

David Riley

Tauranga

30 August 2021

By Email to registrar@comcom.govt.nz Subject : Mercury/Trustpower

The Commissioners

Regarding : **Mercury NZ Limited acquisition of the retail operation of Trustpower Limited**

I am a private citizen resident of Whakamarama Tauranga and I am submitting that the proposed acquisition of the retail arm of Trustpower by Mercury NZ should not proceed as currently proposed due to outstanding matters relating to market failure in the Tauranga electricity market. I consider this market to be the Tauranga Western Bay of Plenty Powerco region defined by the Tauranga Energy Consumer Trust (TECT) Trust Deed.

Access to affordable electricity should be a basic human right in our society as electricity is so vital to stay warm, healthy and connected to society, I believe the TECT Trust deed has the effect of substantially lessening competition in the Tauranga Market and the proposed changes now before the High Court do not address this problem and will pass the offending exclusive TECT distribution from Trustpower to Mercury for up to thirty years. It is the poor and the young and the old and the sick members of Tauranga society that are being affected the most by market failure and high electricity prices and I am motivated to change this.

## ***1: Statement of Preliminary Issues***

### **Market definition:**

I strongly recommend that the Commission examines the Tauranga electricity market as a distinct market. The Tauranga electricity market has a unique structure which I submit causes market failure and higher electricity prices than other regions. TECT is the only electricity energy trust which has linked its benefits to just one retailer and I do not believe that TECT is a member of Energy Trusts NZ. Tauranga is now the fifth largest city in NZ, it is not far from major sources of electricity generation and has reasonable lines charges which are a problem for remote regions yet is stuck with high electricity prices. Consideration of the market only as NZ wide would disadvantage Tauranga consumers if the unique problem is not addressed. There are a number of measures that signal market failure which I shall detail and update in section 2, these include the following;

- Market concentration measured by HHI

- Low levels of Switching

- High Pricing as measure by MBIE Quarterly survey of domestic

- High Pricing as measured by Consumer Powerswitch

- High level of potential (unrealised) savings

- Unique payment method for distributions from community trust TECT

- Unique market failure issues identified by Electricity Price Review EPR

- Incomplete investigation by Commerce Commission

The changes underway to the TECT Trust Deed are currently before the High Court but will introduce new complexity to the issue; there will be a new class of Trustpower customers who will not receive the TECT benefit and existing Mercury customers who currently benefit from Mercury's competitive prices may well lose this advantage. Clearly Tauranga consumers deserve to be considered as a special case.

**Assessment without the acquisition:**

Mercury has submitted that the proposed acquisition is best assessed against a status quo counterfactual, with that counterfactual reflecting Trustpower retaining its retail business. I submit that the status quo is not suitable in the Tauranga electricity market given the apparent market failure and the outstanding investigations following the Electricity Price Review and my complaint to the Commission. Initial documentation in the investigation by the Commission has found (Memo 27 July 2020) that the TECT deed does have an effect on competition but the issue of substantially lessening competition is finely balanced, this despite wrongly in my opinion crediting the TECT distribution to Trustpower. This same memo (sections 76, 77) suggested a counterfactual without the exclusive aspects of the TECT Trust Deed. Clearly there is work to be done here but to use a situation that is already harming consumers and quite possibly in breach of section 27 of the Commerce Act as the baseline serves only to further disadvantage consumers.

**Assessment of NZ wide issues.**

I do not have an opinion on the NZ wide issues relating to Trustpower and Mercury post acquisition apart from noting that any reduction in competition for a commodity such as electricity should be examined carefully. There will be a reduction from the big five retailers to just four and Consumer Powerswitch has noted recently that many of the smaller retailers have currently withdrawn from the market. I have seen this in a reduction from 15 retailers in Tauranga in 2019 to just 10 currently accepting contracts (PowerSwitch calculator), clearly the market is fragile. I do not have an opinion about the gas market.

**What would be fair for Tauranga consumers:**

Mercury has made changes to the TECT Trust Deed a condition of the acquisition. TECT is currently requesting permission from the High Court to make these changes, they did this following consultation which only had one option, approve the change or lose the TECT distribution. The proposed changes will see the TECT distribution paid only to existing Trustpower customers as at Jan 2021 who remain with Trustpower or the purchaser of the retail arm of Trustpower (potentially Mercury). The distorting effects of the TECT distribution will remain for up to 30 years. This could be seen as a subsidy using a public asset (the TECT investment) for the benefit of a private company Mercury. This is very strange. The TECT investments are worth more than \$1 billion and TECT consumer distribution is currently \$500 each per annum.

