

Improving the framework for the Authority's information gathering

Consultation paper

Submissions close: 5pm 24 August 2021

6 July 2021



Executive summary

An evolving New Zealand electricity market puts increased emphasis on the Electricity Authority (Authority) being well-informed to effectively perform its functions under the Electricity Industry Act 2010 (Act). This is particularly so for the Authority's monitoring functions, which comprise industry and market monitoring, monitoring the operation and effectiveness of market facilitation measures, and compliance monitoring.

To undertake its statutory functions, the Authority collects information through a range of methods. These include voluntary requests for information from industry participants, amendments to the Electricity Industry Participation Code 2010 (Code), and the use of information gathering powers under the Act.

However, the Authority's experience over the past decade is that relying on its current approaches to collecting information on an ongoing basis is failing to provide the Authority with sufficient and timely information to effectively carry out its monitoring functions. It also imposes higher-than-necessary transaction costs on participants and the Authority.

There are important economic costs associated with the Authority collecting insufficient information to perform its monitoring functions effectively. In particular:

- (a) policy initiatives are less likely to be informed from a sound evidence base, which reduces their expected efficiency benefits, and increases the likelihood of revisiting the same policy settings in short order at the opportunity cost of addressing other issues
- (b) there tends to be greater policy uncertainty, which translates into investors requiring a higher rate of return on their investments in the electricity industry.

To address this issue, the Authority proposes to amend the Code to enable the Authority to publish a notice specifying information a participant must provide to the Authority on an ongoing basis. Before publishing such a notice, amongst other things the Authority must consult on a draft of the notice and be satisfied that requiring participants to provide the information specified in the notice furthers the Authority's statutory objective and provides a net benefit.

Important aspects of the proposed Code amendment's objective are to make it easier for industry participants to provide ongoing information to the Authority and for the Authority to engage with participants over requirements for the ongoing provision of information. Consistent with these aspects of the proposed amendment's objective, participants are expected to benefit in several ways under the proposed amendment:

- (a) an improved ability to contribute to determinations of the Authority's information requirements and what information should be collected on an ongoing basis
- (b) an improvement in the quality and design of information requests, making them easier for participants to interpret and respond to
- (c) a more standardised approach to information provision obligations, thereby enhancing regulatory certainty
- (d) improved transparency and clarity around information provision obligations
- (e) reduced transaction costs associated with the mandatory provision of information to the Authority.

The Authority welcomes feedback from interested parties on the proposed Code amendment.

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1 What you need to know to make a submission

What this consultation paper is about

- 1.1 The purpose of this paper is to consult with interested parties on the Authority's proposal to amend the Electricity Industry Participation Code 2010 (Code) to enable the Authority to publish a notice specifying information that a participant must, on a regular basis or because of an identified event, provide to the Authority (proposed amendment).
- 1.2 The collection of the information specified in the notice must be for the purpose of carrying out one or more of the Authority's monitoring functions under the Electricity Industry Act 2010 (Act).
- 1.3 Before publishing such a notice, amongst other things the Authority must consult on a draft of the notice and be satisfied that requiring participants to provide the information specified in the notice furthers the Authority's statutory objective and provides a net benefit.
- 1.4 For participants, the proposed amendment is expected to:
 - (a) improve participants' ability to contribute to determinations of the Authority's information requirements and what information should be collected on an ongoing basis
 - (b) improve the quality and design of information requests, making them easier for participants to interpret and respond to
 - (c) provide a more standardised approach to information provision obligations, thereby enhancing regulatory certainty
 - (d) improve transparency and clarity around information provision obligations
 - (e) reduce transaction costs associated with the mandatory provision of information to the Authority.
- 1.5 The Authority considers the proposed amendment would deliver efficiency benefits over the status quo. In summary, it would promote the efficiency limb of the Authority's statutory objective by:
 - (a) enabling more informed, evidence-based Code development and market facilitation measures
 - (b) improving the durability of market arrangements through, in particular:
 - (i) more timely and higher quality monitoring and commentary
 - (ii) reduced policy uncertainty, particularly through de-politicisation of decision making in the electricity industry
 - (c) lowering the transaction costs associated with mandated information provision.

- 1.6 The proposed amendment is consistent with the Authority’s recent strategy reset,¹ under which the Authority wants consumer centricity to guide regulation and the industry. The proposed amendment assists the Authority to be well-informed in the pursuit of its strategic ambitions—in particular:
- (a) helping unlock the full benefits of innovation for consumers by ensuring that regulatory settings are conducive to innovation and industry success
 - (b) promoting a stable investment environment with robust rules and clear price signals to unlock the potential for more renewable generation and ensure the transition to a low carbon electricity industry is as efficient as possible.
- 1.7 Section 39(1)(c) of the Act requires the Authority to consult on any proposed amendment to the Code and corresponding regulatory statement. Section 39(2) provides that the regulatory statement must include a statement of the objectives of the proposed amendment, an evaluation of the costs and benefits of the proposed amendment, and an evaluation of alternative means of achieving the objectives of the proposed amendment. The regulatory statement is set out in section 3 of this paper.

How to make a submission

- 1.8 The Authority’s preference is to receive submissions in electronic format (Microsoft Word) in the format shown in Appendix B. Submissions in electronic form should be emailed to infoframework@ea.govt.nz with “Consultation Paper—Improving the framework for the Authority’s information gathering” in the subject line.
- 1.9 If you cannot send your submission electronically, please contact the Authority (infoframework@ea.govt.nz or 04 460 8860) to discuss alternative arrangements.
- 1.10 Please note the Authority intends to publish all submissions it receives. If you consider that the Authority should not publish any part of your submission, please:
- (a) indicate which part should not be published
 - (b) explain why you consider the Authority should not publish that part, and
 - (c) provide a version of your submission that the Authority can publish (if it agrees not to publish your full submission).
- 1.11 If you indicate there is a part of your submission that should not be published, the Authority will discuss with you before deciding whether to not publish that part of your submission.
- 1.12 However, please note that all submissions received by the Authority, including any parts that the Authority does not publish, can be requested under the Official Information Act 1982. This means the Authority would be required to release material not published unless good reason existed under the Official Information Act to withhold it. The Authority would normally consult with you before releasing any material that you said should not be published.

