

Non-discrimination obligations: Retail Price Consistency Assessment, uncommitted capacity and other matters

Consultation paper

26/02/2026

Executive summary

In October 2025 the Electricity Authority Te Mana Hiko (Authority) consulted on proposed amendments to the Electricity Industry Participation Code 2010 (Code) to introduce principles-based non-discrimination obligations (NDOs) for the four large generator-retailers – Contact Energy, Genesis Energy, Mercury NZ and Meridian Energy (together, the gentailers).

The proposed NDOs seek to ensure the even-handed supply of risk management contracts, support the liquidity and competitive pricing of risk management contracts, and, by doing so, give confidence to independent generators and retailers that they can compete on a level playing field with gentailers. This is to promote competition in, and the efficient operation of, the electricity industry for the long-term benefit of consumers.

This targeted consultation seeks feedback on specific aspects of the proposed NDOs. These are:

- draft guidance and Code amendments, developed following an industry consultation workshop held in December 2025, setting out requirements and guidance for the proposed Retail Price Consistency Assessment (RPCA)
- two options and related draft Code amendments in relation to the treatment of “uncommitted capacity” seeking to address feedback received during consultation
- draft Code amendments to provide greater specification of what should be included in the non-discrimination policies gentailers are required to produce under the proposed NDOs
- draft Code amendments to require external audits on a gentailer’s compliance with the NDOs.

These proposals build on the Authority’s overarching approach to the design of the NDOs which is, if agreed, to put in place measures that improve transparency and confidence as soon as possible. In doing so the Authority has anticipated further steps of review and refinement would likely be required if the NDOs are implemented. The full context is set out in the Authority’s October 2025 consultation document.

RPCA – guidance and related Code amendments

A core component of the proposed Code change is a new disclosure requirement – a six-monthly RPCA to test for gentailer discrimination in the pricing of risk management products in favour of their own retail internal business unit (or below-cost retail pricing).

The RPCA would test the economic link between a gentailer’s expected cost of electricity supply and its retail pricing, and provide evidence of any discrimination in the pricing of hedges that could prevent third party retailers (that are as efficient as the gentailer’s retail internal business unit) from profitably operating in the retail market.

The Authority has yet to make a decision on the proposed Code change to introduce NDOs for the gentailers. That decision is expected in May 2026. However, the Authority is conscious of the value of providing assurance about the potential transparency requirements on gentailer hedge and retail pricing as soon as possible. We have therefore developed RPCA guidance for consultation ahead of the final Code decision, with a view to being able to effectively implement the RPCA as soon as possible if a decision is made to go ahead with the proposed Code change. We are also proposing further amendments to the proposed Code for the RPCA requirements.

Proposed approach

The RPCA design must balance several competing interests, including:

- increasing transparency and scrutiny on how gentailers price hedges, including providing information to the Authority for surveillance and enforcement purposes
- allowing gentailers to manage their own spot price risk in the way they consider most efficient
- ensuring that addressing concerns about discrimination does not ultimately lead to retailers offering consumers less choice or removing services that they value, eg, retail price smoothing
- minimising the total costs of the NDO regime.

These competing interests mean that the RPCA cannot be a brightline pass/fail test. However, the RPCA would assist the Authority in assessing compliance with the NDOs (if implemented).

If the NDO Code amendment is made, the first RPCA would be due 45 working days after the date on which the Code comes into force. This reflects our view that increased transparency as soon as practicable is a core aspect of providing better assurance regarding the risk of gentailer price discrimination.

The Authority will keep the RPCA guidance under review and it would likely develop over time to reflect learnings from disclosures.

Key aspects of the RPCA guidance

The RPCA aims to provide assurance of a level playing field so that an as-efficient third-party retailer is not unduly deterred from competing with the retail internal business units of the gentailers. It does this by comparing gentailer retail prices for relevant groups of customers with the cost of supplying that electricity (both electricity costs based on observed market prices, and non-electricity costs). This allows us to assess whether there may be price discrimination between the (implicit) electricity costs faced by a gentailer's retail internal business unit and those faced by retail competitors.

The proposed RPCA:

- applies to all mass market customers, with separate assessments (at the network reporting region level) of gentailer pricing to new and existing customer pricing, and for any sub-brands, eg, Powershop. This segmentation seeks to ensure that the risk of discrimination in particular areas is not masked by the full set of data
- uses the gentailer's actual retail costs, including a contribution to shared and common costs, as its cost standard (so if an entrant retailer is more efficient, they should be able to profitably compete)
- puts an implied value on the electricity a gentailer supplies directly to its retail customers, requiring each gentailer to value this self-supplied electricity by reference to observed market prices *as if* the gentailer had secured all its electricity supply via risk management contracts
- requires each gentailer to decide how to manage the spot price risk they face as a result of having retail commitments. As gentailers are best placed to make this assessment (how to manage risk within the specific circumstances of their own business), the Authority does not intend to set a benchmark cost of electricity for RPCA purposes. Instead, the RPCA framework:
 - sets the expectation that the gentailer's *as if* portfolio will minimise their risk-adjusted cost of supply, consistent with rational and prudent risk management practices

- expects that gentailers will value their self-supplied electricity by reference to observed market prices – ASX and OTC – including for thinly traded contracts (to the extent that the data allows)
- allows long-dated hedges (eg, OTC hedges for 5+ years) to be included in the *as if* portfolio, but also expects some short-dated hedges to be included
- allows gentailers to set their electricity cost using a book build approach, consistent with our understanding of the usual practice of independent retailers, and/or with reference to current market expectations of the cost of supply
- allows gentailers to change their methodology for constructing their *as if* portfolio, but with requirements around the rationale for change and the change process to ensure that the RPCA remains a useful tool to test for price discrimination over time.
- In taking this approach – allowing gentailers to decide how they construct their own *as if* portfolio to manage their own spot price risk rather than being more prescriptive – the Authority has chosen to reflect the principle that risk should be managed by the party best placed to do so. We expect gentailers to take a prudent, economically rational and durable approach to calculating their cost of electricity for the RPCA, and to link this back to market data. If they do not do so, we expect to make the RPCA more prescriptive.
- The draft RPCA guidance also discusses the Authority’s default approach to responding to negative margin RPCA assessments, including where those negative margins persist over multiple years. The Authority accepts that there may be good reasons for a negative retail margin, such as price smoothing, but expects gentailers to justify any such RPCA outcome. The Authority will then assess any negative margin against the specific evidence and circumstances. Repeated negative margins will lead to more scrutiny.
- Consistent with the RPCA not being a brightline test, we are not proposing to create any safe harbours for negative margins. However, noting the Authority’s clear indication that this test is developing and may require refinement, and that our initial focus is on increasing transparency, we would view with scepticism any claim by gentailers that the introduction of this test would require them to increase retail prices due to compliance concerns.

We welcome feedback on all aspects of the proposed RPCA guidance, including the level of prescription and any practical implementation concerns. We are not, at this point, seeking any further feedback on the broader merits of introducing the NDOs, or of requiring an RPCA to test for internal vs external hedge price discrimination.

Uncommitted capacity

A second core component of the proposed NDO Code changes was introducing the concept of “uncommitted capacity” to the supply of hedge contracts. Gentailers would be required to calculate their uncommitted capacity and make it available to buyers and themselves on a non-discriminatory basis. The intent of the proposed approach was to provide increased assurance of even-handed third-party access to hedges through greater transparency around the gentailers’ ability to provide those hedges.

Uncommitted capacity is an important element because it sets a central parameter for the application of the NDOs.

Submissions on the proposed NDOs raised a number of concerns with the approach. Given the feedback received, the Authority also included it as a topic for discussion at the RPCA workshop held on 9 December 2025.

Independent retailers and independent generators argued that it does not properly implement non-discrimination as it allows gentailers to prioritise a significant proportion of available generation capacity for their retail business units.

Gentailers generally (Contact, Genesis, Meridian) considered that it did not align with their dynamic risk management approaches and, among other things, did not adequately recognise the linkages between “uncommitted capacity” and the ability of gentailers to back hedges with generation.

Given the feedback, and the important role that uncommitted capacity plays in the proposed NDOs, we are consulting on two options developed after consideration of the feedback to date. Submissions on the proposed options will inform further decisions on the proposed NDOs.

We are consulting on two options as set out below.

Option 1

This option retains the concept of uncommitted capacity and refines drafting to:

- tighten existing Code drafting and guidance on how gentailers assess the electricity requirements of their own business units
- clarify that uncommitted capacity is a reasonable expectation formed at the time of relevant assessment and more clearly reference the relationship between uncommitted capacity and a gentailer’s generation capacity
- acknowledge that gentailers will have operational or risk management considerations, and that those should be documented in a gentailer’s non-discrimination policy.

Option 2

This option removes the concept of uncommitted capacity and amends non-discrimination obligation 1(2) to require non-discriminatory access to “risk management contracts” rather than uncommitted capacity. The proposed guidance under Option 2:

- starts from the premise that gentailers will offer hedge contracts in response to all reasonable requests from third parties
- provides that an objectively justifiable reason for discrimination in the supply of risk managements contracts (ie, not offering a hedge contract in response to a third-party request) is that doing so would result in an intolerable risk position for the gentailer.

The proposed drafting outlines the factors a gentailer must have regard to when reaching a view that providing risk management contract(s) would place it in an intolerable risk position. Amongst other things, the guidance outlines an expectation that, if a gentailer cannot offer hedges to a third party due to an intolerable risk position, it will also not be able to provide its own retail business units with new implied or actual hedges of comparable duration, volume and shape. In some cases, this could require a gentailer’s retail business units to adjust their commercial strategies accordingly but it does not limit a gentailer’s ability to obtain hedges from third parties in these circumstances.

Our current view is that Option 2 would, on balance, better and more directly achieve the objectives of the NDOs. We welcome submitters’ views and also welcome proposals to refine the drafting of either option.

Internal non-discrimination policies and auditing

The proposed NDO Code changes included a requirement for gentailers to have a non-discrimination policy that details operational practices to ensure their trading of risk management contracts occurs in accordance with the non-discrimination principles. We are proposing further amendments to that proposed drafting to include greater detail on the expected content of the non-discrimination policies.

We are proposing to codify the requirements for external audit of compliance with the NDOs. These audits would need to be undertaken annually.

We welcome feedback on the usefulness of the approach and the detail of the drafting.

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1 Purpose of this consultation paper

1.1 The Electricity Authority Te Mana Hiko (Authority) seeks feedback on:

- (a) draft guidance to the four large generator-retailers (gentailers)¹ for undertaking and reporting on the proposed Retail Price Consistency Assessments (RPCAs) under the Code amendments proposed in October 2025 (the NDO Code amendments)²
- (b) further amendments to the proposed NDO Code amendments in relation to the RPCA requirements
- (c) the proposed approach to uncommitted capacity and alternative proposed Code amendments in relation to uncommitted capacity
- (d) proposed Code amendments to include greater detail on the expected content of the non-discrimination policies gentailers are required to produce
- (e) proposed Code amendments to codify the requirements for an external audit.

Draft RPCA guidance

- 1.2 In this consultation we are seeking feedback on the draft RPCA guidance and associated proposed Code amendments ahead of any final decisions on the proposed non-discrimination obligations (NDOs). We set out our approach to the guidance in section 3.
- 1.3 We are consulting on the guidance now to ensure the guidance is complete in time to give practical assistance before gentailers would have to submit their first RPCAs if the Authority decides to go ahead with the NDO Code amendments.
- 1.4 We acknowledge this work may not be needed if the Authority decides not to go ahead with the NDO Code amendments, but consider that the benefits of the guidance being ready if needed outweigh this cost. We appreciate stakeholders' continued input in this RPCA development process, including at the workshop held in December 2025.

Proposed approach to 'uncommitted capacity'

- 1.5 In this consultation we outline two potential options for the Authority's approach to uncommitted capacity in the draft NDO Code changes released for consultation in October 2025 and seek feedback to inform the Authority's final decisions on the NDOs.
- 1.6 We invite targeted feedback on the proposed options and do not require submitters to repeat arguments made in their previous submissions unless relevant to the Authority's decision-making on the proposed options.

Proposed approach to non-discrimination policies and audit requirements

- 1.7 The Code amendments proposed in October included a requirement for gentailers to have internal non-discrimination policies. We are proposing further amendments to that proposed drafting to include greater detail on the expected content of the non-discrimination policies. We welcome feedback on the usefulness of this approach and the detail of the drafting.

¹ Namely, Contact Electric Limited, Genesis Energy Limited, Meridian Energy Limited and Mercury NZ Limited.

² Under the proposed Part 13 Subpart 5C of the Electricity Industry Participation Code 2010 set out in the Authority's October 2025 Level playing field measures consultation paper. The Authority subject to this consultation intends to make a final decision on that Code change proposal in May 2026.

- 1.8 We are also proposing to amend the Code to require an annual external audit of compliance with NDOs.

Code amendments to support proposed approaches

- 1.9 Based on the proposals in this consultation paper, we have amended the Code drafting proposed in our October consultation paper. The amended Code drafting is attached as Appendix B. For the RPCA, the changes to the existing Code proposed in October are marked in black; the further changes we are now proposing are marked in red.

2 How to make a submission

- 2.1 The Authority's preference is to receive submissions in a Word document in the format shown in Appendix C.
- 2.2 Submissions should be emailed to levelplayingfield@ea.govt.nz with 'Consultation – RPCA guidance' in the subject line by 5.00pm, 19 March 2026.
- 2.3 The Authority will confirm receipt of all submissions.
- 2.4 If you cannot send your submission electronically, please email levelplayingfield@ea.govt.nz or call 04 460 8860 to discuss alternative arrangements.
- 2.5 We will publish all submissions. If you consider that we should not publish any part of your submission, please:
- (a) indicate which part should not be published and explain why,
 - (b) provide a version of your submission that we can publish (if we agree not to publish your full submission).
- 2.6 All submissions, including any parts the Authority does not publish, can be requested under the Official Information Act 1982. This means the Authority would be required to release material not published unless good reason existed under the Act.

3 Retail Price Consistency Assessment

- 3.1 The RPCA is part of the Authority's October 2025 proposal to introduce NDOs in relation to hedge contracts supplied by the four large gentailers.³ The aim is to ensure there is a 'level playing field' to promote competition between gentailers and independent retailers.
- 3.2 The RPCA tests whether gentailers' retail prices are consistent with available hedge contracts. It answers the question, "Could an 'as efficient' independent retailer compete with a gentailer by purchasing electricity at observed hedge prices". The RPCA does this by valuing a gentailer's supply to its retail internal business unit by reference to observed hedge prices.

What the RPCA does and does not seek to do

- 3.3 The RPCA tests a specific internal vs external price discrimination issue. It is not a screening test for broader competition issues or the absolute level of hedge or retail prices. Rather, the

³ This proposal sits within the broader context of the Energy Competition Task Force's work programme: [Energy Competition Task Force | Our projects | Electricity Authority](#). The Task Force is a joint initiative of the Electricity Authority and Commerce Commission, with the Ministry of Business, Innovation and Employment involved as an observer.

RPCA is a targeted component of the NDO framework which in turn is part of a broader suite of measures aimed at building confidence in the hedge market, including:

- (a) strengthening trading of the super-peak standardised flexibility product (introduced in January 2025)
- (b) the review of market making in the electricity futures market to strengthen price discovery and promote healthy competition
- (c) improving monitoring of the over-the-counter (OTC) contract market, including of OTC requests for contracts and responses to those requests.

3.4 We expect that the RPCA will best assess hedge market price discrimination – between a gentailer’s implicit pricing for ‘self-supply’ to their retail internal business unit⁴ and contracts sold to third parties – by considering expectations of energy cost vs retail pricing at regular points. To do this in a useful way the RPCA needs to:

- (a) cover all mass market retail pricing, adequately segmented to identify potential competition issues
- (b) take an appropriately robust approach to the cost of electricity, eg, linking back to observable market prices
- (c) operate as consistently as possible over time, allowing year by year comparisons
- (d) ultimately provide assurance that a new entrant, that is as efficient at retail as a gentailer, is not unduly deterred from operating profitably and able to compete effectively with gentailers and other electricity retailers.

