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Electricity Authority
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Multiple Trading Relationships

Genesis Energy Limited (**Genesis**) welcomes the opportunity to provide a submission to the Electricity Authority (**the Authority**) on the consultation paper *Multiple Trading Relationships* dated 28 November 2017 (**consultation paper**).

Executive summary

Today's consumers are not one size fits all: they want unique services that give them more comfort, convenience and control of their energy. Providing this means a 'customer first' perspective is crucial for the industry and its regulators as we move from old ways of thinking and doing: ways that put sector benefits ahead of benefits for customers, who the sector has traditionally referred to affectionally as installation control points (**ICPs**).

ICPs are in fact consumers, some of whom are becoming prosumers; investing in new ways of generating, consuming and storing energy. This runs a full spectrum of technologies from electric vehicles to batteries; data-enabled home energy management systems to innovative products, services and business models not yet dreamed of.

Multiple trading relationships (**MTRs**) are just one of many potential 'new ways of doing energy' that in time may prove to be as popular and transformative for the electricity sector as *Uber* has been to transport, or *Airbnb* to accommodation. Equally, MTRs might be the industry's *Segway*: a technological marvel that ultimately made no sense to consumers.[1]

There is a common challenge for all regulators moving to adapt for dynamic sectors, be it electricity, transport or accommodation. They must adopt a more customer-centric approach that is flexible to meet the changing needs of consumers without being distracted along the way by potential red herrings that may only benefit a small subset of consumers at the expense (both actual and opportunity cost) of many. Recent experience

[1] https://www.wired.com/2015/01/well-didnt-work-segway-technological-marvel-bad-doesnt-make-sense/

of regulated taxis and *Uber* is a prime example where regulators were busy focussing on the minutiae and not anticipating total market disruption until it was too late.

Genesis agrees that changes may be needed to current electricity industry rules, systems and processes to meet a fundamentally changing sector, but we are conscious that the narrow focus on MTRs in isolation could result in a costly, complex redesign of the Electricity Industry Participation Code (**the Code**) for what may ultimately be our *Segway*.

We would urge the Authority to refrain from making changes to the Code until there is evidence of a clear market failure. Industry participants are continually investing time and resources to offer innovative products and services to consumers within the requirements of the current Code. Changes in anticipation of market failure results in regulatory uncertainty and could, in fact, reduce investment in the full spectrum of technologies. Code change applications are available to industry where barriers are detected and we are of the view this is sufficient at this stage.

Where there is evidence of such barriers, the focus should be on enabling the uptake of <u>any</u> future product, service or business model by providing a platform where any new customer offering can scale up as determined by consumer preference. This rightly puts consumers in the driver's seat rather than picking technology winners and losers on their behalf; and will deliver the 'flexible and resilient regulatory framework' that is needed for innovation.[2]

Key takeaways from our submission

Genesis recommends the sector and its regulators:

- Focus on addressing the underlying issues common to the enabling of any emerging technologies, particularly how to provide a level playing field across the different parts of the industry for competition for the benefit of consumers;

- Prioritise the Authority's work programmes *Equal Access*; *Data and data exchange*; *Default distribution agreement* and *Distribution pricing* that deal with these issues in detail;

- Understand that data sharing requires delicate balancing between the offering of new products and services based on consumers' data and consumer protection from unauthorised or misuse of data. Consumers can very easily access their own data and provide that data to third parties, at their discretion and we support this. The data issues in the market relate to the distribution of data to third parties directly; and

- Consider carefully the extent of change and associated costs that would be required to current rules, systems and processes to address MTR-specific issues

[2] Multiple Trading Relationships consultation paper, page 15.

as per Figure 1 of the consultation paper, including sharing responsibilities for health and safety and medically dependent customers at an ICP.

Open access to networks: a level playing field for competition

The consultation paper refers to the *Equal access* project that the Innovation Participation Advisory Group (**IPAG**) will undertake in the coming year. Genesis agrees it is important that all parties have confidence network companies are providing a level playing field for competition in emerging technologies and appreciates the Authority prioritising this work programme.

In our submission on *Enabling mass participation*, Genesis wrote that the market fundamentals of a level playing field in the emerging energy environment are being undermined by natural monopolies, creating a suboptimal market for the consumers it serves.

Consumers must be at the core of the changing energy environment, and network companies should not be permitted to use their privileged position to put sector benefits ahead of benefits to consumers. 'Network first' thinking of the kind in the consultation paper e.g. reference to changes to the temperature of heat pumps or altering the cycling of a fridge benefitting networks must come second to legitimacy of consumer choice.