¹ See <https://www.ea.govt.nz/about-us/strategic-planning-and-reporting/strategy-reset-2020/>.

When to make a submission

- 1.13 Please deliver your submission by **5pm** on Tuesday, **24 August 2021**.
- 1.14 Authority staff will acknowledge receipt of all submissions electronically. Please contact the Authority (infoframework@ea.govt.nz or 04 460 8860) if you do not receive electronic acknowledgement of your submission within two business days.

2 The issue the Authority would like to address

The Authority's information gathering framework is missing an important element

- 2.1 The Authority collects information through a range of methods to undertake its functions. These methods of collection range from the informal sharing of anecdotal insights through to voluntary requests for information by the Authority, the making of Code, and the use of the information gathering powers under section 46 of the Act. In each case the goal is to use a method fit for the purpose at hand (eg, requests for voluntary information provision, the formality of a section 46 information request).
- 2.2 However, the Authority's information gathering framework is missing an important element, which is inhibiting the Authority's ability to effectively undertake its monitoring functions. The missing element is an effective method to efficiently gather regular or event-driven information from participants on an ongoing basis. The method needs to be efficient for both the Authority and participants.

The Authority needs to be well-informed to perform its functions effectively

- 2.3 The Authority needs to be well-informed to perform its statutory functions effectively. This is particularly so for the Authority's monitoring functions, which are:
- (a) to undertake industry and market monitoring, and carry out and make publicly available reviews, studies and inquiries into any matter relating to the electricity industry²
 - (b) to monitor the operation and effectiveness of market facilitation measures (such as providing education, guidelines, information, and model arrangements)³
 - (c) to monitor industry participants' compliance with:
 - (i) the Act (including Part 3 of the Act),
 - (ii) the regulations made under the Act, and
 - (iii) the Code.⁴
- 2.4 The main reasons for monitoring are:
- (a) to identify possible improvements to electricity market arrangements that promote competition, reliability and efficiency, for the long-term benefit of consumers (the Authority's monitoring functions inform the design of market facilitation measures and the making and administering of the Code, along with the prioritisation given to these initiatives⁵)
 - (b) to produce accurate and independent commentary about the state of the electricity market—ie, the competitiveness of the market, the reliability of electricity supply under the market arrangements, and the efficiency of the market.

² Refer to section 16(1)(g) of the Act.

³ Refer to section 16(1)(f) of the Act.

⁴ Refer to section 16(1)(c) of the Act.

⁵ Refer to section 16(1)(b) of the Act.

- 2.5 To effectively perform its functions and monitor the market over time, the Authority requires accurate, timely, and consistent information that is sufficiently complete
- (a) to inform a reasonable view of how the electricity market is performing for the long-term benefit of consumers
 - (b) to enable the Authority to identify exceptions or outliers in the performance of the market.

Current arrangements for collecting information for monitoring

- 2.6 To fulfil its monitoring functions and to inform the making and administering of the Code, the Authority tends to collect information from industry participants using three approaches.
- 2.7 First, the Authority relies on requirements in the Act, regulations made under the Act, and the Code for industry participants, including market operation service providers, to make information available. Examples of information collected under this approach include installation control point (ICP) switches obtained from the registry, the ex-post publication of bids and offers, wholesale information disclosure, hedge disclosure, and stress testing results.
- 2.8 Second, the Authority relies on the voluntary provision of information by industry participants in response to requests made by the Authority. The most prominent example of this approach is the Authority's annual retail information request that has been undertaken every year since 2011.
- 2.9 Third, the Act grants the Authority the power to collect information from participants. Under section 46 of the Act, the Authority may require an industry participant to provide information to the Authority for the purpose of:
- (a) carrying out the Authority's monitoring functions⁶
 - (b) carrying out the Authority's function of investigating breaches or possible breaches of, and enforcing compliance with—
 - (i) Parts 2 and 4 of the Act
 - (ii) regulations made under the Act
 - (iii) the Code.⁷
- 2.10 Increasingly, the Authority has used its powers under section 46 of the Act to require participants to provide information necessary for the Authority to undertake its functions—in particular, its industry and market monitoring functions. A current example is the regular and ongoing collection of information from industry participants on the extent to which residential and commercial customers are having difficulty paying for their electricity, and the financial impact this has on electricity retailers.

⁶ Ie, sections 16(1)(c), 16(1)(f) and 16(1)(g) of the Act.

⁷ Refer to section 16(1)(d) of the Act.

Shortcomings in current arrangements for collecting information for monitoring

- 2.11 Relying on the above three approaches to collect information on an ongoing basis does not always provide the Authority with sufficient and timely information to effectively carry out its monitoring functions. It also imposes higher-than-necessary transaction costs on participants and the Authority.
- 2.12 In summary:
- (a) under the first of the three approaches described above, the information provided to the Authority stems from diverse purposes that collectively do not provide the information necessary for the Authority to effectively undertake its monitoring functions
 - (b) the second and third approaches described above do not readily enable information to be provided to the Authority on an ongoing basis that is regular, timely, systematic, and low transaction cost via automated delivery, receipt and processing.

