

Via email: [policyconsult@ea.govt.nz](mailto:policyconsult@ea.govt.nz)

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### **Review of the consultation and feedback processes**

Mercury welcomes the opportunity to provide feedback to the Electricity Authority (Authority) on its consultation paper *Review of the consultation and feedback processes*, 14 December 2022, (Consultation Paper). No part of this submission is confidential.

The Authority is seeking feedback on several proposals that aim to promote best practice in its consultation process and to make it easier for stakeholders to engage with the Authority. These proposals are discrete but related and cover: (i) changes to the consultation charter to incorporate the Amendment Act and EPR recommendations; (ii) establishing an Electricity Authority Advisory Group (EAAG); (iii) changes to the Code amendment request (CAR) process; and (iv) Code amendments relating to the systems operation documents incorporated by reference.

Mercury supports a consultation process that is best practice and makes it easier for all stakeholders to engage with the Authority. Maintaining a consultation process that is best practice is crucial for keeping public and industry informed and promoting confidence, particularly during the sector's transition to a low-emissions, climate resilient future. Looking forward the Authority's engagement with stakeholders needs to be efficient and focused. An indicator of the scale of this engagement is given by the range measures that aim to support the transition proposed in Boston Consulting Group's report *The Future is Electric*; MDAG's options paper *Price discovery in a renewables-based electricity system*; and the Authority's issues paper *Promoting competition in the wholesale electricity market in the transition toward 100% renewable electricity*.

In summary, Mercury submits that to promote best practice and make it easier for stakeholders to engage with the Authority:

- The Authority should include in the Consultation Charter an assurance that the analysis and implementation supporting proposed Code amendments will be robust;
- Support, at this point, for the Authority's Option 2 model of the structure of the EAAG; and
- The Authority should establish a transparent set of criteria for prioritizing CARs based on an initial assessment of the expected costs and benefits of the CAR itself, and not who submits the CAR.

The following submission expands on these points with further detail provided in response to the consultation questions in the annex.

### **Robust analysis and implementation plan for Code amendments**

The Authority should include principles in the Consultation Charter that provide an assurance that the analysis and implementation supporting proposed Code amendments is robust. This assurance should be provided through a consultation process that should be based on the Authority's analysis and proposed implementation plan for the proposed Code amendment.



Mercury proposes that the Authority incorporates in the Consultation Charter principles like those set out, but not limited to, in the guidelines *Government Expectations for Good Regulatory Practice*.<sup>1</sup> The guidelines state, *[before] a substantive regulatory change is formally proposed, the government expects regulatory agencies to provide advice or assurance on the robustness of the proposed change, including:*

- *assessing the importance of the issue in relation to the overall performance and condition of the relevant regulatory system(s), and how it might fit with plans, priorities or opportunities for system improvement already identified*
- *clearly identifying the nature and underlying cause of the policy or operational problem it needs to address, drawing on operational intelligence and available monitoring or review information*
- *undertaking systematic impact and risk analysis, including assessing alternative legislative and non-legislative policy options, and how the proposed change might interact or align with existing domestic and international requirements within this or related regulatory systems*
- *making genuine effort to identify, understand, and estimate the various categories of cost and benefit associated with the options for change*
- *identifying and addressing practical design, resourcing and timing issues required for effective implementation and operation, in conjunction with the regulator(s) who will be expected to deliver and administer the changes,*

Mercury considers that the second principle and an aspect of third principle noted above are particularly important. The second principle is about ensuring that the problem or issue has been clearly defined and based on observable evidence. A clearly defined problem statement with supporting evidence is important for ensuring that the Authority and stakeholders are on *the same page* and that the rationale for an amendment has been clearly stated.

Mercury considers that the application of the third principle is important as it provides an assurance that the Authority will consider a reasonable range of options for addressing the problem. Mercury also proposes that the definition of the problem should be consulted on before and separately from the consultation on the options. Separating the problem definition consultation from the options consultation helps provide transparency and enables stakeholders to focus on the matter at hand.

Mercury considers that the inclusion of these or similar principles would complement the other principles set out in the draft Consultation Charter. It would provide an assurance that a consultation will be backed by and for the purpose of the development of robust analysis and planning. The application of these principles through the consultation process would enhance the quality of the regulatory decisions.

