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Review of Guidelines for participants on wholesale market information disclosure obligations

Genesis Energy welcomes the opportunity to provide feedback on the proposed revised wholesale market information disclosure guidelines.

Genesis considers that one of the most important roles the guidelines play is in helping participants who face a light disclosure burden understand the level and nature of disclosure that can reasonably be expected in relation to thermal fuels. Accordingly, managing expectations is important to avoid participants being misinformed in relation to the level and extent of disclosure that will take place.

There is a risk that providing specific examples of situations in which disclosure obligations would apply may create an unrealistic or mistaken impression among participants that information will always be disclosed under all circumstances. Such a view would not take into account the numerous potential scenarios in which disclosure would rightly not occur due to exclusions applying.

Whilst it is true that guidelines are not compulsory directions, Genesis considers it inevitable some participants will interpret them as requirements. Given recent experience this can reasonably be expected to give rise to perceptions and allegations of breaches. There is no reason to expect these allegations to have any more merit or be any more likely to succeed than those that have failed to date, and thus merely saddle cost and reputational risk on participants for no market benefit.

Circumstances often arise in which information could be expected to have a material impact on prices if disclosed, because participants would misinterpret it. For example, advance notice of a planned gas field outage may increase futures prices for the relevant period, despite spot prices remaining stable during the outage due to the availability of alternative fuel or fuel supplies. As set out in our submission on the proposed changes to the disclosure regime, the

impact of circumstances upstream is rarely known until very close to the time fuel is required for generation¹.

It does not appear to be the Authority's intention to produce guidance that could result in wholesale prices being higher or more volatile than necessary. Therefore, we suggest including a definition of 'material impact' in the guidelines, which sets out that information only needs to be disclosed if the circumstances to which it relates represent a significant departure from the status quo and likely higher prices.

Uncertainty concerning the availability of thermal fuel for generation is a feature of the market, and unavoidable. Indeed, the Authority seems to acknowledge this in the consultation paper accompanying the proposed revised guidance:

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 applied²

Care is required in assuming that the existence of an upstream supply interruption will or is likely to translate to an impact on the ability of thermal generators to generate. For this reason, the proposed entry at 6.28(b)(v) is problematic.

Often the disclosures from upstream gas producers will be of the greatest value to the market as a whole because all parties are then operating on the same information, (that is, without the subjective input of generators). The Authority's working definition of a 'reasonable person' for the purposes of the disclosure rules is:

...a sophisticated market participant familiar with the purpose and scope of the continuous disclosure regime, the market and regulatory framework within which it operated, and publicly known circumstances³

Such a person should be able to make informed decisions armed with an accurate picture of the overall gas supply situation, without information being furnished by generators. It is important that the guidelines make clear that there is a difference between the volume of gas available to the system, and gas available for generation. Often a disruption on the supply side of the gas market will not impact upon the ability of generators to generate, or the price at which they are willing to do so.

At 7.21, the Authority states that information on upstream gas outages disclosed by gas producers is not sufficient, because "the impact on the electricity market is not necessarily obvious". This is precisely the point; very often thermal generators will not be able to ascertain what the impact of a looming outage will be, because how a change in the supply situation impacts the electricity market does not become clear until much closer to the time fuel is required. In this way, thermal generators usually have the same quality information as the rest of the market once an upstream outage has been disclosed, and further disclosure would likely amount to speculation.

The proposed rolling disclosure regime set out at 10.6 – 10.9 goes well beyond what the Code requires, and is therefore inappropriate for inclusion in the guidelines. Similarly to how the

¹ Genesis WMID submission, <https://www.ea.govt.nz/development/work-programme/risk-management/wholesale-market-information-disclosure/consultation/#c18525>

² Review of Guidelines for participants on wholesale market information disclosure obligations Consultation paper, 4.2(a)

³ Proposed guidelines, 7.9(b)

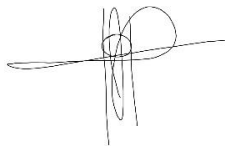
Authority does not consider that a reasonable person would expect continuous disclosure of a generators' entire fuel book⁴, Genesis does not consider it reasonable or necessary for a business to disclose its entire forward fuel position on a rolling basis.

Moreover, and similar to the points in relation to production outages covered earlier, the competing economic uses for natural gas mean that knowledge of the forward contracted volumes a participant has does not equate to knowledge of the use that fuel will be put to months or even years in the future.

Information that has a material impact on prices, in practice, should refer to information that would cause prices to deviate from the status quo or from what participants would reasonably expect in the absence of that information. The proposal at 10.6 – 10.9 suggests a broader obligation, and involves disclosure of 'business as usual' information. This would create a compliance burden without adding any benefit in terms of participants' ability to make trading decisions, and may in fact create confusion.

Please do not hesitate to contact me if you have questions about the contents of this submission, or if you would like further information concerning our experiences in relation to information disclosure.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Matt Ritchie', with a horizontal line extending to the left and a vertical line extending downwards.

Matt Ritchie
Senior Advisor, Regulatory Affairs and Government Relations

⁴ Proposed guidelines, 7.12