



COVERSHEET

Minister	Hon Simon Watts	Portfolio	Energy
Title of Cabinet paper	Investigating Options to Amend or Remove the Amount of Generation that Electricity Distribution Businesses May Own	Date to be published	8 April 2025

List of documents that have been proactively released		
Date	Title	Author
17 October 2024	Investigating Options to Amend or Remove the Amount of Generation that Electricity Distribution Businesses May Own	Office of the Minister for Energy
23 October 2024	Investigating Options to Amend or Remove the Amount of Generation that Electricity Distribution Businesses May Own ECO-24-MIN-0239 Minute	Cabinet Office
17 October 2024	Regulatory Impact Statement: Removing the thresholds on distribution businesses owning generation.	Office of the Minister for Energy

Information redacted

YES / NO

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Some information has been withheld for the reasons of Commercial Information and Privacy of Natural Persons.

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Office of the Minister for Energy

Office of the Minister for Resources

Cabinet Economic Policy Committee

Proposal – Investigating a range of options to amend or remove the amount of generation that electricity distribution businesses may own

- 1 To report back on the investigation into a range of options for the Energy and Electricity Security Bill to amend or remove the amount of generation that electricity distribution businesses may own.

Relation to government priorities

- 2 This paper relates to the commitments in the National and New Zealand First Party coalition agreement to investigate the threshold at which local lines companies (distributors) can invest in generation assets.

Executive Summary

- 3 A distributor is currently prohibited from involvement in (having an ownership interest in or a material influence on) more than 250 megawatts (MW) of generation connected to Transpower's national grid. The Electricity Authority (the Authority) may exempt a distributor from this ownership prohibition.
- 4 In addition, a distributor involved in more than 50 MW of generation on its own network must operate that generation in a separate company and at arms-length, unless an exemption is granted by the Authority.
- 5 While the current regime has become more flexible over time, it is still reported to be burdensome by distributors, and a deterrent to them considering investment in generation. Exemptions may be granted subject to conditions. Applications take time and cost to prepare, representing an administrative burden.
- 6 We consider that removing these restrictions would reduce a barrier to investment in generation and increase regional resilience and security of supply. The advantages of additional investment in local distributed generation were clearly demonstrated in the recent Northland outage.
- 7 We consider the risks to competition in the electricity market would not be significantly increased by these measures, given other regulatory rules that would remain in place.
- 8 We seek Cabinet's agreement to amend the restrictions by:

- 8.1 **removing the restrictions** on cross-involvement in more than 50 MW of generation connected to a distributor's own network, but
- 8.2 **removing the restriction** on cross-involvement in more than 250 MW of generation connected to Transpower's network.
- 9 The Authority will retain the ability to impose restrictions in future if it is found that additional safeguards are warranted at that time. We consider that this will provide an ongoing safeguard for competition.
- 10 We propose making these amendments through the Energy and Electricity Security Bill in early 2025.

Background

- 11 On 21 August 2024, the Cabinet Economic Policy Committee (ECO) invited the Minister for Energy and Minister for Resources to report back by the end of October 2024 on a range of options to amend or remove restrictions on the amount of generation that electricity distribution businesses may own.

History and rationale for the regulation of distributor involvement in generation

- 12 Distributors were required to divest generation and retail assets in 1998 as part of a series of reforms, which also resulted in the breakup of the Electricity Corporation of New Zealand (ECNZ).
- 13 The 1998 ownership prohibitions were progressively relaxed over time, and the current restrictions in the Electricity Industry Participation Code (the Code) and the Electricity Energy Act 2010 (the Act) are essentially the same as those put in place in 2010. The Authority administers the Code and can amend it.

Generation connected to the distributor's own network

- 14 The purpose of the relevant section of the Code is to promote competition in the electricity industry by setting rules for cross-involvement between a distributor and a generator or a retailer on the same network. These rules include a requirement to operate distribution and generation in different companies, prohibitions on cross-directorships and shared management, requirements not to favour a related party, and restrictions on sharing information.
- 15 The rules are intended to promote competition by limiting a distributor's ability to:
 - 15.1 cross-subsidise its contestable generation business from its monopoly distribution business,
 - 15.2 misuse information it acquires as a distributor to benefit its generation business, or

15.3 discriminate against competing generators.

