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Submissions
Electricity Authority

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

Meridian appreciates the opportunity to provide feedback on the Authority's consultation paper on four specific elements of the proposed non-discrimination obligations (NDOs):

- draft guidance on the Retail Price Consistency Assessment (RPCA) methodology;
- two options and related draft Code amendments in relation to the treatment of "uncommitted capacity";
- draft Code amendments to specify what should be included in non-discrimination policies; and
- draft Code amendments to require external audits of compliance with the NDOs.

This submission addresses each of these elements in turn.

This submission should be read in conjunction with Meridian's earlier submissions on the Authority's "Level playing field" options paper[1] and proposed Code amendments.[2]

[1] https://www.meridianenergy.co.nz/public/Investors/Submissions/2025/Level-playing-field-measures-May-2025.pdf
[2] https://www.meridianenergy.co.nz/public/Investors/Submissions/2025/Meridian-submission-Level-playing-field-measures-2-December-2025.pdf

RPCA methodology

Impact on retail prices

Meridian's overarching concern is to avoid the RPCA becoming, in effect, a mechanism that encourages unnecessarily high retail pricing. It appears to be the Authority's intention that it will be a breach of the non-discrimination obligations in the Code to have persistently negative or only narrowly positive margins without "objectively justifiable reasons". However, the Authority has not defined or provided guidance on:

- what constitutes a problematically narrow positive margin;
- how many RPCAs with negative or narrowly positive margins might give rise to enforcement action; or
- what would be considered an "objectively justifiable reason" for a negative or narrowly positive margin in an RPCA.

In the absence of safe harbours in the Code itself or unambiguous guidance, the decision facing a generator-retailer may be stark. A generator-retailer that is considering one or more RPCAs with negative or narrowly positive margins will need to decide whether to:

- hope that the Authority takes no enforcement action (which may be a risk that a prudent Code-compliant generator-retailer is unwilling to take[3]); or
- increase retail prices to ensure more positive RPCA margins and thereby mitigate regulatory risks.

The Authority's stated "scepticism" regarding any claims about increasing retail prices is misplaced. The broad enforcement discretion the Authority is leaving itself coupled with the lack of firm guidance as to the types of cases the Authority will and will not pursue risks unnecessarily driving up retail prices to the detriment of consumers. In Meridian's opinion, the Authority has underestimated the critical importance to market participants of ensuring they comply with the Code. Failing to comply with the Code, depending on the nature of the non-compliance, can be seen as a failure by a participant to comply with its social licence. In this case the Authority's decision to frame the complex obligations it is imposing as if they were matters of basic fairness with which reasonable people should not disagree means participants will be particularly anxious to avoid potential breaches – no one wants to be accused of breaching the "Level Playing Field" or "Non-Discrimination" provisions in the Code. The Authority should also consider the potential reputational risks associated with

[3] Especially considering the recent Cabinet agreement to introduce legislation that would increase penalties for breach of the Code up to a maximum of $10 million or three times any commercial gain.

negative or narrowly positive retail margins given that, regardless of whether the Authority chooses to pursue enforcement action, other parties may choose to allege Code breaches.

In Meridian's opinion, further explicit enforcement guidance or safe harbours would help to ensure the RPCA can provide transparency and support market confidence without unnecessarily increasing retail prices. As stated in Meridian's May 2025 submission, the Authority needs to clarify both the level of acceptable margin and the timeframe over which that can be breached without attracting enforcement action:

- Regarding the level of margin, it is implied that low positive (but above narrowly positive) margins will be sufficient to avoid breaching the proposed Code. Clarification regarding the quantum of a low positive margin would assist with implementation as would further articulation of why a narrowly positive margin might be considered problematic.
- Regarding the timeframe for the assessment, it is not clear over what period the Authority would assess margins. The Authority should be explicit about whether it expects reversion to acceptable margins after a set period or if it expects some measure of long run average margins to be acceptable (for example over a set number of years).