Interviewed by the NBR (25 Jan 2018) and speaking of the TECT structure the TECT Chairman is quoted as saying

*"I believe it was ill-conceived in the first place,"*

*“I cannot understand why you’d have a standalone trust giving financial support to the customers of a particular company and not to other companies.*

*“I can see how it happened. But if, at the outset, the people who started this up could see where it’s got to, they would say this just doesn’t make sense.”*

Following a campaign by Trustpower the TECT Trustees abandoned their approach. It would seem that Trustpower are now exiting the beneficial subsidy arrangement enjoyed for years, perhaps they see that eventually someone will speak up and force change. This will become Mercury's problem.

The problem would be solved if the TECT distribution was paid to all consumers whatever retailer they choose. This is how it is everywhere else in NZ where there is an electricity trust and how it was in Tauranga. This would level the playing field and allow for a fair assessment of the potential effects of the Mercury acquisition.

*"Basically, Trustpower is capturing the benefits from trust-ownership rather than consumers the intended Trust beneficiaries"* Luke Blincoe CE Electric Kiwi and P Anderson MD Haast Energy Trading in a submission to EPR March 2019

The proposed acquisition will pass the benefits from Trustpower to Mercury and the intended beneficiaries will continue to miss out and the Tauranga Electricity Market will remain distorted to the detriment of all Tauranga residents. It is hard to see any winners here.

### **Comments on Mercury NZ Clearance application**

**Paragraph 163:** Mercury commented on ComCom pre-filing remarks regarding regions with barriers to entry/expansion. Mercury is not aware of any region where barriers to entry/expansion are materially different. Have they forgotten Tauranga !! Mercury management are very aware of the extraordinary lengths Trustpower went to retain the Trustpower TECT linkage and have made it a condition of the deal that this exclusive linkage is transferred to Mercury. Currently Mercury provide the only reasonably priced electricity offering in Tauranga from the 'big five', this offering will almost certainly be withdrawn. The exclusive linkage in Tauranga with the TECT distribution is the only explanation I can give for the failure of new entrants to the Tauranga electricity market to gain significant market share leading to continued market failure, this is in marked contrast with every other region in NZ.

**163.2 (iii)** EA-EMI ICP counts for Tauranga show that it has taken almost 18 years to reduce Trustpower ICP count by 5000. At a single transaction Mercury will add more than 6000 ICP connections to the Trustpower block. The Tauranga electricity market shows few signs of improving.

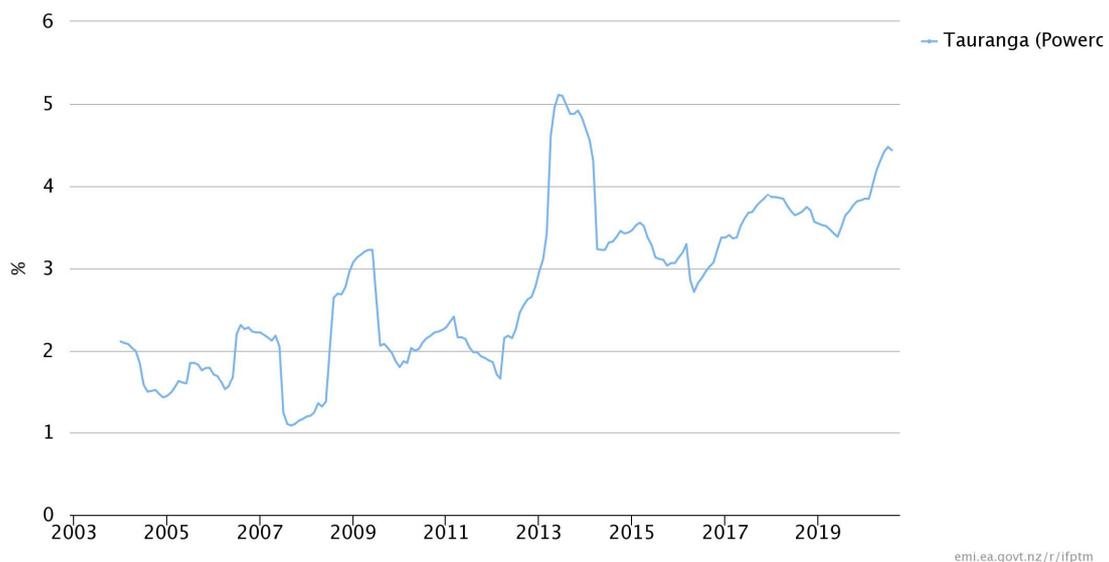
### Sapere report section 71 and referenced in Mercury application 163 (iii)

