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Code Review Programme #5: New dispensation scheme for Part 6A of the Electricity Participants Code

Genesis Energy Ltd. (**Genesis**) is grateful for the opportunity to respond to the Electricity Authority's (**Authority**) consultation on the Code Review Programme dated 29 August 2023.

We consider that the proposed changes to the Electricity Industry Participation Code (**Code**) for the most part address problems identified by the Authority or are otherwise improvements to the understanding and accessibility of the Code.

Further clarity is required with respect to the Part 6A dispensation scheme. As this area is comparatively unregulated for "specified persons", we consider there is potential for unfair commercial advantage to arise where some parties will not be subject to the same regulatory obligations as others. Specifically, we consider the rules as drafted could exempt certain entities or individuals from procedural requirements and the costs or duties associated with participation in the generation and distribution markets, beyond the intend of the changes.

It is important to strike the right balance to ensure that exemptions from obligations do not produce negative outcomes with respect to the interplay between generation and distribution.

It does not appear that Part 6A sufficiently assesses the system security impacts of multiple new generation facilities and their interplay with the system or market. Without understanding precisely the interplay in the system, based on what assets are being connected and their locations, there is risk of unfair advantage in the energy market. For example, generators may not be able to economically provide back-stop options near their existing assets due to dispensations already being awarded at little cost.

As a market participant, we are liable for the costs of these assets, and are not granted exceptions, such as revenue exceptions for innovation allowance as distributors are via the Commerce Commission's input methodology. Although this is a small amount of energy and is a beneficial change for the individual, if multiple exceptions were to be made for one participant, particularly for a distributor, this could result in a 'loophole' which could be exploited for commercial gain.

It would be detrimental to the system if certain metering companies or some distributors were able to use this scheme for commercial gain, for example where they could provide generation

at several different installation control points on the grid, generating 100Gwh individually, but collectively making up a significant amount of generation if supplied across the country. Similar concerns have been raised for a dispensation scheme in Australia, where there have been requests for connection studies and performance standards to be agreed to inform whether the Network Supply Points can support the exemption from registration and licensing, and how the capacity will interplay with the wider generation system.¹

Genesis recommends inclusion of a requirement for operators who are generating, distributing, or supplying energy under the exemption regime to notify the regulator. Exempt operators currently satisfy themselves that their specific generation, distribution and/or supply structure is adequately covered. This approach may lead to a distortion of potential competitive services, such as non-network solutions. Genesis is in favour of a light-touch notification system, however this should be subject to monitoring to understand how the scheme interacts with the system.

Following the above, it appears that the scheme has considered sections 11 and 90 of the Act, however, it has disregarded dispensation requirements in Part 8 of the Code. The consultation further indicates the change is to enable the Code to regulate “specified persons and industry participants” in a like manner. This is not the case for the following reasons:

1. Under the previous process in section 90 of the Act, exemptions must be promulgated via notice in the gazette (i.e., pushed to participants). Proposed Part 6A only requires a list to be published.
2. Industry participants are treated differently in the Part 8 dispensation process compared to Part 6A:
 - a) Draft decisions to be published in the System Operator register.
 - b) Allows participants to make a submission.
 - c) The System Operator must consider all submissions.
 - d) The System Operator must advise all participants of final decisions.
 - e) Applicants pay for costs to consider applications.

Under Part 8 of the Code, there is a robust, transparent process for all participants, where registered participants receive email notifications of draft, final and cancelled dispensations. This process provides participants with the opportunity to make submissions on dispensations and their impact on the system. In contrast, Part 6A does not impose the same level of transparency or consultation for participants, nor does it impose the same kind of cost implications for “specified persons” as Part 8 of the Code does in terms of compliance and resource obligations.

Although Genesis supports exceptions for “specified persons” in individual circumstances e.g., solar generation or battery generation providing capacity in emergency situations (where it meets section 15 of the Electricity Participation Act), we consider further clarity is required for how each dispensation for “specified persons” will operate and how it will impact the network.

Accordingly, while we expect the Authority would apply common sense in most cases, we encourage officials to consider developing a more prescriptive set of criteria. This should include how many exemptions are granted and under what circumstances a “specified person” is allowed to access a dispensation to prevent this scheme creating an uneven playing field.

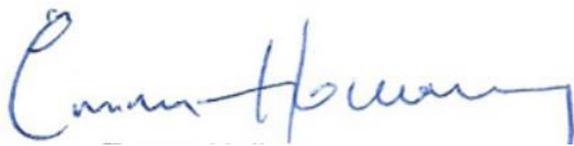
¹ <https://www.claytonutz.com/knowledge/2018/march/changes-to-network-exemption-guidelines-for-dedicated-connection-assets-embedded-generator-connections-and-more>

Finally, we urge the Authority to consider clarifying the definition of “specified person”, to prevent conflicts of interest arising and providing certain distributors or other parties with the ability to not only benefit from the provision of distribution, but also revenue from generation without the costs associated with being a market participant.

As the definition currently reads, it could describe any number of participants in the sector with developing technology. Genesis supports individuals being able to generate power back into the grid, however we question whether other participants such as a company involved in demand side technology should be granted the same exemption rights if they are benefiting from significant revenue. Presently, it is unclear who will qualify.

Please do not hesitate to get in touch if you have any questions regarding this submission.

Yours sincerely,

A handwritten signature in blue ink that reads "Emma Holloway". The signature is written in a cursive style with a large initial 'E' and a long horizontal stroke at the end.

Emma Holloway
Advisor, Regulatory Affairs & Government Relations
Genesis Energy