

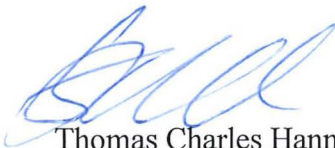
Electricity Industry Participation Code Amendment (Reporting on Wholesale Market Information Disclosure) 2020

Under sections 38 of the Electricity Industry Act 2010, and having complied with section 39 of that Act, I make the following amendments to the Electricity Industry Participation Code 2010.

At Wellington on the 19 day of January 2021



Dr Nicki Crauford
Chair
Electricity Authority
Certified in order for signature:



Thomas Charles Hannah
Senior Legal Counsel
Electricity Authority



Nick Crang
Partner
Duncan Cotterill

18 December 2020

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Contents

1	Title	1
2	Commencement	1
3	Code amended	1
4	Clause 1.1 amended (Interpretation)	1
5	New clauses 13.2B to 13.2L inserted	2

Amendment

- 1 Title**
This is the Electricity Industry Participation Code Amendment (Reporting on Wholesale Market Information Disclosure) 2020.
- 2 Commencement**
This amendment comes into force on 1 April 2021.
- 3 Code amended**
This amendment amends the Electricity Industry Participation Code 2010.
- 4 Clause 1.1 amended (Interpretation)**
 - (1) In clause 1.1, in the appropriate alphabetical order, insert:
“**major participant** means—

- “(a) a **generator** who is subject to **dispatch** or a **generator** with aggregated national generation capacity in excess of 30MW; or
 - “(b) an **ancillary service agent** providing **frequency keeping** or **instantaneous reserve**; or
 - “(c) a **direct purchaser**; or
 - “(d) a **grid owner**”.
- (2) In clause 1.1, in the appropriate alphabetical order, insert:
 “**quarterly disclosure report** means a report provided by a **major participant** under clause 13.2B”.

5 New clauses 13.2B to 13.2L inserted

After clause 13.2A, insert—

“13.2B Submission of quarterly disclosure reports by major participants

- “(1) Each **major participant** must submit **quarterly disclosure reports** to the **Authority**.
- “(2) Each **quarterly disclosure report** must contain the following information relating to the **major participant’s** activities in each quarter beginning 1 January, 1 April, 1 July and 1 October:
 - “(a) whether or not it held or was aware of any **disclosure information** to which clause 13.2A(1) applies during the quarter:
 - “(b) subject to clause 13.2C(2), the means by which it made any such **disclosure information** readily available to the public during the quarter:
 - “(c) if during the quarter it decided not to make any such **disclosure information** readily available to the public:
 - “(i) the number of times it decided to do so; and
 - “(ii) subject to subclause (3), the **disclosure information** or a description of the **disclosure information**; and
 - “(iii) the date on which it decided to not make the **disclosure information** readily available to the public; and
 - “(iv) the grounds it relied on under clause 13.2A(2) to not make the **disclosure information** readily available to the public; and
 - “(v) if it subsequently decided to make the **disclosure information** readily available to the public during the quarter in accordance with clause 13.2A(3), as the ground in clause 13.2A(2) no longer applies, the date on which it decided to make the **disclosure information** readily available to the public:
 - “(d) if it decided during a previous quarter not to make any **disclosure information** readily available to the public, and continues to not make that information readily available to the public in the quarter to which the **quarterly disclosure report** relates (“the current quarter”):
 - “(i) subject to subclause (3), either:
 - “(A) the **disclosure information** or a description of the **disclosure information**; or
 - “(B) a reference to the earlier **quarterly disclosure report** containing the **disclosure information** or the description of the **disclosure information** sufficient to enable the **Authority** to

identify the **disclosure information** or the description of the **disclosure information**; and

“(ii) the grounds it is relying on under clause 13.2A(2) to not make the **disclosure information** readily available to the public in the current quarter:

“(e) if it decided during a previous quarter not to make any **disclosure information** readily available to the public but subsequently decided, upon the ground in clause 13.2A(2) no longer applying, to make that **disclosure information** readily available to the public in the current quarter in accordance with clause 13.2A(3):

“(i) subject to clause 13.2C(2), the means by which it made any such **disclosure information** readily available to the public during the current quarter; and

“(ii) the **disclosure information**; and

“(iii) the date it made the **disclosure information** readily available to the public; and

“(iv) the previous quarter or quarters it decided to not make the **disclosure information** readily available to the public:

“(f) whether or not it complied with clause 13.2A during the quarter:

“(g) if it did not comply with clause 13.2A at any time during the quarter, the details of that non-compliance.

