

ETNZ Response to Electricity Price Review Options Paper

Due 22 March

A: STRENGTHENING THE CONSUMER VOICE

A1 Establish a consumer advisory council

While we support this option in principle we would want such a body to be effective, and capable of galvanising action both at the government level and the consumer level. It may be worthwhile to have it headed by someone akin to the Prime Minister's Chief Science Advisor, such as a PM's or Minister of Energy/Minister of Consumer Affairs 'Chief Consumer Advisor' or 'Chief Energy Consumer Advocate'. We believe that the Council should be an independent body rather than an adjunct to one of the regulatory agencies.

We also believe that the country's energy consumer and community trusts should be strongly represented on the Council. This would bring in the expertise and research capacity necessary to make informed decisions in such a complex industry, assist in creating linkages at the local level, and help balance the strong presence that established gentailers and Transpower have in the various Electricity Authority/market related committees etc.

Providing adequate funding will be a pivotal issue, and ensuring that such funding does not create a risk of capture is important.

A2 Ensure regulators listen to consumers

We agree that this would be a difficult principle to enforce. However, if the proposed advisory council were established along the lines indicated in our answer to A1 then we believe that the added status it would have would contribute to better informed regulation.

B: REDUCING ENERGY HARDSHIP

B1; B2 (Define energy hardship; Establish a cross-sector energy hardship group)

Possibly a hardship group could be a sub-committee of the proposed Consumer Advisory Council. We do not support a large number of discrete advisory agencies in an industry that is already subject to multiple

regulators and that is reliant on well-functioning interfaces between its various sectors.

Energy hardship is one facet of wider hardship issues (low incomes, housing costs, family structures, community health, etc.) and it would be difficult to find a generic definition that does not encompass those other issues. It may be more effective to concentrate on creating a more caring and supportive electricity retail environment, where retail companies seek to identify consumers who have trouble paying bills and collaborate to ensure that genuine cases of hardship are helped while disconnections are avoided. Possibly some sort of *retail hardship review panel* that consumers facing hardship could appeal to would be more effective than a cross-sector group, as responsibilities would be diffused in the latter.

It would be useful, too, for measurable performance objectives to be defined for retailers, such as numbers of disconnections. Performance outcomes could be reported on by the Consumer Advisory Council regularly.

B3 Establish a network of community-level support services to help consumers in energy hardship

This is an option that could be explored further with a number of the various community and consumer agencies, perhaps as a Consumer Advisory Council initiative. One problem is the concentration of poverty in some localities, coupled with the limited numbers of qualified support people available in those areas.

B4 Set up a fund to help households in energy hardship become more energy efficient

This seems to be an appropriate option for EECA to consider. Most ETNZ member trusts and their EDBs concentrate on promoting energy efficiency by focussed programmes such as distributing LED light bulbs and helping with home insulation but they are constrained from undertaking more substantive initiatives by regulatory price lids. The Commerce Act appears to create considerable scope for this regulatory constraint to be reduced – a point we will develop further in our response to ‘F1’.

B5 Offer extra financial support for households in energy hardship

It would be unusual for an industry to be obliged to take on social welfare support functions and make judgements on subsidy allocations, at least in OECD countries. Also, energy hardship may be less significant to such families than their inability to meet health costs, etc.

The most effective mechanism for tackling energy hardship might be a strengthened EECA programme to improve the energy efficiency of targeted households. Recipients might be selected by giving chronic late payers the option of an EECA intervention.

B6 Set mandatory minimum standards to protect vulnerable and medically dependent consumers

We support this option. It would be useful to require retailers to provide statistics on the numbers of vulnerable consumers they have identified (expressed as a percentage of each retailer's customer base) so that any lax behaviour in seeking out such consumers becomes more apparent.

B7 Prohibit prompt payment discounts but allow reasonable late payment fees

We support prohibition of prompt payment discounts. Some form of consumer backstop would be helpful if late payment fees are allowed (e.g. see our 'retail hardship review panel' suggestion in B1;B2).

