

23 August 2016

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Dear John,

Wholesale Market Information: Review of disclosure exclusions

Genesis Energy Limited welcomes the opportunity to provide a submission to the Wholesale Advisory Group (“WAG”) on the discussion paper “Wholesale Market Information: Review of disclosure exclusions”, dated 28 June 2016 (“the Discussion Paper”).

The Discussion Paper sets out the process by which the WAG reviewed the exclusions from making wholesale market information readily available under subclause 13.2A(2) in the Electricity Participation Code 2010 (Code).

What is the market failure?

The WAG states “*some of the exclusions in clause 13.2A of the Code may lead to information disclosure that does not optimally encourage competition, efficiency and reliability in the electricity market for the long-term benefit of consumers.*” The WAG then formed the view that some exclusions *may* lead to sub-optimal information disclosure because “some parties noted that even if failure to disclose information is not a significant issue yet, there is the potential for some of the disclosure exclusions to allow participants to withhold information that should be disclosed.”

Further the WAG considered that a detailed quantitative assessment of the costs and benefits was neither practicable nor warranted at this stage of the review process. We agree that a market failure has not been identified and, further, it is

unclear where the efficiency gains arise from removing the disclosure exclusions. Therefore neither a cost-benefit analysis nor proposals to amend the exclusions are necessary at this time.

This would suggest that an appropriate regulatory response to the concerns raised by the WAG is ongoing monitoring of wholesale market information disclosures to determine whether or not there is any market failure requiring correction and, perhaps, analysis as to how, when and what disclosure exclusions are being utilised by wholesale market participants.

Alignment with the NZX

Throughout the Discussion Paper, the WAG seeks greater alignment between the wholesale market disclosure obligations and the disclosure obligations applicable to companies listed on the New Zealand Stock Exchange (NZX). We do not agree that this is an analogous disclosure regime. The NZX is an equity market whereby participants engage to make a return on their investment; an investment market. The wholesale electricity market is a commodity market where the majority of participants are purchasing a physical product for delivery. The financial instruments traded in electricity are designed to allow participants to manage their commercial exposure in the electricity market, especially given its volatility. This means that where the “commercial disadvantage”¹ exclusion may not be appropriate in the NZX equity market disclosure rules, it is an important exclusion of market participants in the wholesale electricity market.

Accordingly, a better comparison is that of other physical commodity markets, not an equity investment market. We suggest the WAG ought to look to other commodity markets for good practice when setting regulatory settings for information disclosure in a commodities market.

If you would like to discuss any of these matters further, please contact me on 04 495 3348.

Yours sincerely



Rebekah Cain
Regulatory Advisor

¹ 13.2A(2) A participant is not required to make disclosure information readily available to the public if (b) doing so will commercially disadvantage the participant in a material manner.