Submission on Electricity Authority's "Proposed Transmission Pricing Methodology" consultation paper

Submitted 2nd December 2021

Introduction

Fonterra welcome's the opportunity to provide feedback to the Electricity Authority (EA) on the consultation paper, "Proposed Transmission Pricing Methodology".

Fonterra is a co-operative owned and operated by around 9,000 New Zealand farming families. We are New Zealand's largest exporter and have 27 manufacturing sites spread across New Zealand, in addition to science and innovation centres and distribution facilities which are integral to the business.

Our farmers businesses, as well as our manufacturing sites and distribution facilities use a large amount of electricity each year. Last season, our site and distribution facilities used approximately 1,100 GWh of electricity, of which approximately 800 GWh was from the grid and the remainder was from industrial co-generation plants located at four of our sites.

As outlined in this submission, and in the information Fonterra provided as part of the judicial review process, Fonterra has concerns with the size of the residual and the application of this to load.

The EA should review the proposed commencement date to ensure that changes (such as metering upgrades) at embedded generation facilities can occur in time to enable allocation of the residual to their load.

Fonterra notes again that the proposed Transmission Pricing Methodology (TPM) changes provide a potential hurdle to electrification decarbonisation of industrial process heat. We encourage the EA to consider the impact of the TPM and steps they can take that would enable greater use of New Zealand's renewable electricity resources as New Zealand looks to decarbonise across numerous sectors.

We have framed this submission as per the questions outlined in the consultation paper. If there are any clarifications, or if there is any further information that would be of use to the EA, please do not hesitate to contact us.

Chapter 2: A New TPM

Question	Fonterra response
Do you have any comments on the content of this chapter?	Refer to answers on Chapter 15

Chapter 3: Grid Asset Classification

Question	Fonterra response
Do you agree with the proposed approach to treat connection assets as interconnection assets for a limited time if the assets will ultimately be interconnection assets when fully commissioned?	Fonterra is supportive of this proposed approach.
Do you agree with the proposed reclassification power?	Fonterra is not supportive of this proposal as it is not Transpower's role to determine who is or who is not an interconnection customer.
Should there be any further conditions on Transpower's use of this discretion?	If the EA determines that the TPM will provide TPNZ with this discretion, then further conditions should be in place to mitigate potential bias or conflicts that could arise. The following conditions could be included to assist with managing this: • Consultation with stakeholders; and • Approval by the Commerce Commission or the EA; and • Definitions of initiation points that allow TPNZ to make such changes.

Chapter 4: Connection Charges

Question	Fonterra response
Do you have any comment on the proposed approaches to address first mover disadvantage issues, including on: *• the proposed FAC mechanism for Type 1 FMD* *• the alternative option of an upper limit on application of the benefit-based approach for Type 2 FMD* *• the approach to applying 'above-limit costs' under this alternative option?*	Fonterra's preferred approach is to pool and share the costs relating to anticipatory investments (4.49). This appears to be a workable solution that could be relatively easily implemented.
Do you have any other feedback on the proposed TPM in relation to connection charges?	Fonterra does not support the reallocation of the overhead costs from Generators to the Residual, and they should continue to pay this until the benefit-based charges that Generators face (inclusive of the overhead component), equal the overhead charge they face today. The immediate reallocation of TPNZ overheads from Injection overhead on Generators to predominately load customers, via Benefit Based Charges (BBC) and the residual charging regime, is a wealth transfer from consumers to generators, and does not act in the long term benefit of consumers.

Chapter 5: Benefit-based charges: allocation

Question	Fonterra response
Do you have any comment on the proposed standard and simple benefit-based allocation methods?	Fonterra is supportive of TPNZ proposal of broadly a 50;50 split. To support TPM durability, a five year review of this split should only occur under further defined conditions (not just time). A routine re-examination of a material portion of the TPM is effectively re-setting the TPM and invites inefficient lobbying by those who are incentivised to minimise their share of the allocation. Fonterra suggests that additional considerations for TPNZ to follow before a process of review can be initiated should include: • Consultation with stakeholders on whether to undertake a review; and • Approval of any review by an independent body such as the Commerce Commission or the EA.

Chapter 6: Benefit-based charges: allocation

Question	Fonterra response
Do you have any comment on the proposed approach to covered costs, including on: *• whether overhead opex should be recovered through the BBC or residual charge, and any evidence to support your view?* *• the recovery of opex on fully depreciated assets through the residual charge?*	All of TPNZ costs should be recovered through the BBC methods and Connection charges to the extent possible. To draw an illustrative example, if the entire grid were upgraded, 100% of all grid assets would be recovered via connection charges or BBC (i.e. to those parties that benefit from the upgrades). Fonterra sees no reasonable rationale to apportion any remaining costs (e.g. office furniture as described in the consultation paper) entirely to one customer group. Fonterra is supportive of the alternative option, that the opex costs of fully depreciated assets are applied based on the basic BBC mechanism.

Chapter 7: Residual Charges

Question	Fonterra response
Do you have any comment on how the proposed TPM implements the residual charge provided for in the Guidelines?	Fonterra suggests that 7.2 a,c,d should be applied to the BBC method. Please refer to response in Chapter 6 above.
Do you agree with the application of the residual charge to generation with embedded load, or can you suggest a better way to mitigate charge avoidance incentives and risk of an uneven playing field?	Fonterra does not agree with this application. Fonterra was a party to the Trustpower led appeal and put forward our position regarding this issue as part of this process. We refer to the details we provided as part of this process.
Do you have any comment on the proposed approach to application of the residual charge to battery storage to avoid double-counting of load?	The TPM as proposed is incentivising electricity storage (albeit pass through an intermediary process) ahead of other energy storage forms. Other energy storage forms could include, for example, thermal batteries where the input is electricity, energy is stored for some indeterminate period, and output as heat or cold. It is inefficient and not of benefit to consumers to be dis-incentivised from using the most economic technology available for electricity use. Fonterra submits that all electrical energy storage options need to be treated the same. Fonterra proposes that Energy Storage

	System (ESS) that is used to reduce peak demand, should only attract efficiency loss costs from the TPM. This ensures that the TPM is technology agnostic and reflects the true incremental load from that ESS on the network.

Chapter 9: Prudent discounts

Question	Fonterra response
Do you have any comments on the proposed PDP provisions?	Fonterra is supportive of requiring TPNZ to produce a prudent discount practice manual and that the practice manual should be binding on TPNZ.

