



BRIEFING

Appropriate skills and experience for Electricity Authority membership

Date:	13 September 2024	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2425-1051

Minister	Action sought	Deadline
Hon Simeon Brown Minister for Energy	<p>Note our advice on the ideal mix of skills and experience for the Electricity Authority's membership.</p> <p>Agree to a shortlist of candidates to interview for member roles.</p> <p>Indicate whether you wish us to search for additional candidates for roles on the Authority.</p>	24 September 2024

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Paul Metcalf	Manager, Appointments and Governance	s 9(2)(a)	✓
Andrew Flanagan	Senior Advisor, Board Appointments and Governance	04 831 9685	

The following departments/agencies have been consulted

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments

Released under the Official Information Act 1982



BRIEFING

Appropriate skills and experience for Electricity Authority membership

Date:	13 September 2024	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2425-1051

Purpose

To inform your decisions on appointments to the Electricity Authority.

Executive summary

- We have taken a blank-page approach to assess the skills and experience required for members of the Electricity Authority and identified seven ideal member roles.
- Our assessment of the current board against these roles s 9(2)(g)(i) [redacted]
- Priority skills, experience and capabilities required for the Authority are technical expertise, finance and a consumer perspective. s 9(2)(g)(i) [redacted]
- You have the option of shortlisting candidates to interview for up to three roles.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- Note** our advice on the ideal mix of skills and experience for the Electricity Authority's membership. *Noted*
- Note** our comparison of the current Authority with the ideal mix of skills and experience. *Noted*
- Note** that we believe the priority skills, experience and capabilities required for the Authority are technical expertise, finance and a consumer perspective. *Noted*
- Note** that s 9(2)(g)(i) [redacted]. *Noted*

e **Agree** to a shortlist of candidates to interview for up to three member roles:

Finance role

- s 9(2)(a) [Redacted]
- [Redacted]

Agree / Disagree

Agree / Disagree

Consumer perspective role

- s 9(2)(a) [Redacted]
- [Redacted]

Agree / Disagree

Agree / Disagree

Legal role

- s 9(2)(a) [Redacted]

Agree / Disagree

f **Note** we have [Redacted]

Noted

g **Indicate** whether you wish us to search for additional candidates for roles on the Authority.

Yes / No

h **Indicate** whether you wish to discuss the Authority skills mix with officials.

Yes / No

Paul Metcalf
Manager, Appointments and Governance
Labour, Science and Enterprise, MBIE

13 / 9 / 24

Hon Simeon Brown
Minister for Energy

..... / /

Released under the Official Information Act 1982

Background

1. You are progressing work to provide for more effective electricity market regulation in response to the recent security of supply situation, including a new Government Policy Statement and a review of market performance.
2. In this context, on 21 August 2024, the Cabinet Economic Policy Committee (ECO) noted “that the terms of two members of the Electricity Authority Board end in October 2024 and that the Minister for Energy has asked officials for advice on appropriate mix of skills and experience for the Board given the current serious circumstances” [ECO-24-MIN-0172].
3. Your office has requested advice on the appropriate mix of skills and experience for the Electricity Authority’s membership. The Authority currently has six members and one vacancy. Additionally, the terms of two members expire in October 2024.
4. The Authority is an independent Crown entity, and members are appointed by the Governor-General on your recommendation. Members may be removed by the Governor-General for just cause on the recommendation of the Minister after consultation with the Attorney-General (sections 28 and 39 of Crown Entities Act 2004).

Requirements and considerations for membership

5. In light of the recent energy crisis and the Government’s response, we have taken a blank-page approach in assessing the ideal skills mix for the Authority membership.
6. An effective board requires members with complementary skills and experiences. We have considered the statutory requirements and skills and experiences that we believe should be present to meet your expectations for the Authority to deliver a regulatory environment that ensures security of supply and fosters investment and innovation.
7. We have also been mindful to balance sector-based expertise with the skills and experience required for the effective governance of a Crown entity more generally.

Statutory requirements

8. The Electricity Industry Act 2010 (sections 13 and 14) sets out some requirements for membership of the Authority:
 - The Authority comprises between five and seven members.
 - The Minister must have regard to the need to ensure that the Authority has amongst its members knowledge and experience of, and capability in the electricity industry, consumer issues and business generally.
 - No member may represent, or promote the interests or views of, any organisation or any particular industry participant or group of industry participants.

Governance considerations

9. Section 25 of the Crown Entities Act sets out the governance role of the board, where all functions and operational decisions are made by or under the delegation of the board.

Good governance

10. In order to exercise the Authority’s functions and duties, members should collectively have an understanding of the Electricity Industry Act, the Crown Entities Act and good governance practice. This includes how to manage the separation of delegation between governance decisions and operational matters and is led by a chair with deep governance experience.

11. As a Crown entity, members of the Authority must understand their accountability to the responsible Minister, including through the monitoring department (MBIE).
12. The board sets the strategic direction for the Authority and must be able to articulate its regulatory strategy to ministers, government departments, the industry and the public.

Financial management

13. As with any Crown entity or private sector board, Authority members are responsible for ensuring the financial wellbeing of the entity. This is reinforced in section 51 of the Crown Entities Act (“the board of a statutory entity must ensure that the entity operates in a financially responsible manner”).
14. The Authority must demonstrate accountability for its funding and scrutinise the outputs that its spending provides to ensure value for money. The Prime Minister has set out his expectations to the Public Service Commission that Crown entities “do the basics brilliantly” and focus on the quality of their spending.
15. Strategic financial acumen is essential for the board to ensure that the Authority is executing its functions in a sustainable way and delivering value for levy payers. At least one member should have the technical financial expertise required to chair the audit and risk committee.

Electricity market and regulatory capabilities

16. The Authority membership must have credibility and connections amongst the electricity industry to ensure the Authority is a respected regulator and has buy-in from the sector.

