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Energy Hardship Expert Panel
c/- Energy Use Team
Ministry of Business, Innovation and Employment
Wellington

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Competition is the best way to protect consumers from paying too much and to reduce harmful practices

2degrees, Electric Kiwi, Flick Electric, and Pulse (the independent retailers) welcome the establishment of an independent panel to provide advice on energy hardship issues and ensuring New Zealand households, including vulnerable and medically-dependent consumers, have access to affordable electricity.

As independent retailers each of us are proud of the benefits we have delivered to consumers, including through lower prices, which help ease financial difficulties and hardship.

We are acutely aware electricity is an essential service which comes with social responsibilities, and that there are wider societal, health and consumer welfare (long-term) benefits to end-users from provision of electricity services. We have engaged extensively with the Electricity Authority on pro-consumer/consumer welfare issues such as promoting a stronger, more competitive electricity market and replacement of the previous flawed Vulnerable Consumer and Medically-Dependent Consumer Guidelines with Consumer Care Guidelines.

What is energy hardship?

We agree with the Panel that energy hardship includes “the inability of whānau to access and afford enough energy to meet the needs of all those living in a household. Its causes include housing quality; appliance efficiency; energy access and needs, income levels and price”. Energy hardship can also include other matters such as households going without adequate food or access to other essential services in order to balance competing budgetary challenges. If a household is facing energy hardship, they will be facing hardship more generally.

While the list of “current issues” which contribute to energy hardship in the discussion paper is wide-ranging and lengthy, the issues of competitiveness of the electricity market and whether energy prices are affordable/excessive are vital gaps. The discussion paper notes elsewhere energy costs are a key contributor to energy hardship. We consider the ongoing issue of elevated wholesale prices is likely to be the single biggest threat to energy affordability in the energy sector and should be a key focus of the Panel.

The independent retailers consider it important the Hardship Panel’s recommendations address the role of competition and competitively (more cost-reflective) energy pricing in improving energy affordability and consumer wellbeing more generally.

Summary of the independent retailers' views

- **The Hardship Panel should have a sharp focus on recommendations that directly target making electricity more affordable and are within the electricity sector and regulators' ability to do something about**. The Electricity Price Review recommendations on things like saves and win-backs and hedging arrangements highlighted that there is a lot more the Authority could do to promote a more competitive market.

- It may be useful, as part of next steps, for the Hardship Panel to commission an independent expert report on how the health of competition in the electricity market is impacting energy (price) affordability. While the Authority is undertaking a wholesale market review so far this has been ring-fenced from downstream impacts on retail competition, and there has only been cursory consideration of what record high incumbent gentailer profits say or mean about competition and energy affordability.

- We consider that weak competition is the 'elephant in the room'. Fixing competition problems should be prioritised as a way of directly addressing energy affordability issues through lower (than otherwise) prices. We agree with the Panel that "Ensuring we have competitive and efficient energy markets underpins wider efforts to reduce energy hardship". **The development of a more competitive wholesale and retail market is critical for energy affordability and ensuring consumers do not pay too much for electricity.** This should be reflected in the Panel's recommendations.

  There is a considerable amount of reform required for the electricity industry to move from the current oligopolistic structure to a thriving, highly competitive market.

- Competition is also important for ensuring consumers have choice and options that best meet their needs. For example, **some consumers may find it helpful to switch electricity retailer so they can have weekly billing or to be on tariffs where they can reduce the amount they pay by managing how and when they use electricity e.g. only having the hot water cylinder being heated off-peak.**

  Care is needed to ensure regulation doesn't simply displace the role of competition in meeting consumer needs.

- The best way for consumers to reduce financial pressures/ensure their electricity supply arrangements best meet their particular needs can simply be to switch to an alternative/more competitive/lower priced retailer.

- **Particular care is needed when addressing matters that would adversely impact competition/create barriers to competition:** Anything that could adversely impact retail prices and/or competition could be counter-productive and undermine the Panel's efforts to address energy affordability issues. This includes the very real risk of making energy affordability issues worse.

- We consider a cornerstone for dealing with hardship and recognising social responsibilities, is that **all consumers should be treated with respect and dignity**.

- An outcome we would be worried about from changes to existing Consumer Care Guideline requirements is if they resulted in an increase in consumer debt. Retailers have a responsibility to help their customers avoid building up debt they cannot manage. **There is a balance between protecting consumers against disconnection and protecting them against accumulating excessive debt** which they will have difficulty paying later.