Chapter 11: kVar Charges

Question	Fonterra response
Do you have any comment on the proposal not to include a kVAr charge in the proposed TPM?	Fonterra is supportive of this proposal.

Chapter 15: Next Steps

Question	Fonterra response
Do you agree that 1 April 2023 is an appropriate commencement date for the proposed TPM?	Fonterra does not agree that 1 April 2023 is an appropriate commencement date. The residual is a material cost and being applied to embedded generation that will not currently have the required metering class installed as they are behind the tariff meter. The degree of metering required is not yet known and is still to be consulted on. There are further code amendments that may be required. Dependent upon the nature of the code amendments time will be required for parties to make adjustments, including possible changes to assets. For example, metering of embedded generation. Given the materiality of the residual charge it is not unreasonable to expect MARIA compliant metering for embedded generators. If, after consultation, such code changes are made, a reasonable time will be needed to make these changes. Fonterra also notes the capital and ongoing operating costs that such changes will impose and adequate time should be allowed for capital process, approvals, procurement and build time etc and to avoid regulatory imposed price shock. For Fonterra, to install such metering changes, it requires 3-4 days of downtime and the preferred window to undertake these changes are during the winter shut period. Fonterra submits, that even though the matters outlined by the Authority in Section 2 of the consultation paper are code amendments that support the TPM, the application of such possible changes are material. Adequate time will need to be given for such changes to be made. Given the broad number of possible outcomes from matters still to be consulted on Fonterra cannot propose an alternative start date for the new TPM. Rather we submit the Authority should propose a target date range until all such matters are resolved.

-END-

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

TE KOTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2020-485-367

UNDER	the Judicial Review Procedure Act 2016
IN THE MATTER	of an application for judicial review of a decision of the Electricity Authority pursuant to the Electricity Industry Act 2010 and the Electricity Industry Participation Code 2010 to issue new guidelines for the development of a new transmission pricing methodology
BETWEEN	**TRUSTPOWER LIMITED**
	Applicant
AND	**ELECTRICITY AUTHORITY**
	Respondent

SYNOPSIS OF SUBMISSIONS ON BEHALF OF FONTERRA

Dated: 20 August 2021
Judge: TBC
Next event date: 18 October - 1 November 2021 (hearing date)

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AND MERIDIAN ENERGY LIMITED

Respondent

AND NEW ZEALAND STEEL LIMITED

Interested Party

AND FONTERRA CO-OPERATIVE GROUP LIMITED

Interested Party

AND NOVA ENERGY LIMITED

Interested Party

AND TRANSPOWER NEW ZEALAND LIMITED

Intervenor

MAY IT PLEASE YOUR HONOUR:

1. On 21 September 2020 Fonterra filed two additional grounds for review ("**Fonterra's Grounds**"), namely, challenges regarding:

    a. the determination of a Residual Charge and its imposition on load customers, and

    b. the inclusion of co-generation in calculation of Anytime Maximum Demand ("**AMD**")

2. The latter has also been raised by NZ Steel and Nova. Accordingly, in the interests of avoiding duplication Fonterra does not address that challenge as well. These written submissions are directed to the first ground only. Fonterra reserves its position on being able to comment at the hearing on Nova's and/or NZ Steel's submissions if and insofar as they do not traverse a matter relevant to Fonterra's interests and which it would be appropriate to raise.

RESIDUAL CHARGE: SUMMARY

3. The charge proposed is not what would be considered a "residue" (it will represent nearly 55% of the total system costs[1]) nor is imposing it directly on load (i.e. consumers) obviously consistent with the Authority's statutory objective in s15 of the Act to promote competition...for the long-term benefit of consumers. It is a levy, and the approach to its assessment and recovery is much like the approach under taxation principles whereby size determines the amount required to be paid regardless of actual benefit.

4. The alternative (advanced by Fonterra and others) was to impose the Residual Charge on generation (original proposals suggested proportioning it between load and generation, which was still a point of view held by the Authority at least until 2016 and still tentative in 2017[2]). However, the Authority finally determined it likely that any Residual Charge imposed on generation would lead to most of it being passed on to load through electricity prices anyway. Fonterra agrees with that proposition, but noting that all parties appear to accept that some costs would not be, and that the same could be said of the benefit-based charge proposed to be borne in the first instance by generation. How much, exactly, would not be passed on in a competitive market is unknown. Fonterra's position is that the wholesale electricity market in which generators compete is the appropriate market for the outcome to be determined.

5. Nonetheless, the Authority rejected this approach and considered that it would be inefficient if generators bore this cost in the first instance because that might increase transaction costs and influence grid use and investment: "*we decided that*

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[1] Even if that will reduce over time, "a substantial proportion of the costs of grid investments would be recovered through the residual charge initially and for some time after commencement of a new TPM" (2020 Guidelines Decision paper at [10.11] (241.19189)), it is uncertain as to when and by how much it will reduce over time and even so there will always, under the Authority's approach, be a large un-reducible portion.

[2] Covec, *Expert Review of Expert Reviews of Transmission Pricing Methodology Reform Proposals*, 23 February 2017, [103(b)] (231.14538 at 231.14564); affidavit of Lana Maree Stockman dated 9 June 2021, at [11.6].

the residual charge should apply to load only to reduce or avoid inefficiency."[3]

6. The Authority's findings are set out in section 10 of the 10 June 2020 Guidelines Decision paper, specifically for present purposes at [10.15] and following:

