

**Electricity Industry Participation Code (Spot Price Risk
Disclosure) Amendment 2011**

Pursuant to section 38 of the Electricity Industry Act 2010, I
make the following amendments to the Electricity Industry
Participation Code 2010.

At Wellington on the 31st day of October 2011



Dr Thomas Brent Layton
Chairperson
Electricity Authority

Certified in order for signature:



Ross Hill
General Manager Legal and Compliance
Electricity Authority
28 October 2011



Tony Dellow
Partner
Buddle Findlay
28 October 2011

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Amendment

- 1 Title**
This is the Electricity Industry Participation Code (Spot Price Risk Disclosure) Amendment 2011.
- 2 Commencement**
This Amendment comes into force on 1 December 2011.
- 3 Principal Code amended**
This Amendment amends the Electricity Industry Participation Code 2010.
- 4 Interpretation**
Clause 1.1(1) is amended by inserting the following definitions in their appropriate alphabetical order:

"base case means a base case **publicised** by the **Authority** under clause 13.236D

"disclosing participant means any of the following:
(a) a person who consumes **electricity** that is conveyed to the person directly from the national **grid**:
(b) a person who buys **electricity** from the **clearing manager**

"spot price risk disclosure statement means a spot price risk disclosure statement prepared and submitted under clause 13.236A

"stress test means a stress test **publicised** by the **Authority** under clause 13.236D".
- 5 New subpart 5A of Part 13 inserted**
Subpart 5A of Part 13, which is set out in the Schedule of this Amendment, is inserted after subpart 5 of Part 13.

Schedule
New Subpart 5A of Part 13 inserted

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"Subpart 5A—Spot price risk disclosure

"13.236A Disclosing participants must prepare and submit spot price risk disclosure statements

- "(1) Each **disclosing participant** must prepare a **spot price risk disclosure statement** for each quarter beginning 1 January, 1 April, 1 July, and 1 October in each calendar year.
- "(2) Each **participant** who will be a **disclosing participant** in the next quarter must prepare a **spot price risk disclosure statement** for that quarter in accordance with this subpart.
- "(3) The **disclosing participant** must submit the **spot price risk disclosure statement** to the person appointed by the **Authority** to receive **spot price risk disclosure statements** no later than 5 **working days** before the beginning of the quarter to which the statement relates.

"13.236B Authority must appoint a person to receive and analyse spot price risk disclosure statements

- "(1) The **Authority** must appoint an independent person to receive and analyse **spot price risk disclosure statements**.
- "(2) The **Authority** must enter into a contract with the person appointed to receive and analyse **spot price risk disclosure statements**.
- "(3) The contract with the person appointed to receive and analyse **spot price risk disclosure statements** must include the following:
 - "(a) a requirement that the person does not disclose any **spot price risk disclosure statement** to any other person, including that it does not disclose any **spot price risk disclosure statement** to the **Authority**;
 - "(b) a requirement that the person provide information regarding **spot price risk disclosure statements** to the **Authority** in a form that does not identify the **disclosing participant** to which it relates.

"13.236C Authority may approve consolidated spot price risk disclosure statements

On application by 1 or more **disclosing participants**, the **Authority** may approve those **disclosing participants** preparing and submitting a consolidated **spot price risk disclosure statement**.

"13.236D Authority must publicise base case, stress test, and method for calculating target cover ratio

- "(1) The **Authority** must **publicise** a notice setting out the following:
- "(a) a **base case**:
 - "(b) 1 or more **stress tests**:
 - "(c) 1 or more methods for calculating a **disclosing participant's** target cover ratio.
- "(2) If the **Authority** has not **publicised** a notice under subclause (1) at least 30 **working days** before the start of a quarter in respect of which a **spot price risk disclosure statement** is required to be prepared, a **disclosing participant** is not required to prepare or submit a **spot price risk disclosure statement** for the next quarter.
- "(3) If the **Authority** **publicises** an amendment to a notice, or revokes and replaces a notice, within 30 **working days** before the start of a quarter in respect of which a **spot price risk disclosure statement** is required to be prepared, **disclosing participants** must prepare **spot price risk disclosure statements** for the immediately following quarter in accordance with the notice as in force immediately before the amendment or replacement was made and not in accordance with the notice as amended or replaced.

