

Wholesale market information disclosure

Review of Thermal Fuel Information Disclosure

Consultation paper

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Executive summary

This paper seeks feedback on the Authority's proposed actions to improve the availability of thermal fuel information. These actions include a proposed amendment to the Electricity Industry Participation Code (the Code), increased clarity on disclosure expectations and steps to make it easier for participants to find and use thermal fuel information.

Robust information contributes to efficient markets

Information is critical to efficient and well-functioning markets. Thermal fuel information is a key driver of electricity prices. With access to more information participants have more visibility of market activities and can better manage risk, which will benefit consumers in the long-term through more efficient prices.

Difficulty in accessing reliable information can cause market inefficiency or hinder competition, both of which harm consumers. On the other hand, forcing parties to disclose information may reduce innovation, facilitate collusion and increase compliance costs. Hence, information disclosure arrangements need to strike a careful balance to best serve the long-term interests of consumers.

Our current focus is on thermal fuel information

Recent events and reviews have highlighted the availability of thermal fuel information as a key concern so we are reviewing thermal fuel information disclosure rules. We have engaged closely with stakeholders to better understand their thermal fuel information needs, assessed these against the information which is currently available, and identified the key gaps. We have also worked closely with the Gas Industry Company (Gas Industry Co) to understand those gaps.

While we consider thermal fuel information is the most pressing issue, we acknowledge there are other information issues that also need to be assessed. We plan to consider these other issues in a second phase of the project which is scheduled for the 2021/2022 financial year.

Gas sector information has improved considerably in the past 12 months

At the outset, it is important to recognise some thermal information is simply 'unknowable' – such as whether a gas field will suffer an unexpected production outage. Disclosure arrangements therefore need to focus on information that is knowable or can be estimated with reasonable confidence.

Recent thermal fuel concerns largely centre on the availability of information that affects current and future wholesale electricity prices – especially current fuel storage and expected supply capability¹ or outages. The concerns have been most acute for gas as a thermal fuel. It accounted for 80% of thermal generation in the last 5 years compared to 20% for coal and 0.1% for diesel. It has also been subject to the most supply uncertainty because it is sourced from relatively few fields and has been affected by frequent planned and unplanned outages in recent years.

Forward looking information on the gas sector has improved significantly in the last 12 months due to initiatives facilitated by Gas Industry Co. Since July 2019, Gas Industry Co has published information provided by gas producers on all major planned outages. This addresses a gap which was a major concern in 2018 and early 2019. In May 2020 Gas Industry Co began to

¹ Supply capability refers to the ability to obtain additional thermal fuel if required. For gas, this relates to expected field deliverability and for coal the ability to obtain additional supply from domestic production or imports.

publish monthly updates on total gas in storage, and injection and withdrawal rates for the month. This data is provided by the underground storage operator (Flex Gas) and also fills a key information gap.

Improved transparency of the impact of thermal fuels information on the electricity market is needed

The changes noted above significantly improve the information available on the aggregate near-term gas supply outlook. However, they do not necessarily provide information on electricity sector impacts from any changes in the gas supply outlook. Gas is used by multiple sectors and a change in projected supply may not necessarily impact on electricity generation. This project builds on the good progress already made by the Gas Industry Co and gas market participants. This progress raises the question of whether any changes are required to the electricity Code.

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.

After consideration of the views of some stakeholders, a review of compliance actions, and an assessment of reasons for non-disclosure, we do not consider there is yet sufficient evidence to support a change to the substantive disclosure provision in the Code. While we consider the exclusion provisions to be largely appropriate, we have some specific concerns about the confidentiality exclusion, in that it may unjustifiably prevent relevant disclosures. We intend to monitor reliance on the confidentiality exclusion with a view to modifying or removing the exclusion as merited in conjunction with the next wholesale market information disclosure review.

Additionally, we believe some participants may not be fully aware of their disclosure obligations. Compounding this issue, current arrangements make it relatively hard for the Authority to detect any non-compliance – especially as there is limited visibility on whether participants are making timely disclosures of material price-sensitive information they hold and/or are unduly relying on exclusions to withhold such information.

We also think participants face undue difficulty in finding and using the information which is already being disclosed.

We are proposing a Code change and other actions

Notwithstanding our view on the wording of clause 13.2A, the Authority considers that there is in practice a problem related to disclosure about thermal fuels. Improved thermal information disclosure will help build confidence for market participants.

We have four key proposals aimed at ensuring the Code’s disclosure requirements are being met and making thermal fuel information easier to find and use. Together with the work being undertaken by Gas Industry Co, we believe these proposals will improve thermal fuel information in a way that is in the long-term interests of consumers.

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***

We intend to update the disclosure guidelines to provide greater clarity regarding disclosure obligations and reflect recent developments. For example, the fact that gas producers now disclose all planned outages does not override electricity participants' obligations under clause 13.2A.

Aim: Make thermal fuel information easier to find and use

- 3) We propose to raise awareness of existing disclosures eg, via a ***disclosure reference webpage*** which links to published information.
- 4) We propose to ***clarify where parties should disclose information*** about their availability being impacted by a fuel constraint eg, via a centralised website such as WITS.

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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 proposals to improve the disclosure of thermal fuel information in the wholesale market.
- 1.2 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.
- 1.3 The proposals would introduce a requirement for some participants to report quarterly on information disclosure activity, update information disclosure guidelines, and enhance awareness of disclosure information.
- 1.4 Section 39(1)(c) of the Act requires the Authority to consult on any proposed amendment to the Code and corresponding regulatory statement. Section 39(2) provides that the regulatory statement must include a statement of the objectives of the proposed amendment, an evaluation of the costs and benefits of the proposed amendment, and an evaluation of alternative means of achieving the objectives of the proposed amendment. The regulatory statement is set out in Section 5 of this paper.

How to make a submission

- 1.5 Our preference is to receive submissions in electronic format (Microsoft Word) in the format shown in Appendix B. Submissions in electronic form should be emailed to WMID@ea.govt.nz with "Review of Thermal Fuel Information Disclosure—Consultation Paper" in the subject line.
- 1.6 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

- 1.7 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).
- 1.8 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.

- 1.9 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

- 1.10 Please deliver your submissions by **5pm** on Tuesday **1 September 2020**.
- 1.11 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 Issues the Authority would like to address

2.1 The purpose of this chapter is to set out the problem definition and explain why we are reviewing the thermal fuel information disclosure rules at this time.

Prices may not be as efficient as they could be due to some useful thermal fuel information being absent from the market

2.2 There appears to be a widespread view among participants that because some useful thermal fuel information is absent from the market (in a usable form), prices are not as efficient as they could be.

2.3 The Authority has characterised the problem definition addressed in this paper as follows:

Problem definition:

*The **key outcome for an effective wholesale market is confidence in efficient prices**, and currently there is a widespread view that prices are not as efficient as they could be because some useful and important thermal fuel information is absent from the market.*

2.4 Stakeholders have raised concerns that there are material gaps in thermal fuel information disclosure, but there are also concerns that some parties have difficulty accessing and/or interpreting the thermal fuel information that is disclosed.

Markets require information to operate effectively and efficiently

2.5 Markets require information to operate effectively and efficiently. Limitations in the availability of information, or lack of confidence in market information, may lead to inefficient outcomes. Such limitations may also limit competition.

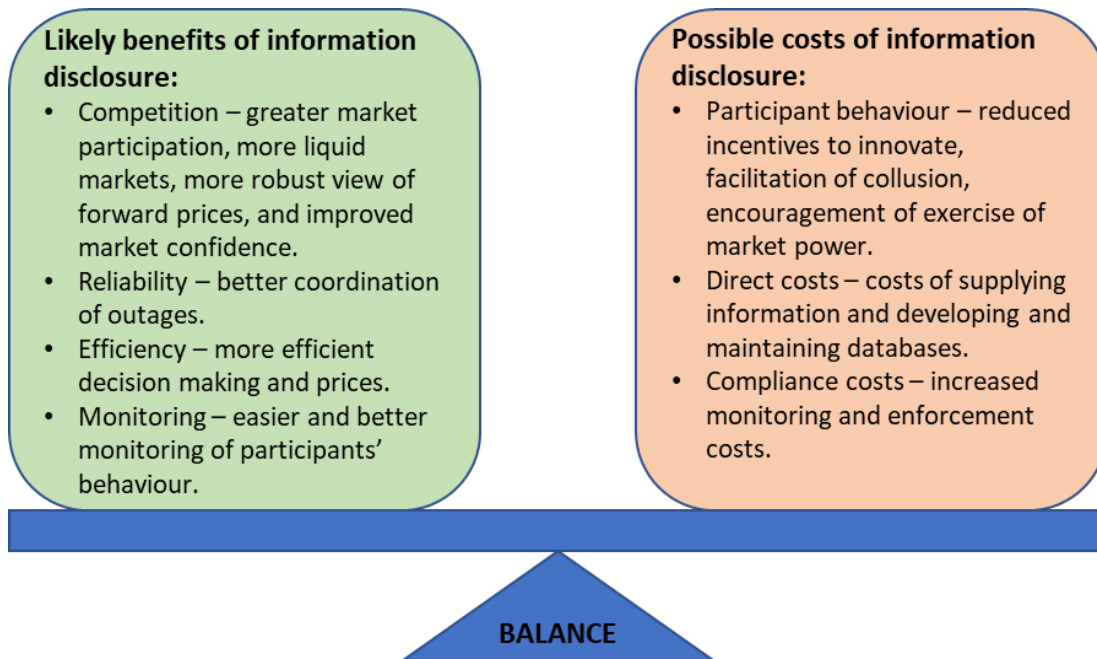
2.6 Furthermore, increased information disclosure in a market reduces the imbalance between “informed” and “uninformed” decision-makers, reduces uncertainty about factors affecting the market, and facilitates better monitoring of behaviour. The benefits to New Zealand’s wholesale electricity market of information disclosure include (among others) more efficient decision-making and prices, 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.

