

Wholesale markets - Internal transfer prices and segmented profitability reporting

Decision Paper

31 August 2021



Executive summary

Confidence in the retail market is undermined if parties have a partial view, and limited understanding of how generator retailers set their internal transfer prices (ITPs) and of the resulting implications for segmented profitability.

Well-functioning electricity markets provide avenues to improve information disclosure by participants, reduce information asymmetries amongst participants and foster greater understanding of the competitive behaviour of retailers. The Authority's decision is intended to provide such an avenue by facilitating reporting by integrated generator retailers, and retailers more generally.

The Authority has decided to require the disclosure of retail ITP information, along with sufficient detail, to enable a reasonable person with an understanding of the wholesale market to determine how ITP prices are set by generator retailers.

The Authority has also decided to require disclosure of retail gross margins by retailers. This will inform the Authority on the pricing practices used within integrated generator retailers and establish whether they are providing electricity at below efficient market prices to their own retail arms. This is also a concern raised by the Electricity Price Review (EPR) and some market participants.

Mandating the ongoing disclosure of ITP information and retail gross margin reports provides an evidence-base to support an appropriate level of confidence in the competitive operation of the electricity market and inform future action that may be required to reduce information asymmetry between generator retailers and other market participants. Greater transparency and better understanding of pricing processes help strengthen trust and confidence in the wholesale market for the long-term benefit of consumers.

The Authority consulted on a Code amendment proposal in April-May 2021 and received submissions from interested parties. The Authority has evaluated this feedback and made a number of changes to its proposed reporting obligation as consulted. These changes streamline the obligation and facilitate disclosure by the relevant parties. The changes do not alter the policy intent of the reporting obligation and the purpose of the obligation is achieved with these changes. Appendix B sets out the obligation with the changes tracked in the text.

This decision paper marks the completion of the Authority's response to the EPR's D3 recommendation: Make generator retailers release information about the profitability of their retailing activities. The reporting obligation is expected to have several positive effects on market outcomes – it will facilitate comparability of key ITP and revenue metrics; it will reduce information asymmetry and will improve trust and confidence in the electricity market.

In light of the work and consideration currently being undertaken on the information gathering framework, the Authority has decided to sequence the decision on how this proposal will be implemented (whether through the Code Amendment set out in Appendix A or under the proposed information gathering framework) at a time when the information gathering framework is being or has been considered.

This decision paper:

- sets out the Authority's decision in full;
- summarises themes from submissions received during the April–May 2021 consultation; and
- summarises the Authority's response to these submissions.

Contents

Executive summary	i
1 The Authority has decided to mandate disclosure of retail internal transfer prices and retail gross margins	2
2 The disclosure obligation will help improve trust and confidence in the wholesale market for the long-term benefit of consumers	3
3 The Authority has received and considered feedback on its proposal	5
4 Next steps - implementation of decisions and supporting actions	22
Appendix A The Code Amendment	23
Appendix B Changes to the Code amendment as consulted	30
Appendix C Summary of submissions and Authority's response	38
Appendix D Submitters' suggested amendments to the proposed Code amendment	45
Glossary of abbreviations and terms	50

Tables

Table 1 – List of submitters	5
Table 2 – Summary of suggested amendments to the proposed Code amendment	16
Table 3 – Other drafting changes to the proposed Code amendment	20
Table 4 – Summary of submissions	38

1 The Authority has decided to mandate disclosure of retail internal transfer prices and retail gross margins

- 1.1. Following consultation in April–May 2021, the Authority has decided to proceed with the proposal to require the disclosure of mass market internal transfer prices (ITP) information by integrated generator retailers and the disclosure of retail gross margin reports by retailers.
- 1.2. This decision responds to and addresses concerns with the wholesale market identified by the EPR in D3: *Make generator retailers release information about the profitability of their retailing activities*.
- 1.3. The Authority’s decision will result in mandatory annual disclosure of mass market internal transfer pricing information by large generator retailers, if, in any month of the financial year, they:
 - (a) sold to the clearing manager at least 5% of the total amount of electricity (as measured in MWh); and
 - (b) were responsible for at least 5% of the total ICPs registered in the registry with an ICP status of “Active”.
- 1.4. These generator retailers will be required to disclose:
 - (a) their average load-weighted retail ITP (expressed in per MWh terms);
 - (b) sufficient detail to enable a reasonable person to understand how the ITP was determined, including the key components and their attribution to the load-weighted retail ITP (expressed in per MWh terms) and an explanation of the methodology;
 - (c) the non-price terms of the internal transfer arrangements, eg, whether supplied on a fixed price variable volume (FPVV) basis;
 - (d) where a change in the methodology impacts the internal transfer price for the current year by more than 5%, compared to the previous methodology, the impact of the change in the methodology on the current and preceding three years of ITPs;
 - (e) the purposes for which the ITP is used, including whether it is used or affects retail pricing.
- 1.5. The Authority’s decision will also result in mandatory annual reporting of retail gross margins by retailers on a per MWh basis. This reporting obligation will apply to any retailer who in any of the preceding 12 months was responsible for 1% or more of ICPs in the registry. Retailers with less than 5% of all ICPs would be anonymised for reporting purposes.
- 1.6. The Authority is satisfied that diversified retail businesses can be unbundled with sufficient rigour to be able to disclose the retail gross margin applicable to the *electricity* business unit.
- 1.7. Participants will be required to report for the first time no later than 90 days after the end of their respective financial years following the date when the proposal takes effect. The Authority is taking a pragmatic approach to collecting ITP information and retail gross margin reports. This is to streamline reporting, facilitate disclosure and minimise the administrative burden on participants. This approach also provides the Authority with sufficient time to develop reporting tools and a central location where market participants will be required to disclose information.

- 1.8. To help with interpretation of the disclosed information, the Authority will independently develop benchmarks and indicators and publish them on the Electricity Market Information (EMI) website.
- 1.9. The first reports made by participants complement existing ITP information obtained by the Authority when it developed ITP benchmarks to inform the project development. These benchmarks cover the 2019 financial years of the integrated generator-retailers and are available on the Authority's website¹.
- 1.10. This project is part of a portfolio of work the Authority has completed or has progressed to improve the current settings and mechanisms in the market. The priorities were clearly expressed by the Minister and through stakeholder feedback to the EPR and the Authority took deliberate and planned action to act upon these priorities in a sequenced manner. In sequencing priority projects, the Authority was also guided by stakeholder feedback to prioritise prohibiting saves and win-backs, set up an enduring market making approach, improve information disclosure and now mandate the disclosure of internal transfer pricing.
- 1.11. A post-implementation review will be undertaken after a sufficient period of time has elapsed from its implementation to evaluate if the proposal has resulted in the expected outcomes, and the Authority will propose any changes, if necessary.
- 1.12. In light of the work and consideration currently being undertaken on the information gathering framework, the Authority has decided to sequence the decision on how this proposal will be implemented (whether through the Code Amendment set out in Appendix A or under the proposed information gathering framework) at a time when the information gathering framework is being or has been considered – currently planned for October. This proposed framework is expected to provide a solid foundation for the Authority's data management and reporting processes.

2 The disclosure obligation will help improve trust and confidence in the wholesale market for the long-term benefit of consumers

- 2.1 Confidence in the retail market is undermined if parties have a partial view, and limited understanding of how generator retailers set their internal transfer prices and of the resulting implications for segmented profitability.
- 2.2 Well-functioning electricity markets provide avenues to improve information disclosure by participants, reduce information asymmetries amongst participants and foster greater understanding of the competitive behaviour of retailers. The Authority's decision to implement the proposal is intended to provide such an avenue by facilitating reporting by integrated generator retailers, and retailers more generally.
- 2.3 The EPR noted concerns that the pricing practices used within integrated generator retailers for transferring electricity between their generation and retail businesses may be undermining competition.
- 2.4 Non-integrated retailers and consumers could be disadvantaged if large generator retailers, which control the greater part of electricity supply, are providing electricity at below fair market prices to their own retail arms. In the long run, consumers could also be disadvantaged if internal pricing stifles retail competition.
- 2.5 The disclosure of retail gross margin reports by retailers addresses the concern that generator retailers might be compromising competition in retail markets by selling at prices below what is 'economic'.

¹ <https://www.ea.govt.nz/development/work-programme/risk-management/internal-transfer-pricing-and-profitability/>

- 2.6 Mandating the annual disclosure of retail ITP information by generator retailers and retail gross margin reports by retailers also provides an evidence-base to support an appropriate level of confidence in the competitive operation of the electricity markets. The disclosures can also inform future policy decisions that may be required to enhance competition. Better transparency and understanding of pricing processes will help strengthen trust and confidence in the wholesale market for the long-term benefit of consumers.
- 2.7 This project is part of a portfolio of work the Authority has completed or has progressed to improve the current settings and mechanisms in the wholesale electricity market. These projects, in their entirety, are expected to enhance wholesale market information disclosure, ensure enduring market making arrangements, clarify trading conduct rules, improve disclosure of internal transfer pricing and more closely monitor contract prices and new-generation costs.
- 2.8 The disclosure obligations are expected to have several positive effects on market outcomes:
- (a) **Build confidence in the electricity market by reducing information asymmetry:** mandating disclosure of information that improves transparency on how generator retailers set their internal prices and implicitly hedge their exposure to spot markets promotes confidence in the competitive operation of the electricity markets.
 - (b) **Improve trust in the market:** information asymmetries raise doubts about competition in electricity markets, and harms trust and confidence. In the longer term, a lack of trust would discourage participation in the market, reduce entry by new competitors and curtail new investment. The Authority considers that improved information disclosure will improve trust in the market.
 - (c) **Facilitate comparability of key metrics:** mandating ongoing disclosure of key metrics on a centralised disclosure platform and facilitating their interpretation through appropriate benchmarks would help uncover problematic behaviour in electricity markets. Improved transparency provides assurance to participants about the competitive operation of the electricity markets.
- 2.9 The disclosure obligations are expected to result in net benefits compared to the status quo obtained from the positive effects outlined above. The cost-benefit analysis (CBA) appended with the consultation paper concluded that:
- Greater transparency would make it easier for investors, and small and prospective retailers to assess risks of both market entry and expansion strategies. Therefore, the improved disclosure regimes would increase competition in electricity markets.
 - The prospect of greater competition from new entrants and growing small retailers would encourage innovation across the sector through reduced perceptions of risk. This would, in turn, encourage new entrants and investment.
 - Centralised reporting would reduce search costs compared with the current situation, and by standardising reporting and mandating ongoing disclosure by all parties would improve the quality and cost effectiveness of comparative analysis across firms and time periods. This would reduce search and analysis costs, reduce information asymmetry, and contribute to greater transparency.

3 The Authority has received and considered feedback on its proposal

- 3.1 The Authority consulted on a proposed Code amendment in April–May 2021. The consultation paper² and stakeholders’ submissions³ are available on the Authority’s website. The Authority has considered the feedback received from submitters and has set out its responses in the paragraphs below.
- 3.2 In addition to this consultation, the Authority’s decision is informed by a detailed benchmarking exercise of the internal transfer prices of the five largest generator retailers’ and supported by a comprehensive engagement process with stakeholders to discuss the findings of this benchmarking exercise and to further refine the Authority’s proposal.
- 3.3 Interested participants have been engaged throughout the ITP project process and an information workshop was held at the launch of the consultation in April 2021. Several bilateral meetings were also held with interested participants during the consultation period.
- 3.4 The Authority received fifteen submissions on the internal transfer pricing consultation from the submitters listed in Table 1. A summary of submissions is provided in Appendix C.

Table 1 – List of submitters

Category	Submitter
Generators/ Generator retailers	Contact
	Genesis
	Mercury
	Meridian
	Nova
	Trustpower
Retailers	Electric Kiwi (note 1)
	Entrust
	Flick Electric (note 1)
	Octopus Energy
	Vector (note 1)
	Vocus
Others	Fincap
	Major Electricity Users Group

Note 1: These participants also submitted jointly.

- 3.5 The feedback received from submitters on the proposal mandating the annual disclosure of mass market ITP information was broadly supportive. Most submitters stated that this is necessary to improve transparency in the electricity market. In contrast, some submitters

² Available [online] at: <https://www.ea.govt.nz/assets/dms-assets/28/Internal-transfer-prices-and-segmented-profitability-reporting-Consultation-paper-updated-20-April.pdf>

³ Available [online] at: <https://www.ea.govt.nz/development/work-programme/risk-management/internal-transfer-pricing-and-profitability/consultations/#c18839>

said that there is no direct link between their ITP and pricing methodology, and the ITP disclosure would have limited value.

- 3.6 There was mixed feedback on the proposal to mandate the disclosure of retail gross margins by retailers. Some submitters requested more granular information and submitted that the Authority should also mandate disclosure of segmented profitability of the generation business of integrated generator retailers to properly address the EPR recommendation. Other submitters argued that the benefits from disclosing retail gross margins are unclear, given their complexity, and are difficult to compare. Some submitters were also concerned that the disclosure of gross retail margins raises confidentiality questions and could have unintended consequences.
- 3.7 Submitters provided several suggestions and raised some concerns. These suggestions and concerns have been grouped into the following categories:
- (a) problem definition
 - (b) assessment of options to address the identified problem
 - (c) proposed information disclosure of retail ITP
 - (d) proposed information disclosure of retail gross margin reports
 - (e) proposed threshold to meet the disclosure obligations on retail ITP
 - (f) proposed threshold to meet the disclosure obligations on retail gross margin reporting
 - (g) proposed disclosure following changes to ITP methodology
 - (h) expected benefits of the proposal
 - (i) textual drafting of the proposed Code amendment
 - (j) a sunset provision for the proposed Code amendment.
- 3.8 Each of these categories is discussed below.
- 3.9 The Authority has evaluated submitters' feedback and made a number of changes to the proposed Code amendment as consulted. These changes streamline the reporting obligations and facilitate disclosure by the relevant parties. The changes do not alter the policy intent of the reporting obligations and the purpose of the obligations is better achieved with these changes. Appendix B sets out the Code amendment with the changes tracked in the text.
- 3.10 The Authority has endeavoured to accurately summarise the views expressed in the submissions. However, the summary is not exhaustive and compresses the information provided in submissions. The individual submissions should be read to obtain a full account of submitters' views.

