

22 March 2019

Miriam R Dean CNZM QC
Chair, Electricity Price Review
Secretariat, Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

via email: energymarkets@mbie.govt.nz

Dear Chair

Submission on the Electricity **Price Review's options paper**

The BusinessNZ Energy Council (**the 'BEC'**) is pleased to have the opportunity to provide a submission to the Electricity Price Review Panel (**the 'Panel'**) on its options paper, published on 20 February 2019.¹

Introduction

The BEC supports the Panel putting consumers at the heart of the electricity price review. The options paper outlines the importance for electricity prices to be fair and affordable for consumers, as well as efficient or competitive. We recognise that even with cost-reflective, efficient prices, outcomes can emerge that are undesirable for some consumer groups. However, a competitive electricity market is a desirable objective in itself, and a strategy of mostly using competitive tools to deliver on it an appropriate one. It is important to review the market multidimensionally including affordability as one of the dimensions. Understanding the conceptual gap between what the market can reasonably be expected to deliver, and the other outcomes the Panel wishes to achieve speaks to the identification of problems and the allocation of appropriate, matching solutions.

In our last submission, we commissioned an independent report by the Sapere **Research Group ('Sapere')** to assess the Panel's first paper on the state of the electricity sector. As part of our submission we referred to five enduring public policy objectives against which a robust, resilient electricity system can be assessed. In this submission, we continue to use this framework to group and assess the recommendations provided in the options paper.

¹ Background information on the BusinessNZ Energy Council is attached in Appendix One.

General comments

However, before providing any specific comments on each of the **Panel's** proposed recommendations, we would first like to provide the following general comments:

- a. overall, the BEC considers the recommendations to be a good start and it is important that those proposals with broad support be implemented quickly. We welcome the majority of the recommendations in section A (strengthening the consumer voice) and section B (reducing energy hardship (see the table below for our view on those we offer a different perspective on));
- b. the review is a good opportunity to assess the sector as a whole including its future fitness, especially with the respect to technology. The terms of reference for the electricity price review states the following:

"The review will consider: The potential impacts of emerging technology on services and prices, and how this may affect different customer groups. The current regulatory framework and its ability to promote the potential benefits from emerging technologies."²

However, **the current outcomes don't seem to provide much input on** the future fitness of the electricity market and the role future technologies will play including the effect of technology on electricity pricing;

- c. it is not clear from the options paper whether the Panel intends to put forward all of the recommendations it agrees with, and if so, if there is a sequencing over time. We would like the Panel to develop a coherent, robust package that includes the **Panel's vision of** what a better electricity market might look like. As we noted in our submission on the draft Terms of Reference:

"it is unclear what outcomes are being sought from a successful review. How will the review panel, let alone market participants, understand what a successful review might look like, or the standards against which they are being measured."³

This is especially important as it aids those responding to the proposals to form **a view of the extent to which they think the Panel's proposals will achieve the** type of electricity system sought from its recommendations. In 2009 BusinessNZ, in its submission on an earlier electricity market review stated its vision:

"Fundamentally, a modern economy needs an efficient electricity system. An efficient electricity system is vital for a competitive, growing economy. Electricity is a key input into the production and use of goods and services in both industry and households, and their

² Terms of reference for the electricity price review, page 3, paragraph 7
[<https://www.mbie.govt.nz/assets/af433b5d84/terms-of-reference-electricity-price-review.pdf>]

³ BEC's Submission on the Electricity Pricing Review Proposed Terms of Reference, page 3
[https://www.bec.org.nz/_data/assets/pdf_file/0011/139934/Submission_Electricity-Pricing-Review-ToR_19-Jan-2018.pdf]

electricity demands need to be satisfied in a manner which is at least **cost to the economy, so that scarce resources are not wasted.**"⁴

and

"Business New Zealand would like to see a future electricity market that is consistent with the following:

