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Energy Competition Task Force Work Package 2 response (initiatives 2A, 2B and 2C)

Mercury welcomes the opportunity to share our views with the Energy Competition Task Force (the Taskforce) on its current work package 2 initiatives. Our response relates predominantly to initiatives 2B and 2C *Improving pricing plan options for consumers: Time-varying retail pricing for electricity consumption and supply* (the consultation).

We also provide some targeted feedback to the Taskforce's initiative 2A *Improving pricing plan options for consumers: Time-varying retail pricing for electricity consumption and supply* regarding prescriptive pricing and pass-through of rebates.

Flexibility is essential for the transition

As New Zealand's energy mix becomes increasingly renewable over the next few years, increasing flexibility in the system will be paramount for when it does not rain, the wind does not blow, or the sun does not shine. Ultimately, all types of flexibility across all types of timeframes will be needed to ensure security of supply during seasonal changes and daily peaks, unlocking significant savings to consumers and the system as a whole.

Batteries are expected to make a significant contribution to balancing the system as will demand-side flexibility in the form of time-shifting demand. The Market Development Advisory Group (MDAG) projected that flexible demand (as a percentage of total demand) would increase from 9% to 18% by 2035 and reach around 25% of total demand by 2025.[1] The industry has made some progress in helping households and communities maximise the value of flexibility but further coordinated effort is required.

We are supportive of the intent of Taskforce's work to ensure households are rewarded for their flexibility from solar and batteries. According to BCG, a flexible system can provide up to $14 billion of savings per decade through optimising network use and avoiding unnecessary infrastructure spend.[2] Enabling a smart, flexible system should be policy and regulation priority.[3] There are a variety of ways to achieve the policy intent. For example, MDAG recommended a scorecard approach to provide empirical evidence around uptake of flexibility tariffs market.[4]

Mercury supports a smart whole-of-system transition where a range of technologies are deployed including batteries, distributed energy, and demand response. We are actively involved in the work of the FlexForum. The FlexForum is currently updating its Flexibility Plan, which is a list of the practical steps and actions that must be taken by the electricity ecosystem to make it easy for people to maximise the value of flexible resources and

[1] MDAG, 2023, https://www.ea.govt.nz/documents/4335/Appendix_A2_-_Final_recommendations_report.pdf
[2] BCG, 2022, The Future is Electric. Available from: https://web-assets.bcg.com/b3/79/19665b7f40c8ba52d5b372cf7e6c/the-future-is-electric-full-report-october-2022.pdf
[3] Sapere, 2025, Key priorities for the New Zealand electricity industry. Available from: https://srgexpert.com/wp-content/uploads/2025/02/Understanding-the-key-priorities-for-the-New-Zealand-electricity-industry-Addendum-to-main-summary-report.-February-2025.pdf
[4] MDAG, 2023, https://www.ea.govt.nz/documents/4335/Appendix_A2_-_Final_recommendations_report.pdf recommendation 3 - A.30

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support the affordable and reliable operation of the electricity market and system. We encourage Taskforce to engage with FlexForum particularly as they progress the update to the Flexibility Plan 2.0.

Actual usage data is a key input of the flexibility business case. We recommend that the Taskforce consider how its proposal can align with the potential electricity sector designation for a Consumer Data Right (CDR). Alignment would help ensure flexibility service providers can access accurate and timely data efficiently, reducing duplication and administrative burden while supporting consumer participation.

Preserving innovation in retail markets

The Taskforce expressed some concerns in the paper regarding switching and consumer engagement, as well as broader issues around access to hedges. Many of these matters are being addressed in other work programmes[5] and Taskforce projects which we are submitting separately on. These projects are expected to address a number of issues that potentially overlap with each other. It is therefore important that the implementation of these projects are coordinated so as to avoid costly duplication or confusion. We also recommend allowing these initiatives time to deliver their intended outcomes. Acting prematurely to move to any next steps risks duplicating effort and may result in less effective outcomes.

Retailers differentiate themselves through price and non-price services. Retail competition has provided consumers with a wide spectrum of choice from ‘no frills’ options to more personalized wrap around care, and other services depending on needs. There are distinctly different groupings of consumers who have different attitudes and usage patterns within the market. As the Electricity Retailers Association of New Zealand (ERANZ) has noted, consumers’ behaviours and motivations are multifaceted:

> *“For many customers, this may just mean having a bill they can understand, and which doesn’t shock them. For others it means being with a company that has really good tools to communicate with them about their usage throughout the day and year. For some it means being with an established brand, and for others it means going with a disruptor. Some like it to be simple – set and forget, others like to have lots of information and control. For yet others, it is knowing their power company is supportive of electric vehicles and renewable generation.”*[6]

Customers have both common and unique characteristics, with their needs, preferences, and expectations shaped by their attitudes toward power and electricity providers.[7] Time-of-Use (ToU) pricing will appeal to consumers who are motivated to adjust their consumption to be in off-peak periods, while others may prefer solutions that do not require active participation. Enabling a variety of tariff options that can engage these distinct consumer segments will support a vibrant, competitive retail market. It is essential to remain focused on the intent of the intervention - to encourage demand reduction and increased capacity at peak times - regardless of how this is achieved.

