EVALUATIONS PANEL BHR

FINDINGS & CONCLUSIONS

Panel members

- Mark Berry – Barrister, former Chair of Commerce Commission
- Rhys Harrison – Queens Counsel, retired Judge in the Court of Appeal
- Iain Rennie – Consultant, former State Services Commissioner

This slide pack and the below disclaimer have been included by the Authority, and do not form part of the findings and commentary of the Evaluation Panel

Disclaimer

The purpose of the Evaluation Panels' consideration of the case studies was to analyse how the existing Code provisions and the proposed Code amendment might be interpreted in a range of different hypothetical scenarios. The analysis by the Evaluation Panels is intended to assist the MDAG in developing recommendations to the Authority's Board in relation to the proposed amendment as part of the wider review of the high standard of trading conduct provisions in the Code.

For the avoidance of doubt, please note:

- The Evaluation Panels' consideration of the case studies and their associated commentary do not purport to represent binding precedent on the interpretation of the current or proposed Code provisions.
- The Evaluation Panels' consideration of the case studies and their associated commentary do not constitute a reconsideration or re-opening of any previous decision by the Rulings Panel or the Authority.
- The Evaluation Panels' consideration of the case studies and their associated commentary do not represent the views of MDAG or the Authority.

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1. Issues that arose when the Panel applied the existing and proposed Code to the case studies
2. Case studies – summary of findings
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Existing Code – issues

- Panel thought it was very hard (arguably impossible) to interpret in HSOTC provision in a consistent and robust fashion.
- Panel's concern centred on meaning of "high standard of trading conduct" in the existing Code.
- On its face, these words suggested that conduct needs to be 'reasonable' or 'acceptable' – but this did not provide much useful guidance as there is no reference point in the Code against which to judge conduct - the bare words effectively "mean nothing" in particular.
- As a result, the panel needed to read a meaning into HSOTC provision. A number of possible approaches were considered:

1. Inferring a HSOTC standard from the safe harbour provisions themselves. In this context, the Panel recognised the Code grants immunity to a participant that is inside the safe harbour, and that being outside the safe harbour does not indicate a breach per se. Nonetheless, the Panel felt that the safe harbour provisions would influence a Court's interpretation of the substantive HSOTC provision given the absence of any other explicit guidance. For example, if a generator did not offer all its available capacity even though it was practical and (apparently) economically rational to do so, that could prima facie indicate a breach of the high standard of trading conduct.
2. A reasonableness or fairness lens – this lens was inherently subjective and requires some application of common sense. But in some instances for example, a generator's conduct would not be a breach if capacity withdrawal was due to events outside its reasonable control (e.g. Acts of God).
3. An economic lens – in effect asking whether conduct was consistent with underlying supply/demand conditions or reflected the exercise of significant market power.

- As is apparent from the case study analysis (see later), the panel ultimately drew on all three approaches, but tended to rely most heavily on the economic lens. This may have been a subconscious response to use of an economic lens in the proposed Code – but it is impossible to know.

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Existing Code – issues (cont'd)

- Panel found it easier to apply safe harbour rules (than the core HSOTC test itself) – but even these provisions were not clear cut:
  - 13.5B(1)c(i) – interpretation of whether an offer would "result in" higher prices – on a narrow interpretation a generator that was not the price setter could argue its offer did not "result in" the relevant final price – but the Panel felt a broader interpretation was the more likely and robust reading of the provision by applying the test of whether the offer was the dominant or operative cause of the higher prices when compared to other offers and events.
  - 13.5B(1)c(ii) – interpretation of "generator's offers are generally consistent with offers it has made when it has not been pivotal" – what does generally consistent mean – especially when prices, quantities and durations of offers need to be considered? Also, how can this be applied when a generator is generally (or always) pivotal?
  - 13.5B(1)c(iii) – interpretation of "does not benefit financially from an increase in the final price at which electricity is supplied in a trading period" – the reference point for the comparison is not entirely clear - it could be relative to a hypothetical counterfactual, or a prior or future trading period (or something else – eg influencing prices in the contracts market).
- In (at least) one case study the safe harbour appeared to provide immunity when behaviour was problematic (a false negative result).
- Overall the Panel found it difficult to apply the existing Code, describing it as being "very unsatisfactory" and requiring the application of a "broken test".

