2 December 2025

Electricity Authority

By email to: levelplayingfield@ea.govt.nz

Tēnā koe

Response to "Level Playing Field Measures"

Contact Energy welcomes the opportunity to comment on the Electricity Authority's Level Playing Field Measures consultation paper.

We support an open and competitive market. We share the Authority's concern that a perception has emerged that the electricity market is subject to economic withholding and/or a wholesale/retail margin squeeze. These accusations are meritless, but have been repeated with such confidence that it they may be dissuading otherwise economic entry.

We therefore, support addressing these perceptions in an effective, but proportional way.

However, we consider that the proposed regime is poorly targeted at these perceived risks, and will create material unintended consequences. Our key concerns are:

- the concept of uncommitted capacity is unworkable, and no matter how it is implemented it would be grossly misleading;
- the requirement for equal access to commercial information will either result in something akin to virtual disaggregation, or excessive disclosure;
- requiring price differences between all trades to be objectively justified will curtail price discovery;
- the regime requires an excessive amount of disclosure that has material risk of leading the industry towards tacit collusion; and
- the current drafting of the Retail Price consistency Assessment looks no less difficult to implement than the previously proposed iteration of this regime.

We consider that the perceived risks identified by the Authority could be better addressed by a regime that causes less harm to the efficient operation of the market. We propose four actions to address these perceptions:

1. Require the Boards of major generator-retailers to certify that they are not artificially increasing their risk position to reduce the volume of risk management contracts in the market.
2. Ongoing monitoring by the Authority of the volume of risk management contracts offered to detect if any change is happening over time, and why this is occurring.
3. Monitoring by the Authority of the retail/wholesale margin utilising the full set of information already available to the Authority
4. Implementing a simplified version of the RPCA to assist with the monitoring of retail/wholesale margins.

We have provided two attachments to this covering note. The first attachment provides a detailed discussion of the proposed regime. It considers the perceived risks the Authority wishes to address, the concerns we have with the proposed regime, and an alternative approach to better address the perceived risks. The second attachment responds to the consultation questions.

Ngā Mihi

[redacted]

Brett Woods

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Contact Energy.

Attachment 1: Detailed discussion of the proposed level playing field regime

Public Version

Confidential information has been redacted from this version of our submission.

The Authority wishes to address two perceived risks

The Authority has identified two perceived risks is wishes to address. It is concerned that one or more major generator-retailer may:

- limit access to risk management contracts, or offer them above workably competitive prices
- cross subsidise their own retail arm, or keep retail prices below an 'as efficient' rivals costs.

We support addressing these two perceived risks. If they are harming perceptions to such a degree that new entry or expansion is being deterred then it is important that they are clarified to ensure that the market remains workably competitive.

However, based on the evidence and market dynamics, we consider these risks unlikely to materialise. Below we consider each of these risks, the evidence used to support them, and our perspective on the prospects of them playing out. We then provide feedback on the concerns raised about access to PPAs. We round out this section with a discussion of the risk of market power that is raised throughout the consultation paper, and the impact that this has on the likelihood of these risks eventuating.

Withholding access to risk management products

The Authority has been unable to definitively rule out that the limited volume of certain types of risk management contracts is not due to the exercise of unproven market power. The consultation paper notes:

> *We observe thin and illiquid hedge markets with poor access to peak and super-peak hedges. While the lack of hedge contracts may not be the result of anticompetitive intent, it may be having anticompetitive effects.*[1]
>
> *While the evidence of anti-competitive conduct remains inconclusive, the risk of such conduct may weaken some market participants' confidence in the competitiveness of the market. Both the price and availability of key wholesale inputs, as well as confidence in those prices and availability, have the potential to damage competition in retail markets.*[2]

In cases where there is insufficient evidence to prove or disprove an assertion, it is useful to consider the incentives of the parties to act in the way claimed. In our previous submission

[1] Para 3.13
[2] Para 3.15

we highlighted that foreclosure is inconsistent with our incentives to manage our exposure to risk. This point may not have been fully considered in the consultation, so we wish to reiterate and provide further detail.

Contact's approach to risk management

Contact Energy is first and foremost an infrastructure business. Electricity infrastructure investments are inherently long-term, and require a stable and predictable return to justify the significant capital costs. Contact itself has committed more than $2bn on new generation since 2019.

To achieve this it is essential that we retain our BBB investment grade credit rating. Contact has maintained its BBB credit rating and stable outlook for over 20 years and remains committed to this target. This is central to our recently released strategy refresh,[3] and it is crucial to achieve the ambitious investment pipeline we have set out.

Contact's commitment to a stable BBB investment credit rating places risk management at the core of our business. We are constantly juggling supply and demand in the electricity market. We have a comprehensive approach to risk management contracts, including CFDs, PPAs, Energy Supply agreements, etc and we have extensive risk management procedures in place. We welcome the opportunity to contract shaped hedges (intra-day / week shape) where our portfolio can reliably support these without undue exposure to the wholesale market in certain hydrology conditions.

Volatility of earnings can occur if we under or over sell hedge contracts (with contract term being a very important variable).

- We want to avoid being under-hedged and therefore being exposed to spot price volatility that is dependent on market conditions. For example, an unhedged generator would have been exposed to low spot prices and very low revenue in October and November 2024 when there was an abundance of water.
- We also want to avoid over-hedging as this could lead to being caught short and running out of generation to back our contractual position if actual output is lower than expected. Contact would then need to buy at spot prices (which are typically elevated during a dry year) and risk a potentially significant loss. This is the situation some generators found themselves in during the water shortage in August and September 2024.

The highly variable nature of the Clutha Scheme makes it very challenging to be certain of output each month, quarter or year. Therefore, our practice is to target a small buffer between our expected generation output and the amount of electricity offered to the market through contracts.

We must also carefully manage contract term. We invest in generation well ahead of new demand arising, and are continually exposed to competing generation projects that vie to meet demand growth. This creates a tension with 20 year or more generation investments, but customers often wanting shorter term contracts for 1-3 years.

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[3] https://contact.co.nz/getContentAsset/9534c60b-c672-4110-b843-1e5fbeae5254/a677e4b4-b3c2-492c-ae74-9399720288b8/Contact-Energy-Capital-Markets-Day.pdf?language=en

Any long-term business that can only secure short-term customer contracts faces higher risk. To help mitigate this, we offer better pricing for longer-term contracts. The lower pricing (for longer contract term) reflects the lower risk to our business which we pass on to the customer. However, many customers only want short term contracts as they appear to highly value the option to recontract. This short-term contracting approach increases the costs (i.e. risks) of our business, and therefore to the overall cost of electricity supply.

