

Guidelines for Participants on Undesirable Trading Situations

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Overview

1. The purpose of this document is to inform industry participants and other interested parties:
 - (a) how to make an undesirable trading situation (UTS) claim
 - (b) on the process that will generally be followed by the Electricity Authority (Authority) if it suspects or anticipates the development, or possible development, of a UTS.
2. If you have any queries about the content of these guidelines, please contact the Authority either by telephone, on (04) 460 8860, or by email, at marketoperations@ea.govt.nz.

Glossary of abbreviations and terms

Act	Electricity Industry Act 2010
Authority	Electricity Authority
Board	Electricity Authority Board
Code	Electricity Industry Participation Code 2010
UTS	Undesirable Trading Situation

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Introduction

What is an Undesirable Trading Situation?

1. Part 1 of the Electricity Industry Participation Code 2010 (Code) defines a UTS as:
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).*
2. 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 **FTRs**.*

Who decides whether a UTS exists?

3. Part 5 of the Code sets out the regime for dealing with a UTS.
4. Part 5 of the Code provides that the Authority is responsible for determining whether a UTS is developing or has developed (refer clause 5.2(1)), and lists the actions the Authority may take to correct the UTS (refer clause 5.2(2)).
5. Refer to <http://www.ea.govt.nz/act-code-regs/uts/decisions-and-claims/> for more information about previous UTS claims and decisions.

Who can claim a UTS?

6. Part 5 does not limit who may claim a UTS. Any person may bring to the Authority's attention the development, or possible development, of a UTS. The person does not need to be an industry participant.

What is the process for initiating a UTS claim?

7. A person who wishes to make a UTS claim should contact the Authority by telephone (**04 474 2260**) **AND** email a claim form (to the email address uts@ea.govt.nz with "UTS claim" in the subject header).

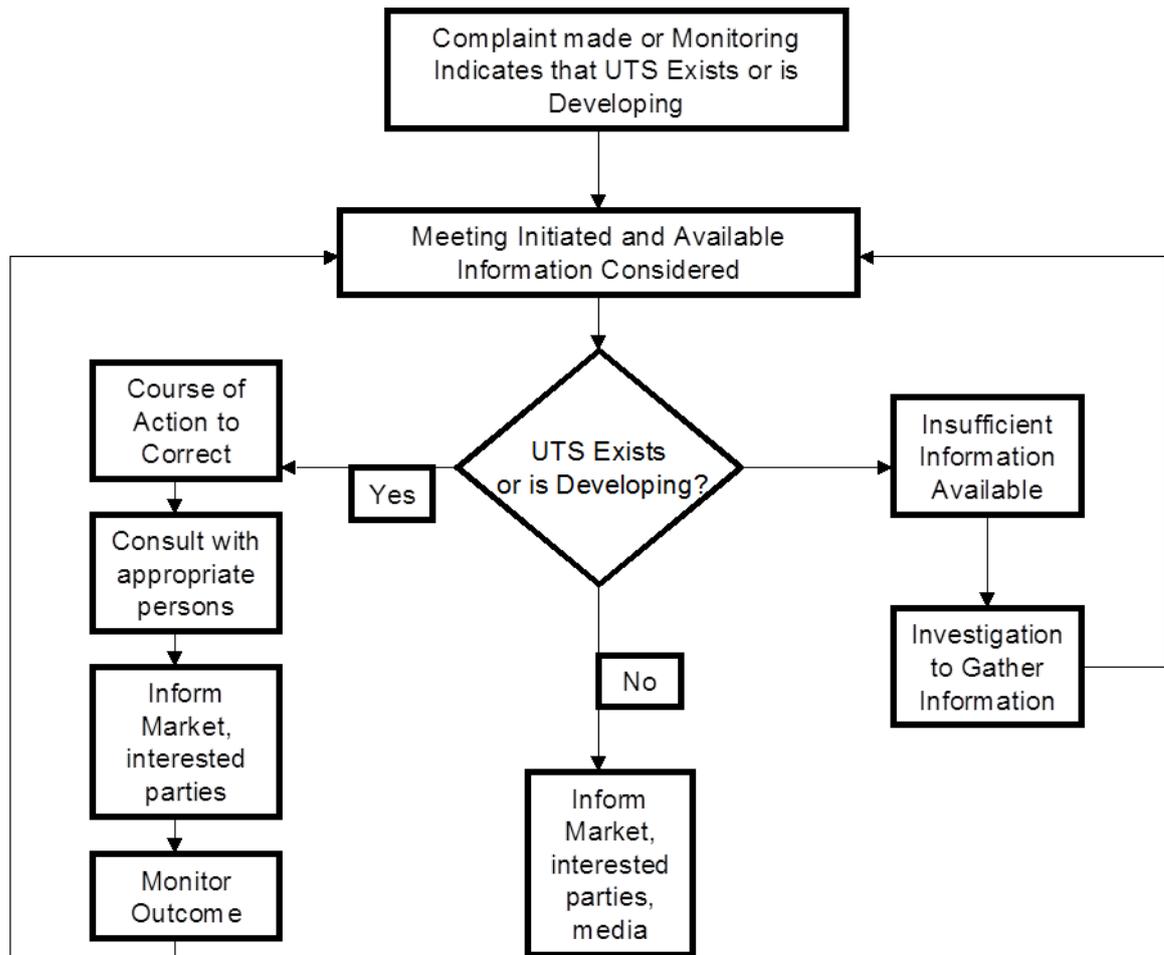
Please refer to Appendix A for a copy of the UTS claim form, which describes the information to be provided by a UTS claimant.