Leaving these key components open to interpretation and leaving such a broad enforcement discretion will risk unnecessary retail price rises to mitigate regulatory risks.

RPCA segments

The detail of the RPCA methodology set out in the Authority's proposed guidance would require a high number of assessments to be carried out. For Meridian Energy Limited, a separate RPCA must be completed for each network reporting region (of which we understand there are 40) and for both brands (Meridan and Powershop) and for new customers and existing customers separately. This means Meridian will need to carry out 160 separate RPCAs as well as providing aggregate views for each segment and brand in the absence of geographical regions. This is an onerous requirement, and any further segmentation would further add to the compliance burden.

Meridian agrees with the Authority's proposals in the consultation paper that:

- A commercial and industrial segment should not be added to the RPCA since the competitive dynamic for these customers is different, with individualised terms and pricing (directly reflecting wholesale prices), more specialised needs, and more sophisticated procurement.

- Other forms of segmentation should not be added to the RPCA as they would not balance transparency with compliance and administrative costs and the risk of misdiagnosing competition concerns.

Meridian also queries whether the geographic segmentation by network reporting region is necessary and whether any competition insights are likely to be derived from that segmentation. As the Authority notes in the consultation paper, the competition concerns raised have not been specific to regions, and with prices referenced to Benmore or Otahuhu nodes it is possible that a more geographically segmented RPCA may be positive in some regional areas and negative in others without this being an indicator of price discrimination for risk management contracts or a price squeeze in the retail market. Meridian agrees and asks that the geographic segment be reconsidered (for example narrowing scope to North Island and South Island) or dropped entirely as it will add significant cost and complexity without usefully increasing transparency.

Further clarity should also be provided regarding the segments for plans:

- offered to new electricity customers; and
- for existing electricity customers.

In Meridian's opinion there are ambiguities regarding the boundary between these two segments. For a forward-looking RPCA there will be overlaps between plans offered to new customers and existing customers that are already on that same plan offering at the point in time the RPCA is carried out. A clearer demarcation of the two segments would require separate RPCAs for:

- all plans currently in market (including customers already on those plans and expected future uptake of those plans); and
- all legacy plans that are no longer in market.

That demarcation would still enable transparency regarding competition for new customers but would be far simpler to implement in practice.

Publication of commercially sensitive information

The draft RPCA guidance states that gentailers 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. While a gentailer may redact information that it reasonably considers commercially sensitive or otherwise confidential, the

Authority states that such redactions should be explained and kept to a minimum to promote transparency.

Given the RPCA is a forward-looking assessment over 12 months it will require assumptions to be made about future price change intentions. Publication of aggregated results by segment for each brand along with key components will enable all retailers to understand the pricing intentions of each generator-retailer. This is unlikely to be pro-competitive and could result in increased price convergence while also conferring a competitive advantage on non-integrated retailers who will not need to reveal their pricing intentions to the market ahead of the fact.

It is difficult to see how publication of RPCA could be meaningful without also harming retail competition through revelation of pricing intent. Even if only aggregate margins are published, many other inputs (for example network prices and wholesale contract prices) will be broadly discoverable or could be estimated to reverse engineer information about retail pricing intentions.

The Authority should consider whether the detrimental impacts of publication of RPCAs are outweighed by any benefits. In Meridian's opinion, provision of RPCA to the Authority alone would provide sufficient transparency to give market participants confidence that there is a regime in operation to identify and deter discrimination. The Authority could also selectively publish information about RPCA to avoid harming retail market competition.

Treatment of "uncommitted capacity"

As set out in Meridian's December 2025 submission[4] the non-discrimination principle prohibiting discrimination against buyers in favour of a retail internal business unit for the supply of "uncommitted capacity" must be workable in practice for dynamic portfolios (including portfolios that manage material fuel risks and locational risks) and avoid unintended distortions in the retail market.

