

# Report on section 44B(2) matters

31 August 2023

## Executive summary

The Electricity Industry Act 2010 (Act) was amended in 2022 to give the Electricity Authority Te Mana Hiko (Authority) clearer powers to protect the interests of small electricity consumers in relation to their electricity supply and to increase the Authority's ability to hold industry participants to account.

The amendments also introduced section 44B, which is a backstop regulation power. This enables the Minister of Energy and Resources (Minister) to amend the Electricity Industry Participation Code 2010 (Code), to include provision for a range of specified matters if the Minister is not satisfied by the existing Code provisions.

The section 44B(2) matters relate to a selection of recommendations from the Electricity Price Review (EPR) in 2019.

The Authority has completed a comprehensive work programme to address these recommendations, and in some cases the Authority is continuing to build on its work.

For example, further enhancements to improve access to consumption data are being considered as part of the Authority's work updating the regulatory settings for distribution networks. The Authority is also exploring improvements to its collection of retail data to better monitor outcomes in the retail market.

This report explains for each section 44B(2) matter how the Authority has amended the Code and utilised supporting initiatives to:

- a) require retailers to process consumer requests for information about their electricity consumption in a timely way
- b) limit retailer saves and win-backs
- c) promote to consumers the benefits of comparing and switching retailers
- d) require distributors to offer retailers standard terms for access to their networks
- e) require certain categories of industry participant to make available information directed at improving the performance of the wholesale market
- f) require certain industry participants to act as market makers in relation to the trading of some wholesale electricity contracts; and
- g) require generator-retailers to release information about the profitability of their retailing activities.

The Authority regulates for the long-term benefit of consumers. It will continue to focus on positive consumer outcomes and, in 2023/24, it will undertake more work to protect the interests of domestic and small business consumers in relation to their supply of electricity, to further its statutory objectives.

## Contents

Executive summary	2
1. Purpose	4
2. The Authority's statutory objectives	4
3. The Authority has prioritised addressing the EPR recommendations and has completed a comprehensive work programme	4
4. Matter One: Requirements for retailers to process consumer requests for information about their electricity consumption in a timely way	10
5. Matter Two: Limitations on retailer saves and win-backs	11
6. Matter Three: Requirements for retailers to provide information to the Authority to enable the Authority to better direct its efforts under section 16(1)(i) (which relates to promoting to consumers the benefits of comparing and switching retailers)	13
7. Matter Four: Requirements for distributors to offer retailers standard terms for access to their networks	15
8. Matter Five: Requirements for certain categories of industry participant to make available information directed at improving the performance of the wholesale market	16
9. Matter Six: Requirements for certain industry participants to act as market makers in relation to the trading of some wholesale electricity contracts	18
10. Matter Seven: Requirements for some or all industry participants that are both generators and retailers to release information about the profitability of their retailing activities	20
11. The Authority will continue focusing on long-term benefits to consumers during the transition to 100% renewables	21

## 1. Purpose

- 1.1. This report explains, for each of the matters specified in section 44B(2) of the Electricity Industry Act 2010 (Act), how the Electricity Industry Participation Code 2010 (Code) has been amended to address the matter and how this will further the Authority's statutory objectives.
- 1.2. This report is published in response to the Minister's annual letter of expectations dated 6 April 2023, which requested this report to assist the Minister's consideration of the backstop regulation power.<sup>1</sup>

## 2. The Authority's statutory objectives

- 2.1. Section 15 of the Act sets out the Authority's statutory objectives. The Authority's main statutory objective is to promote competition in, reliable supply by, and the efficient operation of the electricity industry for the long-term benefit of consumers.
- 2.2. The Act was amended in 2022 to give the Authority an additional statutory objective, which is to protect the interests of domestic and small business consumers in relation to their supply of electricity. The additional objective only applies to the Authority's activities in relation to the direct dealings between participants and these consumers.

## 3. The Authority has prioritised addressing the EPR recommendations and has completed a comprehensive work programme

- 3.1. The section 44B(2) matters relate to the following seven recommendations from the Electricity Price Review (EPR), made in the EPR final report dated May 2019:<sup>2</sup>
  - C3: develop a streamlined way to process customer requests for consumption data.
  - C5: prohibit saves and win-backs.
  - C6: establish a pilot scheme to help non-switching consumers find better deals.
  - C4: make distributors offer retailers standard default terms for network access.
  - D1: improve availability of wholesale market information.
  - D2: introduce mandatory market-making obligations unless the sector develops an effective incentive-based scheme.
  - D3: make generator-retailers release information about the profitability of their retailing activities.

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<sup>1</sup> Reference: [https://www.ea.govt.nz/documents/2686/Letter\\_of\\_expectations\\_2023\\_24.pdf](https://www.ea.govt.nz/documents/2686/Letter_of_expectations_2023_24.pdf)

<sup>2</sup> References: [Electricity Price Review: Final Report \(mbie.govt.nz\)](#); and [Progressing the Electricity Price Review's recommendations \(mbie.govt.nz\)](#) at [87].

- 3.2. Addressing these recommendations was an immediate priority for the Authority following the publication of the EPR final report. By late 2021, the Authority's work associated with these recommendations was largely complete.<sup>3</sup>
- 3.3. Since then, the Authority has continued to progress work relevant to these recommendations – and the related section 44B(2) matters – as part of its work programme.
- 3.4. The Code amendments and supporting initiatives discussed in this report further the Authority's statutory objectives by promoting the long-term benefit of consumers and in some cases protecting the interests of domestic and small business consumers in relation to their supply of electricity.
- 3.5. For example, Code amendments have reduced information asymmetries to ensure domestic and small business consumers have better information for making decisions, and to enhance monitoring of generation, retailing and distribution activities, to support a competitive and efficient market.
- 3.6. The following table presents a summary of the Code amendments made since the final report of the EPR in May 2019, along with the supporting initiatives the Authority has undertaken relevant to each section 44B(2) matter.

