

Submissions WAG Chair
Via email: wag@ea.govt.nz

23 August 2016

Wholesale Market Information: Review of Disclosure Exclusions – WAG discussion paper

Mercury welcomes the opportunity to provide comment on the discussion paper Wholesale Market Information: Review of disclosure exclusions. No part of our submission is confidential.

Mercury supports the WAG review of the wholesale market information disclosure regime. We are strongly of the view that a well-functioning competitive market with access to high quality market information is central to delivering the government's objectives for the electricity sector.

We agree that the availability and accessibility of wholesale market information has generally improved since the current obligations came into force. However, there is still plenty of scope for further improvement. In our experience, some important market information is still not being disclosed or is not being disclosed in a timely fashion. The current arrangements could be improved to keep pace with the evolution of the New Zealand electricity market, particularly the increased participation in the derivatives market.

In our view the current disclosure regime is biased towards those with market information. One of the key ways to address this information asymmetry would be to remove the commercial disadvantage exclusion from subclause 13.2A(2) of the Electricity Industry Participation Code 2010 (Code) and add both a good conduct provision and a reasonable person test. Mercury supports these changes being made, subject to having the opportunity to comment on the specific draft Code amendments.

We are also strongly supportive of the introduction of market facilitation measures to help make the information disclosure regime better targeted so that no interested party is materially disadvantaged against another and interested parties are able to make informed decisions. In particular it would be valuable if the Authority could clarify which situations require and do not require disclosure under the Code (once any proposed amendments have been made). Market participants will then have a clear understanding of their responsibilities and as well as making the process easier for new entrants.

We support more active monitoring of information disclosure and sanctions for breach of obligations. This is best achieved if all relevant information is disclosed in a timely manner via www.electricitycontract.co.nz for contract information and the Planned Outage Coordination Protocol (POCP) for outage information. We would support the Authority's market performance team proactively monitoring information disclosure performance rather than relying on self-reporting of breaches.

We appreciate that the Authority may be reluctant to prescribe where information should be disclosed. However, we consider there are efficiency benefits in doing so. In terms of an appropriate place for disclosure, the POCP should be mandated as the mechanism to report generation and transmission outage information. If necessary, this mechanism should be referenced in the Code to make this clear.

We support more detailed guidance being provided by the Authority on how to use POCP so that participants consistently disclose information. For example, market participants could be obligated to lodge generating plant and transmission outages in this system as soon as practicable after they are confirmed internally. We observe that participants tend to be inconsistent about this practice both in terms of when they lodge outages and between various plant types. For unplanned outages, where return to service times and dates are uncertain, participants should be required to disclose their best estimate of when the generating plant or transmission line is expected to return to service. The POCP should also be updated as soon as is practicable after new information about the return to service timing is confirmed or revised.

We support the above obligations on the reporting of confirmed outages in POCP. However we do not intend for tentative outages to be reported compulsorily. When outages are being tentatively planned, their timing tends to be fluid and therefore the obligation to report on changes to tentative outages would be of limited value to market participants. It would also needlessly increase compliance costs for those operating the generating plant or transmission line.

With respect to transaction disclosure to www.electricitycontract.co.nz, for Option and Contracts for Difference (CfD) products we would support the timeframe reduced from five days to one day under Part 13 clause 225(1)(a) of the Code. The current timeframes are appropriate for fixed price variable volume contracts (FPVV). For all contract disclosures we support requirements other than timeframes clarified, preferably through written guidance so all parties know what is expected and can modify behaviour accordingly.

For Options and CfDs, a reduction in the disclosure timeframe from five to one business day would increase transparency and ensure more efficient operation of the market. Options and CfDs have the potential to impact significantly on spot market dynamics and give informational advantages to contracting parties. By reducing the timeframe for disclosure, other market participants can make better decisions about managing energy market risks and potentially lower end costs to consumers.

