Electric Kiwi

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Electricity Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation and Employment
Wellington

By email: electricitymarkets@mbie.govt.nz.

Electric Kiwi – Submission on MBIE's Proposed Winter Energy Reliability Obligation

1. Electric Kiwi welcomes the Ministry of Business, Innovation and Employment (MBIE) consultation on proposals to better manage dry-year risk.

2. As an independent electricity retailer focused on delivering better prices, choice, and innovation for New Zealand consumers, Electric Kiwi considers dry-year risk to be a significant and growing problem.

3. We agree the electricity market is failing to deliver sufficient firming generation. The consultation singles out the winter of 2024 as exposing "a serious vulnerability in New Zealand's electricity market" but the electricity market has faced dry-years on a regular basis over the last decade.

4. Electric Kiwi considers that the proposed two-layer obligation is directionally correct because it places responsibility for managing dry-year risk on the market participants, specifically the large, incumbent gentailers, who have the size and market power to manage it.

5. We are concerned though that the obligated parties could satisfy the obligation by re-attributing existing capacity (including Huntly) rather than commissioning new build. Relatedly, Electric Kiwi is concerned each obligated generator could demonstrate they have sufficient firm fuel cover in place to support winter load by reducing hedge sales to third parties. These matters should be addressed in the design of the obligations.

6. Electric Kiwi considers that an assessment should be made of how competition problems impact dry-year risk. The level of market concentration in the electricity market weakens incentives to invest and can result in delays to investment compared to a workably competitive market. The result is that the market has been kept perennially tight and is far too dependent on the commercial and investment decisions of Contact, Genesis, Mercury and Meridian.

7. The proposed reliability obligation may help address dry-year risk, but it will not fully resolve it without measures to address the underlying competition problem. The Government should take a holistic approach to incentivising increased generation of all forms of generation, not just firming generation, from a wide and diverse range of suppliers. The OECD has provided some useful guidance on these matters.

The Government needs confidence in the electricity market

8. The consultation details sound reasons why the Government is concerned the current regulatory framework "has not consistently delivered adequate long-duration firm energy as the system has changed" and "The electricity system is becoming more exposed to dry-year risk". Electric Kiwi agrees "the market has not delivered enough certainty that long-duration firm generation will be delivered".

9. If these problems are not adequately addressed, they could get worse and necessitate larger and costly interventions in the future.

10. We are supportive of the direction the Government is taking to try and tackle the identified problems with the electricity market rather than waiting for the next set of crisis conditions before addressing what are foreseeable problems.

11. Electric Kiwi is supportive of the Government's intention to intervene, and supportive of the intention that there will be stronger expectations on the Electricity Authority to monitor dry-year readiness and intervene where the market isn't delivering the level of security that is needed.

The harm caused by dry-year problems has been material

12. Electric Kiwi believes in competitive, market-led solutions. A high-renewables electricity system can deliver affordable and low-emissions electricity only if it is supported by genuine competition and reliable long-duration firming capability.

13. Hydro generation remains central to winter security, while increasing wind and solar penetration will make firming capability more important, not less.

14. There has been a frequent series of periodic dry-years – the winter of 2024 is just one example, and not even the most recent – with wholesale prices (and related future prices) at historically unprecedented high levels for an extended period of time. This has been playing out for most of the last decade.

15. As a country, we got through 2025 more by luck, thanks to relatively benign weather conditions over winter, rather than due to the way the electricity market operates.

16. We share the Government's concerns about how the dry-year problem is resulting in high electricity prices which harm businesses and the economy. The OECD has also detailed similar concerns about the New Zealand electricity market.

17. When dry-year risk is not managed in advance, consumers face the risk of extreme wholesale prices, industrial curtailment, and reduced confidence in electrification.

18. The consultation does a good job of detailing how dry-years impact businesses and energy affordability but there has also been a debilitating impact on independent electricity retailers and retail competition. For independent retailers like Electric Kiwi, dry-year risk also becomes a competition problem.

