Code amendment omnibus two

Decision paper

2 April 2023

ELECTRICITY AUTHORITY
TE MANA HIKO

Executive summary

The Electricity Authority Te Mana Hiko (Authority) is committed to ensuring regulation keeps up with the transformation underway across the electricity sector. We have decided to amend the Electricity Industry Participation Code 2010 (Code) to implement three proposals we consulted on in *Code amendment omnibus two: December 2023* (consultation paper).

Amending Part 6A to include all generation technology

Section 5 explains our decision to amend Part 6A of the Code to ensure the provisions apply to all generation technology. We have decided to proceed with the proposal to create a new definition for 'connected generation' and use this definition when assessing whether a distributor and connected generator fall below the threshold where the Part 6A rules are mandatory.

Permanent Code amendment to clarify use and availability of controllable load

Section 6 explains our decision to amend Schedule 8.3 technical Code B of the Code to provide greater information to the system operator and participants on the amount of available controllable load for a grid emergency. This is intended to inform the scale of participant response needed to maintain security of supply.

The Authority acknowledges that there is a greater role that the demand-side can and should play in the electricity market. Over the medium term (2 to 4 years), we expect to see much greater engagement between distributors and spot-exposed electricity purchasers (namely retailers) to make better use of controllable load in the electricity market – with relevant owners of the controllable load assets compensated for its use.

Updating and clarifying the scope and effect of Part 6A obligations

Section 7 explains our decision to amend Part 6A of the Code following Parliament's decision to move the rules from Part 3 of the Electricity Industry Act 2010 (Act) to the Code. We have decided to proceed with the proposal to clarify the scope and effect of Part 6A and amend the Code to:

(a) update and clarify who has obligations under Part 6A, in light of the permitted scope of the Code

(b) remove elements of the Part 6A rules which are no longer necessary or desirable given breaches of the rules no longer attract criminal liability, and

(c) align reporting requirements in Part 6A with standard Code reporting requirements.

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1. Purpose

1.1. The Electricity Authority Te Mana Hiko (Authority) has decided to amend several areas of the Electricity Industry Participation Code 2010 (Code). This paper details these decisions and provides the Authority's reasons.

Code amendment omnibus #2

1.2. On 15 December 2023, we published a consultation paper: *Code amendment omnibus two: December 2023* (consultation paper). We consulted on three proposals to amend the Code.

1.3. This paper sets out the Authority's decisions to amend the Code and gives reasons for each decision.

1.4. The consultation paper is available on our website at: https://www.ea.govt.nz/projects/all/code-amendment-omnibus/

Table 1: List of amendments proceeding

	Topic	Effective date	Page
1	Amend Part 6A to include all generation technology	1 June 2024	9
2	Make a permanent Code amendment to clarify use and availability of controllable load	1 May 2024	16
3	Update and clarify the scope and effect of Part 6A obligations	1 June 2024	26

2. Submissions on Code amendment omnibus two

2.1. We received submissions on the consultation paper from the 14 parties listed in Table 2 below. Submissions are available on our website at: https://www.ea.govt.nz/projects/all/code-amendment-omnibus/consultation/code-amendment-omnibus-december-2023/

2.2. Issues raised by submitters are discussed in the section for the relevant proposal. The Authority has endeavoured to accurately summarise views expressed in the submissions. However, the summaries necessarily compress the information provided in submissions and the individual submissions should be read to obtain a full account of submitters' views.

Table 2: List of submitters

Submitter	Industry Role	Proposal(s) addressed			
		Amending Part 6A to include all generation technology	Permanent Code amendment to clarify use and availability of discretionary demand control	Updating and clarifying scope of Part 6A obligations	Omnibus format
Aurora Energy	Distributor	N/A	Yes	N/A	N/A
Contact Energy	Generator/Retailer	N/A	Yes	N/A	N/A
Nova Energy	Generator/Retailer	N/A	Yes	N/A	N/A
Private individual	Consumer	N/A	Yes	N/A	N/A
ENA	Industry body	Yes	Yes	Yes	N/A
Genesis	Generator/Retailer	Yes	N/A	N/A	Yes
Meridian	Generator/Retailer	Yes	Yes	Yes	Yes
Northpower	Distributor	N/A	N/A	N/A	N/A
Orion	Distributor	Yes	Yes	Yes	Yes
Powerco	Distributor	Yes	Yes	Yes	N/A
Transpower	Grid Owner	Yes	Yes	Yes	Yes
Vector	Distributor	Yes	Yes	Yes	Yes
Wellington Electricity	Distributor	Yes	Yes	Yes	Yes
WEL Networks	Distributor	Yes	Yes	Yes	Yes

Note: Northpower did not comment on any specific proposal however had general comments on wider review of Part 6 of the Code. We address this in section **5** of this paper.

Feedback on the omnibus process

2.3. We received six submissions with comments about the omnibus process and format.

2.4. All submitters supported for the omnibus process. Comments included:

(a) The need to be clear at the start of the paper what the changes are about, so submitters can skip parts that are not of interest.

(b) Support for the shorter format for each topic, for smaller, less comprehensive, proposals, but the level of analysis should still be comprehensive. This format is not suitable for more comprehensive or material proposals.

(c) Longer consultation periods should be considered if the topics covered are diverse.

(d) Short workshops should be considered in future, to give participants the opportunity to ask questions about the proposals.

(e) Where the same parts of the Code are the subject of different proposals, consider including a consolidated amendment.

2.5. The Authority notes the broad support for the omnibus format for suitable Code amendment proposals and will take onboard the feedback for future omnibuses.

3. The amendments promote our statutory objectives and are consistent with regulatory requirements

3.1. 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. The Authority's additional objective is to protect the interests of domestic and small business consumers in relation to the supply of electricity to those consumers. The additional objective applies only to the Authority's activities in relation to the dealings of industry participants with domestic consumers and small business consumers.

The amendments either promote, or have no effect on, the Authority's statutory objectives

3.2. After considering all submissions on the Code amendment proposals, the Authority considers the final Code amendments will deliver long-term benefits to consumers consistent with the Authority's main objective. The Authority's additional objective does not apply because the proposals do not relate to the dealings of industry participants with domestic consumers and small business consumers.

The benefits of the proposals are greater than the costs

3.3. The Authority has assessed the benefits and costs of the amendments, and each of them delivers a net benefit.

3.4. Each proposal in the consultation paper describes the costs and benefits of the proposal in more detail.

The amendments are consistent with regulatory requirements

3.5. The Code amendments are consistent with the requirements of section 32(1) of the Act.

4. How the amended Code wording is displayed in this decision paper

4.1. Code amendments in this decision paper are displayed as:

(a) added text or formatting is underlined

(b) deleted text is ~~strikethrough~~

(c) additional added text or formatting compared to our consultation paper are red underlined

(d) additional deleted text compared to our consultation paper is ~~red~~ ~~strikethrough~~.

4.2. Some minor changes have been made to the Code since the publication of our consultation paper. These changes appear as existing Code text in this decision paper.

5. Amend Part 6A to include all generation technology

The Authority's proposal

5.1. The Authority proposed to change Part 6A of the Code to ensure it applies to all generation technology, including solar (PV) arrays and batteries connected to the distributor's network. As New Zealand moves to a low-emissions economy the Authority is committed to clarifying regulatory issues for distributed energy resources.

5.2. The Authority proposed to amend the Code to create a new definition for 'connected generation' for the purposes of Part 6A and revoke use of the term 'total capacity' in Part 6A. The new term 'connected generation' would be used where needed throughout Part 6A.

5.3. Amending Part 6A in this way captures all generation regardless of generation technology and links the requirement to comply with the corporate separation and arm's-length rules to the way the generation is used rather than the physical capability of the generation.

5.4. The proposal was for the new term 'connected generation' to refer to the sum of the capacity of the connected generator's generating units. The capacity of each generator is the sum of the maximum amount of each generating unit, in MW, that is any combination of electricity:

(a) offered into[1], or gifted to[2], the wholesale market as energy, or

(b) offered into, or gifted to the wholesale market as reserves, or

(c) contracted to the system operator as an ancillary service, or

(d) for generation that is not included in (a), (b), or (c) above, the nameplate capacity as defined in the Code.

We have decided to implement the proposal with no change to its policy intent, but with revised Code drafting

5.5. We have decided to amend the Code as proposed above with minor changes to the drafting as consulted on, with those changes made to clarify the definition of 'connected generation' in response to comments from submitters.

5.6. The Code amendment will come into force on 1 June 2024.

Submissions and the Authority's response

5.7. There were nine submissions on this proposal. Eight submitters supported the proposal and seven submitters made comments on various aspects of the amendment. One submitter supported the principle of the proposal but did not support the amendment as drafted.

5.8. Another submitter did not address the proposal but made some general comments on the need for a wider review of Part 6A.

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1 Under subpart 1 of Part 13

2 By giving notice under clause 15.13 that the generation is not receiving payment from the clearing manager

Submitter's view – need to include non-rotating generation 50MW threshold

5.9. WEL Networks made comments about the impact of the 50MW generating threshold creating barriers and disincentivising distributors investing in non-rotating generation. This submitter did not support the amendment as drafted.

