# Meridian submission

## "Level Playing Field measures" consultation paper

**2 December 2025**

This submission by Meridian Energy Limited (**Meridian**) responds to the Electricity Authority's (**Authority's**) "Level Playing Field measures: Consultation paper" (**consultation paper**).

For any questions relating to this submission, please contact:

Sam Fleming, Manager – Regulatory & Government Relations:
[redacted]

Matt Hall, Principal Advisor – Regulatory & Government Relations
[redacted]

# Table of contents

# 1 Introduction

Meridian supports an efficient, competitive and reliable electricity market. We support the Authority's goal of promoting greater competition in retail and wholesale markets to deliver long-term benefits to consumers. Meridian aims to assist the Authority in the development and implementation of any proposed reforms to ensure they maximise benefits to consumers.

## 1.1 The proposal is an improvement, but significant risks remain

This latest iteration of the proposal is a marked improvement on earlier versions and makes several of the changes recommended by submitters during the previous consultation in May 2025. It presents a more refined problem definition and a more pragmatic approach to non-discrimination obligations. Notably, the Authority emphasises that it does not want to achieve virtual vertical separation: "The revised proposal specifically seeks to reduce the risk that it undoes the benefits of vertical integration."[1]

While the refinements made to the proposal are welcomed by Meridian, significant risks remain if the proposal is not carefully implemented. Key details regarding implementation of the proposed Code change are still yet to be developed with the Authority saying those details will be clarified later via guidance. There remains a real risk that the proposal will put pressure on generator-retailers to increase retail prices. This would not be a good outcome for consumers.

## 1.2 Meridian suggests an alternative approach (or further refinements and complementary measures should the proposal proceed)

This Meridian submission is focused on further refinements or alternative implementation methods that could reduce the risk of adverse outcomes for consumers and reduce costs, while still providing additional transparency.

Meridian's suggestions include:

- an alternative approach to implementation based on market making, monitoring, and reporting on the pricing and availability of shaped hedges as well as generator-retailer "uncommitted capacity";
- should the Retail Price Consistency Assessment (RPCA) proceed rather than the above alternative, development of clear, objective, and economically defensible criteria to be used by the Authority in deciding whether to investigate a breach; and
- complementary measures to encourage non-integrated retailers to consider their level of capitalisation and ability to ride through a wholesale price super-cycle like that experienced since 2019.

Meridian's preferred alternative implementation approach would assess compliance with the proposed non-discrimination principles through regular reporting on super-peak contract availability and offer prices. This would be similar to the analysis carried out for the Risk Management Review but with additional information from each generator-retailer to identify periods of scarcity when each has no "uncommitted capacity". This approach would mitigate

[1] Consultation paper, paragraph 3.17

the risk of the proposal incentivising higher retail prices while still targeting the perceived risk of a margin squeeze through the raising of rivals' costs (namely via the availability and prices of super-peak hedge contracts).

Meridian also notes the Authority's recent announcement proposing market making of super-peak hedge contracts and longer dated hedge contracts, which on its own would also address the perceived risks identified by the Authority. The Authority must consider what the incremental benefit of the "level playing field" proposal would be in this context and whether any benefits would outweigh the regulatory costs and risk of higher retail prices.

# 2 The Authority's problem definition

## 2.1 It is now clear that there is no evidence of a problem, only a perceived risk

The Authority has improved its assessment of the problems it seeks to address. The Authority now acknowledges that, in addition to baseload and peak hedges being priced competitively, "there is likely a lower risk that the price for super-peak hedges reflects a premium above competitive pricing levels". The Authority also acknowledges that since Meridian updated its pricing methodology in 2023, its offer prices are very close to the Authority's competitive benchmark. Meridian welcomes these acknowledgements and the Authority's consideration of further evidence that was provided by Meridian.

The Authority also finds that:

- "None of the analysis of margin squeeze in the submissions we received robustly demonstrated a margin squeeze in our view."
- "There are good reasons for retailers to smooth out wholesale market fluctuations and supply shocks in their pricing. This is a retail strategy that many consumers appear to value, and which is not anti-competitive."
- "Neither the current rate of build nor the observed pipeline of investment (including the significant portion from non-incumbents) is consistent with any gentailers profitably delaying investment."

Meridian agrees with these statements.

The remaining problems the Authority seeks to address have therefore been narrowed and are captured in the following statements:

- "concerns around access to hedges have not been substantially disproven";
- "the Authority still cannot rule out super-peak hedge prices being non-competitive, reflecting the exercise of market power in conditions of scarcity";
- "there is no definitive evidence of a margin squeeze, though nor has it been definitively disproven"; and
- "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."

These statements make it clear that there is in fact no evidence of anti-competitive conduct and the Authority is proceeding to regulate a perceived risk in the hope that it will increase non-integrated retailers' confidence in the competitiveness of the hedge market (specifically shaped products). This fundamentally affects the approach the Authority must take to assess the costs and benefits of its proposal.

Since the Authority is proposing to regulate a perceived risk rather than an evidenced problem, the costs of any regulation should be proportionate. When regulating to address a risk, benefits are unknown since there is some probability that the risk will never eventuate even in the absence of regulation. On the other hand, regulatory costs are a certainty and there is also the potential for unintended consequences that further cost consumers. The regulatory response proposed by the Authority appears to be relatively high-cost and disproportionate to the perceived risk. This point is discussed further below as part of Meridian's comments on the Authority's cost benefit assessment.

The Authority should also consider the possibility that the supposed loss of confidence that it seeks to address is simply advocacy by non-integrated retailers for their own commercial interests. It does not cost anything to seek disruption of integrated firms or regulatory interventions that might make integrated firms relatively less competitive or cause them to lose market share. Such behaviour should be expected to continue regardless of the Authority's proposal, and in fact may be encouraged by the Authority's willingness to regulate in the absence of conclusive evidence of a problem. For those reasons, the Authority's cost benefit assessment must explicitly allow for the risk the proposal will not improve confidence.

Past experience indicates that similar initiatives have not improved confidence. When the Authority put in place reporting obligations for internal transfer prices and gross retail margins, it similarly had the objective of increasing "confidence" in the competitiveness of the market. That increased confidence has not materialised, at least if measured by statements from non-integrated retailers, and likely never will since the commercial drivers to seek regulatory change remain. Meridian anticipates that the current proposal may have a similar impact on the "confidence" of non-integrated retailers.

It is noteworthy that the parallel Authority proposals to require market making of super-peak hedges and longer dated hedges will also address the same risks by increasing access to shaped hedges at competitive prices.

## 2.2 It is not clear whether the Authority considers the problem to be predatory pricing or raising of rivals' costs

The Authority's margin squeeze analysis is focused on whether super-peak hedge contract prices are competitive. and contracts are accessible. The possibility of a margin squeeze from predatory retail pricing (i.e. prices that are "too low") is analysed in some depth from paragraph 3.64 of the consultation paper but it is not characterised as a problem per se with the Authority stating that "raising rival's costs, through high hedge prices, is a more likely avenue for margin squeezing."[2]

In Meridian's opinion, the Authority should say explicitly whether it has concerns with retail prices being "too low" or if the sole concern is a risk of margin squeezing through raising rivals' costs by offering hedges that are priced "too high". This precise diagnosis of the supposed problem or risk is important and will flow through to the detailed design choices made in the Retail Price Consistency Assessment (RPCA). This is discussed further below.

