

3 October 2017

Submissions
Electricity Authority
PO Box 10 041
Wellington

By email: submissions@ea.govt.nz

Dear Carl,

Re: Consultation Paper – Review of disclosure regime

Pioneer Energy (Pioneer) welcomes the opportunity to make submissions on the proposals to revise the wholesale market information disclosure regime published by the Electricity Authority (Authority) on 8 August 2017.

Pioneer has not been involved in the work undertaken by the Wholesale Advisory Group on this topic so this is our first opportunity to comment on the proposals. We support the change to a 'reasonable person' test if the consensus is that this will improve the effectiveness of the continuous disclosure regime. We also agree that confidence in the wholesale market depends on all participants having access to information that is material to their day-to-day involvement in the market.

Draft Guidelines

Pioneer supports the Authority publishing Guidelines to improve participants understanding of, and compliance with, the disclosure requirements in the Code. However, it is important the Guidelines improve certainty for market participants. We have the following comments about the changes to the Guidelines.

Information Asymmetry

In Section 2, on why an effective disclosure regime is important, there has been, in our view, a significant change to the 'definition' of information asymmetry. The change to the Guideline has introduced the concept of 'inefficient' information asymmetry. This implies information can be categorised (by the person trying to be compliant with the disclosure regime) into two types of information asymmetry – inefficient and efficient information asymmetry. The proposed change to the Guideline is:

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

This change is not explained in the Consultation Paper. Pioneer interprets this change as introducing a new test - in effect, the Authority is stating that information that creates efficient information asymmetry does not need to be disclosed.

Further, the description in Section 4 of the reasons for designing the disclosure regime talks about addressing all information asymmetry:

“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.”

The NZX Disclosure Rules make no distinction between ‘efficient’ and ‘inefficient’ information. In economic theory, information asymmetry is where at least one party has relevant information, whereas the other/s do not. Therefore any information asymmetry is a concern or essentially ‘inefficient’.

This distinction does not appear in the Code but, in our view, including this in the Guidelines potentially imposes an additional test as to whether a particular piece of information should be disclosed.

We strongly submit that no change be made to paragraphs 2.2 and 2.4(c) to introduce the concept of ‘inefficient information asymmetry’.

Reasonable person description – Question 2

The Authority has described a ‘reasonable person’ as

7.11(b) is a sophisticated market participant familiar with the purpose and scope of the continuous disclosure regime, the market and the regulatory framework within which it operated ...

Pioneer suggests two changes to this description:

1. including only ‘sophisticated’ market participants is not appropriate. Any market participant can hold material information. In the Consultation paper the Authority states:

“... all participants must consider what steps they need to take to comply with their disclosure obligations.” (para 5.1)

We note the NZX Disclosure Guidance¹ describes a reasonable person as follows:

“Reasonable person” is not defined in the rules, but in NZXR’s view, a “reasonable person” is a person who commonly invests in securities, and holds such securities for a period of time, based on their view of the inherent value of the securities.

¹ See [https://nzx.com/files/static/cms-documents/Final%20Continuous%20Disclosure%20Guidance%20Note%2019%20December%202014%20\(1\).pdf](https://nzx.com/files/static/cms-documents/Final%20Continuous%20Disclosure%20Guidance%20Note%2019%20December%202014%20(1).pdf) Section 3.1 page 5

This does not require a person to be a “sophisticated” investor but someone that commonly invests, or participates in the investment market. In our view, all market participants are a ‘reasonable person’.

2. being familiar with the purpose and scope of the continuous disclosure regime should not be a precondition of being a reasonable person. This familiarity is a necessary consequence of being a market participant.

We recommend the following changes to this description of a reasonable person:

- 7.11(b) is a ~~sophisticated~~ market participant familiar with the purpose and scope of the ~~continuous disclosure regime~~, the market and the regulatory framework within which it operated ...

Making disclosure information available via the POCP platform

We note the Authority concludes that the obligation to put outage information on POCP satisfies the obligation under this continuous disclosure regime (our interpretation of paragraph 10.13). Pioneer queries whether:

- all market participants have access to POCP (eg small retailers without generation assets); and
- the information available on the POCP platform is in a form that makes it clear to all market participants that a particular outage is ‘material’.

We request the Authority review whether the convenience of entering data in only one format / platform achieves the objectives of this continuous disclosure regime.

We would welcome the opportunity to discuss this submission with you.

Yours truly



Fraser Jonker

Chief Executive