Authority response

5.10. The Authority notes the purpose of Part 6A (Clause 6A.1(1)):

> "*… is to promote competition in the electricity industry by restricting relationships between a distributor and a generator … where those relationships may not otherwise be at arm's length*."

5.11. Part 6A then goes on to set out the rules for operating at arm's length, along with corporate separation and other requirements.

5.12. The Part 6A rules do not prevent distributors from investing in generation (rotating or non-rotating) above 50MW.[3] Rather, the rules require the generation to be carried out in a separate company and at arm's length from the distributor. There is a de-minimus of 50MW before these rules are mandatory, but the Code does not prevent the rules being applied below 50MW.

5.13. These rules were first introduced by the Electricity Industry Reform Act 1998[4] and have been amended several times before being moved into the Code by the Electricity Industry Amendment Act 2022.[5] As noted in paragraph 2.3 of the consultation paper, the intent of moving the rules into the Code was to provide for more flexible and responsive regulation in response to a rapidly evolving electricity system.[6]

5.14. The ability of a distributor to inhibit (or not promote) competition is no different if the generation is rotating or non-rotating. The generation technology does not affect the incentives on the distributor. When these provisions were written, grid scale solar or batteries were rare but not so now. Non-distributor owned businesses investing in grid scale solar and batteries have entered the market recently and more have publicly stated their intention to do so. Including these technologies under Part 6A ensures those business and distributor-owned generation can compete on a level playing field, rather than the Authority needing to respond if anti-competitive conduct emerges.

5.15. For these reasons the Authority does not consider any changes to its proposal are necessary or desirable.

Submitters' views – changing the 50MW threshold

5.16. Several submitters made comments about the existing 50MW threshold. Comments can be grouped into several themes:

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[3] The only prohibition on distributor investment in generation is in section 73 the Electricity Industry Act 2010, which provides that a person who involved in a distributor must not be involved in 1 or more generators that have a total capacity of more than 250MW that is generated by 1 or more generating plants that are directly connected to the national grid.

[4] https://www.legislation.govt.nz/act/public/1998/0088/latest/whole.html

[5] Clause 54 - https://legislation.govt.nz/act/public/2022/0046/latest/whole.html#LMS543486

[6] https://www.ea.govt.nz/documents/4321/Omnibus-2_consultation_paper_-_December_2023.pdf - page 6

(a) the threshold should be changed

(b) threshold should be scaled proportionate to the size of the distributor

(c) generation should be excluded from the threshold when:

(i) islanded from the grid, or

(ii) used as a non-network solution for network management (including voltage support and outage management), or

(iii) used to defer the need for network upgrades.

Authority response

5.17. The Authority notes the comments however any change to the threshold itself has not been considered as part of this proposal and is out of scope for this decision. Any reconsideration of the thresholds would be part of a wider Part 6A review and consultation.

5.18. The threshold currently includes all generation regardless of use and the proposal did not propose any exclusions for certain types of generation based on its use. Therefore amending the definition of connected generation to exclude certain types of generation based on use is out of scope for this decision and will need to be considered in a wider review of Part 6A.

Submitter's views – need for a full review of Part 6A

5.19. Several submitters commented on the need for a wider review of Part 6A, including the generating and retailing thresholds at which the Part 6A rules are engaged, the scope of the regulation, and the alignment of the regulation against the Authority's objectives.

Authority response

5.20. The Authority notes the comments. A full review of Part 6A is not currently planned, however staff are considering this feedback further and the merits of a full review.

Submitter's views – proposed new definition of connected generation

5.21. Several submitters commented on the proposed definition of connected generation. Submitters:

(a) noted issues with the use of the word 'energy' in the proposed definition (implying converting energy (MWh) to capacity (MW)) and the clarity of the definition;

(b) suggested there was no need to include offering reserves as all reserves are contracted as ancillary services;

(c) noted there are still issues calculating 'full load continuous rating' under the definition of 'nameplate capacity';

(d) suggested using an annual assessment of output as the trigger for applying the arm's-length and corporate separation rules;

(e) noted that it is not desirable to amend the statutory definition of 'total capacity'.

Authority response

5.22. Responding to (a) above, the Authority notes the wording ‘energy’ and ‘reserves’ used in the proposed definition does not align with the terminology used in Part 13 of the Code and agrees this is undesirable. Inconsistent wording can cause confusion, as the intention is for the phrase ‘offered into the wholesale market as energy’ to mean ‘offers’ as defined in Part 13 of the Code and similarly, offered as reserves to mean ‘reserve offers’ as defined in Part 13 of the Code. Offers and reserve offers are both in MW.

5.23. The Authority agrees the proposed definition wording could be ambiguous. It is intended to be a two-part calculation – firstly determine for each generating unit the highest amount in MW from the four options, then secondly sum this highest amount for each generating unit to calculate the total generation of the connected generator.

5.24. For these reasons the Authority has decided to amend the drafting to use the terms ‘offers’ and ‘reserve offers’ and make it clear ‘connected generation’ means the sum of the highest of the four options for each generating unit.

5.25. Responding to (b) above, the Authority acknowledges that currently ‘reserve offers’ can only be made if the ancillary service provider has contracted for reserves to the system operator as an ancillary service and that ancillary services are provided for in paragraph (c) of the proposed definition of ‘connected generation’. The Authority, however, wants to ensure the maximum capacity of each generating unit is measured, whether that is by way of offers (including reserve offers) or by all contracted ancillary services or one of the other sub-paragraphs in the definition. There is accordingly no double-counting of reserve offers.

5.26. Responding to (c) above, the Authority notes the definition of ‘nameplate capacity’ in the Code is different from the definition of ‘nameplate’ in the Act, in that it does not include reference to the IEC60034-1 standard. The inclusion of ‘nameplate capacity’ in the new Code definition of ‘connected generation’ is intended to be a catch-all for any generation that does not fit under the three previous categories.

5.27. Any generation that falls under this category is likely to be much smaller (as it is not offered into the market or contracted as an ancillary service). The definition of ‘nameplate capacity’ includes the phrase ‘… under conditions specified by its designer…’. Therefore ‘continuous’ does not need to be 24/7 if the unit’s designer has specified a maximum rating for, say, a 30 minute trading period.

5.28. The Authority wants to ensure the definition of ‘connected generation’ is able to cover potential future situations and technologies where maximum full load continuous rating may be calculated in different ways.

5.29. Responding to (d) above, the Authority notes the suggestion to use annual output has two main issues. Firstly, it requires either the annual output to be estimated or to use actual output at the end of the year. In either case, if the assessment is underestimated, the distributor will need to disconnect the generation until the rules are complied with. Secondly with the volatility of the spot market, the generation may only be used for short periods but earn high revenue, meaning the total output could be low but may disincentivise competition.

5.30. For these reasons the Authority does not consider any changes to its proposal are necessary or desirable.

5.31. Responding to (e) above, the Authority notes it is not intending to alter the definition of 'total capacity'. Rather, the proposal is to no longer refer to that term, which is defined in the Act, and to create a new definition just for the Code that is more suitable for the obligations in Part 6A. The definition of 'total capacity' is still suitable for use in the Act.

5.32. For these reasons the Authority does not consider any changes to its proposal are necessary or desirable.

The amendment will promote competition in the electricity industry

5.33. The Code amendment is consistent with the Authority's statutory objectives, and sections 32(1)(c) of the Act, because it would contribute to competition in the electricity industry.

5.34. The Code amendment will improve competition, by ensuring the provisions of Part 6A continue to meet the purpose of Part 6A by including changes in technology that were unforeseen at the time the provisions were originally written.

5.35. The Code amendment is expected to have no effect on efficiency or the reliable supply of electricity. Part 6A does not relate to dealings between participants with domestic consumers or small business consumers and so the Authority's additional objective does not apply. Nevertheless, the Authority notes that it considers this amendment would have no effect on the interests of domestic and small business consumers in relation to the supply of electricity to those consumers.

Final amendment

Note: These Code amendments are independent of, and do not include, the Code amendments in the decision: *Updating and clarifying the scope and effect of Part 6A obligations* (section 7 of this paper). The two sets of Code amendments will be integrated into the consolidated Code published on our website.

6A.1 Purpose and outline of this Part

(1) The purpose of this Part is to promote competition in the electricity industry by restricting relationships between a **distributor** and a generator or a **retailer**, where those relationships may not otherwise be at arm's length.

(2) In general terms, this Part imposes rules in respect of **distributors** as follows:

- (a) corporate separation and arm's-length rules, if a person is involved both in a **distributor** and in either or both of—
  - (i) a generator ~~that generates~~ with **connected generation** of more than 50 MW of generation connected to the **distributor's** network; or
  - (ii) a **retailer** that retails more than 75 GWh per year to customers connected to the distributor's network:
- (b) **distributor agreement** rules, if—
  - (i) a connected retailer retails more than 5 GWh per year to customers connected to the **distributor's** local network; or
  - (ii) a connected generator has ~~a capacity~~ **connected generation** of more than 10 MW of generation that is connected to any of the **distributor's** networks:

(c) rules preventing persons involved in **distributors** from paying **retailers** in respect of the transfer of retail customers:

(d) no-discrimination rules that apply when **distributors**, or electricity trusts or customer co-operatives involved in distributors, pay dividends or rebates.