[2] Consultation paper, paragraph 3.65

# 3 The Retail Price Consistency Assessment (RPCA)

The Authority has sought to simplify the proposed non-discrimination principles by removing the obligation on generator-retailers to develop a portfolio of notional internal hedge contracts. Instead, the Authority proposes that generator-retailers perform a RPCA every six months to provide transparency on the link between retail prices and the expected cost of supply.

The description in the consultation paper suggests that generator-retailers will need to report every six months on average retail prices, metering, levy and network costs, retail cost to serve, an expected cost of supply benchmark, and any economically justifiable adjustment for differences between market-based cost of supply and self-supply. The detail of the RCPA is yet to be determined and has been left to guidance that will be developed later. However, Meridian is encouraged by statements by the Authority that:

- "[Generator-retailers] will have their own views of the expected cost of supply, and these can also be observed from hedge market transactions over a reasonable timeframe leading up to the point at which they set retail prices, reflecting the perspective that retailers' wholesale input costs could reflect a book build over time."[3]
- "[T]he Authority does not expect that retail prices must be or are best linked to short duration ASX contract prices and agrees that retailers managing wholesale price risk for their customers (price smoothing) has value to many customers and is a strategy consistent with workable competition."[4]
- "The Authority agrees with Meridian that a key step of the design process will be to define 'observable market rates' and avoid the risk that the RPCA adopts a cost of supply measure that is inefficiently volatile by not reflecting consumer preferences for any (economic) price smoothing."[5]
- "It is also not intended that the assessment method becomes the template for a gentailer's (or independent retailer's) risk management or retail pricing strategies."[6]
- "[I]n practice a range of factors mean 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."[7]

## 3.1 Key details that need to be confirmed to provide regulatory certainty

An important step in the design process for the RPCA will be to define an appropriate cost of supply benchmark. While the Authority suggests that it has abandoned the concept of notional internal hedges, Meridian presumes a cost of supply benchmark will necessarily involve a similar process to identify a relevant shape and products over appropriate durations (based on relevant market transactions). If so, we query whether this is any different to the construction of a notional internal hedge using a book build over time.

The Authority also needs to clarify what it would consider a persistent pattern of slim or negative margins. The Authority acknowledges that the assessment cannot offer a brightline

[3] Consultation paper, paragraph 6.14
[4] Consultation paper, paragraph 6.18
[5] Consultation paper, footnote on page 67
[6] Consultation paper, paragraph 6.33
[7] Consultation paper, paragraph 6.29

pass or fail result because there may be good reasons for slim or negative margins in the near term. However, the Authority still expects that over time the results will be a margin above supply costs. The Authority needs to clarify both the level of acceptable margin and the timeframe over which that should be expected:

- Regarding the level of margin, it is implied that low positive (but above slim) margins will be sufficient to avoid breaching the proposed Code. Clarification regarding the quantum of a low positive margin would assist with implementation.
- Regarding the timeframe for the assessment, it is not clear over what period the Authority would assess margins. The consultation paper simply says that it will not be a pass or fail in any given RPCA and that in "developing guidance on the RPCAs, the Authority will seek to balance the ability for gentailers to manage through short-term volatility with any signs of persistently low margins". The Authority should be explicit about whether it expects reversion to acceptable margins after a set period or if it expects some measure of long run average margins to be acceptable (for example over a set number of years).

Leaving these key components to be resolved via subsequent guidance means the Authority is in effect proposing regulation without an understanding of the likely impact on market participants or consumers. Clarity regarding these key elements is essential since in the absence of regulatory certainty, generator-retailers may adopt conservatively high retail prices to ensure compliance with the proposed RPCA.

Participants need certainty regarding the criteria the Authority would use to decide whether RPCA results are acceptable, or a Code breach should be investigated. Such criteria could also inform the Rulings Panel's consideration of any alleged breach. The Authority should provide clear, objective and economically defensible criteria for two key parameters of the RPCA:

- the minimum acceptable positive margin; and
- the maximum persistence of margins below the acceptable margin.

This would ensure participants have clarity regarding what they need to do to comply and would facilitate consistent compliance decisions over time and across different decision-makers. Transparency would be promoted by adopting specific numerical criteria. For example, any margin above x is safe, any margin below y will be investigated, and the Authority retains discretion for margins between x and y. Likewise, for the persistence criteria the Authority should state, for example, that any unacceptable margin that persists for less than x is safe, any margin that persists for more than y will be investigated and the Authority exercises discretion for persistence between x and y.

The Authority seems to be aware that the RPCA will have low explanatory power, or what statisticians call a low signal-to-noise ratio.[8] Meridian is concerned that this could lead the Authority in the direction of adopting vague or highly subjective criteria, giving it considerable discretion when interpreting the results. This would create regulatory risk for generator-retailers and would encourage them to behave more conservatively by raising retail prices to ensure compliance. It would also surely undermine the prospect that the RPCA will improve independent retailer confidence.

[8] See paragraph 6.29 to 6.30 of the consultation paper.

To demonstrate the point, Meridian has added retail costs to our historic reporting of gross retail margins.[9] This provides a rough indicator of what an RPCA might possibly have shown over the past four financial years if it were in force over that period. This retrospective addition to historic data shows Meridian would have reported positive margins in the 2022 and 2023 financial years. However, baseload contract prices increased sharply in the 2024 financial year and while retail prices also rose sharply, they did not rise as much, meaning Meridian would have reported negative margins for the 2024 and 2025 financial years using this methodology.

This retrospective analysis highlights the importance of clarity regarding the minimum acceptable positive margin and the maximum persistence of margins below the acceptable margin. In the absence of that clarity, Meridian may have been under pressure to increase retail prices in both the 2024 and 2025 financial years to re-establish positive margins under the RPCA (with the upward pressure on prices increasing as the period of negative margins continued). The Authority has clearly stated that it does not believe a margin squeeze has occurred to date, yet if the proposal were in place over the past four years, it would have nonetheless still put upward pressure on retail prices. The only mitigation would have been clear guidance from the Authority that margins below the minimum acceptable positive margin could safely persist for (say) three years, as that would be consistent with a generator-retailer using their balance sheet strength to deliver price smoothing that is consumer welfare enhancing, rather than indicative of a margin squeeze.

## 3.2 Retail price rises are likely to be the only means available to comply with the RPCA

The consultation paper states that the RPCA is intended to identify discrimination through over-pricing of risk management contracts or through setting of retail prices below cost – either of which could amount to an anti-competitive squeezing of competitors' retailers' margins.

However, the RPCA does not provide a useful basis for assessing super-peak hedge prices. The assessments will only be determinative of a cause if the Authority has certainty regarding one side of the equation. For example, the only way the RPCA could draw a conclusion about a margin squeeze due to super-peak prices being too high would be if the Authority adhered strictly to a view that retail prices are competitive.