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<sup>3</sup> As reported in the Authority's submission on the Electricity Industry Amendment Bill: [Microsoft Word - Select Committee Submission 17th November 2021\(1334091.3\) \(www.parliament.nz\)](#).

**Table 1 Summary table of Code amendments and supporting initiatives.**

Section 44B(2) matter	Code amendments and supporting initiatives	Description	Date	Outcomes
<p><b>Matter One:</b> require retailers to process consumer requests for information about their electricity consumption in a timely way</p>	<p>Additional Consumer Choice of Electricity Services (ACCES) project</p>	<p>The Authority has completed the Additional Consumer Choice of Electricity Services (ACCES) project.</p> <p>The project gave agents the ability to request consumption data on behalf of a consenting consumer, streamlining the process for those data requests to occur.</p>	<p>March 2020</p>	<p>The Authority amended the Code to set an appropriate minimum standard in terms of timeliness and processes for the provision of consumer data to agents.</p> <p>The Authority continues to monitor and make amendments to the electricity information exchange protocols used to share consumption data between retailers and consumers or their agents.</p> <p>The Authority also publishes information on retailers' response time to consumption data requests.</p>
<p><b>Matter Two:</b> limitations on retailer saves and win-backs</p>	<p>Saves and win-backs</p>	<p>The Authority amended the Code to prohibit saves and win-backs for 180 days after a consumer switches.</p> <p>The change was implemented to address retailers using win-backs to discourage customer acquisition activity by competitors. The Authority also developed a monitoring process to ensure enforcement of this Code amendment as part of its business-as-usual compliance approach.</p>	<p>March 2020</p>	<p>The Authority publishes win-back indicator trends and monitors this as part of its business-as-usual compliance approach. Alleged breaches have been identified and progressed as part of the Authority's monitoring function.</p>
<p><b>Matter Three:</b> requirements for retailers to provide information to the Authority to enable the Authority to better direct its efforts under section 16(1)(i) (which relates to promoting to consumers the benefits of comparing and switching retailers)</p>	<p>Improving consumer awareness of Powerswitch</p>	<p>The Authority introduced Code requirements on retailers to provide clear and prominent information about Powerswitch on their website and in communications with consumers, including electricity bills.</p>	<p>April 2021</p>	<p>The Authority also published guidelines to support the implementation of the Code amendments.</p> <p>The Authority commissioned a survey in May 2022 on electricity consumers' perceptions. Results indicated both awareness and usage of Powerswitch increased between 2021 and 2022. Awareness of Powerswitch increased from 59% to 63% and usage increased from 40% to 44%.</p>
	<p>Using behavioural insights to increase 'search and switch' behaviour: Piloting two letters to consumers</p>	<p>The Authority delivered a mail-based pilot testing two behavioural-insight based variations of a consumer information letter. Both letters were designed to encourage the use of Powerswitch by consumers to check</p>	<p>August 2021</p>	<p>A pilot evaluation report was published in February 2022. The report concluded that a letter designed to address behavioural barriers can be an effective way of encouraging consumers, including</p>

Section 44B(2) matter	Code amendments and supporting initiatives	Description	Date	Outcomes
		their electricity plan to find out whether they could be getting a better deal.		those who are vulnerable, to check their electricity deal, especially consumers considered to be 'non-switching'
	Winter 2023 public marketing campaign	This campaign is a partnership between EECA's Warmer Kiwi Homes and Consumer NZ, with support from the Electricity Authority. It highlights how New Zealanders can save up to \$500 on their annual power bills.	May 2023 onwards	The Authority will be involved in the analysis of its impact on website visits and electricity retailer amendments
<b>Matter Four:</b> requirements for distributors to offer retailers standard terms for access to their networks	Introducing Default Distributor Agreements	<p>The Authority amended the Code to require distributors to develop, publish and offer traders a default distributor agreement (DDA) based on a DDA template in Part 12A of the Code.</p> <p>The DDA template contains a set of default terms for a distributor agreement between a distributor with a local network and a trader who is a retailer wanting to trade on the distributor's local network</p>	June 2020	<p>The DDA has improved the operational arrangements on distribution networks, particularly between distributors and retailers.</p> <p>The Authority intends on implementing further Code amendments, which will mandate more default contractual terms.</p> <p>Consultation on further improvements to the DDA is expected to commence shortly, with potential changes expected to be made by late 2023 or early 2024.</p>
<b>Matter Five:</b> requirements for certain categories of industry participant to make available information directed at improving the performance of the wholesale market	Review of thermal fuel disclosure information	The Authority developed a suite of reforms targeting thermal fuel disclosure in December 2020. These decisions were designed to ensure participants are complying with their disclosure obligations to disclose thermal fuel information and enable the Authority to better monitor and enforce participants' compliance, to support trust and confidence in the wholesale market.	April 2021	<p>The information disclosure guidelines were updated in January 2021 to provide greater clarity on where, when and how thermal generators should disclose information about the availability of thermal fuels for electricity generation.</p> <p>The Authority amended the Code to require quarterly reporting of disclosure activities in April 2021</p>
	Change to the definition of disclosure information	In response to a Rulings Panel decision in January 2021, the Authority further widened the Code definition of 'disclosure information' by way of urgent Code amendment in April 2021. The Rulings Panel decision interpreted the definition in a way that would likely reduce the amount of information participants disclosed to the market.	November 2021	The Authority amended the Code to widen the definition of 'disclosure information' to information that is about and held by a participant, and that a participant expects, or ought reasonably to expect, if made available to the public, will, or is likely to, have a material impact on prices in the wholesale market
	Wholesale markets - trading conduct	The Authority introduced a new trading conduct rule (rule) to replace the then	June 2021	The post implementation review in 2022 showed that the provisions which require generators to ensure