When commenting on switching rates Sapere state

*"the Bay of Plenty has the lowest rates of switch but it has risen consistently since mid-2018. Most regions are centred around 15 per cent."*

I urge caution interpreting statistics. I have included the EA-EMI chart showing 12 month rolling rate trader switches for Tauranga (Powerco). This does not imply to my eyes switching rates rising consistently. It could even be argued that switching has not changed significantly since 2013 !

#### EA-EMI trader switches rolling 12 month rate Tauranga (Powerco)



## 2: Updates on the Tauranga Electricity Market

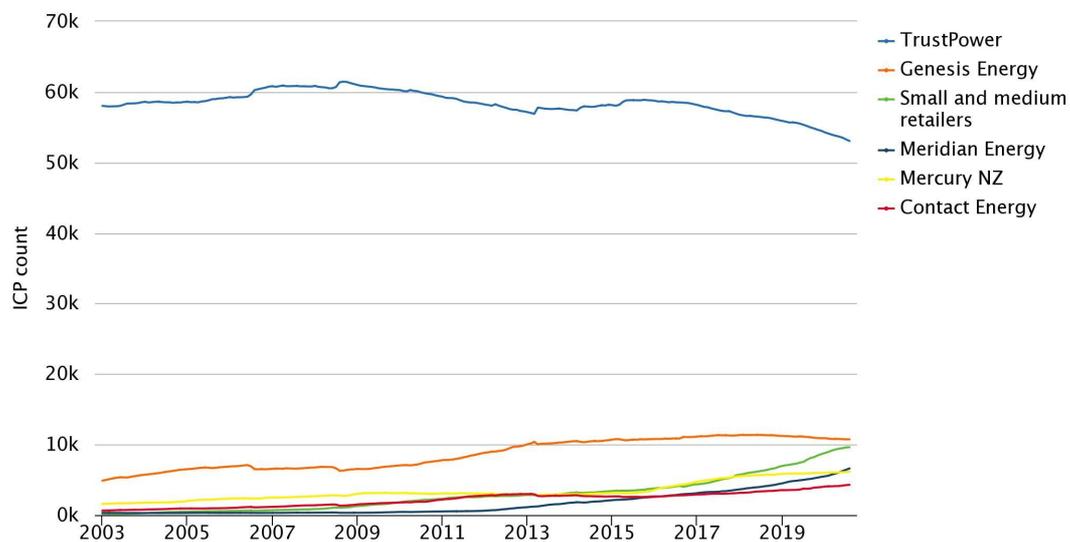
The issues relating to Tauranga TECT Trustpower and market failure have been discussed for many years. Currently as I understand it there is an investigation underway which started with the Electricity Price Review Options Paper of January 2019 and my complaint to the Commerce Commission in March 2019. An initial report contained a number of errors and an amended report in the form of an internal memo was written in July 2020, this memo addressed the errors but I do not agree with some of the conclusions, in particular the concept that the TECT benefit is part of Trustpower's offering and hence pricing comparisons are wrong. The Commission promised a decision on the investigation for early 2021 but there has been no decision to date, perhaps just as well given the proposed changes now under consideration.

The evidence and current situation is updated in the following sections.

