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Electricity Authority
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By email: submissions@ea.govt.nz

Dear Carl

Access to Tariff and Connection Data

Genesis Energy Limited welcomes the opportunity to provide a submission to the Electricity Authority (“the Authority”) on the consultation paper “Access to Tariff and Connection Data” dated 23 June 2015 (the Paper).

Intervening in tariff data disclosure will have serious implications for competition in New Zealand, ultimately in our view, leading to a significant dampening effect in the retail market. There is a very real risk that the type of intervention proposed could lead to standardisation of tariffs. Standardisation will drive out competition and innovation in both the short term as organisations try to understand the impacts and in the long term as organisations attempt to meet the market, not compete in it. This risk has not been considered by the Authority.

We also consider the Authority’s proposals for disclosure of connection data is unnecessarily complicated and will ultimately drive additional costs that will need to be passed onto the consumer.

As the Authority itself has pointed out, tariff and connection data is already available to consumers, and given consumers have very little interest in this information, the proposed intervention looks decidedly like regulation for regulation sake without considering the cost implications or the unintended consequences on competition in the retail market. We consider the most appropriate outcome from this consultation would be for the status quo to continue.

Tariff data

We are wary of the Authority regulating in this space, which is likely to have serious consequences for competition in the retail market with very little benefit (if any), to the consumer. We are of the view that this intervention will load more costs onto consumers. As the Sapere report points out: "*intervention which limits or encourages retailers to reduce experimentation, or narrow the dimensions of product service over which they compete, would have a high risk of doing more harm than good.*"¹ Given the level of change the New Zealand retail market is likely to experience, both due to competition and technology, any restriction on innovation will hurt consumers.

In particular, we note:

- Tariff data is commercially sensitive to retailers as they compete in an increasingly competitive retail market;
- There are already significant competitive and regulatory incentives for retailers to disclose accurate and accessible tariff information to consumers (and the public). Times have changed and traditional regulatory thinking is less applicable. In a socially connected environment companies not providing accurate and accessible tariff information is not an option, without consumer consequences;
- Regulating greater transparency of tariff data information risks undermining competition. In particular, we are very concerned that any intervention that, explicitly or implicitly, creates a standardised approach to electricity tariffs will dampen competition;
- Publication of tariff data has a disproportionate impact on small retailers, or on larger retailers who are innovating with unique segmented customer offerings.

We elaborate on these points below.

Tariff data can be commercially sensitive for retailers

There is a distinction between tariff data and consumption data,² the former which is clearly generated by the retailer and not the end user. In this regard, we also note the Authority has gone to lengths to establish that connection data is

² We refer to the Authority's recent Code change for release of consumption data to consumers and agents.

not private to the customer – but there is no analysis of the impact on private companies from being forced to reveal commercially sensitive tariff plans.

We are unaware of any unregulated competitive market where retailers are forced to reveal future pricing plans. We consider there is good reason for avoiding this type of regulation. A regulated approach, as discussed below and by Sapere in their report, will disincentivise retailers from trying new innovative pricing mechanisms for electricity.

Furthermore, we suggest that there can be a very high degree of customisation in the price plans offered to customers – especially commercial and SME - but we anticipate a growing customised approach in the retail market as well. Forcing retailers to reveal this data in bulk will undermine the commercial basis of these offers.

Existing disclosure and incentives

We consider regulatory intervention unnecessary as a number of retailers, including Genesis Energy, already publish tariff information on their websites. Genesis Energy has no reason to obstruct the ability of consumers to access the same. The Authority’s proposals primarily benefit third party intermediaries which is something that falls outside the Authority’s functions.

As highlighted in the Authority’s most recent publication on the New Zealand retail electricity market³, New Zealand has one of the highest switching rates in the world.⁴ The trend of market saturation (as monitored by the Authority) has decreased year on year.

This all indicates that the New Zealand retail market has already reached the stage of development where retailers face strong enough incentives to compete through transparency about their tariffs and making searching for the best tariffs easy. Notwithstanding the potential of poorly considered regulatory interventions, we suggest this strong switching rate is now embedded in the retail electricity market. Strong retail competition and an embedded culture of consumer switching means it is not in retailers’ best interests to create or maintain barriers to information. The industry is sufficiently open and competitive that the consumer will simply go elsewhere if not able to obtain the desired information.

Changing consumer expectations are also driving retailers to provide more relevant information in a transparent and helpful way. Extensive use of social media now means there is no opportunity for retailers to “hide” pricing plans

³ ,<https://www.ea.govt.nz/monitoring/residential-electricity-market-performance/2014/>

⁴ See our previous submission on Retail Data Project Issues dated 11 March 2014.

from groups of consumers. Consumers demand greater access to information relevant to them and their wider peer group. In our view, any retailer that is taking this approach without clear justification – to the consumer's satisfaction – will face significant brand risk from comments in social media. We suggest consumer pressure and brand risk are a now much more dynamic, and effective, driver for change than a regulatory intervention that will be outdated before it is enacted.