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Proposed code – issues

- At the outset, the Panel noted that the proposed use of an economic lens in 13.5A(1) should provide a more coherent test and reduce the scope of uncertainty (both desirable features).
- However, the panel also noted an economic approach introduced a requirement to formally compare the factual case (what happened) with a hypothetical counterfactual case (what would have happened if no generator had significant market power).
- The Panel considered how to properly frame such counterfactual tests in some detail. Among the questions considered were:
    1. Should counterfactuals allow for entry / exit of generation?
    2. Should counterfactuals allow for transmission investment?
    3. Should counterfactuals be constrained by physical realities (e.g. to reflect river chains or transmission constraints)?
- The Panel considered the above and experimented with a few approaches but ultimately concluded that because the Code would likely be applied to cases where there was significant market power for short but transitory periods, it did not make sense to allow for generation entry/exit or transmission investment in the counterfactual – likewise any disequilibrium condition (under/over supply) in the factual case should be preserved in the counterfactual.
- Accordingly, the counterfactual cases should typically preserve the underlying supply/demand conditions in the relevant temporary market area (whether national or regional) but assume there were sufficient participants in the area such that no participant was pivotal.
- Analysis would then consider the extent of any divergence between actual offers (and implicitly final prices) and those expected in the counterfactual case.
- Although the above describes the core elements of the approach that was ultimately adopted by the Panel, the members stressed that counterfactual analysis requires the exercise of judgment. In a real case before a rulings panel or court, there is likely to be significant debate among the protagonists about the appropriate counterfactual to adopt and this could result in a drawn out (and expensive) case before a decision is reached. The factual case comparison arguably provides a more objective measure and reduced the scope for uncertainty.

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Proposed code – issues (cont'd)

- As it applied the proposed Code to each case study, the Panel first considered whether a breach of 13.5A(1) or (2) had occurred.
- This involved the application of the counterfactual analysis and the result indicated whether there was a prima facie breach (described earlier).
- The Panel then considered clause (3). Although this is framed in the draft Code as a purpose statement for (1) and (2), the Panel felt a Court would use it to cross check the findings based on clause (1) or (2) because it is in the body of the Code.
- When the Panel tried to perform this cross check, it was quite hard to apply clause (3) in practical terms.
  Particular issues were:
  - Clause 3(a) - offer prices should not exceed economic costs by "too much or for too long" – the quoted words were viewed as detracting from rather than adding precision. The panel considered that 'materially' provided a more objective measure.
  - clauses 3(a) and (b) list a broad range of factors to help explain the purpose of (1) and (2). The Panel queried how a Court would interpret these if some elements were in tension with one another. Similarly, the Panel queried whether the inclusion of the list would create more uncertainty by opening up avenues for appeal/review (as was the experience with the purpose statement in s.52A of the Commerce Act).
  - The length of the clause and mix of concepts it contained made it quite difficult to interpret in practical terms.
- Overall, the Panel essentially relied on clauses (1) and (2) to come to its decisions – clause (3) in its present form provided limited practical guidance.

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Case Studies –
Summary of findings

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CASE STUDIES – Summary of findings

		Current Provisions	New Provisions
Case Study 1	**Generator A**	**Not in breach.** Causative event was an Act of God.	**Not in breach.** Offers consistent with expected behaviour in similar circumstances
Case Study 2	**Generator A**	**Indeterminate.** Could not establish whether the generator was within safe harbour 1(c)(iii)	**In breach**. Offer didn't reflect underlying supply/demand conditions enabled by significant market power
	Generator B	**Indeterminate.** Could not establish whether the generator was within safe harbour 1(c)(iii)	**In breach.** Offer didn't reflect underlying supply/demand conditions enabled by significant market power
Case Study 3	**Generator A**	**Not in breach.** There was a reasonable economic rationale for offer price	**Not in breach.** Offers *[likely]* consistent with expected behaviour in similar circumstances
Case Study 4	**Generator A**	**In breach.** Offer didn't reflect underlying supply/demand conditions enabled by significant market power	**In breach.** Offer didn't reflect underlying supply/demand conditions enabled by significant market power
	Generator B	**In breach.** Generator withheld capacity even after N-1 notification	**In breach.** Generator purposefully withheld capacity to affect prices
Case Study 5	**Generator A**	**In breach.** Generator A exercised significant market power to influence prices	**In breach.** Generator A exercised significant market power to influence prices