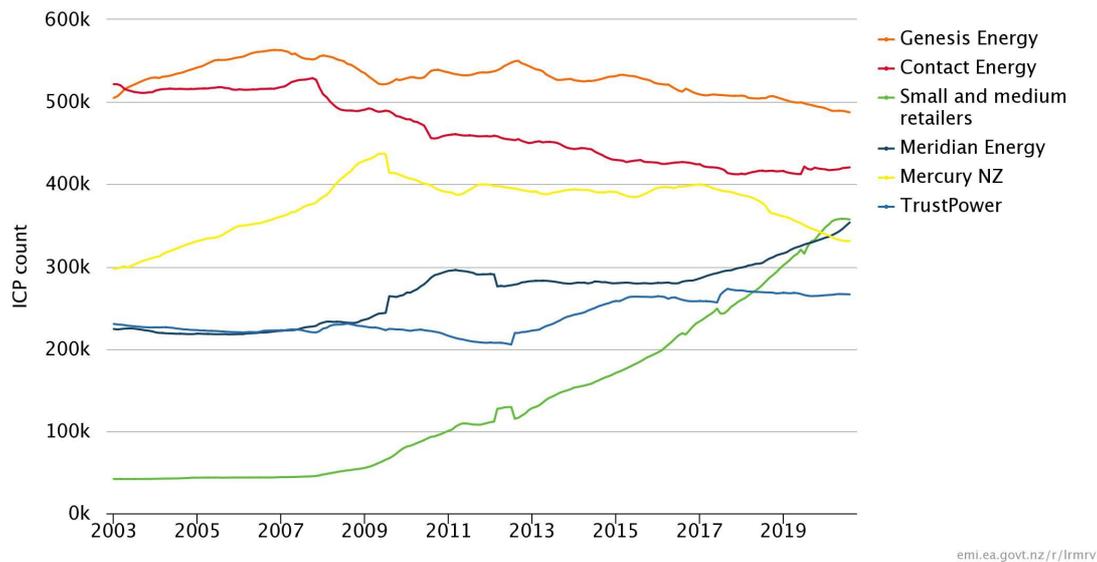
### 2.1 Market concentration

The Tauranga market is still dominated by Trustpower, there has been a continued slow reduction in market share for Trustpower but the actual numbers of residential connections has declined very slowly. These two graphs illustrate how different the Tauranga market is.

Tauranga ICP count (EA-EMI August 2021)

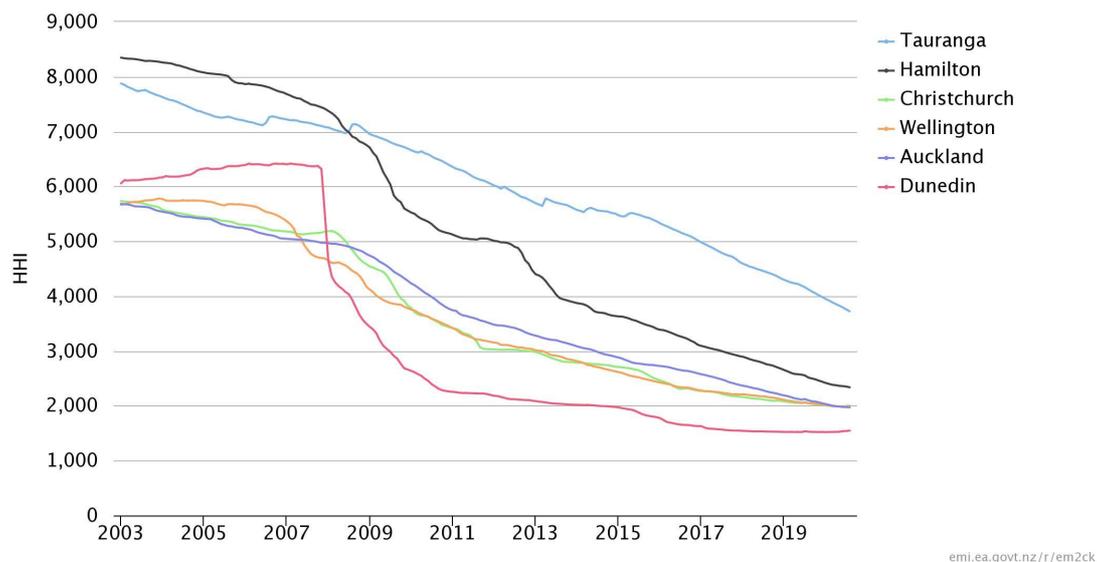


NZ wide ICP count (EA-EMI August 2021)



The Tauranga market concentration as measured by HHI Index has been the most concentrated in NZ since 2013 and although the HHI is reducing it is clearly still out of step. Recently Consumer Powerswitch has identified a number of suppliers who are not currently accepting new customers. This has the potential to disrupt the HHI index data in an unfavourable way. In Tauranga 7 current retailers are not currently accepting new customers, we have reduced competition down from 17 suppliers to just 10 and if the proposal goes ahead just 9. This is potentially a serious issue going forward.