- If inefficient or high costs are created by the Guidelines (existing or new) this would undermine their success in helping reduce financial difficulties and non-payment/disconnection issues. It is important to recognise that if consumer protection rules result in undue costs these will ultimately be borne by consumers.

- There may be elements of consumer protection which should be mandated e.g. consumers rights to access to a consumer complaints scheme and protections against medically-dependent consumers being disconnected for reasons of non-payment.

  The question of whether the Consumer Care Guidelines should be mandated is not binary though. For example, while we consider that electricity retailers should have systems in place so they can make alternative arrangements for consumers having difficulty paying their bills, and for ensuring they have access to the right (lowest cost) pricing plan/a plan that best meets their needs, we would caution against mandating what those systems would look like or over-prescription in the Guidelines.

- **The Electricity Authority's 'efficiency-only' interpretation of its statutory objective means energy affordability and price impacts on consumers are not adequately taken into account.** The inclusion of a "consumer protection" objective won't change this. The independent retailers, and others, have been advocating that the Authority undertake its (now overdue) review of its interpretation of its statutory objective, and treat wealth transfers from consumers to suppliers as a disbenefit/from suppliers to consumers as a benefit.

A workably competitive electricity market is key to ensuring energy affordability

We feel a significant gap in the discussion paper's consideration of energy affordability issues is the important role competition, and a well-functioning market, can play in driving down prices and helping ensure electricity is affordable. The matter of promoting competition, energy affordability and the Government's climate change/electrification ambitions are inextricably linked.

These matters are touched on only incidentally in the discussion paper and are not reflected in the proposed recommendations. We consider that it may be useful, as part of next steps, for the Hardship Panel to commission an independent expert report on how the health of competition in the electricity market is impacting energy (price) affordability. The analysis should consider:

- How effective competition (wholesale and retail) has been in driving down prices to cost-reflective/workably competitive levels;

- The impact of the wholesale market on competition in the electricity retail market (including potential retail price implications over the medium to long-term);

- The impact (and drivers) for regional retail market concentration statistics to flatline or deteriorate;

- The impact (and drivers) of record high incumbent gentailer profits on energy affordability (building, for example, on the work MEUG has commissioned);

- Areas where there are barriers to competition or barriers to new entrant and independent electricity supplier growth, including barriers to competition for consumers facing hardship; and

- The extent to which (and how successfully) the Electricity Price Review competition reforms have been implemented.[1]

Our submissions to the Electricity Authority, e.g. in response to the wholesale market review and the renewable energy future project, have highlighted problems with competition in the electricity market including worrying signs competition may be going backwards in the electricity retail market.[2] Sustained high wholesale prices is a big threat to energy affordability.

The Electricity Authority's wholesale market review, for example, detailed how consumers are paying $863m per annum more than they should to subsidise the 'sweetheart' deal that Tiwai has for cheap electricity. The Authority estimates this alone is costing households $200 per annum. The Authority's wholesale market review also identified "evidence to suggest that prices may not have been determined in a competitive environment" and their analysis indicated "prices were about $38/MWh higher during the review period" than could be explained by "the usual factors that influence prices".

We are underwhelmed by incumbent gentailer virtual-signalling with expenditure on 'affordability-washing' initiatives which is a small fraction of the excess wholesale prices and profits they have been receiving over the last several years.

The discussion paper touches on some of these issues in its commentary that:

> "… Aotearoa New Zealand has experienced an extended period of high wholesale electricity prices. Residential consumers are generally insulated from volatile wholesale prices due to arrangements retailers have in place to purchase electricity from generators. However, the extended period of high wholesale prices is likely to have resulted in retailers paying more overall for the electricity they purchased. This may be reflected in prices they charge to their residential consumers. …"

Relatedly, the discussion paper comments that:

> "For independent social retailers – ones that do not have their own electricity generation to supply their customers – a critical issue is establishing contracts with generators at a price, volume and duration that provides wholesale price stability over time and enables them to support their customer base."

These are issues faced by ALL independent retailers, not just social retailers, and impact the competitiveness – including the extent to which independent retailers can offer lower prices compared to incumbent retailers – and affordability of electricity supply. These issues should have high prominence in the recommendations the Hardship Panel makes to the Government. The recommendations should include options to address energy affordability by making energy prices more competitive and affordable.