Sector-specific capabilities

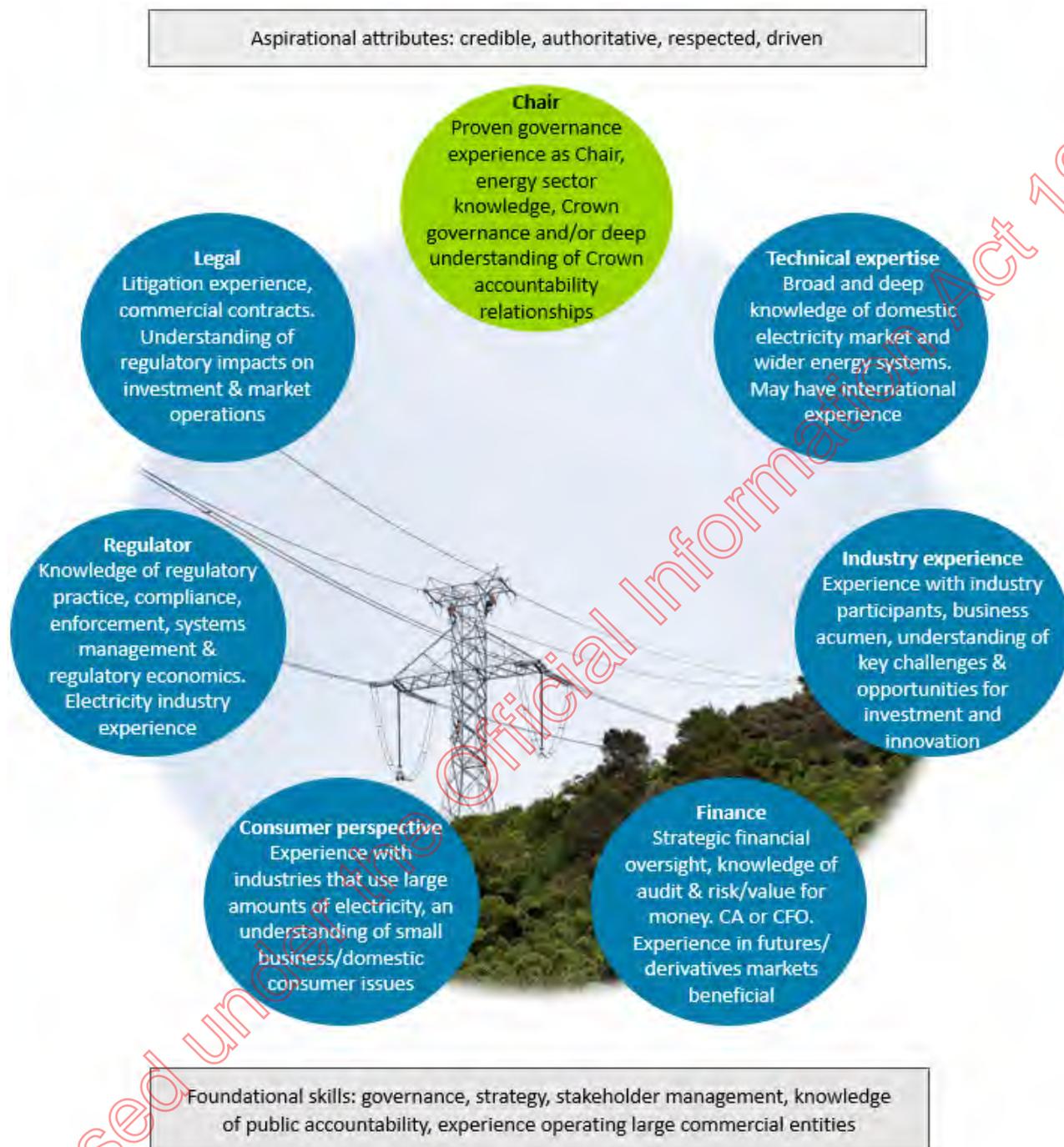
17. In carrying out its regulatory duties, the Authority must have a deep understanding of the impact of its decisions on industry participants and electricity consumers.
18. It is important for the Authority to have within its membership: significant knowledge of how domestic electricity markets operate, how electricity markets interact with other energy and fuel markets, some knowledge of international electricity markets, an understanding of key challenges and opportunities facing market participants, and perspectives of major electricity users, small businesses and domestic consumers. Some experience or understanding of electrical engineering practices may be desirable.

Law and regulatory practice

19. The electricity industry is highly litigious. Experience in commercial and contract litigation or dispute resolution would hone the board’s deliberations on risk management, compliance and enforcement.
20. More generally, an understanding of regulatory practice, compliance, enforcement and economics is essential for the Authority to make regulation that encourages investment and innovation and does not overburden industry participants.

Ideal membership make-up

21. We have identified seven key roles in the ideal make-up of the Authority:



Foundational capabilities

22. All members should have or be able to obtain the following capabilities:

- Governance experience
- Strategic agility
- An understanding of Crown entity accountability relationships
- Stakeholder relationship management skills
- A willingness to serve in the public interest

23. The Authority membership, collectively, should also have the following:

- Business and commercial acumen, and experience operating large commercial entities
- Senior executive leadership experience
- An understanding of energy system trends and emerging energy technologies
- Experience as a regulator or operating within a highly regulated environment
- Expertise in derivatives, including electricity futures contracts
- Crisis management experience

Current board composition

24. As a point of comparison, we have assessed the extent to which the current board aligns with the ideal board.

25. Note that this has been a desktop exercise, using the CVs of members from when they applied to MBIE. This has not been sense-checked with the chair or other external stakeholders.