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CASE STUDY #1 – EXISTING CODE

Assessment of case study #1 against the existing Code:

	Generator must satisfy both 1(a) and 1(b) to be in safe harbour		*If generator pivotal, generator must meet at least one of 1(c) (i) to (iii) to be in safe harbour*			*Must meet 1(a), 1(b), and if pivotal, at least one of 1(c) (i) to (iii)*	*Based on interpretation of "high standard of trading conduct" (HSOTC)*	
	1(a) Was generator offering all available capacity?	**1(b) Was generator submitting and revising offers in timely way?**	**1(c)(i) Did generator's offer result in no material increase in price?**	**1(c)(ii) Was generator's offer consistent with offers when it was previously not pivotal?**	**1(c)(iii) Did generator obtain no financial benefit in a trading period at a node at which it was pivotal?**	**Was generator inside safe harbour?**	**If generator was outside safe harbour, did it breach the Code?**	**Assumptions/ caveats**
Generator A	Yes – assuming 200MW was due to structural damage	Yes – by assumption	No – offer change did have effect of increasing price But there is an argument that Generator C was the price setter so not entirely clear cut	Don't know as no information provided on Generator A offers when it isn't pivotal	Don't know - depends on time horizon for measuring a gain and whether contract position is taken into account	Unsure – depends on answers to previous questions	No breach provided the causative events were genuine Acts of God and parties worked to remedy the problems with due haste.	

Other notes/comments:

- Came to conclusion on HSOTC without reference to safe harbour

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CASE STUDY #1 – PROPOSED CODE

Assessment of case study #1 against the proposed Code:

	Substantive test 13.5A(1)	*Possible guidance for interpretation of 13.5A(1) is set out in 13.5A(3)(a) to (c)*	*Based on interpretation of 13.5A as a whole*	
	Was the generator's offer consistent with a hypothetical market where no supplier could exercise significant market power for that trading period?	**Provisions in 3(a) to 3 (c)**	**Was there a breach of the proposed code provision?**	**Assumptions/ caveats**
Generator A	Yes – in a hypothetical market where no supplier could exercise significant power (which requires assuming extra capacity is available) you would expect a generator to adjust its offer in the same way as Generator A did when faced with storm damage.	Did not consider for this case study.	No breach.	• To determine the counterfactual needed to assume that there was extra capacity available in the counterfactual (ie, you're not in a tight supply situation where every generator is pivotal). • Assumed 200MW was damaged by storm.

Other notes/comments:

- Extensive discussion on whether counterfactual was workable for this case study. The Panel found it difficult to determine a counterfactual due to the tight supply situation.
- The Panellists queried the meaning of the term 'significant' in clause 13.5A(1). Generator C is exercising significant market power and therefore could be inferred that it's in breach of clause 13.5A(1).

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CASE STUDY #2 – EXISTING CODE

Assessment of case study #2 against the existing Code:

	Generator must satisfy both 1(a) and 1(b) to be in safe harbour		*If generator pivotal, generator must meet at least one of 1(c) (i) to (iii) to be in safe harbour*			*Must meet 1(a), 1(b), and if pivotal, at least one of 1(c) (i) to (iii)*	*Based on interpretation of "high standard of trading conduct" (HSOTC)*	
	1(a) Was generator offering all available capacity?	**1(b) Was generator submitting and revising offers in timely way?**	**1(c)(i) Did generator's offer result in no material increase in price?**	**1(c)(ii) Was generator's offer consistent with offers when it was previously not pivotal?**	**1(c)(iii) Did generator obtain no financial benefit in a trading period at a node at which it was pivotal?**	**Was generator inside safe harbour?**	**If generator was outside safe harbour, did it breach the Code?**	**Assumptions/ caveats**
Generator A	Yes	Yes	Yes – final prices remained at $100 throughout	Unlikely – but unsure whether might fall within "generally consistent" meaning	Possibly yes – as final price didn't change Possibly no – as final price would have been lower absent the change in offer structure	Yes	N.A. – but felt there would be a breach on substantive provision but for safe harbour (1(c)(i) because offer price was 10 x SRMC	
Generator B	Yes	Yes	Ditto	Ditto – but a more defensible position than Generator A as smaller lift in offer price	Ditto	Yes	Ditto – but less clear cut as offer price was closer to SRMC for generator B	