Our overall risk appetite is set by our Board. This is expressed in both dollar values and time horizons. These requirements are set prudently to prevent or reduce our exposure to the likelihood and consequence of financial loss.

Contact runs sophisticated risk management tests each month for all commodity risks associated with both contractual and physical positions. We have three Board approved limits:

1. Earnings at Risk (E@R) test quantifies potential earnings (i.e. EBITDAF) loss over a specified period from adverse movements in market conditions. Contact experiences 'earnings at risk' when generation output is lower than expected and it is forced to procure electricity at a higher price;
2. Two risk test measures which are extracted from the EBITDAF distribution:
    a. [
    b. [
    ]
3. Stress Test which estimates the maximum credible loss over a specified shorter period (typically several days) through risk testing under various stress hydrological conditions and with key plant outages assumed like a peaker plant(s) or Ahuroa Gas Storage (AGS) unavailability.

At a management level this is governed by our Commodity Risk Management System (CRMS). This sets out the framework for assessing, managing and reporting of commodity risk, including the procedures and processes to be followed in the event of an exposure limit breach and CRMS non-compliance. This requires Contact's Wholesale Markets team to mitigate risks promptly, generally around the prospect of energy shortfalls versus contracted load, reduce or pause further sales where necessary, and buy back risk management products or its own, to ensure forecast exposures back within exposure limits.

Ultimately the goal of these tests is to keep Contact's earnings at risk within the set exposure limit, which is important to maintain the stable returns its investors and lenders expect, and to allow Contact to continue to invest in new renewable generation projects.

Withholding capacity is inconsistent with our risk management tests

We interpret the accusation that we may withhold risk management contracts as saying that we are either:

- choosing to increase our exposure to spot market risks beyond a prudent level to purposefully harm competition. As we showed in our submission to the risk management review in December 2024, there is no evidence of this occurring;[4] and/or
- choosing to sell to our own retail arm, when it would be more profitable to sell risk management contracts to independent retailers. Again, this is inconsistent with our incentives as a profit maximising company, and no evidence exists to show that Contact has grown our retail market share at the expense of independent retailers.

Neither of these outcomes is in our interests as they would increase risk or reduce earnings, and would therefore cause us to breach our risk tests, or obligations to shareholders.

In addition to the above, we are constantly aware of the high level of competition in the generation sector to build the next plant. There is about 2,500 MW of consented solar PV and about 1,000 MW of consented wind projects. If we were to withhold contracts for supply of electricity, we are simply encouraging our competitors to build new generation – this is obviously not the outcome we seek.

The reality is that we are actively seeking out customers to contract with so that we can build new generation. For example, our recent 'heat as a service' Request for Information.[5]

Margin squeeze

We broadly agree with the analysis that the Authority has carried out to demonstrate that a margin squeeze is not occurring. Retail prices were above long-run marginal cost in every year assessed. In 2023 many prices were below the one year ahead prices, and it is likely that 2024 and 2025 prices would show a similar result. However, the Authority is right to conclude that one year ahead prices are too short a measure of expected costs.

The Authority appears to retain some doubt about the possibility of a margin squeeze because their analysis

> *does not consider the possibility that (during extended periods of rising costs) a large gentailer may keep its own retail prices 'too low' for existing customers, with the intent to harm competition, by dissuading existing customers from considering a switch.*[6]

This is inconsistent with the assertion in Authority's 'Improving electricity billing in New Zealand: Consultation paper', which raises concerns about 'loyalty penalties', suggesting the opposite of the view expressed in this paper. We consider it important for the Authority to develop an internally consistent view of retail pricing trends.

We also note that retailers now provide considerable data to the Authority on retail prices and consumption via the enhanced retail market monitoring regime. That means the Authority has at hand data to test whether a margin squeeze is occurring for legacy plans. This data can also be used to assess if a tenor gap is emerging due to an increase in short-

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[4] https://www.ea.govt.nz/documents/6363/Contact_Energy_zW7Gvmh.pdf, p9-14 which shows that our merchant length has not increased over the period where concerns over access to risk management contracts has increased.
[5] https://www.energynews.co.nz/news/electrification/832498/contact-eyes-gas-users-process-heat-electrification
[6] Para 3.80

term contracting from certain counterparties. Given the Authority already collects detailed retail data, we recommend that this is utilised for future analysis

Furthermore, the Authority has extensive data on trades via the Hedge Disclosure requirements, and will soon have information on uncompleted trades via the OTC bids and offer disclosures. This means the Authority will have a wealth of information at its hands to conduct detailed analysis to test the accusation of a margin squeeze.

We also agree with the conclusion from the Authority that "predatory pricing is unlikely in the electricity sector". This is because predatory pricing requires recouping of lost revenues and this is not possible for parties without market power.

The Authority notes that "raising rival's costs, through high hedge prices, is a more likely avenue for margin squeezing". This appears to suggest a concern that Contact is able to unilaterally set prices, and we do not face competition for the supply of risk management contracts. This is not supported by the finding from the Authority that: "independent retailers' average annual electricity costs were below the median ASX traded price".[7]

Given the lack of evidence, ability or incentive to engage in margin squeeze we consider it should be a simple exercise to address the perception that this may be occurring.

The concerns about the PPA market are over-simplified

We consider the discussion about PPA contracts and firming reflects a mis-understanding of this part of the market. For example, it is incorrect that "the buyer will likely need the PPA supplied electricity to be 'firmed', i.e. backed by flexible electricity supply to ensure that the buyer has access to electricity whenever needed." Our entire renewable generation pipeline is based on seeking to share the risk of intermittency with buyers. We are unable to remove this risk ourselves, so buyers cannot expect this either, nor can independent generators.

There is no source of electricity that is 100% reliable. Every generation plant has risks of outages, and also weather variability for most renewables (including hydro). Generation portfolios reduce this risk, particularly if there is geographic and fuel diversity amongst the generation options (as with Contact's portfolio). However, even at a portfolio, or country level, we still face risk of generation availability at either an energy or capacity level. We consider that everyone in the market has a role in sharing this risk, whether explicitly via a generation following contract, or implicitly with the higher price of a load following contract (with some, but lesser, residual risk).

As we highlighted in our response to Taskforce 1A proposal regarding PPAs,[8] there is a wealth of evidence internationally that buyers can and do take on the risk of intermittency. The Authority must take this into account, recognising the range of market-driven contracting mechanisms available, for example:

- TESCO/EDF (large corporate and UK gentailer). In October 2024, Tesco entered into a 15-year Power PPA with EDF, securing 65% of the electricity generated by the Cleve Hill Solar Park in Kent, UK. This facility includes integration of 373 megawatts (MW) of solar capacity with substantial battery storage, making it the largest hybrid solar and battery storage project in the UK. The energy produced will be sufficient to

[7] Para 3.79
[8] https://www.ea.govt.nz/documents/6773/Contact_Energy_iCVpVte.pdf

power approximately 144 large Tesco stores annually, accounting for up to 10% of Tesco's UK electricity demand. In addition to the Cleve Hill agreement, Tesco has engaged in multiple PPAs, including wind and solar energy projects.

