26 March 2025

Competition should be the driver for innovation and choice

Pulse Energy welcomes the opportunity to submit in response to the Electricity Authority's consultation on the Energy Competition Task Force (ECTF) Initiatives 2A, 2B and 2C.

Good regulation directly targets the underlying market failure.

Regulation of electricity distribution and transmission pricing can be justified on the grounds that electricity networks are natural monopolies. Pulse Energy supports the (2A) proposal to require electricity distributors to provide rebates for injection where there are network benefits and it would help lower power prices.

The issues the Authority has identified in relation to 2B and 2C are principally a consequence of weak and stalling/declining retail competition. They should be addressed directly by initiatives to remove barriers to competition/promote stronger and workable competition i.e. market solutions NOT through administrative (regulated) solutions such as the 2B and 2C proposals. Pricing of suppliers in competitive, or potentially competitive, markets should not be regulated.

Pulse Energy does not support the 2B and 2C proposals but, if they are adopted, they should be targeted at the Contact, Genesis, Mercury and Meridian (and their subsidiaries) only. New entrant and small retailers do not have market power that needs to be controlled. While the electricity retailer market is oligopolistic, only the large incumbent retailers have significant or substantial market power.

Pulse Energy agrees that capturing small retailers who already offer TOU pricing plans under the proposed regulation "would add compliance costs with little additional benefits."

Pulse Energy already offers TOU pricing which allows our customers to "Enjoy half price weekends and discounted off-peak power every day with our Power Shift plan!" as well as competitive rates and transparent billing. Off-peak pricing is a prominent part of our product marketing.[1] A particular concern we have is that the narrow, prescriptive methodological requirements in the proposals may mean our, and/or other retailers, existing TOU pricing would be non-compliant even though it successfully encourages load shifting from peak to off-peak (part of the stated intent of the regulations).

[1] Pulse Energy | Power Shift Plan

PO Box 10044, Dominion Road, Auckland 1446 P 0800 785 733 F 09 378 4405 W www.pulseenergy.co.nz

Summary of Pulse Energy's views

- The problems the consultation identifies are principally due to inadequate competition.

- Regulation should be aimed at the underlying market failure not the symptoms.

- This means the problems raised in the consultation should be addressed directly by improving and strengthening competition, such as the Authority's/ECTF proposals to require the large, incumbent gentailers to provide access to hedge products on a non-discriminatory basis, and to consider potential regulation of super-peak/shaped hedge products.

- The Authority specifically mentions low switching rates as part of the problem; and one of the reasons that there isn't as high uptake of available TOU tariffs as there otherwise might be. This issue should be addressed by considering why switching rates are low and why they have declined since 2018/the Pohokura outage.

- Pulse Energy agrees with the Authority that "It is better to rely on competition to stimulate solutions and innovation, rather than imposing an administrative solution …" Regulation of pricing in markets that are competitive, or potentially competitive, would harm competition. Given the underlying problem is inadequate competition any solution that could harm competition would be a bad one.

- While the Authority has stressed the proposals are intended to be non-prescriptive, at best this would mitigate, rather than avoid, the harm its proposals would cause. We consider that the requirement to develop regulated TOU tariffs that reflect "relative economic costs" would, in fact, be highly restrictive.

- Pulse Energy does not support regulation of pricing of retailers that do not have market power. Regulation of small and independent retailer tariffs would create an undesirable broader precedent that the Authority is willing to interfere with/regulate competitive market activity.

- The Authority has explained that small and new entrant retailers 'punch above their weight' in terms of innovation/tariff innovation. It would seem incongruent that if the Authority is concerned about a lack of innovation that the solution would be to regulate the retailers that are leading the way in terms of innovation.

- Pulse Energy already offers TOU pricing in which consumers can "Enjoy half price weekends and discounted off-peak power every day with our Power Shift plan!" as well as competitive rates and transparent billing. The Authority has acknowledged that capturing small retailers under the proposed regulation which already offer TOU pricing plans "would add compliance costs with little additional benefits."

- Existing TOU pricing plans reflect commercial and marketing decisions by individual retailers. This means that it can't be assumed they "reflect the relative economic costs to the retailer" let alone the "relative economic costs" and the individual customer level ("… of the customer") or "provide a financial benefit to each customer which is in proportion to the extent to which that customer's consumption or injection patterns reduce the retailer's economic costs."

