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John Rampton
General Manager Market Design
Electricity Authority

By email: submissions@ea.govt.nz

Dear John

Code Change Omnibus 2016

We appreciate the opportunity to submit to the Authority's *Code Change Omnibus 2016* that was published 18th October 2016.

In this submission we:

- make suggestions for this omnibus change approach to increase transparency and industry participation
- explain why we disagree with the proposal to remove the Authority obligation on acting reasonably
- provide specific comment on several problem or solution aspects to the proposals, in the Appendix.

Improving the omnibus Code change approach

In our submission to the 2015 Code Change omnibus we had suggested adoption of some steps the Authority could take to assist participants' understanding of and response to the proposals. The aim proposed was to improve transparency and confidence in the omnibus Code process. Specifically, we proposed that:

1. the source for the Code Change be communicated (was it identified by the Authority, or from a participant, and when)
2. the Authority develops and publishes criteria, with industry, for proposing Code changes under the 'technical and non-controversial' route
3. the change comes with an indication from the Authority of the parties it thinks are most affected.

None of our proposals have been acknowledged or adopted leading us to query whether the Authority has considered them at all. We outline below our reasons for proposing the above (except for # 3, which we consider self-evident).

Transparency of the source of the change proposal

In May 2015 Transpower proposed to amend 12.118 so grid capacity and configuration information could be provided in a more accessible and timely manner. We followed the code change proposal process including evidence to demonstrate that the change was net beneficial. The Authority decided to consider our proposal through this omnibus process, which we agreed with.

The consultation paper does not identify Transpower as the source for the change to 123.118, nor any party for any of the others. Transparency of the source of a proposal would highlight how the Authority decides there are ‘problems’ with the Code and whether these problems have also been viewed in the same way by Code practitioners. In other words, what is the evidence for the problems identified.

We note from the concurrent consultation on Authority appropriations that operational efficiency is a new strategic area and we welcome that position. This strategic attention should create opportunities for complying parties, such as Transpower, to identify and propose efficiency measures and for the Authority to be receptive of these proposals.

Establish criteria for ‘technical and non-controversial’

For this omnibus analysis we consider it would be helpful to have summary information about the change route that each proposal is to advance under. It was not clear how the Authority had decided a change was technical and non-controversial (TNC) or that it needed a regulatory statement.

From our examination of the TNC proposals (number five excepted) we have been able to derive some basis, for example, for error correction, for consistent terminology, and for clarification and simplicity etc. This basis could be the starting point for Authority and industry development of change criteria. The development could be modelled on the approach taken by the Commerce Commission when it consulted with industry on a framework for making changes to the input methodologies (the rules for the Commerce Act Part 4 regulation)¹.

When we proposed the amendment to 12.118 we did so under the technical and non-controversial route and explained our reasoning in the proposal for this approach². The Authority instead has considered it via regulatory statement and although we accept that, it is not clear why the Authority did not agree with our classification. We consider the consulted transparent criteria will assist industry participants and the Authority to objectively and efficiently propose changes to the Code under the technical and non-controversial route.

Oppose removal of Authority obligations to act reasonably

The Authority has proposed, under the technical and non-controversial route, to remove various obligations on it to act reasonably. We do not understand how the proposal could have been classified as technical and non-controversial (TNC) nor what ‘problem’ the amendment (removal of the obligation) is intended to address. The change proposal could

¹ Developing decision-making frameworks for the current IM review and for considering changes to the IMs more generally – Discussion draft – 22 July 2015. Available at <http://www.comcom.govt.nz/regulated-industries/input-methodologies-2/input-methodologies-review/>

² To see our code change proposal, refer <https://www.transpower.co.nz/submissions> May 2015

even lead to the view that the Authority considers the reasonableness obligation on it to be undesirable.

The main rationale for removing “reasonable” seems to be that participants can judicially review the Authority for acting unreasonably and therefore references in the Code to the Authority acting reasonably are redundant. We do not agree.

For successful judicial review on the grounds of unreasonableness the applicant typically has to show that the reviewed decision is manifestly irrational, perverse or absurd. That high threshold does not apply to a reasonableness standard in the Code. Also, not every Authority obligation that is currently required to be done reasonably under the Code is necessarily amenable to judicial review.

The proposal is also inconsistent with the Authority’s recent decision on the ‘reasonableness’ standard applying to the system operator. In that context we had argued the reasonableness requirements in the ancillary services procurement plan were not necessary given the protection of the ‘Reasonable and Prudent Operator’ (RPO) obligation already in the Code. In the same sense as the Authority’s proposal, decisions by the system operator could also be called under judicial review on the grounds of reasonableness. However, the Authority rejected the idea.

The outcome of the proposal is to reduce the avenues for scrutiny of the reasonableness of some of the EA’s decisions, for example through an appeal on questions of law³. We consider this loss will inhibit, rather than promote, efficient operation of the electricity industry.

Please contact me if you have any questions about this submission

Yours sincerely



Micky Cave
Senior Regulatory Analyst

³ Section 64 of the Electricity Industry Act

Appendix A Specific code amendment comment

Table 1 2016 - 05 Reasonableness

Reference number for amendment you are submitting on:	2016 - 05
Question 1: Do you agree with the Authority's problem definition? If not, please provide comments.	
We consider the Authority has not articulated any problem to resolve.	
Question 2: Do you agree with the Authority's proposed solution? If not, please provide comments.	
No, refer main submission.	

