

Wholesale market information disclosure

Review of Guidelines for participants on
wholesale market information disclosure
obligations
Consultation paper

Published on: 20 October 2020

Submissions close: 5pm, 3 November 2020



Executive summary

This paper seeks feedback on the Authority's proposed changes to the *Guidelines for participants on wholesale market information disclosure obligations*.

We want to add further examples to the Guidelines to clarify the types of situations where disclosure is warranted. These examples are focused around the different situations where coal, gas or diesel supply could impact the availability of electricity generation.

Based on the evidence we have, the Authority considers clause 13.2A strikes the right balance between the costs and benefits of disclosure. However evidence and feedback indicates more is now known about the types of situations that could warrant disclosure. The proposal ensures participants are disclosing correctly in these situations. The changes to the Guidelines reflect the Authority's current thinking on how the Code should be interpreted and applied – this is the basis on which it will enforce compliance with the Code.

The aim of updating the Guidelines is to improve disclosure of information about the availability of thermal fuels for electricity generation. This will support participants to stay informed about potential impacts on electricity prices and ensure the forward price curve accurately reflects all relevant information, which will benefit consumers in the long-term through more efficient prices.

The Authority will consider submissions on this consultation before presenting the updated Guidelines to the Board for approval in December 2020.

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1 What you need to know to make a submission

What this consultation paper is about

- 1.1 The purpose of this paper is to consult with interested parties on the Authority’s proposal to update the *Guidelines for participants on wholesale market information disclosure obligations*, to support improved disclosure of thermal fuel information in the wholesale market.
- 1.2 The Act does not require the Authority to consult when updating guidelines. However the Authority has decided to run a short consultation to gather stakeholder feedback in this case, because stakeholders are better placed than the Authority to understand how the Guidelines work at an operational level and because the updates to these Guidelines have the potential to influence participant behaviour.

How to make a submission

- 1.3 Submissions in electronic form (pdf) should be emailed to WMID@ea.govt.nz with subject: “Review of Thermal Fuel Information Disclosure—Guidelines Consultation”.
- 1.4 If you cannot send your submission electronically, post one hard copy to either of the addresses below, or fax it to 04 460 8879.

Postal address

Submissions
Electricity Authority
PO Box 10041
Wellington 6143

Physical address

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

- 1.5 Please note the Authority wants to publish all submissions it receives. If you consider that we should not publish any part of your submission, please
- (a) indicate which part should not be published
 - (b) explain why you consider we should not publish that part
 - (c) provide a version of your submission that we can publish (if we agree not to publish your full submission).
- 1.6 If you indicate there is part of your submission that should not be published, we will discuss with you before deciding whether to not publish that part of your submission.
- 1.7 However, please note that all submissions we receive, including any parts that we do not publish, can be requested under the Official Information Act 1982. This means we would be required to release material that we did not publish unless good reason existed under the Official Information Act to withhold it. We would normally consult with you before releasing any material that you said should not be published.

When to make a submission

- 1.8 Please deliver your submissions by **5pm** on Tuesday **3 November 2020**.
- 1.9 We will acknowledge receipt of all submissions electronically. Please contact the Authority WMID@ea.govt.nz or 04 460 8860 if you don’t receive electronic acknowledgement of your submission within two business days.

2 The Authority is reviewing the wholesale market information disclosure rules

- 2.1 Effective information disclosure is important for a well-functioning market. Reducing information asymmetries can improve efficiency in a market and enhance the confidence and integrity of the forward price curve, which will benefit consumers in the long-term through more efficient prices. The Authority considers disclosure rules should continually evolve to changing market developments. At the start of 2020 the Authority commenced a review of the information disclosure rules with a focus on addressing gaps related to thermal fuel information disclosure.
- 2.2 Clause 13.2A of the Code requires participants to disclose information about themselves if that information is expected to “have a material impact on prices” in the wholesale electricity market. Participants may only withhold the information if it falls within one or more of the defined exclusions in clause 13.2A(2) of the Code.
- 2.3 In July – September 2020 the Authority consulted on four proposals to improve information disclosure relating to thermal fuel information.¹ Those four proposals were;

Aim: Ensure the Code’s disclosure requirements are being met

- 1) **Code change – mandatory quarterly reporting of disclosure activities and annual certification by some participants** would ensure those participants are considerate of clause 13.2A obligations and provide information to facilitate monitoring of compliance.
- 2) **Update the Guidelines regarding thermal fuel disclosure** to provide greater clarity regarding disclosure obligations and reflect recent developments.

