

21 March 2019

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To the Electricity Price Review Secretariat,

### **Submission regarding the Electricity Price Review, Options Paper**

This is a joint submission from: Ecotricity, Electric Kiwi, energyclubnz, Flick Electric, Pulse and Switch Utilities/Vocus. It includes this letter and the attached form. We are proudly independent entrant retailers who are responsible for delivering New Zealanders choice, innovation and keeping prices down. This submission builds on the initial submission made by independent retailers with additional signatories. It is also important to note that none of this group are represented by ERANZ, from our perspective ERANZ represents the views of incumbent gentailers.

The focus of this submission is how a level playing field for competition can be implemented to ensure the sustainability of independent retail, this is critical for consumers as without independent retailers there will be little constraint on electricity prices. A two tier market has evolved in both the retail market and wholesale market because of gentailer market power where:

- Retail market - price discrimination between 'switcher' customers and 'loyal' customers increases the cost of acquisition; and
- Wholesale market - preferential pricing and access to risk products is provided to gentailer retail arms compared with what is available to independent retailers.

These raise classic anti competitive concerns of refusal to deal, vertical margin squeeze and misuse of information. These issues have become more acute since 'Spring 18' and undermine the competitive impact of independent retailing .

Level playing field measures, such as those proposed by the Panel and additional measure we've described, are important for ensuring development and growth of a healthy competitive market. They are necessary to ensure that success or failure in the retail market is based on a firm's ability to meet customer needs and do so most efficiently, not because of their control over generation or position as an incumbent.

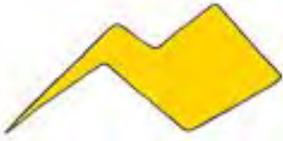
These are the steps that must be taken to level the playing field:

1. For the Electricity Authority to immediately mandate Market Making with objectively set stress tests, trading policies aligning with these should be signed off by Gentailer Board. Refer comments on option D2.
2. The Electricity Authority's statutory objective should be clarified or changed so it is consistent with the Commerce Commission, which would require the Electricity Authority to take into account both wealth transfer (price impact) and efficiency benefits to consumers. Refer comments on option F1.
3. The Electricity Industry Act should be amended to ensure that Gentailers do not provide preference to their internal retail business versus an independent purchaser/retailer, and must comply with non-discrimination/arms-length rules. Refer comments on option D5.

4. Comprehensive operational/virtual separation measures should be implemented via the Code to ensure that Gentailer discrimination is prevented to the greatest extent possible in the absence of ownership separation, and that it can be detected. Refer comments on options D3 and D5.
5. The Code is amended in line with telecommunication industry rules to prevent save/winback activity. Refer comments on options C5.
6. The Electricity Authority's compliance framework, information gathering powers and monitoring activities are strengthened. Refer comments on options D3 and F5.

We are dedicated to working with the Review Panel to ensure that more New Zealanders can benefit from competition. Removing the two-tier market will help improve affordability, particularly for low income and vulnerable consumers. If you have any questions about this submission please contact us.

Yours Faithfully

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	Option	Position on option	Comment
<b>A</b>	<b><i>Strengthening the customer voice</i></b>		
A1	Establish a consumer advisory council	Support	<p>We agree there would be much benefit derived from ensuring residential consumers and small business owners have a common and resourced voice.</p> <p>The Major Energy Users Group has been an effective tool for large industry. Establishing a consumer advisory council on behalf of residential consumers and small business we believe would serve a similar and effective purpose for those groups.</p>
A2	Ensure regulatory listen to consumers	Support	<p>We agree, this would also be supported by providing clarity/ changing the Statutory objective of the EA, refer to our comment on option F3.</p>
<b>B</b>	<b><i>Reducing energy hardship</i></b>		
B1	Establish a cross-sector energy hardship group	Support	<p>We are supportive of initiatives to measure and reduce energy hardship.</p> <p>We believe that Government has an important role to play in ensuring more energy efficient homes through improving it's housing stock and housing standards generally.</p> <p>We also believe a vibrant competitive market will contribute to reducing energy hardship as many of New Zealand's most vulnerable consumers are often paying excessive costs for their electricity once 'loyalty</p>

