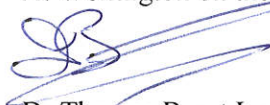


**Electricity Industry Participation (Force Majeure) Code  
Amendment 2012**

Pursuant to section 38 of the Electricity Industry Act 2010, I make the following amendments to the Electricity Industry Participation Code 2010.

At Wellington on the 2<sup>nd</sup> day of October 2012



Dr Thomas Brent Layton  
Chairperson  
Electricity Authority

Certified in order for signature:



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27 September 2012

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## Amendment

- 1 **Title**  
This is the Electricity Industry Participation (Force Majeure) Amendment 2012.
- 2 **Commencement**  
This amendment comes into force on 1 November 2012.
- 3 **Code amended**  
This amendment amends the Electricity Industry Participation Code 2010.
- 4 **Clause 1.1 amended (Interpretation)**  
In clause 1.1(1), replace the definition of **force majeure event** with:  

**"force majeure event**, for the purposes of Parts 3 and 4,—

"(a) means an event or circumstance beyond the reasonable control of a **market operation service provider** or ancillary service agent that results in, or causes, the **market operation service provider** or ancillary service agent to be unable to perform any of its obligations under this Code or the Electricity Industry (Enforcement) Regulations 2010; and

"(b) includes (without limitation)—

"(i) fire, flood, storm, earthquake, landslide, volcanic eruption, or other act of God; and

"(ii) explosion or nuclear, biological, or chemical contamination; and

"(iii) sabotage, terrorism, or act of war (whether declared or not); and

"(c) includes an act or omission by a party to an agreement with a **market operation service provider** (not being the **Authority**) or an **ancillary service agent** only if—

"(i) the act or omission is a breach of an obligation under the agreement; and

"(ii) the obligation is in all material respects the same as an obligation in the **market operation service provider agreement**, or the **ancillary service agent's agreement** with the **system operator**; and

"(iii) the act or omission would have been a **force majeure event** if it had been an act or omission of the **market operation service provider** or

- ancillary service agent** and not an act or omission of the party; and
- "(d) does not include that a **market operation service provider, ancillary service agent**, or other person—
- "(i) is unable or unwilling to pay any amount necessary to meet the obligations under this Code or the Electricity Industry (Enforcement) Regulations 2010 Act; or
- "(ii) is unable to pay its debts; or
- "(iii) calls a meeting for the purpose of Part 14 of the Companies Act 1993; or
- "(iv) is adjudicated bankrupt; or
- "(v) in the case of a company, society, or partnership, has a receiver or statutory manager or similar person appointed in respect of it or of all or any of its assets; or
- "(vi) is put into liquidation; and
- (e) does not include an event that could have been prevented by the **market operation service provider** or ancillary service agent by the exercise of a reasonable standard of care."

**5 Clause 3.7 replaced (Relief of obligation because of force majeure)**

Replace clause 3.7 with:

**"3.7 Relief of obligation because of force majeure**

- "(1) A **market operation service provider** is relieved of an obligation under this Code and under the Electricity Industry (Enforcement) Regulations 2010 to the extent that, and for so long as, it is unable to perform the obligation as a result of a **force majeure event**.
- "(2) Subclause (1) applies only—
- "(a) if the **market operation service provider** promptly advises the **Authority** of—
- "(i) the details of the **force majeure event**; and
- "(ii) the obligation that cannot be performed; and
- "(iii) the likely duration of the inability to perform the obligation; and
- "(b) for so long as the **market operation service provider** uses its reasonable endeavours to overcome the inability to perform the obligation from which it seeks relief and to remove or mitigate the effect of the **force majeure event**; and
- "(c) if the **market operation service provider** provides the **Authority** with reports in accordance with subclauses (3) and (4).
- "(3) As soon as practicable, but in any event no later than by the end of the month following the month in which the **market operation service provider** advises the

**Authority** of a **force majeure event** under subclause (2)(a), the **market operation service provider** must provide the **Authority** with a written report that sets out—

"(a) the full details of the **force majeure event**; and

"(b) the actions the **market operation service provider** is taking or intends to take to comply with subclause (2)(b); and

"(c) the proposed timeline for completing the actions.

