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### Hedge Market Enhancements – Securing Access to Exchange data

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Genesis Energy Limited (**Genesis**) welcomes the opportunity to respond to the Electricity Authority's (**Authority**) consultation paper *Hedge Market Enhancements – Securing Access to Exchange Data* dated 23 June 2020.

We share the Authority's desire for transparency, efficiency and lower compliance costs, and its belief that better access to, and use of, exchange held trading data, can help achieve these objectives.

We do have concerns, however, with the proposal in its current form, including in relation to the breadth of the information access right and the absence of an express confidentiality undertaking. In addition, while we understand the objectives and proposed benefits of the Authority's proposal, we would welcome the Authority providing clarity on:

- (a) What the experience has been in other financial markets where regulators have had access to de-anonymised trading data and used it for improving market monitoring, facilitation, enforcement, development and confidence.
- (b) How the Authority proposes to measure, review and report on whether the greater and more timely access to participant trading data has achieved the objectives set out in the consultation paper.

The Schedule to this letter sets out our detailed response to the consultation questions, including suggestions for safeguards, measures and reporting.

For the reasons set out in the Schedule to this letter, Genesis would support the Authority having direct and timely access to de-anonymised tick data, off-market trade data and open interest data of all participants held by the exchange, provided that:

- (a) The de-anonymised data of a participant is not disclosed to other participants.

- (b) A participant's de-anonymised data cannot be identified or derived from the Authority's market reports or other publications.
- (c) There is an express confidentiality undertaking like that contained in the Electricity Industry Enforcement Regulations 2010 or the NZX Participant Rules which supports the Authority's assurances that there will be appropriate protections and safeguards in place to maintain the security and confidentiality of the data.
- (d) The prescribed form of consent should be provided for consultation to ensure that the terms of the consent do not require participants to provide unnecessary waivers and indemnities to the ASX and / or the Authority concerning the information provided.
- (e) The measures of success are articulated, reviewed and reported on.

We would be happy to discuss any of the matters raised in our submission further.

Please don't hesitate to contact me by email:

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Yours sincerely



Warwick Williams  
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## SCHEDULE RESPONSE TO CONSULTATION QUESTIONS

| Question | Comment   |
|----------|---|
| 1        | <p><b>(a) Has the Authority correctly identified an issue with its access to participants' de-anonymised tick data?</b><br/> <b>(b) Are there other issues that the Authority has not identified?</b></p> <p>In essence, the Authority wants direct access to more participant trading data. However, the grounds for this appear to conflate issues that should be considered separately. Namely:</p> <ul style="list-style-type: none"> <li>• The cessation of the Authority's current access to market makers' tick data and whether that access should continue.</li> <li>• Whether the Authority should have access to the tick data of all participants.</li> </ul> <p>It is also not clear:</p> <ul style="list-style-type: none"> <li>• How the success of the proposed change will be measured and reported on.</li> <li>• That there are robust grounds for granting the Authority an information access right that applies to more than tick data, off-market trade and open interest data.</li> </ul> <p>Dealing with each in turn:</p> <p><b>(a) The Authority's current access rights to market makers tick data</b></p> <p>The Authority's ability to access tick data relates to the backup mandatory market making regime (<b>Backstop Scheme</b>). This was put in place on 3 February 2020 under an urgent Code amendment to address, among other things, concerns that ASX listed NZ electricity futures may not be available at efficient prices during the HVDC and Pohokura outages that were anticipated to occur in early 2020.</p> <p>That access right was to allow the Authority to assess whether:</p> |

- (i) the conditions to the Backstop Scheme applying to a market maker under clause 12.236M of the Code had been satisfied; and
- (ii) where the Backstop Scheme applies, the relevant market maker had met its obligations.

The Authority is considering various voluntary and mandatory market making scheme designs. We consider there is merit in a commercial incentive-based scheme supported by a backstop mandatory scheme, in which case the rationale for the access right described above would apply. Similarly, if the Authority were to proceed with a mandatory scheme, access to exchange held trading data would be required to monitor compliance.

We have not seen evidence presented that shows how the current access right to market makers' tick data supports the Authority's statutory functions as described in section 4 of the Consultation Paper. We acknowledge that this may be due to access only having recently been granted and / or the Authority being constrained by the rationale underpinning the access right discussed above.

The issues which the Authority is seeking to address are, however, faced by regulators in other financial markets. It would be helpful therefore if the Authority were able to provide examples from other markets where access to tick data (and to off market trade and open interest data) has improved market monitoring, facilitation, enforcement, development and confidence. For example, do the Singaporean and Australian electricity regulators have access to such data and what has been their experience? Similarly, how have the New Zealand Financial Markets Authority and the NZX approached and used market participant trading data? What reports have these regulators produced and how have they measured success?