Other notes/comments:

Panelists considered the existing Code to provide a 'false negative' – problematic conduct is not deterred or sanctioned

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CASE STUDY #2 – PROPOSED CODE

Assessment of case study #2 against the proposed Code:

	Substantive test 13.5A(1)	*Possible guidance for interpretation of 13.5A(1) is set out in 13.5A(3)(a) to (c)*	*Based on interpretation of 13.5A as a whole*	
	Was the generator's offer consistent with a hypothetical market where no supplier could exercise significant market power for that trading period?	**Provisions in 3(a) to 3 (c)**	**Was there a breach of the proposed code provision?**	**Assumptions/ caveats**
Generator A	No – because change in offer price structure was prima facie evidence of significant market power (1 panelist) No – because the resulting clearing price did not reflect supply/demand conditions in the local market (i.e. price did not fall below $100/MWh despite abundant supply) (2 panelists)	Offer price well above SRMC (10 x)	Yes	Assumes there was some real harm – e.g. consumption decisions that were affected in local market
Generator B	Ditto	Offer price 20% above SRMC	Yes (but less clear cut than Generator A)	Ditto

Other notes/comments:

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CASE STUDY #3 – EXISTING CODE

Assessment of case study #3 against the existing Code:

	Generator must satisfy both 1(a) and 1(b) to be in safe harbour		*If generator pivotal, generator must meet at least one of 1(c) (i) to (iii) to be in safe harbour*			*Must meet 1(a), 1(b), and if pivotal, at least one of 1(c) (i) to (iii)*	*Based on interpretation of "high standard of trading conduct" (HSOTC)*	
	1(a) Was generator offering all available capacity?	**1(b) Was generator submitting and revising offers in timely way?**	**1(c)(i) Did generator's offer result in no material increase in price?**	**1(c)(ii) Was generator's offer consistent with offers when it was previously not pivotal?**	**1(c)(iii) Did generator obtain no financial benefit in a trading period at a node at which it was pivotal?**	**Was generator inside safe harbour?**	**If generator was outside safe harbour, did it breach the Code?**	**Assumptions/ caveats**
Generator A	Yes	Yes	No – final prices increased	Indeterminate as Generator always pivotal	No – prices did increase	No (but see 1(c)(ii))	Not a breach because there was a reasonable economic rationale for the increase in offer price (higher thermal generation costs)	

Other notes/comments:

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CASE STUDY #3 – PROPOSED CODE

Assessment of case study #3 against the proposed Code:

	Substantive test 13.5A(1)	*Possible guidance for interpretation of 13.5A(1) is set out in 13.5A(3)(a) to (c)*	*Based on interpretation of 13.5A as a whole*	
	Was the generator's offer consistent with a hypothetical market where no supplier could exercise significant market power for that trading period?	**Provisions in 3(a) to 3 (c)**	**Was there a breach of the proposed code provision?**	**Assumptions/ caveats**
Generator A	Probably not a breach. Generator A's offer is probably consistent with what it would have done in a market with no significant market power. Also considered this clause more holistically—by considering the outcome of Generator A's offer (an increase in price to $180). Even if Generator A's offer was not the same in a competitive market, you would likely end up with about the same clearing price,	Difficult to assess in this case study. Clause 3 opening up new arguments that weren't in clause 1 and detracts from the conclusion under clause 1.	Probably not a breach.	Some thermal generation was needed to satisfy demand in the relevant trading periods. $150 was the cost level for thermal generation before the gas price increase (which rose by 15% for period of the gas field maintenance).

