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Electricity Authority
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Hedge Disclosure Obligations: Preferred Options Paper

Meridian appreciates the opportunity to comment on the Electricity Authority's consultation paper on preferred options for amendments to the hedge disclosure obligations in Part 13 of the Code.

Meridian broadly supports the proposal

Meridian agrees that the current hedge disclosure requirements do not accommodate the growing diversity in risk management contracts and that publication of information about different contract types may assist participants to compare and assess the potential prices of different risk management instruments.

We also agree that:

- the Authority should have access to information to enable market monitoring, evaluate market efficiency, and inform regulatory decisions; and
- the hedge disclosure system is dated and there may be improvements that could be made to increase usability.

The Authority's preferred option will help to address these issues. Meridian is broadly supportive of the proposal. However, we note below that:

- compliance costs should be minimised where possible;

- further work may be required to clarify the Authority's objectives in respect of the disclosure and publication of information about demand response contracts;
- contract profile information to be disclosed and published could be more granular in respect of peak load contracts; and
- as a matter of principle, notices outside of the Code should not be used to expand obligations on participants in future.

Meridian supports the minimisation of compliance costs where possible

Enhanced hedge disclosure obligations may impose additional costs on participants, so Meridian strongly supports the efforts of the Authority to minimise additional compliance cost from this proposal, including:

- Retaining the 1MW de minimis threshold for disclosure of fixed price physical supply contracts, acknowledging the very high volumes of smaller contracts transacted by retailers.
- Keeping disclosure obligations to actual contracts rather than bids and offers that are not transacted. Meridian agrees that the Authority can instead rely on the voluntary sharing of bid and offer information under the Voluntary Code of Conduct developed by the OTC Working Group.
- Retaining the existing data collection methods, including bulk upload and online forms so participants can continue to utilise bulk upload for rapid submissions of large contract volumes, eliminating manual data entry, saving time and cost and improving accuracy.

Deviating from the proposed approach in respect of any of these features could significantly alter the costs of the proposal and would likely undermine Meridian's support.

It is not clear what information the Authority would like to collect and publish in respect of demand response contracts

Demand response contracts tend to be risk management contracts and there are various ways that parties can agree to structure a demand response contract. The Authority's proposal will influence these decisions and could lead to inefficiencies if it incentivizes certain structures over others to avoid disclosure obligations or publication of certain information.

For example, parties may choose to:

- Agree a demand response contract independent of any underlying fixed price physical supply contract. This could avoid disclosure entirely as the contract may not be a physical supply contract but a contract to *not* supply electricity under certain conditions. Meridian's understanding is that in this case disclosure of a novel contract would be required with a basic description but nothing else.
- Agree on demand response terms as part of a wider fixed price physical supply contract. Under such an arrangement, the contract price could either:
 - *Reflect a discount to reward the provision of demand response at certain times.* However, there may be limited scope to signal that as part of the disclosure and in the information published (other than perhaps ticking a box to note that there is an adjustment provision). The effect of this may be to misrepresent to others the published price as it may appear below market rates. It is not clear if this is the intended use of the adjustment clause tick box or if changes should be made to allow participants to indicate specifically that a contract price includes a discount to compensate the provider of the demand response.

Or:

- *Ignore the value of demand response in the base electricity pricing* but provide for additional call fees and/or premium to be paid by the party procuring the demand response. The Authority's proposal allows for disclosures to include information about premiums but does not seem to contemplate payment of call fees.

In Meridian's opinion, the Authority would better incentivize demand response arrangements and could prevent unintended consequences by requiring disclosure of information about demand response contracts but not publishing that information. Disclosures to the Authority would enable monitoring of market efficiency and inform any regulatory decisions. The approach to publication could either not publish anything on demand response contracts or seek to recognize the different demand response structures and linked contracts in such a way that enables the hedge disclosure system to calculate an overall 'contract price' for publication. This may be challenging to calculate in a way that does not mislead other participants regarding price expectations for demand response contracts. The existing formula in clause 13.220 may not be sufficient, for example in the case of call fees where the

frequency of calls and value of those fees is not likely to be known in advance, an estimate of the value of those fees may be required.