Name	Term expiry date	Relevant skills and experience	Comments
Anna Kominik (Chair)	12/07/2028	Governance including Chair experience, electricity retailer perspective, public relations, stakeholder engagement	s 9(2)(g)(i)
Dr Cristiano Marantes	30/06/2028	Energy innovation, strategy, commercialisation of energy technology, network business regulation and electrical engineering	
Paula Rose	15/01/2028	Regulation, Crown governance, stakeholder relationship management, consumer issues (non-electricity)	
Erik Westergaard	15/01/2028	Regulatory economics, market operations, senior leadership, electricity distribution business and small retailer perspective	
Allan Dawson (Deputy Chair)	8/10/2024	Energy markets (incl. international), financial risk, senior leadership, fellow chartered accountant, governance	
Lana Stockman	8/10/2024	Capital expenditure, debt raising, electricity trading, regulation, gentailer perspective	
Vacancy	—	—	—

Alignment with ideal roles

26. Based on members' experience, there is s 9(2)(g)(i) [redacted]
27. There is no current member whose skills clearly align between with the consumer perspective or legal roles. You may wish to fill the vacancy with a new member who brings these capabilities.
28. s 9(2)(g)(i) [redacted]
29. [redacted]
30. Increasing the depth and breadth of sector experience may strengthen the Authority's ability to create a regulatory environment that encourages innovation and new investment.

Candidates for shortlisting

31. With one vacancy and two terms expiring, you have the opportunity to recommend up to three appointments to the Authority.

Technical expertise role

32. We advertised for candidates with "in-depth knowledge of the New Zealand electricity market and wider energy systems" s 9(2)(g)(i) [redacted].
33. s 9(2)(g)(i) [redacted]
- s 9(2)(a) [redacted]
34. 9(2)(a), 9(2)(g)(i) [redacted]
- s 9(2)(a) [redacted]
35. 9(2)(a), 9(2)(g)(i) [redacted]

Finance role

s 9(2)(a)

36. 9(2)(a), 9(2)(g)(i)

s 9(2)(a)

37. 9(2)(a), 9(2)(g)(i)

s 9(2)(a) (previously interviewed)

38. We previously interviewed 9(2)(a), 9(2)(g)(i)

39. s 9(2)(g)(i)

Consumer perspective role

s 9(2)(a)

40. In August, you met with the Major Electricity Users' Group (MEUG) and invited its nomination of candidates. MEUG has nominated s 9(2)(a). The Associate Minister for Energy, Hon Shane Jones, has also nominated s 9(2)(a).

41. We have contacted s 9(2)(a) to seek his interest. s 9(2)(a) would bring perspectives of major electricity consumers.

s 9(2)(a)

42. 9(2)(a), 9(2)(g)(i)

Legal role

43. We consider that the technical expertise, finance and consumer perspective roles are more important to fill in the current environment and given the statutory maximum of seven members. If you wish to appoint someone with legal capabilities, we have identified the following candidate.

s 9(2)(a)

44. 9(2)(a), 9(2)(g)(i)

Next steps

45. We will interview your shortlist of candidates for member roles.
46. Following the interviews, we will advise you on candidates recommended for appointment.
47. You may wish to direct us to conduct a further search for candidates to fill the technical expertise role.

Annexes

Annex One: Longlist of candidates

Annex Two: Curricula vitae for candidates

Released under the Official Information Act 1982

Annex One: Longlist of candidates

Candidate	Notes
-----------	-------

9(2)(a), 9(2)(g)(i)

Released under the Official Information Act 1982

Candidate	Notes
-----------	-------

9(2)(a), 9(2)(g)(i)

Released under the Official Information Act 1982

Annex Two: Curricula vitae for candidates

Withheld under section 9(2)(a) of the Official Information Act 1982

Released under the Official Information Act 1982



EVENT BRIEFING

Meeting with Electricity Authority Board Chair Anna Kominik

Date:	19 August 2024	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2425-0782

Action sought		
	Action sought	Deadline
Hon Shane Jones Associate Minister for Energy	Note the contents of this briefing, to support your meeting with Anna Kominik on 21 August 2024 at 08:30 am.	21 August 2024

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Tamara Linnhoff	Manager, Electricity Generation, Infrastructure and Markets Policy	s 9(2)(a)	✓
Mark Pickup	Principal Advisor		

The following departments/agencies have been consulted

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments

Released under the Official Information Act 1982



EVENT BRIEFING

Meeting with Electricity Authority Board Chair Anna Kominik

Date:	19 August 2024	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2425-0782

Purpose

To provide background information and talking points for your meeting with Anna Kominik, Electricity Authority Board Chair on 21 August 2024 at 08:30 am.

A discussion on energy matters is scheduled for Cabinet on 19 August. This event briefing was written prior to that Cabinet discussion and any statements or instructions that may follow.

Recommendations

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** the contents of this briefing, to support your meeting with Anna Kominik, Electricity Authority Board Chair.

Noted

Tamara Linnhoff
Manager, Electricity Markets Policy
Building, Resources and Markets, MBIE

19 / 08 / 2024

Hon Shane Jones
Associate Minister for Energy

..... / /

Meeting purpose and logistics

Date:	Weds 21 August 2024	Time:	08:30 am
Location:	Your office		
Attendees:	Anna Kominik, Electricity Authority Board Chair Attendee biography is included at Annex One .		

1. The meeting has been arranged so that you can discuss the current electricity supply issues and the powers that the Electricity Authority has to regulate the electricity market.
2. The remainder of this briefing provides background information and talking points on the topics outlined above.

Current price situation

3. Recent pricing in the wholesale electricity market has been volatile, and this is reflective of underlying supply conditions. New Zealand's energy supply is currently extremely tight – gas production has dropped significantly in the past two years and the impact of this on the electricity system is exacerbated by extremely dry conditions for hydro-electricity generation where national hydro storage is currently below the 5th percentile of the historical range for this time of year.
4. The perceived risk of a potential shortage of fuel, both hydro and gas generation, has resulted in a price spike:

ELECTRICITY WHOLESALE MARKET - SPOT PRICES: Average national daily wholesale electricity prices over last 12 weeks (25 May to 15 August 2024)



Source: Electricity Authority EMI

5. Prices have come down as fuel supplies for electricity generation have become more secure (Methanex contracting to free up gas and more certainty over coal imports for Huntly). Prices are expected to continue falling as peak winter demand recedes and thawing snow increases inflows to hydro lakes. However, market analysts (Jarden) do not expect them to fall to below \$100/MWh till at least 2028 when sufficient new generation is commissioned, or if substantial new gas volume become available.