“(3) If the **major participant** has not made the **disclosure information** readily available to the public on one of the grounds set out in clause 13.2A(2)(h), the **major participant** does not need to provide the **disclosure information** or a description of it under subclause (2)(c)(ii) or (2)(d)(i) to the **Authority** if doing so would undermine the ground for not making the **disclosure information** readily available to the public.

“(4) For the purposes of each **quarterly disclosure report**, each **major participant**—

“(a) does not breach subclause (2) if it fails to include in a **quarterly disclosure report** information which it did not believe was **disclosure information** and there was a reasonable basis for that belief; but

“(b) must treat any information that came within the definition of **disclosure information** to which clause 13.2A(1) applies at any time during the quarter as **disclosure information**, even if it ceased to be **disclosure information** during the quarter.

“(5) Subject to clause 13.2E(3), the requirement to provide information under subclause (1)—

“(a) applies despite any legal obligation to keep the **disclosure information** confidential and shall not be deemed a breach of any such obligation; and

“(b) does not put the **major participant** in breach of any law.

“13.2C Specific requirements under clause 13.2B

“(1) Each **major participant** who provides a description of the **disclosure information** for the purposes of clause 13.2B(2)(c)(ii) or 13.2B(2)(d)(i) must provide a sufficient description to reasonably enable the **Authority** to

identify whether it is likely that the **major participant** held or continues to hold—

- “(a) information that is **disclosure information** for the purposes of clause 13.2A(1); and
 - “(b) reasonable grounds to not make the **disclosure information** readily available to the public in accordance with clause 13.2A(2).
- “(2) Each **major participant** must provide sufficient information to the **Authority** under clauses 13.2B(2)(b) and 13.2B(2)(e)(i) to enable the **Authority** to find the **disclosure information** made readily available to the public during the quarter, including any website addresses.

“13.2D Timing and form of quarterly disclosure reports under clause 13.2B

- “(1) Each **major participant** must submit the **quarterly disclosure report** to the **Authority** together with the following:
- “(a) a certification that a person to whom subclause (3)(a) applies considers, on reasonable grounds and to the best of that person’s belief, that the **quarterly disclosure report** is complete and is a true and correct record of the matters stated in the **quarterly disclosure report**; and
 - “(b) a report as to whether or not the **major participant** has a written policy, procedure and/or process for identifying and determining whether—
 - “(i) any information held by the **major participant** is **disclosure information** to which clause 13.2A(1) applies; and
 - “(ii) there are grounds under clause 13.2A(2) for not making that information readily available to the public.
- “(2) Each **major participant** must submit the **quarterly disclosure report**, the certification required by subclause (1)(a) and the report required by subclause (1)(b) to the **Authority**—
- “(a) by the end of the month following the expiry of the quarter to which the **quarterly disclosure report** relates; and
 - “(b) in the form specified by the **Authority**.
- “(3) Each **major participant** must ensure that the **quarterly disclosure report**, the certification required by subclause (1)(a) and the report required by subclause (1)(b) are either—
- “(a) signed and dated by a director, or the chief executive officer, or the chief financial officer, or a person holding a position equivalent to one of those positions, of the **major participant**; or
 - “(b) otherwise marked in a way specified by the **Authority** or linked in a way specified by the **Authority** to evidence such a person’s approval of the **quarterly disclosure report** and—
 - “(i) the certification required by subclause (1)(a); and
 - “(ii) the report required by subclause (1)(b).

