

31 October 2022

Electricity Authority
PO Box 10041
Wellington 6143

via email: inefficientpricediscrimination@ea.govt.nz

To whom it may concern,

Submission on Inefficient Price Discrimination in very large electricity contracts – proposed code amendment

The BusinessNZ Energy Council ('BEC')¹ is pleased to have the opportunity to provide feedback to the Electricity Authority on its consultation paper 'Inefficient Price Discrimination in very large contracts – proposed code amendment.'

Firstly, we would like to acknowledge the work done by the Authority to explore how New Zealand's wholesale market could possibly be improved to ensure sufficient investment in new generation as New Zealand decarbonises its economy.

General Comments

We agree that the Tiwai contract is unique due to its large amount of electricity consumed, and the proposed code amendments will only apply to a few contracts at or above 150MW. We also acknowledge the Authority does not object to price discrimination *per se* and recognises large users are likely to receive cost-based discounts due to the contracts size.

However, we still do not believe price discrimination is a pressing concern that requires intervention. As it stands, there remains insufficient evidence to prove that large contracts are sold below cost and are thus inefficient, both currently and likely into the future.

Regarding the three conditions of sale – (1) prohibited on-selling restrictions (2) or a positive net value, (3) or the Authority's clearance – it seems likely the seller would

¹ Background information on the BusinessNZ Energy Council is attached in Appendix One.

elect option 1. In a competitive market, sellers do not have control over on-selling activities. Therefore, this condition is the least restrictive and does not concern BEC.

However, more broadly, the proposed conditions limit contractual freedom, and could have a chilling effect upon investor sentiment towards New Zealand. Investor sentiment is crucial. This proposal could provide new barriers to potential new entrants and investors could become increasingly reluctant to invest.

The proposed code amendments do not address the possible consequences upon large contracts in the future, for instance, large scale hydrogen production. The additional requirements could create additional transactional costs and regulatory risks to large contracts necessary for decarbonising New Zealand's energy sector.

Comments related to specific clauses

We believe clause 13.271 (2)(d) which allows the Authority to request *any* information and documentation, including financial modelling, is broad and unnecessarily intrusive, especially if parties elect clause 13.269 (1)(b) prohibiting on-selling restrictions. Providing a copy of the contract and the disclosure requirements outlined in clause 13.271 (3)(a) are sufficient and any additional disclosure requirements are unnecessary.

Requesting additional information, such as financial modelling, could possibly slow the Authority's deliberations and subsequently its approval. Considerations for a timely process is essential. We would prefer if the Authority sets a maximum timeframe to mitigate unintended blockages to doing business.

We believe investor sentiment can be best improved by removing barriers to new investment more generally. We are pleased to see this is a top priority for the Authority, as indicated within the Authority's latest wholesale market review consultation.

Yours sincerely



Tina Schirr
Executive Director
BusinessNZ Energy Council

APPENDIX 1: BACKGROUND ON THE BUSINESSNZ ENERGY COUNCIL

The [BusinessNZ Energy Council \(BEC\)](#) is a group of New Zealand's peak energy sector organisations taking a leading role in creating a sustainable energy future. BEC is a division of BusinessNZ, New Zealand's largest business advocacy group. BEC is a member of the [World Energy Council \(WEC\)](#). BEC members are a cross-section of leading energy sector businesses, government and research organisations. Together with its members BEC is shaping the energy agenda for New Zealand.

Our vision is to support New Zealand's economic wellbeing through the active promotion of the sustainable development and use of energy, domestically and globally. With that goal in mind, BEC is shaping the debate through leadership, influence and advocacy.

[BusinessNZ](#) is New Zealand's largest business advocacy body, representing:

- Regional business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Employers Otago Southland](#)
- [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 and consumers of New Zealand-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](#)).