6. Unhedged businesses are exposed to spot price risk, as you are aware Winstone, Pan Pac and Oji Fibre all ceased production during recent weeks. Some independent retailers have stopped taking new customers (Electric Kiwi¹) or defaulted (Prime Energy defaulted on its payments to Manawa Energy).
7. You may wish to ask
- s 9(2)(g)(i)

Gentailer profits

8. Contact, Genesis, Mercury and Meridian will release their annual earnings statements (year-end financial reports) over the next few weeks, on these dates:

Contact	Mercury	Genesis	Meridian
Mon, 19 Aug	Tue, 20 Aug	Thu, 22 Aug	Wed, 28 Aug

9. The Authority collects information from gentailers about profits, under its information disclosure rules. It will soon review those.
10. NZIER looked at the Authority's approach and reported (in May 2024) that current rules aren't working – that the Authority hasn't been collecting enough information.
11. You may wish to ask

- s 9(2)(g)(i)

-

¹ Electric Kiwi says wholesale energy prices are up 50 percent on six months ago and high futures prices - what it buys to protect against the volatile spot prices - mean every new customer the retailer takes on would be loss-making for the business. RNZ, 23 July 2024

Hedge markets and retail competition

12. You met recently with Octopus, an independent retailer. They and other independent retailers are concerned that New Zealand generation companies have excessive market power and are insufficiently monitored. They consider the wholesale market is not competitive: that wholesale spot prices are above long run costs of generation and that the Authority is not adequately focussing on identifying the use of market power to set prices above competitive levels. They are also concerned about difficulty accessing forward hedges – the lack of availability of hedges or if offered, the high prices, which they consider poses a significant barrier to entry for independent retailers.
13. Regarding access to hedges - the Authority is carrying out a risk management review, to better understand the availability and accessibility of risk management solutions for independent retailers. This work has been underway since December 2023 and the Authority has signed that it will soon release its analysis. Independent retailers are frustrated with the perceives slow pace of this work.
14. On 14 August (so last week) the Authority made an urgent Code change that had the effect of reducing some of the market-making² obligations on incumbent generators (Contact, Genesis, Mercury and Meridian) in the ASX electricity futures market. This change was explained as aiming to maintain liquidity in the market.
15. This change has been challenged by some independent retailers (Electric Kiwi, Flick and Octopus Energy) who wrote to you and Minister Brown on 14 August. They argue that this change will seriously reduce their access to necessary risk cover and benefit the incumbent gentailers at the expense of large industrial users, and other market participants.
16. s 9(2)(g)(i) 
17. The independent retailers have submitted (via Matthews Law) a Code change request to the Authority, requesting an amendment to introduce the UK model of a level playing field, which requires operational and accounting separation, no discrimination (between a gentailers' own retail arm and other retailers) and no cross subsidy (across generation and retail arms).
18. You may wish to ask
 - s 9(2)(g)(i) 

² Market making is an obligation placed on the main gentailers to offer hedges into the futures market.

Electricity Authority powers and actions

19. The Authority's primary function is to regulate New Zealand's electricity system and markets, enforcing the rules and holding industry participants to account through active monitoring and enforcement.
20. The Authority's main statutory objective is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.
21. An additional objective is to protect the interests of domestic and small business consumers, in relation to their supply of electricity. This objective applies to the Authority's activities in relation to the direct dealings between participants and these consumers.
22. The Authority has broad power to change the market Code or rules, so long as these changes are consistent with its statutory objective. In this regard the Authority is actively investigating ways in which it can address the current pricing situation.
23. A number of measures have already been taken by the Authority to ease that price pressure, including working with Transpower to release extra water from hydro lakes to enable more supply, and releasing weekly information showing profit margins of generators.
24. You may wish to ask

➤ s 9(2)(g)(i)

➤

Power Price Task Force

25. A task force is being setup involving the Electricity Authority, the Commerce Commission (the Commission) and MBIE to investigate the recent wholesale price spikes and develop a series of short and medium term actions to improve the performance of electricity markets.
26. The Task Force brings together government market regulators to urgently consider the complex factors underlying wholesale prices and put in place a suite of measures to help address the current issues across the energy system.
27. The Task Force enables the Commission and Authority to make a holistic assessment of the options available to further stimulate generation investment and promote competition within their respective regulatory powers and scope. The task force intends focusing on rapidly identifying and assessing options within the current powers of the regulators to improve the performance of the electricity industry and ensure secure and affordable energy within the context of a financially sustainable market.
28. As independent regulators, the Authority and the Commission will continue to operate in accordance with their existing powers and mandate. The Task Force expects to issue joint statements or recommendations. A Deputy Secretary of MBIE will attend the task force as an observer.
29. You may wish to ask

➤ s 9(2)(g)(i)

Annexes

Annex One: Attendee biography

Annex Two: Suggested talking points.

Released under the Official Information Act 1982

Annex One: Attendee biography



Anna Kominik, Electricity Authority Board Chair

Anna is an experienced business leader who has worked for a wide variety of public and private sector organisations during the course of her career, including as the former Asia Pacific Director of Wisk, part of an international organisation developing a world-first, all-electric, self-flying air taxi. She is currently Chair of the Edmund Hillary Fellowship and Hillary Institute, a director of Dawn Aerospace and advises in the New Zealand aviation and aerospace sector.

Anna holds a Master's degree from Northwestern University, Chicago, where she was a Rotary International Scholar, has a Certificate of Innovation and Entrepreneurship from Stanford University, and was a Commonwealth Foundation Emerging Pacific Leader.