Consideration of the broader implications of regulating the competitive part of the market

A competitive retail market plays an essential role in delivering better outcomes for consumers by driving innovation, expanding product choice, and encouraging efficient pricing. The retail market in New Zealand is

[5] Including, but not limited to, Retail Market Monitoring clause 2.16 information notice, Decision Paper, March 2025 https://www.ea.govt.nz/documents/6715/Improving_retail_market_monitoring_-_Decision_paper.pdf
[6] Electricity Retailers Association of New Zealand (ERANZ), 2
[7] PSL for ERANZ, 2028 Understanding the Electricity Consumer available from https://www.eranz.org.nz/assets/documents/23.10.18+-+EPR+FIRST+SUBMISSION+UPDATE.pdf

currently competitive, so when considering regulation in the contestable part of the market, a careful assessment is needed to avoid undermining the benefits that competition delivers.

While current challenges with balancing security of supply and affordability are critical to address, it is important to ensure all decisions are grounded in robust analysis and avoid reactive measures that risk compromising long-term outcomes. If a regulatory intervention is not targeted and proportionate there is an increased risk of deterring investment, slowing innovation, and undermining long-term planning.

Stephen Littlechild prepared a paper in 2018 "Retail Lessons for New Zealand from UK regulation and the CMA's Energy Market Investigation, including a critique of Professor Cave's analysis" in which he noted:

> *"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 [Competition and Markets Authority] 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."*[8]

The Taskforce is aware of unintended consequences arising due to regulation as they recognise the value of giving retailers space to innovate and thus are not "*proposing to set restrictions around the design of the plans – except to ensure they will meet the purpose of the intervention*."[9] However, in package *2A Requiring distributors to pay a rebate when consumers supply electricity at peak times* the Taskforce notes "*our proposals under Task Force Initiative 2C would complete the process by* ***ensuring retailers pass this rebate*** *on to consumers through buy-back pricing plans.*"[10]

We agree with the Electricity Authority's position in their May 2024 *Distribution Pricing Reform: Next steps* paper that:

> *"...****it is not necessary for retailers to pass through distribution price structures to end consumers****. Our view* ***is if a retailer faces cost-reflective distribution prices, its incentive will be to respond efficiently*** *(as that will help to manage the retailer's input costs and reduce its risk exposure). An* ***efficient response by a retailer could take various forms*** *including providing information to its customers; procuring or managing embedded flexibility resources on behalf of its customers; and/or adopting non-uniform usage charges or rebates….* ***We are not convinced that a direct intervention requiring retail pass-through into retail pricing would be in the consumers' interests.*** *It could cause a significant change in the retail operating environment, which could negatively impact competitive pressures that drive innovation, efficiency and customer focus. Our current view is that retailers have a role to play in managing network input costs on behalf on their customers."*[11]

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[8] Littlechild, Stephen, 2018. Retail Lessons for New Zealand from UK regulation and the CMA's Energy Market Investigation, including a critique of Professor Cave's analysis Pg. 34

[9] Consultation paper p.24

[10] Energy Competition Task Force initiative 2A*, Requiring distributors to pay a rebate when consumers supply electricity at peak times,* pg. 2.

[11] Electricity Authority, Distribution Pricing Reform: Next steps, May 2024. Pg 36.

Retailers must retain the flexibility to bundle distributors costs' and make their own decisions as to how offers are presented in the market to avoid constraining innovation and lead to adverse consequences for competition and reduce efficiency. For these reasons, we do not support pass-through requirements.

We are however supportive of the principle-based approach to nudge improvements as proposed by the Taskforce in package 2B and 2C as these still enable the essence of competition to drive the best outcomes for consumers. However, if these evolve into a more prescriptive framework, this could result in adverse outcomes like what has been observed in the UK electricity market. [12]

Opportunity to develop a consumer centric system

Ultimately, we believe consumers should have the flexibility to choose the option that best suits them — whether that is load control, time-varying pricing, a combination of both, or remaining on standard pricing. The Taskforce's work provides an opportunity to ensure we have a consumer centric system – from considering how consumers can participate more in the market, through to supporting them making the right investment decisions.[13] Consumers will need to make long-term investment decisions based on current price signals, yet those signals may evolve over the lifetime of their investment.