The Authority's Risk Management Review acknowledged that pricing of baseload and peak risk management contracts is unbiased and competitive. The consultation paper now also acknowledges that since Meridian updated its super-peak pricing methodology in 2023, its offer prices are consistent with the Authority's competitive benchmark. This confirms Meridian is not over-pricing risk management contracts and will have no scope to adjust the prices of risk management contracts to satisfy the requirements of the RPCA. Providing buyers with risk management contracts at below market prices would create an arbitrage opportunity, encouraging buyers to purchase large volumes to on-sell. Therefore, the only practical mechanism available to Meridian to ensure compliance with RPCA requirements would be to adjust retail prices.

[9] Noting this uses a basic three-year rolling average of baseload contract prices (internal transfer prices) as the wholesale cost benchmark so is a rough indicator only. Including some longer dated contracts could lower the wholesale electricity input cost benchmark, as would assuming contract purchases for the book build at market lows (rather than at all times) while including some shaped products would increase the benchmark.

The consultation paper shows some awareness the RPCA may influence retail prices, stating:

> "It is also not intended that the assessment method becomes the template for a gentailer's (or independent retailer's) risk management or retail pricing strategies... It is critical for competition that gentailers continue to make their own choices – albeit consistent with NDOs."[10]
>
> "The Authority is alive to the risk that, under a scenario where prices may currently be consistent with workable competition, the RPCA may cause gentailers to act conservatively to comply and pass-through energy costs faster than they otherwise would. This may not be for the long-term benefit of consumers. Competition among retailers ought to limit this risk, but the Authority will also seek to mitigate this through the guidance for the RPCA, including by acknowledging that there may be good reasons for a slim or negative margin in the near term, but that a persistent pattern or the absence of a justifiable link between costs and retail prices would be a cause of concern."[11]

Nevertheless, in Meridian's opinion, the RPCA requirements will either result in upward pressure on retail prices or have no effect.

The proposal potentially undermines incentives on generator-retailers to compete vigorously on price. This is because the Authority is proposing to have the Rulings Panel sanction a generator-retailer for setting its retail prices too low relative to its estimated costs of supply. This will inevitably encourage generator-retailers to charge higher retail prices than they otherwise would, reducing pricing pressure on competitors (including those not subject to sanction risk), resulting in them charging higher prices too. The proposed sanction may also affect incentives for generator-retailers to innovate in ways that position them to compete on price. For example, offering price discounts to households to induce them to participate in a demand response scheme may be disincentivised if the lower price could increase the risk of sanctions.

### 3.3 The RPCA risks increased politicisation of the Authority and retail pricing

The RPCA approach also risks embedding an ongoing role for the Authority in retail price setting. Any party can allege a Code breach, and the Authority may find itself inundated with allegations from non-integrated retailers asking the regulator to force a generator-retailer to raise retail prices. This is a costless option and would be in the commercial interests of non-integrated retailers since any resulting price rises by competitors would place them at a relative advantage and make it easier to grow market share or increase prices themselves. This is particularly a risk if an RPCA shows a negative margin, since there remains considerable uncertainty (as discussed above) regarding the period over which margins should be assessed to distinguish between:

- price smoothing or other consumer welfare enhancing effects that are consistent with workable competition; and
- any anti-competitive squeezing of competitor's margins.

The Authority (in deciding whether to investigate any alleged breaches) and the Rulings Panel (in considering whether a breach has occurred) will be at the centre of retail pricing decisions. Any decision that would have the effect of increasing retail prices would potentially conflict

[10] Consultation paper, paragraph 6.33
[11] Consultation paper, paragraph 12.24

with existing political pressures on retailers to reduce prices. Meridian therefore questions whether the RPCA approach would be sustainable.

## 3.4 Duplication with upcoming Commerce Act amendments

The RPCA purports to cover similar ground to margin squeeze theories of harm, which could also be considered under section 36 of the Commerce Act.[12] As discussed in the preceding section of this submission on the Authority's problem definition, the Authority has not precisely identified the problem it seeks to address, nor has it designed an RPCA that targets that problem. The Authority's primary concern seems to be a risk of margin squeezing through raising rivals' costs via risk management contracts. The Authority is relatively dismissive of the prospect of predatory pricing or with retail prices being "too low".[13] Regardless, the RPCA seems intended to address both potential harms (predatory pricing and a margin squeeze through raising rivals' costs).

Like the recently proposed amendments to the Commerce Act,[14] the RPCA would require an assessment of whether retail prices are above a measure of costs. This appears very similar to the proposed predatory pricing changes under the Commerce Act, although with several key differences:

- the RPCA would apply irrespective of whether a generator-retailer has substantial market power;
- the RPCA would assess retail prices against both short run and long run costs of retailing, metering, levies and network costs, and an expected cost of supply benchmark with economically justifiable adjustments for differences between market-based cost of supply and self-supply (it is noteworthy that this is focused on expected costs rather than actual costs);
- the RPCA would require regular proactive assessments (ex ante) rather than a test that would be applied in any Court proceeding (ex post); and
- the RPCA would not be a bright line assessment and pricing below the measure of costs may be acceptable for a (currently undefined) period.

These differences suggest that in some respects (for example, no need to show substantial market power and regular proactive assessments) the proposed RPCA is more stringent than the proposed predatory pricing assessment under the Commerce Act. In other respects, it would be far more lenient (not a bright line test and negative margins can be compliant in the near term).

The Authority should consider whether its proposal is duplicative of existing and recently proposed competition laws and therefore imposes unnecessarily higher regulatory costs.

## 3.5 As an alternative, compliance with the non-discrimination proposals could be assessed through monitoring of super-peak offers and market making

The Authority seems to have been able to assess super-peak prices against a competitive benchmark as part of the Risk Management Review. Instead of the RPCA, the Authority could

[12] Consultation paper, paragraph 6.39
[13] Consultation paper, from paragraph 3.64
[14] https://www.mbie.govt.nz/dmsdocument/31115-commerce-act-review-further-changes-to-improve-competition-settings-proactiverelease-pdf

require generator-retailers to undertake a similar assessment of super-peak contract offer prices and report the results on a regular basis. The Authority could monitor accuracy using information received under existing disclosure obligations.[15] The assessment would be superior to the Authority's Risk Management Review analysis as a generator-retailer could also identify periods of energy or capacity scarcity where it has less ability to sell super-peak contracts (and therefore prices should be expected to reflect the increased risk for the seller). Such monitoring and regular publication of findings would be a more precise, proportionate, and lower-cost response to the perceived risks identified in the consultation paper. This approach would make sense if the Authority does not believe retail prices are too low or that competition laws should be sufficient to mitigate any risk of predatory pricing. This alternative approach would also mitigate the risk of the proposal incentivising higher retail prices.

Regular reporting of uncommitted capacity and assessments of super-peak prices against a competitive benchmark would provide greater transparency on the extent to which constrained access to hedges or higher prices reflects scarcity, or an anti-competitive intent such as margin squeezing through the withholding or pricing up of shaped hedges.