- The Authority should be mindful that there could be considerable compliance costs with developing new regulated TOU tariffs to comply with the proposed regulation, and with demonstrating TOU tariffs comply with the requirements (which could require quantitative evidence). If retailers are required to introduce new regulated TOU tariffs it could also have the unintended consequence of crowding out or replacing more innovative, unregulated TOU tariffs of the nature currently seen in the market.

- We consider it undesirable for the Authority to impose restrictive mandatory methodology requirements that require TOU pricing to "reflect the relative economic costs" at the competitive, retail level of the market while only imposing voluntary pricing principles at the monopoly, distribution level of the market which more vaguely suggests "Prices are to signal the economic costs of service provision".[2]

- Pulse Energy **recommends** that the Electricity Authority limit tariff regulation to the natural monopoly (distribution and transmission) parts of the supply chain (2A).

- Pulse Energy **recommends** that the Electricity Authority does NOT regulate competitive (or potentially competitive)-market retail tariffs, including any element of retail tariff pricing methodologies.

- Pulse Energy **recommends** that if retail tariff regulation is adopted, the Authority directly target the regulation at the large incumbent retailers only; the proposed 5% threshold should be changed specifically to regulate Contact, Genesis, Mercury and Meridian (and their subsidiaries) consistent with the Authority's proposed non-discrimination rules.

- Pulse Energy **recommends** that if the Authority adopts a market share threshold it should be set to capture large retailers with 200,000 or more ICPs which would translate to about 8.6% market share.

- If the Authority decides to adopt its proposal to regulate retail TOU tariffs, Pulse Energy **recommends** that the Authority re-draft the requirements to the effect that retailers (i) must offer TOU tariffs; (ii) that the TOU tariffs reward shift in the customer's consumption from peak to off-peak (and shoulder periods) and/or reduction in maximum load; and have regard to: (iii) the retailer's (not the customer's) relative costs between peak and off-peak, potential consumer impacts and uptake incentives and transaction costs. If the concept of "economic cost" is retained it should be defined.

[2] The proposed mandatory requirements for electricity distribution are narrowly focussed e.g. requirements for rebates for injection (2A).

- Pulse Energy **recommends** that the Electricity Authority does not impose retail tariff regulation for TOU pricing which is more restrictive than regulations at the distribution pricing level.

Pulse Energy is fully supportive of the ECTF joint-initiative

Pulse Energy is fully supportive of the ECTF, and the Electricity Authority and Commerce Commission working together. We are also fully supportive of the focus of the ECTF on "enabling new generators and independent retailers to enter, and better compete in the market"[3] and "providing more options for consumers". Our view is that providing more options for consumers is best achieved via increased and stronger competition.

Where policy reforms work to support both these overarching outcomes, we agree they "will encourage more and faster investment in new electricity generation, boost competition, enable homes, businesses and industrials to better manage their own electricity use and costs, and put downward pressure on prices."

The Authority has articulated well the interlinkage between the two overarching outcomes well in its commentary that "A workably competitive retail electricity sector provides consumers with choice of retailers and innovate retailer services and plans that better match circumstances and preferences."

Similarly, the Authority has articulated well the link between competition and innovation. From its Risk Management Review consultation: "Workably competitive markets can bring significant benefits to consumers over the long term by being conducive to entry and expansion by innovative suppliers and to efficient investment. In essence, the competitive threat of new entrants can incentivise innovation and improve value for consumers." [footnotes removed]

The Authority has explained that retailers can reduce their costs – both wholesale and distribution – and compete more effectively if consumers see the benefit of reducing peak demand and shift their consumption to off-peak times.

What this means is that if competition is working well it can be relied on to ensure innovative pricing and solutions, including efficient peak-pricing tariffs. Pulse Energy agrees with the Authority that "It is better to rely on competition to stimulate solutions and innovation, rather than imposing an administrative solution …"

The Authority's/ECTF proposals to require the large, incumbent gentailers to provide access to hedge products on a non-discriminatory basis, and to consider potential regulation of super-peak/shaped hedge products is a good example of the kind of reforms that would reduce barriers to competition and drive more competitive outcomes with greater innovation and consumer choice.

[3] Including that existing independent generators and retailers can better complete in the market.

The 2B and 2C initiatives are most likely to be counterproductive to the ECTF objectives

The 2B and 2C proposals are an administrative (regulated) solution that could be reasonably be expected to harm competition; particularly if the regulation was cast wide enough to capture both incumbent gentailers/retailers with market power and new entrant/independent retailers that do not have market power. The 1% threshold option would immediately capture a number of small and very small retailers while the 5% threshold could be expected to capture a number of smaller-medium sized retailers as they grow if other Authority/ECTF initiatives are successful in promoting a more competitive market.