Problem definition

What the Authority proposed

- 3.11 The EPR recommended that *"The Electricity Authority should require vertically integrated companies to report separately on the financial performance of their retailing and generation/wholesale operations using a common (regulated) set of reporting rules"*.
- 3.12 This recommendation was in response to concerns that generator retailers could be favouring their retail arms to undermine competition. Smaller non-integrated retailers could

be disadvantaged if large generator retailers, which control the greater part of electricity supply, provide electricity at below fair market prices to their own retail arms.

- 3.13 The feedback received during the EPR review consultation process was mixed, with some submitters, including consumer organisations, independent retailers and some generator retailers, favouring the extra scrutiny. Other submitters opposed it on the grounds of effectiveness or implementation costs. MEUG suggested a regulatory economic model similar to its pilot project on assessing the economic profits for the sector in aggregate over time.
- 3.14 The Authority noted in its consultation paper that the *“potential concerns with the pricing practices between the generation and retail arms of large integrated firms are the basis for any intervention by the Authority with respect to ITP”* and that *“the possibility that predatory pricing practices, including generator retailers selling at prices below what is economic and sustainable, or with the express intention of forcing the exit of competitors, would require disclosures which incorporate retail revenues, and would form the basis for any intervention by the Authority in regard to segment reporting”*.

Submitters' views

- 3.15 In its submission, Mercury argued that more clarity is needed on the problem definition. More specifically, Mercury said that the problem is primarily one of information asymmetry and should not be couched in terms of prohibiting predatory pricing practices or other alleged anti-competitive behaviour by the integrated generator retailers. Mercury insists that *“this [viewpoint] is not only confusing but is also without merit”*.
- 3.16 Meridian argued that the *“consultation paper does not adequately define any problems that would justify increased disclosure of ITPs or retail margins”* and that *“it does not explore the concerns that the gentailers may set ITPs that are below fair market prices to favour their retail businesses or [that] the gentailers may set their retail prices below cost, predating the independent retailers”*.
- 3.17 MEUG points out that *“the underlying problem is whether the large vertically integrated suppliers have been undertaking on a sustained basis conduct that is leading to outcomes detrimental to the long-term benefit of consumers.”* MEUG therefore concluded that *“the proposed ITP regime and/or segmented profitability reporting do not answer this underlying question”*.
- 3.18 Electric Kiwi, Flick Electric and Vocus (in their individual and joint submission) claim that the real problem is one of market structure and market power, ie that barriers to entry and competition are present because of the vertical integration and the size of integrated retailers.
- 3.19 Octopus Energy considers that the real problem is the lack of prohibitions that *“prevents discrimination of access to wholesale supply and cross subsidisation by the generation segment”*. Octopus Energy argued in favour of enacting specific provisions to prohibit these practices.

Authority's response

- 3.20 The Authority considers that consumers would benefit from increased transparency in the pricing practices of the integrated generator retailers.
- 3.21 Confidence in the industry is being undermined by the current opaque pricing practices of participants that are both vertically integrated and have market concentration. The Authority notes that independent retailers remain concerned that the extent of market

concentration by the large generator retailers is undermining competition in the retail sector.

- 3.22 The Authority considers that improved and ongoing disclosure of their retail ITP and the disclosure of retail gross margin reports by retailers is an appropriate level of intervention that improves transparency for the benefit of consumers. The Code amendment contributes to the Authority's strategic focus on improving trust and confidence in the competitive operation of the electricity markets.

Assessment of options to address the identified problem

What the Authority proposed

- 3.23 The Authority identified various options to help strengthen trust and confidence in electricity markets through greater transparency, as set out in the consultation paper.
- 3.24 In addition to mandatory disclosure of retail ITP, the options considered the continued reliance on voluntary disclosure of ITP information by some, but not all, large generator retailers and mandating a standardized ITP methodology to be used by all generator retailers.
- 3.25 In respect to segmented profitability reporting, the Authority also considered the reporting of segmented profitability by public companies subject to generally accepted accounting practices and mandating a full cost profitability measure, such as net profitability.

Submitters' views

- 3.26 Electric Kiwi, Flick Electric and Vocus recommended the Authority mandate disclosure of wholesale and retail profitability reporting in addition to the disclosure of retail ITP and gross retail margins, as proposed by the Authority.
- 3.27 They further recommended that the Authority should consider financial separation of integrated generator retailers with full financial segmentation of wholesale and retail to the EBITDAF level (not just gross margin disclosure), as a follow-up to the ITP disclosure.
- 3.28 These views were echoed by Octopus Energy who submitted in favour of more granular reporting "*to effectively monitor competition and market health*" and "*enhance the integrity to the competitive process*" and consider measures that ensure equivalent wholesale access for independent and vertically integrated players alike. This could be achieved by enacting provisions that prohibit discrimination in selling electricity and cross-subsidies, similar to those found in the UK electricity market.
- 3.29 On the other hand, Genesis disagreed that the Authority should mandate what ITPs should be or should include. Genesis also disagreed that "*the ITP should include the additional costs and risks that a gentailer's arm would face if they were not part of an integrated business*" because "*this would introduce additional and unnecessary complexity (eg assumptions around credit risk), is artificial and does not reflect commercial reality or the purpose for which ITPs are used*".

Authority's response

- 3.30 The Authority evaluated various options as outlined above but considered them to be more intrusive and administratively costly to implement when compared to the problem that the proposal seeks to resolve.
- 3.31 The Authority also considers that the current voluntary disclosures made by the generator retailers provide insufficient details on their methodology to enable third parties to understand and reconstruct them. Thus, such voluntary disclosures do not improve transparency of their pricing practices and do not alleviate the competition concerns

voiced by the independent retailers. Mandating disclosure of ITP information is necessary to improve transparency on the pricing practices of the generator retailers.

- 3.32 The Authority has noted feedback from some submitters suggesting the financial separation of integrated generator retailers or to mandate equivalent wholesale access to all market participants. The EPR considered the proposal of operational separation of integrated generator retailers. The EPR did not support this proposal and considered instead that “*other elements of our reform package will be sufficient to mitigate the competition-weakening effects of vertical integration*” and that “*more accurate disclosure of transfer prices will enable a much clearer assessment of the extent of any competition problems*”. The Authority therefore considers that these interventions are outside the scope of this project.
- 3.33 The Authority’s statutory objective is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers. The Authority fosters competition in the electricity markets by seeking out, and removing barriers, to new participants entering the market and by ensuring that existing participants can compete unhindered.
- 3.34 The Authority notes that this project is part of a broader strategic focus on interventions in the wholesale market that seek to strengthen the current regulatory settings in the wholesale market and incentivise the right market behaviours and decisions by participants.

Proposed information disclosure of retail ITP

What the Authority proposed

- 3.35 The Authority proposed to add clauses 13.256 to 13.258 to Part 13 of the Code requiring integrated generator retailers to disclose information on their ITP, specify the key components to be disclosed, and disclose any material change in ITP methodology.
- 3.36 The Authority proposed clauses 13.261 to 13.266 to enable the Authority to appoint an independent party to review the disclosed ITP information (and retail gross margin reports). These proposed clauses also specify which parties would be liable to cover the cost of these independent reviews.

Submitters’ views

- 3.37 Most submitters agree that disclosing ITP information is required to improve transparency on the pricing processes by the integrated generator retailers.
- 3.38 In their joint submission, Electric Kiwi, Flick Electric and Vocus recommended that in addition to the retail ITPs, the generator retailers should also disclose the rationale and justification of their ITP.
- 3.39 Mercury, Meridian and Nova argue that retail ITP information is too diverse to be meaningful and cannot be used for comparability purposes. They further argue that the disclosure of ITP information would raise more questions and is susceptible to being misused.
- 3.40 Mercury recommends that the generator retailers should be able to decide whether to disclose consolidated ITP reporting in the event their financial reporting systems were not integrated. On the other hand, Octopus Energy did not support disclosure of consolidated reports and favoured separate disclosure. Additionally, Octopus Energy stated that where the ITP for a business or segment of customers differs then the generator retailer should also disclose the methodology and explain the rationale for the difference.

Authority's response

- 3.41 Clauses 13.256(2) and (3) require the disclosing party to provide information on the key components making up their retail ITP. This breakdown of key components ensures that the information provided is consistent and comparable between disclosing parties, and responds to the concern raised by Mercury, Meridian and Nova.
- 3.42 Clause 13.256(3)(e) requires the disclosing party to provide information on the purposes for which the retail ITP is used by the generator-retailer. This requirement should shed light on the rationale and justification of their ITP, and responds to the suggestion made by Electric Kiwi, Flick Electric and Vocus.
- 3.43 The Authority considers that the proposal is an appropriate level of intervention to adequately address the identified problem. The disclosed information will provide the Authority and market participants with sufficient information to improve transparency in the price setting processes of the integrated generator retailers. Improved transparency will help strengthen trust and confidence in the electricity market for the benefit of consumers.

Proposed information disclosure of retail gross margin reports

What the Authority proposed

- 3.44 The Authority proposed to add clauses 13.259 to 13.260 to Part 13 of the Code requiring retailers to disclose their retail gross margins.
- 3.45 The Authority also proposed to add clauses 13.261 to 13.266 specifying how an independent party is appointed to review the disclosed retail gross margin reports (and ITP information). These clauses also specify which parties would be liable to cover the cost of these independent reviews.

Submitters' views

- 3.46 In their submissions, Electric Kiwi, Flick Electric, Vocus and Entrust argue that the Authority's proposal to limit segmented financial disclosure to gross retail margins would only partially implement the EPR recommendation. They point out that *"one of the problems with looking at retail gross margins only is that low margins could simply reflect high (undisclosed) generation profits and hide that electricity retail prices are higher than they should be in a workably competitive market"* and that *"the Authority's analysis shows incumbent vertically-integrated suppliers are effectively running two sets of books with two sets of Internal Transfer Prices; one for accounting purposes and one for retail pricing purposes."*
- 3.47 A different view was put forward by Mercury, Meridian and Nova who claim that information on retail gross margins contains too many complexities from differences in retailers' activities, plant types and fuel cost structures to be useful for comparative purposes.
- 3.48 They further argue that the disclosure of this information would raise more questions and is susceptible to being misused and its disclosure would have limited benefits in terms of improving trust and confidence while adding administrative costs to the disclosing parties.

Authority's response

- 3.49 The Authority considers that mandating disclosure of retail gross margins to the level proposed in the Code amendment does not put an onerous obligation on publicly listed participants because they already report segmented information as required by the IFRS 8, albeit at a less granular level than proposed by the Authority.
- 3.50 The Authority notes that the disclosing parties (both publicly listed and privately owned) are likely to already have segmented accounts at the level proposed by the Authority for

their own internal use including to assess the performance of their business units and market segments, and to support their accounting systems.

- 3.51 The proposal is unlikely to apply to any micro and early stage firms/traders with retail operations as they are likely to have less than 1% of all active ICPs. This avoids putting an undue administrative burden on these participants when disclosure by them is unlikely to contribute to address the problem that the proposal seeks to resolve.
- 3.52 Mandating the disclosure of retail gross margin reports at a more granular level than proposed by the Authority would be overly onerous on the disclosing parties compared to the expected benefits and would raise substantially more significant issues around confidentiality and anonymity than the amendment detailed below.
- 3.53 The Authority may, at a later stage, consider mandating more granular information disclosure or the disclosure of other information if the proposed Code amendment is not effective at improving transparency of the price-setting processes of generator retailers.

Proposed thresholds to meet the disclosure obligations on retail ITP

What the Authority proposed

- 3.54 The Authority proposed to mandate annual disclosure of mass market internal transfer pricing information by any generator retailer who in the preceding 12 months:
- sold to the clearing manager an amount of electricity at least equivalent to 5% of the total amount of electricity sold in any of the preceding 12 months by all generators who are traders, as measured in MWh; and
 - was recorded in the registry in any of those preceding 12 months as being responsible for at least 5% of the total ICPs registered in the registry.

Submitters' views

- 3.55 Submitters provided several divergent views on the thresholds to meet the disclosure requirements proposed by the Authority.
- 3.56 Electric Kiwi considers a 5% market share to be a reasonable threshold between large/small participants or whether a supplier has significant or substantial market power. Electric Kiwi does not consider that if a generator or retailer grew its market share organically to 5% or above, it would somehow gain market power.
- 3.57 The Independent retailers stated that, *"for the avoidance of doubt, we do not consider that a 5% market share is an appropriate threshold for determining whether a supplier is large or has market power"* and that *"the requirements should apply to Contact, Genesis, Mercury, Meridian, Nova and Trustpower, and not vertically-integrated suppliers with 5% market share (ITP disclosure) or retailers with 1% market share (retail gross margin disclosure)"*.
- 3.58 They also recommended that the information should be disclosed at the start or financial half year rather than at the end of the financial year.
- 3.59 Contact questioned the source of the thresholds and stated that *"it is unclear why the Authority has determined a threshold of 5% based on total electricity sold to the clearing manager or based on ICPs"* and that *"this is inconsistent with the approach taken on the proposed margin analysis which is set at 1%"*.
- 3.60 Genesis and Mercury suggested that the ITP disclosure requirements should apply to all generator retailers and no threshold is necessary. Similarly, Meridian argued that the

thresholds should apply to “any firm that both sells electricity to the clearing manager and retails at ICPs”, and not rely on the defined term ‘generator retailer’.

- 3.61 Nova suggested that the threshold for full disclosure in relation to the ITP proposal should be set at a level that captures only those with significant market share, ie of a size that could raise competition concerns. It considers a 5% threshold to be too low and captures parties too small to influence the retail market from a competition perspective, while imposing additional regulatory burdens and costs. Nova suggested that the cut-off of 5% share of ICP’s should be increased to 10%, or the definition used to set the public disclosure level be redefined.

Authority’s response

- 3.62 The Authority considers the proposed thresholds for ITP find the right balance between imposing additional administrative costs on disclosing parties and the risk of excluding one or more large market players from disclosure requirements.
- 3.63 The Authority does not share the same view as the Independent retailers that the ITP information should be disclosed at the start or the half year because it raises the risk of providing an avenue for tacit collusion. It would also add an element of uncertainty to the ITP information and this may entail more frequent revisions which increase the administrative burden on the disclosing parties.

