Materially large contracts regime Guidelines

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Disclaimer

The Electricity Authority Te Mana Hiko (Authority) provides these guidelines to improve participants' understanding of, and compliance with, their obligations under the materially large contracts provisions of the Electricity Industry Participation Code 2010 (Code).

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The Code places many obligations on participants and should be referred to in full. Some of those obligations are dealt with in these guidelines but many obligations may only apply in specific circumstances. The Authority's preference is to complement the Code obligations in this area with these guidelines. However, the Authority may consider reviewing this approach and proposing Code amendments to include the content of these guidelines in the Code depending upon participant conduct, including around disclosure requirements.

The information in these guidelines does not replace the requirement for participants to know and comply with their obligations under the Code. It should also be noted that these guidelines are not exhaustive and may be updated or changed from time to time. They reflect the Authority's current interpretation of the existing Code at the time of publication. Although compliance with these guidelines are not mandatory, they may be drawn upon as an interpretative source in assessing a breach allegation. The Authority suggests if you are in doubt regarding your obligations that you consult the Code, ask the Authority and/or seek your own advice. If there is any inconsistency between these guidelines and the Code, the Code takes precedence.

Contents

1. Purpose of these guidelines

1.1 The purpose of these guidelines is to provide guidance to participants and other interested parties on the Authority's approach to interpreting the materially large contracts (MLC) provisions of the the Electricity Participation Code 2010 (Code), to improve understanding and compliance, and to assist them with making decisions.

2. Introduction

2.1 Part 13, subpart 7 of the Code provides that generators must not give effect to MLCs unless certain conditions are met, imposes information disclosure requirements to support compliance with these restrictions, and provides a clearance regime. These provisions address the incentive for generators (in some circumstances) to provide inefficient subsidies to *large load users*, resulting in *other consumers* facing higher prices than they otherwise would in an efficient market.

2.2 The Code prohibits generators from giving effect to MLCs unless the net value from the contract to the generator is positive relative to the alternatives or the buyer can on-sell un-used electricity under the MLC on no worse terms than if they had consumed the electricity themselves.

2.3 The Code also provides the Authority with greater visibility of MLC contracts for the purposes of monitoring and compliance through the disclosure obligations. A voluntary clearance process is also set out in the Code which gives generators the option to gain assurance that the MLC is not in breach of the Code.

2.4 Since the implementation of the MLC provisions in 2023, the Authority has received queries from participants regarding how it interprets and applies certain provisions, particularly around intermittent generation offsets and contracts linked to new investment.

2.5 On 30 April 2026, the Authority made some discrete amendments to the MLC provisions. These changes included updates to the definition of an MLC, clarifying the treatment of new generation, and clarifying options for calculating offsets for intermittent generation like wind and solar.

2.6 These changes aim to support investment in new generation, reduce barriers for renewable projects, and maintain safeguards against inefficient price discrimination.

2.7 These changes also aim to provide greater clarity to participants and other interested parties on how to interpret and apply the MLC Code provisions. Greater clarity will better support the intent of the MLC provisions.

2.8 In our consultation and decision papers[1], we said we would publish guidance to provide further detail on how the Authority expects these aspects of the MLC provisions to work in practice. We believe that helping participants interpret and apply the MLC provisions consistently will better protect the interests of domestic and small business consumers.

The MLC regime supports efficiency and confidence in a well-functioning electricity market

2.9 In economics, price discrimination can enhance efficiency by increasing output and aligning production closer to the social optimum, even though producers often capture a larger share

[1] Code Amendment Omnibus #6 – Consultation paper. Code Amendment Omnibus #6 – Decision paper.

of the economic surplus than they would without price discrimination.[2] In the extreme theoretical case, for example, producers could charge each consumer exactly their maximum willingness to pay, and capture all consumer surplus yet this may still result in an output level where the price equals the marginal cost for the last unit — mirroring the allocatively efficient competitive equilibrium.

2.10 Similarly, where prices vary across distinct consumer groups (eg, airlines charging business travelers higher fares than leisure travelers), this may increase output and bring production closer to the socially optimal level.

2.11 Price discrimination can sometimes cause inefficiencies when pricing strategies, like offering subsidised prices or discounts for buying more push people to consume too much. This leads to the production of goods or services that cost more to create than they are worth to society. This problem is more likely to happen when:

(a) consumers do not have many alternatives (inelastic demand), so they keep buying even if prices change

(b) production costs go up as more units are made

(c) new competitors can't easily enter the market, limiting competition.

2.12 In these situations, producers might be incentivised to inefficiently price discriminate — to encourage overuse to make more money from other customers.

2.13 Building on the general issue of inefficient price discrimination, the Code specifically addresses this concern by prohibiting generators from giving effect to MLCs unless certain conditions are met. These conditions require that either the net value from the contract is positive relative to alternatives or the buyer can on-sell unused electricity under the MLC on terms no worse than if they had consumed it themselves.

2.14 Additionally, the Code enhances the Authority's visibility of MLCs through disclosure obligations, aiding monitoring and compliance. A voluntary clearance process is also provided for, allowing generators to gain assurance that their MLC complies with the Code.

2.15 The Code addresses the incentives that may lead generators to subsidise very large load customers who might otherwise credibly:

(a) exit the domestic market

(b) reduce consumption

(c) not expand

(d) not enter the market.

2.16 This incentive stems from the increased aggregate demand driven by the large user's consumption, which can inflate electricity prices nationally. The resulting higher revenues from all other (inframarginal) consumers can greatly exceed the cost of the subsidy needed to retain the large load user.