Furthermore, as a consumer service, tariff offers are subject to usual fair trading laws and regulation by the Commerce Commission. We note that these regulations already provide strong protections for consumers and restrict mis-selling by way of advertising.

Erodes competition and stifles innovation

Increased access to tariff data can be damaging to competition and innovation, particularly where the form and extent of tariff information is regulated and subject to mandatory disclosure. This kind of transparency deters suppliers from innovation and they are no longer able to compete on price - unintentionally resulting in standardisation of tariff data. We agree with Mighty River Power's comment that *"Requiring retailers to publish a full set of prices, including 'below the line' discounts and incentives will substantially restrict retailers from using these important competitive tools and will be detrimental to regional competition levels."*⁵ Any proposals by the Authority to standardise tariff data are therefore strongly opposed.

The Authority can also be warned from the UK experiences –

Since 2008 UK energy regulator Ofgem has imposed increasingly severe restrictions on suppliers to the domestic (residential) retail market. Initially, non-discrimination conditions aimed to "remove unfair price differentials", particularly between suppliers' prices between regions, totalling £0.5 bn. This actually envisaged increasing prices to other customers by £0.5 billion, to maintain revenue neutrality. In the event, competition reduced, customer switching fell by half, and profits of major suppliers increased by nearly £1 billion, at the expense of customers. Later, restrictions on the number and types of tariffs aimed to encourage customers to engage in the market. However, there is no empirical evidence to justify this, and the policy prohibits many discounts and tariff types that customers value, especially vulnerable customers.⁶

⁵ MRP submission dated 11 March 2014.

⁶ Littlechild S (2014) Promoting or Restricting Competition?: Regulation of the UK Retail Residential Energy Market since 2008, EPRG Working Paper 1415, Cambridge Working Paper in Economics, September 2014.

In late 2010, Ofgem launched the Retail Market Review (RMR) due to concerns that retail energy markets were not working effectively for consumers. The RMR rules included: a) ban on complex tariffs; b) a maximum limit on the number of tariffs that suppliers are able to offer at any point in time; and c) the simplification of cash discounts. Although the Authority's proposals here are somewhat different and less restrictive, 'alternative 2' could have the same consequences, albeit unintentionally. The UK experience did not result in improved consumer engagement or increased switching, and, innovation was stifled:

The introduction of the four-tariff rule has led to a number of the Six Large Energy Firms withdrawing a number of tariffs and discounts and changing tariff structures, which may have made some customers worse off. In particular, some innovative tariffs were withdrawn; various discounts were removed by the Six Large Energy Firms as a result of RMR rules; and RMR curtailed the ability of the Six Large Energy Firms to offer attractive tariffs for low volume users.

We consider that the restrictions imposed by the RMR four-tariff rule limits the ability of suppliers to innovate and provide products which may be beneficial to customers and competition.⁷

It is important to note that 'standardisation' and 'accuracy' are different concepts. Accurate but non-standardised tariff data can be disclosed. In our view, accuracy is more important to consumer choice, and the Authority should focus on accuracy opposed to standardisation.

Small and start-up retailers

Over-regulation of tariff data has the potential for elimination or competition between retailers on price. This means prices will be matched by competitors and the industry will need to compete in other ways (for example by diversification). Small retailers will not have the resources or bargaining power to compete on this basis, and will either be forced out of the market or will be unable to increase their customer base.

Publication of data

We are wary of any one regulated price comparison website. This should be a commercial venture by independent competitive third parties. We support Sapere's comment that the "*characteristics of retail competition in New Zealand mean an intervention to attempt to create a single, comprehensive, centralised comparator site, would be unlikely to improve results for consumers relative to a more commercial approach. Competition in comparator websites is likely to*

⁷ CMA "Energy Market Investigation – Summary of Provisional Findings Report (7 July 2015), page 32 (available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/442500/EMI_PFs_Summary.pdf)

better meet consumer needs over the long run as these websites innovate to draw in customers.”⁸

If the Authority is going to regulate a price comparison website, then there will have to be a higher level of transparency so that consumers have comfort in the accuracy of the information provided.

Risk of unintended consequences

We strongly oppose this intervention due to the significant risk of unintended consequences when interfering with commercial decisions on retail pricing. If, however, the Authority is adamant to intervene, then it must do so in a way that minimises this risk as much as possible. In particular, the Authority must:

- **Avoid standardisation of tariff data.** As discussed above, we consider any standardisation of tariff data will lead to standardised retail formats and structures.
- **Do not force retailers to reveal commercially sensitive information.** Most retailers already publicise and make available their standard tariff data plans (e.g. standard and low fixed user plans). That is, providing the standard tariffs available to mass market consumers within specific and identifiable regions. We suggest that codifying this existing practice will ensure that all retailers provide the same level of information to consumers.