This approach would also be complemented by the Authority's recently announced intention, subject to consultation, to require market-making of super-peak contracts to improve liquidity and price discovery. Meridian notes that market making on its own will address the perceived risks associated with access to and pricing of shaped hedges and queries whether that alone would be a sufficient "level playing field" measure. It was an alternative supported by Meridian in the first round of consultation in May 2025.

### 3.6 A complementary measure would be to extend the stress testing regime to promote improved planning for price super-cycles

In Meridian's opinion, balance sheet strength remains the key explainer for the difficulties faced by non-integrated retailers trying to compete during the wholesale market super-cycle since 2019 with better capitalised firms that are able to take a longer-term view of expected wholesale prices for the benefit of consumers.

The Authority could consider requiring non-integrated retailers to undertake annual stress tests for price super-cycle events (aligned with any RPCA price smoothing assumptions).

If those retailers subsequently fail or seek regulatory solutions to support their business model, the Authority would be able to push back on complaints by noting that the retailer was aware of the risk of being thinly capitalised.

## 4 The concept of "uncommitted capacity"

The proposed draft Code states that:

> "**uncommitted capacity** means a **gentailer's** reasonable expectation of its ability to offer **risk management contracts** in future periods, calculated as a **gentailer's** expected gross forecast ability to offer **risk management contracts**, less:

[15] Hedge disclosure obligations in Part 13, Subpart 5 of the Code, disclosure of data in respect of the standardised super-peak trading events, and the clause 2.16 notice regarding OTC hedge requests and responses.

(a) the amount of generation that could otherwise be used to back **risk management contracts** that the **gentailer** reasonably expects to use to supply electricity to its end customers; and

(b) a **gentailer's** wholesale commitments, comprised of **gentailer** market making commitments (regulated or voluntary) and existing **risk management contracts** entered into with **buyers**"

The consultation paper also makes clear that:

- a retailer's expectations of "organic" growth would prima facie be considered committed under (a) above (as opposed to "planned" growth such as acquisition of another retailer's customer base); and
- "Uncommitted capacity" is intended to reflect the forecast availability of generation controlled by a gentailer in the relevant period, taking account of expected fuel availability and outages.[16]

Non-discrimination principle 1(2) states that "a gentailer must not discriminate against buyers in favour of its own internal business units for the supply of uncommitted capacity without an objectively justifiable reason."

Proposed clause 13.236S states that "a gentailer must establish, maintain and keep records of: (a) the total capacity of the gentailer to offer risk management contracts, and their uncommitted capacity, over the next 3 years."

## 4.1 Implementation will be challenging in practice

In practice, Meridian does not have a clear delineation between committed and uncommitted capacity. That characterisation by the Authority implies a degree of fuel and capacity certainty that is not realistic for a generator-retailer with significant hydro assets.

Meridian manages its portfolio by setting a target contract position that prudently balances potential revenues and risks across a range of potential inflow scenarios.[17] Currently Meridian identifies a target contract position for each quarter for approximately three years into the future (consistent with the ASX forward curve). The target contract position is reassessed approximately twice a year. For the near six months Meridian identifies a more granular buy/sell/hold position for each month. This is reassessed weekly and adjusted as hydrology and other key uncertainties unfold.

Deviations from the optimised position will create additional portfolio financial risks. Because of Meridian's portfolio it is especially conscious of:

- dry year spot price risk, i.e. the risk that Meridian's generation will be short to contracted volumes at a time of very high spot prices;
- basis risk, i.e. as a result of the difference in spot prices between the South Island (where much of Meridian's generation is located) and the North Island (where we have significant retail customers and contract exposure) as well as other regional transmission risks; and

---

[16] Consultation paper from paragraph 5.31

[17] See further description of Meridian's approach to portfolio management in Appendix C of our May 2025 submission: https://www.meridianenergy.co.nz/public/Investors/Submissions/2025/Level-playing-field-measures-May-2025.pdf

- emerging risks such as winter peak prices and capacity constraints.

Meridian assesses whether it needs to buy contracts, sell contracts, or hold its contract position in order to achieve the target contract position. Over different time horizons there are various products Meridian uses to adjust its aggregate contract portfolio towards the target position and manage the above risks (and any others). Significant generation investments, wholesale contracts, planned outages, and unplanned outages can all be a step change, whereas we can shrink or attempt to grow our retail volumes gradually over time and enter financial contracts over a range of time horizons through book building.

This is a dynamic process with a forward view of an optimal position that is regularly adjusted for the near six months, with contracting and other tools then used over different time horizons to achieve the target position at any given point in time. At the target position Meridian has no "uncommitted capacity". All generation that can prudently be allocated to supply electricity to Meridian's end customers or to support Meridian's wholesale commitments (market-making or otherwise) is fully allocated and is typically supplemented for both purposes by Meridian's own purchases of risk management contracts.

In Meridian's opinion, obligations that apply specifically in respect of "uncommitted capacity" will be inherently uncertain and the Authority will need to allow generator-retailers to account for factors such as how dynamically the view of "uncontracted capacity" is adjusted and reported. Matching transacted contracts and bids and offers with a view of "uncommitted capacity" at a specific point in time will be important. Locational nuances will also need to be accounted for. For example, while Meridian often has capacity to sell risk management contracts in the South Island backed by flexible hydro generation, this is inflow dependent. In the North Island, Meridian's generation assets are almost entirely intermittent, and Meridian's retail position means it is more likely to be a net buyer of risk management contracts rather than a seller with any "uncommitted capacity".

A forward view of "uncommitted capacity" for the next three years is also likely to be challenging given that a year ahead tends to be the window for detailed planning of generation outages. In practice this means that, while Meridian will have identified a target contract position, Meridian may not know if it will have the capacity available to support super-peak contracts beyond a year into the future.

## 4.2 Clarity needed regarding the treatment of risk management contracts purchased by generator-retailers

The definition of "uncommitted capacity" in the draft Code does not make clear how purchase of risk management contracts would be treated. The draft Code refers to "gross forecast ability to offer risk management contracts". The draft Code instructs generator-retailers to subtract from the gross view generation used to supply customers and wholesale commitments, the draft accompanying guidance in B6 implies that uncommitted capacity is a generation-based concept and paragraph 5.31 of the consultation paper states:

> "Uncommitted capacity" is intended to reflect the forecast availability of generation controlled by a gentailer in the relevant period, taking account of expected fuel availability and outages…"

However, the draft Code itself is not as clear as it might be in saying that the purchase of risk management contracts for the benefit of the generator-retailer is not required to be added to the "gross forecast ability to offer risk management contracts" and that "uncommitted capacity" is intended to be based on generation capacity only. This should be clarified by the Authority.

Meridian purchases risk management contracts, including baseload contracts, swaptions (including current swaptions with Nova and Genesis), and demand response options (including the NZAS demand response agreement) that protect Meridian from downside risk in a dry year. If these purchases were required to be treated as "uncommitted capacity" and offered to third parties, it would impact Meridian's incentives to enter into such contracts by increasing Meridian's uncertainty about the value of these risk management contracts to Meridian.