B8 Explore bulk deals for social housing and/or Work and Income clients

This would appear to be a positive initiative but we would advise a trial in a limited area before undertaking a widespread programme.

C: INCREASING RETAIL COMPETITION

C1 Make it easier for consumers to shop around

We support merging and improving the Powerswitch/Whatsmynumber sites.

Another, related, useful step would be a standard retail pricing and billing template. Given that electricity is a single, standard product (in contrast to most other retail commodities) it would not seem unreasonable for it to be marketed through a standard pricing schedule. While we recognise the various efforts that competing retailers make to create different pricing structures to supposedly 'give different customers what they want', we would like to see hard evidence that the bulk of household consumers would not feel better served by a much simpler template that makes price comparisons clear and easy. The inability to make such comparisons easily is probably a primary reason for the customer inertia that the EPR has identified.

C2 Include information on power bills to help consumers switch retailer or resolve billing disputes

We support this. Again, a useful step would be a standard retail pricing and billing template.

Also, the widespread use of the term 'Fixed charges' in bills means different things to different retailers. We believe that a simple breakdown of average household bills into typical allocations of the variable and fixed (distribution charges, transmission charges, AE levies, etc.) components would be adequate for most consumers, provided that they were given accurate information on the actual total price they were paying.

C3 Make it easier to access electricity usage data

We support the information standardisation proposed in the Options Paper.

C4 Make distributors offer retailers standard terms for network access

As the parties directly connected to consumers, distributors endeavour to match their services with the needs of those consumers – a trend that is being accentuated by the arrival of significant new loads such as electric vehicles, and by demand-side options that reduce loads or change load patterns. Achieving a relative balance between 'user pays' costs and the realities of fair cost allocation poses different problems in different networks. We would not support a default distribution contract if this creates scope for an obdurate retailer to achieve an unreasonable commercial advantage by refusing to accept an offered contract.

This is a much more complex matter than the short section in the Options Paper indicates. As in most businesses, different sellers and different buyers have specific priorities that need to be met if the most efficient outcomes are to be achieved.

We oppose any intervention in this area without an in-depth study of the issues involved. If a default contract is recommended then we would like to see scope created for distributors to appeal against its application if they can demonstrate that it would lead to inequitable outcomes.

C5 Prohibit win-backs

We support this. All else apart, win-backs create scope for better offers to be targeted at the most desirable customers, meaning that the price disparity that vulnerable consumers face would grow.

C6 Help non-switching consumers find better deals

We support this. Reducing the complexity of pricing and billing data to make comparisons easier would be a sensible first step.

C7 Introduce retail price caps

We note that the Australian Government has indicated to the AER that it will adopt the Australian Competition and Consumer Commission's (ACCC) recommendations 30, 49, 32 and 50 in its [retail electricity price inquiry](#) (REPI). Specifically, the Government has asked the AER to develop by 30 April 2019:

- default market offer prices, which are to apply from 1 July 2019 for standing offer customers on relevant tariffs, in network distribution regions not subject to state-based price regulation.
- a mechanism for determining a reference bill amount for each network distribution region, from which headline discounts can be calculated.

We suspect that New Zealand consumers face similar problems to their Australian counterparts in their interaction with retailers, and believe that the EPR should consider this Australian move before completely dismissing price limitations on retailers.

D: REINFORCING WHOLESALE MARKET COMPETITION

We support recommendations D1 through to D4. The wholesale market provides a platform that gives scope for vertically integrated generator-retailers to enter into internal hedging and cost transfer arrangements that can lead to confusing retail price outcomes and risk exposures to consumers. Greater transparency is desirable.

D1 Toughen rules on disclosing wholesale market information

D2 Introduce mandatory market-making obligations

D3 Make generator-retailers release information about the profitability of their retailing activities

D4 Monitor contract prices and generation costs more closely

D5 Prohibit vertically integrated companies

While we recognise that a prohibition would override property rights, we recommend that consideration be given to assigning the Commerce Commission a specific role in monitoring the outcomes of generator-retailer integration. Control of primary generation assets such as the hydro lakes gives a handful of generator-retailers inordinate power to limit options for stand-alone retailers. Arguably this power is more than equivalent to the strength that supposed transmission and distribution monopolies have to dominate their markets. Information disclosure regulation seems well worth consideration.

