

Memorandum of Understanding between the
Electricity Authority and the Ministry of Business,
Innovation and Employment

September 2014

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This **Memorandum of Understanding** is made on the 19th day of September 2014

between (1) **Electricity Authority** (the Authority)

and (2) **Ministry of Business, Innovation and Employment** (the MBIE)

Background

- A. The Authority is an independent Crown entity established under section 12 of the Electricity Industry Act 2010 (the Act), and is the regulator of the electricity industry. The objective of the Authority, as set out in section 15 of the Act, is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.
- B. The Act (section 16) sets out the following functions of the Authority:
- a) To maintain a register of industry participants, and to exempt individual industry participants from the obligation to be registered;
 - b) To make and administer the Electricity Industry Participation Code (Code);
 - c) To monitor compliance with the Act, the regulations, and the Code;
 - d) To investigate and enforce compliance with Part 2 and Part 4 of the Act, the regulations, and the Code;
 - e) To investigate and enforce compliance with Part 3 of the Act;
 - f) To undertake market-facilitation measures (such as providing education, guidelines, information, and model arrangements), and to monitor the operation and effectiveness of market facilitation measures;
 - g) To undertake industry and market monitoring, and carry out and make publicly available reviews, studies, and inquiries into any matter relating to the electricity industry;
 - h) To contract for market operation services and system operator services;
 - i) To promote to consumers the benefits of comparing and switching retailers;
 - j) To perform any other specific functions imposed on it under this or any other Act.
- C. Consideration of fairness or equity issues is not part of the Authority's objective or functions. The Act provides for the Minister of Energy and Resources to recommend the Governor-General make regulations relating to domestic and small business consumers for fairness reasons, after consulting with the Minister of Consumer Affairs and obtaining and considering advice from the Authority (section 113).
- D. The MBIE's purpose is to 'Grow New Zealand for All'. The MBIE is the Government's policy adviser for the energy sector, including the electricity sector. The MBIE leads the development of sector strategy, for example through the development of the New Zealand Energy Strategy, and is involved in the formulation of legislation (Acts and Regulations) for the electricity sector. The MBIE also acts as the purchase adviser to the Minister of Energy and Resources on the requirements of the Crown Entities Act 2004 in respect to the Authority.

- E. The MBIE includes Consumer Affairs which contributes to the MBIE's purpose by delivering trusted, competitive and well-regulated markets and by creating an environment in which:
- a) The interests of consumers are protected;
 - b) Businesses compete effectively;
 - c) Consumers and businesses participate confidently.

The parties agree as follows:

Purpose of this memorandum

- 1 The purpose of this memorandum is to provide a framework for us to work together generally, but especially in the following areas where there is the potential for overlap in the respective roles of the Authority and the MBIE:
 - a. Fairness or equity issues;
 - b. Industry and market monitoring;
 - c. Consumer dispute resolution;
- 2 Nothing in this memorandum is intended to limit or affect the independence of each party or the requirement that each party act to fulfil its legal functions and obligations.

How we will work together

- 3 We will:
 - a. Coordinate our activities to avoid potential overlaps or duplication of effort, and to maximise efficiency and effectiveness;
 - b. Keep each other informed in a timely manner of information and initiatives that may affect the other party's roles and/or responsibilities under the Act;
 - c. Clearly communicate our respective roles and responsibilities to interested parties and minimise the potential for stakeholders to be confused over our respective roles and responsibilities;
 - d. Share information with each other, other stakeholders and the public as much as is practicable (recognising that sometimes information cannot be shared, for example where it has been provided in confidence);
 - e. Share our knowledge and skills with each other to increase our overall capability (e.g. in the area of electricity modelling and forecasting), including, as appropriate, by entering into an agreement for the provision of services between us;
 - f. Adopt a no surprises approach, by advising each other early of any identified issues that might affect the other party;
 - g. Seek to minimise any scope for uncertainties regarding jurisdictional issues.
- 4 Staff from each organisation will meet as required to give effect to the requirements of this MOU.
- 5 This memorandum will be made available on both the Authority's and the MBIE's websites.

Roles and responsibilities

General

- 6 Consistent with its objective, the Authority's focus is on promoting competition, reliable supply and efficiency in the electricity industry for the long-term benefit of consumers. Consideration of fairness or equity issues is the responsibility of the MBIE as is overall energy policy.