Generation connected to Transpower's national grid

16 The intent of the prohibition on cross-involvement in distribution and grid-connected generation above 250 MW is to promote competition. It is designed to prevent a distribution business from obtaining substantial market power in a region through vertically integrating into a regionally dominant generation business.

Cross involvement in retail supply

17 The restrictions on cross-involvement also apply between distribution and retail supply to customers on the distributor's own network. There are no limits for a distributor who wishes to invest in generation connected to another distributor's network or in a retail business serving customers on another distributor's network.

Impact of the restrictions on investment and resilience

Restrictions have an impact on investment

- 18 Investors who have an ownership interest in distributors as part of a wider portfolio have reported that the prohibition on cross-involvement in generation connected to Transpower's network is deterring investment in generation.
- 19 While the current regime for generation on distributor's own networks has become more flexible over time, it is still reported to be burdensome by distributors, and deters them from considering investment in generation. Small distributors in particular face higher management and governance costs associated with operating separate businesses and complying with arms-length obligations. Exemptions to some cross-involvement rules are available from the Authority but are not reported to encourage further investment.

Restrictions should be removed to increase generation and support regional resilience

- 20 We consider that the current rules about cross-involvement in distribution and generation are deterring investment in generation at a time when distributed generation should be encouraged to promote the regional resilience of our electricity sector.
- 21 Reducing or removing restrictions on distributors owning generation would increase the potential pool of investors in generation and increase and diversify the supply of electricity. Distributors are valuable potential investors in generation, as they are likely to be familiar with local opportunities to develop generation capacity.

- 22 The report into the Northland tower collapse highlighted the value of distributed generation that can respond to grid emergencies in a region vulnerable to transmission outages. In Northland, Top Energy and Vector both had distributed energy resources that boosted the grid capacity in the region, meeting 45 per cent of the peak demand.
- 23 Westpower has one key Transpower transmission line servicing 13,000 customers over 2,000 kilometres. If a natural hazard or other emergency were to impact this line, customers of Westpower could be severely affected. Requiring distributors to go through unnecessary red tape to make investments to invest in localised generation would not deliver the best results for consumers.
- 24 We believe that **removing both of these cross-involvement rules** would reduce the administrative burden and costs for distributors who are interested in generation projects, supporting stronger security of supply. Removing these rules will increase opportunities for new generation to be built and will assist in developing resilience at a local level.

Impact on competition of removing the restrictions

Some risks could arise from removing the 50 MW threshold....

- 25 Greater encouragement of investment in distributed generation to support resilience must be weighed against potential negative consequences for competition. The key risks that could arise from removing the thresholds are that it would be easier for distributors to favour their own generation projects over other competing generation projects.
- 26 Other generators can and do contribute to local resilience, and it would be counter-productive if this investment was deterred by loosening the rules on cross-involvement.
- 27 Independent generators have raised concerns about asymmetric access to information, and about distributors favouring their own generation projects. This could give rise to concerns about the cost and speed of connecting generation, of the kind that have arisen when connecting electricity load (such as EV charge points) to distribution networks.

.... however, safeguards remain in the Code

- 28 The Code sets out rules which apply when connecting distributed generation. It provides a framework to enable the connection of distributed generation and sets out the regulated terms that will apply unless parties have agreed otherwise.
- 29 The relevant part of the Code requires that distributors make certain information publicly available and free of charge. This information includes, but is not limited to:
- 29.1 the distributor's connection and operation standards,

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- 29.2 statements on circumstances where distributed generation may be curtailed, or interrupted to ensure the distributors' standards are met,
 - 29.3 a list of all locations the distributor expects to be subject to export congestion, and
 - 29.4 a list of any fees that the distributor charges.
- 30 The Code also constrains the ability of distributors to set prices for connection in a way that deters generators from connecting. In particular, it requires that distributed generation pays only for incremental costs (i.e., does not contribute to shared network costs). This is widely considered a favourable regime for connecting generation.
- 31 We do not intend to remove restrictions on cross-involvement between distribution and retail businesses in the Code. Furthermore, we note that provisions requiring distributor agreements that provide for non-discriminatory supply of services and information will be retained. These would provide safeguards to complement the other safeguards.
- 32 We do not intend to prohibit the Authority from making fresh rules on cross-involvement, as we consider that would also act as an additional safeguard.