3.5 We are proposing to implement the RPCA as soon as possible if the NDO Code amendment is made. Our aim in doing so is to increase transparency and allow parties to learn by doing as quickly as possible. The Authority will keep the RPCA guidance under review and it may be developed over time reflecting learnings from disclosures.

3.6 This approach is well suited for a new bespoke regulatory test and is, in our view, preferable to an extended period of iterative drafting tweaks without any practical testing. In this context, while we expect gentailers to put their best foot forward with their first RPCA disclosures, they should also seek and act on feedback to make more effective disclosures in subsequent rounds.

3.7 However, we also appreciate the need for the NDOs to have teeth – for there to be real consequences if gentailers are favouring their retail internal business units over third parties without objectively justifiable reasons. Under the proposed Code drafting, a gentailer’s obligations under clauses 13.236V and 13.236W are to provide its RPCA to the Authority and to publish a public version of its RPCA, and to provide a clear, full explanation of its approach, including:

- (a) any departures from the Authority’s guidance
- (b) the gentailer’s view (including any supporting evidence) regarding why the RPCA result is consistent with an outcome that might be observed in a competitive market. We are most interested in this view where the RPCA result is a negative or narrow positive margin.

3.8 A negative, or only narrowly positive, RPCA result will not necessarily indicate a breach of the NDOs or conclusively evidence a margin squeeze. Gentailers are required to explain

⁴ Noting that no gentailer actually sells hedges to themselves.

how the result is consistent with an outcome that might be observed in a competitive market, particularly for a negative or narrow positive margin result. The Authority could then undertake further assessment where RPCA results raise concerns. Where appropriate, we may refer the matter to the Authority's compliance function for consideration of a potential breach of the Code non-discrimination obligations.

Level of prescription in the RPCA guidance

- 3.9 In preparing draft RPCA guidance and associated Code amendments we have actively considered the balance between prescription and a gentailer's freedom to set their own approach to managing spot price risk for their retail internal business unit.
- 3.10 Our strong starting position is that we should not be telling gentailers how to construct their *as if* hedge portfolio because that would be akin to telling them how to best manage their spot price risk – they are best placed to make those judgements (as independent retailers are for their businesses). However, not being prescriptive in the RPCA guidance leaves risks in terms of the level playing field outcomes that the NDO package is seeking to achieve. We acknowledge that some stakeholders might consider that the guidance is not prescriptive enough.
- 3.11 We expect gentailers to put forward RPCA calculations that are prudent, economically rational, and link back to market data. We will closely scrutinise each iteration of the RPCA, particularly the cost of electricity. While gentailers are able to choose how they best minimise the risk-adjusted cost of supply to their own retail internal business unit, when assessing their RPCAs we will have a particular focus on:
- (a) any disconnect between the *as if* hedge portfolio proposed by the gentailer and comparable hedges they actually traded in the same period
 - (b) the approach used to calculate the expected cost of their *as if* portfolio consistent with prudent and rational risk management, which gentailers must set out in detail
 - (c) any changes to their detailed methodology for constructing their *as if* portfolio between RPCAs – shape, duration, weightings, etc.
- 3.12 We encourage gentailers to carefully consider how they construct a durable first *as if* portfolio prior to the first RPCA disclosures being due.
- 3.13 Ultimately our starting position above (not telling gentailers how to manage their spot price risk) only goes so far. If gentailers don't demonstrate a prudent and rational approach to risk management in their RPCAs we will likely need to be materially more prescriptive despite the risks that go with such an approach.
- 3.14 Finally on this point, the same question of balance arises in relation to how gentailers are allocating common costs to their various internal business units. We expect them to be transparent and even-handed, taking a principled allocation position with clearly articulated cost drivers. No business unit should be effectively subsidising another through this allocation process.

Response to feedback

- 3.15 We set out below our response to the key themes from written submissions on the proposed RPCA, responding to the October 2025 Level playing field measures consultation paper, and from the December RPCA workshop. Submissions on whether or not to adopt the RPCA (or an alternative) will be responded to as part of our NDOs decision paper later this year.

3.16 This section addresses the following issues that have been raised about the RPCA framework:

- (a) forward-looking or backward-looking approach
- (b) cost standards: as-efficient or reasonably efficient
- (c) further specification of costs – benchmark
- (d) customer scope and RPCA segmentation
- (e) geographic segmentation
- (f) retail prices used in the RPCA – timing
- (g) period for assessing profitability and price smoothing.

3.17 As context for our response to those issues, we note that the purpose of the RPCA means that it operates over different timeframes from a usual margin squeeze test, which means the RPCA will likely have bespoke elements. For example:

- (a) In a margin squeeze generally, the wholesale (upstream) product that a vertically integrated firm sells to a retail (downstream) competitor is an input into a product in a retail market where the buyer and (vertically integrated) seller are competing. Both transactions typically happen in roughly the same period, so the opportunity cost of either sale is easier to assess than in electricity markets.
- (b) In this case, however, we are considering the supply of risk management contracts for future periods.⁵ A gentailer's perspective at the time it prices and sells the risk management contract may differ (significantly) from when it prices and sells in competition with the buyer at the retail level (and noting it does not actually "sell" an equivalent risk management contract internally). Capital Strategic Advisors for Meridian and Contact illustrated this timing issue when they submitted on retail price smoothing, noting that wholesale prices turned out to stay higher for longer than forecast when the initial decision to smooth retail prices was made.

3.18 Our proposed design of the RPCA guidance and associated proposed Code amendments, and response to key submission issues, is informed by this timing question, so that potential gentailer discrimination is assessed in a way that appropriately reflects their decision making and judgements at specific points in time, compared with second guessing them with the benefit of hindsight.

Forward-looking or backward-looking approach

3.19 Rather than the forward-looking assessment proposed by the Authority, Mercury suggested the RPCA should be a backward-looking assessment because:

- (a) the forward-looking assessment will rely on hypothetically derived assumptions to prepare forecast revenue and costs
- (b) a retrospective assessment of actual retail margins would give a more transparent unbiased assessment of compliance.

3.20 Mercury's proposal is in line with the general approach to margin squeeze analyses in competition law. However, the Authority considers that a forward-looking, or expectations-based, assessment is more useful in this specific case: a regulatory response to discrimination risks relating to contracts that fix a forward-looking wholesale electricity price.

⁵ Such contracts are not substitutable between periods.

- 3.21 While a backward-looking analysis would provide certainty about revenues and costs, it would not be easy to determine why retail margins under that analysis turned out as they did: whether they are due to, say, demand or supply shocks or other factors that cannot have influenced a gentailer's initial decisions on retail prices, or arise as a result of anti-competitive margin squeezing. Judgements and assumptions would need to be made to try to separate out different explanations.
- 3.22 A forward-looking or expectations-based approach would avoid this issue. Under the proposed RPCA, when a gentailer prices hedge or retail contracts, it would have formed its best view on the expected supply costs (among other things) at that time, based on likely demand and supply scenarios. Because the assessment is based on expectations, it does not need to account after the fact for subsequent changes in market conditions.
- 3.23 In addition:
- (a) an expectations-based approach allows for the RPCA to provide more timely assurance to participants; an outturn-based assessment will inevitably be more dated when published
 - (b) any analysis will need to deal with hypotheticals to a material extent regardless, whether that relates to articulating expectations about the future or estimating what costs would have been absent external factors, reflecting that the gentailers do not price (in a robust, commercial way) the internal supply of electricity between their wholesale and retail internal business units.
- 3.24 The Authority therefore considers that, for the RPCA, a forward-looking approach would be more informative than a backward-looking approach, and better reflects what gentailers are able to assess/control at a given point in time (so is a more suitable assessment tool).

Q1. Do you agree with the Authority taking a forward-looking approach to the RPCA? If not, why not?

Cost standards: as-efficient vs reasonably efficient

- 3.25 In assessing whether gentailer hedge and retail pricing allows third party retailers to compete, Link Economics argued that the RPCA should use the reasonably efficient operator (REO) standard rather than the as-efficient competitor (AEC) standard.⁶ It raised concerns about potential gentailer gaming of the costs under the AEC, the relative impact on dynamic efficiency of each standard and potential inconsistencies between gentailers' AEC approach to costs. Link also submitted that relevant retail costs include all costs incremental to retailing over the long run, including a portion of shared costs typically expected to be recovered by retailing activities.
- 3.26 In our view, the appropriate standard for the proposed RPCA is AEC, including a contribution to shared and common costs. This best aligns with the purpose of the RPCA. We set our reasoning out below.
- 3.27 The relevant cost standards in access cases – whether under competition or regulatory regimes – have been substantially discussed in literature and cases.⁷ For example:

⁶ Link Economics, page 8. The as-efficient competitor standard is also referred to as the equally efficient operator standard.

⁷ For example, Posner, R.A., *Antitrust Law: An Economic Perspective* 194–5, (2nd ed., Chicago; University of Chicago Press 2001). See [Review: Posner's Antitrust Law: An Economic Perspective on JSTOR](#)

- (a) Commerce Commission guidance for telecommunications access generally leans towards the AEC, but notes that this would be a minimum standard, and the REO may be relevant in some cases.⁸
- (b) The European Court of Justice has said that the AEC standard is appropriate in assessing potentially abusive pricing, such as margin squeezes⁹ or predation.
- (c) The European Commission has stated that, while the AEC standard is a useful test, “it is important to avoid an unduly strict and dogmatic application of such a standard”.¹⁰ It has said:

“In margin squeeze cases the benchmark which the Commission will generally rely on to determine the costs of an equally efficient competitor are the LRAIC of the downstream division of the integrated dominant undertaking”

“In some cases, however, the LRAIC of a non-integrated competitor downstream might be used as the benchmark, for example when it is not possible to clearly allocate the dominant undertaking's costs to downstream and upstream operations.”¹¹

- (d) The literature notes that the AEC standard tends to promote productive efficiency, while the REO may tend to promote dynamic efficiency.

3.28 In our view the literature and cases are not definitive on which standard to apply and point to ensuring that the test best meets the specific scenario that the decision maker is faced with (noting that in some circumstances the difference between the two tests can be small).

3.29 In this case we consider the AEC standard generally better aligns with the purpose of the NDOs:

- (a) By comparing hedge prices with gentailer retail prices the RPCA performs a check that each gentailer is not discriminating on the price of hedge contracts available to independent retailers by, implicitly, providing electricity at more favourable costs to its own retail internal business unit. Using an AEC standard is most closely aligned to this test: a gentailer should be indifferent (everything else being equal) to whether it sells at the wholesale level (hedges) or at the retail level (at the sum of the wholesale price, its retail costs and other costs). The NDOs are not seeking to provide an advantage to entrants or shelter them from the impact of any scale or scope economies that they cannot yet achieve.
- (b) Using an REO standard absent a cost benchmark (see below) would not be practical for a gentailer to undertake – the proposed RPCA is performed ex ante by the gentailer, so the input data should be reasonably available to them (as it is under the AEC standard), cf, asking them to speculate on an objectively reasonable level of costs (under the REO standard).

3.30 One of the differences between a generic application of the two tests can be the approach to common costs. The as-efficient competitor standard is usually interpreted as applying a

⁸ [Equivalence-and-non-discrimination-guidance-30-September-2020.pdf](#) para. 3.45 onwards

⁹ For example, Case T-827/14 Deutsche Telecom v European Commission, 13 December 2018 and Telefonica etc. European Commission (2023), Competition Policy Brief No 1/2023, A dynamic and workable effects-based approach to abuse of dominance available at [A dynamic and workable effects-based approach to abuse of dominance - Publications Office of the EU](#) citing Case C - 23/14 Post Danmark II, paragraph 55 and Case T-612/17 Google Shopping, paragraph 538.

¹⁰ Ibid.

¹¹ Communication from the Commission — Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertaking (2009) as amended in 2023: [Commission guidance on enforcement priorities related to abusive exclusionary conduct by dominant undertakings | EUR-Lex](#) paragraph 80 and footnote 55. Elsewhere they added that it may not be appropriate in markets with significant barriers to entry, such as economies of scale or network effects or if the conduct is related to conditions attached to pricing (such as exclusivity).

long-run avoidable costs approach. As the Commission put it: “long-run average avoidable costs do not include an allocation of common costs shared between the relevant downstream service and other services (whether upstream services or services in other markets)”.¹²

- 3.31 The REO approach by contrast is interpreted as allowing a share of these common costs to be included (a LRIC+ cost standard).
- 3.32 In this case we consider that a more bespoke approach best suits the RPCA – applying the AEC standard but including an appropriate contribution to common and shared costs. This best fits with the purpose of the RPCA and aligns with the European Commission’s caution against taking rigid and dogmatic approaches. If we are seeking to ensure that an as-efficient new entrant, including one that is not integrated, can compete with the gentailer’s retail internal business unit, the retail cost calculation in the RPCA must include a contribution to all relevant cost categories. Otherwise, if common or shared costs are more than minimal, we are effectively requiring the entrant to be more efficient than the gentailer.¹³
- 3.33 We acknowledge Link Economics’ arguments about the risks of gentailers’ ‘gaming’ the cost measures. They linked this to the use of a cost benchmark. We are confident that appropriate scrutiny of RPCA disclosures should address this point, including a requirement to disclose methods, and changes in methods and their impacts, as set out in the guidance and proposed Code. After the fact auditing of gentailer accounts (as part of gentailers’ standard audit processes), including cost disclosures, provides an extra layer of scrutiny (as audit requirements will be in the minds of gentailer staff at decision points that are relevant to the RPCA).

Q2. Do you agree with the Authority applying an as-efficient standard, including an allocation of common costs, to the retail cost component of the RPCA? If not, what standard should be applied and why?

Further specification of costs – benchmarks

- 3.34 Link Economics submitted that “the energy cost needs to reflect the risk management contract prices charged by the gentailer that correspond to a pre-defined benchmark portfolio of a prudent retailer”.¹⁴ Octopus also submitted that “[t]here are regulatory examples in Australia and the UK for retail price benchmarks and prudent portfolios which the Electricity Authority should draw on for developing an appropriate regime.”¹⁵
- 3.35 Electric Kiwi submitted more generally that:
- “[It is] essential the benchmark price and associated calculation rules are fully standardised and governed by EA to ensure uniformity, transparency and even handedness.*
- “[F]or the RPCA to operate credibly, it is essential that the Authority not only defines the benchmark but also audits gentailers’ RPCA calculations regularly to prevent gaming, ensure uniform application, and maintain trust in the reporting framework.”*

¹² Paragraph 3.47.2.

¹³ This point was recognised in the Commerce Commission’s 2020 Equivalence and non-discrimination guidance for telecommunications at 3.54.

¹⁴ Page 9.

¹⁵ Page 7.

“The Code and supporting guidance should require greater transparency and granularity in RPCA reporting.”¹⁶

- 3.36 We consider that we have overall struck a reasonable balance between prescription and discretion in the draft guidance and proposed Code amendments. We have set out the broad framework of the assessment and asked gentailers to explain their approach and the reasons for it. But each gentailer’s business is different, and the purpose of the RPCA is only to detect discrimination – it is not, at least initially, intended to prescribe how gentailers manage risks and costs by publishing benchmarks.
- 3.37 As noted above, we expect to iterate the RPCA and to learn through this process. That could lead to increased specificity over time.
- 3.38 We discuss the merits of further specification below for:
- (a) energy and retail costs benchmarks
 - (b) benchmark hedge portfolios.

