

31 October 2022

Electricity Authority

Email: inefficientpricediscrimination@ea.govt.nz

To whom it may concern,

Re: Propose Code Amendment - Inefficient Price Discrimination in very large electricity contracts

1. Executive Summary

1.1. The Consumer Advocacy Council (the Council):

- a. supports the proposed amendments to the Code addressing the prospect of inefficient price discrimination.
- b. suggests this proposal ensures the EA is meeting its expanded mandate to include small consumers in its assessments and not solely focusing on the wholesale pricing impact.
- c. recommends that the EA reconsider investigating the over the counter (OTC) contracting between generator-retailers and independent retailers.
- d. suggests amending Clause 13.269(1)(b) proposed Code wording to include the underlined words “.....*the materially large contract allows the buyer to on-sell no less than 20% of any un-used MW quantities to an independent third party under the materially large contract without the buyer being subject to any worse terms than if it had consumed the relevant quantity itself;....” to ensure no unintended consequences that the proposed protections not apply.*

2. Background

- 2.1. The Council is the independent advocate for residential and small business electricity consumers (consumers) in Aotearoa New Zealand. We represent approximately 5 million residential consumers and 530,000 small businesses.
- 2.2. Consumers are concerned that large electricity contracts could be unfair to residential and small business consumers. We note the Electricity Authority’s (EA) findings which state that small electricity consumers could be paying up to \$200 per year per household in a cross subsidisation of one current large contract.
- 2.3. Whilst large consumers use a significant amount of electricity, small consumers represent approximately 40% of the market. Unlike larger consumers, they cannot negotiate a bulk rate of electricity.

- 2.4. The Council has chosen not to respond in the format of submissions provided in the consultation paper, as our role is to advocate for change in the electricity sector and to help make it fairer for everyone. As such, the format of submissions was not the appropriate mechanism to respond to the consultation, and individual comments have been provided below.
- 2.5. We acknowledge the contribution industries that use large amounts of electricity make to the New Zealand economy, and the confidentiality required in commercial negotiations. However, this must be balanced with transparency when the impacts of a negotiation could have adverse effects for smaller consumers.

3. Proposed Code amendment to address Inefficient Price Discrimination in very large electricity contracts

- 3.1. We believe that there is potential for large contracts to:
- increase the wholesale market price and consequently increase the price of electricity for small consumers;
 - distort signals for investment in generation and electrification as the generator needs to seek investment from other consumers; and/or
 - compromise the efficient transition to a low emissions economy, as a large consumer of electricity could be paying well below market prices, which doesn't incentivise energy efficiency.
- 3.2. We agree with the EAs assessment that large contracts could distort substantially the price paid by small consumers.

Recommendation:

The Council supports the proposed amendments to the Code addressing the prospect of inefficient price discrimination.

- 3.3. This will ensure that cross subsidies at the wholesale level are not introduced into the electricity market. Ensuring small consumers are not disadvantaged by subsidising these large contracts.

Principles (Q5)

- 3.4. The Electricity Industry Amendment Act 2022 expands the EAs mandate to include small consumers. An assessment of any potential adverse impacts for small consumers is consistent with that mandate and should not only focus on the impact on wholesale price.

Recommendation:

The Council suggests this ensures the EA is meeting its expanded mandate to include small consumers in its assessments and not solely focusing on the wholesale pricing impact.

General comments

- 3.5. We were disappointed with the EAs response noted in paragraph 4.13
Some submitters, most notably independent retailers, claimed that Over the Counter (OTC) hedges (or off-exchange trading) were either unavailable to them or more costly than can be justified. However, the submitters did not provide sufficient new evidence in support of these claims to justify expanding the scope of this investigation to include OTC contracting between generator-retailers and independent retailers. However, the efficiency of OTC markets will continue to be monitored as part of the Authority's on-going hedge market development programme.
- 3.6. The availability of hedges to new entrants and smaller retailers appears to have had an impact since late 2018. Since 31 October 2018, 15 retailers have left the electricity market¹ and another five have remained at minimum customer numbers. While there may be valid reasons for such a large turnover, we understand that wholesale pricing and lack of competitive hedging arrangements is one of those reasons.
- 3.7. The Electricity Market Information (EMI) shows prices increasing significantly and remaining high. The long dated forward price curve increased from about \$80/MWh to close to the current \$170/MWh.² We agree with the independent retailers that there is a possibility of a form of price discrimination in the market.
- 3.8. Any price discrimination that may exist in availability and prices of hedges may directly impact consumers by removing or limiting competition from the electricity market. This may remove consumer choice and in the long term could remove downward pressure on electricity prices.

Recommendation:

The Council recommends that the EA reconsider investigating the over the counter contracting between generator-retailers and independent retailers.

¹ Determined from 5 year ICP data from www.emi.ea.govt.nz/r/gepto

² <https://www.emi.ea.govt.nz/Forward%20markets/Reports/KOP4VM?rsdr=L60M&DateFrom=20170801&DateTo=20220731&si=v|3>

4. Comments on Appendix A – Proposed Code Amendment

- 4.1. We suggest generators unreasonably withholding generation capacity can also distort the market. Making an offer to generate well above a fair rate of return has similar effects.
- 4.2. Clause 13.268(1) - The clause targets a physical sale of electricity (the sale of kWh). However, hedging arrangements could provide the same effect. This Clause should be reworded to take account of financial contracts that deliver the same effect as a physical contract.
- 4.3. Clause 13.268(1)(a)(iii) - We assume that the 150 MW consumed threshold is a single 30-minute demand period aggregated over all relevant contracts. This needs to be stated in the Code explicitly.
- 4.4. We also suggest that the annual quantity of energy is added as a further threshold to capture contracts that are close to, but below this demand. The reason for this is that we consider that demand and volume could individually have a material effect on wholesale price.
- 4.5. Clause 13.269(1) - We consider that clause 13.296 could be circumvented by the on-sale of a very small quantity of electricity. This could have an unintended consequence that the protection of the Code for materially large contracts would not apply.
- 4.6. We recommend that a minimum % threshold for resale to an independent party is added to ensure that the Clause operates as intended, and suggest adding the underlined words:
“.....the materially large contract allows the buyer to on-sell no less than 20% of any un-used MW quantities to an independent third party under the materially large contract without the buyer being subject to any worse terms than if it had consumed the relevant quantity itself;....”

Recommendation:

The Council suggests amending Clause 13.269(1)(b) the proposed Code wording to include the underlined words “.....the materially large contract allows the buyer to on-sell no less than 20% of any un-used MW quantities to an independent third party under the materially large contract without the buyer being subject to any worse terms than if it had consumed the relevant quantity itself;....” to ensure no unintended consequences that the proposed protections not apply.

5. Conclusion

- 5.1. We wish to thank the EA for the opportunity to submit on the ‘Inefficient Price Discrimination in very large electricity contracts.’”
- 5.2. If you have any further queries regarding the submission do not hesitate to contact Jane Budge –Consumer Advocacy Council Lead, on either jane.budge@cac.org.nz or (021) 393-112.

Yours sincerely,



Deborah Hart
Chair – Consumer Advocacy Council