> 10.15 We received submissions both for and against the proposal that the residual charge should apply to load customers only. Some generation customers supported the Authority's position that load customers should pay the residual charge. Some load customers argued the residual charge should be allocated to generation as well as load customers. For example, Vector (citing Compass Lexecon and Professor Bunn) argues that requiring generators to pay the residual charge would not raise energy prices:
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> > *'Compass Lexecon's 2015 expert report for Vector explains clearly why this view is incorrect. Specifically, the residual charge would be a fixed cost for generators that would not be affected by dispatching decisions, which in a competitive market are determined by marginal costs. It is therefore not the case that generators would be able to simply pass through fixed transmission charges to load customers, at least in the short-run.' [emphasis added]*
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> 10.16 Professor Bunn submitted that fixed costs would not be simply passed through:
>
> > *'...as the transmission charges would be fixed, not short-run marginal, costs, one would not expect those to go through a simple pass through into the energy market. Rather, they would be part of all the annual fixed costs that have to be covered by wholesale market profit contributions...'*
>
> 10.17 We agree with these statements by Compass Lexecon and Professor Bunn. In a competitive market, if generators paid residual charges they would not take the residual charge into account in short-run dispatching decisions; rather, they would be part of annual fixed costs that have to be covered by wholesale market profit contributions. However, it is not our contention that there would be a simple pass-through into the energy market via generators increasing their wholesale market offers. Rather, we expect investors in new generation would respond to the requirement to cover a larger annual fixed cost by not entering or by delaying their entry until energy prices were expected to cover the additional cost of the residual charge.
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> 10.18 Rio Tinto accepted that new generation should not pay the residual charge — for the reasons set out in the preceding paragraph. However, Rio Tinto argued that the residual charge for existing transmission infrastructure should be paid by existing generators (as well as load customers). As new generators would be exempt from the charge, they would then not factor the charge into their entry considerations, so in that case any residual charge on generators would not result in higher energy prices.
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> 10.19 We understand this line of argument. However, we consider that making the distinction between future and existing generation as suggested by Rio Tinto would be problematic. Allocating a residual charge to existing generation only would, in effect, subsidise new generation, so would distort competition in the generation market (e.g. it would cause existing generation to be less profitable and therefore risk premature exit). It would most likely be seen as regulatory opportunism, heightening

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[3] Affidavit above n 1 at [11.6]. This decision was a continuation of the view expressed in the 2019 Issues Paper, see 235.16259 at [B.224] (235.16426).

> uncertainty and so indirectly increasing energy prices.
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> 10.20 Having considered the matters raised in submissions, the Authority remains of the view that it would be consistent with its statutory objective for the residual charge to apply to load customers, but not to generation customers (except to the extent they have load)."[4]

7. Accepting that there would not be a "simple pass-through" of the Residual Charge if imposed on generation, the reason why the Authority did not accept Fonterra's alternative competitive approach was because:

> if generators paid the residual charge, consumers would ultimately pay higher wholesale prices...
>
> ...we expect investors in new generation would respond to the requirement to cover a larger annual fixed cost by not entering or by delaying their entry until energy prices were expected to cover the additional cost of the residual charge.[5]

8. This appears to be a direct reflection, and acceptance, of a proposition made by Meridian's economist (Mr Mellsop) as part of a submission in July 2016 in response to the Second Issues Paper,[6] namely:

> fixed costs have to be recovered through the wholesale market – investment in generation will only occur if investors expect to recover their fixed and variable costs, including any fixed transmission costs. If prices are too low to enable recovery of fixed costs, there would be less investment, and ultimately prices would rise.
>
> This is a more general feature of markets – ultimately the demand-side has to pay for all of the costs incurred in producing the goods or services consumed – otherwise no one would invest on the supply-side.
>
> Also relevant to final incidence is the relative elasticities of the demand- and supply-sides – as already discussed, the demand-side of the electricity market is more inelastic than the supply-side, suggesting greater and faster incidence on the demand-side.
>
> Accordingly we agree with the Authority's conclusion that the generation side is likely to pass through a residual charge, meaning the load side would pay it anyway.

9. No working paper was ever prepared on the Residual Charge (it appeared eventually as a section of the final working paper (that on "Options" on 16 June 2015) and no substantive analysis was ever performed as far as Fonterra is aware, of the kind that the benefit-based charge comprising a smaller proportion of the TPM attracted. The Authority's determination is based on the economic proposition above, that investment would be deterred and prices would ultimately rise if the Residual Charge was imposed on generation, to the detriment of consumers. We are to infer that levying the total amount directly on consumers as a form of "tax", on the other hand, would be a better (lower) pricing outcome for them.

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[4] 241.19119, at 241.19190 to 241.19191. In footnote 110 (to paragraph 9.44) of the 2020 Guidelines the Authority refers to these paragraphs as being "our reasoning for why generators should not pay the residual charge".

[5] 2020 Guidelines Decision paper, [10.7(b)] and [10.17] (241.19119 at 241.19189 and 241.19190).

[6] 228.12741. The affidavit of James Mellsop filed by Meridian in this proceeding is a replication of that submission.

10. Decisions about the TPM should be based on analysis and evidence:

> It is only through principled decision-making – backed by robust evidence and analysis – that a durable TPM can be achieved. A key reason the industry is here now considering a new TPM is that the current TPM was the result of a decision to arbitrarily allocate the costs of the HVDC assets to a small subset of the beneficiaries of the assets – that is, South Island generators. Unprincipled and intuition-based decisions simply don't stand up to scrutiny, and lobbying for change is an inevitable outcome of such decisions.[7]

11. There has not been, as far as Fonterra is aware, such robust evidence and analysis to overcome what would be the most consistent approach with s15 of the Act, namely, to impose the Residual Charge on generation in the same way the benefit-based charge is proposed to be.

EVIDENCE

12. An affidavit has been filed on behalf of Fonterra, sworn by Glenn Robert Sullivan. Mr Sullivan is the senior electrical technical manager employed by Fonterra, which role requires him to be responsible for the technical aspects of electricity use at Fonterra, including liaison with the Electricity Supply Industry. As such he interacted with the Transmission Pricing Review from the beginning, and was a member of the original Transmission Pricing Advisory Group ("**TPAG**") constituted by the Authority when it was established in 2010.

13. Mr Sullivan's affidavit sets out a "roadmap" of how the Authority came to consider the concept of a Residual Charge and Fonterra's involvement in that.

THE JOURNEY

2012 Transmission Pricing Methodology: issues and proposal (Consultation Paper)

14. The 2012 Transmission Pricing Methodology: issues and proposal (Consultation Paper) ("**First Issues Paper**"),[8] was the first comprehensive "design" proposed by the Authority. The concept of recovery of any residue of transmission costs not recovered by specific charges came to be developed in that as follows.

15. The Authority stated that *"the current TPM comprised three main types of charges":*

> a. a connection charge, to recover the cost to Transpower of connecting parties to the transmission grid;
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> b. an HVDC charge, to recover the cost of the high voltage direct current (HVDC) link between the North and South Islands; and
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> c. an interconnection charge, which in simple terms recovers the cost of the interconnected grid in each Island.[9]

16. The connection charge it considered to be "market-like" (albeit requiring some improvements) insofar as it was *"largely based on the commercial interaction of a connecting party and Transpower"*, but the HVDC and interconnection charges it

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7 Submission by Meridian on First Issues Paper, 212.05466 at [72] (212.05484).

