

CLAIM OF UNDESIRABLE TRADING SITUATION



(UTS)

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WHEN CLAIMED UTS OCCURRED

Date: 15 September 2018 - ongoing as at the date of this Claim.

Time: _____

In addition to completing and emailing this form, **please also notify the Authority by telephone at 04 474 2260.**

BASIS OF CLAIM

Why is this event an “undesirable trading situation”?

Please specify why a UTS is claimed – refer to the definition of a UTS set out below:

Clause 1.1(1) of the Electricity Industry Participation Code 2010 (Code) - Meaning of undesirable trading situation

undesirable trading situation means any situation—

- (a) that threatens, or may threaten, confidence in, or the integrity of, the **wholesale market**; and
- (b) that, in the reasonable opinion of the **Authority**, cannot satisfactorily be resolved by any other mechanism available under this Code (but for the purposes of this paragraph a proceeding for a breach of clause 13.5A is not to be regarded as another mechanism for satisfactory resolution of a situation).

Describe why in your view the claimed UTS is a situation that threatens, or may threaten, confidence in, or the integrity of, the wholesale market.

This claim is made jointly by independent retailers representing 86% of customers not served by vertically integrated retailers (hereafter: ‘gentailers’): Electric Kiwi, Flick Electric, Pulse and Switch Utilities (Vocus), and the largest network company Vector (which is majority-owned by New Zealand’s largest consumer energy trust - Entrust).

The claimants note the Authority’s recent public statements regarding current prices. The Authority has attributed high spot prices to the combination of low lake levels and problems at Pohokura. The claimants do not consider these factors explain the present market situation. The claimants urge the Authority to reconsider its view in light of the matters put forward in this claim.

An undesirable trading situation (UTS) is claimed for the period from 15 September¹ onwards (i.e., it is ongoing). The situation differs materially from previous UTS applications lodged with the Electricity Authority (EA) in that it results from a confluence of factors; those being:

- potential *force majeure* events impacting gas supply;
- failure of market-making in the contacts market;

¹ <https://www.youtube.com/watch?v=jT0rKmlU73M&feature=youtu.be> This is based on analysis that suggests the Pohokura outage started at or around 15/9/18. It should be noted that issues with the contracts market preceded that date.

- sustained atypically high spot prices that appear to be at least partly attributable to the coordinated exercise of market power; and
- a blatant disregard for disclosure obligations.

These factors have undermined the confidence in, and the integrity of, the wholesale market and threaten the viability of independent electricity retailing in New Zealand and competitiveness of major users. The claimants consider there is a current and ongoing undesirable trading situation which the Authority should correct – as required by clause 5.5 of the Code – as soon as possible.

The failure of market making obligations in the contracts market (a problem well-known to the EA) and a lack of transparency exposes independent retailers and industrial consumers to the strategic and coordinated exercise of market power by gentailers with natural hedges. Put simply, without adequate contract cover, retailers and consumers are simply wholesale market price-takers. This is problematic in the best of circumstances, but it is many magnitudes worse when supply constraints emerge.

The current conditions provide gentailers with an opportunity to strategically increase their offers, thereby driving up spot prices, and to attribute those increases to water and gas shortages. As explained below, there is good reason to think that this is what is happening at present. Indeed, although supply constraints can undoubtedly be expected to have increased spot prices significantly, it is difficult to see how they could have driven them to the unprecedented levels seen in the last month.

Regardless of the cause, the high spot prices coupled with the demonstrable failure of the contracts market will push independent retailers out of the market. Indeed, at the time of lodgement, Payless Energy had already ceased business. If independent retail competition is reduced there will be less competitive pressure on prices. Consumers will end up paying more and miss out on the benefits of innovation.

This necessitates immediate action from the EA to implement changes to address market failures and restore confidence in, and the integrity of, the wholesale market.

This claim is obviously being made while the Government's Electricity Price Review is underway. The Electricity Review Panel and the Minister of Energy will consequently be informed of this claim and the immediate need for changes to regulatory arrangements, monitoring and enforcement. For the avoidance of doubt, the changes which may result from the Review are not an alternative "mechanism available under [the] Code" for resolving the undesirable trading situation. The Authority should act now and exercise the powers it has already been granted to correct the situation.