Aim: Make thermal fuel information easier to find and use

- 3) Raise awareness of existing disclosures eg, via a **disclosure reference webpage** which links to published information; and
 - 4) **Clarify where parties should disclose information** about their availability being impacted by a fuel constraint eg, via a centralised website.
- 2.4 Submissions from stakeholders were broadly supportive of all the proposals, in particular proposals 2 and 3. Earlier in October we progressed proposal 3 by publishing a disclosure reference webpage.² In December 2020 the Authority Board will decide how to progress with proposals 1, 2 and 4 (as described above). To support that decision we are now running a short consultation on updates to the Guidelines.
 - 2.5 Participants should note that, depending on the Board’s decision, it may be necessary to issue Guidance regarding proposals 1 and 4. If so, this will be developed and issued separately to this current process.

¹ The consultation paper and submissions can be accessed here: <https://www.ea.govt.nz/development/work-programme/risk-management/wholesale-market-information-disclosure/consultation/#c18525>

² Refer: <https://www.emi.ea.govt.nz/Wholesale/InformationDisclosure>

3 Proposal: update the Guidelines to improve disclosure regarding the availability of thermal fuels for electricity generation

- 3.1 Based on the evidence we have, the Authority considers clause 13.2A strikes the right balance between the costs and benefits of disclosure. However evidence and feedback indicates more is now known about the types of situations that could warrant disclosure. The proposal ensures participants are disclosing correctly in these situations. The changes to the Guidelines reflect the Authority’s current thinking on how the Code should be interpreted and applied – this is the basis on which it will enforce compliance with the Code.
- 3.2 Guidelines assist participants to understand and comply with their Code obligations. Detailed Guidelines are a useful companion to a principles-based regime, like that in clause 13.2A. Guidelines provide clarity on the Authority’s expectations on where, when and how participants should meet their obligations to disclose information. Guidelines for participants on wholesale market information disclosure obligations were first published in 2013 and updated in 2018.³
- 3.3 The Guidelines currently provide some limited examples of disclosure information. However, more disclosure is needed in situations when thermal fuel supply could impact the availability of electricity generation (now or in the foreseeable future). The Authority proposes adding further examples to the Guidelines to illustrate situations where disclosure is warranted. The examples are intended to be illustrative rather than prescriptive or comprehensive.
- 3.4 The Authority considers that increased clarity in the Guidelines will help to reduce lack of awareness or misinterpretation of disclosure obligations. The Guidelines will also provide a point of reference for compliance investigations.
- 3.5 The aim of updating the Guidelines is to improve disclosure of information about the availability of thermal fuels for electricity generation. This will support participants to stay informed about potential impacts on electricity prices and ensure the forward price curve accurately reflects all relevant information.
- 3.1 Improving disclosure of thermal fuel information will reduce asymmetries between participants in the wholesale electricity market. Effective and efficient disclosure of thermal fuel information would improve decision-making and prices, induce greater market participation, better coordination of outages, and easier monitoring of participants’ behaviour by the Authority. These benefits help promote the three limbs of the Authority’s statutory objective—competition, reliability, and efficiency—for the long-term benefit of consumers.

Legal status of the Guidelines

- 3.2 In the current context, the Guidelines will create expectations around what is acceptable disclosure behaviour. Compliance with Guidelines is not mandatory unless stated in the Code, but:
 - (a) they complement Code obligations by reflecting the Authority’s interpretation of the Code at the time of publication of the Guidelines;

³ Refer: <https://www.ea.govt.nz/operations/wholesale/information-disclosure/>

- (b) they may be drawn on as an interpretative source in assessing Code breaches; and
- (c) the onus is on participants to show how any different interpretation complies with the Code.