That choice is undermined when a monopoly can dictate what technologies can connect to a network and for what purpose; leverage off guaranteed cost recovery to invest in self-provision of technologies below cost and without risk of failure; procure inefficient network services from related parties; and offer non-standardised network access terms that serve as a barrier to entry or innovation. In essence, the monopoly inhibits increased system-wide, rapid development by substituting customer preference for its own.

In addition, a monopoly may also act in a manner that compromises competitive neutrality by moving quickly to dominate a potentially competitive area, and crowd out future competitors, leading to ineffectual market operation and inefficient outcomes. It is appropriate then, for regulators as 'system stewards' to play their part in securing a neutrally competitive marketplace for the benefit of the end consumer.

In our view, a bold approach that focusses on 'how' participants compete rather than 'who' can compete is needed, which is explained in detail in our *Enabling mass participation* submission. We request you refer to this and our submissions on *data and data exchange*, *default distribution agreement* and *distribution pricing* for more information.[3]

We look forward to working with the IPAG as it considers what flexible and resilient regulatory framework is needed to ensure networks operate as an open access platform,

[3] See Genesis Energy submissions here: Enabling mass participation in the electricity market; Data and data exchange for market transactions; Default distribution agreement for distribution services; Distribution pricing review.

from which a truly competitive, efficient and future focussed market for emerging technologies can grow.

Access to data: balancing consumer benefits with consumer protection

In an energy future where the potential for data-driven products and services is exponential, regulating who can access what data and when deserves consideration far beyond the scope of the consultation paper (and the preference of the operators wanting to sell MTR-specific services to consumers). It is also beyond the remit of the Authority alone to determine the future of consumer privacy; an issue shared by many other customer-facing sectors.

We do, however agree with the Authority's policy on data and data exchange: The Code requires contracts to be in place between sharing participants, allowing participants that have invested in gathering and storing data to reach commercial agreements with other participants for access to this data, which reflect the cost of gathering, storing and accessing the data but do not undermine the rights for the data itself; rights the consumer retains.

Broadly speaking, Genesis supports a regulatory framework that balances a consumer's desire to have access to and benefit from data with the need to carefully manage the parameters around the sharing of that data for a consumer's protection, now and in the future:

- We understand that access to data can present significant opportunities to deliver consumer benefits via innovative products and services, and agree consumers should have timely access to consumption data;

- We also understand that protecting consumers from unauthorised or misuse of data is paramount, as failing to take proper care has real potential to undermine consumers' trust and confidence in the electricity sector.

The 2017 research conducted by the Data Futures Partnership (**DFP**) explored consumers' expectations around data use and sharing, and highlighted consumers generally have a high interest in the specific purpose data will be used for, its security, and extent of anonymity.[4] This work fed into a project led by the Electricity Retailers' Association of New Zealand to develop core values for the treatment of data by its members, including a commitment to collect, use and disclose data consistently with the Privacy Act 1993 (**the Act**).[5]

As is identified in the consultation paper, retailers are provided 20 business days under the Act to assess whether a data request should be granted. We are concerned the consultation paper suggests that retailers are or have an incentive to deliberately withhold

[4] https://trusteddata.co.nz/wp-content/uploads/2017/08/Background-Trusted-Data.pdf
[5] https://www.eranz.org.nz/for-customers/your-electricity-consumption-data/

data during this time. Notwithstanding the lack of evidence provided to support this claim, retailers are obliged to use this time to satisfy themselves that a request to release data has been properly made (i.e. is authorised by the customer), or risk the wrong data falling into the wrong hands.

It appears that anecdotes have been used to assume there is a market failure in the exchange of data. Genesis received 87 data requests in the previous year and 85 were dealt with in a 24-hour period. In the other two instances, incorrect customer data had been supplied initially by the customer's agent, which delayed the process while correct data was sought.

We would expect there to be occasional circumstances where a retailer may need to use the time-period it has been granted to ensure the privacy obligations are being met but if this is the exception not the rule, we struggle to see where the market failure exists. We would urge the Authority to analyse the data received from industry participants on this matter and assess whether there is, in fact, a market failure.

It seems that the crux of the issue highlighted in the consultation paper is limited to operators with low-margin business models, who can gain access through appropriate channels but would prefer to receive data within a timeframe that would suit their own product or service offering.