Proposed thresholds to meet the disclosure obligations on retail gross margin reporting

What the Authority proposed

- 3.64 The Authority proposed to mandate annual disclosure of electricity retail gross margin reporting by retailers. This obligation does not apply to any retailer who was recorded in the registry in any of the preceding 12 months as being responsible for less than 1% of the total number of ICPs registered in the registry with an ICP status of “Active”.
- 3.65 Retailers with less than 5% of all ICPs would be anonymised for reporting purposes and will only be required to disclose their gross margin report on a per MWh basis. These smaller retailers do not have sufficient market power to be considered as being critical, but their information is useful for comparative purposes.

Submitters’ views

- 3.66 Electric Kiwi argued that retail gross margin reporting requirements should only apply to the vertically integrated generator retailers that have market power and “*actual ability to extract excessive profits*”. These disclosure requirements should exclude small participants that have a small market share and do not raise competition concerns. By including parties that are too small to influence the retail market from a competition perspective, the Authority would be imposing additional regulatory burdens and costs.
- 3.67 Genesis considers that all retailers should be treated consistently. That is, either all retailers are identified, or none are named, with reporting anonymised in a manner similar to that used for the Authority’s market maker performance reports.
- 3.68 Contact stated that it is unclear why anonymity is necessary or appropriate for those retailers with greater than 1% but less than 5% of ICPs.
- 3.69 Meridian disagrees with excluding the small retailers from disclosing their retail gross margin because this would allow them to “*gain insight into their rivals’ costs and margins, while not facing the same transparency themselves*”. This would have a distortionary effect

on the market. However, Meridian considers that applying a *de minimis* principle for firms below the percentage threshold is possibly justifiable.

3.70 Nova suggested that the anonymity threshold should be raised from 5% to 10% of ICPs.

Authority's response

3.71 The Authority considers it important that disclosure of retail gross margins by both the large and small participants is required to understand the properties of the market as a whole and to undertake meaningful comparative analysis.

3.72 The Authority has avoided setting a high threshold because it would exclude a larger number of participants while requiring disclosure by fewer participants. This would create a further information asymmetry problem and potentially put the fewer disclosing participants at a competitive disadvantage.

3.73 The Authority maintains that retailers with more than 1% of all active ICPs but less than 5% will be anonymised because while they serve an important function as a counterfactual, their individual identities are not critical as they are not judged to have sufficient market power. To further ensure anonymisation of these entities, they will only be required to disclose their gross margin report on a per MWh basis.

3.74 The Authority continues to consider that the thresholds consulted on find the right balance between imposing additional administrative costs on disclosing parties, particularly the very small ones, and the (higher) risk of excluding one or more large market players from disclosure requirements.

Proposed disclosure following changes to ITP methodology

What the Authority proposed

3.75 The Authority requires generator retailers to disclose a change to their ITP methodology if that change in methodology has the effect of modifying the retail ITP by an amount in excess of 5% from the retail ITP contained in the most recent ITP information supplied by the generator retailer; and other than where this change relates solely to the distribution of the customer load base or the input prices.

3.76 In addition to the ITP methodology change, the Authority proposed that the applicable generator retailer must also disclose to the Authority:

- (a) details of the impact on the average load weighted retail ITP disclosed under clause 13.256 and 13.257 for any of the previous three financial years if the new methodology had been used to determine the generator retailer's retail ITP for those previous financial years;
- (b) details of the impact on the average load weighted retail ITP for the current financial year if the methodology used in any of those previous financial years was used to determine the generator retailer's retail ITP for the current financial year.

Submitters' views

3.77 Electric Kiwi suggested that the Authority should require vertical-suppliers to disclose ITPs proactively rather than retrospectively. This proposal was made to improve timeliness of the assessment and also enable improved transparency regarding the wholesale cost used to set pricing strategy.

3.78 Similarly, Octopus Energy stated that the methodology should be forward looking and reflects an arm's length arrangement.

- 3.79 Genesis did not agree that there should be a requirement to disclose the impact on the preceding three financial year because this adds to compliance costs and produces information that is irrelevant and unrelated to the purpose for which an ITP is calculated.
- 3.80 Nova stated that “[it] would be surprised if participants changed their internal transfer pricing methodologies on a retrospective basis. If parties change their ITP then that is likely to be in response to changes to future market conditions and not the past, so reporting impacts on historical results will not be meaningful or could be misleading.”
- 3.81 Meridian stated that it is not clear why any change in ITP methodology should be retrospectively applied to previous years when in reality a different ITP was used in those years and the financial reporting in respect of those years has been completed.
- 3.82 Meridian also submitted that the Authority has not articulated what benefit would result from this retrospective reporting. The main (and potentially only) effect would likely be to disincentivise any changes to ITP methodologies.

Authority’s response

- 3.83 The Authority has noted Meridian’s feedback but considers it important that the disclosing party reports substantive changes in their ITP methodology, and the impact on the previous financial years.
- 3.84 As set out in the consultation paper, the requirement on generator retailers to retrospectively apply methodological changes to past reported ITP data (subject to the applicable threshold) was proposed to address any residual concern with generator retailers changing their ITP policy.
- 3.85 Disclosing changes in the ITP policy would inform the Authority and market participants of the frequency of such changes and their magnitude compared to the new ITP policy. By understanding the materiality of changes in the ITP policy, the Authority can ascertain whether ITPs are simply an internal means of accounting for the allocation of profits and risks between a generator retailer’s internal groups or whether they serve a different purpose.
- 3.86 This disclosure requirement also ensures that the ITP information provided by the generator retailers is up-to-date and relevant to the Authority, and other market participants, and is useful for comparative purposes. This enhances the robustness of the disclosed information and provides greater consistency in the use of benchmarks. Greater consistency in the disclosed information improves transparency and further contributes to confidence and trust in the wholesale market.

Expected benefits of the proposal

What the Authority proposed

- 3.87 The Authority proposed to add several new clauses to Part 13 of the Code requiring parties that meet the threshold to disclose information on their retail ITP and segmented gross retail margins. The aim is to improve transparency in pricing practices particularly of the integrated generator retailers and consequently help strengthen trust and confidence in the electricity market.
- 3.88 The Authority is of the view that the benefits of the proposed Code amendment exceed the costs because it is expected to:
- (a) increase retail competition by reducing barriers to entry and expansion because over time, improved disclosure and greater transparency would make it easier for

investors, and small and prospective retailers to assess risks of both market entry and expansion strategies. Improved transparency, at least in the case of ITPs, can be expected to reduce existing perceptions of anti-competitive practices, thereby reducing risk-premiums and encouraging greater investment.

- (b) increase innovation because improved transparency will reduce perceptions of risk and encourages new entrants, investment and innovation.
- (c) reduce search and analysis costs because participants will be able to freely access standardised information on ITP and segmented gross retail margins in a centralised location, and eventually, a range of ITP benchmarks produced by the Authority from reported information.

Submitters' views

- 3.89 In their submission, Mercury, Meridian and Nova held similar views that the benefits of the proposal are unclear.
- 3.90 Meridian argued that *“the benefits are unclear whereas costs are easily quantified”* and that the Authority should *“simply publish a paper to dispel myths about ITPs” instead of requiring new information disclosure as proposed*.
- 3.91 Mercury conceded that the proposal *could* be net beneficial *“particularly if all retailers have to complete the [same level of] reporting”*.
- 3.92 Nova held a similar view that the proposal may have net benefits for consumers but is wary that it could also have unintended consequences, such as:
- *“encouraging convergence of gross margins to a level that is possibly higher than parties currently operate on.*
 - *or leading to more volatile mass market pricing as ITP’s become more aligned with shorter term ASX futures prices”*.
- 3.93 Contact had a different view and argued that; *“mandatory reporting through EMI will make comparison easier, reduce search costs and allow for ongoing analysis by parties and the Authority”*.
- 3.94 Electric Kiwi, Flick Electric, Vocus and Octopus Energy all stated that the benefits of the proposal outweigh the costs.

Authority's response

- 3.95 The Authority notes that it is difficult to quantify in monetary terms the expected benefits from an incremental improvement in transparency but disagrees with Meridian that the benefits will not exceed the costs of the proposal.
- 3.96 The regulatory statement in the consultation paper (section 5) clearly sets out the expected costs and benefits of the proposal and discusses in detail the approach taken by the Authority to quantify them.
- 3.97 In response to Nova’s concerns, the Authority notes that the disclosure of retail ITP by the generator retailers is unlikely to encourage gross margins convergence at a higher level than presently set or that it will lead to a more volatile mass market pricing. The disclosure of retail ITP will not remove the incentive for generator retailers to capture market share, and the Authority expects that they are more likely to lower their ITP. The disclosure of ITP does not change the fact that competition exists or that the need to offset risk is removed.

3.98 The Authority intends to carry out a post-implementation review of the Code amendment following a sufficient period of time from its implementation to obtain a better picture of the benefits and costs of this proposal, and propose any changes, if necessary. This is standard practice adopted by the Authority when introducing a substantive change to the Code.

Textual drafting of the proposed Code amendment

What the Authority proposed

- 3.99 The Authority is proposing to add clauses 13.256 to 13.266 to Part 13 of the Code.
- 3.100 As stated above, the Authority has made several changes to the proposed Code amendment as consulted on to streamline the reporting requirements and address some concerns raised by submitters. The Code amendment is set out in full in Appendix A.
- 3.101 This Code amendment addresses the EPR recommendation by mandating additional information disclosure while taking into consideration the administrative burden that such disclosure entails.
- 3.102 Ongoing and improved information disclosure on the pricing processes of generator retailers will help strengthen trust and confidence in the operation of the electricity market and promote the Authority’s statutory objective on improving competition for the long-term benefit of consumers.

Submitters’ views

3.103 Genesis, Meridian and Trustpower proposed several changes to the proposed Code amendment, as summarised in Table 2 below and set out in Appendix D.

Table 2 – Summary of suggested amendments to the proposed Code amendment

Submitter	Suggested Amendment
Genesis	<ul style="list-style-type: none"> (1) Remove clause 13.256(3)(a) and (b). (2) Amend clause 13.256(3)(e) to simply require that the generator retailer set out the purposes for which the ITP is used. (3) Insert a definition of “reasonable person” in Part 1 of the Code. A reasonable person is to be interpreted in the same way as that set out in paragraph 7.9 of the Wholesale Information Disclosure Rules. (4) Amend clauses 13.256 and 13.257 to reflect that the provision of information to the Authority under clause 13.257 satisfies the obligation to make the information publicly available. (5) Remove clause 13.257(b) and (c), subject to the changes proposed in (4).
Meridian	<ul style="list-style-type: none"> (1) Include the words “if relevant” in clause 13.256(3) so as not to force generator retailers into a specific method for determining ITP. (2) Remove reference to “fair reflection of the cost of electricity” from clause 13.256(2)(b) and reword as “understand how the retail ITP was determined”. (3) Remove requirement to submit the information “in the form and by the means specified by the Authority” and allow the submitter to provide a copy of, or a link to, the publicly available information.
Trustpower	<ul style="list-style-type: none"> (1) Remove reference to “fair reflection of the cost of electricity” from clause 13.256(2)(b) and reword as “replicate the calculation of the average load weighted retail ITP”.

Submitter	Suggested Amendment
	<p>(2) Remove the following clauses because they would result in public disclosure of commercially sensitive information:</p> <ul style="list-style-type: none"> • 13.256 (3)(a)(iv) &(v); • 13.256 (3)(c)(i) (A), (B), (C) & (D); and • 13.256 (3)(c)(v) & (vi). <p>(3) Remove clause 13.256 (3)(e).</p> <p>(4) Remove clauses from 13.262 to 13.266 because they may result in several competing views regarding the requirements for compliance.</p>

Authority's response

- 3.104 The Authority has evaluated the suggestions made by the submitters listed in table 2. The Authority has made the changes shown in Appendix B in response to some of the submitters' suggestions and to address textual issues identified during the review process of the proposed Code amendment. The Authority considers these changes simplify the textual drafting of some clauses and facilitates their interpretation.
- 3.105 The Authority considers that these changes are consistent with the policy intent of the Code amendment as originally proposed, improve its drafting, and do not warrant re-consultation.
- 3.106 The Authority's response to the above suggested textual amendments to the proposed Code amendment is set out in more detail below.

The Authority's response to Genesis' suggested changes to the proposed Code amendment

- 3.107 The Authority understands that removing reference to the key components or factors making up the retail ITP (as expressed in clause 13.256(3)(a) and (b)) would simplify the disclosure obligations but considers that a detailed breakdown of the key components is essential to accurately describe the ITP of the generator retailer and to enable comparison with the ITP of other participants.
- 3.108 Genesis pointed out that these key components could '*potentially reveal details of a retailer's customer base*'. As further detailed in paragraphs 3.119 and 3.120 below, the Authority considers it to be unlikely that any of the ITP information or retail gross margins is commercially sensitive.
- 3.109 The Authority has assessed Genesis' suggestion to amend clause 13.256(3)(e) to only require that the generator retailer sets out the purposes for which the ITP is used. The Authority understands that this suggested change would simplify the requirement set out in this clause. The Authority has reviewed this particular clause and considers that the generator retailer should be required to also disclose any matters that the retail ITP affects, as there could be a number of such matters that would not be disclosed if only the purpose for which the ITP is used is disclosed. The Authority considers that it is important in order to achieve the purpose of the amendment that these other matters are disclosed. The Authority has, however, decided to clarify clause 13.256(3)(e) by dividing it into two clauses - inserting clause 13.256(3)(f) and making other minor drafting changes - as shown in Appendix B.
- 3.110 Genesis also suggested that the Authority should insert a definition of "reasonable person" in Part 1 of the Code to specify that this would not be "*the person on the street*" but a "*sophisticated market participant familiar with the wholesale, retail and hedge markets*". The Authority notes that the guidelines to the wholesale market information disclosure

obligations in the Code discuss this concept of a reasonable person. The Authority considers that at a general level this is an appropriate test to apply for determining the level of detail that needs to be provided about the methodology for determining the retail ITP, as the most likely persons to utilise the retail ITP disclosures. The amended drafting in Appendix B gives effect to the Authority's intended test.