8. The Code gives the Authority the discretion over whether to investigate the development, or possible development, of a UTS (refer clause 5.1).
9. As a matter of practice the Authority investigates all UTS claims lodged with it, however the Authority cannot commence an investigation if more than 10 business days have passed since the situation, which the Authority suspects or anticipates may be a UTS, occurred (refer clause 5.1A).
10. If you are in doubt about the time limit for investigating a UTS or whether another party has already claimed a UTS in the circumstances you are concerned about, you should contact the Authority immediately.
11. The Authority will publish completed UTS claims on its website and communicate the receipt of these to stakeholders, usually via Market Brief.
12. A person wishing to withdraw a UTS claim must notify the Authority in writing.

What is the process for considering whether a UTS exists or is developing?

13. The flow chart below provides a useful summary of the UTS process.

Figure 1 UTS process flowchart



14. Depending on the magnitude of the potential/actual UTS, there may be additional steps added to this process. For instance:

- (a) the Authority's Board (Board) may need to meet several times before reaching a decision on whether or not there is a UTS
- (b) the Board may consult on a preliminary decision, including calling for cross-submissions
- (c) if the Board finds there has been a UTS, the action(s) to be taken in correcting the UTS may require time to implement.

15. The Code provisions relating to these key steps are summarised in the following table.

Table 1: Code provisions

	Description	Code provision
1.	Definition of a UTS	Clause 1.1
2.	Authority may investigate when UTS suspected or anticipated	Clause 5.1
3.	Authority cannot commence UTS investigation if more than 10 business days have passed since the situation occurred	Clause 5.1A
4.	Authority must attempt to correct every UTS and restore market to normal operation as soon as possible	Clause 5.5
5.	Authority must consult with the system operator if corrective action is to be taken that may impact system security	Clause 5.3(1)
6.	System operator must have processes to respond immediately, and provide information as soon as reasonably practicable, to Authority regarding clause 5.3(1)	Clause 5.4(a)
7.	Authority must immediately advise all registered participants of its finding whether a UTS is developing or has developed, and if so what corrective actions the Authority intends to take or has taken	Clause 5.4(b)
8.	Unless impractical to do so, Authority must consult with affected participants before taking any corrective action (note: Authority does not need to consult with affected participants on corrective action before it is decided upon)	Clause 5.4(b)
9.	A participant is not liable for acts or omissions necessary to comply with Authority direction	Clause 5.2(4)

16. Under section 46 of the Electricity Industry Act 2010 (Act) the Authority has information gathering powers, which may be used to assist the Authority's consideration of whether a UTS is developing or has developed. Guidelines issued by the Authority to give industry participants an overview of the Authority's information gathering powers can be found at <http://www.ea.govt.nz/act-code-regs/code-regs/guidelines/industry-and-market-monitoring-guidelines/>.

Applying the definition of a UTS

17. This section is intended to assist interested parties in applying the definition of a UTS, when considering whether to lodge a UTS claim with the Authority.
18. As noted earlier in these guidelines, Part 1 of the Code defines a UTS as:

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).*
19. The first limb of the definition reflects the overriding policy concern that maintaining confidence in, and the integrity of, the wholesale market is paramount.
20. Market processes such as trading, price formation, and clearing and settlement may be relevant inputs in deciding whether confidence in, or the integrity of, the wholesale market is threatened or may be threatened. However, the test is in regard to the wholesale market, rather than any particular aspect of the wholesale market, such as settlement.
21. Although the High Court in its decision¹ on the 26 March 2011 UTS considered a different UTS definition, the decision has precedent value when interpreting the current definition because the concepts of market confidence and market integrity were key aspects of the Authority's decision in relation to the 26 March 2011 UTS.
22. The following excerpts from the Authority's decision on the 26 March 2011 UTS are particularly relevant:²

“It is in the public interest to have an electricity market in which all participants can be confident prices are competitively determined. If participants observe that prices are greatly divorced from supply-demand conditions and are excessively higher than underlying costs, they will lose confidence in the integrity of the market arrangements and the incentive structures surrounding the wholesale market for electricity may be greatly damaged....

