

3 August 2021

Submissions
Wholesale markets
Electricity Authority

Nova Energy Limited
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By email: wholesaleconsultation@ea.govt.nz

Re: Wholesale market information disclosure – Permanent change to definition of disclosure information

Nova Energy appreciates the consideration that the Authority has given to the proposal to make the change to the definition of 'disclosure information' permanent.

While the Authority has received a recommendation from the Rulings Panel that the change is desirable from an enforcement perspective, Nova is not convinced that the benefits offset the higher compliance costs and potential litigation risks for generators and major electricity consumers.

Nova understands that information disclosure is important for the operation of a vibrant derivatives market in energy, but believes that on balance, this can be achieved with the original definition of disclosure information.

Nova's responses to the Authority's questions are appended to this letter. Please feel free to contact me if you wish to discuss Nova's views further.

Yours sincerely



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Nova submission

Consultation Paper:

Wholesale market information disclosure – Permanent change to definition of disclosure information

Q No.	Question	Response
1.	Do you agree if the original drafting (will impact prices) were left to stand this could negatively impact outcomes for consumers?	<p>While the original drafting <u>could</u> negatively impact outcomes for consumers, the revised definition <u>could also</u> negatively impact outcomes for consumers.</p> <p>Nova agrees with the point well made in para. 2.5 of the Discussion Paper: <i>'Difficulty in accessing reliable information can cause market inefficiency or hinder competition, both of which are not in the best interests for consumers. <u>On the other hand, requiring parties to disclose information may reduce innovation, facilitate collusion and increase compliance costs.</u></i></p> <p>On balance, Nova considers that the original drafting should still result in adequate market disclosure and avoids the risk of increasing compliance costs being reflected in long-run generation costs.</p>
2.	Regarding the three 'policy states' described above, have you noticed a change in participants' disclosure behaviour between any of these times?	No
3.	Regarding the three 'policy states' described above, has your organisation changed its disclosure behaviour between any of these times?	No
4.	Do you agree with the objectives of the proposed amendment? If not, why not?	Yes. Information disclosure is important for a well performing market.
5.	Do you agree with the wording of the proposed amendment? If not, why not?	On balance, Nova favours ' <i>will</i> materially impact prices' and believes that in conjunction with the Guidelines there is an adequate call for disclosure under the test of judgement by a reasonable person.

Q No.	Question	Response
6.	Do you agree the benefits of the proposed amendment outweigh its costs?	<p>Perhaps, so long as market participants that hold information related to planned generation or demand are not subject to frivolous claims of not meeting the disclosure requirements.</p> <p>Preparing evidence to defend a case alleging non-disclosure can be time consuming and expensive, particularly as the allegation is inevitably going to be made in circumstances where market events have already unfolded. While compliance must be judged on the circumstances at the time of the alleged breach, it is not always easy to convey those circumstances in retrospect.</p> <p>The obvious counter to this is to document all decisions, which is also to say that a deliberate decision to 'not disclose' a piece of information must be made before a decision can be documented. That also leads to additional continuous compliance costs.</p> <p>Further, the proposed change also increases the risks to participants of being penalised over what can be fine points of judgement between the costs associate with disclosure and risk of adverse consequences associated with non-disclosure.</p>
7.	Are there any alternative options that could achieve the objectives?	
8.	Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.	
9.	Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?	Yes

Q No.	Question	Response
10.	Do you have any comments on the drafting of the proposed amendment?	No