- BHP/Neoen (large corporate and Australian independent generator) Neoen and BHP signed a 70 MW baseload renewable energy contract to supply power to BHP's Olympic Dam operations in South Australia starting in July 2025. This PPA combines:
    - Wind power from Goyder South Stage 1 Wind Farm
    - Battery storage from Blyth Battery

  The contract is designed to provide a firm, 24/7 renewable energy supply, reducing BHP’s reliance on fossil fuels while maintaining reliability
    - The agreement ensures a steady energy supply, unlike traditional wind PPAs that provide variable output.
    - Firming is provided by Neoen using battery storage, which smooths out supply fluctuations.
    - Power is delivered via grid connection to South Australia’s transmission network. This allows Neoen to utilise grid balancing mechanisms (Frequency and voltage control, arbitrage on Australian National Energy Market (NEM) prices)
    - Neoen will likely use financial hedging instruments alongside the physical PPA to further smooth revenue and supply risks, as well as procure additional firming through market contracts.

The Authority should not be setting an expectation that major generators are a bottomless pit of firming capacity that can be used to support any and all new intermittent generation. Forcing generators to supply firming would have the effect of subsidising firm capacity for intermittent generators and result in inefficient oversupply of these types of generation.

We expect that contracts that, for example, seek to firm a solar investment into baseload capacity would likely be uneconomic. Independent generators need to be encouraged to seek alternative contracting mechanisms to mitigate these risks, in the same way that major generators currently do.

Because of this, we do not support the proposal to introduce a standardised hedge product to support the flexibility needs of independent generators. These needs are not well suited to standardisation, as they will depend on the specific output of the generation plant (or group of plants), and how the developer has been able to share the risk of intermittency with its offtake customers.

Both of these perceived risks rely on an unproven assumption of market power

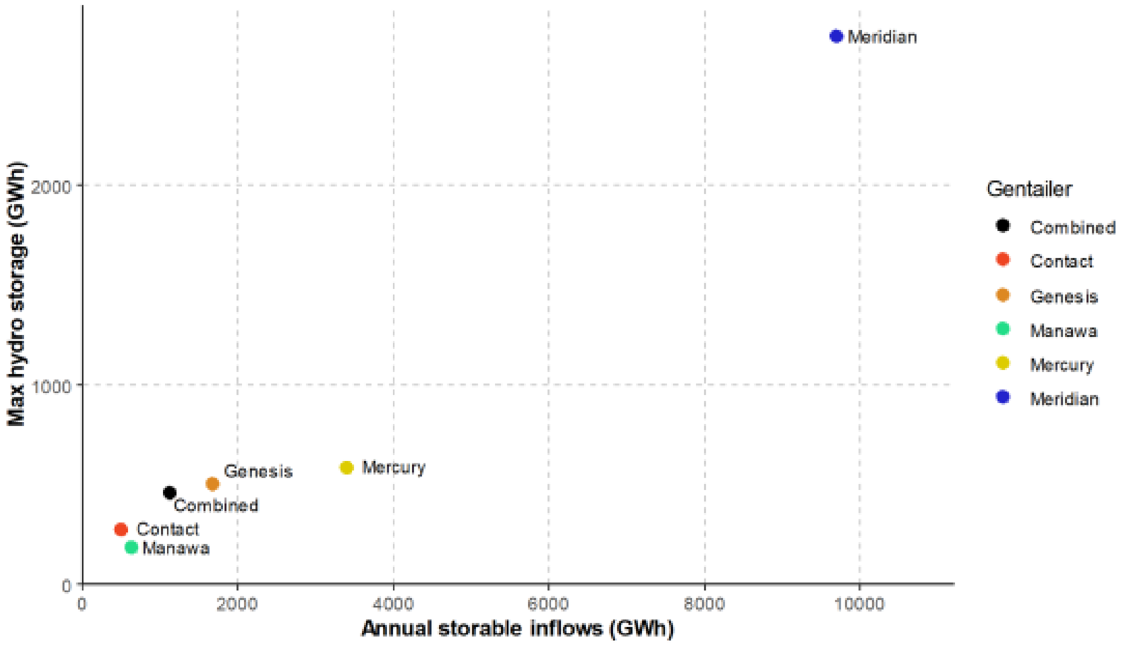
Through the risk management review, and both level playing field consultations the Authority has raised a concern that major generator-retailers may be exercising market power. No evidence has been provided at any point to support this concern.

Contact Energy has a market share of roughly 25% of generation and 20% of retail consumers. This is well below any traditional measure of market power. The consultation paper notes that its main concern is concentration of flexible generation, and specifically highlights that Contact's recent acquisition of Manawa Energy means that we have increased our access to flexible generation assets. However, even following that acquisition our market share of flexible generation is only around 14-18%.[9] Again this is well below any measure of market power.

The Authority has pointed to the Market Development Advisory Group's (MDAG) report "Pricing in a renewables based electricity system" which highlighted a potential concern with market power due to market shares of hydro storage. We note that report was considering the impact of a 100% renewable market, an outcome that is increasingly unlikely in the foreseeable future. However, even if this unlikely scenario is what the Authority has in mind, Contact will still not have market power.

We produced the figure below as part of our application for clearance to acquire Manawa Energy. It looks at the market share of controlled hydro storage over two metrics, inflows into storage lakes, and the maximum storage. It shows that even after the acquisition Contact continues to have a small part of this market, less than any other major generator-retailer. Again we do not consider that this supports a finding of market power.

Figure 1: Controlled Hydro Storage (GWh) by major generator



Finally, we encourage the Authority to consider Contact's investment in the Glenbrook BESS (100 MW), and the consenting of additional BESS capacity (an additional 400MW recently granted). This signals that we are not replete with flexibility as alleged – we are investing to increase our flexibility, which is inconsistent with a narrative of market power.

The mischaracterisation of the risk of market power has material implications for the Authority's assessment of the perceived risks, the justification for the proposed regime, and the proposed implementation.

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9 Contact-Energy-Submission-on-Contact-and-Manawa-Statement-of-Issues-9-March-2025.pdf, pp31-36.