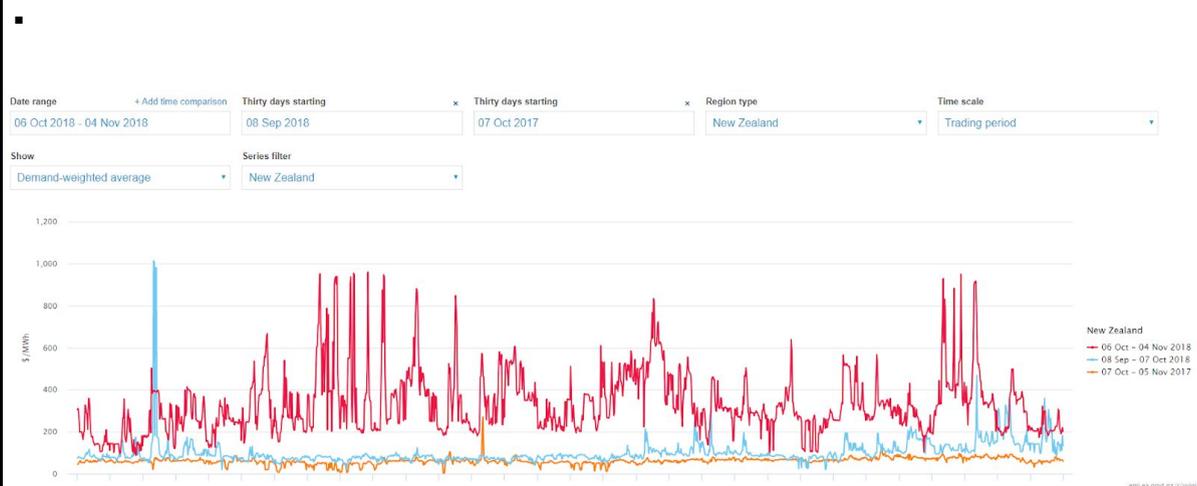
SUSTAINED ATYPICALLY HIGH SPOT PRICES

From the 6th of October there have been sustained, atypically high prices in the spot market. These prices have differed so dramatically from historical norms as to give

rise to a UTS, irrespective of what has driven them to these levels (we explore the two possible explanations below). The chart below illustrates the wholesale market prices from 6 October - 4 November 2018 compared with those seen over:

- the 30 days immediately preceding this window (i.e., from 8 September - 6 October 2018); and
- the corresponding 30-day period from the previous year (i.e., from 7 October – 5 November 2017)

The contrast is stark. Over the period 6 October - 4 November 2018, the average spot price was **\$329.85/MWh**. For the 30 days prior, it was **\$99.26/MWh** and, in the same month in the previous year (i.e., from 7 October to 5 November), it was **\$66.15/MWh**. Spot prices for the last month have therefore exceeded by a substantial margin the level that could reasonably be described as ‘normal’.

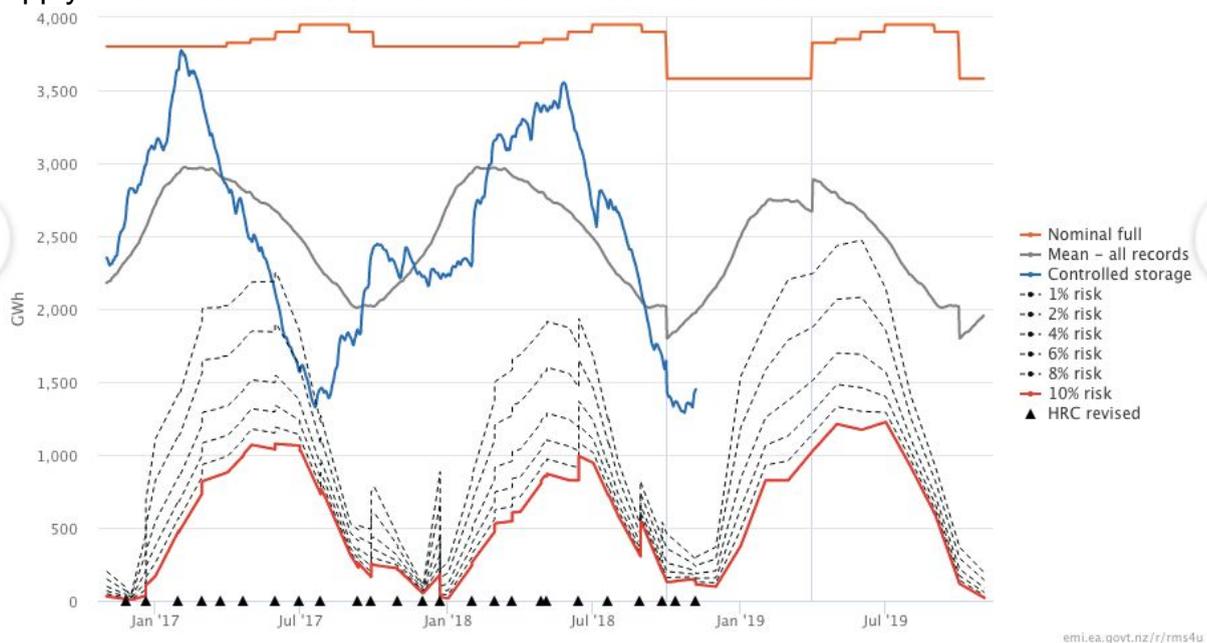


The Electricity Authority has cited low storage lake levels and production problems as the Pohokura gas field (and a scheduled inspection at the Kupe field) as potential drivers of the sustained high spot prices. These factors may explain *some* of the increase that has been observed over the last month or so. However, as we foreshadowed earlier, it is difficult to see how these matters could reasonably account for *all* of that sustained and substantial uplift. We reach that conclusion because:

