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Submissions
Electricity Authority
PO Box 10041
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By email: WMID@ea.govt.nz

Re: Consultation Paper – Review of Thermal Fuel Information Disclosure

Nova Energy understands that the issue of thermal fuel information disclosure is difficult to address. The Authority has correctly identified the complexities and risks involved if excessive disclosure is mandated. Most notably, Nova considers that pricing disclosure is unlikely to be of significant value given the variables associated with different contractual terms and has the potential to disadvantage some companies.

The proposal put forward should provide market participants with greater confidence that adequate market information is being disclosed, and the forward electricity price curve accurately reflects all the available fuels' information.

The proposed regime adds significant additional compliance costs for market participants subject to the rules, but Nova accepts the issue is an important one, and the necessity of providing the market with the appropriate assurances. Nova's detailed responses to the Authority's questions are covered in the attached Appendix.

Please feel free to contact me if you wish to discuss our views further.

Yours sincerely



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Nova submission

Consultation Paper - Wholesale market information disclosure – Review of Thermal Fuel Information Disclosure

Q No.	Question	Response
1.	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?"	<p>No.</p> <p>There is a presumption in this statement that:</p> <ul style="list-style-type: none">a) market prices are currently inefficient, andb) there exists thermal fuel information relevant to market prices that should be available to the market and isn't. <p>Some thermal fuel information is obscure, but it has not been established that this is particularly significant.</p>
2.	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?	<p>Yes, there is inconsistency on where and what relevant thermal fuel information is available, and the ability to interpret that information. There is also a general overstatement of how useful information that is not currently available might be.</p> <p>The gas market is highly dynamic as it must continuously balance supply and demand from different sources, while every gas supply agreement is managed on a bilateral basis. Given the different production dynamics of the major gas fields and because gas demand is impacted by the electricity market, weather conditions, and customer outages etc.; forecasting the future gas supply and demand balance for even the best informed parties is about as accurate as forecasting future hydro inflows. This is observable in the following places:</p> <ul style="list-style-type: none">• The monthly movements in gas storage volumes in the Flexgas facility at Ahuroa.• the volatility of both price and volumes in the trading of gas on emsTradepoint, and

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		<ul style="list-style-type: none"> the trades for pipeline balancing gas by First Gas.
3.	Do you agree that thermal fuel information disclosure is the most pressing wholesale information disclosure issue?	It was identified as a major issue for some parties as highlighted by the Electricity Price Review (EPR) Panel.
4.	Of the other information disclosure issues listed in Appendix E, which are the priority issues? Are there any issues missing from this list?	<p>(k) – new, (i), (g), and (h) need higher priority:</p> <p>(k) Hydro spill reporting needs improving, including <u>weekly</u> reporting by all hydro power stations over 10MW:</p> <ul style="list-style-type: none"> to a single web-site rather than individual company websites, and including the probability of economic spill assuming the generator is operating at capacity. <p>(i) that an explicit prohibition on insider trading is required.</p> <p>(g) that the disclosure period for contracts on the Hedge Disclosure System needs to be shorter and/ or the Hedge Disclosure System needs to be updated.</p> <p>(h) inaccuracies in the system operator demand forecast.</p>
5.	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?	Nova notes that market participants can already advise the market both through POCP and notices to the System Operator (in respect of security of supply) when generation is going to be constrained due to a lack of fuel.
6.	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?	Only in respect of details of past gas field outages. Nova did not disclose these as they were not about Nova; confidentiality clauses prevented disclosure of third party gas field developments, and excepting where it may have notified the market of a generation outage through POCP, Nova had access to sufficient gas to run its own plant. This area has now been resolved through the co-operation of the upstream producers introducing a voluntary outage notification protocol.
7.	Do you agree with the factors leading to nondisclosure of thermal fuel information? Are	The factors described may be leading to nondisclosure of thermal fuel information.

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	these factors leading to inefficient prices in the wholesale market?	Outside of the extended gas outages, which has now been addressed, there is no evidence that this is leading to inefficient prices in the wholesale market.
8.	Do you agree with the barriers to accessing and interpreting thermal fuel information? Are these barriers leading to inefficient prices in the wholesale market?	Yes, the lack of resourcing and expertise in understanding gas market information is a common barrier. We consider that this has led to an overstatement of how useful this information is.
9.	Do you agree the proposed Code amendment captures the appropriate players in the market?	The definition of major participant seems somewhat broader than necessary, particularly given the onerous nature of the compliance reporting regime.
10.	What requirements in the proposed Code amendment will assist participants to be freely able to disclose the information requested?	<p>The proposed Code amendment addresses the key reasons why information might not be released to the market currently.</p> <p>The proposed Code also requires parties to correctly identify the basis of why information might or might not be disclosed to the market, i.e. the operations people might have a reasonable understanding of the importance of disclosure, but that is a quite different standard to managing commitments to third parties and outlining those reasons in a quarterly report. As such this creates a learning process under which disclosure becomes a standard operating procedure for the business.</p>
11.	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?	There needs to be provision so that market participants cannot be held liable for decisions made by third parties based on the release of disclosure information by the participant in good faith, for instance, if a thermal operator advised the market that it had received advice that its primary fuel supply had been suspended for three months, but a week later the problem leading to that situation was resolved, then it should not be held responsible to any party that traded on the original disclosure information.
12.	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	We consider that approach proposed to privilege is appropriate given the powers and protections that exist under ss 46-48 of the Act.

