



20 October 2020

Submissions  
Electricity Authority  
PO Box 10041  
Wellington 6143

By e-mail: [WMID@ea.govt.nz](mailto:WMID@ea.govt.nz)

## **The Authority proposals will improve the Guidelines for participants on wholesale market information disclosure obligations**

Electric Kiwi and Haast Energy Trading (Haast) consider that the Authority proposals will improve the Guidelines for participants on wholesale market information disclosure obligations.

### **We are happy with the process the Authority is running**

We welcome the opportunity to submit on the draft changes, and the opportunity to participate in the Authority workshop on the matter before the consultation was finalised. We also welcome that the Authority has provided specific feedback and responses to stakeholder feedback and submissions.<sup>1</sup> We continue to appreciate the way the Authority and staff have engaged with stakeholders.

### **We support the clarifications to the Guidelines**

The extended disclaimer section and other changes provide useful 'for the avoidance of doubt' clarifications, including:

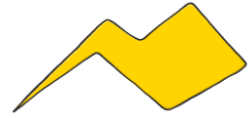
- It is useful to clarify "the Authority may consider reviewing this approach and including the content of these guidelines in the Code through future amendments dependent upon participant disclosure practises". Our position remains there are elements of the Guidelines that would be more appropriate in the Code.
- It is useful to clarify "that these guidelines are not exhaustive, and may be updated or changed from time to time. They reflect the Authority's current interpretation of the existing Code at the time of publication". We agree with the Authority that "disclosure rules should continually evolve to changing market developments".
- It is useful to clarify that "Although these guidelines are not mandatory, they may be drawn upon as an interpretative source in assessing a breach allegation, and the onus is on the participant to show how any different interpretation complies with the Code". While this should be self-evident, we consider it serves as a useful 'for the avoidance of doubt'.
- It is useful to clarify "participants can partially meet the clause 13.2A obligations by regularly disclosing the estimated firm and non-firm fuel they have available to meet generation capacity. This could reduce the need for participants to continually assess their fuel availability for materiality and simplify compliance".

### **We support expansion of examples of disclosure requirements, in the Guidelines and/or Code**

We agree with the Authority that "more disclosure is needed in situations when thermal fuel supply could impact the availability of electricity generation (now or in the foreseeable future)", and with the

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<sup>1</sup> We have previously commented that the Authority decision paper on its saves and (short-term) winback ban was a good example of providing responses to submitters.



Authority proposal to add “further examples to the Guidelines to illustrate situations where disclosure is warranted”. The review of the Guidelines is an opportunity to provide greater clarity about what information is required to be disclosed.

We support the addition of examples 1, 2 and 3.

It would be helpful to make it clearer in 6.27(b) that material information includes both changes in fuel supply price and volume, not just volume as reflected in the addition of “extent to which the change affects aggregate total thermal fuel contracted for generation”.

Consistent with our previous submission, we also consider that “The Authority should use review of the Guidelines to make clear information that is not currently being disclosed it considers should be e.g. activation of Meridian-Genesis ‘swaption’ rights”.

### **Interpretation of materiality**

The interpretation of the Code and Guidelines hinges on interpretation and judgements about materiality.

We note and agree with the issues raised by Meridian on this point:

“Whilst the misinterpretation of disclosure obligations has been identified by the Authority as a factor that may lead to non-disclosure, we wish to highlight the potential for different interpretations between parties as to whether information will have a material impact on prices. In particular, while the guidelines do contain some examples of information that ought to be disclosed by reference to “major investment and dis-investment decisions” and “significant changes” in, for example, coal supply and generation capability, the lack of indication of what the Authority considers to be “major” and “significant” may result in an inconsistent approach by participants. Without such an indication there may be differing views of what amounts to “major” or “significant” as one party’s “major” / “significant” may not be the same as another party (for example, we would consider that Trustpower’s generation data, which generally relates to small generation stations, is significant given the size of the regions they operate in).

“Accordingly, we consider it is useful to review the regime at this time to provide greater clarification to market participants as to what disclosure behaviour is expected.”

### **Clarification of our view on Code versus the Guidelines**

In our previous submission, we commented “The Authority has put too much faith in voluntary Guidelines: As a general rule, for voluntary guidance to be preferred there would need to be some advantage in providing market participants discretion over what is disclosed” and “Some elements of the Guidelines belong in the Code e.g. the information listed in clause 6.27 as non-comprehensive examples of information the Authority considers could reasonably be expected to have a material impact on prices in the relevant markets and therefore is disclosure information”.

We appreciate that the Authority has responded to our submission point.

In the response, the Authority commented that: “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.”

There is nothing in this response we disagree with, or that is inconsistent with our original submission points. The response doesn’t mean the Code cannot or should not include more detail than at present, including specific examples.

Including some of the elements of the Guidelines into the Code would appropriately reflect the balance between principles and prescription, while recognising the Guidelines should be more detailed than the Code, and that the Code cannot anticipate everything that should be disclosed.



## Other matters

In our previous submission, we commented that “The Authority should improve hydro disclosure” and “We agree with Vector that “Just as the Authority is consulting on thermal fuel disclosure, it should quickly move to ensure that the market can easily access and assess hydro operator spill, inflow and production data. ... The Authority should also implement spill reporting from the five main hydro generators”. We understand from feedback at the workshop that this is on the Authority’s project plan as part of stage 2 of WMID reform. We welcome this.

## Concluding remarks

Notwithstanding some of the feedback the Authority received in response to its last consultation, the Authority’s WMID proposals continue to be moderate and cautious, and should be non-contentious.

We reiterate that “In order to achieve the full benefits of the Information Disclosure Requirements, and the proposed enhancements, the Authority needs to increase and better resource its monitoring and enforcement work. We would support any additional funding requirements that may be needed”.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'L. Blincoe'.

**Luke Blincoe**  
Chief Executive, Electric Kiwi Ltd  
[luke.blincoe@electrickiwi.co.nz](mailto:luke.blincoe@electrickiwi.co.nz)  
+64 27 601 3142

A handwritten signature in black ink, appearing to be 'P. Anderson'.

**Phillip Anderson**  
Managing Director, Haast Energy  
[phill@haastenergy.com](mailto:phill@haastenergy.com)  
+64 21 460 040