Wholesale market information

Review of disclosure regime

Consultation paper

Submissions close: 3 October 2017

8 August 2017

Executive summary

The Electricity Authority (Authority) is reviewing the disclosure obligations in clause 13.2A of the Electricity Industry Participation Code 2010 (Code). The wholesale market comprises the spot market, hedge market (including the market for financial transmission rights), and ancillary services markets.

Clause 13.2A places a 'continuous disclosure' obligation on participants. This requires participants to disclose, in a timely manner, any information they hold about themselves that they expect, or ought reasonably to expect, would have a material impact on prices in the wholesale market if it were made publicly available. Participants must make disclosure information readily available to the public unless an exclusion applies.

Our review focuses on the concerns raised about certain exclusions from making information relevant to the wholesale market readily available to the public under clause 13.2A(2) of the Code. The Authority's review follows an investigation by the Authority's Wholesale Advisory Group (WAG) as to whether the current exclusions are appropriate and efficient.

The Authority has considered the WAG's recommendations, and we propose amending the Code and the Authority's *Guidelines for participants on disclosure obligations* (guidelines). Our proposals are largely consistent with the WAG's recommendations. We invite submissions on our proposals.

We propose replacing the commercial disadvantage exclusion with a reasonable person exclusion

We consider the exclusion in clause 13.2A(2) relating to commercial disadvantage may lead to disclosure outcomes that do not support our statutory objective. This is because it:

(a) allows participants to avoid disclosing information that, if disclosed, would better promote an orderly and efficient wholesale market

(b) risks undermining confidence and competition in the wholesale market by creating the potential for some participants to benefit from more and/or better information than others, leading to inefficient decision-making and poor market outcomes

(c) makes enforcing the obligations under clause 13.2A difficult, because the exclusion could apply in most circumstances.

We propose replacing the commercial disadvantage exclusion with the reasonable person exclusion. This would mean a participant would not have to make information relevant to the wholesale market readily available to the public if 'a reasonable person would not expect the disclosure information to be made readily available'.

We consider the interpretation of the reasonable person exclusion will be aided by a substantive body of legal precedent, which is an advantage with respect to the existing commercial disadvantage exclusion. Therefore, we expect the quality of information disclosed will also improve.

We consider there will be two benefits of these Code amendments:

(a) reductions in uncertainty and the costs of obtaining information

(b) enhanced confidence in the wholesale market, particularly because more relevant information would need to be disclosed where previously it would not have been.

This in turn will support the long-term benefit of consumers, because it would likely encourage greater participation (particularly in the hedge market), thereby promoting competition in the electricity market. It will also enhance the efficient operation of the industry through additional information being disclosed, which will enable more informed market participation, and lower costs to obtain information. It also contributes to reliability, by resulting in information being disclosed which supports security of supply through improved investment and operational decisions.

We propose amending the timeframe for addressing misleading, deceptive, or incorrect information

Clause 13.2(2) of the Code requires a participant to act immediately upon discovering it previously disclosed misleading, deceptive, or incorrect information. We consider this timeframe:

(a) is unreasonably onerous

(b) is inconsistent with the clause 13.2A timeframe which is 'as soon as reasonably practicable'

(c) risks the participant releasing further misleading or incorrect information in their haste to act.

We propose amending clause 13.2(2) by replacing the word 'immediately' with the words 'as soon as reasonably practicable'. We consider this will lead to a small efficiency gain by removing an unreasonably onerous obligation to act immediately, and reducing the risk a participant discloses further misleading, deceptive, or incorrect information.

We propose amending the guidelines to help participants understand their obligations to disclose

The Authority's guidelines help participants understand our expectations around disclosing information, and how they can meet their obligations. We propose amending the Authority's guidelines to:

(a) reflect the Code amendments proposed in this consultation paper

(b) clarify the Authority's expectations of disclosure in certain areas, particularly relating to outages and hedge contract information

(c) provide greater assistance to participants making disclosure decisions in those areas

(d) reflect changes to market operations since the guidelines were published.

We have summarised our proposed changes to the guidelines in this paper, and attached a copy of the updated guidelines. We have also made a version of the guidelines with all changes marked available on the Authority's website. If we do not progress, or amend, the proposed Code amendments, we will revise the guidelines accordingly.

We are also interested in receiving input from submitters, particularly regarding worked examples, to further enhance the guidelines.

Contents

Tables

1 What you need to know to make a submission

What this paper is about

1.1 We propose making two amendments to the Code, relating to participants' obligations to disclose information that is relevant to the wholesale market. The proposed amendment is attached as Appendix A.

1.2 We also propose amending the Authority's *Guidelines for participants on disclosure obligations* (guidelines).

1.3 The purpose of this paper is to consult with interested parties on our proposal, and seek input on the guidelines.

1.4 Section 39(1)(c) of the Electricity Industry Act 2010 (Act) requires the Authority to consult on any proposed amendment to the Code and the regulatory statement.[1] Section 39(2) of the Act provides that the regulatory statement must include the following about the proposed amendment:

(a) a statement of its objectives

(b) an evaluation of its costs and benefits

(c) an evaluation of alternative means of achieving its objectives.

1.5 The regulatory statement is set out in section 8 of this paper.

What you need to do

1.6 Please deliver your submission by **5pm** on **3 October 2017**.

1.7 Send your submission (using Microsoft Word in the format shown in Appendix B) by email to submissions@ea.govt.nz with "Consultation Paper—Review of disclosure regime" in the subject line.

1.8 If you cannot email your submission, post one hard copy to either of the addresses below, or fax it to 04 460 8879.

Postal address

Submissions
Electricity Authority
PO Box 10041
Wellington 6143

Physical address

Submissions
Electricity Authority
Level 7, ASB Bank Tower
2 Hunter Street
Wellington

What we will do

1.9 We will acknowledge receipt of all submissions. If you do not receive acknowledgement of your submission within two business days, please contact the Submissions Administrator by sending an email to submissions@ea.govt.nz or phone 04 460 8860.

[1] Section 39(3) of the Act provides that the Authority is not required to prepare and publicise a regulatory statement, or consult on the proposed amendment and regulatory statement if the proposed amendment is technical and non-controversial, there is widespread support for the amendment among the people likely to be affected by it, or there has been adequate prior consultation so that all relevant views have been considered.

1.10 We will publish all submissions. If you do not want us to publish any part of your submission, please:

(a) indicate which part should not be published

(b) explain why you consider we should not publish that part

(c) provide a version of your submission that we can publish (if we agree not to publish your full submission).

1.11 If you tell us you do not want us to publish any part of your submission, we will talk to you before deciding whether we will publish that part.

1.12 However, please note that all submissions we receive, including any parts that we do not publish, can be requested under the Official Information Act 1982 (OIA). This means we would be required to release material that we did not publish unless good reason existed under the OIA to withhold it. We would normally consult with you before releasing any material that you said should not be published.

2 We propose amending clauses 13.2 and 13.2A of the Code

2.1 We propose amending aspects of the Code placing obligations on participants to disclose information relating to the wholesale market.[2] The proposed Code amendments:

(a) remove the existing commercial disadvantage exclusion and replace it with the reasonable person exclusion

(b) require a participant to act 'as soon as reasonably practicable' upon discovering it had previously disclosed misleading, deceptive, or incorrect information, instead of acting 'immediately'.

2.2 We also propose amending the guidelines that assist participants in understanding their obligations to disclose under clause 13.2A. A draft version of the updated guidelines is attached to this consultation paper (Appendix C). The changes are summarised in section 7 of this paper.

2.3 We are seeking stakeholder comment on these proposals. We are also interested in any worked examples, and other input from submitters, to further enhance the guidelines.

2.4 The Authority believes these proposals further the competition, efficiency, and reliability limbs of our statutory objective.

2.5 We based our proposals on recommendations made by the Wholesale Advisory Group (WAG) following its project, *Wholesale market information - Review of disclosure exclusions*. We encourage parties making submissions on this consultation paper to consider the earlier work by the WAG.[3]

3 The Code requires participants to disclose information relevant to the wholesale market

3.1 Access to high quality information helps facilitate an efficient, competitive wholesale market. The wholesale market comprises the spot market, hedge market (including the market for financial transmission rights), and ancillary services markets.[4]

3.2 Clauses 13.2 and 13.2A of the Code aim to ensure that stakeholders in the wholesale market have efficient access to relevant information. Specifically:

(a) Clause 13.2 aims to ensure that participants do not provide misleading, deceptive, or incorrect information, and requires them to act immediately if they discover they have disclosed misleading, deceptive, or incorrect information.

(b) Clause 13.2A places a 'continuous disclosure' obligation on participants. This requires that they disclose, in a timely manner, any information they hold about themselves that they expect, or ought reasonably to expect, would have a material impact on prices in the wholesale market if it were made publicly available.[5]

---

2 The "Code" refers to the Electricity Industry Participation Code 2010.

3 The WAG's discussion paper and subsequent recommendations paper can be found at https://www.ea.govt.nz/dmsdocument/20822 and http://www.ea.govt.nz/dmsdocument/21733 respectively.

4 As defined in clause 1.1(1) of the Code.

5 The information that must be disclosed is defined as "disclosure information" in clause 1.1(1) of the Code.

3.3 Under clause 13.2A, participants must disclose relevant information to the public unless one of 10 specified exclusions applies. In particular, the Code does not require participants to disclose information if doing so will commercially disadvantage them in a material manner.

3.4 Participants are responsible for determining if the information they hold must be disclosed under clause 13.2A. If a participant relies on an exclusion, they have to demonstrate to the Authority that the exclusion applies.

3.5 We publish guidelines to help participants:

(a) understand the Authority's expectations for participants' compliance with their obligations to disclose

(b) make decisions about whether information they might hold needs to be disclosed, including whether the information would have a 'material impact on prices', or whether one of the exclusions applies.

3.6 The guidelines also help interested parties understand what information is likely to be available under the disclosure obligations.

3.7 Beyond clauses 13.2 and 13.2A, there are other arrangements for disclosing information outside the scope of this paper. They include:

(a) specific provisions in the Code requiring publication of market information such as spot prices and bids/offers through the Wholesale Information and Trading System (WITS)

(b) hedge disclosure and spot price risk disclosure obligations

(c) the Authority's market monitoring and compliance arrangements

(d) the Authority's efforts to encourage and facilitate voluntary disclosure of information through a variety of means, such as participant reports on snow pack and hydro spill.

4 The Authority wants to improve the obligations to disclose

Information is important for efficient markets

4.1 An efficient, competitive wholesale market is central to furthering the Authority's statutory objective to promote competition, reliability, and efficiency in the electricity industry for the long-term benefit of consumers. Access to high quality market information helps facilitate this.

4.2 The role of information in the effective functioning of markets has attracted considerable attention in economics. This section summarises some of the key issues associated with information disclosure (including benefits and potential for adverse effects) relevant to electricity markets.[6]

[6] In this section, we have referred to "Transparency and Confidentiality in Competitive Electricity Markets", sponsored by the United States Agency for International Development and the National Association of Regulatory Utility Commissioners, June 2009. The report was prepared by Liz Hooper, Paul Twomey, and David Newbery. We have also explored the importance of information in the wholesale electricity market in a number of our previous consultations. For instance, the Authority's Wholesale Market Information Project

There are benefits from information disclosure

4.3 Free-flowing disclosure of information is typically a key element in facilitating competition and a market that performs effectively. The following are some of the key benefits.

(a) Effective information disclosure can help reduce situations where some stakeholders inefficiently have access to more and/or better information than others. This kind of "information asymmetry" between informed and uninformed market participants could otherwise lead to inefficient decision-making and poor market outcomes.

(b) Effective information disclosure can reduce uncertainty. To make efficient decisions, participants need good information about factors potentially affecting the market, both now and in the future. A lack of this information will increase uncertainty, which can lead to poorer decisions.

(c) Improved information availability can assist other participants and regulators in detecting if participants are not behaving in the long-term benefit of consumers.

4.4 Therefore, we consider providing high quality information to all participants in the wholesale market:

(a) encourages greater participation in the wholesale market

(b) enables more efficient investment and operating decisions

(c) promotes more active hedge trading and more liquid markets

(d) provides a more robust view of forward electricity prices

(e) improves confidence in the electricity market.

There can be some adverse impacts too

4.5 The benefits of information disclosure require balancing against the possible adverse impacts of information disclosure. The following are possible adverse impacts:

(a) Requiring parties to provide information (particularly data) to the public and/or regulators will give rise to costs to develop and maintain databases, and monitor and enforce compliance with the requirements.

(b) Information openness may facilitate overt or tacit collusion in certain circumstances. For example, if there is information openness in a market dominated by a small number of large participants, there is the potential for participants to work in concert.

(c) Some information may need to remain private (at least for a period) to allow a firm the opportunity to reap the rewards from its efforts. For example, a party might invest in an application to improve weather forecasting. Making a party publicise the results of this forecasting could reduce the incentive to invest in such an application in the first place.

4.6 Exclusions allowing a participant to withhold information under certain conditions can help reduce these impacts.

(2011-2013): http://www.ea.govt.nz/development/work-programme/wholesale/wholesale-market-information, and our consultation on improving the opportunities to hedge New Zealand electricity prices (2011): http://www.ea.govt.nz/dmsdocument/11119.