- although lake levels are *lower than normal* for this time of year (i.e., they are among the lowest 10% of historic storage levels), they are not the *lowest on record*, whereas, the average monthly spot price for the last 30 days has been **more than \$200/MWh higher** than the previous highest October monthly average (\$102/MWh) – a conspicuous difference;
- there continues to be significant unutilised reserves and there have been no security events; and

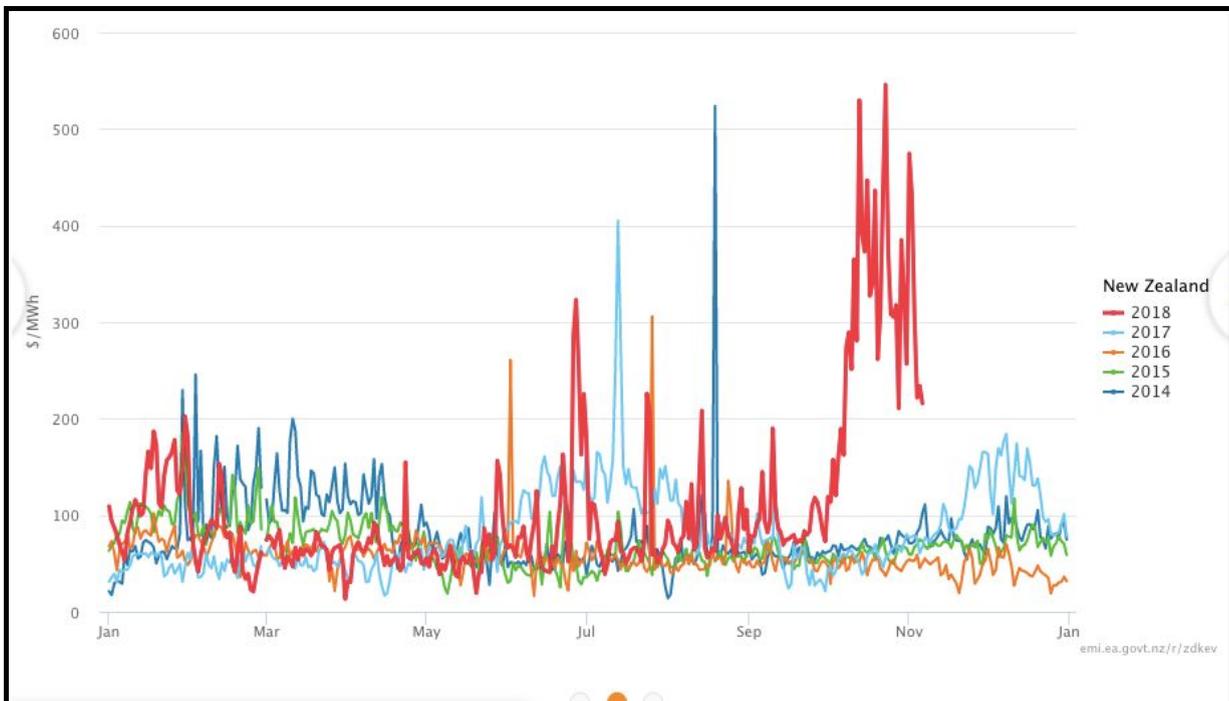
- while the System Operator (which has a responsibility under s8 of the *Electricity Industry Act 2010* to provide information on all short- and long-term aspects of security of supply) has noted the disruptions to gas supply, it has not raised any heightened concern about the ongoing security of supply that would justify the type of price increases that have been observed over October².

The current spot prices therefore appear to exceed significantly what is reasonable given the available generation, lake storage levels and the current security of gas supply.³ As illustrated below no risk curve has been crossed.⁴

