

Non-discrimination obligations – Code amendment

Decision paper

26/05/2026

Executive summary

The Electricity Authority Te Mana Hiko (Authority) has decided to amend the Electricity Industry Participation Code 2010 (Code) to impose non-discrimination obligations (NDOs) on the four large generator-retailers: Contact Energy, Genesis Energy, Mercury NZ and Meridian Energy (together, the gentailers). The obligations will apply from 1 July 2026. This document sets out the reasons for the Authority's decision.

We consulted on a proposal to introduce non-discrimination obligations into the Code

In October 2025, we released *Level playing field measures: Consultation paper* (October consultation paper) to consult on proposed amendments to the Code that would impose NDOs on the gentailers.

We consulted further in February 2026 with *Non-discrimination obligations: Retail Price Consistency Assessment, uncommitted capacity and other matters: Consultation paper* (Supplementary paper) on:

- the proposed Retail Price Consistency Assessment (RPCA) with additional draft guidance and Code amendments, following an industry consultation workshop held in December 2025
- the treatment of “uncommitted capacity”, with two options and related draft Code amendments and guidance, seeking to address feedback from consultation
- the scope of gentailers’ non-discrimination policies, with draft Code amendments to provide greater specification
- draft Code amendments to require external audits on gentailer’s compliance with the NDOs.

The Authority received 25 submissions on the October consultation paper and 19 on the Supplementary paper. We received a wide variety of often opposing views on many aspects of the proposal, including the scope of the problem and the value of further specification in the Code or additional regulatory provisions.

We have decided to amend the Code to implement non-discrimination obligations

The Authority is implementing the NDOs proposed in our October consultation paper, as modified by the February 2026 Supplementary paper, along with some further amendments.

The objectives of the NDOs are to promote competition and the efficient operation of the electricity industry for the long-term benefit of consumers by requiring gentailers to supply risk management contracts on a non-discriminatory basis to:

- ensure the even-handed supply of risk management contracts
- support the liquidity and competitive pricing of risk management contracts
- facilitate investment in the electricity industry.

We consider the NDOs will promote competition in the wholesale and retail markets, improve transparency, and provide further information that the Authority can use to monitor competition. The NDOs (and supporting requirements) address specific discrimination issues that are not covered by any other existing regulatory measures, or measures proposed by submitters.

The NDOs offer a relatively low-cost method of promoting transparency and encouraging participants’ confidence in electricity markets, and align with our main statutory objective.

The table below summarises the six NDOs that have been codified. The NDOs will apply to all risk management contracts (as defined in the Code).

Obligation	Non-discrimination obligations
Obligation 1: Non-discriminatory supply	<p>(1) A gentailer must not discriminate between buyers for the supply of risk management contracts.</p> <p>(2) A gentailer must not discriminate against buyers in favour of its own internal business units for the supply of risk management contracts.</p> <p>(3) A gentailer must not discriminate against buyers in favour of its own internal business units when pricing risk management contracts.</p> <p>(4) For the avoidance of doubt, subclause (3) requires pricing of risk management contracts in such a way as to ensure that any buyer that supplies electricity to end users at retail, that is as efficient with regard to operating costs as the gentailer's own retail internal business unit, and adopts a reasonable risk management approach, is not unduly deterred from operating profitably.</p>
Obligation 2: Obligation to trade in good faith	A gentailer must engage with buyers in good faith and in a timely and constructive manner in relation to the supply of risk management contracts.
Obligation 3: Objective credit assessments	A gentailer's credit terms and collateral arrangements relating to the supply of risk management contracts to buyers must reflect a reasonable, consistent and transparent assessment of the risk of trading with a buyer.
Obligation 4: Equal access to commercial information	A gentailer must ensure that any commercial information relating to risk management contracts made available to its internal business units that compete with buyers is also made available to buyers at the same time.
Obligation 5: Protection of confidential information	<p>A gentailer must:</p> <p>(a) protect buyer confidential information:</p> <p>(b) not use buyer confidential information other than for a purpose for which it was provided to the gentailer:</p> <p>(c) establish robust processes to prevent disclosure of buyer confidential information to, and use of buyer confidential information by, any of the gentailer's internal business units that may compete with the buyer.</p>
Obligation 6: Record-keeping	A gentailer must establish, maintain and keep records that demonstrate its compliance with these non-discrimination obligations.

The Authority has also codified the RPCA. The RPCA will be the primary way that gentailers will demonstrate compliance with Obligation 1(3), by demonstrating an economically justifiable link between the expected cost of electricity supply and their retail price offers. The Code requires each gentailer to undertake an RPCA as at 1 January and 1 July each year:

- for each of its retail brands
- for offers for new, and prices for existing, mass market customers
- in each network reporting region.

The Code sets out what each gentailer is required to do, and provide, in developing RPCAs, and requires the Authority to publish guidance to assist gentailers in undertaking RPCAs.

Gentailers are required to establish and maintain internal non-discrimination policies. These policies must be reviewed annually by the gentailers' boards. Gentailers are required to engage a suitably qualified external auditor to audit compliance with the NDOs.

The NDO regime will apply to gentailers' sale of firming products to match a Power Purchase Agreement (PPA). We are no longer proposing to set up a co-design group focused on the flexibility needs of independent generators. The Authority expects to have more to say on this later in the year.

The Authority is removing Internal Transfer Prices (ITP) reporting from the Code as a recent review found this information was not useful. However, independent retailers will continue reporting on their Retail Gross Margin (RGM) and gentailers will continue reporting on some elements of the RGM for comparability.

The Authority will actively monitor compliance with the NDOs. This will enhance visibility of gentailer conduct in the hedge market. Our monitoring approach will draw on a range of information sources, including gentailers' non-discrimination policies, RPCAs, and information obtained through the Authority's broader monitoring activities. Further detail will be provided on our approach to monitoring compliance with the NDOs before they come into force.

The NDOs will operate alongside regulated market-making obligations and the existing *Voluntary Code of Conduct for participants in New Zealand's Over the Counter Electricity Market* (OTC code of conduct).

Given the NDO regime is new, there will be an element of learning-by-doing that may inform adjustments to the Code and guidance. We expect there to be ongoing industry engagement as the NDOs are implemented. The Authority will consider whether Code and guidance amendments are necessary to improve workability or effectiveness. The Authority intends to undertake an effectiveness review of its broader pro-competition hedge market package in 2027, which could include revisiting the OTC code of conduct and its work on virtual disaggregation.¹

Appendix B sets out the Code amendments with tracked changes. The consolidated final version is available on the Authority's website.

Revisions to the proposals in our October consultation paper and the Supplementary paper

The key revisions to the proposals consulted on in our October consultation paper, as modified by the Supplementary paper, are:

- We have included a definition of "discrimination" in the Code: *engagement in differential treatment except to the extent a particular difference in treatment is objectively justifiable*. This has led to consequential changes to the drafting of the renamed NDOs.
- We have adopted option 2 from the Supplementary paper to replace the proposed 'uncommitted capacity' term. Obligation 1(2) provides that gentailers must not discriminate against buyers in favour of their own internal business units for the supply of risk management contracts. The Code guidance recognises that an objectively justifiable reason for not supplying a risk management contract may occur where doing so would place the gentailer in an "intolerable risk position". In such circumstances, it should not supply new risk management contracts of comparable duration, volume and shape to itself.
- We have decided to adopt an RPCA in substantially the same form as we proposed in the October consultation paper and expanded on in the Supplementary paper. We have, however, amended the Code to state that shared and common costs must be disclosed separately and we've made minor changes to the RPCA guidance to reflect submitters' feedback.
- The first RPCA disclosures will be required in September 2026. We appreciate the uncertainty gentailers will face ahead of this first disclosure round, implementing a new regime requiring judgement, with no existing baseline and no safe harbours. We want to implement this regime

¹ This paper uses the term "hedge" and "hedge market" as shorthand to refer to risk management contracts, and their market(s). The definitions of these terms can be found in the glossary.
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quickly, and want gentailers to initially focus on providing robust and complete disclosures, allowing all parties to learn-by-doing. Consistent with this, we confirm that the Authority is unlikely to rely on a negative margin RPCA result or report in the first September 2026 round of disclosures as evidence of a potential breach of the NDOs unless:

- there is egregious conduct by the gentailer; or
 - the gentailer has not made complete, robust, good faith disclosures; or
 - the initial RPCA result forms part of a pattern of negative margin RPCA results over time.
- Gentailers will continue reporting their metering, transmission, distribution and levy costs, for mass market customers on a per MWh basis under the RGM regime. This will enable comparison and sense checking between RGM and RPCA data.
 - Obligation 5 has been changed so that gentailers can only use confidential buyer information for the purpose for which it was provided.
 - We have amended the external audit requirements so that a gentailer may engage any suitable qualified external auditor, instead of using the Part 16A arrangements.

Regulatory statement

The October consultation paper set out a regulatory statement, consistent with section 39 of the Act, covering:

- a statement of the objectives of the proposed amendment
- an evaluation of the costs and benefits of the proposed amendment
- an evaluation of alternative means of achieving the objectives.

While there have been changes to the proposals set out in the October consultation paper following the Authority's consideration of submissions, the substance of the assessment in the regulatory statement did not change as a result of these changes or other points raised in submissions.

We remain of the view that the benefits of the Code changes outweigh their costs. The potential administrative and compliance costs are low relative to the sales potentially affected (0.02% of the \$10.5b p.a. sales to residential, commercial and industrial consumers). The potential benefits of the NDOs will include lower hedging costs for pass through to retail consumers and downward pressure on retail prices, and increased confidence, thereby encouraging entry and expansion by other independent retailers and generators.

The Authority considers the competition benefits from greater transparency and confidence in a level playing field will exceed the costs of administration and compliance with the Code changes. The Code changes present a prudent investment in promoting confidence among independent retailers and generators and competition in the market.

Implementation dates

The NDOs will come into force from 1 July 2026. Gentailers' implementation plans, and the first RPCAs, are required 45 business days later, on 3 September. We have removed the proposed requirement for gentailers to produce interim reports.

The implementation dates seek to strike a balance between implementing the NDOs as quickly as possible – to give confidence to market participants and ensuring that gentailers have the time required to update their processes and systems.

The regular reporting requirements will begin as follows:

Date	Milestone
1 July 2026	Commencement date
3 September 2026	First RPCA provided to the Authority. Gentailers provide and publish implementation plans (including non-discrimination policies) (45 business days from 1 July 2026)
9 March 2027	Second RPCA as part of ongoing requirement for half yearly reporting
2 September 2027	Third RPCA provided to the Authority
30 September 2027	Annual reports provided to the Authority (and published within five business days) including audit reports
8 March 2028	Fourth RPCA

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1 Purpose

- 1.1 This paper sets out the Authority's decision to amend the Code to introduce non-discrimination obligations (NDOs).

2 Background

Process

- 2.1 The Authority and the Commerce Commission Te Komihana Tauhokohoko (Commission) jointly established the Energy Competition Task Force (Task Force) in August 2024, with the Ministry of Business, Innovation and Employment (MBIE) as an observer. The Task Force's work on the hedge market has been informed by several reports, in particular:
- (a) Market Development Advisory Group's (MDAG) report on *Price discovery in a renewables-based electricity system* published in 2023²
 - (b) the Authority's risk management review project that published, among other things, a report called *Reviewing risk management options for electricity retailers – issues paper* in 2024 (the RMR report).³
- 2.2 The Task Force's work programme focuses on two overarching outcomes:
- (a) Package One — enabling new generators and independent retailers to enter and better compete in the market
 - (b) Package Two — providing more options for end users of electricity.
- 2.3 Package One of the Task Force's work programme contains four initiatives that focus on improving competition in the electricity industry. The Authority published the *Level Playing Field measures: Options paper*⁴ (the LPF Options paper) in February 2025 to progress two Task Force initiatives under Package One:
- (a) prepare for virtual disaggregation of the flexible generation base (also known as Task Force Initiative 1C)
 - (b) investigate Level Playing Field measures such as non-discrimination rules (also known as Task Force Initiative 1D).
- 2.4 The LPF Options paper offers an extensive chapter that outlines all the context and issues that led to the development of that paper.
- 2.5 We published two consultation papers on the proposed Code amendments:
- (a) *Level playing field measures: Consultation paper* in October 2025' (the October consultation paper) and
 - (b) *Non-discrimination obligations: Retail Price Consistency Assessment, uncommitted capacity and other matters: Consultation paper* in February 2026 (the Supplementary paper).
- 2.6 Following the release of each of these papers, we held online information sessions with interested parties and published answers to written questions on our website. On 9 December 2025, we held an industry workshop on elements of the proposal.

² [Price discovery in a renewables-based electricity system: Final Recommendations PAPER 2023](#)

³ [Reviewing risk management options for electricity retailers issues paper.pdf](#)

⁴ [Level Playing Field measures - options paper](#)

3 Decision

The Authority has decided to amend the Code to implement non-discrimination obligations on the gentailers

3.1 We have decided to amend the Code to implement the NDOs on gentailers as set out in Appendix B and its clean version on the Authority’s website.

3.2 Table 1 summarises the NDOs:

Table 1: Summary of NDOs

Non-discrimination obligations	
Obligation 1: Non-discriminatory supply	<p>(1) A gentailer must not discriminate between buyers for the supply of risk management contracts.</p> <p>(2) A gentailer must not discriminate against buyers in favour of its own internal business units for the supply of risk management contracts.</p> <p>(3) A gentailer must not discriminate against buyers in favour of its own internal business units when pricing risk management contracts.</p> <p>(4) For the avoidance of doubt, subclause (3) requires pricing of risk management contracts in such a way as to ensure that any buyer that supplies electricity to end users at retail, that is as efficient with regard to operating costs as the gentailer’s own retail internal business unit, and adopts a reasonable risk management approach, is not unduly deterred from operating profitably.</p>
Obligation 2: Obligation to trade in good faith	A gentailer must engage with buyers in good faith and in a timely and constructive manner in relation to the supply of risk management contracts.
Obligation 3: Objective credit assessments	A gentailer’s credit terms and collateral arrangements relating to the supply of risk management contracts to buyers must reflect a reasonable, consistent and transparent assessment of the risk of trading with a buyer.
Obligation 4: Equal access to commercial information	A gentailer must ensure that any commercial information relating to risk management contracts made available to its internal business units that compete with buyers is also made available to buyers at the same time.
Obligation 5: Protection of confidential information	<p>A gentailer must:</p> <p>(a) protect buyer confidential information;</p> <p>(b) not use buyer confidential information other than for a purpose for which it was provided to the gentailer;</p> <p>(c) establish robust processes to prevent disclosure of buyer confidential information to, and use of buyer confidential information by, any of the gentailer’s internal business units that may compete with the buyer.</p>
Obligation 6: Record-keeping	A gentailer must establish, maintain and keep records that demonstrate its compliance with these non-discrimination obligations.

3.3 In the section below on responses to submissions, we address submissions and highlight areas where the Code amendments are different to the proposals in the October consultation paper and the Supplementary paper.

Adoption of a principles-based framework

3.4 We heard a range of views from submitters on the extent to which the NDOs should be prescriptive or principles based. The Authority also wishes to respond promptly to

longstanding concerns about the functioning of New Zealand's wholesale and retail electricity markets.

- 3.5 We remain of the view that principles-based obligations with accompanying guidance are appropriate. They allow gentailers to implement the obligations in way that is appropriate for their businesses while requiring directors to certify compliance with the obligations and provide verification through the various reporting requirements. In addition, the Authority will be drawing on new and existing monitoring to assess compliance on an ongoing basis.
- 3.6 As further information becomes available, the Authority will be able to make Code or guidance amendments, to improve the operation of the regime.
- 3.7 The Authority considers that this approach supports speedy implementation while ensuring the NDOs are fit for purpose.
- 3.8 The Authority has additionally produced guidance that provides further information to assist gentailers in meeting their Code obligations. The NDO guidance and the RPCA guidance documents are published on the Authority's website.

4 Overview of submissions

The October 2025 consultation paper

- 4.1 On 14 October 2025 we published the October consultation paper, with proposed Code amendments to:
 - (a) introduce principles-based NDOs for the four large generator-retailers – Contact Energy, Genesis Energy, Mercury NZ and Meridian Energy (together, the gentailers) in relation to the supply of risk management contracts, and establishing a retail price consistency assessment (RPCA); and
 - (b) repeal the Code provisions requiring the disclosure of internal transfer price (ITP) information by gentailers.
- 4.2 The proposals in that paper were part of a broader package of changes to improve the operation of wholesale electricity markets, including:
 - (a) strengthening trading of the super-peak standardised flexibility product (introduced in January 2025)
 - (b) the review of market making in the electricity futures market to strengthen price discovery and promote healthy competition
 - (c) improving monitoring of the over-the-counter (OTC) contract market, including of OTC requests for contracts and responses to those requests.
- 4.3 We held a webinar question and answer session on 17 October 2025. We also issued clarifications in response to certain issues raised with us during consultation on the October paper.⁵
- 4.4 The Authority received 25 submissions on the paper, with submitters listed in Table 2. We held a workshop with interested parties on 9 December 2025 to discuss aspects of this proposal.⁶ These submissions are available on the Authority's website.

⁵ See [2510 Stakeholder QA LPF EA responses to written questions.pdf](#)

⁶ The focus of that workshop was the retail price comparison assessment and the term 'uncommitted capacity'. Both of these issues are discussed further below.

Table 2 – List of submissions on the October consultation paper

• 2degrees	• Independent Electricity Retailers (IER), with a consultant report from Link Economics
• BusinessNZ Energy Council (BEC)	• IER and IEGA joint submission
• Contact Energy	• Lodestone Energy
• Electricity Engineers Association (EEA)	• Major Electricity Users Group (MEUG)
• Electricity Retailers' and Generators' Association New Zealand (ERGANZ)	• Mercuria
• Electric Kiwi	• Mercury
• Electric Power Optimization Centre (EPOC)	• Meridian
• Energy Resources Aotearoa (ERA)	• NZ Steel
• Entrust	• Octopus Energy
• EVA Marketplace	• Paua to the People
• Gallagher & Co	• Pulse Energy
• Genesis, with a consultant report from Sapere	• Toast Electric
• Independent Electricity Generators Association (IEGA)	

4.5 The Authority also received two consultant reports from submitters:

- (a) Link Economics on behalf of IEGA and IER, and
- (b) Sapere on behalf of Genesis.

The supplementary consultation paper

4.6 On 26 February 2026, we published a further consultation paper (the Supplementary paper) that:

- (a) proposed Code amendments and draft guidance⁷ regarding the RPCA
- (b) proposed two possible approaches to uncommitted capacity and an alternative proposed Code amendment
- (c) proposed Code amendments to include greater detail on the expected content of the non-discrimination policies gentailers are required to produce
- (d) proposed Code amendments requiring gentailers to obtain an external audit.

4.7 The Supplementary paper sought to address submitters' feedback on the October consultation paper and concerns raised during the 9 December 2025 workshop.

4.8 We received 19 submissions on the Supplementary paper (including one consultant report from Link Economics on behalf of IEGA and IER) as set out in Table 3. These submissions are available on the Authority's website. We issued a response to written stakeholder questions in March 2026.⁸

Table 3 – List of submissions on the Supplementary paper

• 2degrees	• Lodestone Energy
• Contact Energy	• Mercuria
• Electricity Engineers Association (EEA)	• Mercury
• emhTrade	• Meridian

⁷ In order to facilitate timely implementation of this proposal, if that was what the Authority decided given the value of providing assurance about the potential transparency requirements on gentailer hedge and retail pricing as soon as possible.

⁸ See [2603 Stakeholder QA RPCA-UC EA responses to written questions LITnWJS.pdf](#)

• Energy Resources Aotearoa	• Energy Resources Aotearoa (ERA)
• Electricity Retailers' and Generators' Association New Zealand (ERGANZ)	• Major Electricity Users Group (MEUG)
• Fonterra	• Nick Brennan
• Gallagher & Co	• Paua to the People
• Genesis	• Zeale
• IER and IEQA, with a consultant report from Link Economics	

- 4.9 The Supplementary paper was tightly targeted on specific issues. However, some submitters responded to issues that were previously canvassed in the October consultation paper. While this paper does not summarise and respond to all of those submissions, the Authority has read and considered those submissions.
- 4.10 Across both consultation papers, submitters also raised other issues that are outside the scope of this project. These included: consumer sentiment, fuel scarcity, the need for investment in firming, security of supply, prudential requirements, fair trading standards, and capital adequacy. We have not responded to these issues in this paper but note that many of these issues are addressed through other Authority processes or through Government policy processes.
- 4.11 The Authority recognises the considerable time and effort that submitters put into engaging with our proposals. Submitters' comments and suggestions have contributed significantly to the Code amendment process.
- 4.12 Below, we provide a summary of key points raised by submitters in response to our consultation papers.

5 Response to submissions

- 5.1 This section outlines:
- (a) the Authority's response to the points raised in submissions, and
 - (b) detail of the Authority's final decision.
- 5.2 The structure follows the order of the format for submissions in the October consultation paper, amended to reflect the Supplementary paper.

Problem definition

Decision

- 5.3 We remain of the view that there is an ongoing risk that gentailers have opportunities to use market power in relation to their risk management contracts in a manner that would harm competition. Given this ongoing risk and a lack of transparency, there is a corresponding lack of confidence that a level playing field exists.

The Authority's earlier positions

- 5.4 In the LPF Options paper, the Authority expressed concern about the "risk that the combination of gentailer vertical integration and their control of flexible generation is hindering competition in generation and retail, and investment in new electricity generation". Independent retailers had complained about gentailers refusing to supply shaped peak and super-peak products, and that they faced margin squeezes.

- 5.5 The price and availability of certain types of hedges have been affected by several factors, including increased demand for risk management, relatively fewer flexible resources to back hedge contracts, and constrained ability to expand flexible resources in the short and medium term. However, there are also credible concerns that gentailers have the ability and incentive to individually influence the price or supply of hedge contracts and may be doing so in a manner that affects competition.
- 5.6 The submissions we received on the LPF Options paper helped us refine our understanding of the problem and prompted us to undertake further analysis. We responded to the submissions on the LPF Options paper and shared our further analysis in the October consultation paper. Our view, expressed in the October consultation paper, is that:
- It is less likely that the prices for super-peak hedges reflect a premium above competitive pricing levels than initially indicated in the RMR report.
 - Access to shaped hedges remains a concern.
 - While there are substitutes for super-peak hedges, it will be several years before they are available in the quantities needed to provide competitive discipline.
 - Although there is no definitive evidence of a margin squeeze between 2018-2023, some retail price offers were below wholesale contract prices in 2023.
- 5.7 While high prices and limited access to shaped hedges may reflect scarcity, the Authority still cannot rule out super-peak hedge prices being non-competitive, reflecting the exercise of market power in conditions of scarcity of flexible generation.
- 5.8 The Authority sees an ongoing risk that gentailers have opportunities to use market power in relation to their risk management contracts in a manner that would harm competition. While it might be less than first indicated in the RMR report, this risk remains because independent retailers largely depend on the gentailers for the risk management products that they need to compete with those same gentailers in the retail market.
- 5.9 The scarcity and concentrated ownership of flexible generation means the risk to competition may increase over time as the scale of intermittent generation grows, reducing flexible generation as a proportion of the overall mix and increasing the relative market power of the parties controlling that flexible generation.
- 5.10 In part due to this ongoing risk, independent retailers and generators have indicated a lack of confidence in the effective operation of hedge markets. Left unaddressed, this erosion of confidence among market participants risks chilling competition in retail markets.

Submitters' views on the problem definition

- 5.11 The Authority's refined problem definition, as set out in the October consultation paper, attracted comment from submitters with opposing perspectives. While some offered broad support, others suggested the issue had not been well-defined and that the proposals went beyond what was required. Others said that the proposed response did not adequately address pressing competition issues. There was broad support for the Authority's objective of improving confidence in the effectiveness of electricity markets.

The problem definition understates competition issues

- 5.12 Some submitters said that the evidence of competition issues was stronger than the Authority had acknowledged. For example:
- 2degrees, Entrust, Octopus Energy and Pulse Energy argued there was clear evidence of competition problems in the electricity market and pointed to the exit of independent

retailers, unchanged wholesale market concentration, liquidity issues, low switching rates and other competition metrics.

- 2degrees and Electric Kiwi argued that the spot market is also not workably competitive. If the spot market is not competitive, market power will also be reflected in the hedge market. Electric Kiwi said that market monitoring cannot reliably detect the exercise of market power in New Zealand's highly concentrated and vertically integrated electricity industry. Entrust and Electric Kiwi both pointed to Dr Brent Layton's evidence for Meridian in a current Transpower review.⁹ Dr Layton suggested that Genesis and Contact have both the ability and incentives to artificially restrict their hydro generation so that their thermal plant needs to run more often and keep prices artificially high.
- Electric Kiwi said that there was compelling prima facie evidence of anti-competitive margin squeeze behaviour with the gentailers extracting monopoly rents in their wholesale businesses while running their retail arms at a loss. Octopus was also concerned about losses in the gentailers' retail arms. NZ Steel also commented on the cross-subsidy between the mass market retail and generation arms of the gentailers.
- Octopus Energy said the Authority's margin squeeze conclusion lacked rigour because it relied on baseload ASX benchmarks that lacked retail load shape. A revised margin squeeze analysis that accounted for shape would provide clear evidence of a squeeze. The Authority should also distinguish between price smoothing and prolonged discounting.
- Octopus Energy referred to previously submitted analysis of Powerswitch pricing. This snapshot showed the lowest tariff on Powerswitch was below hedge market prices for six weeks in 2024.¹⁰

There is insufficient evidence to support the intervention

5.13 Some submitters thought the Authority's refined problem definition, as set out in the October consultation paper, was insufficient to justify the NDOs:

- Sapere (on behalf of Genesis) described the Authority's problem definition as 'evolving, but not settled'. Meridian argued the Authority was proceeding to regulate a perceived risk to increase non-integrated retailers' confidence. ERA and ERGANZ raised similar concerns, with the ERA saying that without a clear problem definition, regulation risked being driven by perceptions rather than evidence.
- ERA said the Authority had not presented sufficient evidence to justify the intrusive structural regulation of commercial contracting. They argued that structural features of the market were more plausible drivers of hedge market tightness than discrimination.
- Mercury noted the Authority's statements that baseload and peak hedges were likely priced competitively. While Mercury agreed with the Authority's objectives of increasing transparency and monitoring, they thought the Authority had not clearly articulated a rationale for what looked like a disproportionate regulatory intervention. Meridian said the paper showed no evidence of actual anti-competitive conduct.
- ERGANZ said the evidence base did not justify the more intrusive tools such as the RPCA or proposed uncommitted capacity reporting.
- Contact said they agreed with the revised analysis of the problem definition, but considered most concerns had been resolved, leaving only unproven assertions and

⁹ [Review of Security of Supply Forecasting and Information Policy](#)

¹⁰ [OENZ RMR Submission Cover Letter](#)

perceived risks remaining. Although Contact supported addressing perceived risks if they were deterring new entry or exit, they considered such risks unlikely to materialise. Contact also noted that withholding access to capacity would be inconsistent with its approach to risk management and said that it had no market power.

- Sapere argued the proposals were not grounded in orthodox competition theory or supported by empirical evidence. In Sapere's view, the Authority's proposed rules would protect competitors, not competition.

Support for the Authority's refined problem definition

- 5.14 Other submitters supported the Authority's revisions. For example, EEA agreed with the Authority's updated problem definition, saying that it captured issues that materially affected the system's ability to expand efficiently. Lodestone Energy argued the proposed Level Playing Field changes were now even more important following recent developments, such as the authorisation of the Huntly Firming Option arrangement.
- 5.15 MEUG agreed with the objectives of the proposal and welcomed the Authority's updated analysis on the gap between wholesale prices and the levelised cost of electricity (LCOE). They agreed with the Authority's finding that 'the risk of exercise of market power in the hedge market remains in the short to medium term'.

Other comments from submitters on the problem definition

- 5.16 Contact raised issues with the inconsistency between the October consultation paper, saying that retail prices may be too low for too long, and another Authority document that talked about "loyalty penalties" (ie retail prices being too high for too long).
- 5.17 Meridian submitted it was unclear whether the Authority considered the problem to be predatory pricing, or the raising of rivals' costs. Sapere argued that super-peak contracts traded as a ratio of comparable ASX prices, indicating that competitive price discovery was occurring through the auction mechanism.

The Authority's response to submitters' views on the problem definition

- 5.18 In the October consultation paper, the Authority outlined the available evidence on super-peak hedge pricing, access to these products, and potential substitutes. We also examined the investment withholding hypothesis and undertook a high-level retail margin squeeze analysis. Submitters have not provided any new evidence that would lead us to reassess our findings.
- 5.19 High prices for risk management contracts may simply reflect scarcity (which is efficient). However, at times of scarcity, a gentailer's market power may increase, creating a risk that it may discriminate on pricing or limit access to the risk management contracts it offers. It is this risk that the NDOs seek to mitigate, as it could harm competition.
- 5.20 We address here the submissions that our problem definition was understated:
- Electric Kiwi said that there was evidence of margin squeeze behaviour with the gentailers extracting monopoly rents in their wholesale businesses while running their retail arms at a loss. Firstly, we note that our high-level margin squeeze analysis did not find pricing below cost (except for some tariffs in 2023). Secondly, while gentailers' annual reports have typically shown increasing wholesale profits and lean times for their retail arms, this does not necessarily imply a margin squeeze. Accounting profit and economic profit can differ, and the results could also be explained as reflecting retail competition, 'smoothing' of retail prices, and wholesale supply shortages. In other

words, while gentailers' results may be consistent with a risk to competition, they are not in themselves conclusive evidence of anti-competitive conduct.

- 2degrees and Electric Kiwi argued that the spot market is not workably competitive. We disagree with this position and note the Authority has found the spot market is in fact workably competitive, as evidenced in numerous recent reports, including the pipeline of new generation entry, trading conduct monitoring and regular competition reviews.
- Octopus Energy was concerned that we had relied on ASX baseload prices and not considered the costs of shape in our margin squeeze analysis. We acknowledge that our previous high-level margin squeeze analysis did not account for shape.¹¹ We are introducing the RPCA partly to improve the data available for a fuller analysis of this point.
- Octopus Energy referred to their analysis of Powerswitch data. This analysis was limited in scope and time period (six weeks), and is far from conclusive evidence of a margin squeeze in itself.¹² The Authority is collecting improved retail data and along with the RPCA, we will be able to detect if gentailers' expected netbacks (retail revenue less transmission, distribution, levy, and metering costs) are below the contract rates that independent retailers face.
- Entrust and Electric Kiwi both pointed to Dr Brent Layton's evidence for Meridian in a Transpower review.¹³ Dr Layton suggested that 'the incentives on [Genesis and Contact] to access contingent water and use hydro capacity could be influenced by their ownership of thermal plants... One advantage of a price trigger over a trigger based on total hydro storage is that competition concerns arising from the incentives of generators with thermal capacity will be moderated.' Our trading conduct monitoring suggests that there has not been artificial restriction of hydro generation to date. This will continue to be part of our trading conduct monitoring work.
- The other evidence from independent retailers about market share, market exits and changes to switching rates could be consistent with anti-competitive conduct, but could also be explained by competition in the retail market for a scarce resource.

5.21 The Authority considers that the evidence presented by submitters overall does not provide conclusive evidence of anti-competitive conduct. However, the Authority considers that, to the extent this evidence is consistent with the potential for anti-competitive conduct to have occurred and to occur in future, it supports regulatory intervention in the form now being implemented.

5.22 In contrast to the issues identified by independent retailers and generators, other submitters, in particular gentailers, raised concerns that the underlying evidence was being overstated, and the case for intervention was weak.

5.23 Sapere argued the proposals were not grounded in orthodox competition theory or supported by empirical evidence and would protect competitors, not competition. Meridian also criticised the proposal for addressing a perceived risk, while Contact said that it is not justified to address a perceived risk. We note that:

¹¹ Pages 24-30 of the October consultation paper.

¹² Reasons for this include: (i) the Powerswitch data used does not cover all retail offerings so does not provide a full picture of retail revenue, (ii) the pricing may be explained by legitimate business reasons such as short-term promotions.

¹³ Genesis cross-submitted that it complied with Commerce Act - see [GENE MDAG 2023](#)

- Concerns about the possibility of anti-competitive strategic behaviour in the electricity hedge market have a long history in New Zealand.¹⁴ These include allegations of refusals to supply capacity through risk management contracts, and potential margin squeeze and cross-subsidisation. These concerns are not unique to New Zealand, with other jurisdictions facing similar issues. For example, the availability of hedge contracts has been a concern in other countries, including Australia.¹⁵
- Electricity markets have unique characteristics.¹⁶ It is possible for electricity generators to have time-limited market power in oligopolistic markets. This is particularly the case when there is scarcity and concentrated ownership of flexible generation.
- Previous regulatory regimes (ITP) have not effectively provided transparency regarding these issues.¹⁷

5.24 We therefore see benefit in taking steps to improve the consistency and transparency of gentailers' provision of risk management contracts to improve confidence in the effectiveness of electricity markets.

5.25 Our response to other comments relevant to problem definition is as follows:

- Meridian criticised the Authority for not being definitive about whether we see the problem as predatory pricing or raising rivals' costs. Claims have been made about a margin squeeze via both high wholesale prices and low retail prices. The proposed RPCA will help to detect any margin squeeze.
- Contact were concerned about the October consultation document talking about pricing being too low, versus another Authority document describing loyalty penalties. Retail pricing may be low on new tariffs while the pricing of older tariffs may be higher, as is often the case where there are switching costs ('customer stickiness') in a market. As such, there may be both low prices and high prices for electricity retailing. We therefore do not consider our approach to necessarily be inconsistent.
- We agree with Sapere that super-peak products are priced relative to baseload prices. We also agree that the super-peak market is facilitating price discovery. However, this does not tell us, for example, if margin squeezes are occurring that may impact retail competition (by hindering independent retailers from competing). Overall, as noted above, we consider that the NDOs are important for the promotion of competition in the electricity industry for the long-term benefit of consumers.

5.26 Submissions on problem definition were highly polarised. Significant ongoing debate on these issues has the potential to undermine the confidence of consumers that the electricity system is working effectively to provide affordable, reliable electricity. The Authority sees considerable benefit in creating transparency and improving access to hedges to both

¹⁴ For example, see p97 of the Commission, [Electricity Investigation Report](#), 22 May 2009. The then Government's Electricity Price Review in 2018 noted that the electricity hedge contract market was not working effectively - See p46 [Electricity Price Review: Final Report](#) 21 May 2019. The Authority introduced ITP in 2021 to increase confidence in competition in electricity markets. Electricity Authority, [Wholesale markets – Internal transfer prices and segmented profitability](#), 31 August 2021. In 2023, the Authority discussed that it had received concerns about unequal access to hedges and a margin squeeze - [Electricity Authority](#), 2023 at paragraphs 4.10-4.22.

¹⁵ See Nelson et al, draft report for the Australian National Energy Market wholesale market settings review, 6 August 2025 [National Electricity Market wholesale market settings review](#): For example, see page 10: "In South Australia, declining contract liquidity and increased market concentration have raised concerns around vertical foreclosure and the erosion of competition." Page 57 explains the concerns further. See also concerns about strategic behaviour also informed OFGEM licence conditions, see the LPF Options paper at page 39 for details.

¹⁶ Joskow, 2003 at 13 [Microsoft Word - JOSKOW Texas A&M-5-11-03.doc](#). While technologies are changing the challenges, many of Joskow's complexities are still relevant today.

¹⁷ [Internal Transfer Price and Retail Gross Margin post implementation review](#) paragraph 5.1.

improve competition in retail markets and to improve the confidence of all stakeholders that competition is working effectively to deliver affordable and reliable electricity.

- 5.27 The Authority is not required to make a definitive finding of exercise or abuse of market power in order to take the actions it considers necessary or desirable to promote competition in the electricity industry. While evidence is contested, we remain of the view that the NDOs will promote competition and, in particular, have been designed to address competition risks, transparency and confidence in the marketplace, and produce further information that the Authority can use to monitor competition in the market and take further action if required.

Level playing field options

Decision

- 5.28 The Authority has decided to implement the NDOs, rather than any of the alternative Level Playing Field options, to address the risks to competition outlined in the problem definition. These obligations will ensure the even-handed supply and competitive pricing of risk management contracts. This will support hedge market liquidity and new investment, and give confidence to independent generators and retailers that they can compete on a level playing field with gentailers.

The Authority's original proposal

- 5.29 In February 2025, we published the Options paper. That paper identified four options:

- accounting separation
- non-discrimination obligations
- negotiate-arbitrate regulation
- corporate separation.

The preferred option was non-discrimination obligations.

- 5.30 In our October 2025 consultation paper, we refined our original proposal for NDOs. We introduced the concept of the RPCA to ensure that gentailers' pricing bears an economically justifiable link to costs. As part of the October consultation, we asked submitters whether they had any new evidence that was relevant to the choice of level playing field options.

Submitters' views on the level playing field options

- 5.31 Submitters varied in their views on the Authority's revised proposal. Some submitters suggested the intent of the proposal could be achieved in other ways:

- Mercury supported greater transparency to build confidence but thought the choice of intervention should be proportionate. They suggested the current OTC code of conduct should be updated and mandated, and the RGM reporting regime updated. Toast Energy similarly supported transparency but was concerned that the NDOs risk undermining socially beneficial arrangements such as social hedges.
- Contact also emphasised proportionality and suggested an alternative regime relying on gentailer boards certifying that they are not artificially increasing their risk position to reduce the volume of risk management contracts in the market. This would be backed up by monitoring by the Authority and a simplified version of the RPCA.
- Genesis said that the Authority should instead monitor hedge markets and customer switching, and publish analysis to improve market confidence.

- Meridian suggested that market-making (including our proposed changes) and other transparency rules would address the issues that had been identified. Meridian said it regarded the revised proposal as a marked improvement on earlier versions, but cautioned that risks remained, including that of placing pressure on gentailers to increase retail prices.
- BEC said that it supported steps by the Authority to improve competition, but given the Authority is currently working on mandatory market making in the hedge market, with an open consultation, this consultation appeared to be doubling up on solutions without providing equivalent benefits.

5.32 Another theme among a different group of submitters was that the proposed NDOs were insufficient:

- 2degrees and Electric Kiwi argued the most appropriate regulatory intervention to meet the statutory objectives of the Authority was corporate separation. In 2degrees' view, NDOs were unlikely to address affordability of supply or increase liquidity in the market. Electric Kiwi similarly argued the proposed NDOs were inadequate, ambiguous and relied on a market unlikely to deliver competitive or efficient self-correction.
- Entrust suggested accounting separation as a complementary option to the proposed NDOs. EVA Marketplace did not see the NDOs as very helpful and would instead prefer an approach based on accounting separation and the prohibition of subsidies between retail and wholesale operations.
- Lodestone Energy supported the intent behind the Level Playing Field work programme, but argued for a more prescriptive, mandatory approach to the NDOs, along with vigorous monitoring. Entrust and Pulse Energy similarly argued for more prescriptive NDOs, on the basis that this would provide greater regulatory certainty, with Pulse Energy additionally suggesting reformed ITP disclosure requirements to complement and support the NDOs.
- Paua to the People said that the chosen option fell well short of levelling the playing field and it was not clear how it could be practically enforced and utilised. Octopus said the proposal would work only if implemented without the proposed approach to uncommitted capacity.
- IEGA said that the NDOs are unlikely to result in independent retailers being able to procure a fixed-price, variable-volume (FPVV) contract at an average price comparable to the gentailers' internal FPVV price.

5.33 Submitters expressed a variety of views on the NDO proposal itself.

- Some submitters were in favour of the Authority's proposed approach to NDOs. Lodestone Energy thought that requiring gentailers to sell to independents on the same terms is key to a competitive market and lower cost electricity for consumers. In their view, the NDOs will unlock liquidity, support new entrants and improve transparency. EEA supported the NDOs as a means to support independent developers seeking power purchase agreements (PPAs) or risk management arrangements. MEUG was broadly supportive of the NDOs, and particularly the obligation to trade in good faith.
- Pulse Energy did not have confidence that, without material redrafting, the NDO proposals would prevent discrimination that could harm competition and did not have confidence the NDOs would achieve the Authority's intent.
- Other submitters had qualified support that depended on significant changes. Genesis and ERGANZ did not support the inclusion of the RPCA or the concept of uncommitted

capacity. Octopus Energy favoured the NDO approach only if the concept of uncommitted capacity were removed. Meridian also wanted uncommitted capacity removed, and suggested alternatives to the RPCA.

Authority's response to submitters' views on the level playing field options

- 5.34 The Authority remains of the view that a form of NDOs is a proportionate intervention that appropriately balances the need for greater transparency in the market for risk management contracts with the costs associated with regulatory intervention. We discuss the appropriate extent of NDO intervention below.
- 5.35 We are not persuaded that more significant interventions can be justified on the basis of the evidence of the problem definition:
- Corporate separation would represent a significant shift in operating model and would likely require primary legislation. It also represents the most expensive option, requiring structural change to gentailers' businesses. This would result in the loss of the existing efficiencies associated with vertical integration (e.g. resources, systems and risk management). Corporate separation has only been used in New Zealand to manage natural monopolies that controlled critical inputs for other businesses. Corporate separation generally occurs alongside other controls to address market power.
 - While accounting separation would improve transparency, we do not consider that the introduction of accounting separation would be justified at this time, given the potentially significant costs and difficulties involved. The incremental benefit of transparency beyond the RPCA would not justify this intervention.
- 5.36 We also do not think a lesser intervention would be appropriate. Existing interventions, or the alternatives suggested by the gentailers, would, in the Authority's view, be insufficient to address the competition risks and provide confidence to independent generators and retailers that they can compete effectively. The NDOs and the RPCA are a targeted, relatively low-cost solution to provide reassurance to the marketplace and to obtain further information/ assessment of the risks of anti-competitive conduct.
- 5.37 This proposal is part of a wider suite of hedge market interventions, that are designed to work together to improve the functioning of that market. While there may be elements of overlap, we broadly consider them to be complementary. For example, market-making is more focussed on liquidity and price discovery than this proposal. We address the risks of double-counting of benefits in the approach to assessing costs and benefits below.
- 5.38 The Authority is committed to actively monitoring compliance and considers that the NDO framework substantially enhances visibility of gentailer conduct in the hedge market. We discuss our approach to monitoring and compliance further below.
- 5.39 Other suggestions are dealt with in relevant sections below.
- 5.40 Having considered the submissions on the problem definition and options for levelling the playing field, the Authority still considers that mandatory, principles-based NDOs are the best way of addressing the competition concerns in hedge markets, arising from gentailer vertical integration and control of the flexible generation base. The next section sets out the reasoning on why we have decided on a principles-based approach instead of a prescriptive approach.