Electricity and retail costs benchmarks

- 3.39 We acknowledge that standardisation of costs of supply can have advantages. It could increase transparency and reduce the scope for gaming or disagreement about assumptions and inputs. Other jurisdictions use this approach in a different context, for example to set default retail offers in Australia.
- 3.40 However, establishing a benchmark involves to some extent prescribing the risk appetite, risk management strategy, and products for the four large gentailers. In our view setting a benchmark:
- (a) inefficiently moves some part of gentailer risk decisions away from the gentailer and to the regulator, likely with poorer risk management outcomes
 - (b) reduces potential variety in gentailer business models, capabilities and risk preferences and so may limit competition and innovation
 - (c) is less aligned with the purpose of the RPCA, which is not to set wholesale (or retail) prices or a specific efficiency standard for gentailers, but to detect any price discrimination within the specific operations of each gentailer. In this regard, our reasoning for not setting a benchmark is conceptually similar to why we are not adopting a REO cost standard.
- 3.41 For these reasons, the Authority considers that, at this stage, it should not prescribe an electricity costs or retail costs benchmark. A gentailer’s RPCA can instead be based on its own assessment of its cost of supply and retail, given its circumstances, risk preferences, and strategy, within guardrails.

Benchmark portfolio of hedges

- 3.42 We also do not agree that the proposed RPCA regime requires a benchmark hedge portfolio. Much of the same reasoning set out above for energy and retail costs also applies. In addition, we note that gentailers have a range of legitimate choices when considering how they will manage spot price risk, which goes directly to the portfolio that they choose.
- (a) A variety of portfolios may manage a prudent retailer’s risk appropriately.

¹⁶ Page 5 and page 8.

(b) An appropriate portfolio could be relatively simple – such as a combination of baseload and standardised super-peak hedges – or substantially more nuanced.

3.43 We do not see the rationale for prescribing the gentailers' portfolio approach so long as they can demonstrate that they are minimising their risk adjusted cost of supply, consistent with rational and prudent risk management practices.

Q3. Do you agree that the Authority should not be publishing benchmarks for the cost of electricity, the *as if* portfolio of hedges and retail costs, and should instead provide higher level guidance to gentailers (eg, their cost of electricity should be calculated to minimise the risk adjusted cost of supply)? If not, please explain why and set out how you consider that benchmarks should be constructed.

Customer scope and RPCA segmentation

3.44 The RPCA is proposed to cover all mass market customers – residential customers and small businesses. Each gentailer should present separate RPCAs, for each of its retail brands, with respect to the following retail segments:

- (a) offers for new electricity customers
- (b) plans for existing electricity customers.

3.45 Small commercial customers are typically included in the category of mass market customers, as the approach to serving these customers is broadly similar to that for residential customers – in contrast to more bespoke arrangements for larger commercial customers.¹⁷

3.46 At the workshop, participants disagreed on whether commercial and industrial (C&I) customers should be part of the RPCA. It was also suggested that a separate assessment might be appropriate of whether gentailer hedge prices and end customer prices are creating a margin squeeze for independent retailers looking to supply C&I customers.¹⁸

3.47 We propose that, at this stage, larger commercial and industrial consumers should not be included in this first iteration of the RPCA. The competitive dynamic for these customers appears to differ from the mass market: individualised terms and pricing (often more reflective of wholesale prices), more specialised needs and more sophisticated procurement.

3.48 In future iterations, we may explore whether it is useful to better specify the boundary between small and larger C&I customers in more detail. We may also explore margin squeeze issues for larger C&I customers and retailers/brokers separately.

Other customer segmentation suggestions considered

3.49 The Authority considered a range of other suggestions for the appropriate level of customer segmentation raised at the workshop and through submissions, eg, low vs high user; customer contract type (fixed vs open); bundled/non-bundled offers; by price plan; residential and small business as different segments.

3.50 Any segmentation should assist with the core task of the RPCA, balancing the benefit of improved accuracy and transparency with compliance and administrative costs and the risk

¹⁷ In Mercury/Trustpower the CC said that: “there is no material difference between the requirements of, and competitive alternatives available to, residential customers compared to SME customers for both electricity and natural gas”.

¹⁸ We will respond to submissions on the scope of customers captured by the proposed NDOs as part of the decision paper. In our October paper we invited feedback on whether risk management contracts that are also materially large contracts under the Code should be excluded from the proposed NDOs. We note that Meridian submitted that C&I customers should be excluded from the RPCA (as well as NDOs).

of creating unhelpful information that misdiagnoses competitive retail pricing as potentially anti-competitive behaviour.

- 3.51 As such, the Authority considers that RPCA segmentation should be limited to consumer segments where the benefit of transparency is particularly high. RPCAs should focus on segments which could be informative of a competition concern relevant to the NDOs and are of a material size.
- 3.52 These considerations informed the Authority's proposal for the RPCA to focus on offers for new customers (where assurance of a level playing field is likely to have the greatest benefit) and existing customers.
- 3.53 The Authority also considered the case for the following segments, which it will not require for the first round of disclosures, but may reconsider in future:
- (a) segmenting by contract status of existing customers – customers on open contracts are a large group and a relevant target for retail competition (compared to those on fixed term contracts)
 - (b) a separate segment for small businesses – commercially, small business customers may be materially different than the average residential customer (including different load profiles or different cost to serve). That could affect a gentailer's expected supply cost and retail price inputs to the RPCA, but currently the Authority is not aware of evidence that indicates that it should segment this way for the purposes of assessing hedge price discrimination.
- 3.54 The Authority also does not consider there is a basis for segmenting by price plan or low vs high user (too disaggregated and unclear hedge price discrimination risk). Any potential issues around the pricing of bundled offers appear in the first instance to be best addressed through cost allocation expectations set out in the RPCA guidance.

Geographic segmentation

- 3.55 At the December workshop and in written submissions, a number of submitters suggested that regional segments (by electricity distribution business (EDB) area or similar) should be adopted.¹⁹
- 3.56 We can understand the preference for this segmentation given clear differences in costs (which to some extent flow through to prices) between regions. Because of this, to achieve a reasonable degree of accuracy, the Authority expects at minimum a gentailer would undertake its analysis at a regional level for each segment, and this is reflected in the draft guidance. A regional assessment may better assist in identifying price discrimination or other competition issues that may otherwise be obscured by more aggregated measures.
- 3.57 However, these points need to be balanced against other considerations:
- (a) The competition concerns raised with us have not generally been specific to regions, so our current view is that they are likely to be appropriately tested by different segmentation, ie, new vs existing customers.
 - (b) As prices of hedge contracts tend to be established with reference to Benmore or Otahuhu, it is possible that a more geographically segmented RPCA may be positive in some regional areas and fail in others without this being an indicator of price discrimination for risk management contracts or other competition problems. To raise competition concerns, there would need to be credible reasons to suggest either that an

¹⁹ Electric Kiwi p8, Link Economics (commissioned by Independent Electricity Retailers), p8.

RPCA failure in only one or a few geographic areas was likely to have a material effect on competition; or that there was a broader anti-competitive effect.

- 3.58 We note that the Commerce Commission used regional retail markets in its 2021 clearance of Mercury/Trustpower.²⁰ This reflected the fact that the competition issues in that case focussed on Tauranga reflecting Trustpower's retail presence and partial community ownership (noting in particular the substantial TECT rebate).
- 3.59 Balancing these different considerations we therefore propose that:
- (a) gentailers publish (with any commercially sensitive information redacted), and disclose in full to the Authority, the RPCA calculations by regional area, including explanations of negative outliers, so that the Authority can monitor the detailed results, follow-up with a gentailer on any areas of interest, and comment on any geographic concerns we identify as part of our publication of a dashboard of RPCA results and commentary.
 - (b) gentailers should also publish their RPCA results in aggregated form (a national average) for each segment, that is, also without geographic segmentation.
- 3.60 In our view the incremental compliance costs of disclosing the regional calculation to the Authority will not be material but may give considerable transparency benefits.
- 3.61 Different regional classifications are possible. ITP calculations have been undertaken by some gentailers at the GXP level.²¹ A 2024 paper²² used EDB areas. A third possibility is network reporting regions (NRRs), which break up EDB networks into smaller regions, and which align with pricing regions commonly used in the retail market today.
- 3.62 Of the options, we consider that using NRRs is likely the most useful way to implement regional building blocks for this calculation, as it would best support accurate reflection of network costs and adjustments for locational differences in the cost of supply, and align with retail pricing.

Q4. Do you have any comments on our proposed approach to geographic and customer segmentation? If you don't agree, please explain why and set out the alternative segmentation that you think the Authority should apply. Whether or not we require geographic segmentation, we would also be interested in your views on the best regional classification to apply when the Authority analyses the RPCAs (NRRs, EDB areas, GXPs or something else).

Period for assessing profitability and price smoothing

- 3.63 We received several views in written submissions and at the workshop about how RPCA results should be assessed. This includes, but is not limited to, the role of retailers in smoothing prices for retail customers (where, because some customers are 'sticky', retailers may take a longer-term view of profitability). Views have included that:
- (a) price smoothing is valuable to at least some retail customers, and should be expected to be offered in a competitive retail market
 - (b) the Authority should create clear safe harbours for price smoothing, such that narrow positive or negative margin RPCA outcomes over multiple years are not assessed as

²⁰ Commerce Commission, merger clearance determination Mercury NZ Ltd and Trustpower Limited's retail business, 27 September 2021 available at Microsoft Word - PUBLIC version - Mercury and Trustpower merger clearance determination _2021_ NZCC 16(4208749.1).docx

²¹ As well as OTA/BEN by one retailer and OTA with adjustment for other locations by another.

²² Peter Gibbard and Cameron Grubb, "Retail electricity prices in New Zealand: recent trends and the relationship to market shares, New Zealand Economic Papers, 58:3, 288-298, DOI: 10.1080/00779954.2024.2339378. The data are published with the article as supplemental material.

discriminatory; that without safe harbours the Authority risks effectively requiring gentailers to increase current retail prices because of the introduction of the RPCA

- (c) alternatively, the Authority should not accept that price smoothing of itself justifies low or negative margin RPCA outcomes in any year because the same point can be dealt with in the cost of electricity calculation (by including historic hedges) or through the gentailer's ability to provide objective justification for discrimination under the Authority's proposed Code change
- (d) the Authority should apply a strict formula to the RPCA, and only exercise any discretion in its enforcement decision (cf, within the RPCA)
- (e) smoothing retail prices for up to five years should be acceptable, or alternatively that two years of negative or low margin RPCA outcomes would be of concern
- (f) the magnitude of any negative margin in an RPCA outcome should impact the period of smoothing that is acceptable.

3.64 We acknowledge that price smoothing is a valued service for at least some customers and agree that it is a service we would expect to see offered under workable competition. All other things being equal then, a negative margin RPCA outcome in any given year could indicate smoothing consistent with competition rather than discrimination.

3.65 However, a claim of smoothing cannot be a "get out of jail free" card. The proposed RPCA reflects the Authority's view²³ that retail competition matters and that discriminatory hedge pricing between gentailer retail units and third parties should not be occurring. If significant discrimination is occurring and cannot be objectively justified, the regulator should act, rather than err towards a wait and see approach. With this in mind:

- (a) we accept that some smoothing is likely useful, and that the RPCA should not therefore be a year-by-year strict pass/fail test
- (b) we consider, however, that it is not appropriate to have strict safe harbours where narrow positive or negative margin RPCA outcomes cannot be considered as potential indicators of discrimination
- (c) we do not agree that smoothing is necessarily dealt with by or linked to the approach to cost of electricity that the gentailer takes
- (d) the Authority rather will inevitably have to exercise discretion when the RPCA shows narrow positive or negative segment or overall margins for a gentailer and that, while smoothing may conceptually provide a good reason for this outcome, the reasoning and the data will need to stack up objectively at each point, hence the proposed Code requirement at 13.236V(4)(j) that the gentailer must explain their RPCA results in the context of outcomes that would be observed in a competitive market
- (e) we agree that the magnitude and duration of any negative or narrow positive margin are relevant when the Authority is considering the RPCA
- (f) we continue to be sceptical that the RPCA will at any point require a gentailer to increase its retail prices, noting that gentailers should already be managing their margin squeeze risk as part of their Commerce Act risk management. If a gentailer was considering increasing their retail prices, and believed that the RPCA was a significant factor in that decision, we would expect them to advise the Authority of this, including

²³ Shared by the other Task Force member, the Commerce Commission.

setting out the evidence linking the price rise to the RPCA, so that we can consider that link.

- 3.66 We note that the requirement set out above – that the gentailer must explain their RPCA results in the context of outcomes that would be observed in a competitive market – applies to all RPCA results: see clause 13.236V(4)(j) of the proposed Code. This requirement is fundamentally intended for circumstances where an RPCA shows a negative or narrow positive margin. However, we have elected to not define a (likely arbitrary) boundary for “narrow positive”. Instead we leave it to the discretion of the gentailer to decide how much explanation it needs to provide for a positive result. Where an RPCA result is a substantial positive it would in our view be satisfactory for the explanation to simply make the point set out in paragraph A120 of the draft RPCA guidance.
- 3.67 In the guidance we (deliberately) focus on the circumstances where an explanation of RPCA results by a gentailer, rather than the broader Code requirement, eg, at A124 of the guidance:
- As such, in the case of a negative RPCA margin, or a narrowly positive one, a gentailer may be able to provide explanations to demonstrate the result is economically justifiable.*
- 3.68 We have set out our proposed guidance on these matters in Appendix A.

Q5. Do you have any comments on our proposed approach to price smoothing? If you disagree with our approach, please set out your preferred alternative, and how it is consistent with ensuring that there is a ‘level playing field’ to promote competition between gentailers and independent retailers.

Retail prices used in the RPCA – timing

- 3.69 Finally, while it only came up briefly in the workshop, we have further considered whether future retail prices should play a role in the RPCA assessment, and how the timing of retail price changes should impact the timing of the RPCA assessments.
- 3.70 Our current view is that the RPCA should be assessed every six months as a snapshot in time, so should use an average retail price based on all the gentailer’s retail plans at the RPCA assessment date.
- 3.71 Two alternatives we considered were:
- (a) whether a gentailer should make adjustments for changes to tariffs that are planned to take effect shortly after the RPCA assessment date (eg, if a price change has been announced to customers before or at the time the RPCA is due). This may increase accuracy, but also adds complexity
 - (b) whether a gentailer should only report against the retail prices and matching cost expectations as at the time those retail prices for existing customers were last set (raised in discussion at the workshop), cf, reporting every six months. This more static approach would not address why retail prices are not being updated if cost expectations have since altered to the extent of risking negative margins.
- 3.72 The Authority does not currently favour either alternative approach, but acknowledges, for example, that price changes a gentailer expects to be in place shortly after the RPCA assessment date may form part of their explanation of an RPCA outcome.

Implementation timeframe

- 3.73 It is proposed that each gentailer must undertake an RPCA for each of its retail brands and each RPCA segment every six months. The proposed timings coincide with the middle and end of a gentailer's financial year.
- 3.74 The first RPCA would be due to the Authority at a date to be specified in the NDO Code. If the NDO Code amendment is made, and the finalised RPCA guidance is published in May 2026, we expect that the first RPCA would be due on 2 September 2026.
- 3.75 Under the currently proposed timetable, this first RPCA would be standalone, as the first annual report in which a gentailer is to demonstrate how it has met all the non-discrimination principles would not be required until 2027.

Q6. Do you have any comments on the proposed date for the first RPCA disclosures? If you are a gentailer, and have concerns about your ability to meet that timeframe, please explain these in detail.

