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Dear Andrew

Electricity Pricing Review Proposed Terms of Reference

The BusinessNZ Energy Council (the 'BEC') is pleased to have the opportunity to provide a submission to the Ministry of Business, Innovation and Employment on its consultation paper entitled 'Electricity Pricing Review proposed terms of reference (undated).¹

Introduction

It is helpful to have periodic regulatory 'check-ins' to ensure that the electricity system as a whole is well calibrated and delivering efficient and effective outcomes. However, by the same token, regular reviews - unless carefully calibrated - can be destabilising, creating uncertainty, and providing unhelpful incentives that run counter to the very objectives being sought from it. A careful balance is required.

The proposed terms of reference as drafted represent an eclectic mix of issues. Each issue posed could be the subject of a lengthy submission in its own right. Given this, we have not sought to respond specifically to each of the points but rather considered it more helpful to provide our views on the overall shape and direction that we believe the review could usefully pursue.

¹ Background information on the BusinessNZ Energy Council is attached in Appendix One.

Where relevant, our members who have specific interests in the various detailed matters raised will respond to those directly.

Comments

The BEC suggests that greater consideration by officials and the Government of the following issues will improve the likelihood that it will make a positive overall contribution to the efficiency and effectiveness of the electricity system:

- the scope of the review. There are a number of inter-related dimensions to this, being:
 - o while the BEC does not think this to be intentional, the scope of the review, as drafted is extremely broad (as evidenced in the first bullet-point in paragraph 1, the review is now clearly more than an assessment of the electricity price paid by end-consumers, but an end-to-end examination of the delivery of electricity). But this is not reflected in the range of issues that have been drawn out as being in, and out of scope (paragraphs 3-6). For example, the draft terms of reference appears to contain a number of issues that would, at least on the face of it, meet the criteria in paragraph 6 as being issues that have already been subject to extensive scrutiny, consultation and litigation. It would be helpful to make better connections between where the edges of the review lie and what is to be under consideration;
 - o there is no clarity as to purpose of the review or put another way, the evidence – even prima facie – that would be the focus of a review. A good review is one that lets the evidence led us to a robust debate about solutions targeted to them. In its 2017 review, the International Energy Agency described New Zealand as being "a world leading example of a well-functioning electricity market, which continues to work effectively."² This is consistent with the BEC 2017 Energy Briefing that notes our energy sector performs well across a range of dimensions. A preamble at the outset of the terms of reference could be a useful way to provide focus and help with an understanding of both scope and clarity of purpose. Such a statement could, for example, say the review will focus on measures to improve the performance of the electricity market including ongoing institutional and technological flexibility and by removing barriers to innovation and encouraging, where possible, competition; and

² IEA New Zealand 2017 Review, page 13.

- it is unclear what outcomes are being sought from a successful review. How will the review panel, let alone market participants, understand what a successful review might look like, or the standards against which they are being measured. In this regard, the BEC looks to the work of the Sapere Research Group for BusinessNZ in 2014 for guidance. In their report to BusinessNZ, they identified five policy goals that seemed enduring across countries and time:
 - i. security of supply – in the sense of supply meeting demand without involuntary cutting supply, or a heightened threat of cuts to supply
 - ii. efficient operation of the wholesale and retail sectors, with competition a primary tool for achieving efficiency
 - iii. efficient use of, and investment in, long life assets (including transmission and distribution), guided by economic regulation
 - iv. meeting community or social minimums, including universal access to electricity and support for those who can't pay (as opposed to won't pay)
 - v. integrating environmental objectives while mitigating the impact on the industry of achieving these objectives, with a current focus on climate change.

Experience in New Zealand and elsewhere argues that enduring performance gains will be achieved in the electricity sector if the policy interventions provide a clear path to better outcomes across all of these goals. Undue focus on one or a few goals risks policy swings which undermine the likely long-term durability of the changes and the confidence necessary to invest efficiently in the long-life assets of electricity production and delivery.³ This is consistent with the BECs advocacy around the energy trilemma and the importance, even while focusing on a priority area (such as affordability) of being mindful of the other dimensions of environmental sustainability and energy security⁴;

³ Sapere Research Group report to BusinessNZ entitled 'Achieving policy goals for the electricity industry', Toby Stevenson, Kieran Murray, Joanna Smith, dated 10 February 2014.

⁴ It is interesting to note that the draft terms of reference makes no reference at all to security of supply. The BEC considers that any review must at least hold current security of supply standards constant, if not explicitly seek to improve them where efficient to do so. If the review were to dampen investor returns, investment could halt resulting in security of supply issues or implications for pricing in the long term.