### **Support for Option 2 model of the structure of the EAAG**

Mercury considers that at this point the Authority's Option 2 model for the structure of the EAAG is the best of the three options proposed in the Consultation Paper. Option 2 strikes a pragmatic balance regarding the composition and size of the EAAG compared with the other two options.

However, Mercury notes that the descriptions of the three options are high level and it is unclear how the Authority will engage with EAAG in practice. Mercury, therefore, proposes that the Authority should at this point maintain a degree of flexibility regarding the structure of the EAAG. Mercury suggests that the Authority should review the composition of the EAAG from time to time, as more information becomes available, to determine whether it is appropriate.

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<sup>1</sup> See page 4 of the [Government Expectations for Good Regulatory Practice](#)



### **Transparent set of criteria for prioritizing CARs**

The Authority should establish a transparent set of criteria for prioritizing CARs based on an initial assessment of the expected costs and benefits of the CAR itself, and not who submits the CAR. In particular, Mercury does not support the bias suggested in the proposed CAR process that may inherently favour Transpower's CARs over other stakeholders' CARs by virtue of the fact that it is Transpower submitting the CAR.

The Authority proposes that Transpower has a bespoke process to submit CARs and says:<sup>2</sup>

*This process will be an annual process to align with the Authority's workplan and budget setting processes, so that Transpower's suggestions can be given appropriate priority and resources.*

*To ensure Transpower's suggestions are not delayed by limited Authority resources to assess the CARs, the bespoke Transpower process will require Transpower to complete much of the detailed assessments required for Code amendments to be consulted on. The Authority will still have some work to do to progress and finalise any Transpower proposal for consultation in accordance with the requirements of the Act.*

Mercury supports the Authority proposal to streamline the process for Transpower's proposed CARs between itself and Transpower, mitigating the risk of duplication or gaps in the assessment and approval of a CAR. However, Mercury is concerned that Transpower may be given priority and resources by virtue of the fact that it is Transpower, as the Authority suggests:<sup>3</sup>

*Transpower is in a unique position in the industry. It interacts with most participants as part of its management of the power system and operation of the grid. Transpower is also contracted by the Authority to provide a secure and stable power supply to distributors and direct connected consumers. Transpower is able to continue to leverage its experience and knowledge of the industry, beyond maintenance of the current Code provisions.*

Mercury does not question Transpower's expertise as grid owner and system operator, nor the central place of national grid and system operator in the sector. However, Mercury does not consider that this gives it an inherent advantage or greater level of understanding regarding other elements along the energy supply chain nor how these might evolve in the future as the above statement might suggest. Mercury, therefore, considers that Transpower's place in the industry should not mean that its CARs are simply prioritized over other stakeholder CARs.

Mercury proposes that the Authority set out criteria that it will use to determine the *appropriate priority* in its workplan for Transpower's and other stakeholders' CARs.<sup>4</sup> Setting out such criteria would provide helpful information that could be considered by stakeholders and Transpower when submitting a CAR and make the Authority's prioritization decision more transparent.

Mercury looks forward to engaging with Authority and industry on progressing these proposals regarding the consultation and feedback process.

Yours sincerely,



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<sup>2</sup> Consultation Paper, paragraphs 6.17 & 6.18.

<sup>3</sup> Consultation Paper, paragraph 6.16.

<sup>4</sup> With respect to other stakeholders' CARs, the Authority notes in paragraph 6.13 "If the issue raised is urgent, this will be assessed and prioritised as appropriate along with the Authority's current work."



## Annex: Consultation Paper questions with Mercury's responses

Consultation Paper question	Mercury response
1. For your preferred option, do you prefer Option 1, Option 2, or Option 3?	As discussed above, Mercury considers that Option 2 is the best of the three options proposed in the Consultation Paper as it strikes a pragmatic balance in the size and composition of the EAAG. However, as noted above, Mercury considers that the Authority should maintain a degree of flexibility regarding the size and composition of the EAAG as further information is gained over time from its operation following its establishment.
2. Are there any key stakeholders that have been left out of these preferred options?	No comment.
3. Do you have any comments on the proposed membership?	No comment.
4. Do you have an alternative suggestion? If so, please provide details.	Mercury does not have an alternative suggestion.
5. Do you have any comments on the proposed changes to the draft documents in Appendices C and D?	No comment.
6. Do you agree with the overall assessment of the Code amendment proposal? If not, what alternative assessment would you make and why?	No comment.