Other notes/comments:

- The panel discussed whether it was the conduct of the generator or the outcome from the generator's conduct that would be of concern. For example, would you worry about an offer of $10k instead of $200, even if the price still cleared at $180?
- Clause 3 would allow for sides to argue much more sophisticated arguments (which was probably not a good thing).

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CASE STUDY #4 – EXISTING CODE

Assessment of case study #4 against the existing Code:

	Generator must satisfy both 1(a) and 1(b) to be in safe harbour		*If generator pivotal, generator must meet at least one of 1(c) (i) to (iii) to be in safe harbour*			*Must meet 1(a), 1(b), and if pivotal, at least one of 1(c) (i) to (iii)*	*Based on interpretation of "high standard of trading conduct" (HSOTC)*	
	1(a) Was generator offering all available capacity?	**1(b) Was generator submitting and revising offers in timely way?**	**1(c)(i) Did generator's offer result in no material increase in price?**	**1(c)(ii) Was generator's offer consistent with offers when it was previously not pivotal?**	**1(c)(iii) Did generator obtain no financial benefit in a trading period at a node at which it was pivotal?**	**Was generator inside safe harbour?**	**If generator was outside safe harbour, did it breach the Code?**	**Assumptions/ caveats**
Generator A	Probably yes (nothing to suggest it didn't offer all capacity)	Yes	No – prices rose in trading periods 36 and 38 due to Gen A's offer (even if Gen A was not price setter)	Can't tell because no information available on offers when Gen A not pivotal	No – Gen A likely benefited from price increases in trading period 36 and 38	No – outside safe harbour for the 2 trading periods that matter (trading periods 36 and 38).	Yes - the price in South Island was 'artificial' and did not reflect supply and demand (i.e. no shortage) in that island.	
Generator B	No, assuming that it was able to offer its 360 MW gas-fired plant.	N.A.				No	Yes (because it didn't respond to the notice of impending shortage by making all its capacity available)	Generator B could make the 360 MW gas-fired plant available in time, and prices were high enough to cover the starting and running costs.

Other notes/comments:

One panelist thought Gen A was cross-subsidizing its NI retail base by charging a higher price to SI consumers and the scale in this instance made it problematic – but it raised broader issue of whether all cross-subsidies were problematic (or whether lesser scale impacts might be 'tolerated').

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CASE STUDY #4 – PROPOSED CODE

Assessment of case study #4 against the proposed Code:

	Substantive test 13.5A(1)	*Possible guidance for interpretation of 13.5A(1) is set out in 13.5A(3)(a) to (c)*	*Based on interpretation of 13.5A as a whole*	
	Was the generator's offer consistent with a hypothetical market where no supplier could exercise significant market power for that trading period?	**Provisions in 3(a) to 3 (c)**	**Was there a breach of the proposed code provision?**	**Assumptions/ caveats**
Generator A	No – expect offer price to be lower given absence of any shortage in the South Island market (more like offers in preceding trading periods)	Clause 3 did not provide additional useful guidance	Yes	HVDC link would have constrained if all SI generation was offered below North Island price
Generator B	Likely no because of voluntary output restriction.	Don't have enough information to know whether its remaining offers reflected economic costs. But don't need that info as Gen B was withholding output and this is likely to have raised NI prices.	Yes	Gas-fired plant could have been feasibly run and covered its economic costs.

Other notes/comments:
Gen A's offer had effect of raising SI price and (possibly) lowering the NI price. The second effect does not 'excuse' the first effect.