Our commentary on the compliance implications of the proposals details that they are likely to require retailers, regardless of whether they have existing TOU tariffs, to develop regulated TOU tariffs. This is due to the narrow, prescriptive methodological requirement that the TOU tariffs "reflect the relative economic cost". This would mirror the impact of the Low Fixed Charge Regulations which require duplicate regulated tariffs.

The problems the consultation identifies are principally inadequate competition

The consultation paper discusses four potential elements of the problem definition: (a) "a 'chicken or egg' issue where the plans are not offered because they are not demanded, and they are not demanded because there is low awareness of their potential benefits"; (b) "uptake of time-varying price plans is currently limited by switching rates"; (c) "retail competition may be reduced due to retailer or customer specific factors"; (d) "some retailers do not face the true costs of their contribution to peak."

The common thread amongst these problems is a lack of adequate competition.[4] Our view is that the problems raised in the consultation should be addressed directly by improving and strengthening competition. Regulation should be aimed at the underlying market failure not the symptoms.

Our view is reinforced by the Authority commentary that "The limited availability of more innovative pricing plans may reflect limits to retail competition ..."

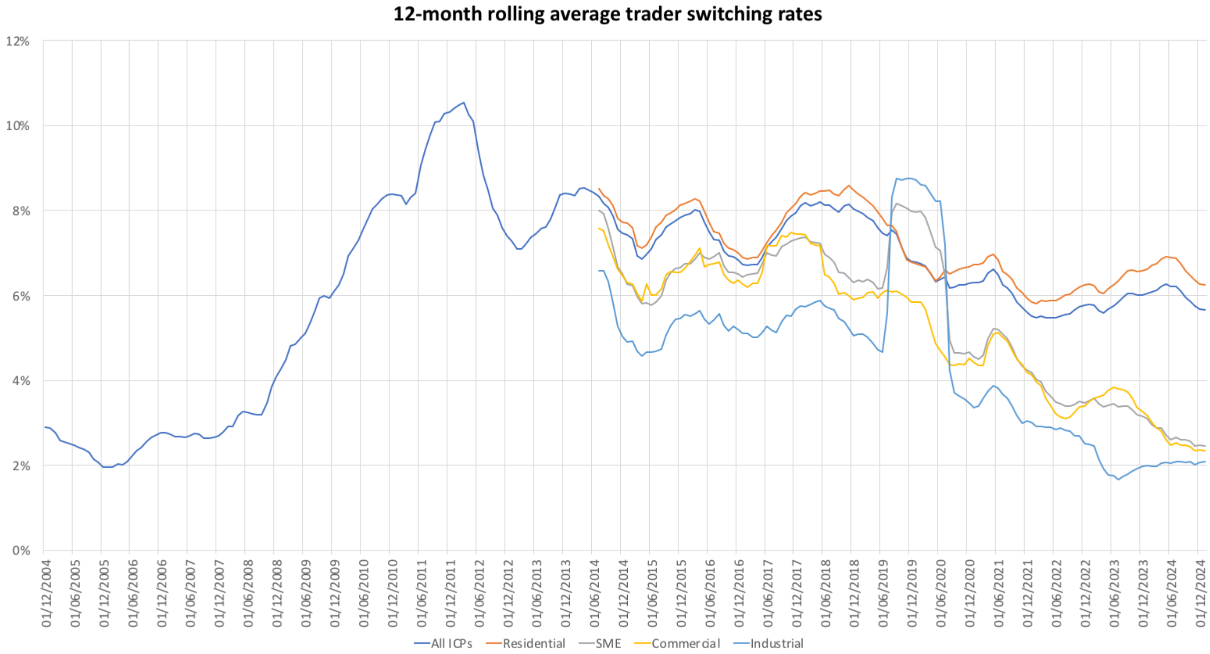
What the Authority describes as a "chicken and egg" issue simply reflects a potential gap in the market that – if genuinely beneficial to consumers (whether they realise it or not) – provides an opportunity for a retailer to innovate and enter the market and/or grow their market share.

If the tariff innovation proves popular, other retailers will follow with copy-cat options. This is already observable in the electricity market.

