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10 August 2015

Andrew Springett
Electricity Authority
2 Hunter Street
WELLINGTON

By email: submissions@ea.govt.nz

Dear Andrew,

Code Review Programme 2015

Genesis Energy Limited welcomes the opportunity to provide a submission to the Electricity Authority (“the Authority”) on the consultation paper “Code Review Programme 2015” dated 30 June 2015 (the “Code Review”).

We support the Authority’s having an annual Code Review programme to consult on minor Code amendments identified through the Authority’s own work and as a result of suggestions received through the Authority’s Code amendment proposal process. Whilst the majority of the proposed amendments are likely to be beneficial, we have two significant concerns:

1. Some of the changes set out in “Appendix C Minor Amendments” are, in fact, substantive. While they may not warrant a separate consultation process they at least require the benefit of the Authority’s full consultation process – including a specific cost benefit analysis; and
2. Incorporation of documentation into the Code by reference is a useful regulatory tool. But it must meet the requirements of the Electricity Industry Act 2010 (“the Act”), specifically section 32(3) and Schedule 1.

Appendix C Minor Amendments

We do not agree that all of the amendments in Appendix C “Minor” Amendments are, in fact, minor amendments. We are concerned that the changes proposed are not “technical and non-controversial”; there is not

“widespread support”; nor has there been “adequate prior consultation”. Therefore, the requirements of section 39(3) of the Act, which would allow the Authority to not consult on these proposed amendments, have not been met. We recommend that the following specific amendments be fully consulted on before any changes are implemented:

1. The change to the definition of Electricity Information Exchange Protocol “EIEP”: while we agree with the definition change, this amendment goes beyond this and seeks to incorporate unspecified EIEPs by reference under clauses 11.32B and 11.32F of the Code. We have provided further comment on this particular point below and provided drafting suggestions in the Appendix.
2. The change to the definition of “electricity supplied”: we dispute that there is confusion in the market with the current definition and are of the view that the proposed amendment removes a valid check on the market activity of participants.
3. The change to the definition of “event date”: we agree with the change but are concerned with unintended consequences arising from the proposed drafting.
4. Registry metering records settlement indicator: the amendment does not address the actual issue in the market regarding the settlement indicator identifier. It is not the current Code description that is putting traders who solely use half hourly data at odds with the Code, but rather the use of this flag for an unrelated decision, that is, to determine which switch files should contain cumulative switch reads.

We have provided full comment on these amendments in the Appendix.

Incorporation by Reference

We are concerned with the proposed drafting of the change to the definition of EIEP because, as part of the drafting, clauses 11.32B and 11.32F have been amended to incorporate EIEPs by reference into the Code. While an EIEP is the type of document that may be incorporated by reference under section 32(3) of the Act (technical and long, or impractical to publish in the Code), Schedule 1 requires that the material incorporated by reference “is the material as it exists at the time the relevant provision of the main document is published”.

The new drafting refers to “any relevant EIEP” in clause 11.32B and to “1 or more EIEP” in clause 11.32F. These references are ambiguous as to which EIEPs are actually being incorporated into the Code. We are concerned the

drafting allows mandatory and voluntary EIEPs as well as current and future EIEPs to be incorporated without the need for the Authority to adhere to the consultation process governing the Code. This Amendment should refer to the specific EIEPs that are to be incorporated into both clause 11.32B and clause 11.32F. We have proposed alternative drafting in the Appendix.

The attached Appendix contains our detailed comments, responses to questions, and proposed drafting changes as requested by the Authority. If you would like to discuss any of these matters further, please contact me on 04 495 3348 or email rebekah.cain@genesisenergy.co.nz.

