

9 August 2023

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Sent via email: [WholesaleConsultation@ea.govt.nz](mailto:WholesaleConsultation@ea.govt.nz)

Dear Andrew

## Improving Hedge Disclosure Obligations

1. This is a submission from the Major Electricity Users' Group (MEUG) on the Electricity Authority's (the Authority's) consultation paper "*Improving Hedge Disclosure Obligations: Collection and Publication of Risk Management Information*"<sup>1</sup> published for consultation on 11 July 2023.
2. MEUG members have been consulted on this submission. This submission is not confidential and can be published on the Authority's website. Members may lodge separate submissions.

### Importance of risk management contracts

3. Risk management contracts are an important tool for MEUG's members, enabling them to manage their exposure to volatility in the wholesale electricity market, and to ensure a secure, competitively priced supply of electricity to operate their businesses. Several of our members are already subject to the Hedge Disclosure Obligations (HDO) that are set out in Subpart 5 of Part 13 of the *Electricity Industry Participation Code 2010* (Code). Members note that the current requirements are not overly burdensome, albeit there is some inconsistency in approach.
4. We agree with the Authority that there have been considerable changes since these Code obligations were introduced in 2009. The New Zealand electricity market is now facing increased spot price volatility alongside the transition to a greater share of intermittent renewable electricity generation. MEUG members are increasingly looking at Power Purchase Agreements (PPAs) as an option to secure electricity at competitive prices for their businesses and supporting the growth in renewable energy.
5. Members have already made PPA investments in renewable energy opportunities. For example, in April 2023, Amazon entered into a long-term corporate PPA contract with

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<sup>1</sup> [https://www.ea.govt.nz/documents/3421/Consultation\\_paper\\_-\\_Improving\\_Hedge\\_Disclosure\\_Obligations\\_1\\_fDNXkoJ.pdf](https://www.ea.govt.nz/documents/3421/Consultation_paper_-_Improving_Hedge_Disclosure_Obligations_1_fDNXkoJ.pdf)

Mercury for approximately half of the real-time output of the southern section of Mercury's Turitea wind farm near Palmerston North.<sup>2</sup> Several members are also part of the Renewable Electricity Generation Project (REGP),<sup>3</sup> which collectively tenders for PPAs with renewable electricity generators across New Zealand. It is currently running its second tender round to source interest in further PPAs.

6. As outlined in the consultation paper, both the Market Development Advisory Group (MDAG) and the Boston Consulting Group (BCG) discuss how greater transparency of hedge information and a deeper contract market will support New Zealand's transition to renewables-based electricity system.<sup>4</sup> We support the findings of this work and look forward to reviewing MDAG's final recommendations in this area.

#### Increased obligations may be counter productive

7. MEUG supports the development of a competitive contracting market, with a broad range of contracting products to meet participant's electricity requirements. However, we consider that the Authority's proposals discussed in this paper may be counter productive to this objective and may actually hinder competition and investment in renewables.
8. In particular, we have concerns with the proposal to:
  - Require submission of the entire contract
  - Collect pre-negotiation bids and offers
  - Remove grid zone areas and require participants to disclose node.<sup>5</sup>
9. We are concerned that requiring participants to provide the outcomes of Requests for Proposals (RfPs) or the pre-negotiation offers and bids will actually make generators reluctant to enter into negotiations. Pre-negotiation information may not reflect the final settlements prices / quantities and could hamper productive negotiations between participants. Participants will be nervous about what information may be publicly disclosed, and summation or analysis of information at the pre-negotiation phase could fall foul of competition law. We are concerned that the proposal creates additional compliance burden, which may discourage new participants in the market, particularly at a time when renewables energy investment is being encouraged by policy makers and regulators to support New Zealand's energy transition.
10. Publication of pricing and quantity information will create commercial sensitivity concerns in some sectors within New Zealand. For example, with the data services / information technology sector, there can be a correlation between electricity costs and pricing. We also don't support disclosing the nodes for contracts in New Zealand, as in many cases, this would enable parties to determine the counter party.

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<sup>2</sup> <https://www.reseller.co.nz/article/706523/aws-inks-renewable-energy-deal-mercury-power-local-data-centers/>

<sup>3</sup> Background on REGP found here: <http://www.meug.co.nz/node/1044> and <https://onestepoffthegrid.com.au/nz-biggest-corporate-ppa-seeks-up-to-2000gwh-a-year-of-new-renewables/>

<sup>4</sup> Paragraphs 3.16 and 3.17 of the consultation paper.

<sup>5</sup> As outlined in paragraph 4.8 of the consultation paper.

11. We have questions and comments on the following aspects of these proposals, which we recommend be addressed in subsequent development and further public consultation of options and a proposal:

- Is the Authority intending to capture only future contracts / PPAs, or will it have retrospective effect capturing existing contracts / PPAs already in place?
- Will this proposed information be analysed alongside transfer pricing within gentailers? Otherwise there is a risk that the Authority and participants are not seeing the complete picture of the contracting market.
- Will the Authority be seeking information on longer term contracts (e.g., >10 years)? We believe this could help the Authority understand the contracting around greater renewables.

#### **Need for disclosure of Authority's legal opinion**

12. MEUG would like to understand if the Authority has sought legal advice on the proposed changes in the consultation paper, due to the potential competition issues we have discussed above. It is sector participants that would be held accountable for any competition issues arising from these new obligations, rather than the Authority. Therefore, it is important that the Code obligations are consistent with existing competition law.
13. We request that the Authority reassure the sector that they have looked at this issue, and if a legal opinion has been prepared, we recommend that this is published alongside this consultation document.

#### **Proposed way forward**

14. MEUG does not support the Authority amending the Code to require the disclosure of full contracts, or collection of pre-negotiation bids and offers. We would be particularly concerned about the publication of such information. We believe the possible disadvantages and consequences of collecting this information outweigh the possible benefits. We would be comfortable with broadening the type of contracts disclosed (i.e., including PPAs) but only if this remains restricted to the current limited amount of information collected and published. We would support the disclosure of both MW and MWh, to ensure the information disclosed is as accurate as possible.<sup>6</sup>

#### **Importance of best practice data governance**

15. If the Authority moves to collect an increased amount of more commercially sensitive information from sector participants, MEUG considers that data governance and protection will become an increasingly important issue. It is important that any material collected from sector participants and disclosed as per the Code obligations is kept both secure and ringfenced, and used solely for the purposes that it is collected for. We expect the Authority to have strict protocols in place for its secure online tool (currently the HDO system) and to ensure that they have an audited process for both the collection and publication of this information.

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<sup>6</sup> See paragraph 4.5 of the consultation paper.

16. Before work on these proposals progresses, we encourage the Authority to disclose its approach to data governance and protection. We also encourage the Authority to disclose what additional costs may be associated with this proposal. The costs are a key input into preparing a robust cost benefit analysis of a more detailed proposal.
17. We would welcome a meeting with the Authority to discuss this proposal further. To arrange this meeting or if you have any questions regarding our submission, please contact MEUG on 027 472 7798 or via email at [karen@meug.co.nz](mailto:karen@meug.co.nz).

Yours sincerely



**Karen Boyes**  
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