**(b) Whether the Authority should have access to the tick data of all participants, and whether access should be to a subset of tick data.**

Limiting direct access to the disclosure of trades (including prices) only would fulfil clauses 13.217 and 13.219 of the Code. However, we can see there are potential benefits to the market (and the Authority), in the Authority having a more holistic and timely view of market participant activity.

In particular:

- The increased transparency of non-market maker trading activity should give the Authority the ability to assess more quickly the veracity of claims that the futures market has failed or is failing.

- The reduction in compliance costs and data quality for both participants and the Authority if data is obtained directly by the ASX rather than through the Authority's hedge disclosure system.
- The potential for a more proactive approach to monitoring and enforcement. (In this regard, we note that there are some similarities between the Authority's objectives and the data strategy of other regulators, such as the UK's Financial Conduct Authority.)
- The ability to provide timely reports that show trends over time and support market development. For example, providing data and weekly reporting broken down by participant category, similar to the example below from the US Commodity Futures Trading Commission relating to silver futures:

| SILVER - COMMODITY EXCHANGE INC.                      |        |         |            |         |         |         |        |               |      | Code-084691    |         |
|---|--------|---------|------------|---------|---------|---------|--------|---------------|------|----------------|---------|
| FUTURES ONLY POSITIONS AS OF 07/14/20                 |        |         |            |         |         |         |        |               |      | NONREPORTABLE  |         |
| NON-COMMERCIAL  |        |         | COMMERCIAL |         |         | TOTAL   |        | NONREPORTABLE |      | POSITIONS      |         |
| LONG  | SHORT  | SPREADS | LONG       | SHORT   | LONG    | SHORT   | LONG   | SHORT         | LONG | SHORT          |         |
| (CONTRACTS OF 5,000 TROY OUNCES)                      |        |         |            |         |         |         |        |               |      | OPEN INTEREST: | 178,367 |
| COMMITMENTS   |        |         |            |         |         |         |        |               |      |                |         |
| 85,679  | 41,810 | 11,418  | 52,696     | 112,891 | 149,793 | 166,119 | 28,574 | 12,248        |      |                |         |
| CHANGES FROM 07/07/20 (CHANGE IN OPEN INTEREST:       |        |         |            |         |         |         |        |               |      | 8,854)         |         |
| 4,938   | -1,106 | 1,600   | 252        | 7,805   | 6,790   | 8,299   | 2,064  | 555           |      |                |         |
| PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS |        |         |            |         |         |         |        |               |      |                |         |
| 48.0  | 23.4   | 6.4     | 29.5       | 63.3    | 84.0    | 93.1    | 16.0   | 6.9           |      |                |         |
| NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:    |        |         |            |         |         |         |        |               |      | 225)           |         |
| 110   | 44     | 43      | 37         | 49      | 169     | 118     |        |               |      |                |         |



We commend the Authority's recent reporting on the futures market and market-making services and consider that additional reports similar to the above examples, would facilitate transparency and market development.

In summary, subject to the conditions discussed below, we would support the Authority having access to all participant tick data (and off market trade and open interest data) held by the exchange.

**(c) Clarity on success measures and review**

The Authority is seeking direct access to significantly more data than it is currently entitled to and the consultation paper proposes several beneficial outcomes from the proposal including, better monitoring and reporting and lower compliance costs. We consider that it is important to establish what success looks like, and how this would be measured, reviewed and reported on. As an example, the Authority could publish every 12 months following implementation, a scorecard showing progress against specific KPIs such as compliance costs, time to investigate and closeout complaints, type and number of reports produced (or using measures used by the regulators of other financial markets who have access to, and use, such data). This could also be supported by case studies or examples of proactive compliance action taken, or market development initiatives, where tick data, off-market trade data and/or open interest data played a material role.

**(d) Data provided should be limited to tick data, off-market trade data and open interest data**

We support the Authority's evidence-based approach to regulatory change. Applying this principle, it is difficult to see reasonable evidence that supports granting the Authority the right to access the breadth of information that the Authority is seeking to capture through 13.236AA.

The Authority states in paragraph 6.2 of the consultation paper:

*“There may be other information or data relating to risk management contracts and held by exchange platforms that the Authority is not aware of or that does not yet exist. The Authority’s proposal is to ensure its access to participants’ data is sufficiently wide to capture these potential future data also.”*

We suggest that if there are other categories relevant information or data held by the exchange the Authority is not aware of, it should make enquiries of the exchange (and other regulators of financial markets) to establish what these are, and through the normal consultation process show how such access would benefit our futures market and ultimately consumers. The same principle should apply to new information or categories of information as these are developed.

We consider that access to information that belongs to others should only be granted where the benefits of such access are clear, those benefits outweigh the costs and such access is demonstrated to be consistent with Authority's statutory objective, and promotes one of the objectives in section 15 of the Electricity Industry Act 2010. We do not believe these conditions have been met and, consequently, strongly disagree with the proposal for a broad information access right.