- "(4) By the end of each following month (unless the **Authority** advises that reports may be provided less frequently or are not required) the **market operation service provider** must provide the **Authority** with a written report that updates the information previously provided and includes any other matters related to the force majeure event that the **Authority** requests.
- "(5) The **Authority** must **publicise** the information provided under subclause (2)(a) and the reports provided under subclauses (3) and (4) as soon as practicable after receiving the information.
- "(6) Despite subclause (5), the **Authority** must not **publicise** or otherwise make publicly available any information or any part of a report if the **market operation service provider** advises the **Authority** (with reasons) that the **market operation service provider** considers that it would have good reason to refuse to supply the information or the part under clause 2.6 or clause 2.7."

**6 Clause 3.8 amended (Effect of relief)**

In clause 3.8(a), replace "(except Parts 6 and 9) or Part 2 or Subpart 1 of Part 4 of the **Act**" with "or of the Electricity Industry (Enforcement) Regulations 2010".

**7 Clause 3.9 amended (Authority may contract elsewhere during force majeure)**

In clause 3.9, replace "(except Parts 6 and 9) or Part 2 or Subpart 1 of Part 4 of the **Act**" with "or with the Electricity Industry (Enforcement) Regulations 2010".

**8 Clause 4.1 replaced (Relief of obligation because of force majeure)**

Replace clause 4.1 with:

**"4.1 Relief of obligation because of force majeure**

"(1) An **ancillary service agent** is relieved of an obligation under this Code and under the Electricity Industry (Enforcement) Regulations 2010 to the extent that, and for so long as, it is unable to perform the obligation as a result of a **force majeure event**.

"(2) Subclause (1) applies only—

- "(a) if the **ancillary service agent** advises the **system operator**, immediately after becoming aware of the existence of a **force majeure event**, of—
    - "(i) the details of the **force majeure event**; and
    - "(ii) the obligation that cannot be performed; and
    - "(iii) the likely duration of the inability to perform the obligation; and
  - "(b) for so long as the **ancillary service agent** uses its reasonable endeavours to overcome the inability to perform the obligation from which it seeks relief and to remove or mitigate the effect of the **force majeure event**; and
  - "(c) if the **ancillary service agent** provides the **Authority** with reports in accordance with subclauses (4) and (5).
- "(3) To avoid doubt, the relief in subclause (1) applies only if an **ancillary service agent** is acting in its capacity as an **ancillary service agent** under an **ancillary service arrangement**.
- "(4) As soon as practicable, but in any event no later than by the end of the month following the month in which the **ancillary service agent** advises the **system operator** of a **force majeure event** under subclause (2)(a), the **ancillary service agent** must provide the **Authority** with a written report that sets out—
- "(a) the full details of the **force majeure event**; and
  - "(b) the actions the **ancillary service agent** is taking or intends to take to comply with subclause (2)(b); and
  - "(c) the proposed timeline for completing the actions.
- "(5) By the end of each following month (unless the **Authority** advises that reports may be provided less frequently or are not required) the **ancillary service agent** must provide the **Authority** with a written report that updates the information previously provided and includes any other matters related to the force majeure event that the **Authority** requests.
- "(6) The **Authority** must **publicise** the information provided under subclause (2)(a) and the reports provided under subclauses (4) and (5) as soon as practicable after receiving the information.
- "(7) Despite subclause (6), the **Authority** must not **publicise** or otherwise make publicly available any information or any part of a report if the **ancillary service agent** advises the **Authority** (with reasons) that the **ancillary service agent** considers that it would have good reason to refuse to supply the information or the part under clause 2.6 or clause 2.7."

**9 Clause 4.2 amended (Effect of relief)**

In clause 4.2(a), replace "(except Parts 6 and 9) or Part 2 or Subpart 1 of Part 4 of the **Act**" with "or of the Electricity Industry (Enforcement) Regulations 2010".

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**Explanatory Note**

*This note is not part of the Code amendment, but is intended to indicate its general effect.*

This amendment to the Electricity Industry Participation Code 2010 comes into force on 1 November 2012.

This amendment removes the exemption granted to market operation service providers and ancillary service agents that relieves those persons of their obligation to comply with certain provisions in the Act in a force majeure event, and exempts market operation service providers and ancillary service agents from their obligation to comply with Parts 6 and 9 of the Code and the Electricity Industry (Enforcement) Regulations 2010 in a force majeure event.

This amendment also requires a market operation service provider or ancillary service agent relying on the force majeure provisions to provide information to the Electricity Authority about the force majeure event.

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Date of notification in the *Gazette*: 4 October 2012.