## 4.3 Clarity needed regarding proactive offers to sell

The consultation paper suggests the proposal would prevent a generator-retailer from allocating future generation capacity to planned growth in its own retail internal business unit "without testing market interest in that capacity."[18]

It is not clear to Meridian what the Authority expects to occur for a generator-retailer to ensure compliance with this requirement. Through the regular super-peak trading events (and market making of super-peak contracts now proposed by the Authority) Meridian is regularly testing market interest in shaped contracts at competitive prices. The Authority should clarify whether it expects:

- market-making of baseload and super-peak contracts alongside willingness to respond to OTC requests is sufficient to test market interest in "uncommitted capacity"; or
- something more, for example if generator-retailers would need to proactively increase their offers to sell both baseload and shaped contracts to show offers to the market that are in aggregate equivalent to the volume of any "uncommitted capacity" and any given point in time (and over what timeframes those offers should be made).

In Meridian's opinion, market making and willingness to respond to OTC requests should be sufficient to test the market interest in any "uncommitted capacity". Through disclosure of information on "uncommitted capacity", the Authority will be able to monitor offer prices and determine whether any higher priced offers are made during periods that a generator-retailer does not have "uncommitted capacity" and therefore reflect increased risk to the generator retailer. Any expectation of more by way, for example, of additional proactive offers to sell would be onerous and challenging for generator-retailers to implement in practice given the volume of "uncommitted capacity" will be dynamic through time, for example as outages and hydrology become more certain.

## 4.4 There will be an impact on investment incentives

In the first round of consultation Meridian submitted that if new investments are deemed to increase "uncontracted risk management capacity" (now referred to as "uncommitted capacity") and therefore increase the volumes that a generator-retailer must make available to buyers, then this would have a chilling effect on investment by generator-retailers. Meridian suggested the Authority consider explicitly excluding new investment after a specified date to avoid weakening investment incentives. However, the Authority has not proposed any carve out for new generation or flexibility investments.

The consultation paper states that generator-retailers should continue to receive market rates for hedge contracts, therefore it is not clear to the Authority how the proposal could have any material chilling effect on investment. This ignores, for example, growth strategies whereby a

[18] Consultation paper, draft guidance paragraph B.9.

generator-retailer invests in new generation or flexibility resources as an enabler of retail market growth. That could be generation commissioned to support a single large new customer (for example, electrification of a dairy boiler) or a proposed retail campaign that would drive step change growth in retail market share. The proposal seems to suggest that a generator-retailer could not link generation investment to a new industrial customer via upfront retail contracting without first testing the market interest in the capacity. This would lead to planning challenges for any generator-retailer and reluctance to invest in generation, bring new industry to New Zealand, or electrify existing industry.

Similarly, the proposal would prevent a generator-retailer taking a merchant generator approach to an investment and seeking to earn a return on the spot market. The generator-retailer would instead be forced to offer contracts to third parties in respect of any new generation.

In Meridian's opinion, the proposal as it stands will continue to have a chilling effect on investment due to the above limitations on business strategy and flexibility.

# 5 Equal access to commercial information

The proposed non-discrimination principle four states that a generator-retailer must ensure that any commercial information relating to risk management contracts made available to its internal business units that compete with buyers is also made available to buyers at the same time. Commercial information is information that relates to the supply by a generator-retailer of risk management contracts including its current and future capacity to supply such contracts.

According to the consultation paper, this is intended to ensure a generator-retailer's retail business unit does not receive a competitive advantage through access to commercial information regarding risk management contracts. This seems fundamentally misguided since retail business segments are not buyers of contracts and therefore commercial information will not confer any competitive advantage.

The proposal imposes costs on generator-retailers to either make commercial information readily available to all buyers or put in place internal information barriers.

As noted above the term commercial information is proposed to be defined to explicitly include a generator-retailer's current and future capacity to supply risk management contracts. Making this information available to all buyers will prejudice generator-retailers relative to competitors that are not subject to the proposed obligations including smaller generator-retailers and non-integrated firms and relative to large prospective purchasers of electricity (industrial users). The prejudice will occur as generator-retailer portfolio positions will be known by the potential counterparty, while generator-retailers will not know the counterparty's position. This would place generator-retailers at a disadvantage in future commercial negotiations for example swaption negotiations, industrial electricity supply negotiations, or demand response negotiations.

Elsewhere, the proposed Code suggests that in making public various records and Meridian's RPCA, Meridian could redact commercially sensitive information. It is not clear how these obligations are intended to work together. In Meridian's opinion, principle four adds nothing to the proposal that would address the perceived risks identified by the Authority, but it would add costs and implementation challenges.

Rather than making commercial information public, Meridian may put in place internal information barriers to ensure the retail segment of Meridian does not have access to commercial information about Meridian's overall portfolio. As noted above this will be pointless since the retail segment receives no competitive advantage from this information yet it will increase costs and reduce efficiency.

# 6 Policies, plans, record-keeping and reporting obligations

The proposal would involve layers of reporting and compliance exercises that appear duplicative and will drive increased compliance costs.

As well as a non-discrimination policy reviewed and approved annually by Meridian's board and disclosed to the Authority, the proposal would require an implementation plan to be provided to the Authority and published on Meridian's website. That implementation plan would need to include the non-discrimination policy, a training programme for employees and directors, and planning for ongoing compliance assurance.

Meridian would also need to establish, maintain and keep records of:

- total capacity to offer risk management contracts, and uncommitted capacity, over the next 3 years;
- monthly electricity supplied over the past 12 months
- expected monthly electricity supply over the next 3 years;
- methodologies for pricing of risk management contracts;
- any reason for discriminating between buyers, or against buyers in favour of Meridian's own internal business units, for the purposes of non-discrimination principle 1;
- all complaints received regarding breaches of the non-discrimination obligations.

Meridian would then need to annually report all the above records, the RPCA, and a Board certificate on Meridian's compliance. Interim reports would also be required on all the above records and the RPCA.

The annual reports, interim report, and all RPCAs must be published on Meridian's website within 5 working days of giving them to the Authority, with any redactions of commercially sensitive information explained to the Authority.

In Meridian's opinion, the reporting burden could be greatly reduced by removal of the interim reporting obligation. It is not clear to Meridian what benefit would be derived from the higher frequency of reporting, and the consultation paper is silent on this point. If an RPCA proceeds to implementation, then generator-retailers could still carry out the assessment every six months. However, annual reporting would reduce costs and reflect the Authority's statement that there would not be a brightline pass or fail in any given assessment.

# 7 The Authority's assessment of costs and benefits

Meridian is concerned about the flawed methodology underpinning the cost benefit assessment (CBA). A core problem with the methodology is that it does not align with the problem statement, which emphasises that non-competitive behaviour is a risk, and something the Authority cannot rule-out definitively. Likewise, it makes unrealistic assumptions about the probability that the mere existence of the non-discrimination obligations will improve the confidence of non-integrated retailers and materially increase retail competition.