- a) a market-based framework where generators and retailers of any size are competing vigorously over a robust transmission network, and businesses and residential consumers are trading in a way that enables them to manage their risks at efficient prices;
- b) a focused, stable regulatory and governance framework delivering an investment climate where local and international firms feel comfortable enough to risk their capital to invest in the right generation technology, at the right cost, and at the right time;
- c) a market where the participants are more willing to use the electricity market, rather than the political market to resolve their issues, and where politicians are willing to set policy but rely on market outcomes; and
- d) an industry where transparent information about the state of its health is regularly delivered in a form that facilitates **understanding and debate about the sector's** performance."⁵

This vision is still relevant and accurate to how we imagine a modern electricity market to look like. However, today this statement needs to be enriched by factors such as energy security, energy affordability and energy sustainability. Together, they **constitute a 'trilemma', and achieving high performance on all** three dimensions entails complex interwoven links between public and private actors, governments and regulators, economic and social factors, national resources, environmental concerns, and individual consumer behaviours. In general, the energy trilemma should always be an enduring test of the future fitness of the energy market;

- d. when setting priorities, the Panel should consider the capacity of all relevant regulatory agencies such as the **Electricity Authority ('Electricity Authority')**, the Commerce Commission, the Ministry of Business, Innovation and Employment (**'MBIE'**) and **the Energy Efficiency and Conservation Authority ('EECA')** to implement recommended improvements;
- e. we note the significant number of levies proposed to fund recommendations like A1, B1, B2, B5, D2 and G1. It is not yet clear where these funds should come from but there is a risk that levies might have an opposite effect on electricity prices as intended by the Panel; and

4 BusinessNZ Submission on Improving Electricity Market Performance, page 7, paragraph 3.6
[https://www.businessnz.org.nz/_data/assets/pdf_file/0010/67942/090916-Electricity-Market-Review.pdf]

5 BusinessNZ Submission on Improving Electricity Market Performance, page 4-5, paragraph 3.4
[https://www.businessnz.org.nz/_data/assets/pdf_file/0010/67942/090916-Electricity-Market-Review.pdf]

- f. finally, it is important that the Panel **doesn't** treat the final development of its package as a policy negotiation. Consistent with good policy development processes, each idea should be assessed on its merits and the Panel should implement those that meet the standards of good policy. **Rather than 'back-fill'** any gaps because options are not preferred by submitters, the Panel should wait until evidence emerges that the initial choice of options are insufficient before defaulting to second or third best alternatives. The proposed recommendations are effectively signalling a progressive reregulation of the electricity market and it is important to be cautious not to unnecessarily regulate where the case has not been sufficiently made.

Specific comments

The following table provides a more specific assessment of the EPR's options paper outcomes. We have grouped them against the five enduring public policy objectives used in our last submission in order to get a perspective of how the Panel's recommended options align with those of the five policy goals.⁶

Five policy goals	EPR recommendations	The BEC's view
Security of supply: supply meeting demand without involuntary cutting supply, or a heightened threat of cuts to supply	G2 Examine security and resilience of electricity supply	<p>We agree that security of supply and resilience should not be taken for granted especially as we reach towards 100% renewable electricity and the options paper quotes the BEC comment to this effect. The Productivity Commission has looked at this and commissioned a paper from Sapere on it. Many others have provided commentary on the issue. The task of establishing how we get to 100% lies with the Interim Climate Change Committee (ICCC) and we would expect the Electricity Authority (EA) to be very much involved as the EPR suggests.</p> <p>However, we are not convinced that a narrowly focused review undertaken by the Security and Reliability Council ('SRC') is sufficient, especially if the Panel is concerned with more than the technically focused issue of system reliability. If the issue is about the resilience of the electricity system to emerging technologies and transitioning to lower power sector emissions, we suggest that there is some alignment between this and the future scenario work the BEC is undertaking. We would welcome discussing this further with the Panel.</p> <p>Regardless of the Panel's chosen path forward, the scope of the review proposed under this recommendation, how it is governed and resourced will be critical to its success.</p>

⁶ BEC's Submission on the Electricity Price Review, page 1-2, [https://www.bec.org.nz/_data/assets/pdf_file/0011/156557/Submission-to-MBIE-on-Electricity-Price-Review.pdf]