Section 44B(2) matter	Code amendments and supporting initiatives	Description	Date	Outcomes
		<p>current 'high standard' of trading conduct provisions.</p> <p>The rule required generators and ancillary service agents to ensure that all their offers are consistent with offers they would have made in a market where no party could exercise significant market power, irrespective of whether their supply is needed to meet demand or not.</p>		<p>that their offers reflect the offers that would be made in a competitive market, are having the intended impact on generator behaviour</p>
<p><b>Matter Six:</b> requirements for certain industry participants to act as market makers in relation to the trading of some wholesale electricity contracts</p>	<p>Permanent market making backstop</p>	<p>The Authority determined in August 2020 that the sector was unlikely to develop an effective incentive-based scheme on its own and amended the Code to impose market-making obligations on the four largest generator-retailers.</p>	<p>April 2021</p>	<p>The amendment requires Contact, Genesis, Mercury and Meridian to provide a certain standard of market-making services to the New Zealand electricity futures market each day and imposes penalties if the required standard is not met.</p>
	<p>Commercial market making</p>	<p>The Authority decided in August 2020 to introduce, an enduring market-making approach that enhances the then existing market-making arrangements.</p> <p>Consequently, the Authority amended the Code to facilitate the entry of a commercial market maker.</p>	<p>September 2022</p>	<p>The Authority has implemented the first iteration of an enhanced market-making arrangement. This involved introducing a new commercial market maker who will provide 20% of the total volume of market making contracts, with the remaining 80% being provided by the existing regulated market makers.</p> <p>Bold Trading entered the market as the new commercial market maker, and both the commercial and regulated market makers will be required to market make under the new service level parameters as set out in the Code (for regulated market-makers) and the 'Agreement for the provision of Market Making Services for the New Zealand Electricity Futures Market' (for the commercial market maker).</p>



Section 44B(2) matter	Code amendments and supporting initiatives	Description	Date	Outcomes
<p><b>Matter Seven:</b> requirements for some or all industry participants that are both generators and retailers to release information about the profitability of their retailing activities</p>	<p>Internal transfer pricing and profitability</p>	<p>The Authority has mandated the disclosure of internal transfer prices (ITPs) by generator-retailers and retail gross margins (RGMs) by retailers.</p>	<p>November 2021</p>	<p>The Authority publishes ITP and RGM data as well as its analysis of this data. This includes comparison of ITPs with benchmarks calculated using ASX future prices, a locational factor adjustment to approximate basis risk, and a load and price profile adjustment.</p> <p>In addition, a decision to publish all ITP information disclosed by generator retailers previously and going forward was implemented in June 2023.</p>

## 4. Matter One: Requirements for retailers to process consumer requests for information about their electricity consumption in a timely way

- 4.1. The Authority has made Code amendments to make it easier for consumers to share their electricity consumption data with businesses and organisations they trust.

### **Additional Consumer Choice of Electricity Services (ACCES) project**

- 4.2. The Authority completed the Additional Consumer Choice of Electricity Services (ACCES) project and amended the Code in March 2020 to make it easier for consumers to access and share their electricity consumption data with third party service providers such as price comparison websites.<sup>4</sup>
- 4.3. The Code amendment gave agents the ability to request consumption data on behalf of a consenting consumer and streamlined the process for those data requests to occur, using an electronic information exchange system. These amendments have made it easier and faster for consumers to share their historical consumption data with third party agents they trust to help them find better power deals and gives the Authority, consumers and retailers more confidence in the arrangements.
- 4.4. The Authority publishes information on consumption data requests, including response time.<sup>5</sup> This enables ongoing monitoring of retailer behaviour to ensure that consumers continue to have access to their consumption data in a timely way. Between June 2022 and June 2023, the average response time each month ranged between 1.3 and 4.0 business days.
- 4.5. The Authority will continue to ensure that requirements for retailers to respond to requests remain fit-for-purpose during the transition and that consumer interests are protected. Previously the Authority has signalled its intent to further improve access to consumption data as part of its work updating the regulatory settings for distribution networks.
- 4.6. In addition, the Authority made more connection data available through its Your Meter webpage, enabling consumers or their agents to compare the applicable tariff plans of competing retailers more easily.<sup>6</sup>

The Electricity Industry Participation Code Amendment (Requirements and Processes for Information Requests by Agents) 2020 amended Parts 1 and 11 of the Code to set an appropriate minimum standard in terms of timeliness and processes for the provision of consumer data to agents.