- 3.111 Genesis suggested to amend clauses 13.256 and 13.257 to "*reflect that the provision of information to the Authority under clause 13.257 satisfies the obligation to make the information publicly available*" clause 13.257(b) and (c), accordingly.
- 3.112 The Authority has considered this recommendation and decided to amend clause 13.256 and clause 13.257 to require disclosure to the Authority rather than require disclosure to both the Authority and the public. This change streamlines the Code amendment and facilitates disclosure by the relevant parties. It also eases the reporting burden on the disclosing parties by avoiding duplicate reporting of the same information.
- 3.113 The Authority will publish the disclosed information or use it in a way that still allows the purpose of the Code amendment to be achieved. The Authority does not consider this change to be substantive and does not alter the policy intent of the Code amendment.

The Authority's response to Meridian's suggested changes to the proposed Code amendment

- 3.114 The Authority understands Meridian's view that adding the term "if relevant" to clause 13.256(3) could provide some leeway for the integrated generator retailers to determine the ITP method or components they wish to disclose. The Authority notes that this term is included in the sub-clauses where this term is relevant such as in clause 13.256(3)(a) and (3)(c).
- 3.115 The Authority has evaluated Meridian's second suggestion to replace the reference to "*fair reflection of the cost of electricity*" in clause 13.256(2)(b) with "*understand how the retail ITP was determined*". The Authority agrees with this suggestion because determining what is 'fair' in the context of the cost of electricity is highly subjective and would depend on factors other than the retail ITP. The Authority considers that this change would improve the intent of the proposed Code amendment and would better deliver the policy objectives.
- 3.116 The Authority disagrees with Meridian's third suggestion to remove the requirement to submit information "*in the form and by the means specified by the Authority*". The Authority requires that disclosed information is streamlined as much as possible and thereby facilitate disclosure and reduce the administrative costs to report, collate, analyse and compare the disclosed information.

The Authority's response to Trustpower's suggested changes to the proposed Code amendment

- 3.117 Trustpower suggested several changes to the proposed Code amendment. The first suggestion to replace reference to "*fair reflection of the cost of electricity*" from clause 13.256(2)(b) with "*replicate the calculation of the average load weighted retail ITP*" has been addressed by the proposed change put forward by Meridian, and accepted by the Authority, as detailed in paragraph 3.113.
- 3.118 Trustpower suggested to remove the following clauses on the basis that their disclosure could result in the public disclosure of commercially sensitive information:

- clause 13.256 (3)(a)(iv) &(v);
- clause 13.256 (3)(c)(i) (A), (B), (C) & (D);
- clause 13.256 (3)(c)(v) & (vi);
- clause 13.256 (3)(e).

3.119 The Authority is confident that nothing which is being requested with respect to ITP disclosures is confidential as:

- much of the information is disclosed voluntarily already;
- generator retailers have stated that their ITPs are not core to their comparative advantage;
- the methodologies draw on public prices, historic data, and load characteristics;
- the level of detail required - being at a sufficient level of detail to enable a reasonable person to determine how the generator retailer determined the retail ITP - is unlikely to require the disclosure of commercially sensitive information.

3.120 Information on retail gross margin reports is more susceptible to being commercially sensitive but it is unlikely to be so. The key components required to be disclosed are already published in annual financial reports, and at least one generator retailer publishes its retail gross margins in its annual financial statements. Furthermore, information by a retailer with less than 5% of total market share by ICP with a status of “Active” will be anonymised so as not to identify that retailer.

3.121 Trustpower suggested to remove clauses 13.262 to 13.266 empowering the Authority to require a review of the disclosed information by an independent person. Trustpower submitted that:

- there is the potential for several competing interpretations of compliance because the disclosure and reporting requirements are unclear (paragraph 3.2 and 3.13);
- sign-off by a director, chief executive officer, or chief financial officer would suffice (paragraph 3.4);
- there are already provisions in the Code that empower the Authority to undertake a compliance investigation if it finds evidence of non-compliance (paragraph 3.5);
- it raises substantial ongoing regulatory risk and the potential to increase compliance costs across the industry (paragraph 3.6);
- the Authority did not provide any transparency as to the criteria or threshold to determine a requirement for a review (paragraph 3.8).

3.122 The Authority has assessed these claims in detail but disagrees that these clauses should be removed and maintains discretion on when and to whom a review should apply. Although no explicit criteria have been laid out in the proposed Code amendment, in practice, the Authority would take a pragmatic approach to decide on the need to review.

3.123 It is likely that the Authority would first identify problematic parties that are not fulfilling or partially fulfilling the reporting requirements of one or more clauses, including requirements on timeliness and reporting format.

3.124 The Authority considers:

- each situation would vary and setting criteria, *a priori*, would risk excluding some possible circumstances;
- it is the norm to append this type of provision with information disclosure requirements and similar clauses are found in other parts of the Code and in disclosure requirements by other entities eg NZX;
- the Authority intends to provide reasoning when it appoints an independent reviewer;

- the cost of review will be paid by the Authority, as stated in clause 13.266(3), if the independent reviewer finds that the disclosing party has complied with its reporting obligations;
- it is a proportionate measure to ensure disclosing parties are adhering to the reporting requirements set out in the proposed Code amendment.

Other drafting changes

3.125 In reviewing the proposed Code amendment, the Authority decided to make the following changes to improve the textual drafting and simplify some clauses, as detailed in Table 3 below.

Table 3 – Other drafting changes to the proposed Code amendment

Change	Reason for change
Definition of “generator retailer” was amended to add in (b): registered in the registry with an ICP status of “Active”.	Clarifies that the ICPs referred in the amendment refer to Active ICPs.
Definition of “retail ITP” amended as follows: retail ITP means the notional price or prices per MWh for electricity set between either the generating arm or the trading arm of a generator retailer , on the one hand, and the retailing arm of the generator retailer , on the other hand, in respect of electricity generated by the generator retailer that is sold by the generator retailer to mass market customers and that is used for internal accounting, management, or other purposes	Clarifies that it is the notional price between the retail and the generation arms that is relevant, but only in respect of the electricity sold for mass market customers. The initial drafting could have been confusing in that it could have been read as referring to the price at retail.
Changed “supplied” in clause 13.256(3)(a)(ii) to “sold”.	Consistent with definition of “retail ITP” which refers to electricity sold rather than electricity supplied.
Changed “discretion” in clause 13.256(3)(a)(iv) to “discretionary judgment”.	Clearer description of the information required under the sub-paragraph.
Added “on a consolidated basis” to clauses 13.256(4)	Clarifies that the option for a single company in a group of companies to disclose information relating to all the companies is on a consolidated basis, rather than each company separately.
Added clause 13.256(5) as follows: If a generator retailer provides ITP information on behalf of other generator retailers under subclause (4), the generator retailer providing the ITP information must identify the other	Clarifies that where a generator retailer provides ITP information on a consolidated basis (in accordance with subclause (4)), the generator retailer must provide the identity of the other generator retailers who it is providing the ITP information for.

Change	Reason for change
generator retailers as part of the ITP information provided.	
Insert “in dollars” after “amount” in clauses 13.259(3)(b) and (c) with dollars	Clarifies the unit in which the disclosures required under subparagraphs must be made.
Add “as relevant” to end of clause 13.267(2)	Clarifies the situations in which the requirement in clause 13.267(2) applies.

Sunset provision to the proposed Code amendment

What the Authority proposed

- 3.126 The Authority did not propose to include a sunset provision in the proposal in its consultation and meetings with stakeholders.
- 3.127 The Authority is proposing to review the reporting obligations following a sufficient period of time from the implementation of this disclosure requirement to obtain a better picture of the benefits and costs of this proposal, and propose any changes, if necessary.

Submitters' views

- 3.128 Mercury suggested to include a sunset provision in the event that the published internal transfer prices would be used perversely and result in disruption of confidence and/or trust in the market.
- 3.129 Mercury maintains that any minor information transparency benefit from disclosing ITP would be outweighed by the disruption caused by their potential misuse. In this eventuality, the Authority should take steps to promptly remove the requirement to publish ITPs.

Authority's response

- 3.130 The Authority has considered Mercury's suggestion to include a sunset provision but decided to follow normal practice for Code amendments in which they last in perpetuity until they are repealed, with the exception of urgent Code amendments.
- 3.131 The Authority does not share the same view that the benefits from disclosing ITP are minor, nor that the costs will outweigh the benefits. The Authority also considers that there is a low risk that the disclosed information will be misused in a way that disrupts confidence and trust in the market.
- 3.132 The regulatory assessment in the consultation paper shows that the benefits from improved transparency obtained by mandating the disclosure of retail ITP by the generator retailers and retail gross margin by retailers would outweigh the administrative costs to compile and report them.
- 3.133 As stated above, the Authority is proposing to review the reporting obligations to obtain a better picture of the benefits and costs of this proposal, and propose any changes, if necessary.

4 Next steps - implementation of decisions and supporting actions

- 4.1 The Authority has decided to proceed with the proposal to require the disclosure of mass market ITP information by the integrated generator retailers and the disclosure of retail gross margin reports by retailer. The details of the proposed obligations are set out in Appendix A.
- 4.2 In light of the work and consideration currently being undertaken on the information gathering framework, the Authority has decided to sequence the decision on how this proposal will be implemented (whether through the Code Amendment set out in Appendix A or under the proposed information gathering framework) at a time when the information gathering framework is being or has been considered. In either case, there will not be a material impact on the information that will be disclosed or the timings for its disclosure. Participants would still be required to provide the Authority with ITP information and/or retail gross margin reports, as the case may be, by no later than 90 days after the end of their financial year.
- 4.3 This framework is expected to provide a solid foundation for the Authority's data management and reporting processes. The ongoing information disclosures required by the ITP proposal align well with this framework. The Authority expects to make a decision on the new information gathering framework in October 2021.
- 4.4 The Authority will advise on the form specified under clauses 13.256(1) and 13.257(2) of the proposal and on the central location where the disclosing parties will be reporting the information to the Authority.
- 4.5 The Authority will make the disclosed information available to the public. The Authority will extract data from the disclosed information to develop a series of benchmarks and indicators and will also make these metrics available to the public through the EMI website. These metrics facilitate the interpretation of the disclosed information and seek to improve participants' understanding of the price setting processes of integrated generator retailers.
- 4.6 The Authority intends to carry out a post-implementation review of the Code amendment following a sufficient period of time from its implementation to obtain a better picture of the benefits and costs of this proposal, and propose any changes, if necessary.
- 4.7 The Authority is also working towards publishing more automated metrics on the wholesale markets via the EMI website including information on contract prices as compared to new generation, and weekly water values by reservoir, and metrics on wholesale market performance such as electricity risk and hydro storage, the sensitivity of price to small changes in demand, quantity-weighted offers and offer changes and information on the marginal and gross pivotal generator.
- 4.8 Concurrently, the Authority is reviewing competition in the spot and forward markets from 2018 to early 2021. Several key events have unfolded in recent years (for example, the 2018 Pohokura outage, the conclusion of negotiations of the contract for supply at Tiwai, and the 2021 dry year event) and these have coincided with high prices for extended periods. This review is aimed at answering the question: are spot prices competitive?

Appendix A The Code Amendment

A.1 The Authority has decided to include the following provisions in the Electricity Industry Participation Code (2010).

New definitions to add to Part 1 of the Code:

financial year means, except in Schedule 12.4, the financial year adopted by a **participant** from time to time, being a 12 month period as a **participant** determines

generator retailer means a **trader** who is both a **generator** and a **retailer** and in any month of the **financial year** of the **generator retailer**:

- (a) has sold to the **clearing manager** an amount of **electricity** at least equivalent to 5% of the total amount of **electricity** sold in any of those months by all **generators** who are **traders** to the **clearing manager**, as measured in **MWh**; and
- (b) was recorded in the **registry** in any of those months as being responsible for at least 5% of the total number of **ICPs** registered in the **registry** with an **ICP** status of “Active”

and, for the purposes of this definition, the terms “**trader**”, “**generator**” and “**retailer**” include any related company, as defined in section 2 of the Companies Act 1993, of a **participant** provided that the related company is a **participant**

retail gross margin report means a report provided by a **retailer** under clause 13.259

ITP information means information on internal transfer pricing as described in clause 13.256

mass market customers means all those customers of a **generator retailer** or **retailer** who the **generator retailer** or **retailer** classifies as mass market or who are commonly understood to be mass market customers in accordance with standard industry practice

retail ITP means the notional price or prices per **MWh** for **electricity** set between either the generating arm or the trading arm of a **generator retailer**, on the one hand, and the retailing arm of the **generator retailer**, on the other hand, in respect of **electricity** generated by the **generator retailer** that is sold by the **generator retailer** to **mass market customers** and that is used for internal accounting, management, or other purposes

New clauses 13.256 to 13.266 to add to Part 13 of the Code:

Provision of internal transfer pricing information by generator retailers

13.256 Generator retailers must provide ITP information to the Authority

- (1) Each **generator retailer** must provide the **ITP information** in relation to the **generator retailer** to the **Authority** in the form and by the means specified by the **Authority** no later than 90 days after the end of the **financial year** of the **generator retailer**.
- (2) The **ITP information** must consist of the following information in relation to the **generator retailer’s financial year**:
 - (a) the average load weighted **retail ITP**, calculated by dividing the total notional cost of **electricity** under the **retail ITP** arrangements of the **generator retailer** divided by the total amount of **electricity** in **MWh** sold by the **generator retailer** to **mass market customers**;
 - (b) information on how the **generator retailer** determined the **retail ITP**, at a sufficient level of detail to enable a reasonable person, being a person who has a reasonably sophisticated understanding of the operation of the electricity industry and the

wholesale market, to determine how the **generator retailer** determined the **retail ITP**.

