

21 March 2023

Sarah Gillies
Chief Executive
Electricity Authority

Dear Sarah,

There is substantial opportunity for the Electricity Authority to improve its consultation and feedback processes

2degrees, Electric Kiwi, Flick Electric and Pulse Energy (the independents) consider that there is substantial scope for the Authority to improve its consultation and feedback processes, and the way it engages with stakeholders more generally. This could assist with allocation of scarce resources and prioritisation of key topics.

A regular, collaborative process is required to set out a 'strategic road map' for the electricity sector

We would like to see the Authority engage proactively and collaboratively with stakeholders on what its 'strategic road map' should look like and how its work-plan should evolve and develop with changes in circumstances.

We have previously talked about the importance of linking the Authority's strategy, market participant surveys (which basically provides a score card for how well (or not) the Authority is doing against its strategic ambitions) and work-plan. We see this as an area for continuous assessment and adjustment as new and better information is obtained, such as on the problems that emerged last year with ASX clearing and access to the OTC market.

At best the link between strategic priorities and the work-plan is only discussed in the Authority's annual appropriations consultation. Even with this once a year consultation, the stakeholder engagement is limited with the Authority no longer consulting on its indicative work programme.¹

Our concerns about the Authority's strategic direction are highlighted by the establishment of the OTC working group. To date, there hasn't been a public confirmation of the decision to go ahead with the working group or that it is now up-and-running. Given the lack of transparency and the absence of direction on problem definition linking to the work already done by MDAG/WMR, we have a significant concern this group will simply result in delay in addressing urgent matters for protection and promotion of competition. The OTC working group shouldn't need to 'reinvent the wheel' or get bogged down on basic things like what is required for a level playing field or to avoid price squeezes, or even whether these are relevant considerations, before it can advance its work.

Ongoing hedge market issues need to be prioritised and addressed

The clear priority for the Authority, if it wants to achieve its strategic ambitions, is regulation of the hedge market which opens up market access. This includes ensuring access to long-term hedging and retail shape products that enable independent retailers to compete against the incumbent

¹ Electricity Authority, 2020/21 LEVY-FUNDED APPROPRIATIONS, 5 November 2019.

gentailers. An overriding approach should be for the Authority to prioritise projects with a competition focus.

Our most recent submission to MDAG highlights our view that hedge market development and regulation must be fast-tracked over a 2-year maximum period for completion and implementation early 2025. This fast track is analogous to the Authority requiring Transpower's TPM development and implementation within 24 months.

We are greatly troubled by the Authority's 2023 winter peak commentary² that ensuring all retailers have access to adequate hedging products in order to compete would result in an "increase in cost", "regulatory burden for market participants" and the unfounded assertion "there is no impediment in the current market arrangements to parties voluntarily entering appropriate peak hedging arrangements".

We highlight, again, the comments from the ACCC which are also applicable to New Zealand:³

- "Managing risk is increasingly challenging "Access to exchange-traded and over-the-counter hedging contracts is critical to allow electricity retailers and generators to manage their exposure to price and volume risk."
- "High and volatile wholesale electricity spot prices, coupled with high contract prices, reduced access to hedging contracts, ... are impacting the financial viability of retailers."
- "A liquid contracts market underlines a competitive wholesale electricity market"
- "Hedging contracts are essential to managing risk for market participants"
- "Recent and current market conditions are having a significant impact on the ability of retailers to manage their risk."

MDAG could aid the Authority in progressing critical elements of wholesale market reform

There have already been considerable delays with the WMR due to resourcing issues. The work MDAG is currently doing is highly complementary to, and invaluable for, successfully progressing the WMR. Given MDAG has proven they are able to run sound policy development processes (with good levels of stakeholder engagement) and successful delivery, they could be utilised to develop critical elements of the Authority's wholesale reform decisions.

Stakeholder engagement on the consultation

We appreciated the opportunity to discuss this consultation bi-laterally with the Authority. We found this helpful for better understanding the Authority's thinking and proposals.