The issue of low switching rates is part of the broader signs that competition is not working as well as it should. Low and declining switching rates, notably from 2018/around the time of the Pohokura Outage, was one of the early signs that retail competition was

[4] Issue (d) relates to the Electricity Industry Participation Code requirements for reconciliation.

deteriorating,[5] which culminated in the Authority's recent acknowledgement that competition has "stalled"/"stagnated". In 2018, residential switching peaked at 8.58% (on a 12-month rolling average) and has been languishing around 6% since 2021.



The Authority specifically mentions low switching rates as part of the problem, and as one of the reasons that there isn't high uptake of available TOU tariffs.

If consumers are not taking up TOU tariffs because they are not offered or promoted by their retailer, and consumers are not switching in sufficiently high numbers, that is a failure of competition and market regulation aimed at promoting competition.

This issue should be addressed by considering why switching rates are low and why they have declined since 2018/Pohokura outage. An administrative (regulated) solution requiring all retailers have TOU pricing – so these options are available to consumers that don't or haven't switched – is at most a 2nd-best solution.

Small and new entrant retailers are part of the solution not the problem

The Authority has provided analysis which shows that small and new entrant retailers 'punch above their weight' in terms of innovation/tariff innovation.

For example, the Authority's insights from retail competition that impact the risk management review found clear evidence small and new entrant retailers are "overrepresented (compared to their market share) in the disruptive, architectural and radical innovations" and "contribute to innovation in a significant way, and likely in a greater proportion to their market share."[6]

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[5] The other early warning sign was the large increase in the number of electricity retailers exiting the market since 2018/the Pohokura Outage.

[6] Electricity Authority, Reviewing risk management options for electricity retailers – issues paper, 7 November 2024.

Small and new entrant retailers are part of the solution and should be encouraged and supported by level playing field initiatives. Small and new entrant retailers are NOT part of the problem that needs to be regulated.

It would seem incongruent that if the Authority is concerned about a lack of innovation that the solution would be to consider regulating the retailers that are leading the way in terms of innovation.

The proposed regulation thresholds should be better targeted

Pulse Energy does not support regulation of pricing of retailers that do not have market power.

If retail tariff regulation is adopted, the Authority should directly target the regulation at the large incumbent retailers with significant or substantial market power only.

The consultation states that the Authority wants to "Ensur[e] large retailers all offer time-varying plans" and detailed that while "Some retailers already offer consumers time-varying plans … some of the largest retailers do not currently offer time-varying consumption plans, or only offer them to select customers (typically EV owners)". The Authority has been clear 5 out of 6 of the large retailers Contact, Frank Energy, Genesis, Mercury, Meridian and Powershop "do not have time-varying price plans that all their mass-market customers can access".

It would be straightforward to ensure the regulation is targeted by adopting the approach for mandatory market-making and for the proposals for non-discriminatory access to hedge products and specifically regulate Contact, Genesis, Mercury and Meridian (and their subsidiaries).

If the Authority adopts a percentage threshold it should be set higher than either 1 or 5%. The Authority has previously defined a large retailer as having 200,000 or more ICPs[7] which would translate to about 8.6% market share. Pulse Energy consider that this would be a better threshold and would at least mean new entrant and small retailers would not be regulated until they fully developed into mature, large sized retailers.

The proposed 5% threshold would create a cost/barrier to independent retailers like Pulse growing their retail businesses beyond 5% market share/much beyond current levels because doing so would result in increase in regulatory compliance costs/restrictions on the way we can price. 5% is a threshold that smaller retailers like Electric Kiwi and Pulse Energy could have already exceeded but for worsening competition problems in the retail market since the Pohokura Outage in 2018.

Given our view that if retail tariff regulation is adopted, it should only apply to the large, incumbent retailers it follows that we consider the regulation should apply both to the parent company and its individual retail brands. Distinguishing between the parent

[7] Electricity Authority, Saves and Win-backs Code Amendment – Summary of Submissions, 18 February 2020, Appendix A.

company and its subsidiaries, would create an artificial incentive to set up subsidiary brands simply to minimise exposure to the regulation.

The Authority has likely substantially underestimated the compliance implications of its proposals including the extent to which new TOU pricing would be needed

Pulse Energy offers TOU pricing which allows our customers to "Enjoy half price weekends and discounted off-peak power every day with our Power Shift plan!" as well as competitive rates and transparent billing.