- (3) The information provided by a **generator retailer** under subclause (2)(b) must include the following:
- (a) a breakdown of the key components or factors which make up the **retail ITP** expressed as an amount in dollars and cents per **MWh** that each key component or factor comprises of the average load weighted **retail ITP** required by subclause (2)(a), and which must include (if relevant) the following components or factors:
 - (i) prices in **ASX NZ electricity futures**:
 - (ii) the distribution of the total electrical load across locations, including the adjustment, calculated on an average load weighted basis in **MWh**, that the **retailer generator** used to determine the **retail ITP** for the **electricity** sold to **mass market customers** beyond a **node** specified in an **ASX NZ electricity future**:
 - (iii) administrative fees, including management fees, notionally charged by the **generator retailer** to the **generator retailer's** retail arm:
 - (iv) the level of discretionary judgement the **generator retailer** exercised to amend or otherwise modify the draft **retail ITP** before it was finalised:
 - (v) all other key components or factors the **generator retailer** relied on to determine the **retail ITP**, and any other material information used by the **generator retailer** to determine the **retail ITP** that is not publicly available:
 - (b) any residual components or factors that make up the **retail ITP**, but which are not components or factors required by paragraph (a), expressed as one combined amount in dollars and cents per **MWh**:
 - (c) an explanation of the methodology the **generator retailer** used to determine or to assist in determining the **retail ITP**, and which must include (if relevant) the following:
 - (i) the assumed process used by the **generator retailer** to build the hedge book of **ASX NZ electricity futures**, including the following:
 - (A) the proportion of **ASX NZ electricity futures** the **generator retailer** assumed would be purchased and the assumed timing of those assumed purchases:
 - (B) the relative weighting of **ASX NZ electricity futures** relating to Benmore as compared to those relating to Otahuhu:
 - (C) the types of **ASX NZ electricity futures** the **generator retailer** assumed to be purchased and the maturities purchased:
 - (D) the basis on which the **ASX NZ electricity futures** are priced:
 - (ii) the approach the **generator retailer** took to adjust for:
 - (A) differences in the within day electrical load and cost profile underlying the **ASX NZ electricity futures** and the **retailer generator's mass market customers** load profile:
 - (B) distribution of electrical load across locations, including the relative use of **FTRs** or historical price differences to price for load by location:

- (iii) the approach or methodology used to determine the electrical load profile, including the following:
 - (A) whether actual or assumed load profiles are relied upon:
 - (B) the degree of granularity of load with respect to location, seasonality and intra-day:
 - (C) the percentage of load by regional geographical location:
- (iv) the basis for and determination of fees, including management or associated fees, the **generator retailer** notionally charged its retail arm:
- (v) the basis for and rationale behind any discretion the **generator retailer** exercised:
- (vi) any other details the **generator retailer** considers material to explain the methodology the **generator retailer** used to determine or assist in determining the **retail ITP**:
- (d) the key non-price parameters the **generator retailer** used to determine the **retail ITP** including whether or not the **retail ITP** is:
 - (i) for fixed or variable volume of **electricity**; or
 - (ii) for a fixed or variable price of **electricity**:
- (e) the purposes for which the **retail ITP** is used by the **generator retailer**, including whether the **retail ITP** is used as part of setting the price of **electricity** sold to **mass market customers** by the **generator retailer**:
- (f) if relevant, and if not disclosed under paragraph (e), any matters relating to the **generator retailer** which the **retail ITP** directly or indirectly affects.
- (4) Where a **generator retailer** and one or more other **generator retailers** are related companies, as defined in section 2 of the Companies Act 1993, and are required by subclause (1) to provide **ITP information** to the **Authority**, the obligation in subclause (1) is met by one of those **generator retailers** providing the **ITP information** relating to all the **generator retailers** on a consolidated basis for the **generator retailers** to the **Authority**.
- (5) If a **generator retailer** provides **ITP information** on behalf of other **generator retailers** under subclause (4), the **generator retailer** providing the **ITP information** must identify the other **generator retailers** as part of the **ITP information** provided.

13.257 Disclosure of change of methodology

- (1) This clause applies if:
 - (a) a **generator retailer** changes the methodology used to determine the **retail ITP** for a **financial year** (“the current **financial year**”) from the methodology used in a previous **financial year** for which the **generator retailer** provided **ITP information** under clause 13.256, other than where that change relates solely to the distribution of the customer load base or the input prices (**ASX NZ electricity futures** prices and locational prices as provided for in clause 13.256 (3)(a) (i) and (ii)); and
 - (b) that change in methodology has the effect of modifying the **retail ITP** by an amount in excess of 5% from the **retail ITP** contained in the most recent **ITP information** the **generator retailer** provided under clause 13.256.

- (2) Where this clause applies, the **generator retailer** must also provide the following information to the **Authority** in the form and by the means specified by the **Authority**:
 - (a) details of the impact on the average load weighted **retail ITP** disclosed under clause 13.256 for any of the previous three **financial years** if the new methodology had been used to determine the **generator retailer’s retail ITP** for those previous **financial years**;
 - (b) details of the impact on the average load weighted **retail ITP** for the current **financial year** if the methodology used in any of those previous **financial years** was used to determine the **generator retailer’s retail ITP** for the current **financial year**.
- (3) The **generator retailer** must provide the information required by subclause (2) to the **Authority** at the same time as providing the **ITP information** required under clause 13.256 for the current **financial year**.
- (4) Where a **generator retailer** and one or more other **generator retailers** are related companies, as defined in section 2 of the Companies Act 1993, and are required by subclause (2) to provide information to the **Authority**, the obligations in subclause (2) are met by one of those **generator retailers** providing the **information** relating to all the **generator retailers** on a consolidated basis for all the **generator retailers** to the **Authority**.
- (5) If a **participant** provides information on behalf of other **generator retailers** under subclause (4), the **generator retailer** providing the information must identify the other **generator retailers** as part of the information provided.

13.258 Publication of ITP information by the Authority

The **Authority** may **publish** any **ITP information** or information submitted to it under clause 13.257, as the **Authority** sees fit.

Provision of retail gross margin reports by retailers

13.259 Provision of retail gross margin report by retailers

- (1) Each **retailer** must provide a **retail gross margin report** to the **Authority** no later than 90 days after the end of the **retailer’s financial year**.
- (2) Subclause (1) does not apply to any **retailer** who was recorded in the **registry** in any of the preceding 12 months as being responsible for less than 1% of the total number of **ICPs** registered in the **registry** with an **ICP** status of “Active”.
- (3) The **retail gross margin report** must consist of the following information relating to the sale of **electricity** to **mass market customers** for the **financial year** by the **retailer**:
 - (a) the total amount of electricity sold by the retailer to **mass market customers** expressed as **MWh**;
 - (b) revenue derived from the sale of **electricity** to **mass market customers** expressed as an amount of dollars per **MWh**;
 - (c) cost of **electricity** sold by the **retailer** to **mass market customers**, including the cost of **electricity** derived from **retail ITP**, expressed as an amount of dollars per **MWh**;

- (d) cost of **metering** services associated with the sale of **electricity** to **mass market customers** expressed as an amount per **MWh**;
 - (e) cost of **distribution** services associated with the sale of **electricity** to **mass market customers** expressed as an amount per **MWh**;
 - (f) cost of transmission services, being those services provided by **Transpower** under a **transmission agreement**, paid by the **retailer** associated with the supply of **electricity** to **mass market customers** by the **retailer** expressed as an amount per **MWh**; and
 - (g) cost of levies associated with the supply of **electricity** to **mass market customers** by the **retailer** expressed as an amount per **MWh**.
- (4) A **retail gross margin report** must be prepared in accordance with generally accepted accounting practices and in the form specified by the **Authority**.
- (5) Where a **retailer** and one or more other **retailers** are related companies, as defined in section 2 of the Companies Act 1993, and are required by subclause (1) to provide a **retail gross margin report** to the Authority:
- (a) the obligation in subclause (1) is met by one of those **retailers** providing the **retail gross margin report** relating to all the **retailers** on a consolidated basis for all the **retailers** to the **Authority**; and
 - (b) in any such case, the **retailer** providing the information must identify the other **retailers**, as part of the information provided.

13.260 Publication of information contained in retail gross margin reports by the Authority

The **Authority** may **publish** the information received in a **retail gross margin report**, except that information contained in a **retail gross margin report** submitted by a **retailer** with less than 5% of total market share by **ICP** with a status of “Active” will be anonymised so as not to identify that **retailer**.

Authority may require review of ITP information and retail gross margin reports

13.261 Authority may require review of ITP information and retail gross margin reports by independent person

The **Authority** may, in its discretion, require a review by an independent person of whether—

- (a) a **generator retailer** may not have complied with one or both of clauses 13.256 or 13.257; and
- (b) a **retailer** may not have complied with clause 13.259.

13.262 Nomination of independent person to undertake review

- (1) If the **Authority** requires a review under clause 13.261—
 - (a) the **Authority** must require the **generator retailer** or **retailer** to nominate an appropriate independent person to undertake the review; and
 - (b) the **generator retailer** or **retailer** must provide that nomination within a reasonable timeframe.
- (2) The **Authority** may direct the **generator retailer** or **retailer** to appoint the person nominated under subclause (1) or to nominate another person for approval.

- (3) If the **generator retailer** or **retailer** fails to nominate an appropriate person under subclause (1) within 5 **business days**, the **Authority** may direct the **generator retailer** or **retailer** to appoint a person of the **Authority's** choice.
- (4) The **generator retailer** or **retailer** must appoint a person to undertake the review in accordance with a direction made under subclause (2) or subclause (3).

13.263 Factors relevant to a direction under clause 13.262

- (1) In making the direction required by clause 13.262(2) or clause 13.262(3), the **Authority** may have regard to any factors it considers relevant in the circumstances, including the following:
 - (a) the degree of independence between the **generator retailer** or **retailer** and the person nominated under clause 13.262(1); and
 - (b) the expected quality of the review; and
 - (c) the expected costs of the review.
- (2) For the purposes of subclause (1)(a), the **Authority** may have regard to the special definition of independent under clause 1.4 but is not bound by that definition.

13.264 Carrying out of review by independent person

- (1) A **generator retailer** or **retailer** subject to a review under clause 13.261 must, on request from the person undertaking the review, provide that person with such information as the person reasonably requires in order to carry out the review.
- (2) The **generator retailer** or **retailer** must provide the information no later than 10 **business days** after receiving a request from the person for the information.
- (3) The **generator retailer** or **retailer** must ensure that the person undertaking the review—
 - (a) produces a report on whether, in the opinion of that person, the **generator retailer** or **retailer** may not have complied with clauses 13.256, 13.257 or 13.259 (as specified by the **Authority** under clause 13.261); and
 - (b) submits the report to the **Authority** within the timeframe specified by the **Authority**.
- (4) The report produced under subclause (3)(a) must include any other information that the **Authority** may reasonably require.
- (5) Before the report is submitted to the **Authority**, any identified failure of the **generator retailer** or **retailer** to comply with clauses 13.256, 13.257 or 13.259 must be referred back to the **generator retailer** or **retailer** for comment.
- (6) The comments of the **generator retailer** or **retailer** must be included in the report.

13.265 Payment of review costs

- (1) If a report received under clause 13.264(3)(a) establishes, to the **Authority's** reasonable satisfaction, that the **generator retailer** or **retailer** may not have complied with clauses 13.256, 13.257 or 13.259 (whether or not the **Authority** appoints an investigator to investigate the alleged breach), the **generator retailer** or **retailer** must pay the costs of the person who undertook the review.

- (2) Despite subclause (1), if a report establishes, to the **Authority's** reasonable satisfaction that any non-compliance of the **generator retailer** or **retailer** is minor or there is any other reason in the **Authority's** view that means the **generator retailer** or **retailer** should not pay the costs of the person who undertook the review, the **Authority** may, in its discretion, determine the proportion of the person's costs that the **generator retailer** or **retailer** must pay, and the **generator retailer** or **retailer** must pay those costs.
- (3) If a report establishes to the **Authority's** reasonable satisfaction that the **generator retailer** or **retailer** has complied with clauses 13.256, 13.257 and 13.259 (if relevant), the **Authority** must pay the person's costs.

13.266 Requirement to provide complete and accurate information

- (1) In addition to the requirements of clause 13.2, the **generator retailer** or **retailer** must take all practicable steps to ensure that the information that the **generator retailer** or **retailer** is required to provide to any person under clauses 13.256, 13.257 or 13.259 is complete and correct.
- (2) If a **generator retailer** or **retailer** becomes aware that any information the **generator retailer** or **retailer** provided under clauses 13.256, 13.257 or 13.259 does not comply with subclause (1) or clause 13.2, even if the **generator retailer** or **retailer** has taken all practicable steps to ensure that the information complies, the **generator retailer** or **retailer** must, as soon as practicable, provide such further information as is necessary to ensure that the information provided complies with clauses 13.256, 13.257, 13.259 or clause 13.2 (as relevant).

Appendix B Changes to the Code amendment as consulted

- B.1 The Authority has made several changes to the Code amendment as originally proposed in response to feedback received from submitters during the consultation process and other minor changes as discussed above. These changes are shown below - additions are underlined and deletions are struck through.
- B.2 The Authority considers these changes clarify the textual drafting of some clauses and facilitate their interpretation. These changes are not considered to be substantial enough to warrant re-consultation. The policy intent as originally proposed has not been altered.

