulations.
5. Improve the transparency and comparability of prices. There may be a need for the Commerce Commission to require retailers to comply with the Fair Trading Act, by ensuring they do not use the term 'discounts' to describe late payment penalties, it is wrong and in the words of the Commerce Commission '*It would be misleading for a business to keep claiming it was discounting a price when the discounted price had become the usual selling price*'. Equally, a convention among most electricity retailers (Flick included) has formed to advertise prices for residential customers excluding GST this also adds to consumer confusion.
6. Undertake scenario analysis of future electricity prices to understand the possible implications of new technologies. This would be valuable for informing policy decisions.
7. Consider developing a new centralised market operations model/ data function, this would eliminate the need for replication of market and networks reconciliations by many parties. It would also allow better data access for all participants who need it - including the SO and networks.
8. Require Network Companies to offer a TOU or Offpeak/ Peak tariff option. This would retain cost reflectivity but would allow those customers who are price sensitive to adapt their consumption to minimise costs.

Affordability

1. Housing New Zealand becoming the exemplar of energy efficient properties.
2. MSD/ Housing New Zealand taking on payment of electricity services and using

their bargaining power to get a better deal for all of their clients by tendering for supply. This would remove credit risk and eliminate the significant costs currently associated with late payment, disconnection, and reconnection - not to mention the health costs flowing from a cold, damp home.

3. Ensure those consumers seeking MSD support are on the cheapest available supply options.
4. Requiring any late payment fees charged by retailers to be reflective of the cost rather than punitive.
5. Improving Powerswitch so it is based on actual usage data and is not confusing to use.
6. Analyse the impact of the Winter Energy payments. Determine if they have actually been used to keep homes warmer. Also consider if more value could be achieved for recipients by ensuring they are on the best tariff.
7. The EA should test strategies for encouraging switching for those groups of customers that remain with the incumbent and are known to be paying over the odds - for example, communicating with customers that they are not on the cheapest offer and how much they could save by switching.
8. Please note that we do not support:
 - a. An 'energy hardship' style tariff where a group of customers would receive a discounted tariff, the cost of which is socialised among all other energy consumers. Rules around eligibility would be fraught. This would also present a cost burden and barrier to growth for entrant retailers. Subsidies are, of course, better managed through government social policy.
 - b. Default tariffs. We believe the first priority should be to ensure a level playing field for all competitors then the prices benefits of competition are more likely to be socialised. Equally default tariffs are likely to increase customer complacency toward switching further entrenching the existing market structure.

Part four: Industry

Generation

12 *What are your views on the assessment of generation sector performance?*

What about the spot market?

We were very disappointed by the limited depth of your assessment. It is a striking oversight that spot market performance was barely mentioned. Unless the spot market is operating efficiently it is misguided to rely on the associated contracts market to produce efficient market outcomes or resolve market power issues. This is a point that has been heavily emphasised by ACCC in their recent studies into the Australian electricity market.

Given that New Zealand's generation remains highly concentrated this should be cause for considerable scrutiny. Market power that is unfettered will deter investment in new generation by independent generators. It also has implications for the retail market and the sustainability of independent competition.

As an independent retailer it is very challenging to scrutinise trading conduct because of limited transparency. We also lack faith in the Electricity Authority's ability and interest in scrutinising behaviour with the vigour and timeliness necessary.

There have been few investigations into poor trading conduct/ abuse of market power. Where poor trading conduct/ abuse of market power has been identified it is incredibly disappointing to see the Electricity Authority respond so slowly and without the force necessary to deter it - an example being the warning letter given in May 2017 to Meridian Energy when their trading behaviour on 2 June 2016 was found to breach the high standard of trading conduct provisions.

We believe market power is persistent rather than short term. It is exacerbated as supply gets tighter but is not limited to half hour periods - it can be sustained for seasons where competitor behaviour becomes more predictable and there is limited downward pressure on prices, we've seen it this winter.