Released under the Official Information Act 1982

Annex Two: Suggested talking points

Current price situation

- s 9(2)(g)(i)

[Redacted]

Gentailer profits

- s 9(2)(g)(i)

[Redacted]

-

Hedge markets and retail competition

- s 9(2)(g)(i)

[Redacted]

-

Electricity Authority powers and actions

- s 9(2)(g)(i)

[Redacted]

-

Power Price Task Force

- s 9(2)(g)(i)

[Redacted]

Released under the Official Information Act 1982



BRIEFING

Fees for Electricity Authority Advisory Group

Date:	18 July 2024	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2425-0299

Minister	Action sought	Deadline
Hon Simeon Brown Minister for Energy	Note that we support the proposed Electricity Authority Advisory Group fees of \$633 per day for the Chair and \$435 per day for members.	1 August 2024

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Paul Metcalf	Manager, Appointments and Governance	s 9(2)(a)	✓
Andrew Flanagan	Senior Advisor, Board Appointments and Governance	04 831 9685	

The following departments/agencies have been consulted
Electricity Authority

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments

Released under the Official Information Act 1982



BRIEFING

Fees for Electricity Authority Advisory Group

Date:	18 July 2024	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2425-0299

Purpose

To provide you with our supporting analysis on the proposed fees for members of the Electricity Authority Advisory Group (EAAG).

Executive summary

- The Electricity Authority is seeking your decision on proposed fees for the EAAG.
- We agree with the classification of the EAAG as a Group 4, Level 3 body and the Authority's proposed fees of \$633 per day for the Chair and \$435 per day for members.
- The Authority estimates that 15 members and the Chair will seek payment, with a total cost of approximately \$45,000 per year.
- The EAAG is expected to deliver value by reducing the time and cost of longer consultation processes.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** that the Electricity Authority has sought your decision on the level of fees paid to members of the Electricity Authority Advisory Group (EAAG).

Noted

- b **Note** that we support the proposed EAAG fees of \$633 per day for the Chair and \$435 per day for members.

Noted


Paul Metcalf
Manager, Appointments and Governance
Labour, Science and Enterprise, MBIE

18 / 7 / 24

Hon Simeon Brown
Minister for Energy

..... / /

Background

1. The Electricity Authority recently established the Electricity Authority Advisory Group (EAAG) under section 21(1) of the Electricity Industry Act 2010 (the Act). It has sought your decision on the level of fees paid to members of the EAAG [Electricity Authority briefing BR-24-0025 refers].
2. This advice should be read alongside the above briefing.

Framework for remuneration

3. Section 22(2) of the Act sets out that remuneration of Authority advisory group members should be determined as if the advisory groups were autonomous Crown entities, that is, by the responsible Minister in accordance with the Cabinet Fees Framework (the Framework).

Classification

4. The Authority has recommended that you classify the EAAG as a Group 4, Level 3 body under the Framework and set the fees at \$633 per day for the Chair and \$435 per day for members.
5. We agree with the Authority's assessment that the EAAG should be classified as a Group 4, Level 3 body under the Framework. The fee ranges for this level are \$308–\$633 for the Chair and \$226–\$435 for members [CO (22) 2 refers].

Setting fees

6. When setting a fee within a band, the Framework sets out that factors such as recruitment and retention issues and affordability should be considered.
7. The Authority recommended that you set the daily fees at the top of these bands (\$633 for the Chair and \$435 for members). It has identified that some independent EAAG members commit time that would otherwise be spent undertaking work that would be compensated at significantly higher rates. It described the recruitment and retention of members of other Authority advisory groups as challenging, due to members receiving what they considered insufficient remuneration. The Authority also noted that EAAG members are required to have significant expertise and some hold very senior roles.
8. We are comfortable with the Authority's assessment of the above factors.

Affordability

9. The Framework states that affordability should be considered when setting fees. The Authority has stipulated that it will not remunerate EAAG members who are public servants or employees of larger industry companies.
10. The Authority's briefing was silent on the affordability of the proposed fees. We sought further information from the Authority to inform your decision. It estimates that 15 members and the Chair will seek remuneration for their EAAG work.
11. The Authority is funded through a levy. The rate at which you set the EAAG fees has no direct financial implications for the government. However, when setting fees, you may like to consider the value that the EAAG will deliver and the opportunity costs the fees spend may represent.
12. The Authority expects the investment in the EAAG to deliver value by hearing views from a broad range of stakeholders early and often. This should reduce the time and cost of longer consultation processes.

13. The Authority anticipates that the Chair and members will commit ten and six days per year, respectively. This would result in a total cost of \$45,480 per year. The Authority has budgeted \$50,000 per year for EAAG fees. It has indicated that it will monitor the spend throughout the year and ensure it makes the most of the time of the EAAG.

Recommendation

14. Given the challenges that the Authority has had recruiting and retaining advisory group members in the past, we recommend that you agree to the Authority's proposed fees of \$633 per day for the Chair and \$435 per day for members.
15. As the proposed fees are consistent with the Framework, there is no requirement for you to consult the Minister for the Public Service or Cabinet.

Next steps

16. Subject to your decision, the Authority will pay EAAG members the fees that you set.

Released under the Official Information Act 1982



EVENT BRIEFING

Meeting with the Chairs of the Electricity Authority and Commerce Commission

Date:	21 June 2024	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2324-3837

Action sought		
	Action sought	Deadline
Hon Simeon Brown Minister for Energy	Note the contents of this briefing and suggested talking points ahead of your meeting with the Chairs of the Electricity Authority and Commerce Commission	24 June 2024

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Tamara Linnhoff	Manager, Electricity Generation, Infrastructure and Markets Policy	s 9(2)(a)	✓
Laëtitia Leroy de Morel	Principal Advisor, Electricity Generation, Infrastructure and Markets Policy	044 901 2237	

The following departments/agencies have been consulted

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments

Released under the Official Information Act 1982



EVENT BRIEFING

Meeting with the Chairs of the Electricity Authority and Commerce Commission

Date:	21 June 2024	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2324-3837

Purpose

You are meeting with Anna Kominik, Chair of the Electricity Authority (Authority) and Dr John Small, Chair of the Commerce Commission (Commission) on Wednesday 26 June at 8:30 am for a 30-minute discussion.

At 10.50am on the same day you will also meet with Sarah Gillies, Chief Executive of the Authority and members of the senior leadership team. You have signalled the topics you would like to discuss including wholesale market competition. This is included as part of this briefing.