² Electricity Authority, Driving efficient solutions to promote consumer interests through Winter 2023, Decision, March 2023.

³ ACCC, Inquiry into the National Electricity Market, November 2022, available at: <https://www.accc.gov.au/system/files/Inquiry%20into%20the%20National%20Electricity%20Market%20%20November%202022%20report.pdf>.

Process matters

We feel the role and establishment of a new Electricity Authority Advisory Group (EAAG) is a significant matter which the Authority would have benefited from consulting on prior to deciding “The Authority will establish a new advisory group”. It could now be useful for the Authority to step-back and have a roundtable type discussion with stakeholders about what it’s trying to achieve with the Advisory Group and the best way forward. This could include a broader conversation about the potential role of Advisory and Working Groups, and how they should be operated.

We anticipate the new EAAG proposals will be timing consuming to get up and running and don’t want to see it result in further delays to important workstreams.

We also consider that the Authority’s foundation documents should be reviewed and overhauled. The review of the Interpretation of the Statutory Objective was announced in February 2020 and is overdue.⁴ The Consultation Charter was developed 10-years ago. A wider review than simply abbreviating the Code amendment principles is warranted. When the Authority announced it would review its foundation documents, including Consultation Charter, in 2020, it gave no indication of this limited scope for the Charter review. The 30 months since the decision to review the foundation documents was announced afforded ample opportunity to engage with stakeholders on scope and areas of concern.

⁴ The last Authority commentary on the matter, we are aware of, was in the July 2020 Strategy Development feedback paper in which the Authority noted “There is clear support from stakeholders for us to review our interpretation of our statutory objective, especially given the length of time that has elapsed since the original interpretation was released” and “We intend to commence this review in the 2020-21 Financial Year” [Electricity Authority, Strategy development: Final strategy framework, Feedback paper, 7 July 2020]. The foundation document is also now out-of-date because it does not include the changes to the Authority’s statutory objective.

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Summary of the independents' views

There are easy changes to help achieve “good practice consultation”

- Many of the changes that would improve the Authority’s consultation and feedback processes don’t require changes to the Consultation Charter or other formal Authority documents.
- **The Authority should focus on expedient and timely project delivery**, including the use of firmer KPIs and ‘stretch’ targets to drive operational excellence and ensure projects are completed in a timely manner. We reiterate from 2018⁵ that we would like to see the Authority deliver on its intention to “[set] more ambitious targets for our top priority projects” and “deliver ... projects faster, so that the benefits for consumers are realised sooner”.⁶

We took some reassurance when the Authority acknowledged in 2019 that “We know we can work more quickly, and we know we can engage differently with our stakeholders to ensure our policies and actions are for the long-term benefit of consumers”⁷ but this has been more the exception than the norm.

- **Relatedly, it would be helpful to detail project plans and key milestones**, including consultation steps and target completion date, as part of the Authority’s consultation processes. We reiterate our recommendation the Authority expand the KPIs for each of its projects to include major project milestones, such as each consultation step, and target completion dates.⁸ Other stakeholders have made similar submissions e.g. ENA has submitted “the Authority should publish a detailed work programme including budgets, delivery timelines and outputs”.⁹
- **We would like to see the Authority adopt more collaborative processes, and less ‘propose-respond’ style consultation.**

The Consumer Care Guidelines project is a good example of a collaborative process with stakeholder engagement through the policy development process. The Authority noted, at the time, that: “We received consistent feedback that the Authority’s shift in engagement approach for this project has been appreciated by stakeholders. ... we will continue to pursue new approaches to engagement”.¹⁰ **Unfortunately, the current consultation is an example of the opposite, propose-respond, approach.**

- **Workshops and cross-submissions should be included as a standard/default part of the Authority’s consultations** (draft clauses 6.8 and 6.8(f)). We reiterate “It is regulatory good practice to include cross-submissions as part of consultation processes; in particular, where (i) there is potential large financial implications for consumers or market participants; and (ii) the issue is likely to be contentious”.¹¹

⁵ Electric Kiwi, Flick Electric, Pulse Energy and Vocus, Joint submission from independent retailers – indicative work programme for 2019/20, 6 December 2018.