2.7 However, there are also costs of information disclosure, particularly if information disclosure requirements are poorly prescribed. Information disclosure can reduce parties’ incentives to innovate, facilitate competition-reducing behaviours such as collusion and the exercise of market power, and increase costs of supplying information and developing and maintaining databases. Mandating information disclosure may also increase compliance costs for both the participants and the rule enforcer (eg, the Authority).

2.8 Therefore, an efficient wholesale electricity market information disclosure regime² will need to strike the right balance between the benefits and costs of information disclosure. This is shown in Figure 1.

² An information disclosure regime is the set of arrangements that describe what information needs to be disclosed and how it should be disclosed.

Figure 1: An efficient wholesale market information disclosure regime strikes a balance between the costs and benefits of information disclosure



A review of information disclosure is merited at this time

- 2.9 Currently there are a range of information disclosure requirements that may apply to a party holding information relevant to the New Zealand wholesale electricity market. Section 3 provides more information on the clause 13.2A wholesale market information disclosure requirements.
- 2.10 It has been three years since these wholesale market information disclosure requirements were last reviewed. We believe it is timely for these requirements to be reviewed again because:
- principles-based information disclosure requirements merit periodic review to ensure they continue to meet information needs and the Authority last completed a review of wholesale market information disclosure in 2017/18,
 - the Electricity Price Review (EPR) Panel recommended “The Electricity Authority should review the wholesale electricity market information disclosure rules and close any gaps” within 12 months³,
 - information gaps were highlighted during the extended Pohokura gas supply outages and resulting wholesale electricity prices increase in the spring of 2018⁴; and
 - the Authority is reviewing market-making arrangements on the Australian Securities Exchange (ASX) electricity futures market and because effective information disclosure requirements help facilitate market-making we consider now is an opportune time to review the wholesale market information disclosure requirements.

³ Refer Recommendation D1: <https://www.mbie.govt.nz/assets/electricity-price-review-final-report.pdf>

⁴ Refer: <https://www.ea.govt.nz/monitoring/enquiries-reviews-and-investigations/2018/review-of-wholesale-market-issues-during-spring-2018/>

- 2.11 The scope of this project has been influenced by the EPR Panel’s final report, where the EPR Panel recommended that a review of information disclosure requirements should include (in addition to considering disclosure of gas spot market volumes and prices):
- (a) the scope of the current exemptions (particularly the confidentiality exclusion)
 - (b) the format of information—the EPR Panel noted that a lot of information was already available but was difficult to piece together and interpret. The EPR Panel supported the consideration of a centralised database.⁵
- 2.12 In addition, the Gas Industry Co started a review of information disclosure in the gas industry in 2018. Many of the issues identified in the Gas Industry Co’s information disclosure workstream have an impact on the electricity market (including gas storage information, forecasts of gas production, and gas positions of thermal electricity generators). As the gas market is central to these issues, it was appropriate for the Gas Industry Co to first lead a broader gas market information disclosure review.
- 2.13 The Authority has been working collaboratively with the Gas Industry Co since their information disclosure workstream commenced to ensure the consistency of our two workstreams. The Authority-led part of this work started in January 2020 and builds on the progress the Gas Industry Co have already made.

There is evidence that thermal fuel information disclosure is the most pressing issue

- 2.14 The Authority has spoken to a broad range of stakeholders in the process of developing this consultation paper. We engaged with relevant stakeholders early in the wholesale market information disclosure project to ensure that we had a good understanding of the potential information disclosure issues. This consultation paper provides further opportunity for stakeholders (including those we haven’t already spoken to) to engage with the Authority on information disclosure issues.
- 2.15 We have also considered the EPR Panel’s reports⁶ and the Gas Industry Co’s *Information Disclosure: Problem Assessment and Options for Information Disclosure in the Wholesale Gas Sector*⁷, and associated stakeholder submissions.
- 2.16 We consider that thermal fuel information disclosure is the most pressing issue because:
- (a) allegations of inadequate disclosure contained within the 15 September 2018 Undesirable Trading Situation (UTS) claim were found to merit further review, despite the claim not resulting in a UTS
 - (b) the EPR Panel’s final paper and submissions on the EPR Panel’s papers cited thermal fuel information disclosure as a key issue
 - (c) during our early engagement with stakeholders, many parties commented that thermal fuel information gaps were hampering market efficiency
 - (d) thermal fuel information is important because of the part thermal fuel plays in New Zealand’s electricity market (as discussed in Box 1 below).

⁵ Refer: <https://www.mbie.govt.nz/assets/electricity-price-review-final-report.pdf>, p42.

⁶ Refer: <https://www.mbie.govt.nz/building-and-energy/energy-and-natural-resources/energy-consultations-and-reviews/electricity-price/>.

⁷ Refer: <https://gasindustry.co.nz/work-programmes/gas-sector-information-disclosure/overview/>.

2.17 We have also undertaken a review of current thermal fuel information disclosure (which is discussed in section 3.18). This stocktake has indicated that there is substantial information disclosed on thermal fuel and the level of disclosure has improved over time. However, the stocktake also indicates that there are still gaps in thermal fuel information disclosure and some information is disclosed infrequently, with a large lag, in a location that is difficult to find, or in a format that makes analysis of the information difficult.

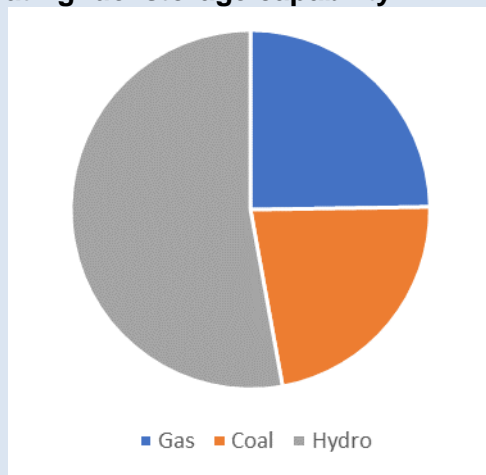
Box 1: What is thermal fuel generation and why does it matter?

Thermal fuel generation in New Zealand

The key thermal fuels used for generation in the New Zealand wholesale electricity market are gas, coal, and diesel.

A substantial proportion of New Zealand’s generating fuel storage is in thermal fuels. Figure 2⁸ compares the storage capability of gas, coal and hydro New Zealand.

Figure 2: Generating fuel storage capability



Since some thermal fuels can be stored and are not dependent on weather conditions, thermal generation plants often generate when other supply sources are scarce, particularly during periods of low hydro inflows and peak winter demand.

Thermal fuel concerns largely centre on the fuel availability information that affects forward prices – especially current fuel storage and expected production levels or outages. The concerns have been most acute for gas as a thermal fuel. It accounted for 80% of thermal generation in the last 5 calendar years compared to 20% for coal and less than 0.1% for diesel. It has also been subject to the most supply uncertainty because it is sourced from relatively few fields and has been affected by frequent planned and unplanned outages in recent years.

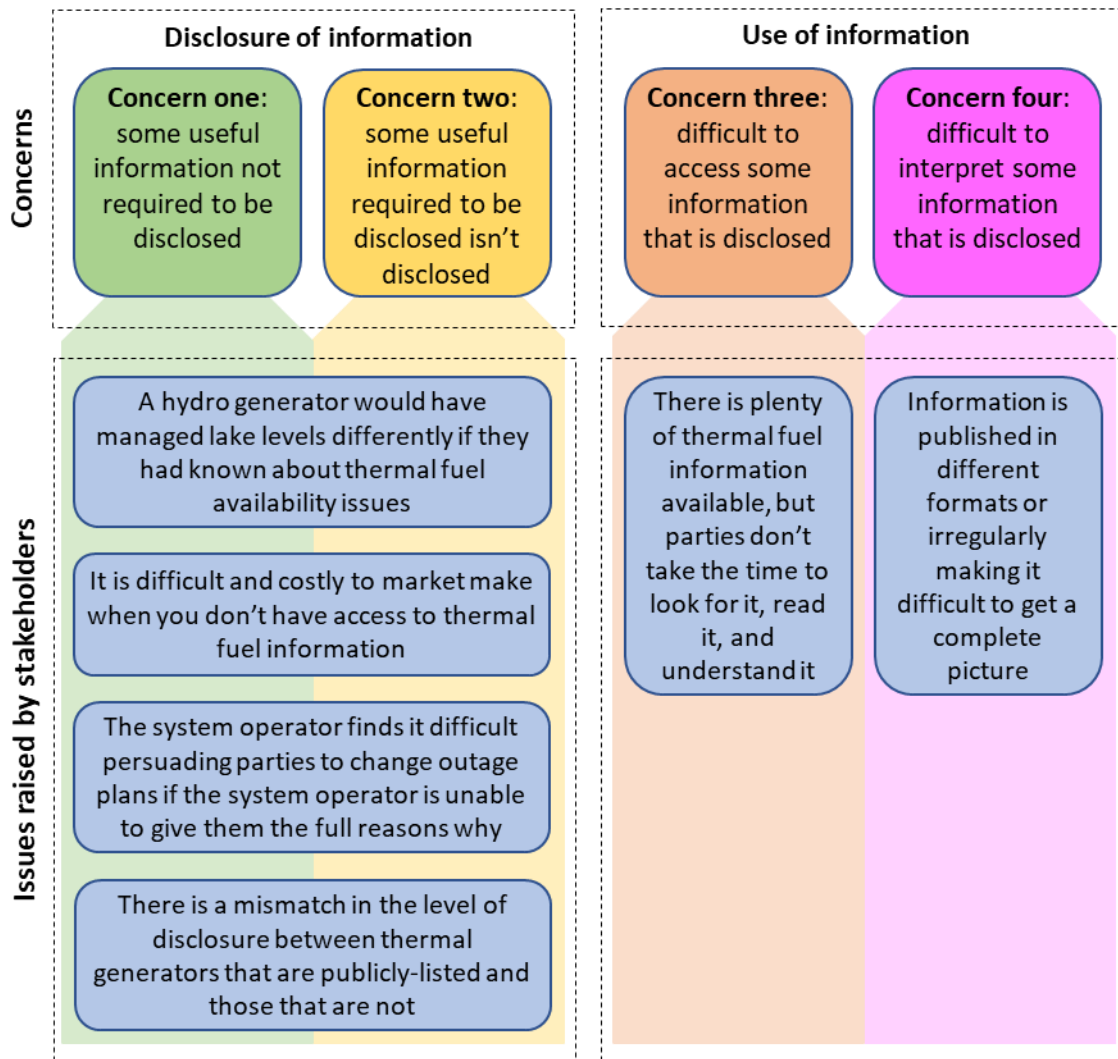
The interaction between the electricity and gas markets

Electricity generation currently accounts for around 25 percent of total gas usage in New Zealand. However, gas use for electricity generation varies significantly from year to year—especially due to ‘dry years’. Because gas-fired generation plants tend to generate when other fuel sources are scarce, gas availability and cost are key drivers of electricity spot prices when hydro storage is low.