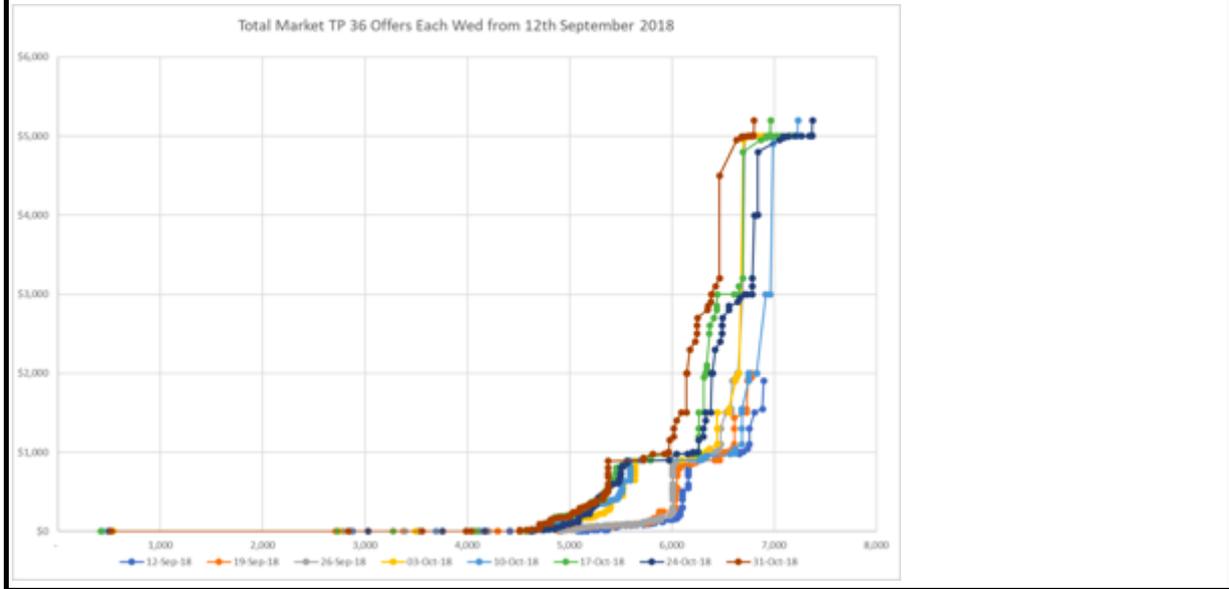


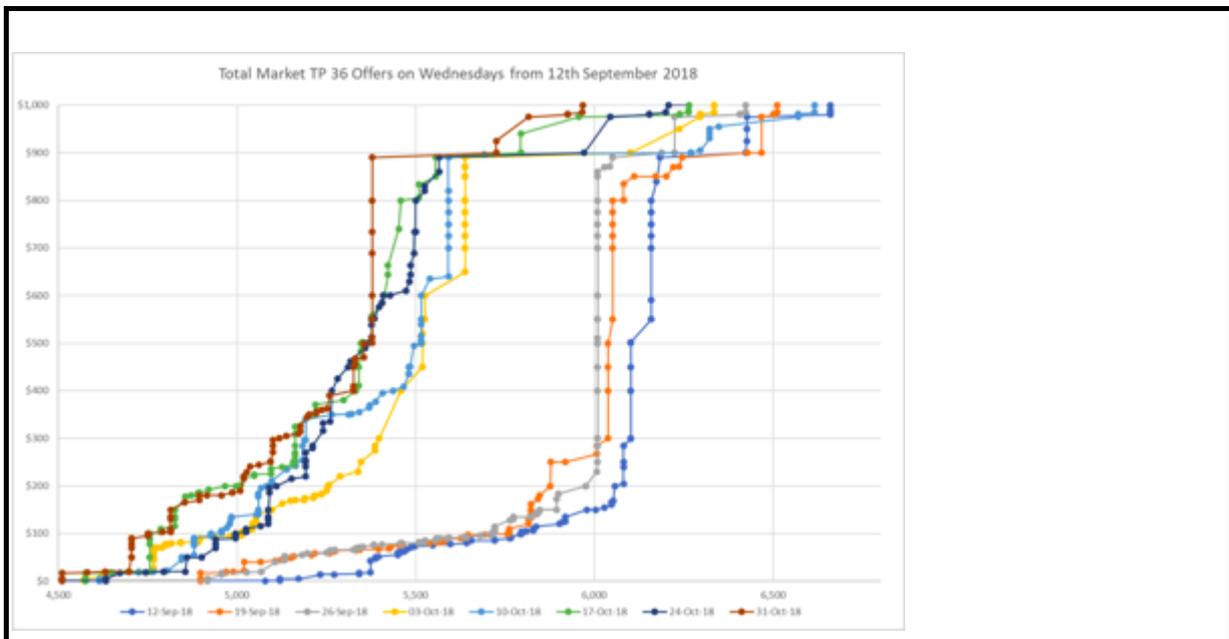
Further, as illustrated in the chart below⁵, current prices also stand out as markedly elevated, especially when considering winter 2017 was a dry event where the risk curves were crossed.

² The ongoing gas shortages are examined in more detail in our subsequent discussion of the gentailers' ostensible disregard for their continual disclosure requirements.
³ Prices now are higher than they were in October 2008 when there was a genuine and extreme shortage.
⁴ <https://www.emi.ea.govt.nz/Environment/Reports/3UN1KD>
⁵ <https://www.emi.ea.govt.nz/>



Rather, the prevailing spot prices reflect a lack of competitive tension at the wholesale level. The charts below show the market supply curves for trading period 36 on each Wednesday from 12th September 2018. The second chart shows a zoomed in view for prices below \$1000 and demand greater than 4,000 MW. Comparing the supply curves of October to September it is clear that all forms of generation are getting bid in at much higher prices, the steepening incline demonstrates the lack of competitive tension on prices. To put this change in perspective there was 409MW between the \$50 point on the curve and the \$100 point on the 12th Sep 2018 and 47MW between the same two points on the 31st Oct 2018.





In our view, the sustained high prices coupled with a justifiable suspicion that a coordinated exercise of market power has been a key driver of those increases and has undermined confidence in and the integrity of the spot market. It therefore constitutes a UTS.

