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TRUSTPOWER SUBMISSION: 2019/20 LEVY-FUNDED APPROPRIATIONS AND INDICATIVE WORK PROGRAMME

1 Introduction and overview

- 1.1.1 Trustpower appreciates the opportunity to submit on the Electricity Authority's (**the Authority's**) 13 November 2018 consultation paper on the *2019/20 Levy-funded appropriations and indicative work programme (Consultation Paper)*.
- 1.1.2 The Authority is seeking feedback on:
- a) An operational appropriation of \$74.9 million to fund its operations including:
 - i. \$43.9m for system operator costs;
 - ii. \$9.7m for various other service providers;
 - iii. \$2.4m for activities to facilitate consumer participation;
 - iv. \$21.2m¹ for the Authority's remaining operational expenses;
 - b) A contingent appropriation of \$6 million over five years for Transpower as system operator to manage actual or emerging emergency events relating to NZ's security of supply;
 - c) An contingent appropriation of up to \$1 million to be used for any costs and expenses the Authority incurs in participating in litigation; and
 - d) The Authority's indicative work programme.

2 Trustpower's views

- 2.1.1 Trustpower supports:
- a) the proposed appropriation of \$6m for Transpower as system operator to manage actual or emerging emergency events relating to NZ's security of supply;

¹ This figure includes \$2.4m for activities to facilitate consumer participation.

- b) appropriation increases of just over \$3m from 2021/22 if the Authority decides to implement real time pricing (subject to stakeholder consultation) as per our 2018/19 submission;
 - c) the Authority, as part of its broader work programme, seeking to empower consumers to make informed choices with respect to their electricity supply through the use of \$2.4m to facilitate consumer participation.
 - i. However, we note that there may be more effective means for promoting competition and consumer engagement and recommend that these should be further explored as a matter of priority, albeit acknowledging the ongoing work by the Electricity Price Review (EPR) in this area.
 - ii. For example, one potential option would be the further development of a multi-channel advertising campaign to promote the benefits of switching retailers and the expansion on the Authority's *What's my number* initiative.
- 2.1.2 We are also highly supportive of the greater level of detailed information that the Authority has provided to enable interested parties to consider its proposed work programme. In our view:
- a) the inclusion of information around net benefits provides valuable insight into how the Authority has prioritised its work programme; and
 - b) the Authority should continue to expand the level of supporting information provided in these consultations in the future, including providing further details of the basis for their calculation of net benefits.
- 2.1.3 We do however have some concerns regarding:
- a) The Authority's proposed operational appropriation of \$74.9 million because:
 - i. There remains an absence of a compelling case to review transmission pricing guidelines, despite the Authority having spent the past 6 years developing proposals in this area; and
 - ii. the Authority's prioritisation approach does not appear to have correctly targeted the most important area for substantive reform, i.e. distribution pricing which is estimated to have indicative net benefits of over \$1 billion. This is substantively more than the net benefits estimated to be associated with transmission pricing and yet the Authority continues to want to focus on transmission pricing and not distribution pricing; and
 - b) The proposed \$1 million litigation contingency fund.
 - i. We continue to think that if these costs were funded out of the Authority's operating budget, rather than additional levy funds, the Authority will have more incentives to follow processes which are likely to suppress these costs including surveys of its stakeholders to understand their experience of its engagement processes.
- 2.1.4 Our reasons for these views are explained in the remainder of this submission, along with some broader suggestions for improving the Authority's existing processes and arrangements.

3 Further expenditure on TPM Guidelines

- 3.1.1 The Authority has asked for input on the priority, timing and scope of the work it should undertake to deliver its strategic priorities as part of this broader consultation.
- 3.1.2 The Authority has been reviewing the current TPM Guidelines since 2012, during which time it has refined and consulted on a number of versions of its flagship proposal for an asset-based,

beneficiaries-pay pricing approach for new assets and a selection of existing assets. The Authority since then has received a large number of submissions and independent expert reports from stakeholders explaining in depth why its TPM reform proposal does not meet the Authority's statutory objective and its Code change requirements, including the requirement to have positive net benefits.

- 3.1.3 We understand the Authority is currently preparing yet another new TPM proposal ready for consultation with industry in early 2019.
- 3.1.4 We do not consider that any further expenditure by the Authority on reforming the TPM would be in the long term interests of consumers and suggest it would be prudent for the Authority to deprioritise its intended new (fourth) set of TPM Guidelines as:
- a) the 'regional aspects of transmission pricing' are part of the EPR's terms of reference so the Authority should wait until the end of this process before resuming its reform project;
 - b) the Authority's preliminary analysis suggests that the benefits to consumers of TPM reform are worth \$100 million, as compared to distribution pricing reform which is estimated to be worth \$1 billion. It is concerning that the Authority continues to seek to progress with TPM reform (for which we suggest the anticipated benefits are likely to be a significant overstatement) when it appears that distribution pricing reform would deliver greater net benefits to consumers.

