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Submission on Improving the Framework for the Authority's Information Gathering

Introduction

1. This is Vector Limited's (Vector) submission on the Electricity Authority's (the Authority) consultation paper on *Improving the framework for the Authority's information gathering*, dated 6 July 2021. We appreciate the Authority's virtual engagement with stakeholders on this consultation through a Zoom call on 20 July 2021.
2. The Authority proposes to amend the *Electricity Industry Participation Code 2010* (the Code) to enable it to publish a notice specifying information a market participant must provide to the Authority on an ongoing basis. The proposal is intended to enable the Authority to effectively perform its monitoring functions, including industry and market monitoring, monitoring the operation and effectiveness of market facilitation measures, and compliance monitoring.
3. Vector has been consistent in its support for greater market transparency that promotes competition, efficiency, and innovation that benefit consumers. As such, we support in principle the Authority's proposed Code amendment and its objective. In our view, it is critically important that any future notice the Authority issues under the proposed Code amendment be subject to meaningful stakeholder consultation. It should also be supported by robust cost-benefit assessment showing that the consumer benefits from introducing the information requirement significantly override the costs.
4. We set out below our responses to the consultation questions and make a few suggestions for improvement.

Responses to the consultation questions

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

5. Vector agrees that a more transparent and structured collection of information from participants that would help the Authority perform its monitoring functions effectively is worthy of attention.
6. The provision of more information on a more frequent and/or ongoing basis is not costless for participants. However, it is worthy of attention where it will help improve the quality of the Authority's decisions and Code amendment proposals, enabling participants to make more efficient strategic and operational business decisions.
7. At present, the high level of policy uncertainty is not helpful and undermines investment. Policy predictability is required to ensure that participants can plan and invest appropriately for the future. More frequent and comprehensive updates and reports from the Authority, informed by timely and more complete information, will help reduce uncertainty for

participants and provide them with clearer options in a market that is in transition. We suggest that these updates and reports be provided to all participants (i.e. publicly) at the same time to address any concerns around information asymmetry.

8. We consider meaningful consultation with participants to be a critical element in the development of any future notice under the proposed Code amendment. The relevant participants are well placed to provide input on: 1) the availability of the required information (including whether similar information is already provided under other arrangements or collected by other parties), 2) the cost and the most efficient way of providing such information on an ongoing basis, and 3) the timeframe required for the implementation of the new information requirement. Meaningful consultation also helps ensure that any new information requirement would not undermine existing commercial arrangements and processes.
9. The other critical element is a robust cost-benefit assessment showing that the benefits to participants and consumers of the new information requirement override implementation and compliance costs. We discuss this in our response to Question 2.
10. We note that the Authority's proposed structured approach is akin to that proposed by the Gas Industry Company for the disclosure of information on planned and unplanned gas production and storage facility outages. This would help promote alignment of information disclosure arrangements between the electricity and gas sectors, reducing compliance costs particularly for those operating across both sectors. The presence of compliance and enforcement mechanisms in both proposals would make them more durable compared to information disclosure on a voluntary basis.

Q2. Do you agree with the objective of the proposed amendment?

11. Vector agrees with the objective of the proposed Code amendment and suggests the addition of a materiality threshold. The Code amendment should be focused on information that has, or is likely to have, a material impact on the electricity market and electricity consumers. The addition of this threshold would help avoid 'scope creep' in the future identification of information that could be subject to a notice under the proposed Code amendment.
12. We propose the following amendments/additions (in red) to the proposed objective:
 - (a) to better enable the Authority to fulfil its monitoring functions by collecting ~~the ongoing material or potentially material~~ information it needs from industry participants ~~on an ongoing basis~~ 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 ongoing collection of ~~ongoing material or potentially material~~ information through consultation, including an obligation to be satisfied the benefits of the Authority obtaining the information outweigh the costs.