Recommendations

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** the contents of this briefing are to support your meeting with the Chairs of the Electricity Authority and the Commerce Commission on 26 June 2024.

Noted

Tamara Linnhoff
**Manager, Electricity Generation,
Infrastructure and Markets Policy**
Energy Markets, MBIE

21 / 06 / 2024

Hon Simeon Brown
Minister for Energy

..... / /

Released under the Official Information Act 1982

Meeting purpose and logistics

Date:	24 June 2024	Time:	8:30 am
Location:	Your office		
Attendees:	Anna Kominik, Chair of Electricity Authority Dr John Small, Chair of the Commerce Commission Attendee biographies are included at Annex One .		
Agenda:	You have asked for this meeting with both Chairs to discuss competition matters. No formal agenda has been provided. You may wish to discuss the following: <ul style="list-style-type: none">• Each agency's role and responsibilities• Electricity prices are expected to rise• Your view that competitive markets - both wholesale and retail markets - are critical for affordable electricity• Understanding the extent of any problem• What could be done? Potential levers to improve competition.		

Each agency's role and responsibilities

1. The Authority develops and enforces compliance with the Electricity Industry Participation Code ("the Code") – the rules governing the electricity market. The Authority's main objective is to promote competition, reliability, and efficient operation of the industry. The Authority can proactively make sector-specific rules that promote competition or reduce the risk that a participant will use market power in a way that harms consumers. Generally, the Authority board decides its work programme and priorities.
2. The Commission enforces competition, fair trading and consumer credit contracts laws and has regulatory responsibilities in the electricity lines, gas pipelines, telecommunications, dairy and airport sectors. A role of the Commission's is to undertake 'Part 2 Commerce Act breach investigations' – which involve assessing and potentially prosecuting a breach of competition law after it has occurred.
3. You can request the Authority to undertake a specific inquiry or review (under section 18 of the Electricity Industry Act). Any such request might specify a requirement to consult the Commission but can't oblige the Commission itself to do anything. Similarly, under the Commerce Act, a market study can be initiated by the Minister of Commerce and Consumer Affairs or self-initiated by the Commerce Commission

Independent retailers' complaints passed from the Authority to the Commission and now back to the Authority

4. After hearing their concerns, the Authority suggested independent retailers file a complaint with the Commission. The Commission then considered the matter and explicitly made no finding on a potential breach of the Commerce Act and decided not to open an investigation at this time:

We have expressly made no decision as to whether we consider there has been or continues to be a breach of section 36 as alleged by the complainants and we reserve the right to address this question in future. Instead, we consider the most effective use of the Commission's competition resources at this stage is to provide staff-level support to the review that the EA will undertake into electricity retailers' forward risk management in 2024."

5. The Commission also commented that the Authority has better tools to address the independent retailers' concerns via Code amendments.
6. The Authority opened a 'Risk Management Review' in December 2023 to focus on the availability and pricing of hedge contracts. On 14 June (last week) it communicated to stakeholders that it is at the data assessment stage and plans to release an initial assessment for stakeholder feedback later this year. Commission staff are assisting with peer review for this Risk Management Review.

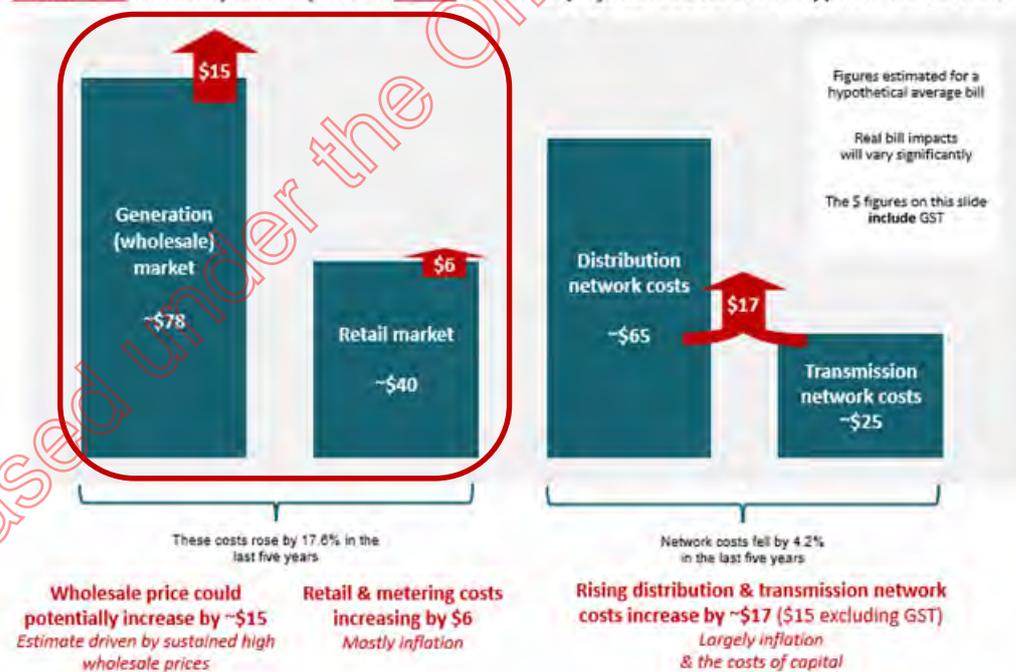
Suggested talking points

- Are your agencies working together? How much active support is the Commission providing to the Authority's Risk Management Review?
- To the Authority - What is your timeline to deliver the Risk Management Review?

Electricity prices are expected to rise

7. On 15 May 2024 we briefed you verbally on competition matters. The supporting slides included the following graphic depicting estimates of the monthly bill impact of rising electricity system costs for a typical household, with the red box highlighting price rises that may be slower (or less) in fully competitive markets:

Estimated monthly bill impact of rising electricity system costs for a 'typical' household



Competitive markets - both wholesale and retail - are critical for affordable electricity

8. Competitive wholesale and retail markets are critical for prices to be at cost and for markets to be innovative – driving investment in new generation or new plans for consumers. We consider that the independent generators coming into New Zealand at the moment are invigorating the generation sector, and that independent retailers are bringing innovation to customers.