“13.2E Publication of information in quarterly disclosure reports by the Authority

- “(1) The **Authority** may publish any information submitted to it in a **quarterly disclosure report**, the certification required by clause 13.2D(1)(a) and the report required by clause 13.2D(1)(b), provided any such publication does not involve the publication of—
- “(a) any **disclosure information** that the **major participant** did not make readily available to the public by reason of clauses 13.2A(2)(ba) to 13.2A(2)(d), 13.2A(2)(f) to 13.2A(2)(g), or 13.2A(2)(i); or

“(b) information from which the nature of any **disclosure information** that the **major participant** did not make readily available to the public by reason of clauses 13.2A(2)(ba) to 13.2A(2)(d), or 13.2A(2)(f) to 13.2A(2)(i) can reasonably be identified by another **participant** or member of the public; or
“(c) the grounds relied on under clauses 13.2A(2)(ba) to 13.2A(2)(d), or 13.2A(2)(f) to 13.2A(2)(i) by the **major participant** to not make **disclosure information** readily available to the public, where the disclosure of those grounds would enable another **participant** or a member of the public to reasonably identify the **disclosure information**.

“(2) The limitations in subclause (1)(a) to (1)(c) do not apply if the grounds under clauses 13.2A(2)(ba) to 13.2A(2)(d), or 13.2A(2)(f) to 13.2A(2)(i) no longer apply to the **disclosure information**.

“(3) If a **major participant** identifies to the **Authority** that the **major participant** is bound by a legal obligation to keep confidential any **disclosure information** provided to the **Authority** in a **quarterly disclosure report** or that disclosure of the **disclosure information** by the **major participant** would be a breach of law, the **Authority** is required to keep that **disclosure information** confidential, except that this subclause does not prevent the use of the **disclosure information** for the purposes of clause 13.2F(1)(b).

“(4) The **Authority** is not required to keep **disclosure information** to which subclause (3) applies confidential if it does not consider on reasonable grounds that the **major participant** is bound by a legal obligation to keep the **disclosure information** confidential or that disclosure of the **disclosure information** by the **major participant** would be a breach of law.

“13.2F Use of information in quarterly disclosure reports by the Authority

“(1) The **Authority** may use the **disclosure information** set out in a **quarterly disclosure report**—

“(a) as provided in clause 13.2E(1); or

“(b) for the purposes set out in section 16(1)(b), (c), (d), (f), and (g) of the **Act**.

“(2) The **Authority** may not use any information subject to legal professional privilege for the purposes in subclause (1)(b) above other than for the purpose of monitoring and enforcing compliance with clause 13.2A.

“(3) The **Authority** must comply with section 48(2) and 48(3) of the **Act** in respect of information that is subject to privilege against self-incrimination.

“13.2G Authority may require review of disclosure requirements or certification by independent person

“(1) The **Authority** may, in its discretion, require a review by an independent person of whether a **major participant** may not have complied with any or all of clauses 13.2B to 13.2D.

“13.2H Nomination of independent person to undertake review

“(1) If the **Authority** requires a review under clause 13.2G—

“(a) the **Authority** must require the **major participant** to nominate an appropriate independent person to undertake the review; and

“(b) the **major participant** must provide that nomination within a reasonable timeframe.

“(2) The **Authority** may direct the **major participant** to appoint the person nominated under subclause (1) or to nominate another person for approval.

- “(3) If the **major participant** fails to nominate an appropriate person under subclause (1) within 5 **business days**, the **Authority** may direct the **major participant** to appoint a person of the **Authority's** choice.
- “(4) The **major participant** must appoint a person to undertake the review in accordance with a direction made under subclause (2) or subclause (3).

“13.2I Factors relevant to a direction under clause 13.2H

- “(1) In making the direction required by clause 13.2H(2) or clause 13.2H(3), the **Authority** may have regard to any factors it considers relevant in the circumstances, including the following:
 - “(a) the degree of independence between the **major participant** and the person nominated under clause 13.2H(1);
 - “(b) the expected quality of the review; and
 - “(c) the expected costs of the review.
- “(2) For the purposes of subclause (1)(a), the **Authority** may have regard to the special definition of independent under clause 1.4 but is not bound by that definition.

