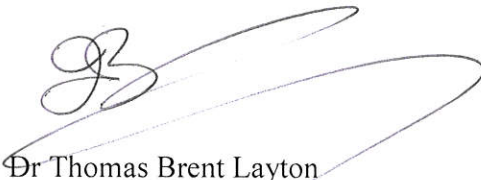


**Electricity Industry Participation (Disclosure Obligations)  
Code Amendment 2013**


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 14<sup>th</sup> day of June 2013

  
Dr Thomas Brent Layton  
Chairperson  
Electricity Authority

Certified in order for signature:

  
Andrew Springett  
Senior Legal Counsel  
Electricity Authority

  
Tony Dellow  
Partner  
Buddle Findlay

13 June 2013

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## Amendment

- 1 **Title**  
This is the Electricity Industry Participation (Disclosure Obligations) Code Amendment 2013.
- 2 **Commencement**  
This amendment comes into force on 1 October 2013.
- 3 **Code amended**  
This amendment amends the Electricity Industry Participation Code 2010.
- 4 **Clause 1.1 amended (Interpretation)**
  - (1) In clause 1.1(1), insert in its appropriate alphabetical order:  
"disclosure information, 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 publicly available, will have a material impact on prices in the **wholesale market**".
  - (2) In clause 1.1(1), definition of "**excluded Code information**", replace paragraph (a) with:  
"(a) that relates to **bids, offers, reserve offers**, or any **asset capability statement**; or".
  - (3) In clause 1.1(1), delete the definition of "**relevant information**".
- 5 **Clause 13.2 replaced (Misleading, deceptive, or incorrect information)**  
Replace clause 13.2 with:  
**"13.2 Misleading, deceptive, or incorrect information"**
  - "(1) A **participant** must not disclose to any person any information under this Part that, at the time the information was disclosed, was misleading or deceptive or likely to mislead or deceive when taken in the context of activities under this Part.
  - "(1A) In assessing whether information, at the time of disclosure, is misleading or deceptive or is likely to mislead or deceive, a **participant** must act reasonably and prudently.
  - "(2) If a **participant** discovers that information previously disclosed by it to a person under this Part was misleading, deceptive or incorrect, the **participant** must immediately—

- "(a) disclose further information so that the person is not misled or deceived by the information; or
- "(b) disclose corrected information to the person."

**6 New clause 13.2A inserted (Participant must make disclosure information readily available)**

After clause 13.2, insert:

**"13.2A Participant must make disclosure information readily available**

- "(1) Each **participant** must make all **disclosure information** in relation to the **participant** readily available to the public, free of charge, as soon as reasonably practicable after the **participant** becomes aware of the information.
- "(2) Despite subclause (1), a **participant** is not required to make **disclosure information** readily available to the public if—
  - "(a) the **disclosure information** is **excluded Code information**; or
  - "(b) doing so will commercially disadvantage the **participant** in a material manner; or
  - "(c) the **participant** is bound by a legal obligation to keep the **disclosure information** confidential; or
  - "(d) doing so will be a breach of law; or
  - "(e) the **disclosure information** is already readily available to the public; or
  - "(f) the **disclosure information** concerns an incomplete proposal or negotiation; or
  - "(g) the **disclosure information** comprises matters of supposition or is insufficiently definite to warrant being made readily available to the public; or
  - "(h) the **participant** claims legal professional privilege or privilege against self-incrimination in respect of the **disclosure information**; or
  - "(i) the **disclosure information** is a trade secret.
- "(3) A **participant** that relies on subclause (2) must, as soon as reasonably practicable, make the **disclosure information** readily available to the public, free of charge, if subclause (2) ceases to apply to the **disclosure information**.
- "(4) If information ceases to be **disclosure information**, a **participant** is no longer required to make the information readily available to the public.

- "(5) A **participant** that does not make information readily available to the public under this clause must, if required to do so by the **Authority**,—
- "(a) satisfy the **Authority** that subclause (2) applies to the **disclosure information**, if the **participant** relies on subclause (2); or
- "(b) satisfy the **Authority** that the information is not **disclosure information**.
- "(6) A **participant** must not enter into a confidentiality agreement with another person for the purpose of avoiding making **disclosure information** readily available to the public under this clause."

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### Explanatory Note

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

This amendment to the Electricity Industry Participation Code 2010 comes into force on 1 October 2013.

The amendment updates and clarifies the obligations of participants in relation to making information readily available to the public if the information is likely to affect prices in the relevant markets.

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Date of notification in the *Gazette*: 20 June 2013