			<p>taxes', lost prompt payment discounts, disconnection and reconnection fees are factored in.</p> <p>Options B3,B4,B5,B6 would all be enhanced by streamlining activities across government as there is replication and gaps.</p>
B2	Define energy hardship	Support	We support this as a matter of priority.
B3	Establish a network of community-level support services to help consumers in energy hardship	Support	We are supportive of this proposal but it needs to happen in parallel with a commitment from Government agencies to provide timely access to services/ funding for energy efficiency upgrades.
B4	Set up a fund to help households in energy hardship to become more energy efficient	Support	We support EECA continuing this role with increased resources available for grants to improve energy efficiency.
B5	Offer extra financial support for households in energy hardship	Support	We support this however we believe the first priority should be reducing energy costs through a bulk tender.
B6	Set mandatory minimum standards to protect vulnerable and medically dependent consumers	Support	It's appropriate that these are regulated.
B7	Prohibit prompt payment discounts but allow reasonable late payment fees	Support	<p>We support the notion that the price offered is the price paid by customers without first being inflated to make prompt payments look attractive.</p> <p>We therefore agree that prompt payment discounts should be prohibited.</p>

			<p>We also believe that the Electricity Pricing Review should clarify and prohibit other forms of a prompt payment discount. Meridian has recently ended the use of Prompt Payment Discounts, which is great, but replaced these with a 'Guaranteed Discount' - a misnomer that adds to customer confusion and that the Commerce Commission should consider a misleading sales practice.</p>
B8	Explore bulk deals for social housing/ WINZ clients	Support	<p>Bulk tenders could unlock better prices for many consumers who are paying too much, they also have the potential to stimulate competition.</p> <p>A bulk tender for social housing/ WINZ clients should be progressed. It will be necessary for Government to underwrite the credit risk otherwise it is very unlikely that there will be much interest in participating, and offers would reflect the credit risk and higher administration costs of this group.</p> <p>We believe client tenders could be run by network area this will allow a number of retailers to participate as the volume could be manageably hedged.</p>
<b>C</b>	<b><i>Increasing retail competition</i></b>		
C1	Make it easier for consumers to shop around.	Support	<p>We support consolidating levy funding into Powerswitch. The functionality of the site must be improved and the commercial terms/ fees charged to retailers also need to be transparent.</p>
C2	Include information on power bills to help consumers switch retailer or resolve billing disputes	Support	<p>Yes we agree. Many retailers are already providing information regarding the Utilities Disputes on their invoices and websites.</p>

			<p>Adding Consumer Powerswitch to incumbent billing information it would also help raise consumer awareness of switching.</p>
C3	<p>Make it easier to access electricity usage data</p>	<p>Support</p>	<p>We agree that electricity usage data should be more readily available.</p> <p>We suggest that there should be a single source of meter data established by the Meter Equipment Providers as the source of this data.</p>
C4	<p>Make distributors offer retailers standard terms for network access.</p>	<p>Support</p>	<p>We agree that default terms for Use of System Agreements (UOSAs) should be mandatory.</p> <p>This will minimise the amount of industry wide work and investment required to negotiate these agreements.</p> <p>It should be noted that a saves and winbacks ban is the first priority, they represent a more significant barrier to growth than UOSAs.</p>
C5	<p>Prohibit win-backs</p>	<p>Support</p>	<p>We strongly support the proposal to prohibit saves and winbacks and prevent information obtained from the switching process being misused to attempt to thwart the switch.</p> <p>The Panel can usefully take comfort from the experience in telecommunications where there is price-led competition and a smaller spread between price tiers. In telecommunications, above the line advertising frequently quotes pricing, while in electricity advertising, price is never mentioned as this</p>