⁸ Data from MBIE, 2015-2019

2.18 For the purpose of this consultation paper we have grouped thermal fuel information disclosure concerns into four broad concerns – two concerns relate to whether information is being disclosed and two concerns relate to parties being able to use the information that is disclosed. These four concerns, and how some of the issues raised by stakeholders fit into these concerns, are shown in Figure 3 below.

Figure 3: There are concerns about the disclosure of thermal fuel information and the ability to access and interpret thermal fuel information



Stakeholders raised other wholesale information disclosure concerns

2.19 Some stakeholders raised other wholesale information disclosure concerns not specifically related to thermal fuel. Some of the key concerns include:

- (a) the scope and use of the exclusions (particularly the confidentiality exclusion)
- (b) difficulties in finding and using information
- (c) interaction of clause 13.2A requirements with other disclosure requirements eg, Schedule 8.3, Technical Code D
- (d) instances where parties have not offered their plant or recorded it as on outage and
- (e) the level of enforcement of the clause 13.2A requirements.

2.20 A more detailed list of the concerns raised by stakeholders (other than thermal fuel information disclosure concerns) is included in Appendix E.

We intend to review other wholesale market information disclosure issues later

2.21 While we consider that addressing concerns with thermal fuel information disclosure is the most pressing issue, we acknowledge there are other information disclosure issues that also need to be assessed. Therefore, we have split the wholesale market information disclosure project into two phases.

2.22 We will focus on issues related to the disclosure of thermal fuel information in the first phase, of which this consultation paper is part. In the second phase of this project we will consider information disclosure issues not specifically related to thermal fuel and identify which are the priority issues to progress (to the extent they are not covered by this review of thermal fuel information disclosure). We plan to commence the second phase in 2021, but this timing is subject to review.

2.23 We welcome any comments on what other wholesale market information disclosure issues the Authority needs to consider for prioritisation in this second phase of the project. A list of the other wholesale market information disclosure issues that the Authority is currently aware of is provided in Appendix E.

Q1. Do you agree with the Authority's problem definition: "The key outcome for an effective wholesale market is confidence in efficient prices, and currently there is a widespread view that prices are not as efficient as they could be because some useful thermal fuel information is absent from the market?"

Q2. Do you agree that there are concerns with both what thermal fuel information is disclosed and the ability to access, interpret and use thermal fuel information that is disclosed?

Q3. Do you agree that thermal fuel information disclosure is the most pressing wholesale information disclosure issue?

Q4. Of the other information disclosure issues listed in Appendix E, which are the priority issues? Are there any issues missing from this list?

3 Thermal fuel information disclosure

- 3.1 The purpose of this chapter is to describe the existing state of thermal fuel disclosure, including existing requirements, current disclosure and what other information may be of use to parties.

Background

There are a range of requirements for thermal fuel disclosure

- 3.2 The overarching wholesale market information disclosure requirements on participants are found in clause 13.2A of the Code. However, holders of thermal fuel information can also be subject to other disclosure requirements.

Requirements to disclose information under clause 13.2A of the Code

- 3.3 Clause 13.2A of the Code imposes 'continuous disclosure' obligations on participants in relation to wholesale market information. The wholesale electricity market comprises the spot market, the hedge market (including financial transmission rights (FTRs)), and the ancillary services market.⁹
- 3.4 Clause 13.2A requires each participant to make disclosure information readily available to the public, free of the charge, as soon as practicable after becoming aware of the information. "Disclosure information"¹⁰, in relation to a participant, means information that:
- (a) is about the participant; and
 - (b) is held by the participant; and
 - (c) the participant expects, or ought reasonably to expect, if made available to the public will have a material impact on prices in the wholesale market.
- 3.5 A participant is not required to make disclosure information readily available to the public if any one of the following nine exclusions hold¹¹:
- (a) the disclosure information is excluded Code information
 - (b) a reasonable person would not expect the disclosure information to be made readily available
 - (c) the participant is bound by a legal obligation to keep the disclosure information confidential
 - (d) doing so would be a breach of law
 - (e) the disclosure information is already readily available to the public
 - (f) the disclosure information concerns an incomplete proposal or negotiation
 - (g) the disclosure information comprises matters of supposition or is insufficiently definite to warrant being made readily available to the public
 - (h) the participant claims legal professional privilege or privilege against self-incrimination in respect of the disclosure information
 - (i) the disclosure information is a trade secret.

⁹ Defined in clause 1.1(1) of the Code.

¹⁰ Defined in clause 1.1(1) of the Code.

¹¹ The exclusions are set out in clause 13.2A(2) of the Code.

- 3.6 The disclosure regime in clause 13.2A of the Code is a principles-based regime. It requires each participant to determine if the information they hold must be disclosed. The Authority has a 'please explain' power¹² if a participant does not disclose information, and which requires the participant to satisfy the Authority that either an exclusion applies, or the information does not meet the definition of disclosure information.
- 3.7 To help participants better understand, and comply with, their obligations under the information disclosure provisions, the Authority has published guidelines on wholesale market information disclosure.¹³

Other requirements to disclose thermal fuel information

- 3.8 Holders of thermal fuel information may be subject to other information disclosure requirements including:
- (a) requirements to disclose planned outage information to the system operator under Schedule 8.3, Technical Code D of the Code. This information is typically disclosed on the Planned Outage Co-ordination Process (POCP) platform, though the use of this platform is currently not mandatory
 - (b) disclosure obligations as part of a listing on a stock exchange. These rules vary by stock exchange, but typically include both continuous and periodic disclosure requirements¹⁴
 - (c) requirements to disclose information to the Ministry of Business, Innovation and Employment (MBIE), including gas production, storage, and consumption data and coal imports. Some of this information is required to be disclosed to MBIE under the Crown Minerals (Petroleum) Regulations (2007)
 - (d) other disclosure requirements in Part 13 of the Code, including requirements related to submission of offers.
- 3.9 Recently gas market participants and Gas Industry Co have also implemented voluntary disclosure of some gas market information, detailed further in 3.19.

'Quantity available to generate' is the most important thermal fuel information

- 3.10 Dealing first with the 'supply-side' of disclosure, it is important to recognise some thermal fuel information is simply 'unknowable' – such as whether a gas field will suffer an unexpected production outage or whether users will have access to gas on a particular day. Disclosure arrangements therefore need to focus on information that is knowable or can be estimated with reasonable confidence.
- 3.11 Turning to the 'demand-side' of disclosure, thermal generation is a critical source of flexibility for New Zealand's electricity system – ramping up when intermittent sources such as hydro or wind generation are temporarily reduced and vice versa. Accordingly, if ramping up thermal generation was difficult or costly, that could affect electricity spot and forward prices.

¹² Clause 13.2A(5).

¹³ Refer: <https://www.ea.govt.nz/operations/wholesale/information-disclosure/>.

¹⁴The New Zealand stock exchange's (NZX) disclosure requirements are set out in Section 3 of the NZX Listing Rules – refer: <https://www.nzx.com/regulation/nzx-rules-guidance/main-board-debt-market-rules>.

- 3.12 With these factors in mind (and leaving aside for now whether it is currently available), the thermal fuel information with the most direct influence on price formation is likely to be the quantity of fuel available for power generation and the effective price of that fuel.
- 3.13 The availability of fuel and its relevant value is a complex derivative of a number of environmental, physical, economic, commercial and structural factors. For example, prevailing contracting practices can influence how much gas is available for generation.
- 3.14 This information is particularly relevant for electricity price formation in the near term (around the next 6-12 months) because the maximum rates at which thermal fuels can be produced or stored are largely fixed in that timeframe. As the time horizon extends, there is more scope to relieve any binding thermal fuel constraints via investment, and electricity price formation will tend to be driven more by economic fundamentals, such as the cost of building new generation.
- 3.15 Relating to quantity and price, thermal generators would likely hold information on:
- (a) the quantity of fuel contracted (expected availability)
 - (b) changes to available fuel from spot or bilateral sales
 - (c) storage available (level and use)
 - (d) impact of interruptions to supply
 - (e) price.
- 3.16 System-level information (eg, planned outages at Pohokura) provide the required building blocks to assess fuel availability. Although participant-level information¹⁵ (eg, Pohokura gas contracted to party X) may provide more granularity, this is not necessarily needed to develop an understanding of thermal fuel availability to the electricity system¹⁶.
- 3.17 We have identified the key thermal fuel information relevant to electricity market participants from stakeholders' feedback, through consultation with market experts, and as highlighted in compliance cases investigated by the Authority. This information is shown in Appendix D.

Thermal fuel information availability and gaps

There are some gaps in thermal fuel information disclosure, but it has improved over time

- 3.18 We have undertaken a stocktake of what thermal fuel information is currently available. This stocktake assessed the disclosure of historical, current, and future information about gas, coal, and diesel generating plant, including fuel availability, volume, price, and contracting arrangements. Appendix D sets out the details of what we found. In summary, we found:
- (a) there is reasonably good disclosure of historical gas and coal usage and storage, although in some cases information is updated infrequently or difficult to find

¹⁵ Unless only one participant uses a fuel, in which case, the system-wide information will be the same as participant-level information.