<sup>4</sup> Reference: Electricity Industry Participation Code Amendment (Requirements and Processes for Information Requests by Agents) 2020, available at <https://www.ea.govt.nz/code-and-compliance/code/amendments/>

<sup>5</sup> Reference: [https://www.emi.ea.govt.nz/MemberDashboards/Public/36284590-96c2-462a-a711-d147302740fa/1?\\_si=s|mdo.v|2](https://www.emi.ea.govt.nz/MemberDashboards/Public/36284590-96c2-462a-a711-d147302740fa/1?_si=s|mdo.v|2)

<sup>6</sup> Reference: <https://www.ea.govt.nz/your-power/your-meter/address/>

## **Statutory objective alignment**

- 4.7. The Code amendment furthers the Authority's statutory objectives by promoting competition and innovation in the retail electricity market, for the long-term benefit of consumers.
- 4.8. Consumers have greater information to make informed decisions on their power consumption and third-party agents have access to the data required for innovation to offer consumers greater value and choice.
- 4.9. The Authority monitors and makes regular amendments to the electricity information exchange protocols (EIEPs) used to share consumption data between retailers and consumers or their agents, to ensure they remain fit-for-purpose. Fit-for-purpose EIEPs improve efficiency in retailers responding to consumer requests in a timely manner and standardisation ensures data expectations are met.

## **5. Matter Two: Limitations on retailer saves and win-backs**

- 5.1. The Authority has made Code amendments after a review of retailer saves and win-backs. The amendments support consumer choice and promote retail competition.

### **Saves and win-backs**

- 5.2. The Authority amended the Code in March 2020 to:
  - (a) expand the saves protection scheme to all retailers (replacing the existing 'opt-in' scheme); and
  - (b) prohibit win-backs for 180 days after a consumer switches.<sup>7</sup>
- 5.3. A saves protection scheme was first introduced (on an opt-in basis) in 2015. The scheme was intended to prevent a losing retailer from exploiting information about an impending customer switch to attempt to retain the customer prior to the completion of the switch (a 'save').
- 5.4. The saves protection scheme did not prevent a losing retailer from attempting to win back a customer after the registry switch process had been formally completed (a 'win-back').
- 5.5. The March 2020 amendments were implemented to address retailers using win-backs to discourage customer acquisition activity by competitors. The Authority developed a monitoring process to ensure enforcement of this Code amendment as part of its business-as-usual compliance approach.
- 5.6. The Authority publishes win-back indicator trends and monitors this as part of its business-as-usual compliance approach. Alleged breaches have been identified and progressed as part of the Authority's monitoring function.<sup>8</sup>

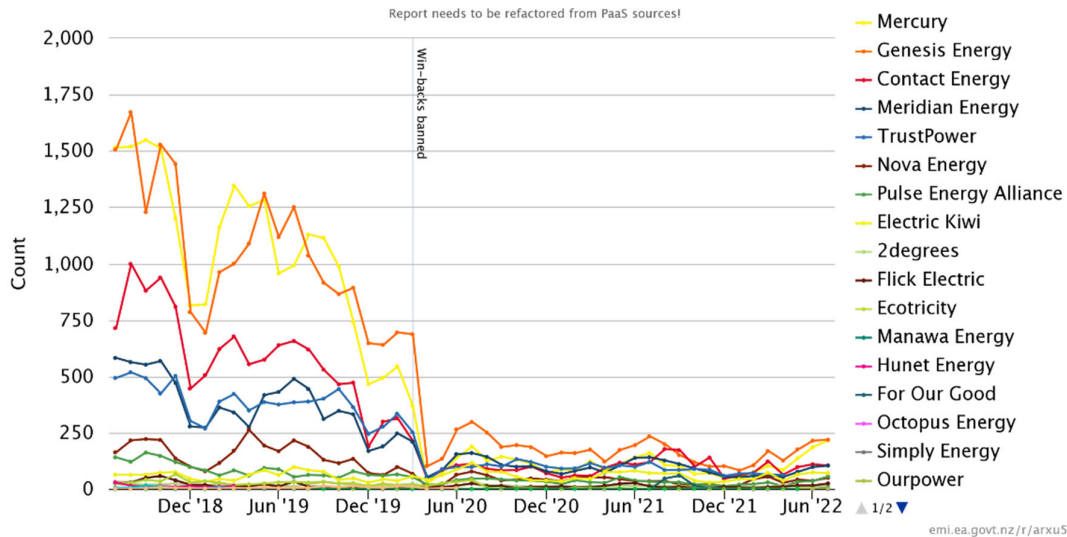
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<sup>7</sup> Reference: <https://www.ea.govt.nz/documents/2755/26369Saves-and-Win-backs-Code-Amendment-Decision-Paper.PDF>

<sup>8</sup> Reference: <https://www.ea.govt.nz/code-and-compliance/investigations-and-rulings/?search=11.15AA+&year=&status=>

5.7. Win-back indicator trends can be viewed on the EMI website. It can be observed that win-backs have decreased after the Authority's amendment.<sup>9</sup> The Code amendment does not restrict consumers from initiating contact with the losing retailer, hence there remains a level of consumer-initiated switchback.

**Figure 1 Win-back indicator trends (Source: EMI)**



The Electricity Industry Participation Code Amendment (Prohibition of Save and Win-Back Approaches by Losing Retailers During a Switch Protected Period) 2020 amended Parts 1 and 11 to ban retailer-initiated saves and win-backs by a losing retailer for 180 days.