4 Uncommitted capacity

Background

- 4.1 In February 2025 the Authority released a Level Playing Field (LPF) options paper recommending principles-based NDOs and seeking feedback.
- 4.2 A key issue for the application of NDOs is the extent to which gentailers can prefer their own retail businesses in the provision of hedges. The February 2025 LPF Options Paper proposed NDOs would require that “uncontracted hedge volumes” should be allocated even handedly. It also proposed the option of mandatory trading where all hedges, both internal and external, would be traded and gentailers would not have the option to prioritise their own internal business units.
- 4.3 “Uncontracted” was defined as hedge volumes that a gentailer does not have binding contractual arrangements for. The proposed hypothetical internal hedge portfolios formed part of the binding contractual arrangements so that new demands for hedges by gentailers’ retail arms would be subject to the NDOs.
- 4.4 Following analysis of submissions, and further problem definition work, the Authority agreed to consult on Code amendments to reflect the following elements:
- (a) mandatory principles-based NDOs
 - (b) the removal of a requirement to establish internal hedge portfolios to avoid potentially protracted hypothetical debates that risked not changing gentailer behaviour or revealing new information about risk management practices
 - (c) the implementation of the RPCA as a more efficient way to determine whether price discrimination is occurring at an aggregate level.
 - (d) The NDOs would sit alongside a broader package of wholesale market interventions including strengthened trading of the super peak hedge product, a review of market making and improved monitoring of the OTC contract market, including of OTC requests for contracts and responses to those requests.
- 4.5 In the absence of a requirement for gentailers to construct internal hedge portfolios the Authority proposed the concept of uncommitted capacity to increase transparency on the

capacity available to support hedges available to buyers. The October consultation paper outlined the Authority's proposed approach summarised below:

The proposed NDOs would require that a gentailer allocate its uncommitted capacity on a non-discriminatory basis. Regular disclosure of uncommitted capacity would provide greater transparency on the extent to which constrained access to hedges reflects scarcity or withholding. This approach is complemented by our intention, subject to consultation, to rely more heavily on market making to improve liquidity for key wholesale inputs. Due to the complexity involved, the Authority is proposing to provide gentailers the flexibility to apply their own methodologies for quantifying and allocating uncommitted capacity. The Authority may choose to refine or standardise this methodology during the initial phases of implementation, subject to consultation.

- 4.6 We sought feedback on this approach on 14 October 2025 and during a stakeholder workshop held on 9 December 2025.

Current drafting

- 4.7 Principle 1 of the Non-Discrimination Principles is non-discriminatory supply and outlines the following NDOs:
- (1) A gentailer must not discriminate between buyers for the supply of risk management contracts without an objectively justifiable reason.
 - (2) 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.
 - (3) A gentailer must not discriminate against buyers in favour of its own internal business units when pricing risk management contracts without an objectively justifiable reason.
 - (4) For the avoidance of doubt, subclause (3) requires pricing of risk management contracts in such a way as to ensure that any buyer that supplies electricity to end users at retail, that is as efficient with regard to operating costs as the gentailer's own retail internal business unit, and adopts a reasonable risk management approach, is not prevented from operating profitably.
- 4.8 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:
- (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
 - (b) a gentailer's wholesale commitments, comprised of gentailer market making commitments (regulated or voluntary) and existing risk management contracts entered into with buyers.

Submissions on 'uncommitted capacity'

- 4.9 There was near unanimous opposition to the "uncommitted capacity" proposals as drafted. Independent retailers and independent generators argued that it does not properly implement non-discrimination as it allows gentailers to prioritise a significant proportion of available generation capacity for their retail business units.
- 4.10 Gentailers generally (Contact, Genesis, Meridian) considered that it did not align with their dynamic risk management approaches. While opposing the concept, Meridian proposed

drafting amendments to more clearly link uncommitted capacity to available generation and suggested that it could be used as a type of monitoring tool in the context of other proposed changes to help the Authority identify when prices reflect scarcity rather than any attempt to exercise market power.

- 4.11 Genesis suggested that an alternative would be to 'update security standards [to inform the amount of uncommitted capacity] and then market design to ensure standards met'.
- 4.12 While opposing the concept Genesis proposed some drafting improvements to inter alia more clearly link uncommitted capacity to available generation, clarify that it is a point in time judgement, and more explicitly address a broader range of considerations.
- 4.13 Meridian suggested an alternative could be that a gentailer would indicate periods for which it doesn't have uncommitted capacity.²⁴
- 4.14 Contact suggested that withholding risk could be better addressed by requiring Board certification that it is not artificially increasing its risk position to reduce volume of risk management contracts in the market, and ongoing monitoring by the Authority on volume of hedges offered.
- 4.15 Mercury considered the approach to be broadly workable but noted a likely need to seek more guidance from the Authority on implementation.
- 4.16 Other submitters such as MEUG considered the concept unworkable.
- 4.17 Independent generators and retailers were generally of the view that using uncommitted capacity to implement non-discrimination was ineffective/too narrow and favoured removing the concept and have the NDOs applicable to all supply.
- 4.18 In addition to the broader objection, independents considered the definition gave gentailers too much flexibility in how they could assess their own requirements.
- 4.19 Electric Kiwi stated:

Allowing each gentailer to rely on its own internal risk models or policies to define "uncommitted capacity" would defeat the purpose of a level playing field. Each gentailer's policies, models, and risk appetites differ, resulting in highly inconsistent and non-comparable outcomes for capacity that should be subject to common regulatory expectations. The regime's effectiveness requires that the definition and calculation of uncommitted capacity be prescriptive, transparent, and uniform across all gentailers, not left to bespoke, internal, or subjective approaches.

- 4.20 Octopus submitted:

We recommend the removal of the concept of uncommitted capacity or significant changes to the definition for reasons discussed above. If it is maintained, the scope of the definition should be broadened and gentailers' reasonable expectations should be replaced with an objective test of expected contract capacity.

- 4.21 Submitters noted potential disconnects between statements in the consultation document, the Code drafting and draft guidance.

Options for consultation

- 4.22 In response to this feedback, the Authority sets out two options below, both of which we consider address submitters' concerns. After considering stakeholder feedback on these two

²⁴ Meridian also suggested a number of other amendments.

options, we may decide to adopt either approach, or to retain the previously proposed approach to uncommitted capacity in our final decision as to whether to amend the Code to introduce the NDOs.

- 4.23 The Authority considers it useful to indicate our preferred option noting that:
- (a) no decisions have been made on either option
 - (b) the purpose of the consultation is to obtain feedback which will be considered alongside previous submissions to inform final decisions.
- 4.24 Our current view is that Option 2 would, on balance, better achieve the objectives of the NDOs. We welcome submitters' views and also welcome proposals to refine the drafting of either option.
- 4.25 Proposed Code drafting is set out in Appendix B. Please note that for simplicity Option 1 is not included in the proposed code drafting in Appendix B. Any proposed amendments to drafting should reference the drafting outlined below.

Option 1: Retain existing non-discrimination principle with refined drafting of uncommitted capacity definition

Non-discrimination obligation remains

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

Existing definition of uncommitted capacity

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:

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

Revised definition of uncommitted capacity

Uncommitted capacity means a gentailer's reasonable expectation at the time of the relevant assessment of its ability to offer risk management contracts in future periods, which must be limited to consideration of:

- (a) the gentailer's gross forecast ability to back risk management contracts with generation
- (b) the amount of generation that the gentailer reasonably expects to need to supply electricity to its existing end customers
- (c) a gentailer's wholesale commitments, comprised of gentailer market making commitments (regulated or voluntary) and existing risk management contracts entered into with buyers
- (d) any other reasonable operational or risk management considerations specifically documented in the gentailer's non-discrimination policy.

Revised guidance

A gentailer's uncommitted capacity to offer risk management contracts reflects its forecast ability to back a risk management contract. For the purpose of this forecast, at any point in time, future generation is uncommitted if the gentailer has not already allocated that generation to back:

- (e) existing risk management contracts entered into with buyers; or
- (f) gentailer market making commitments (regulated or voluntary), noting that where market making commitments to quote or offer do not result in a risk management contracts, the relevant generation then becomes uncommitted; or
- (g) the obligations the gentailer reasonably expects to have to supply to its end customers.

A gentailer should allocate its uncommitted capacity on a non-discriminatory basis, such that the gentailer does not prioritise supplying its internal business units over buyers.

When calculating the generation the gentailer reasonably expects to use to supply electricity to its existing end customers, it may only have regard to its customer commitments at the time of assessment accounting for existing consumption plus any documented and evidenced assessment of the gentailer's reasonable expectations of aggregate increased/decreased consumption for those customers over the relevant period. For the avoidance of doubt, it does not include supply for anticipated new customers.

Option 1: Discussion

- 4.26 This option retains the existing structure of the NDOs and builds on industry suggestions for improvement.
- 4.27 By tightening the criteria for calculating the generation a gentailer reasonably expects to use to supply to its existing end customers, the approach is intended to reduce a potential risk that the combined impact of gentailers' over-estimating future needs would make the remaining uncommitted capacity insufficient to support competition in adjacent markets. It is intended to ensure that, as all participants in retail markets seek to acquire customers, they can access risk management contracts on non-discriminatory terms to compete.
- 4.28 The inclusion of "formed at the time of relevant assessment" reflects the Authority's understanding that as gentailers calculate their uncommitted capacity, this is subject to judgements that may be relevant to the point in time those judgements are made. We would expect to see relevant factors outlined in gentailers' non-discrimination policies.
- 4.29 The more explicit reference to the relationship between uncommitted capacity and generation capacity is intended to reflect the Authority's view that the key underlying constraint on risk management contract availability is generation capacity and to clarify that it is not the intent of NDOs to require gentailers to on-sell any hedge positions agreed with third parties.
- 4.30 The inclusion of the ability to reference operational or risk management considerations is intended to reflect the extent to which gentailers need to be able to make judgements but that those considerations will need to be transparent to the Authority through their inclusion in the non-discrimination policy.
- 4.31 Significant portions of the proposed guidance have been removed given the increased specificity in the revised uncommitted capacity definition.

Option 2: Revised non-discrimination obligation

Revised non-discrimination obligation

- 4.32 A gentailer must not discriminate against buyers in favour of its own internal business units for the supply of ~~uncommitted capacity~~ risk management contracts without an objectively justifiable reason.

Guidance

Under non-discrimination obligation 1(2), a gentailer must supply risk management contracts on a non-discriminatory basis, such that the gentailer does not prioritise supplying actual or implied risk management contracts to its internal business units over the supply of risk management contracts to buyers without an objectively justifiable reason.

Non-discrimination obligation 1(2), starts from the premise that gentailers will offer risk management contracts in response to all reasonable requests from buyers. An “objectively justifiable reason” for not doing so is likely to exist where providing a buyer with a risk management contract would result in an “intolerable risk” position for the gentailer in respect of its existing commitments. Such a position may arise where the gentailer’s reasonable forecast ability to back the requested risk management contract with generation is insufficient having regard to:

- (a) the amount of generation that the gentailer reasonably expects to need to supply electricity to its existing end customers
- (b) the gentailer’s wholesale commitments, comprised of gentailer market making commitments (regulated or voluntary) and existing risk management contracts entered into with buyers.

When calculating the generation the gentailer reasonably expects to use to supply electricity to its existing end customers it may only have regard to its customer commitments at the time of assessment, accounting for existing consumption plus any documented and evidenced assessment of the gentailer’s reasonable expectations of aggregate increased/decreased consumption for those customers over the relevant period of consideration. For the avoidance of doubt, it does not include supply for anticipated new customers.

For the period, or circumstance, for which a gentailer has indicated that the supply of a risk management contract to a buyer would result in an “intolerable risk position”, we would expect the gentailer also to refuse to supply actual or implied risk management contracts of comparable duration, volume and shape, backed by its own generation, to its internal business units, except where those contracts are for the purposes of meeting the existing commitments described above.

Option 2: Discussion

- 4.33 This option requires that all risk management contracts supplied by gentailers are supplied on a non-discriminatory basis. It operates on the default premise that gentailers will offer risk management contracts in response to all reasonable requests from third parties.
- 4.34 Where a gentailer is not able to offer a risk management contract because providing it would place the gentailer in an intolerable risk position this would need to be done on the basis of a robust, evidence-based process outlined in the gentailer’s non-discrimination policy.

- 4.35 This approach is intended to reflect feedback that the ability of gentailers to offer risk management contracts involves dynamic assessments of generation capacity alongside other factors.
- 4.36 The proposed option builds upon a view that each gentailer's wholesale internal business unit supplies actual or implied risk management contracts to ensure they can meet the energy requirements and manage spot market pricing risks for their retail internal business unit. The proposed obligation requires that gentailers will also supply risk management contracts to buyers.
- 4.37 We expect gentailers to give effect to the obligation primarily by continuing to engage in market making and OTC trades. It is intended to work alongside the good faith obligation required by the proposed Principle 2 to support the availability of risk management contracts for buyers.
- 4.38 The proposed obligation is not intended to require parties to enter into risk management contracts or to price them in a way that does not appropriately reflect risk and scarcity. Rather, it is intended to support engagement with buyers consistent with robust competition for the provision of risk management contracts.
- 4.39 For the avoidance of doubt, the proposed obligation is not intended to require that risk management contracts supplied to buyers must be of the same duration, volume and/or shape as actual or implied risk management contracts supplied to gentailers' internal business units.
- 4.40 While used in different contexts, the proposal builds on the concept of 'intolerable risk position' already in use in the Voluntary Code of Conduct for participants in New Zealand's Over the Counter Electricity Market (OTC Code). It reflects the Authority's view that while working in good faith with buyers to meet their reasonable needs, alongside meeting market making commitments, it will be uncommon for gentailers to not be able to provide a requested risk management contract to a buyer, ie, an intolerable risk position is a high bar. The Authority's view is that such circumstances would be limited, in part because:
- (a) the Expression of Interest process, as set out in the OTC Code, provides an opportunity for gentailers to provide feedback on the proposed structure of a transaction to inform the shape and targeting of any future RFP by the issuer
 - (b) we would expect gentailers to work in good faith with buyers to propose a set of terms that would not place it in an intolerable risk position
 - (c) we expect gentailers to primarily signal risk and scarcity through price rather than availability.
- 4.41 In circumstances where supplying a risk management contract, or particular type of risk management contract (eg a particular volume, duration or shape or combination thereof) would result in an "intolerable risk position" for the gentailer, as set out in the guidance, this can be signalled to the potential buyer(s).
- 4.42 Consistent with the principle of non-discrimination the Authority's expectation is that, for the period, or type of risk management contract for which buyer requests are being impacted by an intolerable risk position, a gentailer will also refuse to supply any implied or actual risk management contracts of broadly comparable duration, volume and shape, backed by its own generation, to its internal business units, except where those contracts are required for the purposes of meeting existing commitments. In some circumstances this may require a gentailer's retail business units to adjust their commercial strategies accordingly. It is not

intended to limit a gentailer's ability to purchase risk management contracts from other parties to back their retail strategy in these circumstances.

- 4.43 We welcome views on the interplay between OTC monitoring requirements and the appropriate reporting for circumstances where gentailers have relied on 'intolerable risk position' in response to a request for a risk management contract.

Q7. Do you prefer Option 1, Option 2 or our previous proposal on uncommitted capacity? Do you have any feedback on how Options 1, 2 and our previous proposal on uncommitted capacity could be improved?

Q8. Do you have any feedback on the interplay between OTC monitoring requirements and the appropriate reporting where gentailers rely on 'intolerable risk position' in response to a request for a risk management contract?

5 Internal non-discrimination policies and audit requirements

- 5.1 The proposal for internal non-discrimination policies arose from a suggestion by Octopus²⁵ that gentailers should maintain operational policies. These would direct internal operational practices that ensure trading of risk management contracts is consistent with the NDOs.
- 5.2 The October consultation document proposed that gentailers be required to maintain internal non-discrimination policies. The proposed clause 13.236Q was drafted to give effect to this:

13.236Q Non-discrimination policy

(1) A gentailer must at all times maintain an internal policy ("non-discrimination policy") that details operational practices in place to ensure the gentailer's trading of risk management contracts occurs in accordance with the non-discrimination principles.

(2) The non-discrimination policy referred to in subclause (1) must be reviewed and approved by the gentailer's board at least once a year.

(3) Each time the gentailer amends its non-discrimination policy, the gentailer must disclose a copy of the amended non-discrimination policy to the Authority within 10 working days of the amended policy taking effect.

- 5.3 Submitters provided little to no feedback on the policies, with most of the feedback being somewhat tangential. Genesis wanted reassurance that commercial decisions made in accordance with published policies do not breach good faith. Contact suggested that it was excessive to require its Board to review and approve its NDO policy, while Octopus wanted the policies to identify how all risk management capacity is contestable over time.
- 5.4 We have been considering the feasibility and enforceability of the various NDO obligations. Our current view is that providing greater detail on the expected content of NDO policies is likely to aid gentailers in producing documents that are fit for purpose and aligned with the overall policy intent.