A wide range of parties have expressed concerns regarding competition in the electricity market

9. New Zealand has a concentrated wholesale electricity market and profits earned by gentailers frequently attract negative comment. Competition concerns relating to New Zealand's electricity markets are often raised in relation to the wholesale spot market, the hedge market, and the retail market.
10. Confidence and trust in the electricity market from non-incumbents and large consumers is low – concerns have been expressed by MEUG, independent retailers and consumer advocates. The OECD also recently commented on the lack of competition in the electricity market (6 May 2024).
11. The independent electricity retailers (Electric Kiwi, 2degrees, Flick Electric, Octopus Energy and Pulse Energy) have consistently expressed strong views on the lack of competition. The independent retailers claim the gentailers are using and leveraging market power by:

Setting prices in the wholesale market that are substantially above generation cost



Setting high prices and sometimes refusing to supply forward hedges



Cross-subsidising their own retail arms using high profits from the wholesale market to run retail arms at breakeven (at best).

12. The independent retailers also consider the Authority's work to be too narrow in scope by not focussing adequately on remedies. They have engaged Matthews Law to advise them - Andy Matthews is a leading competition lawyer who represented the NZ Groceries Council on matters relating to the Commission's assessment of supermarkets and subsequent legislative reform.

13. s 9(2)(b)(ii)

Suggested talking points

- Are you talking to the new entrant independent generators, and those considering investing in New Zealand? I have heard s 9(2)(b)(ii)

Understanding the extent of any problem

14. To understand the extent and potential impact of any market power on consumers' power bills, we need to address the question: "Do gentailers hold market power in general, or more specifically in the markets for supply of firming generation (and potentially also for dry year cover)?"
15. In 2009, the Commission published analysis (based on work by Stanford's Professor Wolak), suggesting the then-gentailers used market power to earn \$4.3 billion more over 6 1/5 years. A number of more recent studies have also identified 'excessive pricing', including papers by academics at Auckland University. In 2022, the Authority's Wholesale market review included that around \$39/MWh from 2018 to 2021 was unexplained by underlying fuel costs.
16. The Authority's work programme includes market monitoring of wholesale market outcomes [EA BR-24-0020 refers]. In late 2023, Authority staff confirmed to MBIE officials a view that the 'trading conduct rule (introduced in 2021 and which in general terms, requires generators to make supply offers behaving as if they have no market power) appears to be having an impact on generator behaviour.
17. Independent retailers remain frustrated as they consider the Authority's work is not currently sufficiently targeted at assessing market power and its impact. *"We consider there should be a tighter and overt focus on the underlying market power problem and how this manifests in closely related and downstream markets"*.
18. MBIE officials recognise that assessment of prices compared to marginal supply costs is difficult, largely due to the complexity in assessing the opportunity cost of stored water. As such, the Authority may prefer to collaborate with other agencies, academia or use an external consultancy to carry out this work.

Suggested talking point, to the Authority

- *Are you attempting to measure the wholesale margin – do we know if prices are above costs, in particular during tight supply conditions? In other words – can you tell me if when prices are high, are they too high?*

What could be done? Potential levers to improve competition

19. Potential levers to support or enhance competition span market design levers, structural remedies, or measures that support a growth in supply.

Market design levers to improve access to hedges

20. Independent intermittent generators want to be able to access hedges for firming supply (so they can offer firmed PPAs). Independent retailers want to access both baseload and firming hedges so they can compete in the retail markets 'on a level playing field' with the gentailers. Both generators and retailers report to MBIE officials that gentailers at times refuse to supply hedges, or offer hedges priced far above marginal cost to supply.
21. The Authority's risk management review is focussed on hedges for independent retailers and so competition at the retail level. Relatedly, this month (June 2024) the Authority made a decision to require greater transparency of information on hedges [MBIE Weekly Report 17 June refers].

22. The Authority's risk management work is still in the data analysis phase (problem identification), the Authority is not yet focused on potential solutions. The Authority could also expand its scope to also ensure it is addressing barriers to entry for independent generators, to support competition in the wholesale market.
23. The Authority's Market Design Advisory group (MDAG) recommended the Authority scope a back-stop 'virtual separation' mechanism as a method to enhance competition in wholesale and retail markets. The mechanism would require generators with firming supply to offer a set proportion of that supply to other participants, as forward hedge contracts that are standardised (e.g. shape, duration). To be effective in enhancing competition and lowering electricity prices the prices would have to be linked to supply costs.
24. The Authority has committed to scoping the early work to develop this option as a back-stop but is yet to communicate its thinking on this or wider hedge-related levers as a potential Code amendment to support competition.

Suggested talking point, to the Authority

- *How far are you in scoping MDAG's 'virtual separation' solution? This was intended as a back-pocket option, do you think this has merit?*
- *How could you ensure prices for firming hedge reflect cost?*

Market design levers to address concerns around internal transfer pricing (ITPs) and creating a 'level playing field' for independent retailers

25. Independent retailers have also repeatedly expressed concern about the Authority's approach to ITPs, that gentailers' ITPs are too low affecting competition in the retail market, and ITP methodologies are so unclear profitability is impossible to assess.
26. On 18 June the Authority published retail gross margin (RGM) and internal transfer price (ITP) data for the 2022/23 financial year. The data indicates retailers seem to have absorbed "at least part" of cost increases in the 2022-2023 financial year, with all reporting lower gross retail margins. MBIE officials are yet to review this release in detail. The Authority is currently carrying out a post-implementation review of the ITP and retail gross margin information disclosure provisions.
27. NZIER recently prepared a report for the Consumer Advocacy Council on '*Gentailer retail margin disclosure*'. The report finds internal transfer price (ITP) disclosures are difficult to interpret and unlikely to indicate whether generation revenue is excessive. The report recommends the Authority consider additional analysis and disclosure requirements - more reliable information about whether gentailer profits are excessive. MBIE officials carried out similar analysis during 2023 and arrived at similar conclusions: the Authority's rules for internal transfer pricing are opaque, it isn't possible to use them to determine gentailers' wholesale vs retail profit margins, or to use ITPs as benchmarks to see if forward contracts are competitively priced.
28. The Authority are not (yet) focussing on wider levers that could also be useful to enhance competition, such as the non-discrimination requirement approach used in the UK, whereby gentailers must make detailed financial disclosures and the market's 'rules' include a prohibition of discrimination when selling electricity (to their own retail arm vs other retailers) and a prohibition on cross subsidies. Octopus (a leading innovator in the UK market and an independent retailer here in New Zealand) holds a firm view that the Authority should be considering this.