⁶ <https://www.ea.govt.nz/dmsdocument/23836-market-brief-24-july-2018#mctoc1>

⁷ <https://www.ea.govt.nz/assets/dms-assets/26/26058Market-Brief-26-November-2019.html>

⁸ Electric Kiwi, Flick Electric, Pulse Energy and Switch Utilities (Vocus), Joint submission from independent retailers – indicative work programme for 2019/20, 6 December 2018.

⁹ <https://www.ena.org.nz/submissions/previously-published-ena-submissions/2022-submission/document/1216>.

¹⁰ Electricity Authority, Consumer Care Guidelines, Decision, 30 March 2021.

¹¹ 2degrees, Electric Kiwi, Flick Electric, Haast Energy Trading, and Pulse, The Authority action to ban Tiwai-type deals is necessary to protect and enhance the integrity of the electricity market, 21 October 2022, available at: https://www.ea.govt.nz/assets/dms-assets/31/2degrees_-Electric-Kiwi_-Flick_-Haast-Energy-and-Pulse-Energy-1380054.pdf.

Cross-submissions are not just useful when a matter is “complex” (draft clause 6.8(f)). There is no downside to including cross-submissions as part of the Authority’s standard consultation process and it is rare that time constraints prevent cross-submissions.

- **The Authority should publicly sign-post potential consultations well in advance.**¹² It isn’t clear why the Authority stopped publishing its Consultation Calendar.¹³ Under “Our work programme” page, the Authority now has an out-of-date “Upcoming consultations – Quarter One 2022”.
- **All stakeholders should have the same information on future consultations.** In our Winter 2023 Peaks submission, we raised that lack of advance notice of the consultation put us at a considerable disadvantage, and impacted the extent to which we were able to engage.¹⁴ We subsequently learnt the CEO Forum was notified at least two weeks prior to the consultation.¹⁵
- **The Authority should release submissions/cross-submissions as soon as practicable** and not, as often happens, wait until it has made decisions on Code amendments (draft clause 8).

The Authority should consider more substantive changes to its Consultation Charter

- **It is not clear shortening the principles will make them more “accessible” or simpler.**
- The Consultation Charter principles should include that **the Authority will consider: (i) how certain the expected benefits are; and (ii) the risk of not intervening if the intervention is to the long-term benefit of consumers.** There can be unintended consequences from policy inertia.
- The Consultation Charter principles should include that **policy reforms should be proportionate to the problems they are targeted to address, and address the underlying regulatory or market failure (not just the symptoms).** The abbreviations have removed the link to market failure.
- **The concept of “tie-breakers” or “Additional principles which the Authority might consider where there is no clear best option” is confusing and probably unhelpful.** For example, it would be reasonable to overlay any cost benefit analysis (quantified or not) with a qualitative judgement that “greater competition is *likely* to be positive for economic efficiency and reliability of supply” and not just “where there is no clear best option”.
- **The “Preference for Small-Scale ‘Trial and Error’ Options” can be a barrier to addressing large and systemic regulatory problems and should be dropped.** The Authority has acknowledged “structural changes and major regulatory reform ... are needed now, and in the future”.¹⁶
- Similarly, **we do not support the “Preference for non-prescriptive options”.** It should not be treated as axiomatic that an “outcomes based approach” will be superior to a prescriptive approach. Which is preferable will depend on the problem the regulator is trying to resolve etc.
- We agree benefits should be quantified to the extent practicable.

¹² The Authority used to partially do this with the Consultation Calendar though it wasn’t always kept up-to-date/accurate, and did not include details of next step consultations etc.

¹³ The last version was December 2019. Based on discussions with the Authority circa July-August 2020, the Authority had unreleased versions of the Calendar and was intending to recommence publication, but this did not happen.