Firstly, market power is a necessary pre-condition for both of the perceived risks identified by the Authority. Because we do not have market power, we are unable to withhold supply or raise rivals costs, as there are other providers of risk management contracts who would step in if we reduce supply. As noted by Frontier Economics:

> *it is important to understand that for a margin squeeze to be anti-competitive it would require market power in the upstream activities (in this case the supply of wholesale electricity) and the ability to obtain market power in the downstream market (electricity retailing) because of the margin squeeze. With four individual gentailers this prospect seems highly unlikely. It would require each of the gentailers to be acting in a highly coordinated and so illegal manner. In addition, it would require high barriers to entry to maintain market power in the downstream market, which is evidentially not the case given the apparent ease of entry and exit in the retail market in New Zealand.*[10]

Clarifying that we do not have market power should be sufficient to address both of the perceived risks.

Secondly, an assumption of market power is baked into the cost-benefit analysis. The Authority justifies the benefits of this regime based on removing the "markup from the exercise of significant market power".[11] Without this assumption the benefits of this regime are materially lower than estimated by the Authority.[12]

Thirdly, an assumption of market power is baked into the guidance on the non-discrimination principles. At paragraph B.5 it states that the Authority will assess compliance with principle 1, subclause 1 by considering "whether the gentailer has acted consistently with how a market participant without market power is likely to have acted in the circumstances." Given Contact Energy is a market participant without market power, it appears reasonable to assume any action we take would therefore be consistent with this principle. This will make it challenging for both our Board and the Authority to assess compliance.

The proposed regime is disproportionate to the perceived risks and would have many unintended consequences

We support addressing the perceived risks to ensure that the market continues to be workably competitive.

However, as covered above, we do not consider that the risks identified should be a material concern for the Authority because there is no evidence that these risks are occurring, and they are not aligned to the incentives of major generator-retailers. The material costs and imposition of the proposed regime, therefore, do not appear to be proportionate.

The regime also raises a number of material unintended consequences. As drafted it could negatively affect the efficient operation of the market. In this section we highlight our most material concerns with the proposed regime.

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[10] https://www.mbie.govt.nz/dmsdocument/31228-review-of-electricity-market-performance-by-frontier-economics, pp80-81

[11] Para G.24

[12] The benefits would need to be measured as the marginal introduction of new retail entry or (likely intermittent) generation development, following the removal of the perceived risks. We consider that the quantification of this benefit is likely small. This is because in practice we do not consider it likely that much retail or development entry has been deterred.

- The regime insufficiently recognises the role of competition in setting prices, and would harm price discovery.
- The concept of uncommitted capacity is unworkable as it is inconsistent with how we manage risk.
- The retail price consistency assessments (RPCA) are unlikely to provide useful information to the market.
- The guidance to hold prices open for 5 days provides an exploit that will be taken advantage of by counterparties
- The provisions requiring equal access to commercial information will add material cost and inefficiency to our business for no identified gain.
- The regime requires excessive reporting, unnecessarily increasing the costs of compliance, and raising material risks to competition.

Prices for risk management contracts are set by competition

Principle 1, subclause 1 would prohibit discrimination between buyers for the supply of risk management contracts except in cases where there is an objectively justified reason. We are concerned that this appears inconsistent with competitive price discovery.

There is workable competition in the supply of risk management contracts.[13] Each of the four major generator-retailers offer a large volume of these contracts, and so do other players such as Nova, and financial intermediaries.

This risk mitigation service is distinct from the underlying supply of electricity. It therefore has a price of its own, and this price will be different for different months, days, or even trading periods. This price is not directly observable; it is only revealed by negotiation between sellers and buyers. However, in practice, price discovery is an imperfect process, and it will often result in different prices for different buyers due to a multitude of differences for both the buyer and seller, such as their relative level of exposure.

While imperfect, competitive price discovery is essential to the efficient operation of the market. This is because there is a dynamic relationship between prices and volumes. If the competitive price discovery process results in a price above that expected by the generator, it may choose to sell more capacity. In effect the generator would move up the supply curve. Without the ability to seek out market prices this process will not be possible, potentially limiting the volume of risk management contracts in the market.

This is consistent with the clarification provided by the Authority that “it expects that prices for available capacity will be determined by market forces”.

However, it is unclear how to reconcile this with the requirement that major generator retailers “must not discriminate between buyers for the supply of risk management contracts without an objectively justifiable reason.”

[13] https://www.mbie.govt.nz/dmsdocument/31228-review-of-electricity-market-performance-by-frontier-economics, section 6.4.1

A simplified scenario may help to clarify our concern. Say a major generator offered a tender for 10MW of evening peak capacity. Assume two bids were received for the volume, and it was not possible to identify any objectively justifiable difference between the bidders:

- Bidder 1: $100 per MW for 5MW
- Bidder 2: $80 per MW for 5MW

If the generator accepted both of these bids, then it would have two trades for different prices and the only reason for the differences would be the prices bid. In effect the only 'objectively justified reason' would be 'competitive price discovery'.

This has implications for all completed trades, because every trade is set by competitive price discovery. Just like with the tender example, this can result in two otherwise identical trades settling at a different price. If this occurs, can the generator record the objectively justified reason as 'competitive price discovery'? If this is an acceptable reason for all price differences, what value is there in this requirement?

Uncompleted trades are also important to help buyers and sellers understand market prices. If a trade is above buyers willingness to pay and goes unsold, then that helps inform future offers. An above market offer is also an effective way to signal scarcity. A high offer ensures that capacity is available in the market if demand is sufficient to need it. In this case the 'objectively justified price difference' is the change in the risk position of the generator. But it will be cumbersome and compliance heavy to record these details.

We are also unsure how this regime will function at different points of the market cycle. In times of abundance (as New Zealand experienced through much of the 2010s), prices of risk management services can be below marginal cost as generators will have more to gain from price stability than buyers. How will generators be expected to identify objectively justified reasons for pricing in this cycle of the market?

Ultimately, the requirement to have an objectively justifiable reason for price differences between buyers does not appear to be well aligned to the perceived risks identified by the Authority. Allowing competition to set prices is not the same as observing economic withholding. While withholding could theoretically be achieved by pricing above the market, that assumes a high degree of coordination between major generators to overcome the incentive to revert to competitive prices. The Commerce Commission recently showed why this level of coordination is not likely in the New Zealand Electricity market.[14]

It is not possible to identify uncommitted capacity

Contact Energy does not have a static 'warehouse' of MWh capacity, that sets how many risk management contracts we can sell. Rather, we consider risk management contracts on the impact they have on our risk tests (as described above). Our risk exposure varies constantly based on a number of factors, including:

- Hydrology
- Hydro and gas storage volumes
- Plant reliability (an example being our Stratford Peaking plant which has had considerable reliability issues associated with a design defect in the past 5 years)
- Access to gas

[14] https://www.comcom.govt.nz/assets/pdf_file/0026/366164/5B20255D-NZCC-10-Contact-and-Manawa-clearance-determination-6-May-2025.pdf,

- Gas prices
- Our own hedge buys and the intra-day shape of these hedges
- Hedge sales completed prior and the intra-day shape of these hedges
- Our assessment of spot market volatility
- etc

Even if all the above could be held constant, our ability to offer risk management contracts would vary hugely based on the market price of risk management services. As prices increase the market will react and provide greater volumes (within the bounds of our risk tests). It is not practical to require disclosure of a detailed supply curve. This would be attempting to mimic an entire market structure via regulation.