(3) Subclause (2) is intended only as a guide to the general scheme and effect of this Part.

6A.2 Interpretation

In this Part, unless the context otherwise requires,—

…

connected generation means the sum of ~~any combination of~~ the maximum capacity ~~amount~~ of each **generating unit** of the generator, where maximum capacity of each **generating unit** is the greatest amount for each **generating unit**, in **MW**, that is:

(a) offered into ~~to,~~ the wholesale market as ~~energy~~ **offers** or **reserve offers** ~~under subpart 1 of Part 13~~; or

(b) gifted to the wholesale market ~~as energy or reserves~~ by giving notice under clause 15.13 that the generation is not receiving payment from the **clearing manager**; or

(c) contracted to the **system operator** as an **ancillary service**; or

(d) for generation that is not included in any of (a), (b), or (c) above, the **nameplate capacity** of the **generating unit**

…

~~**total capacity** has the meaning given in section 73(3) of the Act.~~

...

Corporate separation and arm's-length rules

6A.3 Corporate separation and arm's-length rules applying to distributors and connected generators and connected retailers

(1) The person or persons who carry on the business of distribution must carry on that business in a different company from the company that carries on the business of a connected generator or a connected retailer.

(2) Every person who is involved in a **distributor**, and every person who is involved in a connected generator or a connected retailer, must comply, and ensure that the person's businesses comply, with the arm's-length rules.

(3) In this clause, unless the context otherwise requires,—

connected generator, in relation to a **distributor**, means a generator—

(a) that has ~~a total capacity~~ **connected generation** of more than 50 MW of generation that is connected to any of the **distributor's** networks; and

(b) in respect of which the **distributor**, or any other person involved in the **distributor**, is involved

…

Other rules

6A.4 Distributor agreements

(1) Every director of a **distributor** in respect of which there is a connected retailer or a connected generator must ensure that—

(a) the **distribution** business has a comprehensive, written **distributor agreement** that provides for the supply of **line function services** and information to the connected retailer or connected generator (as the case may be); and

(b) the terms of that **distributor agreement** do not discriminate in favour of one business and do not contain arrangements that include elements that the business usually omits, or omit elements that the business usually includes, in **distributor agreements** with parties that are—

(i) connected or related only by the transaction or dealing in question; and

(ii) acting independently; and

(iii) each acting in its own best interests; and

(c) the business operates in accordance with that **distributor agreement**; and

(d) the business **publishes** that **distributor agreement** and provides it to the **Authority**.

(2) A **distributor agreement** required by subclause (1)(a) must be entered into, in the case of a business to which the corporate separation rule does not apply, as if the distribution business and the connected retailer or connected generator were separate legal persons.

(3) In this clause, unless the context otherwise requires,—

connected generator, in relation to a **distributor**, means a generator—

(a) that has ~~a total capacity~~ **connected generation** of more than 10 MW of generation that is connected to any of the **distributor's** networks; and

(b) in respect of which the **distributor**, or any other person involved in the **distributor**, is involved

…

…

Schedule 6A.1

3I Separate management rule

(1) This clause applies if business A is involved in—

(a) a generator that has ~~a total capacity~~ **connected generation** of more than 50 MW and that is connected to any of business A's networks; or

…

6. Permanent Code amendment to clarify use and availability of discretionary demand control

The Authority's proposal

We have previously consulted on 'Option E' in our winter 2023 work programme

6.1. In November 2022, the Authority first consulted on 'Option E' as part of its package of options for winter 2023.[7] Option E aimed to address the issue that the availability and use of discretionary demand control was invisible to the system operator and other participants, making resource commitment decisions difficult.

6.2. Additionally, when discretionary demand control was called upon, the wholesale price is suppressed, removing the price signal for more efficient resources to be employed. The increase in visibility of discretionary demand management was also a recommendation of the Hodgson report into the 9 August 2021 demand management.[8]

6.3. On 3 May 2023, the Authority decided to implement Option E and made an urgent Code amendment, the *Electricity Industry Participation Code Amendment (Discretionary Demand Control) 2023* (urgent Code amendment).[9]

6.4. The Authority considered it desirable in the public interest to implement the urgent Code amendment to address the potential risks highlighted by the system operator and promote the reliable supply of electricity to consumers for winter 2023. Transpower, in its June 2022 Security of Supply Assessment, had noted its concerns about capacity during times of limited generation and peak winter demand in winter 2023. Both the Authority and system operator share the view that these challenges are likely to remain for at least 2024 and 2025.[10]

6.5. The Code amendment replaces the similar urgent Code amendment, which expired in February 2024.

Consultation on permanent Code

6.6. In December 2023, the Authority released an omnibus consultation paper which included our proposals to amend the Code to permanently address the issue around the visibility of controllable load available to the system operator during grid emergencies.[11]

6.7. Our proposals had two objectives:

(a) provide improved information to the system operator and participants ahead of a grid emergency. This is intended to inform participant responses and the scale of response needed to maintain security of supply. This objective is

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7 Electricity Authority, Driving efficient solutions to promote consumer issues through Winter 2023, March 2023

8 Ministry of Business, Innovation and Employment, Investigation into electricity supply interruptions of 9 August 2021, 2022

9 Electricity Authority, Clarify the availability and use of discretionary demand control, March 2023

10 Electricity Authority, Potential Solutions for Peak Electricity Capacity Issues, January 2024.

11 Electricity Authority, Omnibus 2 Consultation Paper, December 2023

consistent with the intent behind the urgent Code amendment outlined in our winter 2023 work programme; and

(b) for any proposal to be implementable by winter 2024 with minimal impact to participants and the system operator.

6.8. The Authority consulted on the proposed Code amendment overall and requested specific feedback on the following three proposals:

(a) the Authority's proposal to permanently implement the intent of the urgent Code amendment. This was for distributors, upon request, to inform the system operator of the amount of available controllable load that may be disconnected during a grid emergency. This information is generally provided via submitting difference bids (**Proposal One**)

(b) Two changes to the definitions used compared to the urgent Code amendment (**Proposal Two**):

- To enable a broad range of assets to be included in difference bids by adopting the term 'quantity of resources' to reflect the range of assets that distributors may have available to them to reduce net load at a Grid Exit Point (GXP) (for example, batteries). This expands the definition to be broader than the term 'quantity of demand' used in the urgent Code amendment
- Move away from the term 'discretionary demand' to 'controllable load' to reflect industry practice.

(c) creating two price bands for difference bids to enable distributors to signal the level of load they will control in the lead up to a grid emergency is declared. This was intended to provide a way to easily assess how much controllable load may be controlled when requested by the system operator under a Warning Notice (WRN), ahead of a grid emergency being declared. (**Proposal Three**).

6.9. Further detail on these proposals can be found in our consultation document.[12]

We have decided to implement an amended form of the proposal

6.10. The Authority has decided to amend the Code to implement Proposals One and Two (the Code amendment). The Authority is confident that the Code amendment will result in improved information to the system operator and participants ahead of a grid emergency, as well as inform participant responses on the scale of response needed to maintain security of supply.

The Authority has decided to retain the one price tranche approach used for the urgent Code

6.11. The Authority has decided to not progress Proposal Three. After analysing submissions, we do not consider that this proposal will adequately meet our objectives. Over half of the submitters opposed the proposal. Submitters highlighted concerns about its complexity, practicality for implementation before winter 2024, and impact on market incentives for demand response.

[12] Electricity Authority, Omnibus 2 Consultation Paper, December 2023

6.12. These submissions indicated that the Authority's expectation of minimal impact on the system operator and participants from this proposal was underestimated. Additional complexities, potential impacts on market incentives, and operational changes were identified by submitters.

6.13. Assessing submitters feedback, the Authority considers that the two-price bands may create additional complexity for distributors, undermining the ability for distributors to reasonably estimate the amount of available load for a grid emergency. There are additional implementation matters that would mean it would not be easy to implement before winter 2024. Therefore, the Authority has does not consider that it meets our objectives.

6.14. The Code amendment will create an obligation on distributors to submit difference bids upon request by the system operator, usually when a Customer Advice Notice (CAN) is issued advising of a low residual situation. Difference bids will be used to estimate the available controllable load that could be disconnected if instructed under a grid emergency. Controllable load will be priced at $9,000/MWh to provide a strong scarcity-like price signal in the forecast schedules. This is the same as the urgent Code.

6.15. The effect of the submitted difference bids will be visible to participants in the forward schedules (up to 36 hours ahead), so participants can clearly see when they are likely to be called upon and the price impact of that action. Scarcity prices will be reflected in final prices if controllable load is instructed to be used by the system operator in a grid emergency. This ensures that the wholesale price will not collapse when controllable load is instructed to be controlled by the system operator.

The Code amendment will support the management of peak demand situations

6.16. The Authority considers that its original rationale for implementing Option E remains valid for the Code amendment.[13] Both the Authority and system operator expect challenges around peak demand and capacity to continue for 2024 and 2025.[14][15] The Code amendment will improve information for participants as there will be better alignment between the forward schedules and real time. This means participants will have better information at the time they are making a decision to commit their resource.