An efficient information disclosure regime will strike a balance between benefits and adverse impacts

4.7 Information disclosure regulation is a common part of wholesale electricity market arrangements in overseas jurisdictions. This is in preference to voluntary, contractual, or ad hoc disclosure arrangements.

4.8 The case for regulating information disclosure is driven largely by the very high transaction costs for parties to enforce bilateral contracts for information disclosure (that is, a series of contracts that say "I'll disclose my information, if you disclose yours"). Every party wants other parties to voluntarily disclose useful information while they withhold their own information, but it would be too costly for each party to investigate and enforce contract breaches.

4.9 A multilateral contract allowing access to a trading platform would remove these issues. Such contracts deny parties access to the platform (or penalise them in some way) if they do not follow the market rules they agreed to in the contract. However, in New Zealand historic difficulties in developing a multilateral contractual mechanism for the electricity market led the government of the day to establish a regulated electricity market. A multilateral contract for information disclosure is not practicable in this environment.

4.10 We consider effective information disclosure regulation is a fundamental feature of an efficient, competitive electricity market for New Zealand.[7] It is important regulation strikes an appropriate balance between the benefits of effective information disclosure, and the potential adverse impacts.

We think some aspects of the information disclosure regime are inconsistent with our statutory objective

4.11 There are three aspects of the information disclosure regime we do not think are in the long-term benefit of consumers. This consultation paper proposes amendments to address these identified issues.

The 'commercial disadvantage' exclusion is too permissive

4.12 We consider the commercial disadvantage exclusion in clause 13.2A(2)(b) may lead to disclosure outcomes that do not support the long-term benefit of consumers, because it:

(a) Allows participants to avoid disclosing information that, if disclosed, would better promote an orderly and efficient wholesale market.

(b) Risks undermining confidence and competition in the wholesale market, because it may create a situation in which some stakeholders have access to more and/or better information than others. This creates an imbalance of power in transactions that may:

(i) Cause inefficient decision-making and poor market outcomes.

(ii) Cause participants to leave the market because they do not have access to information.

[7] Wholesale Market Information Disclosure Obligations – Authority Code amendment consultation paper, 9 November 2012, page B. See http://www.ea.govt.nz/dmsdocument/13939.

(iii) Discourage new entrants from entering the market. This may be a particular concern for hedge markets, where participants with generation assets and retail customers trade with parties that may not have any physical presence in the electricity industry.

(c) Makes it difficult to enforce the obligations, because the exclusion could be considered to apply in most circumstances.

4.13 A participant's failure to disclose information may not cause a material inefficiency right now. However, there is always the potential for new information to emerge, only to be inefficiently withheld. This is particularly true as the wholesale market continuously evolves and new information appears. We consider the ongoing potential for non-disclosure is of significant concern, and undermines confidence in the wholesale market.

The timeframe for addressing misleading, deceptive, or incorrect information is too onerous

4.14 Clause 13.2(2) requires a participant to act immediately upon discovering that information it had previously disclosed was misleading, deceptive, or incorrect. We consider this timeframe:

(a) is unreasonably onerous, particularly for participants not operating a business on a "24 hours, 7 days a week" basis

(b) is inconsistent with the timeframe to disclose information under clause 13.2A, which is 'as soon as reasonably practicable'

(c) risks the participant releasing further misleading or incorrect information in their haste to act.

The guidelines could be improved

4.15 We consider the existing guidelines should be improved to:

(a) clarify the Authority's expectations for information disclosure in certain areas, particularly relating to outages and hedge contract information

(b) provide greater assistance to participants making disclosure decisions in those areas

(c) reflect the Code amendments proposed in this consultation paper

(d) reflect changes to market operations since the guidelines were published.

Q1. Do you agree with the issues the Authority has identified?

5 We asked the WAG to review the information disclosure exclusions

Our request followed suggestions of inefficient behaviour

5.1 The current disclosure obligations in clause 13.2A of the Code came into force on 1 October 2013.

5.2 During the process to introduce those arrangements, we acknowledged concerns raised by participants about the commercial disadvantage exclusion. On balance, we decided at that time to retain the commercial disadvantage exclusion. However, we noted we

could take further action (including further amending the Code) if we considered the arrangements were not delivering efficient outcomes.

5.3 Since clause 13.2A was introduced, some parties have observed to the Authority there has been information that:

(a) they would have expected to be disclosed that has not been disclosed

(b) has not been disclosed in a timely fashion.

5.4 Specifically, behaviour some parties have observed includes:

(a) participants announcing plant outages after OM Financial Limited and NZX Limited release their daily reports, to avoid distributing outage information before the trading window

(b) plant dispatched in a manner inconsistent with outage declarations made in the planned outage co-ordination process (POCP) database

(c) plant running when it is declared unavailable in POCP

(d) permanently retired plant returning to service without notice

(e) hedge trading activity in advance of major market announcements, suggesting some parties may have been aware of the impending announcement.

5.5 In some cases, the information may not have been disclosed because it did not meet the definition of disclosure information or because an exclusion was applied. There may also have been cases where information was not disclosed, despite the information meeting the definition of disclosure information and no exclusions applying.

5.6 Therefore, in September 2015 we asked the WAG to investigate whether the current exclusions are appropriate and efficient.

The WAG conducted a thorough review

5.7 We consider the WAG conducted a very thorough review. The WAG:

(a) drew on a number of information sources (including the Authority's 2014 hedge market survey, participant input, and participant presentations at WAG meetings) to identify possible concerns[8]

(b) made key observations and formed a hypothesis about the information disclosure exclusions

(c) confirmed its hypothesis with a case study assessment of each exclusion

(d) identified possible Code amendment options and market facilitation measures to address the issues it identified

(e) prepared a short list of preferred options based on a high level qualitative assessment

(f) released a discussion paper on 28 June 2016 and sought comment on the issues and options

[8] Shortly prior to releasing this consultation paper, we received and published the 2017 hedge market survey report. We note participants raised issues about the disclosure of wholesale market information that were similar to those raised in the 2014 hedge market survey.

(g) considered the seven submissions it received, and finalised its recommendations.

5.8 We consider we can place strong reliance on the WAG's analysis, because it is robust and does not require duplication. The WAG's analysis and findings were included in its recommendations paper, which the Authority received in February 2017.[9]

6 The Authority has considered the WAG's work and proposes amending the Code

The WAG recommended we amend the Code

6.1 Amongst several conclusions, the WAG recommended the Authority replace the commercial disadvantage exclusion with the reasonable person exclusion.

6.2 In making its recommendation, the WAG determined:

(a) the significant concerns with the commercial disadvantage exclusion could only be adequately addressed through a Code amendment removing this exclusion from clause 13.2A

(b) removing the commercial disadvantage exclusion but making no other changes to the set of exclusions could result in unintended consequences

(c) replacing the commercial disadvantage exclusion with a reasonable person exclusion would:

(i) mitigate the risk of unintended consequences

(ii) have a net public benefit relative to the status quo

(iii) improve delivery of the net public benefits of disclosure the Authority contemplated when it introduced clause 13.2A in October 2013

(d) none of the other Code amendment options the WAG explored in its review would adequately address the concerns identified.

The WAG's recommended Code amendment would be more robust than the current Code provisions

6.3 We agree with the WAG's findings that the existing clause 13.2A does not meet the Authority's expectations for effective disclosure of wholesale market information. As noted in paragraph 4.12, we particularly consider the commercial disadvantage exclusion may lead to disclosure outcomes that do not support the Authority's statutory objective, because it:

(a) allows participants to avoid disclosing information that, if disclosed, would promote an orderly and efficient wholesale market

(b) risks undermining confidence and competition in the wholesale market

(c) makes enforcing the obligations under clause 13.2A difficult, because the exclusion could apply in most circumstances.

6.4 We are confident the WAG identified, and appropriately considered, the full range of options for addressing this issue. These included:

[9] See http://www.ea.govt.nz/dmsdocument/21733.

(a) removing the commercial disadvantage exclusion

(b) adding a good conduct provision

(c) adding a reasonable person exclusion

(d) combinations of the above.

6.5 The WAG concluded the commercial disadvantage exclusion in clause 13.2A(2) should be replaced with the 'reasonable person' exclusion. This exclusion would mean a participant was not required to make information relevant to the wholesale market readily available to the public if 'a reasonable person would not expect the disclosure information to be made readily available'.

6.6 The WAG noted only removing the commercial disadvantage exclusion could result in unintended consequences, such as overly restrictive disclosure obligations inadvertently requiring more disclosure than anticipated. The WAG suggested this could potentially adversely affect participants' risk management behaviour, and considered replacing the commercial disadvantage exclusion with the reasonable person exclusion would mitigate this risk.

We support replacing the commercial disadvantage exclusion with the reasonable person exclusion

6.7 We consider the WAG's recommended Code amendment is more robust than the current arrangements, and will facilitate greater information disclosure. We consider the interpretation of the reasonable person exclusion will be aided by a substantive body of legal precedent, which is an advantage with respect to the existing commercial disadvantage exclusion. Therefore, we expect the quality of information disclosed will also improve.

6.8 However, we note the implementation and enforcement of the information disclosure regime is not an exact science. The reasonable person test is intended to be an objective evaluation, similar to a test as to whether information is 'material'. In practice though, it requires a degree of interpretation and application to the relevant context.

6.9 The WAG did not provide a view on how to define a reasonable person. However, we note there is substantial precedent for a reasonable person test in a range of legal and regulatory contexts.[10] For example, in a commercial context, the courts have previously held a reasonable person refers to a sophisticated market participant familiar with the purpose and scope of the continuous disclosure regime, the market and regulatory framework within which it operated, and publicly known circumstances. The Authority has drawn on these precedents to develop the proposed changes to the guidelines.

Q2. Do you think the example definition of a 'reasonable person' in section 6.9 should be the final definition adopted? If not, how would you define a 'reasonable person'?

We subsequently identified an issue with clause 13.2

6.10 We subsequently identified the issue with clause 13.2(2), discussed in paragraph 4.14, relating to the timeframe for addressing misleading, deceptive, or incorrect information. This issue is addressed as part of this consultation.

[10] For example, see Listing Rule 10.1.1(a)(i) of the NZX Listing Rules: https://nzx.com/files/assets/sxdx_10.pdf.

7 We also propose amending the guidelines

The WAG recommended we improve the guidelines

7.1 In addition to amending the Code, the WAG recommended the Authority improve the guidelines.

7.2 The WAG endorsed the value of the Authority's existing guidelines, but recommended we enhance them by including:

(a) more worked examples to assist participants, for instance by 'crowd-sourcing' relevant disclosure case studies from participants based on their experience with the regime

(b) specific guidance for participants, including:

(i) how participants can meet their clause 13.2 disclosure obligations relating to outages by using the system operator's POCP platform (noting they are not required to use this platform to meet their obligations)

(ii) how participants should use the Authority's hedge disclosure regime for meeting clause 13.2 obligations relating to hedges, noting participants are required to use the hedge disclosure website under clauses 13.217–13.236 of the Code.

7.3 Furthermore, the proposed Code amendments will require consequent changes to the guidelines to:

(a) add a new section to help stakeholders understand the Authority's expectations for the reasonable person exclusion

(b) remove existing material relating to the commercial disadvantage exclusion.

We propose revising the guidelines

7.4 We propose revising the guidelines to address the points raised by the WAG and other matters we subsequently identified. Our proposed changes are summarised in Table 1.

Table 1: Summary of proposed revisions to the guidelines

Proposed revision to the guidelines	Comment
Draft revisions reflecting the proposed Code amendment to replace the existing commercial disadvantage exclusion with the reasonable person exclusion. *See Section 7 of the guidelines.*	The draft revisions to the guidelines are consistent with, and contingent on, our proposal to amend the Code in section 8 of this paper. Further changes to the guidelines may be required once we have considered submissions on the Code amendment proposal.

Proposed revision to the guidelines	Comment
A new section assisting participants choosing to use the POCP platform to meet their wholesale market information disclosure obligations for outage information. *See Section 10 of the guidelines.*	The draft revisions describe the two sets of obligations relating to outage information, that is, wholesale market information disclosure and outage notification for co-ordination of outages.[11] They also give guidance on factors participants need to consider when using the POCP platform to meet their wholesale market information disclosure obligations for outage information.
A new section assisting participants choosing to use the Authority's hedge disclosure platform to meet their wholesale market information disclosure obligations for contract information. *See Section 10 of the guidelines.*	The draft revisions describe the two sets of obligations relating to contract information, that is, wholesale market information disclosure and hedge disclosure. They also give guidance on factors participants need to consider when using the Authority's hedge disclosure platform to meet their wholesale market information disclosure obligations for contract information.
A new section describing the existing Code obligations in clause 13.2 around misleading, deceptive, or incorrect information. *See Section 4 of the guidelines.*	Several of the disclosure concerns parties have observed (refer paragraph 5.4) relate to participants not correcting previously disclosed wholesale market information (for instance, outage information). The proposed new section sets out the existing Code obligations in this area.
Proposed revisions in the section on the Authority's expectations regarding when a participant 'becomes aware of' disclosure information. *See Section 9 of the guidelines.*	We have identified a potential difficulty in this area and have proposed some revisions to more clearly set out our expectations.

[11] Set out in Technical Code D in Schedule 8.3 of the Code.