Safeguards also remain in the Commerce Act

- 33 Part 4 of the Commerce Act imposes cost allocation, information disclosure and related party requirements which limit opportunities for distributors to cross-subsidise or prefer a related party when acquiring or providing regulated distribution services.
- 34 Some concerns have been raised about the possibility of distributors starving their network of investment in order to invest in generation. The Commission has successfully prosecuted firms which have under-invested and failed to meet regulatory standards, and we consider that to be a significant deterrent to this sort of behaviour.
- 35 The regulatory rules mentioned above will remain in place if the thresholds are removed and we are confident they provide appropriate safeguards against potential competition risks arising from removing the 50 MW threshold.

The risks of removing restrictions are lower for the national grid

- 36 In terms of the 250 MW threshold for connecting to the Transpower national grid, distributors, generator-retailers (gentailers) and independent generators are all treated the same when trying to connect generation to Transpower's network. Generators attempting to connect to the grid are connected if the connection is feasible.

- 37 Distributors are permitted unlimited involvement in generation connected to other distributors' networks, on the basis that they cannot leverage their monopoly power in that situation. The situation is not different for connections to Transpower's network.
- 38 Cross-involvement between a distributor's own network, and a retail business serving customers on that network will still be restricted. So long as that is the case, we do not consider this change would lead to different consequences to involvement in generation connected to other distributors' networks.

Alternative Options

- 39 We have considered and discarded two alternative options, outlined below.

Option 1: Removing the transmission grid limits, excluding community-owned distributors from the limits, and amending the thresholds for distribution

- 40 The first alternative option we considered was to:
- 40.1 remove the national grid limits,
 - 40.2 raise the limits for cross-involvement on a distributor's own network from 50 MW to 250 MW, except for community-owned distributors, who would have no limit, and
 - 40.3 amend the thresholds for distribution to allow greater flexibility.

... excluding community-owned distributors...

- 41 Consumer-owned distributors do not have the same motivations as profit-driven distributors. Consumer-owned distributors could invest in generation to support their community and deliver benefits to their communities. Consumers also have a direct say in the election of the distributor's trustees.
- 42 Under the Commerce Act regime, distribution businesses that meet the definition of being consumer/community owned are exempt from price/quality regulation. Removing consumer-owned distributors' obligation to comply with generation thresholds would align with the lower level of regulation applied under the Commerce Act.

... and amending the distribution threshold

- 43 If the distribution threshold were to remain in the Code, the 50 MW limit should be increased. As noted above, the 50 MW limit is low and not fit for purpose in the current generation environment. If this option is preferred, we consider that the limits should be increased to 250 MW before the cross-involvement rules are triggered.

- 44 There are also some more detailed changes that could be made to provide further flexibility to accommodate different types of generation.

This option has similar risks to simply removing the limits, without an equally clear impact on investment in distributed generation

- 45 We consider that this approach has some advantages compared to the current thresholds. However, this option has similar risks to simply removing the limits without an equally clear impact on investment in distributed generation.
- 46 This option would limit the number of significant generation projects a distributor could undertake, without corporate separation and arm's length restrictions applying (although less so than currently). However, raising the threshold would not remove the concern that, *for those projects*, distributors would have anti-competitive incentives to favour them.
- 47 The safeguards that remain would provide continued protection under either option, but this option would still limit the number of new generation projects that distributors could become involved in, before restrictions applied.
- 48 Therefore, we do not favour the approach. For the projects that could proceed without restriction, it provides no more reassurance about competition risk than removing the limits, and it does not send as clear a signal in support of distributed generation.

Option 2: Removing the transmission grid limits, and allowing the Authority to deal with the issue through its investigation into Part 6A of the Code

- 49 The second alternative option we have considered is to:
- 49.1 remove the transmission grid limits, and
- 49.2 allow the Authority to address the issues through its investigation into Part 6A of the Code.

The Authority is undertaking a review of Part 6A of the Code

- 50 The Authority is looking at whether the rules in Part 6A continue to provide the appropriate settings for distributor involvement in generation connected to their network. The Authority has indicated it will work with the Government to ensure a joint approach addresses all issues. Final decisions are likely to be made late 2024 or early 2025 with amendments to the Code, if any, made by March 2025.

The outcome of this option is uncertain and would divert resources

- 51 We do not prefer this option as it is not clear where the Authority would land, and this could require further intervention by the Government at a later point. The Authority has a heavy workload and a review of Part 6A of the Code would divert scarce resources from other activities relating to wholesale market competition and security of supply.

