

26 March 2025

Energy Competition Task Force  
Electricity Authority  
By email: [taskforce@ea.govt.nz](mailto:taskforce@ea.govt.nz)

Tēnā koe,

## Time-varying retail pricing for electricity consumption and supply

We welcome the opportunity to respond to the Energy Competition Task Force and Electricity Authority (**Authority**)'s February consultation package for Task Force initiatives 2A, 2B and 2C and Distributed Generation Pricing Principles. We have provided our comments in 3 documents, however, the themes are related and should be considered together. This letter addresses *Initiative 2B and 2C: Time-varying retail pricing for electricity consumption and supply*.

We agree with the Authority that in a competitive retail market, retail price regulation should not be necessary and that *requiring retailers to offer a particular price plan may undermine the competitive position of retailers who already offer those plans and have made it a point of difference. This could weaken competition and hence reduce innovation and efficiency.*<sup>1</sup>

We also agree that *consumers must have ready options for price plans that reward them for shifting consumption and injection* and that *if some retailers have been slow to respond to the changing environment, and that these issues need to be addressed now*<sup>2</sup> but we disagree that regulating retail prices is the best way to do so. We also caution the Authority intervening in the retail market while the Market Review is underway, with initial findings not expected until June 2025.

We appreciate the difficult situation the Authority is in, with the need to “nudge” the market while at the same time, limiting the risk of adverse unintended consequences. We are committed to working with the Authority and other organisations on reforms that will ensure a timely least-cost transition to a low-carbon energy future and so optimise outcomes for consumers. Our summary observations are:

### Competition delivers the best outcomes for customers

- Powerco is proud to host almost 30 retailers competing on our networks
- We've seen retail competition benefit customers with different product, price and service offerings
- The problem is about frictions to retail competition, not muffled signals.

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<sup>1</sup> Electricity Authority, *Energy Competition Task Force Initiatives 2B and 2C – Improving pricing plan options for consumers: time-varying retail pricing for electricity consumption and supply*, 12 February 2025, at 5.14

<sup>2</sup> Electricity Authority, *Energy Competition Task Force Initiatives 2B and 2C – Improving pricing plan options for consumers: time-varying retail pricing for electricity consumption and supply*, 12 February 2025, at 4.48

**There are real risks from regulating retail pricing**

- Retail isn't just about price – different customers value all sorts of things and different retailers offer all sorts of propositions to meet those needs
- Where regulators have stepped in to regulate the pricing outcomes they want to see, things haven't gone well e.g. Ofgem
- The Authority's anxiety about unintended consequences from price regulation is absolutely appropriate

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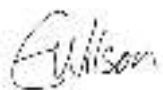
**Nudging the market makes sense**

- The Authority is right to limit intervention, as the problem is about frictions in the competitive market, removing them should be the focus
- There is a wealth of experience from behavioural economics about how to nudge markets when stuck – this is the path of least regret
- The initial focus should be on reducing the cost of market engagement for customers

Our responses to the Authority's questions are tabulated in section 0 below.

We are always keen to meet with the Authority to discuss and develop the ideas in our submissions. In the meantime, if you have any questions or would like to talk further on the points we have raised, please contact Emma Wilson ([Emma.Wilson@powerco.co.nz](mailto:Emma.Wilson@powerco.co.nz)).

Nāku noa, nā,



**Emma Wilson**

Head of Regulatory, Policy and Markets

**POWERCO**

## 1. Competition delivers better outcomes from customer than regulatory intervention

Powerco's objective is to be Aotearoa-New Zealand's **most customer focused infrastructure owner and operator**. We're one of the country's largest gas and electricity distributors, and are proud to supply around 340,000 electricity and 113,000 gas customers in urban and rural homes and businesses in the North Island.