However, we oppose any mandatory requirement for publication beyond this, such as offers made by uninvited direct sales, tailored offers made to a set of consumer type, information about future intentions, information that would not otherwise be made public, and products subject to frequent change. Retailers should have the discretion to disclose these types of additional non-standard products.

- **Recognise the incentive on price comparison websites.** We suggest the Authority’s proposals to provide information to either one website, or to make it available in a standardised form to multiple websites, are flawed. There are suitable incentives for both the retailer and the website to ensure that information is available. The proposal forces all of the cost of providing information to retailers, rather than acknowledging the financial benefit that website owners can gain from having this information. We suggest there is already a strong commercial incentive for website owners to invest in the processes – and even the relationships – to

⁸ Page 3.

ensure tariff information is up-to-date. The Authority is effectively forcing retailers to subsidise these business models.

Based on these three examples of unintended consequence, we reluctantly suggest that the Authority's proposed 'Alternative 1', with amendment, will have the least risk of unintended consequences for retailers and, in the long term, consumers. We suggest the amendment will need to focus on ensuring that customised price plans are not captured by any disclosure obligation, that any obligation on retailers is limited to providing accurate tariff information, and that commercial information between a retailer and a comparison website service provider remains confidential.

In accordance with the Authority's functions and process for code amendments under the Electricity Industry Act, the Authority will need to consult on a new alternative 1 wording in accordance with our recommendations above. At that time we will submit on our preferred wording together with other industry participants.

Connection data

The Authority's proposals are primarily geared at assisting brokers and aggregate agents. Consumers can already access this information from their retailers, whereas brokers are unable to easily access it without authority from the customer. Genesis Energy considers that there is a simpler way for agents to access the data than the Authority's proposals: removing the 'marketing purposes' restriction for use of the Registry and adding a non-participant category for access in a much simpler and more direct way. This will also require granting all trader participants the same ability to access this data.

Our specific responses to your questions are set out in Appendix A.

If you would like to discuss any of these matters further, please contact me on 04 830 0013.

Yours sincerely



Rebekah Plachecki
Regulatory Advisor

Appendix A: Responses to Consultation Questions

QUESTION	COMMENT
<p>Q1: Do you agree that the current arrangements for accessing retail tariff plan data and connection data mean that consumers face higher-than-necessary transaction costs identifying electricity-related offers available to them? Please give reasons with your answer.</p>	<p>No.</p> <p><u>Tariff data</u></p> <p>Our tariff data is available on our websites for standard tariff plans and low fixed user tariffs. We make it easy for consumers to access this information as it is in our interest to ensure consumers can access the best available deal. Consumers can also access this information by calling us. We understand that most other retailers also make available their tariff data online. New Zealand has one of the highest switching rates in the world which suggests that customers are well informed about deals across the industry.</p> <p><u>Connection data</u></p> <p>Again this information is available to the consumer on request at no charge to the consumer.</p>
<p>Q2: Do you agree that a Code amendment would lower consumers' transaction costs more quickly than would market forces? Please give reasons with your answer.</p>	<p>No. The change will have no impact on transaction costs, as the information is already available. The Authority's proposals primarily benefits aggregate agents and brokers.</p>

QUESTION	COMMENT
<p>Q3: Under alternative 1 do you have any comments or suggestions about all retailers being required to provide retail tariff plan information to ConsumerNZ, and having to provide that same retail tariff plan information to any person who requested it?</p>	<p>Although we do not see any reason to depart from the status quo, we think that Alternative 1 has less risk of unintended consequences than Alternative 2. We refer to the main body of this letter.</p> <p>Any regulatory intervention needs to take into account industry needs to protect certain offers from disclosure. We suggest that certain pricing plans should only be published at the retailer's choice although we do not have any issue with publishing standard tariffs and low fixed user tariffs. See main body of letter for our further views on this point,</p> <p>A single regulated price comparison website will impinge on retailer innovation as such provision of data should not be limited to ConsumerNZ. See main body of letter for further discussion,</p>
<p>Q4: Under alternative 2 do you have any comments or suggestions about retailers being required to publish information about their generally available retail tariff plans on their websites?</p>	<p>We do not object to information being made available to consumers on our website but this should be unregulated and un-prescribed to be appropriately flexible, accurate and without impinging on retailer innovation.</p>

