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To:	Energy Markets
Subject:	Electricity Price Review submission
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Category
Regulators and Government

Do you accept these terms & conditions?
Yes

A1. Establish a consumer advisory council

We support the establishment of a consumer advisory council with the mandate you suggest. Although consumers and consumer groups already have an opportunity to engage in our consultation and other engagement processes, a consumer council, possibly similar to the Energy Consumers Australia model would provide a well-resourced, consumer view in balance to industry's views. We agree this should complement other consumer organisations' efforts to avoid mandating a status for the advisory council above that of other consumer representatives.

Independence of the council will be important. We would expect to have no say in the selection of its members or staff nor any oversight of its activities. We would receive its input as appropriate through our established work processes and open consultation programmes. We would be willing to assist members of the panel and its staff to meaningfully engage in our processes if that is helpful. Longer term we support MBIE taking a lead on the formation and oversight of the panel (as it does with the Consumer Protection Partnership Forum).

A2. Ensure regulators listen to consumers

We prefer the consumer advisory council option that you describe in A1 to facilitate consumer representation in regulatory processes. Our established consultation processes will work well in terms of receiving the views of the consumer advisory council.

B1. Establish a cross-sector energy hardship group

We support the establishment of a cross-sector energy hardship group. Through our work enforcing consumer credit laws, we are aware that consumers may fall into energy hardship when under significant pressure to meet other payments, notably debt repayments and interest. In consequence, we agree that concerted efforts of government, industry and regulators will be needed to properly understand energy hardship and implement measures to tackle it.

B2. Define energy hardship

B3. Establish a network of community-level support services to help consumers in energy hardship

B4. Set up a fund to help households in energy hardship become more energy efficient

B5. Offer extra financial support for households in energy hardship

B6. Set mandatory minimum standards to protect vulnerable and medically dependent consumers

B7. Prohibit prompt payment discounts but allow reasonable late payment fees

We are aware other agencies equivalent to ours have considered the issue of conditional discounts, had concerns and implemented reform. We have not considered the issue of conditional discounts in detail but would encourage MBIE to do so.

B8. Seek bulk deals for social housing and/or Work and Income clients

C1. Make it easier for consumers to shop around

C2. Include information on power bills to help consumers switch retailer or resolve billing disputes

C3. Make it easier to access electricity usage data

C4. Make distributors offer retailers standard terms for network access

We support your proposal for the Electricity Authority to make distributors offer retailers a standard default agreement. As noted in our previous submission to the Panel, we recommend consideration of whether s32(2)(b) of the Electricity Industry Act can be improved to address ambiguities in the respective responsibilities of the Electricity Authority and the Commission, including in respect of the Authority's powers to set default distribution agreements with retailers.

C5. Prohibit win-backs

We support further consideration being given to a prohibition on selective discounts such as "saves" and "win-backs".

There can be immediate benefits of selective price discounts to customers who actively participate in the market and initiate a switch. However, these discounts can act as a barrier to entry and expansion, particularly for new entrants and small retailers. For this reason, we consider it important to distinguish between "save" and "win-back" discounts. A "save" occurs where the losing provider induces a customer to cancel a switch before it is completed. "Saves" may be particularly problematic as the competing provider likely has no opportunity to recoup marketing and acquisition costs associated with convincing a customer to switch providers. In contrast, a "win-back" occurs where the losing provider induces the customer to switch back following the switch being completed. "Win-backs" therefore provide an opportunity for the competing provider to recoup costs associated with convincing a customer to switch and once a customer has switched, they may be less likely to be biased in favour of the old retailer.

We also consider the details relating to any prohibition would have to be carefully considered. For example, customers should still be able to initiate contact with the losing provider to obtain a discount during the switching process. We are also currently of the view that any prohibition would need to be incorporated into either the Electricity Industry Act 2010 or the Electricity Industry Participation Code 2010 to be exempt from Part 2 of the Commerce Act.