- forward or backward looking? There are two dimensions to this, being:
 - o we agree that there is little point to setting the future policy direction by looking in the rear vision mirror (we assume that this is the presumption behind the placement of a cut-off date of 1999 to the use of historic data). It is, of course, important to understand why we are where we are today, but to do more than that in order to understand the outcomes that are being achieved (as opposed to those sought) would not be a useful way to utilise resources. However, as currently drafted the detail of the information collection activities (paragraph 2), competition (paragraph 3) and equity analysis (paragraph 4) are all backward-looking but the future technologies investigation is future-looking (paragraph 5); and
 - o some of the language could be amended to remedy this – e.g. it states that the review is to determine "whether the price paid by end-consumers for electricity **is** fair and equitable" (putting aside for the moment what 'fair and equitable' means in terms of practical market operation and who should deliver fairness and equity, for more on this see below). This could be amended to read "to ensure the prices paid by end-consumers for electricity **will** be fair and equitable. In light of the rapidly changing circumstances and pressures, more will be gained out of a review that has a sense of what it seeks, rather than what we have now. This would seem to link much better with the proposed assessment of "the ability of the market and regulatory system to enable and benefit from emerging technologies and innovation in business models, and the likely impact on prices";
- boundaries with other work that is underway or has been commissioned. The BEC notes that there is a significant amount of work either already underway or commissioned that will potentially have substantial implications for the operation of the electricity system. For example, the work being undertaken by the Electricity Authority with respect to transmission pricing, the handing over the work on how to reach 100% renewable electricity by 2035 to the new Climate Commission and the work of the Productivity Commission on its low emissions economy inquiry. It is important that any inevitable overlaps are well managed and that duplication is, where possible avoided. As an aside, we also wonder about the balance of manifesto commitments set out in the Labour Party's energy policy that act as the policy defaults outside of those issues listed in the coalition agreements, and which will have implications for the effectiveness and efficiency of the electricity system;

- the collection and use of financial data. There are two points worth making here, being:
 - o a substantial amount of data is already disclosed to MBIE, the Electricity Authority, and the Commerce Commission, so that should be leveraged ahead of new data requirements which ask for the same/similar data repackaged. This will be unnecessarily costly; and
 - o lessons can hopefully be learnt from the recent work undertaken on petrol pricing. Not only does this raise questions of comparability of information, but also interpretation. A sole focus on financial performance ignores the possibility that a company may be delivering a superior service or superior products to its customers. Such a company could easily be delivering better value to its customers while still demonstrating better financial returns to its shareholders. Such companies should not be penalised for, in effect, delivering better value to customers. But by the same token, where a company has a superior product it should be able to demonstrate this; and
- fairness and equity. As set out in our 2017 Energy Briefing (<https://www.bec.org.nz/projects/energy-briefing-2017>), the BEC and its members recognise that energy hardship is an issue for a segment of their consumers and that they have a role in addressing it. However, an efficient and competitive electricity market is only a partial response as regardless of the efficiency of the market and the prices it reveals, end consumers could still have difficulty paying their bills. The BEC suggests that due to the inherent difficulty with interpreting what fairness and equity means in the operation of a real-time 24/7 market,⁵ that the review would achieve more by focusing on energy affordability (one of the energy trilemma limbs), and on seeking assurances from market participants and regulators that prices are cost reflective.

Summary

We are grateful to the Minister for fulfilling her commitment made to the BEC Council meeting on 20 November 2017 and making the draft terms of reference for the electricity sector review available for comments. This new level of openness and transparency is to be applauded.

We see the review as an opportunity to look forward, and to ensure that the electricity system is well positioned to achieve positive outcomes across the

⁵ This difficulty was no more apparent than during the time of the previous electricity market regulator, the Electricity Commission who had persistent difficulty in both interpreting its fairness objective, and implementing it in a consistent, logical manner.

three trilemma dimensions and unlock the exciting technology-led future that is emerging. As technology evolves more quickly, with shorter payback periods, it is important to ensure that the sector's regulatory and commercial frameworks are fit-for-purpose.

However, reviews are not costless, and reduce investment predictability at a time when the sector is moving at the fastest pace to test and innovate new technologies and business models. A broad sweeping review should not be undertaken lightly.

We would be happy to discuss these and any other issues the Ministry considers relevant to progressing the inquiry and look forward to working closely with it as it proceeds.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Carnegie', with a stylized flourish at the end.

John A Carnegie
Executive Director
BusinessNZ Energy Council

APPENDIX ONE: ABOUT THE BUSINESSNZ ENERGY COUNCIL

The BusinessNZ Energy Council (BEC) is a group of New Zealand's peak energy sector organisations taking a leading role in creating a sustainable energy future. BEC is a division of BusinessNZ, New Zealand's largest business advocacy group. BEC is a member of the World Energy Council (WEC). BEC members are a cross-section of leading energy sector businesses, government and research organisations. Together with its members BEC is shaping the energy agenda for New Zealand.

Our vision is to support New Zealand's economic wellbeing through the active promotion of the sustainable development and use of energy, domestically and globally. With that goal in mind, BEC is shaping the debate through leadership, influence and advocacy.

[BusinessNZ](#) is New Zealand's largest business advocacy body, representing:

- Regional business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Employers Otago Southland](#)
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and the Business and Industry Advisory Council ([BIAC](#)) to the Organisation for Economic Cooperation and Development ([OECD](#)).

