

24 September 2021

James Stevenson-Wallace  
Electricity Authority  
Level 7 Harbour Tower  
2 Hunter Street  
PO Box 10041  
Wellington 6143  
New Zealand

Dear James

**Review of competition in the wholesale market from 2018 Pohokura outage to mid-2021**

The Meridian team will today respond to Andrew Doube’s letter of 17 September 2021. In that letter the Authority asks for our comments on what it describes as “observations of competition in the wholesale market.” We understand the Authority proposes to publish its observations in its upcoming Issues Paper and Review Paper. We also understand from this week’s Market Brief, that the Authority’s Board has already considered the observations that form part of the Review Paper and that it will consider the observations forming part of the Issues Paper in October. The Market Brief indicates that release dates for both Papers are likely to be in late October.

The purpose of this letter is to raise with you, and to ask you to raise with the Authority’s Board, Meridian’s strong concern with aspects of the limited extracts from the Review and Issues Papers that we have been asked to review and comment on. Mr Doube’s letter says these contain the “key information” provided by Meridian to the Authority. The reality is that in places they contain nothing of the sort. It is obviously important for the Authority’s Review that it is grounded in an accurate understanding and fair reflection of the underlying facts. If it is not, the Review is unlikely to be constructive, and more importantly may result in policy prescriptions that are contrary to the interests of consumers.

More particularly, and as outlined in our detailed response to Mr Doube, the Authority’s selective and in places incorrect use of the information we have provided, along with the surprising tone and choice of language in the extracts we have been asked to review, is concerning. The Authority has either misunderstood or misinterpreted some of that information, rather than assessing it accurately and reasonably on its own terms.

At its simplest, the information we have provided to the Authority along with information available to the Authority from other sources, including information already in the public domain, simply does not substantiate or support a number of the Authority’s comments in the material provided to us for review or the broader narrative the Authority seems to be developing in that material. Further the Authority seems to have omitted to include in its comments any information that we have provided or that is otherwise available to the Authority that is inconsistent with its comments and chosen narrative.

I ask that full copies of the confidential information provided by Meridian to Authority staff in respect of the NZAS contract are provided to each member of the Authority Board for their review along with a copy of our detailed response to Mr Doube. I respectfully ask that the Board consider whether, in the light of their own review of the totality of that information, the Authority's selective use of it in the limited extracts provided to us, is accurate, fair or reasonable.

I am acutely conscious that the Meridian team is limited in our ability to fully assess and comment on how the information we have provided to the Authority has been used, by the fact that the Authority has provided only limited extracts from the relevant Papers. In the light of the issues we have identified in those extracts, natural justice requires the Authority should now change course and properly consult with parties like Meridian.

This would involve the Authority providing us with a full copy of the draft Issues and Review Papers, subject only to redactions for confidentiality. This should be done ahead of their public release so that we have an adequate opportunity to comment on and if necessary correct how the Authority has used the information we have provided. In making this request I am not seeking special treatment for Meridian. I believe all parties that have been required to provide information to the Authority for the purposes of the Review should also be consulted in this way. Taking this step is important for industry and wider sector confidence in the Authority. I am also conscious that the review has proceeded to date on the basis of narrow and targeted information requests rather than the kind of broad engagement with, and consideration of a wide range of views and information from, stakeholders that characterises regulatory best practice. Permitting broader engagement on the full draft Papers at this stage would support better informed and more analytically robust conclusions prior to wider publication.

While Meridian's detailed comments are best left to the response to Mr Doube there are three high level points I wish to make:

1. s 9(2)(b)(ii) and s9(2)(ba)(i)  
[Redacted text block containing multiple paragraphs of blacked-out content]

s 9(2)(b)(ii) and s9(2)(ba)(i)

[Redacted]

s 9(2)(b)(ii) and s9(2)(ba)(i)

[Redacted]

[Redacted]

We have engaged with the Commerce Commission around the back-to-back hedge contract with Contact. The Authority have been provided with the Commerce Commission's decision. We do note the significant difference in approach that the Commerce Commission adopt compared to the Electricity Authority. As part of their investigation the Commerce Commission actually took the time to ask us what had occurred to ensure their decision was fully informed. In contrast the EA

staff have not sought to directly engage with Meridian at any point to discuss the information provided. In fact, they have refused to meet with us to discuss any topics that could possibly relate to the Review and aid with their understanding of the NZAS agreements or more broadly, generator offer behaviour. We don't believe this is fair or reasonable behaviour by an independent regulator.

Finally, the information we have provided to the Authority for the purposes of the Review was done in a fully transparent way and in good faith. Also, much of the information provided is commercially sensitive and confidential. The Meridian team stressed this to the Authority in initially providing the information. In response the Authority has said that it nevertheless proposes to disclose it, at least in so far as the information is set out in the Authority's Papers. In our detailed response the Meridian team have restated and re-explained our request for confidentiality in respect of some of the material the Authority now proposes to disclose. If the Authority still plans to reject that request, I would ask that the Authority provides us with sufficient advance notice of the planned public release date of its Papers so that we may consider whether, for reasons including our own obligations under the Commerce Act and our agreement with NZAS to ensure the confidentiality of the relevant material, we need to seek an injunction from the High Court.

We would be grateful for the opportunity to meet with you at either Board or Chief Executive level to discuss our concerns.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Neal Barclay', written in a cursive style.

**Neal Barclay**  
Chief Executive