Suggested talking points, to the Authority

- *Does your work programme include looking for evidence of a margin squeeze on independent retailers?*
- *Will the post implementation review of the internal transfer pricing (ITP) disclosure rule take into account NZIER's recent critique? Will the calculation of ITPs be made clearer, and more transparent?*
- *Are you considering the UK model of clear internal transfer pricing and non-discrimination requirements, as a lever to create a level playing field?*

Structural remedies to change the structure of participants

29. Some stakeholders are calling for structural separation of the gentailers.

30. s 9(2)(g)(i)

31.

Suggested talking point

- *Do you have views on the calls for structural separation?*

Levers to support additional supply, to dilute any existing market power

32. s 9(2)(g)(i)

33.

34. Understanding the pipeline of investments is also important. The Authority's wider work programme also includes an annual survey of planned new generation investments [EA BR-24-0020 refers].

Suggested talking point

- *Do you have views on whether measures to support new or faster entry in firming supply should be considered?*

Annexes

Annex One: Attendee biographies

Annex Two: Suggested talking points

Annex Three: A framework for thinking about competition matters

Annex One: Attendee biographies



Anna Kominik, Chair of the Electricity Authority

Anna Kominik was appointed Chair in 2023, for a five-year term. She was previously the Chair of the Electricity Retailer's Association of New Zealand.

Anna is an experienced business leader who has worked for a wide variety of public and private sector organisations during the course of her career. She is currently Chair of the Edmund Hillary Fellowship and Hillary Institute, a director of Dawn Aerospace and advises in the New Zealand aviation and aerospace sector.



Dr. John Small, Chair of the Commerce Commission

Dr John Small was appointed Chair in December 2022, and has been a Commissioner since June 2020.

In May 2024 John was appointed as an Associate Member of the Australian Competition and Consumer Commission.

John advised on electricity market reform in the early 2000s, was a member of the 2018-19 Electricity Price Review's panel and was the Founding Director and lead of economic consultancy firm Covec for 17 years.

Before Covec, John was Head of Economics at Auckland University's Business School when the energy research institute, the Centre of Excellence in Energy, was opened

John has an extensive experience undertaking complex competition analysis in a wide range of sectors, including energy, transport, agriculture, telecommunications, payment systems, and construction.

John was also previously a lay member of the High Court of New Zealand, frequently called as an expert witness before courts, tribunals and commissions.

Annex Two: Suggested talking points

Each agency's role and responsibilities

- *Are your agencies working together? How much active support is the Commission providing to the Authority's Risk Management Review?*
- *To the Authority - What is your timeline to deliver the Risk Management Review?*

A wide range of parties have expressed concerns regarding competition in the electricity market

- *Are you talking to the new entrant independent generators, and those considering investing in New Zealand? I have heard s 9(2)(b)(ii)*

Understanding the extent of any problem

- *Are you attempting to measure the wholesale margin – do we know if prices are above costs, in particular during tight supply conditions? In other words – can you tell me if when prices are high, are they too high?*

Market design levers to improve access to hedges

- *How far are you in scoping MDAG's 'virtual separation' solution? This was intended as a back-pocket option, do you think this has merit?*
- *How could you ensure prices for firming hedge reflect cost?*

Market design levers to address concerns around internal transfer pricing (ITPs)

- *Does your work programme include looking for evidence of a margin squeeze on independent retailers?*
- *Will the post implementation review of the internal transfer pricing (ITP) disclosure rule take into account NZIER's recent critique? Will the calculation of ITPs be made clearer, and more transparent?*
- *Are you considering the UK model of clear internal transfer pricing and non-discrimination requirements, as a lever to create a level playing field?*

Structural remedies to change the structure of participants

- *Do you have views on the calls for structural separation?*

Levers to support additional supply, to dilute any existing market power

- *Do you have views on whether measures to support new or faster entry in firming supply should be considered?*

Annex Three: A framework for thinking about competition matters

A summary of work MBIE officials understand is underway and not yet underway.

Do gentailers have market power - are they able to set prices above cost, in the wholesale spot or hedge markets?

The Authority is at the early stages of wholesale hedge market assessment – it is actively assessing information gathered on hedge market contract asks, offers and prices.

The Authority is not yet focussing on an assessment of market power in wholesale spot markets under specific conditions (e.g. peaking supply or firming supply).

To date, the Authority has reported market outcomes across all time periods (and all market conditions) but not focussed in on a market for firming.

So any market power concentrated in hydro or thermal generators and used in periods of scarcity will be much harder to isolate and identify.

If yes - How much extra are customers paying for electricity, compared to a competitive market?

The Authority monitors wholesale market outcomes period by period. It is starting to consider market definition for supply during periods of scarcity (when prices are higher, and may also be higher than the cost of gas or scarce water)

The Authority is not yet assessing price vs cost margins (eg in periods when supply is tight), so we do not yet know the customer impact of any exercise of market power arising due to concentration of firming supply.

If yes - Are the gentailers restricting independent generators and independent retailers from competing?

The Authority collects ITP and retailer margin information and has signalled it will release a post-implementation review of these disclosure requirements later in 2024.

The Authority does not appear to be considering any anticompetitive behaviour affecting independent generators.

The Authority does not appear to be explicitly assessing the margin squeeze complaint made by independent retailers (that gentailers are using profits from their wholesale business to cross-subsidise their retail arms)