Furthermore, each trade will have a vastly different impact on our risk exposure based on:

- The shape of the trade, including if there is a variable component
- The duration of the trade, eg a trade for peak supply in a particular week leaves us with higher risk than a 5-year baseload contract.
- Counterparty risk
- etc

This is all managed by the risk management processes described above, which are core to the way we operate our business. Ensuring an appropriate level of risk is essential to achieving the stable cash flow necessary for an infrastructure business.

We are unaware of any way to reconcile the requirement to identify uncommitted capacity, with the risk management approach our business is based upon.

With our risk exposure constantly changing, any disclosed 'uncommitted capacity' figure will be obsolete by the time it is published. Furthermore, as the majority of our capacity is already committed, it would mean that the uncommitted capacity would likely be zero most of the time.

At certain times (eg when new generation capacity comes online), uncommitted capacity would go above zero. However, this won't represent the volume of risk management contracts we can enter into. This is because different contracts effect risk management capacity in different ways. As an example, we may be in a position where we can offer new baseload capacity within our risk tests (eg because of new geothermal generation). However, if we entered into an evening peak risk management contract, it is likely that we will be unable to hedge the remainder of the load, and therefore we will increase our exposure to volatile spot revenue. Therefore, a relatively small MWh sale, could have a large impact on our risk tests, and our ability to enter into more risk management contracts.

Furthermore, even when our theoretical uncommitted capacity is zero, that doesn't mean we won't enter into new contracts. We will often sell risk management contracts in excess of our generation capacity. We will then either take the spot market risk (if this sits within our risk tests), or offset this risk by purchasing our own risk management contracts, such as baseload ASX. It is very rare for us to be unwilling to sell any capacity, except in cases where both our own portfolio and the wider market are under extreme stress, or where the buyer wants cover in the very short term, and our options for mitigating risks are limited.

Ultimately, attempting to report on uncommitted capacity, will be challenging, constantly changing, and grossly misleading. We therefore do not consider that it will be a useful tool in addressing the two perceived risks identified by the Authority. Instead we consider that withholding is best monitored by considering changes in the volume of risk management contracts supplied (or proxies such as a material unexplained increase in merchant length).

Retail price consistency assessments will be complex to implement and may not provide valuable information

We recognise the potential for the RPCA to help address the perceived risk of a margin squeeze. However, the current proposal has many challenges and limitations that may harm its ability to provide valuable information.

We do not consider principle 1 subclause 4 should refer to the profitability of other retailers. The performance of another business (even if it is equally efficient) will be due to a number of factors well outside of our control, including strategy, resourcing, and more. This clause should focus on a description of the approach to the RPCA, rather than how it will be chosen to be interpreted.

We do not support the proposal to base the RPCA on "a portfolio of risk management contracts offered by the gentailer". We are unsure how this is any improvement on the prior proposal that was abandoned by the Authority on the basis that it "would be impractical and time consuming".

We do not consider it feasible to develop the RPCA based on OTC contracts, adjusted for economically justifiable price differences. The risk management cover a retailer like Contact Energy with more than 400,000 ICPs and a long-term commitment would seek is fundamentally different to the majority of OTC contracts traded. Converting observed OTC trades into something relevant for the RPCA would be extremely complex, subjective and prone to material differences in interpretation.

Instead, we consider that the RPCA will need to be based off ASX baseload prices, and possibly the standardised superpeak product. These will then need to be adjusted for the shape and location profile of each retailer.

We agree with the proposal to adjust an ASX/superpeak-based model with some component of longer-term pricing to reflect the long duration hedges a retailer of Contact's size would enter into. We do not consider churn rate to be a useful metric for how long this hedge should be, as we have a reasonable expectation of both gains and losses via churn. We consider a 10-year period is most reasonable.

We do not support the proposal for this assessment to be repeated by 'segment'. We consider a segment-by-segment analysis is an unnecessary complication. For starters there is unlikely to be any agreement across the industry on what a reasonable set of segments is. It appears to provide a path for lobbying for segments that reflect the customer base of the proponents of this regime, rather than any underlying economic rationale.

A segment-by-segment analysis also suggests an emphasis on assessing the reasons for price differentials for different segments. Prof Stephen Littlechild has provided a comprehensive rebuttal to this line of reasoning.[15] He finds that "the retail energy market appears to be a case where price differentials are actually a means of competing".[16] Littlechild goes on to highlight a number of studies that show differentials by segment resulted in lower prices for consumers.

Once the RPCA analysis is complete, retailers are then required to undertake a retail margin analysis which will either show that there is sufficient or insufficient differential between retail

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[15] https://www.jbs.cam.ac.uk/wp-content/uploads/2024/02/eprg-S.-Littlechild_-8-Apr-2018Upd.pdf, https://onlinelibrary.wiley.com/doi/abs/10.1111/ecaf.12498,

[16] https://www.jbs.cam.ac.uk/wp-content/uploads/2024/02/eprg-S.-Littlechild_-8-Apr-2018Upd.pdf, p15

and wholesale prices. We expect that this finding will need to be materially qualified, due to the difficult trade-offs and compromises that this analysis requires.

We also advise caution about the expected impact of the RPCA. Even if a finding of a margin squeeze were identified, there is nothing Contact Energy could do to resolve it. Because we do not have market power, we do not set retail prices, nor do we set the price of risk management contracts or underlying wholesale prices. Therefore, we are unable to change the margin of an equally efficient retail business.

Holding risk management contracts open for five days will create an exploit

In the guidance regarding principle 2 – obligation to act in good faith, the Authority has proposed that there is an expectation that risk management contracts are left open for five working days.

Holding financial contracts open for five working days would create an opportunity for arbitrage, that would see a large value transfer from major generator retailers to other market participants. This is because market prices can shift materially over a five-day period, and the trade would only complete if it is in the buyers favour.

