

7 December 2020

James Stevenson-Wallace
Chief Executive Officer
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By e-mail: appropriations@ea.govt.nz

Dear James

2021/22 Levy-funded appropriations

Ecotricity, Electric Kiwi, Flick Electric, Pulse and Vocus appreciate the opportunity to submit in relation to the Electricity Authority's 2021/22 levy-funded appropriations.

As a group, we collectively represent 9.55% of the electricity retail market (up from 8.26% at the time of the last levy consultation), and 93.26% of the electricity retail market supplied by independent retailers (up from 90.69%).^{1,2} We are proudly independent entrant retailers who are responsible for delivering New Zealanders' choice, innovation and keeping prices down.

We welcome the Authority's commitment to implementation of the Electricity Price Review (EPR) reform package, and look forward to continuing to engage in support of the implementation of the reforms, including the Code change requirements for mandatory market-making, transfer payment disclosure and financial separation of incumbent wholesale and retail activities.

We also commend the Authority for the progress and high quality of the High Standard of Trading Conduct (HSOTC) rules review,³ and the way the Authority has engaged with stakeholders on the Consumer Care Guidelines.

We support funding and prioritisation of EPR and competition reforms

We support any funding requirements (and prioritisation) to deliver the EPR projects. These are critical for the promotion of competition and the Authority's strategic objective of "thriving competition".

The EPR reforms recognise that the principal impediments to stronger retail competition are upstream, wholesale, market related. In particular, we support the Authority prioritising work on mandatory market making, transfer pricing and wholesale/retail financial separation. Introduction of mandatory hedge market requirements and wholesale/retail financial separation are key EPR projects for addressing stifled competition as a result of vertical-integration.

We fully support the EPR recommendation, which the government agreed to, that "the Electricity Authority require vertically integrated companies to report separately on the financial performance of their retail and generation operations using a common set of rules".

¹ Based on 31 October 2019 and 2020 statistics: https://www.emi.ea.govt.nz/Retail/Download/DataReport/CSV/R_MSS_C?_si=v|4

² The increase in our collective share of the retail market supplied by independents reflects the demise of energyclubnz etc.

³ Including the workshops and availability for one-on-one discussions.

The Authority has signalled it will release a consultation paper in March on disclosure of transfer prices and methodologies and will seek feedback on whether disclosure of retail electricity profitability would also be value.⁴ It would be useful to review the EPR submissions on this topic in developing the consultation paper. There was widespread support for financial separation/retail profitability disclosure. Notably, this was supported by Contact, Genesis, Mercury, Meridian/Powershop and Trustpower (partial).⁵

Financial separation will be particularly important for testing/exposing the extent to which vertical-integration is a barrier to competition and whether there are price squeezes in the market e.g. it can be used for 'equivalence of input' type tests to determine whether the incumbent gentailers' retail businesses would be profitable (no implicit subsidies) if they had to compete with the same wholesale input costs as independent retailers.

We support initiatives to deliver on the Authority's strategic ambitions

We would also support funding (and prioritisation) for other projects that would help ensure the Authority is successful in relation to its strategic priority of thriving competition, in both the wholesale and retail markets.

Moving forward, we would like to see the Authority engage with stakeholders on development of 'action plans' for progressing each of its strategic ambitions, including measures of success. For example, how quickly should high levels of market concentration be eliminated from the wholesale and regional retail markets in order to achieve thriving competition? What rates of improvement in competition measures such as HHI and Concentration Ratios, for both the wholesale and regional retail markets, should be expected? Should there be retail markets where the incumbent still has over 50% (let alone 60%) market share?⁶

There seems to be inconsistency between the Authority's strategic ambition of achieve thriving competition, and other commentary such as that the "market ... is **allegedly** not fully competitive"⁷ and there are "**perceived** issues of vertical integration or market power".^{8,9} It should be axiomatic that if there isn't a problem with the level of competition then there would be no reason to make thriving competition a strategic priority. The level of market concentration – using measures such as the Commerce Commission definition of a concentrated market – is a matter of factual record,¹⁰ and readily measurable on the EMI website.¹¹

Funding should be increased for compliance monitoring and enforcement

We consider that the Authority should substantially increase its compliance monitoring and enforcement capability. Based on submissions to the Authority – for example, in relation to HSOTC