Q9. Is it useful and/or helpful to provide greater specification in the Code of the requirements for a non-discrimination policy?

²⁵ Octopus Energy Submission on Level Playing Field Measures Options Paper 6 May 2025
https://www.ea.govt.nz/documents/7370/Octopus_Energy_mWGD2tg.pdf

- 5.5 To provide some structure for the policies, we are proposing the additions to the Code set out in Appendix B.
- 5.6 We are proposing to codify the requirements for a regular external audit of compliance with the NDOs.
- 5.7 Appendix G of the October consultation paper set out the approach to assessing costs and benefits and included the marginal cost of auditing for the purposes of the annual report. This was estimated at \$10,000 per gentailer. We are interested in feedback if this level of cost remains appropriate, given the codification of the audit costs.
- 5.8 Our initial view is that a potential increase in audit costs is unlikely to be significant enough to affect the Regulatory Statement, given our generous assumption that costs could be double our estimates.

Q10. Do you support the requirement for external audit of compliance with the NDOs? Why or why not?

Q11. Is an annual audit of these requirements appropriate, or would a different timeframe be better? Why? Do you have any comments on the alignment of the timing with other gentailer audit obligations?

Q12. Would the codification of the audit requirement impose significant additional costs? What would you estimate these costs to be?

6 Regulatory statement for the proposed amendments

- 6.1 The October consultation paper set out a regulatory statement for the proposed introduction of NDOs.
- 6.2 The proposed Code amendments related to the RPCA, uncommitted capacity and audit of internal NDO policies set out in this consultation paper are aimed at supporting transparency and the implementation and enforceability of the proposed NDOs.
- 6.3 To the extent that these amendments add costs over and above those set out in the regulatory statement in the October consultation paper, the Authority considers such additional costs are marginal.
- 6.4 The Authority also considers that the Code amendment proposals in this paper will better support the achievement of the benefits set out in the regulatory statement in the October consultation paper, by improving transparency and the workability of the NDOs, and that these benefits outweigh any additional costs. As such the Authority considers the regulatory statement is unchanged.
- 6.5 The Authority welcomes feedback on these points.
- 6.6 The Authority considers that the proposed amendments outlined in this paper are necessary or desirable to promote competition in, and the efficient operation of, the electricity industry for the long-term benefit of consumers. We consider that the changes are consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.
- 6.7 A detailed response to submissions on the regulatory statement in the October paper will be set out in the forthcoming decision paper.

Q13. Do you have any comments on the impact of the proposals in this paper on the regulatory statement set out in the October consultation paper?

Appendix A Draft RPCA guidance for consultation purposes

Overall approach to the RPCA

- A.1 This guidance is intended to assist the four large gentailers²⁶ (gentailers) with undertaking and reporting retail price consistency assessments (RPCAs) by explaining the intent of the RPCA and setting out the Authority's current expectations on methods.²⁷

Promoting competition through confidence in a level playing field

- A.2 The purpose of the RPCA is to test whether a gentailer is discriminating on the price of risk management contracts it makes available to independent retailers by, effectively, providing energy at more favourable rates to its own retail internal business unit.
- A.3 The RPCA would be part of a suite of measures aimed at providing, and building confidence that there is, a level playing field to promote competition between independent retailers and generators and the gentailers. The Authority is committed to increased, regular scrutiny of the hedge market – closely monitoring conduct, disclosures and the overall effectiveness of the package of measures it is implementing to address hedge access and pricing risks.

A specific regulatory test

- A.4 The RPCA is conceptually an evolution of the current retail gross margin reporting.²⁸ It provides an indicator of discrimination on the price of hedges or below cost retail pricing, using a margin squeeze-type approach to assess the implicit cost of electricity that each gentailer self-supplies to its retail internal business unit.
- A.5 A disclosed negative/narrow positive margin RPCA may prompt further questions to a gentailer from the Authority and, in case of unsatisfactory explanations, further assessment and possible referral to the Authority's compliance process.
- A.6 However, it is not a bright-line pass/fail enforcement tool. An RPCA "fail" will not lead to enforcement action in itself. Rather it is an indicator of price discrimination in hedge pricing used as evidence that will be considered when assessing potential non-compliance with the non-discrimination principles.
- A.7 Nor is the RPCA a screening test for broader retail competition issues. The RPCA cannot provide insight into access to risk management contracts, or inappropriate use of market power in the pricing of individual risk management contracts. Other aspects of the non-discrimination obligations (NDOs) and our other monitoring work will cover those areas.
- A.8 The RPCA conceptually covers similar ground to margin squeeze theories of harm, which could be considered under section 36 of the Commerce Act 1986, but it is not the same.²⁹ For example, the RPCA is designed to respond to a specific market power risk, it is forward-looking (using expected costs and retail prices) rather than a typically ex-post review of conduct, and it does not require proof of substantial market power.
- A.9 Separately the Commerce Commission retains its function of investigating whether conduct may contravene section 36 and taking enforcement action. It may be informed by any

²⁶ Contact Electric Limited, Genesis Energy Limited, Meridian Energy Limited and Mercury NZ Limited.

²⁷ Under the proposed clause 12.236V(4).

²⁸ Electricity Industry Participation Code 2010, Part 13, Subpart 6.

²⁹ For example, see p18 of Commerce Commission, 2023, [Misuse-of-Market-Power-Guidelines-March-2023.pdf](#).

outcomes of the RPCA, though problematic conduct under the RPCA does not mean that the conduct also breaches section 36 of the Commerce Act and vice versa.

Keeping assumptions and modelling to a minimum

- A.10 The RPCA is designed to reduce requirements for additional modelling or assumptions by focusing on what a gentailer is likely to know or have to do already, and by focusing on expectations, not gentailer outturns.
- A.11 A gentailer decides its retail pricing for the next period based on (among other factors) expected demand and costs. As the RPCA relies on these expectations, the assessment avoids having to adjust actual outturns for, say, the effects of demand or supply shocks or other factors outside a gentailer's control, forecast errors, and actual performance of various gentailer internal business units (generation, trading, retail) that could all impact realised margins and may obscure any anti-competitive margin squeezing.
- A.12 The Authority does not, at this point, intend to test or make any judgment on the accuracy of recorded expectations by looking at outturns, unless there are material doubts about the credibility or good faith of the recorded expectations. We are open to reconsidering this stance in the future.
- A.13 The approach to the RPCA also avoids the need to develop and quantify models of what a reasonably efficient operator might do or what a benchmark cost of supply might be. Instead, the RPCA draws on a gentailer's own assessment of electricity (and other) costs – justified with reference to observed market prices – and its actual retail prices.
- A.14 This more practical approach gives confidence that an 'as efficient' retailer would not be unduly deterred from operating and competing in the electricity retail market, without assuming that a gentailer must be operating at some benchmark efficiency standard.

Evolution of guidance

- A.15 The Authority is seeking to quickly increase transparency to deter any price discrimination on hedges. The RPCA is a new regulatory assessment and relatively high level. All interested parties will learn about what further guidance may be desirable from doing and reviewing the initial RPCA disclosures, and how best to understand and respond to the issues that come up. The guidance will likely evolve over time.
- A.16 As such, the Authority expects that implementation and learning will be the primary focus of the first round of assessments. However, if an assessment reveals strong indicators of potential discrimination, the Authority will respond promptly. Depending on what is appropriate in the circumstances this may include:
 - (a) referring the matter to the compliance function of the Authority to assess whether a potential breach of the NDOs may have occurred
 - (b) considering whether amendments or stronger rules are needed to better support the purpose of the NDOs.

Q14. Do you agree with the proposed general approach to the RPCA, including the approach to implementation and potential evolution of guidance? If not, why not and what would be an alternative approach?

The main elements of the RPCA

Guidance

- A.17 The RPCA margin equals the retail price for the period ahead less expected non electricity costs and less expected cost of electricity. This RPCA margin is generally expected to be positive.**
- A.18 The expected cost of electricity is valued at observed market prices as *if* the cost for all that electricity was fixed with risk management contracts at observed market prices.**
- A.19 All expected prices and costs should be excluding GST and either presented as if they will apply for the year ahead (that is, annualised) or otherwise adjusted for seasonal effects.**

Discussion

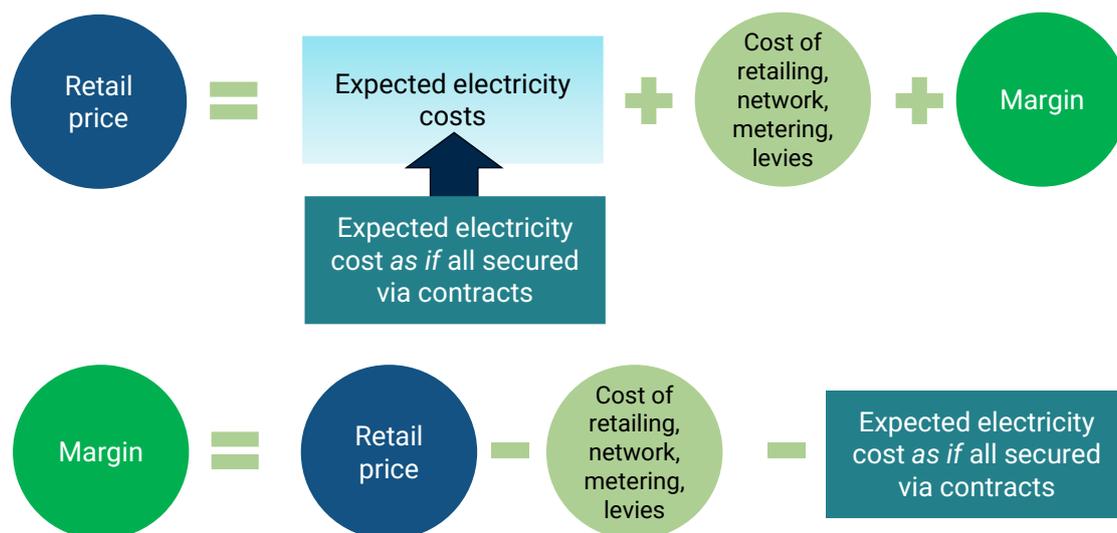
- A.20 The assessment of whether a gentailer's retail prices are consistent with observed hedge prices is a check that a gentailer is not favouring its own retail internal business unit on the cost of supply, compared to what it sells that supply to third parties at, through risk management contracts.
- A.21 The RPCA seeks to overcome the absence of prices for a gentailer self-supplying its retail internal business unit to allow the Authority to monitor for the presence of price discrimination.
- A.22 This is done by assuming that observed market prices of risk management contracts are a reasonable shadow price for self-supply.
- A.23 That is, a gentailer's opportunity cost of self-supply to its own retail customers is the price it could get for selling that supply (or, equivalently, what it would have cost to buy and hedge electricity supply for its retail customers).
- A.24 If, after subtracting all its costs from its retail prices, including energy costs as if supply was all secured via hedge contracts, a gentailer's margin is negative, then the RPCA indicates that a gentailer may be discriminating in the prices of the risk management contracts it sells compared to what it implicitly charges itself for self-supply, and/or that its retail prices may be set below cost.
- A.25 As a negative or narrow positive result may indicate competition concerns, it should be accompanied by a clear explanation. If the explanation is insufficient or raises further issues, the Authority may ask follow-up questions and, where appropriate, the matter may be referred to the compliance process for assessment of a potential breach of the non-discrimination principles in the Code.
- A.26 The Authority acknowledges that the link between retail prices and expected cost to supply (and other costs) is not a simple cost+ relationship. Any firm has many considerations when it sets its retail prices to compete for custom and make profits, including insulating customers from price volatility through price-smoothing. This means the assessment cannot be a bright-line pass/fail assessment. But the assessment is informative, as ultimately a retailer's prices must cover its costs to stay in business.

Overview of the calculation

- A.27 Gentailers will provide their assessment every six months. To be as current and reflective of expected retail prices as possible, the RPCA should cover all the retail plans that have been

agreed with customers or are being offered to (potential) new customers as at the time that each assessment is to be undertaken (at end of the financial year and at the six-month point).

- A.28 Gentailers' assessments should compare the expected costs per MWh (including the implied electricity costs) and retail prices per MWh over the next 12 months from the time of assessment. We call this period the reporting period. Further guidance is provided in subsequent sections.
- A.29 A gentailer should report any decision that has a material impact on its calculations to us, and the reasons for it.



- A.30 For a gentailer to demonstrate (and explain that there is) an economically justifiable link between the expected cost of electricity supply and its retail pricing, the key steps are, for each RPCA segment and for each NRR, to:
- calculate their load profile
 - calculate the average retail price per MWh
 - estimate, using observable market-based prices, the cost per MWh of supplying electricity to the RPCA segment, as if that load was hedged using ASX and OTC contracts (including PPAs) to minimise the risk-adjusted supply cost
 - calculate the expected non-energy (network, retail, metering, levies) costs per MWh
 - calculate the margin, by subtracting the expected cost of electricity and non-electricity costs per MWh from the average retail price per MWh
 - report the RPCA margin per MWh with objectively justifiable reasons for any implied loss or narrow margin, and disclose the methods used, material judgements made and reasons for them, and any additional data, assumptions, and calculations the Authority may need to assess the results (and that cannot be observed from existing retail or contract data disclosures)
 - calculate and present all prices and costs as if for the year ahead, that is, annualised to control for seasonal effects (and exclusive of GST).

Below is more detail on how gentailers should undertake the RPCA.

Q15. Do you agree with the proposed overall calculation approach to the RPCA? If not, why not? In what way could it be improved and why?

Coverage and retail segments

Guidance

- A.31 The RPCA covers all mass market customers – residential customers and small businesses.**
- A.32 Each gentailer should present two separate RPCAs, for each retail brand it controls, covering margins in relation to:**
- (a) **offers for new electricity customers**
 - (b) **existing electricity customers.**
- A.33 Each gentailer should publish and disclose its results for each segment by network reporting region, and aggregated to a national total for each segment.**

RPCA covers mass market customers

- A.34 The RPCA covers all gentailers' mass market customers – that is residential customers and small businesses as commonly understood to be mass market customers in accordance with standard industry practice.
- A.35 For the RPCA, the Authority assumes that small business customers are mass market customers when they are offered or are on retail plans that consist of generic contract terms and served like other retail customers – in contrast to more bespoke arrangements for larger commercial customers.
- A.36 Larger commercial and industrial consumers are currently not included in the RPCA. The competitive dynamic for these customers appears to differ from the mass market: individualised terms and pricing, more specialised needs and more sophisticated procurement.
- A.37 The Authority's starting position is that all prices offered to any mass market customers (adjusted for discounts where appropriate) should be captured somewhere in the RPCA, and that all externally traded hedge contracts are relevant to the cost of electricity.
- A.38 Where a gentailer considers that some end customer prices (eg, staff offers) and some hedge contracts (eg, contracts with social retailers) should be excluded from any RPCA calculations, they should explain this to the Authority, including setting out their internal decision process (how the gentailer goes about distinguishing those offers or contracts in a principled way) and the numerical impact of not including those prices or contracts in the RPCA.

Balancing benefit of transparency with compliance costs and confounding signals

- A.39 The Authority applies the following criteria in considering the extent of segmentation for monitoring compliance with the NDOs:
- (a) accuracy in calculation
 - (b) transparency to support confidence in a level playing field
 - (c) value for money (quality and effectiveness of the signal compared to costs).
- A.40 To expand, separate RPCA reporting for different groups of consumers can improve transparency, which can help to build confidence that retailers can compete on a level playing field, or otherwise identify issues that may require regulatory attention.