Five policy goals	EPR recommendations	The BEC's view
Efficient operation of the wholesale and retail sectors, with competition a primary tool for achieving efficiency	D1 Toughen rules on disclosing wholesale market information	We agree, and Sapere reports commissioned by BEC in 2009, 2014 and 2018 have made this point.
	D2 Introduce mandatory market-making obligations	<p>The rationale to go from current arrangements to a mandatory one is stated in the options paper has now been detailed. However, the design issues that must be addressed for a mandatory scheme have not. The fact that open interest in the futures market exceeds the target set by the previous Ministerial review has not been acknowledged. The EA noted in its recent Undesirable Trading Situation decision that provisions of the current arrangement have not been breached and that is not acknowledged even though this recommendation seem to suggest that market makers failed to meet their obligations.</p> <p>We believe incentivised market-making will produce a better, more durable result and an incentivised model could be set up a lot quicker than mandatory market making. Rather than moving immediately to mandatory market-making the Panel should provide a timeframe to allow participants to develop an incentivised market-making scheme and only introduce a mandatory scheme should market participants fail to agree to an incentive-based arrangement or delivers an arrangement that does not deliver the outcomes sought.</p> <p>Having said that, one member strongly supports mandatory market-making obligations given the lack of liquidity and high levels of vertical integration in the hedge market. This member considers that the current voluntary arrangements are not effective, as demonstrated by the events of September-October last year, nor that it is clear what the proposal for "incentivised market-making" would entail and how exactly this would differ from the current voluntary arrangements.</p>
	D3 Make generator-retailers release information about the profitability of their retailing activities	We agree, and Sapere's reports commissioned by BEC in 2009, 2014 and 2018 have made this point. The options paper quotes and agrees with Sapere's comment in the 2018 paper. However, the Panel needs to be mindful of imposing onerous information disclosure requirements on market participants and should where possible align its requirements with those already disclosed.
	D4 Monitor contract prices and generation costs more closely	We agree, and Sapere's reports commissioned by BEC in 2009, 2014 and 2018 have made this point.
	D5 Prohibit vertically integrated companies	We agree with the Panel's recommendation.

Five policy goals	EPR recommendations	The BEC's view
<p>The efficient use of, and investment in, long life assets (including transmission and distribution), guided by economic regulation</p>	<p>E1 Issue a government policy statement on transmission pricing</p>	<p>We are uncertain as to the effectiveness of Government Policy Statements ('GPS') as a regulatory instrument. Independent regulators being allowed to independently regulate are generally the best means to deal with complex policy issues.</p> <p>GPS' tend not to be durable and there is a high opportunity cost to constant regulatory adjustments. Sapere's report commissioned by BEC in 2009 made this point.</p> <p>Should the Panel wish to recommend the development of a GPS, it is important to remain principle-based and avoid becoming a long, unwieldy and ineffective shopping list as it has been previously. The Government's views around the principles of fairness, including transitions and price shocks, could be elements of a GPS to provide guidance to the EA.</p>
	<p>E2 Issue a government policy statement on distribution pricing</p>	<p>As above, but for distribution.</p>
	<p>E3 Regulate distribution cost allocation principles</p>	<p>We agree that this should not be a matter for heavy handed regulation. The development of a distribution pricing methodology is a matter for the EA and they are in the process of finalising distribution pricing principles.</p>
	<p>E4 Limit price shocks from distribution price increases</p>	<p>It is important that the Panel carefully allocate targeted solutions at the identified problems. In this case it would, at least on the face of it, appear that the Panel is conflating a potential outcome that may worsen energy hardship with other market problems and solutions. If the Panel's concern is fairness or hardship then the Panel should bring other solutions to bear (and indeed does).</p> <p>As an aside we note that price shocks may also arise from a shift towards efficient network pricing. Currently network charges are flat across consumers on a particular tariff with some consumers cross subsidising others by implication. Any shift towards efficient pricing will remove that cross subsidisation creating winners and losers. The consumers negatively affected may also get price shocks.</p> <p>These issues as well as the issues outlined in E3 above could be addressed via a GPS should the Panel believe one to be warranted.</p>
	<p>E5 Phase out low fixed charge tariff regulations</p>	<p>We agree with the recommendation. This should be done as a matter of priority.</p>
	<p>E6 Ensure access to smart meter data on reasonable terms</p>	<p>Access to interval data is already a matter of a great deal of discussion. We agree that the industry working group should find a solution and if it can't the EA should regulate.</p>
	<p>E7 Strengthen the Commerce Commission's powers to regulate distributors' performance</p>	<p>We do not have a view on the options that are listed in the paper but instead support them going into a dedicated consultation process for more careful consideration.</p>