[2] **Economic surplus** refers to the total benefit that society gains from the production and consumption of a good or service. It is calculated as the sum of:

- **Consumer surplus:** This is the difference between what consumers are willing to pay for a good or service and what they actually pay. It represents the extra benefit or value consumers receive when they purchase something for less than their maximum willingness to pay.
- **Producer surplus:** This is the difference between the price at which producers sell a good or service and the minimum price they are willing to accept. It reflects the additional benefit or profit producers gain when they sell at a price higher than their minimum acceptable price.

In essence, economic surplus measures the overall efficiency and welfare generated in a market by combining benefits to both consumers and producers.

2.17 In effect, generators could withhold supply from other consumers by directing electricity to a large load user who would otherwise have exited or not entered the market if faced with the true direct value of that electricity. Such arrangements may lead to large efficiency losses and wealth transfers from consumers to all generators.

2.18 The Authority is particularly concerned with contracts that exhibit the following characteristics:

(a) **A "credible threat to consumption"**: These involve customers likely to:

(i) exit or not enter the market (eg, not be attracted to locate domestically), or

(ii) reduce or not expand consumption.

(b) **Conditional pricing**: The contract price is tied to the consumption of a specific quantum of electricity by the designated large load user.

(c) **Material price impact**: The quantum of physical electricity involved is sufficiently large to materially increase prices faced by other consumers not party to the arrangement.

2.19 Although infrequent, these contracts can severely impact consumer outcomes if they inefficiently allocate a substantial share of national electricity generation.

Overview of the MLC provisions

2.20 Part 13, subpart 7 of the Code can be summarised as follows:

Scope of application

2.21 The Code applies to MLCs. An MLC is a contract, or a combination of contracts, that is not:

(a) entered into through a derivatives exchange

and

(b) results in a final price paid by the buyer (after accounting for any discounts) of less than:

(i) the price of an equivalent exchange traded derivative or derivatives; or

(ii) the spot price, for any trading period during the term of the contract;

and

(c) includes terms under which the buyer itself will consume electricity

and

(d) relates to a net quantity of electricity that equals or exceeds 150MW consumed at a point in time.

Prohibition on giving effect to MLCs

2.22 Generators are prohibited from giving effect to an MLC unless at least one of the following conditions is met:

(a) **Positive net value**: The net value of the MLC to the generator is positive, meaning the direct value the generator receives from the contract exceeds the value of their best alternative option (net value test);

(b) **On-selling provision**: The contract allows the buyer to on-sell any unused electricity under the contract without being subject to any worse terms than if they had consumed the electricity themselves (on-selling test); or

(c) **Authority clearance**: The Authority has granted clearance for the MLC, and that clearance remains effective and applicable.

Disclosure requirements

2.23 Generators must disclose to the Authority any new MLCs, or any MLCs which have had key terms modified, accompanied by supporting information to show compliance, including but not limited to:

(a) certain information regarding the generator's calculation of net value under the contract — where the generator is relying on the net value test; and

(b) a statement of the buyer's rights to on-sell electricity, which will include a description and explanation of any conditions related to that resale — where relying on the on-selling test.

Voluntary clearance regime

2.24 The Code includes a voluntary clearance regime, enabling generators to obtain clearance from the Authority for a draft MLC, or a signed MLC that is conditional on receiving clearance. If clearance is granted and remains effective and applicable, the generator is exempt from the prohibition set out in paragraph 2.22 above.

Voluntary clearance process

2.25 To apply for voluntary clearance, a generator must submit to the Authority:

(a) the proposed unsigned MLC or a signed MLC that is conditional on receiving clearance; and

(b) the supporting information required under paragraph 2.23 above.

Eligibility for clearance

2.26 The Authority will assess whether the MLC is eligible for clearance, based on satisfaction of either clause 13.269(1)(a) or clause 13.269(1)(b). The Authority has 45 business days to make its decision, from the date that all required information has been provided (including any further information requested by the Authority) or a longer period as agreed between the generator and the Authority.

Post-clearance requirements

2.27 If clearance is granted for a proposed unsigned MLC, the generator must enter into the contract within 20 business days of receiving clearance; otherwise, the clearance lapses.

Duration of clearance

2.28 Once granted and the contract is in force, the clearance remains effective and applicable unless:

(a) a key aspect of the contract, on which clearance was based, is changed after clearance is granted; or

(b) the information provided by the generator in support of the clearance is later found to be false or misleading and the clearance is revoked by the Authority as a result.

3. Summary of guidelines

3.1 These guidelines provide guidance regarding the Authority's interpretation and application of the MLC provisions in the Code. The guidelines address key interpretation issues that arise in applying the MLC provisions.

3.2 The matters below are discussed in greater detail in the following sections of this document.

Requirement that the buyer "will" consume electricity

3.3 The definition of an MLC provides that an MLC is a contract that "includes terms under which the buyer itself will consume electricity".[3]

No express obligation to consume

3.4 Even without an express requirement to consume or a minimum volume in a requirement, a contract can still be an MLC. Therefore, variable volume contracts with no explicit consumption ceiling may be captured unless the equipment or plant at the buyer's ICP render it practically or physically impossible to consume 150MW or more at a point in time.

Options and conditional contracts

3.5 Option and conditional contracts are assessed at the time of signing, not when exercised or when the prescribed conditions are met.

Contracting through third parties

3.6 Contracting through third-party arrangements does not circumvent the MLC regime, i.e. they can still be caught by the regime.

Assessment of the 150MW threshold

3.7 The definition of an MLC provides that MLCs are not entered into through a derivatives exchange and relate to a net quantity of electricity that equals or exceeds 150MW consumed at a point in time.[4]

"Point in time" interpretation

3.8 One instance of net 150MW consumption over the life of the contractual arrangement in a single trading period is sufficient to trigger the threshold.

