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Keston Ruxton
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By email: im.review@comcom.govt.nz

Dear Keston,

Input Methodologies review draft decisions – Topic Paper 3: The future impact of emerging technologies in the energy sector

Genesis Energy Limited welcomes the opportunity to provide a submission to the Commerce Commission ("the Commission") on the Input Methodologies review draft decision, dated 16 June 2016 ("The IM Review"). While we appreciate that the Commission is attempting to undertake a fulsome consultation process involving many stakeholders, it is Genesis Energy's firm belief that the Commission has not fully appreciated the potential impacts decisions made today may have on the ability of the energy sector, and others, to develop and evolve a truly competitive emerging technologies environment. Emerging technologies that impact on how energy is generated, stored, used and managed in a consumers' environment are already developing maturity in many international jurisdictions. While emerging technologies will challenge both the sector and the traditional policy solutions employed by regulators, it is essential that the Commission does not inadvertently create barriers to the very near future by advancing a solution set now that could restrict competition and consumer choice.

Genesis Energy would also like to acknowledge the work done by the Electricity Retailers' Association of New Zealand ("ERANZ"); we fully support their submission to the IM Review.

The ERANZ submission considers the detailed issues arising for retailers under Topic 3: The future impact of emerging technologies in the energy sector. This submission considers the macro issues arising from emerging technologies and how to integrate such technologies into a regulatory and market structure designed for networks of poles and lines where the focus was on delivering electricity from the point of generation to the point of consumption. The regulatory and market framework in the future is not that simplistic and the Commission must ensure New Zealand consumers are provided with the opportunities to control how and when they consume either the energy they have produced themselves or the energy produced from the traditional grid once it has reached their home or business.

New Zealand's Energy Future

New Zealand's energy market is undergoing a period of unprecedented transformation from a traditional electricity market to an energy eco-system where control will rest with the end consumer, whether that is residential or commercial. This change is exponentially accelerating and it is essential New Zealand places consumers in the best position to take advantage of the full range of developments happening internationally.

Consumers are ceasing to be passive recipients of electrons delivered to their house or business by electricity distribution businesses ("EDBs"), paying for consumption patterns which they were unaware of and, therefore, could not change or having a regulated third party control their behaviour. As more consumers gain access to smart in-home technologies, there will be increases in products, services and participants in the new energy market and, consequently, a change in consumer and industry relationships.

Genesis Energy believes the traditional vertical relationship focussed on the supply of electrons to the end consumer will become outdated and be replaced with a market where end consumers will purchase multiple products and services that suit their individual needs - changing and shaping the way they receive and consume energy. Proliferation in the highly competitive "beyond-the-meter" market is likely to also create new pressures from new, non-traditional players as diverse as product retailers to telecommunications companies. The shift to a consumer-centric energy eco-system, while maintaining the security, reliability and supply of energy the sector is expected to deliver, will be challenging for all, but stalling roadblocks to advancement are not the answer.

We are likely to see energy service clusters developing where, for example, one provider can supply an in-home battery, another can install solar panels, a third supplier can provide an in-home energy management service, and so forth. All these services may be provided by a single market participant or multiple service providers, depending on what the end consumer chooses, but all must be delivered in a truly competitive way. The opportunities for an energy eco-system a consumer can choose to create in their homes are endless and will suit their needs, not the needs of monopoly assets. We need to empower and enable consumer choice to allow them to decide what they want from their energy services providers, not regulate their option.

The emerging energy related technologies and the beginning of convergence of the energy sector is similar to the 2000s for the telecommunications sector. Since then, telecommunications has evolved from a service that sold call time to a competitive market, offering services that were difficult to comprehend prior to unbundling of telecommunications in 2008, such as streaming services, and there is high uptake by consumers of these constantly developing technologies. The emerging energy sector is no different and it will take time and effort from the Commission to understand where the boundaries between regulated and non-regulated markets exist.

Innovation and access to the right product for each consumer is essential to the success of this market. Not all technology is the same, nor will a single type of technology work for everyone. For example, one battery may perfectly suit one type of consumer, but not deliver the benefits for another. Consumers must have the ability to choose their products and their providers in a competitive market, if the benefits are to be best achieved; it cannot be left to lines companies to dictate a certain technology for their customers so locking others out of the market.