Five policy goals	EPR recommendations	The BEC's view
The efficient use of, and investment in, long life assets (including transmission and distribution), guided by economic regulation (cont)	E8 Require small distributors to amalgamate	We agree with the Panel's recommendation.
	E9 Lower Transpower and distributors' asset values and rates of return	We agree with the Panel's recommendation.
	F1 Give the Electricity Authority clearer, more flexible powers to regulate network access for distributed energy services	We don't have a view on the specifics of the three proposals set out in the options paper. However, we consider that as a matter of course, all of the EA's rules should be flexible, adoptable and allow innovative solutions to come forward and the details included in the three options need to be carefully considered with this objective in mind. At a minimum, before expanding the EA's regulatory powers a robust cost-benefit analysis should be undertaken which weighs up risks to competition and the benefits of technological uptake and co-ordination.
	F2 Transfer the Electricity Authority's transmission and distribution-related regulatory functions to the Commerce Commission	We agree with the Panel's recommendation. However, we recognise that there are disadvantages and advantages to the proposal with one of our members supporting the transfer of the EA's transmission and distribution-related regulatory functions to the Commerce Commission.
	F4 Allow Electricity Authority decisions to be appealed on their merits	As a general statement, inferior decisions generate uncertainty. Poor decisions force businesses into expensive second best 'work arounds' to cope with the risk of uncertainty or arbitrary interventions. Poor precedents threaten investment and economic growth even though people may not be able to measure or even recognise the source of such costs. The difference between high quality predictable decisions and low-quality ad-hoc decisions can be enormous for a small economy like New Zealand's. Specifically, the issue of whether or not to allow merit reviews must lie in an objective, evidence-based assessment of the quality of the decisions made by the EA. It is not immediately clear that poor quality decision-making is endemic. However, some of our members take a different view, believing that the EA should have the same disciplines to which the Commerce Commission is subject. This is on the basis that the EA decisions have equally significant impacts on businesses and consumers and should be subject to appropriate checks and balances.
	F5 Update the Electricity Authority's compliance framework and strengthen its information-gathering powers	We agree with a review of the compliance framework in the Electricity Industry Act. This is consistent with the role and purpose of the regulator as discussed in the Sapere reports prepared for the BEC.
	F6 Establish an electricity and gas regulator	The question is whether either regulator is failing to provide the support for the sector they are required to deliver or whether a single regulator using either model could do a better job across both gas and electricity. The case is not made that this suggestion should be pursued or if it is, with a very low priority. Such a review would be introspective and distracting at a time