6.17. We are comfortable that the Code amendment is a pragmatic, near-term, mechanism to support the electricity market to manage peak capacity issues. The Authority will work with the system operator to monitor the performance of the Code amendment.

The Authority expects to see more involvement in the market from the demand-side in the coming years

6.18. The Authority acknowledges submitter concerns about the need for an enduring future solution for demand-side involvement in the management of peak capacity issues.

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13 Electricity Authority, Clarify the availability and use of discretionary demand control, March 2023

14 Electricity Authority, Potential Solutions for Peak Electricity Capacity Issues, January 2024

15 Transpower, Winter 2024 Outlook, January 2024

6.19. We see the Code amendment as an enabler for future market participation of controllable load, and the demand-side of the market more generally. This includes improved incentives for spot-exposed participants, such as retailers, to contract for controllable load to be offered as demand response at prices lower than scarcity prices.

6.20. Over the medium term (2 to 4 years), we expect to see much greater engagement between distributors and spot-exposed electricity purchasers (namely retailers) to make controllable load more widely available to the wholesale electricity market – with relevant owners of the controllable load assets compensated for its use. Other work, including the Potential Solutions for Peak Electricity Capacity Issues workstream and the Future Security and Resilience Programme will help inform other mechanisms for demand-side involvement for future development.

Submissions and the Authority's response

6.21. There were 12 submissions on the Authority's proposals. Almost all submissions supported the creation of an obligation in the Code to facilitate greater information on the level of controllable load available under a grid emergency and making this information available to participants (Proposal One). There was general support for the adoption of the term controllable load and quantity of resources (Proposal Two).

6.22. Just over half of the submissions opposed the introduction of two price bands for difference bids submitted by distributors (Proposal Three). Three other submissions also raised concerns about aspects of the proposal (particularly the $0.01/MWh price).

Submitters' views relating to improving the information on controllable load available during a grid emergency

6.23. There was general support for the creation of an obligation in the Code to facilitate greater information on the level of controllable load that could be disconnected if required under a grid emergency, and enabling all market participants to see estimates of the quantity available. This proposal was consistent with the intent of the now expired urgent Code amendment.

6.24. Comments from submitters with concerns about the Code amendment proposal included:

(a) Two submitters who noted concerns that the Code amendment was being implemented hastily ahead of Winter 2024

(b) A submitter who considered that the Authority should make another urgent Code amendment to implement Option E, or to include a sunset clause in the Code amendment

(c) A submitter who considered that more work needed to be done across the industry to understand how demand response should be managed in an emergency context.

Authority's Response

6.25. We have heard from submitters that Option E provided important visibility to the market, and that this was useful to participants in managing peak winter demand periods (which are anticipated to continue over winter 2024 and 2025).

6.26. The Authority's decision to create permanent Code will essentially implement the urgent Code amendment. On this basis, we are comfortable that implementation ahead of Winter 2024 is appropriate as we do not anticipate any new operational changes are needed over and above the previous requirements of the urgent Code implemented for winter 2023. The Authority therefore thinks that the Code amendment decision is timed appropriately.

6.27. The Authority does not consider making another urgent Code amendment as appropriate. This would expire in 9 months, and the Authority would likely have to consider making an urgent Code amendment again for Winter 2025. The Code amendment provides operational certainty to the system operator and other participants as to the mechanism that will be available to manage peak winter demand periods. The Authority will work with the system operator to monitor the performance of the Code amendment in practice over the next two winters.

6.28. The Authority encourages participants to continue to work with the Authority and the system operator on emergency preparedness and to engage in our upcoming industry exercise.

6.29. The Authority is confident that this proposal supports our two objectives to:

(a) improve information to the system operator and participants ahead of a grid emergency; as well as to inform participant responses on the scale of response needed to maintain security of supply

(b) be readily implementable for winter 2024.

Submitters' views relating to drafting changes

Shifting to the term Controllable load

6.30. The Authority proposed shifting from the term 'discretionary demand' to 'controllable load'. The change would align the terminology in the Code with existing industry practice and was suggested by the system operator.

6.31. All submitters who commented on this, supported moving away from the term 'discretionary demand' and all but one submitter supported using the term 'controllable load'.

6.32. One submitter suggested using the term manageable load over controllable load because "*it demonstrates that the resources are being operated and managed at the request/behest of the consumer who owns them*".

6.33. Another submitter supported the change, but questioned why the definition of controllable load should exclude "*resources a connected asset owner intends to use for its own network demand management purposes*".

6.34. One submitter was of that view that if controllable load becomes a defined term, it must incorporate all the existing uses of the term throughout the Code.

Authority's response

6.35. The Authority continues to prefer to adopt the term 'controllable load' over the term 'manageable load' suggested by a submitter. Controllable load will align the terminology in the Code with existing industry practice. It is widely understood that the assets being controlled are owned by range of different parties.

6.36. In response to the submitter who queried the exclusion referred to in paragraph 6.33, demand control a distributor would routinely undertake is excluded from difference bids to ensure that these resources are not 'double counted'. This demand control is already likely to be accounted for in the system operator's load forecast or may already be used ahead of a grid emergency.

6.37. Controllable load is not currently a defined term under the Code. However, it is used in several places – primarily relating to the requirements around metering devices and the relationships between traders and distributors. For clarity, we have amended the definition to ensure that the defined term only applies to Part 8.

Shifting to the term quantity of resources

6.38. The Authority also proposed adopting the term 'quantity of resources' over 'quantity of demand'. This is intended to reflect the characteristics of different distributors which may have a broader range of resources available than just demand control. This would enable a difference bid to reflect the total net reduction in load at a GXP that is available to be utilised (whether by controlling demand or increased network support generation).

6.39. Most submitters who commented on this question supported changing to the term 'quantity of resources', over 'quantity of demand', as it reflected a broader range of technologies available to the market, rather than demand alone.

6.40. Two submitters did not support adopting the term. One of these submitters commented that it "*strongly opposes the notion that obligations to dispatch controllable resources should apply only to distributors and proposes that any obligations should apply to all market participants".*

6.41. Both submitters who did not support adopting the term, commented that there is a need for "*more clarity about which resources should be considered 'available' and which resources are not.*" Concerns were raised about circumstances when third parties may be involved in controlling load (for example, controlling a consumer's hot water heating via a smart meter).

Authority's Response

6.42. The purpose of the Code amendment is to provide an additional information gathering method to the system operator to maintain system security, while providing enhanced information and incentives to market participants. The Authority recognises that this is not a free resource.

6.43. The intention behind the change to 'quantity of resources' is to enable distributors to consider a broader range of resources to include in the difference bids that they submit. This provides greater flexibility for managing low residual events.

6.44. A distributor is only obligated to provide a reasonable estimate of the available controllable load. The system operator needs to have confidence that the estimated controllable load in the difference bids can be called upon and reflects a reasonable estimate of the resource available at that time.

6.45. A distributor is not obligated to use any resource that it cannot (or is unwilling to) use when the system operator calls for difference bids to be submitted. If a distributor considers that the use of a diesel generator, or a Battery Energy Storage System, is too expensive or has complications operationally for the relevant trading

period(s), the distributor is not compelled to consider those resources as available controllable load. For this reason, we consider that this proposal is consistent with our objectives.

Submitters' views relating to two price bands for difference bids

6.46. There was consistent feedback from submitters that the two-price band proposal was complex and may change market incentives. Several submitters also raised concerns around how it could be implemented operationally. Four submitters thought further qualitative analysis was required to support the proposal. Two submitters supported the proposal.

6.47. A common theme from submitters was that while our proposal to permanently amend the Code was supported, the difference bid mechanism included in the urgent Code amendment was preferred to the two-price band approach because of the simplicity for distributors.

6.48. Some examples of operational concerns raised by submitters included:

(a) uncertainty about what happens when a grid emergency does not eventuate or what happens when a Grid Emergency Notice (GEN) is issued without a Warning Notice (WRN) first being issued

(b) there would be no difference between what controllable load the distributor would offer between and WRN and a GEN

(c) potential practical issues with ripple control when acting ahead of a grid emergency.

6.49. Two submitters sought compensation for difference bids more generally, while another submitted the need for compensation for distributors if a second price band and process was introduced.

Authority's response

The Authority will implement the approach used for the urgent Code

6.50. The Authority acknowledges the concerns raised by submitters and recognises the importance of having a well understood and effective system for communicating information about demand-response during peak winter demand periods.

6.51. The Authority has decided not to progress with the implementation of two price bands for difference bids . Submissions highlighted the additional complexity and potential impacts on estimating the controllable load available for a grid emergency.

6.52. In the Authority's view, this additional complexity could lead to unintended outcomes, undermining distributors abilities to reasonably estimate the available controllable load in a timely manner. Some submitters also raised concerns about the impact on market incentives. The approach may also be difficult to implement ahead of winter 2024 given some of the identified implementation issues (see paragraph 6.48). On this basis, the Authority has reconsidered its view and does not consider that the two-price bands proposal meets our objectives.