8 [210.04221]

9 Above n 8 at [10] (210.04224).

considered *"are not efficient as the charges do not necessarily relate to the costs and benefits of HVDC and interconnection services."* Further, *"the benefits of HVDC and interconnection services are indirect, the costs attributable to each user are hard to determine, and historically the methods used to recover those costs have not been closely linked to the benefits parties receive from them."*[10]

17. Its proposal sought to *"charge for HVDC and interconnection services in proportion to the private benefits that parties receive from those services. This is called a* ***beneficiaries-pay charge****."*[11]

18. However, due to *"security constraints in the grid and estimated energy losses from transmitting electricity from grid injection points to grid exit points"* there are spot price differences across the grid. This produces funds (referred to as **loss and constraint excess**) that the clearing manager transfers to Transpower and that Transpower pays to its transmission customers proportional to their transmission charges. In the customer's hands, the loss and constraint (or transmission) rentals have the effect of reducing the net amount the customers pay to Transpower and in practice this leads to a large funding deficit or residual, because:

> grid investments typically exhibit large economies of scale, which results in significant spare capacity. In the short term, this spare capacity means there are few constraints and price differences across transmission lines are small. As a result, a transmission investor cannot rely on loss and constraint rentals to recover the costs of an investment to remove a constraint. Even without economies of scale issues, a large residual occurs if grid investments are made earlier than when they are justified on economic grounds.[12]

19. And so:

> 24. For similar reasons the revenue from the beneficiaries-pays charge is unlikely to fully cover the large deficit left after the loss and constraint excess is applied. Hence a second deficit occurs, which the Authority is proposing to cover with a residual charge.
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> 25. The residual charge will be set to ensure Transpower's full economic costs are recovered from transmission customers.
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> 26. A residual or "postage stamp" charge is essentially analogous to a tax or levy because there is no direct relationship between the amount paid, the cost of supply for individual components and the benefit grid users derive from them. The Authority thinks that a residual charging approach is inefficient and, in light of that, has a preference for funding transmission costs from transmission rentals and from the beneficiaries-pay charge. The Authority proposes that the residual charge should be levied on both demand (using regional coincident peak demand, or RCPD) and generators (using regional coincident peak injections, or RCPI), with 50% of the cost on demand and 50% on generation. The charge would be designed to encourage efficient avoidance of peak regional use of the grid. The Authority considers that the residual charge should be applied to generators, direct-connect customers and distributors (or retailers).[13]

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10 Above n 8 at [12] to [15] (210.04224 to 210.04225).

11 Above n 8 at [17] (210.04225).

12 Above n 8 at [21] to [23], and [5.2.5] (210.04226 and 210.04293 and following).

13 Above n 8 at 210.04226 to 210.04227.

20. The Authority considered that wholesale electricity market outcomes provided the best available method for implementing the beneficiaries-pays charge (at [32] and following).

21. At [5.2.13] it articulated its consideration that the residual charge:

> should, in effect, consist of two charges: a regional coincident peak demand (RCPD) charge on load and a region coincident peak injection (RCPI) charge on generation, which should be designed to encourage efficient avoidance of peak regional use of the grid. Further, these charges should be designed so that half the residual is borne by load (direct connected customers, distributors and potentially retailers) and half is borne by generators. This includes generators, direct connect customers, distributors, and, potentially, retailers.[14]

22. In section 5.6 it expanded in four parts on its proposal to recover HVDC and interconnection costs, the third part (expanded further in [5.6.66] and following) being to:

> introduce a residual charge, which would, in effect, involve a regional coincident peak demand (RCPD) charge to load and regional coincident peak injection (RCPI) charge to generation parties. The residual charge is to recover the residual balance of the costs of the HVDC and interconnection assets not recovered by other charges. The RCPD and RCPI charges should be set so that each raises half the residual balance. They should also be designed so that parties subject to the charge have efficient incentives to avoid peak use of the grid in the region in which they are located.[15]

23. Its description in [5.6.72] was that:

> the residual charge:
>
> (a) would be applied to generation as well as load;
>
> (b) should in principle be applied to electricity retailers as well as direct connect customers; and
>
> (c) should, to the extent possible, be incentive neutral if other charges are introduced that provide incentives for more efficient investment."[16]

24. In respect of the parties that should pay the residual charge, the Authority said at [5.6.73] to [5.6.75] that:

> Applying a residual charge to generation as well as load broadens the base across which the charge is recovered. This minimises the extent to which the charge affects non-beneficiaries and minimises overcharging of beneficiaries, reducing the extent to which the charge would distort use of the transmission grid. Further, by applying the charge to generators as well as consumers, generators would have an incentive to consider the cost implications of any transmission investment they advocate for.
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> It is likely that generators would seek to pass the charge on to consumers by raising their wholesale offers. To the extent that some generators face higher transmission costs than others (which is likely under the proposed approach) there will be a constraint on how much these generators can pass on in their charges. In other words, the situation is likely to be analogous to the ability of a potato farmer from Oamaru seeking to pass

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14 Above n 8 at 210.04296.

15 Above n 8 at 210.04313.

16 Above n 8 at 210.04329.

> on the costs of transport of their potatoes to Auckland when they face competition from potatoes produced in Pukekohe. If generators face the charge they would have greater incentives to scrutinise the costs of transmission investment recovered through the charge, which would help promote more efficient transmission investment.
>
> Where generators are unable to pass on the costs of the residual charge they may have incentives to embed in distribution grids to avoid the charge. However, access to the prudent discount policy should avoid the extent to which this is a significant problem.[17]

25. And at [5.6.80]:

> The Authority proposes that the residual charge would in effect consist of two charges - an RCPD charge and an RCPI charge, with half of the residual revenue recovered from load and half from generators. The reason for this balance is that, excluding the effects of losses and constraints, the amount of electricity generated is roughly equal to the amount of electricity consumed, and the Authority considers that this represents a reasonable basis for apportioning residual costs between generation and load.[18]

Transpower would have discretion as to the optimal regions for applying the charge, the number of regional coincident peaks in each region to which the charge would apply and an ability to review that every three years.