Stakeholder feedback is informing this work

- 3.3 In the July – September 2020 consultation (informed by bi-lateral meeting held earlier in the year), stakeholders provided feedback on the proposal to update the Guidelines. We also held a focus group in October 2020 with a small group of stakeholders to further refine the proposed changes.
- 3.4 The following table describes some of the feedback received to date and the Authority's response. On balance, the proposed changes strike an appropriate trade-off between what is practical for participants to disclose and ensuring the availability of information participants need to compete effectively.

Stakeholder comment	Authority response
More of what's in the Guidelines should be in the Code eg, examples of information that have a material impact on prices, how long disclosure information remain readily available.	It is appropriate for the Guidelines to be more detailed than the Code. The Authority cannot detail every situation where disclosure may be required, and judgment is needed in each circumstance to apply the rules appropriately.
The Guidelines could also provide guidance around materiality thresholds for some information.	At this time the Authority does not consider it appropriate to add specific materiality thresholds, as materiality of a change could vary significantly depending on the specific circumstances. Participants should exercise judgement and err on the side of disclosing the information.
There is benefit in the Authority developing case studies that are based on scenarios that parties have observed in practice – particularly for coal and gas supply disclosure situations.	The examples we are proposing to add to the Guidelines are based on scenarios the market has experienced in recent history, and intentionally have sufficient breadth to ensure they are useful for as wide a variety of situations as possible.
It would be useful to have an online forum where participants could question each other about situations that might warrant (additional) information disclosure.	This idea has merit and the Authority will consider this further.
It would be valuable for the Guidelines to set out scenarios in which the exclusions may apply and potential disclosure information is therefore rightly withheld.	Section 7 of the Guidelines provides some examples of what types of information may fall inside or outside the individual exclusions.
A chart showing forecast thermal fuel availability and uncertainty range would be useful.	This idea has merit and the Authority will consider this further.

<p>Gas producers disclosing an upstream gas outage situation is sufficient; there is no need for electricity participants to disclose the expected impact on their operations. This is uncertain anyway and could commercial disadvantage them. The market has enough information to infer the impact on the electricity sector from the gas producer disclosures.</p>	<p>The Authority disagrees with this position. The Authority considers participants in the electricity industry should disclose the impact on their operations if the upstream gas outage is likely to have a material impact on prices. The Authority considers disclosure from gas producers of a gas production outage without any insight into the effect on thermal generation is not necessarily sufficient for participants to understand the overall impact on the electricity sector. Participants are reminded there is no longer an exclusion for commercial disadvantage.⁴ This means it would not be appropriate for participants to withhold information for the sole reason of protecting their position in negotiating for and/or securing replacement fuel supplies.</p>
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4 Feedback on proposed updates to the Guidelines

- 4.1 A version of the Guidelines showing the proposed changes is attached (Appendix A).
- 4.2 The additions to Section 6 provide a list of thermal fuel situations that could be examples of disclosure information and factors participants may find helpful in deciding what to publish.
 - (a) The Authority understands this kind of information is inherently uncertain, and the materiality test and exclusions will apply. This means disclosure of the examples we have added wouldn't always occur, if a relevant exclusion applied.
 - (b) If the Authority Board decides to progress with the proposed Code change to introduce quarterly reporting of disclosure activities, the Authority would use that data to determine whether participants are using exclusions appropriately.
- 4.3 The additions to Section 10 describe a suggested approach to format of disclosure, whereby participants can partially meet the clause 13.2A obligations by regularly disclosing the estimated firm and non-firm fuel they have access to.
- 4.4 There are also some minor changes throughout the document to ensure it is up to date and to improve accuracy.
- 4.5 Since the scope of the current disclosure review is focussed on thermal fuels, that is the area where we are proposing changes to the Guidelines. However the Authority is also open to making other non-controversial updates to the Guidelines that may be relevant or necessary at this time and encourage suggestions from stakeholders.

Q1. Do you agree with the proposed updates to the Guidelines? If not, please explain why.

Q2. Are there any other areas of the Guidelines that need updating? If so, please provide your views on why and how they should be updated.

⁴ Replaced with a 'reasonable person' exclusion in 2018, refer: <https://www.ea.govt.nz/development/work-programme/risk-management/wholesale-market-information-disclosure/development/decision-paper-on-wholesale-market-information-disclosure-regime/#c17098>

Appendix A Guidelines for participants on wholesale
market information disclosure obligations –
tracked changes