¹⁴ Electric Kiwi, Flick Electric, Haast Energy Trading and Pulse, Ensuring supply meets demand is fundamental to ensuring confidence in the wholesale market and promoting the long-term interests of consumers, 16 December 2022, available at:

<https://www.ea.govt.nz/assets/dms-assets/31/Haast-Independents-Winter-Peaks-2022-12-16-1383286.pdf>,
<https://www.ea.govt.nz/assets/dms-assets/31/Letter-to-CE-Forum-final-version-21.11.pdf> and <https://www.ea.govt.nz/assets/dms-assets/31/Letter-Winter-Peak-Ancillary-Services-Product-to-maintain-security-standard-15.11.pdf>.

¹⁶ Electricity Authority, 2022/23 and 2023/24 Levy-funded Appropriations, Consultation Paper, 4 October 2022.

It could be useful to have a conversation with stakeholders about the potential role of Advisory and Working Groups, and how they should be operated

- **It might be better to use purposive rather than prescriptive Code provisions for the role of Advisory Groups:** We don't believe it would be a good idea to replace the existing set of prescriptive provisions (e.g. advise on "mass market demand response") with an alternative set of prescriptive provisions (e.g. advise on "draft issues papers, option papers or other Code amendment papers") (draft clause 14.2).
- We would not consider it appropriate for Advisory Group members to undertake blanket reviews of "draft issues papers, options papers" etc (as implied by draft clause 14.2(a)). Our understanding is that the Authority's intention is a more technical orientation than implied by the draft Code amendments.
- **There may be merit in establishing a standing 'technical' Advisory Group that could act as an initial clearing house/depository for stakeholder Code amendment requests (CARs).** This would be a better option than providing a narrow, annual window for CARs.

The independents support broad, balanced industry representation on Advisory Groups, including consumer representation

- **The "Criteria for membership" in the Code should be changed to reflect that the Authority wants to achieve broad/appropriate representation of impacted stakeholders.** For matters that impact retailers/competition, Advisory Groups should include at least one (depending on how many members are included) independent retailer representative.
- **The Authority should consider adopting a model whereby relevant industry participants decide who their representative is.**
- **Whether an Advisory or Working Group is likely to be successful depends on how they are set-up.** In our view, industry-led initiatives are most likely to be successful if they:
 - reflect genuine industry-wide representation with industry participants choosing their own representatives (rather than this being determined by the regulator);¹⁷
 - include consumer oversight and participation (utilising the Consumer Advocacy Council);
 - are open and transparent;
 - have clear procedural rules for how they will operate;
 - have a tight terms of reference and purpose; and
 - have strong project management (including a clear time-table, and project milestones, for completion of the project) and leadership.

¹⁷ The Telecommunications Act has certain requirements for the TCF to be recognised as a body that can propose Codes including broad industry representation (it must consist of at least 75% of all eligible persons).

- **We do not support extension of Advisory Group membership from 3 years to 5.** The consultation contains no justification or reason for this change. The Electricity Commission commented that shorter membership periods “provides ... regular opportunities to review the balance of membership on each group”.¹⁸

There should be tighter procedural rules for Advisory Group members

- The draft clause 7.6(c) that “the group ... must ensure all papers and discussion a member shares within its organisation for feedback is kept confidential ...” could be too permissive. The Code drafting should clarify that information cannot be used for any other purpose than the Advisory Group’s tasks and must be deleted or returned when the task is completed.

¹⁸ Electricity Commission, Briefing to the incoming Minister: Hon Gerry Brownlee, 20 November 2008.

The Authority should consider more substantive changes to the Consultation Charter/Code amendment principles

The adoption of decision-making principles or “assessment criteria” may be useful if it helps the Authority: (i) make decisions which give effect to the purpose in section 15 of the Electricity Industry Act; and (ii) explain its decisions and provide predictability to stakeholders.

We do not consider that the Authority should apply bespoke principles and decision-making criteria across different consultations, and sometimes within the same project.

We are also concerned about some of the principles the Authority has adopted. For example, the “Hedge market enhancement” consultation claimed preserving the “good will” of the “largest and more established” market-makers reflects “regulatory best practice”.¹⁹ In the winter peak consultation, some of the principles the Authority proposed essentially replicated its problem definition.²⁰ Regulatory best or good practice principles don’t protect incumbent vested-interests and are independent of the problem and solution.