Proposed revision to the guidelines	Comment
Proposed revisions to reflect changes since the guidelines were published, including: • Code amendments of relevance to the wholesale market information disclosure regime • replacement of the WITS-FTA platform • new Authority enforcement and prosecution policies • updated or new links to the Authority website • introduction of the Authority's Electricity Market Information (EMI) database.	We took the opportunity to identify and address these changes as part of this review of the guidelines.
Some minor drafting edits to improve readability, and reflect the Authority's drafting styles and practices.	Our style guides and document templates have changed since we first published the guidelines. We have made some minor drafting edits to reflect our current practices.

7.5 We have included the proposed revised guidelines in Appendix C. The guidelines reflect the changes described in Table 1, but these changes are not marked up. We have also made a version of the guidelines with all changes marked available on the Authority's website.[12]

7.6 We have updated the draft guidelines to reflect the proposed Code amendments. If we do not progress or amend the proposed Code amendments, we will revise the guidelines accordingly. We have underlined or struck through (in both the clean and marked-up versions) the affected sections of the guidelines for the convenience of the reader.

7.7 We note the WAG suggested it would be useful to include more worked examples in the guidelines. Although the guidelines already contain some worked examples, we would like to include additional examples (where relevant) that are consistent with the Authority's disclosure expectations for wholesale market information. As input into this process, we encourage submitters to provide case studies we could consider including as anonymised worked examples in the guidelines.

Q3. Do you agree the Authority should update the guidelines in the way it is proposing?

Q4. Can you suggest one or more case studies the Authority could consider using in the guidelines where parties have either disclosed, or not disclosed, information relating to wholesale markets in an effective way?

We intend to hold a workshop

7.8 We agree with the WAG's recommendation that a participant workshop would raise awareness and understanding of the disclosure obligations.

12 http://www.ea.govt.nz/development/work-programme/risk-management/wholesale-market-information-clause-13-2-and-fuel/consultation/.

7.9 We are therefore considering holding a participant workshop during the consultation period on the proposed Code amendment. This would also provide an opportunity for input on the proposed revisions to the guidelines.

8 Regulatory statement for the proposed Code amendment

8.1 This section sets out the regulatory statement for the proposed Code amendment.

8.2 The regulatory statement only applies to the Code amendment proposal, and does not include our proposed update to the guidelines.

Objectives of the proposed Code amendment

8.3 The objectives of the proposed Code amendment are to:

(a) reduce the potential for participants to withhold information relating to wholesale markets where disclosing the information supports an orderly and efficient wholesale market

(b) reduce the potential for some stakeholders to benefit from more and/or better information than others in a way that may:

(i) discourage participants from entering the market, or expanding their market presence; and/or

(ii) lead to participants without access to the information leaving the market

(c) make the obligations under clause 13.2A more enforceable by limiting the scope of the exclusion in clause 13.2A(2)

(d) make the required timeframe for disclosing corrected information more reasonable and more aligned with other disclosure requirements.

Q5. Do you agree with the objectives of the proposed Code amendment? If not, why not?

The proposed Code amendment

8.4 We propose amending the following clauses of the Code:

(a) clause 13.2(2), which relates to correcting previously disclosed information that was misleading, deceptive, or incorrect

(b) clause 13.2A(2), which relates to exclusions for participants' information disclosure obligations.

8.5 We propose amending clause 13.2(2) by replacing the word 'immediately' with the words 'as soon as reasonably practicable'. In effect, this means if a participant discovers it has disclosed misleading, deceptive, or incorrect information, it must act as soon as reasonably practicable, rather than immediately, to remedy the misleading, deceptive, or incorrect information.

8.6 We propose amending clause 13.2A(2) by:

(a) removing the exclusion set out in clause 13.2A(2)(b) allowing a participant not to make disclosure information readily available to the public if it will commercially disadvantage the participant in a material manner

(b) adding an exclusion allowing a participant not to make disclosure information readily available to the public if a reasonable person would not expect the disclosure information to be made readily available.

8.7 We have included the drafting of the proposed amendment at Appendix A.

We expect the proposed Code amendment's benefits to outweigh the costs

8.8 We consider a quantitative analysis of the costs and benefits of the proposal is not practical in this case. This is because outcomes from both the existing Code and the proposed Code amendment are heavily influenced by subjective judgements about participant behaviour. In such circumstances it is difficult to meaningfully quantify estimates of the costs and benefits. We have therefore used a qualitative analysis to assess the merits of this proposal relative to the status quo (the existing information disclosure regime).

8.9 The proposed Code amendment has been analysed in two parts:

(a) **amending the disclosure timeframe in clause 13.2(2)** by replacing the word 'immediately' with 'as soon as reasonably practicable'

(b) **amending the exclusions in clause 13.2A(2)** by replacing the commercial disadvantage exclusion with a reasonable person exclusion.

Benefits and costs of amending the disclosure timeframe in clause 13.2(2)

8.10 We consider the first part of the proposed Code amendment (paragraph 8.9(a) above) is necessary because:

(a) it is inconsistent with the requirement for disclosure information to be made readily available to the public as soon as reasonably practicable (clause 13.2A(1)) (emphasis added)

(b) it will not always be realistic for a participant to disclose corrected information immediately following the discovery of misleading, deceptive, or incorrect information (for instance, many participants do not operate a "24 hours a day, 7 days a week" business)

(c) requiring a participant to disclose corrected information immediately increases the risk a participant releases further misleading or incorrect information in their haste to release what it believes is corrected information.

8.11 We consider replacing the word 'immediately' with the phrase 'as soon as reasonably practicable' in clause 13.2(2) will lead to a small efficiency gain from:

(a) removing an unreasonably onerous obligation to act immediately

(b) reducing the risk of a participant disclosing further misleading or incorrect information.

8.12 We consider the costs of this part of the proposed Code amendment, if any, are negligible.

8.13 We therefore conclude this part of the Code amendment supports the efficiency limb of our statutory objective, and will have a net benefit.

Benefits and costs of amending the exclusions in clause 13.2A(2)

8.14 The second part of the proposed Code amendment (paragraph 8.9(b) above) is an amendment to one aspect of the disclosure regime for wholesale market information, introduced when the existing clause 13.2A came into effect in October 2013. We have therefore drawn on the assessment of benefits and costs included in the regulatory statement accompanying the October 2013 Code amendment. The economic framework for the October 2013 cost-benefit assessment is repeated in section 4 of this paper.

8.15 This assessment also draws on the WAG's case study analysis and its qualitative assessment of Code amendment options, which it included in its recommendations paper.[13]

Benefits

8.16 Based on the earlier discussion in this paper of why information is important in markets (refer section 4), we consider the economic benefits of replacing the commercial disadvantage exclusion with a reasonable person exclusion will come from two sources:

(a) enhanced confidence in the electricity market

(b) reductions in uncertainty and the costs of obtaining information.

8.17 The Authority considers these two benefits will directly promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers, as outlined below.

Enhanced confidence in the electricity market

8.18 The proposed amendment to clause 13.2A(2) of the Code reduces the potential for participants to withhold information relevant to the wholesale market where disclosing the information supports an orderly and efficient wholesale market. This should enhance participants' confidence in the electricity market (and the confidence of parties considering entering the electricity market) because:

(a) participants should have greater confidence the information they need to make effective decisions will be made available

(b) it will reduce the opportunity for parties holding information to take advantage of information not available to other participants[14]

(c) it will lead to participants having greater confidence the Authority will be able to deal effectively with any breaches of clause 13.2A.

8.19 Enhanced confidence in the wholesale market (in particular, the hedge market and ancillary services markets) should encourage greater participation in these markets and lead to efficiency gains. This supports the competition limb of the Authority's statutory objective to promote competition in the electricity industry for the long-term benefit of consumers.

8.20 It is difficult to quantify how large these efficiency gains would be. However, given the large size of these markets (as an example, the approximate annual turnover for the spot market is $2 billion to $6 billion), even a very small percentage efficiency gain could be material.

Benefits from additional information disclosed

8.21 We consider any additional information disclosed under the proposal relative to the status quo will come from two sources:

(a) information disclosed by participants who are not currently obliged to disclose information under the existing clause 13.2A due to the application of the commercial disadvantage exclusion

---

13 See footnote 3 for a link to the WAG's recommendations paper.

14 This benefit is similar to continuous disclosure requirements for listed companies removing the opportunity for insider trading.

(b) additional information disclosed by participants who are already obliged to disclose information under the existing clause 13.2A due to greater clarity and awareness of their disclosure obligations.

8.22 The benefits from additional information being disclosed include:

(a) improved efficiency in the operation of the electricity industry because of:

(i) reductions in the costs of obtaining information: parties who previously incurred costs to develop their own systems to estimate the information would be able to access the information at reduced or no cost; and

(ii) a reduction in uncertainty: any additional information disclosed under the proposal would assist parties to make efficient decisions about the future.

(b) greater participation in the wholesale market (especially the hedge market) leading to greater competition, because parties would be encouraged to enter these markets due to reductions in uncertainty and the costs of obtaining information

(c) improved reliability, where increased disclosure around outages and fuel availability facilitates investment and operational decisions contributing to improved security of supply.

8.23 We consider when the electricity market is not under stress, there is unlikely to be significantly more information disclosed under the proposed amendment to clause 13.2A. However, when the market is under stress there could be a material increase in the disclosure of information with the potential to significantly impact the prices in the relevant markets.

8.24 When the market is under stress there is greater variation and uncertainty in prices, so increased information disclosure at these times should have its greatest value in significantly reducing uncertainty. This will improve the efficiency in the operation of the electricity industry and encourage greater participation in the wholesale market (particularly the hedge market).

Costs

8.25 We consider the costs of the proposal will be minimal and will predominantly consist of the following costs (as discussed in paragraph 4.5(a)):

(a) providing the additional disclosure information

(b) assessing whether the information meets the reasonable person exclusion.

8.26 Costs of providing information are made up of the costs of processing and disclosing information. The Authority expects these costs will only increase modestly. In the short term, participants may face increased costs of assessing whether the reasonable person exclusion applies to information. In the long term we expect this cost will be negligible.

8.27 We consider the other two potential costs of providing information (a reduction in incentives to innovate and the facilitation of collusion (see paragraph 4.5)) will not be increased under this proposal:

(a) The proposal aims to obtain the right balance of information disclosure by allowing a participant to withhold information a reasonable person would not expect a participant to disclose. For example, a participant's incentive to innovate may be affected if they are required to (prematurely) disclose specific information. In this

situation, disclosure may not be in the long-term benefit of consumers and the reasonable person exclusion could potentially be applied.

(b) The proposal will not increase the latitude participants have to collude as they will still need to comply with the Commerce Act 1986.

8.28 We consider any increase in costs will be substantially less than the benefits of the proposal.

8.29 Furthermore, we consider including the reasonable person exclusion will reduce the risk of possible unintended consequences associated with removing the commercial disadvantage exclusion. While the reasonable person exclusion still requires a degree of interpretation, we consider it is more robust than the commercial disadvantage exclusion because it is supported by precedent in a range of legal and regulatory contexts.

Q6. Do you agree the costs of the proposed Code amendment to the exclusions will be minimal? If not, why not?

Summary

8.30 We expect enhanced confidence in the electricity market to be the largest benefit of the proposed Code amendment. However, it is difficult to quantify how large this benefit will be. We expect the costs of the proposal to be small and to be outweighed by the benefits of the proposal. We consider the proposal supports the efficiency, reliability and competition limbs of our statutory objective for the long-term benefit of consumers.

Q7. Do you agree the benefits of the proposed Code amendment outweigh its costs?

We have identified two other ways to address the objectives

8.31 The WAG identified and undertook a full assessment of the alternatives to the Authority's proposal, which were to:

(a) add a good conduct provision

(b) remove the commercial disadvantage exclusion

(c) include a reasonable person exclusion

(d) add a good conduct provision, and remove the commercial disadvantage exclusion

(e) add a good conduct provision, and replace the commercial disadvantage exclusion with the reasonable person exclusion.

8.32 Of these five alternatives considered by the WAG, it considered only one (paragraph 8.31(e)) would address the first three objectives set out in paragraph 8.3.

8.33 Therefore, we consider there are two alternatives to our proposal:

a) continue with the status quo (that is, retain the commercial disadvantage exclusion and make no other changes to clause 13.2A)

b) add a good conduct provision, and replace the commercial disadvantage exclusion with the reasonable person exclusion.

8.34 We consider there is no alternative way to address the fourth objective in paragraph 8.3 (make the timeframe for disclosing corrected information more realistic and better aligned with other disclosure requirements).

We prefer the proposed Code amendment over the other options

8.35 The Authority has evaluated the other means for addressing the objectives and prefers the proposal.

8.36 The Authority considers the proposal is preferable to the status quo because its:

(a) significant concerns with the commercial disadvantage exclusion can only be adequately addressed through a Code amendment removing this exclusion from clause 13.2A

(b) qualitative assessment of the costs and benefits of the proposal in the previous section is expressed relative to the status quo, and concludes the proposal has a net benefit relative to the status quo.

8.37 The Authority considers the proposed amendment to clause 13.2A is preferable to the option of also adding a good conduct provision (paragraph 8.31(e)) because, relative to the proposal:

(a) the incremental benefits of adding a good conduct provision are uncertain, but likely to be relatively low

(b) the implementation and administration costs would be slightly higher as a result of the need for:

(i) the Authority to put in place guidelines for good conduct

(ii) participants to establish and administer internal procedures for ensuring compliance with the good conduct obligations.