Exclusion of exchange traded derivatives

3.9 Exchange-traded derivatives are excluded because they have a market-determined price.

Undiscounted spot contracts and equivalents to exchange traded derivatives

3.10 The definition of an MLC provides that an MLC is a contract that results in a final price paid by the buyer (after accounting for any discounts) of less than:

(a) the price of an equivalent exchange traded derivative or derivatives, or

(b) the spot price, for any trading period during the term of the contract.

3.11 The Authority considers that contracts where the load user pays at least the spot price or an exchange traded price cannot be the source of an inducement to stay in the market as they result in the load customer paying market price.

3.12 This means that the buyer is paying at least the spot price (or price of an equivalent exchange traded derivative) during the life of the contract, and no discounts or reductions — whether direct or indirect — beyond that price are applied. That is, there cannot be any side deals or informal arrangements that result in the buyer paying less than the spot price (or price of an equivalent exchange traded derivative) at any point during the life of the contract.

[3] Clause 13.268(1)(a)(ii).

[4] Clause 13.268(1)(a)(iii).

Multiple contracts

3.13 MLCs can also be made up of two or more related contracts, where at least one contract includes terms under which the buyer will consume electricity, at least one contract results in a final price paid (after accounting for any discounts) of less than the spot price or the price of an equivalent exchange traded derivative, and when taken together, they meet the 150MW threshold.[5]

Partial visibility challenges

3.14 Where generators have limited visibility of a buyer's total consumption, generators should undertake due diligence through public records or seeking confirmation from the buyer that they are not consuming more than 150MW at any point in time.

3.15 Generators can take proactive measures to avoid unintentional breaches, including informal discussions with the Authority or seeking clearance.

All of the buyer's ICPs and contracts should be considered

3.16 Assessment of the 150MW threshold should be across all of a buyer's Installation Control Points (ICPs)/sites, not single locations.

3.17 In addition, assessment of the 150MW threshold should include contracts that are entered into at different points in time with the same buyer, where the contracts (and consumption under the contracts) overlap at a point in time. This is because otherwise a contract entered into at a later point of time for a low price could potentially provide a subsidy for the overall consumption of the buyer.

Estimating MW consumption for variable volume contracts

3.18 It may be necessary to estimate consumption potential at a point in time for variable volume contracts and across multiple concurrent contracts.

3.19 In the absence of an explicit and hard ceiling below 150MW at all points in time, the generator should consider the possibility that the maximum consumption could exceed the 150MW threshold.

3.20 The notional value of physical supply contracts with a buyer might exceed 150MW at a given point in time. However, in practice, it may be physically and practically impossible for the buyer to consume this amount of electricity. For example:

(a) Physical constraints — such as transmission or connection capacity limits, or the maximum load across sites — may make consumption of 150MW at any one time infeasible.

(b) The buyer's operational practices may impose a cap on consumption that keeps it below the 150MW threshold.

3.21 In circumstances where it is physically and practically impossible for consumption to exceed 150MW at a point in time under a given contract, the contract will not qualify as an MLC, even if it does not make provision for an explicit consumption ceiling below the 150MW threshold.

3.22 It is the generator's responsibility to demonstrate that any consumption caps are credible. If questioned, supporting evidence may include historical consumption patterns or assurances from the buyer.

[5] Clause 13.268(b).

3.23 Generators can mitigate their risk by negotiating a firm contractual limit with the buyer that keeps consumption below 150MW.

Spot Contracts as part of a group of contracts

3.24 Spot contracts (or spot contracts plus a margin) are based on market-determined prices and therefore cannot involve subsidies. However, they can be relevant for evaluating the physical volume of electricity consumed when determining whether the 150MW threshold is met for a group of interdependent contracts. This is because it is possible the definition of an MLC could be met when a spot contract is considered alongside another contract which does include a subsidy, and the combined volume of both contracts meets the 150MW threshold.

3.25 Spot contracts that are part of a contractual arrangement exceeding 150MW consumption at a point in time must be disclosed to the Authority as part of the group of contracts that makes up the MLC.

Quantifying bespoke offsetting factors from new generation

3.26 The Code provides a process for calculating an offset for new generation to determine “net consumption” and whether the contract is an MLC.

Modelling the anticipated generation profile from new generation

3.27 The generation profile of the new asset must be derived using models and methodologies consistent with current industry standards for each energy type and accounting for all relevant factors reasonably expected to affect the new generating station’s contribution to the grid.

3.28 Generators have flexibility in their approach but must ensure compliance with established market standards.

3.29 The generation profile is used to calculate the allowable offset for the purposes of deriving “net consumption” in each period.

The materiality of the MLC to the generator’s investment decision

3.30 For new generation to be relevant to the calculation of the net quantity of electricity consumed, the contract under consideration must be material to the investment decision.

3.31 Factors the Authority may look at when determining whether a contract is material to an investment decision might include financial impact, risk mitigation, timing and certainty, availability of alternatives, negotiation and intent, documentation and evidence, and industry standards.

Net value test for MLC

Contract pricing assessment

3.32 Future spot prices serve as proxy for a generator's best alternative. Therefore, spot-indexed contracts that include a positive premium are likely to satisfy the net value test.

3.33 Fixed price contracts that are negotiated require comprehensive justification, which may include referencing exchange-traded futures prices or long-run marginal cost.

3.34 Net present value techniques can be used to account for differences in timing and provide a consistent basis for comparison.

