Energy Resources Aotearoa
POWERING A BETTER NEW ZEALAND TOGETHER

energyresources.org.nz
energyskills.org.nz
energymix.co.nz
PO Box 25259, Wellington 6140

Electricity Authority

via e-mail: levelplayingfield@ea.govt.nz

Submission on *Level Playing Field measures – Options paper*

Introduction

1. Energy Resources Aotearoa is New Zealand's peak energy sector advocacy organisation. We represent participants from across the energy system, providing a strategic sector perspective on energy issues and their adjacent portfolios. We enable constructive collaboration to bring coherence across the energy sector through and beyond New Zealand's journey to net zero carbon emissions by 2050.

2. We are grateful for the opportunity to provide feedback on the options for *Level Playing Field measures*, which are intended to address hedge contract related competition risks in flexible generation from the four large generator-retailers – Genesis, Contact, Meridian and Mercury.

3. This consultation relates to Energy Competition Taskforce initiatives:

   a. *Level playing field measures*; and

   b. *Prepare for virtual disaggregation of the flexible generation base*.

Key messages

4. We support strong competition that gives choice to customers and puts downward pressure on prices. However, we strongly oppose the third and most aggressive step of virtual disaggregation. We are opposed to this step as it would not support healthier competition but would instead deter it and would quite likely raise prices for everyone. Even canvassing this option has created unwelcome distortion to investment outcomes in the electricity sector.

5. This option will likely increase prices and leave consumers worse off. Their choices will be limited to the highest prices because they will be paying for the risk that is currently eased by the efficiencies in our vertically integrated model. Risk is something to be managed and, as we have directly experienced in the oil and gas sector, cannot be regulated out of existence without substantial costs being shifted to producers.

6. We agree that the energy crisis of last year cannot be repeated. We also agree that something urgent needs to happen so that we have sufficient flexible generation for a dry winter and to encourage new generation into the system as soon as possible. This is predominantly a fossil fuel and firming infrastructure insufficiency problem, exacerbated by the market's changing risk profile.

7. We think that large-scale demand response that materially impacts our GDP is inappropriate except in extreme emergencies. Rather than knee-jerk winter-to-winter responses, a more systemic, strategic response is required that better manages the new risk profile that has emerged from the operation of the electricity market. Increasingly we are of the view that strong, centrally-led market signals that induce more firming into the market are the most appropriate and urgent measures available if other market-led arrangements do not come forward.[1]

8. We support options that support growth and represent stability, consolidation, credibility and coherence. We would also support the Electricity Authority (the 'Authority') adding its voice in support of the Government acting with urgency to revitalise the gas market and lift our reserves given its silence on this matter to date. Such options have not been presented in this *Options paper*.

Options analysis

9. In the *Options paper*, the Authority puts forward a roadmap of progressive steps for non-discrimination obligations for the generator-retailers, with a version of virtual disaggregation as the most progressive (step 3). We are concerned with the way the Authority has characterised this "preferred" option as basically a 'done deal' with quick implementation timeframes.[2]

10. We believe the less progressive steps (1 and 2) are acceptable, but do not believe that the case for step 3 has been made. Incentives matter, and the mere consideration of virtual disaggregation may already have had a chilling effect on investment intentions and competition. These sorts of backstop measures provide an illusion of security for regulators but discourage competition by introducing the risk of unpredictable regulation, even if never used.

11. Step 3 of the roadmap provides a regulated market through which all generator-retailer supplied hedges must be traded, on equal terms for all buyers. While it is hoped that external retailers will have access to the lower prices 'enjoyed' by internal retailers, the likely outcome would be all prices offered at the higher level that external parties face. External parties face higher prices because of

---

[1] See our recent submission to Transpower entitled 'Security of Supply Forecasting and Information Policy Review' dated 24 March 2025.