8.38 Furthermore, the Authority notes a good conduct obligation could be considered as a future Code amendment if circumstances change.

Q8. Do you agree the proposed Code 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 Act.

The proposed Code amendment complies with section 32(1) of the Act

8.39 The Authority's objective under section 15 of the Act is to promote competition in, reliable supply by, and efficient operation of, the electricity industry for the long-term benefit of consumers.

8.40 Section 32(1) of the Act says the Code may contain any provisions consistent with the Authority's objective and necessary or desirable to promote one or all of the following:

Table 2: How proposal complies with section 32(1) of the Act

(a) competition in the electricity industry	The greater clarity in the exclusions for information disclosure will lead to: • participants having greater confidence in the electricity market • additional information being disclosed. This in turn will likely encourage greater participation (particularly in the hedge market), thereby promoting competition in the electricity market.
(b) the reliable supply of electricity to consumers	The proposal will have a positive effect on the reliable supply of electricity to consumers: • an increase in information disclosure, particularly regarding outages and fuel availability, will make parties better informed of potential security of supply issues, and therefore better able to reduce the risk of such issues eventuating • greater confidence in the wholesale market will increase incentives to invest, leading to improvements in security of supply.
(c) the efficient operation of the electricity industry	The efficient operation of the electricity industry will be enhanced by the proposed amendment: • providing greater clarity around exclusions to information disclosure • leading to additional information being disclosed, enabling more informed market participation • removing an unreasonably onerous obligation to act immediately upon discovery of misleading, deceptive, or incorrect information • reducing the risk of further misleading, deceptive, or incorrect information being disclosed.
(d) any other matter specifically referred to in this Act as a matter for inclusion in the Code.	The proposed amendment will not materially affect any other matter specifically referred to in the Act for inclusion in the Code.

Q9. Do you agree the proposed Code amendment complies with section 32(1) of the Act?

The Authority has given regard to the Code amendment principles

8.41 When considering amendments to the Code, the Authority is required by its Consultation Charter to have regard to the following Code amendment principles, to the extent the Authority considers they are applicable.[15] Table 3 below describes the Authority's regard for the Code amendment principles in the preparation of the proposal.

Table 3: Regard for Code amendment principles

Principle	Comment
1. Lawful	The proposal is lawful, and is consistent with the statutory objective (see paragraphs 8.10 to 8.30) and with the empowering provisions of the Act.
2. Provides clearly identified efficiency gains or addresses market or regulatory failure	The efficiency gains are set out in the evaluation of the costs and benefits (see paragraphs 8.10 to 8.30). In addition, the proposed Code amendment addresses a concern the existing Code may lead to information disclosure outcomes that do not support the Authority's statutory objective.
3. Net benefits are quantified	A quantitative analysis of the costs and benefits of the proposal is not practical in this case. A qualitative analysis has therefore been used to assess the merits of this proposal (see paragraphs 8.10 to 8.30). The Authority considers the qualitative analysis of the costs and benefits shows any increase in costs due to the proposed Code amendment will be substantially less than the benefits of the proposed Code amendment.
Principles 4 to 9 apply only if it is unclear which option is best (refer clause 2.5 of the Authority's *Consultation Charter*)	

[15] The consultation charter is one of the Authority's foundation documents and is available at: http://www.ea.govt.nz/about-us/documents-publications/foundation-documents/.

Appendix A Proposed Code amendment

Changes to Part 13

13.2 Misleading, deceptive, or incorrect information

(1) A **participant** must not disclose to any person any information under this Part that, at the time the information was disclosed, was misleading or deceptive or likely to mislead or deceive when taken in the context of activities under this Part.

(1A) In assessing whether information, at the time of disclosure, is misleading or deceptive or is likely to mislead or deceive, a **participant** must act reasonably and prudently.

(2) If a **participant** discovers that information previously disclosed by it to a person under this Part was misleading, deceptive or incorrect, the **participant** must ~~immediately~~, as soon as reasonably practicable,—

(a) disclose further information so that the person is not misled or deceived by the information; or

(b) disclose corrected information to the person.

13.2A Participant must make disclosure information readily available

(1) Each **participant** must make all **disclosure information** in relation to the **participant** readily available to the public, free of charge, as soon as reasonably practicable after the **participant** becomes aware of the information.

(2) Despite subclause (1), a **participant** is not required to make **disclosure information** readily available to the public if—

(a) the **disclosure information** is **excluded Code information**; or

~~(b) doing so will commercially disadvantage the participant in a material manner; or~~

(ba) a reasonable person would not expect the **disclosure information** to be made readily available; or

(c) the **participant** is bound by a legal obligation to keep the **disclosure information** confidential; or

(d) doing so will be a breach of law; or

(e) the **disclosure information** is already readily available to the public; or

(f) the **disclosure information** concerns an incomplete proposal or negotiation; or

(g) the **disclosure information** comprises matters of supposition or is insufficiently definite to warrant being made readily available to the public; or

(h) the **participant** claims legal professional privilege or privilege against self-incrimination in respect of the **disclosure information**; or

(i) the **disclosure information** is a trade secret.

(3) A **participant** that relies on subclause (2) must, as soon as reasonably practicable, make the **disclosure information** readily available to the public, free of charge, if subclause (2) ceases to apply to the **disclosure information**.

(4) If information ceases to be **disclosure information**, a **participant** is no longer required to make the information readily available to the public.

(5) A **participant** that does not make information readily available to the public under this clause must, if required to do so by the **Authority**,—

(a) satisfy the **Authority** that subclause (2) applies to the **disclosure information**, if the **participant** relies on subclause (2); or

(b) satisfy the **Authority** that the information is not **disclosure information**.

(6) A **participant** must not enter into a confidentiality agreement with another person for the purpose of avoiding making **disclosure information** readily available to the public under this clause.

Q10. Do you have any comments on the drafting of the proposed Code amendment?

Appendix B Format for submissions

Submitter	

Question		Comment
Q1.	Do you agree with the issues the Authority has identified?	
Q2.	Do you think the example definition of a ‘reasonable person’ in section 6.9 should be the final definition adopted? If not, how would you define a ‘reasonable person’?	
Q3.	Do you agree the Authority should update the guidelines in the way it is proposing?	
Q4.	Can you suggest one or more case studies the Authority could consider using in the guidelines where parties have either disclosed, or not disclosed, information relating to wholesale markets in an effective way?	
Q5.	Do you agree with the objectives of the proposed Code amendment? If not, why not?	
Q6.	Do you agree the costs of the proposed Code amendment to the exclusions will be minimal? If not, why not?	
Q7.	Do you agree the benefits of the proposed Code amendment outweigh its costs?	
Q8.	Do you agree the proposed Code 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 Act.	
Q9.	Do you agree the proposed Code amendment complies with section 32(1) of the Act?	
Q10.	Do you have any comments on the drafting of the proposed Code amendment?	

Appendix C Wholesale market information disclosure guidelines (draft revised version)

Guidelines for participants on wholesale market information disclosure obligations

Guidelines

8 August 2017

Draft

Version control

Version	Date amended	Comments
1.0	17 June 2013	First published version
[1.1]	[8 August 2017]	Consultation version, prepared in conjunction with proposed Code amendment

Disclaimer

The Electricity Authority (Authority) provides these guidelines to improve participants' understanding of, and compliance with, their obligations under the wholesale market information disclosure provisions of the Electricity Industry Participation Code 2010 (Code).

The information in these guidelines does not replace the requirement for participants to know and comply with their obligations under the Code. These guidelines reflect the Authority's view.

The Authority has prepared this version of the guidelines as if the Code amendments proposed are in effect, namely:

a) amending clause 13.2A(2) by replacing the commercial disadvantage exclusion with the reasonable person exclusion
b) amending clause 13.2(2) by replacing the word 'immediately' with the words 'as soon as reasonably practicable'.

The Authority will revise the guidelines as required before releasing the final updated version to reflect whether the proposed Code amendments are progressed.

The information in these guidelines is not intended to be definitive and should not be used instead of legal advice. If there is any inconsistency between these guidelines and the Code, the Code takes precedence.

Draft

Contents

Draft

1 Introduction

1.1 The Electricity Authority (Authority) oversees the day-to-day operation of the wholesale electricity market in accordance with the Electricity Industry Participation Code 2010 (Code). It manages contracts with market operation service providers that operate the wholesale market, and also has governance and compliance responsibilities, including market development, performance monitoring, and breach investigation.

1.2 Clause 13.2A of the Code imposes disclosure obligations on participants in relation to wholesale market information (WMI disclosure obligations). In New Zealand, the wholesale electricity market comprises the spot market, the hedge market (including financial transmission rights (FTRs)), and the ancillary services market.[1]

2 An effective disclosure regime is important

2.1 The Authority considers that an effective information disclosure regime is a fundamental feature of a well-functioning electricity market. This section describes the Authority's expectations for an effective disclosure regime to provide context for participants in considering their disclosure obligations and making disclosure decisions.

2.2 Enhanced information disclosure regulation is generally viewed as a tool for reducing inefficient information asymmetry between informed and uninformed market participants.[2] Information asymmetry in a market can lead to transfers of wealth from uninformed to informed market participants when they trade with each other, potentially leading to inefficient market outcomes.

2.3 Effective information disclosure regulation can also reduce information costs, assist existing and potential market participants in making informed decisions, and enhance confidence in the integrity of the market by removing opportunities for insider trading and the creation of a false market.

2.4 In this context, the Authority considers that an effective disclosure regime should:

(a) build confidence in the electricity market

(b) promote efficient monitoring and information provision

(c) reduce inefficient information asymmetry between informed and uninformed market participants and interested parties.

2.5 The WMI disclosure obligations in clause 13.2A of the Code, which these guidelines focus on, are the core of the wholesale market disclosure regime. Other elements of the regime include:

(a) specific provisions in the Code requiring publication of market information such as spot prices

(b) the publication of bids/offers and other information through the Wholesale Information and Trading System (WITS)[3]

(c) the hedge disclosure and spot price risk disclosure obligations in the Code

---

1 Clause 1.1(1) of the Code.

2 Information asymmetry describes a situation where one party has more, or better, information than one or more other parties.

3 www.electricityinfo.co.nz.

Draft

(d) the Authority's monitoring and compliance arrangements.

2.6 The Authority encourages and facilitates voluntary information disclosure through a variety of means.

3 Purpose of these guidelines

3.1 The purpose of these guidelines is to:

(a) set out the expectations of the Authority in relation to participants' compliance with their WMI disclosure obligations in the Code

(b) provide guidance to participants bound by the WMI disclosure obligations to assist them in making disclosure decisions

(c) provide guidance to interested parties about what information is likely to be available under the WMI disclosure obligations.

4 Overview of the WMI disclosure obligations

4.1 The WMI disclosure obligations in the Code provide a mechanism to ensure that the stakeholders in the New Zealand wholesale electricity market (interested parties) are informed of relevant information at all times. The WMI disclosure obligations are designed to reduce information asymmetry in the wholesale electricity market so that an interested party:

(a) is not materially disadvantaged against another

(b) can make informed decisions.

4.2 The Authority's disclosure regime was designed to establish a "continuous disclosure" obligation for information relevant to the wholesale market. The regime is modelled on comparable provisions for companies listed and traded on the New Zealand Stock Exchange (NZX), but modified for the electricity market context.

4.3 The key elements of the WMI disclosure obligations set out in clause 13.2A of the Code are summarised in Table 1. The remainder of these guidelines expands on each of these key elements by setting out the Code provisions and discussing the Authority's expectations.

4.4 A flowchart is also included here (Figure 1) to assist in determining whether information needs to be disclosed under clause 13.2A.

Draft

Table 1: Overview of the WMI disclosure obligations

Who do the WMI disclosure obligations apply to?	The WMI disclosure obligations apply to all participants, as defined in Part 1 of the Code and in section 5 of the Electricity Industry Act 2010 (Act). Each participant must make disclosure information readily available to the public, free of charge.
What is disclosure information?	"Disclosure information", in relation to a participant, means information that: (a) is about the participant; and (b) is held by the participant; and (c) the participant expects, or ought reasonably to expect, if made publicly available, will have a material impact on prices in the wholesale market.
What exclusions apply?	A participant is not required to make the information readily available to the public, if: (a) the disclosure information is excluded Code information (as defined in Part 1 of the Code); or (b) a reasonable person would not expect the disclosure information to be made readily available; or (c) the participant is bound by a legal obligation to keep the disclosure information confidential; or (d) making the disclosure information readily available to the public will be a breach of law; or (e) the disclosure information is already readily available to the public; or (f) the disclosure information concerns an incomplete proposal or negotiation; or (g) the disclosure information comprises matters of supposition or is insufficiently definite to warrant being made publicly available; or (h) the participant claims legal professional privilege or privilege against self-incrimination in respect of the disclosure information; or (i) the disclosure information is a trade secret. A participant must not enter into a confidentiality agreement with another person for the purpose of avoiding the WMI disclosure obligations.
Who has to demonstrate that an exclusion applies?	If required to do so by the Authority, a participant who relies on an exclusion must demonstrate that the disclosure information continues to be the subject of an exclusion.