Even if those misgivings are misplaced and the spot price increases are attributable solely to the factors cited by the EA, a UTS *still* exists. This conclusion follows from examining the EA’s mandatory ‘Stress Testing’ regime.⁶ One of the scenarios that companies trading on the wholesale market must test is their resilience to a sustained period of high prices. Specifically, they should be capable of navigating successfully a period in which the average spot price at the Otahuhu node is **\$250/MWh** for a quarter.

Over the period 6 October to 4 November, the average price at the Otahuhu node was **\$335/MWh** – *well above* the threshold specified in the EA’s stress test scenario. This is crucial because, if the factors flagged by the EA are, for the sake of argument, taken to be the sole drivers of the sustained period of high prices (a contention that we do not believe can be substantiated for the reasons already presented) then, logically, there would be no reason to think that they are going to drop any time in the near future. For example:

- unless there is a large volume of unseasonable rainfall, it seems unlikely that storage lake levels are going to increase by much (if at all) over the coming summer months; and

⁶ These arrangements require companies trading on the wholesale market to model their financial resilience under two scenarios: a ‘capacity shortage’ scenario and an ‘energy shortage’ scenario’.

- the EA has indicated that the supply problems at the Pohokura gas field could persist until late November and output from Kupe will soon decline as well due to a scheduled inspection.

In other words, if the factors cited by the EA are the exclusive causes of the current market trends, then it follows that those high spot prices will *continue* for the foreseeable future, i.e., throughout November and probably well beyond. There would then be a distinct possibility that the average quarterly spot price at the Otahuhu node from the beginning of October to the end of December will exceed – perhaps by a considerable margin – the extreme \$250/MWh threshold defined in the EA’s stress test scenario.

The prospect of one of the EA’s stress test scenarios being breached itself also constitutes a UTS - irrespective of what has driven prices to those levels. Indeed, it would seem counterintuitive to wait until that extreme scenario had come to pass before acting – indeed, as explained below, by that time it may be too late, i.e., other independent retailers may have been forced to follow Payless Energy out of the market. In short there are two possibilities in play, – either one of which should prompt a finding that a UTS has occurred; namely:

- the unusually high spot prices have been driven at least in part by the coordinated exercise of market power by generators (a conclusion bolstered by recent conduct in the contracts market, as explained below); or
- the factors cited by the EA are the sole drivers – in which case there is a high probability that its own ‘energy shortage’ stress test scenario will be breached in coming months, which should prompt immediate action.

Regardless of which explanation applies, the confidence in and the integrity of the spot market has been undermined. Indeed, the sustained high spot prices⁷ are threatening the very existence of some independent retailers. As mentioned earlier, Payless Energy has exited already, two others are on the cusp of departing and there may be more to follow. Purchasers are facing settlement costs that have tripled compared to weeks prior, which has had flow-on impacts for their prudential requirements. The cash-flow implications of meeting these thresholds are challenging – even for the very well-capitalised and those purchasers that have achieved a fairly well-matched contract position.

Furthermore, it is not reasonable to contend that independent retailers or industrial consumers should be forced to weather these spot prices because they chose not to procure full contract cover. Any such assertion would rest on the unsound presumption that the contract market was working properly by offering adequate hedging cover at predictable, reasonable prices. It was not – and is not. This should come as no surprise to the EA since, as it is doubtless aware (and as explained in more detail below), gentailers have chosen to disregard their voluntary market-maker

⁷ Coupled with the lack of liquidity in the contract market – a matter we discuss below

obligations. This placed independent retailers in a 'Catch-22' scenario, whereby they had to decide whether:

- to accept contract prices that were substantially more expensive than what could be considered reasonable at the time; or
- remain less-than-fully hedged, thereby exposing themselves subsequently to unconstrained spot prices.

When faced with this 'Clayton's choice', many independent retailers and industrial consumers opted for the latter – a perfectly explicable decision in the circumstances. If the high spot prices that ultimately eventuated force even more independent retailers to exit the market, then New Zealand's electricity customers will face a 'double-whammy'. Those customers on spot-based plans (e.g., a great many of Flick's customers) will feel the acute near-term financial impacts of the higher wholesale prices via their retail bills. And *all* customers will experience higher prices over the longer-term if the departure of retailers reduces further the effectiveness of competition in the retail market.

Sustained high spot prices – potentially those that are well above the underlying costs of supply – also place an unnecessary drag on wider economic activity, with attendant adverse effects on productivity and growth. By way of indications, the high spot prices that have been seen over the course of October have caused some major industrial consumers to have to reduce their production by over 50%. This excerpt from the Major Electricity User Group (MEUG)'s monthly newsletter to members is apposite:

'If the current situation is a window to a future with constrained, or no, domestic gas production and supply and higher energy prices whether due to intermittent renewable electricity supply, higher carbon costs, or some other reason, then the view is not particularly attractive. With hydro and wind generation limited, Genesis have had to import coal and in turn produce twice the emissions than if they had a secure supply of gas. The economic costs and potential consequences are high too. MEUG members generate \$30 billion in revenue for the economy and directly employ over 25,000 people. For process heat there are few, if any, viable alternatives to gas. But many members are now on reduced gas supply, with some having had contract gas quantities halved.'