Five policy goals	EPR recommendations	The BEC's view
		<p>when more practical initiatives of benefit to end consumers could be implemented.</p> <p>We see a bigger issue lying in the economics of gas exploration and availability than an inward-looking governance review.</p>
<p>Meeting community or social minimums, including universal access to electricity and support for those who can't pay</p>	<p>A1 Establish a consumer advisory council (CAC)</p>	<p>We support this idea. However, the success of this proposal will largely depend on its scope and resourcing and ultimately its influence on the decision-making processes of the EA. The voice of small and medium size businesses should be heard and a representative such as the BusinessNZ should be part of the consumer advisory council.</p> <p>If an absence of sufficient influence over decisions made by the EA is the objective, we believe that having consumer representatives on the board of the EA would be the most direct and effective means of achieving this.</p>
	<p>A2 Ensure regulators listen to consumers</p>	<p>This should be joined-up with proposal A1. Regardless of A1, it is important to ensure this covers all regulatory institutions not just the EA.</p>
	<p>B1 Establish a cross-sector energy hardship group</p>	<p>We agree with the Panel's recommendation. It is consistent with the advice set out in the 2014 and 2018 Sapere reports for the BEC.</p>
	<p>B2 Define energy hardship</p>	<p>We agree and note that the EPR quoted the 2018 Sapere paper. Sapere also made the point in the 2014 paper. Energy hardship is multidimensional, and we recommend working with diverse energy organisations using their existing frameworks to define energy hardship.</p>
	<p>B3 Establish a network of community-level support services to help consumers in energy hardship</p>	<p>We agree with this and note that the Panel quoted the 2018 Sapere paper advocating this step. Sapere also made the point in its 2014 paper prepared for the BEC.</p>
	<p>B4 Set up a fund to help households in energy hardship become more energy efficient</p>	<p>We think that proposals B4 and B5 are best addressed in the context of the work undertaken on energy hardship (B1, B2, B3, B6, B7 and B8).</p> <p>It is not immediately clear what the gap is with EECA's current roles and responsibilities.</p> <p>If the Panel wishes to proceed to establish a fund, then the BEC proposes that the winter energy payment could be better targeted at those in need, thereby freeing up resources for this fund.</p>
	<p>B5 Offer extra financial support for households in energy hardship</p>	<p>As above.</p>
	<p>B6 Set mandatory minimum standards to protect vulnerable and medically dependent consumers</p>	<p>We support this idea.</p>
<p>B7 Prohibit prompt payment discounts (PPD) but allow reasonable late payment fees</p>	<p>We believe that consumers should have choice. Market participants are already working on PPD issues with some having already made the decision not to use them.</p>	

Five policy goals	EPR recommendations	The BEC's view
Meeting community or social minimums, including universal access to electricity and support for those who can't pay (cont)		<p>The BEC understands that there are already a number of non-prompt payment discount products on the market. We consider that the retailers should be given the space to resolve this issue without further intervention. This would also allow greater clarity to emerge around consumer's preferences to emerge (one would expect if consumers do not like PPDs then they will shift to non-PPD products being offered). Similar to the issue of market-making, a credible regulatory threat could be used to ensure suitable action is taken within an acceptable timeframe.</p> <p>At a minimum, we don't support the limitation or banning of discounts for things like bundled offers or how doing this would reduce energy hardship.</p> <p>One of our members supports the Panel's position in favour of banning PPDs which in its view are currently being used in a misleading way and are unfair to customers, particularly vulnerable customers. This member notes that the Panel is not proposing to ban reasonable late payment fees and hence retailers will still have a mechanism to incentivise timely bill payment and reduce bad debt costs.</p>
	B8 Explore bulk deals for social housing and/or Work and Income clients	We support this idea.
	C1 Make it easier for consumers to shop around	The 2018 Sapere paper commissioned by BEC argues that price differentiation can be a sign of healthy competition as the options paper quotes. Nonetheless, we are open to an enhancement of the switching website, but this should led by the EA.
	C2 Include information on power bills to help consumers switch retailer or resolve billing disputes	We support the idea to include a link a switching website.
	C3 Make it easier to access electricity usage data	We support this idea.
	C4 Make distributors offer retailers standard terms for network access	The EA is currently working on this issue. The Court of Appeal has recently affirmed the EA's jurisdiction to regulate elements of the default distribution agreement and market participants should be given the opportunity to work with the EA in good faith in its consultation process.