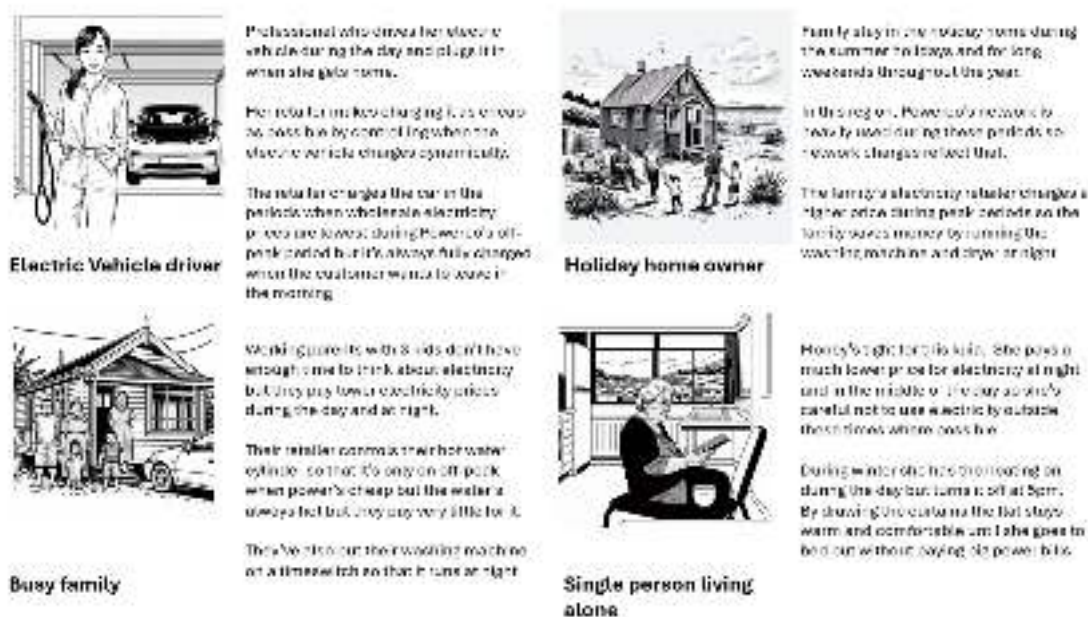
We are in the business of owning and operating infrastructure assets, and while we don't have direct contact with end customers, we can help deliver for customers making our networks the most attractive for multiple retailers to compete on. Nearly 30 different retailers operate on our networks, each with different philosophies about customer service, product design and service delivery.

Retail is a high-volume, low-margin activity which means, unless companies offer something their customers want and is different from their competitors, they are unlikely to stay in business. When competition is effective, the market is a vibrant set of differentiated offerings, not all of which will suit every customer but within which customers should be able to shop around to find products and services that meet their needs.

On an open access network, all customers must be able to access the distribution system on the same terms, but each customer responds to prices and incentives differently. Since all retailers are exposed to the same price signals from distributors, they minimise their cost of supply by designing products and services that suit individual customers and groups of customers.

Passing on time of use (**ToU**) charges isn't the determining factor to customers saving money. We've seen retailers on our networks do innovative things to respond to our prices (and wholesale prices), from creating imaginative offers like an "hour of free power" to encourage customers to use electricity in off-peak periods to sending instructions directly to the customer's EV (with their permission) telling it when to charge and when not to. In both cases the customer doesn't see distribution charges, and in the EV example they don't need to do anything – but they know they're paying a lower price for their power. Figure 1 below illustrates some examples of how customers can benefit from different retail offerings.

Figure 1. How different retail offers benefit different customers<sup>3</sup>



## 1.1 The problem is about low customer engagement, not muffled signals

The Authority's consultation paper identifies a problem with "subdued signals" frustrating customers moving and responding to ToU prices for consumption and export. Requiring retailers to offer and promote ToU prices is the proposed remedy to this problem.

However, our experience is that most customers on our network can access ToU retail prices from at least one retailer – it is not the lack of offers in the market which frustrates the Authority's ambition that customers switch and respond these prices. But rather that the uptake is limited by switching rates and competition may be reduced to retailer or customer specific factors, as highlighted by the consultation paper.<sup>4</sup> The conclusions of the Authority's analysis are that:

- Customers may not be aware of the competitive offers available to them;
- It's hard to compare offers;
- It's hard to switch and the opportunity cost is too high for some customers;
- Constrained generation means some innovative retailers aren't actively seeking new customers; and
- Some vertically integrated retailers' generation portfolios would be less valuable if they offer export pricing.

