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New Zealand

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## Manawa Energy submission: Review of the consultation and feedback processes

### 1. Introduction

This is Manawa Energy's (**Manawa**) response to the Electricity Authority (**Authority**) consultation paper *Review of the consultation and feedback processes* paper (**Consultation Paper**).

The Authority is proposing changes to its consultation charter, Electricity Industry Participation Code (**Code**) amendment request process, and the amendment process that applies to documents incorporated by reference. The Authority is also proposing to establish a new advisory group to provide it with technical expertise and ostensibly more easily represent the views of consumers.

Collectively these arrangements amount to significant change to its engagement processes.

### 2. Context for Manawa's views

Manawa operates a portfolio of 44 power stations across 25 hydro-electric power schemes, supplying around 5% of New Zealand's electricity needs. Manawa also supplies around 600 Commercial and Industrial customers with electricity. We are an active investor in the energy transition with a number of renewable energy projects under active consideration.

The electricity sector is currently going through rapid transformation to support New Zealand's transition to net zero carbon. Boston Consulting Group have recommended faster and greater emissions reductions from the energy sector (from increased electrification of transport and heat and renewable energy investment) than outlined by the Climate Change Commission. Its preferred pathway by 2030 saves \$1.9 billion in total system costs, reduces average annual household energy bills by \$70, and reduces emissions by an additional 205kt CO<sub>2</sub>-e, relative to a business-as-usual pathway.

Delivering this investment will require an unprecedented investment of \$42 billion in the 2020s including \$10.2 billion in renewable generation, \$1.9 billion in new flexible generation and demand resources, \$8.2 billion in transmission infrastructure and \$22 billion in distribution infrastructure<sup>1</sup>.

The size of the investment challenge ahead combined with the progressive introduction of new energy technologies will mean that all parts of the industry will need to work in partnership to ensure that the regulatory settings are fit-for-purpose. The work will be required at the front end of the transition, and we see an important role for advisory groups in helping to consider and develop those changes to the market design that will be required, including via co-design arrangements as was recently proposed by the MDAG.

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<sup>1</sup> Boston Consulting Group *The Future is Electric: A Decarbonisation Roadmap for New Zealand's Electricity Sector*, pages 9-10

### 3. Summary of our views

Manawa supports amendments to assist consumers to engage with the rule-making process. However, the proposed changes remove a set of decision-making principles introduced with the express purpose of improving investor certainty for regulated parties.

The proposed removal of these principles will likely reduce investor certainty, which will have implications for the cost of capital which has not been addressed in the paper. The timing of this amendment is problematic in view of the strong need for investment to support Aotearoa's electrification goals at the lowest possible cost for consumers, and recent recognition by the Authority of the impacts of significant current uncertainty on investment decisions<sup>2</sup>.

Further analysis of these topics would enable interested stakeholders to assess where the balance between accessibility for consumers and investor certainty should lie when it comes to the rule-making process. We note that there may be other options to address consumer engagement which do not impact on affordability (through raising the cost of capital) and encourage the Authority to actively explore these.

Manawa is a strong supporter of the role of advisory groups in developing Code amendment proposals. We agree that consultation with Maori and consumers could usefully occur prior to the issue of consultation papers on matters that are important to those groups.

However, we do not support the Authority's proposal to:

- Remove the commitment to use advisory groups as the primary means of developing the Code; or
- Establish a single Electricity Authority Advisory Group (**EEAG**) to advise the Authority on its prioritised initiatives during the energy transition such as the wholesale market review and proposals to update the regulatory settings for distribution networks.

We think the needs of the Authority and stakeholders would be better served by a series of advisory groups working on matters within their expertise and knowledge and encourage the Authority to further consider what the best arrangements to enable this are. That is, maintain the status quo.

### 4. Changes to the consultation charter

#### *Introduction*

Manawa supports changes to the consultation charter which reflects the Authority's additional statutory objective of protecting the interests of domestic and small business consumers in relation to the supply of electricity.

#### *Code amendment principles*

Manawa does not support the proposed changes to the Code amendment principles.

The Code sets out industry participant responsibilities in relation to generation, transmission, system operation, security of supply, market arrangements, metering, distribution and retail. It does not directly regulate domestic and small business consumers, although such consumers are of course

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<sup>2</sup> "There is currently considerable regulatory and economic uncertainty that may reduce the appetite for making investments" from Electricity Authority *Promoting competition in the wholesale electricity market in the transition towards 100% renewable electricity*, page 44

impacted by the regulation of their suppliers, including via the regulation designed for their protection.