**Statutory objective alignment**

- 5.8. The Code amendment furthered the Authority's statutory objectives by aiming to:
- (a) increase competitive pressure on retailers
  - (b) reduce retail margins
  - (c) increase innovation
  - (d) increase customer acquisition efforts by retailers and price and retailer search by consumers, and
  - (e) reduce information asymmetries between retailers and consumers, and between retailers and their competitors.
- 5.9. Incumbent and new entrant retailers are both expected to respond to increased competition by developing new product offerings and finding new ways to reduce

<sup>9</sup> Reference: [https://www.emi.ea.govt.nz/Retail/Reports/0JIGEW?DateFrom=20180701&DateTo=20220731&RegionType=NZ&RetailEntity=RPC&MarketSegment=All&SwitchTypeCode=TR&Metric=WDSB180&Show=Count&\\_si=v|3](https://www.emi.ea.govt.nz/Retail/Reports/0JIGEW?DateFrom=20180701&DateTo=20220731&RegionType=NZ&RetailEntity=RPC&MarketSegment=All&SwitchTypeCode=TR&Metric=WDSB180&Show=Count&_si=v|3)

costs, which will increase the efficiency of the retail sector. These efficiency gains in costs are also expected to pass through to the prices faced by consumers.

## **6. Matter Three: Requirements for retailers to provide information to the Authority to enable the Authority to better direct its efforts under section 16(1)(i) (which relates to promoting to consumers the benefits of comparing and switching retailers)**

- 6.1. The Authority has amended the Code and undertaken other initiatives in collaboration with external agencies to promote to consumers the benefits of comparing and switching retailers.
- 6.2. In addition, the Authority is considering a number of improvements to how it monitors the retail market. The aim of this project is to increase our collection of retail data to better monitor outcomes in the retail market, including consumption, expenditure and tariffs. Increased visibility will enable the Authority to provide more meaningful insights to the industry and to make better evidence-based decisions in areas relevant to the retail market. The Authority will utilise the data collected to guide any decision-making and determine if what, if any further policy intervention is required.

### **Improving consumer awareness of Powerswitch**

- 6.3. Powerswitch is a free and independent price comparison website which helps consumers work out the best power company and pricing plan for their specific needs. With more information, consumers are empowered to make good choices, and with more choice comes increased competitive tension on retailers to improve their products and services.
- 6.4. The Authority amended the Code in April 2021 to require retailers to provide clear and prominent information about Powerswitch on their website and in communications with consumers, including electricity bills.<sup>10</sup> The Authority also published guidelines to support the implementation of the Code amendment. The guidelines include information on how compliance could be achieved and visual examples of how these changes could be incorporated into communications.
- 6.5. In addition, the Authority commissioned AK Research & Consulting (AKR) to conduct a survey in May 2022 to focus on electricity consumers perceptions on a range of questions relating to the Authority's statutory objectives.<sup>11</sup>

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<sup>10</sup> Reference: [https://www.ea.govt.nz/documents/2892/Decision-and-summary-of-submissions\\_-\\_Guidelines-for-raising-consumer-awareness.pdf](https://www.ea.govt.nz/documents/2892/Decision-and-summary-of-submissions_-_Guidelines-for-raising-consumer-awareness.pdf)

<sup>11</sup> Reference: [https://www.ea.govt.nz/documents/597/Survey\\_of\\_residential\\_electricity\\_consumer\\_perceptions.pdf](https://www.ea.govt.nz/documents/597/Survey_of_residential_electricity_consumer_perceptions.pdf)

- 6.6. Results indicated both awareness and usage of Powerswitch increased between 2021 and 2022. Awareness of Powerswitch increased from 59% to 63% and usage increased from 40% to 44%.

The Electricity Industry Participation Code Amendment (Requirements to Improve Awareness of Dispute Resolution Scheme and the Electricity Plan Comparison Site) 2020 inserted new clauses 11.30A to 11.30E requiring the provision of information to consumers on the electricity plan comparison site.

### **Using behavioural insights to increase ‘search and switch’ behaviour: Piloting two letters to consumers**

- 6.7. The Authority partnered with Kantar Public in 2021 to conduct a pilot project which aimed to encourage more consumers to optimise their electricity plan, using behavioural insights and a randomised control trial to determine what works.<sup>12</sup> This project built on the EPR recommendation to establish a pilot scheme to help non-switching consumers find better deals.
- 6.8. The pilot was mail-based, testing two behavioural-insight based variations of a consumer information letter. Both letters were designed to encourage the use of Powerswitch by consumers to check their electricity plan to find out whether they could be getting a better deal.
- 6.9. A pilot evaluation report was published in February 2022. The report concluded that a letter designed to address behavioural barriers can be an effective way of encouraging consumers, including those who are vulnerable, to check their electricity deal, especially consumers considered to be ‘non-switching’.
- 6.10. The Authority continues to investigate and support ways to increase consumer ‘search and switch’ behaviour as part of its statutory functions, including leveraging the learnings that came out of this pilot scheme.

No Code amendment required.

### **Winter 2023 public marketing campaign**

- 6.11. The campaign conducted from May 2023 onwards is a partnership between EECA’s Warmer Kiwi Homes and Consumer NZ, with support from the Authority. It highlights how New Zealanders can save up to \$500 on their annual power bills.<sup>13</sup>
- 6.12. The Authority provided financial support for this campaign and will be involved in the analysis of its impact on website visits and electricity retailer amendments.

No Code amendment required.

<sup>12</sup> Reference: <https://electricityauthority.cwp.govt.nz/assets/dms-assets/29/Using-behavioural-insights-to-increase-search-and-switch-behaviour-Final-report.pdf>

<sup>13</sup> Reference: <https://www.save500.org.nz/>

### **Statutory objective alignment**

- 6.13. The initiatives discussed above further the Authority's statutory objectives by promoting retail competition and the efficient operation of the electricity industry, for the long-term benefit of consumers. They do so by improving consumer awareness in different retail offerings and helping ensure efficient electricity supply to consumers with diverse needs.