The package of non-discrimination obligations

Decision

- 5.41 The Authority remains committed to a principles-based approach to the NDOs as this will enable more timely delivery and enable the adaptation of the NDOs to different businesses. The Authority may be more prescriptive in the future, if it considers that to be necessary or desirable, as new information comes to light.
- 5.42 The Authority has decided to rename all of the Principles as Obligations.

The Authority's original proposal

- 5.43 The core of the NDO proposals was Principle 1 (now Obligation 1)¹⁸ which prevents gentailers from discriminating in the supply of risk management contracts without an objectively justifiable reason.
- 5.44 These proposed obligations are supported by provisions relating to a good faith obligation, objective credit assessments, equal access to commercial information, protection of confidential information and record-keeping. We also proposed the RPCA to help test compliance with Obligation 1(3).
- 5.45 This section focusses on the general approach to the NDOs and comments that apply to the package of obligations.

Submitters' views on the application of the non-discrimination obligations

- 5.46 Submitters raised risks with the NDO approach. Some submitters wanted more of a response to the report by Frontier Economics commissioned by the Government (Frontier Report)¹⁹. Other submitters wanted much of the guidance to be put into the Code.

Risks associated with the proposal

- 5.47 Submitters raised a number of risks with the NDO approach:
- ERA believe that the proposed approach to Level Playing Field is inherently ambiguous as internal hedging arrangements are bespoke. The proposals will require subjective interpretation, leading to greater uncertainty, with increased cost, risk aversion and disputes, without any countervailing improvement in competition. Contact had similar concerns about the workability of the proposal, focussing in particular on how it would work given the competition dynamics in hedge markets.
 - BEC raised the risks (identified by the Authority in the October consultation document) of gentailers passing through costs more quickly and raising retail prices to comply with the RPCA. Meridian was also concerned that the RPCA could force gentailers to raise retail prices. MEUG, BEC, and Meridian were also concerned that the Level Playing Field measures could possibly be detrimental to consumers through increased retail prices. MEUG and BEC both mentioned the risk of new compliance costs being passed through to consumers.
 - Genesis, BEC, ERA and Meridian were concerned that the proposals could disincentivise generation investment by gentailers. Genesis and ERA both mentioned the risk of the NDOs distorting investment incentives but did not give any detail of the

¹⁸ We have decided to refer to the NDOs as obligations, rather than interchangeably as principles and obligations as we have in the past, to avoid confusion (see paragraph 5.63 below).

¹⁹ [Frontier Report](#), 2025

causal mechanism by which this would happen.²⁰ BEC were concerned that Obligation 1(2) would risk disincentivising gentailer generation investment as it would interfere with a gentailer's ability to grow generation and retail in tandem and so push up risk premiums. Pulse Energy, on the other hand, thought that this obligation provides a substantial regulatory loophole for the incumbent gentailers by incentivising a very close matching of generation and retail, tightening existing vertical integration.

Issues raised about the Frontier Report

5.48 A number of parties raised issues regarding points made in the Frontier Report:²¹

- MEUG and BEC were concerned that the Authority had not fully addressed the conclusions in the Frontier Report, in particular the issue that if gentailers possess market power, they could raise the price of internal contracts to meet non-discrimination requirements.
- BEC said it was not clear why the Authority is proceeding with the LPF initiatives given the Frontier report concerns about increased retail prices. Additionally they pointed to a section of the report suggesting that gentailers were shielding consumers at the expense of their own margins.
- MEUG and NZ Steel were also concerned that the Level Playing Field measures could be harmful to consumers.
- ERGANZ and Meridian referred to Frontier's analysis of small retailers having higher margins and lower energy supply costs.
- Mercury agreed with Frontier that it will be difficult to assess what is discriminatory.

Levels of prescription

5.49 A number of submitters wanted more prescriptive rules established in the Code:

- Entrust were concerned that the reforms do not go far enough and that competition problems would continue to worsen. They thought the regime should more closely mirror that which applies to Chorus. They wanted more prescriptive non-discrimination rules.
- In Electric Kiwi's view, the NDOs are currently ambiguous and lack sufficient detail and prescription to provide confidence to market participants.
- Both Octopus and Electric Kiwi wanted to see more detail in the Code, rather than guidance, to make it enforceable.

5.50 Mercury raised a slightly different point. In their view, requiring compliance with the non-binding guidance appears to elevate the status of the guidance, creating a potential legal grey area.

Other issues

5.51 Pua to the People suggested that each gentailer provide an up-to-date, publicly visible list (a "shop front") of products, prices, and volumes they are willing to supply, accessible to the Authority and all interested parties.

5.52 2degrees raised a question around terminology. Subpart 5C is entitled non-discrimination "obligations", whereas the remainder of the draft refers to the non-discrimination "principles". In their view, labelling a provision as a 'principle' rather than an 'obligation'

²⁰ BEC and Pulse both singled out the uncommitted capacity principle as affecting investment incentives. However, this term has been removed from the Code changes.

²¹ The Frontier paper was published on 1 October. The October consultation paper was published on 14 October.

diminishes its authority and risks fostering a lack of seriousness towards compliance. There should be no question that adherence to these obligations is mandatory and necessary for promoting competition in the market and ensuring even-handed supply of risk management contracts.

Authority's response to submitters' views on the application of the non-discrimination obligations

- 5.53 Many of the views on the risks of the NDOs have been considered during previous consultations. We have not identified or been presented with new evidence related to these views.
- 5.54 As we discuss in more detail below, we are sceptical that the RPCA will lead gentailers to increase retail prices. In summary, the RPCA increases transparency and is not a 'pass/fail' test. It accommodates low or negative margin results, so long as gentailers can explain such results and their reasons are reasonable, consistent, transparent, and evidence-based. We also note the scepticism of the peer reviewers of the Frontier Report who saw little support for the claim that conduct rules will 'increase prices for customers'.²² We have also assessed the compliance costs of the NDOs, as well as other costs and benefits in detail in the Regulatory Statement.
- 5.55 We disagree that the NDOs would impact on incentives to invest in generation. The arguments raised were either premised on the now removed 'uncommitted capacity' element or based on mechanisms that were not articulated.²³
- 5.56 Regarding submitters' comments related to the Frontier Report, we note that Frontier was critiquing options outlined in the February 2025 LPF Options paper, whereas our proposals in the October consultation paper were rather different.²⁴ In response to the February 2025 options paper, Frontier recommended a different approach to improve third party access to firming²⁵ than our proposed non-discrimination approach. This recommendation was rejected by the Government. The Government's view on the NDOs was that "the non-discrimination measures complement [other] actions to improve security of supply".²⁶ We also note that the NDOs are not targeted at addressing the underlying problem of investment in firming generation. The focus of the NDOs is providing non-discriminatory access to hedge contracts, including those backed by firming generation.
- 5.57 We do not support the calls for more prescription of the NDOs in the Code. The NDOs respond to longstanding concerns about the functioning of New Zealand's wholesale and retail electricity markets. Given these concerns, the Authority considers it appropriate to bring the regime in promptly to improve transparency and strengthen participants' confidence in electricity markets.
- 5.58 The NDOs are also appropriate given the potential for implementation complexity. They allow gentailers to interpret and implement as appropriate for their businesses but require directors to certify compliance with the obligations and provide verification through the various reporting requirements.

²² Bushnell, J, Daglish, T et [Review of the NZ Electricity Market Performance Peer Review Evaluation](#) 8 June 2025

²³ BEC, Meridian and Pulse's submissions referred to the previous proposed wording of 1(2) and associated Code guidance, that the Supplementary paper in February 2026 superseded.

²⁴ The RPCA suffers fewer of the disadvantages that they describe for the ITP regime, such as the criticism referred to by BEC and MEUG that if gentailers increased the price of the hedges 'bought' by their retail arm, they could bypass scrutiny.

²⁵ Government involvement in securing and supplying thermal generation through a NewCo

²⁶ The Government agreed with Frontier that "the non-discrimination measures will not address the underlying problem of a lack of new firm capacity in the market". The LPF proposals were not targeted at this issue specifically.

- 5.59 In addition, the Authority will be drawing on new and existing monitoring to assess compliance on an ongoing basis. As further information becomes available, the Authority will be able to make Code or guidance amendments, alongside any enforcement actions, to improve the operation of the regime (including through more prescription).
- 5.60 Concerns were raised about the ambiguity of the NDOs when internal hedging is bespoke and when competitive market processes produce outcomes that are not exactly the same as a perfectly competitive price. The Authority has been conscious of these issues throughout the policy development process. The shift away from the internal hedge portfolio to the RPCA is a direct response to the first issue. We have also further considered and strengthened the guidance on the status of prices set through competitive processes in the discussion of Obligation 1(1).
- 5.61 In response to submissions about the legal effect of the guidelines, we agree that they are not mandatory. However, the guidelines reflect the Authority's current interpretation of the NDO Code at the time of publication and are intended to assist participants to comply with the Code. Although the guidelines are not mandatory, they may be drawn upon as an interpretative source in assessing a breach allegation.
- 5.62 We do not support a publicly visible list of products, prices and volumes as this may facilitate tacit collusion. Providing information regarding present or future price intentions would increase transparency,²⁷ but with repeated interactions and only a handful of suppliers, it may make anti-competitive coordination of hedge prices more likely.
- 5.63 We agree with 2degree's point on the use of the terminology "obligations" and "principles". We have changed all references in the Code and guidance to "obligations" instead of principles. This paper still uses the term "principles" to avoid confusion when referring to old drafting or submitters' views that use that term".

Purpose statement

Decision

- 5.64 The Authority will enact the purpose clause without any amendments from our October proposal. The purpose statement provides that the purpose of the NDOs is to promote competition in, and the efficient operation of, the electricity industry for the long-term benefit of consumers by requiring gentailers to supply risk management contracts to buyers on a non-discriminatory basis to—
- (a) ensure even-handed supply of risk management contracts;
 - (b) support the liquidity and competitive pricing of risk management contracts; and
 - (c) facilitate investment in the electricity industry.

Submitters' views on the purpose statement

- 5.65 Genesis has submitted that the purpose of "facilitate investment in the electricity industry" should be removed, because it is more appropriately addressed through the Security Standards review, and separate workstreams focused on capacity and flexibility. They also suggested that "ensure" be replaced with "provide assurance" to better reflect the confidence-building objective with regard to even-handed supply.

²⁷ For the avoidance of doubt, the Authority will apply its usual process to disclosures of NDO compliance data, including RPCA results, and have regard to the risks of coordination when assessing the level of aggregation of data.

Non-discrimination obligations – Code amendment

Authority's response to submitters' views on the purpose statement

- 5.66 The NDOs are intended to provide confidence in the even-handedness of the market. This improved confidence should promote investment in different elements of the electricity system, such as retail services and generation. For this reason, the investment limb will remain.
- 5.67 Improved confidence is not, however, the only objective of the NDOs. As outlined in the problem definition, the Authority has identified that there are credible concerns that gentailers have the ability and incentive to influence the price or supply of hedge contracts and could do so in a manner that has competition implications. The objective is to ensure that this does not happen, rather than merely providing assurance that this is not occurring. Accordingly, we disagree with Genesis' drafting suggestion on even-handed supply.

Definition: products

Decision

- 5.68 The Authority will amend the Code to apply NDOs to all risk management contracts offered by gentailers as defined in the Code.

The Authority's original proposal

- 5.69 Our proposal was to apply NDOs to the broad range of risk management contracts offered by gentailers.

Submitters' views on the definition of 'products'

- 5.70 MEUG, NZ Steel, Octopus Energy and Mercuria supported the NDOs applying to all risk management contracts, as we proposed. Genesis said that it does not oppose NDOs applying to all risk management contracts in principle, provided the RPCA and uncommitted capacity elements are excluded and the NDOs are modified as requested.
- 5.71 Mercury submitted that the regulatory focus should be just on super-peak hedges, as the Authority has identified that the supply of other contracts is likely to be competitive. A broader application may adversely affect market performance. ERGANZ also preferred the regime to focus on super-peak, to reduce compliance costs and the risk of capturing bespoke arrangements.

Authority's response to submitters' views on the definition of 'products'

- 5.72 Our view is that it remains appropriate that the NDOs apply to all risk management contracts (as defined in the Code). As the October consultation paper said: "A narrow non-discrimination regime, focused on one category of hedge contracts, could leave opportunities for discriminatory behaviour for the remaining hedge products. For example, if NDOs were applied to super-peak hedge contracts only, gentailers would retain the ability — and perhaps have greater incentives — to discriminate when providing baseload and peak hedge contracts in future".²⁸
- 5.73 Even though the data reveals issues around super-peak hedges, limiting the application of NDOs would mean that more customised OTC contracts that were similar to super-peak hedges would be excluded. Applying the obligations narrowly to only selected products would risk distortions through the creation of undesirable incentives and ultimately undermine the integrity of the non-discrimination regime.

²⁸ While baseload hedge contracts are subject to market-making obligations via the ASX, a number of baseload contracts are still traded OTC, so the existence of ASX market-making obligations is not a complete answer to this concern.
Non-discrimination obligations – Code amendment

- 5.74 We consider that the Code definition of risk management contract is broad enough to capture all relevant contracts at this point in time. However, as risk management options evolve over time, the Authority has the ability to either amend this definition or prescribe additional contracts as 'risk management contracts' where necessary. As set out in the next section, we have excluded materially large contracts (MLCs) from the definition of 'risk management contract' for the purpose of the NDOs.

Definition: buyer

Decision

- 5.75 The definition of "buyer" in the Code will include anyone who seeks a risk management contract from a gentailer. However, MLCs will be excluded from the NDO requirements.

The Authority's original proposal

- 5.76 We proposed a broad definition of "buyer" that includes financial intermediaries. Our proposal is to use the existing definition of "buyer" in the Code, but amend this to clarify that for the purposes of the NDOs a buyer:
- (a) includes a person that has indicated to a gentailer a desire to obtain risk management contracts from a gentailer
 - (b) does not include a gentailer's own internal business units.
- 5.77 Large commercial and industrial (C&I) users are also captured within the definition of 'buyer'. However, we proposed excluding MLCs from the NDO requirements.

Submitters' views on the definition of 'buyer'

- 5.78 Mercuria, MEUG and Pulse supported financial intermediaries being included in the definition of a buyer. There were no views expressed to the contrary. MEUG said that the Authority should monitor the inclusion of financial intermediaries to identify any harmful speculation that could undermine market competition.
- 5.79 MEUG questioned whether the inclusion of large C&I consumers is still appropriate, given the changes to the proposal. NZ Steel was unsure how the NDOs would apply to their operation as the load profile and load management for their sites is tailored to their 24-hour operations and references to mass-market load profiles and average \$/MWh are not appropriate for them. Genesis and ERGANZ supported the inclusion of large C&I consumers. Contact were opposed to including large C&I users as their contracts are very different to the financial contracts offered to other market participants. They also noted that large C&I customers often have countervailing buyer power as they are able to trade-off other major generators, and have alternative energy sources such as gas or coal.
- 5.80 Contact, Genesis, and Meridian submitted that MLCs should be excluded from the NDOs to avoid duplication of regulatory requirements. Octopus said that there should be no carve-out for contracts with MLCs. They considered that if contracts are large enough to move the market, it is more critical that they are included to avoid market distortions.
- 5.81 2degrees suggested that the definition of buyer should include gentailers' internal business units. Octopus suggested that all supply and risk management arrangements are subject to NDOs.

Authority's response to submitters' views on the definition of 'buyer'

- 5.82 We remain of the view that financial intermediaries should be included in the definition of a buyer: nobody submitted to the contrary.

- 5.83 We also propose retaining large C&I consumers within the definition of buyers as they may obtain some benefit from the NDOs even if the proposals have shifted somewhat from the LPF Options paper. We disagree with Contact’s assertion that large C&I customers often have sufficient countervailing buyer power just because multiple generators may compete for their business.
- 5.84 We remain of the view that the NDOs are unlikely to have any useful impact in relation to a contract that is also caught by the MLC provisions of the Code. This is because MLCs have their own regulatory regime, are very small in number,²⁹ and are generally negotiated between parties that have material resources and bargaining power. The October consultation paper proposed excluding MLCs from the NDO obligations. We have decided to exclude MLCs from the NDOs and have now drafted Code amendments to give effect to this decision.
- 5.85 We do not agree with Octopus’ suggestion that the NDOs should be extended to all supply arrangements. This could have unintended consequences for retail supply agreements and the spot market. We also disagree with 2degree’s suggestion that the definition of buyer should include gentailers’ internal business units. This would only be appropriate if the regulatory intervention mandated trading of contracts between gentailers’ wholesale and retail units.
- 5.86 The Authority has amended the definition of “buyer” from the October Code drafting to exclude MLCs.

New generation carve-out

Decision

- 5.87 There are no exclusions from the NDOs for new generation or investments in flexibility.

The Authority’s original proposal

- 5.88 The Authority did not propose carving out new generation/flexibility investments from the NDOs. However, we did ask about this proposal, given the previously expressed concerns about investment incentives. We said:

“Under the proposed NDOs gentailers should continue to receive market rates for hedges they supply to buyers or internal customers unless they are engaging in a retail margin squeeze. It is therefore not clear to us how this could have any material chilling effect on investment. If gentailers disagree with this logic, we would expect them to provide us with worked examples of plausible investments in their submissions setting out exactly how this chilling effect would occur.”

Submitters’ views on a new generation carve-out

- 5.89 Octopus Energy submitted that there should be no carve out for new generation as it would create a two-tier market and opportunities for gaming.
- 5.90 No submitter provided any examples of specific investments that would be deterred by the NDOs. Submitters largely focussed instead on how new generation would interface with the uncommitted capacity concept. Contact and Meridian both suggested that new investment coupled with a supply contract should be excluded from uncommitted capacity to avoid adversely impacting incentives to invest in generation. Meridian went further in arguing that gentailers should not have to test market interest in new generation capacity as this could

²⁹ Currently only one buyer has an MLC with two gentailers.
Non-discrimination obligations – Code amendment

limit the way that they could choose to finance new generation and increase revenue certainty in respect of new generation projects.

- 5.91 ERGANZ argued that the guidance should state that support for efficient new investment may justify differences in allocation or terms. EEA stated that the NDOs and RPCA should explicitly avoid disadvantaging emerging resources, eg: utility-scale storage, commercial/industrial demand response, aggregated CER flexibility, and community and distribution-level batteries. A supportive market environment will accelerate their deployment and reduce long-term reliance on scarce flexible generation.

Authority's response to submitters' views on a new generation carve out

- 5.92 We remain of the view that there is no argument for excluding new investments from the scope of the NDOs. If a gentailer considers that a different price or terms should relate to a risk management contract backing new investment than those of other such contracts, it should be able to explain and evidence the differences in advancing 'objectively justified reason' for any discriminatory treatment.
- 5.93 The issues with uncommitted capacity are discussed further in that section.

Obligation 1: Non-discriminatory supply

Decision

- 5.94 The Authority has decided:
- (a) to define discrimination, with flow on consequences for the drafting of Obligation 1
 - (b) to add further examples of potential objectively justifiable reasons to the Code guidance.

The Authority's original proposal

- 5.95 Draft Obligation 1: Non-discriminatory supply was the core of the proposed NDOs and set out the following requirements:³⁰

- (1) A gentailer must not discriminate between buyers for the supply of risk management contracts without an objectively justifiable reason.
- (2) A gentailer must not discriminate against buyers in favour of its own internal business units for the supply of uncommitted capacity without an objectively justifiable reason.
- (3) A gentailer must not discriminate against buyers in favour of its own internal business units when pricing risk management contracts without an objectively justifiable reason.
- (4) For the avoidance of doubt, subclause (3) requires pricing of risk management contracts in such a way as to ensure that any buyer that supplies electricity to end users at retail, that is as efficient with regard to operating costs as the gentailer's own retail internal business unit, and adopts a reasonable risk management approach, is not prevented from operating profitably.

- 5.96 The key common elements of 1(1)-1(3) are:
- (a) a prohibition on gentailers discriminating in the supply of risk management contracts unless
 - (b) objectively justifiable reasons exist.

³⁰ The revised proposed wording from the Supplementary paper.
Non-discrimination obligations – Code amendment

- 5.97 We had not included a definition of discrimination/non-discrimination or a 'no harm to competition' qualifier as used in other regimes (such as the Telecommunications Act).
- 5.98 Obligation 1(4) was intended to further explain how Obligation 1(3) is to apply.
- 5.99 The draft Code guidance on non-discriminatory supply (Obligation 1) stated as follows:

B.2. A gentailer should deal or offer to deal with buyers on substantially the same price and non-price terms and conditions (including quality, reliability and timeliness of service) as those made available (either expressly or implicitly) to other buyers.

B.3. When applying paragraph 1, a gentailer may consider differences in circumstances of trade including (without limitation) load factors, conditions of interruptibility, plant commitments, prudential requirements, time of contracting, scale efficiencies and duration of the relevant agreement.

B.4. To the extent any circumstances of trade referred to in paragraph B.3 above are reflected in commercial terms agreed with a buyer that are different to those agreed with another buyer, those different commercial terms should be based on objectively justifiable reasons.

B.5. For the purposes of the non-discrimination obligations, "objectively justifiable" is intended to require gentailers to apply an evidence-based approach that is reasonable, consistent and transparent. For the avoidance of doubt, when assessing whether a gentailer's reasons are objectively justifiable, the Authority may consider whether the gentailer has acted consistently with how a market participant without market power is likely to have acted in the circumstances.

Submitters' views on obligation 1 (non-discrimination)

Defining "discriminate"

- 5.100 Genesis was concerned that there is no definition of "discriminate". They argue that this creates uncertainty about the scope of the obligations and the standard against which compliance will be assessed. They proposed that the Code include a definition of "discriminate" aligned with telecommunications precedent. This would mean that objective justification is a threshold test: if differences in treatment are objectively justified, there is no discrimination at all. They argue that the current drafting reverses this logic and any difference in treatment appears to be presumptively discriminatory, with the gentailer bearing the burden of demonstrating objective justification.
- 5.101 Entrust and ERGANZ also suggested that "discrimination" should be defined to only capture unjustified differential treatment in a similar way to the Telecommunications Act 2001.
- 5.102 Mercury was concerned that the guidance refers to "non-discrimination" in different ways by saying:
- (a) a gentailer should deal with buyers "on substantially the same price and non-price terms"
 - (b) a gentailer should "not prioritise" themselves over others, and
 - (c) if a gentailer is not discriminating they will be able to show "an economically justifiable link between the expected cost of electricity supply and its retail prices."
- 5.103 They submitted that this creates some confusion, and clear and consistent guidance is needed.

Objectively justifiable

- 5.104 Mercury was of the view that “objectively justifiable” has been broadly defined and a shared understanding of the concept will be important to avoid uncertainty. Meridian was comfortable with this broad definition and noted that it would ultimately be up to the Rulings Panel to determine whether any different commercial terms are objectively justifiable.
- 5.105 MEUG and ERGANZ recommended that the Authority provide more clarification around the term “objectively justifiable”. While the draft guidance discusses “load factors”, they consider that the Authority should be more specific and include details such as “recognition of seasonal demand”.
- 5.106 Genesis suggested that the Authority should provide worked examples and clear safe harbours for what constitutes “objectively justifiable” reasons. This would reduce compliance uncertainty and avoid chilling legitimate commercial decisions. Examples of objectively justifiable reasons should include: creditworthiness differences, volume differences, contract duration, timing of request, risk profile differences, and prices determined by competitive processes (including open tenders). In contrast, Octopus suggested that clause B.3 be redrafted to remove the reference to scale efficiencies as it could become a loophole for discrimination. If it is to be retained, then any scale efficiencies need to be justified on the basis of cost that is realised by the generation business unit.
- 5.107 Contact pointed out that competitive markets and price discovery can create different pricing outcomes that are not objectively justifiable, eg buyers bidding different prices on a tender. Genesis was of the view that risk premia are better monitored through market transactions than “objective discrimination”. Mercuria suggested a rule that premiums and discounts need to be applied consistently to all buyers.
- 5.108 Contact argued that para B5 of the draft Code guidance is effectively unenforceable as Contact does not have market power.
- 5.109 Toast Electric raised the issues that they, and other social purpose retailers, purchase discounted hedges for the purposes of serving vulnerable consumers. They are concerned that if social purpose is not considered an objectively justifiable reason for differential pricing, then this could have the unintended consequence of limiting or eliminating social purpose retailing that addresses energy hardship. They have proposed an exemption for hedges that meet defined social benefit criteria eg not for profit retailers.
- 5.110 ERGANZ submitted underwriting long-lived, capital-intensive flexible assets will require a degree of certainty over future offtake, including from a gentailer’s own retail book, and that this should be recognised as a legitimate, objectively justifiable rationale for some differentiated treatment.

‘No harm to competition’

- 5.111 IER, IEGA, Entrust, Electric Kiwi, Octopus, and Pulse Energy recommended adding a competition test to the objectively justifiable reason. In their view, an “objectively justifiable reason” could be too broad and could be a major loophole for enabling anti-competitive behaviour. They suggested wording along the lines of the Telecommunications Act 2001, and section 88 of the Grocery Industry Competition Act 2023. This would limit the scope of ‘objectively justifiable reasons’ to differences of treatment that did not lead to competition concerns.
- 5.112 For example, section 69XA of the Telecommunications Act 2001 defines non-discrimination as follows:

"non-discrimination, in relation to the supply of a relevant service, means that Chorus must not treat access seekers or itself differently, except to the extent that a particular difference in treatment is objectively justifiable and does not harm, and is unlikely to harm, competition in any telecommunications market."

Authority response to submitter's view on Obligation 1 (non-discrimination)

Defining "discriminate"

5.113 We agree that certainty and enforceability are enhanced by the inclusion of a definition of "discriminate". We have added the following definition to the Code:

In this subpart, discrimination means engagement in differential treatment except to the extent a particular difference in treatment is objectively justifiable; and discriminate and discriminatory has a corresponding meaning.

5.114 Consistent with the approach to non-discrimination in telecommunications and groceries, the concept of objective justification is now included in the definition of discrimination. As a consequence, this wording has now been removed from Obligations 1(1),1(2) and 1(3). This does not change the application of the obligations. It still requires that if there is a difference of treatment this must be objectively justifiable in order to be compliant with the obligations.

5.115 While we agree that these changes align more closely to the approach taken in the Telecommunications Act 2001, we do not agree with Genesis' assertion that this removes the burden of demonstrating that a difference in treatment is objectively justifiable. Any difference of treatment must be objectively justifiable to avoid being discriminatory in accordance with the requirements set out below.

Objectively justifiable

5.116 The concept of objective justification plays an important role in the operation of the NDOs. We have made amendments to the Code to require that a gentailers set out in its non-discrimination policies criteria for determining whether an objectively justifiable reason may exist for difference in treatment.³¹ This creates transparency for the Authority on the approach gentailers intend to take to ensure that any differences in treatment are objectively justifiable.

5.117 We have also added some further examples to the list of examples objectively justifiable reasons in the NDO guidance (available on the Authority's website).

5.118 The list of reasons is not intended to be exhaustive, as attempting to foresee every possible objective justification would be futile. Additionally, discrimination that is objectively justifiable will often be specific to the particular circumstances, so the Authority does not consider it appropriate to designate "safe harbours" as proposed by Genesis.

5.119 For a gentailer to rely on an objective justification, we expect the justification to be evidenced, and consistently and transparently applied, in accordance with their non-discrimination policies.

5.120 We have amended the guidance to provide that:

For the purposes of the non-discrimination obligations, "objectively justifiable" is intended to require gentailers to apply an evidence-based approach that is reasonable, consistent and transparent. For the avoidance of doubt, when assessing whether a gentailer's reasons for

³¹ See the section below on Internal non-discrimination policies and auditing
Non-discrimination obligations – Code amendment

the difference in treatment are objectively justifiable, the Authority will consider whether the gentailer has acted in a way which is consistent with the purpose of the NDO Code.

- 5.121 This reflects our expectation that gentailers will be considering the purpose of the NDOs as decisions are made in relation to the design and application of their non-discrimination policies.
- 5.122 Our response to submitters' suggestions to clarify (or remove) the intolerable risk position is covered below, in our discussion of Obligation 1(2).
- 5.123 We have added some further examples to the list of objectively justifiable reasons in the Code guidance, in response to submitter feedback:
- (a) the timing, shape, location and duration of the contract
 - (b) load factors (including seasonal demand), conditions of interruptibility, plant commitments, prudential requirements, and scale efficiencies
 - (c) if market conditions have changed / timing of request
 - (d) if prices are set by inclusive competitive processes such as open tenders or auctions,
 - (e) discounting for social purposes such as serving vulnerable customers. However, the level of the discount should be reported to the Authority so that the data on hedge transactions remains reasonably comparable.
- 5.124 We have retained scale efficiencies as a potential objectively justifiable reason, but we agree with Octopus Energy's point that to be relied upon it should be backed up by evidence. As noted in the October consultation paper, the Authority expects the magnitude of scale efficiencies to be small given NDOs apply to the trading of financial contracts rather than a physical product.

'No harm to competition'

- 5.125 We disagree with the suggestion from submitters that we add a 'no harm to competition' qualifier to the NDOs. In contrast to other regimes, the potential exercise of market power in this context is both dynamic and contested. In considering and defining harm to competition there is the potential for a significant divergence of views and therefore debate on how this test would be applied by gentailers. Adding a 'no harm to competition' qualifier risks significantly increasing the complexity of the NDOs in a way that we are not currently satisfied is justified. In our view, competition will be substantially promoted through the operation of the NDOs as currently drafted. However, if the Authority's monitoring uncovered issues, these could be addressed by further Code changes or additional guidance.
- 5.126 We understand that a key concern of some submitters is that certain price or non-price terms could be considered objectively justifiable, but still harm competition.
- 5.127 The Authority's view is that these circumstances are addressed by the NDOs without the need for inclusion of the "no harm to competition" qualifier. In particular:
- Any difference in price and non-price terms between buyers would need to be consistent with the detailed methodologies set out in the gentailer's non-discrimination policy. These policies and methodologies need to be able to demonstrate compliance with the NDOs and be consistent with the purpose of subpart 5 of the Code.
 - Obligation 1(2) requires gentailers to price RFPs unless doing so would place them in an intolerable risk position

- Gentailers must keep records of bids, offers and trades, and the reasons for them. This will facilitate audit, and if investigated by the Authority, enable us to consider those reasons.
- Discrepancies between the price terms agreed for hedges and gentailers' implied cost of energy in the RPCA process would raise concerns about the gentailers' compliance with Obligation 1(3).
- Revised guidance provides that when assessing whether a gentailer's reasons for the difference in treatment are objectively justifiable, the Authority will consider whether the gentailer has acted in a way which is consistent with the purpose of the NDO Code.

Obligation 1(1): gentailer must not discriminate between buyers

Decision

5.128 The Authority has decided to adopt Obligation 1(1) into Code.

Submitters' views on Obligation 1(1)

- 5.129 We received very little feedback about Obligation 1(1) specifically: comments focussed either generally on the NDOs or narrowly on Obligation 1(2) or 1(3).
- 5.130 However, shortly after releasing our October consultation paper, we received questions about our proposals, including the following from Contact:

Risk management contract prices are the result of competition between sellers and between buyers. The obligation to demonstrate that different commercial terms are based on objectively justified reasons only considers the supply side of that picture. How should major generators treat differences in terms due to competition between buyers? As an example, if a major generator ran a tender for some capacity, would this regime prevent it from picking the highest bidder if that price could not be explained by objectively justified reasons?

The Authority's response to views on Obligation 1(1)

- 5.131 In response to Contact's question, we published an answer as part of a short document,³² clarifying that prices set by market forces can be objectively justified for the purpose of comparing prices between buyers under Obligation 1(1):

"As the Authority is focused on competition and price discovery, it expects that prices for available capacity will be determined by market forces, including processes such as open tenders. Accordingly, the proposals are not intended to require gentailers to accept a price lower than the highest bid in an open tender."

- 5.132 The Authority expects that prices for available capacity will be determined by competition and market forces, including through inclusive processes such as open tenders. We do not intend to require gentailers to accept a price lower than the highest bid in an open tender. The guidance has been amended accordingly.

³² See [2510 Stakeholder QA LPF EA responses to written questions.pdf](#)
Non-discrimination obligations – Code amendment

Obligation 1(2): a gentailer must not discriminate against buyers in favour of its own internal business units

Decision

- 5.133 We have decided to implement Option 2 from our Supplementary paper, to require that a gentailer must not discriminate against buyers in favour of its own internal business units for the supply of risk management contracts without an objectively justifiable reason.
- 5.134 In Code guidance, we further specify that an objectively justifiable reason is likely to exist for a gentailer where providing a buyer with a risk management contract would result in an “intolerable risk” position, in respect of the gentailer’s existing commitments.
- 5.135 We have expanded the Code guidance to specify:
- (a) With regard to the intolerable risk position, that a gentailer may also have regard to the amount of generation that it reasonably expects to need to supply risk management contracts to prospective buyers, with whom the gentailer is already engaged in final, exclusive negotiations, prior to contract execution, and which are expected, on reasonable commercial grounds, to conclude imminently.
 - (b) For the period or circumstance for which a gentailer has indicated that the supply of a risk management contract to a buyer would result in an “intolerable risk position,” the gentailer should not supply new actual or implied risk management contracts of comparable duration, volume and shape, backed by its own generation, to its internal business units, except where those contracts are for the purposes of meeting the existing commitments described above. Should it do so, this could be an indicator of discrimination, prompting assessment of a potential breach of the NDOs.

The Authority’s original proposals

The October 2025 consultation paper – ‘uncommitted capacity’

- 5.136 In the October 2025 consultation paper, we proposed that gentailers be required to offer *uncommitted capacity* in a non-discriminatory manner. Uncommitted capacity was defined as a gentailer’s reasonable expectation of its ability to offer risk management contracts in future periods. It was to be calculated as a gentailer’s expected gross forecast ability to offer risk management contracts, less:
- (a) the amount of generation, that could otherwise be used to back risk management contracts, the gentailer reasonably expects to use to supply electricity to its end customers; and
 - (b) a gentailer’s wholesale commitments, comprised of gentailer market-making commitments (regulated or voluntary) and existing risk management contracts entered into with buyers.
- 5.137 The intent of the proposed approach was to provide increased assurance of even-handed access to hedges through greater transparency around the gentailers’ ability to provide those hedges.

The Supplementary paper – ‘intolerable risk’

- 5.138 In response to the feedback we received on the October 2025 proposals, we developed two alternatives to the original uncommitted capacity proposal. We consulted on these in our Supplementary paper.

Option 1 – gentailer must not discriminate in the supply of uncommitted capacity (modified version of the October proposal)

5.139 This option retained the concept of uncommitted capacity and refined the drafting to:

- tighten existing Code drafting and guidance on how gentailers assess the electricity requirements of their own business units
- clarify that uncommitted capacity is a reasonable expectation formed at the time of the relevant assessment and more clearly reference the relationship between uncommitted capacity and a gentailer’s generation capacity
- acknowledge that gentailers will have operational or risk management considerations, and that those should be documented in a gentailer’s non-discrimination policy.

Option 2 – gentailer must not discriminate in the supply of ‘risk management contracts’

5.140 This option removed the concept of uncommitted capacity and amended non-discrimination Obligation 1(2) to require non-discriminatory access to “risk management contracts”. The proposed guidance under Option 2:

- started from the premise that gentailers will offer hedge contracts in response to all reasonable requests from third parties
- provided that an objectively justifiable reason for discrimination in the supply of hedges (ie, not offering a hedge contract in response to a third-party request) is that doing so would result in an *intolerable risk position* for the gentailer.

5.141 The proposed drafting outlines the factors a gentailer must have regard to when assessing whether providing risk management contracts would place it in an intolerable risk position. Amongst other things, the guidance outlines an expectation that, if a gentailer cannot offer hedges to a third party due to an intolerable risk position, it should not provide its own retail business units with new implied or actual hedges of comparable duration, volume and shape. In some cases, this could require gentailers’ retail business units to adjust their commercial strategies accordingly. It does not limit a gentailer’s ability to obtain hedges from third parties.

Submitters’ views on Obligation 1(2) options

The October 2025 consultation paper

5.142 Submitters raised concerns with the original ‘uncommitted capacity’ proposal. In particular:

- (a) Independent retailers and independent generators argued that the proposal would not properly implement non-discrimination as it could allow gentailers to prioritise a significant proportion of available generation capacity for their retail business units.
- (b) Gentailers generally (Contact, Genesis, Meridian) considered that the proposal did not align with their dynamic risk management approaches and did not adequately recognise the linkages between uncommitted capacity and the ability of gentailers to back hedges with generation.

5.143 Given the feedback received, the Authority also included it as a topic for discussion at the RPCA workshop held on 9 December 2025. This provided workshop participants with an opportunity to further elaborate on their points raised in submissions to support the Authority’s understanding.

The Supplementary paper

- 5.144 Many submitters (including gentailers, industry bodies, advocacy groups, large electricity users, corporates, individual advisors and consultants) favoured Option 2 that gentailers must not discriminate in the supply of risk management contracts.
- 5.145 Contact expressed that Option 2, by shifting focus away from uncommitted generating capacity, 'better reflects the way we operate our business.' Several submitters also saw Option 2 as less prescriptive and complex. For instance, Genesis and ERGANZ welcomed the move away from 'a formulaic capacity calculation' and towards 'documented risk management processes, and engagement with buyers.'
- 5.146 While independent generators and retailers saw Option 2 as preferable to Option 1, they rejected both options overall. In their view, structural separation was "the most appropriate regulatory intervention to ensure a true levelling of the playing field is achieved" (IEGA and IER submission).
- 5.147 While feedback on Option 2 was generally favourable, many submitters expressed conditional support, suggesting several changes to the draft Code amendment, and guidance. Concerns with Option 2 expressed by submitters fell into three general categories.

Risks of distorting market incentives

- 5.148 Gentailers expressed concern that they would be unable to expand their retail positions, if they invoked an 'intolerable risk position' under Option 2. In our Supplementary paper, we stated that a gentailer seeking to assess its risk position could have regard to:

- (a) the amount of generation that the gentailer reasonably expects to need to supply electricity to its existing end customers, and
- (b) the gentailer's wholesale commitments, comprised of gentailer market-making commitments (regulated or voluntary) and existing risk management contracts entered into with buyers.

- 5.149 Draft guidance for Option 2 also stated that this existing commitments carve-out '[would] not include supply for anticipated new customers.'
- 5.150 Genesis stated that Option 2 'effectively forces [a gentailer] to choose between pursuing retail growth (accepting it cannot invoke intolerable risk for capacity earmarked for that growth) and limiting retail ambitions (to preserve its ability to invoke intolerable risk for third-party requests).' Some gentailers called on the Authority to expand the existing commitments carve out, to cease the obligation to offer hedges in cases where doing so would frustrate a gentailer's ability to finalise negotiations with prospective, new customers, with whom "active discussions" were underway.
- 5.151 Meridian also stated that the proposal could require gentailers to 'on-sell' extra capacity granted by efficiency gains, and thus discourage them from pursuing retail market innovations (such as time-of-use pricing, or load control).
- 5.152 Some submitters (Meridian, Contact and ERA) asserted that a 'generation-only' view of capacity was problematic, since it ignores a gentailer's ability to back the sale of risk management contracts with its own risk management contracts (i.e., on-selling).

Calls to strengthen the obligation

- 5.153 IEGA and IER called for Obligation 1(2) to be strengthened. For instance, some of these submitters suggested that allowing gentailers to invoke an intolerable risk position could create a subjective loophole for withholding capacity from independent players, or

perversely incentivise constructive refusal to supply (i.e., implicit refusal through prohibitive contract terms).

- 5.154 IEGA and IER also suggested that a gentailer’s decision to invoke an intolerable risk position (and refuse to offer risk management contracts) should confer a strict obligation upon that gentailer to withhold ‘new implied or actual hedges of comparable duration, volume and shape’ from its own retail units.³³ They also suggested that the Authority apply the same test for constructive refusal to supply used by the Commerce Commission under section 36 of the Commerce Act, namely whether the conduct has the purpose, effect or likely effect of substantially lessening competition.

Calls to clarify (or remove) ‘intolerable risk’

- 5.155 Some gentailers called on the Authority to clarify the concept of intolerable risk. For instance, while Genesis supported Option 2, they requested that the guidance should ‘specify the factors the Authority will consider when evaluating whether a gentailer’s invocation of intolerable risk was reasonable.’
- 5.156 IEGA and IER called for the concept of intolerable risk to be abandoned altogether, and the concept of objectively justifiable reason to be narrowed and clarified in its place. For instance, they asserted that ‘the objections already raised about “uncommitted capacity” apply to “intolerable risk”.’ They echoed a previous comment from Electric Kiwi on the October consultation paper, which argued that ‘the regime’s effectiveness requires that the definition and calculation of uncommitted capacity be prescriptive, transparent, and uniform across all gentailers, not left to bespoke, internal, or subjective approaches.’

Authority’s response to submitters’ views on Obligation 1(2) options

- 5.157 Given feedback that the proposed Option 2 is more workable we have amended Obligation 1(2) to require that a gentailer must not discriminate against buyers in favour of its own internal business units for the supply of risk management contracts without an objectively justifiable reason.
- 5.158 We have also amended the Code guidance in response to feedback as described below.

Risks of distorting market incentives

- 5.159 The Authority acknowledges the suggestion from gentailers that the existing commitments carve-out ought to be expanded. We agree that gentailers should not be expected to offer a risk management contract if that would jeopardise a contract with another interested buyer that will conclude imminently (ie the gentailer would be placed in an intolerable risk position with respect to other contracts, if the ‘imminent’ agreement were made final).
- 5.160 As such, we have updated the Code guidance to specify that an intolerable risk position may arise where a gentailer’s reasonable forecast ability to back a requested risk management contract with generation is insufficient, having regard to a range of factors, which may include:

the amount of generation that the gentailer reasonably expects to need to supply risk management contracts to prospective buyers, with whom the gentailer is engaged in final, exclusive negotiations, prior to contract execution, and which are expected on reasonable commercial grounds, to conclude imminently.

³³ In our draft Guidance attached to this option (included in the February 2026 consultation paper) we suggested that if a gentailer should invoke an intolerable risk position: “we would expect the gentailer also to refuse to supply actual or implied risk management contracts of comparable duration, volume and shape, backed by its own generation, to its internal business units, except where those contracts are for the purposes of meeting the existing commitments described above.”