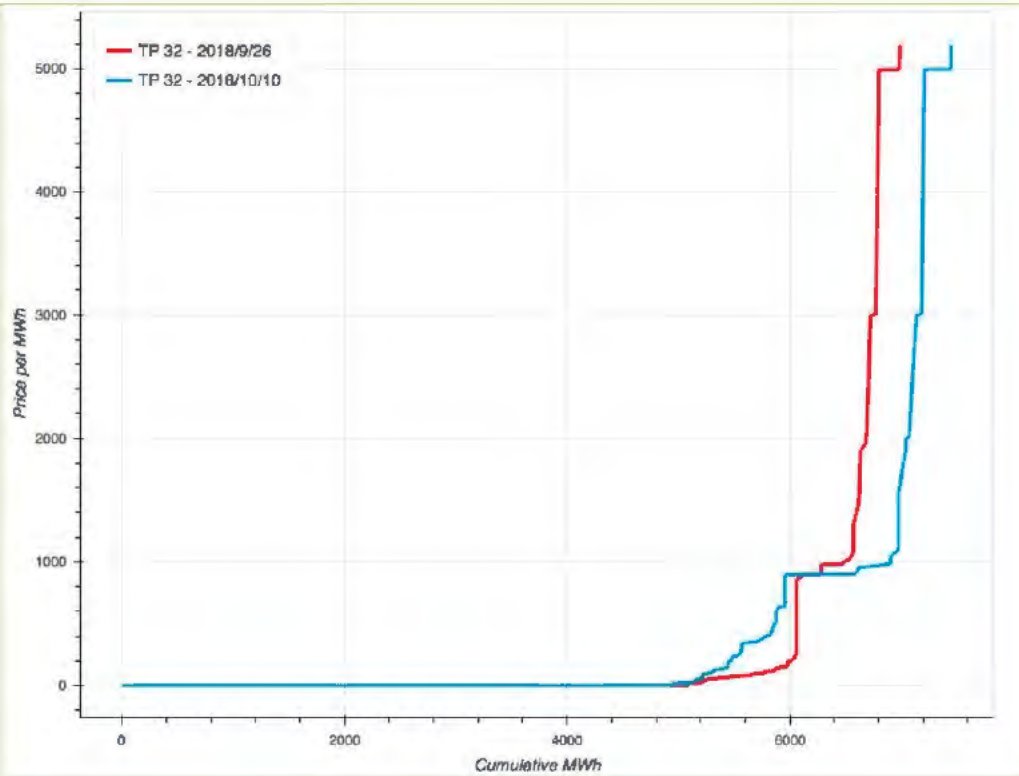
Given it is expected that supply conditions will continue to be tight as there is increasing electrification of the economy we do not believe the current market settings will deliver fair or efficient outcomes for consumers.

As we write this submission we believe we are also observing pricing outcomes heavily impacted by market power.



The supply curve increases very steeply beyond the naturally hedged load. If the market were more competitive the supply curve would be flatter.

Supply curve in TP 32 on 26/9/2018 and 10/10/2018

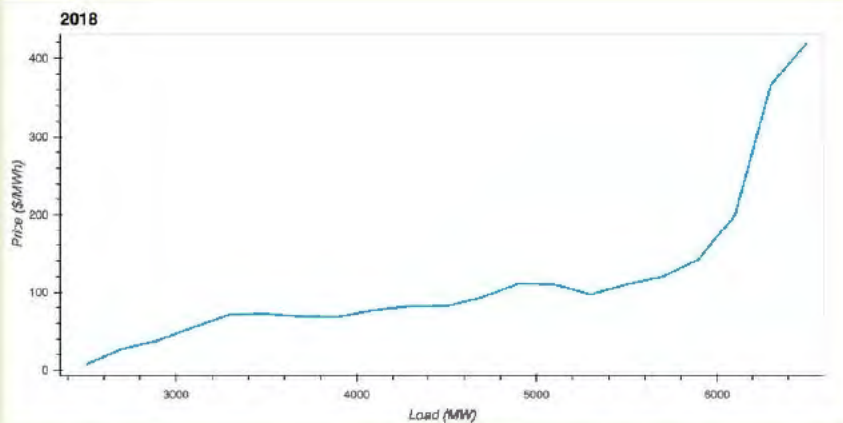


Daily cleared energy and offer stack on 10/10/2018



NZ Market Supply Curve 2018¹

¹ This curve was generated with data from:
https://www.emi.ea.govt.nz/Wholesale/Datasets/Final_pricing/Load_Generation_Price/.