19. Independent retailers face additional pressure because they must manage volatile wholesale exposure in a market where the largest competitors also control substantial generation and hedge supply. Scarcity and price volatility favour large gentailers with generation portfolios and market power, while exposing retailers without generation to additional risk. This has weakened retail competition and ultimately harmed consumers through higher prices and less choice.

20. Electric Kiwi and other independent electricity retailers have provided extensive evidence to industry regulators of how competition metrics have stalled or declined over this period.[1] For example, total independent electricity retailer market share had been growing and exceeded 10% for the first time in 2020, which should have been something to celebrate, but 6 years later independent retailer market share is languishing back in single digits. Competition problems are making dry-year risk worse.

21. While the consultation does a good job of mapping out reasons why there may not be sufficient investment in firming capacity this only tells part of the story. A critical driver for under-investment in electricity generation, including firming generation, is that the electricity market is not fully competitive.

22. Problems with competition in the wholesale electricity market exacerbate dry-year risk problems and may well be the biggest contributor to the problem.

23. Electric Kiwi does not think it will be possible to fully resolve the dry-year problem, regardless of the merits of the proposed two-tier reliability obligation, without addressing competition problems.

24. The level of market concentration weakens incentives to invest or at least results in investment occurring later than in a workably competitive market, which has kept the market perennially tight.

25. Concept Consulting raised the prospect that Contact, Genesis, Mercury and Meridian could seek to "prolong the period of elevated wholesale prices (i.e. by tempering the pace of their investment to avoid depressing the price and therefore the revenue they receive from their existing generation)" and the pace of their investment could be "tempered by cannibalization concerns".[2]

26. Concept Consulting, in reports for the Electricity Authority, acknowledges concerns that the four largest generators don't have sufficient incentives to invest in generation may be valid. In 2022, Concept Consulting commented:[3]

[1] For example: Link Economics, Electricity retailing – adjusting the tilt of the playing field, 7 May 2025 and 2degrees, Electric Kiwi, Flick Electric and Pulse Energy (the independent retailers), 2024/25 levy-funded appropriations consultation – priority should be given to promotion of stronger, thriving competition, 26 January 2024.
[2] These concerns were raised in reports for the Electricity Authority in 2022 and 2023. The reports were updated in 20204 but with ERGANZ as the client and did not mention cannibalization.
[3] Concept Consulting, Generation investment survey 2022, July 2022.

> "The four largest generators have significantly lifted their development efforts in recent years –with major committed projects underway and more potential developments under consideration. While these factors should reduce wholesale price pressures, it is unclear whether major suppliers' investment pace is being tempered by cannibalization concerns.
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> "Such concerns can arise due to the depressing impact a new project may have on revenue from existing generation in an incumbent developer's portfolio. If a cannibalization effect applies, an incumbent supplier can be better off by delaying or foregoing investment, even though the project is economic in its own right.
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> "… based on underlying incentives, the concern appears valid and likely merits closer monitoring."

27. In 2023, Concept Consulting's comments about investment were more positive than the previous year, but they retained the view that the 4 largest generators could be under-investing:[4]

> "While the four largest generators have significantly lifted their development efforts in recent years – with major committed projects underway and more potential developments under consideration, some independents suggested that it was hard to attract interest from major generators, even with apparently attractive projects/power purchase offers – possibly due to cannibalization concerns."

28. The Concept Consulting commentary supports concerns investment in generation, not just firming generation, has not been sufficient. While the situation is not static, there has been widespread concerns about adequacy of investment in generation, and the extent or pact at which retired thermal generation is being replaced.

Huntly Firming Option arrangements highlight the lack of incumbent gentailer confidence in current market and regulatory settings

29. Electric Kiwi considers that the application by Contact, Genesis, Mercury and Meridian for authorisation of their proposed 10-year Huntly Firming Option arrangements is directly relevant to the need for Government intervention to resolve problems with the existing electricity market settings.

30. If the market was operating in an efficient and competitive manner, it would be expected to support the continued operation of existing firming capacity and

[4] Concept Consulting, Generation investment survey 2023 update, undated.

incentivise new investment, without interventions of the kind under the Huntly Firming Option arrangements.