Draft

When should the information be made readily available to the public?	The participant must make disclosure information readily available to the public: (a) as soon as practicable after becoming aware of the information; or (b) if one of the exclusions applies, as soon as practicable after the information ceases to fall within one of those exclusions, provided it is still disclosure information. If information ceases to be disclosure information, a participant is no longer required to keep making the information readily available to the public.
What does readily available to the public mean?	Readily available to the public means the information is available to the public, free of charge in a readily accessible place and in a usable form.

Other disclosure obligations in the Code are relevant

4.5 While clause 13.2A is the focus of these guidelines, clause 13.2 is also very relevant to WMI disclosure. Clause 13.2 relates to misleading, deceptive, and inaccurate information disclosed under Part 13 of the Code.

4.6 Under clause 13.2(1), a participant must not disclose to any person any information under Part 13 that is misleading or deceptive (or is likely to mislead or deceive) when taken in the context of Part 13 activities. Clause 13.2(2) provides that if a participant discovers that information it has previously disclosed to a person under Part 13 was misleading, deceptive, or incorrect, the participant must immediately:

(a) disclose further information so that the person is not misled or deceived by the information; or

(b) disclose corrected information to the person.

4.7 In addition to clauses 13.2 and 13.2A, there are other information disclosure obligations in the Code which may be relevant. These include provisions about:

(a) the availability of Code information (see Part 2 of the Code)

(b) hedge disclosure (see subpart 5 of Part 13 of the Code)

(c) spot price risk disclosure (see subpart 5A of Part 13 of the Code)

(d) the co-ordination of outages that affect common quality (see Technical Code D of Schedule 8.3 of the Code)[4]

4.8 Other Authority guidelines that may also be relevant include:

(a) *Guidelines on information gathering powers – industry and market monitoring functions*[5]

(b) Enforcement Policy 2017[6]

[4] The Planned Outage Co-ordination Process (POCP), a voluntary arrangement established by the system operator and various participants to assist with outage information disclosure, is relevant to these obligations.

[5] http://www.ea.govt.nz/document/12188/download/industry/monitoring/reports-publications/.

Draft

(c) *Prosecution Policy 2017*[7]

(d) *"Industry and market monitoring: competition"*[8]

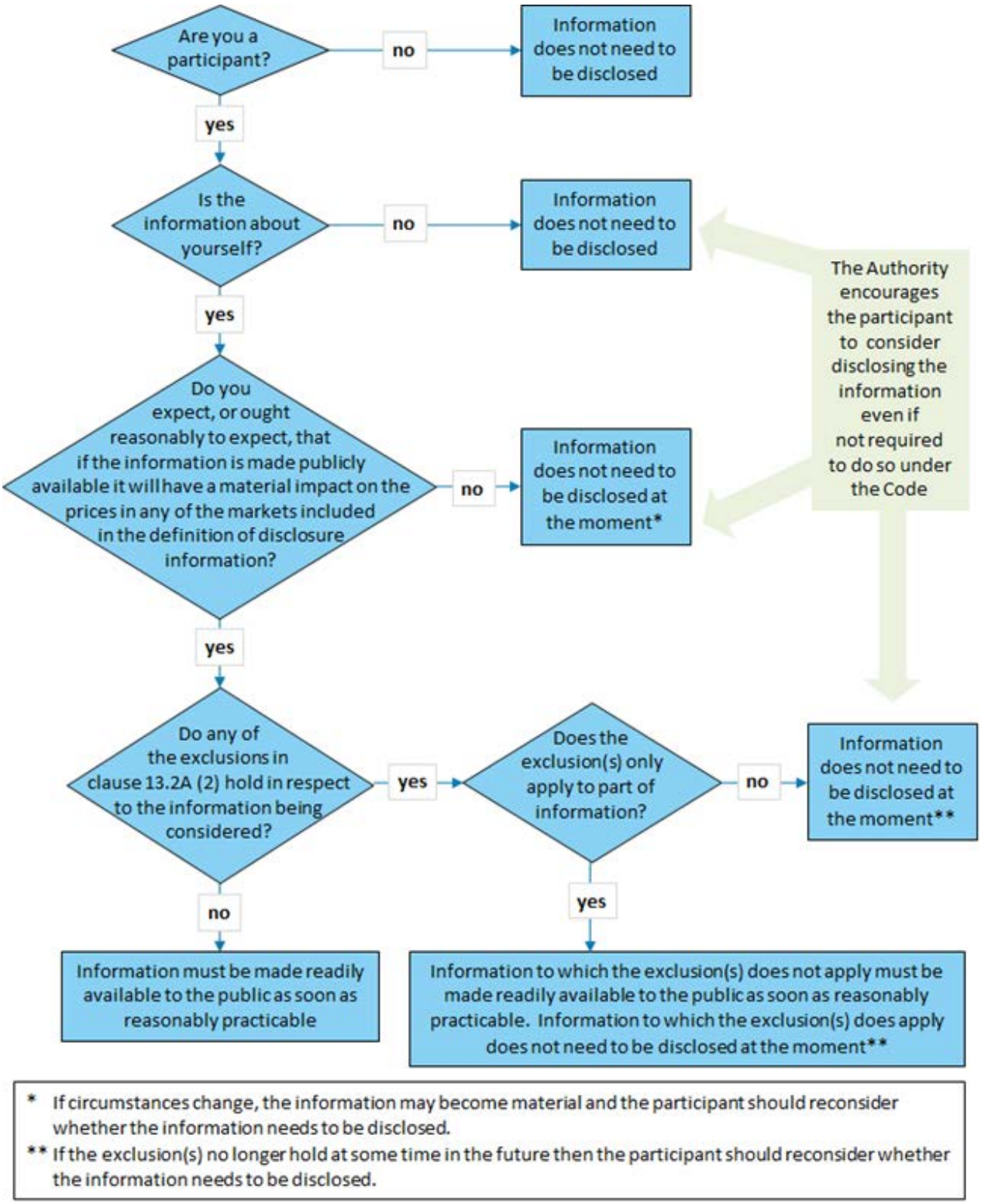
Draft

6 http://www.ea.govt.nz/code-and-compliance/compliance/enforcement-policy/.

7 http://www.ea.govt.nz/code-and-compliance/compliance/prosecution-policy/.

8 http://www.ea.govt.nz/document/14953/download/industry/monitoring/reports-publications/.

Figure 1: Determining whether information needs to be disclosed under clause 13.2A



5 Who do the WMI disclosure obligations apply to?

The WMI disclosure obligations apply to all participants, a term defined in Part 1 of the Code:

> ***participant*** *has the meaning given to it in section 5 of the Act*

The relevant sections of the Act are as follows:

> *5* ***industry participant****, or* ***participant****, means a person, or a person belonging to a class of persons, identified in section 7 as being a participant in the electricity industry*
>
> *7 Industry participants*
>
> *(1) The following are industry participants for the purposes of this Act:*
>
> *(a) a generator:*
> *(b) Transpower:*
> *(c) a distributor:*
> *(d) a retailer:*
> *(e) any other person who owns lines:*
> *(f) a person who consumes electricity that is conveyed to the person directly from the national grid:*
> *(g) a person, other than a generator, who generates electricity that is fed into a network:*
> *(h) a person who buys electricity from the clearing manager:*
> *(i) any industry service provider identified in subsection (2).*
>
> *(2) The following industry service providers are industry participants:*
>
> *(a) a market operation service provider:*
> *(b) a metering equipment provider:*
> *(c) a metering equipment owner:*
> *(d) an ancillary service agent:*
> *(e) a person that operates an approved test house:*
> *(f) a load aggregator:*
> *(g) a trader in electricity:*
> *(h) any other industry service provider identified in regulations made under section 109.*
>
> *(3) The Authority is not an industry participant, except to the extent that it performs functions as an industry service provider*

Some key terms used in section 7 of the Act are defined in the Act as follows:

generation *means the generation of electricity that is fed into the national grid or a network; and* ***generator*** *means a business engaged in generation*

distribution *means the conveyance of electricity on lines other than lines that are part of the national grid; and* ***distributor*** *means a business engaged in distribution*

retailing *means the sale of electricity to a consumer other than for the purpose of resale; and* ***retailer*** *means a business engaged in retailing*

ancillary service agent *means a person who, pursuant to an agreement with the system operator, provides frequency keeping, instantaneous reserve, voltage support, over frequency reserve, black start, or any other ancillary service specified in the Code, and as defined in the Code*

trader in electricity *means a person who trades in electricity or electricity derivatives, and includes—*

(a) a person who buys or sells contracts under which the payment obligations may change according to the changes in the price at which electricity is bought or sold in any market in New Zealand; and

(b) any related clearing house or exchange

load aggregator *means a person who contracts with 1 or more consumers so that the person is able to deal with the electricity otherwise required by those consumers in any way, including putting in place agreements under which those consumers voluntarily change their consumption level, so that the person is able to offer the combined increase or reduction in the interruptible load of all those consumers as collective demand, either in the wholesale electricity market or under any other bilateral agreement or contract*

market operation service provider *means the system operator and any person appointed by the Authority under the Code to perform any of the following market operation service provider roles:*

(a) the registry manager:
(b) the reconciliation manager:
(c) the pricing manager:
(d) the clearing manager:
(e) the market administrator:
(f) the wholesale information trading system provider:
(g) any other role identified in regulations as a market operation service provider role

Under the Electricity Industry (Participants and Roles) Regulations 2012, the FTR Manager and the Extended Reserve Manager are also “market operation service providers”.

Authority's views

5.1 We consider that the definition for "participant" is straightforward and that all participants must consider what steps they need to take to comply with their disclosure obligations.[9]

5.2 In practice, the Authority acknowledges that not all classes of participants will hold disclosure information (that is, information that is subject to the WMI disclosure obligation) in the normal course of their business. For instance, metering equipment owners and operators of approved test houses are unlikely to hold information about themselves that would have a material impact on prices in the wholesale electricity market.

5.3 At the other end of the spectrum, some classes of participant, such as generators, retailers, and Transpower, are likely to have a number of WMI disclosure obligations due to the nature of their businesses and wholesale market activities.

5.4 Parties need to determine whether they are participants, particularly those who undertake activities at the periphery of the wholesale electricity market. For instance, a party based in New Zealand that buys or sells New Zealand electricity futures on the Australian Securities Exchange (ASX) is captured by section 7(2)(g) of the Act as a participant that trades in electricity or electricity derivatives, and is thereby bound by the WMI disclosure obligations.

5.5 The Authority notes that all generators are participants, and must comply with the WMI disclosure obligations. This includes embedded generators and small distributed generation. In practice, a small generator is unlikely to hold information about itself that would have a material impact on prices in the wholesale market.

5.6 The WMI disclosure obligations also apply to the Authority to the extent that it performs any functions as an industry service provider.

5.7 The WMI disclosure obligations do not apply to parties that are not industry participants.

Draft

[9] The Authority maintains a list of participants available from here: http://www.ea.govt.nz/operations/industry-participants/participant-register/. Note that a participant's obligations under the Code are not affected merely because the participant ceases to be registered as a current participant (section 30 of the Act).

6 What is disclosure information?

The definition of disclosure information is set out in the Code as follows:

> ***disclosure information**, in relation to a **participant,** means information that—*
>
> *(a) is about the **participant**; and*
>
> *(b) is held by the **participant**; and*
>
> *(c) the **participant** expects, or ought reasonably to expect, if made publicly available, will have a material impact on the prices in the **wholesale market**.*

Authority's views

6.1 This section of the guidelines focuses on what information is likely, or unlikely, to be disclosure information for the purposes of the WMI disclosure obligation. This section explores each key aspect of the Code obligation, using examples where appropriate to illustrate the Authority's views and expectations.

Information about the participant

6.2 It is important to note that the WMI disclosure obligations in clause 13.2A are limited to disclosure information that the participant holds about itself, for instance about its business, its assets, its financial position, and its contracts.

6.3 Information a participant holds about its wholly owned subsidiaries is not information the participant holds about itself. This is because wholly owned subsidiaries are separate legal entities to the participant. Information a participant holds about joint ventures and special purpose vehicles that have been incorporated as companies will not fall within the definition of "disclosure information" for the same reason. However, information about joint ventures and special purposes vehicles that have been undertaken purely by agreement (that is, without being incorporated as a company) would fall within the definition for "disclosure information".

6.4 The Authority would be concerned if participants structured their affairs to avoid disclosure, such as by ensuring that a subsidiary or holding company holds information rather than the participant. If the Authority forms the view that the intention of the disclosure regime is being frustrated in that way, an amendment to the Code may be considered to extend the obligations to cover information about (or held by) subsidiary and holding companies of participants.

6.5 The definition of disclosure information is not aimed at capturing the collective information such as total electricity demand in the market, final spot prices, or system constraints. It is aimed at capturing a participant's own contribution to the collective position. For instance:

(a) a material change in a directly connected end-user's own electricity demand (for example, a major expansion in production capabilities) might be captured by the WMI disclosure obligations

(b) a participant (for example, a distributor) may act on behalf of a large consumer in the wholesale market who is not a participant. If that participant is informed by the large consumer that there will be a material change in its electricity demand,

Draft

clause 13.2A may require the participant to disclose the material change in electricity demand. However, depending on the circumstances, the participant may not necessarily be obliged to disclose who the large consumer is.