- A.41 If customer groups are too aggregated, then RPCA measures could obscure issues in particular segments. On the flipside, if customer groups are too segmented, the RPCA may effectively mislabel legitimate competition as discrimination. Therefore, in selecting segments the Authority considers accuracy and transparency benefits must be balanced against:
- (a) creating unhelpful information (causing an unwieldy number of measures or misdiagnosing competitive retail pricing as potentially anti-competitive behaviour)
 - (b) adding compliance and administrative costs
 - (c) causing unintended consequences (such as discouraging competition by gentailers, including innovation in retail offers).
- A.42 As such, the Authority considers that RPCA segmentation should be limited to consumer segments where the benefit of transparency is particularly high. RPCAs should focus on segments which could be informative of an anti-competitive effect and are of a material size.

Segmentation to improve transparency in higher risk retail markets

- A.43 RPCA disclosures should be presented for a gentailer's main brand and any separate subsidiary brands for plans (in aggregate):
- (a) offered to new electricity customers
 - (b) for existing electricity customers.
- A.44 Existing electricity customers are those who are already a gentailer's electricity customer at the time RPCAs are calculated.
- A.45 Separate RPCA disclosure for offers to new electricity customers is to provide assurance to new entrants and other retailers that competition for customers who are considering switching plans or retailers is on a level playing field. This is an important segment as it is where competition is most active. Lower priced offers to new customers were a core concern arising from the complaints we have received.
- A.46 RPCA disclosure for a gentailer's existing customers also provides assurance that a gentailer is not favouring its retail internal business unit for those customers it has a contract with.
- A.47 A separate RPCA is required by brand – the gentailer's main brand, and any of its subsidiary brands, to ensure that any reduced 'challenger brand' pricing is separately considered. Noting that there is currently only one remaining separate 'challenger brand' that is owned and actively promoted to the mass market by a gentailer, we will continue to assess whether reporting by brand has ongoing value.

Segmentation to capture geographic differences

- A.48 The Authority requires RPCA reporting to be segmented by region, given geographic differences in customer load profiles, costs of electricity supply, and non-energy costs.
- A.49 Our current view is that a gentailer should undertake its calculations by network reporting region (NRR), to accurately capture differences in network costs, load profiles, differences in the cost of hedges in the North and South Island, and more detailed location factors that impact electricity costs. If other non-electricity costs also vary materially by area, then these should also be captured this way.
- A.50 Gentailers will also publish and disclose to the Authority the underlying information for each segment at the NRR level, including an explanation for negative outliers, so that the

Authority can monitor the detailed results, follow-up with a gentailer on any areas of interest, and comment on any geographic concerns we identify when we publish RPCA results.

- A.51 The Authority also requires gentailers to report aggregated (national) RPCA results. Aggregated RPCAs for each segment would be calculated as a load-weighted average of NRR-level calculations, based on the volume of electricity expected to be supplied to the segment in each NRR.

RPCA segments may be reviewed as actual or perceived risks change

- A.52 Segmentation may be reviewed for future rounds of the RPCA, based on experience with initial disclosures, and evidence about the effectiveness of current segmentation or new evidence about potential price discrimination in risk management contracts and margin squeezing in respect of different segments that may justify separate reporting and monitoring.
- A.53 Future decisions on segmentation would seek to balance the benefits of transparency with cost in terms of compliance and administrative cost and risks.

Q16. Do you agree on the draft guidance with respect to customer coverage, and the approach and criteria for identifying and reviewing RPCA segments? Do you agree that RPCAs should be reported by NRR? Please provide reasons and any proposals to improve. Note, you do not need to duplicate responses to the earlier question on the proposed segmentation.

Retail price per MWh

Guidance

- A.54 For each RPCA reporting segment, a volume weighted-average retail price per MWh should be calculated that covers all the retail plans and customers as at the RPCA assessment date.**
- A.55 For offers to new customers (as at the RPCA assessment date) an aggregated average retail price can be derived based on expected or budgeted revenues and volumes from new customers (in aggregate or built up by offer).**
- A.56 The average retail price should be net of discounts, rebates or other promotional offers.**

Forward-looking

- A.57 As a forward-looking assessment, the RPCA compares expected cost/MWh for the period ahead to average retail price/MWh for the period ahead.
- A.58 As calculations should be done by NRR, an aggregate measure is derived by taking a load weighted average of retail prices per MWh by location.
- A.59 There are different ways to estimate the average retail price, eg:
- (a) the conversion of fixed and variable components in retail plans to a per MWh amount, and weighting these by volume to get an average for the segment
 - (b) a forecast of expected revenue for the segment, divided by expected volume of MWh.
- A.60 The Authority does not see a reason to prescribe this method, as long as it is explained and documented, and consistent with the load profiles assumed for the estimation of the expected cost of supply.

Reference point

- A.61 The RPCA is a snapshot in time. The average retail price should be based on all the retail plans at the RPCA assessment date.
- A.62 The Authority acknowledges that retail prices may have been set some months prior to the assessment date, drawing on expectations that were current then, but may no longer reflect expectations now. One perspective is that this would indicate that expectations about costs have not changed materially, otherwise retail prices would be updated.³⁰
- A.63 This seems a reasonable assumption with respect to offers for new customers. But it may be argued that it is not reasonable in respect of plans for existing customers, for example, as a gentailer also has to consider the costs of amending its prices or any understandings with customers about the frequency of price changes.
- A.64 Gentailers should include explanations of any timing issues regarding updating their retail pricing in their RPCA disclosures.

Discounts and price smoothing

- A.65 Existing plans and offers for new customers may contain discounts, rebates and other forms of promotional offers that reduce effective retail prices. Reported retail prices should be net of any such discounts.
- A.66 It would be appropriate to amortise the cost of promotional offers over a commercially appropriate period (eg, the timeframe over which a customer is required to remain with the retailer to obtain the full benefit of the promotional offer).
- A.67 Discounts or quasi-discounts on bundled sales should be allocated proportional to expected revenue from each bundled service.
- A.68 Retailers can manage wholesale price risk for their customers, by insulating them from day-to-day price volatility and looking through longer periods of elevated costs through retail price smoothing. This is of value to at least some retail customers and can be consistent with workable competition. Retail price smoothing may be a plausible explanation for negative RPCA margins. The section on assessment sets out guidance on this topic.

Q17. Do you agree with the proposed approach to calculating average retail prices per MWh, including that each RPCA assessment should be based on retail prices as at the assessment date? If not, why not?

Non-electricity costs

Guidance

- A.69 For the RPCA, a gentailer should subtract expected non-electricity costs per MWh from the retail price per MWh for the RPCA period. These consist of:**
- (a) **retail costs – all costs attributable to the retail operation, including a principled contribution to shared and common costs**
 - (b) **metering costs**
 - (c) **network (distribution and transmission) costs**

³⁰ If a gentailer expects to update retail prices soon, it is able to explain this in its RPCA disclosures, with reference to the specific input cost changes that are impacting its decision making.

(d) **levies.**

Retail costs

- A.70 A gentailer should identify all relevant retail operating costs attributable to the different mass market RPCA segments as well as a contribution to shared and common costs. The assessment of retail costs that goes into the RPCA should reflect a subsidy free standard.
- A.71 Attribution should be based on a principled basis, that is, using rational cost drivers that reflect a causal relationship or, if this cannot be established, some other reasonable proxy measure.
- A.72 The approach to cost allocation and the reasons for it should be explained in the gentailer's RPCA methodology.
- A.73 Retail costs will typically cover cost to serve and cost to acquire and retain customers:
- (a) cost to serve, including billing and revenue collection, call centre and customer information and management costs, bad debt, and regulatory compliance costs
 - (b) cost to acquire and retain customers,³¹ including cost of acquisition channels, cost of retention teams, marketing costs targeted at acquisition or retention
 - (c) retail internal business unit overheads and an appropriate contribution to shared and common costs including electricity trading costs,³² general marketing, and corporate overheads.
- A.74 The Authority assumes that, to identify expected retail costs, gentailers can use the allocation approach they already use for allocating retail operating costs to their retail internal business unit for annual reporting, according to generally accepted accounting standards.
- A.75 Gentailers should allocate a contribution to shared and common costs to its retail cost, using a principled cost allocation rule. The gentailer should explain its approach and the reasons for it.
- A.76 Bundled sales, such as electricity with gas, broadband or mobile phone plans, raise specific issues about how retail costs should be attributed. Consistent with the overall cost allocation approach for the RPCA, retail costs attributable to energy services should be allocated to those services, including their contribution to shared and common costs (and retail costs attributable to other, bundled services including their contribution to shared and common costs should be allocated to those other bundled services).
- A.77 The expected retail cost per MWh may be calculated by dividing a gentailer's total expected retail costs by the amount of electricity they expect to supply to their retail customers.

Other non-electricity costs

- A.78 Cost of metering services and levies attributable to retail customers may be derived by dividing the total amounts by the total amount of electricity supplied to those customers.
- A.79 If such costs vary materially by location, a gentailer could reflect this in its calculations, with appropriate explanations.

³¹ To the extent such costs are not already captured in retail prices net of any discounts.

³² Noting that trading may include purchasing hedge cover for a gentailer's retail commitments where it is short of generation.

A.80 All expected network costs (electricity distribution and transmission) per MWh that are attributable to mass market customers will be calculated by NRR.

Q18. Do you agree with the proposed approach to calculating non-energy costs, including the proposed approach to shared and common costs and attribution of costs to bundled services? If not, why not? Note, you do not need to duplicate responses to the earlier question on the efficiency standard for retail costs.

Expected cost of electricity

Guidance

- A.81 A gentailer should estimate its expected cost of supply using observed market prices from ASX and OTC trades, as if it hedged the load of its retail customers with risk management contracts from these markets.³³**
- A.82 The composition of a gentailer's as if hedge portfolio should be consistent with minimising the risk-adjusted cost of supply (for example, baseload + super-peak hedges) for a given load profile, consistent with rational and prudent risk management practices.**
- A.83 Short- and long-dated ASX and OTC risk management products, including offtake contracts, may be used for the RPCA, noting:**
- (a) a gentailer would draw on the prices of its own and other OTC trades, alongside ASX prices as appropriate**
 - (b) the Authority may test the reasonableness of assumed prices for thinly traded contracts drawing on the full set of information it holds of trades for similar products including for long-term contracts.**
- A.84 The Authority expects a gentailer's method will remain consistent from assessment to assessment.**
- A.85 A gentailer may from time-to-time need to adapt its methods to estimate the expected cost of supply but, where that change in method is material, this must be justified with evidence of material shifts in the market or retail strategy.**
- A.86 A change in method is material if it has the effect of modifying the expected cost of electricity by an amount in excess of 5% from what would have been calculated under the most recent method prior to the change.**
- A.87 When a gentailer adopts a new method it should report RPCA results under the old method alongside those under the new method in the first and second year that the new method is used.**

Use observed market prices to estimate the expected cost of supply

- A.88 The RPCA compares a gentailer's retail prices planned for the period ahead with the expected cost of supply – summarised in terms of \$/MWh.**

³³ It may be prudent and rational for a retailer to not hedge all its exposure to spot prices. One market-based estimate of the expected cost of electricity of this unhedged portion would be what hedges are being traded at for the relevant period at the time that retail prices are being set. A gentailer would explain its approach as part of its documented methodology.

- A.89 A gentailer should estimate the expected market value of its supply to its retail internal business unit, *as if* it hedged the load of its retail customers with risk management contracts from the ASX and OTC markets.
- A.90 A gentailer may decide on the composition of its *as if* portfolio³⁴ of risk management contracts, but:
- (a) this *as if* portfolio must be consistent with minimising the gentailer’s risk-adjusted cost of supply, consistent with rational and prudent risk management practices
 - (b) where the prices of its own risk management contract trades in the same period, and for similar risks, terms and tenor are materially different to those it assumes for pricing its internal supply, the gentailer must be able to provide an objectively justifiable explanation for such differences.
- A.91 A gentailer’s RPCA report should detail how it estimated the expected cost of supply – the mix of risk management contracts that apply to a segment, market prices used, and how this is credibly consistent with minimising its cost, given:
- (a) the distribution of risk in expected wholesale prices as assessed by the gentailer
 - (b) loss management properties of different risk management tools, and their market prices
 - (c) the gentailer’s risk management policy and risk stance.
- A.92 The Authority’s Risk Management Review analysis suggested that the cost-minimising mix of hedges to cover a retail load does not need to be complex. It could be a simple combination of baseload and standardised super-peak hedges or combined with some other cost risk management tools. The Authority is open to a gentailer using simple models or rules-of-thumb, but these should come with evidence that such models are reasonable and robust approximations of the cost of supply.
- A.93 Any adjustments made to market prices for credit and other risk premia and any other costs avoided by self-supply should be objectively justifiable and explained as part of a gentailer’s methodology.

May contain long-term and other thinly traded OTC contracts

- A.94 A gentailer should draw on the prices of OTC trades, alongside ASX prices, as appropriate.
- A.95 OTC contracts may include long-term supply contracts and other products that are thinly traded (noting that thin trading potentially impacts on the reliability of these prices as a robust measure of the market value of such contracts).
- A.96 The Authority may test the reasonableness of OTC prices used by a gentailer in the RPCA, drawing on the full set of information it holds of trades for similar products including for long-term contracts.
- A.97 The optimal mix of risk management contracts likely has contracts with several different maturities, including long-term contracts.
- (a) For the RPCA, the cost of supply cannot be based solely on long-term contracts, because that would likely not be rational. A mix of short and long durations better enables a generator to:
 - manage its own fuel supply risk (including by actively shedding retail customers)

³⁴ Referred to in the proposed Code amendment drafting as a “hypothetical portfolio”.

- trade supply at times of supply constraints when market prices can clear well above the prices that long-term contracts can attract.
- (b) A retailer's demand for long-dated contracts is limited also, as it reduces flexibility to deal with volume risk (future demand is uncertain, customers may leave), and because there are costs to holding long-dated contracts.

A.98 These considerations and the requirement that the expected cost of supply should be based on observed market prices from ASX and OTC trades should address concerns raised that a gentailer could inappropriately include very old or long-term supply agreements at costs that are not reflective of market values.

The use of historic cost of hedges vs current hedge prices

A.99 The proposed RPCA requires a gentailer to explain the ex-ante link between its 'expected cost of supply' and its retail prices for the period ahead.

A.100 Recent ASX and OTC prices for the period ahead provide an up-to-date measure of the expected cost of supply. This is the opportunity cost of self-supply at the time of the RPCA (regardless of when the risk management product was traded).

A.101 In practice, independent retailers in New Zealand and elsewhere build a book of hedges over time to manage their wholesale price risk. The (weighted average) cost of a book built over time may be a reasonable alternative measure of a gentailer's expected cost of supply as if purchased from the wholesale market.³⁵

A.102 Both measures of expected cost of supply can be used in the RPCA, and their application may differ by RPCA segment.

A.103 The Authority considers that current ASX and OTC prices for the period ahead, observed around the time of the assessment, are a reasonable economic measure of the expected cost of supply 'at the margin'. At the margin, a gentailer has a practical option of either recruiting and supplying a new customer (or retaining price-sensitive customers) vs selling electricity wholesale. Current ASX and OTC prices may therefore be a relevant measure of the expected cost of supply for offers to new customers.

A.104 However, the bulk of existing retail customers are sticky – less likely to switch in the period ahead – and the cost of the book of hedges built over time may be the most relevant measure of the expected cost of supply for this group, given:

- (a) the specific purpose of book-building is to manage the wholesale price risk of supplying these existing customers
- (b) market frictions mean there is no instantaneous arbitrage that equalises the cost of hedges purchased in the past with current expectations of spot prices (ie, current hedge prices) for the same period.³⁶

A.105 The longer-term direction of costs as indicated by longer-dated futures – beyond the period ahead that is covered by the RPCA – may be relevant for retail pricing decisions (such as price smoothing), but not for determining the expected cost of supply during the period covered by an RPCA.

³⁵ At least one gentailer representative at the December 2025 RPCA workshop said this is how they would manage wholesale price risk if they had to put formal arrangements in place.