- 5.161 In our view, a limited carve-out for prospective customers is justified. Introducing a wider carve out (eg for negotiations in the final stages) could be seen to justify withholding by one or several gentailers at the same time, and for an indefinite period. For instance, if several gentailers were in the early phases of bidding to offer a large contract for several months, and each refused throughout that time to offer risk management contracts to buyers (since generating capacity was needed to support an ensuing deal with the large buyer) this could frustrate the policy intent of the NDOs, and likely reduce overall hedge market liquidity.
- 5.162 An even wider proposal (such as allowing a gentailer to invoke an intolerable risk position to support the acquisition of new customers, generally) would strongly undermine the overall policy intent of the regime. The Authority's decisions are directed at creating a level playing field between gentailers and independent retailers by ensuring equitable access to risk-management products. Permitting gentailers to withhold capacity on the basis of uncertain decisions by potential future customers would likely entrench their structural advantage, create incentives for strategic over-forecasting of retail growth, and weaken the ability of independent retailers to manage their spot price exposure, and compete effectively.
- 5.163 For clarity, the proposal would not prevent a gentailer from acquiring new retail customers. Rather, it would preclude the gentailer from taking anticipated retail expansion into account as part of its risk assessment when deciding whether to offer hedges to independent retailers, or to withhold.
- 5.164 With regard to the criticism by Meridian that Option 2 could discourage retail market innovations, we would expect the opposite to occur in a workably competitive market where participants are offering plans to reduce their costs, and therefore, consumers' costs. It is unclear from the information provided why an expectation to make hedges available (where this is supported by generation capacity saved) would disincentivise gentailers from innovating, in the interests of improving offerings to customers.
- 5.165 With regard to the criticism by some gentailers that the Authority has taken a 'generation-only' view of capacity, the more explicit reference in guidance to generation capacity is intended to reflect the Authority's view that the ownership by the gentailers of ~90% of generation capacity is the key underlying constraint on risk management contract availability, and to clarify that it is not the intent of the NDOs to require gentailers to on-sell any hedge positions agreed with third parties. We note that a critique of the previously proposed approach to "uncommitted capacity" was that it appeared to require gentailers to on-sell the benefit of risk management contracts.³⁴
- 5.166 Some submitters asserted that a 'generation-only' view of capacity would make it possible for a gentailer to invoke an intolerable risk position, even if it has purchased hedges that it later no longer requires to maintain its risk position. In response, we expect gentailers' engagement in the hedge market to be informed by their overall risk position, including any hedges or other agreements they have entered into to manage their overall risk. This obligation does not restrict a gentailer from 'on-selling' risk management contracts or from having regard to their overall risk position when engaging in the hedge market. The guidance on "intolerable risk position" is intended to reflect the underlying constraints a gentailer should have regard to if it chooses not to supply a risk management contract, but this is not required in circumstances where they do choose to make risk management contracts available in compliance with Obligation 1(2). If evidence were to emerge in the future indicating that the application of the Code and guidance requirements are not

³⁴ See page 29 of the submission by Meridian on our October 2025 consultation paper – [Meridian - Level playing field Code amendment submission1.pdf](#)
Non-discrimination obligations – Code amendment

supporting the overall objectives of the NDOs we would consider amending the Code or guidance accordingly.

Calls to strengthen the obligation

- 5.167 The Authority acknowledges the call by IEGA and IER to strengthen Obligation 1(2), and agrees in principle with the suggestion that if a gentailer invokes an intolerable risk position (and refuses to offer risk management contracts), then it should withhold “new implied or actual hedges of comparable duration, volume and shape” from its own internal retail units.
- 5.168 As such, we have updated our Code guidance to specify that, for the period or circumstance for which a gentailer has indicated that the supply of a risk management contract to a buyer would result in an “intolerable risk position,” the gentailer:

...should not supply new actual or implied risk management contracts of comparable duration, volume and shape, backed by its own generation, to its internal business units, except where those contracts are for the purposes of meeting the existing commitments described above. Should it do so, this could be an indicator of discrimination, prompting assessment of a potential breach of the NDOs.

- 5.169 For the Authority’s response to the suggestion by IEGA and IER that a ‘no harm to competition’ qualifier be introduced, see the discussion in the preceding section on Obligation 1.

Calls to clarify (or remove) ‘intolerable risk’

- 5.170 The Authority acknowledges the call by many submitters to make Obligation 1(2) more prescriptive, and clarify the concept of intolerable risk (or remove it, and clarify other concepts such as ‘objectively justifiable reason’ instead). Our intention is for the NDO regime to be principles-based, high-level, and conceptual, rather than prescriptive. This design (and degree of definition) is reinforced by an accompanying obligation on parties to act in good faith, which is intended to shape behaviour at the margins where formal rules may not suffice. Where questions arise as to interpretation, the expectation is that gentailers will err on the side of doing what is fair and reasonable by the counterparty.
- 5.171 The NDOs also require a gentailer in its non-discrimination policy to specify how it will comply with the obligations (and how it will define objectively justifiable reason). That is, we expect a gentailer to articulate in advance how it proposes to assess risk, and the factors it would consider. While we do not expect such policies to be exhaustive, we do expect that a gentailer will list the factors it can reasonably foresee for the vast majority of its transactions.

Obligation 1(3) and 1(4): gentailer must not discriminate against buyers in favour of its own internal business units in the pricing of risk management contracts

- 5.172 In this section, we explain our decision to introduce Obligations 1(3) and 1(4) and an RPCA into the Code, following consideration of submissions on the proposals set out in our October consultation paper.
- 5.173 Later sections outline decisions on how the RPCA will be implemented, addressing submissions on our February 2026 supplementary consultation (which responded to submission on the October consultation paper and input from the 9 December workshop about how to implement the RPCA).

Decision

- 5.174 The Authority has decided to introduce Obligations 1(3) and 1(4) into the Code and require each gentailer to undertake a retail price consistency assessment as at 1 January and 1 July each year for:
- each of its retail brands
 - in relation to offers for new, and prices for existing, mass market customers
 - in each network reporting region.
- 5.175 The Code sets out what each gentailer is required to do and provide in developing RPCAs and requires the Authority to publish guidance to assist gentailers in undertaking RPCAs.

The Authority's proposal

- 5.176 The Authority proposed that a gentailer should:
- not discriminate against buyers in favour of its own internal business units when pricing risk management contracts without an objectively justifiable reason (Obligation 1(3))
 - price its risk management contracts in such a way as to ensure that any buyer that supplies electricity to end users at retail, that is as efficient with regard to operating costs as the gentailer's own retail internal business unit, and adopts a reasonable risk management approach, is not prevented from operating profitably (Obligation 1(4)).
- 5.177 As part of the Supplementary paper, we amended the drafting of Obligation 1(4) from 'prevented from operating profitably' to 'unduly deterred from operating profitably'.
- 5.178 The draft Code Guidance related to these obligations was that gentailers would primarily demonstrate compliance with 1(3) by showing an economically justifiable link between the expected cost of electricity supply and their retail price offers, ie, passing the retail price consistency assessment that each is required to regularly perform.
- 5.179 Following submissions on the October consultation paper and input at the December workshop on the RPCA, as part of developing RPCA guidance we proposed in February a substantially expanded clause 13.236V on the RPCA. Submissions on this clause and the draft guidance are addressed in subsequent sections.

Submitters' views

- 5.180 Contact said that the RPCA is not an improvement on the previous proposal for internal hedge portfolios. Contact also questioned the expected impact of the RPCA as, even if the RPCA detected a margin squeeze, there is nothing Contact could do about it, because it has no market power so could not set either retail prices or the price for risk management contracts.
- 5.181 Genesis expressed significant concerns about the proposed RPCA:
- The RPCA is less problematic than internal hedge portfolios, which were unworkable.
 - However, the RPCA is inappropriate because in a competitive market, prices are determined by supply and demand, not cost-plus methodologies (which Genesis understands is implied by assuming a link between input costs and retail prices).
 - Furthermore, the RPCA may risk unintended consequences, such as constraining product innovation and reducing the availability of long-term price-smoothed options for risk-averse retail customers.
 - If retained, Genesis wanted the RPCA to be used as a diagnostic tool only.

5.182 Meridian considered that the RPCA had low explanatory power. If not clearly specified, it risked unintended consequences, such as increased retail prices. Meridian also raised concerns about overlaps with section 36 of the Commerce Act, particularly given upcoming amendments.

5.183 Several submitters indicated at least some support for the RPCA:

- Electric Kiwi said that they strongly supported the RPCA as the basis for assessing consistency between retail prices and expected supply costs. It is essential the benchmark price and associated calculation rules are fully standardised and governed by the Authority to ensure uniformity, transparency and even handedness.
- 2degrees supported the use of an RPCA but considered that the proposed approach to this test was convoluted.
- BEC said that the RPCA was preferable to the ITP regime as it provides a clearer, less complicated assessment.
- EEA supported the RPCA concept in principle, but only to the extent that it helps improve confidence in the wholesale environment in which investment decisions are made.
- EPOC favoured the RPCA over internal hedge portfolios, as a less onerous option, but wanted a clearer definition of the RPCA, in particular around risk profile.
- Mercuria also favoured the RPCA over the ITP regime.

5.184 Some submitters suggested alternatives to the RPCA.

- Contact suggested that the Authority could carry out margin squeeze tests using the information that it already gathers.
- Meridian suggested that the Authority could rely instead on regular reporting of uncommitted capacity and monitoring of super-peak prices against a competitive benchmark.
- Sapere and ERGANZ both suggested a greater focus on monitoring market outcomes and performance.
- Mercury supported an ‘appropriate RPCA’ but not one that was forward-looking. It suggested updating the RGM reporting regime to align with the NDOs.

5.185 Various views were expressed on the balance between the Code and Guidance.

- Meridian thought the RPCA methodology should be prescribed in the Code. This would ensure all parties perform the RPCA on the same basis, rather than applying their own view of the requirements.
- Contact and ERGANZ both thought that the methodology should be in the guidance.
- Octopus Energy said that more of the RPCA should be set out in the Code.

5.186 In their submission to the Supplementary paper, IER and IEGA submitted that excessive reliance on guidance would lead to regulatory uncertainty. They suggested a ‘comply or explain’ clause be added to the proposed Code to establish an expectation that any gentailer adhere to Authority-issued guidance on the NDO framework, including the RPCA guidance.

5.187 Genesis submitted that the change from “prevented from operating profitably” to “unduly deterred from operating profitably” lowers the discrimination threshold. “Prevented from” requires demonstrable inability, whereas “unduly deterred from” introduces a subjective

assessment. Genesis requested the Authority explain the rationale for this change. If retained, the guidance should clarify what “unduly deterred” means in practice. Other gentailers and ERGANZ made similar submissions.

The Authority’s response

- 5.188 Having considered submissions, the Authority’s view remains that the RPCA is a proportionate approach to monitoring compliance with Obligation 1(3). The RPCA responds to the risk of price discrimination and promotes the objectives of the NDOs, including promoting confidence in a level playing field. The Authority considers that these are valid issues, and worth responding to.
- 5.189 The RPCA provides an appropriate way to monitor whether gentailers are favouring their own internal retail business units over others, in the absence of robust internal transfer prices. No other existing regulatory measure, or measure proposed by submitters, properly answers this question.
- 5.190 The Authority disagrees with Contact that the RPCA would be ineffective (and effectively that any margin squeeze cannot be resolved) because it cannot set retail and hedge prices, as these are determined by the market. Contact’s view is not consistent with what we see in the market. For example, all retailers make decisions on their prices (taking into account a range of factors). Current retail prices in the market show a range of offers, not a single price.³⁵ Retail competition would also not constrain below-cost retail pricing enabled by price discrimination on risk management contracts in favour of a gentailer’s own retail business unit, even when observed market prices for hedges are determined in a workably competitive setting.
- 5.191 The Authority also disagrees with Genesis and Sapere that the RPCA is flawed because it assumes a cost-plus relationship between costs and prices. There is, inevitably and uncontroversially, a link between costs and prices. Generally, businesses will not continue to operate if they cannot achieve prices that cover their costs. The Authority has been very clear in its consultation papers that the RPCA is not based on some instant, static linear relationship between cost and prices. This is evidenced in the exploration of how best to measure the expected cost of supply, account for different risk management and retail strategies, and accommodate price smoothing. It is one reason why the RPCA cannot be a bright-line test.
- 5.192 We also do not agree with concerns that the RPCA may constrain product innovation. The proposed approach to monitoring compliance with the NDOs does not prescribe how a gentailer should engage with its current and prospective retail customers, what products it should offer, how it should manage its spot price risk, or how to set its retail prices. Even if the RPCA did have a negative impact on innovation in the short term, the RPCA is expected to promote competition over the medium-long term which ultimately leads to more innovation.³⁶
- 5.193 Meridian’s concern that the RPCA could cause an increase in retail price contrasts with the submissions by Contact and Genesis that retail prices are set in a competitive market (which suggests a constraint on Meridian’s ability to increase prices). We continue to be sceptical that the RPCA will at any point require a gentailer to increase its retail prices. This risk is overstated given the design of the RPCA (for example, it is not a bright-line test). Without further evidence, we do not accept that an assertion of price risk should stand in the

³⁵ We observe the same – a range of offers, not a single price – for responses to RFPs for OTC hedges.

³⁶ Our survey of innovation in the Risk Management Review confirmed that new entrants contribute disproportionately to innovation.

way of a pro-competitive and proportionate measure to address price discrimination and margin squeeze risk.

- 5.194 For the first RPCA disclosures, we have focussed our assessment approach on learning, and then evolving the framework as needed (see the section below RPCA: assessment and implementation). We expect that this will reduce Meridian's immediate concern. Beyond those first disclosures, we will remain available to talk to any gentailer who is considering increasing their retail prices and believes that the RPCA is a significant factor in that decision, so that we can consider the evidence linking the price rise to the RPCA.
- 5.195 With respect to Meridian's concern of an overlap between the RPCA and section 36 of the Commerce Act 1986, the Authority notes that these serve different purposes. The RPCA is ex ante regulation to help promote competition, that will also facilitate transparency. Section 36 is an ex post tool to take action in respect of misuse of market power, which requires investigation and court proceedings to achieve a remedy. The RPCA is more appropriate to proactively address the competition risks we have identified, as it is a more timely remedy and provides better assurance about the future competitive landscape to all participants.
- 5.196 The Authority also considered the alternatives to the RPCA proposed in submissions:
- **Greater focus on monitoring market outcomes:** Existing data sources for monitoring cannot provide insight into potential price discrimination or margin squeezing. The RPCA, which necessarily involves further monitoring, therefore complements the Authority's existing monitoring of the hedge market (including, as mentioned by several submitters, a comparison of super-peak prices to baseload prices), trading conduct, quarterly market performance, and retail market competition (forthcoming).
 - **The Authority using existing data sources to test for margin squeezing:** The effectiveness of this approach would be limited by information asymmetry. For example, the Authority would need to assume a prudent risk management approach and retail strategy that applied to each gentailer. As it cannot be sure its assumptions are correct, results would likely be highly contested and would not provide the desired level of transparency and confidence.
 - **Updating RGM disclosures to align with NDOs:** The Authority considers the RPCA to be a better way of answering the same underlying question as the RGM disclosures. The forward-looking, expectations-based approach is better calibrated to identifying compliance with the NDOs. The RPCA also addresses some of the RGM's weaknesses (including how to deal with common costs and bundling).
- 5.197 We do not consider these proposals would provide adequate insight into the risk of price discrimination or below cost retail pricing, and so would not, by themselves, achieve the Authority's objectives.
- 5.198 We included more detail in Code amendments on the RPCA in the Supplementary paper to reflect earlier submissions about the appropriate balance between Code and guidance. These matters are addressed in more detail in the following sections that address specific proposals in the February 2026 Supplementary paper, and submissions on them.
- 5.199 We do not think it would be appropriate to adopt the IER and IEGA's suggestion to add a 'comply with guidance or explain' clause to the proposed Code as it risks blurring the role of (and the process of establishing) Code compliance requirements versus guidance (not rules) to help participants comply with the Code. The Code provisions related to the RPCA include a requirement that gentailers must provide information on 'areas in which, and

reasons why, the gentailer has departed from guidance published by the Authority'.³⁷ In our view this requirement strikes the right balance. It will increase transparency and provide us with a better basis upon which to consider how to evolve the regime.

5.200 We considered that the term 'prevented from operating profitably' was too high a bar, and not in keeping with our proposed principles-based regime. We agree that the change lowers the threshold from 'prevented' and that is the intention. We consider that the plain meaning of the words provides sufficient certainty and so do not propose to provide further guidance.³⁸

RPCA: forward-looking approach

Decision

5.201 The RPCA will be based on a forward-looking approach – where the RPCA draws on a gentailer's best view of its expected cost of supply (among other things) and compares that to its existing retail prices and offers.

The Authority's proposal

5.202 The Authority proposed a forward-looking (or an expectations, rather than outturn-based) approach to the RPCA because it would:

- avoid having to make judgements to account for changes in market conditions (after-the-fact) that may obscure price discrimination on risk management contracts or below-cost retail pricing
- provide participants with more timely assurance, compared to having to wait for outturns which will inevitably be more dated when published. The Authority proposed that a forward-looking approach would be more informative than a backward-looking approach and better reflects what gentailers are able to assess or control at a given point in time (making it a more suitable assessment tool).

Submitters' views

5.203 Submitters who commented on this point tended to support a forward-looking approach, as it reflects how decisions are made (EEA, ERGANZ, Genesis, IERs and IEGA, and Link Economics for the IERs and IEGA).

5.204 Link Economics suggested that the Authority should be explicit that it would consider the accuracy of expectations against outcomes, with a string of improbable forecast failures indicating price discrimination.

5.205 Contact submitted it had no strong view one way or the other. However, Contact suggested input costs should be allowed to be fixed at the date of reporting, because in a dynamic market, expected input costs may have changed but decisions on retail price changes may not yet have been made.

5.206 Fonterra submitted it supports the RPCA, but that a backward-looking approach would be better as it reduces reliance on assumptions.

5.207 Mercury did not agree with a forward-looking approach because it would rely heavily on assumptions, whereas a backward-looking assessment can rely on actual reported revenue and costs and so would give a more transparent and unbiased assessment.

³⁷ Clause 13.236W(4)(i)

³⁸ We did not refer to the change in proposed Code wording, as we considered its rationale to be self-evident.
Non-discrimination obligations – Code amendment

The Authority's response

- 5.208 The Authority understands and has previously considered the reasons put forward by Mercury and Fonterra in support of a backward-looking approach. It still considers a forward-looking approach as more suitable as it would be more informative and better reflect what gentailers are able to assess and control at a given point in time.
- 5.209 The Authority has considered Link Economics submission that, if a gentailer provided a string of improbable forecasts or statement of expectations, this would suggest price discrimination, ie a backward-looking assessment should act as a cross-check on the forward-looking assessment. We currently consider the draft guidance [A.12] was clear that, if the Authority had material doubts about the credibility or good faith of recorded expectations, it may investigate whether there is a breach of the NDOs.
- 5.210 The draft RPCA guidance addressed Contact's concern that expectations of costs may have increased materially since they last decided on retail prices, while decisions on retail prices have yet to be made at the RPCA date, reducing RPCA margins [A.61-A.64].³⁹ The Authority acknowledges this is a potential outcome, particularly in respect of a gentailer's existing customers [A.63]. It may explain negative margins and is an example of why the RPCA is not a bright-line test.
- 5.211 There are different ways to deal with this (as the Authority considered with reference to the timing of retail price changes). The appropriate way will depend on the specifics of the situation and should be explained in the gentailer's RPCA disclosures. For example, a gentailer may know at the 1 January RPCA assessment date that network charges will rise from 1 April but have not yet reflected this increase in expected cost in its current retail pricing. It could keep network charges fixed at their current level, as at the assessment date, if the gentailer had plans to update retail prices from eg 1 April. If the gentailer has no plans to update retail prices, then the increased network charges would form part of its estimate of expected costs.
- 5.212 The draft guidance set out that a gentailer should provide explanations of any timing issues regarding updating their retail pricing in their RPCA disclosures [A.64].

RPCA: efficient cost standard

Decision

- 5.213 The Authority has decided that, consistent with Obligation 1(4), the RPCA will use an as efficient competitor (AEC) cost standard, augmented to include an appropriate contribution to common and shared costs.

The Authority's proposal

- 5.214 We proposed in our February 2026 Supplementary paper that the RPCA would use the AEC cost standard, augmented to include an appropriate contribution to common and shared costs. This bespoke approach is to ensure that we are not effectively requiring a new entrant to be more efficient than the gentailer.

³⁹ In the RPCA guidance, we set out that retail prices existing as at the date of the assessment should be used.
Non-discrimination obligations – Code amendment

Submitters' views

- 5.215 Contact, EEA, ERGANZ and Genesis submitted in support of the proposed AEC efficiency standard. Genesis and EEA also supported including an appropriate contribution to common and shared costs in any RPCA calculations.⁴⁰
- 5.216 Link Economics, on behalf of IER and IEGA, submitted that the reasonably efficient operator (REO) standard was the appropriate standard, because:
- It considered REO costs as more consistent with promotion of competition. Link Economics' submission gave an example of a less efficient independent electricity retailer being driven from a market, and consumer prices ultimately rising due to the reduction in competition.
 - The electricity retail market context met two of the conditions under which the Commerce Commission's 2020 equivalence and non-discrimination guidance for telecommunications said it may be appropriate to use REO:
 - **Markets in which regulation or workable competition does not constrain downstream prices:** Link Economics considered it implausible that one of the gentailers did not have a substantial degree of market power (meaning it is subject to less constraint from competition), given the size of each relative to the market.
 - **Dynamic efficiency gains may outweigh the loss of static productive efficiency from an REO approach:**⁴¹ Link Economics considered independent retailers likely had greater incentives to pass through cost-reflective prices and to invest in innovative demand-side flexibility. A more competitive retail market would also facilitate greater dynamic efficiency in generation markets by giving independent generators greater confidence that they will receive the same margins that gentailers achieve.
 - The Authority should have more regard to regulatory practice than competition law. In the former setting, REO has been more commonly used than under competition law (albeit both standards were used by a number of regulators).

The Authority's response

- 5.217 The Authority continues to consider the AEC standard (including an appropriate contribution to common and shared costs) is the appropriate efficiency standard for the RPCA for the reasons previously outlined:
- The NDOs prohibit discrimination on the price of hedge contracts, but are not seeking to provide an advantage to entrants or shelter them from the impact of any scale or scope economies they cannot yet achieve. The AEC standard best aligns with this purpose.
 - The AEC standard enables a gentailer to use input data that should be reasonably available to them, whereas an REO standard (absent a cost benchmark as discussed below) would require a gentailer to speculate on an objectively reasonable level of costs.
- 5.218 We disagree with arguments that the REO standard is necessarily better for competition. The Authority does not consider that the circumstances are such that it would be appropriate, as the example given by Link Economics (referred to above - see bullet points under para 5.216) suggests, that a less efficient competitor should be protected from

⁴⁰ While they submitted in support of a different cost standard, IERs and IEGA and Link Economics also supported the inclusion of shared and common costs (albeit Link Economics disagreed with some of the Authority's reasoning). No submitters opposed this inclusion.

⁴¹ Commerce Commission, Equivalence and non-discrimination guidance (2020), paragraph 3.58.1.
Non-discrimination obligations – Code amendment

competition by more efficient competitors. That would harm productive efficiency. The REO could be justifiable if downstream markets are not competitive or gains in dynamic efficiency outweigh the detriment to productive efficiency. But these types of broad assertions have not been proven here. As previously set out, the NDOs and the RPCA are a response to a tangible risk where the underlying evidence is uncertain. While the Authority is committed to promoting competition, it is also wary of the potential harms that arise from regulatory over-reach. In our view the AEC standard remains the most appropriate and proportionate response.

5.219 We do not consider the argument that regulatory practice is more important than competition law approaches should change our approach. We consider it is more important to focus on underlying principles than legal form. In any event, we note that the NDOs and the RPCA are a bespoke regulatory regime, short of a full access regulatory regime, so best suited to an approach focussed on the specific problem that regulation seeks to address.

RPCA: approach to cost allocation

Decision

5.220 The Authority has decided to largely retain its proposed approach to cost allocation for the retail cost component of gentailer RPCA calculations, but with an additional requirement that gentailers must disclose shared and common costs separately.

The Authority's proposal

5.221 We proposed that the retail cost component of gentailer RPCA calculations for each segment should include:

- all retail operating costs attributable to the relevant segment (broadly costs to serve customers and costs to acquire and retain customers)
- a contribution to shared and common costs (as discussed in the section above).

5.222 These costs should be attributed on a principled basis using rational cost drivers that reflect a causal relationship or, if this cannot be established, some other reasonable proxy measure. This attribution should:

- reflect a subsidy-free standard
- be explained in the gentailer's disclosed RPCA methodology.

5.223 We proposed that gentailers follow a similar approach when attributing costs across a bundle of products that includes providing electricity.

Submitters' views

5.224 IER and IEGA, and Link Economics, submitted that the Authority should specify the cost allocation categories that gentailers use in their RPCA calculations. IER and IEGA also sought:

- more specific disclosure requirements around the gentailers' methodologies, allocators and assumptions
- a requirement that allocations of shared and common costs be split out from other retail costs
- better specification of the subsidy-free standard as being between long-run incremental cost and standalone cost

- increased regulation of the actual allocation decisions, ie, the Authority either specifying default allocators or having to approve gentailer allocators and allocation methodologies.

5.225 IER and IEGA also strongly favoured these requirements being included in the Code, rather than in guidance only.

5.226 EEA submitted that treatment of common and shared costs should be consistent across gentailers.

5.227 Genesis submitted that the Authority should provide further guidance on cost allocation for bundled services, including “confirmation that the proportional revenue allocation also applies to shared customer acquisition and retention costs”.

The Authority’s response

5.228 There appears to be a large degree of conceptual alignment between the Authority and submitters on the approach to allocation of retail costs. The main point of debate, from IER and IEGA and their advisor Link Economics, was whether the approach should be better specified and included in the Code.

5.229 For the most part, we don’t disagree with the extra detail put forward in submissions. For example:

- The cost categories proposed by the IER and IEGA, and Link Economics, appear reasonable and broadly aligned with earlier work by Australian regulators including the ACCC. We would expect the gentailers to use similar categories in their initial RPCA disclosures.
- We agree that a subsidy free standard is consistent with allocations between long-run incremental cost and standalone cost.

5.230 However, at this point, we largely disagree with the value of further specification and inclusion in the Code. Our preferred approach is for the gentailers to complete their first round of disclosures based on a high-level specification (that is consistent with their existing accounting practices). The Authority can then ask follow-up questions as needed. Where any gentailer’s approach is particularly helpful and should be applied across all gentailers, or where a particular disclosure approach is problematic, we can then consider whether to add targeted specification to the guidance (or the Code) to respond to that particular point. In our view this is a more proportionate approach to ensuring that we get fit for purpose disclosures versus specifying detail up front.

5.231 The same reasoning applies to why we are not, at this point, implementing EEA’s submission about consistent treatment of shared and common costs across gentailers.

5.232 In response to some of the more specific IER and IEGA submission points:

- We agree that there should be a specific Code requirement that the contribution to shared and common costs is separately disclosed. Given the range of possible approaches to this cost category, it is important that gentailers are transparent about both their methodology and the actual costs that get attributed.
- For the first round of disclosures, we don’t agree with the Authority prescribing allocators, or approving gentailer allocators and allocation methodologies, for the same reasons as set out in the section below re not requiring electricity and retail cost benchmarks. We acknowledge that both suggestions may be rational escalations if the Authority considers that gentailer allocation approaches are not meeting the purpose of the RPCA.

- We have added some further specificity to the guidance with regard to the methodological disclosures we expect from the gentailers.

5.233 It is not clear to us that we can usefully provide further guidance in relation to cost allocation where electricity is being supplied as part of a bundle. In our view the general cost allocation guidance remains the most useful touchstone, ie:

- Costs directly attributable to one service in the bundle should be allocated to that service.
- Costs that apply to more than one service in the bundle should be allocated using rational cost drivers that reflect a causal relationship or, if this cannot be established, some other reasonable proxy measure.

5.234 We acknowledge that allocation proportional to revenue may be an appropriate approach for bundled services, but that will depend on the specific scenario/cost and whether a driver that better reflects causality can be applied.

RPCA: no specification of electricity and retail cost benchmarks

Decision

5.235 The Authority has decided that it will not establish pre-defined benchmarks for electricity or retail costs to be used by gentailers in the RPCA.

The Authority's proposal

5.236 We proposed not to establish benchmarks for electricity or retail costs or a benchmark portfolio of hedges, as the purpose of the RPCA is to detect price discrimination. It is not intended to prescribe (through benchmarks) how gentailers manage risks and costs.

Submitters' views

5.237 Contact, EEA and Genesis submitted in favour of the proposed approach.

5.238 IER and IEGA by contrast said that:

- The RPCA test is too subjective and lacks specificity, in particular in relation to wholesale electricity costs and allocation of costs.
- An independently determined wholesale electricity cost benchmark should be used.
- Standardised cost to serve should be embedded in the RPCA (referring to Australian approaches that specify electricity cost categories).
- The Authority should specify that the RPCA method can only be changed if the Authority is satisfied that the current method no longer meets our objectives.

5.239 They said the lack of standardisation would shift costs from gentailers to the Authority and interested parties (such as independent retailers and generators), and that overall the lack of standardisation would increase regulatory costs.

The Authority's response

5.240 We have not been persuaded to adopt any of the suggested benchmarks.

5.241 Setting a benchmark:

- inefficiently moves some part of gentailer risk decisions away from the gentailer and to the regulator, likely with poorer risk management outcomes

- reduces potential variety in gentailer business models, capabilities and risk preferences and so may limit competition and innovation
- is less aligned with the purpose of the RPCA, which is not to set wholesale (or retail) prices or a specific efficiency standard for gentailers, but to detect any price discrimination within the specific operations of each gentailer. In this regard, our reasoning for not setting a benchmark is conceptually similar to why we are not adopting an REO cost standard.

5.242 At this point, we disagree with further limiting gentailers' scope to change their RPCA method. We consider existing safeguards should be sufficient to address any risks of manipulating RPCA results to effectively hide a margin squeeze. This includes additional disclosures when there is change in method that materially alters the expected cost of electricity provision (as discussed further below), and a requirement to provide information on areas in which, and reasons why, a gentailer has departed from the RPCA guidance.

RPCA: customer scope and RPCA segmentation

Decision

5.243 The RPCA will cover all mass market customers. Each gentailer will be required to undertake a separate RPCA for each of its retail brand in relation to a gentailer's existing mass market customers and to offers it makes for new mass market customers.

The Authority's proposal

5.244 We proposed that the RPCA cover all mass market customers (residential and small business customers) together. We further proposed that each gentailer will be required to undertake a RPCA for each of its retail brands, in relation to both the gentailer's existing mass market customers and to offers it makes for new mass market customers.

Submitters' views

5.245 IER and IEGA submitted that larger C&I customers should be included in the RPCA and that there was not valid reason to exclude them. They suggested separating out residential, SME and larger C&I customers (except the very largest) into separate segments, as well as an overall aggregate retail segment. This would create more granularity and avoid masking important differences in pricing and competitive dynamics. Link Economics added that this was in line with international best practice.

5.246 Contact submitted that it is unnecessary to regard new customers, acquired to maintain a customer base, as a separate segment, as it is unrealistic to assume that large retailers make a trade-off between trading hedges and acquiring new customers. It considered that the complexity of a new customer segment was unjustified (though it may be appropriate where a large retailer is actively growing their customer base).

5.247 Meridian agreed that larger C&I customers should not be included in the RPCA, for reasons consistent with the Authority's proposal. They suggest that a clearer demarcation between existing and new customers would be:

- all plans currently in market (including customers already on those plans and expected future uptake of those plans), and
- all legacy plans that are no longer in market.

5.248 Fonterra submitted that there is "the need for customer segmentation into residential, commercial and industrial categories".

- 5.249 Contact submitted that hardship services (eg, prepay) have higher cost-to-serve and should be excluded to avoid disincentivising ‘the offering of higher cost services to meet hardship needs.’
- 5.250 IER and IEGA submitted that a gentailer should have to undertake a new RPCA test when a new tariff was introduced.

The Authority’s response

- 5.251 We have decided not to include larger C&I customers in the RPCA at this time, because the competitive dynamic for these customers appears to differ from mass market customers, as set out in the Supplementary paper. As noted in paragraph 5.74, where a C&I customer is a ‘buyer’, gentailers will be required to comply with the NDOs when supplying risk management contracts to them and certify that they have done so in the normal way. Not including them in the RPCA does not change any of the other obligations.
- 5.252 We may revisit whether there is a need for some form of margin squeeze testing in relation to these customers if there is evidence of a material risk of price discrimination for these customers that cannot be identified by other monitoring mechanisms. But that would be a separate workstream, and an RPCA type tool (as currently designed) may not be effective for this segment. To help us to better consider whether to revisit this question, we welcome any views from participants about the nature and extent of any C&I segment hedge discrimination that they believe is occurring.
- 5.253 The Authority is not convinced by Contact’s reasoning that offers to new customers should not be a separate segment. To the contrary, we consider that the justification for this separate segment is clear: by increasing confidence that there is a level playing field in respect of competing for searching and switching customers, the RPCA would promote competition where it should most clearly be happening in the electricity retail market. Contact’s proposal to seek additional reporting when a large retailer is actively growing their customer volumes likely adds as much (and potentially more) complexity and effort than a general ‘offers for new customers’ segment.
- 5.254 We have not been persuaded to adopt Meridian’s proposed change to demarcate new and existing customers. The demarcation between existing customers and offers to new (i.e. not yet acquired) customers is straightforward and captures an important difference in competitive dynamics. The Authority also does not see a compelling case to separate out all legacy plans, as the same risks that the RPCA seeks to address equally apply to all active plans.⁴²
- 5.255 We have also not excluded hardship services (or any other type of retail or wholesale customer group, such as staff offers or contracts with social retailers) from the RPCA at this stage. The Authority considers it is better to follow the approach on how to deal with such matters set out in the draft guidance [A.38]. That is, where a gentailer considers that lower margins for such customers are impacting the RPCA results (and should be excluded), they can explain this (including the impact on margins) as part of their reporting.
- 5.256 We consider that requiring a gentailer to carry out an RPCA when a new tariff is introduced is unnecessary and adds complexity for little gain. The six-monthly reporting cycle will ensure that new tariffs will be captured in a timely fashion.

⁴² We also note that segmentation is not by plan; the RPCA provides sufficient flexibility to capture the expected costs and revenues in calculating RPCA margins.

5.257 As noted in the Supplementary paper, a range of other segments are possible. We will keep these under review, balancing accuracy and transparency against compliance and administrative costs.

RPCA: geographic segmentation

Decision

5.258 We have decided that RPCAs should be calculated and disclosed by network reporting regions (NRRs).

The Authority's proposal

5.259 We proposed that RPCAs should be calculated and disclosed by NRR.

Submitters' views

5.260 EEA supported the proposed approach but cautioned that the results from segments should not be overinterpreted. IER and IEGA submitted in favour of a regional approach to geographic segmentation, because competitive market outcomes vary considerably between areas.

5.261 Genesis supported NRR level reporting to the Authority as the appropriate geographic unit for Authority surveillance, provided that this aligns with retail pricing regions, as this would keep implementation and compliance costs low. However, they submitted that public RPCA publication be limited to aggregated national results.

5.262 Contact, ERGANZ and Meridian were against the use of NRR or other regions as segments for the RPCA:

- Contact submitted it would add material complexity and risks for an uncertain rationale. They noted that hedges are not bound to a particular region and differences in margin will be driven by differences in retail prices rather than hedge prices. They were concerned that the results will likely show geographic cross-subsidisation of customers with low ability to pay and were concerned about the market signal this would send.
- ERGANZ noted that NRR segmentation would mean a 40-fold increase in the number of RPCA assessments required, and there had not been sufficient concerns about regional retail competition to provide a foundation for this increase in complexity. Meridian submitted along the same lines.
- Meridian queried whether the geographic segmentation by network reporting region is necessary and whether any competition insights are likely to be derived from that segmentation (noting false positives would be possible). They asked that the geographic segment be reconsidered (for example narrowing scope to North Island and South Island) or dropped entirely. It would add significant cost and complexity without usefully increasing transparency.

The Authority's response

5.263 The Supplementary paper had identified and taken into account the considerations and different points set out by submissions. The submissions did not provide new reasoning or evidence on these points. Having considered these submissions, the Authority concludes, as it did in the Supplementary paper (para 3.55-3.60), that the incremental compliance cost of disclosing regional calculations (that gentailers would likely need to undertake given systematic regional cost differences) would not be material, but give considerable transparency benefits.

- 5.264 We do not yet have a robust (RPCA consistent) margin baseline for any gentailer and note that a key purpose of the regime is to build confidence. We are particularly reluctant at the beginning of the regime to make assumptions about whether any competition insights are likely to be derived from geographic segmentation, or the likelihood of negative regional margins being false positives. Those types of judgements will be best made when supported by data.
- 5.265 We address Genesis' submission on the publication of NRR-level RPCA results in the section on publication below.

RPCA: expected cost of energy

Decision

- 5.266 The expected cost of electricity will be based on observed market prices from ASX and OTC trades, as if the gentailer hedged its full retail load with such contracts, in a manner consistent with minimising the risk-adjusted cost of supplying its retail customers' load profile, and as elaborated on in the RPCA guidance.

The Authority's proposal

- 5.267 The Authority had proposed that the RPCA should compare retail prices to a market-based expected cost of electricity.
- 5.268 In the February 2026 consultation on the draft RPCA guidance, the Authority proposed that each gentailer:
- estimate its expected cost of electricity as if the gentailer hedged its full retail load using ASX and OTC contracts
 - compose its as-if hedge portfolio consistent with minimizing the risk-adjusted cost of electricity given its retail customers' load profile
 - may use a book-build approach and/or current hedge prices for its as-if portfolio
 - may include long-term contracts in its as-if portfolio, although an optimal portfolio should not be based solely on long-term contracts as that would likely not be rational
 - should hold its method for estimating the expected cost of supply consistent from assessment to assessment
 - a change in method may be justified by a material shift in the market or retail strategy. Where that occurs RPCA results under the old method must continue to be reported, for two years, if the change in method modifies the expected cost of electricity by more than 5%.

Submitters' views

- 5.269 In submissions on the February 2026 Supplementary paper, Contact, Genesis and Mercury broadly supported the proposed approach, which leaves decisions with gentailers on risk preferences and risk management strategy, and so the composition and cost of the as-if portfolio.
- 5.270 IER/IEGA expressed concern about the incentives on gentailers from the proposed approach to understate expected energy costs. Its proposal to address this is closely linked to the concept of using a benchmark portfolio in the RPCA. IER/IEGA and Link Economics for IER/IEGA were the only submitters in favour of a benchmark portfolio. This is further considered in the section above on electricity and retail cost benchmarks.

Treatment of unhedged load in as-if portfolio

- 5.271 Genesis sought clarification on the treatment of unhedged load in the as-if portfolio. Related to this point, emhTrade submitted that the guidance should be explicit that the cost of managing volume uncertainty should be included in any RPCA. It considered this may be the cost of buying or selling hedges near to real-time, or an option premium. IER and IEGA submitted that the cost of supply should be assessed on the basis that 100% of the required volume is secured through contracts.

Treatment of differences between own trades and as-if portfolio

- 5.272 Genesis submitted that the guidance should acknowledge that differences between the as-if portfolio and actual trades may arise for legitimate reasons including portfolio-level risk management and because actual trading reflects the gentailer's full business (including generation and C&I) not just the retail business.
- 5.273 Contact sought greater clarity in the guidance about the role of the OTC contracts it sells and the cost of energy used for the RPCA. It considered that there were conflicting statements and it regarded some of the guidance as impractical for use in the RPCA. In particular, 'the vast majority of OTC risk management contracts purchased by independent retailers do not have "similar risks, terms and tenor" to those that a large retailer would purchase.'
- 5.274 Mercuria considered paragraph A.90 of the draft RPCA guidance was critical, as it ties actual market behaviour to the NDOs. This part of the guidance requires a gentailer to explain any material differences between the prices it used in its as-if portfolio and those of comparable external trades during the same period.

Long-term contracts

- 5.275 Contrary to the Authority's draft RPCA guidance, Mercury submitted that it considers that its "cost of electricity could be based *solely* on current long-term sales contracts to C&I customers and other wholesale counter parties" (emphasis added).
- 5.276 Mercury considered that the Authority's draft guidance that a gentailer's cost of electricity cannot be based solely on long term contracts is "based on a flawed assumption about vertical integration" (with an analysis that wrongly treats the generation and retail business divisions as separate, rather than fully integrated).
- 5.277 In essence it argued that its retail business is a long-term sales channel to mass-market customers that competes with long-term sales to C&I customers, and that this means that the price of long-term contracts for sales to C&I customers gives the value of the opportunity cost of electricity sold to mass market customers.

Materiality threshold

- 5.278 Genesis considers the proposed 5% materiality threshold to trigger dual reporting of changes to RPCA due to changes to the method is too low and would likely be triggered by routine input recalibration. As the resulting dual reporting is not cost free, a low threshold would discourage methodology improvement. It considers a 10% materiality threshold would reserve dual reporting for genuinely significant changes. ERGANZ supported the same increase in the threshold.

The Authority's response

- 5.279 IER/IEGA and Link Economics' proposal on a benchmark portfolio is further considered in the section above on electricity and retail cost benchmarks.

Treatment of unhedged load in as-if portfolio

- 5.280 The RPCA operates as if 100% of the gentailer's retail load is hedged as a practical way to estimate the complete expected cost of supply.
- 5.281 The draft RPCA guidance recognised that there could be unhedged load in an as-if portfolio at footnote 33. We suggested that one way a gentailer could estimate the expected cost of this unhedged portion is to use the price that hedges for the relevant period are being traded for at the time that retail prices are being set (as the best estimate of expected future spot prices). The choice of method is left open, requiring that a gentailer explains its approach as part of its documented methodology.
- 5.282 For clarity, we have incorporated this footnote into the text of the guidance at 7.10.