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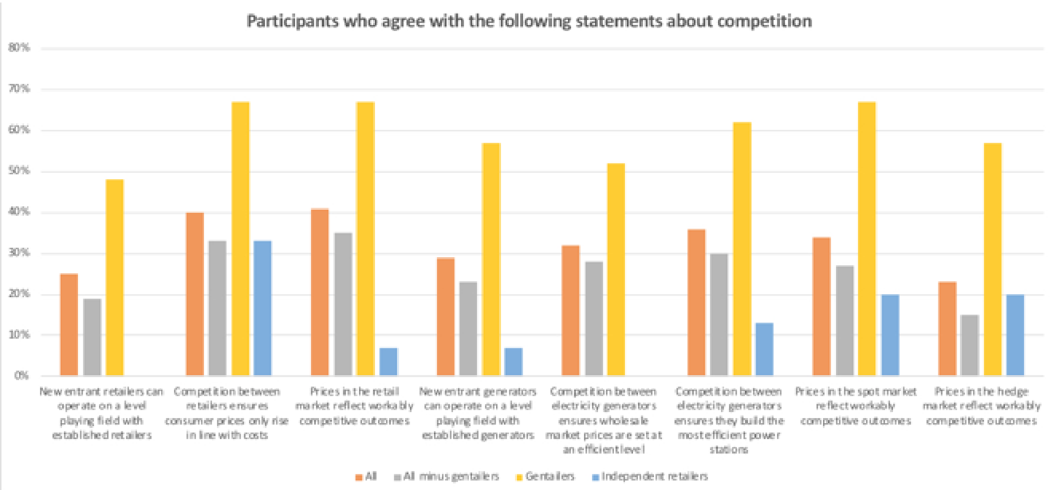
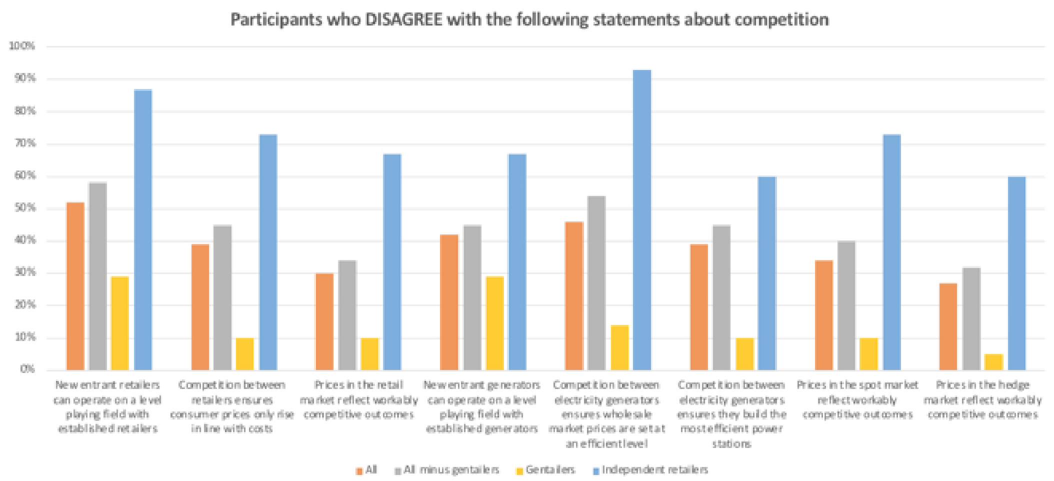
[1] The Expert Advisory Panel recommended that "To confirm that our recommendations, if adopted, have had their intended effect, we propose a high-level review in three years". The Panel view was that "If our recommendations do not result in the intended improvements, more far-reaching measures may be needed, such as options we did not favour" which included splitting vertically-integrated incumbent gentailers.