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CASE STUDY #5 – EXISTING CODE

Assessment of case study #5 against the existing Code:

	Generator must satisfy both 1(a) and 1(b) to be in safe harbour		*If generator pivotal, generator must meet at least one of 1(c) (i) to (iii) to be in safe harbour*			*Must meet 1(a), 1(b), and if pivotal, at least one of 1(c) (i) to (iii)*	*Based on interpretation of "high standard of trading conduct" (HSOTC)*	
	1(a) Was generator offering all available capacity?	**1(b) Was generator submitting and revising offers in timely way?**	**1(c)(i) Did generator's offer result in no material increase in price?**	**1(c)(ii) Was generator's offer consistent with offers when it was previously not pivotal?**	**1(c)(iii) Did generator obtain no financial benefit in a trading period at a node at which it was pivotal?**	**Was generator inside safe harbour?**	**If generator was outside safe harbour, did it breach the Code?**	**Assumptions/ caveats**
Generator A	Yes – by assumption	Yes – by assumption	No – reserve prices increased	No – offer prices were materially higher than when it was not pivotal	No – reasonable to assume that Gen A benefited from higher prices	No	Gen A breached the HSOTC – by virtue of acquiring rights to offer cust X's interruptible load it became net pivotal in SI reserves market and used that position to raise prices	Assume reserve prices materially lower if customer X offered the reserve itself (this is because increase in final price from $1 to >$100 seems unlikely without significant market power)

Other notes/comments:

Strictly speaking the case study relates to an ancillary service provider rather than a generator – but we have used the numbering from the code for a generator as the substantive provisions in the Code are the same for both types of supplier

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CASE STUDY #5 – PROPOSED CODE

Assessment of case study #5 against the proposed Code:

	Substantive test 13.5A(1)	*Possible guidance for interpretation of 13.5A(1) is set out in 13.5A(3)(a) to (c)*	*Based on interpretation of 13.5A as a whole*	
	Was the generator's offer consistent with a hypothetical market where no supplier could exercise significant market power for that trading period?	**Provisions in 3(a) to 3 (c)**	**Was there a breach of the proposed code provision?**	**Assumptions/ caveats**
Generator A	No – expect that offer would have been lower if Gen A had not acquired rights to cust X's interruptible load capacity	Hard to apply 3 and not needed in this example	Yes	Assume reserve prices materially lower if customer X offered the reserve itself (this is because increase in final price from $1 to >$100 seems unlikely without significant market power)

Other notes/comments:

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Suggested Improvements

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PANEL'S SUGGESTED IMPROVEMENTS

Code provisions

- The Panel considered the current code to be unsatisfactory and agreed that an explicit economic-based test would be preferable (as proposed in the new draft Code)
- In relation to the draft Code, the Panel felt clauses 13.5A (1) and (2) were sound, subject to two tweaks (see next slides) to aid interpretation (which are intended in particular to reduce the range of uncertainty in relation to the counterfactual – an issue referred to in the last bullet on slide 5 above)
- In relation to clause 3, the Panel suggested a more succinct formulation which avoids the complexity and opportunities for legal challenge created by MDAG's draft clause 3
- An Explanatory Note could be added to the Code briefly explaining the context of the new provision (eg how for the most part offers are disciplined by the process of competition), and also linking the new provisions to the wider statutory objective (ss.15 and 32(1), Electricity Industry Act 2010)

Monitoring and guidelines

- The Authority should beef up the current level of monitoring, and when it observes behaviour that may not be consistent with clause 13.5A it should issue the generator (or ancillary service agent) with a 'please explain' notice. This would serve two purposes:
    - Assist in more rapidly establishing a body of 'case law' about acceptable/unacceptable conduct – this ultimately should benefit consumers and suppliers, because both have an interest in reducing the current level of uncertainty
    - Deter inappropriate conduct because there is greater likelihood of being held to account (i.e. there would be less reliance a complaint being raised by another participant)
- The Authority could consider whether guidelines on clause 13.5A could be helpful but they shouldn't include hypothetical case studies [only binding decisions]—the guidelines should also signal the potential for the Authority to require a generator or ancillary service agent to respond to 'please explain' notices.