To be clear, Meridian is comfortable with the overall approach of assessing breakeven retail price effects and judging whether they are feasible. That is a reasonable approach when a robust approach is not available for estimating benefits directly. The problem is that the Authority has omitted realistic scenarios, biasing its breakeven estimates.

## 7.1 Even the most simplistic CBA must consider more than one scenario

As mentioned, the consultation paper presents estimates of the size of retail price reductions needed for the proposal to yield benefits equal to the estimated costs of the proposal (i.e. breakeven prices). These calculations are based on the Authority's belief that the mere existence of the non-discrimination obligations will boost the confidence of non-integrated retailers even if the obligations have no impact on generator-retailer behaviour (an exogenous confidence boost).[19] This scenario is represented in row 1 of the following table. It is not credible to ignore the other two logical scenarios, or to assign them zero probability. Doing so biases the quantitative analysis.

| Retail price scenarios | Exogenous confidence boost |
|---|---|
| 1. Prices reduce | Benefits |
| 2. Prices static | No benefits |
| 3. Prices increase | Disbenefits |

For example, suppose there is a 40 percent chance of the proposal being ineffective (row 2 in the above table). Then the price reductions for the first scenario needs to be 67 percent higher to cater for the reality that costs may be incurred without gaining any benefits. The Authority estimates that retail prices in the main scenario for mass market consumers would have to decline by 4.6 percent to achieve breakeven.[20] This increases to 7.7 percent if the proposal has only a 60 percent chance of exogenously improving independent retailer confidence.

Another realistic scenario is that the mere existence of the obligations drives generator-retailers to increase their retail prices to reduce their regulatory risks (row 3 in the above table). Suppose that under this scenario retail prices will be 3 percent higher than without the proposal, causing disbenefits. To see the importance of including possible disbenefits, suppose this scenario has a 40 percent probability, scenario 1 has a 60 percent probability and scenario 2 has zero probability.[21] Then the retail price reduction that is required for the proposal to break even rises from the 4.6 percent figure in the earlier paragraph to 9.7 percent.

In any case, retail price reductions of 4.6 percent (without any changes in hedging costs) are highly questionable. Retail costs account for about one-third of household electricity bills, so a 4.6 percent price reduction implies a 14 percent reduction in retailer costs and profit margin at a time when non-integrated retailers are claiming they are experiencing a margin squeeze. It is certainly not credible to believe 7.7 to 9.7 percent breakeven price reductions are achievable without reductions in hedge prices, which Meridian discusses below.

[19] Consultation paper, paragraphs 12.21 and G.19
[20] Consultation paper, Table 5
[21] The previous paragraph implicitly considered the case where scenario 3 has zero probability

## 7.2 The CBA methodology is not aligned with the risk-based problem definition

The consultation paper assumes that either the non-discrimination obligations will yield an exogenous confidence boost (as discussed above) or they will reduce super-peak hedge prices, enabling incumbent non-integrated retailers to compete more strongly and giving potential new entrants greater confidence to enter.[22] As above, the latter scenario assumes retail prices do not increase (this is only covered as a qualitative risk). Hence, the transmission channel is from super-peak hedge prices to stronger competition to lower retail prices, as illustrated in row 1 in the following table.

| | **Generator-retailer hedge offering behaviour** | |
|---|---|---|
| **Price scenarios** | **A. Anti-competitive scenario** | **B. Competitive scenario** |
| 1. Hedge and retail prices reduce | Benefits | N.A. |
| 2. Hedge and retail prices static | No benefits | No benefits |
| 3. Hedge prices static and retail prices increase | N.A. | Disbenefits |

There is no consideration of the scenario that the proposal does not alter super-peak hedge prices, in which case retail prices are not affected. This could occur either because the RPCA is an ineffective instrument for assessing anti-competitive hedging behaviour (cell 2A) or generator-retailer behaviour is competitive (cell 2B). This is a realistic scenario given statements by the Authority that “there is likely a lower risk that the price for super-peak contracts reflects a premium above competitive pricing levels” and since Meridian updated its super-peak pricing methodology in 2023, its offer prices are very close to the Authority’s competitive benchmark.

As above, ignoring these considerations materially biases the Authority’s breakeven price calculations. And as in the exogenous case, the Authority should also logically consider the scenario where retail prices increase even if hedge prices are static, creating disbenefits (cell 3B). This can occur if the Authority wrongly infers from the RPCA results that generator-retailers are acting anti-competitively when in fact they are behaving competitively. Or, as in the previous section, if generator-retailers proactively raise their retail prices to mitigate regulatory risk.

## 7.3 Concluding comments on the CBA

Meridian considers it important that the Authority assesses these scenarios and provides its views on the likelihood of net benefits to consumers under the proposal. It is difficult to see how the Authority could have the confidence to proceed with the proposal and assert that it is consistent with the objectives of the Authority based on the partial cost benefit analysis in the consultation paper.

Further, the Authority should only consider the likelihood of stronger competition and retail price decreases that result exclusively from the current proposal. The benefits of relevance

[22] Consultation paper, paragraph 12.17

in this assessment should be any benefits over-and-above retail price benefits derived from the proposed market making of super peak contracts and longer-dated contracts. It will be challenging for the Authority to isolate and attribute any benefits to specific interventions given the degree of overlap in the objectives of its proposals.

Meridian would support a level playing field proposal that delivers benefits to consumers. However, Meridian is not convinced the current proposal would do that. This highlights the merits of further analysis on:

- cost saving refinements to the proposal (should the Authority proceed with the RPCA); and
- alternatives whereby implementation of the level playing field proposal relies on market making, monitoring, and reporting on super-peak contract prices and availability.

# 8 Implementation timeframes

As discussed elsewhere in this submission, the Authority's proposal lacks critical details regarding the methods of implementation. The Authority intends to provide guidance on key elements (for example the expected cost of supply benchmark) in April 2026. That would leave generator-retailers two months to prepare implementation plans and carry out the first RPCA in accordance with those guidelines. This timeframe is extremely ambitious and would increase implementation costs and risks.

This would be a highly complex proposal to implement, requiring generator-retailers to:

- develop an RPCA methodology including determining an expected cost of supply benchmark, and any economically justifiable adjustment for differences between market-based cost of supply and self-supply;
- identify a measure of "uncommitted capacity", which will vary significantly over time based on fuel uncertainty, contract position, generation investments and outages (both planned and unplanned);
- if required, establish a mechanism through which to test market interest in any "uncommitted capacity" including frequency, format, and a method for allocating volume when oversubscribed;
- manage information flows to ensure equal access to commercial information by buyers, including managing commercially sensitive information;
- institute policies, implementation plans, record keeping systems and processes, annual and interim reporting processes and formats, and Board approvals and certifications as required.

If the Authority proceeds with its proposed approach, it must do more to allow reasonable implementation timeframes following publication of the final Code change and the Authority's guidance. At a minimum, Meridian recommends the first RPCA and implementation plan be delivered in September 2026. This would be consistent with the regular annual reporting cycle (within 45 working days after the end of each generator-retailer financial year) rather than requiring an initial out of cycle implementation step.