Treatment of differences between own trades and as-if portfolio

- 5.283 The Authority agrees with submitters that there may be justifiable differences between a gentailer's own risk management contracts trades and its as-if portfolio.
- 5.284 It considers the guidance is sufficiently clear about the role of the prices of the OTC contracts a gentailer sells and the gentailer's expected cost of energy 'as if' it hedged the load of its retail customers with risk management contracts from ASX and OTC trades.
- 5.285 The draft RPCA guidance was that a gentailer would draw on the prices of its own and other OTC trades, alongside ASX prices as appropriate [A.81, A.83]. Where the prices of its own OTC trades are different to the prices for similar products that it assumes to be part of its 'as if' portfolio, then these differences (both the rationale and the quantum) are to be explained [A.90].
- 5.286 This includes "any adjustments made to market prices for credit and other risk premia and any other costs avoided by self-supply should be objectively justifiable and explained as part of a gentailer's methodology" [A.93].
- 5.287 In response to a concern raised by Contact, while in principle all retail prices offered should be captured in the RPCA and all externally traded hedge contracts are relevant to the cost of electricity [A.37], this does not imply that the expected cost of energy based on an 'as if' portfolio must be based on some weighted average of all trades. For example, the draft guidance noted that the 'as if' portfolio could be simple combination of ASX baseload + standardised super peak product.

Long-term contracts

- 5.288 The Authority considers that the optimal mix of risk management contracts for retail load likely consists of contracts with several maturities, and that this could include long-term contracts. However, the Authority disagrees with Mercury's submission that the expected cost of electricity to supply its retail customers could be based solely on long-term contracts to C&I customers and other wholesale counter parties.
- 5.289 Generally:
- C&I customers are materially different to retail customers in load shape and volume or volatility risk and how that risk is best managed, ie, they are technically not an appropriate measure of opportunity cost; and
 - the supply options open to C&I customers differ compared to retail customers.⁴³

⁴³ See also ACCC 2018, [Restoring electricity affordability and Australia's competitive advantage. Retail Electricity Pricing Inquiry Final Report](#), p125.

- 5.290 At the margin, a gentailer faces a constant choice between selling generation via hedges on the wholesale market or to more retail customers. The Authority considers that selling on the spot market or via the ASX and shorter duration OTC contracts tends to be the next best (profit-maximising) alternative to selling supply to retail customers, not C&I customers (so should constitute some part of the as-if portfolio).⁴⁴
- 5.291 At a more practical level, Mercury’s suggestion is out of line with both market practice and feedback from all the other participants about how an as-if portfolio might be plausibly constructed. The Authority notes that Mercury is an active participant in this market for shorter duration risk management contracts. Further, in their financial disclosures, gentailers have tended to value the internal transfer of its supply to its retail customers based on a book-build of ASX baseload contracts plus shape – not long-term contracts.⁴⁵
- 5.292 The Authority’s position remains that:
- the as-if hedge portfolio must match the characteristics of a gentailer’s retail load and load profile – including volume risk, peaks, etc.
 - for the RPCA, the cost of supply to retail customers cannot be based solely on long-term contracts, because that would likely not be rational (as set out in the guidance at 7.18).
- 5.293 We cannot pre-judge the credibility of any specific electricity cost submitted by a gentailer in its RPCA disclosures. However, at this point we consider that an RPCA that solely, or in any large proportion, used long-term contracts with C&I customers as its cost of electricity benchmark would be unlikely to be consistent with a credible risk management strategy for the cost of supply of its retail customers. This would also risk unduly skewing the RPCA cost of electricity downwards. A gentailer’s explanations and evidence as to why its selected approach would be economically justifiable would thus come under close scrutiny.

Materiality threshold

- 5.294 The Authority acknowledges the risk identified by Genesis that the proposed 5% materiality threshold could be too low, although this cannot be known until after RPCA disclosures have commenced.
- 5.295 Our intent is that gentailers would very infrequently make material changes to their method to estimate the expected cost of electricity. The Code refers to “a change in the approach used to calculate the expected cost of electricity in a retail price consistency assessment”. A “change in approach” is not intended to capture changes in input values (eg, market movements in hedge prices) or inhibit routine minor input recalibration or error correction.
- 5.296 At this point, the Authority considers the 5% threshold appropriate, given methods to estimate the expected cost of electricity should change only very infrequently.⁴⁶ The Authority remains open to revisit this threshold if experience with RPCAs points to evidence that 5% is too low.

⁴⁴ Mercury’s submission starkly highlights this next best alternative question. Mercury suggests that C&I customers like NZAS, Amazon and Fonterra could be used to set their RPCA energy cost. But those customers are relatively unique in the New Zealand market given their scale and circumstances and likely have bespoke energy purchase arrangements (at least in some cases locked in for a long period). There are simply not equivalent customers (eg, NZAS2, NZAS3 and NZAS4) in the market, so we query how these customers can be credibly put forward in the RPCA context as even a hypothetical alternative to Mercury supplying its retail business.

⁴⁵ As the ACCC (2018) noted: “In an economic sense, the retail arms of vertically integrated businesses are paying the ‘opportunity cost’ of the business’s generation capacity. The retailer will therefore be incurring a wholesale electricity cost comparable to a standalone retailer contracting through the market. In these circumstances, the economic benefits of vertical integration are largely accruing to the wholesale arm of the business.” The Authority recognises that gentailers have stated they tend to see ITPs primarily as an accounting mechanism.

⁴⁶ The 5% materiality threshold is the same as the current threshold in the Code in respect of a gentailer having to disclose a change in its methodology for determining retail internal transfer pricing (see now-deleted clause 13.256).

RPCA: assessment and implementation

Decision

5.297 Our decision on our assessment and implementation approach for the RPCA regime is broadly in line with what we proposed:

- The RPCA is not a bright-line test – a decision on whether or not to refer a negative RPCA outcome to the Authority’s compliance function will be made on a case-by-case basis reflecting the specific circumstances.
- There are no safe harbours. While we accept that price smoothing is potentially a valid justification for a negative RPCA result, that needs to be demonstrated in each case.
- Ordinarily we would expect that a single, small, negative margin RPCA result, with adequate justification, would not be reported to the Authority’s compliance function.
- The RPCA regime will be implemented as soon as practicable, with the first RPCA disclosures due in September 2026. Those disclosures will provide substantial lessons for all parties, including indicating areas where the guidance could be further developed. We expect that the guidance will evolve over time. We expect that this approach will lead to a more fit for purpose RPCA regime more quickly (and therefore better promote competition, transparency and confidence) than delaying the first disclosures to March 2027.

5.298 We have, however, made two specific modifications to our assessment approach in response to submissions:

- in relation to the first RPCA disclosures in September 2026, the Authority confirms that it is unlikely to rely on a negative margin RPCA result or report from the initial RPCA disclosures as evidence of a potential breach of the NDOs unless:
 - there is egregious conduct by the gentailer, eg, evidence that the negative margin reflected a deliberate attempt to harm competition; or
 - the gentailer has not made complete, robust, good faith disclosures; or
 - the initial RPCA disclosure forms part of a pattern of negative margin RPCA results over time.
- we have clarified where we consider a narrow positive margin to be relevant in the assessment of RPCA results.

5.299 Where the RPCA guidance refers to a gentailer providing an explanation about why a negative (or narrow positive) RPCA result is economically justifiable, we have removed the reference to “consistent with how a market participant without market power is likely to have acted in the circumstances”. This reflects our view that this type of counterfactual is not the only way to demonstrate that the result is economically justifiable and may not always be informative.⁴⁷ However, removing this phrase is not intended to prevent any party from putting forward evidence about how they would expect a market participant without market power to act, or to suggest that the Authority will not consider that counterfactual itself when analysing RPCA results.

⁴⁷ For example, the previous version of section 36 of the Commerce Act required a comparison of conduct against this counterfactual. The changes made to section 36 in the Commerce Amendment Act 2022 reflect the position that a prohibition based on this counterfactual: a) has the potential to fail to deter or penalise some forms of anti-competitive conduct; b) is costly and complex to enforce, which reduces the incentives for businesses to comply with the law; and c) creates some unpredictability as to its application to business conduct. See general policy statement of the Commerce Amendment Bill 9--1 (introduced 10 March 2021).

The Authority's proposal

Assessment

- 5.300 In the draft RPCA guidance we proposed that the RPCA would not be a bright-line test so a negative RPCA result would not in itself indicate a breach of the NDOs. In those circumstances, a gentailer would be expected to provide explanations to demonstrate that the RPCA outcome is economically justifiable. We said that economically justifiable means reasonable, consistent with how a market participant without market power is likely to act in the circumstances, and supported by evidence.
- 5.301 We proposed that the Authority would then assess gentailers' RPCA results and the adequacy of any explanation or justification. Where information was insufficient, the Authority's monitoring function would likely seek further details from the gentailer.
- 5.302 Following its assessment of gentailers' RPCA results, and any additional information provided by the gentailer, the Authority would then decide whether to report negative RPCA outcomes to its compliance function as a potential breach of the NDOs. In the draft guidance we said that was more likely where:
- The Authority considered that the gentailer had not provided sufficient justification, and the outcome may indicate potential price discrimination or conduct inconsistent with the NDOs.
 - The gentailer's published RPCA results show a substantial negative margin, or consistent negative or small positive margins over time, notwithstanding the explanations provided.
- 5.303 The Authority acknowledged the benefits of retail price smoothing. This is something we would expect to see in a workably competitive market. However, a claim of price smoothing would need to be assessed in its specific circumstances, on a case-by-case basis. It could not be the basis of an ex ante "safe harbour" for gentailers. The draft guidance nonetheless confirmed that a single small negative margin RPCA result, with adequate justification, would not in itself ordinarily be reported to the Authority's compliance function as an alleged breach of the NDOs.

Implementation

- 5.304 We proposed that the RPCA regime be implemented as soon as practicable, with first disclosures due from gentailers in September 2026. Core to this timetable was a view that interested parties would learn significantly from doing and reviewing the initial RPCA disclosures. Issues that arose from these first disclosures would best inform what further guidance may be desirable. Our expectation was that the guidance would likely evolve over time.

Submitters' views

Timing

- 5.305 IER and IEGA submitted that further refinement of the guidance (to increase its specificity) should occur now and that, if need be, the Authority should take more time before implementing the RPCA regime. This view aligned with the preference of IER and IEGA for a stricter "comply or explain" approach to the RPCA regime (discussed further in the section of this paper about decision to introduce Obligations 1(3) and 1(4) and an RPCA into the Code).

- 5.306 For different reasons, Mercury, Genesis and ERGANZ all submitted that the proposed implementation timeframe for the RPCA disclosures was too tight. Genesis listed a range of actions that would be required (eg methodology design; system and process changes; new governance, compliance and assurance processes). Genesis and ERGANZ suggested that it would be more appropriate to require the first RPCA disclosures to be submitted in March 2027.
- 5.307 By contrast, EEA submitted that the proposed timing was broadly appropriate, but that the Authority should take a phased implementation approach to the new RPCA regime. Early disclosures should be primarily used for learning and should inform refinement of the regime.

Smoothing

- 5.308 ERGANZ and Genesis both submitted that where a gentailer has a smoothing policy in place, and acts consistently with that policy, this should create a presumption (short of a safe harbour) that any negative margin is objectively justified.
- 5.309 Without commenting specifically on smoothing policies, IER and IEGA considered that for price smoothing to be justified, the gentailer would need to demonstrate that it also had a credible plan to offset that smoothing with higher prices, essentially that some level of recoupment would occur.
- 5.310 Meridian commented on the Authority's failure to provide safe harbours. This was part of a broader submission about the potential consequences of introducing a guidance regime that was ambiguous about what would constitute objectively justifiable reasons for negative margins, and what size, or pattern, of negative margins might give rise to enforcement. In Meridian's view, this level of uncertainty would incentivise gentailers to increase retail prices. ERGANZ characterised building a buffer into its pricing as being a rational response for any gentailer.
- 5.311 Meridian went on to say that 'The Authority's stated "scepticism" regarding any claims about increasing retail prices is misplaced. The broad enforcement discretion the Authority is leaving itself coupled with the lack of firm guidance as to the types of cases the Authority will and will not pursue risks unnecessarily driving up retail prices to the detriment of consumers. In Meridian's opinion, the Authority has underestimated the critical importance to market participants of ensuring they comply with the Code. Failing to comply with the Code, depending on the nature of the non-compliance, can be seen as a failure by a participant to comply with its social licence.'

Assessment

- 5.312 ERGANZ submitted that a gentailer reporting a negative margin in a single NRR should not be taken to indicate discrimination without further evidence.
- 5.313 Meridian, Genesis and ERGANZ all submitted that the Authority had created an unhelpful ambiguity in the guidance by requiring gentailers to explain "narrow positive" margins, and suggesting enforcement may be sought where there were consistent negative or small positive margins over time. In their view, a narrow positive margin could not be evidence of discrimination (as it is positive), and should therefore not require explaining or lead to further investigation.
- 5.314 We also note that the following two submissions, responded to above, are also to some extent relevant to this assessment topic:
- Link Economics' submission regarding the value of outturn testing

- Contact's submission that the RPCA regime should be a disclosure regime only, as gentailers cannot affect retail or wholesale prices which are set by the market.

The Authority's response

Our overall approach, including timing

5.315 We have carefully considered these submissions. We appreciate that they are good faith responses from submitters seeking to help shape a new regime, including testing for risks and unintended consequences such as increased retail prices.

5.316 We remain of the view that:

- The RPCA is testing a valid point, and the guidance is the right starting position.
- While we have made specific clarifying amendments where useful,⁴⁸ it would not be valuable to provide greater detail in the guidance now, in the absence of any disclosed gentailer information or approaches. Doing so would be unlikely to improve the guidance, given the current lack of baseline information. It may actually make it less helpful or skewed. That would not benefit competition or consumers.
- We instead favour learning-by-doing (as previously signalled). Parties will benefit from producing and reviewing a first round of disclosures, including through feedback on those disclosures from the Authority. The first disclosures will set the baseline to work from.
- We would expect the second round of disclosures to be improved and would expect to apply more of a compliance lens to them.
- We do not think that enduring safe harbours are helpful or appropriate. The size of a negative margin, the reasons for it and a history of negative margins (none of which can be properly taken account in an *ex ante* safe harbour) are all relevant when considering whether there is an underlying competition problem.

5.317 In our view, the approach above is the best way to develop a robust RPCA regime quickly. It is therefore most consistent with delivering the long-term benefits that arise from competition, transparency and confidence.

5.318 While the timeline is challenging, we have not seen any evidence that gentailers cannot meet a September 2026 deadline for the first round of disclosures, eg, cannot extract relevant data.⁴⁹

5.319 We do appreciate the uncertainty that gentailers will face ahead of the first round of disclosures in September. We want to implement this regime quickly, and want gentailers to initially focus on providing robust, complete disclosures. We intend to then approach these first disclosures with a learning mindset. Our view from the outset has been that we would be unlikely to seek to take enforcement action in response to a negative margin in the first round of disclosures. We are therefore happy to provide a clearer signal of this by confirming that the Authority is unlikely to rely on a negative margin RPCA result or report in the first September 2026 round of disclosures as evidence of a potential breach of the NDOs, unless there is egregious conduct by the gentailer (eg, evidence that the negative margin reflected a deliberate attempt to harm competition), or the relevant gentailer has not

⁴⁸ Such as setting out examples of what would likely be objective justifications of negative RPCA results.

⁴⁹ We note also that, as part of the Authority's engagement process, gentailers have already had many months to consider how they would approach this regime, including how to construct their as-if portfolio.

made complete, robust, good faith disclosures, or the initial RPCA disclosure forms part of a pattern of negative margin RPCA results over time.

5.320 This signal is primarily provided to recognise that this is a new regime that involves significant judgement. It also acknowledges the short time window for gentailers to make any changes between the RPCA requirement being introduced/RPCA guidance being finalised and the first assessment date. The signal is consistent with our intent in this first round of disclosures. To some extent, we have adopted the phased implementation approach suggested by the EEA. But we consider that our approach to the first round of disclosures also answers Meridian's observation about the critical importance to market participants of ensuring they comply with the Code.

5.321 For the avoidance of doubt:

- We are not offering any leeway to gentailers on meeting their RPCA disclosures. We expect them to fully comply with all disclosure requirements in the first round, and will look to take enforcement action if they do not.
- Should the Authority seek to enforce an alleged breach of the NDOs as a result of a negative margin RPCA result in a subsequent disclosure, the Authority would consider relying on its entire evidence base, including the September 2026 RPCA disclosures, to support that action.
- The Authority is not constrained from considering an alleged breach of the NDOs, where a breach is reported by a third party, or the Authority is provided with information, or otherwise becomes aware of a potential breach (including through information or knowledge not arising from the initial RPCA disclosures) or conduct indicating a potential breach.

5.322 Following analysis of the first round of disclosures, we will, as previously signalled, provide feedback to gentailers. We will also consider whether there is any useful further guidance on our assessment approach that we can provide.

Assessment presumptions

5.323 We will need to consider all relevant circumstances when assessing any gentailer justification of negative margins as pricing smoothing. The Authority will need to determine whether smoothing has in fact been applied as a legitimate business strategy. The assessment will include considering:

- the robustness of any policies gentailers have in place
- whether the gentailer has followed that policy
- whether the policy makes sense over time (which includes considering the recoupment point made by IER and IEGA).

5.324 We do not agree with Genesis and ERGANZ that simply having and following a policy creates any significant presumption. The content of the policy will also be relevant, as well as the surrounding context.

5.325 Similarly, while we understand ERGANZ's point about a negative margin in a single NRR, this does not change our process. We agree that a negative margin in a single NRR does not automatically mean discrimination is occurring, but nor is there a safe harbour if there is a negative margin in only one NRR. The circumstances will matter in each case of a negative margin.

Narrow positives

- 5.326 We included narrow positive RPCA margins in the guidance as something that needed to be explained and would not necessarily reset our assessment on margins in a segment, if it came after consecutive negative results. This was primarily to protect against a scenario where a gentailer:
- previously had one or more negative margin results
 - has a further RPCA result close to the line
 - is therefore effectively incentivised to manipulate that further result (eg, through the cost of energy calculation or cost allocations) to get a narrow positive margin, with an expectation that this would then satisfy the Authority that there was “nothing to see”.
- 5.327 In those circumstances, we would still want an explanation of the narrow positive RPCA result. We may well investigate further, especially given the inevitable and ongoing information asymmetry between gentailers and the Authority.
- 5.328 We also note that gentailers have significant flexibility in deciding their RPCA methodology and a natural information advantage over all other parties interested in the RPCA results. We are therefore seeking an explanation of all narrow positive margins to better understand any close calls.
- 5.329 We have adjusted the guidance to better reflect this intent.

RPCA: publication and protection of commercial sensitive information

Decision

- 5.330 We have decided to adopt the proposed disclosure and reporting regime as set out in Code (13.236W and 13.236X) and elaborated on in the RPCA guidance. This strikes an appropriate balance between transparency, and risks to commercial sensitivity and anti-competitive effects.
- 5.331 Each gentailer must publish a public version of its RPCA report within 10 business days of providing the RPCA to the Authority.

The Authority’s proposal

- 5.332 In the draft RPCA guidance the Authority proposed that:
- When providing information to the Authority, gentailers can identify information they consider confidential and the reasons why.
 - The Authority may publish RPCA information from time to time to increase market transparency, but will do so in a manner that appropriately protects the confidentiality of commercially sensitive information.⁵⁰

Public reporting

- 5.333 A gentailer must prepare and publish public versions of the RPCA on the gentailer’s website within five business days of providing the RPCA to the Authority. This must include the aggregated results by segment for each brand, the key components of the calculation, and a full explanation of its approach.

⁵⁰ See the Electricity Authority’s [Information Management Policy](#) published in 2024, including any subsequent updates..
Non-discrimination obligations – Code amendment

5.334 A gentailer may redact from its public version information that it reasonably considers commercially sensitive or otherwise confidential, but such redactions should be explained and kept to a minimum to promote transparency.

Reporting by the Authority

5.335 The Authority will publish a dashboard of the RPCA results and constituent components from each of the gentailers. We will also publish commentary on these results, including any follow-up action taken (to the extent permitted by the confidentiality obligations). These results will be broken down by NRR, brand and customer segment.

Submitters' views

5.336 In summary, gentailers were concerned to protect commercially sensitive information, while independents valued wide disclosure to maximise transparency.

5.337 For example, ERGANZ submitted that:

“Public reporting should be at the aggregated national level, with NRR detail disclosed confidentially to the Authority.

It is important to note the risk that publication of forward looking RPCA results reveals intentions regarding price changes and distorts competition.

The requirement to publish within five working days of providing the RPCA to the Authority is tight and should be extended to ten working days to allow proper preparation of the public version.”⁵¹

5.338 IEGA and IER submitted, in contrast, that the Authority should determine what information is commercially sensitive or otherwise confidential, to prevent gentailers taking an overly wide approach to redactions. They also said that:

“We support a requirement that the RCPA tests and factors are made public [A.138] however the methodology and the calculation methodology for these component needs to be published with sufficient detail...”

5.339 Genesis submitted that public reporting should only be at an aggregate level (ie not at the NRR-level), but did not give a reason why. Genesis submitted that:

“We also propose that the Authority publish, after the first RPCA round, a summary of the types of explanations assessed and the criteria applied. This would provide practical guidance on what constitutes an adequate explanation without requiring formal safe harbours, and would reduce regulatory uncertainty over time.”

The Authority's response

5.340 The Authority considers the disclosure and reporting regime of the Code and RPCA guidance strike an appropriate balance between transparency, and risks to commercial sensitivity and anti-competitive effects.

5.341 The RPCA guidance indicates that gentailers should use current retail pricing in the RPCA. There is therefore no required disclosure of future pricing intentions (which appeared to sit behind ERGANZ's concern).⁵² We accept that pricing intentions would be commercially

⁵¹ Meridian was concerned that RPCA disclosures would disclose future pricing intentions and “is unlikely to be pro-competitive and could result in increased price convergence while also conferring a competitive advantage on non-integrated retailers who will not need to reveal their pricing intentions to the market ahead of the fact”. Genesis said that “public reporting should be at an aggregated level only”. Contact did not comment directly on point, but made submissions (discussed above) that the RPCA should be a disclosure rather than a compliance regime, and that geographic segmentation was not warranted.

⁵² It is not obvious that disclosure of estimated future costs would increase the likelihood or stability of anti-competitive coordination or leader-follower behaviour.

sensitive, if not yet announced. If gentailers wish to use future intended price increases as an objectively justifiable reason for any low or narrowly positive margin, they can disclose this to the Authority. We would expect that for their public reporting, gentailers follow the standard processes for redacting confidential and commercially sensitive information.

- 5.342 We do not agree with the IER and IEGA submission that the Authority should determine what RPCA information is commercially sensitive and therefore not to be disclosed. Our experience is that the party most impacted by the disclosure is best placed to make the initial assessment. If we have any specific concerns about the redactions made for commercial sensitivity, we will raise these with the respective gentailer.
- 5.343 In response to Genesis, we intend to publish commentary on the RPCA results from time to time, and evolve the RPCA guidance as necessary.
- 5.344 We agree with ERGANZ's suggestion that the deadline for each gentailer to publish a public version of its RPCA report should be 10 business days, rather 5. We consider that this short delay is reasonable given the work involved, particularly in the initial iterations of the RPCA.

Obligation 2: good faith

Decision

- 5.345 The Authority has decided to adopt Obligation 2, requiring gentailers to engage with buyers in good faith and in a timely and constructive manner. The guidance on this topic provides further detail, including an expectation that gentailers respond to buyers' requests within 5 business days and allowing buyers 5 business days to respond to those offers. The guidance has been clarified to say that in considering if a gentailer has acted in good faith, the Authority will consider if the buyer has also acted in good faith.

The Authority's original proposal

- 5.346 Draft Obligation 2 is an obligation to engage in good faith. It was stated as follows in the October consultation paper: "A gentailer must engage with buyers in good faith and in a timely and constructive manner in relation to the supply of risk management contracts."
- 5.347 The draft Code guidance on the obligation to trade in good faith was as follows:
- B.13. The confidence in and efficiency of trading of risk management contracts is improved through encouraging high integrity conduct from all counterparties - which includes gentailers acting fairly, consistently and in good faith, and enabling their staff with the requisite skills, training, and support to perform their roles efficiently, effectively and professionally.
- B.14. Gentailers should adopt trading practices and processes that are transparent, efficient, and objectively justifiable, and commit to ongoing improvement and monitoring of performance, both of the market as a whole and the individual participants, so as to ensure ongoing confidence in and efficiency of trading of risk management contracts.
- B.15. Gentailers are expected to engage with buyers in a timely and constructive manner, for example by:
- (i) responding to buyers' requests for risk management contracts within 5 working days; and
 - (j) allowing buyers at least 5 working days to respond to offers made in response, unless there is an objectively justifiable reason for a longer timeframe being necessary.

B.16. The Authority expects that the following list of matters will be relevant in determining whether the gentailer has engaged with buyers in good faith:

- (a) whether the gentailer has acted honestly;
- (b) whether the gentailer has been responsive and communicative;
- (c) whether the gentailer has not acted arbitrarily, capriciously, unfairly, or unreasonably;
- (d) whether the gentailer has not acted in a way that constitutes retaliation against a buyer for past complaints and disputes
- (e) whether the gentailer has observed confidentiality requirements relating to buyer confidential information (including in accordance with Principle 5)
- (f) whether a buyer's requests for risk management contracts are reasonable (for example, by providing reasonable timelines, by providing reasonably required information and being issued where there is a genuine intention to transact).

B.17. The matters set out above are not exhaustive, however, and do not limit the obligation on gentailers to engage with buyers in good faith and in a timely and constructive manner in accordance with Principle 2.

5.348 The Supplementary paper proposed that the gentailer's non-discrimination policy must detail the expectations for the gentailer's engagement with buyers for the purposes of Obligation 2.

Submitters' views on good faith

- 5.349 MEUG strongly supported the inclusion of this obligation as it should address the concerns that some businesses have raised when negotiating new contracts and hedges with retailers – i.e. limited time to consider an offer, such as less than 24 hours. MEUG believed the draft guidance provided in Appendix B provided a good basis to assess alignment with this obligation. EEA also supported the obligation as many engineering and operational interactions occur well before contractual details are finalised. A clearer behavioural baseline will help ensure early-stage technical engagement proceeds constructively.
- 5.350 Genesis accepted the obligation that gentailers should engage with buyers in good faith but was concerned that the open-ended nature of the obligation creates uncertainty. Genesis asks the Authority to: (a) clarify the relationship between the Code obligation and guidance; (b) provide worked examples; (c) confirm that commercial decisions made in accordance with published policies do not breach good faith; (d) align the good faith obligation with the existing OTC code of conduct.
- 5.351 2degrees and Octopus suggested Obligation 2 should define "good faith" based on the Grocery Industry Competition Act and Regulations 2023.
- 5.352 A number of submitters suggested elevating more guidance to the Code, including Electric Kiwi, and Pulse Energy. They submitted that as currently drafted the obligation is weak and overly reliant on non-binding guidance. Octopus Energy and Electric Kiwi recommended that the clause be amended to:
- (a) clearly state that gentailers must not act recklessly, with ulterior motive, or under duress in their dealings with buyers of risk management products. (This was also supported by Pulse Energy.)
 - (b) include a non-exhaustive but meaningful list (within the Code itself) of the matters to be considered in assessing good faith, such as honesty, responsiveness, not acting arbitrarily or unreasonably, not retaliating for complaints, maintaining confidentiality,

and treating buyers without unreasonable discrimination, as set out in the grocery sector code.

- (c) ensure that the obligation to trade in good faith applies at every stage of the supply process, not just procedurally (eg responding within certain timelines), but substantively - requiring transparency, fairness, and genuine engagement in negotiations.

- 5.353 IEGA and IER simply noted that Obligation 2 is inadequate and does not provide necessary assurance but offered no suggestions as to how to achieve this.
- 5.354 Mercury agrees that gentailers should engage with buyers in a timely and constructive manner. However, the proposed guidance under paragraph B.15 specifies that gentailers should respond to buyers' requests within five days and allow buyers at least five days to respond in turn. This level of detail risks distorting conduct in a market that is workably competitive and thereby reduce economic efficiency. Contact, ERGANZ and BEC thought the five-day window should be reduced as the market can change quickly and this long a window presents opportunities for gaming and arbitrage.
- 5.355 Pua to the People supported having a mandatory response time.
- 5.356 Feedback on the Supplementary paper proposal is discussed below in the section on non-discrimination policies.

The Authority's response to submitters' views on good faith

- 5.357 Good faith is a well understood concept. If we attempt to be overly prescriptive about it, it risks becoming less flexible and harder to use the concept in novel situations and edge cases. We have already included detail in the guidance to assist in interpretation. This is consistent with our general approach of keeping the NDOs principles-based.
- 5.358 The requirement for a policy detailing expectations for the gentailer's engagement with buyers, together with the audit requirement, should provide some confidence that a gentailer is acting in good faith. If there are concerns about the effectiveness of these provisions, we will consider further guidance or – if necessary – Code changes. With the Authority's enhanced monitoring of the OTC market (including requests and responses to those requests), we will be able to quickly identify any issues.
- 5.359 We remain of the view that, as per the guidance, gentailers should respond within five business days to a buyer's request as this poses relatively little risk of arbitrage. We acknowledge that there may be some arbitrage risk at the very front of the curve (short contracts with the cover starting very soon). To mitigate the risk at the front of the curve, we propose to clarify that in considering if a gentailer has acted in good faith, we will also consider if the buyer has also acted in good faith, to ensure that they are not simply seeking free options on short-dated risk management contracts. The guidance has been updated to reflect this.
- 5.360 We have enacted Obligation 2, as drafted in the October consultation paper and amended the guidance as per the above paragraph.

Obligation 3: objective credit assessments

Decision

- 5.361 The Authority has decided to adopt Obligation 3 requiring gentailer's credit terms and collateral arrangements to be reasonable, consistent, and transparent. There have been no changes from the October proposal.

The Authority's original proposal

5.362 Draft Obligation 3 was titled "objective credit assessments" and required:

"A gentailer's credit terms and collateral arrangements relating to the supply of risk management contracts to buyers must reflect a reasonable, consistent and transparent assessment of the risk of trading with a buyer."

5.363 The draft Code guidance on credit assessments stated:

B.18. The credit terms and collateral arrangements offered by a gentailer in relation to the supply of risk management contracts to buyers should be a reasonable reflection of the risks of trading with the buyer. For this purpose, a gentailer should:

- (a) assess the credit worthiness of the buyer by reference to a range of relevant information, including information submitted by the buyer
- (b) follow an established and transparent process for assessing credit worthiness
- (c) consider, and where appropriate, discuss a range of credit options with the buyer
- (d) ensure that the credit terms and collateral arrangements offered reflect the outcome of the assessment, consideration and discussion under paragraphs B.18(a) to B.18(b).

Additionally, the gentailer should also be able to demonstrate to the Authority that it has done so.

2. The gentailer should process credit applications and conduct reviews in a timely, efficient and transparent manner. This includes:

- (a) providing an indication of when a decision might reasonably be made, subject to the applicant satisfying all reasonable information requirements in a timely manner
- (b) proactively notifying the applicant of any progress, including delays, issues or final decisions, when they become known.

B.19. The gentailer should submit to the buyer, with its offer, the basis for its credit decision.

5.364 The Supplementary paper proposed that a gentailer's non-discrimination policies should include a credit terms and collateral arrangements policy consistent with the requirements of this obligation.

Submitters' views on objective credit assessments

5.365 Electric Kiwi submitted that the obligation is overly ambiguous and open to subjective interpretation. They recommend wording be strengthened to:

- (a) define terms such as reasonable, consistent and transparent
- (b) require gentailers to maintain and publish high level description of their credit and collateral frameworks
- (c) require similar buyers in similar circumstances to be treated on similar terms with differences documented and justified
- (d) require justifications be provided to buyers around credit related decisions and
- (e) provide for regular reporting and review by regulator.

5.366 Octopus Energy submitted that paragraph B18 of the draft Code guidance should include clear guidance that multiple standard credit arrangements will be in place. It should also be clear that the level of credit assessment and criteria be linked to the credit arrangements

that will be put in place. Octopus Energy have found a high degree of inconsistency in this area.

- 5.367 Pulse Energy submitted that Obligation 3 should be supported by a requirement that justification be provided (including any reliance on data or advice or opinion) for the different treatment.
- 5.368 Submitter views on the non-discrimination policy requirements are discussed below in the section on non-discrimination policies.

The Authority's response to submitter's views on objective credit assessments

- 5.369 The Authority has decided not to amend Obligation 3 in the Code or guidance, in response to feedback. The requirement for a policy (with auditing) detailing the gentailer's credit terms and collateral arrangements should address most of the issues raised by Electric Kiwi. We do not think it useful to define "reasonable", "consistent" or "transparent" as these are well understood terms and defining them would reduce their utility.
- 5.370 In response to Octopus' concerns about consistency of practice, the Authority is not inclined to attempt to harmonise the gentailer's approaches to credit assessments, criteria or arrangements. While this may be convenient for independent retailers, it may reduce the competitive tension between gentailers if their commercial practices become homogenised.
- 5.371 In relation to Pulse Energy's point, we note that the Code guidance says that a gentailer should provide the basis for its credit decision to a buyer.

Obligation 4: equal access to commercial information

Decision

- 5.372 The Authority has decided to adopt Obligation 4 requiring gentailers to share commercial information about risk management contracts with buyers, if that information is shared with an internal business unit that competes with buyers. The guidance has been updated to specify the types of commercial information subject to this obligation. The guidance also clarifies that certain types of information (pricing methodologies and certain types of forecasts) should not be shared, to reduce the risk of tacit collusion.

The Authority's proposal

- 5.373 Draft Obligation 4 of the NDOs was:

"A gentailer must ensure that any commercial information relating to risk management contracts made available to its internal business units that compete with buyers is also made available to buyers at the same time."

- 5.374 The draft Code guidance stated:

B.20. A gentailer should ensure that any commercial information relating to risk management contracts made available to its internal business units is also made available to buyers at the same time.

B.21. This is intended to ensure a gentailer's retail internal business unit does not receive a competitive advantage through access to commercial information regarding risk management contracts. For example, information regarding a gentailer's current and future capacity to offer risk management contracts should be made available to all buyers even-handedly.

Submitters' views on equal access to commercial information

- 5.375 Gentailers were generally opposed to Obligation 4. Mercury said that it was not clear on the underlying problem that Obligation 4 addresses. They thought the obligation is very broad and creates a continuous disclosure obligation with a very large compliance burden. They thought implementation would require significant change for little to no benefit. BEC also emphasised the compliance costs.
- 5.376 Meridian also commented that the obligation does not address risks identified by the Authority and pointed out that it adds costs and implementation challenges. The proposal would require gentailers to either make commercial information available to all buyers or put in place internal information barriers. This may put them at a disadvantage relative to smaller gentailers or non-integrated competitors. They emphasised that other parts of the proposal would enable the redaction of commercially sensitive information from public disclosures, which is at odds with this principle. Genesis made similar arguments to Meridian.
- 5.377 Contact went a step further and said that strict adherence to the obligation would lead to virtual vertical separation. They would need to duplicate functions or consider broad disclosure, which has risks for competition and efficient market operations. The sharing of resources does not advantage the retail team who work to an ITP. They suggested that the Code guidance should be more prescriptive on what information has to be disclosed. ERGANZ also stressed the impracticalities for an integrated business and suggested that it would be better to specify the particular information that needs to be disclosed.
- 5.378 Mercuria supported Obligation 4 and suggested that it may require industry codesign. They suggested a broad interpretation of commercial information, including product availability, capacity forecasts, indicative pricing methodologies, and any changes to standard terms.
- 5.379 Electric Kiwi supported the obligation, but asked for practical guidance to provide clarity on how this would operate in practice.

The Authority's response to submitters' views on equal access to commercial information

- 5.380 The Authority has decided to codify Obligation 4.
- 5.381 Equal access to information is a conventional element of non-discrimination provisions. We disagree with the suggestion that this obligation would require continuous disclosure. A gentailer could comply with this obligation by:
- (a) minimising information sharing by the wholesale unit with the retail unit,⁵³
 - (b) disclosing to buyers information shared by the wholesale unit with the retail unit, or
 - (c) a mixture of the two approaches.
- 5.382 We note that, under the wholesale market information disclosure requirements in the Code, market participants must disclose information that is likely to have a material impact on prices in the wholesale market⁵⁴ (such as planned maintenance outages of generation plant). This is regardless of whether the information would be considered commercially sensitive or not.

⁵³ We have used the term "retail unit" in this section as shorthand for "any of the gentailer's internal business units that may compete with the buyer."

⁵⁴ See clause 13.2A of the Code.

- 5.383 Obligation 4 is intended to capture information that may not meet the wholesale market information disclosure threshold, but which would still create a competitive advantage if the retail arm receives it, either exclusively, or ahead of the rest of the market.
- 5.384 Genesis raised an issue with public disclosure of certain types of confidential information in relation to Obligation 6. Genesis was concerned about disclosure of some categories of commercially sensitive information that “would tend to reduce competition as firms converge on similar approaches and reduce innovation”. We agreed with Genesis’s broader point and have amended the guidance on Obligation 4 to be consistent with that approach.
- 5.385 In our view, it is acceptable for the wholesale unit to choose to share information about contract availability or willingness to trade, and changes to standard terms with their retail units, so long as they share the information with the rest of the market at the same time.
- 5.386 We would be concerned about potential tacit collusion and other effects on competition dynamics, however, if a wholesale unit were to share information, such as pricing methodologies or forecasts of the gentailer’s own internal capacity, with other gentailers.
- 5.387 We have amended the guidance on Obligation 4 to avoid the public disclosure of pricing methodologies and forecasts of the gentailer’s own internal capacity. Similarly, this information should not be published under clause 13.236X. We have made an addition to the guidance to reflect this.
- 5.388 The Authority will monitor the types of information that are shared with retail arms and the market, with a view to the potential impacts on competitive dynamics.
- 5.389 Obligation 4 may well cover commercially sensitive information, which submitters have raised concerns about. Gentailers can protect against the public disclosure of that information by ensuring that their wholesale units do not share that information with their retail units.
- 5.390 We also expect that any information disclosed under Obligation 4 will be disclosed in near real-time. A gentailer’s retail arm should not be getting a ‘heads up’ on availability or pricing shifts that enable retail responses ahead of the broader market.
- 5.391 Whichever approach gentailers take (reducing information sharing with their retail units, or disclosure to market participants), we acknowledge that this will require changes to processes and practices. We also acknowledge that different gentailers will have differing levels of integration between their wholesale and retail arms and so the impacts will be different for each gentailer.

Obligation 5: protection of commercial information

Decision

- 5.392 The Authority has decided to adopt Obligation 5 requiring gentailers to protect buyer’s confidential information and prevent disclosure to internal business units that may compete with the buyer. The Code has been amended to clarify that gentailers may only use confidential information from buyers for the purpose for which it was disclosed.

The Authority’s original proposal

- 5.393 Draft Obligation 5 stated that:

“a gentailer must protect buyer confidential information and establish robust processes to prevent disclosure of buyer confidential information to, and use of buyer confidential information by, any of the gentailer’s internal business units that may compete with the buyer.”

5.394 The draft Code guidance on this obligation was as follows:

B.22. In relation to the supply of risk management contracts by gentailers to buyers:

- (c) a gentailer should not disclose to an internal business unit information the gentailer has obtained through its dealings with a buyer where the disclosure would, or would be likely to, provide an advantage to the internal business unit
- (d) a gentailer should keep all buyer confidential information in confidence and should not disclose buyer confidential information to any third party other than as necessary for the provision of risk management contracts to that buyer, or where disclosure is:
 - (i) in confidence, to an emergency organisation that reasonably needs that information
 - (ii) properly made pursuant to a relevant legal or regulatory obligation
 - (iii) to the Authority
 - (iv) properly and reasonably made to a court
 - (v) authorised by the buyer.
- (e) a gentailer should not use buyer confidential information for sales or marketing purposes
- (f) a gentailer should have robust processes in place to ensure that any buyer confidential information that is inadvertently disclosed to an internal business unit is not used by that internal business unit to gain an advantage.

Submitters' views on protection of commercial information

5.395 Mercury said that it was not clear on the rationale and benefits of this obligation. In their view, the definition of buyer confidential information is broad and could be hard to isolate - the way Mercury currently discloses information internally does not provide an advantage to the internal business unit. In their view this provision could require significant changes to how information is received and cascaded through organisation with little or no corresponding benefit.

5.396 Electric Kiwi said that the Authority should adopt a stronger approach to confidential information, drawing on the provisions found in clause 25 of the Grocery Industry Competition Regulations 2023. Specifically, the rule should state:

'The gentailer must not use that information other than for a purpose for which it was disclosed and may only disclose the confidential information or make it available or accessible to employees or agents of the gentailer who need to have that information in connection with that purpose.'

5.397 In addition, they considered that the qualifier 'that may compete with the buyer' creates an unnecessary test for whether the obligation has been complied with and should be deleted; confidential information should not be shared with or used by any of the incumbent gentailer's internal business units, regardless of whether they compete with the buyer. Pulse Energy also supported these drafting changes.

The Authority's response to submitters' views on protection of commercial information

5.398 In the Authority's view, we do not believe the definition of confidential buyer information is broad. Buyers themselves should be identifying which of their information is confidential, based on existing law about confidential information.

- 5.399 We agree with the point that the gentailer should only be able to use the confidential information for the purpose for which it was disclosed. We have amended the Code drafting of Obligation 5 to take this into account.
- 5.400 In response to the submissions that the qualifier ‘that may compete with the buyer’ should be removed, we note that responding to a buyer’s request may require input from more than one internal business unit, none of whom compete with the buyer. Removing the qualifier ‘that may compete with the buyer’ could be unnecessarily restrictive without any benefits.

Obligation 6: record keeping

Decision

- 5.401 The Authority has decided to adopt Obligation 6 requiring a gentailer to keep records that demonstrate its compliance with the non-discrimination obligations. We have not amended Obligation 6 but have decided to amend the record-keeping requirements in clause 13.236T to be consistent with the removal of the uncommitted capacity concept. We have added guidance on public reporting under clause 13.236X to underscore that they Authority would be concerned about the public disclosure of information, such as pricing methodologies, that could facilitate tacit collusion

The Authority’s proposal

- 5.402 Draft Obligation 6 was set out in the October consultation paper as follows:

A gentailer must establish, maintain and keep records that demonstrate its compliance with these non-discrimination principles.

- 5.403 Draft clause 13.236S provided further details:

(1) A gentailer is required to establish, maintain and keep comprehensive records that demonstrate how it meets the non-discrimination principles.