31. Electric Kiwi's submission in response to the Commerce Commission Statement of Preliminary Issues[5] detailed why we considered it reasonable to interpret the application as reflecting that Contact, Genesis, Mercury and Meridian don't have confidence current market settings will ensure the market can deliver the returns needed to ensure there is sufficient investment in firming capacity to meet demand and ensure security of supply. The Application noted, for example, that even when expected "new generation assets become available, Genesis submits that there will still be a need for thermal capacity like the Rankine Units" which would not otherwise remain operating in the market.

32. The Huntly Firming Option Application provides useful evidence to substantiate that there are significant problems in the wholesale electricity market that support concerns about dry-year risk and competition problems.

33. The Application, for example, detailed that:

    a. "if one Rankine unit is removed, wholesale electricity prices would increase by around 10%-12% in the short-run years (2026 to 2028) and 6% in the long-term year modelled (2037)";

    b. "the effect of removing a Rankine Unit will have the greatest effect in dry years" i.e. the increase in wholesale electricity prices would be even greater in dry years; and

    c. this would result in a surplus transfer from consumers to producers of $2.13 billion to $2.24 billion based on analysis over a 5-year timeframe.[6]

34. The Application highlights the sheer scale of market power the incumbent gentailers have, demonstrated by the substantial impact their generation decisions can have on wholesale electricity prices.

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[5] https://www.comcom.govt.nz/assets/Documents/timeline/Electric-Kiwi-Submission-on-Statement-of-Preliminary-Issues-27-August-2025.pdf

[6] The Applicants conversely try to present wholesale electricity prices NOT going up by 10-12% initially and by 6% in the long term as a wealth transfer from consumers to producers.

35. The Application also highlights that the incumbent gentailers are commercially incentivised to bring forward retirement of firming generation (given the upward impact this would have on wholesale prices for the rest of their generation portfolio) and, as a corollary, the incentive they have to under-invest or delay investment (which would have an equivalent impact on maintaining artificially high wholesale prices for the rest of their generation portfolio).

36. An outcome we would expect in a workably competitive market, is that if price increases significantly departed from costs, including due to plant closure, new entry by alternative suppliers would then force prices back down to competitive market levels. The modelling that wholesale electricity prices would still be 6% higher in the long-term (11 years after decommissioning Rankine 2) indicates the Applicants consider the threat of new entry/independent generators provides little or weak competitive discipline.

The proposed two-layer obligation is directionally correct

37. Electric Kiwi considers that the proposed two-layer obligation is directionally correct because it places responsibility for managing dry-year risk on the market participants who have the size and market power to manage it; specifically, the large, incumbent gentailers.[7]

38. We are fully supportive of regulation that is targeted at market power.

39. Our submission details how market power and weak competition makes dry-year problems worse. The consultation focuses on the incumbent gentailers' large size and ability to impact market outcomes, which we see as shorthand for their respective significant or substantial market power.

40. Regulating small, independent market participants wouldn't help achieve better dry-year risk management. What the exemption of smaller new entrants, independent retailers, independent generators, aggregators, and demand-response providers does do though is help ensure the objectives of the reforms are met at the lowest cost. The targeted regulation helps minimise the

[7] The potential for harm due to the size and commercial incentives of the incumbent gentailers is highlighted by concerns raised by the Minister of Energy and Transpower over Meridian's resource consent to draw down Lake Pukaki by an additional five metres: https://www.thepost.co.nz/business/361037428/energy-minister-simeon-brown-accused-meridian-taking-unilateral-approach-over-lake-pukaki-rights.

extent to which the reforms could distort the electricity market or crowd out new investment and competition.

De-minimis threshold

41. Electric Kiwi considers that the proposed obligations should specifically name Contact, Genesis, Mercury, Meridian and NZAS as the obligated parties rather than adopting a de minimis threshold.

42. We are concerned that a de minimis threshold could become a barrier to independent retailer growth.

43. The proposed 500 GWh threshold as currently specified creates a "cliff-edge" — an independent retailer approaching this level would face a sudden and significant compliance burden, creating a strong disincentive to grow.