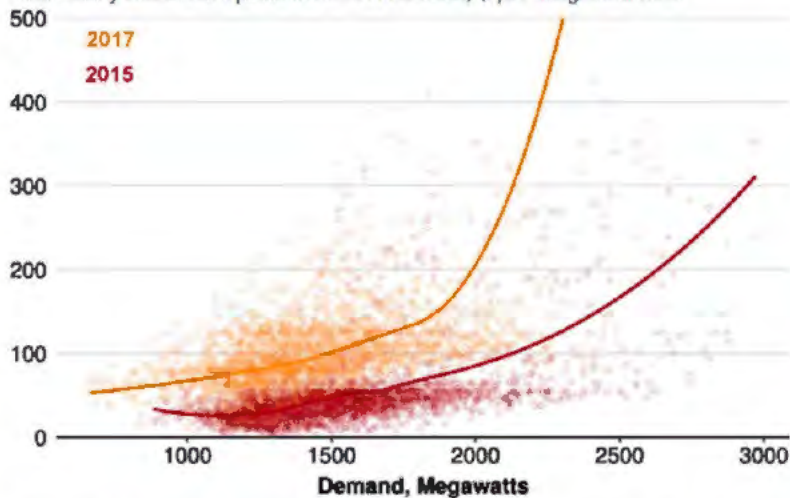


The NZ Market Supply Curve 2018 above for the year to date is very similar to the supply curve for South Australia (and Queensland) in the chart below. These are also markets with concentration and market power problems. It is pertinent that the ACCC has seen similar market outcomes in South Australia and Queensland as cause to implement measures to disaggregate generation because of the obvious and damaging levels of market power.

A.2 South Australia

Figure A.5: Supply curves have moved up and left in South Australia as input costs rise and generators close

Half-hourly settlement price in South Australia, \$ per megawatt hour



Notes: The faint circles represent the settlement price and demand for each half hour in that 12-month period. The lines are the average of all these half-hour settlement periods, or the 'supply curves'.

Source: Grattan analysis of AEMO (2018a).

We are left questioning the fundamentals of this market and what is transpiring:

- Is this political point scoring by thermal operators at a cost to our customers?
- Why were the reasons for material changes in thermal operation not disclosed to the market?
- Why are issues with Pohokura gas field being suggested as explanation for issues when production at Kupe does not appear to be significantly impacted?
- Why were they not signaled in the futures market?
- Given the response of competitors - is there tacit collusion?
- Why has the EA not responded?

- Given the above, why does the EA not insist on gas supply monitoring like it does hydro?

The contracts market

While we are only participating in the contracts market in small quantities, we are concerned about the effectiveness of competition for hedge contracts. We have concerns about the lack of liquidity and depth of that market, and the ease at which it can be manipulated.

The existing market maker obligations do not hold as supply tightens, given we should expect fairly tight conditions as demand grows through electrification of more parts of the economy, these voluntary arrangements should not be relied on.

New generation

It would be valuable to consider what organisations are planning to develop new generation and the extent to which this impacts market concentration.

Issues requiring more detailed consideration

We believe the following issues warrant more detailed consideration:

- Market concentration
- Use of market power in the spot market and reserves market
- Inaccurate forecasting leading to increased costs for consumers
- The need to consider whether a capacity mechanism may be required in order to maintain 'firm' generation for non rainy, sunny or windy conditions.
- Transparency and scrutiny of behaviour and how effective the EA has been
- 'Access pricing'/ vertically integrated players preferentially pricing to their own retail business.

13 *What are your views of the assessment of barriers to competition in the generation sector?*

Refer comments above in 12.