Market concentration HHI index NZ Main Centres (EA-EMI August 2021)

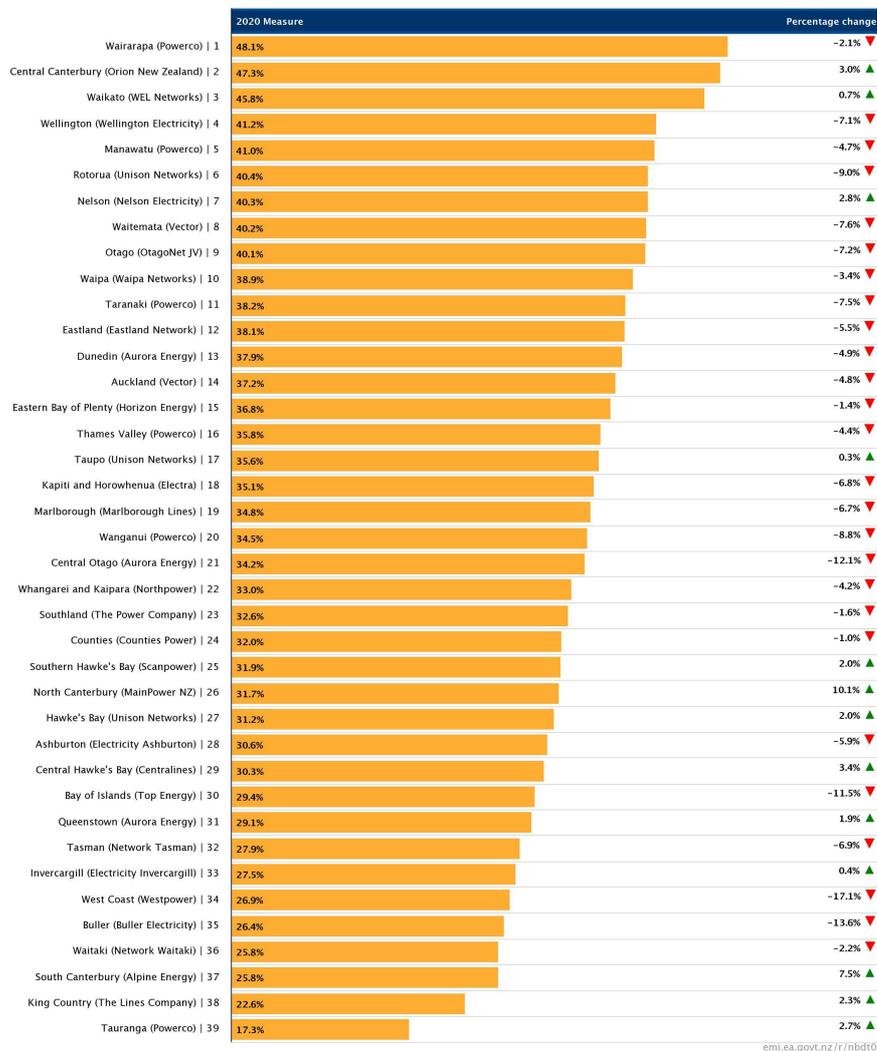


## 2.2 Low Levels of switching

The level of switching in Tauranga remains low. Looking at residential trader switches the most recent data shows Tauranga at equal lowest rate along with Waitaki at 3.9%, NZ wide rate is 6.7%

The last five years (2015-2020) for residential trader switches shows Tauranga a clear last with a rate of 17.3% with active markets more than 40%. This combines with a market where customers have the highest potential savings and there is something interfering with normal market forces in Tauranga. The second lowest region is King Country which is in direct contrast to Tauranga, King Country also has the lowest potential savings in the most recent report (2017) implying that for most customers there is little reason to change and the market works.

### Residential ICP trader switching rate 2015-2020 (EA-EMI August 2021)



### 2.3 Electricity Prices MBIE Quarterly Survey of Domestic Electricity Prices

The MBIE Quarterly Survey of Domestic Electricity Prices has many years of data of electricity prices. The calculation is based on a typical household using 8000 kWh per year and the lines charges component is subtracted from the retail price to give 'energy and other' component price. The calculation uses the lowest rate without a fixed term in proportion to the retailers market share. It assumes bills are paid on time and GST is included (energy trust payments excluded).