E: IMPROVING TRANSMISSION AND DISTRIBUTION

E1 Issue a government policy statement on transmission pricing

On balance we support this but would like to be assured that the views of Transpower's customers would be taken into account in drafting the GPS. We are conscious that the Government, as the beneficial owner of Transpower, may be subject to advice and other pressures that prevent it from making a fair, unbiased policy statement.

The tortuous progress of the Electricity Authority's Transmission Pricing Methodology proposals, along with the harsh impacts those proposals would mean for parts of the country that are least able to cope with the resultant cost increases, emphasise the need for an intervention in this area.

As part of the transmission GPS we would like to see clear principles for the allocation of costs to major customers, such as the aluminium smelter, set out.

E2 Issue a government policy statement on distribution pricing

In the past, such a statement has been used to impose unclear *de facto* regulation on distributors, notably an injunction to ensure that rural consumers pay the same prices as (i.e. are cross-subsidised by) urban consumers. We support the work that ENA is coordinating on a possible GPS but would like to see early guidance from MBIE on the issues it feels the GPS should address, and the underlying principles involved.

Because the distribution sector is subject to widespread price and quality controls, ensuring that the ability to respond to any GPS mandate does not clash with the regulatory conditions facing each distributor is essential. It

might also be helpful to have policy guidance on promotion of energy efficiency considered for inclusion in the GPS.

E3 Regulate distribution cost allocation principles

We do not believe that there is either a need or a justification for such an intervention at the moment, as the emergence of new loads such as EVs will create changes that cannot readily be anticipated.

E4 Limit price shocks from distribution price increases

The Commerce Commission already applies a price movement cap on regulated distribution prices, while unregulated distributors are all consumer-owned and therefore subject to strong owner pressures to price responsibly. We cannot see any case for adding to, or duplicating, the control regimes they operate under.

E5 Phase out low fixed charge tariff regulations

We support this, including the proposed transition arrangements.

E6 Ensure access to smart meter data on reasonable terms

We recognise the need for better access to metering data to assist distribution services, especially as the trend towards demand-side options and consumer empowerment continues. We also recognise the different ownership rights existing across the industry as a legacy of the 'Bradford reforms', and the problems those create. At this stage we would like to see the outcome of the work being undertaken by the Electricity Authority before forming a view on this issue.

E7 Strengthen the Commerce Commission's powers to regulate distributors' performance

We oppose this recommendation. It would involve giving the Commerce Commission a role where it 'second guesses' the operational activities of electricity distributors from the remote heights of its Wellington offices.

Our views on the specific powers being suggested are:

- **advise the Minister of Commerce and Consumer Affairs to remove a distributor's exempt status ...**

We are not aware of any examples where the exempt status of trust-owned distributors has resulted in untoward outcomes for consumers. As was recognised by Parliament when the exemption

rules were agreed, consumer control through trust ownership is an effective way to ensure fair outcomes. Adding the additional costs associated with establishing a regulatory team in small EDBs, and day-to-day compliance, would be a pointless additional burden on consumers.

The existing provision that allows a group of consumers to petition for removal of exempt status has not been triggered, suggesting that consumers remain happy with the service they receive. Unless some significant examples of failings in the existing arrangements emerge we can see no case for making this change.

As requested at the *Regulation & Low Carbon Workshop*, we will forward information on customer satisfaction with unregulated EDBs to the Review team.

- **require a distributor to move...to more stringent customised price-quality regulations**

One of the strengths of the current price-quality control regime is that it provides consistency and certainty for companies that rely on those two features in planning long-term investments, and in identifying appropriate technologies. Giving busy regulators with 'generalist' skillsets a hands-on role in directing distribution activities implies introducing all the failings of central planning.

The Commission has made no secret of its belief that more distributors should be seeking CPPs, suggesting that such a new power would lead to the imposition of costly CPPs or IPPs that eat up time and staff resources in negotiation and oversight, and create rigidities that stifle dynamic advances as technologies and consumer needs change.