We disagree with you. Market concentration remains high, the market share of the big 5 has only fallen 8% in almost 30 years and remains at 90%, this fact seems at odds with your conclusion of low barriers to competition.

In our view these factors create significant barriers to competition in the generation sector:

- Market concentration and market power of gentailers
- Significant investment costs
- Lead time to develop generation
- RMA limits where new generation can be developed

Further, the virtual asset swaps were designed to address a problem - they were an arrangement that was put in place because of the problematic regional concentration of former SOE's.

This is an issue which again requires considered attention. We do not support extension of these swap agreements because they entrench gentailer dominance. We believe a better regulatory response would be to require vertical separation and implement measures to address market concentration.

14 *What are your views on whether current arrangements will ensure sufficient new generation to meet demand?*

Refer comments above in 12 and 13.

It would be valuable to identify where the 'sweet spot' is in terms of falling generation prices and the percentage of renewables in the system.

It is also important to note that, perversely, existing players can have an incentive to delay investment to maintain scarce supply/ high prices as demand grows.

Further, we note that much of the new generation proposed is intermittent. We agree with the Productivity Commission's view that there may be insufficient incentives to retain back-up generation. New incentives should be considered.

We believe it is important for measures to be developed that:

- prevent further regional concentration.
- promote a level playing field by vertically separating gentailers. This would stimulate the depth and liquidity of the contracts market for the benefit of all parties looking to invest in new generation.
- ensure incentives exist for back-up generation. We believe it is worth considering an incentive in addition to improving the contracts market.

Retailing

15 *What are your views on the assessment of retail sector performance?*

We are concerned about the two speed market that has evolved. We agree with the Minister's observation that the market is not working for everyone.

The benefits of competition, innovation and downward pressure on prices, are not being shared by all. There are also questions to be asked of market participants, particularly incumbent gentailers, and also of the barriers to competition (which we address in 16. below).

Participant behaviour

As an entrant we participate in the fast part of the market where competition is driving sharper prices and spurring innovation. We do not believe in, nor engage in, price discrimination between customers. We provide great customer service - we have topped Consumer New Zealand's customer satisfaction survey for 2017 and 2018 . We provide customers with tools (carbon rating, live price notifications) and cost reflective pricing options (Freestyle - our spot pricing, or Fixie - where the price is fixed for 6 month periods).We work hard to be transparent and communicate clearly. We charge a fair and transparent fee for our service in managing our customer's supply.

By way of contrast our largest competitors, particularly the gentailers, engage in the following worrying behaviours:

- Price discrimination, often charging 'loyal' customers significantly more than new customers, or those that attempt to switch.
- Charging punitive late payment penalties (prompt payment discounts);
- Engaging in confusing/ opaque marketing practices: for example not making all residential tariffs publically available.

We hope that Panel will analyse the billing data provided as part of this review in light of the above. We suggest those retailers that engage in the most problematic behaviour are named, our hope is that this would spur customers of these retailers to switch to better offers and resolve the 'problems' themselves.

Customer information and switching

Information about tariffs can be very confusing. The 'What's My Number?' and Powerswitch websites are not particularly user friendly and there are significant (and not necessarily accurate) assumptions that drive the recommendations. There is plenty of room for improving this.

Our experience is that entry to the retail market is relatively straightforward, rather the issues are around the market rules and the industry structure which make it challenging to grow.

The Electricity Authority does a good job supporting entry to the market with useful information and a willingness to help entrants understand and fulfil technical requirements. However, they have done a poor job reducing barriers to growth and independently scrutinising conduct.

The continued dominance of the Big 5 is a symptom of barriers. Independent entrants have not been able to enter this market and significantly grow their market share and operate sustainably. By contrast over a much shorter time period entrants have been able to enter the retail telecommunications markets and make significant inroads.

https://comcom.govt.nz/data/assets/pdf_file/0020/63821/2017-Annual-Telecommunications-Monitoring-Report-20-December-2017.PDF.

