

Submission by



to the

Electricity Authority

on the

Level Playing Field Measures – Options Paper

7 May 2025

Level Playing Field Measures - Options Paper

– SUBMISSION BY BUSINESSNZ ENERGY COUNCIL–

Introduction

1. BusinessNZ Energy Council (BEC)¹ is pleased to have the opportunity to provide feedback on the Electricity Authorities (EA) working paper titled Level Playing Field Measures – Options Paper.
2. BEC represents a diverse array of leading energy-sector businesses, government bodies, and research organisations dedicated to creating a sustainable, equitable, and secure energy future.
3. As a brand of BusinessNZ, New Zealand’s largest business advocacy organisation, we represent the World Energy Council in New Zealand, aiming to shape better outcomes for our wider energy system both locally and globally.
4. With this work the EA aims at addressing perceived hedge contract related competition risks arising from control of New Zealand’s flexible generation base by, and vertical integration of, the four large generator-retailers.
5. BEC believes that increasing competition in access to hedge contracts is important in ensuring stable investment into new generation projects. Additionally, improved competition will allow for smaller retailers to offer consumers more choice.
6. However, it is worth noting that security of supply is the main concern and should be addressed before considering increasing regulation.
7. This submission highlights that while increasing competition is important and BEC agrees that parts of option 2 (non-discrimination obligations) is the preferred option there are issues revolving around step 2 and 3 of option 2. Namely, reduced flexibility, increased compliance costs, increased regulatory burden and price convergence which would decrease competition.

Key Recommendations for the Electricity Authority and the Government

- Focus on addressing the primary issue, which is security of supply and diversity of production, before increasing regulation, as this approach is more likely to reduce prices for consumers.
- If moving forward with regulation, prioritise option 2, step 1 with a principles-based approach as the preferred regulatory framework. It offers a balanced approach that enhances transparency while preserving market flexibility.
- Establish clear, objective thresholds for progression between steps 1, 2 and 3 in option 2 to reduce uncertainty and increase industry confidence.

¹ More about BEC in APPENDIX One

- Consider modifying step 3 to reflect international best practices (e.g. France, Spain and Australia), where only specific volumes are mandated for trading, preserving flexibility for bespoke arrangements.
- Avoid fully mandated hedge trading as a 100% mandate may reduce flexibility, discourage participation, and harm small retailers. It risks unintended price convergence and reduced competition in the hedge market.
- Reassess perceived risk mitigation barriers. With one third of new generation expected to come from independent players, concerns about access to risk mitigation tools may be overstated in the current investment environment.

General discussion

8. With an increase to competition surrounding hedging contracts there would be a greater ability for non-integrated retailers and generators to manage risk and gain access to PPAs.
9. The EA has presented four options for addressing the competition risks associated with the gentailers control of New Zealand's flexible generation. The four options are 1. Account separation/stronger regulatory requirements for ITPs, 2. Non-discrimination obligations, 3. Negotiate-arbitrate regulation and 4. Corporate separation.
10. There are risks associated with all four of the options presented by the EA.

Option 1: Account separation/stronger regulatory requirements for ITPs

11. Option 1: Account separation/stronger regulatory requirements for ITPs requires that the financial accounts of vertically integrated firms' business units are kept separate. This aims at ensuring that the costs, revenues and profits of each unit and any transfer between them can be clearly identified. Stronger regulatory requirements around Internal Transfer Prices (ITPs) could also be included in this option.
12. Account separation could help identify price discrimination and cross-subsidisation as well as potentially discipline gentailer behaviour by increasing transparency.
13. BEC agrees with the EAs concerns about the likely effectiveness of regulating ITPs as a standalone remedy to address discriminatory behaviour. As a standalone remedy it does not directly impact the pricing and availability of hedges for third parties. Additionally, the information asymmetry between gentailers and other parties is likely to continue to exist.

Option 2: Non-discrimination obligations

14. Option 2: Non-discrimination obligations would require gentailers to ensure substantially the same treatment between their internal units and non-integrated retailers/generators. It applies to aspects such as pricing, procedures and information sharing. The implementation of these obligations range from principle-based approaches to more detailed, prescriptive obligations following three steps.

15. The three steps are as follows; step 1: a principle-based approach which would entail, economically meaningful ITPs for hedges, non-discrimination of supply of risk management contracts, objective credit terms and collateral arrangements, equal access to commercial information and record keeping and disclosure for demonstrating compliance.
16. Step 2 would involve creating prescriptive rules enforcing the principles of step 1.
17. Step 3 is the mandatory trading of gentailer hedges. This would entail all hedge contracts being traded through a designated market with defined trading terms. Trading would be primarily exchange based. Trading of bespoke products would still be possible but tied to exchange based trades as reference.
18. BEC agrees that option 2 should be the preferred approach as the principles-based approach could be implemented quickly, maintain gentailer flexibility of operations and achieve some of the same transparency goals of option 1.
19. Paragraph 13 of Appendix B states that volume should not be a consideration for pricing. This appears inconsistent with standard commercial practice, where bulk purchasing typically leads to more favourable pricing. Departing from this principle without clear justification raises concerns about the practical viability and competitiveness of the proposed approach within the New Zealand market.
20. Step 2 and 3 within option 2 present some worries that need to be addressed. These concerns are as follows.
21. The movement between the three steps seems to have a degree of ambiguity. A move to step 2 would be based on "the effectiveness of the principles in step 1 and the implementation of them by gentailers." Then movement to step 3 would be caused by "if existing non-discrimination obligations are failing." As well as "are there reasonable grounds for believing that the benefit of mandatory trading exceeds the costs." There is a lack of clarity surrounding thresholds for movement which, in this format, would provide a large degree of uncertainty for gentailers, especially considering the large difference between step 1 and step 3.
22. The rules set up in step 2 may not perfectly account for the complexities and nuances of the electricity market and individual gentailer circumstances. This could lead to regulatory errors and overly rigid rules which could stifle innovation in trading practices.
23. There could be an increased regulatory burden for both industry and the EA increasing costs to consumers. Potential for increased costs to consumers, which comes up later in this submission as well, should be particularly concerning. This is due to the increasing cost-of-living pressures felt by households and the affordability concerns of industrials.
24. There is a risk of the rules becoming outdated requiring further intervention and updates exasperating industry uncertainty.
25. The next concerns are directly related to the mandatory hedge trading outlined in step 3.
26. Reduced contract flexibility could disproportionately affect small retailers, who may have unique needs that standardised contracts don't accommodate for.