6.53. Instead, the Authority has decided to implement an obligation for distributors to submit difference bids in a single tranche, priced at $9,000/MWh. This is the mechanism that was used under the urgent Code and was generally supported by submitters.

Distributors are obligated to update difference bids if estimates of available controllable load change

6.54. A request to control load ahead of a grid emergency being declared is existing operational practice by the system operator. A drawback of not progressing with this proposal is that the amount of controllable load used before a grid emergency will not be as easily signalled to the market. However, this information will be able to be interpreted in the schedules, and the system operator will be aware of the estimated level of load control occurring.

6.55. Importantly, the Code amendment also creates an obligation for distributors to update their difference bids, as soon as reasonably practicable, if there are changes in the estimated available controllable load. In other words, if the controllable load is used before a grid emergency, then there is an obligation to update the bid. This was also an obligation in the urgent Code. We consider that this helps ensure that the available controllable load for a grid emergency remains as accurate as possible.

The Code amendment is intended to incentivise greater market participation of controllable load

6.56. We recognise that the use of controllable load is not a free resource. As we have noted previously, we see the Code amendment as an enabler for future market participation of controllable load, and the demand-side of the market more generally. This includes improved incentives for spot-exposed participants, such as retailers, to contract for controllable load to be offered as demand response at prices lower than scarcity prices.

6.57. The Authority disagrees that compensation should be provided for difference bids. Our view is that it is appropriate for difference bids to remain as a price sensitivity signal of load in the forecast market schedules. Difference bids are not used in the calculation of dispatch prices.

6.58. We consider the current approach is balanced as we do not expect controllable load to be called upon by the system operator very often.

The amendment will promote the efficient operation of the electricity industry

6.59. The Code amendment is consistent with the Authority's main statutory objective and sections 32(1)(b) and 32(1)(e) of the Act and the Code amendment principles as required by the Authority's Consultation Charter.

6.60. The Code amendment will directly support the reliable supply of electricity by improving information about the level of controllable load that could be controlled during peak periods where generation capacity is tight. This will allow the system operator to better manager tight supply situations through allowing all market participants to see estimates of the quantity available in the market schedules.

6.61. The Code amendment will be implementable by winter 2024 with minimal impact to participants and the system operator.

Final amendment

As there have been many changes resulting from the Authority's consideration of submissions, below is a clean version with no track changes as it will appear in the Code. To see the changes made to the original proposal as a result of submissions, see Appendix A.

Clause 1.1 (Interpretation)

controllable load, for the purposes of Part 8, means, the quantity of resources (in **MW**) that a **connected asset owner** estimates will be available for use by the **system operator** under a **grid emergency.** The available **controllable load** must exclude—

(i) resources a **connected asset owner** intends to use for its own network demand management purposes; and

(ii) any resources offered into the **instantaneous reserves** market; and

(iii) any resources bid or offered on behalf of a **dispatch-capable load station** or **dispatch notification purchaser** or **dispatch notification generator**

Proposed new clause 5A of Schedule 8.3, Technical Code B

5A Request to inform the system operator of available controllable load

(1) A **connected asset owner** must, as soon as reasonably practicable following a request by the **system operator**, inform the **system operator** of its available **controllable load** using a method or form agreed with the **system operator**.

(2) A **connected asset owner** must submit **difference bids** to provide the information required under subclause (1) to the **system operator**, unless the **connected asset owner** agrees an alternative form or method for providing this information with the **system operator**.

(3) For the purposes of subclauses (4) and (5), a **connected asset owner** who submits **difference bids** to the **system operator** under subclause (1) is deemed to be a **purchaser** who purchases **non-dispatch-capable load** at a **conforming GXP** for the purposes of clauses 13.7AA, 13.7AC, 13.7AD, 13.13(2), 13.15, 13.16 and 13.19A.

(4) If the **system operator** requests information regarding available **controllable load** under subclause (1), a **connected asset owner** who submits **difference bids** must, as soon as reasonably practicable following a request by the **system operator**—

(a) submit to the **system operator** for each **trading period** notified by the **system operator** a **difference bid** that represents a reasonable estimate of the available **controllable load** which the **connected asset owner** can use to decrease its **demand**—

(i) at each **conforming GXP** in the **connected asset owner's** network or at a **conforming GXP** nominated by the **system operator** and agreed with the **connected asset owner**; and

(ii) for the **trading period**; and

(iii) at a single price band of $9,000 per **MWh**; and

(b) following any **difference bids** submitted under paragraph (a), submit revised **difference bids** to reflect any changes in the **connected asset owner's** estimate of available **controllable load**, as soon as reasonably practicable following such changes.

(5) No later than 5 **business days** following a request or requirement from the **system operator** under this **technical code** to reduce or disconnect **controllable load**, a **connected asset owner** who submits **difference bids** to the **system operator** must provide data as reasonably requested by the **system operator** to enable it to confirm the **connected asset owner's** compliance with subclause (4).

(6) For the purposes of this clause 5A and the definition of **controllable load** in Part 1, a **connected asset owner** means a **distributor** in its capacity as the owner or operator of a **local network**, but excludes—

(a) an **embedded generator**; and

(b) an owner or operator of an **embedded network**.

7. Updating and clarifying the scope and effect of Part 6A obligations

The Authority's proposal

7.1. The Authority proposed to make several amendments to update and clarify Part 6A. The proposal was consequential to Parliament's decision in 2022 to shift the Part 6A rules from the Act to the Code. The proposal was to:

(a) Update and clarify who has obligations under the Part 6A rules, in a way that is appropriate in the context of the Code and consistent with the Act, by:

(i) imposing some of the obligations in Part 6A on participants directly, rather than on their directors or managers; and

(ii) redrafting some of the Part 6A rules to clarify that their application is limited to the permitted groups under section 32 of the Act.

(b) Remove the requirement for a mental element to establish a breach of some of the Part 6A rules. This requirement existed under the Act only to establish criminal liability and is no longer necessary now that breaches are dealt with under the Code's enforcement regime.

(c) Align the information disclosure obligations in Part 6A with the Authority's normal Code drafting approach.

7.2. The proposal did not revisit or propose changes in the policy underpinning the Part 6A rules.

We have decided to implement the proposal with no change to its policy intent, but with minor revisions to Code drafting

7.3. We have decided to amend the Code as proposed above with very minor changes to the Code drafting as consulted on, with those changes made for consistency with the Authority's normal Code drafting approach.

7.4. The Code amendment will come into force on 1 June 2024.

Submissions and the Authority's response

7.5. There were eight submissions on this proposal. Six submitters supported (or were comfortable with) the proposal. One submitter agreed with the intent of the proposal but not the proposed drafting, and one submitter provided comments on the proposal and suggested further changes to Part 6A. Three of these submitters provided comments on the proposal, which are discussed below. Another submitter did not address the proposal but commented on the need for a wider review of Part 6A. We address this view in section 5 of this decision paper.

Submitter's view – scope of the proposal

7.6. One submitter submitted that the proposal significantly widens the scope of the obligations in Part 6A, noting in particular the proposed changes to clause 6A.3(2) and 6A.5(2). It was concerned that the proposed changes create unnecessary confusion and ambiguity in the Code and submitted that the scope of Part 6A should

be limited to distributors, connected retailers and connected generators, and specified persons.

Authority response

7.7. The proposal does not widen the application of Part 6A of the Code. Clause 6A.3(2) of the Code as currently drafted purports to apply to 'every person who is involved in a distributor, and every person who is involved in a connected generator or a connected retailer'. A 'person' in this context could be an individual or a body corporate and is not expressly limited to industry participants and specified persons. This is too broad, as it could capture someone on whom the Code may not impose obligations under section 32 of the Act.

7.8. For this reason, the proposal was to limit the application of clause 6A.3 to the permitted groups under section 32 of the Act. While the proposed new wording of clause 6A.3(2) does refer to 'any other participant', it only captures any other participant *involved in* a connected generator, connected retailer or a distributor in respect of which there is a connected generator or connected retailer. That does not widen the application of this clause, because such a participant is already captured by clause 6A.3(2) (because they would be a person who is involved in a distributor, connected generator or connected retailer).

7.9. We note the submission that the application of Part 6A should be limited to distributors, connected generators, connected retailers and specified persons. This, however, would amount to a change in policy underpinning the Part 6A rules and is beyond the scope of this proposal.

Submitter's view – application of Part 6A to managers

7.10. One submitter noted that some obligations in Part 6A relate to managers and sought clarification that these obligations will not extend to all, but only the most senior employees in a business. Its view is that only those in positions of authority and associated decision-makers should be held accountable under Part 6A.

Authority response

7.11. The arm's-length rules in Schedule 6A.1 do impose obligations in relation to managers. These obligations were moved from Part 3 of the Act and have been in place since 2010. The Act defines 'manager' in a way that provides some clarity as to its scope:[16]

> ***manager*** *… means a person who, whether alone or jointly with any other person, manages, or directs or supervises the management of, the whole or a substantial part of the business and affairs of the person …*

7.12. The Code was amended on 1 March 2024 as part of the Authority's Code Review Programme to clarify that this definition continues to apply to the arm's-length rules in Schedule 6A.1. The Authority considers that this definition provides a sufficient indication as to which employees would be 'managers' for the purpose of the arm's-length rules.