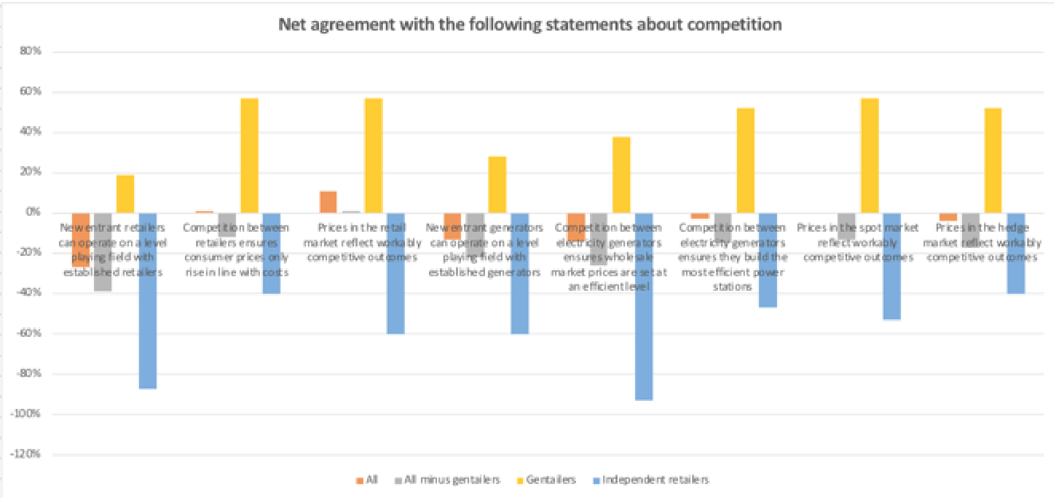
[2] For example, the Appendix to our most recent submission on the Authority's wholesale market review provides evidence that the electricity retail market is concentrated and there are are worrying reversals in retail market concentration statistics: https://www.ea.govt.nz/documents/2300/Haast___Independent_Retailers_-_WMR2_-_2022_12_14_-_1382982.pdf.

The majority of market participants do not consider that electricity prices reflect workably competitive outcomes

The Authority's market participant surveys show that market participants do not consider competition in either the wholesale or retail markets is working well. This includes a majority that consider competition in the wholesale market is not resulting in efficient prices and that prices do not reflect workably competitive market outcomes.[3]







[3] Electricity Authority, Electricity Authority survey of electricity industry participant perceptions 2021/22. Breakdown of survey results by participant type provided under the Official Information Act.

Consumer protection comes with difficult trade-offs between different elements of consumer welfare

We were pleased to engage with and support the Authority's development of the Consumer Care Guidelines. The independents prioritised considerable time and resource contributing to the development of the new Guidelines to ensure consumers are protected.

There are difficult trade-offs that need to be made when trying to protect consumers including, for example, balancing protection against disconnection (which should be treated as a last resort) but also ensuring consumers do not build up high and unmanageable levels of debt from unpaid bills.

We are open to a discussion about mandating elements of consumer protection, including parts of the Consumer Care Guidelines, but don't see this as a binary choice. It should be recognised that a key reason the Guidelines are voluntary is so retailers are able to tailor support to their individual customers. Based on iterations of the draft new Guidelines we submitted that some of the changes could actually limit the consumer protection and service retailers are able to provide.

There may be elements of the Guidelines which should be mandated; in particular, medically-dependent consumers should NOT be disconnected for reasons of non-payment and retailers should make reasonable efforts to contact and notify their customers who have not paid their electricity bills before they are disconnected. Electricity retailers should also have systems in place so they can make alternative arrangements for consumers having difficulty paying their bills, and for ensuring they have access to the right (lowest cost) pricing plan/a plan that best meets their needs. We would caution against mandating what those systems look like or over-prescription in the Guidelines.

A consensus view that emerged amongst independent and incumbent retailers, in response to the Authority consultation on the Consumer Care Guidelines, was that it should be recognised the costs of complying with the Guidelines are ultimately borne by consumers. If inefficient or high costs are created by the Guidelines (existing or new) this would undermine their success in helping reduce financial difficulties and non-payment/disconnection issues.

We support an operational review of the Consumer Care Guidelines

The Panel has raised concern that "Current Consumer Care Guidelines are not as effective as they could be" and "the Panel has heard the level of alignment with the guidelines varies across retailers".

The extent of alignment, and whether the reasons for deviation (where applicable) are valid, is something the Panel should be able to confirm with the Authority based on retailer compliance disclosures.

The Authority had proposed it would "hold periodic operational reviews to obtain stakeholder feedback on: (a) The effectiveness of the guidelines (b) Changes or updates that may be necessary to components of the consumer care guidance package (c) Retailer alignment with the guidelines". We would support such a review. The Authority had "intend[ed] to hold the first such stakeholder review in August 2022, after retailers have made their first annual information disclosure" and to coincide with its alignment review of retailers.[4]

We also note there are outstanding matters with the Consumer Care Guidelines which the Authority has not yet addressed; specifically, the matter of whether retailers should be able to disconnect

[4] See paragraphs 8.16 and 8.19 of the Authority's Consumer Care Guidelines Decision, 30 March 2021.

consumers who engage in fraudulent activity, and the requirements before vacant properties can be disconnected.[5] The Authority labelled these as "Material policy issues" which it parked (maintaining the status quo) to be addressed through workshops and "if required, a revision to the guidelines".

