

Via email to levelplayingfield@ea.govt.nz

24 March 2026

Retail Price Consistency Assessment, uncommitted capacity and other matters

Mercury welcomes the opportunity to submit on the Electricity Authority's (Authority's) consultation paper, *Non-discrimination obligations: Retail Price Consistency Assessment, uncommitted capacity and other matters*, 26 February 2026.

Mercury is focused on implementing the non-discrimination obligations regime, with our submission addressing the following concerns with the present proposal:

- Authority's assumption that gentailers' strategies for hedging price exposure of generation through sales are comparable to hedge strategies adopted by standalone retailers and generators. In the case of Mercury, we don't believe these hedging strategies are comparable;
- Authority's conclusion, following from the mistaken assumption noted above, that Mercury's as-if portfolio of risk management contracts cannot be based solely on long-term contracts;
- Level of specification in the proposed Code amendment of requirements for a non-discrimination policy; and
- Lack of clarity of timing of implementation and compliance requirements.

We expand on these points next with further comments and feedback provided in our response to Authority's questions in the attachment.

Vertical integration and hedging price exposure

The draft RPCA guidance included in the consultation paper proposes that a gentailer is to decide the composition of its as-if portfolio of risk management contracts when determining its expected cost of electricity. It also states that the gentailer's as-if portfolio must be consistent with rational and prudent risk management practices that aim to minimise the gentailer's risk -adjusted cost of supply.

Mercury agrees that a gentailer is best placed to decide its own prudent risk management practices as it is commercially rational for it to minimise its cost of electricity. Furthermore, we consider that there is no reason to expect that these practices should be the same for each gentailer.

However, the Authority then asserts that gentailer's cost of electricity cannot be based "solely" on long-term contracts because that "would likely not be rational".¹ The Authority draws its conclusion based on its view that:²

- A mix of short and long duration contracts better enables a generator to manage its own fuel supply risk and trade supply at times of supply constraints when market prices can clear well above the prices that long-term contracts can attract;
- A retailer's demand for long-dated contracts is limited also, as it reduces flexibility to deal with volume risk (future demand is uncertain, customers may leave), and because there are costs to holding long-dated contracts.

This analysis makes the assumption that a gentailer is not fully, vertically integrated from generation through to its customers. It presumes that a gentailer is divided into a generation business unit and a retail business unit and that

¹ Consultation Paper, Appendix A Draft RPCA guidance for consultation purposes, paragraph A.97(a).

² Ibid. paragraphs A.97 and A.98.

each unit optimises its own commercial objective independently of each other, and that each unit contracts with the other accordingly.

By adopting such an approach the Authority in effect functionally separates generation and retail divisions within a vertically integrated business. This is inconsistent with the Authority's position set out in the October consultation, where it states:³

"The revised proposal specifically seeks to reduce the risk that it undoes the benefits of vertical integration. While vertical integration is a core part of the context within which these concerns arise, in the Authority's view it is not by itself the problem, and undoing vertical integration would at this point be a poorly targeted response to the nature and level of concerns we have."

Mercury agrees in general with the Authority's position that vertical integration is not by itself the problem. Undoing vertical integration, even indirectly according to the analysis included in the present consultation paper, could have unintended adverse consequences, which the present consultation paper seems to recognise, such as retail prices becoming increasingly volatile and correlated with the more volatile energy prices.⁴

In sum, the Authority's conclusion that gentailer's cost of electricity cannot be based "solely" on long-term contracts because it "would likely not be rational" is based on a flawed assumption about vertical integration. Furthermore, this flawed assumption should be corrected as it raises the risk of wider unintended adverse consequence that undo the benefits of vertical integration.

Mercury's as-if portfolio based on long-term contracts

Mercury's position is that our cost of electricity could be based solely on current long-term sales contracts to C&I customers and other wholesale counter parties.

Mercury is an electricity generator that secures a revenue stream to finance investment in generation over the long-term by selling electricity either directly to C&I customers or through (not to) our retail business to mass market customers. This means that Mercury has different exposures to risk and engages different hedge strategies than a standalone retailer.

Generation requires long-term investment in generation assets which best aligns with long-term sales. These long-term sales can be to C&I customers, such as with NZAS, Amazon, Fonterra etc, or to a much larger number of much smaller mass market customers. Mercury views its retail business as a long-term sales channel to mass-market customers that competes with long-term sales to C&I customers.

This competition means the price of long-term contracts for sales to C&I customers gives the value of the opportunity cost of electricity sold through our retail business to mass market customers.

Level of specification in the Code of requirements for a non-discrimination policy

The Authority has added a level of detail to the non-discrimination policy requirements in the present proposed draft Code amendments that was not included in the October consultation draft.