Five policy goals	EPR recommendations	The BEC's view
Meeting community or social minimums, including universal access to electricity and support for those who can't pay (cont)	C5 Prohibit win-backs	<p>The rationale for prohibiting win-backs seems to lie in the untested proposition that in the longer-term consumers would ultimately save more because banning win-backs would increase competition. This proposition seems a stretch and certainly was too far a reach for the Australian Competition and Consumer Commission (ACCC) when they looked at the same issue in the Australian context – they recommended against regulatory intervention to reduce save and win-back activity as the costs imposed would exceed any benefits. As with B7, we believe that the industry will solve this issue without further intervention and the most effective way is to give the market the space to deliver a solution.</p> <p>One of our members supports the Panel's position in favour of placing restrictions on win-backs, arguing that it would help to address the growing problem of two-tier pricing between 'sticky' customers and 'switchers', as well as reduce barriers to expansion for new entrants. This member notes that although the ACCC stopped short of recommending a ban on win-backs, it did identify significant concerns with incumbents' use of switching information to segment the market and proposed some changes to the switch notification process to address this.</p>
	C6 Help non-switching consumers find better deals	<p>As discussed in the 2018 Sapere paper, consumers are entitled to now seek better deals. Competitors are incentivised to find those consumers. We note that the 'what's my number' emerged from the 2009 Ministerial Review for this purpose and has now been going for 8 years.</p> <p>Should the Panel wish to implement this option, it would need to be mindful of the need to ensure switching occurs with the consumer's consent, the fact that price is not the only consideration in consumers switching decision, and the risks associated with the cost of the implementation and the incentive for consumers to disengage from the market.</p>
	C7 Introduce retail price caps	We agree with the Panel's recommendation.
Integrating environmental objectives while mitigating the impact on the industry of achieving these objectives, with a current focus on climate change	F3 Give regulators environmental and fairness goals	<p>The EPR does not favour an environmental and fairness goal but favours to give the EA a "consumer protection function". We agree that multiple objectives are not desirable.</p> <p>With respect to the consumer protection function, we believe that great care will need to be taken in adding such a measure. How would, for example, such a function look and what precisely would consumers be protected from (e.g. price and/or quality deviations)?</p>
	G1 Set up a fund to encourage more innovation	<p>We are not sure if there is a need for a fund to encourage innovation. There are already funds to encourage innovation (e.g. Callaghan Innovation grants). However, we believe that greater visibility of available funds is required.</p> <p>It is also important not to focus on funding as the magic bullet to bring forth innovation – the BEC considers that the primary means to stimulate</p>

Five policy goals	EPR recommendations	The BEC's view
		investment in innovation is through supportive and stable regulations that are durable over time.
	G3 Encourage more co-ordination among agencies	The Sapere report raised the issue of a lack of joined up thinking. We agree and support this idea.
	G4 Improve the energy efficiency of new and existing buildings	We agree that this idea should be pursued further by the appropriate agencies. However, we note the recent passage of legislation to improve the quality of the rental housing stock and would want to be assured that any such improvements address policy and operational gaps.

Summary

The BEC welcomes **the Panel's work undertaken** on the EPR. It is important that the **sector's regulatory and commercial** frameworks are fit-for-purpose to achieve positive outcomes across the three trilemma dimensions, including issues such as affordability.

The EPR is an opportunity to look forward and ensure a well-positioned electricity system. For a review of this nature and magnitude, it is important that the Panel provide a coherent, robust package that is carefully aligned to the **Panel's vision of a** better electricity market. A final package should also include recommendations on priorities and an implementation sequence.

If there is anything we can do to assist the Panel, please let us know. We are happy to expand or further explain on the detail of this submission if the Panel wishes additional information.

Yours sincerely



John A Carnegie
Executive Director
BusinessNZ Energy Council

APPENDIX ONE: ABOUT THE BUSINESSNZ ENERGY COUNCIL

The BusinessNZ Energy Council (BEC) is a group of New Zealand's peak energy sector organisations taking a leading role in creating a sustainable energy future. BEC is a division of BusinessNZ, New Zealand's largest business advocacy group. BEC is a member of the World Energy Council (WEC). BEC members are a cross-section of leading energy sector businesses, government and research organisations. Together with its members BEC is shaping the energy agenda for New Zealand.

Our vision is to support New Zealand's economic wellbeing through the active promotion of the sustainable development and use of energy, domestically and globally. With that goal in mind, BEC is shaping the debate through leadership, influence and advocacy.

BusinessNZ is New Zealand's largest business advocacy body, representing:

- Regional business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Employers Otago Southland](#)
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and the Business and Industry Advisory Council ([BIAC](#)) to the Organisation for Economic Cooperation and Development ([OECD](#)).