## **7. Matter Four: Requirements for distributors to offer retailers standard terms for access to their networks**

- 7.1. The Authority has amended the Code to mandate certain default contractual terms in agreements for access to local distribution networks.

### **Introducing Default Distributor Agreements**

- 7.2. The Authority amended the Code in July 2020 to require distributors to develop, publish and offer traders a default distributor agreement (DDA) based on a DDA template in Part 12A of the Code.<sup>14</sup> The DDA template contains a set of default terms for a distributor agreement between a distributor with a local network and a trader who is a retailer wanting to trade on the distributor's local network.
- 7.3. The DDA template also includes default terms for some additional services commonly provided alongside distribution services but which are not themselves part of the distribution services. These include the right to control load, data template for exchanging consumer information, and greater of EIEPs.
- 7.4. At the time the Code was amended, the Authority committed to monitoring the terms included in distributor agreements as part of business as usual to ensure they continued to align with its statutory objective.
- 7.5. Three years on, the Authority considers improvements can be made to the Code to address some practical issues with the DDA template and the consumption data template which are, in the Authority's view, limiting some of the expected benefits from the 2020 Code amendment.
- 7.6. Consultation on further improvements to the DDA is expected to commence shortly, with potential changes expected to be made by late 2023 or early 2024.

The Electricity Industry Participation Code Amendment (Default Distributor Agreement) 2020 amended Parts 1, 11, 12A and 14 of the Code to require distributors and traders to comply with certain requirements when entering into a distributor agreement, to require distributors to have a default distributor agreement, and to introduce a default distributor agreement template.

### **Statutory objective alignment**

- 7.7. The Code amendment furthers the Authority's statutory objectives by aiming to:
- (a) promote the efficient operation of the electricity industry by minimising:

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<sup>14</sup> Reference: <https://www.ea.govt.nz/documents/3273/25535DDA-consultation.pdf>

- i. higher-than-necessary transaction costs associated with distributors and retailers negotiating distributor agreements, including duplication of effort by retailers and distributors negotiating multiple distributor agreements, and
  - ii. barriers to accessing, exchanging and using consumption data on reasonable terms
- (b) promote competition in the retail electricity market, by:
- i. lowering the costs faced by retailers wanting to compete for customers on distributors' local networks – through national consistency of terms across distributor agreements, and
  - ii. ensuring retailers can compete on fair terms both on the same local network and across different local networks
- (c) promote competition in emerging markets for electricity-related services (eg, providers of electricity flexibility services and other business models taking advantage of emerging technologies), by ensuring industry participants can compete for and provide related services on a level playing field.

## **8. Matter Five: Requirements for certain categories of industry participant to make available information directed at improving the performance of the wholesale market**

- 8.1. The Authority has enhanced existing wholesale information disclosure measures to improve wholesale market performance.

### **Review of thermal fuel disclosure information**

- 8.2. The Authority developed a suite of reforms targeting thermal fuel disclosure in December 2020. These decisions were designed to ensure participants comply with their disclosure obligations and enable the Authority to better monitor and enforce participants' compliance, to support trust and confidence in the wholesale market.
- 8.3. The information disclosure guidelines were updated in January 2021 to provide greater clarity on where, when and how thermal generators should disclose information about the availability of thermal fuels for electricity generation.<sup>15</sup>
- 8.4. The Authority amended the Code in April 2021 to require major participants to submit quarterly disclosure reports to the Authority on how they are meeting their disclosure obligations. The purpose of the amendment was to allow the Authority and market participants to understand the extent to which major participants are relying on exemptions to the market disclosure obligations and cause major participants to focus more strongly on making sure that they meet these obligations.

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<sup>15</sup> Reference: <https://www.ea.govt.nz/documents/2708/Wholesale-market-information-disclosure-Review-of-thermal-fuels-decision-paper.pdf>



The Electricity Industry Participation Code Amendment (Reporting on Wholesale Market Information Disclosure) 2020 inserted new clauses 13.2B to 13.2L to impose new reporting obligations on major participants.

### **Permanent change to the definition of disclosure information**

- 8.5. In response to a Rulings Panel decision in January 2021, the Authority further widened the Code definition of 'disclosure information' by way of urgent Code amendment in April 2021. The Rulings Panel decision interpreted the definition in a way that would likely reduce the amount of information participants disclosed to the market. A permanent Code amendment was implemented in November 2021.<sup>16</sup>
- 8.6. The amendment widened the definition of 'disclosure information' to information that is about and held by a participant, and that the participant expects, or ought reasonably to expect, if made available to the public, will, or is likely to, have a material impact on prices in the wholesale market.

The Electricity Industry Participation Code Amendment (Definition of Disclosure Information) 2021 updated the definition for 'disclosure information' in clause 1.1.