Existing regulatory obligations do not provide sufficient information

- 2.13 Existing regulatory obligations, particularly Code obligations, provide the Authority with a significant amount of information about electricity traded in the wholesale market. However, existing regulatory obligations do not provide the Authority with the same level of information about electricity traded in the retail market, especially in relation to:
- (a) consumer choices and preferences
 - (b) consumer engagement with the electricity products and services offered to them
 - (c) the outcomes provided to consumers by current electricity market settings.
- 2.14 This represents a material shortcoming in the Authority's ability to effectively monitor the retail aspect of the electricity industry. Under the Authority's recent strategy reset,⁸ the Authority wants consumer centricity to guide regulation and the industry. In addition, more activity is occurring at increasing scale within the retail market and will continue to do so as technology is deployed and new business models evolve. The Authority needs to ensure it is sufficiently informed as the market evolves, to successfully perform its functions..
- 2.15 The Authority could make Code for each individual information need, requiring participants to provide information to it either directly or via market systems. However, this approach:
- (a) is relatively expensive
 - (b) increases the possibility of non-standardised information requirements being implemented over time
 - (c) can take a long time to implement if it involves changes to market systems
 - (d) makes the Code harder to read and understand.

⁸ See <https://www.ea.govt.nz/about-us/strategic-planning-and-reporting/strategy-reset-2020/>.

Voluntary ongoing information provision has drawbacks

- 2.16 The Authority collects a material amount of information from participants responding voluntarily to one-off information requests from the Authority.
- 2.17 However, asking participants to provide ongoing information to the Authority voluntarily has its drawbacks.
- 2.18 Industry participants must decide whether to provide the information voluntarily, which typically requires, amongst other things, more consideration and upward delegation in their organisations than a mandatory requirement to provide information.
- 2.19 If participants do not readily provide the information, both the Authority and the participant face additional transaction costs as the information request is followed up and escalated.
- 2.20 The Authority encounters instances of industry participants refusing to voluntarily supply information to it for industry and market monitoring. This impacts the completeness and therefore value of the information to the Authority.
- 2.21 Some participants provide unconsidered or indifferent responses to the Authority's requests for information to be provided voluntarily. This lack of diligence reduces the quality and consistency of information provided to the Authority and, for ongoing information, reduces the usefulness of time series data to inform monitoring of evolving trends.
- 2.22 Repeated voluntary requests for identical information over time does not encourage automation or standardisation of reporting as the approach lacks certainty that the requests will continue or continue without change.

Using section 46 of the Act for ongoing information provision also has drawbacks

- 2.23 Section 46 of the Act is a useful method to collect information. This includes supporting one-off requests from the Authority for participants to provide information voluntarily. However, using section 46 to collect ongoing information for the Authority's monitoring functions also has shortcomings. In particular:
 - (a) typically, this approach is reactive in nature, meaning the Authority has little or no time to engage with industry participants to refine the information sought and to assess the benefits and costs of obtaining the information
 - (b) section 46 information requests do not easily lend themselves to the use of standardised data formats and data transfer protocols, which can increase the transaction costs of this approach.

The missing element in the Authority's information gathering framework

- 2.24 After considering the shortcomings in the current arrangements for ongoing collection of information for monitoring, the Authority's view is that amending the Code to insert an additional element in the Authority's information gathering framework would promote the Authority's statutory objective.

- 2.25 This additional element is the transparent and structured collection of information by the Authority from industry participants, via a consultative process that ensures the Authority:
- (a) explains to interested parties why information is being sought
 - (b) seeks feedback from participants on the information to be collected, including interpretation, appropriate terminology, and any points of confusion in relation to the information sought
 - (c) seeks feedback from participants on their capability to provide the information sought via the proposed means of provision
 - (d) requires participants to provide information to the Authority, only if this furthers the Authority's statutory objective and provides a net benefit.

Why the Authority is addressing this issue now

- 2.26 The information required by the Authority to effectively fulfil its statutory functions is growing over time. This growing requirement reflects:
- (a) the evolving electricity sector, including more and lower cost technologies
 - (b) broader changes in the economy.
- 2.27 Significant evolution in the electricity sector is being driven by the uptake and deployment of emerging technologies. These changes will have an increasingly material effect on the behaviour of consumers and participants in the coming years. The traditional distinction between retail and wholesale market arrangements will be disrupted as distributed energy resources increasingly play a role in the wholesale electricity market. These distributed energy resources also offer value for network deferral and support quality and system security.
- 2.28 The Authority needs to be well-informed to meet its ambition of helping unlock the full benefits of innovation for consumers by ensuring regulatory settings are conducive to innovation and industry success.⁹
- 2.29 The decarbonisation of the economy will bring about new opportunities and challenges for the electricity industry. The Authority wants to promote a stable investment environment with robust rules and clear price signals to unlock the potential for more renewable generation and ensure the transition to a low carbon electricity industry is as efficient as possible.¹⁰ The Authority needs to be well-informed to achieve this.
- 2.30 The Authority's strategy reset also requires an evolution in the Authority's collection of ongoing information for its monitoring functions. The Authority wants to be well-informed and agile not only in relation to changes in the electricity industry, but also in relation to shocks to the industry—whether unexpected, such as COVID-19, or expected, such as the planned retirement of coal-fired generation.

⁹ *Ibid*

¹⁰ *Ibid*

2.31 Given these drivers, the Authority considers it is an appropriate time to improve its information gathering framework. In the absence of this proposed amendment, the Authority anticipates more bespoke information-gathering amendments to the Code and greater use of section 46 information requests. The Authority considers these to be less efficient approaches to collecting information than the proposed amendment.

Q1. Do you agree the issue identified by the Authority is worthy of attention?