UTS claims in regard to 26 March 2011 and responses to the Authority's information requests in regard to 26 March 2011, indicate that buyer confidence in the wholesale market for electricity appears to have been seriously undermined through the combination of exceptionally high prices (in the absence of an underlying supply-demand imbalance) and buyers' lack of awareness of these prices until after the events had occurred....

Finally, the indications are that, if the high prices of 26 March 2011 are allowed to stand, the reputation of the wholesale market for electricity may be damaged to the

¹ *Bay of Plenty Energy Limited v Electricity Authority* [2012] NZHC 238

² Final decision on the Undesirable Trading Situation of 26 March 2011, and Final decision on actions to correct the Undesirable Trading Situation of 26 March 2011, 4 July 2011, paragraphs 150, 153,155.

point where trading on the market may be threatened and the adverse financial impact on some parties may preclude the maintenance of orderly trading or the proper settlement of trades.”

23. The High Court found that the Authority made no error of law in its decision on the 26 March 2011 UTS. In that regard, the High Court stated:³

“I am satisfied the Authority was entitled to take confidence in the market into account in assessing whether a UTS had occurred. In assessing threats to trading and the likelihood of orderly trading being affected, confidence in the market is relevant. Confidence, or lack of it, would not by itself be determinative of these questions. Confidence is an integral part of the operation of such a market.”

24. In summary, maintaining confidence in the wholesale market is a core policy concern of the Authority’s. Therefore a situation that threatens, or may threaten, confidence in the wholesale market should be sufficient to meet the first limb of the UTS definition. Similarly, a situation that threatens, or may threaten, the integrity of the wholesale market should also be sufficient to meet the first limb of the UTS definition.
25. The second limb of the definition is relatively straightforward – a situation cannot be a UTS if it can be satisfactorily resolved by any other means under the Code. In other words a UTS cannot exist if the normal application of the Code will resolve the situation. For instance, if a participant wishes to claim that it has been materially affected by a pricing error, that participant should make a claim under clause 13.168 of the Code (under the interim pricing period rules) rather than making a UTS claim.
26. ‘Any other means under the Code’ does not include the compliance process involving a breach of clause 13.5A of the Code. This means that certain situations could be both a UTS and a breach of clause 13.5A, and would be dealt with separately.
27. The normal application of the Code includes Code amendments. A future Code amendment cannot apply to a situation that has already occurred, but it may apply to a situation that is developing. However, uncertainty over the form and timing of Code amendments may mean that a developing situation should still be considered as a UTS to ensure market confidence or protect the market’s integrity. Some guidance in this regard is provided in the High Court decision on the 26 March 2011 UTS.⁴

Please refer to Appendix B for the UTS Code provisions in their entirety.

³ Bay of Plenty Energy v Electricity Authority [2012] NZHC 238, paragraph 294.

⁴ Bay of Plenty Energy v Electricity Authority [2012] NZHC 238, paragraphs 274-275, 306, 314-318.

Appendix A Claim form

A standalone version of this claim form is available on the Authority's website at <http://www.ea.govt.nz/code-and-compliance/uts/how-to-make-a-claim/>.

CLAIM OF UNDESIRABLE TRADING SITUATION (UTS)	
<u>CONTACT DETAILS</u>	
Reporting Organisation:	_____
Contact Name:	_____
Email:	_____
Phone:	_____
Mobile:	_____
Fax:	_____

<u>WHEN CLAIMED UTS OCCURRED</u>	
Date:	_____
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.

1.

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

2.

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.

1. _____

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).