			<p>would expose the loyalty tax to those paying it. We also note that there are useful Australian and UK reviews which the Panel can draw on in support of the need to address 'loyalty taxes' or penalties through restrictions on winback. Ultimately, while it may be that winbacks result in some customers getting better prices it results in overall higher average prices for consumers, especially penalising those that can least afford it.</p>
C6	Help non-switching consumers find better deals	Support	<p>Yes, like B6 bulk tenders could unlock better prices for many consumers who are paying too much, they also have the potential to stimulate competition.</p>
C7	Introduce retail price caps	Do not support	<p>We agree with the Panel's assessment that there are other measures that should be taken to address problems of the two-tier market.</p> <p>We consider that the level of price discrimination should be monitored. It's important to be clear that the problem of a two tier market is many consumers paying significantly more than they should be because of a 'loyalty tax'. If retailers are persistently charging massive premiums to some customers for exactly the same service this is not good or trustworthy behaviour, it is also anticompetitive, at a minimum it needs to be called out and intervention may be appropriate.</p> <p>To date the Electricity Authority has not seen price discrimination as problematic, we consider this</p>

			troubling and counter to international regulatory and consumer protection trends <sup>1</sup> . We believe the EA needs to have a sharper focus on it including a responsibility to minimise wealth transfers from consumer to producers. 'Loyalty taxes' have eroded trust and confidence in the sector, paying too much for electricity also has negative social and productivity implications.
	TECT limitation on competition in Tauranga	Support addressing this now	We don't support the Panel's approach. TECT discounts tied to Trustpower patronage do limit competition. This should be addressed immediately by the Panel rather than pushing it to the Commerce Commission who will take years to deal with it. It would probably require a legislative order for the TECT Trust Deed to be changed.
<b>D</b>	<b><i>Reinforcing wholesale market competition</i></b>		
D1	Toughen rules on disclosing wholesale market information	Support	14.2 of the Code needs to be tightened by removing the confidentiality exclusion.  The Financial Markets Authority needs to be directed to enforce insider trading laws in New Zealand electricity.
D2	Introduce mandatory market making obligations	Support	<b>Immediate</b>

<sup>1</sup> <https://www.accc.gov.au/speech/companies-behaving-badly>  
<https://www.ft.com/content/57ea8542-0470-11e9-99df-6183d3002ee1>

			<p>We support using the emergency Code amendment mechanisms to mandate a scheme with the following features:</p> <ul style="list-style-type: none"> <li>● Quoting and spread requirements the same as the current voluntary scheme until long term mandatory market making rules are in place.</li> <li>● No “portfolio stress” or similar force majeure clauses.</li> <li>● Includes the current 4 market makers plus Trustpower.</li> <li>● Has a mechanism to widen spreads to 10% if a contract price has moved by more than 20% net in either direction over the past 5 trading days.</li> </ul> <p><b>Enduring structure</b></p> <p>An enduring Mandatory Market Making structure should be developed based on terms of reference set by the EPR with the objective of achieving equivalence of vertical separation.</p> <p>A precondition for developing an effective scheme should be that a non discrimination/ arms length trading obligation exists, in addition to an obligation to trade retail load over the market (ASX) for vertically intergrated firms.</p> <p>Refer comments on level playing field measures described in D5.</p>
D3	Make generator-retailers release information about their profitability of their	Support	We support the requirement to introduce financial reporting and disclosure requirements for the

	retailing activities		<p>incumbent gentailers. It will be important to ensure robust rules for cost allocation and related party transfers (RTP), to ensure that cost allocation isn't used to mask profitability and/or cross-subsidies.</p> <p>The views expressed by ERANZ and the incumbent gentailers in their submissions to the Commerce Commission during its statutory review of the Input Methodologies under Part 4 of the Commerce Act - in relation to new technology, and cost allocation and RTP rules for EDBs - are directly relevant to the issue of gentailer disclosure.</p> <p>We consider it will be useful to review these submissions when considering the type of financial reporting and disclosure requirements that should be introduced, particularly in relation to the incumbent retailers' concerns about the need for tight rules (which minimise the suppliers' ability to manipulate its cost allocations), and concerns about particular types of cost allocation methodologies.</p>
D4	Monitor contract prices and generation costs more closely	Support	<p>We agree more monitoring is required, it is critical that this includes spot market prices as the efficiency of spot signals impacts the efficiency of contract prices.</p> <p>There is considerable room in the New Zealand market for localised and transient market power and this needs to be monitored.</p>
D5	Prohibit vertically integrated companies	Support 'virtual' separation	<p>Vertical ownership separation is considered the gold standard for eliminating the incentives for anti-competitive and discriminatory behaviours. We appreciate that the Government is not prepared to</p>