This submission discusses below the risks associated with the two options proposed by the Authority. Meridian considers either option may be workable in practice provided it is carefully implemented by the Authority to avoid unintended consequences and costs.

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[4] https://www.meridianenergy.co.nz/public/Investors/Submissions/2025/Meridian-submission-Level-playing-field-measures-2-December-2025.pdf

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

Meridian understands that this option would clarify the Authority's expectations that "uncommitted capacity" is linked directly to generation capacity only. Under this option, Meridian would need to construct a notional portfolio with our generation only (i.e. in the absence of risk management contracts like swaptions, the Huntly Strategic Energy Reserve, or other contracts that Meridian purchases to manage locational and dry year risks).

[redacted] Meridian agrees with the Authority that it should not require generator-retailers to on-sell any hedge positions agreed with third parties. Even if Meridian did not have any "uncommitted capacity" based on a notional generation-only portfolio we would expect to continue to transact contracts where our real-world portfolio (including contracts purchased to manage dry year and locational risks) enabled us to do so. That practice would be over and above any requirement of the proposed non-discrimination obligations under Option 1.

Under this option, Meridian would also regularly publish a "generation-only" view of uncommitted capacity to satisfy the proposed Non-discrimination principle 4. However, as noted in previous submissions, we consider this principle to be meaningless given Meridian's internal retail business unit does not purchase contracts and therefore can receive no advantage relative to competitors by having access to a notional generation-only portfolio view. The fact such a "generation-only" view does not currently exist, and Meridian has not seen any advantage in developing such a view for its retail business unit, is further evidence of this point. In Meridian's opinion, ideally Non-discrimination principle 4 would simply be deleted as it would add compliance costs and provide no consumer benefit.

Option 2: Revised non-discrimination obligation

The Authority's preferred Option 2 would completely remove the concept of "uncommitted capacity" and instead specify that a gentailer must not discriminate against buyers in favour of its own internal business units for the supply of risk management contracts without an objectively justifiable reason.

This version of non-discrimination obligation 1(2), would start from the premise that gentailers will offer risk management contracts in response to all reasonable requests from buyers. In Meridian's experience this would be a reasonable starting point. An "objectively justifiable reason" for not offering a risk management contract would be when providing a risk management contract would result in an "intolerable risk" position for the gentailer. The consultation paper makes clear that "intolerable risk" would be linked directly to generation only. As with Option 1, this would require Meridian to construct a "generation-only" notional portfolio, [redacted]

Unlike Option 1, this option also seems to be intended to link explicitly to retail volumes and suggests that in any period that a gentailer indicates that supply of a risk management contract to a buyer would result in an "intolerable risk" position, the Authority "expects 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." If not implemented carefully, this link to a notional generation-only portfolio could risk hindering any future retail growth and therefore competition and perhaps even create a regulatory directive to shrink (or at least only ever hold) an existing retail position. The implementation of this expectation must ensure that gentailers are not precluded from competing in the retail market and can continue to compete in a way that would result in growth where that is enabled by the real-world risk management practices of the gentailer, including purchase of contracts (as opposed to a notional generation-only portfolio).

Meridian understands that to be the intention given paragraph 4.32 of the consultation paper states (emphasis added):

> "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."

The implication being that Meridian could continue to supply implied risk management contracts to our internal retail business unit if it is Meridian's purchase of contracts that enables it to grow retail volumes. Retail competition limitations should in no way be dependent on notional generation-only portfolios, when real-world portfolios enable greater retail competition. Provided that expectation is clear, then Option 2 may be the more workable of the two options in practice.

As with Option 1, implementation of Option 2 would require regular publication of a "generation-only" view of a gentailer's current and future capacity to supply risk management contracts. This would need to be linked to the generation-only view of that capacity and limits that if crossed would create an intolerable risk position. However, as noted in previous submissions and above, non-discrimination principle 4 should be deleted as it adds compliance costs and provides no consumer benefit.