As an example, if a market participant came to a major generator retailer and requested a 10MW baseload OTC contract for $100/MWh, which reflected the ASX price at the time. The contract was left open five days, at which point two things could have happened:

1. ASX baseload prices decreased to say $90. The buyer then chooses to not take the trade offered by the major generator retailer, and instead buys off the ASX.
2. ASX baseload prices increased to say $110/MWh. The buyer would then complete the trade, buy at $100, and instantly sell on the ASX for $110, pocketing $10/MWh for no risk

For electricity supply contracts, eg to commercial and industrial customers, we do keep offers open for a longer period of time, as there is less risk of arbitrage, with contracts typically covering terms of greater than 1 year and no ability or request by the counterpart to price several separate CFD legs separately and requesting the ability to accept some but not all of the CFD legs.

If this principle is retained in the final version of the Code, then we recommend that the guidance is more sensitive to the potential market loopholes it creates. Specifically, the requirement to keep contracts open for five days should only apply to physical supply contracts.

The requirement to ensure equal access to commercial information would impose a material inefficiency

Contact Energy operates as an integrated business. That means we have functions and roles that spread across different parts of our business. For example, our risk management process involves staff across retail, wholesale, development, finance and strategy. There are also some staff that have a skillset that is valuable to both wholesale, retail and development.

Strict adherence to Principle 4 would in practice be similar to virtual vertical separation – a proposal that the Authority itself has rejected. It would mean duplication of functions or implementing inefficient information gatekeeping processes. Across a range of matters it would make operating our business materially harder, and higher cost.

To avoid this material cost, Contact may instead consider a broad disclosure regime of all commercial information. However, that is likely to have its own risks to competition, and the efficient operation of the market, as covered in the next section.

In practice, the sharing of these resources does not give any advantage to our retail team. Our retail branch are given an internal energy price (transparently set via the ITP), and must manage their costs to that. Their involvement in risk management processes is simply due to their expertise, and has no bearing on how the ITP is set, or how our retail business operates.

This principle is given little explanation in either this or the prior consultation paper. In the guidance it states that it is intended to ensure that the retail arms of major generator-retailers are not given an information advantage that could affect competition. We suggest the Authority clarify the nature of any information advantage it has identified and consider whether a targeted disclosure regime would be more appropriate to address this risk, rather than driving material costs into the market.

The regime requires excessive reporting, driving material costs, and risks to competition

The proposed clause 13.236S record-keeping obligations are excessive, and will drive costs, inefficiency, and may harm competition if fully disclosed. This obligation would require us to disclose:

a) the total capacity of the gentailer to offer risk management contracts, and their uncommitted capacity, over the next 3 years;
b) the gentailer’s monthly electricity supplied over the past 12 months
c) the gentailer’s expected monthly electricity supply over the next 3 years;
d) the gentailer’s methodologies for pricing of risk management contracts;
e) any reason for discriminating between buyers, or against buyers in favour of a gentailer’s own internal business units, for the purposes of non-discrimination principle 1 of the non-discrimination principles (set out in clause 13.236P(1)- (3));
f) all complaints received by the gentailer by any person about any conduct of the gentailer that the person believes might constitute a breach of this subpart.

As noted above, we are unable to meet requirement a) as we have no way of identifying, let alone forecasting uncommitted capacity to offer risk management contracts. We consider requirement b) is already substantively met by other disclosure requirements, and are interested in what gaps the Authority has identified. Requirement c) regarding expected supply, is simply another measure of our development pipeline, and plant closures. Again this information is already available to the Authority under different mechanisms.

We have material concerns with publicly disclosing our pricing methodologies under requirement d), and would have a similar concern with disclosing uncommitted capacity (if that were amended to be a more practical disclosure). Disclosure of these metrics appears to be the intent in the discussion at paragraph 7.11, and the requirement at clause 13.236W(2) to keep redactions to a minimum. If our methodologies and available volumes are publicly disclosed, it would open us up to gaming by other market participants.

Furthermore, it would harm competition for the supply of risk management contracts. Each major generator-retailer could see its competitors pricing model and react accordingly. This will likely lead to convergence on a single methodology. It will also provide a means for major generator-retailers to detect changes from this single methodology, and punish detractors. In other words, it could result in the market moving towards tacit collusion. We consider that this would be a materially worse outcome for consumers.

As discussed above, we do not consider it practical to identify the reasons for differences between buyers as specified under requirement e). Often these differences will simply come down to competitive price discovery. In practice, we are also unsure how this would differ from the disclosure of our methodology in requirement d).

We also recommend the following changes to the disclosure and governance requirements:

- It is excessive to require annual review and approval by our Board of the non-discrimination policy. We manage a range of policies with our Board to comply with a broad set of regulations across the Financial Markets Act, Privacy Act, Fair Trading Act, and other obligations under the Electricity Industry Participation Code etc, and none are on a yearly review cycle. The majority of these policies are reviewed once every three years, and we see no reason that the non-discrimination policy should be any more frequent than that. To fit with different risk appetites of different Boards we recommend that 'regular' review is required, rather than specifying the exact timeframe.
- We consider the requirement to develop an implementation plan to be unnecessary and excessive. We consider that this information can be provided as part of the initial interim report.
- We consider that it is excessive to require an RPCA assessment once every six months. As noted by the Authority, the RPCA will only derive a 'residual energy cost', so will provide little insights outside of the yearly retail gross margin disclosure. The consultation paper also notes that

  > *the assessment cannot offer a brightline pass or fail result, e.g. so that any fail would immediately lead to some enforcement action. This is because there may be good reasons for slim or negative margins in the near term.*[17]

  It is therefore likely that 6-monthly reporting will be too fine grained to be used to reach any conclusions. Furthermore, six-monthly reporting is materially more frequent than other disclosures, such as the stress testing regime, that may be of greater importance to the efficient operation of the market.
- We recommend that where possible the timing of the disclosure requirements of this regime are aligned with other related disclosure requirements from the Authority. For example, we consider this regime is closely linked to the stress testing regime, and that disclosures for the two parts should happen at the same time to more efficiently manage internal resources.

[17] Para 6.29

The perceived risks can be better addressed by simpler measures

We consider it important for regulations to be well aligned with and proportional to the underlying justification. In this case the two underlying concerns are that there is a perception that one or more major generator-retailer may:

- limit access to risk management contracts, or offer them above workably competitive prices
- cross subsidise their own retail arm, or keep retail prices below an 'as efficient' rivals costs.

As noted above, the regime proposed by the Authority is disproportionate and poorly targeted at these risks. We propose a more targeted approach below.

Addressing the perceived risk of withholding

The supply of risk management contracts is directly linked to each company's risk appetite, and its risk management procedures.