On-selling test for MLC

3.35 Market participants drafting MLCs and seeking clearance on the basis of the on-selling test should ensure:

(a) contracts explicitly allow on-selling of unused electricity, including through contracts-for-difference (CFDs), without imposing worse terms than if the buyer consumed the electricity themselves

(b) no clauses in the MLC or related agreements (eg, demand response agreements) restrict on-selling, either explicitly or in practical effect

(c) on-selling provisions are clear and unambiguous to avoid misinterpretation.

Clearance regime

3.36 Clearance is only available for contractual arrangements that meet the definition of MLCs (ie, clearance cannot be granted for contractual arrangements that do not meet the MLC criteria).

3.37 The following sections provide detailed guidance on each of the above key interpretative issues, including specific examples and recommended approaches for compliance with the MLC regime.

4. Requirement that the buyer “will” consume electricity

4.1 In April 2023, the Authority amended clause 13.268(1)(a)(ii) of the Code to provide that an MLC is a contract that: “includes terms under which the buyer itself will consume electricity”.

4.2 This provision was worded to target only those arrangements that present genuine risks of adverse outcomes from inefficient price discrimination. Inefficient price discrimination can occur only where there exists a "credible threat to consumption" — that is, situations where, absent the contract, the buyer would likely exit or not enter the New Zealand electricity market or would reduce or not expand their consumption.

4.3 Through this provision, the Authority sought to ensure the clause would only capture situations where such a credible threat to consumption exists.

4.4 The clause was drafted to prevent the MLC definition from inadvertently capturing electricity retailers entering hedge contracts exceeding 150MW on behalf of numerous residential and commercial consumers. In these retail aggregation scenarios, there is no credible threat to consumption, and aggregate demand is unlikely to be curtailed significantly without the contract.

4.5 To exclude these legitimate hedging and supply arrangements from unnecessary regulatory burden, the Authority requires that the buyer itself consume the electricity for the arrangement to qualify as an MLC. Clause 13.268 does not capture contracts involving retailers acting for numerous small consumers whose individual consumption would not trigger the MLC provisions.

No express obligation to consume

4.6 Since clause 13.268(1)(a)(ii) requires that the contract "includes terms under which the buyer itself will consume electricity", questions have arisen about whether the contract must expressly create an obligation on the user to consume any electricity for it to be captured by the MLC regime.

4.7 This question was raised specifically in the context of variable volume contracts with no specified minimum obligation for the buyer to consume, where at the time of entering the

contract, there is no absolute assurance that the buyer will consume any electricity under the arrangement.

4.8 The absence of an express requirement to consume electricity of a minimum amount is not sufficient to avoid a contract being defined as an MLC. The phrase "will consume electricity" indicates an expectation or intent of consumption, but it doesn't inherently demand a specific minimum amount.

4.9 Rather, the focus is on the inclusion of terms related to that consumption. These terms could encompass dimensions beyond volumes, including pricing structures, delivery profiles, and other responsibilities tied to consumption, such as demand response provisions.

Options and conditional contracts

4.10 Option contracts typically give a party the right, but not the obligation, to buy or sell electricity. Conditional contracts are agreements that include specific conditions or contingencies that must be met before the contract becomes fully binding or before certain obligations are triggered.

4.11 These contracts are particularly common when parties are considering significant investments, such as those where economic viability is dependent on supply or demand factors, as they help manage risks and uncertainties. For example, a buyer may enter a contract for electricity supply on agreed terms, conditional on the installation or commissioning of a piece of kit.

4.12 An important consideration with options and conditional arrangements is whether, for the purposes of the MLC regime, they satisfy clause 13.268(1)(a)(ii) at the time they are contracted, or only when the option is exercised or the conditions are met.

4.13 Despite not having been exercised, an option contract includes terms under which the buyer will consume electricity if the conditions are satisfied or the option exercised. The Code focuses on the presence of these terms in the contract, not necessarily on whether consumption is guaranteed from the outset. If the option is exercised or the conditions satisfied, the contract comes into full effect and is to be treated no differently than outright contracts.

4.14 As a consequence, to determine compliance with MLC rules, options and conditional contracts should be assessed at the time of signing, even though the obligations of each party only become enforceable if exercised or the conditions are met. Generators that are parties to variable volume, options and other conditional contracts must not give effect to an MLC unless they satisfy the requirements in clause 13.269(1).

4.15 Furthermore, they must satisfy the disclosure obligations and timeframes set out in clause 13.271(1), ensuring transparency and regulatory compliance regardless of the contract’s conditional nature.

Contracting through a third party does not circumvent the regime

4.16 Large load users or generators cannot circumvent the MLC regime by contracting through a third party, i.e. such arrangements can still be caught. This scenario differs fundamentally from a retailer consolidating demand for multiple small customers, none of whom individually trigger the MLC provisions.

4.17 Where a large load user or generators contract through a third-party, the Authority would apply clause 13.268(1)(b)(iii), which provides that two or more contracts, when combined, may satisfy the MLC definition and meet one of the criteria in clause 13.268(1)(c). Clause

13.268(1)(c) specifically addresses arrangements involving multiple contracts between generators, buyers, and their related entities.

4.18 These provisions enable the Authority to assess the underlying economic substance of the arrangement to determine whether the buyer effectively secures a net quantity of electricity exceeding 150MW, regardless of the contractual structure employed.

5. Whether arrangements exceed the 150MW threshold

5.1 This section provides guidance on whether an arrangement exceeds the 150MW threshold for the purposes of the MLC regime.

Policy intent and threshold rationale

5.2 The purpose of clause 13.268(1)(a)(iii) is to determine whether a contractual arrangement has the potential to enable the consumption of net 150MW at a point in time. This threshold was established based on a level of net consumption that could lead to price increases, relative to prices without that new demand, sufficient to incentivise generators to consider inefficient price discrimination arrangements that could impose meaningful costs on consumers.