Yours sincerely



Rebekah Cain
Regulatory Advisor

Appendix: Responses to Consultation Questions

Reference number for amendment you are submitting on:	097-001
Amending the definition of “contract for differences”	
Question 1: Do you agree with the Authority's problem definition? If not, please provide comments.	
Yes	
Question 2: Do you agree with the Authority's proposed solution? If not, please provide comments.	
Yes. However, while we have all the necessary information stored in the database, and can create an automatically generated file that sends the appropriate information to wherever it needs to go, this will require lead in time to ensure that we can have this set up correctly. This is particularly relevant if the ASX reporting software changes have not been made at the time this provision comes into force.	
Question 3: Do you have any comments on the Authority's proposed Code drafting?	
No	
Question 4: Do you agree with the objectives of the proposed amendment? If not, why not?	
Yes	
Question 5: Do you agree the benefits of the proposed amendment outweigh its costs?	
Yes	
Question 6: Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.	
Yes	

Reference number for amendment you are submitting on:	008-002
Replacing the definition of “embedded network”	
Question 1: Do you agree with the Authority's problem definition? If not, please provide comments.	
Yes	
Question 2: Do you agree with the Authority's proposed solution? If not, please provide comments.	
Yes	
Question 3: Do you have any comments on the Authority's proposed Code drafting?	
Point (a) would be more clearly drafted as follows: “(a) is not connected directly to the grid; and”	
Question 4: Do you agree with the objectives of the proposed amendment? If not, why not?	
Yes	
Question 5: Do you agree the benefits of the proposed amendment outweigh its costs?	
Yes	
Question 6: Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.	
Yes	

Reference number for amendment you are submitting on:	084-003.
Amending the definition of “use of system agreement”	
Question 1: Do you agree with the Authority's problem definition? If not, please provide comments.	
Yes	
Question 2: Do you agree with the Authority's proposed solution? If not, please provide comments.	
Yes	
Question 3: Do you have any comments on the Authority's proposed Code drafting?	
Yes. We do note, however, that while an amendment is proposed to the definition and to clause 14.41, the proposed change to clause 14.41 has not been included in the “Master List of all Proposed Amendments”.	
Question 4: Do you agree with the objectives of the proposed amendment? If not, why not?	
Yes. However, it only works provided that any network is required to meet the current threshold of a “serious financial breach”. This threshold is an important safeguard to ensure that an embedded network does not have a disproportionate amount of power in the event of a default.	
Question 5: Do you agree the benefits of the proposed amendment outweigh its costs?	
Yes	
Question 6: Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority’s statutory objective in section 15 of the Electricity Industry Act 2010.	
Yes	

Reference number for amendment you are submitting on:	022-006
Energising a point of connection that has not previously been energised	
Question 1: Do you agree with the Authority's problem definition? If not, please provide comments.	
Yes	
Question 2: Do you agree with the Authority's proposed solution? If not, please provide comments.	
Yes	
Question 3: Do you have any comments on the Authority's proposed Code drafting?	
No	
Question 4: Do you agree with the objectives of the proposed amendment? If not, why not?	
Yes	
Question 5: Do you agree the benefits of the proposed amendment outweigh its costs?	
No. The change will reflect current market practice so, arguably, the costs are overstated as the Authority has not enforced this.	
Question 6: Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.	
Yes	

Reference number for amendment you are submitting on:	051-016
Electricity Information Exchange Protocols (EIEPs)	
Question 1: Do you agree with the Authority's problem definition? If not, please provide comments.	
Yes	
Question 2: Do you agree with the Authority's proposed solution? If not, please provide comments.	
Rather than recording the agreement to opt out in the Use of System Agreement, we propose that the parties be allowed to agree to opt-out in writing, for example, by an exchange of emails or letters.	
Question 3: Do you have any comments on the Authority's proposed Code drafting?	
See above comment.	
Question 4: Do you agree with the objectives of the proposed amendment? If not, why not?	
Yes	
Question 5: Do you agree the benefits of the proposed amendment outweigh its costs?	
Yes	
Question 6: Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.	
Yes.	

