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Submissions  
Electricity Authority  
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### Proposal to amend the Electricity Industry Act to enable collection of fees

Thank you for the opportunity to comment on Electricity Authority's (EA) proposal to amend the Electricity Industry Act to enable collection of fees. No part of this submission is confidential. Further comments are provided to the consultation questions as an attachment to this letter.

The EA is proposing to introduce additional fee-making regulations to address the perceived shortcomings of the current annual appropriations process.

Mighty River Power appreciates the current appropriations regime presents certain challenges, but considers the materiality of this issue is low compared to other more important priorities on the EA work program. In any instance, the consultation paper does not provide sufficient analysis to enable an appropriate assessment of the Authority's efficiency claims.

As such Mighty River Power does not support the EA's proposal to enable the collection of fees. In our view, the current appropriations process provides sufficient transparency and flexibility but one area of reform that could be considered is the development of an industry forum to assist in the scrutiny of rising system operator costs.

Please direct any queries on this submission to myself on [nick.wilson@mightyriver.co.nz](mailto:nick.wilson@mightyriver.co.nz) or 09 580 3623.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Nick Wilson', written over a horizontal line.

**Nick Wilson**  
Senior Market Regulatory Advisor

## **ATTACHMENT: RESPONSES TO CONSULTATION QUESTIONS**

1. What comment do you have on the Authority's view that the introduction of fees could deliver efficiency gains as it would more readily support the introduction of efficient user-pays charges to recover some costs?

We consider the case for efficiency has not been sufficiently demonstrated. Section 4.2 provides only a single example (externalities arising from participants who provide poor quality data for reconciliation purposes) as a problem definition and does not provide any indication of materiality.

Further, the section does not address at all why the Authority would not have recourse under its existing powers within the Act to issues warnings to offending parties to resolve information provision inefficiencies by more direct, and less costly, means. The section implies a regulatory failure exists but does not address this in any way, which is inconsistent with the Authority's own code amendment principles.

We consider the likelihood of net benefits under the EA's proposal is limited. As the paper notes, the Controller and Auditor-General's good practice guide for charging fees recommends establishing an appropriate consultation process. It also recognises that to be efficient, fees should be subject to regular review to ensure they are set at incentive levels. This creates costs beyond the status quo (or even a counter-factual of the Authority using its existing regulatory powers under the Act) which are ultimately passed on to consumers.

The paper switches between concepts of user pays and beneficiary/exacerbator pays. While identifying users of a good or service may be relatively straight forward, linking use to specific benefits or externalities and charging appropriately will be more likely to generate efficiency gains. The downside to this approach is that allocating costs in this manner requires additional complexity and can be inherently contestable, resulting in increased consultation and lobbying costs which need to be taken into account.

As a final point, Mighty River Power notes that currently the significant majority of the levy, around 87 percent, is recovered from only two industry participant classes: purchasers (including retailers) and generators. We are not aware of any of any participants raising concerns via the annual appropriation process as to the balance of the levy between these two classes that would suggest the need for more granular cost allocation methodology.

2. What comment do you have on the Authority's view that the introduction of fees to recover some costs could deliver efficiency gains through the enhanced flexibility that a fee arrangement can provide relative to the rigidity of the annual Crown appropriations process?

We consider the case for efficiency has not been sufficiently demonstrated. As the paper notes there are still opportunities for the Authority to seek a mid-year appropriation if levy rates are not sufficient. While the Authority considers this could result in delays of up to six months, this would only occur in the extreme. As there would be a requirement to consult on fee levels under the EA's proposal, any purported flexibility gains are likely to be marginal.

Further, while potentially limiting in certain instances, the annual appropriations process is transparent to stakeholders and in our view provides the appropriate discipline to ensure costs are controlled and projects managed effectively. This is particularly of relevance given the Authority's emphasis on cost benefit analysis in underpinning its policy making decisions.

As is discussed later, there would likely be flexibility benefits if the EA were to consider greater industry representation at board level as is the norm with other energy industry bodies.

3. What comment do you have on the Authority's view that the introduction of fees to recover some costs could deliver efficiency gains through more effective engagement between the Authority as purchasing agent and its "client" industry users on key issues relating to service provision and the engagement of service providers?

We consider the case for efficiency has not been sufficiently demonstrated. We appreciate that an annual appropriation process could provide challenges for long term service provision contracts. However, we note that this issue is not singular to the electricity industry and it would appear that many ICE's are required to manage long term contracts without recourse to fee arrangements (Figure 6).

Mighty River Power notes that around 50% of the external market service provider budget is allocated to a single provider, the system operator. The EA has indicated it intends to provide greater scrutiny of rising system operator costs which we support. However, we consider a more effective and least-cost measure than introducing fee based mechanism would be to develop an industry forum to assist in the scrutiny of multi-year service contracts with the system operator.

4. What other comments do you have on the Authority's proposal to seek an amendment to the Electricity Industry Act 2010 to allow for the Authority's activities to be funded by a mixture of fees and the industry levy?

We do not support the proposal to introduce fee setting powers into the Act. As a general point we consider the need for fee setting arrangements is a minor consideration compared to other higher priority regulatory issues such as the Transmission Pricing Mechanism and the review of the Undesirable Trading Situation provisions. We note it was not identified as a priority in the recent work programme and appropriations consultation.

The Authority's main argument for fee setting powers does not appear to be based on any analysis of economic efficiency, but rather a claim that the Authority is in some way unique among Independent Crown Entities (ICE) in not charging fees. This claim is not substantiated by the information provided in Figure 6 which shows in reality only a very small proportion of ICE's charge fees and then only at very low levels. We also note that the list does not include all ICE's and in fact a non-ICE has been included to build the Authority's case.

Further, it is not possible to compare the electricity industry to many of the other ICE's in anything but very abstract terms. The Office of Film and Literature Classification for example is responsible for regulation across a much more diverse range of product categories (film, games, magazines) with a user base that at its limit is not known. In comparison electricity is a homogenous product characterised by a relatively stable industry structure due to its capital intensive nature and with specific physical characteristics which are well understood. This suggests the nature and quality of the services required should be able to be anticipated and delivered under an annual appropriations regime.

The Authority makes reference to both Gas Industry Council and the Australian Energy Market Operator (AEMO) as examples of entities who charge fees for services. However, a key point is both bodies differ from the EA in that they have been established under a company structure with some form of industry representation or ownership<sup>1</sup>. This provides a much greater oversight and governance of fee setting arrangements and mitigates the need for extensive consultation, which as noted above is likely to be a source of potential inefficiency and inflexibility. Mighty River Power would be supportive of similar governance arrangements being considered for the EA.

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<sup>1</sup> AEMO's ownership for example is split 60/40% between government and industry.