

30 April 2013



Vector Limited
101 Carlton Gore Road
PO Box 99882, Newmarket
Auckland 1149,
New Zealand
www.vector.co.nz
Corporate Telephone
+64-9-978 7788
Corporate Facsimile
+64-9-978 7799

Electricity Authority
PO Box 10041
Wellington

Sent by email to: submissions@ea.govt.nz

Review of the Undesirable Trading Situation Provisions in the Code

1. Vector welcomes the opportunity to respond to the Electricity Authority's (Authority) consultation paper *Review of the Undesirable Trading Situation Provisions in the Code*, dated 18 March 2013. No part of this submission is confidential and we are happy for it to be publicly released.
2. Vector's contact person for this submission is:
Sally Ma
Regulatory Analyst
09 978 8284
Sally.Ma@vector.co.nz
3. The Authority is proposing to amend certain provisions relating to an Undesirable Trading Situation (UTS), including amendments to the definition of a "UTS" and "Wholesale Market", time limit of claims and the remedies available to address a UTS. While Vector is not directly affected by UTS decisions, we are interested in ensuring the proper functioning of the wholesale market and minimising regulatory risk.

Proposed definition of an Undesirable Trading Situation

4. Vector agrees that the UTS provisions warrant review. However, Vector is concerned that the proposed amended definition will remove the *causal link* between an undesirable activity and a UTS, thereby widening the scope of situations that could be deemed a UTS. The amendment ultimately means that the Authority would be able to declare that UTS' occur in situations that are beyond the control and influence of market participants and the

Authority. This increases risk of regulatory uncertainty and gives the Authority wide scope to deem many situations a UTS.

5. For example, the following list of situations could each be considered UTS' under the proposed definition:

Dry-years: Take for instance the situation of semi-periodic droughts: it could be readily argued that droughts "(a) threatens, or may threaten, confidence in, or the integrity of, the wholesale market; and (b) ... in the reasonable opinion of the Authority, cannot satisfactorily be resolved by any other mechanism available under this Code." However, Vector does not believe it would be sensible to declare a UTS for a drought.

General wholesale electricity market operation: If the wholesale electricity market is not perfectly or workably competitive, either for limited periods or an enduring basis, wholesale electricity prices would be higher than otherwise. Where this lack of competition was caused by, for example, manipulative trading activity, then it would already be captured by the UTS definition. However, if the lack of competition was caused by the structural nature of the market (e.g. not enough generation firms to deliver workable competition), should this situation be captured by the UTS provisions?

Electricity Authority's proposed TPM: Another example of a situation that could be interpreted as a UTS relates to the Authority's October 2012 transmission pricing methodology (TPM) proposal. Under the proposal, generators would have incentives to manipulate their offers in the wholesale market (by raising the offers closer to their expectation of the clearing price) to minimise their share of SPD charges. This is a point made by a large number of submitters. Would the Authority consider that generators acting rationally by gaming the wholesale electricity market to minimise transmission charges amount to a UTS under the Authority's TPM proposal?

6. Vector believes that the issue is in the current wording of sub-clause (c). Sub-clause (c) is too wide because it contains the qualification "without limitation" and "(v) any exceptional or unforeseen circumstance that is at variance with, or that threatens or may threaten, generally accepted principles of trading or the public interest." However, a UTS should only be declared when it has been determined that the party has acted undesirably.

The amendment would frustrate the ability to deter trading practices that harm the market and create uncertainty around what may be deemed a UTS. We do not believe it is enough to merely include sub-clause (c) as “examples” in Part 5 of the Code.

7. Vector **recommends** that the Authority amend rather than delete clause (c) of the definition of a UTS along the following lines:

(c) that is caused by misleading, deceptive or undesirable conduct or activity which includes, without limitation:

- (i) manipulative or attempted manipulative trading activity;*
- and*
- (ii) conduct in relation to trading that is misleading or deceptive, or likely to mislead or deceive; and*
- (iii) unwarranted speculation or an undesirable practice; and*
- (iv) material breach of any law.*

Proposed remedies inconsistent with the Code

8. The Authority proposes to widen the remedies it may consider for redressing a UTS by allowing the Authority to give directions that are inconsistent with the Code. This gives the Authority very wide power and Vector considers that the Authority approach any changes with caution. Directions that breach the Code should be subject to some form of scrutiny.
9. To this end, Vector **recommends** that if the Authority adopts this proposal, its directions under clause 5.2 should include provision for appeal to the Rulings Panel against such directions.

Yours sincerely,



Bruce Girdwood
Manager Regulatory Affairs