Meridian would not support publication of individual cost components in any demand response contract, for example the price paid as a call fee, or the premium paid for the ability to make a call. In isolation, any one of these components is unlikely to provide third parties with an accurate view of the overall value of a contract. Publication of demand response fees could also commercially prejudice future negotiations between the purchaser of the demand response and other parties.

The value of demand response will be highly variable based on factors such as location, volume, frequency and duration of call times, flexibility, speed of response (including ramp up and ramp down rates) as well as the portfolio needs of any potential purchaser at a point in time. The Authority should ask itself whether the complex and inherently bespoke nature of these arrangements lends itself to publication in a way that is meaningful and useful for other participants, or whether publication of information about demand response arrangements is more likely to mislead other participants.

Whatever the Authority ultimately decides, Meridian would like to see greater clarity around what the Authority is trying to achieve in respect of disclosure and publication of demand response contract information under the final Code proposal.

Greater granularity of peak load contracts

The Authority has proposed disclosure of contract profiles to enable better comparison of similar contracts. Under the contract profile field, the proposal is to include three options – base load, peak load, or off-peak load. Meridian queries whether there should be a fourth option to distinguish between peak and super-peak load contracts. Based on Meridian's experience of what contracts purchasers seek, there is a distinction commonly drawn between:

- peak load contracts, covering all daytime trading periods; and
- super-peak load contracts, covering only the few trading periods over the morning and evening peaks of a day.

Morning and evening peaks are likely to have higher wholesale spot prices on average compared to the rest of the day, and this will generally be reflected in the pricing of super-peak hedge contracts. In Meridian's opinion, it would be useful for published information to enable comparison between similar contracts rather than group both peak and super-peak

contracts together. Grouping the two will give participants unrealistically low price expectations for super-peak contracts and unrealistically high price expectations for peak contracts.

Notices outside of the Code should not be used to expand obligations on participants

Meridian does not support the use of notices to expand information disclosure obligations in future. The Authority proposes giving itself notice-making powers to expand disclosure obligations into new types of risk management contract and/or expand the data points that must be disclosed for any risk management contract. The Authority says it is doing this to “future proof” the Code as though it is a static document that is difficult to change. However, the Code is in fact constantly evolving and the process to amend the Code is not overly onerous and not dissimilar to the process the Authority proposes for the making of notices to expand disclosure obligations.

In Meridian’s opinion, if the Authority wants to place new or expanded obligations on participants, those obligations should rightly sit in the Code itself rather than a separate notice. This is so that:

- due process is followed in consulting and preparing a regulatory statement in respect of the change as is required by section 39 of the Electricity Industry Act; and
- participants know where to look to easily understand their Code obligations.

Parliament has set out its expectations that the Authority cannot impose new obligations on participants without following the processes set out under the Act. The Authority’s proposal bypasses the processes and protections in the Act by extending to itself powers beyond those envisioned by Parliament. In Meridian’s opinion, creation of a new rule making power external to the Code could rightly be challenged through the Regulations Review Committee. The problems in principle with this aspect of the Authority’s proposal cannot be overcome simply by paraphrasing the prerequisites of the Act in setting out the new notice making power in the Code.

Use of an instrument external to the Code to extend obligations into new areas is in some ways comparable to incorporation by reference, which is enabled in secondary legislation like the Code by section 64 of the Legislation Act. However, that Act makes clear that incorporation by reference should only be used for technical matters if it is impracticable to include the material in the secondary legislation or the material is so large that including it in the secondary legislation will prevent persons from understanding it with reasonable ease.

That is not the case here. Inclusion in the Code of a further type of risk management contract or new data points for disclosure would not be impracticable in the future nor would it prevent persons from understanding the Code. In fact, including such changes in the Code itself make the legal obligations on participants far clearer than use of other instruments like notices.