We are of the view that vertical integration and current regulatory arrangements limit the opportunities for sustainable entry and growth in this industry, in contrast to the telecommunications market, electricity retailers face the following barriers:

Uneven access to the wholesale market

Other than general competition law there are no rules to ensure independent retailers and gentailers face the same wholesale costs. There appears to be a significant differential between the internal 'transfer price' and market prices.

It also appears like there is limited competition/ possibly tacit collusion during times of tight supply. This is incredibly detrimental for customers like ours that are passed through the cost of the spot market. This behaviour driven risk also drives up the cost of contracts generally, which impacts independent retailers ability to compete.

Information advantages and price discrimination

Because of the allowance of saves and winback activity there is an opportunity to price discriminate and predate competition, this creates a significant structural advantage for incumbents who dominate the market.

Fair and independent regulation

We have become increasingly concerned by the Electricity Authority's lack of interest in the sustainability of competition. Problems with current market arrangements are often minimised - some examples:

- The figures used by the EA often minimise the extent of issues eg estimated average savings from switching;
- We noted that in the briefing to the new Minister of Energy there was no mention of the two speed market that's evolving - this strikes us as an obvious oversight given the EA's statutory objective requires them to promote competition for the benefit of consumers;
- The lack of consideration of entrant and consumer views as part of the win-back/ saves debate.

We believe this is a result of the EA's work agenda and decision making processes which are heavily influenced by incumbents. It also seems to speak to an underlying pervading view that electricity is a game for the Big 5 - that independents do not carry the same legitimacy - which is of course neither right nor fair.

We understand that in some industry forums there have been suggestions that the lack of success of entrants is because they are not sufficiently sophisticated, obviously is not the case. We for example have a team with significant sector expertise. Vocus have significant expertise in the New Zealand and Australian markets in both energy and telecommunications, they have demonstrated significant success in the New Zealand telecommunications market and are clear that the electricity market is challenging because arrangements do not support effective competition to the extent they could.

Vertical integration

17 *What are your views on the assessment of vertical integration and the contract market?*

We believe that vertical integration is one of the features in the industry that limits effective competition in both the wholesale and retail market. We believe the benefit of 'natural stabilisation' is outweighed by the throttling impact vertical integration has on competition.

The current market structure means that independent players face the price of the markets (spot and contract) while vertically integrated players do not - to the extent their retail positions are matched by generation. As a result the spot and contract market pricing outcomes are not borne equally by all retail participants.

Vertically integrated firms can leverage their position in the wholesale market to gain advantage over/ or foreclose competitors in the retail market or vice versa. In the context of our market this is demonstrated by behaviours including:

- The aggressive levels of price discrimination between retail customers of incumbent gentailers;
- Discounting to commercial customers compared to the contract price offered to competing retailers as noted in the report;
- The difficulty some independent retailers face accessing hedge contracts at reasonable prices.

These issues have been raised by independent participants for sometime as outlined in this letter from the The Alliance of Independent Retailers (TAIR) 4 May 2017.

<https://www.ea.govt.nz/development/advisory-technical-groups/mdag/meeting-papers/2018/15-march-2018/>

Work on the depth and liquidity of the contracts market alone is simply not sufficient to deal with the problems created by vertical integration and market power - as long as the integrated retail businesses can avoid the wholesale market. The report suggests that market power is 'short term' but it is not, there are high degrees of market concentration in generation - and new power plants are take significant time and cost to develop.

Vertical integration also has the consequence of a lack of tension (or incentives to criticise) the performance of the generation sector by the retail sector. We see this in the few voices that raise concerns about wholesale market behaviour and also in the lack of effort invested in demand side response by gentailers.

18 *What are your views on the assessment of generators' and retailers' profits?*

There is not sufficient information available to make an assessment.

We think the review should also be attempting to look at the profits made by the retail and generation businesses of gentailers. One of the obvious risks of vertical integration is that their position in generation can be leveraged to foreclose retail competition.

Transmission

19 *What are your views on the process, timing and fairness aspects of the transmission pricing methodology?*

We agree with view that the process could have been more expedient.

