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Electricity Authority
By email: submissions@ea.govt.nz

Wholesale market information: review of disclosure regime

Genesis Energy Limited (**Genesis**) welcomes the opportunity to provide a submission to the Electricity Authority (**the Authority**) on the consultation paper *Wholesale market information: review of disclosure regime* dated 8 August 2017 (**consultation paper**).

The Authority considers that an effective information disclosure regime is a fundamental feature of a well-functioning electricity market. Genesis agrees. We will support any improvements to the regime should they better facilitate a more competitive, efficient and reliable electricity market for the benefit of consumers.

Summary of key points

In the consultation paper the Authority proposes to amend clauses 13.2A(2) and 13.2(2) of the Electricity Industry Participant Code (2010) (**Code**) with the view to reducing inefficient information asymmetry between informed and uninformed market participants. It also intends to amend the Guidelines for Participants on wholesale market information disclosure obligations (**Guidelines**).

Genesis generally supports what the Authority is trying to achieve in amending the Code and Guidelines. We do however have the following key concerns, which are explained in the remainder of our submission:

- Whether the proposed amendments will be workable, particularly accounting for the interaction of the Code with the Guidelines, and;
- Whether the amendments will address the underlying causes of the anecdotal evidence of participant behaviour that triggered this review.

Code vs. Guidelines: Workability of amendments is crucial

Genesis is wary of the Authority's desire to proceed with non-prescriptive Code amendments supplemented by amended Guidelines. We believe that unless those Guidelines are capable of absolute, consistent interpretation, it risks creating an environment where any challenge of market participant disclosure behaviour is extremely difficult, if not impossible, to rule on.

We note that in the Guidelines' disclaimer it states that the information enclosed is not intended to be definitive, and, should there be any inconsistency between the Guidelines and the Code, the Code will take preference. This is a clear marker that should there be any challenge, on which the Guidelines is ambiguous or silent, then the Code provisions will determine if there has been a breach or not.

At this point, returning to the Code, participants will find that the Code provisions are non-prescriptive and written with the intention participants will be able to use the Guidelines to decide when they need to disclose information. This will trigger a circular reference of Guidelines-to-Code-to-Guidelines-to-Code, neither of which can resolve the issue.

To avoid this type of scenario, the Authority might like to draft the Code amendment so that it does not require reliance on Guidelines.

Should the Authority proceed with the amendments as proposed in the consultation paper, Genesis urges reflection on whether the current drafting of the Guidelines is fit for purpose, including whether the proposed definition of a reasonable person accurately represents a reasonable person participating in the New Zealand electricity market.

We note that the disclosure regime has been designed to be analogous to requirements for companies listed on the New Zealand Stock Exchange (**NZX**), but modified for the electricity market context. The 'modified for the electricity market context' is key, because in the electricity market, participants are primarily purchasing a physical product for delivery in a commodity market. This is very different to companies looking to make a return on an investment in an equity market.

Genesis also recommends the Authority redrafts its Code amendment to include reference to the existence of the Guidelines in the Code and a requirement that those Guidelines cannot be amended without industry consultation.

Room for improvement on timeliness, consistency of disclosure

Genesis notes that the proposed amendments follow the Wholesale Advisory Group's (**WAG**) 2016 review, which was triggered by concerns of inefficient

behaviour raised by parties, including the behaviour described in the scenarios found in section 5.4 of the consultation paper.

We agree with WAG and the Authority that it might be information was not disclosed in these scenarios because it did not meet the definition of disclosure information or because an exclusion was applied i.e. there is no conclusive evidence of the disclosure regime failing to operate as intended. Despite this, we agree it is useful to review the regime at this time to provide greater clarification to market participants as to what disclosure behaviour is expected.

For the review to be meaningful, we need to consider what will best address the underlying cause of the behaviour that may be giving certain parties cause for concern. Genesis suggests that in each of the scenarios, it is likely that market participants were not purposefully withholding information from interested parties, but, perhaps, not making their best efforts to disclose the information as efficiently as possible i.e. in a consistent place; in a timely manner.

To this end, we welcome the Authority's clarifying how market participants can use the Planned Outage Co-ordination Platform (**POCP**) database and Hedge Disclosure Regime (**HDR**) to make disclosures. We also recognise that because the Authority does not own or mandate use of POCP, there is a limit to its ability to require parties to best utilise it. We suggest the industry reconvenes a working group on the POCP platform to look at how to improve consistency and timeliness of disclosures to this database, and that this might be a very effective way to address the concerns that have led to the Authority's proposed amendments as drafted.

In addition to POCP and the HDR, listed market participants including Genesis have certain disclosure obligations to the NZX. It is here that you will find any disclosures about significant fuel contracts that will have a material impact on electricity market prices, and we consider that this sufficiently discharges any disclosure obligation in respect of fuel contracts.

We disagree with the Authority in section 7.23 of the Guidelines that information submitted to the NZX would not satisfy the requirements to make information readily available to the public. Any person can search 'Genesis Energy NZX' in Google and the top result will take them directly to our latest disclosures to the market. Further, any person can also set up email notifications to be updated when any listed market participant makes a market announcement.

Next steps: the best pathway forward

While Genesis supports the Authority in improving the wholesale information disclosure regime where warranted, we are unconvinced that the amendments to

the Code and Guidelines in the consultation paper will facilitate a more competitive, efficient and reliable electricity market for the benefit of consumers.

Our recommendations are provided with the hope you will pause and reflect on the interaction between the Code and Guidelines as drafted, and whether there are other ways that may more efficiently address the concerns identified by some parties e.g. industry-led review to improve timely and consistent disclosure to POCP.

We look forward to further engagement with the Authority and industry stakeholders.

Please find our answers to the consultation questions attached as Appendix A. If you would like to discuss any of these matters further, please contact me by email: margie.mccrone@genesisenergy.co.nz or by phone: 09 951 9272.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. McCrone'.

Margie McCrone
Regulatory Advisor

Appendix A: Responses to Consultation Questions

QUESTION	COMMENT
Q1: Do you agree with the issues the Authority has identified?	Yes, subject to the comments provided in our cover letter above.
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'?	Yes, subject to the comments provided in our cover letter above.
Q3: Do you agree the Authority should update the guidelines in the way it is proposing?	Yes, subject to the comments provided in our cover letter above.
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?	No comment.
Q5: Do you agree with the objectives of the proposed Code amendment? If not, why not?	Yes.
Q6: Do you agree the costs of the proposed Code amendment to the exclusions will be minimal? If not, why not?	Yes.
Q7: Do you agree the benefits of the proposed Code amendment outweigh its costs?	Yes.
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.	Yes, subject to the comments provided in our cover letter above.

Q9: Do you agree the proposed Code amendment complies with section 32(1) of the Act?	Yes.
Q10: Do you have any comments on the drafting of the proposed Code amendment?	No comment.