[2] "Our current view is that a clear implementation roadmap of non-discrimination obligations, alongside the more targeted standardised flexibility product initiative, would best promote the price, liquidity and even-handedness outcomes we are seeking." *Options paper*, page 53.

higher risks – they are an unknown entity and cannot offer the efficiencies that retailer arms of the generator-retailers can. Effectively, this option exposes all hedges to the price that includes all the risks.[3]

12. Principles of fairness and equity are not economic concepts but judgmental notions that can lead to subjective decision making. As we have seen in the work of the Climate Change Commission, shunning least-cost solutions (and the pursuit of solutions to evidenced market failures) places the making of value judgements in the hands of unelected bureaucrats rather than with elected representatives, where they rightly belong. [4]

13. Put simply, levelling the playing field using principles of fairness and equity could inadvertently lead to the lifting of all prices to the same high-risk averting level. **We are unclear what 'fair prices' mean in this context and note that they do not necessarily result in lower prices.**

14. The only effective way to bring prices down and enhance competition is through gains in efficiency[5] and introducing new market participants to grow the pie.

Competition issues

15. The *Options paper* highlights a long list of efficiency-gains from the current vertical integration model, including reduced costs, co-ordination and scope economies. We encourage the Authority to see these strengths as necessary benefits of an efficient electricity system. The risks of destabilising them is far greater than continuing with minimal intervention.

16. Countering these efficiency gains, the *Options paper* presents a small handful of risks to competition from the vertical integration model, such as lower transparency and lower liquidity for non-integrated competitors. But the justification behind step 3 is undoubtedly a reaction against perceived 'market power'.

17. We question whether the Authority and Commerce Commission, together, have adequately considered existing competition factors, not just the size of the generator-retailers, but the fact there are four of them. This is not a monopoly or duopoly issue, nor is it a cartel. The electricity market operates leanly and efficiently. If anything, the problem is not competition but a misrepresentation of market power. Perhaps the government (as co-owner of approximately 70 per

---

3 For comparison, we would see this elsewhere in the energy system, if we were to expose our domestic natural gas market to international gas prices through imports of LNG, for example.

4 See our [Perspectives Series note on least-cost approach](#).

5 There are three orthodox forms of economic efficiency: productive (least cost), allocative (resources gravitate to their highest value use) and dynamic (innovation and investment).

cent of generation-retailers) has a role to play in solving the first mover problem by helping the market to value building more fast-start thermal peaking capacity.

18. The key problem is the scarcity of new firming or flexible generation entering the market to underpin the renewable energy. We do not believe these *Level Playing Field measures* will address that. We believe that this consultation is asking the wrong question.

19. We have suggested an alternative approach, outlined in our last submission to the Authority on new entrant generators' access to Power Purchase Agreements (PPAs) and in our submission to Transpower on the Security of Supply Forecasting and Information Policy Review (the SOSFIP) in which a required and proportional level of firming for renewables is introduced that the market must provide.

Misrepresentation of generator-retailers favouring their retail arms

20. There is a false presumption that generator-retailers favour themselves by, for example, giving their retail arms access to flexible generation or hedge contracts on better or 'preferential' terms than they offer to third parties.

21. To quote the Authority's *Options paper*:

> *"Our proposal reflects a view that it is no longer tenable for Gentailers to continue preferring self-supply of informal internal hedge arrangements backed by flexible generation as they currently do; that those shaped hedges are too critical an input for it to be left solely to Gentailers' discretion to allocate them as and when they prefer. We currently consider that the costs incurred by Gentailers in complying with non-discrimination principles are likely to be outweighed by benefits to consumers arising from greater competition, particularly over the longer-term."*

22. What this characterisation fails to recognise is that the risks associated with hedge contracts are better known within the generator-retailer relationship (these are some of the downplayed efficiency-gains associated with vertical integration), and therefore the risks are lower and the prices are lower accordingly. Once a third party is introduced, the risks will escalate and so will prices, as there are more unknowns and a less secure relationship.

23. **Nothing in these proposals will likely lead to lower consumer prices**.