New definitions to add to Part 1 of the Code:

financial year means, except in Schedule 12.4, the financial year adopted by a **participant** from time to time, being a 12 month period as a **participant** determines

generator retailer means a **trader** who is both a **generator** and a **retailer** and in any month of the **financial year** of the **generator retailer**:

- (a) has sold to the **clearing manager** an amount of **electricity** at least equivalent to 5% of the total amount of **electricity** sold in any of those months by all **generators** who are **traders** to the **clearing manager**, as measured in **MWh**; and
- (b) was recorded in the **registry** in any of those months as being responsible for at least 5% of the total number of **ICPs** registered in the **registry** with an **ICP** status of “Active”

and, for the purposes of this definition, the terms “**trader**”, “**generator**” and “**retailer**” include any related company, as defined in section 2 of the Companies Act 1993, of a **participant** provided that the related company is a **participant**

retail gross margin report means a report provided by a **retailer** under clause 13.25~~96~~0

ITP information means information on internal transfer pricing as described in clause 13.256

mass market customers means all those customers of a **generator retailer** or **retailer** who the **generator retailer** or **retailer** classifies as mass market or who are commonly understood to be mass market customers in accordance with standard industry practice

retail ITP means the notional price or prices per **MWh** for **electricity** ~~in relation to a **generator retailer**'s sale of **electricity** to **mass market customers**~~ set between either the generating arm or the trading arm of a **generator retailer**, on the one hand, and the retailing arm of the **generator retailer**, on the other hand, in respect of **electricity** generated by the **generator retailer** that is sold by the **generator retailer** to **mass market customers** and that is used for internal accounting, management, or other purposes

New clauses 13.256 to 13.26~~16~~ to add to Part 13 of the Code:

Disclosure Provision of internal transfer pricing information by generator retailers

13.256 Generator retailers must ~~make retail~~ provide ITP information ~~available to the Authority~~

- (1) Each **generator retailer** must ~~make~~ provide the **ITP information** in relation to the **generator retailer** to the **Authority** in the form and by the means specified by the **Authority** ~~readily available to the public, free of charge, no later than 90 days after the end of the **financial year** of the **generator retailer**.~~

- (2) The **ITP information** must consist of the following information in relation to the **generator retailer's financial year**:
- (a) the average load weighted **retail ITP**, calculated by dividing the total notional cost of **electricity** under the **retail ITP** arrangements of the **generator retailer** divided by the total amount of **electricity** in **MWh** sold by the **generator retailer** to **mass market customers**:
 - (b) information on how the **generator retailer** has determined the **retail ITP**, at a sufficient level of detail to enable a reasonable person, being a person who has a reasonably sophisticated understanding of the operation of the electricity industry and the wholesale market, to determine how ~~whether or not~~ the **generator retailer's** determined the retail ITP ~~is a fair reflection of the cost of electricity to the generator retailer~~.
- (3) The information provided by a **generator retailer** under subclause (2)(b) must include the following:
- (a) a breakdown of the key components or factors which make up the **retail ITP** expressed as an amount in dollars and cents per **MWh** that each key component or factor comprises of the average load weighted **retail ITP** required by subclause (2)(a), and which must include (if relevant) the following components or factors:
 - (i) prices in **ASX NZ electricity futures**:
 - (ii) the distribution of the total electrical load across locations, including the adjustment, calculated on an average load weighted basis in **MWh**, that the **retailer generator** used to determine the **retail ITP** for the **electricity** supplied sold to **mass market customers** beyond a **node** specified in an **ASX NZ electricity future**:
 - (iii) administrative fees, including management fees, notionally charged by the **generator retailer** to the **generator retailer's** retail arm:
 - (iv) the level of ~~discretion~~ discretionary judgement the **generator retailer** exercised to amend or otherwise modify the draft **retail ITP** before it was finalised:
 - (v) all other key components or factors the **generator retailer** relied on to determine the **retail ITP**, and any other material information used by the **generator retailer** to determine the **retail ITP** that is not publicly available:
 - (b) any residual components or factors that make up the **retail ITP**, but which are not components or factors required by paragraph (a), expressed as one combined amount in dollars and cents per **MWh**:
 - (c) an explanation of the methodology the **generator retailer** used to determine or to assist in determining the **retail ITP**, and which must include (if relevant) the following:
 - (i) the assumed process used by the **generator retailer** to build the hedge book of **ASX NZ electricity futures**, including the following:
 - (A) the proportion of **ASX NZ electricity futures** the **generator retailer** assumed would be purchased and the assumed timing of those assumed purchases:

- (B) the relative weighting of **ASX NZ electricity futures** relating to Benmore as compared to those relating to Otahuhu:
 - (C) the types of **ASX NZ electricity futures** the **generator retailer** assumed to be purchased and the maturities purchased:
 - (D) the basis on which the **ASX NZ electricity futures** are priced:
- (ii) the approach the **generator retailer** took to adjust for:
 - (A) differences in the within day electrical load and cost profile underlying the **ASX NZ electricity futures** and the **retailer generator's mass market customers** load profile:
 - (B) distribution of electrical load across locations, including the relative use of **FTRs** or historical price differences to price for load by location:
 - (iii) the approach or methodology used to determine the electrical load profile, including the following:
 - (A) whether actual or assumed load profiles are relied upon:
 - (B) the degree of granularity of load with respect to location, seasonality and intra-day:
 - (C) the percentage of load by regional geographical location:
 - (iv) the basis for and determination of fees, including management or associated fees, the **generator retailer** notionally charged its retail arm:
 - (v) the basis for and rationale behind any discretion the **generator retailer** exercised:
 - (vi) any other details the **generator retailer** considers material to explain the methodology the **generator retailer** used to determine or assist in determining the **retail ITP**:
- (d) the key non-price parameters the **generator retailer** used to determine the **retail ITP** including whether or not the **retail ITP** is:
 - (i) for fixed or variable volume of **electricity**; or
 - (ii) for a fixed or variable price of **electricity**:
 - (e) the purposes for which the **retail ITP** is used by the **generator retailer** ~~or the matters relating to the **generator retailer** which the **retail ITP** directly or indirectly affects,~~ including whether the **retail ITP** is used as part of setting, ~~or directly or indirectly affects,~~ the price of **electricity** sold to **mass market customers** by the **generator retailer**:-
 - (f) if relevant, and if not disclosed under paragraph (e), any matters relating to the **generator retailer** which the **retail ITP** directly or indirectly affects.
- (4) Where a **participant generator retailer** and one or more other **participants generator retailers** are related companies, as defined in section 2 of the Companies Act 1993, and are required by subclause (1) to ~~make provide~~ **ITP information** ~~readily available to the public to the Authority,~~ the obligation in subclause (1) is met by one of those **generator retailers participants making providing** the **ITP information** relating to all the **generator retailers participants** on a consolidated basis for the **generator retailers** readily available to the public to the Authority.

- (5) If a **generator retailer** provides **ITP information** on behalf of other **generator retailers** under subclause (4), the **generator retailer** providing the **ITP information** must identify the other **generator retailers** as part of the **ITP information** provided.

13.257 Submission of ITP information to the Authority

- (1) ~~Each **generator retailer** must:~~
- ~~(a) submit the **ITP information** made readily available to the public in accordance with clause 13.256(1) to the **Authority** in the form and by the means specified by the **Authority**;~~
 - ~~(b) advise the **Authority** of the means by which it made the **ITP information** readily available to the public; and~~
 - ~~(c) provide sufficient information to the **Authority** under paragraph (b) to enable the **Authority** to find the **ITP information** made readily available to the public, including any website addresses.~~
- (2) ~~The **generator retailer** must submit the **ITP information** required by subclause (1) to the **Authority** by the earlier of:~~
- ~~(a) the date that is no later than 7 days after making the **ITP information** readily available to the public in accordance with clause 13.256(1); or~~
 - ~~(b) 90 days after the end of the **financial year** of the **generator retailer**.~~
- (3) ~~Where a **participant** and one or more other **participants** are related companies, as defined in section 2 of the Companies Act 1993, and are required by subclause (1) to submit **ITP information**, the obligation in subclause (1) is met by one of those **participants** submitting the **ITP information** relating to all the **participants** to the **Authority**.~~

13.2578 Disclosure of change of methodology

- (1) This clause applies if:
- (a) a **generator retailer** changes the methodology used to determine the **retail ITP** for a **financial year** (“the current **financial year**”) from the methodology used in a previous **financial year** for which the **generator retailer** ~~disclosed~~ provided **ITP information** under clause 13.256 ~~and 13.257~~, other than where that change relates solely to the distribution of the customer load base or the input prices (**ASX NZ electricity futures** prices and locational prices as provided for in clause 13.256 (3)(a) (i) and (ii)); and
 - (b) that change in methodology has the effect of modifying the **retail ITP** by an amount in excess of 5% from the **retail ITP** contained in the most recent **ITP information** the **generator retailer** ~~made readily available to the public~~ provided under clause 13.256.
- (2) Where this clause applies, the **generator retailer** must also ~~make~~ provide the following information ~~readily available to the public, free of charge~~ to the **Authority** in the form and by the means specified by the **Authority**:
- (a) details of the impact on the average load weighted **retail ITP** disclosed under clause 13.256 ~~and 13.257~~ for any of the previous three **financial years** if the new

methodology had been used to determine the **generator retailer's retail ITP** for those previous **financial years**:

- (b) details of the impact on the average load weighted **retail ITP** for the current **financial year** if the methodology used in any of those previous **financial years** was used to determine the **generator retailer's retail ITP** for the current **financial year**.
- (3) ~~Where subclause (2) applies, The~~ **generator retailer** must ~~make~~ provide the information required by subclause (2) ~~readily available to the public to the Authority~~ at the same time as ~~making providing the ITP information readily available to the public Authority~~ for the current **financial year** required under clause 13.256 for the current financial year.
- (4) ~~Where this clause applies, the~~ **generator retailer** must, at the same time as making **ITP information** for the current **financial year** ~~readily available to the public~~ in accordance with clause 13.256(1):
 - (a) ~~submit the information made readily available to the public in accordance with subclause (2) to the Authority in the form and by the means specified by the Authority;~~
 - (b) ~~advise the Authority of the means by which it made the information required by subclause (2) readily available to the public; and~~
 - (c) ~~provide sufficient information to the Authority under paragraph (b) to enable the Authority to find the information made readily available to the public in accordance with subclause (2), including any website addresses.~~
- (4 5) Where a **generator retailer participant** and one or more other **generator retailers participants** are related companies, as defined in section 2 of the Companies Act 1993, and are required by subclauses (2) and (4) to ~~make provide~~ information readily available to the public and to submit information to the Authority, the obligations in subclauses (2) and (4) are met by one of those **generator retailers participants** making providing the information readily available to the public and submitting the information relating to all the **participants generator retailers** on a consolidated basis for all the **generator retailers** to the **Authority**.
- (5) If a **participant** provides information on behalf of other **generator retailers** under subclause (4), the **generator retailer** providing the information must identify the other **generator retailers** as part of the information provided.

13.2589 Publication of ITP information by the Authority

~~(4)~~The **Authority** may **publish** any **ITP information** or information submitted to it under clause 13.2578, as the **Authority** sees fit.

Submission Provision of retail gross margin reports by retailers

13.25960 Submission Provision of retail gross margin report by retailers

- (1) Each **retailer** must ~~submit provide~~ a **retail gross margin report** to the **Authority** no later than 90 days after the end of the **retailer's financial year**.
- (2) Subclause (1) does not apply to any **retailer** who was recorded in the **registry** in any of the preceding 12 months as being responsible for less than 1% of the total number of **ICPs** registered in the **registry** with an ICP status of "Active".

- (3) The **retail gross margin report** must consist of the following information relating to the sale of **electricity** to **mass market customers** for the **financial year** by the **retailer**:
- (a) the total amount of electricity sold by the retailer to **mass market customers** expressed as **MWh**;
 - (b) revenue derived from the sale of **electricity** to **mass market customers** expressed as an amount of dollars per **MWh**;
 - (c) cost of **electricity** sold by the **retailer** to **mass market customers**, including the cost of **electricity** derived from **retail ITP**, expressed as an amount of dollars per **MWh**;
 - (d) cost of **metering** services associated with the sale of **electricity** to **mass market customers** expressed as an amount per **MWh**;
 - (e) cost of **distribution** services associated with the sale of **electricity** to **mass market customers** expressed as an amount per **MWh**;
 - (f) cost of transmission services, being those services provided by **Transpower** under a **transmission agreement**, paid by the **retailer** associated with the supply of **electricity** to **mass market customers** by the **retailer** expressed as an amount per **MWh**; and
 - (g) cost of levies associated with the supply of **electricity** to **mass market customers** by the **retailer** expressed as an amount per **MWh**.
- (4) A **retail gross margin report** must be prepared in accordance with generally accepted accounting practices and in the form specified by the **Authority**.
- (5) Where a **participant-retailer** and one or more other **participants-retailers** are related companies, as defined in section 2 of the Companies Act 1993, and are required by subclause (1) to ~~submit~~ provide a retail gross margin reports to the Authority;
- (a) the obligation in subclause (1) is met by one of those ~~participants~~ making retailers providing the retail gross margin report ITP information relating to all the ~~participants~~ retailers on a consolidated basis for all the retailers readily available to the ~~public~~ Authority; and
 - (b) in any such case, the retailer providing the information must identify the other retailers, as part of the information provided.

13.2601 Publication of information contained in retail gross margin reports by the Authority

~~(1)~~The **Authority** may **publish** the information received in a **retail gross margin report**, except that information contained in a **retail gross margin report** submitted by a **retailer** with less than 5% of total market share by **ICSP** with a status of “Active” will be anonymised so as not to identify that **retailer**.

Authority may require review of ITP information and retail gross margin reports

13.2612 Authority may require review of ITP information and retail gross margin reports by independent person

~~(1)~~—The **Authority** may, in its discretion, require a review by an independent person of whether—

- (a) a **generator retailer** may not have complied with ~~any one~~ or ~~all both~~ of clauses 13.256 ~~to~~ or 13.257~~8~~; and
- (b) a **retailer** may not have complied with clause 13.259~~60~~.

13.262~~3~~ Nomination of independent person to undertake review

- (1) If the **Authority** requires a review under clause 13.261~~2~~—
 - (a) the **Authority** must require the **generator retailer** or **retailer** to nominate an appropriate independent person to undertake the review; and
 - (b) the **generator retailer** or **retailer** must provide that nomination within a reasonable timeframe.
- (2) The **Authority** may direct the **generator retailer** or **retailer** to appoint the person nominated under subclause (1) or to nominate another person for approval.
- (3) If the **generator retailer** or **retailer** fails to nominate an appropriate person under subclause (1) within 5 **business days**, the **Authority** may direct the **generator retailer** or **retailer** to appoint a person of the **Authority's** choice.
- (4) The **generator retailer** or **retailer** must appoint a person to undertake the review in accordance with a direction made under subclause (2) or subclause (3).

13.263~~4~~ Factors relevant to a direction under clause 13.262~~3~~

- (1) In making the direction required by clause 13.262~~3~~(2) or clause 13.262~~3~~(3), the **Authority** may have regard to any factors it considers relevant in the circumstances, including the following:
 - (a) the degree of independence between the **generator retailer** or **retailer** and the person nominated under clause 13.262~~3~~(1); and
 - (b) the expected quality of the review; and
 - (c) the expected costs of the review.
- (2) For the purposes of subclause (1)(a), the **Authority** may have regard to the special definition of independent under clause 1.4 but is not bound by that definition.