There would be benefit in stepping-back and taking a holistic review of the principles so they can be used more broadly as decision-making criteria and not just as Code change criteria. After a decade of having the Consultation Charter in place an in-depth review is warranted rather than simply abbreviating the Code change principles.

There are problems with the Consultation Charter principles

There are issues with the existing and proposed draft principles which could be readily addressed:

- It is not clear shortening the principles, as proposed, would enhance them and make them more “accessible” or simpler to understand. The abbreviation has resulted in loss of the important, first principles, link to there being a market or regulatory failure.
- While it is appropriate to “only consider amending the Code when there is a clear case to do so”, the Authority should have at front and centre the risk of unintended consequences and outcomes from policy inertia and delay.
- The concept of “tie-breakers” or “Additional principles which the Authority might consider where there is no clear best option” is confusing and probably unhelpful. For example, it would be reasonable to overlay any cost benefit analysis (quantified or not) with an expectation that “greater competition is *likely* to be positive for economic efficiency and reliability of supply” and not just “where there is no clear best option”. Overlaying quantified CBA with qualitative judgement is neither novel nor unusual.
- The “Preference for Small-Scale ‘Trial and Error’ Options” can be a barrier to addressing large regulatory problems and should be dropped. A preference for small scale ‘trial and error’ options, for example, would be entirely unsuitable for substantial, systematic problems. The Authority has acknowledged “the required transformational changes needed to support

¹⁹ Electricity Authority, Discussion paper, Hedge Market Enhancements (market making): Ensuring market making arrangements are fit-for-purpose over time, November 2019.

²⁰ Electric Kiwi, Flick Electric and Haast Energy Trading and Pulse, Ensuring supply meets demand is fundamental to ensuring confidence in the wholesale market and promoting the long-term interests of consumers, 16 December 2022, available at: <https://www.ea.govt.nz/assets/dms-assets/31/Haast-Independents-Winter-Peaks-2022-12-16-1383286.pdf>.

particularly the transition to a net zero emissions economy by 2050”.²¹ In our view, small-scale Code changes are unlikely to add up to transformational change.

- Similarly, we do not support the “Preference for non-prescriptive options”. It should not be treated as axiomatic that an “outcomes based approach” will be superior to a prescriptive approach. Which is preferable will depend on the problem the regulator is trying to fix. For example, the more market power a market participant has, or the less aligned its incentives are with the long-term benefit of consumers, the more likely a prescriptive approach will be optimal.

By way of analogy, road safety legislation includes a mix of prescriptive rules (speed limits) where they can be readily measured, and outcome-based rules (prohibition on dangerous driving) where compliance cannot be readily defined ex ante. Prescriptive rules²² such as speed limits provide greater certainty about what is and is not allowed.

Principles for good regulatory decision-making

There are many legitimate ways decision-making principles can be specified. We have discussed what we consider decision-making principles should/should not look like in prior submissions.²³ The following is an amalgam of the Authority’s proposals and our own thinking:

- *The end-consumer is at the front and centre in consideration of the long-term benefit of consumers.*
- *When considering whether a regulatory intervention and reforms are to the long-term benefit of consumers the Authority will consider: (i) how certain the expected benefits are; and (ii) the risk of unintended consequences, including from policy inertia and the risk of not intervening if the intervention is to the long-term benefit of consumers.*
- *The Authority will make its decisions (both on policy and regulatory compliance) without fear or favour.*
- *The Authority will consider quantified benefits where this is possible, practicable and useful.*
- *Regulatory intervention and reforms should be proportionate to the problems they are intended to address.*
- *Regulatory solutions should be targeted at the underlying problem and not just the symptoms of the problem.*
- *The Authority will give preference to Code amendment options that have larger pro-competition effects, because greater competition is likely to be positive for economic efficiency and reliability of supply.*
- *Regulatory decision-making should be predictable and transparent.*

²¹ Electricity Authority, 2022/23 and 2023/24 Levy-funded Appropriations, Consultation Paper, 4 October 2022.