3 Regulatory statement for the proposed amendment

Objective of the proposed amendment

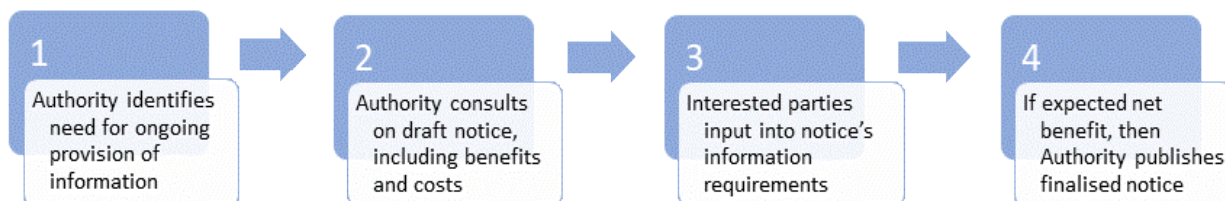
- 3.1 The objective of the proposed Code amendment is:
- (a) to better enable the Authority to fulfil its monitoring functions by collecting the ongoing information it needs from industry participants using a more efficient approach than under the Authority’s current information gathering framework, and
 - (b) to require the Authority to engage with participants over the collection of ongoing information through consultation, including an obligation to be satisfied the benefits of the Authority obtaining the information outweigh the costs.

Q2. Do you agree with the objective of the proposed amendment? If not, why not?

The proposed amendment

Figure 1: Summary of the process to be followed under the proposed amendment

Summary of process to be followed in preparing a notice requiring the provision of regular and event-driven information



- 3.2 The Authority proposes to amend Part 2 of the Code to update the framework for gathering information from industry participants for the purpose of enabling the Authority to effectively undertake its monitoring functions.
- 3.3 The proposed Code amendment would enable the Authority to publish a notice specifying information a participant must, on a regular basis¹¹ or because of an identified event,¹² provide to the Authority in a specified manner.

¹¹ For example, the existing provision of:

- retail information annually, and
- the monthly provision of information on the extent to which residential and commercial customers are having difficulty paying for their electricity, and the financial impact this has on electricity retailers.

¹² A possible example might be the provision of information by generators re-rating their generating units.

- 3.4 Any information to be collected must be for the purpose of carrying out one or more of the following Authority statutory functions:
- (a) to undertake industry and market monitoring, and carry out and make publicly available reviews, studies, and inquiries into any matter relating to the electricity industry
 - (b) to monitor the operation and effectiveness of market facilitation measures
 - (c) to monitor compliance with the Act, the regulations made under the Act, and the Code.
- 3.5 The Authority must consult with participants to whom a notice is proposed to apply, on the following matters:
- (a) the proposed notice
 - (b) the purpose of the information requirements in the proposed notice
 - (c) the Authority's assessment of whether there is a net benefit from the Authority obtaining the information required in the proposed notice.
- 3.6 The Authority will prepare a privacy impact assessment for any proposed notice specifying information that has the potential to be personal information.
- 3.7 Consulting on a proposed notice would:
- (a) provide participants with an opportunity to inform the Authority of, amongst other things:
 - (i) omitted information that would be of high value to the Authority in fulfilling its monitoring functions
 - (ii) alternative information options or sources of similar information the Authority has not considered, which may fulfil its needs
 - (iii) improved descriptions of the requested information that avoid confusion and improve the quality of the information provided to the Authority
 - (iv) difficulties providing the information (eg, it is not readily accessible)
 - (v) the costs and benefits of collecting the information, including identifying information that would be unlikely to deliver the expected benefit assessed by the Authority
 - (vi) the benefits to participants and other interested parties of the Authority's analysis and reporting of the information proposed to be collected
 - (b) provide an opportunity for the Authority to work with industry participants to maximise the efficiency of the manner in which information is provided (eg, standardised and automated data collection processes).
- 3.8 While the Authority often consults on information gathering requests, it is not always obliged to do so—eg, under section 46 of the Act.

- 3.9 Under the proposed amendment, before finalising and publishing a notice the Authority must:
- (a) be satisfied the benefits of the Authority obtaining the information outweigh the costs of the information requirements set out in the proposed notice
 - (b) be satisfied the information requirements set out in the proposed notice promote the Authority's statutory objective
 - (c) consider the impact of the proposed information requirements on each participant to whom it is proposed the notice apply.
- 3.10 The Authority does not envisage the proposed Code amendment being a substitute for existing provisions in the Code that require the provision or disclosure of information. This is because most of these provisions are intrinsic to market processes. However, for some of these existing Code provisions, and similar provisions proposed in the future, the Authority may consult with stakeholders over the benefits and costs of leveraging the standardised processes put in place through notices issued under the proposed amendment.
- 3.11 Alongside the proposed Code amendment, the Authority would prepare and publish a guideline on its processes, procedures and decision criteria for:
- (a) determining whether information identified by a participant is confidential
 - (b) determining whether to make confidential information publicly available
 - (c) determining whether to disclose confidential information.
- 3.12 Appendix A contains the drafting of the proposed Code amendment.

The proposed amendment's benefits are expected to outweigh the costs

- 3.13 The Authority has assessed the economic benefits and costs of the proposed Code amendment and expects it to deliver a net economic benefit.
- 3.14 Relative to the status quo arrangements under which the Authority collects information for its monitoring functions:
- (a) the proposed amendment's expected benefits are as follows:
 - (i) enabling better informed Code development and market facilitation measures
 - (ii) improving the durability of the electricity market arrangements
 - (iii) reducing transaction costs currently incurred through information collection
 - (b) the proposed amendment's expected costs are as follows:
 - (i) the cost for the Authority to consult with interested parties on requests for participants to provide information to the Authority on an ongoing basis
 - (ii) the cost for interested parties to respond to the Authority's consultations on requests for participants to provide information on an ongoing basis.
- 3.15 Table 1 summarises the expected economic benefits and costs of the proposed amendment relative to the counterfactual of the Authority collecting information on an ongoing basis using its existing information gathering framework.