Distribution

20 *What are your views on the assessment of distributors' profits?*

Flick shares the concern of other retailers about distributors investing in 'competitive' activities as regulated businesses. Increasingly there will be opportunities for new technologies to be an alternative to 'lines' (for example battery and solar supply as an alternative to lines in rural areas). It is important that there is a robust process for identifying where these opportunities exist and allowing competition for the opportunity. This does not need to preclude distributor participation provided it is on an arm's length basis - and that this is stringently monitored and enforced.

21 *What are your views on the assessment of barriers to greater efficiency for distributors?*

Flick strongly supports consolidation of distributor operations and in particular the smaller Trust owned networks that often lack the scale or competence to operate efficiently (we have seen UOSA agreements referring to the Y2K bug and MARIA). Requiring compliance with the same requirements as the non-community owned companies may encourage better management and consideration of alternative operating structures. Community ownership is an obvious barrier to ownership consolidation but it should not preclude arrangements such as a joint venture for management and operation of the networks.

We agree that there needs to be more cost reflective pricing but there should be a limited set of forms for tariffs and they need be attributable to end consumers. 'GXP' based demand pricing like Orion, does not serve customers well because it has resulted in a retailers pricing in the 'risk' they are exposed to as a result of an uncertain pricing structure. This needs to be addressed - and certainly not replicated further.

We believe a centralised data model and regulation of metering services warrants consideration. This would resolve many of the concerns around meter data access for distribution companies. Retailers rightly hold genuine concerns about privacy, data security and use of the data by the non -regulated arms of distribution companies for competitive advantage for example targeting battery/ solar or other sales.

22 *What are your views on the assessment of the allocation of distribution costs?*

We support cost reflective pricing, unfortunately this may result in households paying more because of the 'peakiness' of their demand. However provided there is a distribution tariff option that is TOU or Off Peak/ Onpeak then there is an opportunity for consumers to shift their flexible demand to avoid costs. This is an appropriate incentive and it works - we see customers who are aware of the price signal regularly shift their load (eg washing, switching off the hot water) to a lower priced time period.

23 *What are your views on the assessment of challenges facing electricity distribution?*

We agree with the assessment of the challenges. We are also concerned that the size and competence of many distributors means they will not be well placed to adapt to the changing demands.

Summary of feedback on Part four

24 *Please summarise your key points on Part four.*

Generation

- There is a high degree of concentration in the generation sector.
- Spot market behaviour needs consideration.
- Market power is a problem.
- The Electricity Authority has not regulated effectively
- The contracts market will not solve problems of market power in the spot market.
- An incentive for 'firm' generation may be necessary.
- Asset swaps should not be continued.
- It would be valuable to identify the desirable mix/'sweet spot' in terms of intermittent renewable penetration and price.

Retailing

- It is not a level playing field - saves and winbacks, access to the wholesale market, and large gentailer incumbencies tilt the field.
- It is generally the incumbents that have engaged in problematic/ detrimental behaviour.
- Customer information supporting switching could be clearer and more usable.

Vertical integration

- Vertical integration is problematic, is causing harm and is limiting competition.

Solutions to issues and concerns raised in Part four

25 *Please briefly describe any potential solutions to the issues and concerns raised in Part four.*

Generation

- Implement measures to prevent further market concentration, this could include: preventing new investment in concentrated regions, administering prices where a generator does not face competition.
- Address market power, consider changes to pricing structures- eg administered pricing where a generator is pivotal, limits on price that are reflective of available supply.
- Increase scrutiny and explanation of market pricing outcomes and make sure this is timely.

Retail

- Improving the transparency of retail offer information and the ease of switching. Switching sites could be driven by actual usage data if there was a centralised data model.
- Remove the opportunity to engage in saves and winbacks.

Vertical integration

- Require ownership separation of generators and retailers.

Distribution

- Apply regulation to all distributors regardless of ownership.
- Incentivise consolidation of distributor businesses/ require shared investment for some forms of asset eg IT systems.

Part five: Technology and regulation

Technology

26 *What are your views on the assessment of the impact of technology on consumers and the electricity industry?*

We generally agree with the assessment. We do however have concerns about the sustainability of competition and the potential for vertical integration (gentailers with mixed incentives) to inhibit the adoption of new technology on its merits because of market power and mixed incentives.