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	proposed on the use and publication of the information.	
13.	Please provide any feedback on the limitations proposed in relation to the use of the information requested.	<p>We object to the provision of the major participants' confidential information to other agencies. Parties should have the right to protect the confidentiality of sensitive information agreed under contract unless required by law. While major participants may be required to disclose information as requested under the Code (which is a second tier law), there is a risk that the information will be considered to be in the public domain once disclosed to third party agencies who are under no obligation to treat the information confidentially. If those other agencies require the disclosure of the major participants' confidential information, then we suggest that this requirement should be enshrined under a separate legislative or regulatory requirement pertaining to that agency.</p>
14.	Please provide any comments on the proposed audit power.	<p>Does the Authority intend to provide a list of appropriate auditors? It is unclear from the consultation document how an appropriate auditor is defined. It would be helpful if the Authority was to elaborate on the criteria to determine that an auditor is appropriate.</p> <p>The proposed approach to require major participants to nominate auditors differs from some other similar aspects of the Code e.g. where the Authority provides a list of approved auditors. There would seem to be little benefit to requiring major participants to nominate an auditor and the Authority subsequently approve this.</p> <p>Given the objectives and scope of the audits proposed in clauses 13.2H-J, it would seem more efficient for the Authority to provide a standard terms of reference that meets the requirements under clauses 13.2B to 13.2E, or at least a template that could be referenced in each instance. This would avoid the costs associated with auditors developing the scope and methodology for audits of each major participant and ensure a consistent approach to these audits.</p>

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15.	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.	Nova agrees that the advantage of this proposal is that it is not overly prescriptive in terms of the type of information to be disclosed.
16.	Do you agree with proposal 2: to update the Guidelines regarding thermal fuel disclosure? Please explain why or why not.	<p>Yes, additional guidelines reflective of realistic scenarios are useful.</p> <p>Nova requests that enough time be allowed in the introduction of the proposed Code in order to ensure the Guidelines regarding thermal fuel disclosure can be updated prior to their implementation. The process of updating the Guidelines will also help inform the adequacy of the Code.</p>
17.	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.	Nova agrees this will be useful to many market participants.
18.	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.	<p>It is important that market participants can keep fully informed of any market changes as they occur. By using a central location, market participants should be able to set up a live feed for updates. The alternative requires searching a number of sites and spending a lot of wasted time staying abreast of updates to sites.</p> <p>This same central location should be used for recording hydro spill information as described in response to Q.4.</p>
19.	Do you agree that the current Code clearly spells out the disclosure obligations to market participants? If not, why not?	Yes
20.	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)?	The exclusions in clause 13.2A(2) are very important for the confidence of the market. Confidentiality clauses in contracts enable the parties to the contract to freely trade-off against various terms of supply without needing to consider the implications for other parts of their business, for instance, a short term supply of surplus gas that is sold to a generator on a take or pay basis may be totally at odds with medium to longer term supply constraints. Similarly, terms relating to rights of

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		interruptibility of supply by both buyer and seller can have significant value implications, and even if disclosed, would be difficult for third parties to track the current status of those arrangements.
21.	Do you believe the currently available penalties and remedies are sufficient?	Yes
22.	Do you agree with the objectives of the proposed amendment? If not, why not?	Yes, although we note that the perception of an information gap is greater than the reality.
23.	Do you agree the benefits of the proposed amendment outweigh its costs?	We cannot disprove that the benefits of the proposed amendment outweigh its costs but remain unconvinced that the problem is as great as claimed. The costs of compliance will be significant given the reputational risks and need for legal input to verify correct interpretation of the rules by the operations areas in many cases.
24.	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.	Yes
25.	Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?	Yes
26.	Do you have any comments on the drafting of the proposed amendment?	<p>The references to clause 12.2A(i) which appears numerous times in the proposed amendment should be to clause "13.2A(i)"</p> <p>Clause 13.2F(3) – the reference to clause 13.2G(1)(d) is a typo – there is no paragraph (d) in that clause.</p> <p>Clause 13.2H - Appointment of auditors</p> <p>The timeframe to nominate an appropriate auditor within 5 business days is inconsistent with the similar requirements in s13.231 which allow for a 'reasonable timeframe' to appoint an auditor. It may be that there are few appropriate auditors</p>

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		<p>available within the specified timeframes and therefore 5 business days is an unreasonable length of time.</p> <p>Clause 13.2I Carrying out audit</p> <ul style="list-style-type: none">• Clause 13.2I(6) should be changed to be mandatory to protect the confidentiality of information provided to the auditors.• Clause 13.2I is silent on whether the Authority intends to publish audit reports. What is the intention of the Authority in this regard?