The stated purpose of the proposed changes to the Code amendment principles is to simplify them to make it easier for small businesses and domestic consumers to understand them. The current principles are said to be “inaccessible to consumers”.

However, there is no evidence in the paper:

- about the extent to which small businesses and domestic consumers wish to engage in supplier regulation; or
- that the current principles, which refer to economic concepts such as market and regulatory failure, and commit to quantitative cost benefit analysis where possible, are a barrier to such participation.

Another stated rationale for the proposed changes is the removal of a barrier on the Authority’s discretion. The Authority finds the decision-making process, involving several steps and tie breaker mechanisms, “overly prescriptive” and “inflexible”. No examples have however been given as to how this has impacted on the Authority discharging its obligations.

Problematically the Consultation Paper does not consider the benefits of the current arrangements for industry participants who are bound by the Code, or of the impact of their removal.

Clauses 2.2 and 2.3 of the current principles provide:

*2.2 As amendments to the Code can substantially affect industry participants, and unpredictable and ill-founded amendments can undermine investor confidence, the Authority considers there is value in stating principles that the Authority and its advisory groups must adhere to when considering Code amendment matters. **The primary purpose of the principles is to provide industry participants with greater predictability about decision-making on likely amendments to the Code, to maximise investor certainty.***

*2.3. The Code amendment principles are intended to provide guidance to interested parties, and industry participants in particular, about:*

- *the potential scope of the Code with regard to achieving the Authority’s statutory objective; and*
- *how the Authority and its advisory groups will consider Code amendment matters, particularly in cases where quantitative cost-benefit analysis yields inconclusive results. (emphasis added)*

These clauses, along with the decision-making principles that implement this intent, are deleted as part of the Authority’s proposal. There is no discussion about how else investor certainty should be provided for during rule change processes.

Manawa considers both industry participants and consumer interests would be better served by retaining the current principles.

1. There is a useful discipline in requiring the Authority to identify how its proposed amendments will improve efficiency or remove a market or regulatory failure. A principle that merely states the Authority will only change the Code when there is a clear case to do so is so vague as to be effectively meaningless.
2. Our view is that cost benefit analysis provides a useful structure to provide objectivity in the analysis of alternative reform options. By cost benefit analysis we mean the whole exercise of

identifying the problem being addressed and the most suitable alternatives to address that problem, as well as the exercise of evaluating (quantitatively to the extent practicable) the costs and benefits of each of those alternatives. We disagree with the Authority's view that good practice cost benefit analysis is simply an exercise in assessing the benefits to "support proposed amendments".

3. We also note that the current tie-breaker principles provide a structured process for decision-making when the results of the cost benefit analysis of alternative options are inconclusive about which is the best option. In such cases it makes sense to prefer options which are small scale and easily reversible, have greater pro-competition effects, facilitate markets, encourage innovation, and are outcome-based rather than prescriptive. It also makes sense to use a risk assessment (of the advantages and disadvantages of making or not making a Code change at different times) as part of this structured approach.

### **Consultation with the Commerce Commission**

We support the inclusion of an explicit reference to the requirement to consult with the Commerce Commission on certain Code amendment proposals.

We encourage the Authority to also add a commitment to be proactive in releasing information about the nature and outcome of that consultation. This is good practice and will help consumers and the industry understand how this process is providing "*joined up thinking*" across those responsible for regulating the sector.

### **Good practice consultation**

We support the proposed changes to the description of general consultation principles. We agree that good practice requires that:

- The right people have the opportunity to be heard;
- Adequate information is provided to allow stakeholders to understand the intended purpose of a proposed Code change;
- Sufficient time must be provided for submissions;
- Submissions should be properly and impartially assessed; and
- A further round of consultation should occur if consultation results in substantial changes to a proposed amendment.

We think it would be useful if the discussion in this part of the charter also included reference to the benefits of consultation. This would provide important context for understanding what good practice is in any particular situation.

As we see it, the benefits of consultation for the Authority include:

- informed decision-making;
- better issues management;
- improved communications and relationships with industry;
- quality regulatory outcomes;
- reduced implementation risk; and
- improved compliance.

### **Role of advisory groups**

We do not support the removal of the reference to advisory groups being the primary means of developing Code amendment options.