Off-peak pricing is a prominent part of our product marketing.[8]

Our retail tariffs have been set on a commercial basis to enable Pulse Energy to compete and grow its market share. We have designed our TOU pricing to be attractive to consumers and to encourage load shifting rather than in way that would necessarily align with the proposed requirements to "reflect the relative economic costs to the retailer" and "provide a financial benefit to each customer which is in proportion to the extent to which that customer's consumption or injection patterns reduce the retailer's economic costs."

If the proposals are adopted as currently drafted it is likely that most retailers would need to develop new regulated TOU tariffs to comply, regardless of whether they already offer TOU pricing. Pulse considers that if the Authority imposes retail tariff regulation, it should provide retailers with flexibility about the form of TOU pricing they adopt, including how strong the peak/off-peak pricing signals are. Retailers should be able to set prices based on market conditions and their expectations about what consumers want rather than a regulatory economist perspective of what efficient pricing looks like.

The Authority should be mindful that there could be considerable compliance costs with developing new regulated TOU tariffs to comply with the proposed regulation, and with demonstrating TOU tariffs comply with the requirements (which could require quantitative evidence).

If retailers are required to introduce new regulated TOU tariffs it could also have the unintended consequence of crowding out or replacing more innovative, unregulated TOU tariffs of the nature currently seen in the market.

Our understanding is that the Authority's intent is that the TOU pricing requirements are non-prescriptive and not intended to interfere with existing pricing that is available to mass-market consumers. The problem is likely to be that the Authority has drafted highly prescriptive methodological requirements that the TOU pricing "reflect the relative economic costs", that relative economic costs are defined at the individual customer level ("… of the customer") and to ensure the "financial benefit" each consumer receives is proportionate to their impact on economic costs.

[8] Pulse Energy | Power Shift Plan

The proposals should be redrafted to be 'surgical' and provide retailers with flexibility about the type of TOU pricing they adopt

The Authority has been clear that it intends that the regulation will be 'surgical' and shouldn't interfere with retailer tariff innovation etc. We do not think that the draft Code aligns with the intent, but it should not be difficult to resolve.

If the Authority is going to regulate/mandate retail TOU tariffs, it should redraft its proposals along the following lines:

- The large retailers (and their subsidiaries) only are required to offer TOU tariffs;

- The TOU tariffs must reward shift in consumption from peak to off-peak (and shoulder periods) and/or reduction in maximum load;

- The retailer must <u>have regard to</u> (not "reflect") the retailer's relative costs between peak and off-peak, potential consumer impacts and uptake incentives and transaction costs. If the concept of "economic cost" is retained it should be defined.

For the avoidance of doubt, we do not support requiring retailers to adopt a particular TOU pricing methodology requiring that pricing be based on relative economic costs of the customer's consumption, and do not support this mandatory requirement having elevated status over the proposed clause 3(d) matters retailers would be required to have regard to.

Pulse Energy's recommendations

Pulse Energy recommends that:

- The Authority limit tariff regulation to the natural monopoly (distribution and transmission) parts of the supply chain:

  - We support the (2A) proposal to require electricity distributors to provide rebates for injection where there are network benefits and it would help lower power prices.

- The Authority does NOT regulate competitive (or potentially competitive)-market retail tariffs, including any element of retail tariff pricing methodologies:

  - For the avoidance of doubt, Pulse Energy does not support regulated requirements for retailer time-of-use pricing, retailer solar rebates and/or mandated pass-through distributor pricing (including distributor rebates).

- If retail tariff regulation is adopted, the Authority should directly target the regulation at the large incumbent retailers with significant or substantial market power only:

  - The proposed 5% threshold should be changed specifically: (i) to regulate Contact, Genesis, Mercury and Meridian (and their subsidiaries) consistent with the

Authority's proposed non-discrimination rules; and (ii) avoid regulating new entrant and small electricity retailers that do not have market power.

- If the Authority adopts a market share threshold it should be set to capture large retailers with 200,000 or more ICPs which would translate to about 8.6% market share.

- If the Authority is going to regulate/mandate retail TOU tariffs, then it should redraft its proposals along the following lines:

    - The large retailers are required to offer TOU tariffs;

    - The TOU tariffs must reward shift in the customer's consumption from peak to off-peak (and shoulder periods) and/or reduction in maximum load;

    - The retailer must have regard to the retailer's relative costs between peak and off-peak, potential consumer impacts and uptake incentives and transaction costs. If the concept of "economic cost" is retained it should be defined.

- The Authority does not impose retail tariff regulation for TOU pricing which is more restrictive than regulations at the distribution pricing level.

