

Summary of submissions: IPAG Equal Access Project

May 2018

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1 Overview of the consultation

- 1.1 On 30 May 2017, the Electricity Authority published a consultation paper entitled *Enabling mass participation in the electricity market: how can we promote innovation and participation?* The consultation paper sought views on changes to regulation that may be required for consumers to benefit from changes in technology and innovation happening in the electricity industry. A summary of submissions received in response to that consultation paper was published on the Authority's [website](#) on the 7th of November 2017.
- 1.2 Following that consultation round, the Innovation and Participation Advisory Group (**IPAG**) was asked to undertake the *Equal access framework* project (**Equal Access Project**). The Equal Access Project is intended to ensure that appropriate arrangements are in place to ensure equal access and a level-playing field to New Zealand's electricity networks.
- 1.3 The IPAG sought further input from interested parties about concerns raised regarding access arrangements for transmission and distribution networks. In particular, the IPAG sought views on how competition, efficiency and reliability in the industry might be affected by the existing or different access arrangements, and how this might affect consumers. Stakeholders were also asked to provide their perspective on whether the existing access arrangements need to change to ensure that consumers benefit. The IPAG's focus is on consumers and the technological changes and innovation that are already affecting New Zealand's electricity industry.
- 1.4 Nine submissions were received in response to the IPAG's request.
- 1.5 This document gives a high level summary of the submissions received, and identifies some of the key themes observed. It is not intended to be comprehensive – rather, it offers a general overview. Any submitters mentioned in this document are used by way of example and are not necessarily the only parties who made a certain point. For the purposes of this summary, the IPAG's request for information has been split into two questions and this summary is organised according to those questions.

2 General themes in the submissions received

- 2.1 A recurring theme was a request from submitters to clarify the parameters and objectives of the Equal Access Project and provide clear evidence and definition of the problem, if any, with equal and open access arrangements (Transpower, Unison). Aurora and Entrust requested IPAG to further consider and refine the scope of the project. The reasons included that the terms 'open access' and 'equal access' are used interchangeably and it is not clear what distinction, if any, the Authority is trying to make. Aurora further suggested that network support is not a network access issue.
- 2.2 A number of energy trusts' noted that there is no robust evidence that Distributors are discriminating significantly against other parties in the introduction and connection of new participants' (see ETNZ, Waitaki and Hawke's Bay Power Consumers' Trust). Unison also noted that regulatory solutions (particularly structural regulations restricting the operations of Distributors') should not be imposed without clear evidence of broad-based problems.
- 2.3 Similarly, Transpower supported the Authority's request for IPAG to consider and report on the operation of the existing framework for using transmission and distribution networks, but noted that the first step was to be clear on whether a problem exists. Specifically, Transpower noted that the Authority's detection of "*a lack of confidence in the existing open or equal access arrangements*" is not evidence of the existence of a problem in itself. Entrust agreed that there was no evidence to support this claim.
- 2.4 ETNZ submitted that the Authority and the IPAG's focus should be on consumers rather than ensuring the competitive market is sacrosanct. ETNZ suggested that the correct regulatory approach to increase competition via mass participation is to facilitate community projects and distributor-led ventures. ETNZ further noted that most of the distribution industry is owned by

consumer trusts who are interested in developing and encouraging local options that bring benefits to shareholders and their communities. ETNZ's views were supported by Waitaki (who made identical submissions) and Hawke's Bay Power Consumers' Trust. Entrust also suggested that the Authority has been overly focused on networks, and that increasing mass participation would more easily be achieved by addressing factors such as: resistance to provision of customer data, the stalling of smart meter roll-outs, perverse outcomes in the wholesale market, and customer disengagement. Entrust submitted that the fundamental question is whether there are barriers to entry or adopting new business models.

3 Submissions in response to consultation questions

3.1 How might competition, efficiency and reliability in the industry be affected by the existing or different access arrangements, and how this might affect consumers?