There is a complex interrelationship between our risk tests and the volume of risk management contracts we offer. Some contracts will reduce our risk exposure as they reduce the amount of our revenue exposed to the volatile spot market. Others may increase risk, because they carry a payment risk, or cannot be backed by generation or other trades, and therefore expose us to spot purchasing risk.

The role of our risk management tests is to ensure we are selling the optimal amount of capacity within a certain risk limit. We consider it important that Contact's Board continues to have the responsibility for setting and monitoring our adherence to the risk limits.

Theoretically, withholding occurs when a particular contract could be met within our risk tests, but we choose not to enter into it regardless. This will either result in an increase in our risk exposure, or reduce our revenue. As noted above, this is not in our interests.

Within this context, we propose two measures to monitor whether economic withholding is occurring:

1. Require our Board to certify that we are not artificially increasing our risk position to reduce the volume of risk management contracts in the market.
2. Ongoing monitoring by the Authority on the volume of risk management contracts offered to detect if any change is happening over time, and why this is occurring.

Addressing the perceived risk of a margin squeeze

The Authority already has access to sufficient data via the Retail Market Monitoring, Wholesale Market Information Disclosure, Hedge Disclosure and OTC trade disclosure regimes to assess margin squeezes. We consider a refined version of the analysis carried out at pages 27-30 could be completed by the Authority at regular intervals and should be sufficient to address the (incorrect) perception that a margin squeeze is occurring.

If the Authority considers it necessary to gain further comfort, then it could implement something like the RPCA. However, as covered above, we do not consider that this assessment will provide useful information to the market, and because Contact does not have market power, there is no action we can take to change the outcome of these assessments.

Attachment 2: Response to Consultation Questions

Questions	Contact Energy Response
Level Playing Field options (options 1-4)	
Q1. Do you have any comments on our additional analysis of data to inform the problem definition? Do you have any new evidence to add to any of the elements of the problem definition?	We broadly support the revised analysis of the problem definition. We note that the majority of the concerns raised at the start of this work have now been resolved. All that appear to remain are unproven assertions, or perception risks. This should inform the scope and scale of any proposed intervention.
Level Playing Field options (options 1-4)	
Q2. Do you have any new evidence that is relevant to the choice of level playing field interventions to address the identified competition issues?	We consider that the interventions should be aligned to the nature and scale of problems identified. We have suggested an alternative regime in our submission above, that we consider is more proportionate and better targeted.
Approach to applying non-discrimination obligations	
Q3. Do you have any feedback on our proposed approach to implementing principles-based non-discrimination requirements, as set out in Chapter 5? If you disagree with elements, how would you improve them?	We have suggested an alternative regime in our submission above, that we consider is more proportionate and better targeted.
Q4. Do you agree that substituting an RPCA test for a requirement to develop an internal hedge portfolio will be more effective at ensuring non-discriminatory pricing than the proposals in the LPF Options paper? Why or why not?	We consider that the RPCA is likely to be equally difficult to implement as the approach proposed in the prior consultation. It retains all the same complexity of determining an internal hedge portfolio. But it will be more complex as key parts will be determined by a committee led by the Authority rather than the experts within each major generator retailer. The resulting analysis is likely to be difficult to interpret for the Authority and the market. It will necessarily be highly caveated due to the difficulty of the analysis, and the compromises that will need to be made. Furthermore, because Contact Energy does not have market power, it cannot change

Questions	Contact Energy Response
	market prices to increase the margin between wholesale and retail prices.
Q5. Is our proposal around “uncommitted capacity” workable? What suggestions do you have for improving it?	It is not workable for us to identify ‘uncommitted capacity’. As noted above the volume of risk management contracts we offer is related to our risk tests, not a theoretical ‘warehouse’ of MWh. We cannot see any way to reconcile these two approaches that will be of any value to the Authority or the market.
Q6. Do you have any further evidence, particularly relating to costs or incentives, about the impact of applying NDOs to all risk management contracts rather than just super-peak hedges?	We do not consider the NDOs as drafted are justified for any type of contract. However, we note that market making is a further safeguard against the perceived risks raised by the Authority. The deep liquidity of baseload ASX contracts leaves little room for even a market participant with market power to influence volumes of contracts offered, or pricing.
Q7. Should large users be included as buyers under the NDOs? If so, is a carve out needed for risk management contracts approved under the MLC regime?	We consider that large users should be excluded from this regime. The nature of these contracts is often very different to financial contracts offered to other market participants, so will be difficult, if not impossible to translate the requirements across these different groups. We also note that larger C&I customers often have countervailing buyer power, as they are able to trade-off other major generators, and also have a wider range of energy alternatives, such as gas or coal. Contracts captured under the Materially Large Contracts regime should also be excluded. These contracts are already placed under close scrutiny, and represent a very unique use case that is not well suited to this wider proposal.
Q8. Should the OTC Electricity Market Working Group be reconvened to assess whether any amendments might be made to the voluntary OTC Code of Conduct to reflect the proposed non-discrimination regime?	If there are known conduct problems that need to be addressed the OTC Electricity Market Working Group could be an effective way to resolve them. However, we note that the paper, nor anything else from the Authority has been able to identify any problems that this group would need to resolve.

Questions	Contact Energy Response
Q9. Should investment in new flexible generation assets be carved out from the proposed NDOs? Why or why not? If you think new investment should be ringfenced, please provide details of how you suggest any carve outs be implemented.	New investments will often be paired with supply contracts, such as PPAs. We consider that if a supply contract is coupled with a new investment that this volume should be excluded as the project would not occur without the supply, so in effect this capacity is never 'uncommitted'.
Q10. What impact do you think the revised NDOs will have on retail prices and/or incentives to invest in generation? How does this compare to the impacts you posited in response to the LPF Options paper? Can you share any evidence that supports your view?	In competitive markets, a market-wide cost imposition will ultimately be borne by consumers. We do not consider that there will be material countervailing benefit to consumers of this cost. The key benefit appears to be removing a perception risk that may be deterring entry. We consider this to be a minimal impact on the market, as informed participants considering entry tend to undertake deeper analysis than relying on perceptions.
Retail price consistency assessment	
Q11. Do you agree that by providing transparency on margins, the RPCA would materially improve stakeholders' confidence that retailers compete on a LPF for the long-term benefit of consumers? If not, why? Can you share any evidence that supports your view? How could we adjust the test to further improve confidence?	We cautiously support the RPCA, but suggest amendments to make it more workable. As drafted the RPCA will be complex to develop, and given the compromises that will need to be made it will be hard to interpret.
Q12. What impact do you think the RPCA will have on retail prices and incentives to invest in generation? How does this compare to the impacts you posited in response in the LPF Options paper? Can you share any evidence that supports your view?	In competitive markets, a market-wide cost imposition will ultimately be borne by consumers. We appreciate the clarification from the Authority that there are good reasons why there may be negative margins in any given year. This minimises our previous concern that the market may over-react to these requirements. Our most material concern is with the segmental analysis. If this is done on a higher cost subset of consumers, there is a greater risk that it will influence an increase in prices.