⁴ <https://www.ea.govt.nz/development/work-programme/risk-management/internal-transfer-pricing-and-profitability/development-2/18739/>

⁵ Based on our assessment of submissions, the total list of supporters consists of Buller, Business NZ, Consumer NZ, Contact Energy, Counties Power, Counties Power Consumer Trust, ecotricity, Electric Kiwi, ENA, Entrust, Flick Electric, Fonterra, Genesis, Grey Power, independent retailers, The Lines Company, Lines Trust South Canterbury, Mercury, Meridian/Powershop, Network Waitaki, Northpower/Top Energy, NZ Steel, Orion, Pioneer Energy, Pulse, Trustpower, Vector, Vocus, and Wellington Electricity. The Authority, MEUG and Nova were the only stakeholders that submitted in opposition.

⁶ King Country (54%), Tauranga (61%) and Waitaki. (54%).

⁷ Electricity Authority, Raising consumer awareness of Utilities Disputes and Powerswitch services, Decisions and reasons paper, 1 September 2020.

⁸ Electricity Authority, Hedge Market Enhancements Enduring market making approach, Decision Paper, 27 October 2020.

⁹ We note this 'perception' is also reflected in the views of the EPR Panel, ACCC and other electricity industries etc.

¹⁰ See, for example, our joint 2019/20 appropriations submission.

¹¹ We welcome that the EMI website will include HHI/Concentration Ratio statistics for the wholesale market, and not just the retail market, going forward. Our joint 2020/21 appropriations submission noted this as a gap in EMI.

reform – we consider that there would be widespread support for this. At present, we consider breach investigations are taking longer than they should,¹² and there is prima facie evidence of potential Code breaches that have not been investigated.¹³

The Authority must avoid being paralysed by inertia

The appropriations paper makes reference to the risk of unintended consequences.

We reiterate from our joint 2020/21 appropriations submission that “While it is prudent and appropriate for the Authority to consider the risks of getting its decisions wrong, the Authority should also have at front and centre of mind the risks of unintended consequences and outcomes from inaction and delay”.¹⁴

Project planning is critical for working more quickly and engaging differently

We welcome that the Authority has reiterated “We know we can work more quickly, and we know we can engage differently”.

Project planning is critical for working more quickly and engaging differently. We would like increased visibility of the Authority’s work programme, including project milestones/deliverables and consultation dates over the entire life of each project. We understand the Authority has this information for its own internal purposes and we would like it to be shared with stakeholders. The Consultation Calendar has not been updated since December 2019, but we would like to see it re-introduced and expanded.¹⁵

The Consumer Care project is one of the few projects where the Authority has publicly specified a (very ambitious) target for project delivery. This should be the norm not the exception.

Price comparison websites

We consider the arrangements for powerswitch should be revisited, particularly now the Authority has granted it pseudo monopoly status. We would like consideration to be given to whether the price comparison service should be competitively tendered, and of the scope to monitor the accuracy and compliance with key objectives of the information provided by the service.¹⁶

Concluding remarks

We commend the Authority for the changes it is making in the way it operates, and for its shift in strategic direction.

The reforms the Authority are presently working through – including hedge market, wholesale information disclosure, transfer payment disclosure and retail-wholesale financial separation – individually and collectively have the potential to make a material and substantial difference to the level of competition in the electricity retail markets and, most importantly, for the affordability of electricity for consumers.

¹² For example, the investigation into Genesis’ trading conduct between 6 and 9 August 2018: <https://www.ea.govt.nz/assets/dms-assets/25/25116Notice-of-investigation-Genesis-Energy-Limited-1.pdf>

¹³ Reflected, for example, in examples provided by MDAG as part of its HSOTC review.


¹⁴ We commented on this point in more detail in last year’s submission.

¹⁵ Consistent with our previous submissions, we would like to see the Consultation Calendar kept up-to-date and treated as a living document, and expanded to include whole-of-life projection milestones and consultation steps.

¹⁶ By way of example, the price comparison website does not recognise Vocus is an electricity retailers

We would like to see an ambitious focus on elimination of market concentration followed by progression towards a fully and thriving competitive market. A fully competitive wholesale market (spot and hedge) is essential for growth in retail competition.

Yours sincerely,

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