Individual retailers are not reported. The table reproduced here is from the latest report (May 2021 spreadsheet) looking at the "energy and other" prices and sorted in descending order. Tauranga is the Powerco Tauranga region.

Tauranga lines charges (not shown) are reasonable at 10.6 c/kWh with NZ average 11.1 c/kWh. The "energy and other" is concerning, Tauranga is the most expensive city, most expensive region in the North Island and second only to Greymouth. Tauranga is out of step!

 <b>MINISTRY OF BUSINESS,                  INNOVATION &amp; EMPLOYMENT</b> HIKINA WHAKATUTUKI	
Location	Energy and Other
	c/kWh
<i>New Zealand</i>	19.5
Greymouth	23.7
Tauranga	23.5
Westport	23.1
Balclutha	22.8
Blenhiem	22.2
Nelson	21.9
Taupo	21.9
Hawera	21.7
Rotorua	21.6
Whanganui	21.5
Thames	21.4
Ashburton	21.2
Masterton	21.2
Cambridge	20.9
Gisborne	20.7
Whangarei	20.6
New Plymouth	20.4
Palmerston North	20.2
Kerikeri	20.1
Hamilton	20.0
Otorohanga	19.9
Taumarunui	19.9
Timaru	19.7
Richmond	19.7
Oamaru	19.4
Waipukurau	19.1
Napier	19.1
Dannevirke	19.1
Cromwell	19.0
Auckland North Shore	18.8
Whakatane	18.8
Wellington City	18.8
Christchurch	18.7
Invercargill	18.7
Winton	18.6
Queenstown	18.4
Pukekohe	18.2
Auckland Central	18.2
Rangiora	18.0
Paraparaumu	17.7
Kaiapoi	17.4

## 2.4 Consumer Powerswitch Calculator

The price "Trends" data tables are no longer on Consumer Powerswitch website. I have checked prices in Tauranga, Hamilton and Auckland and I believe there is no real change to the analysis made in 2019. Previous analysis indicated that Trustpower was charging higher prices in Tauranga than in other regions (without taking into account the TECT distribution. Many of the other retailers also appeared to be charging more in Tauranga than other regions. This remains a concern.

Jon Duffy Chief Executive Consumer NZ writing in Stuff 24 April 2021 noted;

*"There are few things more fundamental to wellbeing than affordable energy. Unfortunately, energy hardship in New Zealand is real."*

*"Consumer NZ research has found 17 per cent of New Zealanders report having trouble paying their power bill. A household that spends more than 10 per cent of its income on energy is considered to be in energy hardship."*

and in correspondence with me, Paul Fuge Powerswitch Manager has written;

*"The presence of the rebate gives Trustpower an advantage over its rivals. This will effectively reduce competition, which in turn reduces the pressure on electricity prices in Tauranga. This is perhaps evidenced by the latest MBIE data which shows the energy component of the power bill in Tauranga is higher than in other parts of the country. This despite Tauranga being a large population centre that is close to large sources of electricity generation and relatively close to the national grid backbone."*

*"And of course, in general higher prices disproportionately affects the most vulnerable consumers. This is something Consumer NZ is particularly concerned about."*

Electricity cost for 8000 kWh cheapest non fixed term offering as used by MBIE (Consumer Powerswitch 28 Aug 2021)

Retailer	Tauranga	Auckland	Hamilton
Mercury	\$2327	\$2382	No offer
Contact	\$2564	\$2232	No offer
Meridian	\$2713	\$2444	\$2582
Genesis	\$2961	\$2644	\$2830
Trustpower	\$3034	\$2488	\$2668

## 2.5 Potential Savings League Table EA-EMI report

The report has not been updated since the 2017 data was added. Tauranga market showed the highest potential savings of \$444.43 more than double the NZ average of \$207.47. I believe the only explanation for this is the TECT distribution. See also section 2.2 for discussion of comparison with King Country data.

## **2.6 TECT Structure post proposed Mercury acquisition**

The TECT Trustees have submitted to the High Court the proposed changes to the TECT Trust Deed. The proposed changes have been made a condition by Mercury for the acquisition to proceed. TECT is an independent entity which holds the ownership of an investment portfolio including 26% of Trustpower shares on behalf of the people of Tauranga.