It is important for the Taskforce to remain focused on ensuring that the benefits of regulatory change do not unintentionally undermine the affordability limb of the trilemma. Consumers must be able to choose whether they want time-varying products as well as understand how they work.

We believe the Taskforce's proposals strike a reasonable balance, but it is essential to acknowledge that not all consumers will choose, or be able, to shift demand. As we have noted, the maintaining flexibility in tariff design is important to enable innovative solutions that meet diverse consumer needs, particularly in the context of energy hardship and winter challenges. Retailers are well-placed to design tariffs that deliver the intended outcomes for consumers, and we encourage the Taskforce to maintain this flexibility to support innovation and competition.

Ex-post review needed to allow for course correction prior to sunset provision

To ensure regulatory settings enable innovation while delivering the intended outcomes, we are supportive of the Code change being subject to a five-year sunset provision. We would also encourage the Taskforce to consider an ex-post review after three years on all 3 of their proposals to assess the impact and effectiveness of the proposed change.

As they note "it is a fast-changing environment, and the Task Force is very focused on ensuring we consider relevant and up-to-date information."[14] An ex-post review would provide:

- regulatory certainty while allowing for course correction based on market developments;
- an opportunity to refine any compliance requirements which may not be adding value or that may need amending; and

[12] Stephen Littlechild, 2018. Retail Lessons for New Zealand from UK regulation and the CMA's Energy Market Investigation, including a critique of Professor Cave's analysis.
[13] Sapere, 2025, Understanding the key priorities for the New Zealand electricity industry.
[14] Taskforce 2025, Q+A available from https://www.ea.govt.nz/documents/6509/New_ways_to_empower_electricity_consumers_webinar_Q_and_As.pdf

> a prudent mechanism to assess whether the Code changes aligning with consumer preferences, particularly as that retail offerings are already available in the market.

Please refer to **Appendix 1** for answers to specific questions.

If you have any questions about this submission, please do not hesitate to contact me.

Yours sincerely,

Claudia Vianello

Regulatory Strategist

Appendix 1 Consultation Questions - package 2B and 2C

Q1. Do you agree the issues identified by the Authority are worthy of attention? If not, why not?	We broadly agree with the issues identified by the Taskforce.
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?	We are supportive of the principle-based proposal opposed to a proposal which would set restrictions around the design of the plans; however, believe the MDAG approach[15] or the 'pared back' option proposed in the consultation would achieve the same policy intent. Some tweaks are needed to the 'four-part' proposal which we outline below.
Q3. Should we require retailers to offer a price plan with time-varying prices for both consumption and injection? Why or why not?	We would welcome clarification on the definition of 'mass market'. The Code currently defines "mass market customers" as those customers a retailer classifies as mass market or who are commonly understood to be mass market customers in accordance with standard industry practice. This is our preferred definition. The Taskforce paper refers to consumers on standard contracts as defined in the Commerce Commission's information disclosure rules in certain sections of the paper. The recent *Retail market monitoring clause 2.16 information notice* published by the Authority also has a "mass-market" definition. Further clarity is needed. We are supportive of the Taskforce's clarification that "*We are defining time-of-use as any plan with different rates for different times. Importantly, the proposed amendment would require the price structures incentivise load-shifting by consumers that benefits the whole system. If retailers can demonstrate that day/night plans do this, then they would comply*"[16] We support this flexible approach. We would also welcome details on the distinction between mass-market connections and mass-market customers to avoid confusion. For example, commercial and industrial (C&I) customers could inadvertently fall under the mass-market category if the definition is applied solely at the connection level which we do not believe is the intention of the proposal. While an individual connection may meet the mass-market criteria, the broader customer entity could belong to the C&I segment. We also note that implementing time-varying buy-back pricing plans may present practical challenges and could take longer than the proposed implementation timeframe. It would be helpful for the Taskforce to consider this in its planning.

