Mercury

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taskforce@ea.govt.nz

Cross submission: Energy Competition Task Force Work Package 2 (initiatives 2A, 2B and 2C)

Mercury welcomes the opportunity to prepare a cross submission to the Energy Competition Task Force (the Taskforce) package 2 responses. We appreciate the short extension that was granted to give additional time to engage with the material.

General comments

In reviewing the submissions received, we observe broad support for the Taskforce's approach of nudging improvements toward a more affordable, responsive, and secure energy system. This direction appropriately recognises the importance of preserving the integrity of New Zealand's highly competitive retail electricity market. Mercury remains supportive of the proposals, while noting it is essential that retailers retain the flexibility to bundle distributor's costs and make their own decisions as to how offers are presented in the market. As we noted in our submission, it is critical to focus on the outcomes desired (demand reduction and increased capacity at peak times) as opposed to prescribing how those outcomes are achieved.

We also see there is broad agreement for a sunset clause to ensure that regulatory changes are not indefinitely locked in. We believe our original position, which includes an ex-post review prior to the sunset clause, remains an appropriate mechanism to evaluate whether the regulatory changes are achieving their objectives, identify any unintended impacts, and decide whether the measures should be retained, adjusted, or phased out. This approach would help manage the risk of keeping provisions in place for an extended period (such as five years) should they not be delivering the desired results, ensuring that only effective measures remain.

There is also broad consensus that the 1 January 2026 date for implementation of the retail initiatives is too ambitious, with preferences ranging from April 2026 to October 2026 or even April 2027. Retailers and distributors alike note that premature implementation risks compromising service quality and customer experience.

Our cross-submission is limited to four key points:

1. Care is required when regulating a competitive retail market
2. Promotional requirement should not be included
3. Threshold at 1% ensures consistent and fair application across the market
4. Implementation date of package 2b and 2c should be reconsidered, particularly requirements for a time-varying injection offer

Care is required when regulating a competitive retail market

New Zealand's electricity retail market is highly competitive with more than 40 retail brands in market. To put that into perspective, there are just over 20 retailers in the United Kingdom for a population 13 times the size of NZ.[1] As outlined in our submission, it is important that the benefits to consumers created by retail competition are carefully preserved by any new arrangements introduced under work package 2 – that is, retailers must continue to have flexibility to create and offer plans that meet consumer's diverse needs. [2]

[1] For more details refer to Ofgem here: https://www.ofgem.gov.uk/energy-data-and-research/data-portal/retail-market-indicators
[2] Refer to Mercury submission

The Mercury Building, 33 Broadway, Newmarket 1023
PO Box 90399, Auckland 1142 New Zealand
PHONE: + 64 9 308 8200
FAX: + 64 9 308 8209
mercury.co.nz

Other submissions also agree that there are significant risks from regulating a competitive retail market which need to be carefully balanced when considering the proposals.

Mandating time-varying tariffs

Mandating time-varying tariffs is complex and hard to get right. While we are generally supportive of the Taskforce's nudge towards improvements in these offers, we agree with Genesis that:

> "This complexity is likely to be increased by the fact retailers will need to operationalise this requirement in coordination with 29 different distribution businesses."[3]

This complexity will need to be considered when setting timeframes for implementation (which we elaborate further below).

Others also raised concerns regarding mandating time-of-use plans which need due consideration. WEL Networks notes with regards to mandating retailers to offer specific plans:

> "Mandating all retailers offer a TOU plan seems to be contrary to principles of competition, and no evidence is offered in the consultation around the Authority's contentions availability of plans is mismatched to consumer demand, or that it is lack awareness or understanding by consumers is a determining factor in uptake"[4]

Similarly, 2degrees notes:

> "The Authority's proposal to mandate TOU tariffs, includes regulation of pricing methodologies to require a specific version of TOU pricing where the differential between peak and off-peak reflects "relative economic cost". Our interpretation of the draft Code proposal is that existing TOU tariffs would not necessarily be complaint [sic] and retailers would need to develop new regulatory TOU tariffs to comply. This could interfere with the type of TOU pricing retailers can offer and could hamper the kind of tariff developments and innovations that have already been observed in the market."[5]

Submitters, including us, have noted that regulating the competitive market could have significant unintended consequences like what has been experienced abroad. We agree with Powerco's point that "it is widely known that Ofgem's extensive intervention into the retail market between 2008 and 2014 was unsuccessful".[6]

Mandatory pass-through requirements

We strongly disagree with Horizon Networks assertion that mandatory pass-through is necessary to achieve policy objectives. As we noted in our submission:

> "Time-of-Use (ToU) pricing will appeal to consumers who are motivated to adjust their consumption to be in off-peak periods, while others may prefer solutions that do not require active participation. Enabling a variety of tariff options that can engage these distinct consumer segments will support a vibrant, competitive retail market. **It is essential to remain focused on the intent of the intervention - to encourage demand reduction and increased capacity at peak times - regardless of how this is achieved**."