CONDUCT AND OUTCOMES IN THE CONTRACT MARKET

The contracts/hedge market is a fundamental part of a properly functioning wholesale market.

Part 1 of the Code defines the **wholesale market** as:

- (a) the spot market for electricity, including the processes 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) markets for ancillary services:
- (c) the hedge market for electricity, including the market for FTR

Where the contracts market disintegrates the generators have unconstrained market power because of the removal of the wholesale price tension and lack of ability for purchasers to protect themselves. Contracts market failure in itself is a UTS.

The problems highlighted in the spot market have also manifested in the contract market. In particular, the conduct of several of the vertically integrated gentailers suggests that market power is being exercised in a coordinated manner, driving up both spot and contract prices. As mentioned above, this is demonstrated most clearly by the brazen step taken by the largest gentailers to withdraw from their voluntary ASX market-maker obligations.

The EA has, on numerous occasions, determined that market-maker obligations are necessary. Yet, despite that finding, it has decided repeatedly against imposing any explicit requirements on those generators in the Code itself. The EA has instead been happy to rely upon the obligations agreed to voluntarily by the four largest generators with the ASX – undertakings that are not binding.

The voluntary market-maker agreements include a fixed volume that will be applied to both the bid and ask at a fixed spread for all contracts that the agreement covers. The spread between the bid and the ask was originally set at 10% and later reduced by mutual consent of the market-makers to 5%. However, those market-maker agreements rely on mutually reinforcing conduct: unless your fellow participants also post bids and asks at the agreed spreads, the arrangement collapses. This latest episode has exposed harshly the inadequacies of the current framework.

The four market-makers appear to have either lost confidence in one another, or to have made a conscious decision to eschew from their commitments for financial reasons, i.e., to boost their wholesale profits. Whatever the reason, they have all refused to honour their market-maker commitments, resulting in a substantial deterioration in liquidity. The following chart shows the percentage spread on daily basis. The three lines are the minimum spread on the day of all contracts, the average spread of all contracts and the maximum spread on the day.

The chart reveals that, throughout most of the year, the maximum spread on each day has been less than 5%. Spreads started to widen on 7 September – initially in the current and next-monthly contracts. This then quickly moved to all the monthly and

the first 3 quarterly contracts. By early October, the market-maker obligations were well and truly out the window, with average spreads over all contracts out to 2022 increasing to 10%-18%. By the time gas constraints started to hit the market, spreads reached levels bordering on the absurd – up to 66% in some instances.



With spreads at such levels, purchasers without natural hedges could have had no confidence that they were being offered a price that reflected the real future cost of production. As we explained above, this placed those independent retailers in a no-win situation. They could either purchase contract cover at what appeared, by any measure, to be unreasonable prices, or they could remain unhedged and take on the wholesale spot price risk.⁸ Unsurprisingly, many opted for the latter, as evidenced by the sharp reduction in contracts traded over October versus September.

Type	Number of Contracts
Monthly Sep	5,381
Monthly Oct	3,608
Quarterly Sep	8,780

⁸ Had those independent retailers had access to reasonably 'Caps' contracts,[1] then this problem may not have so acute. A 'Caps' contract is one in which the counterparty agrees to remit to the retailer the difference between a specified price and spot price for a specified volume of electricity whenever the pool price exceeds the specified (contract) price – usually \$150/MWh or \$300/MWh. In exchange, the retailer agrees to pay a set monthly premium. The contract applies to a specified volume of electricity in certain time periods. The effect of the cap is to protect the retailer against prices above a certain level for that specified volume during the periods covered by the contract. However, these products are still not available on the ASX platform.

Quarterly Oct	4,706
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Simply put, throughout the period in question, independent retailers have been left exposed to substantially higher wholesale market costs against which they cannot adequately hedge in light of the prevailing contract market conditions. Meanwhile, the vertically integrated generators that are net sellers have undoubtedly benefited from those higher spot prices. It should therefore come as no surprise whatsoever that independent retailers are starting to exit the market.

To summarise, the recent conduct of the large generators has reduced liquidity, compromised the ability of non-vertically integrated purchasers to hedge effectively against high spot prices and, in all likelihood, improved substantially the profitability of their own businesses. The likely exit of multiple independent retailers consequently raises fundamental questions about whether hedging instruments can truly serve as a viable substitute to owning generation. This undermines clearly the integrity of and the confidence in the contract market.

FLOUTING MARKET DISCLOSURE REQUIREMENTS

The trading arrangements contained in Part 13 of the Code subject market participants to strict continuous disclosure obligations. Section 13.2A compels market participants to disclose any information they have about themselves that they expect will have a material impact on the prices in the wholesale market if it was to become public. Market participants are required to make such information readily available, free of charge, as soon as reasonably practicable after they become aware of it.

These obligations are crucial to the operation of the wholesale market. The existence of insider information leaves the market susceptible to manipulation by those parties that are privy to it, which inevitably undermines confidence. To that end, throughout the period of sustained high prices, the following information has not been disclosed in the timely fashion required by the Code.