(2) Without limiting subsection (1), a gentailer must establish, maintain and keep records of:

(a) the total capacity of the gentailer to offer risk management contracts, and their uncommitted capacity, over the next 3 years;

(b) the gentailer’s monthly electricity supplied over the past 12 months

(c) the gentailer’s expected monthly electricity supply over the next 3 years;

(d) the gentailer’s methodologies for pricing of risk management contracts;

(e) any reason for discriminating between buyers, or against buyers in favour of a gentailer’s own internal business units, for the purposes of non-discrimination principle 1 of the non-discrimination principles (set out in clause 13.236P(1)-(3));

(f) all complaints received by the gentailer by any person about any conduct of the gentailer that the person believes might constitute a breach of this subpart.

- 5.404 In the Supplementary paper, we proposed deleting ‘and their uncommitted capacity’.

- 5.405 No guidance was proposed for Obligation 6.

- 5.406 Draft clause 13.236T required an annual report to the Authority, which includes all the information covered in draft clause 13.236S(2). Draft clause 13.236W required the gentailer to publish a public version of the annual report. The gentailer “may redact information that it reasonably considers is commercially sensitive, or otherwise confidential, but any such redactions should be kept to a minimum to promote transparency.”

Submitters' views on record keeping

October consultation paper

5.407 Electric Kiwi submitted that records should, at a minimum:

- (a) cover both total risk management capacity and uncommitted capacity, tracked monthly on a rolling three-year forward basis. Records relating to uncommitted capacity should be based on observable, factual, or pre-determined values, or tied to a clear, prescriptive formula set out in the Code, rather than subjective forecasts
- (b) include all material methodologies, data, and key assumptions used in preparing these records, with all underlying calculations and workings documented so they can be audited
- (c) document any changes to methods, data, assumptions, or calculations over time, including reasons for such changes
- (d) for any forecasts of expected monthly electricity supply, ensure supporting detail and traceability back to methodologies, data, assumptions, and any subsequent changes
- (e) document credit-related decisions in relation to individual buyers.

5.408 Genesis suggested Code guidance on Obligation 6 as follows:

'For the avoidance of doubt, nothing in Principle 6 would require a gentailer to publicly disclose commercially sensitive information, including but not limited to pricing methodologies, customer-specific terms, and internal forecasts, except as specifically required under the Code for the purpose of compliance monitoring.'

5.409 They suggest that this would protect genuinely commercially sensitive information.

5.410 Contact was concerned that the disclosure requirements around uncommitted capacity are impossible to meet and that some of the other measures are already reported to the Authority. They also have concerns about public disclosure of some of this information.

Supplementary paper

5.411 Contact recommended a further change to the proposed record keeping requirements. The proposed clause 13.236S(2)(a) (now clause 13.236T(2)(a)) requires a gentailer to keep records of "the total capacity of the gentailer to offer risk management contracts, over the next 3 years". This has many of the same problems as the original uncommitted capacity requirement. Instead, they proposed that this clause requires gentailers to disclose their expected "risk adjusted generation capacity". They described this as more familiar terminology.

5.412 IER and IEGA suggested that a new record-keeping requirement should be added to the Code to cover records of the preparation of each retail price consistency assessment.

The Authority's response to submitters' views on record keeping

5.413 We have decided to adopt Obligation 6 into the Code, along with the clause on record keeping, with the changes described below.

5.414 In our view, the record keeping clause (clause 13.236T) requires comprehensive record-keeping and is not an exhaustive list of records that must be kept. The information that needs to be recorded will also be determined by other information and reporting requirements, as well as non-discrimination policies. The record keeping obligation is broader than the information enumerated under clause 13.236T(2). We therefore do not believe that Electric Kiwi's proposed changes are necessary.

- 5.415 The record-keeping obligation is only about the maintenance of records. Separate requirements have been included for public reporting and the Authority has internal processes and policies in place for protecting commercially sensitive information which is provided to it. We do not believe that guidance is needed for Obligation 6 on the public disclosure of commercially sensitive information.
- 5.416 We agree with Genesis' broader point that certain types of information should not be publicly disclosed. While they cited competitive diversity and innovation as the reason, we are particularly concerned that the public disclosure of certain types of information would facilitate tacit collusion. We have amended the guidance on Obligation 4 to avoid the public disclosure of pricing methodologies and forecasts of the gentailer's own internal capacity. Similarly, this information should not be published under clause 13.236X. We have made an addition to the guidance to reflect this.
- 5.417 The public reporting requirements in clause 13.236X require gentailers to publish public versions of their annual report and their RPCA.
- 5.418 We agree with Contact's suggested drafting change on the record-keeping requirements in clause 13.236T. Contact suggested changing "total capacity to offer risk management contracts" to "risk adjusted generation capacity to offer risk management contracts". As discussed above on Obligation 1(2), we have enabled gentailers to refuse to supply risk management contracts when that would put them in an intolerable risk position. This change does not require them to on-sell risk management contracts that they have purchased. Contact's suggestion better aligns with the new position and according to them is more familiar terminology.
- 5.419 We do not agree with the IEGA and IER suggestion of adding RPCA records to clause 13.236T(2) as this would then require those records to be included in annual reports. Clause 13.236T(1) is already broad enough to require maintaining records of the information used to prepare an RPCA.

Internal non-discrimination policies and auditing

Decision

- 5.420 The Authority has decided to include provisions governing non-discrimination policies and audit requirements into the Code. These provisions require gentailers to:
- maintain an internal non-discrimination policy that must be reviewed by a gentailer's board annually
 - undergo an annual external audit of their compliance with the NDO Subpart.
- 5.421 In a change from the Supplementary paper proposal, gentailers may engage any suitably qualified external auditor.

The Authority's original proposal

- 5.422 In the Supplementary paper, we proposed Code additions to provide greater detail on the expected content of non-discrimination policies. These additions were intended to aid gentailers in producing documents that are fit for purpose and aligned with the overall policy intent and to improve overall transparency.
- 5.423 In addition:
- We proposed codifying the requirements for a regular external audit of compliance with the NDO Subpart, first in September 2027 and then as the Authority required.

- We asked for feedback on the costs of auditing for the purposes of the annual report. In the October consultation paper this was estimated at \$10,000 per gentailer.

Submitters' views on internal non-discrimination policies and auditing

Internal non-discrimination policies

- 5.424 Submitters generally supported non-discrimination policies and the increased detail specified in the Supplementary paper. Lodestone Energy, EEA, Genesis, ERGANZ, Contact, IEGA and IER supported specifying the content of non-discrimination policies in the Code.
- 5.425 Submitters commented on the amount of detail in the proposed Code that governs a gentailer's non-discrimination policy:
- Mercury did not consider there was value in having greater specification of non-discrimination policy requirements in the Code. Mercury proposed the Authority revert to the approach in the October consultation paper, where greater detail was provided in guidance. Mercury also said the non-discrimination policy draft Code amendments had become narrowly focused, which risked turning the implementation of a non-discrimination policy into an overly prescriptive process.
 - ERGANZ and Genesis sought confirmation that commercial decisions consistent with a non-discrimination policy would satisfy the good faith obligation under Obligation 2.
 - Contact thought their previous feedback had been misunderstood. They clarified that they had not said it was excessive to require their Board to review and approve their non-discrimination policy, but rather that it was excessive for this review to occur annually. Contact said yearly review was not required for other policy under other legislation (e.g. the Financial Markets Act, Privacy Act or Fair Trading Act).
- 5.426 While Mercuria strongly supported expanded non-discrimination policies and the introduction of record keeping and annual audits, they said these enhancements should require gentailers to set out their methodologies, decision criteria and engagement practices for ensuring no discrimination between different classes of external buyers..

Audit requirements

- 5.427 Submitters offered mixed views on the proposed external audit requirements:
- Lodestone Energy, EEA, Contact, ERGANZ, Mercuria, IER and IEGA supported the audit requirements.
 - MEUG viewed the audit requirements with caution, saying the compliance costs and time associated with the audit needed to be balanced against the expected benefits.
 - Meridian said it did not support the proposed obligation for an external compliance audit as it was not clear what the audit would assess. As the NDOs and RPCA were principle-based, it would be difficult for any auditor to determine compliance. Meridian also thought external audits would not provide anything additional to existing powers and reporting proposals.
 - EEA, Contact, ERGANZ, IER and IEGA asked for more guidance and clarity on audit requirements. IER and IEGA recommended mandating current audit standards.

Audit frequency

- 5.428 Some submitters commented on the frequency of audits. Contact, IER and IEGA, ERGANZ and Gensis all supported annual audits. Some of them suggested that more frequent audits would be disproportionately expensive.
- 5.429 Mercury said that if external audits were to be required, they supported the proposed Code amendment that would require gentailers to complete an initial audit no later than 45 days after 1 July 2027, with further audits as specified by the Authority. Genesis said the first audit should occur after a least one full RPCA cycle to ensure there was a complete data set.

Audit costs

- 5.430 Submitters also commented on the projected costs of an audit:
- Meridian argued the costs of external audits had been underestimated. They thought one of the big four accounting firms would be best placed to carry out the audit and suggested initial costs closer to \$50,000. While they thought the Authority's estimate of \$10,000 for subsequent audits may be closer to reality, they said this would not include the time and costs incurred by a gentailer to support the audit. Mercury, ERGANZ and Genesis also agreed that audit costs were likely to be higher.
 - IER and IEGA said the codification of audit requirements were unlikely to impose significant additional costs, especially when weighed against its potential benefits. They added that the audit costs would be small in the context of gentailer revenues and profit margins, and were outweighed by gains from promoting fairer competition and improving transparency, among other matters.

Code drafting

- 5.431 Meridian offered specific comments, arguing the Authority's drafting had not considered how an external audit would function. Their comments included:
- A request for greater specificity in what was to be audited, which they added may mean that Part 16A was not suitable, since it assumed an audit of compliance.
 - If Part 16A were used, the prescribed form for the audit should be specified and additions to the current list of approved auditors should be considered. Alternatively, auditors could be appointed under separate drafting.
 - The Authority should consider whether the process to vary the chosen auditor should apply in this case (which would increase costs).
- 5.432 Meridian also said the Authority should consider whether the costs of an audit were to be met by the participant, the Authority, or depend on the findings of the Audit.

The Authority's response to submitters' views on internal non-discrimination policies and auditing requirements

Internal non-discrimination policies

- 5.433 Submitters were generally in favour of the proposed Code requirements governing non-discrimination policies. We consider the additional required detail will provide clarity as to Code requirements and do not consider the additional detail will be unduly burdensome (noting our decision to implement a principled framework as discussed above).
- 5.434 We are aware of the need to ensure gentailers have sufficient information to enable them to produce documents that are fit for purpose and meet their Code obligations. We consider

the additional detail provided in the Supplementary paper is appropriate and that retaining this level of detail will assist gentailers in complying with the Code.

5.435 We do not consider an annual requirement for a gentailer to review their internal policy to be unreasonable. In implementing a new regulatory regime, we expect gentailers to learn-by-doing, and we therefore anticipate annual reviews will assist gentailers in improving their non-discrimination policies.

5.436 We do not consider it sufficient for good faith to be assessed merely through compliance with non-discrimination policies. While the requirement for a policy detailing expectations for the gentailer's engagement with buyers should help to ensure that gentailers do engage in good faith, and should provide confidence to buyers in that respect, whether a gentailer has in fact acted in good faith will necessarily be judged with regard to all the particular circumstances. Accordingly, the Authority does not consider it appropriate to designate a safe harbour, as proposed by Genesis and ERGANZ.

Audit requirements

5.437 Following our review of submissions, we have amended the Code so that audits will not need to be arranged under Part 16A. Instead, under the revised drafting, a gentailer may engage any suitably qualified external auditor. We expect that such audit would be required by gentailer boards before certifying annual compliance with the NDO Subpart. We consider that this approach will reduce compliance costs and support the availability of auditors when compared with the previously proposed approach. We do not consider it necessary to include reference to audit standards with the Code as auditors are already subject to professional and contractual obligations.

5.438 In our view, requiring the annual audit of compliance with the NDO Subpart is appropriate and will ensure that gentailers' compliance with the NDOs remains front of mind.

5.439 Given Meridian's and ERGANZ submissions on audit costs, in particular Meridian's argument that first year costs would be closer to \$50,000, we have updated our cost estimates (see the cost-benefit analysis below). In the absence of specific data to the contrary, we assume that any additional internal costs incurred to support such an audit is adequately captured by the original estimates of potential compliance costs. Gentailers will be required to bear the costs of undergoing an audit under the Code.

Implementation timeframes

Decision

5.440 The Authority has decided that the non-discrimination regime will commence 1 July 2026, with the first RPCA being required 45 days later, on 3 September 2026. Gentailers will not be required to produce interim reports, which is a change from the proposals.

5.441 The annual report and audit reports will be due on 30 September to align with financial reporting timeframes.

The Authority's original proposal

5.442 In the October consultation paper, the Authority proposed the non-discrimination regime would commence on 1 July 2026. This date was selected to balance getting the new requirements in place as soon as reasonably practicable with the need for gentailers to engage with the material changes to their business processes. A 1 July commencement date would also align with the start of the gentailers' financial years.

- 5.443 We proposed requiring gentailers to publish an implementation plan (including the non-discrimination policy) and provide their first RPCAs to the Authority on 1 July 2026. We proposed requiring the gentailers to publish interim reports and provide the Authority with their second RPCA in February 2027. Annual reports were to be provided to the Authority in September 2027 along with the third RPCA. The fourth RPCA was proposed to follow in February 2028 as part of the ongoing requirement for half-year reporting.
- 5.444 In the Supplementary paper, the Authority proposed a modification to the timetable in the October consultation paper. While retaining the overall commencement date of 1 July 2026, the Authority proposed the implementation plan (including the non-discrimination policy) and first RPCA be required 45 business days thereafter (3 September 2026). We also changed the date of the interim report to 45 business days from the end of the first six-month period from 20 business days after that period.

Submitters' views on the implementation timeframes

- 5.445 Submitters' comments on the proposed implementation pathway in October were generally focused on the viability of the proposed timetable and the potential compliance costs.

Timetable

- 5.446 Several submitters argued that the proposed timetable in the October consultation paper was ambitious and sought additional time to implement some or all of the proposals. For example:
- Meridian said that making guidance available in April 2026 would leave gentailers only two months to prepare implementation plans and carry out the first RPCA and suggested shifting the first RPCA to September 2026.
 - Genesis said that even with a workable alternative, a lead time of potentially 9 – 12 months would be required.
 - ERGANZ also didn't think the proposed implementation timeline was achievable.
- 5.447 While Octopus Energy said the NDOs should come into effect immediately, they thought that an additional one to two months might be required to develop more fulsome Code amendments for the RPCA.
- 5.448 Contact said the proposed disclosure requirements should be aligned with other required disclosures.
- 5.449 Other submitters, such as EEA, Mercuria and MEUG, were supportive of the proposed timetable contained in the October consultation paper.
- 5.450 Some submitters also commented on the implementation implications of the proposal as part of their feedback on the Supplementary paper:
- ERGANZ and Genesis asked the first RPCA be required by 31 March 2027, saying that this would be an appropriate implementation period that would allow the systems and processes to be built once the NDO design and guidance were finalised.
 - Mercury requested clarity on the overall proposed timetable. Mercury also asked for an extension of the commencement date and clarification of when gentailers needed to comply with all the NDOs. They said that requiring the implementation plan within 45 days of the subpart coming into force suggested that compliance was subsequent to that.

Implementation plans

5.451 Electric Kiwi queried the value of requiring gentailer implementation plans to be published on the same date as the commencement of the NDO regime (i.e. 1 July 2026). By that point the implementation should already be complete. Electric Kiwi also suggested enhancements to the proposed implementation plan and reporting.

Compliance costs

- 5.452 Another theme among submissions was the potential for significant compliance costs. MEUG said it was strongly concerned that the potential compliance and reporting costs could exceed those estimated in the October consultation paper, with these costs flowing through to customers and undermining the benefits of the intervention. Meridian similarly thought the proposal would involve increased layers of reporting and compliance, which would drive increased compliance costs. In Meridian's view, moving to annual reporting would reduce costs and reflect the Authority's view that there would not be a brightline pass or fail in any given assessment.
- 5.453 Octopus Energy offered a different view and suggested that incorporating the reporting requirements into the reconciliation participant audits could reduce the compliance burden on the Authority. They supported the proposed director certifications as a tool to increase transparency and accountability, provided the obligations were legally explicit.
- 5.454 Submitters also commented on the potential compliance costs in the Supplementary paper. ERA and ERGANZ said that the NDOs would require new systems, modelling and governance processes. These would need sufficient lead time for implementation and that substantial costs would ultimately be borne by consumers.

The Authority's response to submitters' views on the implementation timeframes

Timetable

- 5.455 The Authority considers the date of 1 July 2026 remains an appropriate date for the non-discrimination regime to commence.
- 5.456 We have decided to require the annual report and audit report by 30 September each year to align with the financial reporting cycle. Following feedback that the initial timetable could present significant administrative challenges for those affected, we have revised the implementation timetable as follows:

Date	Milestone
1 July 2026	Commencement date
3 September 2026	Gentailers provide first RPCAs and publish implementation plans (including non-discrimination policies) (45 business days from 1 July 2026)
9 March 2027	Second RPCA provided to the Authority
2 September 2027	Third RPCA provided to the Authority
30 September 2027	Annual reports provided to the Authority (and published within five business days) along with audit reports
8 March 2028	Fourth RPCA provided to the Authority, as part of ongoing requirement for half year reporting

Interim reports

- 5.457 We have removed the requirement for gentailers to produce interim reports, in response to submitter feedback. We have done so to allow the gentailers to focus on producing their initial RPCA reporting as well as their implementation plans and non-discrimination policies.

Compliance costs

- 5.458 The Authority considers it is important that gentailers regularly review their non-discrimination policies to ensure these policies are fit for purpose and remain at the centre of gentailers' day-to-day operations. In our view, requiring gentailers to conduct an annual review of the internal policies remains appropriate.
- 5.459 We discussed the costs and benefits of the proposals in Appendix G of the October consultation paper. This estimated gentailers' costs at \$4.8m in year one, and \$2.3m p.a. on an ongoing basis. We noted that the ongoing costs of \$2.3m p.a. (+/- \$0.5m) was 0.02% of the \$10.5b p.a. sales to residential, C&I consumers (including approximately \$3b for transmission and distribution). In this context, we would not expect the costs of the proposals to materially influence the price of gentailers' offerings to consumers.
- 5.460 We would expect gentailers to develop appropriate systems and processes to reduce ongoing costs and create efficiencies as compliance with the NDOs is integrated into their regular reporting functions.

Internal Transfer Price and Retail Gross Margin disclosure requirements

Decision

- 5.461 The Authority has decided to remove Internal Transfer Prices (ITP) reporting from the Code because a post-implementation review found that this information was not useful. Independent retailers will continue reporting on their Retail Gross Margin (RGM). In a change from the October proposal, gentailers will continue reporting of metering, transmission, distribution and levy costs, for mass market customers on a per MWh basis. This will enable comparison and sense checking between RGM and RPCA data.

The Authority's original proposal

- 5.462 The Authority proposed repealing the requirements for reporting ITPs because the post-implementation review did not find this information useful in its current form.⁵⁵ The ITP disclosure requirements were originally put in place to address concerns about even-handedness and potential margin squeezes. The NDOs outlined in this paper better address those concerns than the ITP disclosure requirements.
- 5.463 We proposed retaining the RGM requirements for independent retailers. We were of the view that the purpose of those requirements would effectively be met for the gentailers, by the regular RPCAs they will be required to perform and report on. RGM requirements for independent retailers remain useful for monitoring purposes and include information that is not contained in the retail data notice. The RGM information would also assist in comparing independent retailer margins and information obtained through the RPCA.

⁵⁵ Electricity Authority, [Internal Transfer Price and Retail Gross Margin post implementation review](#), 7 November 2024., Non-discrimination obligations – Code amendment

Submitters' views on Internal Transfer Price and Retail Gross Margin disclosure requirements

5.464 Most submitters favoured removing the ITP requirements from the Code:

- Meridian supported the proposal to revoke the ITP requirements for gentailers, as did Mercury, which suggested retaining an updated form of RGM reporting for all participants (though they saw this as a substitute for the RPCA).
- Genesis also supported the revocation of the ITP requirements as well as the retention of RGM reporting for independent retailers.
- Contact was unsure if the RPCA would provide better information to the market than ITP disclosure but suggested it could be possible to improve the RPCA to reduce complexity and improve its clarity.
- MEUG supported the removal of ITP reporting on the basis it was not achieving its intended purpose.
- Likewise, ERGANZ thought the ITP disclosure requirements had not delivered sufficient transparency or regulatory value to justify their cost.
- EEA also supported the repeal of ITPs on the basis that these did not materially support engineering or investment. EEA thought the RPCA would provide a clearer, more meaningful transparency mechanism without duplicating information or imposing a compliance burden.

5.465 However, some submitters believed the ITP regime should be retained:

- Electric Kiwi did not support the removal of ITP reporting for gentailers and thought issues with ITP reporting arose from the regime's design. Electric Kiwi argued ITP reporting provided visibility over historic financial flows between generation and retail arms and thought that relying on an RPCA would risk independent oversight.
- Pulse Energy argued the ITP disclosure requirements should be reformed rather than repealed and that the disclosure of ITPs is required to determine whether a gentailer has discriminated against buyers in favour of its own internal business units.
- Octopus also suggested retaining the ITP or incorporating it into the RPCA.

The Authority's response to submitters' views on ITP and RGM disclosure requirements

5.466 Submitters' views were mixed and we remain of the view that ITP reporting should be removed, in line with the findings of our previous review. The ITP regime has not achieved its goals and places unnecessary compliance costs on gentailers. The RPCA should give a better insight into gentailer energy costs than the ITP regime.

5.467 We also support the retention of the RGM requirements for independent retailers to enable comparison with the gentailers' margins. We have amended our proposal slightly to retain gentailer reporting of metering, transmission, distribution and levy costs, for mass market customers on a per MWh basis. Continuing this obligation on gentailers would reduce the cost offset from the repeal of ITPs somewhat, but the Authority considers this would not materially impact the estimated compliance cost that form part of the assessment of costs and benefits.

Compliance and enforcement

Decision

- 5.468 The Authority is committed to active monitoring of compliance with and enforcement of the NDOs to ensure their effectiveness and considers that the NDO framework substantially enhances visibility of gentailer conduct in the hedge market.
- 5.469 The Authority will provide further detail on our approach to monitoring compliance with the NDOs by 1 July 2026. This information is intended to inform participants about the Authority's approach but will not provide guidance or advice on how to meet the obligations. Nor will the information the Authority provides create binding tests, automatic enforcement triggers, or limit the Authority's discretion. This reflects the Authority's approach that monitoring tools and disclosures sit within a broader monitoring and compliance framework and do not pre-determine enforcement outcomes.
- 5.470 Our approach to enforcement will be grounded in the existing statutory compliance and enforcement framework, and will be focussed on proportionate, risk-based responses to alleged non-compliance. Alleged breaches of the Code, including the NDOs, will be assessed on a case-by-case basis, taking into account the nature and seriousness of the conduct, its actual or potential impact on consumers, competition and the market, the behaviour and compliance history of the gentailer, and the need to maintain industry confidence and effective deterrence.

The Authority's original proposal

Compliance and self-reporting

- 5.471 In the October consultation paper, the Authority proposed a substantial disclosure and self-reporting regime to support compliance with the NDOs and provide confidence that the hedge market is supporting effective competition. The proposed regime includes disclosure, reporting and record-keeping obligations, director-certified annual compliance reports, and a requirement to self-report breaches of the NDOs.
- 5.472 The Authority reiterated its view that director-level certification of compliance is an important accountability and assurance mechanism. The extent to which gentailers could evidence their approach to compliance would inform the Authority's assessment of any alleged Code breach, and our approach to monitoring and enforcement.

Enforcement

- 5.473 The Authority said that there should be a genuine prospect of enforcement action to incentivise compliance, both with the NDOs themselves and with any process requirements that supported compliance and assurance (such as the requirement on directors to make reasonable inquiry).
- 5.474 The October consultation paper noted that any enforcement action would follow the Authority's normal compliance processes. Where an alleged breach proceeds to a formal complaint, whether brought by the Authority or another participant, the determination of whether a Code breach has occurred, and any remedies, ultimately rests with the Rulings Panel.

Submitters' views on compliance and enforcement

- 5.475 Submitters' comments on compliance and enforcement varied.

Monitoring and enforcement

- 5.476 Several independent retailers and representative organisations sought robust monitoring and enforcement, often with specific triggers:
- (a) Electric Kiwi argued for robust monitoring and enforcement, with the Code triggering an investigation where the RPCA indicated potential discrimination. In Electric Kiwi's view, this should extend to a joint investigation by the Commerce Commission and the Authority where more than one failure occurred (e.g. more than two failures in a three-year period). Electric Kiwi's recommendations also included the retention of corporate separation as an enforcement option and enabling third party reporting of breaches.
 - (b) On a similar note, 2degrees argued the NDOs would only be effective if accompanied by robust monitoring, reporting and enforcement by the Authority. They were concerned the proposal did not include direction on enforcement or consequences for failing to comply with the NDOs and sought automatic penalties for non-compliance. However, 2degrees supported the Authority's director certification regime.
 - (c) IER held similar views, supporting a joint investigation with the Commerce Commission following repeated negative results. They additionally proposed that repeated negative results should automatically require the Authority to develop an escalated Level Playing Field measure. IER also thought that the Code and guidance should be sufficiently specific so as not to be materially manipulated, and that the consequences flowing from the RPCA should be clear. In their view, a firm that failed the RPCA without an acceptable reason should be fined, and be required to amend their pricing, and implement both internal legal separation and arms-length operating arrangements.

Uncertainty and costs

- 5.477 Gentailers were concerned that:
- (a) the criteria for the Authority NDO compliance and enforcement action would be unclear, and compliance uncertainty could chill legitimate business decisions; and
 - (b) the proposed NDO regime would involve significant compliance costs and unintended consequences.
- 5.478 For example, Genesis proposed codified safe harbours, clear definitions, and explicit recognition that competitive tender outcomes satisfy NDO requirements. Meridian said that the Authority needed to clarify both the level of acceptable margin and the timeframe over which that should be expected under the RPCA. Contact commented that various proposed requirements were excessive, such as: annual review and Board approval of the non-discrimination policy, the requirement to develop an implementation plan, and the six-monthly reporting of RPCAs.

Reporting and dispute resolution pathway

- 5.479 Some comments focused on the reporting and resolution pathways. For example, MEUG queried why the Authority had only proposed the self-reporting of breaches by gentailers, and suggested that impacted buyers should be able to raise concerns with the Authority directly.
- 5.480 BEC thought that the path to dispute resolution remained unclear where there were disagreements as to whether a breach had occurred. It suggested that introducing a dispute resolution mechanism could prove helpful.

Other comments

- 5.481 Genesis raised concerns about the potential legal implications of the framework, noting the proposed Code changes would require gentailers to self-report breaches of the NDOs. They queried whether this requirement raised issues of self-incrimination and legal privilege and proposed the Authority clarify that the Code did not displace legal professional privilege.

The Authority's response to submitters' views on compliance and enforcement

Monitoring and assessment

- 5.482 The Authority agrees with submitters that effective monitoring and enforcement are necessary to ensure the effectiveness of the NDOs. The Authority is committed to active monitoring of compliance. The NDO framework substantially enhances the visibility of gentailer conduct in the hedge market.
- 5.483 The Authority will provide further detail on our approach to monitoring compliance with the NDOs by 1 July 2026. This is intended to inform participants about the Authority's approach but will not provide guidance or advice on how to meet the obligations. Nor will the information the Authority provides create binding tests, automatic enforcement triggers, or limit the Authority's discretion. This reflects the Authority's approach that monitoring tools and disclosures sit within a broader monitoring and compliance framework and do not pre-determine enforcement outcomes.
- 5.484 The Authority's monitoring approach will be evidence-driven, drawing on a range of information sources including:
- (a) gentailers' non-discrimination policies, RPCAs, implementation plans, annual reports, and audit reports
 - (b) Code-mandated disclosures and market data (including hedge disclosure obligations, OTC bids and offers information, ASX data and retail data)
 - (c) information obtained through the Authority's broader monitoring activities
 - (d) alleged breach reports, and issues raised by market participants or stakeholders.
- 5.485 In assessing compliance, the Authority will consider both process and outcomes. This includes assessing whether gentailers have established and applied policies, methodologies, and controls required by the NDOs, and whether observed conduct and market outcomes are consistent with those arrangements and enable compliance with the NDOs.
- 5.486 In doing so, the Authority does not seek to second guess legitimate commercial judgments, but rather assess consistency, systems and patterns of conduct against the requirements of the Code. We have also sought to address these concerns through the design of the NDO Code and our guidance. For example:
- (a) We have set out a broad, evidence-based test for a gentailer to provide legitimate business reasons for any discrimination (objectively justified reasons).
 - (b) Our RPCA guidance provides gentailers with flexibility around the appropriate hedge portfolio and other aspects, but asks for these reasons to be explained. However, it is not a bright-line pass/fail enforcement tool. An RPCA "fail" will not necessarily lead to enforcement action in itself. Rather it is an indicator of price discrimination in hedge pricing used as evidence that will be considered when assessing potential non-compliance with the non-discrimination principles.

- 5.487 While individual instances of conduct may inform the Authority's understanding, or lead to enforcement action where appropriate, greater weight will generally be placed on repeated behaviour, ongoing issues, or indicators of systemic non-compliance over time. The Authority will take whatever action it considers most appropriate in the circumstances.
- 5.488 The Authority may use analytical tools and indicators, including the RPCA, to support its assessment of compliance. These tools are not determinative of non-compliance. The RPCA is intended to provide transparency and evidence that may inform the Authority's assessment of gentailers' compliance with the NDOs and may prompt further engagement, information gathering, or assessment depending on the particular circumstances.
- 5.489 We do not think that bright-line triggers for compliance or enforcement for the NDOs are feasible or desirable. Decisions about investigation or referral to the Rulings Panel will be made in the context of the Authority's Enforcement and Prosecution Policy and the statutory framework.
- 5.490 As information comes to light, we may also consider Code amendments if we believe that regulation needs to be adapted to the problems we see in the marketplace.

Enforcement processes

- 5.491 The Authority's compliance and enforcement processes must align with, and give effect to, the Electricity Industry Act 2010 (the Act) and the Electricity (Enforcement) Regulations 2010 (the regulations). The regulations establish the framework for investigating and resolving alleged Code breaches, within which the Authority's compliance processes must operate.
- 5.492 Further detail on the Code enforcement process prescribed by the regulations is set out in our [Enforcement and Prosecution policy](#). In summary:
- (a) alleged Code breaches may be reported by industry participants, non-participants or the Authority
 - (b) the Authority may decide to take no further action under regulation 11⁵⁶
 - (c) unless the Authority decides to take no further action, we must appoint an investigator who must attempt to effect a settlement between the parties to an investigation
 - (d) on completion of the investigation, the investigator must submit a written report to the Authority setting out the findings and recommendations
 - (e) on receipt of the investigator's report, the Authority may discontinue the investigation, approve a settlement (if one was reached) or refer a complaint to the Rulings Panel.
- 5.493 The Authority will assess complaints about breaches of the Code using its standard processes, consistent with the regulations and with close collaboration between the monitoring and compliance functions. When considering whether to take enforcement action, the Authority may consider the criteria in its [Enforcement and Prosecution policy](#). These criteria are not intended to prescribe or restrict the Authority's exercise of judgment and discretion – each assessment will be made on a case-by-case basis.
- 5.494 The first criterion under the policy is the participant's compliance history and behaviour. Relevant considerations include:

⁵⁶ Regulation 11 of the Electricity Industry (Enforcement) Regulations 2010 says the Authority may decline to take action on any report of an alleged breach if—

(a) the report relates to a matter that has been, or that the Authority considers should more properly be, dealt with by any other person;

or

(b) the Authority considers that the report fails to establish a prima facie case for the alleged breach; or
(c) the Authority decides that the alleged breach does not otherwise warrant further action being taken.

Non-discrimination obligations – Code amendment

- (a) whether the participant self-reported the breach, and the timeliness of self-reporting
- (b) whether the breach was inadvertent, or whether the participant was aware (or should have been aware)
- (c) whether the conduct is repeated or ongoing behaviour
- (d) level of cooperation by the participant.

5.495 Based on these factors, the Authority is more likely to consider enforcement action for non-compliance which is repeated or ongoing or of which the gentailer was aware. The Authority will be alert to instances where there are persistent negative RPCA results, a gentailer has frequently departed from its non-discrimination policy, or it fails to demonstrate objectively justifiable reasons for discrimination. That being said, any negative RPCA result will be closely scrutinised. The Authority may take into account other factors indicating widespread non-compliance, such as failure to keep adequate records, defaulting on reporting deadlines, and failures to develop and maintain adequate operational policies, practices, methodologies and processes. This is just one factor the Authority may take into account, notwithstanding the above.

5.496 The second criterion the Authority may consider is the actual or potential impact. The Authority may take into account:

- (a) the impact on consumers, other participants, security and the market
- (b) the scale of the impact
- (c) the duration of the non-compliance
- (d) the benefit or advantage gained from the breach.

5.497 The Authority is likely to take action if non-compliance with NDOs has actual or potential significant discriminatory effect.

5.498 The third criterion is industry or consumer awareness. Relevant factors include:

- (a) the level and scale of concern within the industry or consumers
- (b) the need for specific or general deterrence from similar conduct
- (c) whether a decision not to undertake enforcement action would undermine confidence of the electricity industry
- (d) the time needed for duty holders to familiarise themselves with new regulatory requirements.

5.499 Based on this criterion, the Authority will be responsive if industry participants or consumers raise alleged breaches or there is a particular public interest in enforcement action. The Authority will be mindful of the deterrence aspect of enforcing the NDOs and the need to maintain industry confidence in this area.

5.500 The fourth and final criterion concerns the Authority's objectives, functions and outcomes. Enforcement decisions must be aligned to the objectives and functions set out in the Act. Of particular relevance in this context is the Authority's main objective of promoting competition in the electricity industry for the long-term benefit of consumers.

5.501 The above is intended to guide parties as to how the Authority may exercise its enforcement discretion, but such decisions will always be made on a case-by-case basis, balancing the full range of relevant factors.

- 5.502 Only the Rulings Panel may determine whether a Code breach has occurred and impose remedies. Remedies include pecuniary penalties up to \$2 million, daily penalties for ongoing breaches, compensation orders, public reprimands, and compliance orders.⁵⁷
- 5.503 We note that MBIE’s cabinet paper [Progressing the Energy Package: Building Better Markets](#) proposes to increase the maximum pecuniary penalty for the most serious breaches of the Code to \$10 million, three times the commercial gain, or 10% of turnover. The Code provisions subject to higher penalties are proposed to be specified in the regulations but have not yet been consulted on.

Dispute resolution

- 5.504 Under section 50 of the Act, the Rulings Panel may resolve disputes between industry participants that relate to the Code, where those disputes are of a kind identified in the regulations or the Code. Disputes identified in the regulations and the Code generally relate to disagreements of a specific and limited nature, such as disputes relating to reconciliation information, contracts for procurement of ancillary services, and disputes about amounts payable. While the Authority could introduce additional dispute resolution mechanisms through the Code, we consider alleged breaches of the NDOs are best addressed through the existing compliance and enforcement framework, which can include settlement agreements following any formal investigation.

Reporting of alleged breaches

- 5.505 In response to Electric Kiwi’s recommendation regarding third-party reporting, the Authority notes that the regulations already provide for both mandatory and voluntary reporting. Regulation 8 requires industry participants to report alleged breaches of the Code by other industry participants, and regulation 9 enables any other person to report an alleged breach voluntarily. The existing framework already supports comprehensive reporting of alleged non-compliance.
- 5.506 The Authority also meets regularly with stakeholders to discuss issues affecting participants and remains available to speak with stakeholders as required.
- 5.507 In response to Genesis’ point, self-reporting of breaches is a well-established compliance tool within the electricity regulatory framework. The regulations already require participants to self-report certain breaches of the Code.⁵⁸ The regulations expressly contemplate that additional reporting requirements may be specified in the Code and the Authority has exercised this power in other contexts, including through the consumer care obligations.⁵⁹ The proposed self-reporting requirements for the NDOs are therefore consistent with existing regulatory practice and do not raise new issues of principle. A requirement to self-report breaches of the NDOs does not displace legal professional privilege. The Code guidance has been updated to clarify this.

Escalation pathway

Decision

- 5.508 We intend to consider any significant escalation or broader reform following an effectiveness review of our broader pro-competition hedge market package in 2027.

⁵⁷ See section 54 of the Electricity Industry Act 2010.

⁵⁸ See regulation 8 of the Electricity Industry (Enforcement) Regulations 2010.

⁵⁹ See clause 37 of Part 11A of the Code which prevents a retailer from electrically disconnecting a post-pay customer’s premises at which the retailer knows a medically dependent consumer may be residing and requires the retailer to notify the Authority as soon as it becomes aware of an electrical disconnection which results in a known medically dependent consumer being without electricity.

The Authority's original proposal

- 5.509 In the LPF Options paper, the Authority offered a roadmap for implementing NDOs that would apply to all gentailers' risk management contracts. The original proposal offered a three-step approach to regulation. The proposed steps were:
- (a) Step 1: the principles-based non-discrimination requirements, including more detailed ITP design principles
 - (b) Step 2: Non-discrimination requirements prescribed in detail
 - (c) Step 3: Mandatory trading of gentailer hedges.
- 5.510 Following feedback from submitters on this approach, the Authority revised its proposal in the October consultation paper to no longer include ITPs, the construction of a hypothetical hedge portfolio, or an escalation to Step 3. Instead, the Authority proposed using the RPCA as the key intervention for demonstrating non-discrimination on price terms alongside non-discrimination obligations on conduct.
- 5.511 The Authority also proposed developing the regime by producing further guidance or by adding more prescription through Code amendments to parts of the regime in response to issues that arise. This is an incremental approach that may result in some elements of the NDOs remaining as high-level principles and others becoming more prescriptive.

Submitters' views on the escalation pathway

- 5.512 Submitters offered a range of views on the proposed escalation pathway, with many submitters arguing against an incremental approach to the NDOs or RPCA. However, submitters were more supportive of the Authority's decision to move away from a three-step escalation regime.

General comments on proposed escalation pathway

- 5.513 Some submitters felt the escalation pathway was inadequate. For example, Octopus Energy didn't think the proposal included a real escalation pathway and argued the Authority should include a clear roadmap to legal separation and arms-length trading if the NDOs failed to deliver liquidity and fair pricing. Electric Kiwi similarly sought corporate separation measures to be developed in parallel as a fully developed and ready back-stop option.
- 5.514 Other submitters sought further clarity on when the Authority would amend the NDOs.
- ERGANZ recommended the Authority state in advance the indicators that would trigger consideration of further specifications to ensure stakeholders had a shared understanding of what constituted a failure of the initial regime. They also said any significant changes to the scope or nature of the obligations should be subject to full consultation and impact assessment.
 - Genesis noted the Authority's approach of conducting an effectiveness review before considering any significant escalation, which they urged be based on demonstrated evidence of harm rather than hypothetical concerns.

Incremental specification of NDOs or RPCA

- 5.515 Mercury said that it supported any future changes focused on refining the NDOs with appropriate industry consultation. However, some submitters thought that incrementally refining the NDOs or RPCA was not the best approach. For example:
- Octopus Energy thought an incremental approach to the NDOs or RPCA was too vague and argued that the Authority should have clear rules upfront. They said the core

requirements for the RPCA and the definition of capacity should be prescribed in the Code to ensure the regime was immediately enforceable and not able to be gamed.

- Pulse Energy argued the Authority should move to more prescriptive NDOs with fewer carve-outs as these would provide regulatory certainty and make incumbent gentailer and compliance requirements clearer. They also argued the Authority's approach to escalation suggested a preference for minimising intervention over regulatory certainty.
- Meridian thought an incremental approach would not provide regulatory certainty, and that later changes would further increase regulatory costs. They argued that a post-implementation review could show the proposals did not benefit consumers and that less regulation might be preferable.
- Genesis said any escalation should be evidence-based and proportionate to demonstrated harm rather than based on hypothetical concerns. They argued that the evidence base did not support the RPCA or uncommitted capacity requirements, let alone more intrusive measures.
- Contact did not support any further specification on the basis they thought the NDOs and RPCA were already over-specified.

Support for shift away from prior three-step approach

5.516 Submitters also commented on the Authority's move away from a three-step escalation regime, with many broadly supportive of the change. Meridian supported the Authority's shift from the previous escalation pathway.

5.517 MEUG said that they appreciated the Authority's reasoning for no longer pursuing a three-step approach, noting the clear divergence of submitter views and the broader work underway through both the Task Force and the Government's Energy package. They supported an effectiveness review following the first set of annual gentailer disclosures, alongside consideration of information gathered on the OTC market.

5.518 BEC and ERGANZ also commented on the Authority's revision, with the BEC saying they were particularly glad that step three (trading of hedges through a regulated market) was no longer being proposed. ERGANZ said it only supported the revised approach as a significant improvement on the earlier three-step framework.

The Authority's response to submitters' views on the escalation pathway

5.519 The Authority acknowledges the range of views from submitters on the proposed escalation pathway, and particularly the divergent views over the prospect of incremental reform and a desire for certainty.

5.520 We are not convinced that reverting to a formal escalation pathway would be appropriate. As we said in the October consultation paper: "a binary distinction between a principled or prescriptive approach is no longer helpful. We now see escalation from the NDOs, under the current proposal, to more prescriptive rules occurring on a spectrum. Parts of the principles-based obligations will likely be strengthened over time as best practice is established or any issues arise, rather than needing to completely re-write the whole regime."⁶⁰

5.521 The section above on compliance and enforcement sets out our general approach to compliance and enforcement, as well as our views on escalation.

⁶⁰ Paragraph 8.22.

- 5.522 We have already noted and discussed the calls for greater prescription and specification of the Code above. Our reasoning is set out in more detail in the section above on the package of NDOs.
- 5.523 We intend to review the effectiveness of our broader package of pro-competition reforms in hedge markets in late 2027, following receipt of the first set of annual reports. This review will assess the impacts of these Code changes, as well as other reforms, such as the new standardised super-peak hedge product and our review of market making. It is unlikely that any significant policy changes will be made to the NDOs ahead of that review. This does not however preclude amendments before then to improve workability.

OTC code of conduct

Decision

- 5.524 The NDOs will operate alongside the existing OTC code of conduct. The Authority may revisit the OTC code of conduct and this position as part of our planned effectiveness review of pro-competition reforms in hedge markets in late 2027.