5.3 Contractual arrangements below this threshold were determined to be insufficient to incentivise inefficient price discrimination or impose costs on consumers that would warrant the associated compliance and administration costs of regulation.

Significance of “point in time”

5.4 For clarity, a "point in time" refers to any single trading period over the life of the contract. Consequently, a single instance of net 150MW of consumption is sufficient to trigger the threshold. This approach recognises that even temporary consumption at this level can have significant market impacts. This also means that groups of contracts entered into at different times with the same buyer may still be captured by the regime, where there is a point in time where all contracts are in effect and where consumption reaches the 150MW threshold.

Exclusion of exchange traded contracts

5.5 Exchange-traded derivative contracts are expressly excluded under clause 13.268(1)(a)(i). This is because these contracts are both exchange traded and cash-settled with no physical delivery or consumption elements.[6]

5.6 The presumption is that a contract with a market-determined price — such as contracts entered over a derivatives exchange — cannot be a source of subsidy. These contracts are excluded from the MLC definition because there is no physical consumption implied by these contracts, and there is no scope for a subsidy.

Exclusion of bilateral contracts priced without any form of discount

5.7 For a contractual arrangement to provide an incentive for over-consumption by the buyer, it must contain pricing elements or financial transfers that are not determined by market mechanisms. Only negotiated prices or payments — those not determined by open market forces — can create an opportunity for a contractual arrangement to provide a subsidy relative to other consumers.

5.8 The MLC definition excludes bilateral contracts where the final price the buyer pays (accounting for any form of discount) is equivalent to exchange-traded derivatives.

[6] This is the case with ASX traded futures. Moreover, exchange-traded electricity futures and options contracts are predominantly cash-settled worldwide, with physical delivery only being the norm for spot and day-ahead markets.

5.9 If the load user pays less than an equivalent exchange traded price throughout the duration of the contract, the contract would not qualify for exclusion and would instead be captured under the MLC definition.

Spot contracts and the MLC regime

5.10 The MLC definition excludes spot-priced contracts where the buyer pays at least the full spot price, after any discount is applied. This means the buyer must pay the spot price in full, without any direct or indirect reductions. This includes the absence of side arrangements or informal deals that would effectively lower the price paid below the spot price.

5.11 While physical spot contracts themselves will not typically be the source of a subsidy (due to their market-determined pricing), they remain crucial for determining whether a buyer's consumption at a point in time, through a group of contracts, may exceed the 150MW threshold specified in the MLC regime.

5.12 In cases where consumption exceeds the 150MW threshold, any financial inducement to consume would necessarily arise from a separate contract containing negotiated pricing elements, not from the spot contract itself.

Treatment when combining multiple contracts

5.13 Multiple contracts can together constitute an MLC. Any assessment of multiple contracts needs to take account of the underlying economics of the combination of contracts to assess whether they constitute an MLC. This approach ensures that parties cannot circumvent the MLC regime by structuring what is effectively a single arrangement as multiple separate contracts.

5.14 When assessing the MW contribution from a spot contract that is hedged through contracts for difference (CFDs), the contribution towards the 150MW threshold is not the sum of the notional consumption values of both the spot and CFD contracts. Rather it is the notional consumption value of the spot and other physical contracts which is relevant, as net physical consumption is the basis for defining an MLC.

Generators with partial visibility of MLC status

5.15 The Authority recognises that generators may face challenges in determining whether their contract forms part of an MLC when they supply only a portion of a buyer's total electricity needs. To address this challenge, the Authority considers that generators can reasonably estimate the scale of a large buyer's electricity requirements through:

(a) utilising data available in the public record; or

(b) requesting direct confirmation from the buyer regarding their total electricity consumption across all ICPs and contracts, specifically confirming whether their total consumption will exceed 150MW at any given time during the contract period.

5.16 When a generator is supplying only a portion of the buyer's total load, the Authority expects the generator to exercise due diligence by assuming that the buyer might have additional contracts with other suppliers that could collectively impact the total load calculation. This assumption reflects the reality of large industrial and commercial consumers who often maintain multiple supply arrangements.

Recommended approach for generators

5.17 The Authority recommends that generators adopt a cautious and proactive approach when the supplied portion does not meet the MLC threshold, but there is reasonable cause to

believe that the buyer's total consumption, when combined with other contracts, could exceed 150MW at any point during the contract term.

5.18 In such cases, generators could take proactive measures to avoid unintentionally breaching MLC regulations. They could discuss the arrangements with the Authority and, depending on the outcome of those discussions, seek clearance if the contract is considered an MLC or part of an MLC. They could also seek assurances from the buyer that their consumption across all contracts does not exceed 150MW at any point in time.

5.19 This proactive approach enables generators to effectively mitigate regulatory risks and maintain compliance with the requirements surrounding MLCs, even when they supply only a portion of a buyer's overall electricity demand.

All contracts with a buyer should be considered

5.20 The MLC regime is fundamentally designed to address situations where generators might subsidise large buyers who could credibly exit, reduce consumption, not expand, or not enter the domestic market. To comprehensively assess whether an arrangement qualifies as a MLC, all contracts with a buyer, and across all ICPs or sites, should be considered rather than focusing on contracts entered at a single point of time, or related to a single site or ICP.

5.21 This approach is inherently conservative, as it assumes that all the buyer's consumption — both existing and potential (eg, planned expansions) — is potentially at risk. In some cases, a buyer's decision might only affect a portion of their consumption, such as a specific reduction or expansion project, rather than their entire electricity usage portfolio. Despite this limitation, the Authority considers this conservative approach essential for effective regulatory oversight.