# 9 Concluding comments

Meridian looks forward to further engagement with the Authority as it develops guidance materials and makes final decisions on any Code amendments. Meridian will do its utmost to make any changes work for the sector – and most importantly – for electricity consumers.

Given the changes in the evidence base regarding the pricing and availability of shaped contracts and recent proposal to require market making of super peak contracts, Meridian encourages the Authority to consider an alternative "level playing field" package that is more proportionate to the perceived risk.

An alternative approach could assess compliance with the proposed non-discrimination principles through regular reporting on super-peak contract availability and offer prices, verifiable through the information disclosures already required by the Authority covering hedge transactions, requests, and responses as well as transparency regarding trading in the standardized super-peak product (for which the Authority now proposes mandatory market making). Generator-retailers could also disclose an estimate of their "uncommitted capacity" through time to help the Authority determine whether higher priced offers are due to scarcity.

This approach would mitigate the risk of the proposal incentivising higher retail prices. Instead of the RPCA it would rely on existing and recently proposed controls on predatory pricing under the Commerce Act to manage any risk of retail electricity pricing that is "too low". The approach would still directly address the perceived risk of a margin squeeze through the raising of rivals' costs (via monitoring of the availability and prices of super-peak hedge contracts).

In the absence of such an alternative approach, Meridian remains concerned that even the most careful implementation of the proposal will result in:

- costs to consumers that exceed any benefits;
- risks of higher retail prices; and
- impacts on investment in generation and other sources of flexibility.

# Appendix A: Meridian responses to consultation questions

| Questions | Comments |
|---|---|
| **Problem definition** | |
| 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? | See Meridian's comments under the heading "The Authority's problem definition" in the body of this submission.<br>Meridian does not have new evidence to provide at this time. |
| **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? | Not at this time. |
| **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? | Yes. See Meridian's comments in the body of this submission. |
| 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? | See Meridian's comments under the heading "The Retail Price Consistency Assessment (RPCA)" in the body of this submission.<br>Meridian agrees the RPCA may be an improvement over development of notional internal hedge portfolios. However, the difference may be limited given the need to identify an expected cost of supply benchmark. Key details are yet to be determined through guidance, therefore it is difficult for Meridian to comment further. |
| Q5. Is our proposal around "uncommitted capacity" | See Meridian's comments under the heading "The concept of uncommitted capacity" in the body of this submission. |

| | |
|---|---|
| workable? What suggestions do you have for improving it? | Implementation will be challenging in practice, and Meridian is not sure at this stage the concept will be workable. |
| 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? | Not at this time. |
| 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? | Meridian agrees it would be pragmatic to carve out risk management contracts approved under the materially large contracts “MLC” regime. The MLC regime individually assesses and approves materially large contracts with a higher degree of scrutiny than the current proposal.<br><br>In Meridian’s opinion, those materially large contracts should be excluded from the proposal entirely, including:<br><br>• any RPCA (to the extent it covers commercial and industrial pricing); and<br><br>• any implementation of the non-discrimination obligations since the MLC regime acknowledges that some price discrimination is efficient and specifically targets inefficient price discrimination (similar to the way in which the current proposal would allow discrimination for “objectively justifiable” reasons).<br><br>More broadly, Meridian considers a post-implementation review of the MLC regime to be warranted since it is poorly targeted and imposes ongoing regulatory costs. The regime was designed with NZAS in mind but unnecessarily captures aggregated smaller contracts, for example situations where there is:<br><br>• broad retail competition for contracts in respect of multiple sites across New Zealand (i.e. less specific nodal price implications from decisions to consume electricity or not compared to NZAS);<br><br>• a load customer that is wedded to New Zealand and electrification (i.e. minimal exit risk |

| | |
|---|---|
| | and if Meridian does not supply electricity someone else will); and<br>• a significant portion of load contracted at spot prices plus a margin such that it could in no way be considered inefficient price discrimination and should not contribute to the 150MW threshold in the Code. |
| 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? | Meridian does not consider this necessary. |
| 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. | Yes. See Meridian's comments under the heading "The concept of uncommitted capacity" in the body of this submission.<br>Generator-retailers should be allowed to adopt a merchant generation strategy in respect of new generation assets so that the investment does not impact the view of "uncommitted capacity".<br>Generator-retailers should also be allowed to make generation investments that are linked to large new electricity supply customers through upfront contracting. Forcing generator-retailers to test market interest in new generation capacity would otherwise deter investment and limit the way that generator-retailers could choose to finance new generation and increase revenue certainty in respect of new generation projects. |
| 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? | See Meridian's comments under the headings "The Retail Price Consistency Assessment (RPCA)" and "The concept of uncommitted capacity" in the body of this submission.<br>Meridian continues to see a real risk that the proposal will put upward pressure on retail prices.<br>See also the comments on generation investment above in response to Q9. While we expect generation investment would still occur, it may occur at higher costs due to the proposals effect of limiting the |

| | |
|---|---|
| | business strategies that generator-retailers are able to adopt when investing in new generation. |
| **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? | Meridian considers it likely that the RPCA will not materially improve the confidence of non-integrated firms.<br><br>See Meridian's comments under the heading "The Retail Price Consistency Assessment (RPCA)" in the body of this submission. |
| 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? | See Meridian's response to Q10 above. |
| Q13. How could the proposed approach to the RPCA be improved? | See Meridian's comments under the heading "The Retail Price Consistency Assessment (RPCA)" in the body of this submission.<br><br>Meridian would prefer an alternative approach to implementation based on market making, plus monitoring and reporting on the pricing and availability of shaped hedges as well as generator-retailer "uncommitted capacity".<br><br>Should the RPCA proceed rather than the above alternative, the Authority should develop clear, objective, and economically defensible criteria to be used by the Authority in deciding whether to investigate a breach. |
| Q14. How often should gentailers make and disclose their assessment – should it be more or less frequent than every six months, and why? | See Meridian's comments under the heading "The Retail Price Consistency Assessment (RPCA)" in the body of this submission.<br><br>Less frequent assessments would reduce implementation costs. Even if an RPCA must be |