26. At [5.8.5] the Authority considered its proposal facilitated efficient operation of the electricity industry through:

> (c) designing the residual charge so that it provides efficient incentives to alter the use of the grid. The objective of the residual charge is to ensure that parties have efficient incentives to avoid peak use of the grid which will help promote efficient use of the grid.[19]

27. In section 6.6, the Authority canvassed the desirability of considering an alternative charging option and posed three for consideration: the status quo (the current interconnection charge based on RCPD), a MWh charge and an incentive-free uniform (or "postage stamp") charge. It is noted that in respect of the third option (postage stamp charge) the Authority at [6.6.31] stated that "*Overall, it is unlikely the benefits of an incentive-free postage stamp charge* [which the proposed Residual Charge, as it came to be, effectively is] *would exceed the costs.*"[20]

28. In laying out the elements of the first option (status quo: the current interconnection charge, calculated on the basis of RCPD), the Authority noted that if other charges it proposed were more efficient and provided more efficient pricing signals for investment, then there would not appear to be strong reasons for the residual charge to incorporate such price signals (such as RCPD). Accordingly at [6.6.9] it concluded in respect of this option that:

> The Authority proposes that these issues be addressed in designing the residual charge, provided cost-benefit analysis of the proposed charge demonstrates that this would result in net benefits. In particular, the Authority proposes that the residual charge:

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17 Above n 8 at 210.04329.

18 Above n 8 at 210.04331.

19 Above n 8 at 210.04343.

20 Above n 8 at 210.04377.

> (a) would be applied to generation as well as load;
>
> (b) should in principle be applied to electricity retailers as well as direct connect customers; and
>
> (c) should, to the extent possible, avoid inefficiently distorting behaviour if other charges are introduced that provide incentives for more efficient investment.[21]

29. In summary, whatever the residual charge would be was uncertain as to design and scale, depended on the final design of the other charges and the sufficiency of their price signals, would not be imposed entirely on load and would be subject to appropriate cost-benefit analysis.

30. Fonterra's submission in early 2013 on the First Issues Paper in this respect were accordingly brief, noting that *"[f]urther clarification is required on how the residual is to be allocated and further consultation is required on this aspect."*[22]

Working Papers

31. Mr Sullivan sets out in paragraphs 11 to 15 of his affidavit how over the next two to three years there followed a process whereby the Authority would release working papers on various topics, and receive submissions on them, but nothing on the design of the residual charge. Various working papers said there would be, but in the end the topic only surfaced again as part of the "TPM options working paper" dated 16 June 2015 ("**Options Working Paper**").[23]

32. As Mr Sullivan states, *"this was of no particular consequence at that time, because any such charges were, by definition, just 'residual' and there was no particular significance being attached to them"*,[24] and they would not all be imposed on load. Whatever the residual charges would be, they would only be defined once the other charges were designed.[25]

> The exact size of that 'leftover' component would be an outcome of how the other components (the extent of the 'area of benefit' charges) would be determined and applied, and that was still an open question. Further investigation by the EA was required, and what we expected.[26]

33. Criticisms by the Applicant of the approach to, and deficiencies in, the design of the other charge are, accordingly, relevant and of consequence to the Residual Charge.[27] It is to be noted that if the CBA was flawed, leaving no appropriate cost benefit analysis by the Authority of its proposal regarding the benefit-based charge, then by default that also impacts on the Residual Charge. The Residual Charge is only as large as it is because of the Authority's approach to the "area" that should

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21 Above n 8 at 210.04373.

22 212.05430 at [24] (212.05435)

23 222.10106.

24 Affidavit of Glenn Robert Sullivan dated 22 April 2021, at [16].

25 Mr Sullivan's description of process is confirmed in the affidavit of Susan Marie Paterson dated 9 June 2021 at [7.4].

26 Above, n 24 at [18].

27 The report from John Small of Covec, commissioned by a group of electricity industry participants, is particularly insightful: *Expert Review of Expert Reviews of Transmission Pricing Methodology Reform Proposals*, 23 February 2017, (231.14538). See conclusions at section 1.5 (231.14553). Mr Small was also a member of the Panel that conducted the Electricity Price Review for MBIE in 2018, and is a member of the Commerce Commission.

be covered by the Area of Benefit ("**AoB**") for recovery by the benefit-based charge.[28] And regardless of the sufficiency or not of the CBA relating to the benefit-based charge, no cost benefit analysis appears to have been conducted specifically relating to either the rejected alternative approach to imposition of the Residual Charge, the proposal to impose it all on load or to the relative costs/benefits of each.

34. Under the Options Working Paper, HVDC and interconnection charges would be recovered by benefit-based charges defined by the AoB, with a postage stamp residual charge picking up the remainder. The RCPD/RCPI proposal was abandoned and the Authority introduced a concept of allocating the residual charge on the basis of fixed capacity and that it all be applied to load. In its presentation of the Options Working paper it was stated simply that it was "*[n]ot applied to generators as they would variabilise it* [just being added to the energy price] *(allocatively inefficient).*"[29] Fonterra is unaware of any analysis or evidence which supported this or why this was a better outcome than what had been proposed up to then.

35. The Residual Charge was now also materially significant, as a result of the Authority's approach to the AoB (approximately $350 million of total system costs of about $930 million, subsequently rising to approximately $500 million).

Second Issues Paper

36. Mr Sullivan states that:

> [g]iven its role and resources, we expected that the EA, having received feedback on its working paper regarding options, would do some analysis of the proposals in light of what it had received. However, on 17 May 2016 the EA released its 'Transmission pricing methodology issues and proposals: second issues paper' – '**Second Issues Paper**' – 226.11692). It continued to propose a 'capacity-based "postage stamp" residual charge on load customers only', which was now identified as expected to be around $500 million pa (over 50% of the total) by virtue of decreasing the area of benefit charges.[30]

37. A supplementary consultation paper released by the Authority dated 13 December 2016 (230.13910) did not advance matters in principle and Fonterra's submission re-iterated that analysis should be undertaken of the effect of imposing the charge on generation.

Hiatus, 2019 Issues Paper

38. At this time, as Ms Paterson puts it, the Authority "*felt unable to proceed any further with the 2016 Second Issues Paper due to issues which were identified with the CBA*".[31] Mr Sullivan states that "*there was effectively silence for approximately two years, until the 2019 Issues Paper (235.16259) was released by the EA on*

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28 Mr Sullivan's clear understanding from questioning the Authority about why it would not apply the benefit-based charge more widely (which would reduce the residual) was that it was motivated by making revision of the TPM "*a manageable task*", that it would simply be "*too hard*" to do otherwise: Sullivan affidavit, above n 24 at [23].

29 222.10369 at 222.10382.