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SUGGESTED CHANGES (clean)

<u>The Panel suggested that:</u>

- MDAG's proposed Code be amended so that it reads as follows (tracked changes provided on the next slide):

13.5A Conduct in relation to generators' offers and ancillary service agents' reserve offers

(1) *Where a **generator** submits or revises an **offer** for a **point of connection** to the **grid**, that **offer** must be consistent with **offers** that the **generator** would have*
*likely made where no **generator** was able, or would have been able, to exercise significant market power in relation to that **point of connection** to the **grid** for*
*that **trading period**.*

(2) *Where an **ancillary service agent** submits or revises a **reserve offer** for a **point of connection** to the **grid** (including an **interruptible load group GXP**), that **offer** must be consistent with **reserve offers** that the **ancillary service agent** would have likely made where no **ancillary service agent** was able, or would have been able, to exercise significant market power in relation to that **point of connection** to the **grid** for that **trading period**.*

(3) *The purpose of this clause 13.5A is:*

- *(a)* *to act as a constraint on **offers** made by a **generator** or **ancillary service agent** during periods when that **generator** or **ancillary service agent** is*
  in a position of significant market power,
- *(b)* *by providing that **offers** reflect prevailing conditions of supply and demand taking into account the **generator** or **ancillary service agent's***
- *(c)* *associated economic costs at its **point of connection**, where, for the purposes of paragraph (b) "economic costs" in clause 13.5A(3)(b) :*
  - *(i)* *when assessed in relation to short-run costs, includes scarcity rents and the opportunity cost of generating **electricity** or of providing*
    ***instantaneous reserve**, as applicable;*
  - *(ii)* *when assessed in relation to long-run costs, includes recovery of capital costs with a suitable premium for risk.*

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SUGGESTED CHANGES (mark-up)

13.5A Conduct in relation to generators' offers and ancillary service agents' reserve offers

(1) Where a **generator** submits or revises an **offer** for a **point of connection** to the **grid**, that **offer** must be consistent with **offers** that the **generator** would have likely made where no **generator** ~~could~~ was able, or would have been able, to exercise significant market power in relation to that **point of connection** to the **grid** for that **trading period**.

(2) Where an **ancillary service agent** submits or revises a **reserve offer** for a **point of connection** to the **grid** (including an **interruptible load group GXP**), that **offer** must be consistent with **reserve offers** that the **ancillary service agent** would have likely made where no **ancillary service agent** ~~could~~ was able, or would have been able, to exercise significant market power in relation to that **point of connection** to the **grid** for that **trading period**.

(3) The purpose of this clause 13.5A is: ~~to promote offer behaviour and efficiency outcomes consistent with competitive markets, in particular so that—~~

~~(a) the prices of **offers** or **reserve offers** do not exceed, by too much or for too long, the associated economic costs to the **generator** or **ancillary service agent** respectively, assuming a market in which no **generator** or **ancillary service agent** has significant market power;~~

~~(b) with the effect that **offers** or **reserve offers** made by **generators** or **ancillary service agents** promote efficient:~~

~~(i) consumption decisions by **consumers**; and~~

~~(ii) production decisions by suppliers (including **generators** and providers of **electricity** services); and~~

~~(iii) innovation and investment by suppliers and **consumers** (including the location of their investments); and~~

~~(iv) risk management and risk management markets,~~

~~in relation to the **point of connection** to the **grid** (including an **interruptible load group GXP**) at which the **generator** or **ancillary service agent**, as applicable, submits or revises an **offer** or a **reserve offer**, and any **node** in respect of which the **offer** or **reserve offer** may have a material influence on efficiency outcomes of the kind referred to in subparagraphs (i) to (iv);~~

(a) to act as a constraint on **offers** made by a **generator** or **ancillary service agent** during periods when that **generator** or **ancillary service agent** is in a position of significant market power,

(b) by providing that **offers** reflect prevailing conditions of supply and demand taking into account the **generator** or **ancillary service agent's** associated economic costs at its **point of connection**,

(c) where, for the purposes of paragraph ~~(a)~~(b) "economic costs" in clause 13.5A(3)~~(a)~~(b) :

(i) when assessed in relation to short-run costs, includes scarcity rents and the opportunity cost of generating **electricity** or of providing **instantaneous reserve**, as applicable;

(ii) when assessed in relation to long-run costs, includes recovery of capital costs with a suitable premium for risk.

~~[Drafting note: The use of the long dash (em dash) in the above drafting ("in particular so that—") signifies that paragraphs (a) to (c) which follow are essentially one continuous sentence]~~