³⁶ As in other sectors, there tends to be a lag between changes in wholesale and average retail prices. During a period of falling wholesale prices, the presence of sticky retail customers allows retailers to retain margin on the larger existing book, while reducing retail price offers to compete for new customers. Sticky customers insulate retailers from pressure to drop their average retail prices immediately, but this applies less to customer acquisition retail prices where we expect competition to be strongest.

- A.106 Beyond this general guidance, the Authority does not currently seek to prescribe the approach that a gentailer should adopt to estimate its expected cost of supply. A gentailer can select (with suitable supporting explanation) the approach that best reflects its customer profile and risk strategy and tolerance.
- A.107 The Authority currently considers that prescribing the gentailers' approach to the cost of supply or creating a cost of energy benchmark would not be appropriate given the RPCA's focus on price discrimination of risk management contracts, and as it risks limiting competition and innovation. It may revisit this point in future.

Changing methodology for determining gentailers' cost of energy

- A.108 The Authority expects that gentailers would only very infrequently make material changes to their methodology to estimate the expected cost of electricity. Consistency between assessments over time promotes confidence in the measure.
- A.109 However, to stay credible the method should be able to adjust to material changes in the market or retail strategy, such as long-lasting or permanent fuel supply shocks, major changes in customer demand, or changes in the competitive landscape.
- A.110 A gentailer should set out in its disclosures any changes made to its method and reasons for the changes.
- A.111 When the change in method is material, to promote transparency, a gentailer should report RPCA results under the old method, alongside those under the new method in the first and second year that the new method is used, and justify the change with evidence of material shifts in the market or in its retail strategy, and its consistency with its risk management policy and risk stance. We would expect the gentailer to set out that justification to the Authority for comment before it implemented any material change in methodology.
- A.112 A change in method is material if it has the effect of modifying the expected cost of electricity by an amount in excess of 5% from what would have been calculated under the most recent method prior to the change.

Q19. Do you agree with the proposed approach to expected cost of electricity? If not, why not? We would particularly welcome any views on proposed guardrails (eg, minimising risk adjusted cost of supply) and possible alternatives, and on our approach to changes in method between assessments.

Assessment of results

Guidance

- A.113 In the case of a negative or narrow positive RPCA result, a gentailer should provide explanations to demonstrate the outcome is economically justifiable – that is, reasonable, consistent with how a market participant without market power is likely to act in the circumstances, and supported by evidence.**
- A.114 As the RPCA is not a bright-line test, a negative RPCA result does not in itself indicate a breach of the NDOs.**
- A.115 The Authority will assess gentailers' RPCA results and the adequacy of any explanation or justification. Where information is insufficient, the Authority's monitoring function may seek further details from the gentailer.**

A.116 Following its assessment of gentailers' RPCA results, the Authority may report negative RPCA outcomes to the compliance function as a potential breach of the NDOs, in particular where:

- (a) the Authority considers that the gentailer has not provided sufficient justification, and the outcome may indicate potential price discrimination or conduct inconsistent with the NDOs**
- (b) the gentailer's published RPCA results show a substantial negative margin, or consistent negative or small positive margins over time, notwithstanding the explanations provided.**

A.117 This means that a single small negative margin RPCA result, with adequate justification, will not in itself ordinarily be reported to the Authority's compliance function as an alleged breach of the NDOs.

Assessment of results

A.118 A positive RPCA result (or a negative result with objectively justifiable explanations) indicates there is likely an economically justifiable link between the expected cost of electricity supply and retail pricing.

A.119 A gentailer's RPCA for any segment is generally expected to be positive. Over time a gentailer's retail operations must make profits as a matter of commercial necessity.

A.120 However, the Authority acknowledges that, as in other markets, firms may price below cost for limited periods of time for pro-competitive reasons, such as short-term promotions or retaining customers through periods of temporarily heightened wholesale costs (price smoothing).

A.121 In other words, a negative margin RPCA outcome in any given year could reflect the outcome of retail competition rather than discrimination.

A.122 As such, in the case of a negative RPCA margin, or a narrowly positive one, a gentailer may be able to provide explanations to demonstrate the result is economically justifiable.

A.123 Consistent with any departure from NDOs having to be "objectively justifiable", any explanations should be reasonable and consistent with how a market participant without market power is likely to have acted in the circumstances. Explanations should be supported by evidence.

Promotions and price smoothing

A.124 In the case of promotions or price smoothing causing a negative margin RPCA, the Authority expects a gentailer to explain how such retail pricing (or cost raising) decisions are rational – that is, are expected to be profitable over a reasonable period.

A.125 For example, in the case of price smoothing this may be with reference to longer-term expectations about costs and retail profitability of sticky customers over time, such as the two to three year trend in ASX or for longer-term OTC hedges, or evidence of the benefits of not prompting sticky customers to shop around (eg, customer replacement costs avoided).³⁷

³⁷ The Authority does not agree with Sapere's submission for Genesis (p11) that setting retail prices equal to long run marginal cost would be potentially consistent with a gentailer optimising its value", because "...setting the retail price equal to long run marginal cost has the same expected value as setting retail price equal to short run marginal cost period by period". Pricing that reflects short run marginal cost is usually considered to be consistent with profit maximisation (and efficiency), given constraints on inputs and the time it takes to commission new investment (or retire surplus capacity) in practice.

A.126 Such reasons will not automatically be accepted. While factors like price smoothing may explain a negative result in one year and maybe also subsequent years, the Authority would likely seek more detailed justification if this persisted for more than one year, for reassurance that this does not indicate discriminatory hedge pricing.

Authority assessment of RPCA and possible follow-up actions

A.127 If the Authority identifies any missed requirements or data issues, it will contact the gentailer in question as soon as possible.

A.128 The Authority will assess each gentailer's RPCAs, and its explanations and, if required, ask further questions to clarify any aspects of them. If, following a gentailer's responses, the Authority has concerns about a potential breach of the NDOs, it may be reported to the Authority's compliance function for assessment.

A.129 The primary purpose of the RPCA is for monitoring and transparency/evidence. The RPCA is not a bright-line test. As noted earlier, short-term losses may reflect vigorous competition rather than anti-competitive conduct. Hence, RPCAs that indicate a negative (or narrow positive) result do not necessarily indicate a breach of the non-discrimination principles.

A.130 In determining the appropriate follow up for negative or narrow positive RPCA results, the factors the Authority may consider include:

- (a) the magnitude and duration of any loss or period of negative or low implied margins
- (b) the extent to which the explanations provided demonstrate that the negative or narrow positive results are objectively justifiable including being consistent with an outcome that might be observed in a competitive market
- (c) the outcome of any follow-up questions and context from other monitoring work
- (d) whether a gentailers' published RPCA results show a pattern of consistent negative or narrow positive outcomes over multiple reporting periods notwithstanding the justification provided.

A.131 Where, after review of the gentailer's explanation³⁸ and any follow-up information, the Authority considers that the gentailer has not provided sufficient justification and the outcome raises concerns about potential discrimination, the matter may be reported as an alleged breach of the NDOs to the Authority's compliance function. An alleged breach may also be reported where RPCA results show a persistent pattern of negative or narrow positive margins over multiple reporting periods.

A.132 If RPCA results are reported as an alleged breach of the NDOs – whether under the proposed gentailer self-reporting obligation,³⁹ by the Authority or by an industry participant⁴⁰ – the Authority will assess the alleged breach in accordance with the Electricity Industry (Enforcement) Regulations 2010 and its enforcement and compliance policies, which are available on our website.

³⁸ While this guidance does not provide any specific safe harbours, the Authority acknowledges that, all other things being equal, it is unlikely to report an alleged breach to its compliance function where the negative margin is relatively small, there is clear evidence that the gentailer was implementing retail price smoothing or put forward another justifiable explanation, and the negative margin has not persisted over multiple years. Each assessment will be made on a case-by-case basis.

³⁹ Proposed clause 13.236X of the Code.

⁴⁰ Regulation 8 of the Electricity Industry (Enforcement) Regulations 2010 requires industry participants who believe, on reasonable grounds, that another industry participant has breached the Code, to report the alleged breach to the Authority as soon as possible.

Authority will publish a summary of RPCA results

- A.133 The Authority will publish a summary report of RPCA results. These summaries will outline key findings, trends, and any follow-up action taken (but consistent with any permitted withholding of data by the gentailers for confidentiality reasons).
- A.134 Publishing these summaries provides transparency about how the regime is operating and helps build trust and confidence in the market arrangements.

Q20. Do you agree with the proposed guidance on the assessment of results, including the factors the Authority may consider in determining the appropriate follow up for negative or small positive RPCA results? If not, why not and what would be an alternative approach? Note, you do not need to duplicate responses to the earlier question on price smoothing.

Disclosure and reporting by gentailers

Reporting requirements

- A.135 RPCA reporting requirements are set out in the (proposed) Code at clauses 13.236T-13.236W.
- A.136 Each gentailer must undertake an RPCA for each of its retail brands and each RPCA segment, at each NRR, every six months, assessing price consistency as at 1 July and 1 January, and reporting that assessment within 45 working days.
- A.137 The first RPCA would be standalone, as the first annual report in which a gentailer is to demonstrate how it has met all the non-discrimination principles will not be required until 2027.

Content of RPCA reports

- A.138 For each of the retail brands it controls a gentailer must submit to the Authority a report for each RPCA segment and by NRR (and exclusive of GST):
- (a) the RPCA margin as dollars per MWh
 - (b) the key components used to calculate the RPCA margin, consisting of:
 - the expected retail price \$/MWh
 - the expected electricity cost \$/MWh
 - the expected network (transmission and distribution) cost \$/MWh
 - the expected retail cost \$/MWh
 - expected metering costs \$/MWh
 - expected levies \$/MWh
 - (c) the expected load profile and volumes by segment by NRR to the granularity necessary to understand the spot price risk and construct the *as if* hedge portfolio
 - (d) the components of the RPCA for each segment as an aggregated nation-wide statistic, using load-weighted averages for the different components, albeit that simple averages may be used for retail costs, metering costs and levies
 - (e) in the case of a negative or narrow positive RPCA result, explanations supported by evidence to demonstrate the outcome is economically justifiable – that is, consistent with an outcome that would be observed in a competitive market

- (f) a clear and full explanation of its methods to calculate the key components of the RPCA, material judgements made, and the reasons for them, including:
- the description of the *as if* hedge portfolio that underlies the expected electricity cost, and the reason for its selection (ie, how it is consistent with risk adjusted cost minimisation)
 - the methodology and data for the cost of OTC and ASX hedges in the *as if* hedge portfolio used to estimate the expected cost of electricity
 - the approach to identifying and calculating retail costs attributable to the retail operation, including any differences by segment, including a contribution to shared and common costs
- (g) explanations where the gentailer has departed from the guidance or there have been any material changes in methods and the reasons for that
- (h) when there is a change in the method to calculate the expected cost of energy, such that it modifies the expected cost of electricity by more than 5% from what it would have been under the method just prior to the change:
- the results under the old method and under the new method for the first and second year (that is, four six-monthly reports) that the new method is used
 - a justification for the change in method with reference to material shifts in the market or retail strategy
- (i) any additional data, assumptions, or calculations the Authority may need to assess the methods and results that it cannot observe from existing retail or contract data disclosures.

Submitting reports and supporting data to the Authority

A.139 The Authority is developing material that specifies the form and manner in which the information is to be provided, consistent with the Code requirements. This will be published and sent to the gentailers prior to 1 July 2026.

Confidentiality of information

A.140 When providing information to the Authority gentailers can identify information they consider confidential and the reasons why.

A.141 The Authority may publish RPCA information from time to time to increase market transparency, but will do so in a manner that appropriately protects the confidentiality of commercially sensitive information.⁴¹

Public reporting

A.142 A gentailer must prepare and publish public versions of the RPCA (including the aggregated results by segment for each brand, the key components of the calculation, and a full explanation of its approach) on the gentailer's website within five working days of providing the RPCA to the Authority.

A.143 A gentailer may redact from its public version information that it reasonably considers commercially sensitive or otherwise confidential, but such redactions should be explained and kept to a minimum to promote transparency.

⁴¹ See the Electricity Authority's [Information Management Policy](#) published in 2024, including any subsequent updates..

Reporting by the Authority

- A.144 The Authority will publish a dashboard of the RPCA results and constituent components from each of the gentailers and will publish commentary on these results, including any follow-up action taken (to the extent permitted by the confidentiality obligations).
- A.145 We expect to publish values for the following RPCA components by NRR, brand and segment similar to current Retail Gross Margin reporting:
- (a) RPCA margin in \$/MWh
 - (b) retail prices in \$/MWh
 - (c) expected cost of electricity supplied in \$/MWh
 - (d) expected network (distribution and transmission) costs in \$/MWh
 - (e) expected retail costs in \$/MWh
 - (f) expected metering costs in \$/MWh
 - (g) expected levies in \$/MWh.
- A.146 The Authority will also monitor gentailers' RPCA results at the NRR level and expects to publish analysis and insights at this level.

Q21. Do you agree with the proposed approach to RPCA disclosure and reporting? If not, why not?

Appendix B Proposed Code amendments

Proposed Code amendments are displayed as follows:

- (a) text or formatting is shown black underlined where the October consultation paper proposed adding to the Code
- (b) text or formatting is shown ~~black strikethrough~~ where the October consultation paper proposed deleting from the Code.
- (c) text or formatting is shown red underlined where drafting changes have been proposed following the October consultation
- (d) text or formatting is shown ~~red strikethrough~~ where drafting changes have been proposed following the October consultation

Electricity Industry Participation Code 2010

Part 1

Preliminary provisions

...

1.1 Interpretation

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

...

network reporting regions means geographical regions defined by a group of NSPs, generally formed by historic Electricity Power Board networks (with some aggregations) and aligning with retail pricing regions commonly used in the electricity industry, and which are commonly understood to be **network reporting regions** in accordance with standard industry practice

...

retail price consistency assessment means an assessment of the difference between a **gentailer's**:

- (a) expected costs of supply to a **retail segment** (expected cost of **electricity** (based on a hypothetical portfolio of **risk management contracts** consistent with rational and prudent risk management practices) and expected non-**electricity** costs); ~~of electricity supply~~ and
- (b) that **gentailer's** retail prices to a **retail segment**

retail price consistency assessment report has the meaning given to it in clause 13.236V(4)

retail segment, for the purposes of subpart 5C of Part 13, has the meaning given to it in clause 13.236V(1)(b)

...

~~**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:~~

- ~~(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**~~

...

Electricity Industry Participation Code 2010

Part 13

Trading arrangements

...

13.236P Non-discrimination principles

The non-discrimination principles are as follows:

Non-discrimination principle 1

Non-discriminatory supply

- (1) A **gentailer** must not discriminate between **buyers** for the supply of **risk management contracts** without an objectively justifiable reason.
- (2) A **gentailer** must not discriminate against **buyers** in favour of its own **internal business units** for the supply of ~~**uncommitted capacity risk management contracts**~~ without an objectively justifiable reason.
- (3) A **gentailer** must not discriminate against **buyers** in favour of its own **internal business units** when pricing **risk management contracts** without an objectively justifiable reason.
- (4) For the avoidance of doubt, subclause (3) requires pricing of **risk management contracts** in such a way as to ensure that any **buyer** that supplies **electricity** to end users at retail, that is as efficient with regard to operating costs as the **gentailer's** own retail **internal business unit**, and adopts a reasonable risk management approach, is not ~~prevented unduly deterred~~ from operating profitably.

...

Non-discrimination policy and implementation plan

13.236Q Non-discrimination policy

- (1) A **gentailer** must at all times maintain an internal policy (“**non-discrimination policy**”) that:
 - ~~(a) details operational **policies, practices, methodologies, processes and accountabilities** in place to ensure the **gentailer's** trading of **risk management contracts** occurs in accordance with the **non-discrimination principles**;~~
 - ~~(b) is of a reasonable standard, taking into account the nature, scale and complexity of the **gentailer's** operations.~~
- (2) The **non-discrimination policy** referred to in subclause (1) must be reviewed and approved by the **gentailer's** board at least once a year.