Questions	Contact Energy Response
Q13. How could the proposed approach to the RPCA be improved?	We highlight a number of changes that need to be made to the RPCA in our detailed submission above. In summary: • The reference to other operator's profitability should be removed. • The RPCA should not attempt to establish a portfolio of risk management contracts offered by the gentailer. • It is not feasible to develop the RCPA based on observed OTC contracts • We agree with adding a longer term component to the estimate of energy costs, but disagree with using churn rate to set the length of this component. • We do not support the proposal to repeat this analysis by segment
Q14. How often should gentailers make and disclose their assessment – should it be more or less frequent than every six months, and why?	We consider the disclosure regime is excessive, relative to the nature of the perceived risks. Specifically: • The non-discrimination policy should be required to be reviewed regularly rather than annually. • Producing a separate implementation plan is unnecessary. This information can be provided as part of the initial interim report. • We do not believe there is any rationale for requiring an RPCA assessment every six months. This is too granular for the assessment the Authority is proposing to carry out. • We recommend that where possible the timing of the disclosure requirements of this regime are aligned with other related disclosure requirements, eg the stress testing regime.
Q15. Would it be sufficient for the Authority to provide gentailers with guidance on the methodology for the RPCA or should it be prescribed in the Code, and why?	We consider guidance is sufficient. Implementing the RPCA will be complex, and likely require frequent updates and amendments to reflect evolving understanding of how the requirements work.

Questions	Contact Energy Response
Q16. If you do not support the RPCA approach, what would you propose instead to demonstrate compliance with non-discrimination principles?	We propose that the Authority undertakes analysis similar to that carried out at pages 27-30, but utilises the full set of information it has available to it via the retail market monitoring regime, the hedge disclosure regime and the OTC disclosure regime.
Implementation pathway	
Q17. Is the proposed implementation timeline achievable?	At this stage, material parts of the proposal remain unworkable. We are therefore unable to comment on the time necessary to implement. Once a workable solution has been designed we believe it could be implemented swiftly.
Q18. Should the Authority consider adding or removing any particular steps, or providing more or less time at any point?	We have provided an alternative proposal that is more proportionate and better addresses the perceived risks.
Escalation pathway	
Q20. Do you support the revised approach of incrementally creating more specification for NDOs or the RPCA as required? Why or why not?	We consider the NDOs and RPCA are already over-specified, we do not support any further specification.
Q21. What are your views on the proposed approach to the escalation pathway?	We appreciate the removal of the proposed escalation pathway. We do not consider the prior escalations were practical, or proportionate to the perceived risks.
Power Purchase Agreements	
Q22. Do you have any feedback, including suggestions for improvement, on the way that the NDOs will affect buyers seeking firming for PPAs?	We note that we do not typically provide full firming for our own intermittent renewables. We seek to share this risk with end users, and help end users to minimise their exposure by supporting load shifting. It is likely that a market price to firm wind or solar to baseload will be uneconomic. We do not consider that this should be used as evidence of a problem, simply that independent generators need to consider other solutions in a similar way that major generators are.

Questions	Contact Energy Response
Q23. Would it be useful to convene a co-design group to consider a range of flexibility products that suit the needs of independent power generators?	As noted above, firming for new generation is dependent on the needs of the end user. Therefore any firming will be bespoke to each project and each offtake. We do not consider that this can be addressed via a standardised hedging product.
Internal Transfer Price disclosure requirements	
Q24. Do you support the proposal to revoke the ITP requirements for gentailers? What are your views on retaining the RGM reporting requirements for independent retailers?	At this stage we are unsure if the RPCA will provide better information to the market than the current ITP disclosure regime. However, it may be possible to improve the RPCA with tweaks to reduce its complexity and improve its clarity.
Regulatory Statement for the proposed amendment	
Q25. Do you agree with the objectives of the proposed amendment? If not, why not?	We support addressing the perceived risks.
Q26. Do you agree the benefits of the proposed amendment outweigh its costs?	No. The benefits are assessed on removing the margin caused by market power. However, no market power has been identified, nor any excess margin identified. We therefore do not consider this to be a robust basis to assess the benefits of the regime. We consider this regime will add costs to generators, and reduce the efficiency of the market, with minimal countervailing benefit to consumers.
Q27. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.	We have proposed a further option that we consider is more proportionate and better targeted at the perceived risks.
Q28. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?	If the Authority considers that the perceived risks are deterring efficient entry into the market, then it is reasonable for the Authority to consider amending the code to provide greater confidence. However we consider that there are better and lower cost ways of addressing these perceived risks.

Questions	Contact Energy Response
Q29. Do you have any comments on the regulatory statement?	
Appendix A – Proposed Code amendments	
Proposed Code amendments	
Q30. Do you have any comments on the drafting of the proposed Code amendments?	
Draft guidance to support Code amendments	
Q31. Do you have any comments on the draft guidance?	As covered in the body of our submission above, we consider that the code: • Paragraph B.5. should not assess compliance by considering our actions compared to a fictional market participant without market power. Since Contact Energy itself does not have market power, this clause is effectively unenforceable. • As noted elsewhere the description at paragraph B.6. of uncommitted capacity is inconsistent with our ability to offer risk management contracts. • Paragraph B8.e appears redundant given the soon to be implemented OTC disclosure regime that will be capturing the same information. • Paragraph B.10 assumes we are able to set wholesale and/or retail prices. This is incorrect as we do not have market power. The RPCA should not be considered a pass/fail test, but information that can be used to inform the Authority and other market participants. • Paragraph B.12. seems inconsistent with the explanation elsewhere that the RPCA is intended to set an energy price, and that the margin analysis will be carried out via the existing margin test. • The paragraph B.15. guidance for principle 2 should not require financial contracts to be open for five days. This would create an exploit that would see large value transfers

Questions	Contact Energy Response
	from major generators to other market participants. • We would like the guidance at paragraphs B20-21 to be more prescriptive on what information needs to be disclosed. As noted, we operate as an integrated business, so are unable to separate activity between wholesale, retail and development arms of our business.
Q32. Is any further guidance needed to help clarify what constitutes an "objectively justifiable" reason for discrimination under the NDOs? Please explain.	Yes. We are unsure how to interpret this requirement in a market where there is competitive price discovery. Prices are not set by an administered model held by Contact Energy.