### **Wholesale markets - trading conduct**

- 8.7. The Authority amended the Code in June 2021 to introduce a new trading conduct rule (rule) to replace the then current 'high standard' of trading conduct provisions. The rule required generators and ancillary service agents to ensure that all their offers are consistent with offers they would have made in a market where no party could exercise significant market power, irrespective of whether their supply is needed to meet demand or not.
- 8.8. Trading conduct rules are warranted because confidence in the market is undermined if parties can benefit from high prices that are raised to inefficient levels by exercising market power when competitive pressure is weak. Frequent recurrence of these occasions could substantially damage the integrity of the wholesale market and sends the wrong signal to potential new players that could deter them from entering and competing in the market and reduce trust and confidence amongst stakeholders in the market, including consumers.
- 8.9. The post implementation review in 2022 showed that the provisions which require generators to ensure that their offers reflect the offers that would be made in a competitive market, are having the intended impact on generator behaviour.<sup>17</sup>

<sup>16</sup> Reference: <https://www.ea.govt.nz/documents/2704/Decision-paper-permanent-change-to-definition-of-disclosure-information.pdf>

<sup>17</sup> Reference: <https://www.ea.govt.nz/documents/2157/Information-paper-Post-implementation-review-of-the-trading-conduct-provisions.pdf>

- 8.10. The Authority also publishes weekly trading conduct reports on its website along with its approach to monitoring trading conduct.<sup>18</sup>

The Electricity Industry Participation Code Amendment (Trading Conduct Provisions) 2021 amended clause 13.5A to introduce a new trading conduct rule.

### **Statutory objective alignment**

- 8.11. Improving the availability and quality of wholesale market information furthers the Authority's statutory objectives by promoting competition in, and the efficient operation of, the electricity industry for the long-term benefit of consumers. An effective disclosure regime is a fundamental feature of a well-functioning electricity market. An effective regime can reduce inefficient information asymmetry between informed and uninformed market participants. Information asymmetry in a market can lead to transfers of wealth from uninformed to informed market participants when they trade with each other, potentially leading to inefficient market outcomes.
- 8.12. An effective disclosure regime can also reduce information costs, assist existing and potential market participants in making informed decisions, and enhance confidence in the integrity of the market by removing opportunities for insider trading and the creation of a false market.

## **9. Matter Six: Requirements for certain industry participants to act as market makers in relation to the trading of some wholesale electricity contracts**

- 9.1. The Authority decided, in August 2020, to pursue a long-term vision for enhanced market making arrangements.<sup>19</sup> This involves transitioning, over a period of years, to an incentivised market making arrangement where market making services are performed by commercial providers, and, in the interim period, ensuring market making services are provided through a combination of mandated market makers and commercial providers.
- 9.2. The Authority has amended the Code to mandate certain participants to provide market making services. In addition, the Authority has implemented the first iteration of commercial market-making arrangements.

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<sup>18</sup> Reference: <https://www.ea.govt.nz/code-and-compliance/code/amendments/>

<sup>19</sup> Reference: [https://www.ea.govt.nz/documents/1369/Hedge\\_Market\\_Enhancements\\_Permanent\\_market\\_making\\_backstop\\_-\\_decision\\_paper.pdf](https://www.ea.govt.nz/documents/1369/Hedge_Market_Enhancements_Permanent_market_making_backstop_-_decision_paper.pdf)

### **Permanent market making backstop**

- 9.3. The Authority determined in August 2020 that the sector was unlikely to develop an effective incentive-based scheme on its own and decided to require the four largest integrated generator-retailers to provide market-making services in order to facilitate an active market for electricity futures. The Authority implemented this decision in April 2021 when a permanent Code amendment came into effect. This requires Contact, Genesis, Mercury and Meridian to provide a certain standard of market-making services to the New Zealand electricity futures market each day and imposes penalties if the required standard is not met.<sup>20</sup>

The Electricity Industry Participation Code Amendment (Hedge Market Arrangements) 2021 inserted new subpart 5B of Part 13 of the Code, imposing certain market-making obligations on the four largest generator-retailers.

### **Commercial market making**

- 9.4. A Code amendment to facilitate the first iteration of enhanced market-making arrangements was implemented in September 2022.<sup>21</sup> This involved introducing a new commercial market maker who provides 20% of the total volume of market making contracts, with the remaining 80% being provided by the existing mandated market makers.
- 9.5. Bold Trading entered the market as the new commercial market maker, and both the commercial and regulated market makers will be required to market make under the new service level parameters as set out in the Code (for regulated market-makers) and the 'Agreement for the provision of Market Making Services for the New Zealand Electricity Futures Market' for the commercial market maker.

The Electricity Industry Participation Code Amendment (Hedge Market Arrangements) 2022 amended subpart 5B of Part 13 to align the regulated market-making requirements for the trading of electricity futures with the introduction of commercial market-making.

### **Statutory objective alignment**

- 9.6. The Code amendments further the Authority's statutory objectives by enhancing the performance of the electricity futures market, allowing parties to effectively manage their price risk. This promotes the long-term interests of consumers by enabling efficient decisions and fostering competition and transparency.
- 9.7. An effective futures market allows retailers to offer consumers better deals on their electricity, helping to protect them from volatile spot prices. It also allows new

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<sup>20</sup> Reference: [https://www.ea.govt.nz/documents/1369/Hedge\\_Market\\_Enhancements\\_Permanent\\_market\\_making\\_backstop\\_-\\_decision\\_paper.pdf](https://www.ea.govt.nz/documents/1369/Hedge_Market_Enhancements_Permanent_market_making_backstop_-_decision_paper.pdf)

<sup>21</sup> Reference: [Commercial Market Making Scheme code amendment - decision paper.pdf \(ea.govt.nz\)](https://www.ea.govt.nz/documents/1369/Commercial_Market_Making_Scheme_code_amendment_-_decision_paper.pdf)

retailers to manage their price risk, which reduces barriers to entry, helping to increase competition in the retail market.