It appears low customer engagement is responsible for limited response to ToU pricing – not a lack of availability of offers, which regulating ToU plans will not solve.

In addition, the recently updated Government Policy Statement to the Authority identifies "Effectively competitive markets for electricity retail services"<sup>5</sup> as one of the three "best" ways of achieving what we want from our electricity system, with no mention of regulated retail pricing. When the Authority has identified clear problems with the

<sup>3</sup> Images generated using Microsoft Copilot

<sup>4</sup> Electricity Authority, *improving pricing plan options for consumers: Time-varying retail pricing for electricity consumption and supply, consultation – Energy Competition Task Force initiatives 2B and 2C*, 12 February, at 4.28-4.35.

<sup>5</sup> *Statement of Government Policy to the Electricity Authority*, Minister for Energy, October 2024. 3. c





Therefore, there are real risks from intervening and forcing retailers to offer particular products / service offerings, as they are effectively picking which customers to support with a high possibility there are unintended consequences for other customers. They are also giving away the competitive advantage of those retailers who already offer these types of plans. The Authority rightly acknowledges that their interventions may undermine competitive position or retailers who already offer those plans and have made it a point of difference. This could weaken competition and hence reduce innovation and efficiency.<sup>9</sup>

## 2.1 Where regulators have stepped in to regulate the pricing outcomes they want to see, things haven't gone well

It is widely known that Ofgem's extensive intervention into the retail market between 2008 and 2014 was unsuccessful. To summarise: <sup>10,11,12</sup>

EPR submissions heavily referenced Ofgem's 2008 decision to ban price discrimination – **resulting in a large decrease in the number of customers switching and increases in retailer margins**

*"...the non-discrimination condition has changed the nature of competition, that the constraint on incumbent price increases has weakened and that each regional market is now closer to a duopoly between the regional incumbent and British Gas."*

**Strongly criticised by the UK's Competition Market Authority – Ofgem repealed the non-discrimination condition.**

*CMA determined the impediment to a more competitive energy retail market is not the presence of price discrimination but the "weak customer response" to rival offers. CMA found "customers have limited awareness of and interest in, their ability to switch energy supplier"*

Former Director General of Electricity Supply for England and Wales, professor Stephen Littlechild's submission to the EPR on **Ofgem's unsuccessful retail price regulation**

*Ofgem intervened extensively in the retail market between 2008 and 2014. In the face of increasing political pressure, Ofgem repeatedly felt the need to Do Something. It used a mixture of supply side and demand side remedies informed by a behavioural perspective. It restricted suppliers' prices and products, hoping initially to bring about "fair price differentials" and later to increase customer engagement with a view to making the market work better, particularly for more vulnerable and less engaged customers. Quite simply, most of these regulatory interventions did not work. Indeed, the CMA found that they had unintended and adverse consequences for competition and customers, and should be repealed. So the second lesson is that UK experience suggests great caution in proposing further regulatory interventions in New Zealand or, for that matter, in the UK or elsewhere.*

<sup>9</sup> Improving pricing plan options for consumers: Time-varying retail pricing for electricity consumption and supply, Electricity Authority, February 2025. 5.14

<sup>10</sup> Waddams, Price and Zhu quoted by Prof Stephen Littlechild. *Competition in New Zealand Electricity Markets*, Competition Economists Group for Meridian Energy. October 2018. p. 89

<sup>11</sup> *Energy market investigation – Final Report*, Competition & Market Authority, June 2016 quoted in *Competition in New Zealand Electricity Markets*, Competition Economists Group for Meridian Energy. October 2018. p. 91

<sup>12</sup> *Retail Lessons for New Zealand from UK regulation and the CMA's Energy Market Investigation, including a critique of Professor Cave's analysis*, Stephen Littlechild for Meridian Energy. October 2018.

Ofgem's motivation for retail price regulation appears similar to the Authority's, however this unsuccessfully reduced retail competition which goes against the interests of the customers it was intended to benefit because it didn't address the actual problem – weak customer engagement with competitive retail offers. The Authority's anxiety about unintended consequences from price regulation is appropriate, and they are clearly alert to the risks adverse unintended consequences from interventions such as Ofgem's.