27. Successful hedge markets require enough willing buyers and sellers. If gentailers are forced to trade through a single regulated market, they may become less willing to hedge at all. Making risk management harder for all participants.
28. Gentailers use internal hedging to manage risk and reduce costs. If forced to hedge externally they may pass additional costs onto consumers. Higher prices could make it harder for new retailers to enter the market.
29. A regulated mandatory hedge trading system may lead to price convergence, where most hedging contracts are priced similarly. This would lead to reduced incentives for competition between hedging providers leading to a more rigid and less dynamic market.
30. Gentailers hedge to manage long-term price risks. If hedges must be traded on a regulated platform it could discourage long-term contracts in favour of short-term trading increasing uncertainty. This in turn would discourage investment.
31. The EA provides examples of other markets where there is regulated trading platforms but **none** of them make generators place all sales on a regulated platform. This suggests that the costs of 100% mandated trading outweigh the benefits and so under the cost-benefit movement outlined between step 2 and step 3 there will never be a shift to step 3 making it redundant.
32. In countries with degrees of mandated hedge trading, such as Australia and the United Kingdom, these models have generally worked well due to a more predictable generation base. Australia's Retailer Reliability Obligation (RRO) and Market Liquidity Obligation (MLO)² include mandated trading to ensure long-term price certainty and increase liquidity. The UK's Market Making Obligation (MMO) introduced in 2014 aimed at increasing liquidity and transparency in the wholesale market. It was removed in 2019 due to limited effectiveness.³ Both systems rely/relied heavily on firm, dispatchable generation and market structures that support standardised financial products. However, New Zealand's high reliance on seasonal intermittent generation, particularly hydro with its seasonal variability, and an increasing share of wind/solar, makes it more difficult to establish and price standardised hedge contracts. This intermittency could reduce the effectiveness of a mandated trading market unless mechanisms are adapted to reflect physical generation constraints.

Option 3: Negotiate-arbitrate regulation

33. Option 3: Negotiate-arbitrate regulation aims to encourage parties to reach commercial agreement through negotiation, limiting the need for direct regulatory intervention.
34. Despite the potential for simplifying the process for resolving disputes **BEC does not support the adoption of option 3 as it offers less transparency than the other options and arbitration could be slow, legalistic and costly**. Additionally, there is potential for bias within arbitration and for arbitration costs to be passed onto the consumer.

² Australian Energy Regulator, Market liquidity obligation, Accessed 5.5.2025, <https://www.aer.gov.au/industry/retail/reliability-obligation/market-liquidity-obligation>

³ Ofgem, Decision to suspend the Secure and Promote Market Making Obligation with effect on 18 November 2019, 14.11.2019, https://www.ofgem.gov.uk/sites/default/files/docs/2019/11/mmo_suspension_decision_letter_2.pdf

Option 4: Corporate separation

35. Option 4: Corporate separation involves operating gentailers generation and retail arms as separate entities, although they can be owned by the same parent company. Arm's length rules would be imposed to govern interactions between these separate entities to prevent preferential treatment.
36. While separation would promote transparency and incentives to discriminate would be significantly reduced it is unlikely that corporate separation is proportionate to the identified concerns. **BEC therefore does not support the implementation of option 4 as it is likely to add extra costs and large disruption to the market. Efficiencies from vertical integration would also be lost increasing base costs and enforcement of 'arm's length rules' could be difficult to identify, presenting additional costs for regulators.**

Suggestions for the Electricity Authority.

37. Introduce clearer thresholds for changes between the three steps in option 2. This would increase certainty for industry and prevent misunderstandings in the uptake of the principles of step 1.
38. Consider changing step three of option 2 to more closely mimic other examples of regulated trading platforms. For example, the provided example of France and Spain, where mandated to provide specific amounts of capacity or energy. This maintained flexibility as companies maintained supplementary non mandated trades. While not exactly the same due to the selling of physical electricity rather than financial hedge contracts it does provide examples of locking in set prices for buyers.
39. According to the EA's January 2024 Generation Investment Survey⁴, approximately one third of the new generation capacity expected to come online in the next few years will be delivered by independent generators. Within this context the issue of access to risk mitigation contracts outlined in this paper may be overstated.

APPENDIX ONE – BACKGROUND INFORMATION ON THE BUSINESSNZ ENERGY COUNCIL

⁴ Concept Consulting. Generation Investment Survey. Page 47. 23 January 2024.
https://www.ea.govt.nz/documents/4414/Generation_Investment_Survey_-_2023_update.pdf

The [BusinessNZ Energy Council \(BEC\)](#) is a group of leading energy-sector business, government and research organisations taking a leading role in creating a sustainable, equitable and secure energy future.

BEC is a brand of BusinessNZ and represents the [World Energy Council](#) in New Zealand. Together with its members, BEC is shaping the energy agenda for New Zealand and globally.



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- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
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