Industry and market monitoring

- 7 The Authority's industry and market monitoring activities will be focused on assessing matters relating to its statutory objective. In particular, the Authority's industry and market monitoring activities will focus on identifying and understanding key trends and drivers of the level of competition, reliability and efficiency in the New Zealand electricity industry. The Authority's focus in this area will be on the way in which the Code affects the behaviour of market participants with regard to these matters.
- 8 The MBIE has overall responsibility for energy policy and as such has responsibility for monitoring and evaluating the reforms implemented as part of the 2009 Ministerial Review of the Electricity Market. As competition, reliability and efficiency in the electricity sector are key policy issues for the Minister of Energy and Resources, the MBIE will be able to draw on the data, results and analysis published by the Authority to evaluate the electricity reforms. As a result, the MBIE will not need to duplicate the industry and market monitoring undertaken by the Authority.
- 9 The Authority's industry and market monitoring role does not extend to monitoring the fair treatment of consumers in the electricity industry, but the Authority collects statistics on disconnections, and on vulnerable and medically dependant consumers. The Authority's industry and market monitoring role might also be used to provide the Minister of Energy and Resources and the MBIE with data and other information relevant to their consideration of fairness in the electricity industry.
- 10 The Authority also notes that the Minister of Energy and Resources may request the Authority to review and report on any matter relating to the electricity industry that is specified by the Minister of Energy and Resources (section 18 of the Act). Such reviews might be used by the Minister of Energy and Resources and the MBIE to assist them in monitoring the fair treatment of consumers in the electricity industry and in informing any policy development in this area.

Market facilitation measures

- 11 The Authority is responsible for undertaking and monitoring the operation and effectiveness of market facilitation measures (sections 16 and 45 of the Act). While the Authority's objective means that these measures must be focussed on promoting competition, reliable supply and efficiency, it is likely that some of these measures will also have implications for the fair treatment of consumers.

Consideration of the fairness implications of market facilitation measures undertaken by the Authority is the responsibility of the MBIE.

Powers to make regulations about tariffs and other consumer issues

- 12 The Authority is responsible for monitoring, investigating and enforcing compliance with any regulations that are made under the Act, and section 113 of the Act enables regulations relating to fair treatment of consumers to be developed in the future. If requested by the Minister of Energy and Resources, the Authority will provide analysis and advice to the Minister of Energy and Resources and/or the MBIE on possible market impacts and implementation issues associated with proposed regulations relating to fair treatment of consumers.
- 13 Before recommending any Order in Council under section 113 of the Act, the Minister of Energy and Resources must obtain and consider advice from the Authority on the impact of the proposed Order in Council on the promotion of competition in, the reliable supply by, and the efficient operation of, the electricity industry.

Continuance of supply

- 14 The Authority is responsible for monitoring, investigating and enforcing compliance with the requirement in the Act for distributors covered by section 105(1) to supply line function services or else supply electricity from an alternative source (sections 16 and 45 of the Act).
- 15 At the request of the Minister of Energy and Resources, the Authority will provide analysis and advice to the Minister of Energy and Resources and/or the MBIE in instances where the Minister of Energy and Resources is required to give consent under sections 105 and 106 of the Act.

Dispute resolution

- 16 The MBIE is responsible for advising the Government on policy matters in respect to the consumer dispute resolution scheme required under the Act (subpart 1 of Part 4). In turn, the Authority is responsible for monitoring, investigating and enforcing compliance with the requirement in the Act for certain persons to be members of the approved (or regulated) dispute resolution scheme (sections 16 and 96 of the Act). The Authority is not responsible for enforcing compliance with a District Court order requiring a member of a scheme to comply with the rules of the scheme and/or comply with a binding settlement determined by the scheme in response to a complaint (section 98 of the Act).
- 17 The MBIE must consult the Authority when considering whether to approve a dispute resolution scheme (clause 6 of schedule 4 of the Act) and when considering whether to appoint a regulated scheme (clause 18 of schedule 4 of the Act). However, the MBIE, not the Authority, is responsible for providing analytical or administrative support to the Minister of Consumer Affairs within these processes.