The Authority's original proposal

- 5.525 In the October consultation paper, the Authority stated its view that mandatory NDOs could operate alongside the existing OTC code of conduct. This was because the voluntary OTC code of conduct makes it clear that it is not binding, does not have the force of law, and "in no way supersedes or alters the legal obligations of parties in the OTC market". We also noted the proposed NDOs (as enacted within the Code) would take precedence over the obligations in the OTC code of conduct.
- 5.526 While we had incorporated some elements of the OTC code of conduct into the draft guidance, we expressed the view that mandating the voluntary OTC code of conduct was not a suitable alternative to the proposed NDOs. This was because it does not explicitly prohibit gentailers from discriminating against buyers in favour of their own business units in the same way as the proposed NDOs. However, we have a positive view of the OTC code of conduct.
- 5.527 We sought feedback from stakeholders on whether the OTC Electricity Market Working Group should be reconvened to assess whether any amendments might be made to the voluntary OTC code of conduct to reflect the proposed non-discrimination regime.

Submitters' views on the OTC code of conduct

- 5.528 We received a range of views from submitters:
- (a) Pulse (supported by Octopus) suggested that the OTC code should be revised and incorporated into the Electricity Code to make it mandatory.
 - (b) MEUG, ERGANZ and Genesis suggested revising the voluntary Code in light of the NDO regime.
 - (c) Mercury did not believe that the mandatory NDOs can operate alongside the voluntary OTC Code of conduct.
 - (d) Meridian did not see a need to revise the OTC Code of conduct.

The Authority's response to submitters' views on the OTC code of conduct

- 5.529 The Authority acknowledges submitters' diverse views on the OTC code of conduct. Once we have implemented the NDOs, we intend to revisit the OTC code of conduct and consider

how it is working in conjunction with the NDOs. This may be part of our planned effectiveness review of pro-competition reforms in hedge markets in late 2027.

Firming power purchase agreements

Decision

5.530 The NDOs will apply to firming relating to Power Purchase Agreements (PPAs). We are no longer proposing to set up a co-design group solely focussed on the flexibility needs of independent generators in the short term. The Authority will be considering further work in this area in the context of other workstreams and expects to have more to say on this later in the year.

The Authority's original proposal

5.531 PPAs are contracts sold by a generator or a developer, that are linked to a specific generation development, generally for a term of ten years or more. PPAs play an important role in underwriting new investment.

5.532 The Authority proposed extending the NDOs to cover gentailers responding to requests to supply firming to competing generators. This would mean the NDOs would apply to firming product that match a PPA, ensuring equal access when seeking firming contracts. The Authority also asked submitters if they would consider participating in a co-design process to consider the specific flexibility needs of independent generators.

Submitters' views on firming backing power purchase agreements

5.533 Submitters offered a range of views on how the NDOs could affect buyers seeking firming for PPAs.

5.534 Gentailers were sanguine or considered there was no problem for independent generators that would be addressed by the proposal:

- Mercury recognised that some stakeholders perceived ongoing issues in the market that could undermine confidence and supported increased transparency to better assess these concerns and promote greater openness and confidence in market outcomes.
- Meridian thought this aspect of the proposal was unclear but considered the proposal would not affect non-integrated generation developers seeking to sell PPAs to generator retailers.
- Genesis did not oppose the NDOs applying to firming arrangements for PPAs, provided their requested modifications were made to the NDOs. Genesis also felt that the Authority's work on the standardised super-peak product was relevant.
- Contact said that while it was likely that a market price to firm wind or solar to baseload would be uneconomic, they did not consider this was evidence of a problem. Instead, Contact thought that independent generators needed to consider other solutions in a similar way to major generators.

5.535 Other submitters appeared more concerned:

- IEGA said that the NDOs would restrict independent generators' ability to buy hedge contracts from the gentailers, which in turn facilitate independent generators' ability to sell PPAs to consumers. This appeared to result from concerns about the now removed 'uncommitted capacity' mechanism.

- IEGA also said independent generators would be in direct competition with the gentailers' generation business as they attempted to sell the 'derisked' PPAs, and the Authority must monitor gentailers' contracting with independent generators.
- Octopus Energy argued that the NDOs should explicitly cover the purchase of energy and the supply of firming products, saying independent generators were blocked from market entry because they were unable to secure firming from gentailers. Octopus Energy also commented on the 'uncommitted capacity' mechanism in this context, which they described as a 'loophole'.
- EVA Marketplace said that businesses in the current market could not have confidence that a gentailer would offer them PPA sleeving at a reasonable price, either now, or in the future. In their view, the Authority's current proposal would not give businesses the confidence they need to support independent renewable generators. Narrowing the NDOs to 'uncommitted capacity' meant the gentailers would dictate the size of the playing field.

5.536 Submitters also commented on the idea of a co-design group. While Contact said that firming for new generation was dependent on the needs of the end user, and could not be addressed by a standardised hedging product, other submitters, such as Mercury, Genesis, ERGANZ and Octopus, were supportive:

The Authority's response to submitters' views on firming backing power purchase agreements

- 5.537 The Authority notes the varied responses on this issue and appreciates submitters' willingness to engage in a co-design group. A number of concerns were based on the now removed 'uncommitted capacity' element and are no longer relevant. We appreciate the value of participant involvement in developing effective solutions to issues affecting the wider industry.
- 5.538 The application of the NDOs should mean consistent, timely and transparent treatment for generators seeking firming contracts.
- 5.539 We are separately considering the role of the contracts market to support investment in long-duration firming. We intend to release an issues and options paper later this year which will seek feedback on matters such as the size of the firming gap and design features of potential firming products.
- 5.540 Given the potential for these work streams to overlap, we are no longer proposing in the short-term to set up a co-design group solely focussed on the flexibility needs of independent generators.

Virtual disaggregation

Decision

- 5.541 We have placed our work on virtual disaggregation on hold for now, but we will revisit this piece of work or as part of our planned effectiveness review of our broader pro-competition hedge market package in 2027.

The Authority's original proposal

- 5.542 MDAG was concerned that concentrated control of flexible generation would increase the risk of the exercise of market power in the provision of longer-duration flexibility products. MDAG recommended developing an outline of what virtual disaggregation would look like (stopping short of detailed design). This would be a 'virtual' break-up rather the actual

divestment of physical assets.⁶¹ These would mimic the effect of physical disaggregation, while leaving ownership and generating dispatch rights unchanged. This would ensure there would not be any loss of co-ordination efficiencies on river chains. If behavioural pro-competition measures were insufficient to address the risk of competition issues, MDAG recommended further developing and implementing the outline.⁶²

- 5.543 It is important to note that virtual disaggregation is not about separating wholesale and retail operations. It is instead focussed on reducing the concentration of the control of flexible assets.
- 5.544 Following on from MDAG's proposal, the LPF Options paper presented a proposal for the Mandatory Supply of Firming (MSOF). This was aimed at addressing market power by requiring generators to offer a specified volume of financial products linked to flexible generation supply capability. This focused on addressing market power at its source. While this built on the earlier MDAG work, it was not a preferred backstop measure for the Level Playing Field proposals.
- 5.545 In the October consultation paper, the Authority said that it did not consider it useful to further develop the MSOF option provided in the LPF Options paper. The Authority said it would update stakeholders on proposed next steps in relation to virtual disaggregation in early 2026, likely near the time we made our decision on the proposed level playing field Code change set out in the October consultation paper. The Authority said it remained committed to appropriately implementing MDAG's 2023 recommendations but noted this must be done in light of the sector context, which has developed swiftly since the publication of MDAG's report in December 2023.

Submitters' views on virtual disaggregation

- 5.546 Submitters offered different views on virtual disaggregation. For example, ERGANZ said it was positive that the Authority had pulled back on virtual disaggregation. By contrast, Octopus Energy said it supported the development of virtual disaggregation as a backstop measure to be advanced now.
- 5.547 Some submitters argued virtual disaggregation could be paired with the NDOs. For example:
- 2degrees said that virtual disaggregation and/or corporate separation would be complementary to the good faith and non-discrimination requirements and should be explored.
 - Pulse Energy offered a similar view, saying that virtual disaggregation was not an alternative to non-discrimination rules and should not be treated as an escalation option. Rather, in their view, these policies addressed different problems and were complementary rather than substitutes. Pulse Energy also argued the Authority's NDO proposals would not address the level of wholesale market power or its impact on spot and forward contract price levels.

The Authority's response to submitters' views on virtual disaggregation

- 5.548 The Authority's work on the issue of virtual disaggregation has provoked debate among submitters.
- 5.549 We have several workstreams designed to improve the availability of firming capacity, including the Level Playing Field proposals and the market-making review. In line with

⁶¹ Recommendation 13.

⁶² Recommendation 31.

MDAG's proposals,⁶³ we will allow pro-competition behavioural reforms time to work and be assessed before moving on to developing the virtual disaggregation outline. Accordingly, we have placed our work on virtual disaggregation on hold for now.

5.550 We will revisit virtual disaggregation as part of our planned effectiveness review of our broader pro-competition hedge market package in 2027.

6 Regulatory Statement for the Code amendment

The Authority's decision promotes its main statutory objective

- 6.1 Consistent with section 32 of the Act, the Authority considers that the Code amendment – as set out and explained in this paper and its appendices – is necessary or desirable to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.
- 6.2 The October consultation paper set out a regulatory statement, consistent with section 39 of the Act, covering:
- a statement of the objectives of the proposed amendment
 - an evaluation of the costs and benefits of the proposed amendment
 - an evaluation of alternative means of achieving the objectives.
- 6.3 The objectives of the Code amendment are competition in, and the efficient operation of, the electricity industry for the long-term benefit of consumers by:
- ensuring the even-handed supply of risk management contracts
 - supporting the liquidity and competitive pricing of risk management contracts
 - giving confidence to independent generators and retailers that they can compete on a level playing field with gentailers thereby facilitating investment in the electricity industry.
- 6.4 The Authority had undertaken an evaluation of the costs and benefits and considered the pros and cons of four options (plus the status quo) against five assessment criteria.
- 6.5 It also explained that in developing and considering the proposed amendments to the Code, the Authority has had regard to the Code amendment principles set out in its Consultation Charter. The Authority had identified a clear case for regulation and its evaluation of the costs and benefits indicated it was likely that the expected benefits of the Code amendment would exceed the costs.
- 6.6 The Authority has also had regard to the Government Policy Statement of 2024 (GPS) in accordance with section 17 of the Act. In particular, the Code amendment aims to reduce the risk of the exercise of market power, and to promote effective competition, including in the markets for electricity retail services.
- 6.7 While there have been changes to the proposals set out in the October consultation paper following the Authority's consideration of submissions, the substance of the assessment in the regulatory statement did not change as a result of these changes or other points raised in submissions.
- 6.8 The Authority also considers that, regardless, the costs of the Code changes are modest in the context of the total market. They present a prudent investment in promoting confidence

⁶³ We note submitters commenting that MDAG and the LPF Options paper may have different characterisations of the competition problem, and the LPF measure was not one of the measures recommended by MDAG. The Authority has progressed most of the MDAG recommendations, and the possibility remains of virtual disaggregation being a contingent measure.

among independent retailers and generators, and competition in the market, for the long-term benefit of consumers.

- 6.9 In summary, the Authority considers that the benefits of the Code amendments are likely to exceed their costs, and that these amendments are superior to the status quo and to the alternative options that have been assessed (and others proposed in submissions). The Authority considers the Code amendments are necessary and desirable to promote competition in and the efficient operation of the electricity industry for the long-term benefit of consumers.

The Authority's original proposal

- 6.10 In the October consultation paper, the Authority expressed the preliminary view that:

- The objectives of the proposal are to promote competition in, and the efficient operation of, the electricity industry for the long-term benefit of consumers by:
 - ensuring the even-handed supply of risk management contracts
 - supporting the liquidity and competitive pricing of risk management contracts
 - giving confidence to independent generators and retailers that they can compete on a level playing field with gentailers thereby facilitating investment in the electricity industry.
- The proposal's benefits were expected to outweigh the costs.
- The proposal was superior to other options that could be used to achieve those objectives.⁶⁴
- The proposed amendment complies with section 32(1) of the Act.⁶⁵

- 6.11 Regarding costs and benefits, the Authority considered the following:

- The Authority attempted to quantify costs and benefits to the extent reasonably practicable. These were order-of-magnitude estimates only, given acknowledged information limits.
- We estimated the one-off compliance and administration cost of \$4.36m for gentailers and the Authority and annual costs of \$2.23m, based on the costs of other projects. These costs may be offset to some degree by the proposed removal of the ITP regime (although we did not quantify that).
- Competition should mitigate the risk that the RPCA may cause gentailers to act conservatively to comply and pass through energy costs faster than they otherwise would, and we also added guidance to the draft RPCA guidance on this point.
- The forward-looking benefits likely outweigh the relatively modest implementation and compliance costs. Potential benefits of the proposed NDOs would be:
 - lower hedging costs for pass-through to retail consumers by promoting access to risk management products at competitive prices so that buyers can avoid more costly alternative risk management strategies
 - downward pressure on retail prices by providing a basis for greater confidence that there is a level playing field, in turn promoting competition by encouraging entry and expansion by independent retailers and generators.

⁶⁴ These are set out in more detail in the section above on LPF options.

⁶⁵ We had regard to the Code amendment principles as set out in the Consultation Charter. Electricity Authority, 27 February 2024. Non-discrimination obligations – Code amendment

- Another benefit would be the NDOs addressing any exercise of market power by one or more gentailers offering hedges at above competitive prices. However, we noted that the proposed NDOs may only partially address this risk. We noted that the broader package of hedge market improvements – including the review of market-making – would assist.
- The potential compliance and administrative costs were expected to be relatively low relative to the sales potentially affected (0.02% of the \$10.5b p.a. sales to residential, commercial and industrial consumers, or 0.05% if just considering sales to residential consumers).
- We quantified the extent of price reductions needed to make the changes break even, in terms of consumer surplus gains. That was to enable decision-makers to assess the plausibility of the magnitude of impacts needed for gains in consumer surplus (a measure of efficiency benefits) necessary for the amendments to at least offset the estimated cost.
- This break-even approach was taken because of a lack of a robust basis to be able to quantify *how much* the proposal would impact the (unquantified) risk of the persistent exercise of market power, or lift confidence in a level playing field, and so deliver benefits.
- We presented main, low and high scenarios to capture the sensitivity of results to changes in key assumptions on costs, price elasticities and demand growth rates.
- Given these assumptions, to breakeven, the proposal would need to have the effect of a one-off reduction in end users' prices, compared to the counterfactual, of 1.59c/kWh or - 4.6%, (range 1.1 to 2.7 c/kWh). This estimate was not to imply that price reductions are the only way this proposal would be for the long-term benefit of consumers.
- Qualitatively, we also discussed the risk of retail price increases, but considered that this would be unlikely.
- Given the uncertainty about the extent of risk and impact, the Authority considered that the projected costs of the proposal were modest in the context of the total market, and that they presented a prudent investment in promoting confidence among independent retailers and generators and competition in the market, for the long-term benefit of consumers.

6.12 In the Supplementary paper, we proposed adding further requirements around non-discrimination policies and annual auditing of compliance with those policies. We asked for feedback whether the cost of estimate of \$10,000 per gentailer for auditing the annual report assumed in the October consultation paper was appropriate given the codification of this additional auditing Code provision.

Submitters' views on the Regulatory Statement for the Code amendment

6.13 Submissions focussed on the costs and benefits of the proposed Code amendments.

Objectives

6.14 A number of submitters offered broad support for some or all of the Authority's objectives. For example:

- Genesis said they did not oppose the objectives of demonstrating that risk management contracts were supplied even-handedly, supporting liquidity and competitive pricing, and

giving confidence to independent retailers. Contact said it supported addressing the perceived risks. Octopus Energy said it agreed with the objectives.

- Mercury offered broad support for the objectives and agreed with increased transparency to ensure confidence in the market, while ERGANZ said it agreed with the high-level objectives but remained concerned about some proposed tools.
- Meridian supported the objectives with the exception of giving confidence to non-integrated retailers, which it said was subjective, impossible to measure and ignored the drivers for non-integrated retailers to make complaints about competitor pricing.

Cost benefit analysis

- 6.15 Submitters offered different views of the potential benefits. For example, Meridian said that the Authority had unrealistically assumed benefits to confidence and retail competition. They also regarded retail price reductions of 4.6 percent (without any changes in hedging costs) as highly questionable. They added that any benefit should be measured over only the retail costs but not the network or energy costs.
- 6.16 ERGANZ, Genesis and Meridian submitted audit costs could be materially higher than the Authority had estimated. The gentailers also talked generally about high compliance costs.
- 6.17 Genesis considered the benefits of the NDOs could outweigh the costs, if implemented appropriately. However, they thought the RPCA and uncommitted capacity requirements would impose substantial compliance burdens.
- 6.18 Other submitters did not think the benefits would outweigh the costs:
- ERGANZ argued the implementation and consequential costs of the proposals would outweigh any benefits, in particular the RPCA and uncommitted capacity elements.
 - Contact argued the regime would add costs to generators, reduce the efficiency of the market and provide minimal countervailing benefit to consumers. It did not consider the benefits outweighed the costs, noting that no market power and no excess margin had been identified.
 - BEC similarly questioned whether the implementation and compliance costs associated with the RPCA were justified if there was no definitive evidence of a margin squeeze.
 - Mercury was concerned the costs could be considerable and would outweigh any benefit. They said the Authority had not demonstrated that the proposed regulatory intervention would be proportionate to the risk or problem it was seeking to solve.
- 6.19 EPOC thought that if the RPCA did not identify any predatory pricing by gentailers then the effect on retail prices and generation investment would be negligible. They also said that the cost of intervention using an RPCA seemed high compared to the welfare benefits that it believed had not been rigorously identified.
- 6.20 IER said that the Authority's analysis focused on (static) competition benefits, when it expected an additional (dynamic competition) benefit would be that independents would be able to bring more innovation to pricing and products.
- 6.21 Some submitters said that the Authority should have undertaken a risk-based cost-benefit analysis. For example, Meridian disagreed with the CBA methodology, saying that it did not align with the problem statement in that it was not risk-based and only considered the scenario in which benefits accrued and not those in which no benefits or negative effects resulted.

- 6.22 Some submitters mentioned the risk of double-counting of benefits. For example, BEC said that they supported steps by the Authority to improve competition, but given the Authority is currently working on mandatory market-making in hedge market, with an open consultation, this consultation appears to be doubling up on solutions without providing equivalent benefits.

Unintended consequences

- 6.23 Genesis said that the Code changes may distort retail product design to the detriment of consumers who value price certainty. As discussed above in the RPCA section, several gentailers said that the RPCA might lead to price increases for consumers. Genesis, BEC and ERA were concerned that the Code changes could disincentivise generation investment by gentailers.
- 6.24 IER did not consider the Level Playing Field measures would increase retail prices, arguing that gentailers would already have increased prices if they could have done so. Electric Kiwi was also sceptical of gentailers' price increase arguments and was concerned that gentailers' pricing was already impacting competition with negative effects on investment.

Other options

- 6.25 Submitter views on other approaches to the Level Playing Field have been outlined above in the section on LPF options.

Compliance with section 32(1)

- 6.26 Submitters' comments on compliance with section 32(1) of the Act were mixed. Genesis argued the NDOs, director certification and reporting framework would better satisfy section 32(1) if the RPCA and uncommitted capacity elements were omitted. ERGANZ said it was not persuaded that some elements met the section 32(1) requirement for efficient regulation. Contact considered that there were better and lower cost ways of addressing perceived risks. Octopus Energy thought the proposal complied with section 32(1), provided its proposed changes were incorporated.

Other comments on the regulatory statement

- 6.27 Submitters commented on the regulatory statement in the October consultation paper. For example:
- Mercury said it expected to see a more detailed regulatory statement given the potentially significant impact of the changes proposed.
 - ERGANZ submitted the regulatory statement lacked detail, saying the Authority should be more explicit about uncertainties in assessing dynamic impacts on entry, innovation and investment. ERGANZ also encouraged a post-implementation review to test whether the expected benefits had materialised.
- 6.28 Submitters also commented on the regulatory statement in submissions on the Supplementary paper.
- ERGANZ said the regulatory statement underestimated compliance costs and argued audit costs alone were likely five times the Authority's estimate. They added that the RPCA compliance burden was material and had not been adequately costed. ERGANZ urged the Authority to address the risk the RPCA incentivised higher retail prices (which would reduce the proposal's net benefits).

- Contact said it continued to disagree with the rationale and quantification of the benefits of the regime and that its view remained unchanged from that expressed in relation to the last consultation (as summarised in the cost benefit analysis sub-section above).
- Mercury reiterated that it expected to see a more detailed regulatory statement than had been provided in the October consultation paper, and said that the assessment would need to be repeated by for any final Code amendment and guidance.
- IER and IEGA said they expected the regulatory statement to include quantification of the proposal's impact on competition, electricity prices and affordability. They said it was unclear how much or how quickly the Authority expected its proposals to result in improvements in wholesale and retail competition. IER and IEGA added that if the Authority had confidence in the proposals it would map out its expectations for unwinding retail regulation, such as time-of-use pricing and retail billing, that it had introduced because it did not have confidence it could rely on competition.
- Genesis suggested the incremental costs, particularly RPCA implementation costs (such as systems, data, costs allocation and governance), may be underestimated.

The Authority's response to submitters' views on the Regulatory Statement for the Code amendment

6.29 We have considered submitters' comments on the regulatory statement and consider that the benefits of the Code amendments are likely to exceed the costs, and that the Code amendments set out in this paper are likely superior to the status quo and alternative options as a way to promote the Authority's main statutory objective.

Assessment of costs and benefits

6.30 The purpose of a cost-benefit analysis is as an input into the Authority's decision-making on Code amendments. While we recognise that quantification of costs and benefits is a useful element of good regulatory practice, and we have sought to quantify costs and benefits to the extent reasonably practicable, ultimately the Authority is required to undertake a broad evaluative judgment in assessing whether to make a Code amendment. This includes a qualitative evaluation of unquantified costs and benefits, risks and opportunities that are relevant to the promotion of the Authority's statutory objective.⁶⁶

6.31 We address detailed comments from submitters below.

Costs of administration and compliance

6.32 We have updated our previous cost estimates to reflect submissions that first year audit costs could be higher than initially estimated. Following the submission from Meridian, we have raised first year audit costs from \$10,000 to \$50,000. This did not make a material difference to the present value of costs (\$27m with a range of \$21m-33m), or the breakeven change in the retail price (1.59 c/kWh in our main scenario), previously reported.

6.33 We have noted the submissions that considered the compliance costs to be greater than had been estimated by the Authority. However, those submissions did not provide further data or information on which estimates needed to be amended or by how much. As the draft CBA also considered a 'high-cost' scenario' (present value of \$33m), this final CBA does not include other amendments to costs.

⁶⁶ We note *Manawa Energy v Electricity Authority*.... At [120]: "But a CBA is also only as good as the assumptions by which the quantification is undertaken. It is inherently difficult to quantify some sorts of intangible benefits. The Treasury's Guide makes such limitations clear too. Quantification of costs and benefits can be a useful element of good regulatory practice. But there is more to good regulatory practice than quantification."

Estimation of benefits

- 6.34 The key benefits of the Code change relate to transparency, confidence and addressing competition risks, all of which are intangible and so are difficult to quantify with a reasonable degree of confidence. One way these benefits might be realised is through reduced prices for consumers compared to what they otherwise might be, for example, if the identified competition risks were to be realised. Such downward pressure (or avoided increases) might come via greater (actual or threat of) investment in independent retail and generation, and innovation in retail and spot price risk management.
- 6.35 We quantified the reduction in consumer prices that would be required for the Code amendments to break even as a proxy for efficiency gains (consumer surplus standard) that may come about as a result of promoting competition through increased transparency and confidence in a level playing field. This was to facilitate the Authority's assessment about the plausibility of the level of efficiency gains needed and was not intended to confine the quantum of benefits or indicate that a price reduction was the only way in which benefits could be obtained.
- 6.36 In assessing the scope of the potential benefits, the Authority has had regard to the following:
- The issue of access and pricing of risk management contracts, in particular for independent retailers, has a long history (see paragraph 5.23 above). The issue was discussed in the Commerce Commission's 2009 electricity investigation, and the 2019 Electricity Price Review⁶⁷ which led to the introduction of ITP and RGM reporting.
 - As noted at paragraphs 5.3 to 5.7 above, our view remains that there is a material risk of harm to competition that the Authority should respond to. We remain particularly concerned that this risk may weaken the confidence of new entrants and participants looking to expand in retail and generation markets. We consider the NDOs will help mitigate the risk of the exercise of market power.
 - Even if the risks to competition do not eventuate, the Code changes will still provide benefits relating to transparency and confidence in hedge and retail markets. The Authority considers that increased transparency and monitoring of OTC transactions and of retail margins will promote competition by providing independent generators and retailers confidence to enter or expand through assurance of a level playing field. The Code amendment will facilitate hedge and retail markets working more effectively than without the changes.
 - We do not agree with Meridian's submission that retail price reductions of 4.6% (without any changes in hedging costs) are highly questionable, as they mean a 14% reduction in retailer cost and profit margin at a time when non-integrated retailers are claiming they are experiencing a margin squeeze.
 - We consider a focus solely on retail costs and margins to be too narrow. The Code changes will provide transparency and confidence, and address discrimination and competition risks, in hedge markets. (The benefits may also impact the commercial and industrial segments, in which case the breakeven price impact would be lower.)

⁶⁷ New Zealand Government, [Electricity Price Review Final Report](#), 21 May 2019
Non-discrimination obligations – Code amendment

- The price change (through retail price decreases or avoided retail price increases) is not a one-off level shift on day one but is assumed to occur over time.^{68 69} Competition can provide many benefits: lower prices are one way in which such gains to consumers could come about; other ways include through non-price eg innovative retail offerings that may be spurred through promoting competition.
- The estimate passed a number of sense checks described in Appendix G of the October consultation paper, and conservatively did not count the reduction in deadweight loss that is caused by the recovery of fixed costs through variable charges, and which would reduce if retail prices were to reduce compared to the counterfactual. That effect in turn would materially reduce the price change needed to achieve breakeven on the consumer surplus standard [G.7-G.18]
- The estimates are only one input alongside other, non-quantified, factors into considering whether the benefits of the proposal are likely to exceed its costs [G.44].

Uncertainty of benefits and lack of detail

- 6.37 Meridian submitted that the Authority did not consider adequately represent its risk-based problem definition in its cost benefit analysis. In Meridian’s view, the Authority’s analysis should have included scenarios that also reflected a probability of the intervention producing no benefits or disbenefits.
- 6.38 While we acknowledge a scenario analysis of the sort suggested by Meridian can be helpful in some settings, we do not consider it useful to take such an approach in this instance. As we noted in the Appendix G to the October consultation paper, we do not consider there is a robust basis for assuming either an explicit probability distribution or differing impacts of the proposals.⁷⁰
- 6.39 Accordingly, we adopted a break-even analysis to understand the level of efficiency gains that may be needed as one input into considering whether the benefits of the proposal are likely to exceed its costs.
- 6.40 Without putting an explicit probability on it, the analysis does provide an indication of the expected net cost of the non-discrimination policy under a scenario if there is either no risk to mitigate, or the policy is ineffective – namely an estimated ongoing costs of \$2.3m per annum, with an estimated present value of \$27m over 25 years (\$21m-\$33m).
- 6.41 The assessment also considered, but discounted, the possibility of price increases as Meridian suggested. That is, we:
- acknowledged the near-term risk that, if one or more gentailers had been subsidising their retail business or otherwise setting retail prices below cost then they could be under pressure to raise their retail prices to comply with the NDOs. However, we noted the Authority’s high-level assessment did not find definitive evidence of margin squeezing through retail prices being too low for 2018-2023.
 - noted the risk that (without any safe harbours) the RPCA could create pressure on gentailers to raise retail prices to ensure they would pass the RPCA. However, we also said we would seek to mitigate that risk through further RPCA guidance material. As clarified in the final design of the RPCA, and as elaborated in the guidance, the absence

⁶⁸ Electricity Authority, Level playing field measures – Consultation paper, October 2025, p144

⁶⁹ In the modelling the implied per annum change was assumed to be achieved over three years, albeit that other paths are possible). This is not inconceivable when compared to annual changes in the energy+ components of retail rates reported by MBIE in Residential sales-based electricity cost data March 2006 to March 2025.

⁷⁰ Level playing field measures – consultation paper, October 2026, paragraph 12.34
Non-discrimination obligations – Code amendment

of a bright-line test and a focus on learning for the first RPCA disclosures addresses this risk.

- 6.42 The Authority remains of the view that it is plausible that net benefits from the proposals, both tangible and intangible, are likely to exceed the relatively modest estimated ongoing total costs of \$2.3m per year (\$1.8m-\$2.8m).
- 6.43 We disagree with ERGANZ's suggestion that the analysis lacks detail and that we should be more explicit about uncertainties in assessing dynamic impacts on entry, innovation and investment. We have been clear about the uncertainties in the analysis. Our analysis is based on the information available and have consulted three times to obtain information from stakeholders.

Double counting of benefits

- 6.44 The Authority does not consider that there is double-counting of benefits. We have assessed the costs and benefits of this proposal by itself. As noted above, we consider the pro-competition reforms in the hedge market to be mostly complementary, as they address different types of risks (eg those reforms do not address the risk of a gentailer favouring its retail business unit in the pricing of supply). Further, while there is some overlap (eg, the NDO effect on access and the liquidity-improving hedge market reform), the draft CBA only identified the size of benefits needed to at least offset costs. There is therefore no need to discount benefits to account for complementary reforms.

Unintended consequences

- 6.45 The Authority does not consider it likely that the NDOs will constrain product innovation or would require a gentailer to increase its retail prices. For example, the approach to monitoring the NDOs does not prescribe how a gentailer should engage with its current and prospective retail customers, what products it should offer, or how it should set its retail prices. Increased competition, through raising confidence that there is a level playing field, will support innovation.
- 6.46 The risk that a gentailer may raise its prices to comply with the RPCA is overstated, given the design of the RPCA, which is not a bright-line test, and the focus of the assessment approach for the first RPCA disclosures on learning and evolving the framework as needed.
- 6.47 We do not consider that the Code amendments will negatively impact incentives to invest in generation. The primary mechanism identified for this was uncommitted capacity, which has been removed. As noted at the beginning of this part of the paper, we remain of the view that the amendment meets the requirements in section 32(1) of the Act.

7 Next steps

- 7.1 The Authority has amended the Code to give effect to this decision, as set out in Appendix B with tracked changes. The final version is published on The Authority's website. The Code amendment will apply to the gentailers from 1 July 2026.
- 7.2 Appendix C sets out the tracked changes from the RPCA guidance consulted on in February 2026. The final version is published on the Authority's website.
- 7.3 The NDO Code guidance can be found on the Authority's website.
- 7.4 We will issue material that specifies the form and manner in which RPCA disclosures are to be provided to the Authority, consistent with Code requirements, before 1 July 2026.
- 7.5 We will also issue information regarding our approach to monitoring compliance with the NDOs before 1 July 2026.

8 Attachments

8.1 The following appendices are attached to this paper:

- **Appendix A - Glossary of abbreviations and terms**
- **Appendix B - Red line version of Amendments to the Electricity Industry Participation Code 2010**
- **Appendix C - Red line version of Guidance on Retail Price Consistency Assessment**

Appendix A Glossary of abbreviations and terms

Act	Electricity Industry Act 2010
ASX	Australian Securities Exchange. Some standardised risk management contracts are traded via the ASX. They all have standardised terms (monthly or quarterly), profiles (baseload) and nodes (OTA or BEN).
Australian NEM market	National Electricity Market, operating in the eastern and south-eastern states of Australia
Authority	Electricity Authority
Baseload	A fixed volume of energy traded during a fixed period for a fixed price, for all trading periods (same volume in each trading period).
Buyer	The buyer, for the purposes of the NDOs, is the entity who is seeking to obtain a risk management contract. A more specific definition is included in the Code.
CER	Consumer Energy Resources. Distributed Energy resources include rooftop solar systems, battery energy storage systems and electric vehicles. In Australia, these are referred to as CER to distinguish from grid-side resources like large grid-scale batteries.
CfD	<p>Contract for differences. This is defined in the Code as a financial derivative contract:</p> <p>Under which one or both parties makes or may make a payment to the other party; and</p> <p>In which the payment to be made depends on, or is derived from, the price of a specified quantity of electricity at a particular time; and</p> <p>That may provide a means for the risk to 1 or both parties of an increase or decrease in the price of electricity to be reduced or eliminated; and</p> <p>That either—</p> <p>Relates to a quantity of electricity that equals or exceeds 0.25 MW of electricity; or</p> <p>Is entered into through a derivatives exchange, being a market in which parties trade standardised financial derivative contracts, and contracts containing the right to buy or sell standardised financial derivative contracts, with a central counterparty.</p>
C&I	Commercial and Industrial. Refers to commercial and industrial customers of an electricity retailer (or generator retailer).
Code	Electricity Industry Participation Code 2010
Derivative	A financial product whose value is based on (derived from) another product. An arrangement or product (such as a future, option, or warrant) whose value derives from and is dependent on the value of an underlying asset, such as a commodity, currency, or security.
Firming	Ensuring that intermittent power generation (like wind and solar) can reliably meet demand by supplementing it with other energy sources or storage solutions.
Firming contract	An agreement that ensures the availability of a specified amount of electricity supply during times when it is needed, especially when dealing with variable or intermittent generation sources, such as wind or solar power.
Flexible generation	The ability to increase or decrease the amount of electricity produced, by turning generation on or off when needed (or ramping output up or down). Hydro is the most common type of flexible generation. Most flexible generation assets are controlled by the gentailers. Ownership of those assets underpins the ability to offer shaped hedge contracts and firming for intermittent generation.

Futures	In relation to the NZ electricity market, futures are financial contracts purchased or sold by those who wish to hedge or speculate on the underlying spot market prices of a certain amount of electricity for a future period, such as a month or a quarter. These contracts are traded on the Australian Securities Exchange (ASX).
Gentailer	One of the four large generator-retailers - an electricity company that operates both as a generator and a retailer of electricity. Namely Contact, Genesis, Mercury and Meridian.
Hedge, hedge contract	A way of reducing or eliminating one's exposure to risk in a market. For example, non-integrated retailers are exposed to the risk that the spot price of electricity will be higher than the price for which they have already agreed to sell electricity to their customers. To eliminate this risk they can buy an over-the-counter hedge contract from a gentailer that guarantees them electricity at a certain price instead of the spot price during a future period. Hedging is a risk management strategy.
Hedge market	The hedge market in New Zealand is primarily the electricity futures market (run by the ASX) and the OTC market for risk management contracts. This paper uses the term "hedge market" as shorthand for the broader risk management contract market, which includes options and physical supply agreements.
ICP	Installation control point number. A unique 15-digit number that identifies a connection to the electricity network.
Independent retailer	See non-integrated retailer.
Intermittent generation	Generation such as wind or solar power that may not be able to generate at times when its fuel source is unavailable (for example, if there is no wind or it is cloudy). The more intermittent generation there is in the system, the more flexible capacity is required to firm it.
ITP	Internal transfer price of a gentailer. It is a notional transfer price used in accounting practice that represents the price that one division in a company charges against another division (in this case wholesale charges retail).
LCOE	The levelised cost of electricity. Most calculations of the LCOE for a particular technology are the sum of the costs over the lifetime divided by the sum of electrical production over the lifetime. This calculation gives a value of the electricity produced as \$/MWh. Levelised cost of electricity (LCOE) = total lifetime costs ÷ total lifetime electrical production.
Level playing field measures	Level Playing Field measures are measures that are designed to ensure fair and even-handed access treatment of all participants in a market. They can range from disclosure obligations to structural remedies like corporate separation.
Liquidity	Liquidity refers to how easily and quickly a buyer or seller can enter into a transaction, without causing a major change in price and without incurring significant transaction costs.
Margin squeeze	A margin squeeze is an anti-competitive practice where a vertically integrated, dominant firm charges prices for an essential input to its competitors, and sets its own downstream price, in such a way that equally efficient rivals cannot profitably compete in the downstream market.
Mass market	Customers of an electricity retailer (or generator retailer) who are classified by the retailer as mass market, or who are commonly understood to be mass market customers in accordance with standard industry practice.

MDAG	Market Development Advisory Group - The group provided independent advice on issues that relate to pricing and cost allocation, risk and risk management, and operational efficiencies. Group was formed in October 2017 and disbanded in February 2024.
MLC	Materially Large Contracts, defined in subpart 7 of part 13 of the Code. It refers to a contract where the buyer will consume at least 150MW itself.
MSOF	Mandatory Supply of Firming, a form of virtual disaggregation.
Non-Discrimination Obligations (NDOs)	Non-discrimination obligations are a level playing field measure that, in relation to the supply of risk management contracts, require gentailers not to treat themselves substantially differently from buyers, or not to treat different buyers substantially differently.
Non-integrated retailer	A retailer that does not own generation.
Network reporting regions (NRR)	Network reporting regions mean geographical regions defined by a group of network supply points, generally formed by historic Electricity Power Board networks (with some aggregations) and aligning with retail pricing regions commonly used in the electricity industry, and which are commonly understood to be network reporting regions in accordance with standard industry practice.
Option	Financial contract containing the right, but not obligation, to buy (call option) or sell (put option) a commodity or financial instrument at the specified strike price. It is the option to exercise a contract.
OTC	Over-the-Counter. Contracts for the purchase and sale of electricity hedges that are traded bilaterally rather than on an exchange. Bespoke contracts between two parties (buyers negotiate directly with sellers). Because it is bespoke, the contract can be for any node(s), term, profile or payment terms that the two parties agree on.
OTC code of conduct	A voluntary code of conduct for participants in New Zealand's over the counter electricity market.
Peak	A fixed volume of energy is traded during a fixed period for a fixed price, for all trading periods during the day (same volume in each trading period). For peak contracts on the ASX, these trading periods cover 7am to 10pm.
PPA	Power purchase agreement. A PPA is a long-term agreement between an offtaker/purchaser and an asset owner/generator that allows the offtaker to purchase electricity on a long-term basis for a price level agreed by the parties.
Premium	Fixed amount paid for the rights to buy or sell a contract.
Regulations	Electricity Industry (Enforcement) Regulations 2010.
Retail Gross Margin (RGM)	Represents the revenue received by a retailer after electricity, metering, levies, and distribution costs. For gentailers, the electricity cost used is based on their ITPs.
Retail Price Consistency Assessment (RPCA)	An assessment of the retail margin expected by a gentailer for the period ahead, calculated by subtracting their expected cost of electricity and non-electricity costs from their retail prices, as further described in clause 13.236W(4) of the Code.
RFP	Request for proposal - a request to get bids or proposals from service providers. The RFP outlines the requirements, scope of work, and expectations for potential suppliers to follow in their responses.

Risk management	The strategies of forecasting and evaluation of financial risks together with the identification of procedures to avoid or minimise their impact.
Risk management contract	A term defined in the Code, which covers contracts for difference, options contracts, and fixed-price physical supply contracts. This paper has used the term “hedge” and “hedge market” to refer imprecisely to risk management contracts and the market for them.
Risk premium	A measure of the excess return that is required by an individual to compensate being subjected to an increased level of risk.
RMR	Risk Management Review. An Electricity Authority publication, with the full title: “Reviewing risk management options for electricity retailers – issues paper”.
Rulings panel	The Rulings Panel is an independent body that hears and determines complaints about breaches of the Electricity Industry Participation Code 2010 (Code).
Seller (or Writer)	A seller (or writer) refers to the party that issues a contract. This party is responsible for fulfilling the obligations of the contract if the buyer (or holder) decides to exercise their right.
Shaped products/ contracts	A customised financial instrument designed to meet specific load profiles or consumption patterns of end users. Unlike standard products, shaped products can account for variations in demand over different times of the day or seasons, allowing customers to better match their energy supply with their actual usage.
Sleeving	A retail service that enables an end user to give effect to a PPA by paying different prices for PPA and residual volumes.
SSNIP test	A test to define the relevant market from a competition perspective. The SSNIP test asks whether a hypothetical monopolist seller of a particular product could profitably implement a “Small but Significant (5-10%), Non-transitory Increase in Price”. If so, then the market is correctly defined as being limited to that product. If not, then there are likely substitute products that consumers are switching to in response to the price rise, so they should be included in the market definition, and the SSNIP test repeated, until it is met.
Standardised flexibility product	A new, standardised super-peak hedge OTC contract that was co-designed with industry and announced in December 2024.
Super-peak hedges	A contract for a fixed volume of energy at “super-peak” times of consumer demand – ie, morning and evening peaks.
Uncommitted capacity	A gentailer’s capacity to offer risk management contracts in future periods. This was a proposal in the October consultation paper, which is no longer included in the Code amendment.

Appendix B Red line version of Amendments to the Electricity Industry Participation Code 2010

Code amendments following consultation are displayed as follows:

- (a) text or formatting is shown black underlined where the October and/or February consultation papers proposed adding to the Code;
- (b) text or formatting is shown black strikethrough where the October and/or February consultation papers proposed deleting from the Code;
- (c) text or formatting is shown red underlined where drafting changes have been proposed following the February consultation paper;
- (d) text or formatting is shown red strikethrough where drafting changes have been proposed following February consultation paper.

Electricity Industry Participation Code 2010

Part 1

Preliminary provisions

...