- **Apply higher maximum penalties to deter big distributors from breaching price-quality regulations**

The existing penalties (e.g. of up to \$5 million for a company in breach of a price-quality requirement) have not been shown to be ineffective. Furthermore, we do not believe that there is any case for treating electricity distributors more harshly than any other party in breach of a particular Commerce Act requirement. The Commission has a wide range of powers to investigate, expose and prosecute, and we see no justification for disputing the effectiveness of those powers as they exist at present.

- **Compare distributors' performance when setting price-quality regulations. Comparative benchmarking would be used cautiously as one input in setting prices.**

Comparative benchmarking in setting price/quality paths is explicitly excluded in the Commerce Act, for good reason. Basically, no two distributors are alike, especially in terms of customer densities and customer mix. It would be far too easy to use apparent differences in outcomes to justify unreasonable interventions, just through regulatory ignorance or error.

The Commission already has the power to use comparative benchmarking in analysing and presenting data from the Information Disclosure regime. It has yet to use this to demonstrate that comparative benchmarking can deliver robust conclusions.

The justification put forward by some that a number of overseas regulators use yardstick comparisons for price setting does not necessarily mean that it is appropriate to New Zealand. Unlike countries such as the UK, we have a relatively large number of very different EDBs, facing local issues that take on far more relevance because of scale economics. Oxera published a very thorough analysis of the pitfalls of yardsticks as far back as 2005 that seems to have become more relevant today.¹

- **Greater use of ComCom existing powers (a standard for Asset Management Plans; forward-looking quality standards; publishing details of collaborative activities to encourage others).**

The Commission regularly reviews the way it uses its various powers and chooses to apply them when it sees a reason to do so, normally after detailed consultation with the industry on the issues involved. We do not believe that the Electricity Price Review has shown any particular justification for the ComCom to 'lift its performance' in making those judgements.

We do, however, recognise the advantage of giving more publicity to the numerous collaborative activities undertaken by distributors.

E8 Require small distributors to amalgamate

¹ <https://www.oxera.com/wp-content/uploads/2018/03/Yardstick-competition.pdf>

We support the Review's reasoning in rejecting this option, notably that "imposed amalgamations would be heavy-handed and would trample on existing property rights." The two submissions' from Professor George Yarrow, supplied by ETNZ to the Review last year, go into detail on the merits of diversity, and on the myths associated with economies of scale in distribution businesses.

E9 Lower Transpower and distributors' asset values and rates of return

We support the Review's reasoning in rejecting this option.

F: IMPROVING THE REGULATORY SYSTEM

F1 Give the Electricity Authority clearer, more flexible powers to regulate network access for distributed energy services

We do not support this option. The justification for this that the Review uses - of giving regulators "flexibility to deal with unforeseen developments in the future" - is a worrying one. We believe that regulatory powers should be applied consistently and predictably, and conferring broad additional roles on the EA just in case something unforeseen happens would undermine this consistency and predictability. The correct approach is to seek such powers when, and if, the situation they are needed to correct materialises. We are not aware of any developments at present that demonstrate that such an extension of the EA's powers is necessary. On this point we support the comment in the final paragraph of 'F1' that any changes to the rules for distributors' involvement in distributed energy markets could be targeted "as and when any problems emerge."

If further powers to regulate access are recommended then it would seem sensible to look first at extending Part 2 of the Commerce Act, rather than just focussing on access to electricity networks by creating additional EA powers.

Distributors face a host of regulatory issues already. Their primary focus for price-quality control is directed at the Commerce Commission, which is also the appropriate body for dealing with any anti-competitive activity. Adding a new layer of EA-led powers to the existing mix implies additional confusion and unsatisfactory overlaps of regulatory responsibilities.

We are surprised that consideration is being given to creating powers to advance emerging technologies ahead of any need for them, when adequate powers have existed for many years for regulation to be used to

promote distributed energy services delivering energy efficiency and demand-side management, and these have barely been utilised. Thus, the Commerce Act carries a very strong instruction to the regulator to do just that:

54Q Energy efficiency

The Commission must promote incentives, and must avoid imposing disincentives, for suppliers of electricity lines services to invest in energy efficiency and demand side management, and to reduce energy losses, when applying this Part in relation to electricity lines services.