4 Litigation Contingency Fund

- 4.1.1 In previous submissions we highlighted our concerns with the \$1 million litigation contingency fund.
- 4.1.2 We continue to have concerns with this contingency fund because:
- a) the Authority cannot be challenged by industry participants on the *merit* of a decision, only its *processes* and the extent to which it has complied with the law;
 - b) there has never been a successful case of judicial review against a market regulator in New Zealand. This suggests industry participants are unlikely to commence costly and time-consuming litigation unless they are seriously aggrieved at the Authority's decision-making processes and wish to "spotlight" the issues; and
 - c) litigation is expensive and therefore will not be available to all parties. It is conceivable, indeed likely, that there will be many more cases where parties have concerns about the Authority's decision-making processes but no action is commenced.
- 4.1.3 Therefore, our preference continues to be for the \$1 million litigation costs to be funded out of the Authority's operating budget, rather than additional levy funds.

5 Other Authority processes and arrangements

- 5.1.1 We also wish to provide some broader suggestions around how the Authority could continue to ensure that its current processes and arrangements:
- a) enable feedback on stakeholders current level of satisfaction;
 - b) continue to ensure "group-think" is avoided; and
 - c) support joined-up thinking across agencies.

5.2 The Australian experience

- 5.2.1 In 2014-2015 the Australian Energy Market Commission (**AEMC**) implemented consultation process surveys which are designed to measure stakeholder satisfaction with the AEMC's engagement and communications and identify ways in which engagement can be improved.
- 5.2.2 The AEMC rationale for establishing online surveys was gather project-specific feedback on AEMC timeliness and the effectiveness of consultation processes for individual rule change and review projects. These online surveys are reviewed by an independent research company and responses remain completely confidential unless stakeholders want their views revealed to the AEMC.²
- 5.2.3 The AEMC believes survey feedback provides a valuable baseline to monitor their progress in strengthening engagement and ensuring stakeholders have meaningful input into decisions that could affect them.
- 5.2.4 We propose the adoption of stakeholder surveys akin to what the AEMC has established in order to measure the overall satisfaction with the Authority's process.
- 5.2.5 We not only believe this is beneficial for stakeholder management, but also believe it to be an efficient risk-management strategy as well as act as an incentive to follow due process and prevent any future litigation from arising in the first place.

5.3 Consultancy services and stakeholder engagement

- 5.3.1 We note the Authority's intention to continue to decrease its use of consultancy services over time and are generally supportive of this approach as it should align with least cost outcomes.
- 5.3.2 There will however continue to be value in the Authority drawing on external advice from consultants so as to ensure they are continuing to benefit from the broader experience in other jurisdictions and do not get impacted by "groupthink".
- 5.3.3 Therefore, we support the Authority ensuring it uses a range of consultants, including those based in other jurisdictions, such as Australia.
- 5.3.4 We also support the Authority enabling those consultants to work for industry participants at times (albeit ensuring appropriate conflicts remain in check) as this will enable the industry to continue to develop as a whole and benefit from greater understanding of the views of various parties on matters.
- 5.3.5 We are encouraged by the Authority's collaborative approach with regards to the Multiple Trading Partnerships consultation by holding stakeholder interviews and we encourage such a process in future work streams. We believe this consultative approach will allow for greater collaboration when considering the variety of issues on the Authority's programme.

5.4 Support joined up thinking

- 5.4.1 We are highly supportive of the Authority's continued involvement in the multi-regulator (Authority, Commerce Commission, MBIE and GIC) meetings held in New Zealand. We are also supportive of the Authority's continued relationships with regulators in overseas jurisdictions.
- 5.4.2 There is significant benefit in holding regular multi-regulator meetings. Evidence suggests that the effectiveness and efficiency of a regulatory system depends, in part, on the extent to which

² For more information, please visit: <https://www.aemc.gov.au/about-us/stakeholder-engagement>

potential duplication and gaps between regulations are anticipated and avoided.³ As the OECD recently outlined:⁴

“Achieving good regulatory outcomes is almost always a cooperative effort: by the regulator and other regulators, the regulated, and often the broader community”.

- 5.4.3 More broadly, we note that while the scope of the Authority’s functions are prescribed by the Act, it has an important role in contributing to ensuring there is alignment in thinking across energy regulation, climate change and resource management.
- 5.4.4 We are supportive of the Authority providing ongoing input into relevant discussions with agencies working on climate change and resource management matters to ensure joined-up thinking can occur (where appropriate).

If you have any queries regarding this submission please contact Claudia Vianello on 021 681 206.

Regards,



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³ OECD (2014), *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing

⁴ Ibid. Pg 5