1.1 Interpretation

- (1) In this Code, unless the context otherwise requires,—

...

buyer, for the purposes of subpart 5, subpart 5C, and subpart 7 of Part 13, means—

- (a) in respect of a **contract for differences**, the fixed-price payer, being the **party** obliged to make payments at a fixed price from time to time during the **term** of the contract; or
- (b) in respect of a **fixed-price physical supply contract**, the purchaser of **electricity**; or
- (c) in respect of an **options contract**, either—
 - (i) the **party** paying the **premium**; or
 - (ii) if there is no **premium**, the **party** who agrees to be the **buyer** for the purposes of subpart 5, subpart 5C, or subpart 7 (as applicable) of Part 13; or
 - (iii) if neither **party** agrees to be the **buyer**, the **party** whose name is the first alphabetically; or
- (ca) for the purposes of subpart 5 of Part 13, in respect of a contract prescribed by the **Authority** under clause 13.219B as a **risk management contract**, either—
 - (i) the **party** specified as the buyer in the contract; or
 - (ii) if neither **party** is specified as the buyer, the **party** whose name is the first alphabetically; or
- (cb) for the purposes of subpart 5C of Part 13, in respect of a contract prescribed by the **Authority** under clause 13.219B as a **risk management contract**, the **party** specified as the buyer in the contract; ~~or and~~
- (d) for the purposes of subpart 7 of Part 13, in respect of any other contract, the **party** consuming the **electricity** that the contract relates to; ~~or~~
- (e) for the purposes of subpart 5C of Part 13, a **buyer**—

- (i) includes a person that has indicated to a **gentailer** a desire to obtain **risk management contracts** from a **gentailer**; and
- (ii) does not include:
 - (A) a **buyer** in relation to a **materially large contract** subject to subpart 7 of Part 13; or
 - (B) a **gentailer's** own **internal business units**

buyer confidential information, for the purposes of subpart 5C of Part 13, means:—

- (a) information that—
 - (i) a **buyer** provides to a **gentailer** in relation to the provision of **risk management contracts**; or
 - (ii) a **gentailer** otherwise holds or obtains in relation to the provision of **risk management contracts** to a **buyer**; and
- (b) information that:—
 - (i) is by its nature confidential or proprietary to the **buyer**; or
 - (ii) is disclosed in confidence by the **buyer**; or
 - (iii) a **gentailer** knows or ought reasonably to know is confidential to the **buyer**; or
 - (iv) concerns a person that is, or intends to become, a customer of the **buyer**; but
- (c) does not include:—
 - (i) information that was publicly available at the time of receipt, or that becomes publicly available other than as a result of a breach of confidentiality; or
 - (ii) information that was obtained bona fide by a **gentailer** from another person who is in lawful possession of the information and who did not acquire the information directly or indirectly from the **buyer** under an obligation of confidence; or
 - (iii) information, or types of information, that a **buyer** agrees with the **gentailer** is not **buyer confidential information**

...

commercial information, for the purposes of subpart 5C of Part 13, means information that is—

- (a) held by a **gentailer**; and
- (b) relates to the supply by that **gentailer** of **risk management contracts**, including the **gentailer's**:—
 - (i) current capacity to supply **risk management contracts**; and
 - (ii) future capacity to supply **risk management contracts**; but
- (c) does not include:—
 - (i) any information that ~~is~~:—
 - (A) has been superseded by identifiable new information;
 - (B) is more than 18 months old; or
 - (C) is otherwise not current; or
 - (ii) any information, or types of information, that the **gentailer** and the **Authority** agree in writing is not commercial information

...

discrimination, for the purposes of subpart 5C of Part 13, has the meaning set out in clause 13.236P

...

generator retailer means a **trader** who is both a **generator** and a **retailer** and in any month

of the **financial year** of the **generator retailer**:

- (a) has sold to the **clearing manager** an amount of **electricity** at least equivalent to 5% of the total amount of **electricity** sold in any of those months by all **generators** who are **traders** to the **clearing manager**, as measured in **MWh**; and
 - (b) was recorded in the **registry** in any of those months as being responsible for at least 5% of the total number of **ICPs** registered in the **registry** with an **ICP** status of “Active”, —
- and, for the purposes of this definition, the terms “**trader**”, “**generator**” and “**retailer**” include any related company, as defined in section 2 of the Companies Act 1993, of a **participant** provided that the related company is a **participant**

gentailer means—

- (a) Contact Energy Limited;
- (b) Genesis Energy Limited;
- (c) Mercury NZ Limited;
- (d) Meridian Energy Limited

...

interconnected bodies corporate has the meaning given to it in section 2(7) of the Commerce Act 1986

...

internal business units means the separate functions of a **gentailer’s** business (including, for example, generation, retail and other business units), even where these functions are not clearly separated in the **gentailer’s** organisational structure, and includes functions undertaken by any **interconnected bodies corporate** of the **gentailer**

...

ITP information means information on internal transfer pricing as described in clause 13.256

...

mass market customers means all those customers of a **generator retailer** or **retailer** who the **generator retailer** or **retailer** classifies as mass market or who are commonly understood to be **mass market customers** in accordance with standard industry practice

...

network reporting regions means geographical regions defined by a group of NSPs, generally formed by historic Electricity Power Board networks (with some aggregations) and aligning with retail pricing regions commonly used in the electricity industry, and which are commonly understood to be network reporting regions in accordance with standard industry practice

...

non-discrimination policy has the meaning given to it in clause 13.236QR

non-discrimination obligations principles means the non-discrimination obligations principles in clause 13.236PQ

...

retail ITP means the notional price or prices per **MWh** for **electricity** set between either the generating arm or the trading arm of a **generator retailer**, on the one hand, and the retailing arm of the **generator retailer**, on the other hand, in respect of **electricity** generated by the **generator retailer** that is sold by the **generator retailer** to **mass market customers** and that is used for internal accounting, management, or other purposes

retailer, means as follows:

- (a) except as provided in paragraphs (b) and (c), a **participant** who supplies **electricity** to another person for any purpose other than for resupply by the other person:
- (b) in Parts 1 (except for the definition of specified participant), 8, 10, and 12 to 15, a **participant** who supplies **electricity** to a **consumer** or to another **retailer**:
- (c) in subpart 4 of Part 9, the **retailer** defined in paragraph (a) who is recorded in the **registry** as being responsible for the **ICP** described in clause 9.21(1)(b):
- (d) for the purposes of clauses 13.259- to 13.266 only, does not include a **gentailer**.

...

retail price consistency assessment means an assessment of the difference between a **gentailer's**:

- (a) expected costs of supply to a **retail segment** (expected cost of **electricity** (based on a hypothetical portfolio of **risk management contracts** consistent with rational and prudent risk management practices) and expected non-**electricity** costs); and
- (b) that **gentailer's** retail prices to a **retail segment**

retail price consistency assessment report has the meaning given to it in clause 13.236~~VW~~(4)

retail segment, for the purposes of subpart 5C of Part 13, has the meaning given to it in clause 13.236~~VW~~(1)(b)

...

risk management contract, for the purposes of subpart 5, subpart 5C, and subpart 7 of Part 13, means—

- (a) a **contract for differences**; or
- (b) a **fixed-price physical supply contract**; or
- (c) an **options contract**; or
- (ca) for the purposes of subpart 5 and subpart 5C of Part 13, a contract prescribed by the Authority under clause 13.219B as a risk management contract; but
- (d) does not include—
 - (i) an **FTR**;
 - (ii) for the purposes of subpart 5C of Part 13, a **materially large contract** subject to subpart 7 of Part 13

...

Electricity Industry Participation Code 2010

Part 13

Trading arrangements

...

Subpart 5C—Non-~~d~~Discrimination ~~o~~Obligations

13.236O Purpose of this subpart

The purpose of this subpart is to promote competition in, and the efficient operation of, the electricity industry for the long-term benefit of consumers by requiring **gentailers** to supply **risk management contracts** to buyers on a non-discriminatory basis to—

- (a) ensure even-handed supply of **risk management contracts**; and
- (b) support the liquidity and competitive pricing of **risk management contracts**; and
- (c) facilitate investment in the electricity industry.

Meaning of discrimination

13.236P Meaning of discrimination

In this subpart, **discrimination** means engagement in differential treatment except to the extent a particular difference in treatment is objectively justifiable; and **discriminate** and **discriminatory** have corresponding meanings.

Non-discrimination obligations principles

13.236QP Non-discrimination obligations principles

The non-discrimination obligations principles are as follows:—

Non-discrimination obligation principle 1

Non-discriminatory supply

- (1) A gentailer must not discriminate between buyers for the supply of risk management contracts without an objectively justifiable reason.
- (2) A gentailer must not discriminate against buyers in favour of its own internal business units for the supply of risk management contracts without an objectively justifiable reason.
- (3) A gentailer must not discriminate against buyers in favour of its own internal business units when pricing risk management contracts without an objectively justifiable reason.
- (4) For the avoidance of doubt, subclause (3) requires pricing of risk management contracts in such a way as to ensure that any buyer that supplies electricity to end users at retail, that is as efficient with regard to operating costs as the gentailer's own retail internal business unit, and adopts a reasonable risk management approach, is not unduly deterred from operating profitably.

Non-discrimination obligation principle 2

Obligation to trade in good faith

- (5) A gentailer must engage with buyers in good faith and in a timely and constructive manner in relation to the supply of risk management contracts.

Non-discrimination obligation principle 3

Objective credit assessments

- (6) A gentailer's credit terms and collateral arrangements relating to the supply of risk management contracts to buyers must reflect a reasonable, consistent and transparent assessment of the risk of trading with a buyer.

Non-discrimination obligation principle 4

Equal access to commercial information

- (7) A gentailer must ensure that any commercial information relating to risk management contracts made available to its internal business units is also made available to buyers at the same time.

Non-discrimination obligation principle 5

Protection of confidential information

- (8) A gentailer must—

- (a) protect **buyer confidential information**; and
- (b) not use **buyer confidential information** other than for a purpose for which it was provided to the **gentailer**; and
- (c) establish robust processes to prevent disclosure of **buyer confidential information** to, and use of **buyer confidential information** by, any of the **gentailer's internal business units** that may compete with the **buyer**.

Non-discrimination ~~obligation-principle~~ 6

Record keeping

- (9) A **gentailer** must establish, maintain and keep records that demonstrate its compliance with these **non-discrimination obligations-principles**.²²

Non-discrimination policy and implementation plan

13.236QR Non-discrimination policy

- (1) A **gentailer** must at all times maintain an internal policy (“**non-discrimination policy**”) that:—
 - (a) details operational policies, practices, methodologies, processes and accountabilities in place to ensure the **gentailer's** trading of **risk management contracts** occurs in accordance with the **non-discrimination obligations-principles**; and
 - (b) is of a reasonable standard, taking into account the nature, scale and complexity of the **gentailer's** operations.
- (2) The **non-discrimination policy** referred to in subclause (1) must be reviewed and approved by the **gentailer's** board at least once a year.
- (3) Each time the **gentailer** amends its **non-discrimination policy**, the **gentailer** must disclose a copy of the amended **non-discrimination policy** to the **Authority** within 10 ~~working~~ **business days** of the amended policy taking effect.
- (4) Without limiting subclause (1), the **non-discrimination policy** must include:—
 - (a) detailed methodologies applied by the **gentailer** for the purposes of ensuring compliance with clause 13.236PQ(1)– to (4); and
 - (b) criteria for determining whether an objectively justifiable reason may exist for the purposes of **compliance with** clause 13.236PQ(1)– to (3); and
 - (c) a policy detailing expectations for the **gentailer's** engagement with **buyers** for the purposes of clause 13.236PQ(5); and
 - (d) a credit terms and collateral arrangements policy consistent with the requirements in clause 13.236PQ(6); and
 - (e) an information control policy for the purposes of clause 13.236PQ(7)– to (9).

13.236RS Implementation plan

- (1) A **gentailer** must prepare an implementation plan detailing its approach to complying with the **non-discrimination obligations-principles**.
- (2) A **gentailer's** implementation plan is to be provided to the **Authority** and published on the **gentailer's** website within 45 ~~working~~ **business days** after the date on which this subpart comes into force.
- (3) The implementation plan must include (without limitation) the **gentailer's**:—
 - (a) **non-discrimination policy**; and

- (b) planning (including any steps already taken) for training its employees, directors and agents on compliance with the **non-discrimination obligations-principles**; and
- (c) planning (including any steps already taken) for ensuring ongoing compliance with the **non-discrimination obligations-principles** (for example, through regular internal audits).

Record-keeping and disclosure requirements

13.236ST Record-keeping

- (1) A **gentailer** is required to establish, maintain and keep comprehensive records that demonstrate how it meets the **non-discrimination obligations-principles**.
- (2) Without limiting subsection (1), a **gentailer** must establish, maintain and keep records of:—
 - (a) the ~~total capacity~~ **risk-adjusted capacity** of the **gentailer** to offer **risk management contracts** over the next 3 years; and
 - (b) the **gentailer's** monthly **electricity** supplied over the past 12 months; and
 - (c) the **gentailer's** expected monthly **electricity** supply over the next 3 years; and
 - (d) the **gentailer's** methodologies for pricing of **risk management contracts**; and
 - (e) any reason for discriminating between **buyers**, or against **buyers** in favour of a **gentailer's** own **internal business units**, for the purposes of non-discrimination **obligation-principle** 1 of the **non-discrimination obligations-principles** (set out in clause 13.236PQ(1)– to (3)); and
 - (f) all complaints received by the **gentailer** by any person about any conduct of the **gentailer** that the person believes might constitute a breach of this subpart.

13.236SAU ~~Gentailers to arrange for regular audits~~ Appointment of independent auditor and submission of audit report

~~Each **gentailer** must arrange to be **audited** regularly in accordance with Part 16A in respect of the **gentailer's** compliance with its obligations under this subpart.~~

- (1) ~~A **gentailer** must appoint an independent **auditor**, who is suitably qualified and experienced, to conduct an annual **audit** of the **gentailer's** compliance with its obligations under this subpart as at 1 July for the previous 12 months (commencing 1 July 2027).~~
- (2) ~~The **gentailer** must ensure that the independent **auditor** provides a written audit report to the **gentailer** detailing the findings of any **audit** under subclause (1).~~
- (3) ~~The **gentailer** must submit the audit report referred to in subclause (2) to the **Authority** no later than 30 September each year.~~

13.236TV Annual reporting

- (1) ~~Within 45 working days after 1 July each year (commencing 1 July 2027), a **gentailer** must provide an annual report to the Authority no later than 30 September each year that demonstrates whether and how that **gentailer** has met the **non-discrimination obligations principles** for the 12-month period prior to 1 July that year (commencing 1 July 2027) in the previous 12-month period.~~
- (2) Without limiting subsection (1), the annual report must include the matters set out in clause 13.236ST(2).
- (3) When providing the annual report to the **Authority**, a **gentailer** must certify that the **gentailer** has complied with the **non-discrimination obligations-principles** during the relevant 12-month period (except for any breaches that have been reported, or are reported with the

certificate, to the **Authority** in accordance with clause 13.236~~XY~~).

- (4) The certification referred to in subclause (3) must be:—
- (a) signed by at least two directors of the **gentailer**; and
 - (b) accompanied by a statement confirming the truth and accuracy of the certification to the best of those directors' knowledge and belief having made all reasonable enquiries (including an explanation of the enquiries made).

13.236U Interim report

- (1) ~~Within 45 working days after the end of the first six-month period following this subpart coming into force, a gentailer must provide an interim report to the **Authority** that demonstrates whether and how the **gentailer** has met the **non-discrimination principles** during that six-month period.~~
- (2) ~~Without limiting subsection (1), the interim report must include the matters set out in clause 13.236S(2).~~

13.236VW Retail price consistency assessments

- (1) A **gentailer** must undertake a **retail price consistency assessment**:—
- (a) for each of its retail brands; and
 - (b) in relation to each of the following **retail segments**:—
 - (i) offers by the **gentailer** for new **mass market customers**; and
 - (ii) the **gentailer's** existing **mass market customers**; and
 - (c) in each **network reporting region**; and
 - (d) as at:—
 - (i) the date this subpart comes into force; and
 - (ii) 1 January and 1 July each year.
- (2) The purpose of a **retail price consistency assessment** in subclause (1) and **retail price consistency assessment report** in subclause (4) is to assist with the monitoring and enforcement of compliance with clause 13.236PQ(3) and (4).
- (3) The Authority must publish guidance to assist **gentailers** in undertaking **retail price consistency assessments**.
- (4) Each time a **gentailer** undertakes any **retail price consistency assessment** required by subclause (1), the **gentailer** must prepare a **retail price consistency assessment report** including the following information:—
- (a) the **gentailer's** expected cost of **electricity** associated with supply to the relevant **retail segment** expressed as an amount of dollars per **MWh**; and
 - (b) where there has been a change in the approach used to calculate the expected cost of **electricity** in a **retail price consistency assessment**:—
 - (i) an explanation for the change in approach; and
 - (ii) for the four **retail price consistency assessment reports** following that change in approach, the information required under subclause (4)(a) using the previous approach, unless the difference in the expected cost of **electricity** calculated using the old and new approaches in the first **retail price consistency assessment** following the change in approach is less than 5 per cent; and
 - (c) the **gentailer's** expected non-**electricity** costs associated with the supply of **electricity** to the relevant **retail segment** expressed as an amount of dollars per **MWh**, including:—
 - (i) expected cost of **metering** services associated with the supply of **electricity** to the

- relevant **retail segment** expressed as an amount of dollars per MWh; and
- (ii) expected cost of network (distribution and transmission) services associated with the supply of **electricity** to the relevant **retail segment** expressed as an amount of dollars per MWh; and
- (iii) expected cost of levies associated with the supply of **electricity** to the relevant **retail segment** expressed as an amount of dollars per MWh; and
- (iv) expected retail operating costs (including a contribution to the **gentailer's** shared and common costs, **disclosed separately**) associated with the supply of **electricity** to the relevant **retail segment** expressed as an amount of dollars per MWh; and
- (d) the **gentailer's** retail prices to the relevant **retail segment** expressed as an amount of ~~in~~ dollars per MWh; and
- (e) the **gentailer's** margin determined by the **retail price consistency assessment** expressed as an amount of dollars per MWh; and
- (f) detailed information on the expected load profile and volumes in MWh of **electricity** for the relevant **retail segment**; and
- (g) the information referred to in subclause (4)(a)– to (f) geographically aggregated to provide a national total for each of the **retail price consistency assessments** undertaken under subclause (1)(b)(i) and (ii); and
- (h) a full and clear explanation of the **gentailer's** approach to undertaking the **retail price consistency assessment**, including:—
 - (i) a description of the hypothetical portfolio of **risk management contracts** used to calculate the expected cost of **electricity** in subclause (4)(a) and (b), including:—
 - (A) an explanation of the approach taken by the **gentailer** to constructing its hypothetical portfolio of **risk management contracts** consistent with rational and prudent risk management practices; and
 - (B) the methodology and data for determining the costs of the **risk management contracts** used in that hypothetical portfolio; and
 - (C) an explanation for any differences between the costs of the **risk management contracts** used in that hypothetical portfolio and similar actual **risk management contracts** traded by the **gentailer** in the same period; and
 - (ii) the **gentailer's** approach to identifying and calculating the retail operating costs, including the contribution to the **gentailer's** shared and common costs, in subclause (4)(c)(iv); and
 - (iii) any other material judgements made by the **gentailer** in undertaking the **retail price consistency assessment** together with an explanation for those judgements; and
- (i) areas in which, and reasons why, the **gentailer** has departed from the guidance published by the **Authority** under subclause (3); and
- (j) an explanation as to whether and how the results of the **retail price consistency assessment** are **consistent with an outcome that would be observed in a competitive market economically justifiable**; and
- (k) any additional information the **gentailer** reasonably considers may be required to assess the results of the **retail price consistency assessment**.
- (5) For the avoidance of doubt, the costs and prices referred to in subclause (4)(a)– to (e) must be exclusive of GST.
- (6) A **retail price consistency assessment report** must be in the form specified by the **Authority**.
- (7) A **gentailer's retail price consistency assessment report** must be provided to the

Authority—

- (a) within 45 **business-working days** after the date on which this subpart comes into force, in respect of the initial **retail price consistency assessment** referred to in subclause (1)(d)(i); and
- (b) otherwise, within 45 **business-working days** of 1 January and 1 July each year.

13.236WX Public reporting

- (1) A **gentailer** must prepare and publish public versions of the annual report referred to in clause 13.236TV(1), ~~the interim report referred to in clause 13.236U(1)~~ or any **retail price consistency assessment report** prepared in accordance with clause 13.236VW(4) on the **gentailer's** website within **10 ~~5~~ business working days** of providing of the relevant report to the **Authority**.
- (2) When preparing a public version of an annual report, ~~interim report~~ or **retail price consistency assessment report**, a **gentailer** may redact information that is commercially sensitive or otherwise confidential, but any such redactions should be kept to a minimum to promote transparency.
- (3) The **gentailer's** public version of any annual report, ~~interim report~~ or **retail price consistency assessment report** must be:—
 - (a) provided to the **Authority** at the same time as submitting the relevant annual report, ~~interim report~~ or **retail price consistency assessment report**; and
 - (b) accompanied by an explanation of the basis for any redactions made under subclause (2).

13.236XY Self-reporting of breaches

- (1) If a **gentailer** believes, on reasonable grounds, that it may have breached this subpart, the **gentailer** must report the alleged breach to the **Authority** as soon as reasonably practicable, and no later than 20 **business working days** after the **gentailer** becomes aware of the alleged breach.
- (2) Any report under subsection (1) must be in writing and must specify:—
 - (a) the relevant provision of this subpart allegedly breached; and
 - (b) the circumstances relating to the alleged breach; and
 - (c) the extent and impact of the alleged breach, including any affected **parties** or processes; and
 - (d) any remedial actions taken or proposed; and
 - (e) the date and time the alleged breach occurred.

...

Provision of internal transfer pricing information by generator retailers ~~[Revoked]~~

13.256Generator retailers must provide ITP information to the Authority ~~[Revoked]~~

- (1) ~~Each **generator retailer** must provide the **ITP information** in relation to the **generator retailer** to the **Authority** in the form and by the means specified by the **Authority** no later than 90 days after the end of the **financial year** of the **generator retailer**.~~
- (2) ~~The **ITP information** must consist of the following information in relation to the **generator retailer's financial year**:~~
 - (a) ~~the average load weighted **retail ITP**, calculated by dividing the total notional cost of **electricity** under the **retail ITP** arrangements of the **generator retailer** by the total amount of **electricity** in **MWh** sold by the **generator retailer** to **mass market customers**;~~

- (b) information on how the **generator retailer** determined the **retail ITP**, at a sufficient level of detail to enable a reasonable person, being a person who has a reasonably sophisticated understanding of the operation of the **electricity** industry and the **wholesale market**, to determine how the **generator retailer** determined the **retail ITP**.
- (3) The information provided by a **generator retailer** under subclause (2)(b) must include the following:
- (a) a breakdown of the key components or factors which make up the **retail ITP** expressed as an amount in dollars and cents per **MWh** that each key component or factor comprises of the average load weighted **retail ITP** required by subclause (2)(a), and which must include (if relevant) the following components or factors:
- (i) prices in **ASX NZ electricity futures**:
 - (ii) the distribution of the total electrical load across locations, including the adjustment, calculated on an average load weighted basis in **MWh**, that the **retailer** generator used to determine the **retail ITP** for the **electricity** sold to **mass market customers** beyond a **node** specified in an **ASX NZ electricity future**:
 - (iii) administrative fees, including management fees, notionally charged by the **generator retailer** to the **generator retailer's** retail arm:
 - (iv) the level of discretionary judgement the **generator retailer** exercised to amend or otherwise modify the draft **retail ITP** before it was finalised:
 - (v) all other key components or factors the **generator retailer** relied on to determine the **retail ITP**, and any other material information used by the **generator retailer** to determine the **retail ITP** that is not publicly available:
- (b) any residual components or factors that make up the **retail ITP**, but which are not components or factors required by paragraph (a), expressed as one combined amount in dollars and cents per **MWh**:
- (c) an explanation of the methodology the **generator retailer** used to determine or to assist in determining the **retail ITP**, and which must include (if relevant) the following:
- (i) the assumed process used by the **generator retailer** to build the hedge book of **ASX NZ electricity futures**, including the following:
 - (A) the proportion of **ASX NZ electricity futures** the **generator retailer** assumed would be purchased and the assumed timing of those assumed purchases:
 - (B) the relative weighting of **ASX NZ electricity futures** relating to Benmore as compared to those relating to Otahuhu:
 - (C) the types of **ASX NZ electricity futures** the **generator retailer** assumed to be purchased and the maturities purchased:
 - (D) the basis on which the **ASX NZ electricity futures** are priced:
 - (ii) the approach the **generator retailer** took to adjust for:
 - (A) differences in the within day electrical load and cost profile underlying the **ASX NZ electricity futures** and the **generator retailer's mass market customers** load profile:
 - (B) distribution of electrical load across locations, including the relative use of **FTRs** or historical price differences to price for load by location:
 - (iii) the approach or methodology used to determine the electrical load profile, including the following:
 - (A) whether actual or assumed load profiles are relied upon:
 - (B) the degree of granularity of load with respect to location, seasonality and intra-day:
 - (C) the percentage of load by regional geographical location:

- (iv) the basis for and determination of fees, including management or associated fees, the **generator retailer** notionally charged its retail arm:
 - (v) the basis for and rationale behind any discretion the **generator retailer** exercised:
 - (vi) any other details the **generator retailer** considers material to explain the methodology the **generator retailer** used to determine or assist in determining the **retail ITP**:
- (d) the key non-price parameters the **generator retailer** used to determine the **retail ITP** including whether or not the **retail ITP** is:
 - (i) for fixed or variable volume of **electricity**; or
 - (ii) for a fixed or variable price of **electricity**:
 - (e) the purposes for which the **retail ITP** is used by the **generator retailer**, including whether the **retail ITP** is used as part of setting the price of **electricity** sold to **mass market customers** by the **generator retailer**:
 - (f) if relevant, and if not disclosed under paragraph (e), any matters relating to the **generator retailer** which the **retail ITP** directly or indirectly affects.
- (4) Where a **generator retailer** and one or more other **generator retailers** are related companies, as defined in section 2 of the Companies Act 1993, and are required by subclause (1) to provide **ITP information** to the **Authority**, the obligation in subclause (1) is met by one of those **generator retailers** providing the **ITP information** relating to all the **generator retailers** on a consolidated basis for the **generator retailers** to the **Authority**.
 - (5) If a **generator retailer** provides **ITP information** on behalf of other **generator retailers** under subclause (4), the **generator retailer** providing the **ITP information** must identify the other **generator retailers** as part of the **ITP information** provided.

13.257 Disclosure of change of methodology *[Revoked]*

- (1) This clause applies if —
 - (a) a **generator retailer** changes the methodology used to determine the **retail ITP** for a **financial year** (“the current **financial year**”) from the methodology used in a previous **financial year** for which the **generator retailer** provided **ITP information** under clause 13.256, other than where that change relates solely to the distribution of the customer load base or the input prices (**ASX NZ electricity futures** prices and locational prices as provided for in clause 13.256(3)(a)(i) and (ii)); and
 - (b) that change in methodology has the effect of modifying the **retail ITP** by an amount in excess of 5% from the **retail ITP** contained in the most recent **ITP information** the **generator retailer** provided under clause 13.256.
- (2) Where this clause applies, the **generator retailer** must also provide the following information to the **Authority** in the form and by the means specified by the **Authority**:
 - (a) details of the impact on the average load weighted **retail ITP** disclosed under clause 13.256 for any of the previous three **financial years** if the new methodology had been used to determine the **generator retailer’s retail ITP** for those previous **financial years**;
 - (b) details of the impact on the average load weighted **retail ITP** for the current **financial year** if the methodology used in any of those previous **financial years** was used to determine the **generator retailer’s retail ITP** for the current **financial year**.
- (3) The **generator** must provide the information required by subclause (2) to the **Authority** at the same time as providing the **ITP information** required under clause 13.256 for the current **financial year**.

- (4) ~~Where a **generator retailer** and one or more other **generator retailers** are related companies, as defined in section 2 of the Companies Act 1993, and are required by subclause (2) to provide information to the **Authority**, the obligations in subclause (2) are met by one of those **generator retailers** providing the information relating to all the **generator retailers** on a consolidated basis for all the **generator retailers** to the **Authority**.~~
- (5) ~~If a **participant** provides information on behalf of other **generator retailers** under subclause (4), the **generator retailer** providing the information must identify the other **generator retailers** as part of the information provided.~~

13.258 Publication of ITP information by the Authority *[Revoked]*

The **Authority** may publish any **ITP information** or information submitted to it under clause 13.257, as the **Authority** sees fit.

Provision of retail gross margin reports by retailers and gentailer cost information

13.259 Provision of retail gross margin report by retailers

- (1) Each **retailer** must provide a **retail gross margin report** to the **Authority** no later than 90 days after the end of the **retailer's financial year**.
- (2) ~~Subclause (1) does not apply to any **retailer** who was recorded in the **registry** in any of the preceding 12 months as being responsible for less than 1% of the total number of **ICPs** registered in the **registry** with an **ICP** status of "Active".~~
- (2) Subclause (1) does not apply to:—
- (a) any **retailer** who was recorded in the **registry** in any of the preceding 12 months as being responsible for less than 1% of the total number of **ICPs** registered in the **registry** with an **ICP** status of "Active"; or
 - (b) any **gentailer**.
- (3) The **retail gross margin report** must consist of the following information *(exclusive of GST)* relating to the sale of **electricity** to **mass market customers** for the **financial year** by the **retailer**:
- (a) the total amount of **electricity** sold by the **retailer** to **mass market customers** expressed as **MWh**;
 - (b) revenue derived from the sale of **electricity** to **mass market customers** expressed as an amount of dollars per **MWh**;
 - (c) cost of **electricity** sold by the **retailer** to **mass market customers**, ~~including the cost of **electricity** derived from **retail ITP**,~~ expressed as an amount of dollars per **MWh**;
 - (d) cost of **metering** services associated with the sale of **electricity** to **mass market customers** expressed as an amount per **MWh**;
 - (e) cost of **distribution** services associated with the sale of **electricity** to **mass market customers** expressed as an amount per **MWh**;
 - (f) cost of transmission services, being those services provided by **Transpower** under a **transmission agreement**, paid by the **retailer** associated with the supply of **electricity** to **mass market customers** by the **retailer** expressed as an amount per **MWh**;
 - (g) cost of levies associated with the supply of **electricity** to **mass market customers** by the **retailer** expressed as an amount per **MWh**.
- (4) A **retail gross margin report** must be prepared in accordance with generally accepted accounting practices and in the form *and in the manner* specified by the **Authority**.

- (5) Where a **retailer** and one or more other **retailers** are related companies, as defined in section 2 of the Companies Act 1993, and are required by subclause (1) to provide a **retail gross margin report** to the **Authority**—
- (a) the obligation in subclause (1) is met by one of those **retailers** providing the **retail gross margin report** relating to all the **retailers** on a consolidated basis for all the **retailers** to the **Authority**; and
 - (b) in any such case, the **retailer** providing the information must identify the other **retailers**, as part of the information provided.

13.259A Provision of cost information by gentailers

- (1) Each **gentailer** must provide the information in subclause (2) to the **Authority** no later than 90 days after the end of the **gentailer's financial year**.
- (2) Each **gentailer** must provide the following information (exclusive of GST) to the **Authority**, relating to the sale of **electricity to mass market customers** for the **financial year** by the **gentailer**—
 - (a) cost of **metering** services associated with the sale of **electricity to mass market customers** expressed as an amount per MWh; and
 - (b) cost of **distribution** services associated with the sale of **electricity to mass market customers** expressed as an amount per MWh; and
 - (c) cost of transmission services, being those services provided by **Transpower** under a **transmission agreement**, paid by the **gentailer** associated with the supply of **electricity to mass market customers** by the **gentailer** expressed as an amount per MWh; and
 - (d) cost of levies associated with the supply of **electricity to mass market customers** by the **gentailer** expressed as an amount per MWh.
- (3) The information in subclause (2) must be prepared in accordance with generally accepted accounting practices and in the form and in the manner specified by the **Authority**.

13.260 Publication of information contained in retail gross margin reports and gentailer cost information by the Authority

- (1) The **Authority** may **publish** the information received in a **retail gross margin report**, except that information contained in a **retail gross margin report** submitted by a **retailer** with less than 5% of total market share by **ICP** with a status of “Active” must be anonymised so as not to identify that **retailer**.
- (2) The **Authority** may **publish** information provided by a **gentailer** to the **Authority** under clause 13.259A.

Authority may require review of ~~HFP information~~ and retail gross margin reports and gentailer cost information

13.261 Authority may require review of ~~HFP information~~ and retail gross margin reports and gentailer cost information by independent person

The **Authority** may, in its discretion, require a review by an independent person of whether—

- (a) ~~a **generator retailer** may not have complied with one or both of clauses 13.256 or 13.257; and~~
- (b) ~~a **retailer** may not have complied with clause 13.259.~~

The **Authority** may, in its discretion, require a review by an independent person of whether—

- (a) a **retailer** may not have complied with clause 13.259; and

- (b) a ~~retailer~~ **gentailer** may not have complied with clause 13.259A.

13.262 Nomination of independent person to undertake review

- (1) If the **Authority** requires a review under clause 13.261—
 - (a) the **Authority** must require the ~~generator retailer~~ or **retailer or gentailer** to nominate an appropriate independent person to undertake the review; and
 - (b) the ~~generator retailer~~ or **retailer or gentailer** must provide that nomination within a reasonable timeframe.
- (2) The **Authority** may direct the ~~generator retailer~~ or **retailer or gentailer** to appoint the person nominated under subclause (1) or to nominate another person for approval.
- (3) If the ~~generator retailer~~ or **retailer or gentailer** fails to nominate an appropriate person under subclause (1) within 5 **business days**, the **Authority** may direct the ~~generator retailer~~ or **retailer or gentailer** to appoint a person of the **Authority's** choice.
- (4) The ~~generator retailer~~ or **retailer or gentailer** must appoint a person to undertake the review in accordance with a direction made under subclause (2) or subclause (3).

13.263 Factors relevant to a direction under clause 13.262

- (1) In making the direction required by clause 13.262(2) or clause 13.262(3), the **Authority** may have regard to any factors it considers relevant in the circumstances, including the following:
 - (a) the degree of independence between the ~~generator retailer~~ or **retailer or gentailer** and the person nominated under clause 13.262(1); and
 - (b) the expected quality of the review; and
 - (c) the expected costs of the review.
- (2) For the purposes of subclause (1)(a), the **Authority** may have regard to the special definition of independent under clause 1.4 but it is not bound by that definition.

13.264 Carrying out of review by independent person

- (1) A ~~generator retailer~~ or **retailer or gentailer** subject to a review under clause 13.261 must, on request from the person undertaking the review, provide that person with such information as the person reasonably requires in order to carry out the review.
- (2) The ~~generator retailer~~ or **retailer or gentailer** must provide the information no later than 10 **business days** after receiving a request from the person for the information.
- (3) The ~~generator retailer~~ or **retailer or gentailer** must ensure that the person undertaking the review—
 - (a) produces a report on whether, in the opinion of that person, the ~~generator retailer~~ or **retailer or gentailer** may not have complied with clauses ~~13.256, 13.257 or 13.259~~ or **13.259A (as applicable)** (as specified by the **Authority** under clause 13.261); and
 - (b) submits the report to the **Authority** within the timeframe specified by the **Authority**.
- (4) The report produced under subclause (3)(a) must include any other information that the **Authority** may reasonably require.
- (5) Before the report is submitted to the **Authority**, any identified failure of the ~~generator retailer~~ or **retailer or gentailer** to comply with clauses ~~13.256, 13.257 or 13.259~~ or **13.259A (as applicable)** must be referred back to the ~~generator retailer~~ or **retailer or gentailer** for comment.
- (6) The comments of the ~~generator retailer~~ or **retailer or gentailer** must be included in the report.

13.265 Payment of review costs

- (1) If a report received under clause 13.264(3)(a) establishes, to the **Authority's** reasonable satisfaction, that the ~~generator retailer or~~ **retailer or gentailer** may not have complied with clauses ~~ss 13.256, 13.257 or 13.259~~ **or 13.259A (as applicable)** (whether or not the **Authority** appoints an investigator to investigate the alleged breach), the ~~generator retailer or~~ **retailer or gentailer** must pay the costs of the person who undertook the review.
- (2) Despite subclause (1), if a report establishes, to the **Authority's** reasonable satisfaction that any non-compliance of the ~~generator retailer or~~ **retailer or gentailer** is minor or there is any other reason in the **Authority's** view that means the ~~generator retailer or~~ **retailer or gentailer** should not pay the costs of the person who undertook the review, the **Authority** may, in its discretion, determine the proportion of the person's costs that the ~~generator retailer or~~ **retailer or gentailer** must pay, and the ~~generator retailer or~~ **retailer or gentailer** must pay those costs.
- (3) If a report establishes to the **Authority's** reasonable satisfaction that the ~~generator retailer or~~ **retailer or gentailer** has complied with clauses ~~ss 13.256, 13.257 and 13.259~~ **or 13.259A (as applicable)** (if relevant), the **Authority** must pay the person's costs.

13.266 Requirement to provide complete and accurate information

- (1) In addition to the requirements of clause 13.2, the ~~generator retailer or~~ **retailer or gentailer** must take all practicable steps to ensure that the information that the ~~generator retailer or~~ **retailer or gentailer** is required to provide to any person under clauses ~~ss 13.256, 13.257 or 13.259~~ **or 13.259A (as applicable)** is complete and correct.
- (2) If a ~~generator retailer or~~ **retailer or gentailer** becomes aware that any information the ~~generator retailer or~~ **retailer or gentailer** provided under clauses ~~ss 13.256, 13.257 or 13.259~~ **or 13.259A (as applicable)** does not comply with subclause (1) or clause 13.2, even if the ~~generator retailer or~~ **retailer or gentailer** has taken all practicable steps to ensure that the information complies, the ~~generator retailer or~~ **retailer or gentailer** must, as soon as practicable, provide such further information as is necessary to ensure that the information provided complies with clauses ~~ss 13.256, 13.257, 13.259~~ **or 13.259A (as applicable)**, or clause 13.2 (as relevant).

Electricity Industry Participation Code 2010

Part 1A

Audits

...

16A.1 Contents of this Part

This Part specifies obligations on **participants** that perform functions under Parts 10, 11, 13 and 15 in respect of **audits** required under the following clauses:

- (a) 10.17A (**Metering equipment providers** and **ATHs** to arrange for regular **audits**):
- (b) 10.17B (**Authority** and **participant** requested **audits**):
- (c) 11.8B (**Metering equipment providers** to arrange for regular **audits**):
- (d) 11.10 (**Distributors** to arrange for regular **audits**):
- (e) 11.11 (**Authority** and **participant** requested **audits**):
- (ea) 13.138C (**Generators** to arrange for regular **audits**):
- ~~(eb) 13.236SA (**Gentailers** to arrange for regular **audits**):~~
- (f) 15.37A (**Reconciliation participants** to arrange for regular **audits**):
- (g) 15.37B (**Retailers** to arrange for **audits** in respect of **distributed unmetered load**):

(h)15.37C (**Authority** and **participant** requested **audits**).

...

~~Subpart 6B – Gentailer Non-Discrimination Obligations Audits~~

~~16A.26A Time frame for gentailer non-discrimination obligations audits~~

~~In relation to **audits** required under clause 13.236SA, a **gentailer** must ensure that—~~

~~(a) an initial **audit** is completed no later than 45 days after 1 July 2027; and~~

~~(b) further **audits** are completed as specified by the **Authority** under clause 16A.14.~~

Appendix C Red line version of Guidance on Retail Price Consistency Assessment

1 Purpose

Overall approach to the RPCA

- 1.1 Clause 13.236W of the Electricity Industry Participation Code 2010 (Code) requires the four large gentailers⁷¹ (gentailers) to undertake a retail price consistency assessment (RPCA) and to provide a RPCA report the Authority. The Code requires the Authority to publish guidance on the RPCA. In accordance with that Code obligation, this guidance is intended to assist the gentailers with undertaking and reporting ~~retail price consistency assessments (RPCAs)~~ by explaining the intent of the RPCA and setting out the Authority's current expectations on methods.⁷²

Promoting competition through confidence in a level playing field

- 1.2 The purpose of the RPCA is to test whether a gentailer is discriminating on the price of risk management contracts it makes available to independent retailers by, effectively, providing energy at more favourable rates to its own retail internal business unit, and accordingly to assist monitoring and enforcement of compliance with non-discrimination obligation 1(3) and 1(4) (clauses 13.236Q(3) and (4) of the Code).
- 1.3 The RPCA ~~would be~~ is part of a suite of measures aimed at providing, and building confidence that there is, a level playing field to promote competition between independent retailers and generators and the gentailers. The Authority is committed to increased, regular scrutiny of the hedge market – closely monitoring conduct, disclosures and the overall effectiveness of the package of measures it is implementing to address hedge access and pricing risks.

2 Scope and definitions

A specific regulatory test

- 2.1 The RPCA is conceptually an evolution of the current retail gross margin reporting.⁷³ It provides an indicator of discrimination on the price of hedges or below cost retail pricing, using a margin squeeze-type approach to assess the implicit cost of electricity that each gentailer self-supplies to its retail internal business unit.
- 2.2 A disclosed negative/narrow positive margin RPCA may prompt further questions to a gentailer from the Authority and, in case of unsatisfactory explanations, further assessment and possible referral to the Authority's compliance process.
- 2.3 However, it is not a bright-line pass/fail enforcement tool. An RPCA "fail" will not lead to enforcement action in itself. Rather it is an indicator of price discrimination in hedge pricing used as evidence that will be considered when assessing potential non-compliance with the non-discrimination principles obligations.
- 2.4 Nor is the RPCA a screening test for broader retail competition issues. The RPCA cannot provide insight into access to risk management contracts, or inappropriate use of market power in the pricing of individual risk management contracts. Other

⁷¹ Contact Electric Limited, Genesis Energy Limited, Meridian Energy Limited and Mercury NZ Limited.

⁷² Under ~~the proposed~~ clause 12.236V 236W(4).

⁷³ Electricity Industry Participation Code 2010, Part 13, Subpart 6.

aspects of the non-discrimination obligations (~~NDOs~~) and our other monitoring work will cover those areas.

- 2.5 The RPCA conceptually covers similar ground to margin squeeze theories of harm, which could be considered under section 36 of the Commerce Act 1986, but it is not the same.⁷⁴ For example, the RPCA is designed to respond to a specific market power risk, it is forward-looking (using expected costs and retail prices) rather than a typically ex-post review of conduct, and it does not require proof of substantial market power.
- 2.6 Separately the Commerce Commission retains its function of investigating whether conduct may contravene section 36 and taking enforcement action. It may be informed by any outcomes of the RPCA, though problematic conduct under the RPCA does not necessarily mean that the conduct also breaches section 36 of the Commerce Act ~~and vice versa~~.⁷⁵

Keeping assumptions and modelling to a minimum

- 2.7 The RPCA is designed to reduce requirements for additional modelling or assumptions by focusing on what a gentailer is likely to know or have to do already, and by focusing on expectations, not gentailer outturns.
- 2.8 A gentailer decides its retail pricing for the next period based on (among other factors) expected demand and costs. As the RPCA relies on these expectations, the assessment avoids having to adjust actual outturns for, say, the effects of demand or supply shocks or other factors outside a gentailer's control, forecast errors, and actual performance of various gentailer internal business units (generation, trading, retail) that could all impact realised margins and may obscure any anti-competitive margin squeezing.
- 2.9 The Authority does not, at this point, intend to test or make any judgment on the accuracy of recorded expectations by looking at outturns, unless there are material doubts about the credibility or good faith of the recorded expectations. We are open to reconsidering this stance in the future.
- 2.10 The approach to the RPCA ~~also~~ avoids the need to develop and quantify models of what a reasonably efficient operator might do or what a benchmark cost of supply might be. Instead, the RPCA draws on a gentailer's own assessment of electricity (and other) costs – justified with reference to observed market prices – and its actual retail prices.
- 2.11 This more practical approach gives confidence that an 'as efficient' retailer would not be unduly deterred from operating and competing in the electricity retail market, without assuming that a gentailer must be operating at some benchmark efficiency standard.