- 52 While any amendments to Part 6A of the Code following a review by the Authority could potentially be made by March 2025, this timeframe is not significantly shorter than if amendments were made via the Energy and Electricity Security Bill, which is due to be introduced before the end of 2024.

Cost-of-living Implications

- 53 There are no cost-of-living implications for these policy proposals. Over a longer period, increased resilience will lower costs for consumers.

Financial Implications

- 54 There are no financial implications for the Crown. Costs will be borne by distribution businesses should they choose to invest in generation.

Legislative Implications

- 55 The 50 MW thresholds for generation connected to distributors' own networks is in the Code.
- 56 The 250 MW connected to the National Grid is set out in Section 73 of the Electricity Industry Act 2010.
- 57 The Electricity Industry Act 2010 and the Electricity Industry Participation Code 2010 will need to be amended to give effect to the policy proposals in this paper. The Energy and Electricity Security Bill is expected to be introduced before the end of this year and will be the vehicle for these changes.
- 58 As a general rule, secondary legislation such as the Code should not be amended by primary legislation. However, we consider that for reasons of administrative convenience, and to provide greater investment certainty more rapidly, this Bill should be used to amend the Code.

Impact Analysis

Regulatory Impact Statement

- 59 Impact analysis is required for these recommendations and a draft Regulatory Impact Statement (RIS) has been prepared and is attached to the Cabinet paper.
- 60 MBIE's Regulatory Impact Assessment review panel has evaluated the Regulatory Impact Statement (RIS). The panel assessed the RIS as '**partially meeting**' quality assurance criteria.

Climate Implications of Policy Assessment

- 61 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal, as the emissions impact is indirect.

- 62 This proposal concerns amendments to make distributor investment in electricity generation more attractive, enhancing resilience and security.
- 63 Removing restrictions on distributors may lead to more electricity generation projects in New Zealand, likely focusing on renewable sources such as solar or wind, which could positively impact greenhouse gas emissions. However, at this stage, it is difficult to quantify the emissions impact.

Population Implications

- 64 The proposed amendments to the Code and the Act are not expected to have a significant impact on children, seniors, disabled people, women, people who are gender diverse, Māori, Pacific peoples, veterans, ethnic communities, and faith-based communities.

Human Rights

- 65 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Use of External Resources

Consultation

- 66 The Commerce Commission, the Infrastructure Commission, the Electricity Authority, Electricity Networks Aotearoa, Independent Electricity Generators Association, Westpower, Top Energy, Harmony Energy, Clarus, and Mainpower were consulted in the preparation of this paper. The Ministry for Regulation, the Treasury and the Department of Prime Minister and Cabinet were also consulted.

Communications

- 67 We propose to issue a media release announcing the actions this Government is taking in the Energy and Electricity Security Bill to remove the limits on how much generation an electricity distribution business may own.

Proactive Release

- 68 We propose to proactively release this Cabinet paper subject to any necessary redactions. This would be done within 30 business days following confirmation of Cabinet's decisions.

Recommendations

The Minister for Energy and the Minister for Resources recommend that the Committee:

- 1 **note** that on 21 August 2024, Cabinet agreed for the Ministers for Energy and Resources to report back to ECO on a range of options for the Energy and Electricity Security Bill to amend or remove the amount of generation that electricity distribution businesses may own [ECO-24-MIN-0172]

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- 2 **note** that removing the thresholds is unlikely to have a significant negative impact on competition, given other safeguards that remain
- 3 **agree** to remove the 250 MW threshold and related restrictions in section 73 of the Act on electricity distribution business owning generation connected to Transpower's network
- 4 **agree** to remove the 50 MW threshold and related restrictions in Part 6A of the Code on electricity distribution businesses owning generation connected to their own network
- 5 **invite** the Ministers for Energy and Resources to issue further drafting instructions to the Parliamentary Council Office regarding the Energy and Electricity Security Bill [ECO-24-MIN-0172 refers] to give effect to the above decisions
- 6 **authorise** the Ministers for Energy and Resources to approve any matters that arise during drafting and that may be required to align with the above decisions.

Authorised for lodgement

Hon Simeon Brown

Minister for Energy

Hon Shane Jones

Minister for Resources

Appendices