²² The problems with the new roadside drug-testing rules highlight the problems where prescriptive rules cannot be readily defined/measured: <https://www.1news.co.nz/2023/03/03/roadside-drug-testing-postponed-because-saliva-kits-dont-exist/>.

²³ These are a refined variation of the principles we included in our 2021 WMR submission: See our concerns under “Principles for good regulatory decision-making” in Electric Kiwi, Flick Electric, Pulse and Vocus, Wholesale Market Review, 17 December 2021, available at <https://www.ea.govt.nz/assets/dms-assets/29/Independent-retailers-submission.pdf>.

The efficacy and potential role of the EAAG warrants consideration

The role and establishment of a new EAAG is something the Authority would have benefited from consulting on prior to deciding “The Authority will establish a new advisory group”. It could be useful for the Authority to step-back and have a roundtable type discussion with stakeholders about what it’s trying to achieve and the best way forward. This could include a broader conversation about the potential role of Advisory and Working Groups, and how they should be operated.

The experience with the Authority’s Advisory Groups has been mixed, at best, and care would be needed to improve the likelihood of success of any new group.

Advisory Groups can work well if they are run well (the current MDAG being a case in point) and at other times Advisory Groups can work very poorly (earlier iterations of MDAG) particularly where they are dominated by vested-interests (TPAG’s majority SI generation-interests where reflected its recommendations).

Our positive views about the current MDAG are reflected in the submissions we have provided on trading conduct and the renewables future project. While it is generally more likely Advisory Groups will be successful in relation to technical matters, care should be taken not to ‘throw the baby out with the bath water’. The thought leadership, and good regulatory practice engagement, that has been provided by MDAG on ‘big P’ policy matters is something that should not be lost. As long as MDAG continues to run sound policy development processes with successful delivery, we consider they should have a role in developing critical elements of the Authority’s wholesale reforms.

We have concerns about the potential role of the EAAG

Based on discussions with the Authority, our understanding is that it is intended EAAG would be tightly focused on technical issues such as whether Authority proposals are “feasible and viable”, how best to implement particular policy decisions etc. These are appropriate functions.

The way the draft Code has been written could provide for the EAAG to also act as an intermediary, between the Authority and stakeholders, undertaking blanket reviews of “draft issues papers, options papers” etc more generally (draft clause 14.2(a)). This would not be appropriate.²⁴

Part of the problem with the drafting is that it replaces the existing set of prescriptive provisions for the Advisory Group role (e.g. advise on “mass market demand response”) with an alternative proposed replacement set of prescriptive provisions (e.g. advise on “draft issues papers, option papers or other Code amendment papers”) (draft clause 14.2). It might be better to focus on how the Authority intends that Advisory Group’s will assist it, i.e. purposive provisions, rather than on prescriptive specification of its role.

While the Authority “considers that introducing a new advisory group structure will ensure it ... gets the best interactions from industry-representative parties” some of the potential EAAG functions might be better addressed through greater use of stakeholder workshops/roundtable discussions

²⁴ Advisory Group members would have an advantage over other interested stakeholders and submitters if they have access to Authority’s consultation material generally. This was evident from Meridian’s submission on the 2021 WMR consultation where Meridian was given access to the draft consultation material to ‘fact check’ it but used this access to try and influence the consultation material and in its submission. This was wholly inappropriate.

See our concerns under “Process issues” in Electric Kiwi, Flick Electric, Pulse and Vocus, Wholesale Market Review, 17 December 2021, available at <https://www.ea.govt.nz/assets/dms-assets/29/Independent-retailers-submission.pdf>.

rather than a potentially ‘closed shop’ Advisory Group. We note, for example, the GIC holds industry forums to commence development of its Statement of Intent and to establish its work programme and work programme costs.²⁵

There may be merit in establishing a standing ‘technical Advisory Group’

The ‘technical’ Advisory Group could act as an initial clearing house/depository for stakeholder Code amendment requests (CARs). This would be a better option than providing a narrow, annual window as part of appropriations consultation.

