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Submission on IM decision-making discussion draft

The Energy Trusts Association – ETNZ - represents the trust owners of electricity distribution businesses throughout New Zealand, the largest of which is the Auckland Energy Consumer Trust and smallest of which is the Buller Electric Power Trust. The majority of the Trustees of these energy trusts are elected by electricity consumers who are the beneficiaries of the trusts. Accordingly, ETNZ has both an asset owner and a consumer perspective in addressing this topic.

In this submission we address the Commission's specific queries where these are relevant, as identified in italics below.

> *Our preliminary view that there is no specific statutory threshold for making changes to the IMs as part of the review.*

We tend to disagree with this view, although we accept that the Act is silent on a specific statutory threshold. A number of clauses contribute to the conclusion that a change to an IM should only occur if it addresses a substantive problem.

For example:

52T (2) (c) "[Every IM must, as far as is reasonably practicable] be consistent with the other input methodologies that relate to the same type

of goods or services." This requirement for consistency appears to us to be a broad one, suggesting that each IM must be addressing matters of a similar scale or impact (and that the impacts of any proposed change to one IM on all of the others must be considered).

Provision does exist for minor amendments to be made where these are not material but 52X refers to "making a material change" which must be handled as if it were a new IM. Here section 52T (2) seems relevant:

"Every input methodology must, as far as is reasonably practicable,—

- "(a) set out the matters listed in subsection (1) in sufficient detail so that each affected supplier is reasonably able to estimate the material effects of the methodology on the supplier; "

In other words, each supplier must be able to understand the material impacts of the change on the full spectrum of the existing IMs, including the cost of capital, the asset value, and so forth. This creates a fairly high threshold for prior consultation.

> *30.3 Our preliminary view that we cannot create an IM on a matter not covered by an existing published IM for a particular type of regulated service as part of the review.*

And, the comment in the Overview document (para 27):

> *If you disagree with our preliminary view that we cannot create IMs on new matters, please let us know in your submissions on the problem definition paper. In doing so, it would be helpful if you could provide examples of any areas where you think a change to an IM is required that might cross over into creating an IM on a new matter. This can be a difficult point to discuss in the abstract, given that it can be unclear as to what would constitute the creation of an IM on a new matter.*

We disagree with the Commission's preliminary view and believe that the Act was specifically crafted to allow for IMs on new matters to be created. It would be unlikely that Parliament would have considered the original IM provisions to be immutable and complete, given the interrelationships between electricity distribution and many aspects of economic and social legislation, where future changes could create new requirements.

Specifically, 52Y(4) states "Section 52W applies if, following a review, an input methodology is replaced or amended." The word 'replaced', used in

contrast with the word 'amended' makes it clear that the Act allows for new IMs as well as for amendment of the existing ones.

This is an important point because, as well as allowing for new IMs, it clarifies the interpretation of 52W. The meaning we take from 52W in this context is that the Commission must publish all IMs promptly and cannot also have unpublished ones, nor IMs with elements withheld from publication e.g. for commercial confidentiality.

For example, given the extensive Crown financial investment in the electricity sector, it would be disquieting to private investors in EDBs if scope existed for the Commission to also take into account some type of confidential government injunction aimed at protecting the Crown investment when amending or applying IMs.

As far as creating a new IM goes, one hypothetical example is an IM that specifically creates a platform for the Commission to address the issues arising from transformative technologies. Another example would be an IM that gives substance to the requirements of 54Q. Others could cover matters such as accommodation of legislative requirements to, e.g. cross-subsidise certain classes of consumer. These are all areas where the required IM objectives specified in section 52T (2) would apply.

> *Do you support us developing a decision-making framework for the review (Attachment A), and for making changes to the IMs more generally (Attachment B), at this time?*

We note that the Commission is proposing only changing the current IMs where this appears likely to:

- Promote the Part 4 purpose in s 52A more effectively;
- Promote the IM purpose in s 52R more effectively (without detrimentally affecting the promotion of the s 52A purpose); or
- Significantly reduce compliance costs, other regulatory costs or complexity (without detrimentally affecting the promotion of the s 52A purpose).

These three limitations provide a very broad platform for change, as the words "more effectively" create a mandate to do just about anything provided that it is not 'less effective'. However, we recommend that the Commission undertake an audit of the completeness of the existing IMs-based regime in meeting the requirements of Part 4, and that it specifically

proposes changes that address any areas where those requirements have not been addressed.

As an example, we recommend that the following be added to this list:

- Promote the requirements of section 54Q in providing incentives and not imposing disincentives for investment in energy efficiency and demand side management, and to reduce energy losses.

Do you agree with our preliminary views on whether we can create IMs on new matters and whether there is a statutory threshold for changing the IMs in the context of both s 52Y and s 52X?

No. This issue is addressed above.

Is there something else specific that you would like us to provide further guidance on in developing our thinking on these matters?

We would appreciate the Commission providing further guidance on the following matters:

The Distribution Pricing Methodology IM

Recognising the 52T (1)(b) and 52T(2) requirements for all the IMs to be consistent, and for suppliers to be able to assess their combined impacts, we believe that the consultation process requires the two regulators involved to present and consult jointly on the review process. We are aware that the Electricity Authority is looking at the DPM in parallel with the Commission's IM review but at this stage have seen no material that enables us to model and assess preliminary regulatory views on the full spectrum of IMs.

As consumer and community representatives, trusts are close to the various concerns and opinions on local electricity charging arrangements. If they are to develop fully informed views on the evolution of the IMs they require a reasonable level of information on the way the pricing methodology may change, and on how any proposed changes might impact on other IMs.

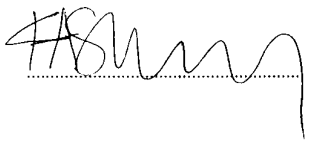
Proposals for a Customised Price Path

The Commission appears to view the widespread reluctance to apply for a CPP as an issue to be addressed through better marketing plus simplification of the processes.

A decision to make a CPP application would almost certainly be considered a material one to trusts, as asset owners. In particular it would expose asset values to a 'blank cheque' regulatory approach with no right of appeal where asset value erosion or investment curtailment may result from the application. If they support making a CPP application, trustees have to do so with no knowledge on what the company-specific WACC might become, and with an imperfect knowledge of what will happen after the CPP period ends.

The Commission might be able to improve confidence in the CPP process by, amongst other things, developing (in consultation) a set of clear principles that it would adhere to in determining a CPP. These principles or a commitment to develop them could be included in the IM.

Thank you for providing this opportunity to submit, and I look forward to ongoing engagement on the IMs review.



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