Significant change in generation capability: Contact Energy

Contact Energy (Contact) has routinely waited until near or after the close of business to declare high impact shutdowns of its gas fired generation in the Taranaki region, despite compelling evidence from bid-offer stacks that the outages were planned and that the company was aware of the outages up to several hours before disclosure.

A severe example of this behaviour occurred on 31 October when at 3:32pm the 350MW Taranaki combined cycle generator was placed on full outage for more than 11 days, effective from 10:30 pm that evening.

- The outage was reflected in Contact's bid stacks from 3:24pm, which themselves would have taken time to prepare (i.e., this implies that Contact was aware of the outage well before 3.24pm).

- The commencement time of the outage coincided with the end of the evening peak (more than six hours after the bid stacks changed) and its extended nature indicates that the decision to take the unit off-line was very likely to have been made earlier in the day, i.e., this was plainly not a rushed decision.
- The tardy disclosure bought extra time for Contact to adjust its own bid stacks and to make decisions about its hedge book, particularly with regard to November. It also severely compromised the ability of other market participants without that inside knowledge to process and react to the information during the ASX trading window that had already commenced. The November contract at OTA settled 20% higher the following day.

The above example is indicative of a pattern of late disclosures by Contact. It was not a one-time oversight. Rather, it sits alongside three other material TCC outage announcements that Contact has made since 19 October – none of which were disclosed in a timely fashion. One occurred at 3:59pm and the two others occurred after the 4pm close of ASX trading. In addition, a 200MW outage of the Stratford peakers was announced at 4:19pm on 5 November and a 105MW outage of TCC on 10 October was disclosed an hour after bid stacks were updated.

The 19 October case is worth special mention. A 200MW outage lasting until 28 October was declared at 5:47pm that day, but analysis of bid stacks shows that they were changed to reflect the outage from 3:10pm that afternoon, and the unit was gradually ramped down from 5pm. The outage disclosure was delayed until after the close of business despite Contact clearly having decided to take the unit off-line for a prolonged period more than two and a half hours earlier.

In summary, Contact has not disclosed its recent significant outages as soon as was reasonably practicable, and the consistency with which major outages have been declared after the close of business indicates that this has been a deliberate practice.

Significant change in generation capability: Genesis Energy

Genesis Energy has failed entirely to disclose the unavailability of its HLY_5 generating unit to the market (in POCP or otherwise) on multiple occasions since 24 September.

- On a running basis from 25 to 28 September offers for HLY_5 generation were set to zero for approximately the 12am to 5am period and the plant did not run. The offers were removed generally one to two days in advance.
- From 1 to 5 October HLY_5 ran at approximately 200MW. Analysis of bid stacks shows that Genesis gradually pulled offers for generation above this level on 1 October and for the majority of the 2 to 5 October period the maximum generation offered was 200MW.
- In the majority of weekdays from 8 to 26 October HLY_5 was again shut down completely in the early morning periods.

- While Genesis Energy may argue that Unit 5 was not on a maintenance outage and not required to be entered into POCP, it is obvious that the plant's availability was reduced for an extended period due to gas supply issues and this reduction in availability should have been disclosed to the market (in POCP or otherwise)

Significant change in fuel supply situation: Genesis and Contact, possibly other participants with long term gas supply contracts

Despite the obvious reality that their normal fuel supply has been disrupted, none of the major generators have disclosed changes to their fuel supply situations since Pohokura began experiencing problems in early September.

- Analysis of HLY_5 bid stacks and the deployment of coal in the Huntly rankine units clearly indicates that Genesis Energy began receiving advanced warning of gas curtailments as early as 2 September.
- As noted above, this change in fuel supply situation resulted in full shutdown of HLY_5 on the mornings of 25 to 28 September, reduction to 200MW availability from 1 to 5 October and morning shutdowns on weekdays from 8 to 26 October.
- Contact has declared two major outages to its generating plant.
- Consistent with bid-stack analysis, feedback from market sources indicates that generators with gas powered units have been receiving *force majeure* notices on their contracted gas supplies.
- On the 18th of September an OTC trade for 56400MWh (50MW) in Zone E was executed. The timing of the trade, from 26 October to 11 December 2018, closely aligns with the November HLY_5 gas outage. It is considered likely that Genesis Energy bought South Island cover for this outage while in breach of outage disclosure guidelines with regards to its fuel supply situation, inappropriately securing \$5 million in profits from a single trade (conservatively assuming a \$100 move in the contract's value). This hedge disclosure and Genesis' spot market bidding behaviour in mid to late September constitutes extremely strong circumstantial evidence that it was active in the hedge market whilst withholding crucial details about its fuel supply situation from the market.
- There is yet to be any meaningful disclosure from owners of gas fired plant regarding known changes in their fuel supply situation.