The Authority has not undertaken this follow-up review, even though it acknowledged the issues were "controversial".

It is quite possible the level of compliance with the Guidelines has been impacted by these outstanding issues not being resolved. Incumbent and independent retailers essentially had consensus (unresolved) concerns about these aspects of the Guidelines, and the costs they could ultimately impose on consumers if they were fully adhered to. Trustpower, for example, noted the cost of engaging a third-party contractor to physically attend a (vacant) premise on behalf of the retailer is approximately $75-$150 per visit.

Care is needed when addressing matters that would adversely impact competition/create barriers to competition

There are places in the consultation where "The Panel also acknowledges there may be possible implications for retail prices and retail competition more generally that would need to be considered". This is particularly important as anything that could adversely impact retail prices and/or competition could be counter-productive and undermine the Panel's efforts to address energy affordability issues. This includes the very real risk of making energy affordability issues worse if prices are forced up to cover new costs.

These issues are likely to be particularly acute in relation to the idea that the Electricity Authority could assign particular consumers to particular retailers ("A more interventionist solution could involve the Electricity Authority establishing a scheme to randomly allocate a "poor credit" customer to any local energy supplier, pro-rata based on market share") and potential regulation of retail tariffs and structures.

There is likely to be more scope for "streamlin[ing] tariff structures" at the distribution level than the retail level. Competition will and has inevitability resulted in greater diversity of tariff options and choice to better cater for consumer needs and to better allow consumers to control their power bills e.g. fully variable tariffs, tariffs linked to wholesale prices, time-of-use options and free periods of electricity usage.

In some circumstances, the best approach to affordability issues may be as simple as recognising that a particular retailer or retailers may better meet the particular needs of an individual consumer or household better than others e.g. some consumers will prefer more frequent (including weekly) billing and others won't. This doesn't mean all retailers should or need to be subject to homogeneous regulatory requirements to offer weekly billing. Just as it is important to ensure consumers are on the right tariff it is important to ensure they are with the right retailer. The focus should be on how to ensure consumers are matched to the retailer that will best meet their needs.

We support improvement of price comparison services

This is something we have been advocating to both the Electricity Authority and ConsumerNZ.

We have been concerned about the risk or likelihood that the Powerswitch site will provide consumers with false-positives i.e. telling consumers they could save money by switching retailers

[5] See paragraphs 6.30 and 6.45 of the Authority's Consumer Care Guidelines Decision, 30 March 2021.

when this would result in the consumer switching to a more expensive retailer. This risk is particularly heightened as Powerswitch does not include all electricity retailers and doesn't take into account bundled offers which are becoming an increasingly popular way for consumers to save money. We have also been concerned about Powerswitch's limited functionality, including the inability to show contingent savings based on shifting load under time-of-use tariffs.[6]

For example, the 2degrees, Electric Kiwi, Flick Electric, OurPower and Pulse joint submission to the Electricity Authority on its 2023/24 Appropriations, 1 November 2022, in summary, commented:[7]

- **The Authority should undertake a review of the performance and accuracy of Powerswitch:** We consider that a review should be undertaken in 2022/23. Given: (i) the Authority's levy-funding of Powerswitch; and (ii) regulation requiring retailers to promote Powerswitch to their customers, it is important the Authority ensures Powerswitch is fit-for-purpose and safe to rely on by consumers deciding whether to change retailers. Based on current Powerswitch settings there is likely to be a high incidence of false-positives (consumers being directed to more expensive retailer and tariff options).

- **The Authority should review the current funding arrangements for Powerswitch.** It is not clear that Powerswitch requires more funding than provided by the Authority or what service the Authority and Consumer NZ agreed would be provided from the funding. It is also unclear why a hybrid levy:retail sales commission funding model would be desirable. We consider the funding arrangements should be reviewed and consulted on. The requirement to promote the site regardless of whether you are represented on it provides Consumer NZ a pseudo monopoly status when it comes to setting fees.

  The way Consumer NZ chooses to set Powerswitch fees – on a retail sales commission basis – is a 'tax on competition' which favours incumbent retailers at the expense of small and new entrant retailers. We consider that Powerswitch should be fully levy-funded.

The Commerce Commission and Electricity Authority should both take into account the harm to consumers from wealth transfers to suppliers when applying their statutory objectives

The Electricity Authority's 'efficiency-only' interpretation of its statutory objective means energy affordability and price impacts on consumers are not adequately taken into account.