- (3) Each time the **gentailer** amends its **non-discrimination policy**, the **gentailer** must disclose a copy of the amended **non-discrimination policy** to the **Authority** within 10 working days of the amended policy taking effect.
- (4) Without limiting subclause (1), the **non-discrimination policy** must include:
 - (a) detailed methodologies applied by the **gentailer** for the purposes of ensuring compliance with clause 13.236P(1)-(4);
 - (b) criteria for determining whether an objectively justifiable reason may exist for the purposes of clause 13.236P(1)-(3);
 - (c) a policy detailing expectations for the **gentailer's** engagement with **buyers** for the purposes of clause 13.236P(5);
 - (d) a credit terms and collateral arrangements policy consistent with the requirements in clause 13.236P(6); and
 - (e) an information control policy for the purposes of clause 13.236P(7)-(9).

13.236R Implementation plan

- (1) A **gentailer** must prepare an implementation plan detailing its approach to complying with the **non-discrimination principles**.
- (2) A **gentailer's** implementation plan is to be provided to the **Authority** and published on the **gentailer's** website within 45 days after the date on which this subpart comes into force on 1 July 2026.
- (3) The implementation plan must include (without limitation) the **gentailer's**:
 - (a) **non-discrimination policy**;
 - (b) planning (including any steps already taken) for training its employees, directors and agents on compliance with the **non-discrimination principles**;
 - (c) planning (including any steps already taken) for ensuring ongoing compliance with the **non-discrimination principles** (for example, through regular internal audits).

Record-keeping and disclosure requirements

13.236S Record-keeping

- (1) A **gentailer** is required to establish, maintain and keep comprehensive records that demonstrate how it meets the **non-discrimination principles**.
- (2) Without limiting subsection (1), 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;
 - (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.

13.236SA Gentailers to arrange for regular audits

Each **gentailer** must arrange to be **audited** regularly in accordance with Part 16A in respect of the **gentailer's** compliance with its obligations under this subpart.

13.236T Annual reporting

- (1) Within 45 working days after ~~the end of each **gentailer financial year** (including the first **gentailer financial year** (or part thereof) following this subpart coming into force) 1 July~~

- each year (commencing 1 July 2027), a **gentailer** must provide an annual report to the Authority, that demonstrates whether and how that **gentailer** has met the **non-discrimination principles in that financial year the previous 12-month period.**
- (2) Without limiting subsection (1), the annual report must include **the matters set out in clause 13.236S(2):**
- (a) **the matters set out in clause 13.236S(2); and**
- (b) **a **retail price consistency assessment** in accordance with clause 13.236V.**
- (3) When providing the annual report to the Authority, a **gentailer** must certify that the **gentailer** has complied with the **non-discrimination principles** during the relevant **gentailer financial year**-12-month period (except for any breaches that have been reported, or are reported with the certificate, to the Authority in accordance with clause 13.236X).
- (4) The certification referred to in subclause (3) must be:
- (a) signed by at least two directors of the **gentailer**;
- (b) accompanied by a statement confirming the truth and accuracy of the certification to the best of those directors' knowledge and belief having made all reasonable enquiries (including an explanation of the enquiries made).

13.236U Interim report

- (1) Within **20 45** working days after the end of the first six-month period following this subpart coming into force, a **gentailer** must provide an interim report to the Authority that demonstrates whether and how the **gentailer** has met the **non-discrimination principles** during that six-month period.
- (2) Without limiting subsection (1), the interim report must include **the matters set out in clause 13.236S(2):**
- (a) **the matters set out in clause 13.236S(2); and**
- (e) **a **retail price consistency assessment** in accordance with clause 13.236V.**

13.236V Retail price consistency assessments

- (1) **A **gentailer** must undertake a **retail price consistency assessment**:**
- (a) **for each of its retail brands within each retail segment; and**
- (b) **on the coming into force of this subpart and every six months thereafter (following the end of the first and second half of the **gentailer's financial year**).**
- (2) **A **gentailer's retail price consistency assessment** must be provided to the Authority—**
- (a) **by 1 July 2026, in respect of the initial **retail price consistency assessment** referred to in subclause (1)(a);**
- (b) **together with the interim report referred to in clause 13.236U(1), in respect of a **retail price consistency assessment** undertaken at the end of the first six-month period following this subpart coming into force (as required by clause 13.236U(2));**
- (c) **together with the annual report referred to in clause 13.236T(1), in respect of a **retail price consistency assessment** undertaken for the second half of the **gentailer's financial year** (as required by clause 13.236T(2)(g));**
- (d) **otherwise, within 20 working days after the end of the relevant half of the **gentailer's financial year**.**
- (4) **The Authority must publish guidance on the recommended methodology for undertaking **retail price consistency assessments**.**
- (5) **Each time a **gentailer** provides a **retail price consistency assessment** to the Authority, it must include a clear and full explanation of its approach, including (without limitation):**
- (a) **areas in which, and reasons why it has departed from the methodology published by the Authority referred to in subclause (4); and**
- (b) **the underlying data on retail prices and wholesale costs.**

13.236V Retail price consistency assessments

- (1) A gentailer must undertake a retail price consistency assessment:**
 - (a) for each of its retail brands;**
 - (b) in relation to each of the following retail segments:**
 - (i) offers by the gentailer for new mass market customers; and**
 - (ii) the gentailer's existing mass market customers;**
 - (c) in each network reporting region;**
 - (d) as at:**
 - (i) the date this subpart comes into force; and**
 - (ii) 1 January and 1 July each year.**
- (2) The purpose of a retail price consistency assessment in subclause (1) and retail price consistency assessment report in subclause (4) is to assist with the monitoring and enforcement of compliance with clause 13.236P(3) and (4).**
- (3) The Authority must publish guidance to assist gentailers in undertaking retail price consistency assessments.**
- (4) Each time a gentailer undertakes any retail price consistency assessment required by subclause (1), the gentailer must prepare a retail price consistency assessment report including the following information:**
 - (a) the gentailer's expected cost of electricity associated with supply to the relevant retail segment expressed as an amount of dollars per MWh;**
 - (b) where there has been a change in the approach used to calculate the expected cost of electricity in a retail price consistency assessment:**
 - (i) an explanation for the change in approach; and**
 - (ii) for the four retail price consistency assessment reports following that change in approach, the information required under subclause (4)(a) using the previous approach, unless the difference in the expected cost of electricity calculated using the old and new approaches in the first retail price consistency assessment following the change in approach is less than 5 per cent;**
 - (c) the gentailer's expected non-electricity costs associated with the supply of electricity to the relevant retail segment expressed as an amount of dollars per MWh, including:**
 - (i) expected cost of metering services associated with the supply of electricity to the relevant retail segment expressed as an amount of dollars per MWh;**
 - (ii) expected cost of network (distribution and transmission) services associated with the supply of electricity to the relevant retail segment expressed as an amount of dollars per MWh;**
 - (iii) cost of levies associated with the supply of electricity to the relevant retail segment expressed as an amount of dollars per MWh; and**
 - (iv) retail operating costs (including a contribution to the gentailer's shared and common costs) associated with the supply of electricity to the relevant retail segment expressed as an amount of dollars per MWh;**
 - (d) the gentailer's retail prices to the relevant retail segment expressed as an amount in dollars per MWh;**
 - (e) the gentailer's margin determined by the retail price consistency assessment expressed as an amount of dollars per MWh;**
 - (f) detailed information on the expected load profile and volumes in MWh of electricity for the relevant retail segment;**
 - (g) the information referred to in subclause (4)(a)-(f) geographically aggregated to provide a national total for each of the retail price consistency assessments undertaken under subclause (1)(b)(i) and (ii);**
 - (h) a full and clear explanation of the gentailer's approach to undertaking the retail price consistency assessment, including:**

- (i) a description of the hypothetical portfolio of **risk management contracts** used to calculate the expected cost of **electricity** in subclause (4)(a) and (b), including:
 - (A) an explanation of the approach taken by the **gentailer** to constructing its hypothetical portfolio of **risk management contracts** consistent with rational and prudent risk management practices;
 - (B) the methodology and data for determining the costs of the **risk management contracts** used in that hypothetical portfolio; and
 - (C) an explanation for any differences between the costs of the **risk management contracts** used in that hypothetical portfolio and similar actual **risk management contracts** traded by the **gentailer** in the same period;
 - (ii) the **gentailer's** approach to identifying and calculating the retail operating costs, including the contribution to the **gentailer's** shared and common costs, in subclause (4)(c)(iv); and
 - (iii) any other material judgements made by the **gentailer** in undertaking the **retail price consistency assessment** together with an explanation for those judgements;
 - (i) areas in which, and reasons why, the **gentailer** has departed from the guidance published by the **Authority** under subclause (3);
 - (j) an explanation as to whether and how the results of the **retail price consistency assessment** are consistent with an outcome that would be observed in a competitive market; and
 - (k) any additional information the **gentailer** reasonably considers may be required to assess the results of the **retail price consistency assessment**.
- (5) For the avoidance of doubt, the costs and prices referred to in subclause (4)(a)-(e) must be exclusive of **GST**.
- (6) A **retail price consistency assessment report** must be in the form specified by the **Authority**.
- (7) A **gentailer's retail price consistency assessment report** must be provided to the **Authority**—
 - (a) within 45 working days after the date on which this subpart comes into force, in respect of the initial **retail price consistency assessment** referred to in subclause (1)(d)(i); and
 - (b) otherwise, within 45 working days of 1 January and 1 July each year.

13.236W Public reporting

- (1) A **gentailer** must prepare and publish public versions of the annual report referred to in clause 13.236T(1), the interim report referred to in clause 13.236U(1) or any **retail price consistency assessment report** prepared in accordance with clause 13.236V(4) (~~including the explanation referred to in clause 13.236V(5)~~) on the **gentailer's** website within 5 working days of providing of the relevant report ~~or **retail price consistency assessment**~~ to the **Authority**.
- (2) When preparing a public version of an annual report, interim report or **retail price consistency assessment report**, a **gentailer** may redact information that it reasonably considers is commercially sensitive or otherwise confidential, but any such redactions should be kept to a minimum to promote transparency.
- (3) The **gentailer's** public version of any annual report, interim report or **retail price consistency assessment report** must be:
 - (a) provided to the **Authority** at the same time as submitting the relevant annual report, interim report or **retail price consistency assessment report**; and
 - (b) accompanied by an explanation of the basis for any redactions made under subclause (2).

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Electricity Industry Participation Code 2010
Part 16A
Audits

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16A.1 Contents of this Part

This Part specifies obligations on **participants** that perform functions under Parts 10, 11, 13 and 15 in respect of **audits** required under the following clauses:

- (a) 10.17A (**Metering equipment providers** and **ATHs** to arrange for regular **audits**):
- (b) 10.17B (**Authority** and **participant** requested **audits**):
- (c) 11.8B (**Metering equipment providers** to arrange for regular **audits**):
- (d) 11.10 (**Distributors** to arrange for regular **audits**):
- (e) 11.11 (**Authority** and **participant** requested **audits**):
- (ea) 13.138C (**Generators** to arrange for regular **audits**):
- (eb) 13.236SA (**Gentailers** to arrange for regular **audits**):
- (f) 15.37A (**Reconciliation participants** to arrange for regular **audits**):
- (g) 15.37B (**Retailers** to arrange for **audits** in respect of **distributed unmetered load**):
- (h) 15.37C (**Authority** and **participant** requested **audits**).

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Subpart 6B – Gentailer Non-Discrimination Obligations Audits

16A.26A Time frame for gentailer non-discrimination obligations audits

In relation to **audits** required under clause 13.236SA, a **gentailer** must ensure that—

- (a) an initial **audit** is completed no later than 45 days after 1 July 2027; and
- (b) further **audits** are completed as specified by the **Authority** under clause 16A.14.

Q22. Do you have any comments on the drafting of this Code amendment? Are we missing anything? Is there anything that we should not include?

Appendix C Submission form

Submitter	
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Questions	Comments
Retail Price Consistency Assessment	
Q1. Do you agree with the Authority taking a forward-looking approach to the RPCA? If not, why not?	
Q2. Do you agree with the Authority applying an as-efficient standard, including an allocation of common costs, to the retail cost component of the RPCA? If not, what standard should be applied and why?	
Q3. Do you agree that the Authority should not be publishing benchmarks for the cost of electricity, the as if portfolio of hedges and retail costs, and should instead provide higher level guidance to gentailers (eg, their cost of electricity should be calculated to minimise the risk adjusted cost of supply)? If not, please explain why and set out how you consider that benchmarks should be constructed.	
Q4. Do you have any comments on our proposed approach to geographic and customer segmentation? If you don't agree, please explain why and set out the alternative segmentation that you think the Authority should apply. Whether or not we require geographic segmentation, we would also be interested in your views on the best regional classification to apply when the Authority analyses the RPCAs (NRRs, EDB areas, GXPs or something else).	
Q5. Do you have any comments on our proposed approach to price smoothing? If you disagree with our approach, please set out your preferred alternative, and how it is consistent with ensuring that there is a 'level playing field' to promote competition between gentailers and independent retailers.	
Q6. Do you have any comments on the proposed date for the first RPCA disclosures? If you are a gentailer, and have concerns about your ability to meet that timeframe, please explain these in detail	
Uncommitted capacity	
Q7. Do you prefer Option 1, Option 2 or our previous proposal on uncommitted capacity? Do you have any feedback on how Options 1, 2 and our previous proposal on uncommitted capacity could be improved?	
Q8. Do you have any feedback on the interplay between OTC monitoring requirements and the appropriate reporting where gentailers rely on 'intolerable risk position' in response to a request for a risk management contract?	
Internal non-discrimination policies and audit requirements	
Q9. Is it useful and/or helpful to provide greater specification in the Code of the requirements for a non-discrimination policy?	
Q10. Do you support the requirement for external audit of compliance with the NDOs? Why or why not?	
Q11. Is an annual audit of these requirements appropriate, or would a different timeframe be better? Why? Do you	

have any comments on the alignment of the timing with other gentailer audit obligations?	
Q12. Would the codification of the audit requirement impose significant additional costs? What would you estimate these costs to be?	
Regulatory statement for the proposed amendments	
Q13. Do you have any comments on the impact of the proposals in this paper on the regulatory statement set out in the October consultation paper?	
Appendix A – Draft RPCA guidance for consultation purposes	
Q14. Do you agree with the proposed general approach to the RPCA, including the approach to implementation and potential evolution of guidance? If not, why not and what would be an alternative approach?	
Q15. Do you agree with the proposed overall calculation approach to the RPCA? If not, why not? In what way could it be improved and why?	
Q16. Do you agree on the draft guidance with respect to customer coverage, and the approach and criteria for identifying and reviewing RPCA segments? Do you agree that RPCAs should be reported by NRR? Please provide reasons and any proposals to improve. Note, you do not need to duplicate responses to the earlier question on the proposed segmentation.	
Q17. Do you agree with the proposed approach to calculating average retail prices per MWh, including that each RPCA assessment should be based on retail prices as at the assessment date? If not, why not?	
Q18. Do you agree with the proposed approach to calculating non-energy costs, including the proposed approach to shared and common costs and attribution of costs to bundled services? If not, why not? Note, you do not need to duplicate responses to the earlier question on the efficiency standard for retail costs.	
Q19. Do you agree with the proposed approach to expected cost of electricity? If not, why not? We would particularly welcome any views on proposed guardrails (eg, minimising risk adjusted cost of supply) and possible alternatives, and on our approach to changes in method between assessments.	
Q20. Do you agree with the proposed guidance on the assessment of results, including the factors the Authority may consider in determining the appropriate follow up for negative or small positive RPCA results? If not, why not and what would be an alternative approach? Note, you do not need to duplicate responses to the earlier question on price smoothing.	
Q21. Do you agree with the proposed approach to RPCA disclosure and reporting? If not, why not?	
Appendix B – Proposed Code Amendments	
Q22. Do you have any comments on the drafting of this Code amendment? Are we missing anything? Is there anything that we should not include?	