5.22 Defining MLCs on a per-site or per-ICP basis would create a significant regulatory gap, as it could allow a buyer to strategically hold multiple contracts, each individually below the 150MW threshold, which collectively exceed 150MW without triggering the MLC provisions. This would effectively create a loophole in the regulatory framework that could undermine its intended purpose of preventing inefficient price discrimination.

5.23 By considering the buyer's total consumption across all sites and contracts, the Authority ensures that the MLC regime maintains its integrity and achieves its regulatory objectives, even if this approach occasionally captures arrangements where only a portion of the buyer's consumption might genuinely be at risk.

5.24 A new contract (entered into at a later point in time) may still be captured within the MLC regime by forming part of set of related or interdependent contracts which, taken together, exceed the 150MW threshold. This is because a contract entered into at a later point in time (even if below the 150MW threshold itself) could provide an effective subsidy to induce a large buyer to enter or remain in the market when it would otherwise exit, reduce consumption, not expand or not enter.

Estimating MW consumption across multiple contracts

5.25 While the notional value of a series of contracts with a buyer might exceed the 150MW threshold, actual usage may remain below this limit. This discrepancy can arise for several important reasons.

5.26 First, practical constraints on supply or load may mean that the threshold cannot physically be met. These constraints might include transmission capacity limitations, connection point restrictions, or other physical barriers to electricity delivery.

5.27 Second, the buyer's operational model might provide compelling evidence that the 150MW threshold will not be breached despite the buyer having load potential that theoretically exceeds 150MW if all equipment were operating at maximum capacity simultaneously. Industrial operations often involve operational patterns, maintenance schedules, and production constraints that prevent maximum theoretical consumption from occurring.

5.28 For example, consider a factory with three independent production lines, each requiring up to 60MW at a point in time, but which for logistical and maintenance purposes will never run more than two of the three lines concurrently. If the generator and the buyer negotiate a variable volume supply contract with a 180MW ceiling, on the face of it, the contract appears to qualify as an MLC.

5.29 However, in practice, the generator could reasonably argue that the contract relates to no more than 120MW at a point in time (two production lines at 60MW each) and therefore does not constitute an MLC. To substantiate this argument, the generator would need to demonstrate that the maximum load would not exceed 150MW, despite the theoretical possibility that it could.

5.30 The generator could seek formal assurances from the buyer confirming they will never operate the three lines simultaneously and could examine the buyer's historical consumption patterns to verify they have never exceeded 150MW across their sites.

5.31 Maximum levels of consumption impact whether an arrangement is classified as a MLC, but the Authority can only grant clearances for contracts which are MLCs (see below). This means that if a generator determines a contract is not an MLC, they are not required to disclose it under the MLC provisions. Therefore, the generator entering this arrangement would have to accept the risk that the Authority may later reassess the arrangement and determine that it is an MLC.

5.32 To mitigate this risk, the generator may wish to safeguard their position by:

(a) modifying the contract to explicitly ensure that it will not constitute an MLC — for example, by including a ceiling below the 150MW threshold

(b) disclosing the contract to the Authority

(c) seeking clearance in the event the buyer does exceed the 150MW threshold.

Determining peak consumption for variable volume physical supply contracts

5.33 When assessing the peak consumption at a point in time under a variable volume contract, for the purposes of evaluating its contribution to the 150MW threshold, the Authority recommends employing a systematic, phased approach, as suggested below.

5.34 First, the generator should examine any MW consumption ceiling specified in the contract and evaluate its credibility as a hard limit. Second, in the absence of an explicit and credible ceiling in the contract, the generator should assess the possibility that the maximum consumption under the contract exceeds the threshold.

Contracts with ceilings below 150WM

5.35 If the contract specifies a ceiling less than 150MW at all points in time, then the contract by itself would not normally constitute an MLC. However, it is important to note that such a contract could still form part of a broader contractual arrangement comprising two or more contracts which, when considered together, constitute an MLC under clause 13.268(1)(b).

5.36 This provision ensures that parties cannot circumvent the MLC regime by splitting what would otherwise be a single large contract into multiple smaller contracts.

Contracts with ceilings exceeding 150MW

5.37 If the contract specifies a ceiling greater than 150MW, then the contract has the potential to be classified as an MLC on a standalone basis. In these situations, the generator may still be able to give effect to the contract through one of three pathways outlined in clause 13.269(1): by satisfying the net value test, the on-selling test, or by securing a clearance from the Authority.

5.38 In the case of a variable price, variable volume contract — where there is no secondary contract or financial clauses in the contract that might constitute a subsidy — and the price is not subsidised relative to other consumers (for example, if it matches or exceeds prevailing spot prices), the contract is unlikely to raise concerns. In such cases, satisfying the Authority's net value test under clause 13.269(1)(a) should be relatively straightforward.

5.39 While a ceiling in excess of 150MW establishes a prima facie case that clause 13.268(1)(a)(iii) has been satisfied, the generator could potentially argue that in practical terms there is no realistic potential of reaching the threshold (as discussed in more detail below). However, in such cases, it would normally be advantageous to include a credible ceiling in the contract below 150MW, as this would mitigate the risk of the arrangement being caught by the MLC regime.

5.40 Presumably, establishing such a ceiling would impose no cost on the buyer if there were genuinely no realistic potential of consumption exceeding this level. It is important to note that a contract cannot be granted a clearance on the basis that it is not an MLC, as the clearance regime applies only to contracts that already qualify as MLCs.