Table 1: Summary of the proposed amendment's expected benefits and costs

Benefit / Cost	Magnitude of benefit / cost
The benefit from improving the durability of the electricity market arrangements	Expected to be material
The benefit from better informed Code development, market facilitation measures and policy making	Expected to be material
The benefit from reducing transaction costs currently incurred through regular information collection	Expected to be modest
The cost to implement the proposed amendment (Authority processes and procedures)	Expected to be negligible
The ongoing cost for the Authority to operate under the proposed amendment	Expected to be modest
The ongoing cost for industry participants to operate under the proposed amendment	Expected to be modest
Expected net benefit	In the range of modest to material

Efficiency benefits are expected through better informed Code development, market facilitation measures and government policy making

- 3.16 The Authority expects the proposed amendment would mean better informed Code development, market facilitation measures, and policy making. This benefit would stem from the Authority collecting improved and more consistent information under the proposed amendment than currently.
- 3.17 Information collected through the Authority's monitoring functions informs market development by helping to answer two questions:
- (a) are changes to the market arrangements needed?
 - (b) is a change to the market arrangements delivering the necessary competition, reliability and efficiency outcomes (eg, monitor retail market performance)?
- 3.18 New Zealand's electricity industry rules / arrangements need to evolve over time as changes occur to the structure of the industry and to the technologies used in the industry. The proposed amendment would facilitate the Authority having the information necessary for it to better understand what market arrangements are not fit-for-purpose as the electricity industry evolves, and therefore not delivering long-term benefits to consumers through competition, reliability and efficiency.
- 3.19 The proposed amendment would reduce the risk of the Authority progressing initiatives that are imperfectly targeted or have consequences that go unrecognised.

- 3.20 Improved access to quality information on the electricity industry provides the Authority and electricity industry stakeholders a basis upon which to:
- (a) identify areas where Code amendments or market facilitation measures may be needed to improve competition, reliability, and/or efficiency
 - (b) assess and prioritise Code amendment proposals and market facilitation measures
 - (c) have a better understanding of how consumers might respond to, or be affected by, Code amendments or market facilitation measures
 - (d) identify areas where government policy change is desirable.
- 3.21 This proposed amendment promotes all three limbs of the Authority's statutory objective.

Efficiency benefits are expected from improved durability of market arrangements

- 3.22 The Authority expects the proposed amendment would also improve the durability of New Zealand's electricity market arrangements.
- 3.23 The durability of these arrangements rests on them operating for the long-term benefit of consumers. This requires well-informed Code development, market facilitation measures, and policy making, as discussed under the preceding benefit. The durability of New Zealand's electricity market arrangements also requires consumers to be confident the market arrangements are benefiting them. Investors in the electricity industry also need to be confident they are operating on a level and competitive playing field.
- 3.24 Under its functions of industry and market monitoring and the monitoring of market facilitation measures, the Authority publishes reports, analyses, and various information (eg, through its EMI website¹³) on the state of the electricity market.
- 3.25 Objective, high quality, timely information is important in assisting consumers, investors, policy makers and other interested parties to understand the state of competition, reliability and efficiency in the electricity industry. High quality information, monitoring, and commentary is also important in enabling electricity industry stakeholders to make well-informed decisions.¹⁴ The more well-informed such decisions are, the greater the expected economic value attached to the decisions.
- 3.26 The proposed amendment facilitates the ongoing collection of higher quality information. This would better enable the Authority to provide consumers, participants and market observers¹⁵ with a more accurate analysis of the state of the electricity market and its performance. The Authority would also be better able to accurately answer questions about the extent to which the electricity market arrangements are working and better prioritise areas where they can be improved.

¹³ Refer to <http://emi.ea.govt.nz/>.

¹⁴ Better-informed rules and market facilitation measures made by the Authority also result in participants making decisions that are more economically beneficial. This is because many decisions made by participants are in response to the rules and market facilitation measures made by the Authority.

¹⁵ Market observers include academics, consultancies, research institutions, politicians, and energy services businesses.

- 3.27 More generally, with better information the Authority would be able to communicate with consumers, participants and industry observers in a way that:
- (a) is easier for them to understand and more meaningful to them
 - (b) provides them with confidence in the market arrangements, increasing their willingness to engage in industry matters and helping inform their electricity-related decisions.

Efficiency benefits are expected from reducing transaction costs currently incurred in the collection of information

- 3.28 The Authority considers the proposed amendment would reduce, by a modest amount, the transaction costs currently incurred by the Authority and participants through the collection of information—particularly information collected on an ongoing basis.

Lower transaction costs due to standardised information collection

- 3.29 Under the Authority’s current approach to collecting information under section 46 of the Act, the Authority and participants incur transaction costs that would not be incurred under the proposed amendment.
- 3.30 For the Authority, these avoidable transaction costs comprise one-off and ongoing costs, including:
- (a) preparing and making each individual information request
 - (b) answering queries from participants about the information request
 - (c) following up each individual information request
 - (d) clarifying, collating and processing data provided in different formats by respondents.

- 3.31 For participants, these avoidable transaction costs comprise one-off costs associated with interpreting and clarifying information requirements that are not as well specified as they could be due to the typically ad-hoc and reactionary nature of information requests made under section 46 of the Act. Some participants also incur avoidable transaction costs through the data provision channels used for section 46 information requests not being as efficient (ie, standardised and automated) as they could be.

- 3.32 The Authority estimates the saving in these transaction costs would be modest. This is based on the Authority’s experience with the current section 46 information request relating to the collection from industry participants of information on the extent to which residential and commercial customers are having difficulty paying for their electricity, and the financial impact this has on electricity retailers.