13.264~~5~~ Carrying out of review by independent person

- (1) A **generator retailer** or **retailer** subject to a review under clause 13.261~~2~~ must, on request from the person undertaking the review, provide that person with such information as the person reasonably requires in order to carry out the review.
- (2) The **generator retailer** or **retailer** must provide the information no later than 10 **business days** after receiving a request from the person for the information.
- (3) The **generator retailer** or **retailer** must ensure that the person undertaking the review—
 - (a) produces a report on whether, in the opinion of that person, the **generator retailer** or **retailer** may not have complied with clauses 13.256, ~~to~~ 13.257~~8~~ or 13.259~~60~~ (as specified by the **Authority** under clause 13.261) ~~under clause 13.262~~; and
 - (b) submits the report to the **Authority** within the timeframe specified by the **Authority**.

- (4) The report produced under subclause (3)(a) must include any other information that the **Authority** may reasonably require.
- (5) Before the report is submitted to the **Authority**, any identified failure of the **generator retailer** or **retailer** to comply with clauses 13.256,~~13.257~~ or 13.259~~60~~ must be referred back to the **generator retailer** or **retailer** for comment.
- (6) The comments of the **generator retailer** or **retailer** must be included in the report.

13.2656 Payment of review costs

- (1) If a report received under clause 13.2645(3)(a) establishes, to the **Authority's** reasonable satisfaction, that the **generator retailer** or **retailer** may not have complied with clauses 13.256,~~13.257~~ or 13.259~~60~~ (whether or not the **Authority** appoints an investigator to investigate the alleged breach), the **generator retailer** or **retailer** must pay the costs of the person who undertook the review.
- (2) Despite subclause (1), if a report establishes, to the **Authority's** reasonable satisfaction that any non-compliance of the **generator retailer** or **retailer** is minor or there is any other reason in the **Authority's** view that means the **generator retailer** or **retailer** should not pay the costs of the person who undertook the review, the **Authority** may, in its discretion, determine the proportion of the person's costs that the **generator retailer** or **retailer** must pay, and the **generator retailer** or **retailer** must pay those costs.
- (3) If a report establishes to the **Authority's** reasonable satisfaction that the **generator retailer** or **retailer** has complied with clauses 13.256,~~13.257~~ ~~or~~ and 13.259~~60~~ (if relevant), the **Authority** must pay the person's costs.

13.2667 Requirement to provide complete and accurate information

- (1) In addition to the requirements of clause 13.2, the **generator retailer** or **retailer** must take all practicable steps to ensure that the information that the **generator retailer** or **retailer** is required to provide to any person under clauses 13.256,~~13.257~~ or 13.259~~60~~ is complete and correct.
- (2) If a **generator retailer** or **retailer** becomes aware that any information the **generator retailer** or **retailer** provided under clauses 13.256,~~13.257~~ or 13.259~~60~~ does not comply with subclause (1) or clause 13.2, even if the **generator retailer** or **retailer** has taken all practicable steps to ensure that the information complies, the **generator retailer** or **retailer** must, as soon as practicable, provide such further information as is necessary to ensure that the information provided complies with clauses 13.256,~~13.257~~, 13.259~~60~~ or clause 13.2 (as relevant).

Appendix C Summary of submissions and Authority's response

C.1 The Authority has responded to the main issues and concerns raised by submitters during the April-May 2021 consultation. A summary of submissions, together with the Authority's response, is provided in Table 4 below.

Table 4 – Summary of submissions

Submitter	Submitter feedback	Authority's response
Problem Definition		
Mercury	The problem is primarily one of information asymmetry.	The Authority considers that consumers would benefit from increased transparency in the pricing practices of the integrated generator retailers that is mitigated by the disclosure of retail ITP by the integrated generator retailers and disclosure of gross retail margins by retailers. Improved and ongoing disclosure of this information is an appropriate level of intervention for the problem that they seek to resolve, namely improving transparency in the price setting processes of generator retailers.
Meridian	Consultation paper does not adequately define any problems that would justify increased disclosure of ITPs or retail margins.	
MEUG	The underlying problem is whether the large vertically integrated suppliers have been undertaking on a sustained basis conduct that is leading to outcomes detrimental to the long-term benefit of consumers.	
Electric Kiwi, Flick Electric and Vocus	The real problem is one of market structure and market power ie that barriers to entry and competition are present because of the vertical integration and the size of integrated retailers.	
Octopus Energy	The real problem is the lack of prohibitions that prevents discrimination of access to wholesale supply and cross subsidisation by the generation segment.	
Assessment of options to address the identified problem		
Electric Kiwi, Flick Electric and Vocus	Mandate disclosure of wholesale and retail profitability reporting. Consider financial separation of integrated generator retailers with full financial segmentation of wholesale and retail to the EBITDAF level	The Authority assessed several options and considers the proposal to be an appropriate level of intervention that will benefit consumers from increased transparency in the price setting processes of generator retailers. The Authority considers that interventions in relation to financial separation of integrated generator retailers and mandating wholesale access to all market participants are more tailored to address problems with market

Submitter	Submitter feedback	Authority's response
Octopus Energy	Consider measures that ensure equivalent wholesale access for independent and vertically integrated players alike.	<p>power, which is outside the scope of this project.</p> <p>The Authority's statutory objective is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers. The Authority fosters competition in the electricity markets by seeking out, and removing barriers, to new participants entering the market and by ensuring that existing participants can compete unhindered.</p>
Genesis	The Authority should not mandate what ITPs should be or should include, including the additional costs and risks that a gentailer's arm would face if they were not part of an integrated business	The Authority considers that the current voluntary disclosures provide insufficient details on their methodology to enable third parties to understand and reconstruct them.
Proposed information disclosure of retail ITP		
Electric Kiwi, Flick Electric and Vocus	The generator retailers' should also disclose the rationale and justification of their ITP.	Clause 13.256(3)(e) requires the disclosing party to provide information on the purposes for which the retail ITP is used by the generator-retailer. This requirement should shed light on the rationale and justification of their ITP.
Mercury, Meridian and Nova	<p>Retail ITP information is too diverse to be meaningful and cannot be used for comparability purposes.</p> <p>Disclosure of ITP information would raise more questions and is susceptible to being misused.</p>	Clauses 13.256(2) and (3) require the disclosing party to provide information on the key components making up their retail ITP. This breakdown of key components ensures that the information provided is consistent and comparable between disclosing parties.
Proposed information disclosure of retail gross margin reports		
Electric Kiwi, Flick Electric, Vocus and Entrust	Authority's proposal to limit segmented financial disclosure to gross retail margins would only partially implement the EPR recommendation.	<p>The Authority considers the proposed disclosure obligations to be an appropriate level of intervention for the problem that they seek to resolve, and adequately addresses the EPR recommendation.</p> <p>Requiring more granular information than proposed by the Authority would be onerous on the disclosing parties, increase costs, and substantially raises issues around confidentiality and anonymity.</p> <p>The Authority may, at a later stage, consider mandating more granular information or the disclosure of other information if the amendment is not effective.</p>

Submitter	Submitter feedback	Authority's response
Mercury, Meridian and Nova	<p>Information on retail gross margins contains too many complexities from differences in retailers' activities, plant types and fuel cost structures to make any comparative analysis meaningful.</p> <p>Disclosure of this information would raise more questions and is susceptible to being misused.</p> <p>Disclosure of this information would have limited benefits in terms of improving trust and confidence while adding administrative costs to the disclosing parties.</p>	<p>Disclosing parties are likely to already have segmented accounts at the level proposed by the Authority for their own internal use.</p> <p>Disclosure of this information is required to provide the Authority, and market participants, with sufficient information to improve transparency in the price setting processes of the integrated generator retailers.</p>
Proposed thresholds to meet disclosure obligations on retail ITP		
Electric Kiwi	A 5% market share to be a reasonable threshold between large/small participants or whether a supplier has significant or substantial market power.	<p>The Authority points out that any threshold would have an element of subjectivity but considers the proposed thresholds for ITP find the right balance between imposing additional administrative costs on disclosing parties and the risk of excluding one or more large market players from disclosure requirements.</p>
Independent retailers	<p>A 5% market share is an appropriate threshold for determining whether a supplier is large or has market power.</p> <p>The requirements should apply to Contact, Genesis, Mercury, Meridian, Nova and Trustpower, and not vertically-integrated suppliers with 5% market share (ITP disclosure) or retailers with 1% market share (retail gross margin disclosure).</p>	
Contact	It is unclear why the Authority has determined a threshold of 5% based on total electricity sold to the clearing manager or based on ICPs and that this is inconsistent with the approach taken on the proposed margin analysis which is set at 1%.	
Genesis and Mercury	ITP disclosure requirements should apply to all generator retailers and no threshold is necessary.	
Nova	The cut-off of 5% share of ICP's should be increased to 10 %.	
	A 5% threshold to be too low and captures parties too small to influence the retail market from a competition perspective, while imposing additional regulatory burdens and costs.	
Proposed thresholds to meet disclosure obligations on retail gross margin reporting		

Submitter	Submitter feedback	Authority's response
Electric Kiwi, Meridian and Nova	Disclosure requirements should only apply to the vertically integrated generator retailers that have market power; and exclude small participants that have a small market share and do not raise competition concerns.	Disclosure of retail gross margins by both the large and small participants is required to understand the properties of the market as a whole and to undertake meaningful comparative analysis.
Nova	Disclosure threshold should be raised from 5% to 10% of ICPs	Retailers with more than 1% of all active ICPs but less than 5% will be anonymised because while they serve an important function as a counterfactual their individual identities are not critical as they are not judged to have sufficient market power.
Genesis	All retailers should be treated consistently. That is, either all retailers are identified, or none are named, with reporting anonymised in a manner similar to that used for the Authority's market maker performance reports	The Authority has avoided setting a high threshold because it would exclude a larger number of participants while requiring disclosure by fewer participants. This would create an information asymmetry problem and potentially put the fewer disclosing participants at a competitive disadvantage. The Authority continues to consider that the thresholds consulted on are the most appropriate.
Contact	It is unclear why anonymity is necessary or appropriate for those retailers with greater than 1% of ICPs	
Meridian	Do not exclude the small retailers from disclosing their retail gross margin because this would allow them to <i>"gain insight into their rivals' costs and margins, while not facing the same transparency themselves"</i> .	
Proposed disclosure following changes to ITP methodology		
Electric Kiwi	Require vertical-suppliers to disclose ITPs proactively rather than retrospectively	The Authority considers it important that the disclosing party reports substantive changes in their ITP methodology, and the impact on the previous financial years because this addresses any residual concern with generator retailers changing their ITP policy.
Octopus Energy	The methodology should be forward looking and reflects an arm's length arrangement	
Genesis	Exclude requirement to disclose the impact on the preceding three financial year because this adds to compliance costs and produces information that is irrelevant and unrelated to the purpose for which an ITP is calculated	Disclosing changes in the ITP policy would inform the Authority and market participants of the frequency of such changes and their magnitude compared to the new ITP policy; and enables understanding of the materiality of the ITP policy changes.
Nova	Would be surprised if participants changed their internal transfer pricing methodologies on a retrospective basis.	
Meridian	It is not clear why any change in ITP methodology should be retrospectively applied to previous years and has not articulated the benefits from this retrospective reporting.	This disclosure requirement also ensures that the ITP information provided by the generator retailers is up-to-date and relevant to the Authority, and other market participants, and is useful for comparative purposes.
Expected benefits of the proposal		
Mercury, Meridian and Nova	The benefits of the proposal are unclear.	The Authority considers that the benefits exceed the costs of the proposal. The costs and

Submitter	Submitter feedback	Authority's response
		<p>benefits, and the methodology used to estimate them, are set out in the regulatory statement.</p> <p>The Authority intends to carry out a post-implementation review of the Code amendment to obtain a better picture of its benefits and costs, and propose any changes, if necessary.</p>
Nova	The proposal may have net benefits for consumers but could also have unintended consequences.	The unintended consequences outlined by Nova are unlikely to occur because the need to compete and to offset risk still exist. The risk of unintended consequences will also be moderated by the subsequent review of the amendment.
Contact	Mandatory reporting through EMI will make comparison easier, reduce search costs and allow for ongoing analysis by parties and the Authority.	The Authority agrees with these statements
Electric Kiwi, Flick Electric, Vocus and Octopus Energy	The benefits of the proposal outweigh the costs.	
Textual drafting to the proposed Code amendment		
Genesis	<ol style="list-style-type: none"> (1) Remove clause 13.256(3)(a) and (b). (2) Amend clause 13.256(3)(e) to simply require that the generator retailer set out the purposes for which the ITP is used. (3) Insert a definition of "reasonable person" in Part 1 of the Code. A reasonable person is to be interpreted in the same way as that set out in paragraph 7.9 of the Wholesale Information Disclosure Rules. (4) Amend clauses 13.256 and 13.257 to reflect that the provision of information to the Authority under clause 13.257 satisfies the obligation to make the information publicly available. (5) Remove clause 13.257(b) and (c), subject to the changes proposed in (4). 	<p>The Authority considers that a detailed breakdown of the key components as required by clause 13.256(3)(a) and (b) is essential to accurately describe the ITP of the generator retailer and to enable comparison with the ITP of other participants.</p> <p>The Authority considers that clause 13.256(3)(e) is important to achieve the purpose of the amendment by disclosing the "other matters". However, this clause was broken into two clauses to make the wording clearer.</p> <p>The Authority notes that the guidelines to the wholesale market information disclosure obligations discuss the concept of a reasonable person. The Authority has amended its proposed Code changes to better reflect its intended test</p> <p>The Authority has amended clauses 13.256 and 13.257 to require disclosure to the Authority rather than require disclosure to both the Authority and the public to streamline the amendment, facilitate disclosure and ease the</p>