Mercury proposes that the Authority should remove this additional detail and revert to the non-discrimination policy draft Code amendments included in the October consultation. We also propose that the Authority's expectations for the policy should be provided in a separate guidance similar to that included in the October consultation but is absent in the present consultation.⁵

The present non-discrimination policy draft Code amendments have become narrowly focused on reporting a list of items that suggest the Authority has made decisions on how each gentailer would implement the non-discrimination obligation policy. This risks turning the implementation of an internal non-discrimination policy into an overly prescriptive process that attempts to impose a particular design of non-discrimination obligation systems and processes onto gentailers.

³ Level playing field measures, consultation paper, 14 October 2025, [October consultation] paragraph 3.17

⁴ Consultation paper, paragraph 3.65 (f).

⁵ It is not clear in the present consultation paper whether or not the Authority now intends to issue a draft guidance to support Code amendments as proposed in the October consultation.



Timeframe of implementation and compliance requirements

Mercury notes that the Authority now proposes changes to the implementation timeframes – i.e. *If the NDO Code amendment is made, and the finalised RPCA guidance is published in May 2026, we expect that the first RPCA would be due on 2 September 2026.*

In addition, the Authority also states:

Under the currently proposed timetable, this first RPCA would be standalone, as the first annual report in which a gentailer is to demonstrate how it has met all the non-discrimination principles would not be required until 2027.⁶

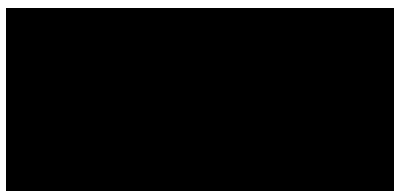
Mercury requests that the Authority clarify the proposed overall timetable. In particular, given the changes to the dates when the Authority now expects to publish NDO Code amendments and RPCA guidance we request the Authority consider extending the commencement date of the new regime. In addition, we request the Authority clarify when it expects gentailers to comply with all the non-discrimination principles following the commencement date. The implementation plan needs to be published within 45 days of the subpart coming into force, suggesting that compliance is subsequent to that.

Having the Authority's timetable is crucial for planning the implementation of the final prescribed non-discrimination measures and reporting compliance with the non-discrimination obligations. For instance, an important initial step in the process will be finalising and seeking Board approval of Mercury's internal non-discrimination policy and implementation plan which could take several months from when the Code amendments are finalised.

These points are further expanded on in our response to the Authority's questions, which is attached.

We look forward to continuing to engage with the Authority and the sector on the finalising and implementation of level playing field Code amendments.

Yours faithfully,



Tim Thompson
Executive General Manager Wholesale Markets

⁶ Consultation paper, paragraph 3.75.



ANNEX: Authority questions and Mercury's comments

Questions	Mercury Comments
Retail Price Consistency Assessment	
Q1. Do you agree with the Authority taking a forward-looking approach to the RPCA? If not, why not?	Mercury does not agree with the Authority taking a forward-looking approach to the RPCA. Repeating our previous submission, a retrospective assessment will be a more effective and efficient at assessing retail margins because it will rely on actual reported revenue and costs, whereas the forward-looking assessment will rely heavily on hypothetically derived assumptions to prepare forecast revenue and costs. Therefore, a retrospective assessment of actual retail margins would give a more transparent, unbiased assessment of compliance with Principle 1(3) and 1(4), than a forward-looking, hypothetical retail margin assessment. Nothing stated in the Authority's present consultation report has changed our view.
Q2. Do you agree with the Authority applying an as-efficient standard, including an allocation of common costs, to the retail cost component of the RPCA? If not, what standard should be applied and why?	
Q3. Do you agree that the Authority should not be publishing benchmarks for the cost of electricity, the as if portfolio of hedges and retail costs, and should instead provide higher level guidance to gentailers (eg, their cost of electricity should be calculated to minimise the risk adjusted cost of supply)? If not, please explain why and set out how you consider that benchmarks should be constructed.	
Q4. Do you have any comments on our proposed approach to geographic and customer segmentation? If you don't agree, please explain why and set out the alternative segmentation that you think the Authority should apply. Whether or not we require geographic segmentation, we would also be interested in your views on the best regional classification to apply when the Authority analyses the RPCAs (NRRs, EDB areas, GXPs or something else).	