C6. Help non-switching consumers find better deals

Helping customers find better deals in a manner based on the UK trials could lower bills for customers that have remained with a retailer for an extended period and

might contribute to reduced energy hardship. To achieve this effectively, it will be important to ensure transparency for both consumers' historic data, and for energy retailers' tariffs. Doing this in conjunction with improvements to price comparison services, such as Powerswitch may be beneficial to a broad range of consumers. That is, it could also benefit those who already regularly seek better deals too.

C7. Introduce retail price caps

D1. Toughen rules on disclosing wholesale market information

We support consideration of strengthening the position in relation to information disclosure rules. However, as is the case with any increased disclosure requirements, consideration would need to be given to the type of information that is required to be disclosed and whether any increased transparency assists participants with coordinating their conduct in the wholesale market to the detriment of consumers.

D2. Introduce mandatory market-making obligations

D3. Make generator-retailers release information about the profitability of their retailing activities

D4. Monitor contract prices and generation costs more closely

D5. Prohibit vertically integrated companies

E1. Issue a government policy statement on transmission pricing

E2. Issue a government policy statement on distribution pricing

E3. Regulate distribution cost allocation principles

E4. Limit price shocks from distribution price increases

E5. Phase out low fixed charge tariff regulations

E6. Ensure access to smart meter data on reasonable terms

We support the progress that the industry is making towards distributors accessing metering data. We support this because the timely provision of these data is essential to facilitating significant distribution system efficiencies through distributors' control of network load. Enabling distributors to reduce consumer loads may allow potentially significant capital investment to be avoided over time and has the additional benefit of reducing power bills immediately. Where an enduring agreement between industry cannot be reached in a timely manner, we support the Electricity Authority introducing backstop access provisions through the default distribution agreement.

We have reminded the relevant industry working groups that they need to ensure that any collective agreements relating to the provision of data to distributors do not raise any competition concerns under Part 2 of the Commerce Act. The relevant participants would need to consider whether any collective agreements need to be implemented under the Electricity Industry Participate Code 2010 or require authorisation by the Commission.

E7. Strengthen the Commerce Commission's powers to regulate distributors' performance

We acknowledge your proposal to strengthen our powers to regulate distributors' performance. Part 4 of the Commerce Act has provided a predictable regime under which the distributors operate so we encourage careful weighing of the benefits of the proposed changes against the risks of instigating changes to the Act.

Amendments to Part 4 of the Commerce Act in 2008 have brought regulatory certainty and predictability which resulted in an improved climate for infrastructure investment. Regulatory regimes take time to embed and are frequently challenged

when changes are first introduced. The current regulatory rules, processes and requirements faced multiple merits appeals when changes were first introduced in 2008 but there were no appeals following the 2016/17 review of the input methodologies. The resultant certainty and predictability of the regulatory regime is reflected in an improved regulatory framework score from Standard & Poor's. Last year the ratings agency revised its score for the regulation of electricity and gas networks upwards from 'strong/adequate' to 'strong' – the same rating as Australia and the United Kingdom. Reviewing Part 4 to consider the Panel's proposals might open other aspects of Part 4 to review as well. Doing so would potentially put at risk the regulatory certainty and predictability which took a number of years to emerge. We also note that some of the Panel's proposals would affect other sectors regulated under Part 4, and not just electricity distribution.

If the Commerce Act is to be amended then we would support a number of the proposals that you have made.

First, we support your recommendation to increase the maximum penalties to deter regulatory breaches. This would align the penalties under Part 4 with the maximum penalties under Part 2 of the Act, and this might provide better incentives to electricity distributors to avoid breaching their price-quality paths.

Second, we support the proposal for us to make careful use of comparative benchmarking. This has proven to be a useful tool in a number of regulated industries around the world, particularly where it has been used as just one input to inform regulatory decisions, rather than used mechanistically to set regulated price paths. In the first instance, we intend making greater use of benchmarking in assessing the performance of distributors under the information disclosure regime. However, the current prohibition on using benchmarking results when setting default price-quality paths (DPPs) could result in perverse outcomes. For instance, if benchmarking suggested that two distributors were similar in all respects, except for their reliability performance, we would be unable to take that analysis into account when setting quality standards under the DPP.

