



MAJOR ELECTRICITY USERS' GROUP

8 August 2017

Ross Hill
General Manager Legal and Compliance
Electricity Authority
By email to submissions@ea.govt.nz

Dear Ross

Top Energy Limited application for exemption from arm's-length rules

1. This is a submission by the Major Electricity Users' Group (MEUG) on the Electricity Authority (EA) draft decision paper "Application for exemption from arm's-length rules: Top Energy Limited" dated 28 June 2017¹.
2. MEUG members have been consulted in the preparation of this submission. This submission is not confidential. Some members may make separate submissions.
3. This application is important for the circumstances relevant to Top Energy and to ensure good precedents are set for other Electricity Distribution Businesses (EDB) that may seek exemptions.²
4. Comments on two aspects of the analysis supporting the draft decision follow:
 - a) If exemption(s) are not granted, then Top Energy could sell their generation assets to another party that can invest without breaching the arm's-length rules. This is a feasible option and should have been considered.

There is a presumption in the draft decision that local ownership of Top Energy is sufficient to allay any agency issues, that is incentives leading to inefficient outcomes, between managers of the business and local end consumers.³ That presumption relies on extending the argument when the Electricity Industry Act was promulgated that direct local ownership is sufficient to ensure efficient outcomes and hence consumer directly owned EDB need not be subject to price-quality regulation. The extension in this case is that local authority ownership of Top Energy is a small step away from direct consumer ownership. MEUG is not aware of any analysis that

¹ URL <http://www.ea.govt.nz/dmsdocument/22314> at <http://www.ea.govt.nz/code-and-compliance/act-and-regulations/part-3/exemptions-part3/>.

² Transpower could also seek exemption(s). This submission has not considered that possibility.

³ For example, see draft decision, paragraph 7.58, "Although the Trust does not meet the requirements in Part 4 of the Commerce Act to be exempt from price-quality regulation (because the trustees are not directed elected by consumers), the combination of consumer ownership (as beneficiaries) and price quality regulation help relieve concerns about Top structuring its cost allocations to benefit shareholders at the expense of consumers, as they are one and the same."

has tested this presumption. In our view the failure of most of the 29 EDB to form regional Distribution Network Operators is an indicator there may be managerial capture resulting in barriers to operational aggregations that would lower costs for the long-term benefit of consumers.

- b) The application for exemption is specific about the technology and commercial arrangements to be used for the proposed Top Energy ownership of an additional 26MW of diesel/bio-diesel generation. An alternative commercial arrangement is for Top Energy to out-source procurement for the service and be open to other options such as batteries. These alternative commercial arrangements and technical options should have been considered.

To put this in context compare Top Energy's proposal to dedicate the additional 26 MW of diesel/bio-diesel generation for distribution alternative services with the option of out-sourcing to a service provider using batteries to provide that service and other services and therefore lowering the overall cost. Genesis Energy have explained this as follows:⁴

"It appears to us that, to the extent that customer-sited batteries are considered, EDBs only consider self-provision and use of the battery for their purposes. It also appears they do not evaluate the potential for a market transaction to provide a solution to a constraint issue, or consider how a large percentage of the value of the customer-sited battery is being untapped. This risks under-utilising the potential of such a battery not just for the benefit of the network but also the benefit it could, and should, provide to the customer on whose premises it is located.

In any given scenario, we are of the view that the application of a customer-sited battery for the single purpose of deferring investment in the distribution network will leave a substantial amount of the economic value on the table. By contrast, a market transaction involving customer-owned batteries that provides a stack of services to the electricity system may well shift the economics of the solution for a forecasted constraint in favour of batteries because the additional revenue generated by the batteries will have the tendency to decrease the cost of the distribution deferral service for the EDB."

Any exemption(s) granted by the EA should make it clear that the exemption(s) do not condone or support a particular commercial arrangement or technical solution. If this condition is part of the exemption(s) then Top Energy will be accountable for price-quality outcomes that ensue from their decisions on how to exercise the exemption(s). If the diesel/bio-diesel generation assets become economically stranded in the future, then Top Energy should not be able to rely on the exemption(s) to avoid accountability.

5. We look forward to the EA considering this submission.

Yours sincerely



Ralph Matthes
Executive Director

⁴ Genesis Energy submission to CC, Proposed amendments to information disclosure determinations, 28 July 2017, p5, refer <http://www.comcom.govt.nz/dmsdocument/15643>