		<p>force this structural change however there are operational separation measures that must be implemented to ensure a level playing field and safeguard competition.</p> <p>A market with a level playing field does not allow preference or discrimination between parties. Practically this means a vertically integrated firm offering the same terms for wholesale supply to an independent retailer as it does its own retail operation. As a result success or failure in the retail market would be determined by how effectively and efficiently retailers serve customers.</p> <p>Gentailers have submitted analysis that suggests that vertical integration is more efficient than contracting because a vertically integrated generator can adjust generation in response to changes in retail demand. We think this is disingenuous and overstates contracting costs. The same dynamic could be simply achieved through a customer number limited fixed price variable volume contract with an external retailer where the fluctuations in demand would be comparable to the internal retailer's. Putting in place a contract like this does not involve significant transaction costs, however in practice it typically comes with a price premium to a fixed volume contract and internal transfer prices.</p> <p>Currently we have a market that allows an integrated retail operation to be given preference over external independent retailers because they are 'insulated' from market price risk giving them an input cost</p>
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			<p>advantage. This occurs because there are not clear operational boundaries between the retail and wholesale operations of integrated businesses and there is no monitored and enforced obligation of equal access to wholesale supply.</p> <p>Measures to prevent discrimination could be implemented through the Code and regulations. We believe ex-ante measures that prescribe actions are required to prevent anti-competitive behaviour before it occurs.</p> <p>In addition to improvements to market making, we believe the following measures must be implemented to level the playing field:</p> <ul style="list-style-type: none"><li>• Separate accounting of retail and wholesale activities - this will allow better assessment of efficiency and discrimination,</li><li>• An explicit obligation on vertically integrated firms to provide wholesale access with internal and external parties on equivalent terms.</li><li>• Operation of a 'virtual trading' desk by Gentrailer retail division -practically retail load should be traded via the market (ASX) or 'Notional' contracts should be indexed to the futures forward curve and there must be disclosure of these contracts.</li><li>• Separate Prudential obligations for the retail division ( Futures offset provision should be advanced)</li><li>• Audited chinese walls to protect trading information of external parties</li></ul>
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			<p>These measures could be implemented swiftly because there is limited functional integration between retail and wholesale operations of gentailers (compared with unbundling network/ retail/ wholesale or telecommunications).</p> <p>If integrated firms are found to act in a discriminatory way full vertical separation would be necessary. This would need to be coupled with measures to constrain market power of generators.</p>
<b>E</b>	<b><i>Improving transmission and distribution</i></b>		
E1	Issue a government policy statement on transmission pricing	Differing views	<p>We have differing views on using a GPS for transmission and distribution pricing although we agree that changes to the interpretation of the Statutory Objective of the EA would allow them to consider wealth transfers and consumer protection issues.</p> <p>The Independent Retailers do not support wealth transfers from consumers to generators such as Meridian and Contact.</p>
E2	Issue a government policy statement on distribution pricing	Differing views	<p>We have differing views on the use of a GPS. We do support reform of distribution pricing to introduce more dynamic prices and different forms of peak price signals to be progressed.</p>
E3	Regulate distribution cost allocation principles	Differing views	