¹⁶ The value of the more granular information is the incremental improvement over the system wide information. It is the incremental value which should be considered against the cost of disclosure.

- (b) there is less information available about current storage and expected near term gas and coal availability (especially next 6-12 months)
 - (c) there is no information about expected future diesel availability for generation (although this is less material)
 - (d) information disclosure by publicly-listed companies appears to be better than disclosure by privately-owned companies.
- 3.19 Thermal fuel information disclosure has been improving over time. Examples of improved information disclosure include:
- (a) emsTradeport has increased the availability of gas spot price and volume data over time
 - (b) Gas Industry Co introduced an industry notifications webpage in mid-2019 where parties can upload notifications about gas facilities (such as planned outages)¹⁷
 - (c) since May 2020 monthly updates of gas storage levels of Ahuroa have been provided by Flex Gas and published on the Gas Industry Co's website¹⁸
 - (d) in June 2020 upstream gas producers and Flex Gas have agreed to a new voluntary Upstream Gas Outage Information Disclosure Code, formalising the frequency and format of disclosures.

The availability of thermal fuel information is inconsistent

- 3.20 Table 1 assesses each key information item against four qualifiers, namely whether the information is currently being disclosed, how easily it is for users to access this information, the quality of the disclosure (in terms of timeliness, frequency, presentability etc.) and whether disclosure is made voluntarily or because it is mandated by the Code or some other obligation.

¹⁷ Refer: <https://gasindustry.co.nz/industry-notifications/>

¹⁸ Refer: <https://www.gasindustry.co.nz/publications/landing-pages/gas-storage-information-chart/>

Table 1: Thermal fuel information where disclosure is limited

Information Item		Disclosure status & disclosure quality			
		Currently disclosed	Easily accessible	Quality of disclosure ¹	Is current disclosure voluntary [V] or mandatory [M]
Gas information	Gas storage levels ²	✓✓	✓✓	✓✓	V
	Gas injections and withdrawals	✓✓	✓✓	✓✓	V
	Thermal generators' access to gas	Varies	Varies	Varies	M
	Planned Gas production and storage outages	✓✓	✓✓	✓✓	V
	Key terms of gas supply agreements	X	X	n/a	V
	Forecast gas production capability	✓	✓	-	M
	Gas SPOT price information	✓	✓	-	V
Coal information	Coal stockpile	✓	-	X	V
	Coal imports & deliveries	X	X	X	V
	Coal availability for thermal generation	Varies	Varies	Varies	M
	Key terms of coal supply agreements	X	X	X	V
	Coal SPOT price information	✓	✓	-	V
Diesel information	Diesel availability for thermal generation ³	X	X	X	V
	Diesel price information	✓	✓	-	V

Note 1: the quality of disclosure is assessed in terms of frequency, timeliness and general presentability

Note 2: excluding line pack

Note 3: although diesel is used to generate a very small portion of electricity supply for a very few trading periods, it is nonetheless a very important source of thermal generation during high peak demand and/or dry years

Note 4: Forecast gas production refers to reporting to MBIE by field operators required under Crown Minerals Act

- 3.21 Table 1 indicates that the overall quality of gas, coal and diesel market information is now generally good.
- 3.22 To the extent there is a remaining uncertainty, it is primarily about how electricity generation is affected by changes in the gas, coal and diesel markets. Additional disclosure of information on the availability of thermal fuels (gas, coal and diesel) for electricity generation¹⁹ seems to be an area where improvement is required. Disclosure of this information would provide a clearer picture to market participants on the likely impact that fuel constraints would have on short term prices.

What additional information was requested by stakeholders

- 3.23 As discussed in Section 2, we have approached a number of stakeholders during the development of this paper to obtain a better understanding of their current information needs. The majority agreed that disclosure of thermal fuel information has substantially improved over the past couple of years but that it still is the most pressing disclosure issue. Stakeholders raised concerns about existing barriers to access or interpret information, the lack of consistency in the disclosed information, uncertainty around disclosure obligations and the (actual or perceived) lack of monitoring and enforcement activity by the Authority. This paper proposes options that seek to resolve these concerns, as further detailed in Section 4 below.
- 3.24 Some stakeholders listed specific thermal fuel information that should be disclosed because it is (a) material information subject to disclosure obligations under the Code or (b) is relevant information to their decision-making and to forward price discovery.

What information would be of most value

- 3.25 A more **efficient** information disclosure regime does not imply that more information has to be disclosed.²⁰ Rather, a balance needs to be found between the cost of disclosing more information and the benefits obtained from its disclosure such that the cost of additional information disclosure would yield, at a minimum, a corresponding improvement in market efficiency and benefits to consumers.
- 3.26 An initial high-level assessment was undertaken to better understand the value that the key thermal fuel information listed in Table 1 would have if market participants are obliged to disclose it or to improve the quality of current disclosure.
- 3.27 The value of disclosure was assessed in terms of its contribution to:
- (a) facilitate price discovery in the spot and forward markets
 - (b) improve the efficiency of operational and investment decisions for generation assets, and
 - (c) inform the system operator to better manage security of supply.
- 3.28 At a broader level, improvements in these areas would improve the overall efficiency, reliability and confidence in the electricity market and ultimately translate into long-term benefits to consumers.

¹⁹ Fuel availability for electricity generation is the result of a combination of factors including physical availability net of any outages, whether fuel is contracted or can practically be secured on short notice, and procurement practices and timing.

²⁰ In this context, more information disclosure covers (1) disclosure of more information than currently being disclosed, (2) providing more detailed information to what is currently disclosed, and (3) disclosing information more frequently than currently is the case.

3.29 Table 2 below shows that all the key thermal fuel information listed in Table 1 can contribute towards the above outcomes. However, it is clear that some information would add more value to market participants and to these outcomes than others, such as gas availability and gas production outages.

Table 2: Contribution of thermal fuel information to our statutory objectives

Information Item		What information would add the most value if it is disclosed and is easily accessible			
		Encourages more efficient SPOT electricity prices • increases confidence • improves efficiency	Facilitates forward electricity price discovery ¹ • increases confidence • improves efficiency	Encourages more efficient electricity generation investment decisions • improves efficiency	Improves System Operator's ability to manage security of supply • increase reliability
Gas information	Gas storage levels ²	✓	✓	-	✓
	Gas injections and withdrawals	✓	✓	-	✓
	Thermal generators' access to gas	✓ ✓	✓ ✓	✓	✓ ✓
	Planned Gas production and storage outages	✓ ✓	✓ ✓	-	✓ ✓
	Key terms of gas supply agreements	-	-	-	✓
	Forecast gas production capability	✓	✓	✓	✓
	Gas SPOT price information	✓	✓	✓	-
Coal information	Coal stockpile	✓	✓	-	✓
	Coal imports & deliveries	-	✓	-	✓
	Coal availability for thermal generation	✓	✓ ✓	-	✓ ✓
	Key terms of coal supply agreements	-	-	-	✓
	Coal SPOT price information	✓	✓	-	-
Diesel information	Diesel availability for thermal generation	✓	-	-	✓

	Diesel price information	✓	-	-	-
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Note 1: In the longer term, better forward price discovery would also facilitate entry of new market participants

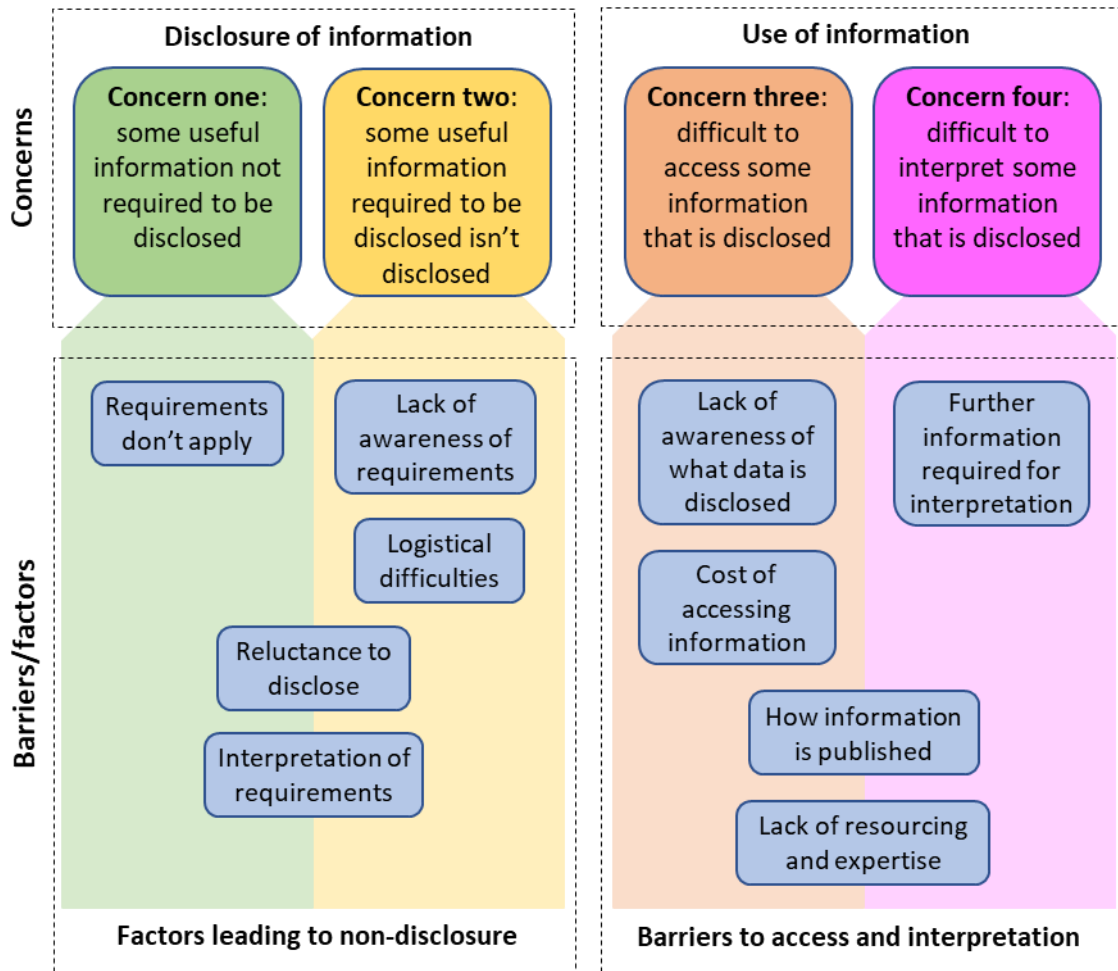
Note 2: Gas storage excludes line pack

- 3.30 We do not consider disclosure of key terms from fuel supply agreements is a priority at this time. We recognise this information could be of interest to market participants because users can identify how much fuel has been procured by each thermal generator, and therefore, be able to determine whether it has sufficient fuel for electricity generation. Price information within gas or coal supply agreements is of interest to participants. However, if disclosed, it could place the market participant at a competitive disadvantage and has a very high risk of undermining confidence in the market. Contracts are also bespoke, making the value of comparison between participants limited. Disclosing these arrangements is unlikely to add significant value to market participants compared to other key thermal fuel information.