QUESTION	COMMENT
<p>Q5: Under alternative 2 do you have any comments or suggestions about the requirement to supply retail tariff plan information using standardised file formats and structures?</p>	<p>We strongly oppose any standardised format for disclosure of data. The Authority must appreciate that tariff data is information owned by the retailer and therefore the retailer should be at liberty to provide this to its customers using its own systems and processes. To regulate formats and processes would introduce an unnecessary layer of regulation and costs for no benefit to the end user.</p> <p>In addition by standardising the format, the Authority is at risk of stifling innovation in pricing models. By the proposed definition, the Authority is already making the determination that a retail price will be based on one or more of physical location, meter configuration or the network price category code when this does not need to be the case.</p> <p>Please see main body of letter for our further views on standardisation and our concerns with alternative 2.</p>

QUESTION	COMMENT
<p>Q6: Under both alternatives do you have any comments or suggestions about making publicly available the connection data held in the registry that is set out in appendix D?</p>	<p>We consider amendment to rule 11.28 Access to Registry⁷ is the better way for agents to gather connection data. The Code would need to allow for using the Registry for marketing purposes and adding non-participant access rights (as is currently granted for some organisations). This would effectively achieve the outcome the Authority is aiming for¹ but at very little cost and a simple Code amendment.</p> <p>If the Authority does proceed with mirroring Registry data then the connection data to be mirrored far exceeds the data we consider necessary for a tariff comparison. For instance, a customer will have no use for the POC, reconciliation type or loss category code (list is not exhaustive). We accept that an agent may wish more details than a customer, but still there is an excess of data. For example of what purpose does how the current trader reconciles wholesale purchases, or the current status of the ICP, serve in determining best cost for a customer.</p> <p>We also believe in the interests of an open and competitive market that existing traders at an ICP should be able to report from the Registry those ICPs for which data is being requested by other parties.</p>
<p>Q7: Do you agree that the objectives of the proposed alternatives are appropriate and consistent with the Authority's statutory objective? Please give reasons if you disagree.</p>	<p>No. The Authority's proposals primarily benefit agents or other interested third parties, not the consumer.</p>

QUESTION	COMMENT
<p>Q8: Do you agree that the connection data which the Authority proposes to make publicly available is not personal information?</p>	<p>It is our view that information about the ICP on the Registry does not contain personal information as it does not identify an individual.</p> <p>However, if the publicising of status data and the development of including temporary (i.e. credit) disconnections continues, there is the change that customers at ICPs with credit disconnections (current or past) may be disadvantaged.</p>
<p>Q9: If you disagree, please give reasons and suggest a way to address the privacy issue(s) you have identified.</p>	<p>N/A</p>
<p>Q10: Do you agree with the assessment of gross benefits, costs and net benefits? If not, please explain your reasoning.</p>	<p>We struggle to see any benefits to the consumer to justify costs spent on this issue, We cannot comment on the assessment of gross benefits, costs, and net benefits because we don't understand the figures projected or the reasoning behind them.</p>
<p>Q11: Do you have any comments or suggestions about whether the additional gross benefits or alternative 2 outweigh its additional costs vis-à-vis alternative 1? Please give reasons with your answer.</p>	<p>See question 10.</p>

QUESTION	COMMENT
<p>Q12: Do you agree that both of the proposed alternatives are preferable to other options? If not, please explain your preferred option in terms consistent with the Authority's statutory objective.</p>	<p>Our preferred option is maintaining the status quo.</p> <p><u>Tariff data</u></p> <p>We think that access to tariff data should be voluntary as well as any formats and procedures. We refer to the main body of our letter which sets out our reasoning. If the Authority nevertheless decides to regulate this, then Alternative 1 can be achieved at less cost than Alternative 2 and would not have adverse long term consequences on competition in the sector. Any Code amendment would require publication of standard and low fixed user tariff plans but any other customised plans and those as a result of uninvited sales would be published at the retailer's discretion. Formats and procedures for publication would also be unregulated.</p> <p><u>Connection data</u></p> <p>The better way to provide access to connection data is through a simple Code amendment to the rules relating to access to the Registry. This could be achieved by removing the marketing purposes restriction for use of the Registry and adding a non-participant category for access.</p>

QUESTION	COMMENT
<p>Q13: Do you agree with the Authority's assessment that the proposed Code amendment for each of the proposed alternatives meets the requirements of Section 32 of the Act? Please give reasons if you do not.</p>	<p>We are not convinced that the Authority's proposals are the best way to increase competition among retailers. Tariff data is available to consumers already, which enables them to make an informed decision on the best price option for their needs. Conversely, we do not object to agents or brokers setting up price comparison websites to assist in the choice process but this should be a commercial venture with information provided on a voluntary basis.</p>
<p>Q14: Do you agree with the Authority's assessment of the two proposed alternative options against the Code amendment principles? Please give reasons if you do not.</p>	<p>See body of letter.</p>