For the reasons set out above, and subject to the conditions outlined in the summary below, Genesis would, however, support the Authority having access to participant tick data, off-market trade data and open interest data held by the exchange.

### **Summary**

We share the Authority's desire for transparency, efficiency and lower compliance costs, and its belief that better access to, and use of, data, can help achieve these objectives. While we understand the objectives and proposed benefits of the Authority's proposal, we have some concerns, including the breadth of the access right, as discussed above.

On balance, and given the potential value to the related Hedge Market Enhancement Project and the anticipated changes to the market making scheme, we support the Authority having access to de-anonymised tick data, off-market trade data and open interest data of all participants held by the exchange, provided that:

- The de-anonymised data of a participant is not disclosed to other participants.
- A participant's de-anonymised trading data cannot be identified or derived from the Authority's market reports or other publications.
- There is an express confidentiality undertaking like that contained in the Electricity Industry Enforcement Regulations 2010 or the NZX Participant Rules which supports the Authority's assurances that there will be appropriate protections and safeguards in place to maintain the security and confidentiality of the data.
- The prescribed form of consent is consulted on (please see discussion in section 4 below).
- The Authority provides clarity on:
  - What the experience has been in other financial markets where regulators have had access to tick data, off-market trade data and open interest data, and who have used it for improving market monitoring, facilitation, enforcement, development and confidence.
  - How the Authority proposes to measure, review and report on whether the greater access has achieved the objectives set out in the consultation paper.



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|---|---|
|   | <p><b>(c) Have the benefits of addressing the issue been correctly articulated? Has the Authority missed any benefits, or are the benefits identified mis-specified?</b></p> <p>Please see comments above.</p>  |
|   | <p><b>(d) How else could the Authority use de-anonymised tick data to better perform its functions for the long-term benefit of consumers?</b></p> <p>Please see comments above.</p>  |
| 2 | <p><b>(a) Are there other options to address this issue that the Authority has not identified? If so, please provide a brief description of the alternative and its merits.</b></p> <p>An alternative would have been to limit the data to executed trades as discussed above. The three options outlined in the paper are, however, the key options.</p> |
|   | <p><b>(b) Has the Authority correctly analysed the options that it has identified? If not, please explain why.</b></p> <p>In relation to the mandatory disclosure option, please see our comments in section 1 above.</p>   |
| 3 | <p><b>(a) Are there any other opportunities the Authority should consider as part of its proposal? If so, please provide a brief description of the opportunity and its merits.</b></p> <p>Please see also our comments in section 1 above concerning success measures and regularly reviewing and reporting on those.</p>                                |
|   | <p><b>(b) Has the Authority correctly analysed the opportunities that it has identified? If not, please explain why.</b></p> <p>We agree that having the data provided directly would materially reduce disclosure compliance costs (both time and cost). Please see also our comments in section 1 above and section 4(a) below.</p>                     |

|                 |   |
|-----------------|---|
|                 | <p><b>(c) Are there any other opportunities the Authority should consider addressing with the proposed code change? If so, please provide a brief description of the opportunity.</b></p>   |
|                 | <p><b>(d) Has the Authority correctly analysed the options that it has identified? If not, please explain why.</b></p> <p>In relation to the mandatory disclosure option, please see our comments in section 1 above.</p>   |
| <p><b>4</b></p> | <p><b>(a) Do you have any feedback on the Authority’s cost benefit analysis set out in Appendix A?</b></p> <p>We suggest that the savings in compliance costs - both in time and cost - by having the data provided directly by the ASX is considerably more than \$2,000 per annum for market makers and more active participants. This is due to the large number of transactions (which we anticipate will continue to increase) and the data preparation and associated processes such as hedge transaction reconciliations.</p> <p>Please see also our comments in section 1 above concerning success measures and reviewing and reporting on those.</p> <p><b>(b) Do you have any feedback on the Regulatory statement in Appendix B?</b></p> <p>No.</p> <p><b>(c) Do you have any feedback on the Code amendment set out in Appendix C?</b></p> <p>We have three material concerns with the draft Code amendment:</p> <ul style="list-style-type: none"> <li>• Clause 13.236AA should be limited to tick data, off-market trade data and open interest data as defined in the consultation paper for the reasons discussed in section 1 above.</li> <li>• We welcome the Authority’s assurances concerning data security set out in the consultation paper. Given those assurances, the Authority should be able to provide an express undertaking, equivalent to that contained in regulation 10 of the Electricity Industry Enforcement Regulations 2010, to protect and maintain the confidentiality of the information provided to it. We note similar undertakings are given by the NZX to NZX market participants under rule 8.3 of the NZX market participant rules.</li> </ul> |

- The prescribed form of consent should be provided for consultation to ensure that the terms of the consent do not require participants to provide unnecessary waivers and indemnities to the ASX and / or the Authority concerning the information provided.

We would be more than happy to discuss how these principles should be reflected in the proposed clause 13.236AA further.