Reference number for amendment you are submitting on:	081-023
Amending the definition of "EIEP"	
Question 1: Do you agree with the Authority's problem definition? If not, please provide comments.	
Yes	
Question 2: Do you agree with the Authority's proposed solution? If not, please provide comments.	
<p>This amendment is not specific enough and presumes to incorporate of both mandatory and voluntary EIEPs into the Code under clause 11.32B, as well as current and future EIEPs, without proper consultation. In its current form, we consider this amendment <i>ultra vires</i>.</p> <p>Incorporation by reference is permitted under section 32(3) and Schedule 1 of the Act. And we agree an EIEP is the type of document that may be incorporated by reference. EIEPs are technical in nature and impractical to publish in full in the Code. However, Schedule 1 requires that material incorporated by reference is the material "as it exists at the time the relevant provision of the main document (the Code) is published".</p> <p>Therefore, to meet the legal requirements of the act this amendment must refer to the specific EIEP that is to be incorporated into clause 11.32B. This applies equally to the reference to "1 or more EIEPs" in clause 11.32F that a retailer must comply with when responding to such a request.</p> <p>The Act does allow for amendments to specific documents incorporated by reference, if necessary, if the change is of the "same general character" as the incorporated document. Specifying the EIEP, and properly consulting on both the EIEP and its incorporation by reference into the Code, would allow the specific EIEP to be amended but still requires that the incorporation of any future EIEPs would be need to be consulted on.</p> <p>We also ask that the reference to "procedures" be deleted from clause 11.32F. The Authority has, in fact, used EIEPs for this purpose and, we agree, this is an established and appropriate mechanism to use for the exchange of data between retailers and consumers as well as distributors and traders.</p>	

Question 3: Do you have any comments on the Authority's proposed Code drafting?

We propose the following drafting changes:

11.32B Requests for information

(2) In responding to a request, the **retailer** must comply with ~~the procedures and any relevant~~ EIEP 13A, 13B and 13C publicised by the Authority under clause 11.32F.

11.32F Authority must publicise ~~procedures~~ EIEPs for responding to requests for consumption information

(1) The **Authority** must, no later than 20 **business days** after this clause comes into force, **publicise** (and must keep **publicised**)

(a) ~~procedures~~ **EIEPs** under which a **retailer** must respond to a request from a **consumer** under clause 11.32B; and

(b) Each **EIEP publicised** by the **Authority** must specify 1 or more formats in which information must be given to **consumers**.

(2) The ~~procedures~~ **EIEPs publicised** by the **Authority** must specify the manner in which information must be given to **consumers**.

(3) Each **EIEP publicised** by the **Authority** must specify 1 or more formats in which information must be given to **consumers**.

We are of the view that clause 12A.13 should reflect the amendment to the definition of EIEP so that the consultation requirements for mandatory EIEPs apply equally to EIEPs that apply to information provided by **retailers** to **consumers** as to information exchanged between **distributors** and **traders**.

12A.13 Authority may publicise EIEPs that must be used

(1) The **Authority** may **publicise** 1 or more **EIEPs** that set out the standard formats for the exchange or provision of information ~~that distributors and traders must use when exchanging information.~~

Question 4: Do you agree with the objectives of the proposed amendment? If not, why not?

Yes

Question 5: Do you agree the benefits of the proposed amendment outweigh its costs?

There is no cost-benefit analysis on this because the Authority has considered it to be an immaterial change. We disagree and are of the view that a full consultative process is necessary for this proposed amendment.

Question 6: Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.

The Authority needs to follow the full consultation process requirements for amending the Code for this proposed change.