Table 2 Proposal 2016 – 09 Grid Information

Reference number for amendment you are submitting on:	2016 - 09
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, noting that Transpower identified the issue and proposed the efficiency improvements.	
Question 3: Do you have any comments on the Authority's proposed Code drafting?	
<p>Yes, as follows.</p> <ul style="list-style-type: none"> • “Publish” in clause 12.107(1) should be bolded. Same for “published” in clause 12.118(2). • Clause 12.107(1A) should refer to changes since the last set of information was published because it might not always be published at the end of a month. • 12.107 (1). Please remove ‘<i>other than connection assets</i>’. The grid configuration diagrams we produce show all grid assets. We do not want to be at risk of non-compliance for showing more than the interconnection assets. • 12.107 (4). We suggest replacing the words ‘<i>both summer and winter</i>’ with the term <i>seasonal</i> because we also rate our circuit branches for shoulder periods (between winter and summer). • 12.107 (4) (b) (i) A and B. Replace <i>post-contingency</i> with <i>for both summer and winter periods</i>. This is because transformers are not offered with post-contingency ratings. • In 12.128 (2) the reference clause 12.151(3) is redundant because the exclusion is covered in clause 12.151(2). 	

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.

Table 3 2016 – 10 Time

Reference number for amendment you are submitting on:	2016 - 10
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.	
No.	
Question 3: Do you have any comments on the Authority's proposed Code drafting?	
<p>We have several comments:</p> <p>(a) The “except within 20 business days...” wording in clause 3.14(1) and other places is grammatically incorrect. Also, that concept is not applied over into all clauses where “working day” has been replaced with “business day”.</p> <p>(b) For historic reasons there is a different definition of “business day” for the purposes of Part 6. We query whether that can now be removed.</p> <p>(c) Replacing “qualifying date” with “last day of a public conservation period” has moved the relevant date forward by one day. Is that intentional?</p> <p>(d) In clause 12.76 specifying that the years are years ending 31 December is imbuing the 10 year forecast with an unrealistic degree of precision given how far out it is. It would be more appropriate to leave “years” unqualified in this clause, as it is in clause 12.20(e).</p> <p>(e) Clause 9.21(1)(ii) Suggest “12 months immediately preceding the <u>start/end</u> of the public conservation period”</p>	

(f) Clause 13.119

We do not agree with the amendment that removes the defined term **preceding year day**. The change does not create clarity but confusion. In our view, the concept that an auction is for the next trading day and that the data needed is for the equivalent day from the previous year has been lost.

We suggest either retain the existing working or redraft the proposed change to improve clarity.

It needs to convey the following:

13.119 Historic load data

- Each grid owner is required to provide the CM with historic total load data for a trading day that is to be auctioned
- The historic total load data is for the day preceding the trading day by 364 days
- Except for conditions (2) and (3) where there are holidays
- The grid owner is required to provide the data by 11:00 hours 3 days before the start of the trading day.

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?

We are unsure.

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, we consider the status quo may be more clear in the instances explained above.

Table 4 2016 – 13 and 14 Information System / Publish

Reference number for amendment you are submitting on:	2016 – 13 / 14 (code changes were presented together in the consultation paper)
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.	
No. For clauses 13.136 – 13.138 we consider there is a risk that 'approved systems' may be changed without transparency. We suggest a consultation process should be specified for any potential system change. Also the "or by written notice" reference implies that a party can send any type of document to grid owner and we must accept it. The information needs to be in a file format suitable for our systems.	

In addition, we have the following comments to many of the clauses.

Possible business process issues

- Part 1 definition of approved system: Will there be a register of approved systems maintained by the Authority?
- Schedule 8.3 T.C. B 7(2) : We suggest the means of communication not be specified. It may be important for the system operator to receive this communication more rapidly than 'in writing' would suggest.
- 9.15(1) : We question whether the inclusion of 'written' is necessary or desirable in these circumstances.
- 13.35(2): we query whether specifying written confirmation is appropriate.
- 13.135A(5)(a) note that the notice of a scarcity pricing situation is given via SMTP to market participants (not on WITS alone).
- 13.61(1) and 13.65(1) This notification is done via WITS and presented in a table of data, not written notice.
- Schedule 13.3 13(1) This is done via WITS, not written notification.

Drafting

- 9.15(3) Revoked by implication from 9.15 (1). Consider it is redundant.
- 9.28(a) Unsure of value of words 'keep published' perhaps the term needs an end date; otherwise 'publish' is sufficient
- 13.55(1) 'Publish and make available' – make available seems redundant?

Table 5 2016 - 14 Publish

Reference number for amendment you are submitting on:	2016 – 14
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.	
No. We do not support the amendments to 13.143 and we have query about clause 13.141.	
Question 3: Do you have any comments on the Authority's proposed Code drafting?	
<p>13.143 Grid owners to <u>give written notice of</u> notify SCADA situation</p> <p>(1) If a grid owner gives any input information in accordance with clause 13.141 to the pricing manager, the grid owner must—</p> <p>(a) <u>give written publish notice to affected participants</u> that it has given the pricing manager input information; and</p> <ul style="list-style-type: none"> • We would be unable to comply with 13.143 (a) as we will not know the affected participants. The only party we currently inform and want to inform is the pricing 	

manager. The drafting suggests we have to 'push' the information to a range of unknown parties. We consider all instances of where there are insertions "affected participants" should be examined for this undesirable impact.

- Clause 13.141 there are obligations on the pricing manager to make information available on the WITS manager's website. We consider this is not feasible if the pricing manager and WITS manager are not the same.