Other factors may be leading to useful thermal fuel information being absent from the market

- 3.31 As noted in Section 2 the Authority considers that improved thermal fuel information disclosure is required to achieve more efficient prices in the wholesale market. The Authority considers that there are factors that may be leading to non-disclosure of thermal fuel information and are therefore restricting the flow of thermal fuel information. At the same time barriers to accessing and interpreting information are reducing the usability of some thermal fuel information that is disclosed.
- 3.32 The relationship between the factors leading to non-disclosure of thermal fuel information, the barriers to accessing and interpreting information, and the four broad concerns shown in Figure 2, Section 2 are laid out in Figure 4 below.
- 3.33 The factors that may be leading to non-disclosure of thermal fuel information drive the first two concerns—some useful information is not required to be disclosed and some useful information required to be disclosed isn't being disclosed.
- 3.34 The barriers to accessing and interpreting information drive the second two concerns—it is difficult to access some information that is disclosed and it is difficult to interpret some information that is disclosed.

Figure 4: There are factors that may be leading to useful thermal fuel information being absent from the market



3.35 Addressing the factors that are leading to non-disclosure of thermal fuel information and the barriers to accessing and interpreting thermal fuel information will lead to better and more thermal fuel information disclosure. We consider options that could address these factors and barriers in Section 4 of this paper. However, there may be cases where it's not appropriate for the Authority to address a factor or barrier because the action required by the Authority to do so may be out of proportion to any issues the factor or barrier is causing.

Compliance with clause 13.2A has been hard to measure

3.36 The Authority's Compliance Committee assessed five alleged breaches of clause 13.2A between April 2013 and October 2019. In each of these alleged breaches the Compliance Committee has found no breach of clause 13.2A. The reasons for the finding of no breach included:

- (a) the information would not have had a material impact on prices in the wholesale market if it was made available to the public (ie, it didn't meet the definition of disclosure information)
- (b) the participant disclosed the disclosure information as soon as reasonably practicable after it became aware of the information

- (c) a reasonable person would not have expected the information to be readily available (one of the exclusions in clause 13.2A²¹).
- 3.37 However, it is difficult for the Authority to determine the current level of compliance with clause 13.2A as we don't know:
- (a) what information participants have that meets the definition of disclosure information but is not being disclosed
 - (b) whether there is an exclusion that applies to any piece of disclosure information.
- 3.38 Paragraph 4.34 onwards discusses the exclusions in more detail and question Q20 asks for submitter feedback on them. The Authority welcomes feedback from submitters on which exclusions have been relied on when determining that disclosure information does not need to be disclosed.

Current factors that may lead to non-disclosure of thermal fuel information

- 3.39 The Authority considers that there are currently five broad factors that may be leading to non-disclosure of thermal fuel information, which are elaborated on below:
- (a) disclosure obligations don't apply
 - (b) reluctance to disclose
 - (c) misinterpretation of disclosure obligations
 - (d) lack of awareness of disclosure obligations
 - (e) logistical difficulties.

Disclosure obligations don't apply

- 3.40 The information disclosure obligations in clause 13.2A of the Code only apply to electricity participants²² and only require a participant to disclose information that is about itself that it expects, or ought reasonably to expect, will have a material impact on prices in the wholesale market.
- 3.41 In addition, one of the exclusions listed in clause 13.2A(2) may apply. For example, a participant would not need to make disclosure information readily available to the public if the participant is bound by a legal obligation to keep the disclosure information confidential or if the disclosure information concerns an incomplete proposal or negotiation.²³
- 3.42 There are also differing disclosure obligations on parties depending on whether they are publicly listed or not. A private company may not be required to disclose information that similar publicly-listed companies are required to by the exchange they are listed on (eg, NZX).

Reluctance to disclose

- 3.43 There can be reluctance by some holders of information to disclose it. This can be for a number of reasons:
- (a) the holder of the information is wary of disclosing information that is likely to change (and therefore risks misinforming the market)

²¹ Clause 13.2A(2)(ba) of the Code.

²² Participant is defined in section 5 of the Electricity Industry Act and further defined in clause 1.5 of the Code.

²³ See paragraph 3.5 for the full list of exclusions.

- (b) the information is disclosed (at least partially) somewhere else and the holder of the information considers they shouldn't have to disclose in multiple locations and in multiple forms
- (c) the holder of the information doesn't want to lose commercial advantage (eg, when innovating)
- (d) a party is reluctant to disclose information when other parties aren't disclosing similar information (which may be because other parties aren't required to disclose this information)
- (e) the holder of information considers the private benefit of not disclosing the information is larger than any risk associated with not disclosing the information
- (f) a holder does what they've always done (ie, inertia)
- (g) there's a perception that compliance with information disclosure requirements isn't being monitored and that the penalties for a breach aren't significant.

Misinterpretation of disclosure obligations

3.44 The Authority has heard from some parties that there is a lack of clarity around what the current disclosure requirements in clause 13.2A mean. Specific parts of the requirements that could be interpreted differently include:

- (a) whether a piece of information is likely to have a material impact on wholesale market prices
- (b) the term 'as soon as reasonably practicable after the participant becomes aware of the information'
- (c) the exclusions, particularly the exclusion on confidentiality that has potential to be gamed.

Lack of awareness of disclosure obligations

3.45 Some participants, particularly new entrants, may be unaware of the disclosure requirements that apply under clause 13.2A or may not devote enough attention to understanding and applying them.

Logistical difficulties

3.46 Some information can require a lot of effort to disclose. For example, some information may require approval by the company's board before it can be disclosed. In addition, disclosing in multiple locations and/or on multiple platforms can be difficult or time-consuming.

Barriers to using thermal fuel information

3.47 The Authority considers that there are barriers to accessing and interpreting thermal fuel information. The barriers to accessing and interpreting information can be split into five broad categories, which are elaborated on below:

- (a) lack of awareness of what information is disclosed
- (b) cost of accessing information
- (c) requiring further information to interpret what the information means
- (d) how information is published eg, differing formats
- (e) lack of resourcing and expertise.

Lack of awareness of what information is already disclosed

- 3.48 Some parties may be unaware of what thermal fuel information is already disclosed. Parties may also not be aware that information could be updated or that it has been updated (eg, the timing of an outage changes). This lack of awareness could stem from an unwillingness to look for information or because there is no easy way to be kept informed of what information is being disclosed and when it is updated.

Cost of accessing information

- 3.49 Some information is only available if a fee is paid. This fee may be prohibitive for some parties (particularly smaller parties) or there may be a reluctance to pay to access information.

Further information required to interpret information

- 3.50 In many cases multiple pieces of information are required to develop a complete picture of what is happening in the wholesale electricity market. For example, if information about a planned gas production outage is disclosed but it's not known how other gas users will react to the gas supply outage, then it is difficult to interpret what the outage will mean for the running of thermal generation plant.

How information is published

- 3.51 How thermal fuel information is disclosed can have a big impact on the accessibility and interpretability of the information. Issues include:
- (a) information is published in a variety of places or platforms making it difficult to find
 - (b) disclosure of too much information can make it difficult to find information that is significant/important
 - (c) information is disclosed irregularly so parties don't know in advance when it will be next disclosed
 - (d) information is disclosed with a long lag or infrequently (eg, quarterly or annually)
 - (e) information is published in different formats or units by different parties making it difficult to compare and get a complete picture (eg, thermal fuel information may be disclosed differently by each generator)
 - (f) each holder of information is disclosing a different level of information
 - (g) information is published in formats that aren't user-friendly for analysis
 - (h) there is a lack of transparency about what assumptions have been made in the information disclosed
 - (i) information disclosure isn't consistent over time.

Lack of resourcing and expertise

- 3.52 Smaller parties (and potentially some larger parties) may lack the resources and expertise to access and analyse information. Parties who lack these resources and expertise could pay an expert to do this for them, but the cost to smaller parties may be prohibitive.
- 3.53 The lack of expertise may be a more significant issue for gas-related information disclosure than other information disclosure. The gas industry is complex and quite different to the electricity industry. It is difficult to infer the electrical impact of gas information without understanding the gas industry in detail.

Q5. Do you agree with the Authority's stocktake of current thermal fuel information disclosure? Has the Authority missed any information in the stocktake or misrepresented disclosure?

Q6. Are you aware of disclosure information where one of the exclusions in clause 13.2A(2) has been relied on to not make the disclosure information publicly available? If so, what exclusion(s) were relied on?

Q7. Do you agree with the factors leading to non-disclosure of thermal fuel information? Are these factors leading to inefficient prices in the wholesale market?

Q8. Do you agree with the barriers to accessing and interpreting thermal fuel information? Are these barriers leading to inefficient prices in the wholesale market?