In addition, there are a number of proposals that we consider require further refinement and development in order to be effective.

It is not clear that applying price-quality regulation would result in more efficient outcomes for the 12 distributors that are exempt from price-quality regulation. We acknowledge the potential merits of having the power to advise the Minister of Commerce and Consumer Affairs to remove distributors' exempt status as a last resort. For instance, the streamlined Part 4 inquiry provisions introduced for regulated airports last year, which allow the Commission to recommend the addition of another type of regulation to information disclosure, are likely to have played a role in Auckland Airport's recent announcement that it will reduce its prices.

We suggest exploring whether full price-quality regulation should be the only option that the Commission could recommend. For instance, as the Paper highlighted from our previous submission, another option would be to provide for enforceable quality standards to be introduced without associated price path requirements.

We have reservations about introducing a facility for the Commission to investigate whether moving a distributor onto a customised price-quality path (CPP) would

significantly benefit end users. A CPP is described in the paper as 'more stringent', but the CPP is intended to provide a regulated supplier on a default price-quality path with an opportunity to have a price-quality path that better meets its circumstances. A supplier is only likely to apply for a CPP if it considers it is likely to be able to set higher prices than under the default path so there is a risk that suppliers might attempt to 'cherry pick' a more favourable path.

The incentives faced by regulated suppliers under the existing 'propose-respond' CPP mechanism are influenced by a number of CPP-specific provisions, such as: there are strict timeframes for the Commission to assess a CPP proposal, which may only be extended with the agreement of the supplier; the supplier's proposal takes effect if the Commission does not make a CPP determination within the timeframes; the Commission may only vary relevant input methodologies with the agreement of the supplier; and the Commission's costs of assessing a CPP proposal are recovered from the supplier, rather than recovered through the pool of Part 4 levy funding.

We suggest that the Panel consider greater use of individual price-quality paths for the largest distributors. Both the two largest distributors have recently expressed at least conceptual support for such a change to be considered. Individual price-quality paths would not be constrained by some of the features of CPPs mentioned above. However, introducing individual price-quality regulation for one or more distributors may require consulting on how the existing input methodologies would apply to that type of regulation. We also suggest exploring whether we might be permitted to recommend the removal of price-quality regulation from non-exempt distributors.

E8. Require smaller distributors to amalgamate

E9. Lower Transpower and distributors' asset values and rates of return

We are pleased that you have recognised the risks, first, to New Zealand's reputation amongst the international investor community and, second, that the risks of under-investment and the resultant negative consequence for quality of service and security of supply outweigh the potential risk from over-investing. We have consulted extensively about these issues previously and our approach was found to be robust when tested in the courts.

F1. Give the Electricity Authority clearer, more flexible powers to regulate network access for distributed energy services

We are working jointly with the Electricity Authority to consider the economic impact of electricity distributors' involvement in the provision of contestable services. Our joint team will be publishing its terms of reference in the near future. New markets and technologies are developing quickly, and it will be important for the relevant regulators to have the flexibility to respond in a timely and co-ordinated manner if the market structure creates harms to consumers. We consider that reviewing the option of ringfencing would be a significant undertaking which may have significant consequences across the supply chain and for consumers. Because of this, any powers to ringfence should be exercised cautiously. We consider it important to allow, to the extent possible, new technology and different business models to emerge to the benefit of New Zealanders.

F2. Transfer the Electricity Authority's transmission and distribution-related regulatory functions to the Commerce Commission

F3. Give regulators environmental and fairness goals

F4. Allow Electricity Authority decisions to be appealed on their merits
F5. Update the Electricity Authority's compliance framework and strengthen its information-gathering powers
F6. Establish an electricity and gas regulator
G1. Set up a fund to encourage more innovation
G2. Examine security and resilience of electricity supply
G3. Encourage more co-ordination among agencies
G4. Improve the energy efficiency of new and existing buildings