Lower transaction costs due to mandated regular information provision

- 3.33 Requests the Authority makes for information to be provided regularly on a voluntary basis typically have higher associated transaction costs than mandated requirements to provide information regularly. With the former, industry participants must decide whether to provide the information voluntarily, which typically requires, amongst other things, more consideration and upward delegation in a participant’s organisation. These transaction costs are not present under information provision mandated by the Act, regulations made under the Act, or the Code.

- 3.34 Mandated and standardised approaches encourage automation and other efficiency improvements in the collection of information. Voluntary approaches to collecting information often fail to provide sufficient certainty and stability in relation to the request to support investment in improved processes or automation.
- 3.35 If participants do not voluntarily provide the requested information, the Authority faces transaction costs associated with following up the request, with multiple follow ups sometimes required.
- 3.36 Based on its experience and discussions with participants over time, the Authority estimates the benefit from participants and the Authority incurring lower transaction costs under mandated ongoing information provision would be modest.
- 3.37 The Authority considers the proposed amendment will also reduce transaction costs by providing participants, and potential new entrants, with greater transparency and certainty of the information participants are asked to provide the Authority. Participants looking to change their systems and processes to accommodate the Authority's existing voluntary information requests should have greater confidence the Authority will not cease these requests in an ad hoc manner.

The Authority and participants will incur ongoing operating costs under the proposed amendment

- 3.38 As noted above, the proposed amendment would require the Authority to consult with participants to whom a notice is proposed to apply, on the following matters:
- (a) the purpose of the information requirements in the proposed notice
 - (b) the proposed notice that sets out the information requirements (who must provide what, how often, when, and using what manner of provision)
 - (c) the Authority's assessment of whether there is a net benefit from the Authority obtaining the information required in the proposed notice.
- 3.39 The Authority estimates the average incremental cost of these consultations for the Authority and participants would be modest. This is based on the number and type of submissions the Authority has received on consultations it considers to be of a reasonably similar nature.¹⁶

Q3. Do you agree the benefits of the proposed amendment outweigh its costs?

¹⁶ Being consultations on: the consumer care guidelines; the electricity information exchange protocols (EIEPs); the operational review of registry content codes; the review of metering and related registry processes; the switch process review; access to the registry and the wholesale information and trading system (WITS); and integrating hosting capability into Part 6 of the Code.

The Authority has identified two other options to address the objective

- 3.40 The Authority has identified two other means for addressing the proposed Code amendment's objective:
- (a) amend the Code to fill any gaps in information necessary for the Authority to effectively undertake its monitoring functions
 - (b) rely on section 46 of the Act to fill any gaps in information necessary for the Authority to effectively undertake its monitoring functions.

The proposed amendment is preferred to the other identified options

- 3.41 The Authority has evaluated the two other identified means for addressing the objective and prefers the proposed amendment.

Option 1: Amend the Code to fill any gaps in information necessary for effective monitoring

- 3.42 Under Option 1 the Authority would rely on bespoke Code amendments to fill any gaps in the information it requires to effectively undertake its monitoring functions.
- 3.43 The information to be collected via such Code amendments would mirror the information to be collected via notices issued under the proposed amendment.
- 3.44 Typically, new Code obligations relating to the provision of information are a component of a Code amendment rather than being the reason for the Code amendment. Part of the reason for this is the relatively high transaction cost associated with making new Code.
- 3.45 Under Option 1 there is an increased possibility of non-standardised information requirements being implemented over time. This is because the Code amendments may end up addressing supplementary issues that result in some bespoke information requirements.
- 3.46 Option 1 would also be more likely to result in non-standardised information requirements that are contained in provisions spread throughout the Code. This would make it harder for participants to read and understand their Code obligations relating to the ongoing provision of information to the Authority.
- 3.47 On the basis that Option 1 is expected to realise similar economic benefits to the proposed amendment, the Authority has concluded that the proposed amendment's lower transaction costs relative to Option 1 mean the proposed amendment would have a higher net benefit than Option 1.

Option 2: Rely on section 46 of the Act to fill any gaps in information necessary for effective monitoring

- 3.48 Under Option 2 the Authority would rely on section 46 of the Act to fill any gaps in the information it needed to effectively undertake its monitoring functions.
- 3.49 The Authority would revise its approach to section 46 information requests. It would use the approach in the proposed amendment for information it wanted to collect from participants on a regular basis or because of an identified event. This would include the Authority specifying the manner in which participants should provide the information.

- 3.50 The Authority would publish this approach in guidelines, to inform interested parties and in the interests of being open and transparent. These guidelines would be akin to the Authority's guidelines on the consideration of undesirable trading situation (UTS) claims.¹⁷
- 3.51 It would not be appropriate to apply the approach in the proposed amendment to all information requests under section 46 of the Act. This is because time can be critical for the collection of some information, meaning a section 46 information request is more appropriate for one-off requests investigating market events (eg, information collected to assist the Authority's assessment of a UTS claim).
- 3.52 Having considered Option 2, the Authority prefers the proposed amendment. The Authority considers Option 2 would realise approximately the same economic benefit as the proposed amendment but would have slightly higher transaction costs. The Authority also considers stakeholders would have greater regulatory certainty if obligations on the Authority were placed in the Code rather than in internal procedures and guidelines.
- 3.53 At a minimum, under the proposed amendment any proposed change to the information gathering framework would require the Authority to consult with interested parties via a Code amendment proposal. This would not be the case under Option 2, with internal procedures reflected in published guidelines.

Q4. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.

¹⁷ Refer to the Authority's document titled 'Guidelines for Participants on Undesirable Trading Situations', available at <https://www.ea.govt.nz/assets/dms-assets/8/8960Guidelines-for-participants-on-UTS.pdf>.

