

2 December 2025

Electricity Authority

Via e-mail: levelplayingfield@ea.govt.nz

Submission on Level Playing Field Measures – consultation paper

Introduction

1. Energy Resources Aotearoa is New Zealand's peak energy sector advocacy organisation. We represent participants from across the energy system, providing a strategic sector perspective on energy issues and their adjacent portfolios. We enable constructive collaboration to bring coherence across the energy sector through and beyond New Zealand's journey to net-zero carbon emissions by 2050.
2. This submission responds to the Electricity Authority's ('the Authority') consultation on [Level Playing Field Measures](#). We submitted on the [options paper](#) in April 2025.

Key messages

3. We support the Authority's objective of improving competition, market confidence, and long-term consumer outcomes.
4. However, we do not support the proposed non-discrimination obligations ('NDOs') in their current form. The case for intervention has not been adequately demonstrated, the obligations are ambiguous and operationally unworkable, and there is a material risk of unintended negative impacts on investment, liquidity, and market efficiency.
5. At the same time, we acknowledge the concerns raised by some market participants and are open to future, evidence-based interventions where a clearly defined problem is demonstrated and the benefits outweigh the costs.
6. We therefore do not support the NDO proposals as drafted, and endorse a more proportionate, targeted, evidence-driven approach as recommended at the end of this submission.

The case for intervention remains unproven

7. The Authority has not presented evidence that discrimination is occurring at a scale or frequency that justifies intrusive structural regulation of commercial contracting. The Frontier Economics analysis shed light on the problem of firming and recommended improving market transparency, but we do not agree that the NDOs proposed are the right measures to achieve that.
8. Existing monitoring has not shown persistent or systematic disadvantage to independents relative to generator-retailer ('gentailer') internal trades. We have pointed out that internal efficiencies are an important part of the gentailer model, and that interventions are unlikely to result in lower prices because these efficiencies will no longer be available.
9. Differences in hedging terms between internal portfolios and external parties are normal and reflect genuine differences in risk exposure, contract history, counterparty credit, portfolio structure, and physical positions.
10. Structural features of the market, such as hydro volatility, supply scarcity during dry years, and the relative size of participants, are more plausible drivers of hedge market tightness.
11. Without a clear and quantified problem definition, the risk is that regulation is being driven by perceptions rather than evidence. This creates a weak basis for fundamentally reshaping commercial contracting behaviour.

Principles-based NDOs risk being ambiguous, subjective, unworkable, and ultimately unnecessary

12. The Authority proposes starting with a principles-based obligation that gentailers treat internal and external trades equivalently. However, this principles-based approach is inherently ambiguous:
 - a internal hedging arrangements are bespoke and tailored to integrated portfolio risks; they cannot be cleanly replicated for external parties with different load shapes, risk exposures, or credit characteristics;
 - b "equivalent terms" is undefined, and could refer to pricing, volume, structure, timing, duration, or risk allocation, each of which may differ for legitimate commercial reasons; and
 - c the proposals would require subjective interpretation by both participants and the regulator, creating significant compliance and legal uncertainty.
13. As drafted, the principles risk creating an environment where commercial decisions may later be judged against ambiguous standards. This uncertainty is

likely to increase cost and risk aversion, and result in disputes, without improving competition.

Risk of unintended consequences for liquidity and investment

14. The hedge market and the investment pipeline are both sensitive to regulatory settings. Poorly targeted obligations can have unintended impacts, including:
 - a reduced liquidity if counterparties become more conservative in offering hedge products;
 - b increased compliance burden leading to fewer, not more, offers into the market;
 - c reduced appetite for new generation investment, at a time when increasing supply is the single most effective way to improve competition; and
 - d portfolio inefficiencies if gentailers must align external contracts with internal arrangements that were never intended to be benchmarks.
15. The Authority has not quantified these risks, nor assessed whether the proposed NDOs may worsen the very problems they aim to solve.
16. We endorse the Authority's support of new hedging products, such as super-peak hedge contracts, as useful additions for improving market liquidity. More products are needed to manage year-round risk. But importantly, these products don't create physical supply. They are *financial* contracts and help manage the *risk* of scarcity but do not themselves increase the amount of firm, dispatchable capacity in the system.

Recommendations

17. We support the Authority's goal of improving liquidity and confidence in the hedge market. However, there are more proportionate and targeted tools available that would achieve these goals without the risk and uncertainty associated with the proposed NDOs.
18. We recommend the Authority work with Transpower and the Government to:
 - a accelerate processes for new firming investment with clear and proportional regulatory settings. This should include clearer, quicker pathways for batteries, flexible thermal, and demand-response projects to counter the weather dependency of our hydro market. More generation entering the system remains by far the strongest driver of improved competition. Regulatory certainty is crucial to enable this;

- b strengthen the evidence base around hedging competition. It has not been proven that hedge market contracts are uncompetitive, rather they are responsive to scarcity, which only more generation can combat; and
 - c recognise the limits of what retail competition can achieve in a small, hydro-dominated market that is priced on scarcity. Avoid costly and market distorting regulations such as NDOs and focus instead on improving transparency for investment in new generation and flexible firming, grid transmission planning, and removing regulatory barriers for new entrants in generation and retail.
19. These approaches address valid problems of energy supply and avoid locking the market into an untested and potentially distortionary regulatory framework.

Concluding comments

20. Fuel scarcity is at the root of the problem, yet we continue to see no action or commentary from the Authority on this matter. We are disappointed to see NDOs as a proposed solution to a fuel scarcity problem. NDOs will not induce more generation or firming into the market, they will only distort the incentives to invest and increase costs.
21. Introducing mandatory market-making NDOs would be a mistake. It is a blunt, potentially distortionary tool based on an overstated and unproven problem, and it risks harming investment incentives and consumer outcomes. It is far better to improve underlying system fundamentals, such as enabling more investment in non-hydro firming, backing the Government's policies to improve gas availability, and improving transmission planning and approvals to support quicker grid upgrades.
22. Any information gathering needs to be purposeful and proportionate to avoid unnecessary costs and delays. There may be a case for some voluntary disclosures in future, but we believe the case has not been made for anything mandatory.