Variable volume contracts with no explicit consumption ceiling

5.41 Where a variable volume contract does not specify a hard MW ceiling, then theoretically, the contract has the potential to enable peak consumption above 150MW. In these cases, provided the contract satisfies the other conditions of being an MLC, the generator would be compelled to disclose the contract under clause 13.271 and not give effect to the MLC unless it can be shown to satisfy one of the exemptions in clauses 13.269(1)(a)–(c) or if physical and practical conditions at the buyers ICP(s) render it impossible for the threshold to be met.

5.42 Parties may therefore wish to consider whether to include a sub-150MW ceiling, including as a way of avoiding potential compliance costs under the Code. In situations where the contract does not include a point-in-time consumption ceiling below the 150MW threshold, the generator should take a conservative approach to assuring itself that an open-ended variable volume contract has no realistic likelihood of exceeding the threshold.

5.43 It is not the Authority's intention for the MLC provisions to capture agreements which have no realistic potential of reaching the 150MW threshold, irrespective of whether they have a ceiling or there is no limit on the consumption specified in the contract.

5.44 In these situations, the Authority will rely on the generator to demonstrate that the actual consumption at a point in time will not reach the threshold. It is the generator's responsibility to provide sufficient evidence, which could include the following:

(a) **Maximum load at the sites covered by the agreement** — that is, the total electricity demand of all major equipment and systems operating simultaneously.

(b) **Supply constraints** — including connection and transmission link limitations that would physically prevent consumption from reaching the threshold.

(c) **Demand diversity** — that is, evidence showing that not all potential loads at or across sites are used simultaneously at their maximum capacity due to considerations like redundancy, maintenance, operational patterns, or supply constraints. Historical usage

patterns, future operating models, or proposed investments or divestments in equipment may be relevant in this context.

5.45 It should be noted that clauses 13.271(1) and 13.273(6) specifically address changes in consumption volume (for example, due to new equipment or operating models) that occurs after entering into the MLC. A generator must notify the Authority within 5 business days where any of the changes described in clause 13.271(1) occurs, including changes to an MLC's volume if the generator is relying on clause 13.269(1)(a) to give effect to the MLC. If the calculation of the net value of the MLC to the generator is adversely impacted, any prior clearance based on the net value test may no longer be valid.

6. Net consumption and new generation

6.1 This section provides guidance on the application of clause 13.268(4), specifically regarding the approach used to:

(a) quantify "any MW generated from new generation"

(b) determine whether the MLC is "material to the generator's decision to invest in the new generation"[7] (i.e., that the investment decision would not have occurred absent the generator's contract with a large load user (ie, buyer)).

Multiple contracts and new generation offsetting

6.2 Contracts supporting new generation may still be captured under the MLC regime if they rely on (or are interdependent with) a set or group of other contracts which together exceed the 150MW threshold.

Quantifying new generation

6.3 Clauses 13.268(5) outline the processes for generators to determine an offset for "any MW generated from new generation" when calculating the "net quantity" under clauses 13.268(1)(a)(iii) and 13.268(4). This offset is determined by the generator using data specific to the location of the new generation asset and the technology deployed to establish an appropriate offset allowance.

6.4 Clause 13.268(5) permits generators to apply an offset equal to the median expected generation from a new asset in any trading period over the contract's duration. Under clause 13.268(4), this median generation is offset against the total MW consumed at a given time to determine if the contract qualifies as an MLC.

6.5 Both clauses require the generation profile of the new asset to be derived using models and methodologies consistent with current industry standards for each energy type. Generators have flexibility in their approach but ought to comply with established market standards to produce robust, bankable generation estimates. These estimates must account for relevant operational and environmental factors, including climate variability. Examples of applicable standards include:

(a) **Wind:** At least three years of site-specific wind speed and direction data, compliant with IEC 61400-12-1, correlated with long-term reference data to account for climate oscillations like El Niño Southern Oscillation and Southern Annular Mode.

[7] So long as it can be shown that the contract is a material factor in the investment decision making, any of the following could be allowable offsets:
- Completely new generation
- Like-for-like replacement of end-of-life assets
- Fossil-fuelled thermal conversion to biofuel
- Replacement of turbine blades on an existing windfarm
- New thermal plant which increases whole of system MW capacity at a point in time.

(b) **Solar:** A minimum of three years of Global Horizontal Irradiance data — either site-specific or from a nearby location — adhering to ISO 9060:2018, supplemented by satellite models.

(c) **Geothermal:** Well test data (temperature, pressure, flow rates) per NZS 2403:2015, with reservoir modelling for long-term yield.

6.6 The standards listed above are illustrative of current best practices for each generation type, noting that industry standards may evolve over time and that multiple evidence-based methodologies may exist for each energy type, and generators must select and justify their chosen approach.

The materiality of the MLC to the generator's decision to invest

6.7 The electricity contract with the buyer must be a significant factor in the decision to invest in new generation, in order to allow a new generation offset to be applied against consumption when assessing whether the contractual arrangements constitute an MLC.

6.8 In many cases the new generation asset will not have been built at the time the contract is negotiated or commences. Some contracts may provide that the new generation will come on stream after the commencement of the contract.

6.9 In these cases, to avoid being defined as an MLC, the contract must always result in the net electricity consumption not exceeding 150MW (or else not meet one of the other criteria for being an MLC). This would mean that in the period of the contract prior to the new generation being operational, the contract with the buyer would need to be for an amount less than 150MW to avoid being defined as an MLC. Only once the new generation is operational would the consumption by the buyer be able to exceed gross 150MW, up to an amount equal to the offset allowance.