Reference number for amendment you are submitting on:	083-025
Amending the definition of “electricity supplied”	
Question 1: Do you agree with the Authority's problem definition? If not, please provide comments.	
<p>No.</p> <p>We dispute that there is confusion with the current definition and are of the view that the proposed amendment removes a valid check on participants market activity.</p> <p>The intent of “electricity supplied” is to provide a view of the difference between what a Trader is purchasing (wholesale submissions) and what they are selling to customers (electricity supplied). The current definition describes electricity supplied well. The proposed change will remove this differentiation and both wholesale submissions and “electricity supplied” will have the same meaning.</p> <p>It is worthy to note that the fraudulent activity of EGas Limited was in part proved by the comparison of wholesale submissions and true electricity supplied data. It was EGas’s manipulation of electricity supplied to match wholesale submissions that was used to hide their fraudulent under-submission activity. This change will remove this differentiation.</p>	
Question 2: Do you agree with the Authority's proposed solution? If not, please provide comments.	
No	
Question 3: Do you have any comments on the Authority's proposed Code drafting?	
<p>The amendment should not be made. This is certainly not a “minor” amendment as it fundamentally changes the intent of the reporting clauses where the term “electricity supplied” is used.</p> <p>If not rejected outright, it should at least have a full consultation so the perceived failing, and the intended outcome of the changes, can be explored fully before any amendment is made.</p> <p>This is not “technical and non-controversial”, there is not “widespread support”, nor has there been “adequate prior consultation”, therefore, it does not meet the requirements of section 39(3) of the Act which would allow the Authority to not consult.</p>	

Question 4: Do you agree with the objectives of the proposed amendment? If not, why not?
No.
Question 5: Do you agree the benefits of the proposed amendment outweigh its costs?
The system changes required to meet the reporting requirement changes brought about by this amendment would be extensive and costly for no practical benefit.
Question 6: Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.
The status quo should remain.

Reference number for amendment you are submitting on:	009-027
Amending the definition of “event date”	
Question 1: Do you agree with the Authority's problem definition? If not, please provide comments.	
Yes	
Question 2: Do you agree with the Authority's proposed solution? If not, please provide comments.	
This is conditional on the changes to the drafting, as proposed.	
Question 3: Do you have any comments on the Authority's proposed Code drafting?	
<p>The inclusion of the word “earlier” in the proposed amendment has the perverse result that if the Trader assumes responsibility for an ICP under 11.18(1), loses that ICP, and then is involved in regaining that ICP by way of a switch at some time in the future, under this amendment, the switch date will need to be the earlier ICP assumption date.</p> <p>We propose the following alternative drafting:</p> <p>Event date, in relation to an ICP, means:</p> <ul style="list-style-type: none"> (a) in respect of Schedule 11.3, the date on which the gaining trader commences trading electricity at the ICP, or (b) in respect of clause 11.18(1), the date on which the gaining trader otherwise assumes responsibility for the ICP. 	
Question 4: Do you agree with the objectives of the proposed amendment? If not, why not?	
Yes	
Question 5: Do you agree the benefits of the proposed amendment outweigh its costs?	
Only if the unintended consequence of the proposed amendment is addressed.	

Question 6: Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.

The amendment must be changed to address the unintended consequence identified under Question 3 above for this amendment. We have proposed alternative drafting which we believe better addresses the issue.

Reference number for amendment you are submitting on:	045A-040
Registry metering records: settlement indicator	
Question 1: Do you agree with the Authority's problem definition? If not, please provide comments.	
The current Code description for the field is correct as it clearly identifies which channels of data a trader is using to settle in the market. It is not the description that is putting traders who solely use half hourly data at odds with the Code, but rather the use of this flag for an unrelated decision, that is, to determine which switch files should contain cumulative switch reads.	
Question 2: Do you agree with the Authority's proposed solution? If not, please provide comments.	
No. If the Code were to be altered as proposed it destroys the original purpose of the indicator as there will be no way to identify which data channels are used for settlement as the indicator will be "Y" irrespective of whether the trader is using the channel or not. The root problem is appropriate switch reads. This is better addressed by revising the Code and functional specification that directly applies to what is included in the final information and linking this to the same decision point as the switch process, that is, the metering category.	
Question 3: Do you have any comments on the Authority's proposed Code drafting?	
See above.	
Question 4: Do you agree with the objectives of the proposed amendment? If not, why not?	
No	
Question 5: Do you agree the benefits of the proposed amendment outweigh its costs?	
No	
Question 6: Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.	
No. The real issue here is how to ensure that cumulative reads are used in the switching files for lower meter category ICPs irrespective of how a gaining or losing trader may settle volumes in the market. This should have no bearing on the switch process.	