- 3.1.1 A number of submitters noted that some rigid line/energy separation rules introduced in 1998 remain in place and that while these separation rules have been progressively broken down by successive reforms, the remaining rules continued to create a disincentive to a large segment of the industry entering the energy market. These submitters questioned whether any significant benefits are delivered by the remaining separation requirements, and recommended investigating whether they should be abolished (ETNZ, Waitaki, Hawke's Bay Power Consumers' Trust).
- 3.1.2 ETNZ submitted that the Authority's preference for removing ACOT arrangements will have the effect of removing the only current material incentive (in terms of section 54Q of the Commerce Act) for mass participation in local energy markets.
- 3.1.3 One submitter also noted that the Part 4 regulatory framework creates uncertainty by defining the line service as extending beyond the metering installation into the home (Mercury). Mercury submitted that there is considerable competition to provide smarter home services which is essential to drive innovation and ensure technology risk is borne by commercial businesses rather than consumers.
- 3.1.4 However, Mercury noted that there is a risk that competition will be undermined in situations where Distributors are allowed to roll out new technologies, that are provided in competitive markets as regulated assets into homes and where the Authority acknowledges there are "incentives to raise barriers and block competition to favour themselves". Mercury gave the example of a Distributor providing "free batteries" to households, justified on the basis of enhancing network reliability, a claim which cannot be validated as there is no transparent way for the market to understand the network's needs or tender to provide the network a similar service that may be more cost effective.
- 3.1.5 Contact also noted that networks can make access to network value conditional on consumers participating through mandated technology, rather than through a competitive market. Contact used the example of a "walled garden", and Vector's requirement to adopt a "Powerwall" with no value for other batteries.

3.2 Do existing access arrangements need to change to ensure consumers benefit? The IPAG's focus is on consumers and the technological changes and innovation that are already affecting New Zealand's electricity industry.

- 3.2.1 Unison noted that market opportunities for emerging technologies are only just developing, and as a result, regulatory interventions at this stage may do more harm than good. Unison submitted that the Equal Access Project should focus on the precise nature of work to be done to develop the platforms, commercial and technical arrangements to enable efficient use of distributed resources.
- 3.2.2 Unison suggested that the IPAG start with a clear view of market context and the requirements to enable greater participation from distributed resources, before considering regulatory settings. Specifically, Unison noted that IPAG should investigate the potential

market opportunities and likely requirements for participating in those markets, and the likely attributes of the technical and commercial platforms that need to be in place to enable the markets to develop (ie distribution system operator platforms to manage dispatch of distributed resources, or trading platforms for buying and selling services from distributed resources).

- 3.2.3 Entrust submitted that the Authority has been overly focused on networks. It said that mass participation would be more easily increased by addressing: resistance to provision of customer data, stalling of smart meter roll-outs, perverse outcomes in the wholesale market and customer disengagement. Entrust saw the fundamental question as whether there are barriers to entry or adopting new business models.
- 3.2.4 Mercury, however, submitted in favour of changes to the distribution regulatory framework. Mercury noted that a lack of transparency under current arrangements incentivises Distributors to transact with related parties given the potential to earn unregulated revenue. Mercury gave the example of vegetation management being predominantly managed internally by EDBs, despite evidence suggesting external parties could be at least 33% more cost effective.
- 3.2.5 Mercury agrees with the findings of the Australian Energy Market Commission that “centralised control over the installation and use of the services provided by distributed energy resources may make it easier for DNSPs to manage their networks in a technical sense, but would not support consumer choice or maximise the value of all services that those resources are capable of providing.”
- 3.2.6 Mercury suggested that Transpower’s current model is a useful template for reform of the distribution regulatory framework. It submitted that the structural separation between the grid owner and system operator, and promotion of transparency by assessing constraints and alternatives to network investment promotes transparency. Mercury noted that the regulatory investment test applied to major capital investments (evaluating network and non-network options for greatest consumer benefit) has applied to Australian distributors for some time.
- 3.2.7 Contact also noted that the current legislation is not supportive of a competitive energy services market. Contact emphasised that under current arrangements consumers cannot “co-optimize” value streams. Networks appear to prefer building assets, rather than contracting network support and there is a lack of transparency under the current framework. Mercury also noted that there is a lack of a level playing field and insufficient transparency and scrutiny around network investment decisions, including information asymmetry between distributors and third party service providers as to potential network investment opportunities.
- 3.2.8 In contrast, ETNZ noted that the Commerce Act 1986 and the Commerce Commission’s role as regulator is in place to safeguard the competitive process and that it is for the Commission to “police” irregularities (ETNZ, Unison, Waitaki).
- 3.2.9 Mercury submitted that Distributors should be required to disclose network investment opportunities and select options based on a net benefit framework, including producing forecast maps that demonstrate anticipated expenditure and constraint. Additionally, Commerce Commission disclosure requirements could be improved to require Distributors to include in Asset Management Plans what investments in emerging technologies have been included in the Regulated Asset Base and on what basis (Mercury).
- 3.2.10 Mercury suggested that there is merit in evaluating options for greater separation of ownership and operation of Distributed Energy Resources by Distributors. Mercury noted that “ring-fencing” of the regulated services should be investigated as a possible solution, including how it could be implemented or promoted by the Authority and might work in practice. Mercury also noted that “ring-fencing” has been adopted in the UK and Australia for monopoly service providers and that the IPAG should consider these international models.

