Submission by

to the

Electricity Authority

on the

Level Playing Field Proposed Code Amendments

2 December 2025

Level Playing Field Proposed Code Amendments

– SUBMISSION BY BUSINESSNZ ENERGY COUNCIL—

Introduction

1. BusinessNZ Energy Council (BEC)[1] is pleased to have the opportunity to provide feedback on the Electricity Authorities (EA) consultation titled Level Playing Field measures.

2. BEC represents a diverse array of leading energy-sector businesses, government bodies, and research organisations dedicated to creating a sustainable, equitable, and secure energy future.

3. As a brand of BusinessNZ, New Zealand's largest business advocacy organisation, we represent the World Energy Council in New Zealand, aiming to shape better outcomes for our wider energy system both locally and globally.

4. This consultation is building on the Level Playing Field measures – options paper which was published on the 27th of February. The original options paper laid out 4 potential options for regulation to address competition risks, particularly within the hedge market.

5. BEC advocated for option 2: non-discrimination obligations but advised against aspects of the three-step progression originally suggested. We are therefore glad that the EA has decided to move forward with non-discrimination obligations without a three-step progression plan. BEC is particularly glad that step three, the trading of hedges through a regulated market is no longer being proposed.

6. BEC supports steps taken by the EA to improve competition within the hedge market. However, keeping in mind that the EA is currently working on mandatory market making within the hedge market through the open consultation 'strengthening price discovery in the forward electricity markets', this consultation seems to be doubling up on solutions without providing equivalent benefits.

Key Recommendations for the Electricity Authority and the Government

- Reassess what the problem is that the Level Playing Fields workstream is trying to address and whether the non-discrimination obligations proposed are proportionate, given that there has been evidence that they will impose higher electricity costs onto consumers and industry.

- Due to a lack of evidence of margin squeeze and access to hedges being addressed in other work streams, the risks that implementing the policy laid out in this consultation has on increasing consumer costs, seems to go against the EAs statutory objective.

[1] More about BEC in APPENDIX One

- Reassess the 5-day window within principle 2 as, due to the speed at which the market can change, this presents opportunities for gaming and arbitrage.

General discussion

7. In the original options paper BEC saw principles-based non-discrimination obligations (NDOs) as the preferred option for increasing competition as it offers a balanced approach that enhances transparency while preserving market flexibility.

8. The EA has made modifications to the proposed NDOs which they believe will be more pragmatic, faster to implement and easier to enforce.

9. The main changes to the NDOs are the removal of the Internal Hedge Portfolio requirement which has been replaced with the Retail Price Consistency Assessment (RPCA), and the addition of the obligation to trade in good faith.

10. Other changes made include the shift in terminology for available capacity from 'uncontracted hedge volumes' to 'uncommitted capacity' and strengthened compliance and accountability requirements.

11. We will address the changes mentioned above and other aspects of the consultation later in this submission. Before that we would like to discuss some broader issues related to this consultation.

Wider issues with Level Playing Fields

12. BEC would like to highlight that within the recent market review done by Frontier Economics they stated that *"the proposals for non-discrimination of contracts… should not be adopted as these options will not resolve the underlying issue in the market; but will instead impose higher electricity costs onto consumers and industry."* Additionally, within that same report Frontier stated that *"there is evidence that rather than gentailers misusing market power at the expense of consumers, they are shielding consumers at the expense of their own margins."* With these comments in mind and additional comments made around the cost implications for consumers caused by Level Playing Field measures outlined by Frontier we question why the EA is still continuing with this workstream.

13. In conjunction with the above comment BEC notes that the current work that the EA is doing around implementing mandatory market making within the hedge market should solve a lot of the challenges around the availability of hedge contracts. Therefore, the NDOs seem to simply be an exercise in increasing scrutiny of the behaviour of the four large gentailers.

14. Increasing scrutiny is likely to be a good thing to aim for particularly for the goal of increasing confidence for new entrants, but actions laid out in this consultation seem to be an expensive way of achieving that outcome.

15. The EA states themselves within their policy statement, paragraph 12.24, that *"under a scenario where prices may currently be consistent with workable competition, the RPCA may cause gentailers to act conservatively to comply and pass-through energy costs faster than they otherwise would. This may not be for the long-term benefit of consumers."* This is effectively saying that this policy could affect the efficient operation of the market to the detriment of consumers.

16. The EA also acknowledges in paragraph 12.44 the near-term risk that *"if one or more gentailer have been cross-subsidising their retail business or otherwise setting its retail prices below cost, then they will be under pressure to raise their retail prices to be in compliance with the NDOs."* The EA goes on to state that this would bring benefits over time by removing anticompetitively low pricing.

17. BEC would like to challenge this. All four of the large gentailers could cross-subsidise and they do compete with each other. The telecommunications market, which is assessed for competition by the Commerce Commission, has regularly been found to be competitive despite only having three participants. Therefore, there is no reason that the electricity market cannot be competitive despite market concentration in the four large gentailers. The potential raising of retail prices seems to go against the EAs statutory objective to promote competition in, reliable supply by, and the efficient operation on, the electricity industry for the **long-term benefit of consumers.**

Changes to the principles-based non-discrimination obligations

18. While the six NDOs that were originally outlined within the option paper remain relatively unchanged there have been areas that have had significant modification.

19. The first major change to the NDOs is the removal of the original principle 2 which stated that the gentailers must establish an economically meaningful portfolio of internal transfer prices (ITPs) that reflects its internally traded hedges to provide a benchmark against external offers would be measured no ensure non-discrimination.