[16] Electricity Industry Act 2010, s 5.

Submitter's view – distribution agreements

7.13. One submitter commented that it is unclear what form of 'distribution agreement' the Authority considers appropriate to comply with clause 6A.4. It noted that the Default Distributor Agreement (DDA) and the Regulated Terms for distributed generation in Schedule 6.2 of the Code (Regulated Terms) both seem to be appropriate. It also noted that a DDA may already be in place when a specified person becomes involved in a distributor and a connected retailer, and queried whether the Authority would consider such an existing agreement to be appropriate to comply with clause 6A.4.

7.14. The submitter suggested that DDAs and Regulated Terms be exempted from the publication and disclosure requirements in clause 6A.4, and that reporting obligations in clauses 6A.4 and 6A.5 apply only in respect of other forms of distribution agreements.

Authority response

7.15. Clause 6A.4 replaces section 77 of the Act which, prior to it being moved to the Code, had been in place since 2010. When the provision was shifted to the Code in 2022, it used the terminology of 'distribution agreement', consistent with the language which is now used in the Act and replacing the old terminology of 'use-of-system agreement'. We have since amended clause 6A.4 of the Code as part of the Code Review Programme to refer to 'distributor agreement' as it is defined in the Code.

7.16. A DDA would be capable of satisfying the requirements of clause 6A.4(1)(a), as it is a comprehensive, written agreement that provides for the supply of line function services and information to the connected retailer. The Regulated Terms, however, do not constitute an agreement between the parties, as they apply by operation of the Code in the absence of a connection contract. They would not, therefore, satisfy the requirements of clause 6A.4(1)(a). The obligation in clause 6A.4(1) is to ensure that the distributor has a distributor agreement in place (not to enter into such an agreement at the point in time that clause 6A.4 becomes applicable). Existing agreements are, therefore, capable of satisfying this requirement. The Authority intends to publish guidance on the operation of Part 6A once the amendments discussed in this paper come into force. This guidance will address these points to provide clarity to the industry.

7.17. To the extent that the submitter suggested changes to the substantive obligations in clauses 6A.4 and 6A.5, these would amount to a change in policy underpinning the Part 6A rules and is therefore beyond the scope of this proposal. As noted in section 5 of this paper, the Authority intends to open a full review of Part 6A in the near future.

Submitter's view – minor drafting comments

7.18. One submitter provided minor comments on the proposed drafting, suggesting that the subclauses in clause 6A.4 and 6A.8 be renumbered for simplicity, and that Schedule 6A.1, clause 1 (objective of the arm's-length rules) be further amended to refer to "connected generators *and other specified persons".*

Authority response

7.19. The Authority has not made any changes to the drafting. As to renumbering the subclauses of clauses 6A.4 and 6A.8, the Authority's approach (consistent with the usual approach to legislative drafting) is to preserve the existing numbering of subclauses where possible. Here, subclauses 6A.4(5), 6A.8(2) and 6A.8(3) address the same material both before and after the amendment. The Authority therefore considers it appropriate to retain its proposed numbering.

7.20. The Authority has not made the suggested change to Schedule 6A.1, clause 1. This clause describes the objective of the arm's-length rules, which is to ensure that the relevant businesses (that is, distributors, connected retailers and connected generators) operate at arm's-length. Specified persons are, by definition, involved in both classes of participant. The intention is not to require that all specified persons operate at arm's-length from the relevant distributor, and the relevant connected retailer or connected generator. Rather, the objective in clause 1 is achieved in part by imposing obligations on specified persons.

Submitter's view – further changes to Part 6A

7.21. One submitter noted that any further arm's-length requirements should be considered carefully given existing rules relating to related party transactions set by the Commerce Commission and NZX market participation rules. This submitter also noted that while it appreciated these proposed changes were consequential to Parliament's decision to shift the arm's-length rules to the Code, it was unsure the proposed changes would make it easier for participants to understand the obligations or easier for the Authority to administer Part 6A.

Authority response

7.22. The Authority notes the comments. As explained above, a full review of Part 6A is not currently planned, however staff are considering this feedback further and the merits of a full review.

The amendment will promote competition and the efficient operation of the electricity industry

7.23. The proposed Code amendment is consistent with the Authority's statutory objectives and with section 32(1)(a), (c) and (e) of the Act, because clarifying the scope and effect of Part 6A will:

(a) promote competition in the electricity industry (which is the purpose of Part 6A), by making the Part 6A provisions more workable

(b) promote the efficient operation of the electricity industry, as it will be easier for participants and others to understand what is required of them under Part 6A, and

(c) promote the performance by the Authority of its functions, by streamlining the Authority's role in administering Part 6A.

7.24. The proposed Code amendment is expected to have no effect on the reliable supply of electricity. Part 6A does not relate to dealings between participants with domestic consumers or small business consumers and so the Authority's additional objective does not apply. Nevertheless, the Authority notes that it considers this amendment

would have no effect on the interests of domestic and small business consumers in relation to the supply of electricity to those consumers.

Final amendment

Note: These Code amendments are independent of, and do not include, the Code amendments in the decision: *Amend Part 6A to include all generation technology* (section 5 of this paper). The two sets of Code amendments will be integrated into the consolidated Code published on our website.

6A.1 Purpose and outline of this Part

(1) The purpose of this Part is to promote competition in the electricity industry by restricting relationships between a **distributor** and a generator or a **retailer**, where those relationships may not otherwise be at arm's length.

(2) In general terms, this Part imposes rules in respect of **distributors** as follows:

(a) corporate separation and arm's-length rules, if a person is involved both in a **distributor** and in either or both of—

(i) a generator that generates more than 50 MW of generation connected to the **distributor's** network; or

(ii) a **retailer** that retails more than 75 GWh per year to customers connected to the distributor's network:

(b) **distributor agreement** rules, if—

(i) a connected retailer retails more than 5 GWh per year to customers connected to the **distributor's** local network; or

(ii) a connected generator has a capacity of more than 10 MW of generation that is connected to any of the **distributor's** networks:

(c) rules preventing payments to ~~persons involved in **distributors** from paying~~ **retailers** in respect of the transfer of retail customers:

(d) no-discrimination rules that apply when **distributors** or **specified persons**~~, or electricity trusts or customer co-operatives involved in distributors,~~ pay dividends or rebates.

(3) Subclause (2) is intended only as a guide to the general scheme and effect of this Part.

…

Corporate separation and arm's-length rules

6A.3 Corporate separation and arm's-length rules applying to distributors and connected generators and connected retailers

(1) Every **participant** and **specified person** ~~The person or persons~~ who carries ~~carry~~ on the business of distribution must carry on that business in a different company from the company that carries on the business of a connected generator or a connected retailer.

(2) The following persons ~~Every person who is involved in a **distributor**, and every person who is involved in a connected generator or a connected retailer,~~ must comply, and ensure that the person's businesses comply, with the arm's-length rules~~:~~.

(a) every **distributor** in respect of which there is a connected generator or a connected retailer, and any other **participant** involved in that **distributor**:

(b) a connected generator in respect of the **distributor**, and any other **participant** involved in the connected generator:

(c) a connected retailer in respect of the **distributor**, and any other **participant** involved in the connected retailer:

(d) a **specified person** who is involved in the **distributor**, and either a connected generator or a connected retailer in respect of the **distributor**.

(3) In this clause, unless the context otherwise requires,—

connected generator, in relation to a **distributor**, means a generator—

(a) that has a total capacity of more than 50 MW of generation that is connected to any of the **distributor's** networks; and

(b) in respect of which the **distributor**, or any other person involved in the **distributor**, is involved

connected retailer, in relation to a **distributor**, means a **retailer**—

(a) that is involved in retailing more than 75 GWh of **electricity** in a financial year to customers who are connected to any of the **distributor's** networks; and

(b) in respect of which the **distributor**, or any other person involved in the **distributor**, is involved.

Other rules

6A.4 Distributor agreements

(1) Every ~~director of a~~ **distributor** in respect of which there is a connected retailer or a connected generator must ~~ensure that—~~

(a) have ~~the **distribution** business has~~ a comprehensive, written **distributor agreement** that provides for the supply of **line function services** and information to the connected retailer or connected generator (as the case may be); and

(b) ensure that the terms of that **distributor agreement** do not discriminate in favour of one business and do not contain arrangements that include elements that the business usually omits, or omit elements that the business usually includes, in **distributor agreements** with parties that are—

(i) connected or related only by the transaction or dealing in question; and

(ii) acting independently; and

(iii) each acting in its own best interests; and

(c) ~~the business~~ operate~~s~~ in accordance with that **distributor agreement**; and

(d) **publish** ~~the business publishes~~ that **distributor agreement** and provide~~s~~ it to the **Authority**.

(2) A **distributor agreement** required by subclause (1)(a) must be entered into, in the case of a business to which the corporate separation rule does not apply, as if the distribution business and the connected retailer or connected generator were separate legal persons.

