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Submissions
Electricity Authority
PO Box 1041
Wellington 6143

Via email: submissions@ea.govt.nz

Mighty River Power Limited
Level 14, 23-29 Albert Street
Auckland 1010
PO Box 90399
Auckland Mail Centre
Auckland 1142

Phone: +64 9 308 8200
Fax: +64 9 308 8209
www.mightyriverpower.co.nz

DDI: +64 9 308 8200
Direct Fax: +64 9 308 8209

Review of Undesirable Trading Situation provisions in the Code – Consultation Paper

Thank you for the opportunity to comment on the Electricity Authority's (EA) consultation paper on the review of the Undesirable Trading Situation (UTS) provisions. No part of this submission is confidential.

Mighty River Power supports the Authority's proposed amendments which we consider address many of the substantive points raised during the March 26 UTS legal proceedings and from previous UTS consultations. The broadening of the scope of UTS provisions is appropriate and will allow the Authority to consider the full range of impacts from any future instances of undesirable trading across the market.

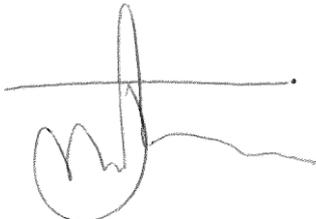
We also support the current draft recommendations from the Wholesale Advisory Group (WAG) as part of the Net Pivotal review to re-establish conduct provision in the Code. However, we note that the proposed provisions to prohibit market manipulation creates potential overlap with the UTS paragraph (C) which also references market manipulation and is proposed to be moved to the Code.

Given the high bar of proving deliberate market manipulation as noted by the WAG, it is likely that participants will seek to address undesirable conduct under the Code but also seek recourse to declaring a UTS concurrently. This will be to ensure that in the event claims of market manipulation are not able to be substantiated under the Code provisions, there still may be remedy to address the market outcomes of an undesirable event via a UTS.

This outcome is not problematic and is consistent with retaining the 'backstop' nature of the UTS provisions. However, the optimal outcome is that the conduct provisions, should they be implemented, will need to be sufficient to actually capture potential manipulative behaviour - otherwise the value over the UTS provisions will likely be significantly reduced.

Please direct any queries to myself on nick.wilson@mightyriver.co.nz or 09 580 3623.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'N' and 'W' followed by a horizontal line with a dot at the end.

Nick Wilson
Senior Market Regulatory Adviser

Attachment: Questions and Answers

No.	Question	Response
1	Do you agree with the proposal that the current definition of “wholesale market” should be clarified as including the spot market for electricity, the ancillary services markets and the hedge market, and that clause 9.14(2)(a) of the Code should be amended accordingly?	Yes we agree with this proposal. We consider the ability to leverage outcomes in the hedge market, for example by offering inflated hedge cover when net pivotal, is clearly undesirable. We agree with the Authority that this amendment will allow it to take into account the “potential ‘stabilising’ influence the hedge market has within the wider wholesale market.” particularly during net pivotal situations.
2	Do you agree with the proposed changes to Part 1 of the Code to clarify the definition of a UTS?	<p>Yes. However we note that the change to a definition of a UTS to apply to actions that may undermine “integrity and confidence” could benefit from further clarity being provided by the Authority as to how this may be interpreted in practice.</p> <p>In particular, clarity would be useful around what weight the Authority would be likely to give to various parties (e.g. non-participants) claims as to lack of confidence creating grounds for a UTS.</p>
3	Do you agree that the examples in paragraph (c) of the current definition of a UTS should be retained in the Code, and moved to Part 5?	<p>Yes. However we note the Authority’s Wholesale Advisory Group (WAG) is currently considering recommending revisions to the Code to reinstate market manipulation and “in good faith” trading provisions. We have a question as to how such provisions will relate to UTS paragraph (C) which also references manipulative trading and whether consideration has been given to any potential uncertainties this creates.</p> <p>Mighty River Power notes the WAG analysis shows that actually proving market manipulation has occurred is a high bar given the need to demonstrate intent. If market</p>

		<p>manipulation is tested under the proposed new market conduct provisions, but market manipulation is unable to be proven, participants may not have recourse to then call a UTS, particularly given the proposed 10 day limitation.</p> <p>As a result we consider it likely that participants would seek to call a UTS as well as seek remedy under the Code to preserve optionality which would likely not be efficient.</p> <p>A further issue is whether the Authority would consider a UTS could still be called given clause B of the UTS provisions indicates that a UTS can only be called when, in its reasonable opinion, the issue cannot be resolved by any other mechanism available in the Code.</p> <p>March 26 is illustrative here as while it was not able to be found that deliberate market manipulation had been engaged in, a UTS was still able to be called and prices reset.</p> <p>Providing clarity around how the various provisions might work in tandem will be important as is ensuring that the market conduct provisions being considered by the WAG are broad enough to capture and deal with market manipulation without needing recourse to a UTS. Mighty River Power will also raise such issues as part of the WAG's consultation in due course.</p>
4	Do you agree with the proposed changes to clause 13.255 of the Code to align it with the suggested changes to UTS provisions?	Yes.
5	Do you agree with the proposal that there should be a restriction on the	Yes.

	Authority initiating a UTS investigation for situations earlier than a defined time limit in the past?	
6	Do you agree with the proposal that the time limit should be no more than 10 business days, and apply between the commencement of the alleged UTS and the date the Authority initiates an investigation?	Yes.
7	Do you agree with the proposal that there should be no time limit on republication of final prices per se?	Yes.
8	Do you agree with the proposal that the Authority should be able to take any action to remedy a UTS, provided the action relates to an aspect of the electricity industry that the Authority could regulate in the Code under section 32 of the Act?	Yes
9	Do you agree with the proposal that industry participants following directions from the Authority do not face the risk of breaching the Code as a consequence of doing so?	Yes