This is something of an aside and a technical matter of due process to be followed in any future changes to the proposed obligations. However, Meridian considers it to be important in principle. Continuing to make Code to impose obligations should not limit the outcomes the Authority can achieve or alter the substance of the proposed changes to hedge disclosure obligations.

Nāku noa, nā



Sam Fleming

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Appendix A: Responses to consultation questions

1.	Do you agree with the proposal to retain the existing categories of risk management contract (CfDs, fixed-price physical supply and options contracts), with the proposed changes to ensure these contract categories remain fit-for-purpose? If not, please explain why?	Yes.
2.	Do you agree with the proposed disclosure approach regarding the novel contracts? If not, please explain why?	Yes, however we note that free text fields requiring description of novel contracts will be quite onerous and require data creation rather than provision. Where possible the sorts of information the Authority seeks about novel contracts should be standardized and automated disclosure through the platform enabled. Given the novel nature of the contracts in question we acknowledge that any standard field may need to be accompanied by a free text field to describe any other aspects that are important to the contract structure.
3.	Do you support the proposal to exclude ASX-traded contracts from the hedge disclosure obligations, if it means losing access to detailed data at the individual contract level for these contracts? If not, please explain why?	Yes.
4.	If you do not support excluding ASX-traded contracts from the hedge disclosure obligations, please describe what additional value this data holds compared with the aggregated insights available on the Authority's EMI website. If not, please explain why?	Not applicable, see above.
5.	Do you agree with the proposed approach to the disclosure of contract details including price, quantity, contract characteristics, contract profile, fuel type, trading period and location? If not, please explain why and outline what you consider to be a more appropriate approach.	Yes. However, see also our comments in the body of this submission on the merits of a four contract profiles baseload, peak, super-peak, and off peak.
6.	Are there any other datapoints you think should be disclosed for each contract?	See the comments in the body of this submission about disclosure of information in respect of demand

		response contracts and the need for greater clarity of purpose and intent.
7.	Do you agree with the proposed voluntary approach to the disclosure of bids and offers? If not, please explain why and outline what you consider to be a more appropriate approach.	Yes.
8.	Do you agree with publishing the proposed data-points in Table 8 for individual contracts on the hedge disclosure system? If not, please explain why and outline what you consider to be a more appropriate approach.	Yes. However, we note the challenges associated with demand response contracts as described in the body of this submission.
9.	What other insights and analysis on the risk management information do you think would be helpful to publish on the hedge disclosure system or EMI?	It would be useful for any published analysis on contract prices to be able to distinguish between contract types.
10.	Do you agree with the proposed approach to improving the hedge disclosure system? If not, please explain why and outline what you consider to be a more appropriate approach.	Yes. It is critical that bulk upload capabilities remain to reduce the time and cost to submit large numbers of contracts.
11.	Do you support the option of using API to disclose risk management information, even if doing so requires investment and upgrade in your systems?	The current methods of bulk upload and automation are sufficient. Adopting APIs would come at a cost to Meridian (and presumably the Authority).
12.	Do you agree with the objectives of the proposed amendment? If not, please explain why.	Yes.
13.	Do you agree that the benefits of the proposed amendment outweigh its costs?	Yes. Noting the improvements suggested in this submission.
14.	Do you agree that the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's main statutory objective in section 15 of the Electricity Industry Act 2010.	Yes.

15.	Do you agree the Authority’s proposed amendment complies with section 32(1) of the Act?	Yes.
16.	Do you have any comments on the drafting of the proposed amendment?	<p>Other than changes that would be necessary to give effect to the suggestions in this submission, there is a minor typo in the proposed drafting of clause 13.230(1). The highlighted word “in” below should be retained.</p> <p>“Each participant that has submitted information <u>to the approved system</u> in accordance with <u>this subpart clause 13.225</u> in a particular year ending 31 March must...”</p>