There is agreement that distribution signals should be cost-reflective, but it is vital that retailers retain the autonomy to decide how best to bundle and pass on network charges for the many reasons outlined by the submitters who are also opposed to prescriptive regulation (including Pulse Energy, 2degrees, Vector, WEL Networks, The Lines Company, and Genesis Energy). Imposing a one-size-fits-all mandate disregards the complex realities of retail pricing and could lead to market distortions rather than efficient outcomes. More notably, not all consumers are in a

[3] Genesis, Genesis submission on proposal to requiring distributors to pay injection rebates, pg 2
[4] WEL networks, Consultation Paper – Improving pricing plan options for consumers: Time-varying retail pricing for electricity consumption and supply, pg 2
[5] 2degrees, Promoting competition is preferable to administrative solutions, pg. 2
[6] Powerco, Time-varying retail pricing for electricity consumption and supply, pg 6

position to actively participate in the electricity market, while others may prefer solutions that do not require active participation.

We urge the Taskforce to not progress with any mandatory pass-through measures or prescriptive requirements and focus instead on the approach as proposed of principles-based guidance that preserves the competitive retail market. Maintaining retailer flexibility in creating and offering plans that meet consumer's diverse needs is crucial for ensuring robust consumer benefits, and efficient market outcomes without stifling innovation or creating operational and compliance challenges (which ultimately increase costs for consumers).

Promotion requirement should not be included

As we noted in our submission, simply providing consumers with information about time varying pricing plans and the 'expected benefits' of these plans without considering the consumer's ability to understand it, nor assessing whether its relevant at the time it is provided, is unlikely to translate into better decision-making for consumers, shift-behaviour or achieve the policy intent.

Contact Energy helpfully explains:

> "… any notices that we provide regarding pricing require a high level of accuracy to meet retailers Fair Trading Act obligations. There are significant complexities to calculate and predict exactitudes for customers already on time of use plans let alone for consumers who may move onto a plan."[7]

We further agree with Meridian and Contact submissions in which they note:

> "Meridian is not supportive of the proactive offer requirements as they are overly prescriptive and require comparing historic data to predict potential savings which is not an accurate predictor"[8]
>
> "The scope of the requirements is also very onerous – it would require analysing consumption data for every customer to identify customers that would benefit from a time-varying price plan. This would require significant amounts of time and work. Having such high compliance costs is not good for consumers, as increased costs to retailers can result in increased power prices for consumers"[9]
>
> "The specifications focus heavily on information about the consumer's past usage. However, to be successful time varying plans should incentivise consumers to change their consumption patterns, making prior usage a poor indicator of potential savings."[10]

We also agree with Nova's view that:

> "…determining whether a customer would benefit from selecting such a plan requires enough usage data to make an informed comparison and determine (or not) whether that is the case. This data is typically unavailable for customers who have recently switched providers."[11]

We acknowledge Powerco's reference to behavioural economics and the concept of "nudges" to encourage consumer decision-making. [12] While we generally support the use of nudges, we do not agree that mandating retailers to promote specific offers at specific times in specific ways is a benign or low-touch form of intervention. There is significant complexity involved in accurately identifying and targeting specific customers based on historical consumption data which needs consideration.

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[7] Contact Energy, pg 3
[8] Meridian, Improving pricing plan options for consumers submission, pg. 6
[9] Meridian, Improving pricing plan options for consumers submission, pg. 7
[10] Contact Energy, Improving price plan options for consumers: Time-varying retail pricing for electricity for consumption and supply, pg 2.
[11] Nova, Consultation paper – Improving pricing plan options for consumers: Time-varying retail pricing for electricity consumption and supply pg 7
[12] Powerco, Time-varying retail pricing for electricity consumption and supply, pg. 8

Retailers differentiate themselves through marketing strategies, customer engagement, and tailored offers. Mandating uniform promotion practices limits retailers' ability to innovate in how they present and market their products, effectively reducing competitive differentiation. We agree with Powerco when they explain:

> "Retail isn't just about price – different customers value all sorts of things and different retailers offer all sorts of propositions to meet those needs"[13]

We remain unsupportive of prescriptive requirements to determine which customers would benefit from certain plans. We believe there must be careful consideration when regulating the competitive market.

Prescriptive mandates for promotion undermine retailer flexibility and could lead to unintended consequences. Retailers are best placed to decide how and when to promote products based on their customer engagement strategies. As we noted in our submission:

> "Ultimately, in a market-driven environment, retailers that allocate resources towards research and development for a specific product, such as a time-of-use (ToU) or injection tariff, have a natural economic incentive to actively promote and encourage uptake of that product without the need for prescriptive regulation."[14]

Threshold at 1% could ensure consistent and fair application across the market

Our views on which retailers should be included in Parts 1-3 of proposals 2b and 2b have evolved after reviewing the responses to the Taskforce papers. We consider a 1% market share threshold could strike an appropriate balance between regulatory consistency and proportionality.