6.6 In some circumstances the WMI disclosure obligations may relate to information about the participant and another party (who may or may not also be a participant). For instance, a participant that is a counterparty to a new contract may have WMI disclosure obligations in relation to aspects of that contract. This will occur if the impact of the contract on the participant would meet the definition of "disclosure information". The participant would likely be required to disclose the impact on its business, and may also need to disclose further details (subject to any permitted exclusions discussed later in these guidelines).

"Material impact on prices" test

6.7 The WMI disclosure obligations are drafted in a deliberately non-prescriptive manner. The obligations use "material impact on prices" in the relevant markets (discussed later) as the test, and require the holder of information to decide if the test is met.

6.8 The Authority acknowledges that to apply this test, the participant must:

(a) consider the facts and circumstances of the particular situation

(b) exercise its judgement.

6.9 The Authority believes that the holder of the information is in the best position to know the relevant facts and circumstances, and to exercise that judgement in the first instance. The exclusion provisions (discussed later), and the Authority's monitoring and compliance regime more generally, provide checks and balances on information holders that exercise their judgement and make disclosure decisions.

6.10 The Authority's focus is on information that is likely to have a material impact on prices in the relevant markets. The term "material impact" is not defined, nor are materiality metrics included in the Code or these guidelines. The Authority's view is that a "material impact" is simply any impact that is non-trivial. Participants will need to exercise judgement whether information needs to be disclosed in the context of each particular circumstance. The Authority encourages participants to take a cautious approach when determining whether information will have a material impact on prices, and to err on the side of disclosing the information.

6.11 In the normal course of trading, information that has a material impact is most likely to be information that has a sustained effect across multiple trading periods. It is important to note that the facts and circumstances of a particular case could mean that having an effect over just a single trading period is sufficient to meet the test.

6.12 The locational scope of the impact may also be relevant to determining materiality. A relatively small matter could have a material impact on localised prices in certain circumstances, particularly if there are constraints (for example, transmission, generation, fuel delivery). The Authority considers that this would meet the test of "material impact on prices" even though the impact may be relatively localised.

6.13 The Authority notes that information which at one point had a non-material impact, could have a material impact through a change in circumstances. The Authority encourages participants to consider how sensitive the materiality might be to changing circumstances when making a disclosure decision.

Draft

6.14 The information could be quantitative and/or qualitative in nature. It may be generated regularly (for example, monthly financials or annual reports) or on an ad hoc basis (for example, an announcement on commissioning of new generation).

6.15 Factors that holders of information may find it useful to consider when applying the "material impact on prices" test include the following:

(a) would a reasonable person expect that the information would, if it were generally available to the market, have a material effect on the day to day decision-making of interested parties (see the following sections for discussion of "interested parties" and "day-to-day decision-making")[10]

(b) would the impact be significant enough to extend over several days, weeks, or months

(c) would the participant expect another participant to disclose such information in similar circumstances

(d) has a participant disclosed similar information in similar circumstances previously

(e) would a reasonable person expect that the information could materially alter the primary energy balance (that is, supply margin)[11]

(f) even if the extent of the impact is small on a national basis, might the impact be material in a localised area

(g) even if the extent of the impact is uncertain in current circumstances, is there a reasonable chance that the impact could become "material" if circumstances change in the near future.

6.16 It is important to note that the above factors are intended only to provide guidance on the type of issues that a holder of information may find it useful to consider and are not exhaustive. They do not constitute requirements or mandatory considerations in themselves and should not be deemed to exclude the consideration of factors not listed.

Interested parties

6.17 The Authority considers that the interested parties these WMI disclosure obligations are targeted at benefiting are those parties with a key interest in the wholesale market including, for instance:

(a) existing and potential participants

(b) medium to large electricity users and other consumers who are directly and materially affected by prices in the relevant markets

(c) owners of electricity generating fuels (or holders of fuel contracts)

(d) providers of market services such as trading or demand aggregation

(e) current and potential investors in wholesale electricity market assets and services

(f) market commentators and analysts

(g) regulatory bodies such as the Authority, the Gas Industry Company, and the Commerce Commission

---

10 The material impact test is based on what a reasonable person would expect to happen upon the release of the information.

11 A supply margin is the balance between supply and demand.

Draft

(h) Government agencies and officials.

6.18 Participants need to have regard to who the interested parties might be when considering whether the "material impact on prices" test is met, and therefore whether information they hold needs to be disclosed.

Day-to-day decision-making of interested parties

6.19 As noted in paragraph 6.15(a) above, holders of information may find it useful to consider whether the information in question would have a material effect on the day-to-day decision-making of interested parties. The Authority considers that this could include, for instance, an interested party deciding to:

(a) alter bidding or offering strategies for energy or ancillary services

(b) alter hedge positions

(c) negotiate a fuel contract or exercise an option in an existing contract

(d) enter a new retailing area (or exit an existing area)

(e) alter aspects of the grid configuration, ratings, protection settings etc

(f) invest in new assets or expand existing assets (generation, transmission etc)

(g) mothball, decommission, or sell existing assets

(h) shutdown part of a major production facility for an extended period of time

(i) schedule (or reschedule) major maintenance.

6.20 This list of day-to-day decisions is intended only to provide guidance and is not exhaustive.

Relevant markets

6.21 The scope of the "material impact on prices" test is confined to the wholesale market.

The term "wholesale market" is defined in the Code as follows:

> ***wholesale market*** *means—*
>
> *(a) the spot market for* ***electricity****, including the process for setting—*
>
> *(i)* ***real time prices****:*
>
> *(ii)* ***forecast prices*** *and* ***forecast reserve prices****:*
>
> *(iii)* ***provisional prices*** *and* ***provisional reserve prices****:*
>
> *(iv)* ***interim prices*** *and* ***interim reserve prices****:*
>
> *(v)* ***final prices*** *and* ***final reserve prices****:*
>
> *(b) the markets for* ***ancillary services****:*
>
> *(c) the hedge market for* ***electricity****, including the market for* ***FTRs***

6.22 The Authority makes the following comments in relation to each of the relevant markets that are included in the definition of wholesale market:

draft

(a) The spot market for electricity – This means the spot market that operates under Part 13 of the Code, and the processes by which the various prices listed in paragraph (a) of the definition are set.

(b) The market for ancillary services – This means the market for instantaneous reserves, frequency-keeping, voltage support, over-frequency reserve, and black start. These markets operate in the short, medium, and longer term, and are governed by the procurement arrangements in Part 8 of the Code, relevant provisions in Part 13, the Procurement Plan (incorporated by reference in the Code) and the ancillary service contracts agreed between the system operator and ancillary service agents.

(c) The market for financial hedge contracts for electricity (including FTRs) – This includes electricity hedges or futures negotiated bilaterally, traded on exchanges such as ASX or traded over-the-counter (OTC). The market for financial hedge contracts is part of the wholesale market more broadly, that is the medium to long term interaction of electricity supply and wholesale demand. Accordingly, it encompasses parties such as generators, Transpower, distributors and major users making decisions on, for instance, (dis)investment, major maintenance, fuel contracting and electricity retailing.

6.23 The Authority considers that the retail electricity market is not a relevant market in this context, except to the extent that there is an overlap (for example, some wholesale market participants are also retail market participants).

Level of detail to disclose

6.24 Once a participant has established that it holds disclosure information and that no exclusion applies (refer section 7 below), the participant then needs to determine how much detail should be disclosed. The Authority considers that the participant, in making this determination, could have regard to the following factors:

(a) the nature of the disclosure information

(b) the relevant market(s) to which it relates

(c) how much detail an interested party would require in order to form a reasonable understanding of the scope and nature of the “material impact on prices”

(d) the scale and nature of the types of day-to-day decision-making that the disclosure information is likely to materially affect

(e) how much detail the participant would expect another participant to disclose in similar circumstances

(f) how much detail other participants have disclosed in similar circumstances in the past.

6.25 This list of factors is not exhaustive and should not be deemed to exclude the consideration of factors not listed.

6.26 The information should be in a usable form, which may differ for different types of information. For instance, quantitative information (data) should be in a form that can be readily imported into common analytical tools such as spreadsheets.

Draft

Some examples of disclosure information

6.27 The Authority has developed several examples to further assist participants consider their WMI disclosure obligations under clause 13.2A. The Authority stresses, however, that the obligation to decide if information is disclosure information remains with participants. Furthermore, disclosure decisions need to be made on a case-by-case basis after considering the facts and circumstances of the particular situation, and exercising judgement. Accordingly, the examples here are indicative and should not be regarded as outlining a definitive position.

6.28 Under normal circumstances, the Authority considers that the following could reasonably be expected to have a material impact on prices in the relevant markets and therefore be disclosure information. The list is not exhaustive. Note also that the applicability of exclusions (addressed later in these guidelines) has not been considered in compiling this list.

(a) *Major investment and dis-investment decisions* – Examples include a decision to build major new generation or transmission assets, mothball or decommission major existing assets, or undertake major upgrade or refurbishment of existing assets. A large electricity user scaling its production facilities up or down in a manner that would materially impact electricity demand would also be an example.

(b) *A significant change in fuel supply situation* – Examples include buying (or selling) a significant quantity of coal, entering (or exiting) a significant gas contract, or a significant change in fuel storage/stockpile/transport capabilities. Whether the change is significant or not might depend on a number of factors such as the size of the change, the scale and location of the relevant generation, and market conditions at the time (for example, wet/dry, other fuel supply issues).

(c) *A significant change in generation capability or mode of operation* – Examples include a planned or unplanned outage of generation plant that would result in a significant reduction in generation capability, generation plant returning to service significantly earlier or later than anticipated, a re-rating of asset capability, moving generating assets from baseload to peaking or into “long-term storage” for recall under certain conditions, or a change in resource consent conditions that would have a material impact on generation capability. The significance of the change will depend on factors such as the type, size and location of the generation, size and duration of the outage in question, transmission constraints and market conditions at the time.

(d) *A significant change in ancillary service capability* – Examples include a decision to invest in ancillary service capability, or withdrawal of interruptible load from the reserves market to use for peak management.

(e) *A significant change in transmission capability* – Examples include a planned or unplanned outage of transmission assets that would result in a significant reduction in transmission capability, transmission assets returning to service significantly earlier or later than anticipated, or a material change in asset ratings. The significance of the change will depend on factors such as the capacity and location of the transmission assets, size and duration of the outage in question and market conditions at the time.

(f) *A significant change in electricity contracting position* – Examples include entering into, or terminating, a hedge contract that is of sufficient magnitude to materially alter spot market incentives and prices.

Draft

6.29 Under normal circumstances, the Authority considers that the following are unlikely to have a material impact on prices in the relevant markets and are therefore unlikely to be disclosure information. The list is not exhaustive:

(a) minor adjustments in contracting position

(b) minor adjustments in fuel supply position

(c) minor maintenance decisions

(d) minor changes in outage scheduling

(e) minor investment in generation, transmission or ancillary services

(f) minor fuel supply adjustments.

Draft

7 What exclusions apply?

The exclusions are set out in clause 13.2A(2) and 13.2A(6) of the Code as follows:

*(2) Despite subclauses (1) and (3), a **participant** is not required to make **disclosure information** readily available to the public, if—*

*(a) the **disclosure information** is **excluded Code information**; or*

*(b) [a reasonable person would not expect the **disclosure information** to be made readily available]; or*

*(c) the **participant** is bound by a legal obligation to keep the **disclosure information** confidential; or*

*(d) making the **disclosure information** readily available to the public will be a breach of law; or*

*(e) the **disclosure information** is readily available to the public; or*

*(f) the **disclosure information** concerns an incomplete proposal or negotiation; or*

*(g) the **disclosure information** comprises matters of supposition or is insufficiently definite to warrant being made readily available to the public; or*

*(h) the **participant** claims legal professional privilege or privilege against self-incrimination in respect of the **disclosure information**; or*

*(i) the **disclosure information** is a trade secret.*

*(6) A **participant** must not enter into a confidentiality agreement with another person for the purpose of avoiding making the **disclosure information** readily available to the public under this clause.*

The Code defines 'excluded Code information' in clause 1.1 of the Code as follows:

***excluded Code information** means information—*

*(a) that relates to **bids**, **offers**, **reserve offers** and any **asset capability statement**; or*

*(b) that is provided to the **Authority**, any investigator, or the **Rulings Panel** and that is required to be kept confidential under this Code or the **Act**; or*

*(c) in relation to which the **Rulings Panel** has prohibited publication or communication.*

Authority's views

7.1 Once a participant has identified that information it holds is disclosure information, the participant may choose not to make the information readily available to the public if one of the exclusions in clause 13.2A(2) applies.

7.2 The onus of demonstrating that an exclusion applies (refer to section 8) rests with the holder of the information.

7.3 Consideration of whether an exclusion applies should be done on a case-by-case basis and will depend on the nature of the information and the specific circumstances. If any of the exclusions apply only to some of the disclosure information, a participant must still publish the disclosure information that does not fall within the exclusions. For example, a participant may publish disclosure information without disclosing information that has been communicated to the participant under an obligation of confidence.

7.4 In cases where a participant chooses to withhold certain parts of disclosure information on the basis that one of the exclusions apply, the participant should consider stating that the information that it has disclosed has been partially withheld. This will alert interested parties to the fact that they may not have a complete picture of the relevant information, and avoid confusion or the potential for the information released to be seen as misleading.