Encouraging customers to choose time-of-use plans and changing their habits to reduce demand on the system and lower their power bills would better address the issues that Authority has identified with no risk of unintended consequences. We discuss this further below.

### 3. Nudging the market makes sense

With the perils of unintended consequences in mind, it is still possible for the Authority to take action in support of a more efficient electricity market including the increased participation of small customers both through demand response and export, by lowering the cost of engagement.

We agree with the Authority's assessment that more prescriptive pricing approaches would work against the public interest.<sup>13</sup> Given the Authority's assessment that there are problems with the effectiveness of retail competition, focusing on them may mean that it is not necessary to regulate retail pricing at all, avoiding the risks of adverse unintended consequences.

Like the CMA, we see evidence that customers have limited awareness of and interest in switching to time of use plans for demand and export because the plans exist, and customers aren't switching to them. This is not a new observation – as Ron Ben-David, former Chair of the Victorian Essential Services Commission, points out *Waiting for consumers to engage is like waiting for Godot*

*For 20 years, report after report from the energy market regulators has found limited consumer engagement in the retail energy market; with many customers paying too much for their energy. These reports have invariably concluded that consumers would benefit from shopping around and should be encouraged and supported to do so.*

*After 20 years, regulators must stop 'consumer-shaming' when explaining poor consumer outcomes in the retail energy market. Regulators must openly accept their responsibility for these poor outcomes. After all, nothing happens in the energy market that is not made possible, and permitted, by the regulators' rules and regulations. If there is a mismatch between the rules and consumers' conduct – particularly as that conduct has barely changed in 20 years – then it is the regulators who must change how they speak, think and act<sup>14</sup>*

This highlights that if the opportunity cost of engaging with the market is too high for some customers to respond to price signals, the appropriate regulatory response is to lower the cost of engagement.

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<sup>13</sup> *Improving pricing plan options for consumers: Time-varying retail pricing for electricity consumption and supply*, Electricity Authority, February 2025. 5.18-5.28

<sup>14</sup> *Meditations on an imaginary electricity market*, Dr Ron Ben-David, January 2024. p. 6

### 3.1 There is a wealth of experience from behavioural economics about how to nudge markets when stuck – this is the path of least regret

Famously behavioural economics has addressed this problem – understanding the ways in which we differ from the rational human assumed in standard economic theory. There are plenty of examples of “nudges” in public policy which have resulted in customers deciding to do things that are in their own best interests which previously they didn’t pursue.

It is possible to adapt the Authority’s proposals into nudges – rather than regulated prices and so avoid the risks of unintended consequences. The Authority’s proposal for retail prices has 3 parts:

- Requirement to offer time-varying price plans
- Promotion requirements and
- Monitoring and reporting.

It is only the requirement to offer time-varying plans that runs the risk of undermining competition – promotion, monitoring and reporting are all consistent with nudges. Rather than forcing retailers to offer ToU plans to those customers who’d benefit from them, the nudge would be to enable customers to switch to those plans that exist. This suggests that the requirement should be to tell the customers who’d benefit that they’d be better off on a ToU plan and make it as easy as possible for them to switch. This is very similar to the EPR’s recommendation C6: *Establish a pilot scheme to help non-switching consumers find better deals*<sup>15</sup>.

The EPR’s proposal was a specific group purchase scheme based on an Ofgem pilot but the same intent could be achieved with simple changes to the Authority’s proposal – an obligation on large retailers to make sure customers are made aware of time varying plans in a way that’s easy for the customer to understand and switch if so inclined. This obligation could be enabled using customers’ actual demand data as an early use case in the implementation of the Consumer Data Right for the electricity<sup>16</sup> and delivered by a third party such as a comparison and switching service<sup>17</sup>. In turn this service might nudge large retailers to offer competitive time of use plans themselves if they don’t already have one.

Importantly though, this obligation would not undermine the incentives and innovation of retailers operating in the market and would serve only to nudge competition.