We agree that, by and large, regulations should apply generally. As Genesis explains:

> "In principle, regulations should apply generally. Adopting a market share threshold may create perverse incentives for retailers who do not wish to incur the obligation to offer time-varying plans and is likely to be more administratively burdensome than regulations that apply generally. We recommend whatever regulations that are progressed apply to all retailers."[15]

We do not agree with 2degrees statement that:

> "If the Authority adopts retail tariff regulation it should apply to the large, incumbent retailers only: Contact, Genesis, Mercury and Meridian (including their subsidiaries)."[16]

If a smaller brand such as Globug is captured by the Code change, it would be inconsistent to exclude other small brands simply because they are not linked to a larger player. This creates a double standard whereby some small brands are regulated while others are not purely based on ownership rather than market impact or consumer reach.

In our view, if some smaller retailers are to be subject to obligations, then all smaller retailers with more than 1% market share—regardless of affiliation—should be captured. This would ensure consistent and fair application across the market, minimising the risk of distorting competitive dynamics by applying regulation unevenly.

An alternative option could be for the Taskforce to consider Meridian's balanced approach, in which they suggest:

> "Meridian's preference would be for the rules to apply equally to all retailers, acknowledging that small retailers can apply for exemptions and the Authority can approve then on a case-by-case basis if doing so would be consistent with the Authority's statutory objective."[17]

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[13] Powerco, Time-varying retail pricing for electricity consumption and supply, pg 2
[14] Mercury, Energy Competition Task Force Work Package 2 response (initiatives 2A, 2B and 2C), pg. 8
[15] Genesis, Competition remains key to retail market innovation, p 7
[16] 2degrees, Promoting competition is preferable to administrative solutions, pg 3
[17] Meridian, Improving pricing plan options for consumers, pg 6-7.

This could be a useful mechanism for achieving the policy intent without imposing compliance obligations on retailers who are not able to reasonably meet them.

Implementation date no sooner than October 2026

There is broad consensus that the proposed implementation date of 1 January 2026 date for retailers and 1 April 2026 for distributors for package 2 initiatives is too ambitious. Electricity Network Association correctly notes that:

> "a 'one size fits all' timeframe for having this in place is unlikely to be achievable for all EDBs and could lead to rushed or poor outcomes." [18]

We are further convinced by Alpine Energy's point regarding implementation date of 1st April 2026 in the context of other significant regulatory reforms affecting distribution pricing and we can appreciate how challenging the evolving landscape will be for many distributors:

> "Implementing multiple major regulatory changes in parallel would place undue pressure on internal teams and systems, increasing the risk of rushed delivery and reduced implementation quality. It may also limit our ability to engage meaningfully with consumers and stakeholders. For example, teams responsible for pricing methodology development, billing systems, and customer engagement would need to support several complex programmes simultaneously, potentially resulting in rushed delivery or unintended outcomes."[19]

As well as Powerco's comment that:

> "the low user fixed charge will not be removed until 1 April 2027. This is a major distortion to distribution pricing, which will evolve in the 2027-2028 pricing year as a result."[20]

It appears that the proposed implementation dates are likely to be unworkable for most.

Specifically, Mercury continues to believe it is not practical to have a 1st January 2026 implementation across the initiatives in package 2b and 2c. As 2degrees explains:

> "While the Authority has suggested its proposal "is a new offer not a price change" we do not consider it would be desirable to potentially need to increase the price of the "new offer" just 4 months after it is implemented to align with electricity distribution price increases at that date."[21]

Thus, while we acknowledge that for some retailers the implementation date for time varying tariffs could be achievable by 1st of April 2026, we still believe this date would be particularly challenging for us to achieve for a new tariff that rewards injection to the level of specificity required to comply with the proposal.

A number of submitters noted the same issue in their submissions. In fact, Genesis goes further and notes that:

> "Retailers that can offer time-varying plans to reward injection are already incentivised in a competitive market by the potential to capture greater market share, and those who cannot face market discipline in the risk of losing market share. These incentives are sufficient and appropriate for the nascent market for retail solar and batteries."[22]

We strongly agree with Contact's proposal of October 2026 at the earliest regarding the implementation date for time of use for injection. Contact explains that:

> "Significant effort will be required in the pricing system to provide time of use buyback rates. There is already substantial existing regulatory compliance utilising the resource that would implement these plans, including the Consumer Care Obligations, the new Retail Market Monitoring requirements, changes to the

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[18] ENA, pg 21.
[19] Alpine Energy, Alpine Energy Limited's submission on the Electricity Authority's consultation paper on requiring distributors to pay a rebate when consumers supply electricity at peak times, pg 2
[20] Powerco, Requiring distributors to pay a rebate when consumers supply electricity at peak times, pg 7
[21] 2degrees, Promoting competition is preferable to administrative solutions, pg 4
[22] Genesis, Competition remains key to retail market innovation, p 3

EIEP4a system, and more. Therefore, we recommend an implementation date of October 2026 at the earliest. "[23]

We encourage the Taskforce to reconsider the implementation date of the initiatives in package 2b and 2c to ensure they do not place undue administrative burden at a time where significant pricing changes are occurring.

Specifically, we recommend that the implementation date time-varying injection tariffs be delayed as these offerings are expected to be more challenging to implement and the market segment is still nascent.

If you have any questions about this cross submission, please do not hesitate to contact me.

Yours sincerely,

Claudia Vianello

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Regulatory Strategist

[23] Contact, pg. 3