4 Proposals

- 4.1 In Section 3 we considered the information that would be of most value alongside the barriers to disclosing thermal fuel information. We evaluated options to improve market performance and confidence through enhanced thermal fuel disclosure and extending the utility of what is disclosed. Here we introduce four specific proposals as well as some of the options which are not recommended at this time. A more detailed assessment of options is available in Appendix F.

Proposed actions

- 4.2 Table 3 below summarises the changes the Authority proposes to improve information disclosure.

Table 3: Proposed actions to enhance information disclosure effectiveness

Proposal	Desired effect
1. Code change to require quarterly reporting of disclosure activities and compliance including use of exclusions	Increased respect for electricity market information disclosure requirements Increased transparency and confidence New information to support monitoring and compliance Clarity around use of exclusions
2. Add recommended disclosure approaches to guidelines, include further examples of coal and gas fuel disclosure	Increased understanding of disclosure requirements Improved compliance outcomes More standardisation of outage information
3. Authority to publish a disclosure information reference website and interpretation document	Easier access to disclosure information Increased utility of existing information Increased confidence
4. Develop an appropriate centralised location for disclosure information	Easier access to disclosure information Increased utility of existing information Increased confidence Standardisation of outage information

(1) We propose a Code change to require quarterly reporting of disclosure activities

- 4.3 We propose mandatory quarterly reporting of disclosure activities by particular participants, called “major participants” in the proposal, who held disclosure information during the period. Annually, a directors’ declaration and an annual report on policies would be required to accompany the reporting. A summary of the reporting (but not the declarations) would be published on the Authority’s website.
- 4.4 Electricity market information disclosure reporting by major participants would include:
- whether or not the participant holds any disclosure information relevant to the reporting period
 - a list of the locations or methods of disclosure used by the participant including webpage links

- (c) the number of times the participant has not published disclosure information during the reporting period, what information was withheld and which exclusions were relied upon in each case
 - (d) a general statement to confirm the participant has complied with clause 13.2A or has reported non-compliance.
- 4.5 Annually, a Director's certification would be required to confirm the quarterly reports are accurate, and separately major participants would have to submit a report to confirm that an explicit information disclosure policy, procedure or process in respect of clause 13.2A is in place.
- 4.6 The Authority expects the self-reporting of disclosure practices will:
- (a) elevate an information holder's perception of the importance of considered efforts to comply with disclosure obligations in clause 13.2A
 - (b) increase transparency of disclosure activities by major participants and enhance confidence in the market
 - (c) provide a record of all methods of disclosure and highlight locations of disclosed information
 - (d) provide information on the prevalence on reliance on the exclusions set out in clause 13.2A(2) to aid industry evaluation of the suitability of those exclusions
 - (e) provide information to assist with monitoring and compliance activities by the Authority or other industry participants²⁴.
- 4.7 As such, the Authority considers that the proposed requirement will mitigate a number of the factors limiting effective disclosure and utilisation of information listed in 3.39 and 3.47. Reporting would focus more internal and external attention on a major participant's disclosure performance which would help rectify any issues with lack of awareness or misinterpretation of disclosure obligations. It will also provide a reference to inform users what information is disclosed and where it is.
- 4.8 The proposed reporting will also require major participants to undertake a management and director certification process similar to that required by the stress test regime stipulated in 13.236A of the Code, and therefore imposes a cost on those participants. The Authority does not consider there will be any additional costs to participants who are already meeting their obligations in respect of development of internal information disclosure policies, recordkeeping, etc. More detail on the proposed amendment is provided in 4.18 onwards, the proposed code amendment is provided in Appendix A, and the costs and benefits are assessed in Section 5 and Appendix G.

(2) We propose to update the Guidelines regarding thermal fuel disclosure

- 4.9 We propose to update the electricity wholesale market information disclosure guidelines to provide greater clarity on where, when and how thermal generators should disclose information. Specific changes would involve making the guidelines more prescriptive and incorporating recent examples and extracts from compliance investigation reports.

²⁴ The increased transparency which would be introduced by this proposal will aid monitoring by other participants, however Authority focus on this reporting will be required to achieve the full benefits.

4.10 We're proposing to add detail to coal and gas supply disclosure situations because they are the most important. The revised guidelines would include:

- (a) detailed information regarding our disclosure expectations of thermal generators covering situations which may have material impacts on prices in the wholesale market. For example, the guidelines could address the following:
 - (i) a gas-fired generator should disclose how their plant availability is impacted by an upstream gas outage (if this outage will or is likely to have a material impact on wholesale market prices);
 - (ii) a coal generator should provide frequent updates about the size of its coal stockpile if this stockpile falls below a level that will or is likely to impact on wholesale market prices (we note Genesis disclosed its coal storage levels on a weekly basis after its stockpile fell below approximately 200,000 tonnes in late 2018);
 - (iii) reliance on disclosure by an upstream party is not necessarily sufficient to avoid disclosure where a thermal generator is impacted by a fuel production or transport outage. For example, a gas producer notifying a major gas outage does not provide information on whether power generation will be affected;
 - (iv) highlight the obligation to disclose when constraints to diesel availability may have a material impact on electricity prices (although this happens infrequently)
 - (v) clarifying that some changes to commercial or contracting arrangements which are likely to have a material impact on prices would merit disclosure such as a significant change in contracted fuel volumes
- (b) note that regular reporting on the availability of fuel for generation may alleviate the need for a generator to continually assess their fuel availability for materiality and simplify compliance
- (c) specify preferred formats for disclosure information.

4.11 The Authority believes that increased clarity in the guidelines will go some way to reduce lack of awareness or misinterpretation of disclosure obligations as outlined in 3.39. The guidelines will also provide a point of reference for compliance investigations.

(3) We propose to raise awareness and utilisation of existing disclosures through a disclosure reference webpage

4.12 We propose to raise awareness of disclosure information by establishing a disclosure information web page on the Authority website which will serve as a reference for participants. It would include static links to the location of participant published disclosure information as well as other information sources.²⁵

4.13 The site need not be limited to thermal fuel information. In order to be effective, this website will need to be well organised and maintained by the Authority. The Authority would also include 'disclosure help' information which would assist participants in understanding and applying disclosure information.

²⁵ Examples of the types of information sources to be referenced is provided in Appendix D.

- 4.14 This proposal relates to the concerns expressed by a number of stakeholders that highlighted the need for more awareness of the thermal fuel information that is already disclosed. We consider this ‘quick win’ activity will raise awareness of disclosure activity and improve confidence in the market.
- 4.15 Regarding the barriers to effective utilisation of disclosure information set out in 3.47, the Authority considers this proposal would improve industry awareness of what information is disclosed and where. It would also reduce the cost of accessing and interpreting that information.

(4) We recommend thermal fuel information disclosures under clause 13.2A should be made to a central location

- 4.16 The fourth proposal is to add detail to the guidelines or Code to make clear where we expect thermal fuel generators, predominantly gas and coal, to disclose information on how their generation capacity will be impacted by current or expected fuel constraints. This disclosure obligation is already found in clause 13.2A but the Code is silent on the ‘right’ location to disclose information.
- 4.17 Participants publish disclosure information in different ways and to various sites (eg, their own websites, NZX announcements). We propose to add further guidance on where we would expect these 13.2A disclosures to be made. Identification of the specific disclosure platform and detailed functionality requirements would take place in the next phase of our wholesale market information disclosure work and would not necessarily be limited to thermal fuel disclosure information. There are a number of potential options which are shown in Appendix F. An important aspect of the website’s functionality will be for interested parties to be able to subscribe to receive notifications of new publications. We will also consider whether use of such a site should be strongly encouraged or mandatory (in which case a Code change and associated consultation would be required).

Further detail on proposed Code amendment

- 4.18 **Relevant participants:** We propose the reporting obligation relates only to those parties in the market that are likely to be able to impact wholesale market prices. We do not want to burden many parties with a reporting obligation for which they are unlikely to ever have anything material to disclose. Therefore we have proposed creating a new definition, **major participants**, which includes generators, ancillary service agents, direct purchasers (noting this doesn’t include retailers), distributors and the grid owner. For the avoidance of doubt, if a participant is not captured by the definition of major participant but has disclosure information, it still faces an obligation to disclose that information.

Q9. Do you agree the proposed Code amendment captures the appropriate players in the market?

- 4.19 We are proposing parties submit the following, at the following timescales:

Submission	Frequency	Sign off
Quarterly disclosure reports	Each quarter beginning 1 January, 1 April, 1 July and 1 October	Director, or the chief executive officer, or the chief financial officer,

Submission	Frequency	Sign off
Annual report on policies, procedures and provision	Annually by 1 April	or a person holding a position equivalent to one of those positions
Annual certification of quarterly reports	Annually (relating to previous calendar year) by 1 April	A director of the major participant and either— <ul style="list-style-type: none"> • another director of the major participant; • the major participant's chief executive officer, or person holding an equivalent position; or • the major participant's chief financial officer, or person holding an equivalent position

- (a) To assist parties in complying we propose to supply a template for the Quarterly disclosure reports which would accompany the final decision on any Code change. We would also give adequate prior warning before the Code comes in force.

4.20 **Disclosure to the Authority of information subject to legal obligations to keep confidential:** we appreciate that participants may be subject to contractual, statutory and other legal restrictions upon the release of information. We have included clause 13.2B(5) to provide the basis for disclosure of information where such restrictions (most commonly confidentiality) are in place and to ensure such disclosures may occur under the new provisions without breaching those restrictions. A key purpose of seeking this information is to test the application of the exclusion provisions and not to make specific participant information publicly available. The Authority has proposed limitations in clause 13.2F and 13.2G to manage this. As the Code is law, it will fall within the usual carve outs that provide for release 'where required by law'. The proposed provisions provide a basis for disclosure to the Authority even where such a carve out does not exist. Without proposed clause 13.2B(5) (or something similar) there is a risk the underlying objectives of the proposed Code amendment could be thwarted.

Q10. What requirements in the proposed Code amendment will assist participants to be freely able to disclose the information requested?