The Authority is essentially indifferent to the impact of wealth transfers from consumers to suppliers, which has played out in its transmission pricing methodology (TPM) decisions ($46m per annum wealth transfer to South Island generators due to introduction of a requirement for North Island consumers to help pay for transport of electricity generated in the South Island[8,9]) and the related allocation of loss and constraint excess (LCE). The Authority decided to increase the allocation of LCE to generators/reduce the allocation to consumers. Based on Electricity Authority calculations its decision to reallocate LCE in favour of generators will result in a $30m per annum wealth transfer from consumers.[10]

The inclusion of the new "consumer protection" objective won't achieve the change we recommend.

[6] ConsumerNZ has indicated that it will include bundled offers on its site, and time-of-use pricing with more accurate profiles.
[7] The main body of the submission (unpublished) includes a more detailed commentary on Powerswitch.
[8] HVDC charges were previously paid by South Island generators only and are now split approximately 50:50 between North Island consumers and South Island generators.
[9] Based on 2022/23 HVDC charge value of $92m.
[10] Based on LCE value of $80m.

The independent retailers, and others, have been advocating the Authority undertake the (now overdue) review of its interpretation of its statutory objective, and treat wealth transfers from consumers to suppliers as a disbenefit / from suppliers to consumers as a benefit.[11]

The Authority's pure efficiency focus has meant the full benefits of competition – which include the benefits to consumers of lower, more competitive prices – are not taken into account which locks in a bias against pro-competitive market reforms. Efficiency is not an end in itself. The benefits of more competitive prices should not be treated as subservient to efficiency considerations.

The Authority's Consumer Care Guidelines also highlight problems with a pure economic efficiency perspective. Providing consumer protection – including the extended process before disconnection can occur and restrictions on disconnection of vacant sites – goes well beyond what would be considered economically efficient.[12]

For a consumer it makes no difference whether an improvement in competition reduces prices due to cost efficiency or reduction of monopoly rents. A dollar is a dollar is a dollar.[13] If the Authority changed its interpretation of its statutory objective to take into account both efficiency and wealth transfers this would bring its interpretation into alignment with the Commerce Commission's interpretation of its essentially identical statutory objectives under Part 4 Commerce Act and the Telecommunications Act.

We do not consider it desirable or conducive to regulatory certainty that the electricity industry is operating under dual interpretations of "long-term benefit of consumers" with the Authority[14] taking an efficiency-only approach and the Commerce Commission[15] taking into account both efficiency and wealth transfer (price) benefits.

Concluding remarks

We consider that for the Hardship Panel to best achieve its objectives to help alleviate energy affordability and hardship problems there should be a sharp focus on recommendations that are within the control of the energy sector and energy regulators and are targeted at ensuring energy prices are cost reflective and subject to full competitive disciplines. These are matters where we, as a sector, don't have to rely on other agencies, e.g. Kainga Ora and Ministry of Social Development, to improve the wellbeing of Kiwi households and families.

The focus should be first and foremost on ensuring the cost of energy is affordable and competitively priced to reduce hardship, enabling retailers and social agencies to better focus on consumers who have fallen through the cracks.

[11] Refer, for example, to:

- 2degrees, Electric Kiwi, Flick Electric, OurPower and Pulse, submission to the Authority on 2023/24 appropriations, "Funding proposals should have a clear focus on "consumer centricity" and "thriving competition"", 1 November 2022 (as yet unpublished); and
- 2degrees, Electric Kiwi, Flick Electric and Pulse Energy, submission to the Authority on its consultation and feedback processes, "There is substantial opportunity for the Electricity Authority to improve its consultation and feedback processes", 21 March 2023 (as yet unpublished).

[12] Ecotricity, Electric Kiwi, Flick Electric, and Vocus, Independent retailers support introduction of new Consumer Care Guidelines, 27 November 2020: https://www.ea.govt.nz/assets/dms-assets/27/Independent-Retailers-submissions.pdf

[13] Electric Kiwi, Flick Electric, Pulse and Vocus, The Authority has provided robust evidence of fundamental, structural problems in the wholesale market, 17 December 2021, "Regulatory incrementalism won't resolve fundamental structural problems or deliver a high performing market" at: https://www.ea.govt.nz/assets/dms-assets/29/Independent-retailers-submission.pdf.

[14] Section 15 of the Electricity Industry Act.

[15] Section 52, Part 4 of the Commerce Act.

Yours sincerely,

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