

Notice of the Electricity Industry Participation Code Amendment (Restrictions on Materially Large Contracts) 2022

1. Under section 38 of the Electricity Industry Act 2010 (“Act”), and the Legislation Act 2019, the Electricity Authority (“Authority”) gives notice of making the Electricity Industry Participation Code Amendment (Restrictions on Materially Large Contracts) 2022 (“amendment”).

2. The amendment is made urgently under section 40 of the Act.

3. The amendment was made on **17 August 2022**.

4. The amendment comes into force on the day after the amendment is published in *the New Zealand Gazette*.

5. The amendment inserts a new subpart 7 of Part 13 into the Electricity Industry Participation Code 2010 (“Code”). The new subpart places certain restrictions on generators giving effect to materially large contracts (as that term is defined in the amendment) entered into, extended or modified on or after the date the amendment comes into force. The amendment also provides for disclosure of materially large contracts and additional material, an ability for generators to seek Authority clearance of materially large contracts, and reconsideration and appeal of Authority clearance decisions.

6. The Authority published *Inefficient price discrimination in the wholesale electricity market – Issues and options* (Issues Paper) in October 2021 as an initial response to an observation made in its *Market Monitoring Review of Structure, Conduct and Performance in the Wholesale Electricity Market*. The primary intent of the Issues Paper was to explore whether generators have incentives under the current market design and regulation which can lead to arrangements which are inefficient and cause harm to consumers, using the Tiwai contracts to illustrate this potential. Having considered submissions in response to the Issues Paper, the Authority will shortly release a further consultation paper on the Authority’s website inviting submissions on a proposed permanent Code amendment that seeks to address generators’ incentives and ensure market participants are confident that any future arrangements are efficient and in the long-term interests of all consumers. The problem definition and rationale for the proposed permanent amendment as set out in detail in the further consultation paper also applies to this urgent amendment.

7. Pursuant to section 40 of the Act, the Authority considers that it is necessary or desirable in the public interest that the amendment be made urgently because:

- i. The Authority has identified an issue with the current market design and regulatory settings whereby generators have incentives to enter into materially large contracts that are inefficient and are harmful to the long-term interests of consumers.
- ii. There is a real risk of parties entering into such arrangements before any permanent regulatory solution can be fully consulted on and put in place, including because parties may be motivated to avoid the signalled potential regulation.
- iii. This has the potential to lock in inefficient price discrimination for many years causing inefficiencies in the electricity industry and material and ongoing harm to consumers.

8. The amendment is secondary legislation for the purpose of the Legislation Act 2019 and is administered by the Authority.

9. A copy of the amendment and the Code is available on the Authority’s website at <http://www.ea.govt.nz/code-and-compliance/the-code/>.

10. A copy of the amendment and the Code may also be inspected free of charge or purchased from the Electricity Authority, Level 7, Aon Centre, 1 Willis Street, Wellington.

Dated at United Kingdom this 17th day of August 2022.

DR NICOLA LANE CRAUFORD, Chair, Electricity Authority.