- 9.8. The gradual introduction of a commercial market making scheme – in place of the current arrangements – is in the long-term interests of consumers. It will increase competition, boost the performance of the market, and help ensure that contract prices accurately reflect traders’ view of the future. This in turn will increase trust and confidence in forward prices of electricity in the wholesale market. This benefits consumers by enabling market participants to manage their price risk more effectively.

## **10. Matter Seven: Requirements for some or all industry participants that are both generators and retailers to release information about the profitability of their retailing activities**

- 10.1. The Authority has amended the Code to introduce disclosure obligations for generator-retailers to help improve trust and confidence in the wholesale and retail markets for the long-term benefit of consumers.

### **Internal transfer pricing and profitability**

- 10.2. The Authority mandated the disclosure of internal transfer prices (ITPs) by generator-retailers and retail gross margins (RGMs) by retailers in November 2021.<sup>22</sup> This data is published by the Authority, along with the Authority’s analysis of the data.<sup>23</sup>
- 10.3. In relation to ITP data, the Authority compares ITPs with benchmarks calculated using ASX future prices, a locational factor adjustment to approximate basis risk, and a load and price profile adjustment.<sup>24</sup> RGM data is also analysed and the results published online.<sup>25</sup>
- 10.4. A decision to publish all ITP information disclosed by generator retailers previously and going forward was implemented in June 2023.<sup>26</sup>

The Electricity Industry Participation Code Amendment (Internal Transfer Prices and Segmented Profitability Reporting) 2021 inserted new clauses 13.256 to 13.266 into Part 13 and new definitions into Part 1 to impose reporting obligations on generator retailers to disclose internal transfer prices, and on retailers to disclose retail gross margins.

<sup>22</sup> Reference: [https://www.ea.govt.nz/documents/2592/Wholesale-markets-Internal-transfer-prices-and-segmented-profitability-reporti\\_Onm0Deh.pdf](https://www.ea.govt.nz/documents/2592/Wholesale-markets-Internal-transfer-prices-and-segmented-profitability-reporti_Onm0Deh.pdf)

<sup>23</sup> Reference: <https://public.tableau.com/app/profile/electricity.authority>

<sup>24</sup> Reference: <https://public.tableau.com/app/profile/electricity.authority/viz/ITPbenchmarks/ITPbenchmarks>.

<sup>25</sup> Reference: <https://public.tableau.com/app/profile/electricity.authority/viz/Retailgrossmargin/Retailgrossmargin>. For more analysis of the RGM data see: <https://www.ea.govt.nz/news/general-news/new-zealands-electricity-retail-market-retail-gross-margins/>

<sup>26</sup> Reference: <https://www.ea.govt.nz/projects/all/internal-transfer-pricing-and-profitability/>

### **Statutory objective alignment**

- 10.5. The Code amendments further the Authority's statutory objectives by improving trust and confidence in the wholesale market for the long-term benefit of consumers.
- 10.6. Mandating disclosure of information that improves transparency on how generator-retailers set their internal prices and implicitly hedge their exposure to spot markets promotes confidence in the competitive operation of the electricity markets.
- 10.7. Information asymmetries raise doubts about competition in electricity markets, and harm trust and confidence. In the longer term, a lack of trust would discourage participation in the market, reduce entry by new competitors and curtail new investment. The Authority considers that improved information disclosure will improve trust in the market.
- 10.8. Mandating ongoing disclosure of key metrics on a centralised disclosure platform and facilitating their interpretation through appropriate benchmarks helps uncover problematic behaviour in electricity markets. Over time, this information will provide an evidence base to inform future action that may be required by the Authority to reduce information asymmetry between generator-retailers and other market participants.

## **11. The Authority will continue focusing on long-term benefits to consumers during the transition to 100% renewables**

- 11.1. While the Authority has completed work to address the EPR recommendations, it will continue to progress work relevant to these recommendations – and the related section 44B(2) matters – as part of its work programme.
- 11.2. In addition to the Code amendments and supporting initiatives discussed in this report, the Authority has been actively progressing other workstreams which focus on long-term benefits to consumers. This includes engaging with market participants, industry associations and consumer advocacy groups on matters such as retail competition, updating the regulatory settings for distribution networks (discussed above), and progressing other EPR recommendations.
- 11.3. There have also been initiatives such as the Authority's review of wholesale market competition, which included the Inefficient Price Discrimination in very large electricity contracts Code amendment in April 2023.<sup>27</sup> This prohibits generators giving effect to contracts of net 150 MW or more, unless certain conditions are met. Implementation of the amendment was in the long-term interests of consumers as it will mitigate potentially very significant efficiency losses and wealth transfers that can arise from very large electricity contracts.
- 11.4. These initiatives have broad benefits across both wholesale and retail markets which support market competition and efficiency.

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<sup>27</sup> [Decision paper - Inefficient price discrimination in very large electricity contracts.pdf \(ea.govt.nz\)](#).

- 11.5. The Authority has demonstrated it is committed to ensuring the Code is fit for purpose in addressing the section 44B matters and furthering the Authority's statutory objectives.
- 11.6. In 2023/24, the Authority will undertake more work to deliver against its additional statutory objective, to protect the interests of domestic and small business consumers in relation to their supply of electricity.<sup>28</sup>

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<sup>28</sup> The Authority's planned activities in the consumer protection space are discussed in its 2023 – 2024 Annual Corporate Plan: [Annual Corporate Plan 2023-2024 \(ea.govt.nz\)](https://www.ea.govt.nz/annual-report/2023-2024/).