E4	Limit price shocks from distribution price increases	Support	We support the limitation of price shocks across all distribution networks. We consider that the Commerce Commission's part 4 is an appropriate place for i) defining price shocks; and ii) how both distribution and transmission price shocks should be managed.
E5	Phase out low fixed charge tariff regulations	Differing views	
E6	Ensure access to smart meter data on reasonable terms	Support	<p>We agree that distributors should have unfettered meter usage data. There is a need to review and regulate Metering Equipment providers both in terms of access and pricing.</p> <p>As noted in section C3, we recommend, is meter data is administered by the Meter Equipment Providers and provided directly to approved parties: networks, retailers, others eg Powerswitch as required.</p> <p>The data however should not be able to be used by the networks for end user competitive offers, only for network maintenance and development purposes. Additionally privacy issues need to be actively managed.</p>
E7	Strengthen the Commerce Commission's powers to regulate distributors' performance	Support	We support all distributors being subject to price path regulation.
E8	Require small distributors to amalgamate	Support	We support this proposal, it would reduce costs for consumers through improved efficiency.
E9	Lower Transmission and distributor's	Differing views.	

	asset values and rates of return		
<b>F</b>	<b><i>Improving the regulatory system</i></b>		
F1	Give the Electricity Authority clearer, more flexible powers to regulate network access for distributed energy services	Support	
F2	Transfer the Electricity Authority's transmission and distribution-related regulatory functions to the Commerce Commission	Differing views	
F3	Give regulators environmental and fairness goals	Partially support, some differing views.	<p>We all support clarifying the interpretation / changing the Electricity Authority's statutory objective so they adopt the same approach as the Commerce Commission as discussed below.</p> <p>We consider that the Commerce Commission (Part 4 Commerce Act, and Telecommunications Act) and Electricity Authority's (section 18, Electricity Industry Act) statutory objectives are appropriately interpreted to account for the long-term benefits to consumers from both efficiency gains and wealth transfers from suppliers to consumers. From a consumer perspective a dollar is a dollar is a dollar, and it doesn't matter if a price reduction is due to reduced costs (efficiency improvement) or competitive pressure resulting in lower economic rents (wealth transfers).</p> <p>We are concerned that the Commerce Commission and Electricity Authority adopt different interpretations, with the Electricity Authority choosing to only consider efficiency gains. This creates a regulatory bias against</p>

			<p>initiatives, such as saves and winbacks, that would promote greater competition, because wealth transfers (reduction in excessive returns or economic rents) can be one of the largest benefits from increased competition. Notably, despite the EPR identifying over half a billion dollars pre-annum in over-charging or excessive returns (loyalty taxes) under the two-tier retail market, MDAG have completely ignored this in their assessment of whether winbacks is a problem. The Electricity Authority's Advisory Group wouldn't have been able to ignore the main consumer detriment from the two-tier market/winbacks if they had applied the same statutory objective interpretation as the Commerce Commission.</p>
F4	Allow Electricity Authority decisions to be appealed on their merits	Differing views	
F5	Update the Electricity Authority's compliance framework and strengthen its information-gathering powers	Support	<p>This is necessary given the poor job the Electricity Authority has done proactively policing current market Rules and the importance of actively monitoring the market for anti-competitive behaviour.</p>
F6	Establish an electricity and gas regulator	Support	<p>It is clear from a number of participants that the Electricity Authority is failing in its performance with regards to competition and consumer matters.</p> <p>This is evident on a number of levels, on a number of topics and over an extended period of time. Lack of liquidity in the forward wholesale market, the complete failure of the saves and winback programme to name a few are issues that have not been</p> <p>Further, responses of the EA via the Market Design</p>

			Advisory Group (MDAG) would appear to show that Design Groups, designed and appointed by the EA appear to only serve as vehicles for the EA to underwrite the status quo.
<b>G</b>	<b><i>Preparing for a low- carbon future</i></b>		
G1	Set up a fund to encourage more innovation	Support	We would support this on the basis it is targeted at initiatives that lower energy costs for consumers.
G2	Examine security and resilience of electricity supply	Support	
G3	Encourage more coordination among agencies	Support	
G4	Improve the energy efficiency of new and existing buildings	Support	