Submitter	Submitter feedback	Authority's response
		reporting burden on the disclosing parties. The Authority will publish the disclosed information or use it in a way that still allows the purpose of the Code amendment to be achieved.
Meridian	<p>(1) Include the words "if relevant" in clause 13.256(3) so as not to force generator retailers into a specific method for determining ITP.</p> <p>(2) Remove reference to "fair reflection of the cost of electricity" from clause 13.256(2)(b) and reword as "understand how the retail ITP was determined".</p> <p>(3) Remove requirement to submit the information "in the form and by the means specified by the Authority" and allow the submitter to provide a copy of, or a link to, the publicly available information.</p>	<p>The term "if relevant" is included in the sub-clauses where this term is relevant such as in clause 13.256(3)(a) and (3)(c).</p> <p>The Authority has removed reference to "fair reflection of the cost of electricity" because determining what is 'fair' in the context of the cost of electricity is highly subjective and would depend on factors other than the retail ITP.</p> <p>The term "in the form and by the means specified by the Authority" is required because it streamlines the reporting requirements, facilitates disclosure and reduces administrative costs.</p>
Trustpower	<p>(1) Remove reference to "fair reflection of the cost of electricity" from clause 13.256(2)(b) and reword as "replicate the calculation of the average load weighted retail ITP".</p> <p>(2) Remove the following clauses because they would result in public disclosure of commercially sensitive information:</p> <ul style="list-style-type: none"> • 13.256 (3)(a)(iv) &(v); • 13.256 (3)(c)(i) (A), (B), (C) & (D); and • 13.256 (3)(c)(v) & (vi). <p>(3) Remove clause 13.256 (3)(e). Remove clauses from 13.262 to 13.266 because they may result in several competing views regarding the requirements for compliance.</p>	<p>The Authority has removed reference to "fair reflection of the cost of electricity" because determining what is 'fair' in the context of the cost of electricity is highly subjective and would depend on factors other than the retail ITP.</p> <p>The Authority considers the ITP information and key components required to be disclosed are not commercially sensitive because they exclude price-related components made to third party retailers and ITPs are only used for internal accounting purposes. Furthermore, the level of detail required is unlikely to require the disclosure of commercially sensitive information.</p>
Sunset provision to the proposed Code amendment		
Mercury	Include a sunset provision in the event that the published internal transfer prices would be used perversely and result in disruption of confidence and/or trust in the market	<p>The Authority has followed normal practice for Code amendments that the presumption is that they last in perpetuity until they are repealed, with the exception of urgent Code amendments.</p> <p>The Authority also does not share the same view that the benefits from disclosing ITP are</p>

Submitter	Submitter feedback	Authority's response
		<p>minor, nor that these benefits will not outweigh the costs. The Authority also considers that there is a low risk that the disclosed information will be misused in a way that disrupts confidence and trust in the market.</p> <p>The regulatory assessment concludes that the benefits from improved transparency would outweigh the administrative costs to compile and report the retail ITP and gross retail margins.</p>

Appendix D Submitters' suggested amendments to the proposed Code amendment

D.1 This Appendix reproduces in full the suggested amendments to the proposed rule by the Meridian and Trustpower (additions are underlined and deletions are struck through).

D.2 Meridian's suggested textual amendments

- **Clause 13.256(2)(b):** information on how the **generator retailer** has determined the **retail ITP** at a sufficient level of detail to enable a reasonable person to understand how the **retail ITP** was determined~~determine whether or not the generator retailer's retail ITP is a fair reflection of the cost of electricity to the generator retailer.~~
- **Clause 13.257(1)(a):** Each **generator retailer** must submit the **ITP information** made readily available to the public in accordance with clause 13.256(1) to the **Authority by providing** a copy of, or a link to, the publicly available information ~~in the form and by the means specified by the Authority.~~

D.3 Trustpower's suggested textual amendments

- **Clause 13.256(2)(b):** information on how the **generator retailer** has determined the **retail ITP** at a sufficient level of detail to enable a reasonable person to replicate the calculation of the average load weighted retail ITP~~determine whether or not the generator retailer's retail ITP is a fair reflection of the cost of electricity to the generator retailer.~~
- **Clause 13.256 (3)(a)(iv) &(v); clause 13.256 (3)(c)(i) (A), (B), (C) & (D); and clause 13.256 (3)(c)(v) & (vi):**

13.256 Generator retailers must make retail ITP information available

- (3) The information provided by a **generator retailer** under subclause (2)(b) must include the following:
- (a) a breakdown of the key components or factors which make up the **retail ITP** expressed as an amount in dollars and cents per **MWh** that each key component or factor comprises of the average load weighted **retail ITP** required by subclause (2)(a), and which must include (if relevant) the following components or factors:
- (i) prices in **ASX NZ electricity futures**:
 - (ii) the distribution of the total electrical load across locations, including the adjustment, calculated on an average load weighted basis in **MWh**, that the **retailer generator** used to determine the **retail ITP** for the **electricity** supplied to **mass market customers** beyond a **node** specified in an **ASX NZ electricity future**:
 - (iii) administrative fees, including management fees, notionally charged by the **generator retailer** to the **generator retailer's** retail arm:

- ~~(iv) the level of discretion the **generator retailer** exercised to amend or otherwise modify the draft **retail ITP** before it was finalised:~~
- ~~(v) all other key components or factors the **generator retailer** relied on to determine the **retail ITP**, and any other material information used by the **generator retailer** to determine the **retail ITP** that is not publicly available:~~
- (b) any residual components or factors that make up the **retail ITP**, but which are not components or factors required by paragraph (a), expressed as one combined amount in dollars and cents per **MWh**:
- ~~(c) an explanation of the methodology the **generator retailer** used to determine or to assist in determining the **retail ITP**, and which must include (if relevant) the following:~~
 - ~~(i) the assumed process used by the **generator retailer** to build the hedge book of **ASX NZ electricity futures**, including the following:~~
 - ~~— (A) the proportion of **ASX NZ electricity futures** the **generator retailer** assumed would be purchased and the assumed timing of those assumed purchases:~~
 - ~~(B) the relative weighting of **ASX NZ electricity futures** relating to **Benmore** as compared to those relating to **Otahuhu**:~~
 - ~~(C) the types of **ASX NZ electricity futures** the **generator retailer** assumed to be purchased and the maturities purchased:~~
 - ~~(D) the basis on which the **ASX NZ electricity futures** are priced:~~
 - (ii) the approach the **generator retailer** took to adjust for:
 - (A) differences in the within day electrical load and cost profile underlying the **ASX NZ electricity futures** and the **retailer generator's mass market customers** load profile:
 - (B) distribution of electrical load across locations, including the relative use of **FTRs** or historical price differences to price for load by location:
 - (iii) the approach or methodology used to determine the electrical load profile, including the following:
 - (A) whether actual or assumed load profiles are relied upon:
 - (B) the degree of granularity of load with respect to location, seasonality and intra-day:
 - (C) the percentage of load by regional geographical location:
 - ~~(iv) the basis for and determination of fees, including management or associated fees, the **generator retailer** notionally charged its retail arm:~~
 - ~~(v) the basis for and rationale behind any discretion the **generator retailer** exercised:~~
 - ~~(vi) any other details the **generator retailer** considers material to explain the methodology the **generator retailer** used to determine or assist in determining the **retail ITP**:~~
- (d) the key non-price parameters the **generator retailer** used to determine the **retail ITP** including whether or not the **retail ITP** is:

- (i) for fixed or variable volume of **electricity**; or
 - (ii) for a fixed or variable price of **electricity**;
- (e) ~~the purposes for which the **retail ITP** is used by the **generator retailer** or the matters relating to the **generator retailer** which the **retail ITP** directly or indirectly affects, including whether the **retail ITP** is used as part of setting, or directly or indirectly affects, the price of **electricity** sold to **mass market customers** by the **generator retailer**.~~
- (3) Where a **participant** and one or more other **participants** are related companies, as defined in section 2 of the Companies Act 1993, and are required by subclause (1) to make **ITP information** readily available to the public, the obligation in subclause (1) is met by one of those **participants** making the **ITP information** relating to all the **participants** readily available to the public.

- **Clause 13.258:**

- (1) This clause applies if:
- (a) a **generator retailer** changes the methodology used to determine the **retail ITP** for a **financial year** (“the current **financial year**”) from the methodology used in a previous **financial year** for which the **generator retailer** disclosed **ITP information** under clause 13.256 and 13.257, other than where that change relates solely to the distribution of the customer load base or the input prices (**ASX NZ electricity futures** prices and locational prices as provided for in clause 13.256 (3)(a) (i) and (ii)); and
 - (b) that change in methodology has the effect of modifying the **retail ITP** by an amount in excess of 5% from the **retail ITP** contained in the most recent **ITP information** the **generator retailer** made readily available to the public.
- (2) ~~Where this clause applies, the **generator retailer** must also make the following information readily available to the public, free of charge:~~
- (a) ~~details of the impact on the average load weighted **retail ITP** disclosed under clause 13.256 and 13.257 for any of the previous three **financial years** if the new methodology had been used to determine the **generator retailer’s retail ITP** for those previous **financial years**;~~
 - (b) ~~details of the impact on the average load weighted **retail ITP** for the current **financial year** if the methodology used in any of those previous **financial years** was used to determine the **generator retailer’s retail ITP** for the current **financial year**.~~
- (3) Where subclause (2) applies, the **generator retailer** must make the information required by subclause (2) readily available to the public at the same time as making the **ITP information** readily available to the public for the current **financial year**.
- (4) Where this clause applies, the **generator retailer** must, at the same time as making **ITP information** for the current **financial year** readily available to the public in accordance with clause 13.256(1):
- (a) submit the information made readily available to the public in accordance with subclause (2) to the **Authority** in the form and by the means specified by the **Authority**;

- (b) advise the **Authority** of the means by which it made the information required by subclause (2) readily available to the public; and
 - (c) provide sufficient information to the **Authority** under paragraph (b) to enable the **Authority** to find the information made readily available to the public in accordance with subclause (2), including any website addresses.
- (5) Where a **participant** and one or more other **participants** are related companies, as defined in section 2 of the Companies Act 1993, and are required by subclauses (2) and (4) to make information readily available to the public and to submit information to the **Authority**, the obligations in subclauses (2) and (4) are met by one of those **participants** making the **information** readily available to the public and submitting the information relating to all the **participants** to the **Authority**.

- **Clause 13.262:**

Authority may require review of ITP information and retail gross margin reports

13.262 Authority may require review of ITP information and retail gross margin reports by independent person

- (1) ~~The **Authority** may, in its discretion, require a review by an independent person of whether—~~
 - ~~(a) a **generator retailer** may not have complied with any or all of clauses 13.256 to 13.258; and~~
 - ~~(b) a **retailer** may not have complied with clause 13.260.~~

13.263 Nomination of independent person to undertake review

- (1) ~~If the **Authority** requires a review under clause 13.262—~~
 - ~~(a) the **Authority** must require the **generator retailer** or **retailer** to nominate an appropriate independent person to undertake the review; and~~
 - ~~(b) the **generator retailer** or **retailer** must provide that nomination within a reasonable timeframe.~~
- (2) ~~The **Authority** may direct the **generator retailer** or **retailer** to appoint the person nominated under subclause (1) or to nominate another person for approval.~~
- (3) ~~If the **generator retailer** or **retailer** fails to nominate an appropriate person under subclause (1) within 5 **business days**, the **Authority** may direct the **generator retailer** or **retailer** to appoint a person of the **Authority**'s choice.~~
- (4) ~~The **generator retailer** or **retailer** must appoint a person to undertake the review in accordance with a direction made under subclause (2) or subclause (3).~~

13.264 Factors relevant to a direction under clause 13.263

- (1) ~~In making the direction required by clause 13.263(2) or clause 13.263(3), the **Authority** may have regard to any factors it considers relevant in the circumstances, including the following:~~

- ~~— (a) — the degree of independence between the **generator retailer** or **retailer** and the person — nominated under clause 13.263(1);~~
 - ~~— (b) — the expected quality of the review; and~~
 - ~~— (c) — the expected costs of the review.~~
- (2) For the purposes of subclause (1)(a), the **Authority** may have regard to the special definition of independent under clause 1.4 but is not bound by that definition.

13.265 Carrying out of review by independent person

- (1) A **generator retailer** or **retailer** subject to a review under clause 13.262 must, on request from the person undertaking the review, provide that person with such information as the person reasonably requires in order to carry out the review.
- (2) The **generator retailer** or **retailer** must provide the information no later than 10 **business days** after receiving a request from the person for the information.
- (3) The **generator retailer** or **retailer** must ensure that the person undertaking the review—
- (a) produces a report on whether, in the opinion of that person, the **generator retailer** or **retailer** may not have complied with clauses 13.256 to 13.258 or 13.260 (as specified by the **Authority**) under clause 13.262; and
 - (b) submits the report to the **Authority** within the timeframe specified by the **Authority**.
- (4) The report produced under subclause (3)(a) must include any other information that the **Authority** may reasonably require.
- (5) Before the report is submitted to the **Authority**, any identified failure of the **generator retailer** or **retailer** to comply with clauses 13.256 to 13.258 or 13.260 must be referred back to the **generator retailer** or **retailer** for comment.
- (6) The comments of the **generator retailer** or **retailer** must be included in the report.

13.266 Payment of review costs

- (1) If a report received under clause 13.265(3)(a) establishes, to the **Authority's** reasonable satisfaction, that the **generator retailer** or **retailer** may not have complied with clauses 13.256 to 13.258 or 13.260 (whether or not the **Authority** appoints an investigator to investigate the alleged breach), the **generator retailer** or **retailer** must pay the costs of the person who undertook the review.
- (2) Despite subclause (1), if a report establishes, to the **Authority's** reasonable satisfaction that any non-compliance of the **generator retailer** or **retailer** is minor or there is any other reason in the **Authority's** view that means the **generator retailer** or **retailer** should not pay the costs of the person who undertook the review, the **Authority** may, in its discretion, determine the proportion of the person's costs that the **generator retailer** or **retailer** must pay, and the **generator retailer** or **retailer** must pay those costs.
- (3) If a report establishes to the **Authority's** reasonable satisfaction that the **generator retailer** or **retailer** has complied with clauses 13.256 to 13.258 or 13.260, the **Authority** must pay the person's costs.

Glossary of abbreviations and terms

Authority	Electricity Authority
Act	Electricity Industry Act 2010
CBA	Cost-Benefit Analysis
Code	Electricity Industry Participation Code 2010
EMI	Electricity Market Information Website
EPR	Electricity Price Review
FPVV	Fixed Price Variable Volume
ICP	Installation Control Point
ITP	Internal Transfer Price
MBIE	Ministry for Business, Innovation and Employment
MWh	Mega-watt hours