7.5 This section of the guidelines discusses each of the information disclosure exclusions listed in clause 13.2A of the Code. Some are self-evident and/or well-documented in law and little discussion is required.

7.6 It is important to note that the Code does not prevent a participant publishing the disclosure information, even if an exclusion applies. The Authority encourages participants to consider whether they could publish disclosure information despite the exclusions applying. In considering this, a participant may like to take into account whether:

(a) the participant would expect another participant to withhold such information in similar circumstances

(b) a participant has withheld similar information in similar circumstances previously.

Excluded Code information

7.7 A participant is not required to make publicly available disclosure information which is excluded Code information. "Excluded Code information" is defined in clause 1.1 of the Code.

~~Commercially disadvantage the participant in a material way~~[12]

~~7.8 A participant is not required to make publicly available disclosure information which will commercially disadvantage the participant in a material manner.~~

~~7.9 The Authority considers that "commercially disadvantage... in a material manner" has the following meaning:~~

- ~~*commercially disadvantaged:* a person can be said to be commercially disadvantaged if an event or action has a negative financial impact upon them, or impedes them from pursuing a commercial objective~~
- ~~*in a material manner:* a person is affected in a manner that is not trivial.~~]

[12] The Authority is consulting on a proposed Code amendment that would delete this exclusion, and replace it with a 'reasonable person' exclusion.

A reasonable person would not expect disclosure[13]

7.10 A participant is not required to make disclosure information publicly available if a reasonable person would not expect that information to be publicly disclosed.

7.11 The Authority considers that a 'reasonable person' in this context:

(a) is not 'the person on the street'

(b) is a sophisticated market participant familiar with the purpose and scope of the continuous disclosure regime, the market and regulatory framework within which it operated, and publicly known circumstances (refer the section on 'interested parties' earlier in these guidelines, starting at paragraph 6.17).

7.12 This 'reasonable person' exclusion requires an objective assessment of the circumstances relating to the information concerned to determine whether a reasonable person would not expect the information to be disclosed. Participants will need to exercise judgement as to whether the requirements of this exclusion are met on a case-by-case basis.

7.13 Participants may find it useful to consider the following non-exhaustive list of factors for guidance:

(a) whether disclosure by the participant would unreasonably prejudice that participant's position and activities in the wholesale market or in their commercial operations more generally. The Authority notes that this does not mean that participants can simply choose to withhold unfavourable news

(b) whether the participant would not expect another participant to disclose such information in similar circumstances

(c) whether a participant has disclosed similar information in similar circumstances previously.

Legal obligation to keep information confidential

7.14 A participant is not required to make any disclosure information publicly available if there is a legal obligation to keep the disclosure information confidential.

7.15 To establish that a participant has a legal obligation to keep information confidential, there must generally be an understanding between the provider of the information and the recipient that the information is communicated in confidence. For example an obligation of confidence will not exist simply because a participant unilaterally imposes an obligation of confidence on itself. Similarly, a simple declaration that information is confidential is insufficient to establish that such an obligation exists.

7.16 The understanding that information is communicated between parties in confidence may be express (for example, a signed confidentiality agreement) or implied from the circumstances of the particular case.

7.17 The fact that information is disclosed to third parties for limited purposes does not necessarily waive confidentiality in respect of others. However, confidentiality can be destroyed if there has been sufficient prior publication. This is a question of degree in the circumstances of each case, and therefore each case must be considered on its own merits.

---

[13] The Authority is consulting on a Code amendment to replace the 'commercial disadvantage' exclusion with this 'reasonable person' exclusion.

Draft

7.18 It is important to note that a participant would be in breach of the Code if it entered into a confidentiality agreement with another person for the purpose of avoiding the publication of disclosure information under clause 13.2A. A participant is entitled to enter into a confidentiality agreement with another party, as long as the purpose of the confidentiality agreement is not to avoid publication of disclosure information that the participant would have been required to publish, but for the confidentiality agreement.

Breach of law

7.19 A participant is not required to make disclosure information publicly available if making the disclosure information publicly available will be a breach of law.

Readily available to the public

7.20 The Authority's view is that the words "readily available to the public" in this context mean that the information must be able to be accessed easily, without delay, and without conditions. For example, if a participant placed information on a website that the public must subscribe to in order to access the information, the Authority would not consider that the information had been made readily available to the public.[14]

7.21 The Authority would not expect the holder of the information to disclose the information if it could demonstrate that the same (or substantially similar) information was already readily available to the public, free of charge.

7.22 For instance, information in the publicly accessible part of the WITS information system, by virtue of participants undertaking normal day to day spot market trading, is readily available to the public free of charge and the relevant participants need not separately disclose that information. Similarly, the Electricity Market Information (EMI) website is the Authority's avenue for publishing data, market performance metrics, and analytical tools to facilitate effective decision-making within the New Zealand electricity industry.[15] EMI is readily available to the public free of charge. Information published in EMI need not be separately disclosed by participants.

7.23 However, information submitted to the NZX or ASX by listed companies as part of their continuous disclosure obligations under the listing rules would not, in the Authority's view, satisfy the requirement to make information readily available to the public. Although the platforms operated by those exchanges are not closed to the public, they are specifically designed to accommodate the supply of information to issuers, and are not easily accessible or understandable by other parties. In particular, they are not appropriate platforms for the disclosure of information affecting the electricity markets.

An incomplete proposal or negotiation

7.24 A participant is not required to make disclosure information publicly available if the disclosure information concerns an incomplete proposal or negotiation.

7.25 A negotiation is considered to be complete at the point a contract (which may be conditional) is signed. The Authority is unlikely to regard a signed conditional contract as being incomplete.

---

14 Another example would be if members of the public were otherwise required to provide information about themselves before being given access to the information.

15 http://www.emi.ea.govt.nz/.

Draft

Matters of supposition or insufficiently definite

7.26 A participant does not have to disclose matters of supposition or disclosure information which is insufficiently definite to warrant being made readily available to the public.

7.27 For example, a participant does not have to publicly disclose that there is a possibility of an outage of one of its generators. However, once a decision has been made that a planned outage is required for maintenance, then it may be difficult for the participant to argue that this exclusion applies.[16]

Legal professional privilege or privilege against self-incrimination

7.28 A participant is not required to make disclosure information publicly available if legal professional privilege or privilege against self-incrimination applies to the disclosure information.

Legal professional privilege

7.29 Legal professional privilege is designed to protect confidential legal communications. There are two types of legal professional privilege:

(a) solicitor/client privilege extends to all communications between a legal advisor (acting in that capacity) and the client for the purposes of seeking or giving legal advice or assistance, irrespective of legal proceedings

(b) litigation privilege extends to communications with the client or third parties, if those communications are for the main purpose of enabling a legal adviser to advise a client on the conduct of litigation (whether current or anticipated).

7.30 A document is not subject to legal professional privilege merely because it is signed by a legal advisor or includes a claim to being privileged. Consideration must always be given to the content and substance of the information and the purpose for which it was provided.

Privilege against self-incrimination

7.31 Privilege against self-incrimination can be claimed by a person when there is a risk that criminal charges are likely to be laid against him or her as a result of any information he or she gives. Privilege against self-incrimination extends to information supplied by a person representing a corporation that is incriminating for the corporation, although not incriminating for the person himself or herself.

Waiver

7.32 Privilege is held by the client. Accordingly, even if information is subject to privilege, it is always open to the client to decide to waive the privilege and publish the information.

Trade secret

7.33 A participant is not required to make disclosure information that is a trade secret publicly available. Some factors that could be considered when determining whether the disclosure information amounts to a trade secret are:

(a) the extent to which the information is known outside of the participant's business

(b) the extent to which it is known by employees and others involved in the participant's business

[16] Provided the information is disclosure information.

Draft

(c) the extent of measures taken by the participant to guard the secrecy of the information

(d) the value of the information to the participant's contemporaries

(e) the amount of effort or money extended by the participant in developing the information

(f) the ease or difficulty with which the information could be properly acquired or duplicated by others.

7.34 This list of factors is intended as guidance only and is not exhaustive.

Draft

8 Who has to demonstrate that an exclusion applies?

The relevant Code requirements in clause 13.2A are:

*(5) A **participant** that does not make information readily available to the public under this clause must, if required to do so by the Authority,—*

*(a) satisfy the **Authority** that subclause (2) [exclusions] applies to the **disclosure information,** if the **participant** relies on subclause (2); or*

*(b) satisfy the **Authority** that the information is not **disclosure information**.*

Authority's views

8.1 Placing the onus of demonstrating an exclusion applies on the holder of the disclosure information who is relying on an exclusion applying is a key aspect of the design the Authority has adopted, and is consistent with giving the holder the duty of deciding if the definition of disclosure information is met. This is reinforced by the Authority's right under clause 13.2A(5) to require a participant to demonstrate to the Authority's satisfaction that an exclusion applies. This 'please explain' provision is specifically designed to facilitate compliance with the WMI disclosure obligations. The Authority also has powers to gather information and enforce the Code more generally.

8.2 The Authority can seek information from participants if its own monitoring regime highlights a concern with information not being disclosed, or if it receives an allegation that a participant has breached the provision in the Code. If a breach is alleged, the Authority will process the alleged breach under its *Enforcement Policy 2017*.

8.3 If a participant relies on an exclusion when an exclusion does not apply, the participant could be found to have breached the Code from the time it should have published the disclosure information in the first place. In this case, the participant would be required to publish the disclosure information, and refusing to do so may mean that the participant would be continuing to breach the Code.

Draft

9 When and for how long should the information be made readily available to the public?

The relevant Code requirements in clause 13.2A are:

> *(1) Each **participant** must make **disclosure information** in relation to the **participant** readily available to the public, free of charge, as soon as reasonably practicable after the **participant** becomes aware of the information.*
>
> *(3) A **participant** that relies on subclause (2) [exclusions] must, as soon as reasonably practicable, make the **disclosure information** readily available to the public, free of charge, if subclause (2) ceases to apply to the **disclosure information**.*
>
> *(4) If information ceases to be **disclosure information**, a **participant** is no longer required to make the information readily available to the public.*

Authority's views

9.1 In essence, a participant must disclose disclosure information as soon as it becomes aware of it, subject to reasonable practicalities which might include verification, approval, and communications, etc.

What does "becomes aware of" mean?

9.2 The Authority considers that a participant is in the best position to determine when they "become aware of" disclosure information. In general terms, a participant needs to disclose disclosure information as soon as practicable after anyone in the organisation becomes aware of the disclosure information.

9.3 Therefore, participants need to ensure they have appropriate systems and procedures in place to ensure that:

(a) any information that may be disclosure information is promptly identified

(b) information is promptly passed on to whoever in the organisation has authority to:

  (i) determine whether disclosure is required

  (ii) make disclosure information readily available to the public.

9.4 A participant should consider identifying a person or role in their organisation who is responsible for coordinating and leading the process of identifying and disclosing disclosure information. This person could consider who in their organisation is likely to frequently become aware of disclosure information and make sure these people are aware of their obligations to pass on any information that may be disclosure information.

Business hours or 24/7 disclosure

9.5 The relevant markets operate on a 24/7 basis. Furthermore, there is increasing interaction with offshore markets, particularly ASX, whose business hours differ to those in New Zealand. Disclosure information may therefore be relevant across a 24/7 timeframe, rather than just during normal business hours.

Draft

9.6 The Code requires that disclosure information be made readily available to the public as soon as reasonably practicable.

9.7 A participant may become aware of disclosure information outside of normal business hours. The Authority acknowledges that in some circumstances and/or for some participants, it may not be “reasonably practicable” to disclose information outside of normal business hours. In particular, this may be the case for smaller or less well-resourced participants who may not operate on a 24/7 basis and/or who may contract out aspects of their operations such as website maintenance.

How long must disclosure information remain readily available?

9.8 The participant must ensure that, once disclosure information has been published, the information continues to be readily available to the public, free of charge for as long as it meets the definition of "disclosure information".

9.9 The Authority is mindful that historic disclosure information may still be of great interest even if, strictly speaking, it no longer meets the definition of "disclosure information". Furthermore, a potential new entrant may not be aware of historic disclosure information. The Authority encourages participants to leave information available to the public even after the participant is no longer required to do so.

Information that is no longer the subject of an exclusion provision

9.10 In the case of disclosure information that had been subject to an exclusion provision, the participant must disclose the information as soon as the exclusion ceases to apply, provided the information is still disclosure information (that is, it is still captured by the definition of disclosure information).

9.11 This provision also applies when a participant fails to demonstrate to the Authority that an exclusion applies.

Draft

10 How should the information be made readily available to the public?

Clause 13.2A(1) of the Code requires that disclosure information is made:

"readily available to the public, free of charge".

Authority's views

10.1 The Code does not specify how the information is to be made publicly available, thereby giving the holders of the information flexibility to adopt an approach that suits their circumstances and the nature of the information to be disclosed.