Q11. Are there any unusual situations (whether arising out of contract, law or otherwise) that the Authority needs to consider in amending the current disclosure regime?

4.21 **Privilege:** we have included clause 13.2F(5) in relation to dealing with disclosure of information subject to legal professional privilege or privilege against self-incrimination (whether in part or whole). Such information would need to be provided to the Authority under the proposed Code Amendment. Our intention with proposed clause 13.3F(5) is to make it clear that providing disclosure information that is subject to legal professional privilege or privilege against self-incrimination (whether in part or whole) does not amount to an implied waiver of privilege. This will ensure that the major participant is able to maintain privilege in the information for other purposes.

Q12. Please provide any feedback on the approach proposed to privilege given the powers (and protections) that exist under sections 46 – 48 of the Electricity Industry Act and the limitations proposed on the use and publication of the information.

4.22 **Publication and use of information:** we have included clause 13.2G to give participants reassurance about how the Authority will be able to use the information gathered under the reporting regime. The list at clause 13.2G is intended to capture the likely scenarios the Authority would want to use information gathered. These include publishing information from the reports to show the kind of exceptions relied upon and how often, providing input into potential future Code changes or guidelines, investigating compliance, and referring on situations to other relevant agencies to investigate. The clause also includes limitations on how the Authority may use privileged information.

Q13. Please provide any feedback on the limitations proposed in relation to the use of the information requested.

4.23 **Audit provision:** we have included clause 13.2H-J to give the Authority the power to audit the process participants follow in conducting this reporting, to ensure it is true, correct and complete.

Q14. Please provide any comments on the proposed audit power.

Other options considered

4.24 The Authority considered a range of options for enhancing information disclosure in respect of each of the thermal fuel types. Details of this broader assessment is contained in Appendix F. The following high-level levers were considered:

- (a) prescriptive Code change to require public disclosure of thermal fuel information
- (b) removal or alteration of one or more exclusions
- (c) prescriptive Code change to require disclosure of thermal fuel information to the system operator
- (d) increase the consequences of non-disclosure.

Prescriptive Code change to require specific fuel level disclosure

4.25 In section 4.3 and 4.10 we proposed to enhance guidelines and institute reporting on information disclosure. We also considered changes to the principle-based provisions or the introduction of overlaying prescriptive provision to enhance thermal fuel information disclosure.

Current evidence suggests substantive disclosure provisions are workable, when exercised

4.26 In assessing the suitability of the current provisions we reviewed compliance actions, considered previous submissions and stated views of stakeholders, observed disclosure behaviour and assessed reasons for non-disclosure.

4.27 It appears most disclosure currently occurring under clause 13.2A is consistent with other disclosure rules. Most large generators and the grid owner use POCP to disclose planned and unplanned outages frequently, to meet their requirements under Schedule 8.3,

Technical Code D of the Code. Listed generators also make disclosures to NZX, under the continuous disclosure obligation. Therefore there is adequate disclosure performance from most major players regarding outages and significant changes in contracting arrangements. However there is a lack of disclosure from non-listed companies, and a lack of disclosure about things that fall outside the scope of Schedule 8.3, such a fuel restrictions.

- 4.28 Of the compliance investigations of alleged breaches of clause 13.2A to date, none of the breaches were upheld. While that could be taken as an indication that rules need tightening, reasons included immateriality and information being in the public domain. We do not consider this to be evidence of the settings in the Code being wrong. The potential issues regarding the confidentiality exclusion are addressed in 4.35.
- 4.29 In another example, while three of the four findings of the Authority's Spring 2018 Market Performance Review²⁶ indicated the need for improved information disclosure, the findings were largely around the need to improve the mechanics of disclosure rather than to alter the requirements for disclosure.
- 4.30 Through submissions and discussions, participants have indicated that thermal fuel information disclosure is important, and they have offered specific suggestions to enhance Code requirements for disclosure. One option that was mentioned was a potential requirement to disclose gas contract information similar to the requirement to disclose hedges on the energy hedge system. Other participants have indicated that adherence to existing requirements would be aided by clarification, education and monitoring.
- 4.31 Recent Gas Industry Co work has delivered a suite of improved disclosure tools and practices which has been well received by electricity market participants and demonstrated that coordination and organisation can improve confidence.
- 4.32 In reviewing Code based remedies, we also considered the inflexibility and limitations of prescriptive requirements (eg, the need to be updated frequently or creating unintended loopholes).
- 4.33 We believe the measures to clarify requirements and increase awareness and transparency proposed in this section will improve information disclosure and confidence in the market. Should such measures not deliver satisfactory information into the market, future information disclosure reviews may consider embedding more prescriptive disclosure requirements in the Code itself. We would like to hear your views on the suitability of the Code provisions.

Removal or alteration of one or more exclusions

- 4.34 We considered the case for removing or altering exclusions. The exclusions were last reviewed in 2017/2018.
- 4.35 We do have concerns about the exclusion noted in 3.5(c) – that confidential information may be protected where bound by a legal obligation, such as a contract (clause 13.2A(2)(c)). We are concerned about the interaction between a confidentiality agreement between two parties and the disclosure obligations under the Code, and that the current formulation of the confidentiality exclusion may effectively be preventing relevant disclosures because of boilerplate contract clauses. Recent compliance cases have confirmed that useful information is not being published due to the use of the confidentiality

²⁶ Refer: <https://www.ea.govt.nz/monitoring/enquiries-reviews-and-investigations/2018/review-of-wholesale-market-issues-during-spring-2018/>

exclusion. We note that the exclusion does not necessarily relieve the holder of disclosure information from publishing other relevant disclosure information that is not explicitly confidential. The issue of confidentiality exclusions resulting in the withholding of relevant market information was raised in the final EPR report.²⁷ It was also raised by a minority of stakeholders during discussions, however the issue was not positioned as the most pressing problem.

- 4.36 We also note that other information disclosure regimes are structured differently. For example, NZX listing rules provide five different cases (exclusions) where the primary disclosure rule does not apply, if in addition the information is confidential and its confidentiality is maintained, and a reasonable person would not expect the information to be disclosed.²⁸
- 4.37 At this time, we do not consider there is sufficient evidence to merit a change to the disclosure obligations. The changes proposed in 4.3 will provide additional information to support assessment of the use of exclusions. The Authority will consider additional evidence relating to the appropriateness of the confidentiality clause in relation to all types of market disclosure information that emerges from responses to this consultation and the proposed new reporting regime, and consider potential actions in future.
- 4.38 An alternative approach we did consider would be to remove the confidentiality exclusion now, without waiting for further evidence. We are interested in your views and evidence relating to the suitability of the confidentiality and other exclusions.

Prescriptive Code change to require disclosure to the system operator

- 4.39 We considered, but decided not to progress at this time, two mandatory options for disclosure of information (including thermal fuel information) to the system operator. The first is disclosure of any information requested by the system operator for the purpose of assessment of system reliability or security of supply. This information may be mandated for supply exclusively to the system operator. We anticipated this option would improve the speed, efficiency and reliability of the system operator's security of supply assessments. A limitation would be that the system operator may need to limit how much of its assessments would be shared.
- 4.40 The second option for mandatory disclosure would not only require the disclosure of information to the system operator, but would also either require public disclosure or limit the ability of the disclosing party to restrict the system operator to publish findings and assumptions based on information disclosed. This second option has the benefit that market participants will be fully informed as to the system operator's view of security of supply, and that awareness will lead to more efficient behaviours.
- 4.41 While both options may enhance security of supply outcomes, this may come at a commercial cost to disclosing parties. At this point we did not observe sufficient evidence of need to introduce a new mandatory disclosure requirement. If additional evidence comes to light this option could be advanced.

Increased consequences of non-disclosure

- 4.42 In addition to increasing monitoring and compliance activities, we considered the merits of increasing the penalties for non-disclosure of disclosure information.

²⁷ Refer: <https://www.mbie.govt.nz/assets/electricity-price-review-final-report.pdf>

²⁸ Refer Continuous Disclosure Guidance Note: <https://www.nzx.com/regulation/nzx-rules-guidance/nzx-mo-announcements/guidance-notes>

- 4.43 Our view was that the financial penalties may be insufficient. Parties devote considerable attention to ensuring they meet their NZX listing rule disclosure requirements as the penalty for non-compliance here is to be de-listed from the Stock Exchange. However, in comparison parties seem to pay less attention to additional disclosures that may be warranted under clause 13.2A of the Code.
- 4.44 For breaches of the Code, the maximum penalty is \$200,000 with additional amounts possible where damages are awarded. However as there is not a precedent for applying penalties for a breach of information disclosure rules the effective penalty may be lower than what is potentially available. Should the limitations on available penalties become a pronounced issue in future reviews of information disclosure, changes to available penalties can be sought. An increase in the maximum penalty would require a change to the Act and therefore is not within the Authority's powers.

Possible priority topics for phase two of the review

- 4.45 Elaborating on 2.19(d), under Schedule 8.3 of the Code, asset owners are required to inform the system operator of their outages. They typically do this via the POCP platform. Part 13 of the Code also requires parties to submit timely offers. A commercial decision to not offer the plant, which is still physically available to generate, is known as economic withdrawal. This may occur, for example, if the fuel cost is very expensive. However, this situation creates uncertainty regarding under what conditions the plant would again be offered or made available for generation. A possible solution to this could be to make offering into the Weekly Dispatch Schedule compulsory and/or more transparent. We are aware this is a potential information gap in the near term and may review it further in future.

Q15. Do you agree with proposal 1: a Code change to require quarterly reporting of disclosure activities, provision of an annual directors' declaration and an annual report on policies? Please explain why or why not.

Q16. Do you agree with proposal 2: to update the Guidelines regarding thermal fuel disclosure? Please explain why or why not.

Q17. Do you agree with proposal 3: to raise awareness and utilisation of existing disclosures through a disclosure reference webpage? Please explain why or why not.

Q18. Do you agree with proposal 4: that thermal fuel information disclosures under clause 13.2A should be made to a central location? Please explain why or why not.