(3) In this clause, unless the context otherwise requires,—

connected generator, in relation to a **distributor**, means a generator—

(a) that has a total capacity of more than 10 MW of generation that is connected to any of the **distributor's** networks; and

(b) in respect of which the **distributor**, or any other person involved in the **distributor**, is involved

connected retailer, in relation to a **distributor**, means a **retailer**—

(a) that is involved in retailing more than 5 GWh of **electricity** on the **distributor's** local network in a financial year to customers who are connected to that network; and

(b) in respect of which the **distributor**, or any other person involved in the **distributor**, is involved

local network means a network operated by a **distributor** in a contiguous geographic area or areas.

(4) ~~The directors of the~~ A **distributor** required to have a **distributor agreement** under this clause must submit to the **Authority** a statement indicating ~~ensure that there is also~~ **published**~~, and provided to the~~ **Authority**~~, a certificate signed by those directors stating~~ whether, in the preceding calendar year,—

(a) the terms in the **distributor agreement** are a true and fair view of the terms on which **line function services** and information were supplied in respect of the retailing or generating to which the agreement relates; and

(b) this clause was otherwise fully complied with.

(4A) The statement provided under subclause (4) must be:

(a) in the **prescribed form**;

(b) signed and dated by a director of the **distributor** and either—

(i) another director of the **distributor**; or

(ii) the **distributor's** chief financial officer, or a person holding the equivalent position; or

(iii) the **distributor's** chief executive officer, or a person holding the equivalent position; and

(c) submitted by 31 March in respect of the preceding calendar year.

(4B) The statement provided under subclause (4) must be **published** by the **distributor**.

(5) A **distributor** must not **publish** or provide the **Authority** with any information under this clause that, at the time the information was **published** or provided, was false or misleading in a material particular. ~~A director breaches this Code if the director—~~

~~(a) refuses or knowingly fails to comply with this clause; or~~

~~(b) allows a distributor agreement or a certificate to be published or provided to the Authority knowing that it is false or misleading in a material particular.~~

6A.5 Payments ~~Person involved in distributor must not pay~~ for transfer of retail customers to connected retailers prohibited

(1) A **distributor**, and any other person listed in subclause (2), must not pay, or offer to pay, any consideration to a **retailer** in respect of the transfer to a connected retailer of any retail customers who are connected to the **distributor's** networks.

(2) The following persons must comply with subclause (1) ~~are —~~:

(a) the **distributor** and ~~or~~ any other **participant** ~~person~~ involved in the **distributor**~~;~~ ~~and~~:

(b) a connected generator in respect of the **distributor** or any other **participant** ~~person~~ involved in the connected generator~~; and~~:

(c) a connected retailer in respect of the **distributor** or any other **participant** ~~person~~ involved in the connected retailer:

(d) a **specified person** who is involved in the **distributor** and either a connected generator or connected retailer in respect of the **distributor**.

(3) To avoid doubt, subclause (1) includes a prohibition on—

(a) any agreement to acquire the assets or voting securities of another **retailer** (regardless of whether any, or only nominal, consideration is attributed to

customers) as a result of which there is a transfer of responsibility for retailing **electricity** to customers; and

(b) any consideration that is directly or indirectly or in whole or in part in respect of the transfer of any of another **retailer's** customers or customer accounts.

(4) *[Revoked]* ~~A person who knowingly fails to comply with this clause breaches this Code.~~

(5) In this clause,—

agreement has the same meaning as in clause 10 of Schedule 2 of the Act

connected generator has the same meaning as in clause 6A.4

connected retailer has the same meaning as in clause 6A.4.

6A.6 No discrimination when paying rebates or dividends

(1) This clause applies if a **distributor** has a connected retailer.

(2) Every person listed in subclause (3) must ensure that any rebates or dividends or other similar payments paid do not discriminate between—

(a) customers of the connected retailer; and

(b) customers of other **retailers** where those customers are connected to the **distributor's** networks.

(3) The persons are—

(a) the ~~directors of the~~ **distributor**, and any director of the **distributor** who is involved in the connected retailer; and

(b) ~~the trustees of~~ any customer trust or community trust that is involved in the **distributor** and the connected retailer, and the trustees of that consumer trust or community trust; and

(c) ~~the directors of~~ any customer co-operative that is involved in the **distributor** and the connected retailer, and the directors of that customer co-operative.

(4) In this clause, **connected retailer** has the same meaning as in clause 6A.4.

(5) *[Revoked]* ~~A director or trustee who knowingly fails to comply with this clause breaches this Code.~~

Disclosure and reporting to Authority

6A.7 Disclosure of information to the Authority

(1) Each ~~director of a~~ **distributor** referred to in clause 6A.4(1) (**distributor agreements**) must ~~ensure that the **distributor**~~ discloses~~s~~ the quantity of **electricity** sold each financial year by connected retailers to customers who are connected to its local network (within the meanings in that clause).

(2) The disclosure must be made in a statement to the **Authority** within 2 months after the end of the financial year.

(3) The statement provided under subclause (2) must be:

(a) in the ~~form prescribed by the **Authority** from time to time.~~ **prescribed form**; and

(b) signed and dated by a director of the **distributor** and either—

(i) another director of the **distributor**; or

(ii) the **distributor's** chief financial officer, or a person holding the equivalent position; or

(iii) the **distributor's** chief executive officer, or a person holding an equivalent position.

(4) The statement provided under subclause (2) must be **published** by the **Authority** and the **distributor**.

(5) A **distributor** must not **publish** or provide the **Authority** with any information under this clause that, at the time the information was disclosed, was ~~director breaches this Code if the director—~~

~~(a) refuses or knowingly fails to comply with this clause; or~~

~~(b) provides the statement to the **Authority** knowing that it is~~ false or misleading in a material particular.

6A.8 Reporting ~~Directors must report~~ compliance with the arm's-length rules

(1) Each person referred to in clause 6A.3(2) ~~director of a business to which the arm's-length rules apply~~ must provide to the **Authority**, no later than 31 March in each year, a statement confirming whether the person ~~director~~ has complied with all of the arm's-length rules during the preceding calendar year.

(1A) The statement provided under subclause (1) must be:

(a) in the **prescribed form**; and

(b) unless subclause (1B) or (1C) applies, signed and dated by a director of the **participant** and either—

(i) another director of the **participant**; or

(ii) the **participant's** chief financial officer, or a person holding the equivalent position; or

(iii) the **participant's** chief executive officer, or a person holding an equivalent position.

(1B) If the person providing the statement under subclause (1) is a natural person, the statement must be signed and dated by that person.

(1C) If the person providing the statement under subclause (1) is a **specified person** but is not a natural person, the statement must be signed and dated by an authorised representative of that **specified person**.

(2) Statements provided under subclause (1) must be **published** by the **Authority** and, if the person who provided the statement is a **participant**, the **participant**. ~~The directors and the **Authority** must ensure that the statement is **published**.~~

(3) A person must not **publish** or provide the **Authority** with any information under this clause that, at the time the information was **published** or provided, was ~~director breaches this Code if the director—~~

~~(a) refuses or knowingly fails to comply with this clause; or~~

~~(b) provides the statement to the Authority knowing that it is~~ false or misleading in a material particular.

…

Schedule 6A.1
Arm's-length rules

1 Objective

(1) The objective of this schedule is to ensure that the **distributors**, connected retailers and connected generators ~~businesses~~ to which clause 6A.3 applies operate at arm's-length.

(2) Without limiting the ordinary meaning of the expression, **arm's-length** includes having relationships, dealings, and transactions that, if the parties were in the position described in subclause (3),—

(a) do not include elements that parties in that position would usually omit; and
(b) do not omit elements that parties in that position would usually include.

(3) The position of the parties referred to in subclause (2) is one in which the parties are—
(a) connected or related only by the transaction or dealing in question; and
(b) acting independently; and
(c) each acting in their own best interests.

2 Interpretation

(1) In this schedule,—

business A means a business that is required to be carried out in one company under clause 6A.3, and **business B** then refers to a business that is required to be carried out in another company under that clause

common parent, in relation to business A and business B, means a **participant** or **specified person** ~~person~~ that is involved in both business A and business B

electricity trust means a community trust or a customer trust or a customer co-operative

manager has the meaning given to it by section 5 of the **Act**

parent, in relation to a business, means every person that is involved in the business.

(2) In this schedule, a person is **interested** in a transaction if the person, or an associate of that person,—
(a) is a party to, or will derive a material financial benefit from, the transaction; or
(b) has a material financial interest in a party to the transaction; or
(c) is a director or manager of a party to, or a person who will or may derive a material financial benefit from, the transaction; or
(d) is otherwise directly or indirectly materially interested in the transaction.

(3) Where this schedule applies to business A, it applies equally to business B, and vice versa.

(4) References to trust A and trust B have corresponding meanings and application.

3 Arm's-length rules

The arm's-length rules are set out in clauses 3A to 3M.

3A Duty to ensure arm's-length objective is met

Business A, business B and every parent of either business A or B (where that parent is a **participant** or **specified person** involved in both business A and business B), ~~and business B and every parent of business B,~~ must take all reasonable steps to ensure that the arm's-length objective in clause 1 is met.