The proposed amendment complies with section 32(1) of the Act

3.54 The Authority’s objective under section 15 of the Act is to promote competition in, reliable supply by, and efficient operation of, the electricity industry for the long-term benefit of consumers.

3.55 Section 32(1) of the Act says the Code may contain any provisions that are consistent with the Authority’s objective and are necessary or desirable to promote one or all of the following:

Table 2: How the proposed amendment complies with section 32(1) of the Act

(a) competition in the electricity industry;	The proposed amendment improves the durability of market arrangements and better enables more informed Code development and market facilitation measures.
(b) the reliable supply of electricity to consumers;	The proposed amendment improves the durability of market arrangements and better enables more informed Code development and market facilitation measures.
(c) the efficient operation of the electricity industry;	The proposed amendment improves the durability of market arrangements and better enables more informed Code development and market facilitation measures. The proposed amendment reduces transaction costs associated with providing information to the Authority regularly.
(d) the performance by the Authority of its functions;	The proposed amendment will improve the Authority’s performance of its statutory functions.
(e) any other matter specifically referred to in this Act as a matter for inclusion in the Code.	The proposed amendment will not materially affect any other matter specifically referred to in the Act for inclusion in the Code.

Q5. Do you agree the Authority’s proposed amendment complies with section 32(1) of the Act?

The Authority has given regard to the Code amendment principles

3.56 When considering amendments to the Code, the Authority is required by its Consultation Charter¹⁸ to have regard to the following Code amendment principles, to the extent it considers them to be applicable. Table 3 describes the Authority’s regard for the Code amendment principles in the preparation of the proposed amendment.

Table 3: Regard for Code amendment principles

Principle	Comment
1. Lawful	The proposed amendment is lawful and is consistent with the statutory objective (see section 3) and with the empowering provisions of the Act.
2. Provides clearly identified efficiency gains or addresses market or regulatory failure	The efficiency gains are set out in the evaluation of the costs and benefits (section 3).
3. Net benefits are quantified	The extent to which the Authority has been able to estimate the efficiency gains is set out in the evaluation of the costs and benefits (section 3).
4. Preference for small-scale ‘trial and error’ options	Not applicable.
5. Preference for greater competition	Not applicable.
6. Preference for market solutions	Not applicable.
7. Preference for flexibility to allow innovation	Not applicable.
8. Preference for non-prescriptive options	Not applicable.
9. Risk reporting	Not applicable.

¹⁸ The consultation charter is one of the Authority’s foundation documents and is available at: <http://www.ea.govt.nz/about-us/documents-publications/foundation-documents/>.

Appendix A Proposed Code amendment

A.1 Set out below is the proposed Code amendment.

Part 2

Availability of Code information

Contents

Power to request Code information

2.1 Requests for Code information

Information held by the Authority

2.2 Information held by Authority

Information held by other participants

2.3 Information not held by Authority

2.4 Authority must contact participant believed to hold requested information

2.5 Participant must consider request

2.6 Code information should be made available to all participants unless good reason

2.7 Other reasons

2.8 Transfer of requests

2.9 Participants must not enter contracts that prejudice supply of Code information

2.10 Decision about supplying information

2.11 Process if participant agrees to supply information

2.12 Charges payable

2.13 Documents may include deletions

2.14 Process if participant refuses to supply information

2.15 Appeal

Regular and event-driven provision of information to the Authority

2.16 Authority may specify information that participants must collect, collate and/or provide regularly or in response to events

2.17 Requirements that the Authority must or may set in a notice under clause 2.16

2.18 Authority must consult before publishing notice

2.19 Factors the Authority must take into account before publishing notice

2.20 Participants must provide information to Authority

2.21 Participants may identify confidential information

2.22 Authority may amend notice

...

2.16 Authority may specify information that participants must collect, collate and provide regularly or in response to events

- (1) The Authority may publish a notice specifying information that a participant must, on a regular basis or as a result of an identified event, provide to the Authority.
- (2) The Authority may specify information under subclause (1) only for the purposes set out in section 45(a) of the Act being to carry out the Authority's monitoring functions which are to:
 - (a) monitor compliance with the Act, the regulations and the Code under section 16(1)(c) of the Act; or
 - (b) undertake and monitor the operation and effectiveness of market-facilitation measures under section 16(1)(f) of the Act; or
 - (c) undertake industry and market monitoring, and carry out and make publicly available reviews, studies, and inquiries into any matter relating to the electricity industry, under section 16(1)(g) of the Act.
- (3) The Authority may not specify information under subclause (1) for the purpose of investigating or enforcing compliance with the Act, the regulations and the Code except that it may use information obtained under a notice published under subclause (1) in the course of making a decision to appoint an investigator under regulation 12 of the Electricity Industry (Enforcement) Regulations 2010.

2.17 Requirements that the Authority must or may set in a notice under clause 2.16

- (1) In a notice published under clause 2.16, the Authority must specify the following information requirements:
 - (a) the participant who must provide the information:
 - (b) the information the Authority requires the participant to provide, to a reasonable level of detail:
 - (c) either:
 - (i) the time and/or the frequency at which the participant must provide the information to the Authority; or
 - (ii) the event following which the participant must provide the information to the Authority and the time by which the participant must provide the information:
 - (d) the manner in which the participant must provide the information to the Authority;
 - (e) the date from which the notice applies, which can be different dates for different participants.
- (2) In a notice published under clause 2.16, the Authority may specify 1 or more standard formats in which the participant must provide the information to the Authority.

2.18 Authority must consult before publishing notice

- (1) Before publishing a notice under clause 2.16, the Authority must provide to the participant to whom the proposed notice applies:
 - (a) the proposed notice; and
 - (b) the Authority's purpose in setting the information requirements in the proposed notice; and
 - (c) the Authority's assessment of the likely benefits of the Authority obtaining the information required in the proposed notice and whether those benefits are expected to outweigh the likely costs.