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

13. Vector considers the assessment of the benefits and costs of the proposed Code amendment (Table 1, page 13 of the consultation paper) to be broadly reasonable, but there is a missing cost element. Table 1 does not include the cost to participants of implementing new information requirements, as distinguished from the "ongoing cost for industry participants to operate under the proposed amendment" (last item in the table). For participants, implementation costs could be negligible where they already provide the same or similar information under existing arrangements, or where systems already exist for the provision of similar information, e.g. online form on the Authority's website with restricted access for

authorised participants. Implementation costs could be “material” (rather than “modest” or “negligible”) where participants need to change their IT systems and/or automate processes to be able to meet the new information requirement.

14. We suggest that future consultations on any proposed notice for the ongoing collection of information (new or already being collected) be supported by a robust cost-benefit assessment, including a quantitative assessment where possible. This assessment should be informed by input from the relevant participants on the likely magnitude of the implementation cost. The variable nature of this cost – influenced by the complexity of the information required – could make the difference between a ‘go’ or ‘no go’ decision for a proposed notice.
15. Longer term, the value that can be generated from the ongoing and more structured provision of information would also depend on the nature and (potential) value of the information in enhancing the quality of future Authority decisions and Code changes. Where the expected benefits do not significantly override implementation and other costs, participants and their customers can be harmed by the additional compliance costs.

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.

16. Vector agrees that the proposed Code amendment is preferable to the other two options outlined on pages 17-18 of the consultation paper.
17. We agree that relying on bespoke Code amendments to fill any gaps in information for monitoring (alternative Option 1) would have high transaction costs associated with introducing a Code amendment every time the Authority needs a specific information. We also agree with the possibility of non-standardised information requirements being contained in multiple provisions throughout the Code, potentially creating confusion or making it harder for participants to understand their Code obligations.
18. We further agree that relying on section 46 of the *Electricity Industry Act 2010* (the Act) to fill any gaps in information for effective monitoring (alternative Option 2) would have slightly higher transactions costs. Section 46 supports one-off or event-driven requests for information, e.g. information to assess an Undesirable Trading Situation claim, and is reactive in nature, leaving little time for consultation with participants. As suggested in the consultation paper, section 46 requests do not lend themselves well to standardised data formats.
19. In identifying any information that could be subject to the proposed Code amendment (e.g. wholesale market information disclosure monitoring, hedge disclosure, monitoring the impact of economic shocks or pandemics), we encourage the Authority to work closely with other energy regulators to avoid duplication and unnecessary compliance costs. For example, regulated electricity distribution businesses (EDBs) are already subject to a well-established information disclosure regime under Part 4 of the *Commerce Act 1986*, administered by the Commerce Commission, and EDBs’ multi-year Asset Management Plans are publicly available. We also note the Gas Industry Company’s ongoing development of an information disclosure regime for gas production and storage facility outages (mentioned above), which would have implications for electricity market monitoring.

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

20. Vector broadly agrees that the Authority’s proposed Code amendment complies with section 32(1) of the Act.

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

21. To ensure that the consultative process will be meaningful for the relevant participants and deliver the desired objective, Vector suggests the following additions/amendments (in red) to the wording of the proposed Code amendment:

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 **significantly** 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 a summary of the submissions and/or respond to the submissions before publishing the notice; and**
 - (~~b~~c) **publish the notice, including on the Authority's website and/or other media relied on by most participants.**
 - (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.
22. We also suggest that the proposed Code amendment, or any future notices and supporting guidelines, include a requirement on the Authority to provide a reasonable timeframe between the date the notice is published and the commencement date of the new requirement. We further suggest that future consultations on any proposed notice seek stakeholders' views on what a reasonable timeframe would be.
23. We encourage the Authority to issue supporting guidelines for future notices made under the proposed Code amendment. Such guidelines could provide indication or examples of the types of information that are likely to be captured by the notice. For example, it could specify thresholds for the disclosure of the required information and factors that could trigger any changes to, or future reviews of, the information specified in the notice – or even the further need for such a notice.

Concluding comments

24. We are happy to discuss any aspects of this submission with the Authority. Please contact Luz Rose (Senior Regulatory Partner) at Luz.Rose@vector.co.nz or 04 803 9051 in the first instance.

25. No part of this submission is confidential, and we are happy for the Authority to publish it in its entirety.

Yours sincerely
For and on behalf of Vector Limited



Neil Williams
GM Market Regulation