[15] MDAG recommended a scorecard approach to provide empirical evidence around uptake of flexibility tariffs market
[16] Taskforce, Q+A available from https://www.ea.govt.nz/documents/6509/New_ways_to_empower_electricity_consumers_webinar_Q_and_As.pdf

	Overall, we encourage the Taskforce to maintain flexibility in how retailers design and deliver offers to ensure they align with broader market dynamics and consumer needs. We have discussed this in our cover letter and in subsequent questions. As part of plan designs, we actively seek feedback from customers as to preferences and then consider what is achievable and aligns to the principles, which helps ensure that we deliver a product customers want to engage with and can easily understand.
Q4. Do you have any feedback on the design requirements?	See above.
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?	We believe that cost-reflective wholesale signals, including variable rebates based on kWh, will help mitigate this risk. Then allowing the process of competition in the retail market to determine how it is passed through in line and energy prices to end users, would promote economic efficiency. Ensuring retailers have the flexibility to bundle distribution costs in a way that best suits customers in an easy-to-understand manner will further support positive outcomes.
Q6. Which retailers should be captured by the proposal and why?	We would work with option A proposed by the Taskforce provided there was adequate implementation time that aligned with distributors pricing changes. As noted in the cover letter, the Taskforce is consulting on a number of initiatives that are expected to address a number of issues, which potentially overlap with each other. It is important that the implementation of these initiatives are coordinated so as to avoid costly duplication or confusion. For example, the present proposal overlaps with the Taskforce's level playing field proposal. Therefore, to ensure the proposal delivers the intended outcomes without creating unnecessary compliance burdens or unintended consequences, we believe an ex-post review after 3 years would provide a valuable opportunity to assess whether the policy intent has been achieved. This would help ensure the framework remains effective, proportionate, and aligned with market developments.
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?	The Taskforce's proposal should align with the 1 April 2026 date when distributors adjust their pricing structures. Aligning the implementation of retail ToU with this date would improve consistency and simplify the transition for both retailers and consumers. With regards to injection tariffs, as noted above, there may be some practical implementation challenges that might mean even an April date is not achievable.

Q8. What are your views on Part 2 of our proposal that would require retailers to promote the time-varying price plans?	Simply providing information without considering the consumer's ability to understand it, nor assessing whether its relevant at the time it is provided, is unlikely to translate into better decision-making for consumers, shift-behaviour or achieve the policy intent. While the Taskforce's proposal aims to increase the adoption of time-varying price plans, mandating certain retailers to promote these plans in specific ways, and place compliance obligations on specific retailers risks being ineffective and may have unintended consequences. Poorly timed or generic messaging could create consumer fatigue, confusion, or disengagement — outcomes that are counterproductive to encouraging informed decisions. Ultimately, in a market-driven environment, retailers that allocate resources towards research and development for a specific product, such as a time-of-use (ToU) or injection tariff, have a natural economic incentive to actively promote and encourage uptake of that product without the need for prescriptive regulation. We are not supportive of the proposal to require retailers to promote the time-varying price plans We believe retailers should retain flexibility in how they market these new offers —whether through targeted campaigns, opt-in incentives, automated technology solutions or a combination of all. Effective communication requires an understanding of customer behaviour, engagement strategies, and timing — expertise that sits with retailers. Prescriptive requirements risk overriding this expertise.
Q9. What should the Authority consider when establishing the approach to and format of the reporting regime?	As noted above, proactive offer requirements should not fall within the Code change nor in the reporting regime. Instead, a pragmatic, proportionate, and adaptable reporting framework is essential to avoid imposing unnecessary costs while still ensuring transparency and accountability. The Taskforce should leverage existing data sources, focus on meaningful insights, and engage industry stakeholders to develop a framework that supports, rather than stifles, innovation in time-varying pricing. Reporting obligations as a result of this Code change could be incorporated into the Electricity Authority section 2.16 retail data request decision.
Q10. Should the Authority include a sunset provision in the Code, or a review provision? Why?	Yes, and also consider an ex-post review after 3 years as noted in the cover note.
Q11. What are your overall views on Part 3 of the proposal?	Outlined above but to summarise we are supportive of the sunset provision. We recommend an ex-post review after 3 years as per question 10. We do not support the proactive offer requirement, and we recommend the Taskforce consider using the Authority's section 2.16 retail data request decision to obtain details on various tariff designs.

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 broadly agree with the Part 4 proposal. We would welcome a clarification that meters need to be communicative, as opposed to merely ‘on’ to ensure data is transmitted and available for settlement purposes. Changes to retailers resulting from this Code change should align with distributors changes which are proposed to take effect on April 1st 2026 although as noted above, there may be some practical implementation challenges particularly with injection that might mean even an April date is not achievable. We seek further clarity on the additional value created by requiring retailers to provide half-hourly data to distributors for billing. As data is already broken into defined time bands (e.g., peak/off-peak) based on distributor time-varying charges, it is unclear how half-hourly granularity would materially improve outcomes. If the intent is to enable more precise cost allocation or network management, this should be clearly articulated to ensure the requirement is justified and proportionate.
Q13. Do you agree with the objective of the proposed amendment? If not, why not?	-
Q14. Do you agree the benefits of the proposed amendment outweigh its costs?	Unsure, as actual implementation costs are not known.
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.	-