Significant change in electricity contracting position:

The deployment and outage schedule of Genesis' Huntly rankine units coupled with a corresponding drop in generation by Meridian suggests strongly that the "swaption" contract between the two parties was activated in late September, with a start on approximately 7 October. If so, this would represent a significant change in electricity contracting positions between both parties. It would also have had material repercussions for spot values, with very high prices and a strong locational adjustment as Meridian curtailed its South Island generation from 7 October.

The triggering of the swaption presents a material change in electricity contracting positions. Once the swaption is in effect, Meridian and Genesis both have very different short-term contract positions that materially affect spot prices. If this assumption regarding the activation of the swaption is correct, then it should have been disclosed to the market at the time it was called. In addition, this being the case, then when the swaption is called off this should also be disclosed to the market as soon as practicable.

AND describe why in your view the claimed UTS could not be satisfactorily resolved by any other mechanism available under the Code.

1. Within the Code there are no provisions that regulate market maker obligations or require generators to ensure the availability of contracts that enable purchasers to manage wholesale market price risk.
2. Within the Code there are no provisions that directly address the susceptibility of purchasers to generator pricing power causing sustained high prices that threaten financial viability and orderly trading. Other electricity markets have specific rules to address sustained high (but not extreme) prices. The Undesirable Trading Situation is applicable in this event since it must be considered an important component of the 'market safety net' that should protect purchasers (and ultimately end consumers) against generator pricing power.



SOLUTION SOUGHT BY APPLICANT

Clause 5.2 of the Code

Describe how in your view the claimed UTS could be resolved by the Authority, bearing in mind that clause 5.2 of the Code enables the Authority to take one or more of the following actions, should it find that a UTS does exist (please refer to the full text of clause 5.2 of the Code on the following page for more information):

- directing that an activity be suspended, limited or stopped, either generally or for a specified period:
- directing that completion of trades be deferred for a specified period:
- directing that any trades be closed out or settled at a specified price:
- directing a participant to take any actions that will, in the Authority's opinion, correct or assist in overcoming the UTS.

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1. **Direct** participants to comply with their disclosure obligations. This must include requiring immediate clarification of gas supplies. This will improve transparency in the market.
 2. **Reset** market prices to levels which could be expected absent the exercise of excessive market power from the 15th of September until the spread of the ASX futures is less than 5% for 5 business days. This will address the lack of competitive tension/pricing power through this period. It will also reduce the prudential burden.
 3. **Direct** the System Operator to provide updates on all fuel supplies as part of its regular reporting, and to develop an 'all fuels' market risk curve. This will improve transparency.
 4. **Take** such further actions as are necessary to correct the undesirable trading situation and restore normal operation of the market as soon as possible.

In addition to these immediate measures under clause 5.2 of the Code, the claimants request that the Authority:

5. **Amend** the Code to require compulsory market making obligations for all Generators with 10% or greater share of the transmission-connected generation market. This will address the lack of liquidity in the contracts market and will restore its integrity.
6. **Amend** the Code to create an automatic price cap if there is a *force majeure* event affecting the operation of significant generation. This will ensure purchasers don't bear the cost of events that impact competition within the market that are outside their control.

7. **Amend** the Code to allow generators to be compensated for operating during *force majeure* or market stress events if doing so would result in operating losses, i.e., this should ensure that generators are not faced with the prospect of operating at a loss when an automatic price cap is applied, which would create a disincentive for them to supply energy.
8. **Amend** the Code to create an automatic price cap if there is likely to be a sustained market stress event based on 'stress test' scenarios. This will ensure that purchasers are not exposed to events that make it financially unviable for prudent operators.
9. **Confirm** if the Electricity Authority will investigate potential oligopoly behaviour and market manipulation or whether concerns should be directed to the Commerce Commission and/or Financial Markets Authority.

Please send the completed form to uts@ea.govt.nz

Clause 5.2 of the Code - Actions Authority may take to correct undesirable trading situation

- (1) If the **Authority** finds that an **undesirable trading situation** is developing or has developed, it may take any action that—
 - (a) the **Authority** considers is necessary to correct the **undesirable trading situation**; and
 - (b) relates to an aspect of the **electricity** industry that the **Authority** could regulate in this Code under section 32 of the **Act**.
- (2) The actions that the **Authority** may take under subclause (1) include any 1 or more of the following:
 - (a) directing that an activity be suspended, limited or stopped, either generally or for a specified period:
 - (b) directing that completion of trades be deferred for a specified period:
 - (c) directing that any trades be closed out or settled at a specified price:
 - (d) directing a **participant** to take any actions that will, in the **Authority's** opinion, correct or assist in overcoming the **undesirable trading situation**.
- (2A) A direction given to a **participant** under subclause (2)(d)—
 - (a) may be inconsistent with this Code; but
 - (b) must not be inconsistent with the **Act**, or any other law.
- (3) The **participant** must comply promptly with a direction given to it in writing.
- (4) A **participant** is not liable to any other **participant** in relation to the taking of an action, or an omission, that is reasonably necessary for compliance with an **Authority** direction under this clause.
- (5) A **participant** does not breach this Code if it acts in accordance with a direction given under subclause (2)(d).