We do not think the current commitment creates any ambiguity that it is the Authority that is responsible under the Act to make and administer the Code. Instead, it merely provides an undertaking to engage with representatives of regulated parties during the development of material changes to the Code.

This commitment is an important source of certainty for industry participants. It also reflects Parliament's intention that the Authority establish advisory groups *"to provide independent advice to the Authority on the development of the Code..."*<sup>3</sup> and set out in its consultation charter *"when and how it will consult advisory groups on material changes to the Code"*<sup>4</sup>.

Removing the commitment creates a risk that material changes to the Code will be developed without the benefits noted in the next section.

## 5. Establishing a new advisory group

Manawa supports the Authority establishing advisory groups to assist it with its work programme.

Stakeholders will have day to day experience on the problems which are sought to be addressed including access to empirical information about the size of the problem. They may also be able to identify and develop alternative solutions which the Authority has not considered. In addition, members experience and knowledge of the industry, or consumer and iwi perspectives, can help identify at an early-stage potential unintended effects of change.

However, we do not support the proposal in the Consultation Paper to create a single group such as the EAAG<sup>5</sup>. The breadth of the issues facing the industry combined with the need for a number of these issues to be addressed at the same time, suggests that the Authority would likely be better served by a range of advisory groups rather than a single group. This will ensure that the groups capture the appropriate specialist expertise for the topic in hand.

When forming such groups Manawa recommends establishing a smaller group of experts for an advisory group, noting research into the effectiveness of group decision-making which suggests an optimal number of seven.<sup>6</sup>

With respect to the operation of advisory groups, we caution that moving to predominantly complete work electronically may not deliver the best result. In our experience, face-to-face discussion (which can be easily enabled online) provides an effective means for exploring issues, understanding other people's perspectives and working towards consensus.

In terms of representation in advisory groups or workshops, we do not think that size of an organisation is necessarily reflective of interests or specialist expertise of individuals. In our experience what matters more is commonality of interests eg vertically integrated vs non-integrated, distributed vs grid connected generation, consumer owned vs investor owned etc. Ultimately a variety of

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<sup>3</sup> Section 21, Electricity Industry Act 2010

<sup>4</sup> Section 19, Electricity Industry Act 2010

<sup>5</sup> Although we recognise that Option 3 would provide a mechanism to create a number of small breakout advisory groups.

<sup>6</sup> And that for each person added above this, the group's decision making effectiveness was reduced by 10% (Harvard Business Review Stat Watch, Jan Feb 2011 which cites Decide & Deliver: 5 Steps to Breakthrough Performance in your Organization by Marcia W. Blenko, Michael C. Mankins and Paul Rogers, Bain and Company, 2009). Another study found the most effective number to be five, but noted that the effectiveness of the group decision making in groups between five and eight neither increases nor decreases.



appropriate knowledge and experience in the electricity sector and consumer issues needs to be tapped into and how this is best achieved will be generally specific to the issues under consideration.

We note the formation of advisory groups does not preclude the Authority convening open workshops for discussion of the different views on consumer, Maori, and supplier interests. We encourage greater use of such workshops leading up to the release of significant consultation papers.

## **6. Updates to the Code Amendment Request process**

Manawa supports a Code Amendment Request process which provides for the most efficient allocation of resources for the Authority and rule change proponent.

We agree that:

- Code change suggestions that fit into the Authority's current strategic projects should be considered as part of those processes;
- Minor or technical code change suggestions should be considered as part of the Authority's omnibus Code change process;
- Transpower should be given an annual opportunity to submit Code change requests under a bespoke process;
- The Authority should have discretion to progress and prioritise urgent Code change requests as it sees fit; and
- Suggestions for complex or major Code reform proposals should be captured in the Authority's annual consultation on its work programme and funding.

## **7. Changes to the processes for consulting on Documents Incorporated into the Code by reference**

Manawa supports the Authority's proposal to have a common process for the development of the System Operator's:

- Security of supply forecasting and information policy;
- Emergency management policy;
- Policy Statement;
- Ancillary Services Procurement Plan;
- AUFLS technical requirements report;
- System operator rolling outage plan

We agree that it is efficient if the System Operator is required to engage with the Authority on these documents before public consultation but have reservations about whether it is appropriate for the Authority to be able to direct the System Operator to make changes. We would like to understand how such directions impact System Operator service provider obligations under the Act and Code.