



29 November 2016

Submissions
Electricity Authority
PO Box 10041
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By email: submissions@ea.govt.nz

Code review programme 2016: consultation paper

Counties Power appreciates the opportunity to provide feedback on the *Code Review Programme 2016: Consultation Paper* dated 18 October 2016.

Counties Power is a trust-owned electricity lines company, based in Pukekohe, in Auckland's rural south. The Company distributes electricity to over 40,000 ICPs across a geographical region of some 2,250 square kilometres across a total circuit length of 3,125 kilometres. All shares in the company are held by the trustees of Counties Power Consumer Trust on behalf of all local power consumers.

Counties Power's submission to the Electricity Authority ('the Authority') is in regard to proposal section '2016-05 Removing references to the Authority acting reasonably'. In this section we note that the Authority is seeking to remove requirements in the Electricity Governance Rules 2003 (Code) to: (1) act reasonably; (2) publish information within a reasonable period of time; and (3) being required to make 'reasonable endeavours'.

Counties Power is concerned that the Authority is seeking to reduce requirements for it to act reasonably given that it is an independent Crown entity and electricity regulator, with a mandate that does not consider issues of equity, fairness and the environment. The risk associated with its mandate and issues of equity were in evidence with the Authority's transmission pricing methodology (TPM) proposals, where the Authority admits that it is seeking changes to the Code, which will affect line charges for large areas of New Zealand, without consideration of equity on the general public and businesses.

Counties Power observes that the Authority through the proposed TPM is effectively changing government policy around the allocation of infrastructure f costs independent of the Minister of Energy and the Ministry of Business, Innovation and Employment (MBIE). The lack of MBIE policy advice on the TPM, we believe, may indicate a lack of oversight of the Authority by MBIE, which has the wider mandate to 'Grow New Zealand for All' and sets government electricity policy for the Minister of Energy, and separately through policy advice to the Minister of Commerce and Consumer Affairs is entrusted to ensure that the interests of consumers are protected. This is despite the MoU between the Authority and MBIE dated

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September 2014 which states that MBIE's role covers "regulatory activity relating to fairness/equity issues".

Consequently, Counties Power believes there are currently only light touch controls governing the Authority's performance, so Counties Power would not support any changes that would in any way further weaken the Authority's requirements to act reasonably or publish information in a reasonable time period. This problem is compounded by the Electricity Industry Act specifying a limited statutory objective for the Authority. This type of problem was identified by The New Zealand Productivity Commission where they state in a review of regulatory practices "The Commission has found that regulators often have to work with legislation that is outdated or not fit for purpose"¹.

The only reason that the Authority has presented for the amendments is that as a Crown entity the Authority is required to act in accordance with administrative law principles that include a requirement to act reasonably. However, the Code is designed to be read by a wide range of people within the industry, and the general public, so the requirements to act reasonably needs to be included in the Code for the understanding of the reader. This requirement for regulations to be easily understood is reflected in the Regulatory Standards Bill that states that "the law should be clear and accessible"². Therefore, the requirement to act reasonably should be made clear to the reader of the Code without the need to refer to administrative law principles.

In conclusion, given that the Authority is making regulatory changes independent of the Minister of Energy and MBIE, then the proposed Code changes in removing references to the Authority acting reasonably can only erode consumer and industry confidence in the lack of controls around the Authority and transparency into its performance.

Regards

A handwritten signature in blue ink that reads "Andrew Toop". The signature is written in a cursive, flowing style.

Andrew Toop
Commercial Manager

¹ Publication titled *Regulatory institutions and practices*, June 2014, page 8.

² Regulatory Standards Bill, Part 2, clause 7 (1) (a) (i).