"13.236E Content of spot price risk disclosure statements

- "(1) A **spot price risk disclosure statement** submitted under this subpart must include the following:
- "(a) the **disclosing participant's** annual net cash flow from operating activities as set out in the **disclosing participant's** most recent set of audited annual financial statements:
 - "(b) the **disclosing participant's** level of shareholders' equity as set out in the **disclosing participant's** most recent set of audited annual financial statements:
 - "(c) the **disclosing participant's** estimate of the value of **electricity** that it expects to sell to the **clearing manager** during the period to which the **stress test** relates when the **stress test** is applied, minus the **disclosing participant's** estimate of the value of that **electricity** under the **base case** for that period:
 - "(d) the **disclosing participant's** estimate of the value of **electricity** that it expects to purchase from the **clearing manager** during the period to which the **stress test** relates when the **stress test** is applied, minus the **disclosing participant's** estimate of the

value of that **electricity** under the **base case** for that period:

- "(e) the **disclosing participant's** estimate of the projected net cash flows from operating activities of the **disclosing participant** during the period to which the **stress test** relates when the **stress test** is applied, minus the **disclosing participant's** estimate of those cash flows under the **base case** for that period:
 - "(f) a statement as to whether the **disclosing participant** has an explicit risk management policy in respect of its exposure to the **wholesale market**:
 - "(g) if the **disclosing participant** has an explicit risk management policy, the **disclosing participant's** target cover ratio, for each **stress test**, calculated in accordance with the relevant method **publicised** by the **Authority** under clause 13.236D for the quarter to which the statement relates.
- "(2) For the purposes of subclause (1),—
- "(a) **electricity** is deemed to be sold to the **clearing manager** by a **disclosing participant** if it is sold to the **clearing manager** on the **disclosing participant's** behalf; and
 - "(b) **electricity** is deemed to be purchased from the **clearing manager** by a **disclosing participant** if it is purchased from the **clearing manager** on the **disclosing participant's** behalf.
- "(3) The **disclosing participant** must ensure that a **spot price risk disclosure statement** is signed and dated by a director, or the chief executive officer, or the chief financial officer, or a person holding a position equivalent to one of those positions, of the **disclosing participant** no earlier than 20 **working days** and no later than 5 **working days** before the beginning of the quarter to which the statement relates.
- "(4) In preparing a **spot price risk disclosure statement**, a **disclosing participant** must have regard to all relevant factors, including (without limitation)—
- "(a) any financial instruments in which the **disclosing participant** has an interest; and
 - "(b) any other measures that the **disclosing participant** has in effect to manage the risk arising from its exposure to the **wholesale market**; and
 - "(c) any other arrangements that the **disclosing participant** has in place to manage that risk; and
 - "(d) any amounts of **electricity** that the **disclosing participant** expects to buy from, or sell to, the **clearing manager**.

"13.236F Certification of spot price risk disclosure statement

"(1) A disclosing participant who has submitted a **spot price risk disclosure statement** in accordance with this subpart must provide a certificate to the **Authority**—

"(a) verifying that the board of the disclosing participant has considered—

"(i) every spot price risk disclosure statement submitted under this subpart by the **disclosing participant** in the period to which the certificate relates; and

"(ii) the projected change in net cash flows from operating activities of the disclosing participant as a result of applying the **stress test** or **stress tests** that relate to each period to which each **spot price risk disclosure statement** relates; and

"(b) certifying that the disclosing participant has provided to each of the **disclosing participant's** customers who, in the period to which the certificate relates, has entered into or renewed a contract with the **disclosing participant** that results in any **electricity** supplied to the customer being determined directly by reference to the **final price** at a **GXP**, information to enable the customer to consider the outcomes of applying the **stress test** or **stress tests** to the customer.

"(2) Each certificate must be submitted as follows:

"(a) in the case of the first certificate submitted by a disclosing participant, no later than the end of the fourth quarter following the quarter in which the first **spot price risk disclosure statement** is submitted by that **disclosing participant** (in which case the certificate must relate to every **spot price risk disclosure statement** made by the **disclosing participant** in the preceding quarters):

"(b) in the case of every subsequent certificate, no later than the end of the fifth quarter following the quarter in which the last certificate was submitted (in which case the certificate must relate to every **spot price risk disclosure statement** made by the **disclosing participant** since the last certificate was submitted).

"(3) The certificate must be—

"(a) in the form specified by the Authority; and

"(b) signed and dated by a director of the disclosing participant and 1 of the following:

- (i) another director of the **disclosing participant**:
- (ii) the chief executive officer, or person holding an equivalent position, of the **disclosing participant**:
- (iii) the chief financial officer, or person holding an equivalent position, of the **disclosing participant**.