- (2) The Authority must give that **participant** a reasonable opportunity to make submissions to the **Authority** on the proposed notice and take into account those submissions in deciding whether to:
 - (a) make any reasonable changes to the information requirements to be included in the **published notice**; and
 - (b) **publish** the notice.
- (3) If, following the consideration of submissions under subclause (2), the **Authority** proposes to extend the number of **participants** to whom it proposes the notice will apply, the **Authority** must consult with those additional **participants** following the process in subclause (1) if it has not already.

2.19 Factors the Authority must consider before publishing notice

- (1) Before **publishing** a notice under clause 2.16, the **Authority** must be satisfied that—
 - (a) the benefits of the **Authority** obtaining the information outweigh the costs of the information requirements set out in the proposed notice; and
 - (b) the information requirements set out in the proposed notice promote the **Authority's** objective set out in section 15 of the Act.
- (2) Before publishing a notice under clause 2.16, the **Authority** must consider the impact of the proposed information requirements on each **participant** to whom it is proposed the notice apply.

2.20 Participants must provide information to Authority

- (1) If the **Authority publishes** a notice under clause 2.16, each **participant** to whom the notice applies must—
 - (a) collect and record the information specified in the notice; and
 - (b) collate from its own systems, records and/or information the information specified in the notice; and
 - (c) provide to the **Authority** the information specified in the notice; and
 - (d) meet the other information requirements specified in the notice.
- (2) A **participant** does not need to provide any information to the **Authority** under subclause (1)(c) if—
 - (a) the **participant** has legal professional privilege in respect of the information; or
 - (b) it is not reasonably possible for the **participant** to obtain that information, including because the person that holds the information may lawfully refuse to provide the information to the **participant**.

2.21 Participants may identify confidential information

- (1) In supplying information under clause 2.16, a **participant** may identify any information for which confidentiality is sought by reason that—
 - (a) disclosure of the information would unreasonably prejudice the commercial position of the **participant** (or the person who is the subject of that information); or
 - (b) confidentiality is necessary to protect information which is itself subject to an obligation of confidence; or
 - (c) if clause 2.20 did not apply, disclosure of the information by the **participant** would be in breach of law.
- (2) If a **participant** identifies to the **Authority** any information under subclause (1), the **Authority** will determine whether—
 - (a) there are reasons for keeping the information confidential; and
 - (b) if there are reasons to keep the information confidential as determined by the **Authority**, these reasons are outweighed by other considerations which render it

desirable, in order to give effect to the objective of the **Authority** in section 15 of the Act or for the purposes of any of the **Authority's** functions in section 16 of the Act or section 14 of the Crown Entities Act 2004, for the **Authority** to make all or any part of the information publicly available.

- (3) If the **Authority** does not consider under subclause 2(a) that there are reasons for keeping the information confidential or it considers that it is desirable under subclause 2(b) to make all or any part of the information publicly available, the **Authority** is not required to keep the information confidential.
- (4) If the **Authority** considers under subclause 2(a) that there are reasons for keeping the information confidential and does not consider that it is desirable under subclause 2(b) to make all or any part of the information publicly available, subject to subclause (5), the **Authority** must keep the information identified by a **participant** under subclause (1) confidential.
- (5) Subclause (4) does not prevent the **Authority** from—
 - (a) using the information identified under subclause (1) for any purpose in connection with the objective set out in section 15 of the Act or the **Authority's** functions in section 16 of the Act or section 14 of the Crown Entities Act 2004; and
 - (b) disclosing the information to any person in connection with a purpose referred to in paragraph (a) in anonymised form or in consolidated form with other information such that the reasons for keeping the information confidential are not compromised; and
 - (c) disclosing the information where the **participant** who supplied the information either:
 - (i) has consented specifically to the disclosure of that information; or
 - (ii) has consented generally to the disclosure, even where the **participant** identifies the information as confidential under clause 2.21(1), of:
 - (A) information specified in the notice **published** under clause 2.16 under which the **participant** supplied the information to the **Authority**; or
 - (B) a category of information specified in the notice **published** under clause 2.16 under which the **participant** supplied the information and the **Authority** reasonably considers the information that it intends to disclose comes within that category; or
 - (d) disclosing the information as required by or under law.

2.22 Privilege against self-incrimination

The **Authority** must comply with section 48(2) and 48(3) of the Act in respect of information that is subject to privilege against self-incrimination.

2.23 Authority may amend notice

- (1) The Authority may amend a notice published under clause 2.16 following the procedure set out in clause 2.18 and complying with clause 2.19.
- (2) The Authority does not need to consult under clause 2.18 on a proposed amendment to a notice if it is satisfied on reasonable grounds that—
 - (a) the nature of the amendment is technical and non-controversial; or
 - (b) there is widespread support for the amendment among the participants to whom the notice applies and to whom the proposed amendment will apply; or
 - (c) there has been adequate prior consultation (for instance, by or through an advisory group) so that all relevant views have been considered.

Q6. Do you have any comments on the drafting of the proposed amendment?

Appendix B Format for submissions

Submitter	
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Question	Comment
<p>Do you agree the issue identified by the Authority is worthy of attention?</p> <p>Q2. Do you agree with the objective of the proposed amendment? If not, why not?</p> <p>Q3. Do you agree the benefits of the proposed amendment outweigh its costs?</p> <p>Q4. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.</p> <p>Q5. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?</p> <p>Q6. Do you have any comments on the drafting of the proposed amendment?</p>	

Glossary of abbreviations and terms

Authority	Electricity Authority
Act	Electricity Industry Act 2010
Code	Electricity Industry Participation Code 2010
ICP	Installation control point
participant	industry participant
UTS	Undesirable trading situation