30 Above n 24 at [19].

31 Affidavit of Susan Marie Paterson dated 9 June 2021 at [8.19].

23 July 2019."[32]

39. The Authority through its main deponent on the subject of Residual Charge (Ms Stockman) states that the residual charge received *"significant attention"* throughout the TPM reform,[33] yet the sequence set out above and the Record suggests otherwise. The attention was at best tentative and with little to no definitive content at least before 2015, and after 2016 there was a *"pause in the project"*.[34]

40. By the time of the 2019 Issues Paper, the Authority:

> still had to decide a number of both higher- and lower-level issues, including:
>
> (a) identifying the costs to be recovered via the residual charge (as opposed to other charges)
>
> (b) identifying which parties should pay the residual charge
>
> (c) establishing a method for how residual charges would be allocated, including more detailed questions around
>
> (i) whether to use historic anytime maximum demand (**AMD**);
>
> (ii) whether to calculate AMD at the grid exit point (**GXP**) or at the installation control point (**ICP**); and
>
> (iii) whether a method based on demand should use a gross or net measure"[35]

That list describes pretty much everything of significance, still to be decided.

2020 Guidelines Decision paper

41. When Ms Stockman came onto the Authority, her view was not dissimilar to Fonterra's:

> Philosophically, I was of the view that the residual charge should be exactly that 'a residual' and not become a major charging category in the long term...I was therefore generally inclined to ensure that as few costs as possible were to be recovered via the residual charge and that, where costs were to be allocated using the residual charge mechanism, I considered that this needed to be transparent.[36]

42. Yet, fundamentally, nothing changed in the 2020 Guidelines from the proposals in the 2019 Issues Paper and the Second Issues Paper prior to that.

> My initial thinking was that the residual charge should be spread far and wide across both load and generation...
>
> [However] analysis showed that any residual charge on generators would likely be passed on to load in the form of higher energy prices as new generators delayed entering until the prices they could achieve would cover their residual charge."[37]

43. Resulting in the Authority's decision and reasoning in the 2020 Guidelines Decision

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32 Above n 24 at [27].

33 Affidavit of Lana Maree Stockman dated 9 June 2021, at [11.1].

34 Paterson, above n 31 at [9.3].

35 Stockman, above n 33 at [11.2].

36 Above n 33 at [11.3].

37 Above n 33 at [11.6].

paper as set out in paragraph 6 above.

THE ERROR

Why treat Residual Charge differently from AoB charge?

44. Fonterra submitted in respect of the Second Issues Paper that this "*apparent basis for not imposing residual charges on generation (that they would simply be passed on) would apply just as equally to, and therefore negate, any charges (ie, area of benefit) in general.*"[38] Ms Stockman's response is to distinguish the AoB charges because it would be harder for generators to pass them on, "*due to competition in the [wholesale electricity] market.*"[39]

45. It is not clear why that distinction can be made. Mr Mellsop, in providing his opinion in support of imposition on load, stated a generally accepted proposition that it "*is a more general feature of markets – ultimately the demand-side has to pay for all of the costs incurred in producing the goods or services consumed – otherwise no one would invest in the supply-side.*"[40] It is equally generally the case, and implicit in this proposition, that costs are first incurred on the supply-side (ie, generation in this context). Second, costs incurred in supply can only be passed on to the extent competition in the suppliers' market allows (ie, not necessarily **all** costs. In an uncompetitive market suppliers might be able to have no regard to efficiency). This would be as true for the Residual Charge if it was imposed on generation, as it is for the benefit-based charge which is proposed to be.

46. The 2020 Guidelines Decision paper is inconsistent on this point. In a footnote to its explanation of the desirability of imposing the benefit-based charge on generation it is said that:

> a key difference is that if the residual charge were paid by generators, it would be paid by all on the same basis – and so the cost increase would ultimately be paid by consumers. By contrast the benefit-based charge is levied in different amounts on different generators, depending on the extent to which they benefit from various grid investments...[and] there is little scope for a firm to pass on a cost increase that only affects that firm (rather than all firms in the industry) [41]

47. Yet in the section of that decision dealing with imposition of the Residual Charge,[42] it is acknowledged that there would not be simple pass-through. The most that has been said from time to time is that "*a very high proportion*" is likely to be passed on,[43] that it would "*likely largely be passed on*" and effectively load customers would "*likely end up paying much*" of the charge.[44] That is because, as the discussion in the next section shows, the cross-elasticities of demand are not zero).

48. Moreover, the initial proposal by the Authority was to share the Residual Charge equally between generation and load by reference to RCPI and RCPD respectively.

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38 Sullivan affidavit, above n 24 at [25].

39 Above n 33 at [11.6].

40 Affidavit of James Mellsop dated 25 June 2021, at [81], repeating his submission to the Authority regarding the Second Issues Paper.

41 Footnote 110, 241.19178

42 [10.15] to [10.20], (241.19190 to 241.19191).

43 Second Issues Paper (226.11692) at [7.198] (226.11853).

44 2019 Issues Paper (235.16259), Appendix A: Policy Objectives at B.224 (235.16426).

The operation of RCPI would have seen the Residual Charge levied in *"different amounts on different generators"* too (and so, applying that justification noted in the quote above for why the benefit-based charge should be imposed on generation, an RCPI-based residual charge would not necessarily all be passed through either). Yet in abandoning the RCPI approach in the Second Issues Paper and moving to impose the entire Residual Charge on load, the premise on which it then did so was self-fulfilling, namely, that if it had been applied to generation it would have been "paid by all on the same basis" (not so) and because of that applied in ways that the Authority says justifies its conclusion that generation would pass it through.

Two-sided platform and cross-elasticities of demand

49. Mr Mellsop put forward a view that the transmission *"grid shares some features of a 'two-sided platform'"*. He considered the different demand elasticities of load and generation and that it is "likely" that the demand of load for transmission services is more inelastic than the demand of generation. These features suggested to him *"that the interconnection elements of the grid should be priced to recover most or all of the costs from the load side."*[45]

50. The concept of a two-sided platform did not inform the Authority's proposal regarding imposition of the benefit-based charges. Any conclusions about cross-elasticities apply as equally to those charges (they are just another part of the total cost of the "platform"), and no doubt most of those costs will also be recovered from the load side (but, importantly, as determined by the market which the Authority accepts as being competitive: eg, Ms Stockman at [11.6] of her affidavit). The Authority considered that building the benefit-based charge into the generators' cost structure would be an advantage not a flaw, that it would provide efficient long-run price signals to support efficient operation and investment and lower wholesale prices over the long term.[46]

51. No-one denies that whatever the cross-elasticities are, they are not zero: if cross-elasticities are used as a guide for where costs would fall if left to market forces, some (unknown) amount would not be passed on. In a paper he prepared in April 2014 the former Chairman of the Authority considered the ratio between load and generation to be about 85/15 (meaning about 15% should theoretically "stick" with generation).[47]

52. In summary:

    a. while the costs of supplying electricity will be recovered from those who want it (otherwise it will not be supplied), the level of costs which a supplier can recover will be determined by the market in which it competes;

    b. if transmission services are a component of the total costs of electricity supply, they should be treated the same way as other components in the absence of compelling reasons (supported by robust evidence and analysis) to the contrary, or

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45 Mellsop affidavit, above n 40 at [75] to [78].