"13.236G Authority may require disclosing participant to submit new spot price risk disclosure statement

- "(1) The **Authority** may, by notice in writing to a **disclosing participant** who submitted a **spot price risk disclosure statement**, require the **disclosing participant** to submit a new **spot price risk disclosure statement**.
- "(2) If a **disclosing participant** receives a request from the **Authority** under subclause (1), the **disclosing participant** must submit a new **spot price risk disclosure statement** to the person appointed by the **Authority** to receive **spot price risk disclosure statements** within 10 **working days** after the date on which the **disclosing participant** received the request.
- "(3) Clause 13.236E applies to a **spot price risk disclosure statement** submitted under this clause.

"13.236H Authority may require independent audit of spot price risk disclosure statement or certificate

- "(1) The **Authority** may, in its discretion, on the recommendation of the person appointed to receive and analyse **spot price risk disclosure statements** or on its own motion, require an **audit** of 1 or more of the following:
 - (a) a **spot price risk disclosure statement**:
 - (b) part of a **spot price risk disclosure statement**:
 - (c) the information set out in the certificate submitted under clause 13.236F.
- "(2) If the **Authority** requires an **audit** under subclause (1), the **Authority** must require the relevant **disclosing participant** to nominate an appropriate **auditor**.
- "(3) The **disclosing participant** must provide that nomination within a reasonable timeframe.
- "(4) The **Authority** may direct the **disclosing participant** to appoint the **auditor** nominated by the **disclosing participant**.
- "(5) If the **disclosing participant** fails to nominate an appropriate **auditor** within 5 **working days**, the **Authority** may direct the **disclosing participant** to appoint an **auditor** of the **Authority's** choice.

- "(6) The **disclosing participant** must appoint an **auditor** in accordance with a direction made under subsection (4) or subsection (5).
- "(7) A **disclosing participant** subject to an **audit** under this clause must, on request from the **auditor**, provide the **auditor** with such information as the **auditor** reasonably requires in order to **audit** the **spot price risk disclosure statement** or the information set out in the certificate submitted under clause 13.236F (as the case may be).
- "(8) The **disclosing participant** must provide the information no later than 10 **working days** after receiving a request from the **auditor** for the information.
- "(9) The **disclosing participant** must ensure that the **auditor** produces an **audit** report on the **spot price risk disclosure statement** or the information set out in the certificate submitted under clause 13.236F (as the case may be) and submits the **audit** report to the **Authority**.
- "(10) Before the **audit** report is submitted to the **Authority**, any failure of the **spot price risk disclosure statement** or the information set out in the certificate submitted under clause 13.236F (as the case may be) to comply with this subpart must be referred back to the **disclosing participant** for comment.
- "(11) The comments of the **disclosing participant** must be included in the **audit** report.
- "(12) The **disclosing participant** may require that the **auditor** does not provide the **Authority** with a copy of any information that the **disclosing participant** has provided to the **auditor** in accordance with subclause (7).

"13.236I Payment of auditor's costs

- "(1) If an **audit** establishes, to the **Authority's** reasonable satisfaction, that a **disclosing participant's spot price risk disclosure statement** or the information set out in the certificate submitted under clause 13.236F (as the case may be) has not complied with this subpart (whether or not the **Authority** appoints an investigator to investigate the alleged breach), the **disclosing participant** must pay the **auditor's** costs.
- "(2) If the **Authority** considers that the **disclosing participant's** non-compliance is minor, the **Authority** may, in its discretion, determine the proportion of the **auditor's** costs that the **disclosing participant** must pay, and the **disclosing participant** must pay those costs.
- "(3) If an **audit** establishes to the **Authority's** reasonable satisfaction that a **disclosing participant's spot price risk disclosure statement** or the information set out in the certificate submitted under clause 13.236F (as the case

may be) has complied with this subpart, the Authority must pay the **auditor's** costs."

Explanatory Note

This note is not part of the Code Amendment, but is intended to indicate its general effect.

This amendment to the Electricity Industry Participation Code 2010 comes into force on 1 December 2011.

This amendment amends Parts 1 and 13 of the Electricity Industry Participation Code 2010 to implement the Electricity Authority's stress test regime proposal, which requires specified participants to submit spot price risk disclosure statements to an independent person appointed by the Authority, and to submit annual certificates to the Authority in respect of the spot price risk disclosure statements.

Date of notification in the *Gazette*: 3 November 2011.