We have seen an increasing number of short-term Options going through the market. We are concerned that CfDs may be being presented as Options to avoid the more sophisticated disclosure regime that applies to CfDs. We support more disclosure, particularly the strike price and location of the contract, to enable all market participants to make more informed decisions. This would allow traders to better manage risk. Having the same disclosure requirements for CfDs and Options would ensure more efficient operation of the industry in line with the Authority's objective.

Mercury supports greater clarity around the requirements for disclosure of FPVV contracts. The current time frames are appropriate, however clarification is needed around the size of contract that should be disclosed. For example, our practice is to disclose all contracts above 1MW. It would be valuable if a consistent baseline was in place as it is for disclosure of contracts to the ASX.

For our detailed response to the specific consultation questions please refer to Appendix One.

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

Sincerely

A handwritten signature in black ink, appearing to read 'Nick Wilson', written over a horizontal line.

Nick Wilson
Manager Regulatory and Government Affairs



Appendix One Consultation Questions

Question	Response
1. What comment do you have on the WAG conclusion that the existing WMI disclosure regime could be enhanced if concerns with exclusions (b) commercial disadvantage and (g) information is insufficiently definite, could be addressed in a cost-effective way?	We strongly agree that if a way can be found to address concerns with these exclusions in a cost-effective way it would enhance the disclosure regime.
2. What comments do you have on the WAG's assessment of these Code amendment options?	We support removing the commercial disclosure exclusion and adding a reasonable person and good trading conduct provision. Our experience has been that some market participants are not taking the disclosure requirements as seriously as is appropriate and therefore they need to be both tightened and more closely monitored.
3. What comments do you have on the potential benefits, risks and costs of each option?	The benefits of tightening the disclosure regime outweigh the costs and risks in our view, particularly now that the market has evolved to include many third party participants who do not have access to information that is available to the traditional market participants such as ourselves.
4. What is your preferred option, and why?	See our response to question 2. We also support enhancing the WMI disclosure guidelines in particular use of POCP and the Authority's hedge disclosure platform. Consistency of use of these two platforms would be helpful as would a requirement that all participants disclose information on these platforms rather than potentially having information available in a variety of different places such as individual participant websites. This seems the most efficient outcome particularly given the public has access to POCP. If necessary this could be done by inserting a reference to POCP in the Code.
5. What comments do you have on the possible market facilitation measures the WAG has identified?	See answer to Q4. We agree with all the WAG's suggestions on pg 40 of the discussion document – the inclusion of worked examples, guidance on use of POCP and the hedge disclosure regime set up by the Authority. We also support an industry workshop. It is crucial that there is clarity around what situations do and do not require disclose once any Code amendments have been implemented so that all market participants and interested members of the public understand the requirements and new entrants can research the requirements prior to entry.
6. Are there other market facilitation measures that should be considered?	<p>We would like to see transaction disclosure to www.electricitycontract.co.nz down from five days to one day and more disclosure requirements for option products under Part 13 clause 225(1)(a) of the Code. One business day would increase transparency, thereby ensuring more efficient operation of the market. Contracts for Difference (CfDs) and Options have the potential to impact significantly on spot market dynamics and give informational advantages to the parties who are contracting. By reducing the timeframe for disclosure, other market participants can make better decisions about managing energy market risks and potentially, lower the end cost to the consumer.</p> <p>We have seen an increasing number of short-term Options going through the market. We are concerned that CfDs may be being presented as Options to avoid the more sophisticated disclosure regime that applies to CfDs. We support more disclosure, particularly the strike price and location of the contract, to enable all market participants to make more informed decisions. It would allow traders to better manage risk. Having the same disclosure requirements for CfDs and Options would ensure more efficient operation of the industry in line with the Authority's objective.</p> <p>We would also like to see the disclosure requirements for fixed price variable volume contracts (FPVV) clarified as they relate</p>



to volume. For example, as a matter of practice we disclose FPVV contracts over 1MW. The timeframe for disclosure currently in place is appropriate.

We would support the Authority more actively monitoring information disclosure practice rather than relying on self-breach reporting. This would send a strong message that information disclosure is regarded as a serious obligation.