44. This is directly contrary to the Government's competition objectives. The retailers most likely to provide meaningful competitive discipline on the incumbent gentailers are precisely those growing toward and beyond this threshold.

Care is needed to manage the risk of unintended consequences

45. Electric Kiwi considers that there is a risk of unintended consequences which should be addressed in the specification of the two-tier reliability obligation before final decisions are made.

46. We are concerned the obligated parties could be able to satisfy the obligation by re-attributing existing capacity (including Huntly) rather than commissioning new build.

47. Relatedly, Electric Kiwi is concerned about unintended consequences for independent market participants. Each obligated generator could demonstrate they have sufficient firm fuel cover in place to support the winter load for which it is relevantly responsible by reducing hedge sales to third parties (paragraph 137 of the consultation paper refers) – every MWh sold increases their obligation, and the risk that fewer hedges will be made available, at higher prices.

Compliance costs risk being passed through to independent retailers

48. The costs incurred by obligated gentailers in meeting the reliability obligation - including additional fuel procurement, LNG-backed generation contracts, and holding additional firm cover - will inevitably flow through into wholesale contract and hedge prices paid by independent retailers. Without safeguards, independent retailers would effectively subsidise the compliance costs of their largest competitors, while gaining no equivalent benefit.

49. The regime must be designed to ensure it genuinely delivers improved hedge market liquidity and access, rather than entrenching existing gentailer advantages. Specific measures should include:
    a. Strengthened and extended market-making obligations, with volume and tenor requirements calibrated to independent retailer needs
    b. Transparent pricing of qualifying cover, with anti-discrimination requirements
    c. Mandatory disclosure of internal transfer prices between gentailer generation and retail arms, to enable benchmarking
    d. Regular monitoring by the Electricity Authority of hedge market access, pricing, and liquidity outcomes for independent retailers

50. Without these measures, there is a real risk the regime will increase — not decrease — the competitive disadvantage faced by independent retailers.

Recommended design features

51. Electric Kiwi recommends the two-tier reliability obligation is designed consistent with the following features:

    a. **Clear trigger settings:** The obligation should be triggered by transparent, winter energy standards set by the Electricity Authority,[8] taking into account hydro storage, fuel availability, demand forecasts, and credible plant availability.

    b. **Fair access for independent retailers:** The regime must ensure independent retailers can access qualifying firming and hedge products on fair, transparent, and non-discriminatory terms.

[8] For the longer-term obligations it could be the existing security standards set in the Electricity Industry Participation Code.

c. **Forward contracting and disclosure:** Obligated parties should be required to demonstrate credible forward arrangements before risk materialises, not after scarcity prices have already emerged.

d. **Meaningful penalties:** Non-compliance should attract penalties large enough to prevent large participants from treating the obligation as an optional cost of doing business.

e. **Consumer protection:** The regime should reduce the likelihood of price spikes being passed through to households, small businesses, and exposed industrial users.

f. **Regulatory accountability:** The Electricity Authority should be required to publish regular dry-year readiness assessments and explain any decision not to intervene when risk indicators deteriorate.

Concluding remarks

52. Electric Kiwi is open-minded about the best approach to fixing the dry-year problem in the electricity market. We recognise it is a material issue but also that there are a number of potential options that could address the issues.

53. We consider that, regardless of the options on the table, dry-year risk and competition problems should be considered in tandem given that competition problems exacerbate dry-year risk and vice-versa.

54. The proposals aim to address a real and demonstrated weakness in New Zealand's electricity market: the absence of durable incentives to secure long-duration firm energy before a dry winter. If the Government goes ahead with the regime, it should be implemented promptly, with strong compliance settings, clear regulatory accountability, and safeguards to ensure independent retailers can continue to compete effectively.

55. A strengthened framework is needed because existing arrangements failed to protect consumers, independent retailers, and the wider economy from foreseeable dry-year risk. The Government should ensure that the final regime gives the Electricity Authority clearer duties and stronger accountability, so that future risks are identified early and addressed before consumers face another winter energy crisis or independent competition is further weakened.

Electric Kiwi

Yours sincerely.

Privacy of natural persons

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