Appendix B UTS Code provisions

Electricity Industry Participation Code 2010

Part 5

Regime for dealing with undesirable trading situations

Contents

- 5.1 Occurrence of undesirable trading situation
- 5.1A Time limit for investigating undesirable trading situation
- 5.2 Actions Authority may take to correct undesirable trading situation
- 5.3 Authority must consult with system operator
- 5.4 Authority must consult with participants
- 5.5 Authority must attempt to correct and restore normal operation as soon as possible

5.1 Occurrence of undesirable trading situation

- (1) If the **Authority** suspects or anticipates the development, or possible development, of an **undesirable trading situation**, the **Authority** may investigate the matter.
- (2) The following are examples of what the **Authority** may consider to constitute an **undesirable trading situation**:
 - (a) manipulative or attempted manipulative trading activity;
 - (b) conduct in relation to trading that is misleading or deceptive, or is likely to mislead or deceive;
 - (c) unwarranted speculation or an undesirable practice;
 - (d) material breach of any law;
 - (e) a situation that threatens orderly trading or proper settlement;
 - (f) any exceptional or unforeseen circumstance that is contrary to the public interest.
- (3) To avoid doubt,—
 - (a) the list of examples in subclause (2) is not an exhaustive list, and does not prevent the **Authority** from finding that an **undesirable trading situation** is developing or has developed in other circumstances; and
 - (b) an example listed in subclause (2) does not constitute an **undesirable trading situation** unless the example comes within the definition of that term in Part 1.

5.1A Time limit for investigating undesirable trading situation

Despite clause 5.1(1), the **Authority** must not commence an investigation if more than 10 **business days** have passed since the situation, which the **Authority** suspects or anticipates may be an **undesirable trading situation**, occurred.

5.2 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).

5.3 Authority must consult with system operator

- (1) The **Authority** must consult with the **system operator** if—
 - (a) the **Authority** is considering taking an action under clause 5.2 to correct an **undesirable trading situation**; and
 - (b) it is possible that the action may have an effect on **system security**.
- (2) The **system operator** must maintain procedures that are necessary to enable it to respond immediately to the **Authority**, and provide information as soon as reasonably practicable, if the **Authority** consults the **system operator** under this clause.

5.4 Authority must consult with participants

If the **Authority** finds that an **undesirable trading situation** is developing or has developed, the **Authority** must—

- (a) immediately advise all **registered participants** of its findings and of any actions that the **Authority** intends to take, or has taken, to correct the **undesirable trading situation**; and
- (b) unless the **Authority** considers that it is impractical to do so, consult with affected **participants** before taking the action.

5.5 Authority must attempt to correct and restore normal operation as soon as possible

The **Authority** must attempt to correct every **undesirable trading situation** and, consistently with section 15 of the **Act**, restore the normal operation of the **wholesale market** as soon as possible.

Appendix C Checklist – Process for managing undesirable trading situations

	Description	Reference
1.	<p>Initiation of UTS process</p> <ul style="list-style-type: none"> a. UTS claim made to the Authority <ul style="list-style-type: none"> • Claim made by email AND by telephone • Supporting information supplied by fax or email or other means • Authority staff establish contact with claimant to ensure the Authority is able to discuss the matter with the appropriate person at short notice b. Authority's monitoring indicates a UTS may exist or is developing 	Clause 5.1
2.	<p>Board meets to consider whether a UTS exists or is developing</p> <ul style="list-style-type: none"> a. Authority staff organise a meeting of the Board b. Board meets to consider whether matter is a UTS c. Authority staff provide background information and analysis d. Board may discuss matter during the meeting with other persons as it considers appropriate e. Board decides <ul style="list-style-type: none"> i. a UTS exists or is developing or ii. a UTS does not exist and is not developing or iii. it has insufficient information to determine whether a UTS exists or is developing f. Board decides whether its decision is preliminary and whether to consult on its decision g. Action items from meeting agreed, including whether further information is required before Board makes a decision as to whether or not a UTS exists or is developing h. Board grants any exemptions necessary while possible UTS is under consideration 	Definition of UTS in Part 1, and clause 5.1

	Description	Reference
3.	<p>Board decides a UTS exists or is developing</p> <ul style="list-style-type: none"> a. Board decides a UTS exists or is developing b. Board decides what actions must be taken to correct and restore normal operation of the wholesale market c. Board considers whether the intended actions will affect system security and, if so, consults with the system operator d. Board considers whether it is practical to consult with industry participants that may be affected by any of the intended actions e. Board notifies industry participants and other interested parties of its findings and any intended actions f. Board grants any exemptions necessary to give effect to the intended actions g. Authority staff manage any market operation service provider change requests, and any other operating expenditure and/or capital expenditure, required as part of implementing the actions to correct and restore normal operation of the wholesale market. 	<p>Definition of UTS in Part 1, and clauses 5.2 to 5.5</p>
4.	<p>Board monitors outcome</p> <ul style="list-style-type: none"> a. Board monitors outcome, assisted by Authority staff b. Board determines whether further action is necessary, or whether the UTS is corrected c. Board and Authority staff consider any Code amendments arising from the UTS 	