6.10 For example, assume a generator invests in a 200MW windfarm, to support a contract with a buyer. Assume the contract is for 5 years, the plant will be operational at the end of year 3, and the generator has determined to rely on the default offset of 20% of planned generation. To avoid being an MLC, the generator can offer the buyer up to 150MW for the first three years, and 190MW maximum in years 4 and 5.

6.11 When considering whether the contracts are a significant factor in the investment decision, generators could consider some of the following factors:

(a) **Financial impact** — Did the contract provide a revenue stream that made the investment financially viable? For instance, if the contract guaranteed a specific price or volume of electricity sales, it could be essential to the project's financial projections and thus material to the decision.

(b) **Risk mitigation** — Did the contract reduce the investment's risk? A long-term contract might lock in prices or demand, shielding the project from market volatility and making the investment more secure. This risk reduction could render the contract material.

(c) **Timing and certainty** — Was the contract secured before the investment decision? If it was in place prior to committing resources to the new generation, it might be seen as a foundational element of the decision, enhancing its materiality.

(d) **Availability of alternatives** — Were there other contracts or market opportunities available? If the contract in question was unique or offered particularly favourable terms compared to alternatives, its role in the decision could be deemed material.

(e) **Negotiation and intent** — Was the contract a focal point of negotiations, explicitly linked to the investment decision? Evidence of intent — such as statements during negotiations tying the contract to the project — could indicate its materiality.

(f) **Documentation and evidence** — Is there documented proof, such as board minutes, investment memos, or feasibility studies, showing that the contract was critical to the decision? Such records can substantiate its material influence.

(g) **Industry standards** — Do norms within the electricity sector suggest that contracts are typically pivotal to investment decisions in new generation of this type? Industry practices can provide context for assessing materiality.

7. Net value test for MLCs

7.1 Clause 13.269(1)(a) allows contractual arrangements that pass the net value test set out in clause 13.270 to proceed.

7.2 The net value of the MLC to the generator is the value of the contract to the generator less the value of the generator's best alternative. A critical part of that test is clause 13.270(2), which requires the generator to consider "whether in the absence of the materially large contract the buyer would have exited completely, reduced consumption, not expanded, or not entered the domestic market."

7.3 Clause 13.270(3) provides that the generator must take into account any direct value components that are reasonably relevant when calculating the value of the contract to the generator and the value of the generator's best alternative and lists some of these components. In the Authority's view, future spot prices serve as a defensible proxy for a generator's best alternative under clause 13.270(3).

7.4 Complex contracts with additional financial terms — such as demand response mechanisms or direct financial inducements — require these additional terms to be factored into the net value analysis.

Negotiated price elements in contracts

7.5 The definition of an MLC does not preclude any specific contract types, such as fixed price, indexed, or option contracts. Therefore, contracts of any type which satisfy the MLC definition can only be given effect if they satisfy one of the exemptions in clause 13.269(1). Generators will need to be able to demonstrate how the MLC satisfies either the net value or on-selling tests.

7.6 For negotiated fixed price and indexed contracts (excluding spot contracts with positive index premium), a more comprehensive demonstration of net value will be required from the generator. An example of a fixed spot contract with a positive index premium might be the spot price plus $5 per kWh.

7.7 A non-positive index would include contracts tied to spot but less a constant (spot less $5 per kWh) or some index adjustment which may not always result in a price higher than spot (for example, spot plus $5 per kWh, unless the oil price exceeds $90/barrel, in which case the price will be spot less $10 per kWh).

7.8 For MLC arrangements with negotiated pricing and other financial elements, the generator will need to demonstrate that the contract offers a higher effective price than what the generator could have achieved (eg, through exchange traded hedges or estimates of long-run marginal cost for periods extending beyond those covered by hedges).

7.9 Differences in timing of cashflows between the contractual arrangement and the counterfactual used to demonstrate “net benefit” can be standardised through defensible net present value techniques.

7.10 The Authority notes that it is normal commercial practice when pricing such large deals for the Board and management to satisfy themselves that the contract offers value relative to alternatives. The same calculations can be used to demonstrate compliance with the MLC provisions.

8. On-selling test for MLCs

8.1 Clause 13.269(1)(b) enables a generator to give effect to an MLC which allows the buyer to on-sell all unused electricity to a third party, on no worse terms than if the buyer had consumed the relevant quantity themselves (on-selling test).

8.2 Where an MLC permits on-selling on terms no worse than if the buyer consumed the electricity themselves, a buyer who values the electricity less than other potential users can redistribute it through physical sales or financial arrangements, such as CFDs. CFDs often provide a lower-risk and simpler option for on-selling unused electricity.

8.3 In the case of a fixed volume fixed price CFD, the buyer simply can reduce their own consumption to capture the difference between the contract price and the spot market price. Alternatively, buyers can on-sell by entering back-to-back CFDs with other users. Both approaches align with the policy intent of ensuring efficient market outcomes.

8.4 The on-selling test requires a legal assessment of the contract’s terms and their practical implications to ensure compliance. Key considerations include:

(a) **Unrestricted right to on-sell:** The contract should explicitly allow the buyer to on-sell unused electricity, whether through physical sales or financial arrangements like CFDs, without restrictions that would impose worse terms than consumption.

(b) **Flexibility in on-selling arrangements:** The contract should permit the buyer to negotiate commercially acceptable terms with third parties, including back-to-back CFDs, without limitations that undermine the on-selling provision.

(c) **Absence of restrictive clauses**: The contract and any related agreements (eg, demand response agreements) should not contain terms that prevent or practically restrict on-selling.

(d) **Clarity of on-selling provisions:** The contract should clearly state that on-selling is permitted, ensuring no ambiguity about the buyer’s rights. Modifications to the on-selling provisions of a cleared MLC may invalidate any existing clearance.