46 2020 Guidelines Decision paper, at [9.39] to [9.44], (241.19119 at 241.19177).

47 *The Transmission Pricing Methodology: Issues with the current methodology*, April 2014 (EA.03.1275).

c. if they are treated as something separate and which, like a "two-sided platform", both suppliers and consumers benefit from, the Authority should at least try to assess what the benefits are (the relative contributions of each to the platform) if it is to impose costs on one or the other and, if not, leave it to the relevant market to determine (as it does in respect of the benefit-based charge): ie, either let the market determine apportionment on the basis of elasticities or design charges that are an appropriate or sufficient reflection of outcomes that would occur in that market[48]), because

d. to do neither would impose costs on consumers they would or should not otherwise incur (namely, that portion which would not be passed on if left to competition or according to a general model of cross-elasticities of demand).

53. The Authority rejected Ramsey pricing principles in the Second Issues Paper as being *"not feasible in the context of transmission pricing"*.[49] The reasoning was that it would be too hard to calculate the elasticity of every consumer and every generator, it would create various inefficiencies and it would lead to some consumers with inelastic demand (such as hospitals) paying prices that would be viewed as inappropriately high.

54. However, the approach does not have to be that granular. The Authority's position regarding its design of a TPM is that nothing it comes up with will be perfect and that it cannot satisfy everybody. If so, it could have consulted (but did not) on a more aggregate proposition, based on its former chairman's paper regarding elasticities, that the Residual Charge be allocated on the basis of 85/15 for instance. It would be better than imposing the entire amount on load, but if even that is considered too hard to simulate, then the apportionment should be allowed to happen on the basis of elasticities determined by the actual market.

Belief that energy prices will be higher than the amount of the Residual Charges

55. Doing neither, however, is what the Authority decided: that it would be better to ensure that all the residual costs are borne by load, on the basis that otherwise consumers would pay higher energy prices because:

> we expect investors in new generation would respond to the requirement to cover a larger annual fixed cost by not entering or by delaying their entry until energy prices were expected to cover the additional cost of the residual charge.[50]

56. Mr Mellsop's opinion was that *"investment in generation will only occur if investors expect to recover their fixed and variable costs, including any fixed transmission costs. If prices are too low to enable recovery of fixed costs, there would be less investment"*,[51] and prices would ultimately rise. The 2020 Guidelines Decision paper

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48 Being what Mr Sullivan suggests in paragraph [22] of his affidavit, not what Mr Mellsop in the last sentence at paragraph [83] of his affidavit says he suggested. The latter is not contentious up to the final sentence, insofar as that suggests Mr Sullivan's agreement with the logic that "the more inelastic customers would tend to contribute more to cost recovery than the more elastic" means that grid charges should be paid directly by the load side.

49 Above n 43, at [5.89] and fn 106 (226.11780).

50 2020 Guidelines Decision paper (241.19119), at [10.17] (241.19190). This reasoning also appeared in the 2019 Issues Paper, above n 44, Appendix A: Policy Objectives at B.224 (235.16426).

51 Mellsop affidavit, above n 40 at [80].

also put it that *"we expect investors in new generation would respond to the requirement to cover a larger annual fixed cost by not entering or by delaying their entry until energy prices were expected to cover the additional cost of the residual charge."* Ms Stockman has stated the Authority's concern to be that the Residual Charge would be passed on in the form of higher energy prices.[52]

57. All this seems to imagine:

    a. an initial period (unspecified) where existing generators face higher costs, but low energy prices ie, generators have not yet raised them to pass the costs on. (Nice for consumers briefly, but presumably not a state of affairs that generators would suffer for long. Wholesale electricity market data would provide insights into price responsiveness in that market);

    b. new entrants holding off entry in that (no doubt brief) period until higher energy prices occurred that reflect costs; but

    c. higher energy prices would follow, with generators passing on the costs.

58. On the one hand the Authority seems to be saying that if the Residual Charge is imposed on generation, it will be a cost that deters new investment, yet on the other hand it is a cost that would largely be passed on in the energy price.

59. However, if new investment will not occur unless the wholesale electricity price is high enough, and the residual costs would be passed on in the form of higher energy prices, then presumably there would be incentive for new entry to occur (at least, no less than currently).

60. In which case the Authority's concern seems to come down to a belief that, in passing them on, the existing generators would over-recover the costs of the Residual Charge in their energy prices through the wholesale electricity market (because if they are only recovering the amount or less than the full amount, it is hard to see how consumers are worse off).

61. Moreover, that would cease upon new entry (because the nature of competition is to compete the price down to the most efficient supplier), unless it is believed that new entry would not have that effect and that the new entrants would also over-recover. For those outcomes to be believed (that generators could over-recover in the first place and/or that new entrants could subsequently), it would have to be assumed that the market is not competitive. Yet the Authority acknowledges that the wholesale electricity market is competitive.

62. Faced with the two alternatives (imposing the Residual Charge on generation which would "likely" lead to "most" of it being passed on to load, or making certain of that by imposing all of it on to load directly), the Authority *"considered that our approach would better achieve the aim of recovering costs in the least distortionary manner possible."*[53] No robust evidence or evidence-based analysis supports this, and it appears to be driven more by the pursuit of efficient revenue collection than the statutory objective in s15 of the Act.

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52 Stockman affidavit, above n 33 at [11.6].

53 Stockman affidavit, above n 33 at [11.8].

63. Moreover, there is no consideration of why the impact on the supply-side that troubles the Authority if the Residual Charge is imposed on generation would not similarly occur on the demand-side if the Residual Charge is imposed on load. It was said in the 2019 Issues Paper, for instance, that the former would lead to higher prices *"discouraging energy use"*,[54] yet a large fixed cost levied on consumers would likely also have a discouraging effect. The effect on new entry in generation also troubles the Authority (that, effectively, the next generation investment would be deferred), yet a consumer facing a high fixed cost in the nature of the Residual Charge levy would also consider deferring investment in a new plant, for instance.