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<sup>15</sup> *Electricity Price Review: Final Report*, May 2019. pp. 39-40

<sup>16</sup> [Exploring a consumer data right for the electricity sector | Ministry of Business, Innovation & Employment](#)

<sup>17</sup> New Zealand already has several independent comparison and switching services including [Glimp](#), [Switchme](#) and [Power Compare](#) as well as [Powerswitch](#) who are funded by the Authority to provide comparison services



## 4. Responses to the Authority's questions

Questions	Comments
Q1. Do you agree the issues identified by the Authority are worthy of attention? If not, why not?	We agree that customers who would benefit from moving and responding to time-of-use pricing have not.
Q2. Which option do you consider best addresses the issues and promotes the Authority's main objective? Are there other options we have not considered?	As discussed in section 1.1 above, the problem is about customer engagement – it is not about the availability of time-of-use offers. We suggest a simple modification to the Authority's proposal in section 3 to address this.
Q3. Should we require retailers to offer a price plan with time-varying prices for both consumption and injection? Why or why not?	No. Regulating retail prices in a competitive market won't address the problem of customer engagement and is likely to lead to worse outcomes than doing nothing as discussed in section 2. Competitive markets will deliver better outcomes for customers than what regulatory intervention can.
Q4. Do you have any feedback on the design requirements?	Retail pricing should not be regulated, it's not addressing the barriers that exist. The "design" should be to nudge customers to engage with existing time-of-use plans – see section 3.1.
Q5. Is there a risk that injection rebates will not be passed through to the consumers targeted? If so, how could we safeguard against this risk?	Only if the retail market is not competitive. Addressing the frictions to retail competition the Authority in paras 4.28-4.35 of the consultation paper would safeguard against this risk.
Q6. Which retailers should be captured by the proposal and why?	We don't think retail pricing should be regulated, so it shouldn't capture any retailers. However, if focused on addressing frictions to retail competition, then it should apply to all.
Q7. What are your views on the proposed timeframe for implementation of 1 January 2026? Would 1 April 2026 be preferable, and if so why?	If implementation is focused on improving customer engagement as we suggest, then it should progress as soon as possible.
Q8. What are your views on Part 2 of our proposal that would require retailers to promote the time-varying price plans?	As discussed in section 3.1, promoting time varying plans that already exist in the market and which would benefit customers would not have adverse unintended consequences. In other jurisdictions this nudge has been carried out by regulators or their agents but in principle it could be carried out by any comparison and switching service contracted to large retailers just as effectively - potentially as an extension to their obligations to in clause 11.30B of the Code <i>Provision of information on electricity plan comparison site</i> .
Q9. What should the Authority consider when establishing the approach to and format of the reporting regime?	As we note in our answer to Q4, we don't believe regulating retail pricing will work. Reporting should be on whether retailers are nudging customers to engage with existing time-of-use plans – see section 3.1.

Questions	Comments
Q10. Should the Authority include a sunset provision in the Code, or a review provision? Why?	Yes. Nudging customers to engage with time-of-use prices is only necessary if the retail market is not adequately competitive. Nudging is intended to address that and won't be necessary indefinitely if it's effective.
Q11. What are your overall views on Part 3 of the proposal?	As we note above, reporting should be on whether retailers are nudging customers to engage with existing time-of-use plans in the market from any retailer not whether they offer time-of-use plans themselves.
Q12. What are your views on Part 4 of our proposal to amend the Code to require that consumers are assigned to time-varying distribution charges, that retailers provide half-hourly data to distributors for settlement	We support the proposal.
Q13. Do you agree with the objective of the proposed amendment? If not, why not?	Yes as worded – noting that we don't agree with the Authority's proposed amendment.
Q14. Do you agree the benefits of the proposed amendment outweigh its costs?	No. The risks identified in 7.17 are potentially far larger than the benefits the Authority is targeting. This was the case when Ofgem banned price discrimination in the UK electricity retail market as discussed in sections 2.1 and <b>Error! Reference source not found..</b>
Q15. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objectives in section 15 of the Electricity Industry Act 2010.	Nudging customers to engage with existing time-of-use offers would result in an increase to competition – one of the three primary limbs of the Authority's statutory objective. Regulating prices doesn't and Ofgem's experience is that it reduces competition and ultimately efficiency – both of which are inconsistent with the statutory objective.
Q14. Do you agree the benefits of the proposed amendment outweigh its costs?	No. See our answer to Q13.