Section 54Q: inserted, on 1 April 2009, by [section 4](#) of the Commerce Amendment Act 2008 (2008 No 70).

As mentioned in workshop discussion, the Commission has shown little willingness to progress the objectives of this clause over the past decade, despite the unusual use of the word 'must' ("must promote incentives" and "must avoid imposing disincentives"). In contrast, the EA is taking active steps to remove 'ACOT' - the most significant regulatory incentive currently available for demand-side investment in technologies such as solar and in other ventures that lessen the demand for transmission-dependant generation and associated energy losses. Here we see no reason why the two regulators should not be acting in a way that is consistent with the Commerce Act.

F2 Transfer the Electricity Authority's transmission and distribution-related regulatory functions to the Commerce Commission

We believe that the Commerce Commission is regarded by most of our members as the more appropriate regulatory body for overseeing monopoly activities, mainly because – in contrast to the EA - it does not have its primary focus on making the electricity wholesale and retail markets function more efficiently.

F3 Give regulators environmental and fairness goals

We suspect that giving regulators an environmental focus is an issue that will recur, due to the importance of electricity-related issues to wider policy objectives in areas such as climate change and consumer empowerment. We would prefer a recommendation to pass the option on to, say, the Climate Change Commission for consideration.

We recognise the problems of introducing a subjective term such as 'fairness' to the regulatory regime. However, we support the suggestion that a specific 'consumer protection' function be incorporated in the EA's Charter, or at least be included in the proposed Transmission GPS.

F4 Allow Electricity Authority decisions to be appealed on their merits

While we accept the rationale given, that such appeals can be costly, we believe that more efficient outcomes (i.e. overall cost reductions) would result from extending merits appeal to at least some EA decisions where a declaratory judgement would be useful. We also believe that the accumulation of case law around such appeals would contribute to clarity and certainty, both for the industry and for regulators, meaning further savings over time.

Energy Consumers Australia published a review of 'Limited Merits Review' ² in October 2016 that is worth considering. We would be keen to see consideration given to a mechanism that would serve as a cheap alternative to merits review.

F5 Update the Electricity Authority's compliance framework and strengthen its information-gathering powers

We are not well placed to comment on this issue.

F6 Establish an electricity and gas regulator

We are not well placed to comment on this issue but suspect that any consideration of this move should also include the option of allocating all such regulatory powers to the Commerce Commission.

G: PREPARING FOR A LOW-CARBON FUTURE

G1 Set up a fund to encourage more innovation

While we do not support the creation of a separate fund of this type, we agree with the EPR that regulated distributors are discouraged from investing more in innovation due to the price caps imposed on them, and that such a fund would assist them to overcome this disadvantage. On balance we would prefer to see scope for the price caps to be adjusted to

²

[Review of Limited Merits Review - Energy Consumers Australia](#)

energyconsumersaustralia.com.au/.../Review-of-Limited-Merits-Review-Submission.p...

accommodate reasonable R&D expenditure, especially recognising the rapid technological advances now occurring.

More significantly, we would like to see a mechanism that allows EDB price caps to be adjusted to allow for expenditure on promoting low carbon outcomes through energy efficiency and demand-side options.

G2 Examine security and resilience of electricity supply

We agree with this recommendation, and with the comment that security of supply should not be taken for granted.

G3 Encourage more co-ordination among agencies

We support officials and regulators becoming more aware of, and responsive to, wider government policy and regulatory changes, as well as to not frustrating or avoiding legislative requirements applying to the parties they regulate. Again, many Trusts have expressed concern about the EA over-riding the Commerce Act s54Q requirement to promote incentives for energy efficiency and demand-side management, for example in its proposal to abolish the arrangements allowing demand-side initiatives to capture the avoided costs of transmission ('ACOT').

G4 Improve the energy efficiency of new and existing buildings

We support this recommendation.