Risk common to both options

Both options risk reducing incentives on gentailers to pursue retail innovation to manage portfolio risks. Both the revised concept of "uncommitted capacity" under Option 1 and the concept of an "intolerable risk" position under Option 2 would be based on a generation-only view of capacity to sell risk management contracts. However, both concepts consider generation minus existing retail and wholesale contractual commitments. This means if, for example, a gentailer invests in innovative hot water load control, or EV charging load control, or time of use pricing to reduce peak exposure, it will then be seen to have a commensurate volume of additional "uncommitted capacity" or an increased ability to sell contracts before hitting an "intolerable risk" position. In Meridian's opinion, allowances should be made under both options 1 and 2 to ensure such retail innovations are not disincentivised by effectively requiring on-selling. In principle, retail market innovations should be treated the same way as risk management contracts – both can manage risk and the obligations proposed by the Authority should not require on-selling of either.

Non-discrimination policies

The additional description of non-discrimination policies that the Authority proposes to codify is consistent with what Meridian expected to be required in any case. Meridian does not have any issue with these additions.

External audits

The Authority also proposes a new Code requirement for regular external audits of compliance with the non-discrimination obligations. The first audit would need to be completed by September 2027 with the Authority given discretion to determine the frequency thereafter. The Authority is seeking feedback on which auditors should be approved to carry out the task.

Meridian does not support the proposed obligation for an external compliance audit because:

- It is not clear what an external compliance audit would assess: At most we would expect the purpose of an external audit to be to provide assurance regarding the actual non-energy costs that are used in the RPCA and allocation of those costs between segments, brands, and across bundled offerings; however, the consultation paper suggests the Authority has a compliance audit in mind. The non-discrimination obligations and RPCA are principle-based and in the Authority's words not a bright line assessment, therefore it will be extremely difficult for any auditor to determine what constitutes compliance.
- External audits will not provide anything additional to existing powers and reporting proposals: The Authority will already receive extensive reporting on a high cadence and has powers to ask follow-up questions or compel provision of further information as needed.
- The costs of external audits have been underestimated: Meridian would expect one of the big four accounting firms to be best placed to carry out an audit. Costs would be dependent on scoping of the audit. For an initial audit Meridian would expect cost to be many multiples higher than the $10,000 estimated in the consultation paper and more in the order of $50,000. For any subsequent audits, the Authority's estimate may be closer to reality. However, that estimate would be for the costs of the external auditors only and would not include the time and costs incurred by a generator-retailer to support the audit.

The Authority's proposed Code drafting has also not considered the workability of Part 16A in this specific application. Many of the necessary details of how an external audit would function do not appear to have been considered. If the Authority proceeds at all with the proposed audit obligation, Meridian suggests that the Code drafting would need to not only provide for the audit right (whether in Part 16A or separately) but also:

- Provide more specificity on what exactly is to be audited (since auditing compliance per se will not likely be possible given the broad discretion and subjective judgement left for the Authority and Rulings Panel to exercise in considering any enforcement action). This may mean that Part 16A is not suitable since it assumes an audit of compliance (see clause 16A.12(1)(e)), in which case separate audit obligations should be drafted.

- To the extent Part 16A is used, specify the prescribed form for the audit under clause 16A.12(1)(a).
- Consider suitable additions to the current approved list of auditors published by the Authority under clause 16A.5(6) if Part 16A is to be used or appoint auditors under separate drafting if preferred.
- Consider whether clause 16A.7 and the process to vary the chosen auditor should apply in this case, which would increase costs.
- Consider whether the costs of an audit are to be met by the participant the subject of the audit, or by the Authority, or whether cost allocation is dependent on the findings of the audit (see clause 16A.16 for the different cost allocation methods used for various purposes under Part 16A).

Please contact me if you have any queries regarding this submission.

Nāku noa, nā

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