27 *What are your views on the assessment of the impact of technology on pricing mechanisms and the fairness of prices?*

Unless there are changes to the market design, we believe there is a real risk high electricity prices inhibit the adoption of technology, such as EV's, because as demand increases there is tighter supply and more market power.

The Low Fixed Charge Regulations should be revoked, as this section discusses they are distortionary and not benefiting households they were intended to.

We support tariff structures being more reflective of the cost of supply. We believe all networks should offer a TOU or Off Peak/ On Peak tariff options. It may be appropriate to require solar users to adopt this type of tariff, or a tariff with a higher fixed cost if justified based on the cost to maintain services to a site.

28 *What are your views on how emerging technology will affect security of supply, resilience and prices?*

We are concerned that the push to 100% renewables may significantly increase the volatility of prices and risk of insecure supply. As discussed earlier we believe an incentive to maintain firm supply may warrant consideration.

Regulation

29 *What are your views on the assessment of the place of environmental sustainability and fairness in the regulatory system?*

As a business we are of course supportive of the concepts of fairness and sustainability, increasingly these values have currency with consumers in their own right. It is not necessary to build sustainability or fairness measures into the objectives of the EA - rather sustainability and fairness should be an outcome of good regulation.

30 *What are your views on the assessment of low fixed charge tariff regulations?*

They need to be removed. They are distortionary, and outmoded - there is confusion regarding the intended purpose of these regulations.

31 *What are your views on the assessment of gaps or overlaps between the regulators?*

The Use of System Agreements should fall under the Commerce Commission. It is appropriate for an economic regulator to have oversight of contract terms of a monopoly.

Smart Metering Services should also be subject to Commerce Commission regulations. There should be a standard rate card and standard minimum terms of service. The availability of data services and rates are not standard between retailers and metering service providers.

The Electricity Authority should take a more active and responsive role in monitoring competition and performance in the wholesale market.

32 *What are your views on the assessment of whether the regulatory framework and regulators' workplans enable new technologies and business models to emerge?*

We believe the Electricity Authority needs to have an increased focus on effective competition and achieving a level playing field. A level playing field will ensure technology is adopted on its merits.

We also think the data model for the industry may need to be centralised in order to better facilitate new technologies and business models.

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

We have touched on concerns about the Electricity Authority throughout this submission. We believe they need to do a better job promoting competition and the interests of consumers. The Electricity Authority needs to operate with more independence. The working groups are relied on too much to influence the policy direction of regulation rather than been focused on providing technical input.

Summary of feedback on Part five

34 *Please summarise your key points on Part five.*

Technology

- We generally agree with the assessment of issues.
- We are concerned that the gentailer structure may inhibit the adoption of new technologies and business models.
- LFC regulations are distortionary.
- More intermittent generation may warrant consideration of incentives for firmer supply.

Regulation

- Network Use of System Agreements vary in quality and reasonableness, there has been slow adoption of the model UOSA, and often when it is 'adopted' it has been varied. It is impossible to negotiate the terms with a monopoly.
- Smart metering services vary in cost and quality and are not subject to price regulation even though it is a service dominated by a small number of players.
- The Electricity Authority has not regulated with the independence that is necessary.

Solutions to issues and concerns raised in Part five

35 *Please briefly describe any potential solutions to the issues and concerns raised in Part five.*

Technology

- Ensuring opportunities for investing in alternatives to 'lines' are contestable.
- A centralised data model may enable better management and access to data across the industry.
- Vertical separation will be required so new business models can compete on a level playing field, and new technologies succeed on their merits.
- All Networks should be required to offer a TOU or Off Peak/ Peak tariff.

Regulatory

- Network Use of System Agreements should be regulated by the Commerce Commission
- Smart metering services should be subject to Commerce Commission regulation.
- The Electricity Authority needs to regulate the sector with more independence.

Additional information

36 *Please briefly provide any additional information or comment you would like to include in your submission.*