3B Arm's-length test

Business A, and every parent of business A (where that parent is a **participant** or **specified person** involved in both business A and business B), must not enter into a transaction in which business B, or any parent of business B, is interested if the terms of the transaction are terms that unrelated parties in the position of the parties to the transaction, each acting independently and in its own best interests, would not have agreed to.

3C Duty not to prefer interests of business B

Business A, and every ~~A~~ director or manager of business A who is also involved in business B, must not, when exercising powers or performing duties in connection with

business A, act in a manner that they ~~director or manager knows~~ or ought reasonably to know would prefer the interests of business B over the interests of business A.

3D Duty not to discriminate in favour of business B

Business A must not, in providing services or benefits, discriminate in favour of business B or the customers, suppliers, or members of business B.

3E Duty to focus on interests of right ultimate owners

Business A, and every ~~A~~ director or manager of business A who is also involved in business B, must, when exercising powers or performing duties in connection with business A, act in the interests of the ultimate members of business A in their capacity as such, and must neither subordinate the interests of those members to the interests of the members of business B nor, to the extent that the members or ultimate beneficial members of each business overlap, take account of that fact or have regard to their dual capacity as members of business B and business A.

3F Duty on ~~of directors and managers of~~ parents of business A

Any parent of business A (where that parent is a **participant** or a **specified person** and involved in both business A and business B), and any ~~A~~ director or manager of a parent of business A (where that director or manager is a **specified person** who is also involved in business B), must not, when exercising powers or performing duties in connection with business A, act in a manner that they ~~director or manager knows~~ or ought reasonably to know would favour the interests of business B, or of the customers, suppliers, or members of business B in that capacity, over the interests of business A or the customers, suppliers, or members of business A.

3G At least 2 independent directors

At least 2 directors of business A must—

(a) be neither a director nor a manager of business B; and

(b) not be an associate of business B, other than by virtue of being a director of business A.

3H No cross-directors who are executive directors

A director of business A may be a director of business B, but must not—

(a) manage business B on a day-to-day basis; or

(b) be an associate of business B, other than by virtue of being a director of business A or business B; or

(c) be involved in business B (other than by having material influence over business B by virtue of being a director of business B).

3I Separate management rule

(1) This clause applies if business A is involved in—

(a) a generator that has a total capacity of more than 50 MW and that is connected to any of business A's networks; or

(b) a **retailer** that retails more than 75 GWh of **electricity** in a financial year to customers who are connected to any of business A's networks.

(2) A manager of business A must not—

(a) be a manager of business B; or

(b) be an associate of business B, other than by virtue of being a manager of business A; or
(c) be involved in the business of business B.

3J Directors and managers must not be placed under certain obligations

(1) Subject to subclause (2), no ~~person~~ **participant** or **specified person** may place a director or manager of business A under an obligation, whether enforceable or not, to act in accordance with the directions, instructions, or wishes of business B, or any director or manager or associate of business B, or any parent of business B, and no director or manager may submit to any such obligation.

(2) A common parent, or a cross-director or a cross-manager, of both business A and business B may place a director or manager under an obligation referred to in subclause (1) if doing so does not contravene another of the arm's-length rules.

3K Restriction on use of information

(1) Business A must not disclose or permit the disclosure to business B, or use or permit the use for the purposes of business B, of restricted information of business A.

(2) An electricity trust that is a parent of business A (**trust A**), business A, and every parent of trust A (where trust A, or the parent of trust A, is a **participant** or a **specified person** involved in both business A and business B) must not disclose or permit the disclosure to business B, an electricity trust that is a parent of business B (**trust B**), or any parent of trust B, or use or permit the use for the purposes of business B or trust B, of restricted information of business A or trust A.

(3) In this clause, **restricted information** is information received or generated, and held, by business A or trust A that is connected with its business, being information that—
(a) is not available to the competitors or potential competitors of business B or trust B; and
(b) if disclosed to business B or trust B, would put, or be likely to put, business B or trust B in a position of material advantage in relation to any competitor or potential competitor.

(4) This clause does not prevent cross-directors under clause 3H from having access to normal board information.

(5) A manager of business A who is not prohibited from being a manager of business B under clause 3I may use restricted information of both business A and business B, but only to the extent that the use does not contravene another of the arm's-length rules.

3L Records

(1) Every business to which this schedule applies must keep at its registered office a register of transactions entered into between business A, or any parent of business A, and business B, or any parent of business B.

(2) Business A must, within 10 working days of entering into such transaction, enter in its register details sufficient to identify the nature and import of the transaction.

3M Practical considerations

(1) Business A and every parent of business A (where that parent is a **participant** or **specified person**) must ensure that its practical arrangements, such as use of accommodation, equipment, and services, do not contravene this schedule.

(2) Business A and every parent of business A (where that parent is a **participant** or **specified person**) must ensure that its selection and appointment of advisors does not prejudice compliance with clauses 3G to 3K.

4 Rules do not limit objective

The arm's-length rules in clauses 3A to 3M do not limit the generality of the arm's-length objective in clause 1.

Appendix A Code amendment to clarify use and availability of discretionary demand control (tracked)

1.1 Interpretation

(1) In this Code, unless the context otherwise requires,—

~~discretionary demand~~ controllable load means the quantity of resources (in **MW**)that a **connected asset owner** estimates will be available for use by the **system operator** under a **grid emergency**. ~~in respect of a connected asset owner, both available instructed controllable load and available requested controllable load.~~ ~~the quantity of **demand** that a **connected asset owner** estimates will be available for use by the **system operator** under a **grid emergency**. For the avoidance of doubt,~~ The available **controllable load** must exclude—

(i) ~~**discretionary demand**~~ resources a **connected asset owner** intends to use for its own network demand management purposes; and

(ii) any ~~**discretionary demand**~~ resources offered into the **instantaneous reserves** market; and

(iii) any ~~**discretionary demand**~~ resources bid or offered on behalf of a **dispatch-capable load station** or **dispatch notification purchaser** or **dispatch notification generator**."

~~…~~

~~**instructed controllable load** means the quantity of resources (in **MW)** that a **connected asset owner** estimates will be available for use by the **system operator** when required under a **grid emergency**.~~

~~…~~

~~**requested controllable load** means the quantity of resources (in **MW**) that a **connected asset owner** estimates will be available for use by the **system operator** when requested under a **formal notice**.~~

Schedule 8.3
Technical codes

Technical Code B – Emergencies

…

5A Request to inform the system operator of available ~~discretionary demand~~ controllable load

(1) A **connected asset owner** must, as soon as reasonably practicable following a request by the **system operator**, inform the **system operator** of their available ~~**discretionary demand**~~ **controllable load** using a method or form agreed with the **system operator**.

(2) The **connected asset owner** must submit **difference bids to** provide the information required under subclause (1) to the **system operator** unless the **connected asset owner** agrees an alternative form or method for providing this information with the **system operator**.

(3~~2~~) For the purposes of subclauses (4) and (5), a **connected asset owner** who submits **difference bids** to the **system operator** under subclause (1) is deemed to be a

purchaser who purchases **non-dispatch-capable load** at a **conforming GXP** for the purposes of clauses 13.7AA, 13.7AC, 13.7AD, 13.13(2), 13.15, 13.16 and 13.19A.

(~~4~~3) If the **system operator** requests information regarding available **~~discretionary demand~~ controllable load** under subclause (1), a **connected asset owner** who submits **difference bids** must, as soon as reasonably practicable following a request by the **system operator**—

(a) submit to the **system operator** for each **trading period** notified by the **system operator** a **difference bid** that represents a reasonable estimate of the available **controllable load ~~discretionary demand~~** ~~**instructed controllable load** and available **requested controllable load**~~ which the **connected asset owner** can use to decrease its **demand**—

(i) at each **conforming GXP** in the **connected asset owner's** network or at a **conforming GXP** nominated by the **system operator** and agreed with the **connected asset owner**; and

(ii) for the **trading period**; and

(iii) at a single price band of $9000 per **MWh**

~~at the following price bands:~~

~~(A) for available **instructed controllable load**, at a price band of $9,000 per **MWh**; and~~

~~(B) for available **requested controllable load**, at a price band of $0.01 per **MWh**; and~~

(b) following any **difference bids** submitted under paragraph (a), submit revised **difference bids** to reflect any changes in the **connected asset owner's** estimate of available **~~discretionary demand~~ ~~instructed controllable load~~** ~~or **requested controllable load**~~ **controllable load**, as soon as reasonably practicable following such changes.

(~~5~~6) No later than 5 **business days** following a request or requirement from the **system operator** under this **technical code** to reduce or disconnect **~~discretionary demand~~ controllable load**, a **connected asset owner** who submits **difference bids** to the **system operator** must provide data as reasonably requested by the **system operator** to enable it to confirm the **connected asset owner's** compliance with subclause (4).

(~~6~~5) For the purposes of this clause 5A and the definition of **~~discretionary demand~~ controllable load**~~, **instructed controllable load** and **requested controllable load**~~ in Part 1, a **connected asset owner** means a **distributor** in its capacity as the owner or operator of a **local network**, but excludes—

(a) an **embedded generator**; and

(b) an owner or operator of an **embedded network**.