64. The right approach, in a way which is least distortionary to both sides, would be Ramsey pricing but in lieu of that, the relevant market in which the appropriate outcomes should be left to be determined is the wholesale electricity market.

It's consumers whose benefit is contemplated in the Act

65. Mr Dawson and Ms Paterson simply say that they considered the arguments from Fonterra (and Nova and NZ Steel), but just did not agree with them[55] (notwithstanding Ms Paterson's view also, when the DME was being constructed, that market-based approaches are preferable and *"only when those mechanisms had been exhausted or were simply not available that we had to consider other 'administrative' approaches" but simply dividing up costs was 'less desirable' "*[56]).

66. It is not sufficient for good public decision-making to justify a decision on the basis, that it would be impossible to please everybody and that no matter what the Authority decided there would be disaffected parties. Consumers are the specifically identified class in s15 of the Act that achievement of the statutory objective is designed to benefit and they are required to be given more weight accordingly.

67. Under the Authority's proposal consumers will bear all the costs: it is hard to imagine how the alternative it rejects could manifest in greater financial burden on them.

Decision mis-informed by revenue collection

68. A concern expressed in the Second Issues Paper as the primary basis for the view that the Residual Charge should not be imposed on generation was that it would create incentives for them to, and they would, engage in avoidance strategies, and that this would create (unspecified) distortions to generator investment and operator decisions.[57]

69. Consumers, on the other hand, would be unable to engage in avoidance strategies if a "postage stamp" Residual Charge was levied on them and allocated by reference to gross AMD (an allocator that is *"a better proxy for customers size (and so their willingness and ability to pay)"*[58].

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54 Above n 44, Appendix A: Policy Objectives at B.224 (235.16426).

55 Affidavit of Allan Hunter Dawson dated 8 June 2021 at [2.13] and above n 31 at [10.6] respectively.

56 Paterson affidavit, above n 31 at [5.13].

57 Sullivan affidavit, above n 24 at [20].

58 Above n 44, Appendix B, B.213 (235.16424).

70. To the extent that can be described as relating simply to the most expedient method of recovering costs (by targeting those least able to avoid them) regardless of how or from whom, then it is less about a statutory objective of promoting competition in, reliable supply by, and the efficient operation of the electricity industry for the long-term benefit of consumers than it is about pragmatically identifying how to collect revenue in the administratively easiest manner.

71. Collection of revenue, and who could avoid it least, is not a concept conforming with the Authority's statutory objective. It may be for that reason that it is not subsequently articulated as reasoning for the decision. Nonetheless there is justifiable suspicion that it continued to inform the Authority's view of "efficiency" and taint its decision.

Efficiency

72. Without wishing to repeat arguments by the Applicant, it is also Fonterra's submission that:

    a. satisfying the efficiency limb (even if that was supported by evidence and analysis, and it also being noted that, even so, there are no incentives for efficient consumption in the design proposed) does not of itself satisfy the objective in s15 of the Act, which is "*to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers*"; and
    b. circumventing the distribution of costs by an acknowledged competitive market because of a view that the outcome can be predicted more or less and it would be more efficient to "cut out the middle man" and distribute costs directly, is an approach more reflective of a command economy and not with the promotion of competition.

73. Finally, it should not be assumed that because these are "Guidelines" then the final TPM could, as some of the Authority's deponents suggest, differ in ways favourable to consumers in respect of the Residual Charge. First, it is unprincipled to make a bad decision and justify it because someone else might be able to ameliorate it. Second, the Authority has tightened the Guidelines in a way that is prescriptive and detailed and which effectively reduces Transpower's discretion.[59] Since any TPM developed by Transpower must be approved by the Authority, then any attempt at deviation by Transpower is unlikely.

74. The Authority could have, should have, but did not investigate further or analyse the respective merits of the alternative approaches to imposition of the Residual Charge. The sort of evidence and analysis that would be expected is modeling of the alternatives, including deriving the relative cross-elasticities of demand for transmission services even if only in aggregate, the relative elasticities of the wholesale electricity market, modelling the extent of pass-through of transmission costs from generation to load including wholesale price impacts, and generation-build scenarios for a TPM where the residual was applied entirely to generation. Data for such analysis is no less available than data used for determining the benefit-based charge, and in fact analysis described above would very likely use the same date set extensively and data from the wholesale electricity market.

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[59] Covec, *Expert Review of Expert Reviews of Transmission Pricing Methodology Reform Proposals*, 23 February 2017, [231.14538] at [100] ([231.14563]). See clause 23 of TPM Guidelines to be published under cl12.83(b) of the Code.

Legal principles

75. Fonterra adopts legal principles applicable to judicial review as set out in the Synopsis of Submissions for the Applicant dated 6 August 2021, and does not repeat them in these submissions.

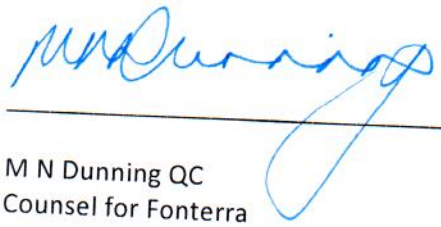
76. Specifically, in addition to what is set out in the Applicant's submissions, Fonterra submits vis-à-vis the Residual Charge that the Authority:

    a. Failed to evaluate and therefore take into account relevant considerations regarding:
        i. The relative impacts between different types of consumers;
        ii. The relative impacts of imposing the Residual Charge on load vs generation, or either vs load and generation, having regard to factors such as cross-elasticities of demand;
        iii. The relative contribution of alternative proposals to the promotion of competition for the long-term benefit of consumers;
    b. Took into account irrelevant considerations, namely that:
        i. an appropriate approach to designing a TPM should reflect who is most able to pay and least able to avoid paying and imposing the majority of the costs of transmission on them by reference to size;
        ii. because most of any costs borne by generation would likely be passed on to load, it would be more "efficient" to pass them all to load directly.

77. As a result of these errors and its failure to conform to its statutory objective in s 15 of the Act, the Authority can also be said to have failed to act reasonably.

78. For all these reasons its decision in respect of the Residual Charge is invalid and should be set aside.

DATED at Auckland on 20 August 2021



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