- The Authority should address concerns about insufficient innovation, including tariff innovation and development of TOU pricing through initiatives to strengthen competition rather than imposing an administrative (regulated) solution e.g. introduction of requirements for the incumbent gentailers to provide hedge products on a non-discriminatory basis and regulated (mandatory) super-peak/shaped hedge products.

Concluding remarks

The Electricity Authority's primary ECTF focus should be on removing barriers to competition and promoting a strongly and workably competitive market.

The Authority should address why competition has stalled and why switching rates have declined materially from already low rates.

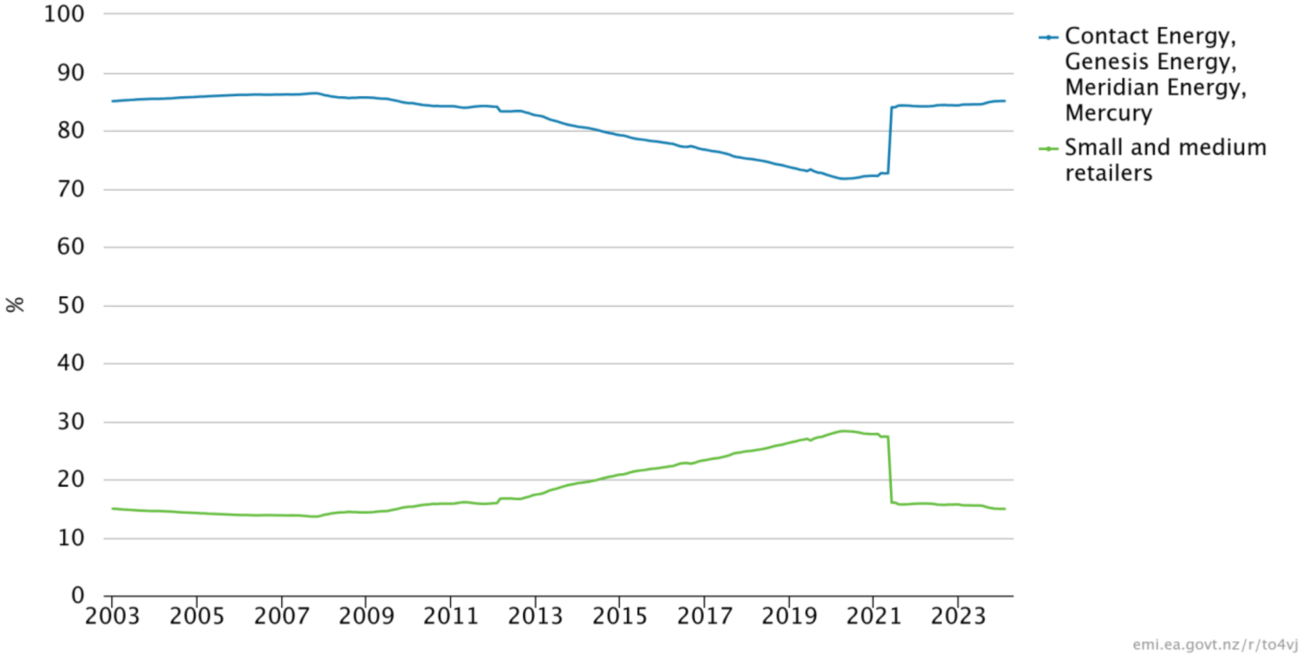
If the Authority addresses these issues, then New Zealand Inc should see competition and innovation flourish, and more choice and options for consumers.

In a strongly competitive market, electricity retailers wouldn't have the luxury of leaving value propositions (such as opportunities to reduce wholesale/network costs through load-shifting) on the table, as they would become less competitive and lose customers.

This is not what we are currently seeing in the retail market with the large, incumbent generators growing their overall market share since April 2021.[9] Based on current

[9] Regardless of whether Mercury's acquisition of Trustpower's retail business is taken into account or not.

trajectories Contact, Genesis, Mercury and Meridian are on course to increase their aggregate market share beyond that seen at any time in the last 20 years.



Pulse Energy considers that regulation of retail tariffs would be an acknowledgement that competition is not working, and the Authority does not have confidence competition problems will be adequately addressed for several years. Pulse considers that the best way to deal with these issues is to ramp up initiatives aimed at promoting competition – including going beyond what the Authority is proposing in the level playing field/non-discrimination consultation – rather than falling back on administrative (regulated) solutions.

Yours sincerely,

[redacted]

Sharnie Warren
Chief Executive