



4 October 2019

James Stevenson-Wallace
Chief Executive
Electricity Authority

Tony Baldwin
Chair
Market Development Advisory Group

By e-mail: james.stevenson-wallace@ea.govt.nz, tony@tonybaldwin.co.nz, Rob.Bernau@ea.govt.nz

Dear James, Rob and Tony,

Electric Kiwi's concerns about the membership of MDAG

Electric Kiwi would like to register our disappointment with the Electricity Authority's decision on the membership of the Market Development Advisory Group (MDAG). While we agree with the MDAG Chair that "As usual, we should seek to ensure that the group has a rounded composition" we respectfully do not consider this has been achieved.¹

No part of our letter is confidential, and we are happy for it to be made publicly available.

Caveat to our comments

We stress our comments in no way reflect on, or are in anyway critical of, any of individual members of MDAG or any other Advisory Group. We appreciate that Advisory Group members are taking time out of their 'day jobs' to participate and contribute to the Advisory Group processes.

We recognise that under 6.5(b) of the Terms of Reference for Advisory Groups members are appointed to act in a personal capacity, not as representatives of organisations, but consider it would be naïve to expect or believe that commercial organisations offer individual staff members to participate on Advisory Groups whose views don't coincide with the organisations they work for. Naturally the extent to which the commercial interests of the organisations Advisory Group members work for will vary in the degree with which they coincide with the long-term interests of consumers.

Advisory Groups need to be seen to provide balanced and neutral perspective for stakeholders to have confidence in the process

While individual members will naturally bring the views and commercial interests of the organisations they represent to the Advisory Group they are a member of, the success and credibility of each Advisory Group hinges on the Group as a whole being able to not only provide a balanced and neutral perspective but, just as importantly, being perceived by stakeholders as providing a balanced and neutral perspective on the matters they are responsible for. The Transmission Pricing Advisory Group (TPAG) experience provides a salutary lesson in the importance of providing a balanced and neutral

¹ Untitled letter from Tony Baldwin to James Stevenson-Wallace, 23 May 2019.



perspective as the so-called 'TPAG majority' recommendations reflected that the TPAG majority was made up of South Island generation interests. There was very little support for their view outside of TPAG. The 'TPAG majority' position turned out to be an 'industry minority' position with no consumer or consumer group support.² The result was a set back to the TPM review, with the Authority ending up having to abandon the Advisory Group process.

The Electricity Authority decisions on MDAG membership are likely to undermine confidence

The Electricity Authority should be well aware there is growing disquiet about MDAG and the imbalance of incumbent interests with its membership having consisted of 3 of the 5 largest incumbent retailers, and no independent retailer representation.

The concerns are held by a much broader group than just smaller participants or independent retailers, as suggested by your correspondence on this matter.³ This was made very explicit in widespread comments about MDAG in response to the Electricity Price Review.⁴ It should be clear a wide cross-section of industry stakeholders do not perceive MDAG as providing balanced and neutral perspectives on the matters they are responsible for. We think this should be of significant concern to the Electricity Authority and MDAG members.

Instead of resolving the imbalance in MDAG membership, and the perception problem that has developed, the Electricity Authority's decisions on the revised membership will exacerbate them.

We are concerned and disappointed by the loss of Matt Rowe (Enel X)⁵ and Darren Gilchrist (Oji Fibre Solutions) from the Advisory Group.

The MDAG membership is now even more strongly dominated by incumbents, with 3 incumbent retailers and 3 electricity network representatives as well as a Partner from Houston Kemp, an organisation that has strong ties with incumbent retailers (e.g. Trustpower) and electricity networks (e.g. ENA). In terms of 'balance' there is only one independent retailer representative and no major user representatives. The impression now is that MDAG is a 'closed shop'.

Ensuring transparent and free and frank engagement and expression of ideas

We note MDAG is currently considering a draft MDAG operations and procedures document. Our expectation is that any such document will be consulted on with industry before it is finalised. It will inevitably have implications beyond MDAG and have precedent value and relevance to other Advisory Group and Electricity Authority processes.

We expect any such document to promote and encourage open, transparent and free and frank dialogue within Advisory Groups, amongst industry stakeholders and other public fora. It is important

² Only 3 parties outside of TPAG supported the 'TPAG majority', all of which had South Island interests.

³ Untitled letter from James Stevenson-Wallace to Tony Baldwin, 13 May 2019.

⁴ For example, ENA noted: "The Electricity Authority has asked its Market Development Advisory Group (MDAG) to review the rules relating to saves and win-backs. This topic is divisive with strong views held by incumbent retailers versus new entrant retailers. We would note that the MDAG does not appear to include a new entrant retailer or a residential consumer representative." Vector similarly commented "Although we welcome the EA's investigation of the impact of win-backs, we are concerned that on this and other issues, they are unduly influenced by the large incumbent players. We note that there are currently no independent retailers represented MDAG, which has been tasked with investigating win backs.

⁵ Please refer to the e-mail from Phillip Anderson to James Stevenson-Wallace, Gagging advisory groups, Date: 10 September 2019 at 9:59AM.



any regulatory institution has the confidence to have their views scrutinised and challenged and to avoid situations where 'devil's advocate' or alternative views are suppressed or displaced by 'group think'.

We would also expect a symmetric approach to be taken to both the Electricity Authority and Advisory Groups. For example, on the matter of saves and winbacks the Chief Executive of the Electricity Authority publicly questioned whether there was a problem while the matter was before the Advisory Group for consideration. This not only brought into question whether the Electricity Authority would be considering the MDAG advice and alternative stakeholder views with an open mind, but also raises potential issues about how the Group's advice or recommendations might be perceived by the Authority.

Expert Advisory Panel's warnings have gone unheeded

The Expert Advisory Panel's final report highlighted that the Panel had warned the Authority about how it is perceived, including the perception that it favours incumbent operators over independent retailers: "Perhaps it is only a matter of perception, but perceptions are reality for those who hold them. No doubt some of the Authority's decisions have coloured their unfavourable view, particularly in the slow and costly transmission pricing controversy. But even allowing for that, the strength and extent of these views lead us to urge the Electricity Authority to step up its engagement efforts because it is vital all participants feel their views have been heard and considered. We shared these observations with the Authority's board and senior management ..." The Authority's decisions on the make-up of MDAG won't help to resolve these concerns.

Concluding remarks

Electric Kiwi's disappointment and concerns are heightened by the critical importance of some of the work MDAG is or has been responsible for. This particularly includes saves and winbacks and spot market trading conduct which are two of the most important issues in front of the Electricity Authority. The saves and winbacks problem, alone, means consumers are paying circa \$500m per annum, in loyalty taxes, more than they should be and dwarfs most of the Authority's work programme in terms of importance for promoting the long-term interests (benefit) of consumers. I would be happy to discuss Electric Kiwi's concerns about MDAG, and about what we consider to be the most pressing matters for the Electricity Authority to address at this time.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'L. Blincoe', with a long horizontal flourish extending to the right.

Luke Blincoe
Chief Executive, Electric Kiwi Ltd