Evolution of guidance

- 2.12 The Authority is seeking to quickly increase transparency to deter any price discrimination on hedges. The RPCA is a new regulatory assessment and relatively high level. All interested parties will learn about what further guidance may be

⁷⁴ For example, see p18 of Commerce Commission 2023, [Misuse-of-Market-Power-Guidelines-March-2023.pdf](#).

⁷⁵ We note that:

If the Authority received information via the RPCA process suggesting gentailers may have engaged in a margin squeeze, it could provide that information to the Commission (under s47A of the Act) to also consider under Part 2 of the Commerce Act. If the Commission received information in its Part 2 Commerce Act enforcement function which might relate to gentailers' RPCA compliance, it could provide that information to the Authority (s 99AA of the Commerce Act 1986).

desirable from doing and reviewing the initial RPCA disclosures, and how best to understand and respond to the issues that come up. The guidance will likely evolve over time.

- 2.13 As such, the Authority expects that implementation and learning will be the primary focus of the first round of assessments. However, if an assessment reveals strong indicators of potential discrimination, the Authority will respond promptly ([see para 8.4](#)). Depending on what is appropriate in the circumstances this may include:
- (a) referring the matter to the compliance function of the Authority to assess whether a potential breach of the non-discrimination obligations may have occurred
 - (b) considering whether amendments or stronger rules are needed to better support the purpose of the non-discrimination obligations.

3 The main elements of the RPCA

Guidance

- 3.1 The RPCA margin equals the retail price for the period ahead less expected non-electricity costs and less expected cost of electricity. This RPCA margin is generally expected to be positive.**
- 3.2 The expected cost of electricity is valued at observed market prices as *if* the cost for all that electricity was fixed with risk management contracts at observed market prices.**
- 3.3 All expected prices and costs should be excluding GST and either presented as if they will apply for the year ahead (that is, annualised) or otherwise adjusted for seasonal effects.**

Discussion

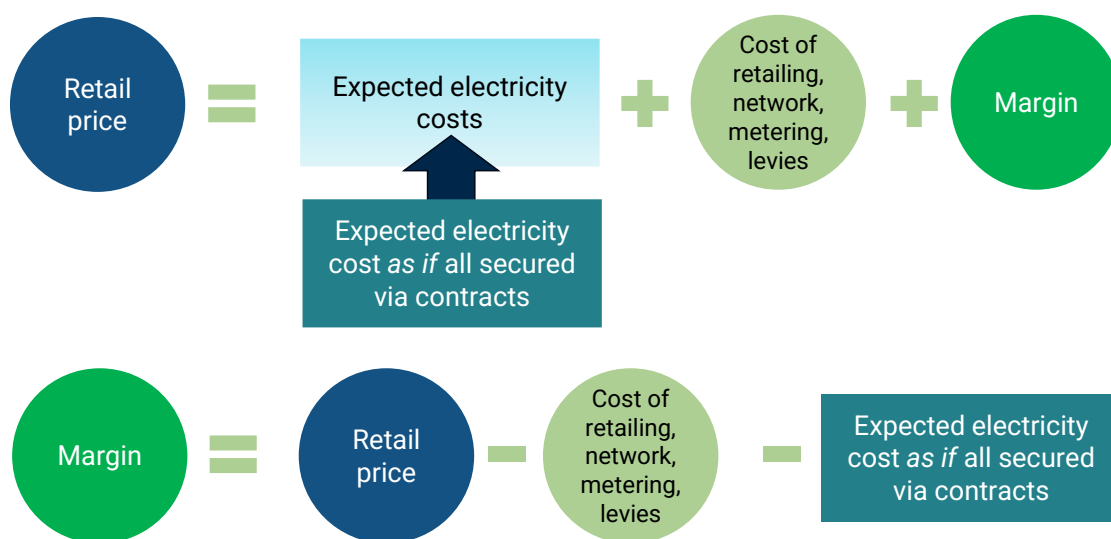
- 3.4 The assessment of whether a gentailer's retail prices are consistent with observed hedge prices is a check that a gentailer is not favouring its own retail internal business unit on the cost of supply, compared to what it sells that supply to third parties at, through risk management contracts.
- 3.5 The RPCA seeks to overcome the absence of prices for a gentailer self-supplying its retail internal business unit to allow the Authority to monitor for the presence of price discrimination.
- 3.6 This is done by assuming that observed market prices of risk management contracts are a reasonable shadow price for self-supply.
- 3.7 That is, a gentailer's opportunity cost of self-supply to its own retail customers is the price it could get for selling that supply (or, equivalently, what it would have cost to buy and hedge electricity supply for its retail customers).
- 3.8 If, after subtracting all its costs from its retail prices, including energy costs as if supply was all secured via hedge contracts, a gentailer's margin is negative, then the RPCA indicates that a gentailer may be discriminating in the prices of the risk management contracts it sells compared to what it implicitly charges itself for self-supply, and/or that its retail prices may be set below cost.
- 3.9 As a negative or narrow positive result may indicate competition concerns, it should be accompanied by a clear explanation. If the explanation is insufficient or raises

further issues, the Authority may ask follow-up questions and, where appropriate, the matter may be referred to the compliance process for assessment of a potential breach of the non-discrimination principles in the Code.

- 3.10 The Authority acknowledges that the link between retail prices and expected cost to supply (and other costs) is not a simple cost+ relationship. Any firm has many considerations when it sets its retail prices to compete for custom and make profits, including insulating customers from price volatility through price-smoothing. This means the assessment cannot be a bright-line pass/fail assessment. But the assessment is informative, as ultimately a retailer's prices must cover its costs to stay in business.

Overview of the calculation

- 3.11 Gentailers will provide their assessment every six months. To be as current and reflective of expected retail prices as possible, the RPCA should cover all the retail plans that have been agreed with customers or are being offered to (potential) new customers as at the time that each assessment is to be undertaken (at end of the financial year and at the six-month point).
- 3.12 Gentailers' assessments should compare the expected costs per MWh (including the implied electricity costs) and retail prices per MWh over the next 12 months from the time of assessment. We call this period the reporting period. Further guidance is provided in subsequent sections.
- 3.13 A gentailer should report any decision that has a material impact on its calculations to us, and the reasons for it.



- 3.14 For a gentailer to demonstrate (and explain that there is) an economically justifiable link between the expected cost of electricity supply and its retail pricing, the key steps are, for each RPCA segment and for each Network Reporting Region (NRR), to:
- calculate their load profile
 - calculate the average retail price per MWh
 - estimate, using observable market-based prices, the cost per MWh of supplying electricity to the RPCA segment, as if that load was hedged using ASX and OTC contracts (including PPAs) to minimise the risk-adjusted supply cost
 - calculate the expected non-energy electricity (network, retail, metering, levies) costs per MWh

- (e) calculate the margin, by subtracting the expected cost of electricity and non-electricity costs per MWh from the average retail price per MWh
- (f) report the RPCA margin per MWh with objectively justifiable reasons for any implied loss or narrow margin, and disclose the methods used, material judgements made and reasons for them, and any additional data, assumptions, and calculations the Authority may need to assess the results (and that cannot be observed from existing retail or contract data disclosures)
- (g) calculate and present all prices and costs as if for the year ahead, that is, annualised to control for seasonal effects (and exclusive of GST).

Below is more detail on how gentailers should undertake the RPCA.

4 Coverage and retail segments

Guidance

- 4.1 The RPCA covers all mass market customers – residential customers and small businesses.**
- 4.2 Each gentailer should present ~~two~~ separate RPCAs for each retail brand it controls, covering margins in relation to the following retail segments:**
 - (a) **offers for new electricity customers**
 - (b) **existing electricity customers.**
- 4.3 Each gentailer should publish and disclose its results for each segment by network reporting region, and aggregated to a national total for each segment.**

RPCA covers mass market customers

- 4.4 The RPCA covers all gentailers' mass market customers – that is residential customers and small businesses as commonly understood to be mass market customers in accordance with standard industry practice.
- 4.5 For the RPCA, the Authority assumes that small business customers are mass market customers when they are offered or are on retail plans that consist of generic contract terms and served like other retail customers – in contrast to more bespoke arrangements for larger commercial customers.
- 4.6 Larger commercial and industrial consumers are currently not included in the RPCA. The competitive dynamic for these customers appears to differ from the mass market: individualised terms and pricing, more specialised needs and more sophisticated procurement.
- 4.7 The Authority's starting position is that all prices offered to any mass market customers (adjusted for discounts where appropriate) should be captured somewhere in the RPCA, and that all externally traded hedge contracts are relevant to the cost of electricity.
- 4.8 Where a gentailer considers that some end customer prices (eg, staff offers) and some hedge contracts (eg, contracts with social retailers) should be excluded from any RPCA calculations, they should explain this to the Authority, including setting out their internal decision process (how the gentailer goes about distinguishing those

offers or contracts in a principled way) and the numerical impact of not including those prices or contracts in the RPCA.

Balancing benefit of transparency with compliance costs and confounding signals

4.9 The Authority ~~applies applied~~ the following criteria, ~~and will continue to do so~~, in considering the extent of segmentation for monitoring compliance with ~~non-discrimination obligations~~ ~~NDOs~~:

- (a) accuracy in calculation
 - (b) transparency to support confidence in a level playing field
 - (c) value for money (quality and effectiveness of the signal compared to costs).
- 4.10 To expand, separate RPCA reporting for different groups of consumers can improve transparency, which can help to build confidence that retailers can compete on a level playing field, or otherwise identify issues that may require regulatory attention.
- 4.11 If customer groups are too aggregated, then RPCA measures could obscure issues in particular segments. ~~On the flipside~~ ~~Conversely~~, if customer groups are too segmented, the RPCA may effectively mislabel legitimate competition as discrimination. Therefore, in selecting segments the Authority considers accuracy and transparency benefits must be balanced against:
- (a) creating unhelpful information (causing an unwieldy number of measures or misdiagnosing competitive retail pricing as potentially anti-competitive behaviour)
 - (b) adding compliance and administrative costs
 - (c) causing unintended consequences (such as discouraging competition by gentailers, including innovation in retail offers).
- 4.12 As such, the Authority considers that RPCA segmentation should be limited to consumer segments where the benefit of transparency is particularly high. RPCAs should focus on segments which could be informative of an anti-competitive effect and are of a material size.

Segmentation to improve transparency in higher risk retail markets

- 4.13 RPCA disclosures should be presented for a gentailer's main brand and any separate subsidiary brands for plans (in aggregate):
- (a) offered to new electricity customers
 - (b) for existing electricity customers.
- 4.14 Existing electricity customers are those who are already a gentailer's electricity customer at the time RPCAs are calculated.
- 4.15 Separate RPCA disclosure for offers to new electricity customers is to provide assurance to new entrants and other retailers that competition for customers who are considering switching plans or retailers is on a level playing field. This is an important segment as it is where competition is most active. Lower priced offers to new customers were a core concern arising from the complaints we have received.
- 4.16 RPCA disclosure for a gentailer's existing customers also provides assurance that a gentailer is not favouring its retail internal business unit for those customers it has a contract with.

- 4.17 A separate RPCA is required by brand – the gentailer’s main brand, and any of its subsidiary brands, to ensure that any reduced ‘challenger brand’ pricing is separately considered. Noting that there is currently only one remaining separate ‘challenger brand’ that is owned and actively promoted to the mass market by a gentailer, we will continue to assess whether reporting by brand has ongoing value.

Segmentation to capture geographic differences

- 4.18 The Authority requires RPCA reporting to be segmented by region, given geographic differences in customer load profiles, costs of electricity supply, and ~~non-energy~~ electricity costs.
- 4.19 ~~Our current view is that a~~ A gentailer ~~should~~ is required to undertake its calculations ~~by network reporting region (NRR)~~, to accurately capture differences in network costs, load profiles, differences in the cost of hedges in the North and South Island, and more detailed location factors that impact electricity costs. If other non-electricity costs also vary materially by area, then these should also be captured this way.
- 4.20 Gentailers will also publish and disclose to the Authority the underlying information for each segment at the NRR level, including an explanation for negative outliers, so that the Authority can monitor the detailed results, follow-up with a gentailer on any areas of interest, and comment on any geographic concerns we identify when we publish RPCA results.
- 4.21 The Authority also requires gentailers to report aggregated (national) RPCA results. Aggregated RPCAs for each segment would be calculated as a load-weighted average of NRR-level calculations, based on the volume of electricity expected to be supplied to the segment in each NRR.

RPCA segments may be reviewed as actual or perceived risks change

- 4.22 Segmentation may be reviewed for future rounds of the RPCA, based on experience with initial disclosures, and evidence about the effectiveness of current segmentation or new evidence about potential price discrimination in risk management contracts and margin squeezing in respect of different segments that may justify separate reporting and monitoring.
- 4.23 Future decisions on segmentation would seek to balance the benefits of transparency with cost in terms of compliance and administrative cost and risks, and would require the RPCA Guidance and the Code to be updated.

5 Retail price per MWh

Guidance

- 5.1 **For each RPCA reporting segment, a volume weighted-average retail price per MWh should be calculated that covers all the retail plans and customers as at the RPCA assessment date.**
- 5.2 **For offers to new customers (as at the RPCA assessment date) an aggregated average retail price can be derived based on expected or budgeted revenues and volumes from new customers (in aggregate or built up by offer).**

5.3 The average retail price should be net of discounts, rebates or other promotional offers.

Forward-looking

- 5.4 As a forward-looking assessment, the RPCA compares expected cost/MWh for the period ahead to average retail price/MWh for the period ahead.
- 5.5 As calculations should be done by NRR, an aggregate measure is derived by taking a load weighted average of retail prices per MWh by location.
- 5.6 There are different ways to estimate the average retail price, eg:
 - (a) the conversion of fixed and variable components in retail plans to a per MWh amount, and weighting these by volume to get an average for the segment
 - (b) a forecast of expected revenue for the segment, divided by expected volume of MWh.
- 5.7 The Authority does not see a reason to prescribe this method, as long as it is explained and documented, and consistent with the load profiles assumed for the estimation of the expected cost of supply.

Reference point

- 5.8 The RPCA is a snapshot in time. The average retail price should be based on all the retail plans at the RPCA assessment date.
- 5.9 The Authority acknowledges that retail prices may have been set some months prior to the assessment date, drawing on expectations that were current then, but may no longer reflect expectations now. One perspective is that this would indicate that expectations about costs have not changed materially, otherwise retail prices would be updated.⁷⁶
- 5.10 This seems a reasonable assumption with respect to offers for new customers. But it may be argued that it is not reasonable in respect of plans for existing customers, for example, as a gentailer also has to consider the costs of amending its prices or any understandings with customers about the frequency of price changes.
- 5.11 Gentailers should include explanations of any timing issues regarding updating their retail pricing in their RPCA disclosures.

Discounts and price smoothing

- 5.12 Existing plans and offers for new customers may contain discounts, rebates and other forms of promotional offers that reduce effective retail prices. Reported retail prices should be net of any such discounts.
- 5.13 It would be appropriate to amortise the cost of promotional offers over a commercially appropriate period (eg, the timeframe over which a customer is expected or required to remain with the retailer to obtain the full benefit of the promotional offer).
- 5.14 Discounts or quasi-discounts on bundled sales should be allocated proportional to expected revenue from each bundled service.
- 5.15 Retailers can manage wholesale price risk for their customers, by insulating them from day-to-day price volatility and looking through longer periods of elevated costs through retail price smoothing. This is of value to at least some retail customers and

⁷⁶ If a gentailer expects to update retail prices soon, it is able to explain this in its RPCA disclosures, with reference to the specific input cost changes that are impacting its decision making.

can be consistent with workable competition. Retail price smoothing may be a plausible explanation for negative RPCA margins. The section on assessment sets out guidance on this topic.

6 Non-electricity costs

Guidance

- 6.1 For the RPCA, a gentailer should subtract expected non-electricity costs per MWh from the retail price per MWh for the RPCA period. These consist of:**
- (a) **retail costs – all costs attributable to the retail operation, including a principled contribution to shared and common costs (separately disclosed)**
 - (b) **metering costs**
 - (c) **network (distribution and transmission) costs**
 - (d) **levies.**

Retail costs

- 6.2** A gentailer should identify all relevant retail operating costs attributable to the different mass market RPCA segments as well as a contribution to shared and common costs. The assessment of retail costs that goes into the RPCA should reflect a subsidy free standard.
- 6.3** Attribution should be ~~based~~ on a principled basis, that is, using rational cost drivers that reflect a causal relationship or, if this cannot be established, some other reasonable proxy measure.
- 6.4** The approach to cost allocation and the reasons for it should be explained in the gentailer's RPCA methodology. That includes setting out allocation methodologies, actual allocators used and any underlying assumptions.
- 6.5** Retail costs will typically cover cost to serve and cost to acquire and retain customers:
- (a) cost to serve, including billing and revenue collection, call centre and customer information and management costs, bad debt, and regulatory compliance costs
 - (b) cost to acquire and retain customers,⁷⁷ including cost of acquisition channels, cost of retention teams, marketing costs targeted at acquisition or retention
 - (c) retail internal business unit overheads and an appropriate contribution to shared and common costs including electricity trading costs,⁷⁸ general marketing, and corporate overheads.
- 6.6** The Authority assumes that, to identify expected retail costs, gentailers can use the allocation approach they already use for allocating retail operating costs to their retail internal business unit for annual reporting, according to generally accepted accounting standards.
- 6.7** Gentailers should allocate a contribution to shared and common costs to its retail cost, using a principled cost allocation rule. . The Authority does not have a fixed view on exactly how these costs should be allocated, but expects gentailers to use a

⁷⁷ To the extent such costs are not already captured in retail prices net of any discounts.

⁷⁸ Noting that trading may include purchasing hedge cover for a gentailer's retail commitments where it is short of generation.

principled cost allocation rule and act consistently with accepted economic principles for recovery of such costs. The gentailer should explain its approach and the reasons for it.

- 6.8 Bundled sales, such as electricity with gas, broadband or mobile phone plans, raise specific issues about how retail costs should be attributed. Consistent with the overall cost allocation approach for the RPCA:
- (a) retail costs attributable to energy services should be allocated to those services, including their contribution to shared and common costs
 - (b) ~~and~~ retail costs attributable to other, bundled services including their contribution to shared and common costs should be allocated to those other bundled services).
 - (c) costs that apply to more than one service in the bundle should be allocated using rational cost drivers that reflect a causal relationship or, if this cannot be established, some other reasonable proxy measure.
- 6.9 The expected retail cost per MWh may be calculated by dividing a gentailer's total expected retail costs by the amount of electricity they expect to supply to their retail customers.

Other non-electricity costs

- 6.10 Cost of metering services and levies attributable to retail customers may be derived by dividing the total amounts by the total amount of electricity supplied to those customers.
- 6.11 If such costs vary materially by location, a gentailer could reflect this in its calculations, with appropriate explanations.
- 6.12 All expected network costs (electricity distribution and transmission) per MWh that are attributable to mass market customers will be calculated by NRR.

7 Expected cost of electricity

Guidance

- 7.1** A gentailer should estimate its expected cost of supply using observed market prices from ASX and OTC trades, as if it hedged all the load of its retail customers with risk management contracts from these markets.⁷⁹
- 7.2** The composition of a gentailer's as if hedge portfolio should be consistent with minimising the risk-adjusted cost of supply (for example, baseload + super-peak hedges) for a given load profile, consistent with rational and prudent risk management practices.
- 7.3** Short- and long-dated ASX and OTC risk management products, including offtake contracts, may be used for the RPCA, noting:
- (a) a gentailer would draw on the prices of its own and other OTC trades, alongside ASX prices as appropriate

⁷⁹ ~~It may be prudent and rational for a retailer to not hedge all its exposure to spot prices. One market-based estimate of the expected cost of electricity of this unhedged portion would be what hedges are being traded at for the relevant period at the time that retail prices are being set. A gentailer would explain its approach as part of its documented methodology.~~

- (b) the Authority may test the reasonableness of assumed prices for **thinly-traded any** contracts drawing on the full set of information it holds of trades for similar products including for long-term contracts.

- 7.4 The Authority expects a gentailer's method will remain consistent from assessment to assessment.
- 7.5 A gentailer may from time-to-time need to adapt its methods to estimate the expected cost of supply but, where that change in method is material, this must be justified with evidence of material shifts in the market or retail strategy.
- 7.6 A change in method is material if it has the effect of modifying the expected cost of electricity by an amount in excess of 5% from what would have been calculated under the most recent method prior to the change.
- 7.7 When a gentailer adopts a new method it **should-is required to** report RPCA results under the old method alongside those under the new method in the first and second year that the new method is used.

Use observed market prices to estimate the expected cost of supply

- 7.8 The RPCA compares a gentailer's retail prices planned for the period ahead with the expected cost of supply – summarised in terms of \$/MWh.
- 7.9 A gentailer should estimate the expected market value of its supply to its retail internal business unit, as if it hedged **100% of** the load of its retail customers with risk management contracts from the ASX and OTC markets.
- 7.10 This approach recognises that it may be prudent and rational for a retailer to not hedge all its exposure to spot prices. The RPCA does not require or expect that a gentailer would actually hedge all its load, but for RPCA purposes (where the gentailer needs to price 100% of the electricity needed to supply its retail load) the expected cost of electricity of any unhedged load would still need to be estimated using prices of currently trading risk management contracts for the relevant period at the time that retail prices are being set. A gentailer would explain its approach as part of its documented methodology.
- 7.11 A gentailer may decide on the composition of its *as if* portfolio⁸⁰ of risk management contracts, but:
- (a) this *as if* portfolio must be consistent with minimising the gentailer's risk-adjusted cost of supply, consistent with rational and prudent risk management practices
 - (b) where the prices of its own risk management contract trades in the same period, and for similar risks, terms and tenor are materially different to those it assumes for pricing its internal supply, the gentailer must be able to provide an objectively justifiable explanation for such differences.
- 7.12 A gentailer's RPCA report should detail how it estimated the expected cost of supply – the mix of risk management contracts that apply to a segment, market prices used, and how this is credibly consistent with minimising its cost, given:
- (a) the distribution of risk in expected wholesale prices as assessed by the gentailer
 - (b) loss management properties of different risk management tools, and their market prices

⁸⁰ Referred to in the **proposed-Code amendment drafting-as** a "hypothetical portfolio".
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- (c) the gentailer's risk management policy and risk stance.
- 7.13 The Authority's Risk Management Review analysis suggested that the cost-minimising mix of hedges to cover a retail load does not need to be complex. It could be a simple combination of baseload and standardised super-peak hedges or combined with some other cost risk management tools. The Authority is open to a gentailer using simple models or rules-of-thumb, but these should come with evidence that such models are reasonable and robust approximations of the cost of supply.
- 7.14 Any adjustments made to market prices for credit and other risk premia and any other costs avoided by self-supply should be objectively justifiable and explained as part of a gentailer's methodology.

May contain long-term and other thinly traded OTC contracts

- 7.15 A gentailer should draw on the prices of OTC trades, alongside ASX prices, as appropriate.
- 7.16 OTC contracts may include long-term supply contracts and other products that are thinly traded (noting that thin trading potentially impacts on the reliability of these prices as a robust measure of the market value of such contracts).
- 7.17 The Authority may test the reasonableness of ~~OTC hedge~~ prices used by a gentailer in the RPCA, drawing on the full set of information it holds of trades for similar products including for long-term contracts.
- 7.18 The optimal mix of risk management contracts likely has contracts with several different maturities, including long-term contracts.
- (a) For the RPCA, the cost of supply cannot be based solely on long-term contracts, because that would likely not be rational. A mix of short and long durations better enables a generator to:
- manage its own fuel supply risk (including by actively shedding retail customers)
 - trade supply at times of supply constraints when market prices can clear well above the prices that long-term contracts can attract.
- (b) 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.
- 7.19 These considerations and the requirement that the expected cost of supply should be based on observed market prices from ASX and OTC trades should address concerns raised that a gentailer could inappropriately include very old or long-term supply agreements at costs that are not reflective of market values.

The use of historic cost of hedges vs current hedge prices

- 7.20 The ~~proposed~~ RPCA requires a gentailer to explain the ex-ante link between its 'expected cost of supply' and its retail prices for the period ahead.
- 7.21 Recent ASX and OTC prices for the period ahead provide an up-to-date measure of the expected cost of supply. This is the opportunity cost of self-supply at the time of the RPCA (regardless of when the risk management product was traded).
- 7.22 In practice, independent retailers in New Zealand and elsewhere build a book of hedges over time to manage their wholesale price risk. The (weighted average) cost

of a book built over time may be a reasonable alternative measure of a gentailer's expected cost of supply as if purchased from the wholesale market.⁸¹

- 7.23 Both measures of expected cost of supply can be used in the RPCA, and their application may differ by RPCA segment.
- 7.24 The Authority considers that current ASX and OTC prices for the period ahead, observed around the time of the assessment, are a reasonable economic measure of the expected cost of supply 'at the margin'. At the margin, a gentailer has a practical option of either recruiting and supplying a new customer (or retaining price-sensitive customers) vs selling electricity wholesale. Current ASX and OTC prices may therefore be a relevant measure of the expected cost of supply for offers to new customers.
- 7.25 However, the bulk of existing retail customers are sticky – less likely to switch in the period ahead – and the cost of the book of hedges built over time may be the most relevant measure of the expected cost of supply for this group, given:
- (a) the specific purpose of book-building is to manage the wholesale price risk of supplying these existing customers
 - (b) market frictions mean there is no instantaneous arbitraging that equalises the cost of hedges purchased in the past with current expectations of spot prices (ie, current hedge prices) for the same period.⁸²
- 7.26 The longer-term direction of costs as indicated by longer-dated futures – beyond the period ahead that is covered by the RPCA – may be relevant for retail pricing decisions (such as price smoothing), but not for determining the expected cost of supply during the period covered by an RPCA.
- 7.27 Beyond this general guidance, the Authority does not currently seek to prescribe the approach that a gentailer should adopt to estimate its expected cost of supply. A gentailer can select (with suitable supporting explanation) the approach that best reflects its customer profile and risk strategy and tolerance.
- 7.28 The Authority currently considers that prescribing the gentailers' approach to the cost of supply or creating a cost of energy-electricity benchmark would not be appropriate given the RPCA's focus on price discrimination of risk management contracts, and as it risks limiting competition and innovation. It may revisit this point in future.

Changing methodology for determining gentailers' cost of energy electricity

- 7.29 The Authority expects that gentailers would only very infrequently make material changes to their methodology to estimate the expected cost of electricity. Consistency between assessments over time promotes confidence in the measure.
- 7.30 However, to stay credible the method should be able to adjust to material changes in the market or retail strategy, such as long-lasting or permanent fuel supply shocks, major changes in customer demand, or changes in the competitive landscape.

⁸¹ At least one gentailer representative at the December 2025 RPCA workshop said this is how they would manage wholesale price risk if they had to put formal arrangements in place.

⁸² As in other sectors, there tends to be a lag between changes in wholesale and average retail prices. During a period of falling wholesale prices, the presence of sticky retail customers allows retailers to retain margin on the larger existing book, while reducing retail price offers to compete for new customers. Sticky customers insulate retailers from pressure to drop their average retail prices immediately, but this applies less to customer acquisition retail prices where we expect competition to be strongest.

- 7.31 A gentailer should set out in its disclosures any changes made to its method and reasons for the changes.
- 7.32 When the change in method is material, to promote transparency, a gentailer ~~should~~ is required to report RPCA results under the old method, alongside those under the new method in the first and second year that the new method is used, and should justify the change with evidence of material shifts in the market or in its retail strategy, and its consistency with its risk management policy and risk stance. We would expect the gentailer to set out that justification to the Authority for comment before it implemented any material change in methodology.
- 7.33 A change in method is material if it has the effect of modifying the expected cost of electricity by an amount in excess of 5% from what would have been calculated under the most recent method prior to the change.

8 Assessment of results

Guidance

- 8.1 In the case of a negative or narrow positive RPCA result, a gentailer should provide explanations to demonstrate the outcome is economically justifiable – that is, reasonable, ~~consistent with how a market participant without market power is likely to act in the circumstances,~~ and supported by evidence.
- 8.2 As the RPCA is not a bright-line test, a negative RPCA result does not in itself indicate a breach of the NDOs.
- 8.3 The Authority will assess gentailers' RPCA results and the adequacy of any explanation or justification. Where information is insufficient, the Authority's monitoring function may seek further details from the gentailer.

First RPCA disclosures – September 2026

- 8.4 The Authority is unlikely to rely on a negative margin RPCA result or report as evidence of a potential breach of the NDOs unless:
- (a) there is egregious conduct by the gentailer; or
 - (b) the gentailer has not made complete, robust, good faith RPCA disclosures; or
 - (c) the initial RPCA result forms part of a pattern of negative margin RPCA results over time.

Subsequent RPCA disclosures

- 8.5 Following its assessment of gentailers' RPCA results, the Authority may report negative RPCA outcomes to the compliance function as a potential breach of the NDOs, in particular where:
- (a) the Authority considers that the gentailer has not provided sufficient justification, and the outcome may indicate potential price discrimination or conduct inconsistent with the NDOs
 - (b) the gentailer's published RPCA results show a substantial negative margin, or consistent negative or ~~small-narrow~~ positive margins over time, notwithstanding the explanations provided.

- 8.6 This means that a single small negative margin RPCA result, with adequate justification, will not in itself ordinarily be reported to the Authority’s compliance function as an alleged breach of the NDOs.**

Assessment of results

- 8.7 A positive RPCA result (or a negative result with objectively justifiable explanations) indicates there is likely an economically justifiable link between the expected cost of electricity supply and retail pricing.
- 8.8 A gentailer’s RPCA for any segment is generally expected to be positive. Over time a gentailer’s retail operations must make profits as a matter of commercial necessity.
- 8.9 However, the Authority acknowledges that, as in other markets, firms may price below cost to some customer segments for limited periods of time for pro-competitive reasons, such as ~~short-term promotions or retaining customers through periods of temporarily heightened wholesale costs (price smoothing)~~:
- (a) retaining customers through periods of temporarily heightened wholesale costs – price smoothing (see below);
 - (b) commercially/economically rational short-term promotions (products or tariffs) or customer acquisition.
- 8.10 In other words, a negative margin RPCA outcome in any given year could reflect the outcome of retail competition rather than discrimination, in which case it would likely be objectively justifiable for NDO purposes.
- 8.11 As such, in the case of a negative RPCA margin, ~~or a narrowly positive one,~~ a gentailer may be able to provide explanations to demonstrate the result is economically justifiable.
- 8.12 We also require an explanation where an RPCA margin is narrowly positive.⁸³ Noting that gentailers have significant flexibility in deciding their RPCA methodology and an information advantage over other interested parties, we want to better understand the close calls. This explanation will inform any assessment of whether to report a series of negative and narrow positive RPCA outcomes to the Authority’s compliance function (see below).
- 8.13 Consistent with any ~~departure from NDOs~~ differences in treatment having to be “objectively justifiable”, any explanations should be reasonable and ~~consistent with how a market participant without market power is likely to have acted in the circumstances.~~ Explanations should be supported by evidence.
- 8.14 Negative margins may also be justified for a short period where they reflect within pricing year misalignments: where pricing has yet to catch-up with costs.

Promotions and price smoothing

- 8.15 In the case of promotions or price smoothing causing a negative margin RPCA, the Authority expects a gentailer to explain how such retail pricing (or cost raising) decisions are rational – that is, are expected to be profitable over a reasonable period – and to back that explanation up with contemporaneous evidence (such as a

⁸³ Clause 13.236W(4) states that a gentailer’s RPCA report must include an explanation as to whether and how all results of the RPCA are economically justifiable. This requirement is fundamentally intended for circumstances where an RPCA shows a negative or narrow positive margin. However, we have elected to not define a (likely arbitrary) boundary for “narrow positive”. Instead we leave it to the discretion of the gentailer to decide how much explanation it needs to provide for a positive result. Where an RPCA result is a substantial positive it would in our view be satisfactory for the explanation to simply make the point set out in paragraph 8.7 of the RPCA guidance.

commercially reasonable plan and being able to demonstrate reasonable implementation of that plan).

- 8.16 For example, in the case of price smoothing this may be with reference to longer-term expectations about costs and retail profitability of sticky customers over time, such as the two to three year trend in ASX or for longer-term OTC hedges, or evidence of the benefits of not prompting sticky customers to shop around (eg, customer replacement costs avoided).⁸⁴
- 8.17 Such reasons will not automatically be accepted. While factors like price smoothing may explain a negative result in one year and maybe also subsequent years, the Authority would likely seek more detailed justification if this persisted for more than one year, for reassurance that this does not indicate discriminatory hedge pricing.

Authority assessment of RPCA and possible follow-up actions

- 8.18 If the Authority identifies any missed requirements or data issues, it will contact the gentailer in question as soon as possible.
- 8.19 The Authority will assess each gentailer's RPCAs, and its explanations and, if required, ask further questions to clarify any aspects of them. If, following a gentailer's responses, the Authority has concerns about a potential breach of the NDOs, it may be reported to the Authority's compliance function for assessment.
- 8.20 The primary purpose of the RPCA is for monitoring and transparency/evidence. The RPCA is not a bright-line test. As noted earlier, short-term losses may reflect vigorous competition rather than anti-competitive conduct. Hence, RPCAs that indicate a negative ~~(or narrow positive)~~ result do not necessarily indicate a breach of the non-discrimination principles. Similarly, a narrow positive result does not necessarily mean that there is nothing to follow up.
- 8.21 In determining the appropriate follow up for negative or narrow positive RPCA results, the factors the Authority may consider include:
- (a) the magnitude and duration of any loss or period of negative or low implied margins
 - (b) the extent to which the explanations provided demonstrate that the negative or narrow positive results are objectively justifiable including being consistent with an outcome that might be observed in a competitive market
 - (c) the outcome of any follow-up questions and context from other monitoring work
 - (d) whether a gentailers' published RPCA results show a pattern of consistent negative or narrow positive outcomes over multiple reporting periods notwithstanding the justification provided.
- 8.22 Where, after review of the gentailer's explanation⁸⁵ and any follow-up information, the Authority considers that the gentailer has not provided sufficient justification and the outcome raises concerns about potential discrimination, the matter may be reported as an alleged breach of the NDOs to the Authority's compliance function. An alleged

⁸⁴ The Authority does not agree with Sapere's submission for Genesis (p11) that setting retail prices equal to long run marginal cost would be potentially consistent with a gentailer optimising its value, because "...setting the retail price equal to long run marginal cost has the same expected value as setting retail price equal to short run marginal cost period by period". Pricing that reflects short run marginal cost is usually considered to be consistent with profit maximisation (and efficiency), given constraints on inputs and the time it takes to commission new investment (or retire surplus capacity) in practice.

⁸⁵ ~~While this guidance does not provide any specific safe harbours, the Authority acknowledges that, all other things being equal, it is unlikely to report an alleged breach to its compliance function where the negative margin is relatively small, there is clear evidence that the gentailer was implementing retail price smoothing or put forward another justifiable explanation, and the negative margin has not persisted over multiple years. Each assessment will be made on a case-by-case basis.~~

breach may also be reported where RPCA results show a persistent pattern of negative or narrow positive margins over multiple reporting periods.

8.23 The Authority:

- (a) does not generally expect to report a narrow positive RPCA margin, by itself, to its compliance function as evidence of an alleged breach of the NDOs. In the context of a decision whether to seek enforcement action, a narrow positive margin will likely be most relevant where it is part of a persistent pattern of negative or narrow positive margins over multiple reporting periods. In those circumstances, a narrow positive may be more consistent with an ongoing competition problem than with vigorous competition.
- (b) considers that it is unlikely to seek to take enforcement action in response to a negative margin in the first September 2026 round of disclosures. We have decided to provide a clearer signal of this in paragraph 8.4 of this guidance, which reflects that the RPCA is a new regime that involves significant judgement, and the short time window for gentailers to makes any changes between the RPCA requirement being introduced/RPCA guidance being finalised and the first assessment date. However, that signal is contingent upon there not being any egregious conduct by the gentailer (eg, evidence that the negative margin reflected a deliberate attempt to harm competition) and the gentailer in good faith providing comprehensive and robust disclosures to the Authority.
- (c) acknowledges that, all other things being equal, for all subsequent RPCA disclosures it is unlikely to report an alleged breach to its compliance function where the negative margin is relatively small, there is clear evidence that the gentailer was implementing retail price smoothing or put forward another justifiable explanation, and the negative margin has not persisted over multiple years. Each assessment will be made on a case-by-case basis, ie, the guidance does not provide any specific safe harbours.

8.24 If RPCA results are reported as an alleged breach of the NDOs – whether under the ~~proposed~~ gentailer self-reporting obligation,⁸⁶ by the Authority or by an industry participant⁸⁷ – the Authority will assess the alleged breach in accordance with the Electricity Industry (Enforcement) Regulations 2010 and its enforcement and compliance policies, which are available on our website.

Authority will publish a summary of RPCA results

- 8.25 The Authority will publish a summary report of RPCA results. These summaries will outline key findings, trends, and any follow-up action taken (but consistent with any permitted withholding of data by the gentailers for confidentiality reasons).
- 8.26 Publishing these summaries provides transparency about how the regime is operating and helps build trust and confidence in the market arrangements.

⁸⁶ ~~Proposed clause~~ Clause 13.236X, 236Y of the Code.

⁸⁷ Regulation 8 of the Electricity Industry (Enforcement) Regulations 2010 requires industry participants who believe, on reasonable grounds, that another industry participant has breached the Code, to report the alleged breach to the Authority as soon as possible.
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9 Disclosure and reporting by gentailers

Reporting requirements

- 9.1 RPCA reporting requirements are set out in the ~~(proposed)~~ Code at clauses 13.236T ~~236V~~-13.236W 236X.
- 9.2 Each gentailer must undertake an RPCA for each of its retail brands and each RPCA segment, at each NRR, every six months, assessing price consistency as at 1 July and 1 January, and reporting that assessment within 45 working days.
- 9.3 The 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 will not be required until 2027.

Content of RPCA reports

- 9.4 For each of the retail brands it controls a gentailer must submit to provide the Authority with a RPCA report for each customer segment and by NRR (and exclusive of GST):
 - (a) the RPCA margin as dollars per MWh
 - (b) the key components used to calculate the RPCA margin, consisting of:
 - the ~~expected~~ retail price \$/MWh
 - the expected electricity cost \$/MWh
 - the expected network (transmission and distribution) cost \$/MWh
 - the expected retail cost \$/MWh
 - expected metering costs \$/MWh
 - expected levies \$/MWh
 - (c) the expected load profile and volumes by segment by NRR to the granularity necessary to understand the spot price risk and construct the *as if* hedge portfolio
 - (d) the components of the RPCA for each segment as an aggregated nation-wide statistic, using load-weighted averages for the different components, albeit that simple averages may be used for retail costs, metering costs and levies
 - (e) in the case of a negative or narrow positive RPCA result, explanations supported by evidence to demonstrate the outcome is economically justifiable ~~—that is, consistent with an outcome that would be observed in a competitive market~~
 - (f) a clear and full explanation of its methods to calculate the key components of the RPCA, material judgements made, and the reasons for them, including:
 - the description of the *as if* hedge portfolio that underlies the expected electricity cost, and the reason for its selection (ie, how it is consistent with risk adjusted cost minimisation)
 - the methodology and data for the cost of OTC and ASX hedges in the *as if* hedge portfolio used to estimate the expected cost of electricity
 - the approach to identifying and calculating retail costs attributable to the retail operation, including any differences by segment, including a contribution to shared and common costs

- (g) explanations where the gentailer has departed from the guidance or there have been any material changes in methods and the reasons for that
- (h) when there is a change in the method to calculate the expected cost of energy electricity, such that it modifies the expected cost of electricity by more than 5% from what it would have been under the method just prior to the change:
 - the results under the old method and under the new method for the first and second year (that is, four six-monthly reports) that the new method is used
 - ~~a justification~~ an explanation for the change in method with reference to material shifts in the market or retail strategy
- (i) any additional data, assumptions, or calculations the Authority may need to assess the methods and results that it cannot observe from existing retail or contract data disclosures.

Submitting reports and supporting data to the Authority

- 9.5 The Authority is developing material that specifies the form and manner in which the information is to be provided, consistent with the Code requirements. This will be published and sent to the gentailers prior to 1 July 2026.

Confidentiality of information

- 9.6 When providing information to the Authority gentailers can identify information they consider confidential and the reasons why.
- 9.7 The Authority may publish RPCA information from time to time to increase market transparency, but will do so in a manner that appropriately protects the confidentiality of commercially sensitive information.⁸⁸

Public reporting

- 9.8 A gentailer must prepare and publish public versions of the RPCA (including the aggregated results by segment for each brand, the key components of the calculation, and a full explanation of its approach) on the gentailer's website within five working days of providing the RPCA to the Authority.
- 9.9 A gentailer may redact from its public version information that it reasonably considers commercially sensitive or otherwise confidential, but such redactions should be explained and kept to a minimum to promote transparency.

Reporting by the Authority

- 9.10 The Authority will publish a dashboard of the RPCA results and constituent components from each of the gentailers and will publish commentary on these results, including any follow-up action taken (to the extent permitted by the confidentiality obligations).
- 9.11 We expect to publish values for the following RPCA components by NRR, brand and segment similar to current Retail Gross Margin reporting:
- (a) RPCA margin in \$/MWh
 - (b) retail prices in \$/MWh

⁸⁸ See the Electricity Authority's [Information Management Policy](#) published in 2024, including any subsequent updates..
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- (c) expected cost of electricity supplied in \$/MWh
- (d) expected network (distribution and transmission) costs in \$/MWh
- (e) expected retail costs in \$/MWh
- (f) expected metering costs in \$/MWh
- (g) expected levies in \$/MWh.

~~9.12 The Authority will also monitor gentailers' RPCA results at the NRR level and expects to publish analysis and insights at this level.~~