| | |
|---|---|
| | carried out every six months, reporting annually rather than twice a year would also reduce implementation costs.<br><br>It is not clear what benefit would result from more frequent assessments and reporting given the Authority's acknowledgement that the RPCA should not be a bright line pass or fail assessment, and consumers benefit from price smoothing. |
| 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 believe it should be prescribed in the Code. The need to perform RPCAs and the information included in them has the potential to drive outcomes with significant potential impacts on competition including retail price levels. All parties should be performing RPCAs on the same basis rather than applying their own view of what is required based on Guidance. |
| Q16. If you do not support the RPCA approach, what would you propose instead to demonstrate compliance with non-discrimination principles? | Meridian would prefer an alternative approach to implementation based on market making, plus monitoring and reporting on the pricing and availability of shaped hedges as well as generator-retailer "uncommitted capacity". |
| **Implementation pathway** | |
| Q17. Is the proposed implementation timeline achievable? | See Meridian's comments under the heading "Implementation timeframes" in the body of this submission.<br><br>The two months proposed for preparation of the first RPCA and implementation plan is extremely ambitious (potentially unachievable) and will increase costs and risks. |
| Q18. Should the Authority consider adding or removing any particular steps, or providing more or less time at any point? | See Meridian's comments under the heading "Implementation timeframes" in the body of this submission.<br><br>At a minimum, Meridian suggests the first RPCA and implementation plan be provided to the Authority in September 2026, consistent with the regular cycle for annual reporting (45 working days after the end of each generator-retailer financial year). |
| Q19. Does the proposed approach to implementation provide the right balance between certainty, transparency and flexibility to | It is difficult to comment in the absence of guidance regarding key elements of the proposal.<br><br>The Authority should clarify the basis for any enforcement action as described by Meridian under the heading "The Retail Price Consistency |

| | |
|---|---|
| allow gentailers to demonstrate their compliance with the non-discrimination obligations, and to provide an appropriate basis for enforcement action if they do not? | Assessment (RPCA)" in the body of this submission. This would include development of clear, objective, and economically defensible criteria to be used by the Authority in deciding whether to investigate a breach. |
| **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? | No. This will not provide regulatory certainty, and subsequent changes will further increase regulatory costs. Rather than predetermining a pathway of increased regulation, the Authority should be open to the possibility that a post-implementation review reveals the proposal does not benefit consumers and therefore less regulation may be preferable. |
| Q21. What are your views on the proposed approach to the escalation pathway? | Meridian supports the Authority's proposal to abandon the three-step escalation pathway from the Options Paper. |
| **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? | The operation of this aspect of the proposal is unclear to Meridian. It seems to have been added as an afterthought with little consideration of workability.<br><br>The proposal appears to suggest that generator-retailers will be required to make firming products available at competitive prices when they have "uncommitted capacity" to the extent that a firming contract is a risk management contract (fixed-price physical supply contract).<br><br>As far as Meridian can tell, the proposal would not affect non-integrated generation developers seeking to sell PPAs to generator-retailers. |
| 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? | Non-integrated generators will be better placed to comment. We note the Authority is already convening this group in any event. |
| **Internal Transfer Price disclosure requirements** | |
| Q24. Do you support the proposal to revoke the ITP requirements for gentailers? | Yes. Meridian supports the proposal to revoke the ITP requirements for generator-retailers. |

| | |
|---|---|
| What are your views on retaining the RGM reporting requirements for independent retailers? | Retaining the RGM reporting requirements for non-integrated retailers remains valuable as a means to test the assertions of non-integrated retailers that they cannot compete in the retail market or cannot access hedges. That data should enable the Authority to avoid misdiagnosis of problems. As noted by Frontier Economics, "… analysis of the retailing margins shows that the smaller retailers generally have higher margins and lower energy supply costs than the gentailers they complain charge them too much." |
| **Regulatory Statement for the proposed amendment** | |
| Q25. Do you agree with the objectives of the proposed amendment? If not, why not? | Yes, with the exception of an objective to give confidence to non-integrated retailers. This is highly subjective, impossible to measure, and ignores the commercial drivers for non-integrated retailers to continue to make complaints about competitor pricing. |
| Q26. Do you agree the benefits of the proposed amendment outweigh its costs? | No. |
| 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. | See Meridian's comments under the heading "The Authority's assessment of costs and benefits" in the body of this submission. |
| Q28. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act? | No, due to likely inconsistency with the Authority's statutory objective to promote competition, reliability, and efficiency for the long-term benefit of consumers. See comments on the evaluation of consumer benefits under the heading "The Authority's assessment of costs and benefits" in the body of this submission. |
| Q29. Do you have any comments on the regulatory statement? | See Meridian's comments under the heading "The Authority's assessment of costs and benefits" in the body of this submission. |
| **Proposed Code amendments** | |
| Q30. Do you have any comments on the drafting of | In Meridian's opinion, the drafting of the proposed Code amendments should be substantially altered to |

| | |
|---|---|
| the proposed Code amendments? | give effect to the alternative implementation approach suggested by Meridian in this submission. This would remove all RPCA-related drafting and add new drafting to give effect to the alternative reporting on super peak offers and uncommitted capacity suggested by Meridian in this submission. Separate drafting to implement market making changes has already been proposed in the Authority's Market making review consultation paper.[23]<br><br>In addition, the definition of "uncommitted capacity" should be redrafted to clarify that the concept is focused on generation (consistent with paragraph B.6. of the draft guidance) rather than requiring generator-retailers to on-sell the benefits of risk management contracts purchased by a generator-retailer, for example:<br><br>**uncommitted capacity** means a **gentailer's** reasonable expectation of its ability to offer **risk management contracts** in future periods, calculated as a **gentailer's** expected gross forecast ability to offer **risk management contracts** based on its available generation, less:<br><br>(a) the amount of generation that could otherwise be used to back **risk management contracts** that the **gentailer** reasonably expects to use to supply electricity to its end customers; and<br><br>(b) a **gentailer's** wholesale commitments, comprised of **gentailer** market making commitments (regulated or voluntary) and existing risk management contracts entered into with **buyers**<br><br>Finally, there is a minor drafting error in the definition of commercial information as indicated below:<br><br>**commercial information**, for the purposes of subpart 5C of Part 13, means information that is—<br><br>(a) held by a **gentailer**; and<br><br>(b) relates to the supply by that **gentailer** of **risk management contracts**, including the **gentailer's**:<br><br>(i) current capacity to supply **risk management contracts**; and<br><br>(ii) future capacity to supply **risk management contracts**; but |

[23] https://www.ea.govt.nz/documents/8613/Market_making_review_strengthening_price_discover_is_the_forward_electricity_markets.pdf

| | |
|---|---|
| | (c) does not include:<br>(i) any information that ~~is~~:<br>(A) has been superseded by identifiable new information;<br>(B) is more than 18 months old; or<br>(C) is otherwise not current; or<br>(ii) any information, or types of information, that the **gentailer** and the **Authority** agree in writing is not commercial information |
| **Draft guidance to support Code amendments** | |
| Q31. Do you have any comments on the draft guidance? | In Meridian's opinion, the draft guidance should be substantially altered to give effect to the alternative implementation approach suggested by Meridian in this submission. This would remove all RPCA-related guidance and add new guidance to give effect to the alternative reporting on super peak offers and uncommitted capacity suggested by Meridian in this submission.<br>Meridian notes that the draft guidance at paragraph B.6. assumes that the definition of "uncommitted capacity" relates specifically to generation. The drafting of the proposed Code amendment is by comparison less clear and should be aligned with the intent expressed in the draft guidance. |
| Q32. Is any further guidance needed to help clarify what constitutes an "objectively justifiable" reason for discrimination under the NDOs? Please explain. | No. It is rightly a broad concept and regardless of any guidance it will ultimately be up to the Rulings Panel to determine whether any different commercial terms are objectively justifiable. |