While immediate access to data may be of interest to those operators, unless a customer has provided express permission for a particular party to access and use its data for a particular purpose, data disclosure should not be a 'free for all'. Just like we wouldn't expect other sectors to disclose customer data without taking the upmost care e.g. banks shouldn't provide financial transactions openly, electricity retailers must ensure protection of customer data.

Not all consumers have the same level of comfort in respect of data sharing, and in fact the DFP research found that some groups had broader concerns about the handling of data, tended to have lower levels of trust, and be sceptical that their anonymity could be protected. It is these groups of consumers that are particularly vulnerable to data breaches, and a single breach event could damage the reputation of the sector.

Fit for purpose regulation around the collection, storage, access and disclosure of data becomes more and more important as more and more data is generated. Genesis has previously commented that the half hour data consumers generate today is just the tip of the 'data iceberg' that we should expect in the future. This provides further context as to why it's critical the right balance is struck between access and privacy now for the benefit of consumers going forward.

The extent of change required for MTRs

Genesis has stated above our preference for prioritising other projects ahead of addressing MTR-specific issues. In our view, the Authority needs to lay solid foundations

for consumers to invest in a range of possible technology solutions of their choosing, to which the sector should ultimately be agnostic.

Generally, we do not believe any barriers to MTR are insurmountable and many new business models are already being offered and developed. The challenge is to ensure that the extent of change that may be required to current rules, systems and processes to allow further innovative products, services and business models can be identified, however, the burden of change should not be borne by the current industry whereby we incur time and cost for a plausible future and perceived barriers which, in fact, do not yet exist and may never exist. Some issues that warrant further consideration include:

- The metering pricing model would need to transition from 'amortised cost per asset per day' to 'price per service', with different retailers charged for different services they received from a meter e.g. a grid load retailer may only want daily reads, but a solar exporter would want interval data;

- Meters would accordingly need to be able to provide a variety of different data formats to accommodate different retailer demands, and it would be important to regulate metering equipment provider (**MEP**) service charges and access terms to create a fair playing field for competition;

- Distributor pricing would need to change to ensure that the costs of running the network were the focus of such pricing. Network costs would then be spread across all retailers on a network, and could be allocated on a 'services supplied' basis so only beneficiaries of services were bearing the costs;

- Metering for an ICP is currently determined via commercial negotiation of a one-to-one agreement between a retailer and an MEP. If meters continued to be relied on for billing and reconciliation purposes, there may need to be contractual changes to allow for multiple access to metering data. Tensions would arise if meters were not able to provide data in a format desired by different retailers, which is a problem currently with both smart and legacy meters;

- Where responsibility for things like the health and safety of meters, or vulnerable and medically dependent consumers currently sits with a single incumbent retailer, this is likely to need to be reconsidered to ensure appropriate care and consideration continues for those consumers;

- It may not be possible to engage with multiple retailers via a single meter, with a rule change proposed by the Australian Energy Market Operator to allow consumers in Australia to engage with multiple retailers relying on additional meters being installed at an ICP. The Australian Energy Market Commission concluded the proposal was unlikely to deliver material benefits for most

consumers and would increase costs. We agree that multiple meters cannot be considered the best way forward;[6]

- In the future, home appliances and electric vehicles may be able to communicate directly with energy providers. Alternatively, the removal of barriers to allow for innovative pricing may see meters being circumvented and algorithmic pricing being used. Such changes would render the physical meter model redundant. Code amendments that rely on the continuation of the current meter construct will be costly and may inevitably fail to keep up with the pace of change in the sector.

The best path forward: flexible and resilient regulatory framework

With the sector at a crossroads, we have the rare opportunity to lay the foundations for generational change that will deliver benefits for consumers. Unfortunately, with a consultation paper that focusses on just one of many possible 'new ways of doing energy', we risk making costly changes to existing rules, systems and processes that rely on the eventuation of one of many possible energy futures.

This kind of colouring only within the lines of the current Code will fail to appreciate the extent of the change facing the sector, and disjointed policy decisions that solve problems with more problems, pick technology winners and losers, or limit innovation will fall short. We urge the Authority to instead prioritise the *Equal access* project, and taking the next steps in *default distributor agreement*, *data and data exchange* and *distribution pricing* projects is key in our view.

To this end, we look forward to working further with industry stakeholders to deliver a regulatory framework that is flexible and resilient.

If you would like to discuss any of these matters further, please contact me by email: margie.mccrone@genesisenergy.co.nz or by phone: 09 951 9272.

Yours sincerely

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[6] http://www.aemc.gov.au/Rule-Changes/Multiple-Trading-Relationships