Q19. Do you agree that the current Code clearly spells out the disclosure obligations to market participants? If not, why not?

Q20. Do you have any comments on the validity of the exclusions in clause 13.2A(2)? Do you consider there are benefits of removing the confidentiality exclusion in clause 13.2A(2)(c)?

Q21. Do you believe the currently available penalties and remedies are sufficient?

5 Regulatory statement for the proposed amendment

Objectives of the proposed amendment

- 5.1 We are proposing mandatory quarterly reporting of disclosure activities by participants who held disclosure information during the period. The reporting would be submitted to the Authority along with a declaration. Annually, a directors' declaration and an annual report on policies would be required to accompany the reporting. A summary of the reporting (but not the declarations) would be published on the Authority's website.
- 5.2 The objectives of the proposed amendment are to improve confidence in and efficiency of prices by narrowing the real and perceived information gap that currently exists in relation to thermal fuels information. The Authority expects the self-reporting of disclosure practices, performance and information will achieve this by:
- (a) elevating an information holder's perception of the importance of considered efforts to comply with disclosure obligations in clause 13.2A, to increase compliance, narrow the real information gap and enhance confidence in the market,
 - (b) provide a record of all methods of disclosure and highlight locations of disclosed information, which would increase transparency of disclosure activities by participants, narrow the perceived information gap and enhance confidence in the market,
 - (c) provide information to assist with monitoring and compliance activities by the Authority or other industry participants, which will support confidence, and
 - (d) provide information on how parties rely on the exclusions set out in clause 13.2A(2) to aid evaluation of the suitability of those exclusions and inform future market development.

Q22. Do you agree with the objectives of the proposed amendment? If not, why not?

The proposed amendment

- 5.3 The drafting of the proposed amendment is contained in Appendix A.

The proposed amendment's benefits are expected to outweigh the costs

- 5.4 We have qualitatively assessed the benefits and costs of this proposal and consider the proposal will have a significant net benefit for consumers. The proposal could result in a significant increase in and awareness of disclosure activity and provide important data points for the future development of the code, for a modest reporting cost.
- 5.5 The benefits of this proposal are that it would generate increased information disclosure and thereby narrow the information gap in two key ways:
- (a) parties having to report and sign off on their disclosures will encourage increased compliance and disclosure. This will bolster participants confidence that the right disclosures are occurring, narrowing the perceived as well as real, information gaps; and
 - (b) the Authority will use the reports to identify periods or behaviours of interest upon which to target their monitoring and enforcement work. This could result in more investigations which will again encourage compliance.

- 5.6 The benefits for consumers of more disclosure include more efficient prices and parties having more confidence in the market. Consumers will also benefit from the fact that the reporting will enable future code development to be informed by real data eg, the data on which exclusions are being used.
- 5.7 The costs of this proposal include a small increase in compliance costs for reporting parties completing and submitting the report each quarter and obtaining the Director sign off annually. In designing the reporting regime the Authority will aim to streamline this with other reporting processes (where possible) to minimise the regulatory burden. There would also be a minor increase in costs for the Authority to process reports. This proposal is not requesting parties disclose any new or additional information, only to report on the disclosure it does undertake, therefore there will be no unintended consequences on confidentiality or competitiveness.

Q23. Do you agree the benefits of the proposed amendment outweigh its costs?

The Authority has identified four other means for addressing the objectives

- 5.8 The Authority has identified four other means for addressing the objectives (to improve confidence in and efficiency of prices by narrowing the real and perceived information gap that currently exists in relation to thermal fuels information).
- 5.9 Prescriptive Code change to require specific fuel level disclosure
- a) The existing Code requirement takes a broad, principles-based approach, which leaves space for parties to interpret it themselves. An alternative option is to add more prescriptive disclosure requirements in the Code itself to further clarify when we expect different types of information to be disclosed. For example, we could embed a requirement such as indicated in the proposed guidelines in section 4.10(a)(ii).
- 5.10 Prescriptive Code change to require disclosure to the system operator
- a) We considered, but decided not to progress at this time, two mandatory options for disclosure of information (including thermal fuel information) to the system operator. The first is disclosure of any information requested by the system operator for the purpose of assessment of system reliability or security of supply. This information may be mandated for supply exclusively to the system operator. We anticipated this option would improve the speed, efficiency and reliability of the system operator's security of supply assessments. A remaining limitation would be that the system operator may need to limit how much of its assessments would be shared.
- b) The second option for mandatory disclosure would not only require the disclosure of information to the system operator, but would also either require public disclosure of that information by the system operator or limit the ability of the disclosing party to restrict the system operator to publish findings and assumptions based on information disclosed. This second option has the benefit that market participants will be fully advised as to the system operators view of security of supply, and that awareness will lead to more efficient behaviours.
- 5.11 Removal or alteration of one or more exclusions

- a) We considered the case for removing or altering the exclusions (clause 13.2A(2)). There has been some anecdotal evidence the 'confidentiality' exclusion (clause 13.2A(2)(c)) is preventing relevant disclosures).

5.12 Increased consequences of non-disclosure

- a) We considered the merits of increasing the penalties for non-disclosure of disclosure information, as an incentive to encourage compliance.

The proposed amendment is preferred to other options

5.13 The Authority has evaluated the other means for addressing the objectives and prefers the proposal. Based on information we gathered so far we do not consider a change to the substantive disclosure rule (clause 13.2A(1)) is warranted at this time. The cause of the information gap we want to address seems to be in part due to lack of compliance by some parties with the existing Code, and lack of awareness by others of the disclosure that is occurring.

5.14 We therefore consider that the proposed amendment is a proportionate response at this time. The costs and risks of the alternative options are greater than the preferred option and we do not consider they are proportionate to the size of the problem we have identified at this time. If the suite of recommendations within this paper do not realise significant benefits over time we will re-consider the alternative options.

5.15 Prescriptive Code change to require specific fuel level disclosure

- (a) For now we propose adding the detail of our expectations of disclosure for different thermal fuel types to the Guidelines. If parties do not comply with this we may consider moving this into the Code in the future.

5.16 Prescriptive Code change to require disclosure to the system operator

- (a) This option will enhance security of supply outcomes, but this may come at a commercial cost to disclosing parties. At this point we did not observe sufficient evidence of need to indicate a new mandatory disclosure requirement.

5.17 Removal or alteration of one or more exclusions

- (a) Removing the exclusions carries risk of unintended adverse consequences. It is difficult to know whether participants are using the exclusions for their intended purpose, or whether participants are 'stretching' their application.
- (b) Changes proposed in Section 4 will provide additional information to support assessment of participants' use of exclusions. This information will be considered in future reviews of information disclosure. We may still consider removing the confidentiality exclusion (clause 13.2A(2)(c)) in this project depending on participant feedback.

5.18 Increased consequences of non-disclosure

- (a) In assessing the option to increase the consequences of non-disclosure, our view is that the financial penalties available may be insufficient. As there is not a precedent for applying these penalties, the effective penalty is lower than potentially available. Should the limitations on available penalties become a pronounced issue in future reviews of information disclosure, we would need to seek a change to the Act.

Q24. 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.

The proposed amendment complies with section 32(1) of the Act

- 5.19 The Authority's objective under section 15 of the Act is to promote competition in, reliable supply by, and efficient operation of, the electricity industry for the long-term benefit of consumers.
- 5.20 Section 32(1) of the Act says that the Code may contain any provisions that are consistent with the Authority's objective and is necessary or desirable to promote one or all of the following:

Table 4: How proposal complies with section 32(1) of the Act

(a) competition in the electricity industry;	By reducing information asymmetries, market participants will be encouraged to participate in the market, encouraged to enter or invest, and there will be less scope for potential market abuse. Providing more uniform access to information may increase trust in the market, and hence improve liquidity.
(b) the reliable supply of electricity to consumers;	By improving the information disclosure of thermal fuel stations, the proposal will improve reliability by helping to avoid unserved energy at times of scarcity in cases where this scarcity results in part from fuel constraints on thermal generation, and avoid the need for various dry-year measures in cases where the dry year is exacerbated by fuel constraints on thermal generation.
(c) the efficient operation of the electricity industry;	By reducing information asymmetries, market participants will have more information to make better decisions about the future, reducing risk and uncertainty.
(d) the performance by the Authority of its functions;	The proposed amendment will improve the ability of the Authority to conduct its monitoring and enforcement activity by providing a data source on which to base such activity. Market monitoring can assist in the uncovering of problematic short run behaviours. Improved market monitoring can therefore provide increased assurance to consumers and their representatives about market outcomes and reduce the risk of ad hoc intervention.
(e) any other matter specifically referred to in this Act as a matter for inclusion in the Code.	The proposed amendment will not materially affect any other matter specifically referred to in the Act for inclusion in the Code.

Q25. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?

The Authority has given regard to the Code amendment principles

5.21 When considering amendments to the Code, the Authority is required by its Consultation Charter²⁹ to have regard to the following Code amendment principles, to the extent that the Authority considers that they are applicable. Table 5 (below) describes the Authority's regard for the Code amendment principles in the preparation of the proposal.

Table 5: Regard for Code amendment principles

Principle	Comment
1. Lawful	The proposal is lawful and is consistent with the statutory objective (see 5.19-5.20) and with the empowering provisions of the Act.
2. Provides clearly identified efficiency gains or addresses market or regulatory failure	The efficiency gains are set out in the evaluation of the costs and benefits (see 5.4-5.8).
3. Net benefits are quantified	The extent to which the Authority has been able to estimate the efficiency gains is set out in the evaluation of the costs and benefits (see 5.4-5.8).
4. Preference for small-scale 'trial and error' options	Principles 4 to 9 apply only if it is unclear which option is best (refer clause 2.5 of the Consultation Charter).
5. Preference for greater competition	
6. Preference for market solutions	
7. Preference for flexibility to allow innovation	
8. Preference for non-prescriptive options	
9. Risk reporting	

²⁹ The consultation charter is one of the Authority's foundation document, refer: <http://www.ea.govt.nz/about-us/documents-publications/foundation-documents/>