This is a daunting yet exciting prospect for market participants, end consumers and regulators alike. We are concerned that this exciting change will be stifled if EDBs are able to leverage off guaranteed cost recovery to offer emerging technologies below cost in the short to medium term creating an unsustainable commercial environment for those new entrants in what could, and should, be a competitive sector of the energy market – effectively stifling the sector for at least a decade, if not longer.

Concern about the wholesale inclusion of emerging technologies in the RAB

We do not envisage an end to the need for a well maintained and innovative distribution network that is, the traditional lines and poles business, and believe new technologies will allow EDBs to augment such networks. However, it is perverse to consider assets or services should be included in the regulated asset base merely because they are similar to, or a substitute for, the regulated service. New technologies are constantly developing providing efficiencies and opportunities for end consumers. Further, beyond-the-meter services are a different market from the network itself and, accordingly, should be treated differently. The Commission regulates markets "*where there is little or no competition and little or no likelihood of a substantial increase in competition,*[1]" This is not the case for beyond-the-meter services using emerging technologies. There appear to be similar reasons given for including beyond-the-meter investment by EDBs in emerging technologies in the RAB that were given for not unbundling telecommunications in 2003. This is a significant concern.

Current regulatory framework creating a disjointed regulatory response

We understand that there are many issues to be addressed within a wide regulatory framework for which the Commission is not wholly responsible. The IM review and whether the investment in emerging technologies by EDBs, should be included in the Regulated Asset Base ("RAB") or not, is one piece of a complex and evolving puzzle. A great deal is at stake - it is essential that the regulatory settings (including market structure, pricing structure and cost allocation of assets used for regulated services) are considered holistically.

[1] Section 52 The Commerce Act 1986

While the Commission is statutorily responsible for only a small part of the wider regulatory context and how emerging technologies will be integrated into the new energy eco-system, it is unacceptable to use the disjointed regulatory framework as a reason to make piecemeal decisions. We know the New Zealand regulatory environment complicates this integration because it requires three regulators, the Commission, the Electricity Authority ("the Authority") and the Ministry for Business, Innovation and Employment ("MBIE"), to consider separate components of the same issue. The lines are also blurring as to where certain responsibilities lie complicated by technology, which straddles traditional boundaries. We cannot have one component of the emerging energy ecosystem being regulated differently from others, nor can we have one area of regulation facilitating emerging technology in competitive markets while the other areas remain static or seek to restrain. We need the three regulators to lead wider discussions with industry, so that New Zealand does not become an emerging technology backwater.

We understand that a collaborative approach is much harder due to the number of parties with varying perspectives, but this diversity increases, rather than diminishes, the importance of such collaboration.

We urge the Commission to pause, to reflect, and reconsider their approach to competitive emerging technologies within a wider discussion about New Zealand's energy future.

Options to ensure emerging technology delivers long term benefits for New Zealand consumers

We note the Commission states in the IM Review "*The precise nature of future electricity distribution networks is uncertain and currently subject to wide international debate. We consider that imposing regulatory restrictions on EDBs' ability to efficiently respond to the changing environment is inappropriate at this stage.*" We agree with the first part of this statement, but believe that rather than allowing emerging technologies offered beyond-the-meter by EDBs to be included in the RAB, the Commission consider:

(1) excluding beyond-the-meter emerging technologies from the RAB to ensure that the converse does not arise, that is, hindering competition where early indications are that it will be a highly competitive market. This can be facilitated by EDBs ownership of emerging technologies through affiliates not involved in regulated services, a mechanism that EDBs are already using for ancillary services, such as tree maintenance;

(2) requiring full, open and continuous disclosure of all investments, and associated data, by EDBs in emerging technologies under new Information Disclosure obligations to ensure full transparency; and

(3) removing the decision as to what emerging technologies can or cannot be included in the RAB from this decision-making process and allow additional

time for discussion with stakeholders and collection of evidence on the impacts of these technologies.

The current decision on emerging technology does not need to be reached this year. The Commission has time and with the energy sector on the cusp of monumental change, it would be prudent to take the time. Separating this part would ensure that a long-term decision with the possibility for far-reaching consequences is not rushed and does not negatively impact competition in the energy market of the future.

We strongly urge the Commission to consider a separate work stream from the wider IM Review to consider the future integration of emerging technologies into the regulatory framework.

If you would like to discuss any of these matters further, please contact Rebekah Cain on 04 495 3348.

Yours sincerely

Dean Schmidt
Executive General Manager
Corporate Affairs and Transformation