- 3.2.11 In contrast, Unison noted that Retailers are incentivised to advocate for “ring-fencing” as a solution as this eliminates a potentially important source of competition for Retailers in emerging technology markets. Unison suggested that the Equal Access Project should not degenerate into arguments about who may participate in new technology related markets.
- 3.2.12 ETNZ was concerned with the Authority’s focus on limiting Distributors to a role as ‘platforms’ for Retailers and other parties to provide innovative technologies and stated that this raises serious uncertainties for consumer trusts that have ownership interests in Distributors.

4 Other remarks

- 4.1.1 Transpower noted that the broad scope of the Equal Access Project risks overlap with other Authority Projects such as the Default Distributor Agreement and the Commerce Commission’s responsibility for the economic regulation of networks. Unison also acknowledged the overlap of the Equal Access Project with other projects on the Authority’s work programme (Data Exchange, Distributor Pricing, Default Distributor Agreements), and noted that the IPAG should carefully consider these work streams, as it may be difficult to fully address equal access until they are completed. Entrust noted concerns that the Equal Access Project may proceed too slowly due to the existing workload of other projects the Authority already has ongoing. It said that project planning information should be published more quickly.
- 4.1.2 While submitters generally encouraged the involvement of the Commerce Commission in considering network support services and efficient network investment and regulation (Transpower, ETNZ), Transpower emphasised that the IPAG must be well advised on existing regulatory framework to ensure that policy development under the Code does not conflict with the Commerce Commission’s mandate under Part 3 or Part 4 of the Commerce Act 1986 (including its recent review of input methodologies). ETNZ emphasised that while the Authority could play a role in notifying the Commerce Commission of market irregularities, it should not pre-empt irregularities in the market by seeking enforced exclusion of Distributors from activities.
- 4.1.3 Aurora and Entrust expressed that the Authority and the Commerce Commission have overlapped in their requests for submissions on this matter and this has caused the need for submissions to be made twice. Both requested clarity on the roles and responsibilities of the Authority and the Commerce Commission. Aurora felt that third-party network access issues needed to be resolved by the Commerce Commission.
- 4.1.4 Specifically, ETNZ, Waitaki and Hawke’s Bay Power Consumers Trust suggested that a joint discussion document between the Authority and the Commerce Commission on issues where the Commerce Commission and Authority’s responsibilities overlap would be sensible. They submitted that this document should contrast the expectations of each regulator and be open for public submission (for example the proposal to remove ACOT incentives and s 54Q requirements under the Commerce Act 1986).
- 4.1.5 ETNZ also commented that the “protracted and inconclusive” transmission pricing reform creates uncertainty in the market, particularly in parts of the country where competition amongst Retailers is weakest.
- 4.1.6 In addition to the responses to specific questions, Transpower noted that the definitions for “open” and “equal” access are used interchangeably in the Authority’s decision paper. Transpower submitted that “equal access” is not a commonly used term for network access. Aurora and Entrust also requested clarification on the scope of each term.
- 4.1.7 Transpower notes that the Telecommunications Act uses “open access”, which creates precedent for network access settings. The Telecommunications Act includes non-discrimination requirements which seem consistent with treating network users equally. Transpower submitted that IPAG must use “open access” and “non-discrimination” when

describing equality of network access, otherwise, the Authority will need to consult on a new definition for “equal access” as it is not currently commonly used or understood.

- 4.1.8 Unison cautioned against extending the facilitation of ancillary markets to distribution. Unison noted that issues with diversity and scale limit this approach for distribution. For example, to implement and maintain ancillary type markets may bring increased cost, complexity and system risk which would negatively impact efficiency and reliability. Unison suggested that IPAG explore impacts on efficiency and reliability as comprehensively as competition.
- 4.1.9 Entrust expressed the view that submissions and references to possible deterrence from investment into the industry have lacked substance, with no evidence backing these concerns.

Appendix A List of Submitters

Submitter	Description of submitter
Contact Energy	Electricity generator, natural gas wholesaler, and electricity, natural gas, and LPG Retailer.
Energy Trusts of New Zealand Incorporated (ETNZ)	Represents 22 energy trusts in New Zealand.
Hawke's Bay Power Consumers' Trust	A consumer energy trust which wholly owns Unison.
Mercury Energy	Electricity Generator and Retailer.
Transpower	Owner and operator of the national grid.
Unison	EDB operating in the Hawke's Bay, Rotorua, and Taupo.
Waitaki Power Trust (Waitaki)	Owner of Network Waitaki.
Aurora Energy (Aurora)	Electricity Distributor operating in Dunedin and Central Otago
Entrust	Private trust that is the majority shareholder of Vector