Scarcity risk vs competition risk, and a note about fairness

24. The *Options paper* outlines an interaction between scarcity and competition and some implications of addressing competition risks in the context of fuel scarcity. It is vital that the Authority addresses fuel scarcity head on. This is the core concern. We question whether the Authority would be pursuing options like step

3 (virtual disaggregation) if we did not have a problem with fuel scarcity. This is the true test of the robustness and durability of the solutions proposed.

25. We also question whether the Authority is doing anything, and urgently, to address fuel scarcity. And if not, why not? While the Authority recognises that we have a problem with thermal fuel scarcity it neither suggests any responses nor leans into supporting the Government's actions to revitalise the gas market and encourage greater production. This misalignment seems to be an oversight.

26. We believe fairness is the incorrect objective to pursue. The clear objective for the Authority should be improving economic efficiency and leaving considerations of fairness to the politicians and consumers. Fair access to flexible generation products does not induce more generation products. It simply moves the access around – hoping to eliminate discrimination but likely to have a negative impact on prices. That is not a good outcome for anyone.

27. As a rough comparison, the current system is 'growing' but is restricted by a rubber band, and the band is getting ever tighter and thinner as demand grows. Giving 'fair access' to what lies within the rubber band, with demand growing, simply stretches the band even thinner. Even with willing buyers and sellers operating under the same rules, housing and energy market participants have continued to face volatile market prices as scarcity or otherwise dictates.

28. This isn't the type of scarcity that induces more growth, it is a failure of policy to allow growth. We have seen similar trends in the housing market (urban boundary growth restrictions which created housing price 'bubbles'), price-setting policies in various sectors, and transport policies that argued 'no more roads'.

Wait for the market review findings before making grand reforms, and only if they are 100 per cent warranted

29. One of the listed key benefits of the options proposed is that they can be implemented quickly. We see this instead as a key risk. Making sweeping changes at the system level could severely destabilise the electricity market at the very time we need investment to be unlocked.

30. We strongly encourage decision makers to hold off on the 'big' decisions until, at a minimum, we have the findings from the market review by Frontier Economics.

31. It is crucial that the big rocks are moved first. That means solving the firming problem. Turning all the rocks over at once, big and small, risks flooding the system with uncertainty, creating unpredictability and resulting in the loss of investment confidence. We do not want a tail-wags-the-dog solution, or a regulator who is constantly chasing rats and mice while the house is falling.

32. With commentary saying these proposals represent a seismic and once-in-a-generation shift in electricity market settings, we think there should be a more well-considered approach. [6]

Concluding remarks

33. We oppose the third step of the options roadmap. We believe this option:

    a. is poorly targeted at the underlying problem of the market's inability to manage the increasing risk it is creating from the growing mismatch in generation type and demand requirements (this in turn arises from regulatory unpredictability over the medium term); and

    b. will already have had a negative effect on investment, with flow on impacts that lift prices, exacerbating the very problem that needs to be solved.

34. The Authority must instead help move the big rocks first. This means bringing new generation, especially thermal peaking plants, into the system as an urgent matter of priority and strongly advocating for a rapid response from the Government to support all efforts to lift our gas reserves.

35. Too often we hear arguments in favour of flexible demand products for the retail end of the market, as if they could save the day. They are important, but we need both – flexible demand response *and* large-scale supply growth. For housing, this means building up *and* out. For roads, it means maintaining and using what we have *and* building new connections.

36. The response needs to be focused on attracting more flexible generation into the market that does not depend on the weather or reducing economic output and energy use.

37. We thank the Authority for the opportunity to submit and look forward to engaging further on a way forward.

---

[6] "It would arguably be the biggest rule change for the sector since the Bradford reforms of the electricity industry in the late 1990s." The Post, Tom Pullar-Strecker (quoted), February 27, 2025 – https://www.thepost.co.nz/business/360595686/competition-task-force-recommends-anti-discrimination-rule-power-giants