20. The EA cites that the decision to remove ITPs from the NDOs was due to them being impractical and time consuming. The replacement tool for ensuring non-discrimination is the Retail Price Consistency Assessment (RPCA).

21. The RPCA is requires gentailers to demonstrate an economically justifiable link between the expected cost of electricity supply and its retail price offers. This focus is intended to address the specific complaint of margin squeezing, ensuring that gentailers are not favouring their internal retail business through risk management pricing or setting artificially low retail prices.

22. BEC would like to highlight that within the consultation document the EAs view is that *"There is no definitive evidence of a margin squeeze, though some retail price offers were below wholesale contract prices in 2023."* We understand that the RPCA is about reducing the risk of any discrimination in the pricing of hedges and any potential for anti-competitive retail margin squeezing by the four large gentailers. But if there is no evidence of margin squeeze then we question if the implementation and compliance costs associated with the RPCA are justified. Particularly as RPCA must be reported on every six months.

23. That being said, BEC does believe that the RPCA is preferable to the ITPs previously suggested as focusing on economic links between cost of supply and retail pricing provides a clearer, less complicated, assessment.

24. There has also been a new 'good faith' obligation included as the new principle 2 which requires gentailers to trade in good faith, meaning that they must engage with buyers in a timely and constructive manner in relation to the supply of risk management contracts. Under appendix B the EA provides a more extensive outline on what is viewed as 'acting in good faith.'

25. BEC sees mostly no issue with the outline provided by the EA with regards to what they deem as good faith, however we have concerns around the five-day window for both buyers and sellers to respond to offers made. Given that the market can change significantly over a five-day period, the five-day window presents significant opportunity for gaming or arbitrage.

26. It is also unclear to us how disputes around this principle will be dealt with. The EA requires self-reporting of breaches to the NDOs but for an instance where there are disagreements between parties as to whether or not a breach has occurred the path to resolution remains unclear. Introducing a dispute settlement mechanism could help with this, or this role could be folded into the existing Electricity Rulings Panel.

27. There has also been an elaboration around principle 1: non-discriminatory supply. The EA has now stated that sellers cannot discriminate between buyers without objectively justifiable reasons. Must not discriminate in favour of internal businesses for uncommitted supply and requires the pricing of risk management contracts to be in such a way as to ensure that buyers that supply to end users, that are as efficient in operating costs to gentailers and have a reasonable risk management approach, are not prevented from operating profitably.

28. BEC would like to note that price discrimination is a natural part of many markets, and this is the same for the electricity hedge contract market. Price discrimination is efficient when it reflects the risk preferences of buyers and sellers or the nature of the contract, it becomes inefficient when driven by market power or opaque anti-competitive practices. With this in mind, we are glad to see that the EA has included aspects such as credit assessments, scale efficiencies, and wider circumstances of trade as objectively justified.

29. We would like to caution that the second part of principle 1 '*must not discriminate in favour of internal businesses for uncommitted supply'* and the elaboration of this in appendix B.9.h *'the non-discrimination obligations are not intended to… allow a generator to allocate further generation to planned growth in its own retail business unit without testing market interest in that capacity'* risks disincentivising gentailer generation investment. Additionally, gentailers balance risk by growing their generation and retail arms in tandem, reducing their ability to do this may push up risk premiums and negatively impact consumer outcomes.

30. Within Principle 4 a gentailer would have to ensure that any commercial information relating to risk management contracts made available to its internal business units is also made available to buyers at the same time. This presents challenges as there will be roles within the gentailers that work across both arms. Principle 4 appears to introduce a potentially excessive and intrusive compliance cost.

Other areas of concern

31. There has been a change made in terminology from the original 'uncontracted hedge volumes' to 'uncommitted capacity'. This uncommitted capacity is determined by the gentailers expected gross forecast ability to offer risk management contracts, less the amount of generation the gentailer reasonably expects to use to supply electricity to its end customers and the gentailers wholesale commitments, comprised of gentailer market making commitments and existing risk management contracts entered into with buyers.

32. BEC supports this change as the decision to remove ITPs from the NDOs in favour of the previously mentioned RPCA means that gentailers would be unlikely to have access to the internal hedge accounting that would be necessary to accurately determine 'uncontracted hedge volumes.

APPENDIX ONE – BACKGROUND INFORMATION ON THE BUSINESSNZ ENERGY COUNCIL

The BusinessNZ Energy Council (BEC) is a group of leading energy-sector business, government and research organisations taking a leading role in creating a sustainable, equitable and secure energy future.

BEC is a brand of BusinessNZ and represents the World Energy Council in New Zealand. Together with its members, BEC is shaping the energy agenda for New Zealand and globally.

BusinessNZ is New Zealand's largest business advocacy body, representing:

- Regional business groups: EMA, Business Central, Canterbury Employers' Chamber of Commerce, and Business South
- Major Companies Group of New Zealand's largest businesses
- Gold Group of medium sized businesses
- Affiliated Industries Group of national industry associations
- ExportNZ representing New Zealand exporting enterprises
- ManufacturingNZ representing New Zealand manufacturing enterprises
- Sustainable Business Council of enterprises leading sustainable business practice
- BusinessNZ Energy Council of enterprises leading sustainable energy production and use
- Buy NZ Made representing producers, retailers, consumers of NZ-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation (ILO), the International Organisation of Employers (IOE) and the Business and Industry Advisory Council (BIAC) to the Organisation for Economic Cooperation and Development (OECD).