Questions	Mercury Comments
Q5. Do you have any comments on our proposed approach to price smoothing? If you disagree with our approach, please set out your preferred alternative, and how it is consistent with ensuring that there is a 'level playing field' to promote competition between gentailers and independent retailers.	
Q6. Do you have any comments on the proposed date for the first RPCA disclosures? If you are a gentailer, and have concerns about your ability to meet that timeframe, please explain these in detail	
Uncommitted capacity	
Q7. Do you prefer Option 1, Option 2 or our previous proposal on uncommitted capacity? Do you have any feedback on how Options 1, 2 and our previous proposal on uncommitted capacity could be improved?	Mercury supports the Authority's preference for Option 2.
Q8. Do you have any feedback on the interplay between OTC monitoring requirements and the appropriate reporting where gentailers rely on 'intolerable risk position' in response to a request for a risk management contract?	Under Option 2, Mercury will inform the Authority when it has curtailed supply of risk management contracts along with the reasons.
Internal non-discrimination policies and audit requirements	
Q9. Is it useful and/or helpful to provide greater specification in the Code of the requirements for a non-discrimination policy?	As discussed above, Mercury does not consider that there is value in having greater specification in the Code of the requirements for non-discrimination policy. Furthermore, Mercury proposes that the Authority reverts to the approach proposed in the October consultation, where greater detail is provide in a guidance.
Q10. Do you support the requirement for external audit of compliance with the NDOs? Why or why not?	.
Q11. Is an annual audit of these requirements appropriate, or would a different timeframe be better? Why? Do you have any comments on the alignment	If the Authority includes a requirement for an external audit in the Code, then Mercury supports the present Code amendment which in summary would require gentailers to complete an initial audit no later



Questions	Mercury Comments
of the timing with other gentailer audit obligations?	than 45 days after 1 July 2027 and then further audits are completed as specified by the Authority under clause 16A.14 of the Code.
Q12. Would the codification of the audit requirement impose significant additional costs? What would you estimate these costs to be?	Any imposition for an audit imposes a significant cost on the business.
Regulatory statement for the proposed amendments	
Q13. Do you have any comments on the impact of the proposals in this paper on the regulatory statement set out in the October consultation paper?	As noted in our response to the October consultation, given the potentially significant impact of the changes proposed, we would expect to see a more detailed Regulatory Impact Statement than provided in the October consultation and that this assessment will need to be repeated for any final Code amendments and guidances.
Appendix A – Draft RPCA guidance for consultation purposes	
Q14. Do you agree with the proposed general approach to the RPCA, including the approach to implementation and potential evolution of guidance? If not, why not and what would be an alternative approach?	Please refer to our comments above regarding the RPCA above and made in our submission on the Authority's October consultation.
Q15. Do you agree with the proposed overall calculation approach to the RPCA? If not, why not? In what way could it be improved and why?	Please refer to our comments above.
Q16. Do you agree on the draft guidance with respect to customer coverage, and the approach and criteria for identifying and reviewing RPCA segments? Do you agree that RPCAs should be reported by NRR? Please provide reasons and any proposals to improve. Note, you do not need to duplicate responses to the earlier question on the proposed segmentation.	
Q17. Do you agree with the proposed approach to calculating average retail prices per MWh, including that each RPCA assessment should be based on retail prices as at the assessment date? If not, why not?	
Q18. Do you agree with the proposed approach to calculating non-energy costs,	



Questions	Mercury Comments
including the proposed approach to shared and common costs and attribution of costs to bundled services? If not, why not? Note, you do not need to duplicate responses to the earlier question on the efficiency standard for retail costs.	
Q19. Do you agree with the proposed approach to expected cost of electricity? If not, why not? We would particularly welcome any views on proposed guardrails (eg, minimising risk adjusted cost of supply) and possible alternatives, and on our approach to changes in method between assessments	As addressed in our submission above, Mercury disagrees with the Authority's proposition in A.67(a) – i.e. <i>For the RPCA, the cost of supply cannot be based solely on long-term contracts, because that would likely not be rational.</i>
Q20. Do you agree with the proposed guidance on the assessment of results, including the factors the Authority may consider in determining the appropriate follow up for negative or small positive RPCA results? If not, why not and what would be an alternative approach? Note, you do not need to duplicate responses to the earlier question on price smoothing.	
Q21. Do you agree with the proposed approach to RPCA disclosure and reporting? If not, why not?	
Appendix B – Proposed Code Amendments	
Q22. Do you have any comments on the drafting of this Code amendment? Are we missing anything? Is there anything that we should not include?	<p>As noted above, Mercury does not support the additional level of detail to the non-discrimination policy requirements in the present consultation draft Code amendments compared with the October consultation.</p> <p>Mercury proposes that the Authority should instead provide supporting information on expectations for the policy in a separate guidance similar to that included in the October consultation but is absent from the present consultation.</p>