The TECT changes will create two classes of Trustpower customers;

1) those who were customers as at end of January 2021 and remain customers. These customers will continue for 30 years to receive a TECT distribution of \$500 per annum increasing to \$600 in 2030 and \$700 in 2040 or when the reserved amount to cover these payments is exhausted. These customers will essentially be treated as all TECT consumers have been in the recent past. Currently around 52,000 ICPs

2) those who have joined or rejoined Trustpower after January 2021. These customers will not receive the TECT distribution. Currently around 1000 ICPs

While the Commission is not part of the process to review the Trust deed, the newly joined Trustpower customers and Mercury customers do face a potential problem the Commission should consider. The Tauranga Trustpower tariffs appear to be inflated given the subsidy effect of the TECT distribution, these new customers can not offset the high tariffs with a TECT distribution and being in a minority in Tauranga for some time to come it seems unlikely Mercury will adjust all tariffs to retain them. They will likely have to move to other retailers.

Similarly post Mercury acquisition the existing Mercury customers (around 6000 ICPs) who at present do enjoy competitive electricity prices in Tauranga may well lose these given the large numbers (around 52,000) of category 1 Trustpower customers joining Mercury's ranks.

For the 1000 Tauranga Trustpower customers in category 2 and 6000 Mercury customers it is likely that they will be disadvantaged remaining with Mercury and the only realistic options currently seem to be Powershop or Contact Energy (Meridian and Genesis already have inflated prices in Tauranga)

The pool of competitive retailers seems to be shrinking more than is obvious at first glance. The obvious solution is for TECT to treat all Tauranga electricity customers the same as they originally were, and pay the TECT distribution to all customers. This would restore a functioning marketplace for electricity in Tauranga and remove the ongoing uncertainty around conforming with the competition provisions of the Commerce Act. Every consumer would benefit. I do not understand how the TECT Trustees choose not to even debate this possibility.

It seems that TECT is probably not bound by the EA Participation Code meaning another layer of protection is denied Tauranga consumers.

## **2.7 Electricity Price Review (EPR) 2018-2019**

The EPR options paper of February 2019 suggested the TECT Trustpower issue should be examined by the Commission. The Commission's decision not to pursue the investigation was reported in the EPR Final Report of May 2019.

[EPR Final report May 2019 p40](#)

### *Competition in Tauranga area*

*Some submitters, we noted in our options paper, said Tauranga Energy Consumer Trust's distribution of benefits solely to Trustpower customers undermined retail competition in the western Bay of Plenty. We said that if these arrangements were reducing competition, this might be a matter the Commerce Commission should investigate. The Commission, after making enquires, has told us it considers the trust's practice of restricting rebate payments to Trustpower customers "potentially distort[s] retail competition", but it does not consider these payments result in a substantial lessening of competition (which is the legal standard). It said Trustpower's share of the Tauranga and western Bay of Plenty market was declining (although still about 65 per cent, as at February 2019) and its customers were switching to other retailers. It did not consider prices were "abnormally high" or "resulting in negative outcomes for consumers" and would not take the matter further. We do note that Trustpower's prices average about \$575 a year more than the cheapest alternative in the Tauranga area.*

*We do not necessarily share the Commission's view that this matter warrants no further investigation, but as New Zealand's expert competition authority, its view must prevail.*

It was only later in July 2020 that errors in the Commission's investigation were corrected as noted in the internal report.

There was clearly some disappointment in the Commission's decision given three of the themes of the report are ;

- A: Strengthening the consumer voice
- B: Reducing energy hardship
- C: Increasing retail competition

## **2.8 Commerce Commission report July 2020**

The Commission has been investigating the TECT arrangements for several years. The proposed changes to the TECT distribution change the pricing calculations in the July 2020 internal memo as newer Trustpower customers cease to receive the TECT distributions. I have always disagreed that the TECT distribution could be seen as part of Trustpower's offering and the proposed changes weaken this suggestion further. TECT belongs to the residents of Tauranga and should not be handed over for Mercury to use as a bundled subsidy. The electricity customers of Tauranga pay reasonable regulated distribution charges but the retail prices which should have been regulated by free market competition have been distorted by a TECT Trust deed that is outdated and cruel to those at the margins of my community. The Commission should take a stand on behalf of these local customers.

David Riley  
Whakamarama