Electricity Industry Participation Code 2010

Part 5
Regime for dealing with undesirable trading situations

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5.1 Occurrence of undesirable trading situation
(1) If the Authority suspects or anticipates the development, or possible development, of an undesirable trading situation, the Authority may investigate the matter.
(2) The following are examples of what the Authority may consider to constitute an undesirable trading situation:
   (a) manipulative or attempted manipulative trading activity:
   (b) conduct in relation to trading that is misleading or deceptive, or is likely to mislead or deceive:
   (c) unwarranted speculation or an undesirable practice:
   (d) material breach of any law:
   (e) a situation that threatens orderly trading or proper settlement:
   (f) any exceptional or unforeseen circumstance that is contrary to the public interest.
(3) To avoid doubt,—
   (a) the list of examples in subclause (2) is not an exhaustive list, and does not prevent the Authority from finding that an undesirable trading situation is developing or has developed in other circumstances; and
   (b) an example listed in subclause (2) does not constitute an undesirable trading situation unless the example comes within the definition of that term in Part 1.

Compare: SR 2003/374 r 54
Clause 5.1(2) and (3): inserted, on 18 July 2013, by clause 5 of the Electricity Industry Participation (Undesirable Trading Situation) Code Amendment 2013.

5.1A Time limit for investigating undesirable trading situation
Despite clause 5.1(1), the Authority must not commence an investigation if more than 10 business days have passed since the situation, which the Authority suspects or anticipates may be an undesirable trading situation, occurred.

5.2 Actions Authority may take to correct undesirable trading situation

(1) If the Authority finds that an undesirable trading situation is developing or has developed, it may take any action that—
   (a) the Authority considers is necessary to correct the undesirable trading situation; and
   (b) relates to an aspect of the electricity industry that the Authority could regulate in this Code under section 32 of the Act.

(2) The actions that the Authority may take under subclause (1) include any 1 or more of the following:
   (a) directing that an activity be suspended, limited, or stopped, either generally or for a specified period;
   (b) directing that completion of trades be deferred for a specified period;
   (c) directing that any trades be closed out or settled at a specified price;
   (d) directing a participant to take any actions that will, in the Authority’s opinion, correct or assist in overcoming the undesirable trading situation.

(2A) A direction given to a participant under subclause (2)(d)—
   (a) may be inconsistent with this Code; but
   (b) must not be inconsistent with the Act, or any other law.

(3) The participant must comply promptly with a direction given to it in writing.

(4) A participant is not liable to any other participant in relation to the taking of an action, or an omission, that is reasonably necessary for compliance with an Authority direction under this clause.

(5) A participant does not breach this Code if it acts in accordance with a direction given under subclause (2)(d).

Compare: SR 2003/374 r 56

5.3 Authority must consult with system operator

(1) The Authority must consult with the system operator if—
   (a) the Authority is considering taking an action under clause 5.2 to correct an undesirable trading situation; and
   (b) it is possible that the action may have an effect on system security.

(2) The system operator must maintain procedures that are necessary to enable it to respond immediately to the Authority, and provide information as soon as reasonably practicable, if the Authority consults the system operator under this clause.

Compare: SR 2003/374 r 58
5.4 Authority must consult with participants
If the Authority finds that an undesirable trading situation is developing or has developed, the Authority must—
(a) immediately advise all registered participants of its findings and of any actions that the Authority intends to take, or has taken, to correct the undesirable trading situation; and
(b) unless the Authority considers that it is impractical to do so, consult with affected participants before taking the action.

Compare: SR 2003/374 r 59

5.5 Authority must attempt to correct and restore normal operation as soon as possible
The Authority must attempt to correct every undesirable trading situation and, consistently with section 15 of the Act, restore the normal operation of the wholesale market as soon as possible.

Compare: SR 2003/374 r 60