



19/08/2020

Electricity Authority
Level 7, Harbour Tower
2 Hunter Street, Wellington

By email only: UTS@ea.govt.nz

Trustpower Limited

Head Office
108 Durham Street
Tauranga

Postal Address:
Private Bag 12023
Tauranga Mail Centre
Tauranga 3143

F 0800 32 93 02

Offices in
Auckland
Wellington
Christchurch
Oamaru

Freephone
0800 87 87 87

trustpower.co.nz

THE AUTHORITY'S PRELIMINARY DECISION ON CLAIM OF AN UNDESIRABLE TRADING SITUATION

On 12 December 2019, Haast Energy Trading, Ecotricity, Electric Kiwi, Flick Electric, Oji Fibre, Pulse Energy Alliance, and Vocus lodged an undesirable trading situation (**UTS**) claim.

Trustpower Limited (**Trustpower**) welcomes the opportunity to provide brief feedback to the Electricity Authority (**the Authority**) on their preliminary decision document "*Preliminary decision on claim of an undesirable trading situation*" (**the preliminary decision document**) released 30 June 2020.

We consider there is likely to be significant overlap between matters of consideration outlined by the Authority in the preliminary decision document and the related review of trading conduct that is currently underway, from both a compliance and a broader policy perspective. It is within this context that we provide the following general observations:

- The Market Development Advisory Group is currently considering the adequacy of the existing trading conduct provisions and whether changes to these are required to better align with the Authority's statutory obligations. To inform this work, Concept Consulting was engaged to consider whether trading conduct enforcement action by the Authority in May 2017 caused a structural increase in electricity spot prices, and the extent to which changes in spot prices might be explained by other factors.¹ Concept Consulting's finding suggests that the conduct currently being investigated (i.e. offers to avoid transmission constraints binding) is not outside the normal behaviour of the market.
- To the extent that there is perceived to be an issue relating to the bidding behaviour of individual participants, individual remedies should be considered.
- Given the possibility of "double jeopardy" due to an event potentially being subject to both a UTS investigation and a trading conduct investigation, we suggest that claims should be:
 - considered at the same time, subject to any limitations created by our suggestions around how to ensure independence in undertaking investigations below; and
 - decided by the same "judge".² We acknowledge this would require changes to the current institutional design.

¹ Note: As part of the warning provided to Meridian following the 2016 trading conduct investigation, the EA outlined its view that participants should not bid to avoid transmission constraints binding.

² In relation to the UTS rules the Authority is tasked under the Code with both investigation and decision-making responsibilities, whereas in relation to the HSOTC rules, the Authority's role is that of investigation and pre-hearing resolution and the ultimate decision-maker is the Rulings Panel.

- We consider that it is unclear how following this UTS investigation, staff from the Authority will ensure independence when conducting the trading conduct investigation, as is required under the *Electricity Industry (Enforcement) Regulations 2010*.³ The Gas Industry Co uses an independent Barrister to oversee investigations, thereby ensuring independence. We encourage the Authority to consider this option in order to best support the principle of impartiality.⁴
- We consider that if the Authority wishes to introduce a prohibition on generator offers being used to manage transmission constraints, this should be considered as a policy matter rather than indirectly introduced via the Authority's compliance activities. Any reset of the boundaries for behaviour within the market should occur ex-ante through an appropriate regulatory instrument (i.e. code change, issuance of guidelines etc).

For any questions relating to the material in this submission, please contact Fiona Wiseman, Senior Advisor, Strategy and Regulation on 027 549 9330.

Regards,



Fiona Wiseman
Senior Advisor, Strategy and Regulation

³ See *Electricity Industry (Enforcement) Regulations 2010* clause 13(4)

⁴ Electricity Authority, *Review of the Electricity Authority's compliance framework: Final report*, 2014 pg.5 available from <https://www.ea.govt.nz/dmsdocument/18081-review-of-the-electricity-authoritys-compliance-framework>