10.2 The Authority has set out guidance for participants to consider when determining their approach to disclosure.

Readily available to the public, free of charge

10.3 The Act includes a general definition of "publicly available", and the Authority has drawn on this definition in these guidelines:

***publicly available**, in relation to making a document or information available, means that—*

(a) the document or information is available for inspection, free of charge, on an Internet site that is publicly accessible at all reasonable times (except to the extent that doing so would infringe copyright in the material or be inconsistent with any enactment or rule of law); and

(b) a copy of the document or information is available for inspection at all reasonable times, free of charge, at the head office of the person required to make it publicly available or, if the person is a Minister, at the head office of the relevant Ministry; and

(c) copies of the document may be purchased by any person at a reasonable price.

10.4 The Authority considers that the following conditions must be satisfied for disclosure information to meet the requirements of being "readily available to the public, free of charge":

(a) If the information is disclosed on a website, then the website needs to be readily accessible to the public. A website is not readily accessible if a person must first meet registration requirements and be approved as a user of the website. If the website administrator is able to deny access then this would not constitute "readily available to the public".

(b) The location of the information needs to be relatively easy for interested parties to find. If the information is disclosed on a website, then an interested party should be able to locate the information using a straightforward internet search with suitable search engine (for example, Google) and appropriate keywords. Ideally, interested parties should also be able to subscribe to receive notifications whenever changes are posted to the website. Disclosing the information in a relatively obscure or non-

Draft

intuitive location would not meet the Authority's expectations for "readily available to the public".[17]

(c) The information should be in a usable form. For quantitative information (data), the Authority encourages disclosing in a form that can be readily imported into common analytical tools such as spreadsheets.

(d) The term "free of charge" means no specific cost is imposed on an interested party accessing the information. It is assumed that interested parties have internet access and can receive email notifications as part of their normal business activities. If the website required a subscription payment or imposes an access charge then this would not constitute "free of charge".

(e) The Authority does not consider it reasonable to require a participant to disclose information in a physical format (for example, printed copy or on DVD/CD) free of charge, if it is already making the information publicly available free of charge on a website. Should an interested party request a physical copy, it would be reasonable for the participant to be able to impose a small charge to recover the costs involved.

(f) The Authority recognises that although the wording in clause 13.2A requires the disclosure information to be made available to the public at large, the parties interested in this type of information are likely to be parties with knowledge of the electricity industry, and therefore participants may word the disclosure information accordingly.

Preference for standardised disclosure practices

10.5 The Authority's preference is for participants to establish standardised disclosure practices (for example, format, location, timing), particularly where several participants are disclosing similar information. The facilitated disclosure arrangements that some generators have adopted for publishing information on snowpack is an example of this. The Authority is happy to assist participants establish standardised disclosure practices where practicable.[18]

Use of POCP platform for disclosure of outage information

10.6 In addition to the WMI disclosure requirements under clause 13.2A, the Code includes asset outage disclosure obligations under Technical Code D in Schedule 8.3 of the Code:

(a) asset owners must notify planned asset outages to the system operator if the outages may impact on the system operator's ability to meet its principal performance obligations[19]

(b) asset owners must notify the system operator up to 12 months ahead of planned outages, and update the system operator of any changes as they become aware of them

(c) the system operator must regularly publish an asset outage programme containing all the notified planned outage information.

---

17 The Authority would consider publishing the location of such information (for example, web address) on its own website if participants request this. To date no such request has been received.

18 Disclosure of thermal fuel information is an example that has been suggested by some parties.

19 For Part 8, asset owners are generators, distributors, grid owners and directly connected consumers.

Draft

10.7 In support of the Technical Code D outage obligations, the Planned Outage Co-ordination Process (POCP) is a set of processes and business rules relating to outage notification, outage co-ordination and the outage database. POCP was jointly developed by the system operator and other electricity industry participants through a series of industry workshops in 2003. It has been reviewed and developed since that time.[20] The system operator operates the POCP platform, including the outage database, for planned outage notification, publication and co-ordination.

10.8 It is important to note that, although the outage notification obligations under Technical Code D are mandatory, the POCP provisions and asset owners' use of the POCP platform for outage notification are both voluntary. The Authority and the system operator encourage asset owners to use the POCP platform to meet their Technical Code D planned outage notification obligations, as it provides a timely, efficient and standardised process for planned outage co-ordinating and publication.

10.9 The Authority acknowledges that participants might wish to utilise the POCP platform for disclosure of outage information that is also captured by the clause 13.2A WMI disclosure obligations. However, participants and other interested parties need to be aware of important differences between the two sets of disclosure obligations and the implications of different approaches to disclosure.

There are differences in what information needs to be disclosed

10.10 Firstly, the test for requiring disclosure of outage information is different under each set of disclosure obligations:

(a) under clause 13.2A the test is "…have a material impact on prices in the wholesale markets"

(b) under Technical Code D the test is "…may impact on the system operator's ability to plan to comply, and to comply, with the principal performance obligations".

10.11 Depending on the nature of a planned outage, and the circumstances at the time, a planned outage may meet the test for disclosure under one set of obligations but not the other. Furthermore, circumstances change over time, and a planned outage that did not meet one or other test at one point in time may do so at a later point in time. Participants must be mindful of both sets of obligations and of the different tests. The Authority encourages participants to take a cautious approach, erring on the side of greater disclosure.

10.12 Secondly, participants meet their clause 13.2A obligations by making their disclosure information about themselves readily available to the public. However, asset owners meet their Technical Code D obligations by *notifying the system operator* of a planned outage, and the obligation to *publish* the outage programme containing all notified planned outage information rests with the system operator.[21]

10.13 Asset owners using the POCP platform notify the system operator by logging into the POCP platform and entering the planned outage information directly. The information is then visible, and thus publicly available, without further action by either the asset owner

---

20 In particular, POCP was reviewed as part of the introduction of clause 13.2A in 2013 to enable participants to meet their clause 13.2A WMI disclosure obligations simultaneously with their outage disclosure obligations. The POCP business rules as at July 2015 are available from the system operator's website here https://www.transpower.co.nz/sites/default/files/bulk-upload/documents/POCP%20Business%20Rules%20as%20at%2010%20July%202013.pdf.

21 Clauses 2 and 6 respectively of Technical Code D in Schedule 8.3 of the Code.

Draft

or the system operator. If the outage information is also disclosure information under clause 13.2A, then the asset owner will simultaneously meet both sets of disclosure obligations provided the asset owner:

(a) enters the outage information into the POCP platform as soon as reasonably practicable after becoming aware of it

(b) updates the outage information in the POCP platform as soon as reasonably practicable after becoming aware of the need to update it.

10.14 However, although the outage notification obligations under Technical Code D are mandatory, use of the POCP platform to meet these mandatory obligations is voluntary. Some asset owners may choose not to use it, opting instead to notify the system operator directly. Until published by the system operator, that asset owner's outage information is not publicly available and would therefore not meet the clause 13.2A requirements for disclosure information.

10.15 Although Technical Code D only requires the system operator to 'regularly publish' an outage programme containing all notified planned outages, the POCP provisions (as at July 2015) tighten this to 'as soon as practical'. This is very similar to the clause 13.2A requirement of 'as soon as reasonably practicable'.

Use of the Hedge Disclosure System for disclosure of contract information

10.16 In addition to the wholesale market information disclosure requirements under clause 13.2A, the Code includes specific hedge disclosure obligations in subpart 5 of Part 13. The Authority operates the Electricity Hedge Disclosure System as the platform participants must use for disclosure of this information.

10.17 The Authority acknowledges that participants might wish to utilise the hedge disclosure system to meet their clause 13.2A obligations relating to disclosure of risk management contract information. However, participants and other interested parties need to be aware of important differences between the two sets of disclosure obligations.

There are differences in what information needs to be disclosed

10.18 Under subpart 5 of Part 13, participants are required to submit certain risk management contract details into the hedge disclosure system. The information to be submitted varies for different types and durations of risk management contract, but generally relates to the date, term, quantity, price and location.

10.19 It is important to note that the counterparties to each contract are not identified when the submitted information is published in the hedge disclosure system; that is, the contract counterparties are anonymous. This is sufficient for the hedge disclosure obligations where the purpose is to enable parties to formulate their own estimated forward price curves for electricity based on historical information, and to facilitate the ready comparison of electricity prices and other key terms of risk management contracts.

10.20 However, if a participant enters into a risk management contract, and the act of doing so meets the 'material impact on prices' test under the WMI disclosure obligations (and no exclusion applies), then the participant is obliged to disclose information about that contract under clause 13.2A. Importantly, the Authority considers that the provisions of clause 13.2A mean that this disclosure cannot be anonymous, and that the participant would need to include in the information it publicly disclosed that it is a party to the contract. In such circumstances, disclosure through the hedge disclosure system would not fully meet the requirements of clause 13.2A because the contract counterparty is not

Draft

published. Currently, there is no provision in the hedge disclosure system for the participant to publicly identify themselves as a contract counterparty.

10.21 Conversely, to meet the requirements of clause 13.2A, the participant may not need to disclose as much detail as Subpart 5 requires. In particular, it is likely that a participant could argue that disclosure of the contract price would meet the test of the 'reasonable person' exclusion and therefore need not be disclosed.

There are differences in the required timing for disclosure

10.22 The timing of disclosure is also a factor to be considered. Under the hedge disclosure requirements, the contract details must be submitted no later than 5pm, five business days after the trade date for a contract for differences (CfD) or options contract, and 10 business days after the trade date for all other risk management contracts.

10.23 However, for contract information that must be disclosed under clause 13.2A, the Code requires that the participant must disclose that information as soon as reasonably practicable after becoming aware of it. Disclosure up to 5–10 days after entering into the contract would not meet this timing requirement.

Draft

Appendix A Brief overview of the wholesale market and some key terms

A.1 Retailers and a small number of customers, typically large industrial users, buy electricity directly from the spot market. These parties will typically also enter into financial contracts, often called hedges, which smooth out some or all of the volatility in spot prices. Jointly, the spot and hedge markets are the major components of the wholesale electricity market, which also includes the ancillary services markets and the market for financial transmission rights (FTRs).

A.2 Generators that are bigger than 10MW or are grid connected compete in the spot market for the right to generate electricity to satisfy demand, subject to transmission capacity. They do this by submitting offers through the wholesale information and trading system (WITS). Each offer covers a future half-hour period (a trading period) and is an offer to generate a specified quantity at that time in return for a nominated price. Similarly, purchasers submit bids to purchase a quantity of electricity.

A.3 The system operator (Transpower) uses a scheduling, pricing and dispatch system to rank bids and offers in order of price and selects the lowest cost combination of resources to satisfy demand while accounting for factors such as ancillary services, losses and constraints. Changing demand and supply over the course of a day results in price differences each half-hour trading period. Prices also vary by location, reflecting the costs of getting electricity from source (generators) to destination (consumers).

A.4 As pricing manager, NZX is responsible for calculating and publishing the spot prices at which electricity market transactions are settled. Final (spot) prices are derived using the same model the system operator uses to dispatch generation. The pricing manager calculates approximately 12,000 final prices every day, which are published to market participants through WITS. These final prices are provided to the clearing manager to use in the clearing and settlement processes. The clearing manager also calculates and invoices ancillary services and FTR settlement.

A.5 In order to manage the risk of price movements in the spot market, generators and purchasers can enter into hedge contracts to insulate them from variations in the spot price of electricity. This improves their ability to manage tight supply situations and assists retail competition. Traditionally, the hedge market in New Zealand has operated through over-the-counter (OTC) contracts, where buyers negotiate directly with sellers to agree on a price. As an alternative to OTC contracts, buyers and sellers of electricity are able to contract on the futures market operated by the ASX. FTRs are a type of hedge contract that can protect wholesale market participants from half-hourly variations in spot-market prices at one location versus another. A simple FTR market is now in operation.

A.6 There are five ancillary services: frequency keeping, instantaneous reserves, over-frequency reserve, voltage support and black start. Frequency keeping and instantaneous reserve operate on market-based procurement, with offers of quantity and price used to select the respective providers in each half-hour trading period. The other three ancillary services are procured bilaterally by the system operator.

Draft

Glossary of abbreviations and terms

Act	Electricity Industry Act 2010
ASX	Australian Securities Exchange
Authority	Electricity Authority
Board	Electricity Authority Board
Code	Electricity Industry Participation Code 2010
Disclosure information	As this term is defined in part 1 of the Code
Disclosure obligations	Wholesale market information (WMI) disclosure obligations under clauses 13.2 and 13.2A of the Code
EMI	The Authority's Electricity Market Information website
FTRs	Financial Transmission Rights
NZX	New Zealand Stock Exchange
POCP	Planned Outage Co-ordination Process
OTC	Over-the-Counter
Relevant markets	The markets described in the definition of "wholesale market" in Part 1 of the Code
System Operator	Transpower in its capacity as system operator as defined under the Act
WITS	Wholesale Information and Trading System, operated by NZX as a service provider
WMI	Wholesale market information

Draft

Consultation paper – glossary of abbreviations and terms

Act	Electricity Industry Act 2010
Authority	Electricity Authority
Code	Electricity Industry Participation Code 2010
Guidelines	The Authority's *Guidelines for participants on disclosure obligations*
POCP	The Planned Outage Co-ordination Process, agreed between the system operator and industry to assist with outage disclosure arrangements under Technical Code D of Schedule 8.3 of the Code
WAG	The Authority's Wholesale Advisory Group
wholesale market	the spot market, hedge market and ancillary services markets
WITS	Wholesale Information and Trading System