We note Transpower has submitted “The Authority may wish to consider whether the industry and other stakeholders can play a greater role in assisting the Authority in assessing proposed Code amendments”, and has raised concerns, on a number of occasions, about lack of progress with Code amendments²⁶ e.g. “We are concerned that the slow speed of some Code changes, while potentially seen as minor, may prevent participants from maximising consumers’ long-term benefits. For example, it has now been two years since the last omnibus code change”.²⁷

The independents support broad, balanced industry representation on Advisory Groups, including consumer representation

The independents consider that the Consumer Advocacy Council should be invited on each Advisory and Working Group, with the option of being a participant or observer. Ultimately, if the Authority wants to “introduce an advisory group that will ... represent the interests of consumers more easily” consumer representatives need to be invited onto the Advisory Groups. This should be reflected in the “Criteria for membership” in the Code.

For matters that impact retailers/competition the Advisory Group should include at least one (depending on which option it adopts for number of members) dedicated independent retailer representative. In order for the EAAG to achieve broad representation it needs to be recognised the interests of small retailers, small generators and small distributors are substantially different, and they should not be lumped together.

We understand the Authority doesn’t want to prescribe the make-up of industry representation in the Code as the appropriate mix will depend on the particular topic and which stakeholders are impacted. This seems sensible. The “Criteria for membership” in the Code should be changed though to reflect that the Authority wants to achieve broad/appropriate representation of impacted stakeholders. This is markedly different from the existing criteria in the Code.

The Authority should consider adopting a model whereby relevant industry participants agree amongst themselves who their representative is. A critical element of the TCF is that members choose their own representatives on both the Board and working groups e.g. the Board has a member representing smaller telcos, selected by the smaller telcos. Finally, the new Advisory Group will not be truly representative of the industry or independent of the Authority if the Authority selects its membership.

²⁵ <https://www.gasindustry.co.nz/assets/DMS/About-/News-Publications/News-/News-Bulletin-19-October-2022/News-Bulletin-19-October-2022.pdf>

²⁶ Transpower, 2021/22 Levy-funded Appropriations Consultation Paper, 8 December 2020, available at:

<https://www.ea.govt.nz/assets/dms-assets/28/Transpower-submission-202122-Levy-funded-appropriation.pdf>.

²⁷ Transpower, 2021/22 and 2022/23 Appropriations, 30 November 2021, available at: <https://www.ea.govt.nz/assets/dms-assets/30/Transpower-submission-2021-22-and-2022-23-levy-funded-appropriations.pdf>.

Concluding remarks

The independents support the Authority’s desire to adopt “best practice in consultation”, “make it easier to engage with the Authority” and to better “represent the interests of consumers”.

We don’t think the proposals in the consultation paper will help achieve these aims.




Most of the changes required to improve the Authority’s consultation practices would be simple to adopt and do not require Code amendments or changes to the foundation documents. What is required are changes in the way the Authority operates. This includes engagement with stakeholders to determine its strategic direction or ‘road map’, at the helicopter level, down to the approach to consultations and keeping stakeholders up-to-date about its work.

We would like there to be more interactive and collaborative engagement on the way the Authority’s work-plan can help achieve its strategic ambitions and statutory objective, including on course directions needed to deal with material changes such as the winter-peak issue and OTC market developments in 2022.

We would similarly like there to be more interactive and collaborative engagement from the start of Authority policy development projects with less ‘propose-respond’ consultations such as this current consultation. The Authority should have discussed matters such as the breadth of the review of the Consultation Charter (narrowed to abbreviating the Code amendment principles), and whether establishment of a new EAAG would help achieve the Authority’s aims, with stakeholders during the 30-months it took to produce the current consultation paper.

None of our suggestions should come as a surprise to the Authority. Better processes and more robust consultation is more likely to result in stakeholder buy-in and support.

Yours sincerely,

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