Summary table of roles

18 The respective roles of the Authority and the MBIE are detailed in Appendix 1.

Code amendments requiring supporting regulatory action

- 19 From time to time the Authority will propose Code amendments that may require supporting regulatory action by the MBIE and the Minister of Energy and Resources.
- 20 The Authority will advise the MBIE as soon as it becomes aware of a project on its work programme that may require supporting regulatory action.
- 21 The MBIE will work with the Authority in a spirit of cooperation to achieve the desired outcome.
- 22 The Authority will:
- a. Include in its evaluation of the costs and benefits of a proposed Code amendment, made under section 39(2)(b) of the Act, all costs associated with the supporting regulatory action e.g. the MBIE, the Minister of Energy and Resources, Cabinet and the Executive Council;
 - b. Ensure its consultation on the proposed Code amendment also meets the requirements of the Government's regulatory impact analysis process, to avoid the MBIE having to carry a separate consultation process;
 - c. Make available to the MBIE the analysis and advice necessary to meet the regulatory impact statement criteria and Cabinet Office requirements for writing Cabinet and Cabinet Committee papers;
 - d. Provide the MBIE with an opportunity to comment on any draft Authority documents that may impact on the MBIE process, for example draft consultation papers.

Issue resolution

- 23 Both parties will use their best endeavours to resolve any issue in a timely manner and in the way that best supports the delivery of the government's strategy and policy.
- 24 In the event of issues arising between the parties they will be resolved, or if necessary escalated for resolution, in accordance with the following order and timeframe:
- a. The Authority and MBIE personnel, if unresolved within two weeks, then escalated to;
 - b. The responsible managers, if not resolved within two weeks, then escalated to;

- c. The Chief Executive of the Authority and the Chief Executive of the MBIE, who will agree on what further action is required.
- 25 Solutions to issues need to be consistent with the roles and mandates of each party.

Review

- 26 This memorandum will be reviewed by the parties from time to time, as appropriate.

Signatures



Carl Hansen
Chief Executive
Electricity Authority



Bruce Parkes
General Manager, Resources, Energy and
Communications
Ministry of Business, Innovation and
Employment

on the 19th day of September 2014

Appendix 1 – Detail on Roles

	The Authority's role	The MBIE's role
<i>Low fixed charge regulations</i>	Enforcing compliance with the regulations. Consulted with by the MBIE if changes are proposed to the regulations. Primary responsibility for distribution pricing methodology.	Any regulatory activity. Processing any exemptions.
<i>Customer and community trusts</i>	Enforcing the Act's requirements.	Any regulatory activity.
<i>Rural/urban line charges</i>	Advising the MBIE on possible market impacts and implementation issues. Enforcing any regulations made.	Any regulatory activity.
<i>Retail supply contracts</i>	Undertaking and monitoring this market facilitation measure but not targeted at fairness or equity issues. Informing the MBIE when potential fairness/equity issues come to the Authority's attention. Enforcing any regulations made.	Any regulatory activity relating to fairness/equity issues.
<i>MDC/VC Guidelines</i>	Undertaking and monitoring this market facilitation measure but not targeted at fairness or equity issues. Informing the MBIE when potential fairness/equity issues come to the Authority's attention. Enforcing any regulations made.	Any regulatory activity relating to fairness/equity issues.
<i>Retailer / social agency protocol</i>	Undertaking and monitoring this market facilitation measure but not targeted at fairness or equity issues. Informing the MBIE when potential fairness/equity issues come to the Authority's attention. Enforcing any regulations made.	Any regulatory activity relating to fairness/equity issues.
<i>Disconnection statistics</i>	Undertaking and monitoring this market facilitation measure but not targeted at fairness or equity issues. Informing the MBIE when potential fairness/equity issues come to the Authority's attention. Enforcing any regulations made.	Any regulatory activity targeted at fairness/equity issues.
<i>Continuity of supply for stranded customers</i>	Assessing possible options and their market impacts and implementation issues. Implementing proposals, as justified.	Any regulatory activity relating to fairness/equity issues.
<i>Continuance of supply</i>	Enforcing the Act's requirements. Providing advice to the MBIE and/or the Minister of Energy and Resources when the Minister must give consent.	Liaising with the Minister of Energy and Resources when the Minister must give consent.
<i>Distributed generation</i>	Establishing mandatory terms and conditions for small-scale distributed generation. Publishing technical guidelines for connection of domestic-scale distributed generation. Developing and enforcing the Code	No powers to undertake any regulatory activity.
<i>Future supply and demand scenario development</i>	Maintenance and development of modelling tools (e.g. GEM).	Primary responsibility for national and regional demand forecasts. Collation/research on generation costs and opportunities.

<i>Electricity industry data</i>	Collection, storage and publication of electricity industry data, including future generation plans.	Able to draw on data published by the Authority.
<i>Dispute resolution</i>	Monitoring, investigating and enforcing compliance with the Act's requirements that certain persons be members of the approved (or regulated) dispute resolution scheme.	Any regulatory activity.