“13.2J Carrying out of review by independent person

- “(1) A **major participant** subject to a review under clause 13.2G must, on request from the person undertaking the review, provide that person with such information as the person reasonably requires in order to carry out the review.
- “(2) The **major participant** must provide the information no later than 10 **business days** after receiving a request from the person for the information.
- “(3) The **major participant** must ensure that the person undertaking the review—
 - “(a) produces a report on whether, in the opinion of that person, the **major participant** may not have complied with clauses 13.2B to 13.2D (as specified by the **Authority**) under clause 13.2G; and
 - “(b) submits the report to the **Authority** within the timeframe specified by the **Authority**.
- “(4) The report produced under subclause (3)(a) must include any other information that the **Authority** may reasonably require.
- “(5) Before the report is submitted to the **Authority**, any identified failure of the **major participant** to comply with clauses 13.2B to 13.2D must be referred back to the **major participant** for comment.
- “(6) The comments of the **major participant** must be included in the report.
- “(7) The **major participant** may require that the person does not provide the **Authority** with a copy of any information that the **major participant** has provided to the person in accordance with subclause (2).

“13.2K Payment of review costs

- “(1) If a report received under clause 13.2J(3)(a) establishes, to the **Authority's** reasonable satisfaction, that the **major participant** may not have complied with clauses 13.2B to 13.2D (whether or not the **Authority** appoints an investigator to investigate the alleged breach), the **major participant** must pay the costs of the person who undertook the review.
- “(2) Despite subclause (1), if a report establishes, to the **Authority's** reasonable satisfaction that any non-compliance of the **major participant** is minor, the **Authority** may, in its discretion, determine the proportion of the person's costs that the **major participant** must pay, and the **major participant** must pay those costs.

“(3) If a report establishes to the **Authority's** reasonable satisfaction that the **major participant** has complied with clauses 13.2B to 13.2D, the **Authority** must pay the person’s costs.

“13.2L Requirement to provide complete and accurate information

“(1) In addition to the requirements of clause 13.2, the **major participant** must take all practicable steps to ensure that the information that the **major participant** is required to provide to any person under clauses 13.2B to 13.2D is complete and correct.

“(2) If a **major participant** becomes aware that any information the **major participant** provided under clauses 13.2B to 13.2D does not comply with subclause (1) or clause 13.2, even if the **major participant** has taken all practicable steps to ensure that the information complies, the **major participant** must, as soon as practicable, provide such further information as is necessary to ensure that the information provided complies with clauses 13.2B to 13.2D and clause 13.2.”

Explanatory Note

This note is not part of the amendment, but is intended to indicate its general effect.

This amendment to the Electricity Industry Participation Code 2010 ("Code") comes into force on 1 April 2021.

The amendment inserts new clauses 13.2B to 13.2L in Part 13 of the Code and two related definitions in Part 1 of the Code. The purpose of the amendment is to allow the Authority and market participants to understand the extent to which major participants are relying on exemptions to the market disclosure obligation in clause 13.2A(2) of the Code and cause major participants to focus more strongly on making sure that they meet their obligations under clause 13.2A of the Code. The new clauses:

- (a) impose reporting obligations on particular participants, called a major participant, to submit:
 - (i) quarterly disclosure reports to the Authority containing details including any disclosure information, or a description of disclosure information, the major participant did not make readily available to the public during the quarter and the grounds it relied on under clause 13.2A(2) of the Code; and
 - (ii) with each quarterly disclosure report a certification that a director, the chief executive officer, the chief financial officer, or a person holding a position equivalent to one of those positions of the major participant considers, on reasonable grounds and to the best of that person’s belief, that the quarterly disclosure report is complete and is a true and correct record of the matters stated in the quarterly disclosure report; and
 - (iii) with each quarterly disclosure report a report on the major participant’s policies relating to disclosure under clause 13.2A of the Code; and

- (b) permit the Authority to publish some of the information it receives as a result of the new reporting obligations provided any such publication does not involve the publication of:
 - (i) any disclosure information that the major participant did not make readily available to the public by reason of specified subclauses of clause 13.2A(2); and
 - (ii) information from which the nature of any disclosure information that the major participant did not make readily available to the public by reason of specified subclauses of clause 13.2A(2) can reasonably be identified by another participant or member of the public; and
 - (iii) the grounds relied on under specified subclauses of clause 13.2A(2) by the major participant to not make the disclosure information readily available to the public, where the disclosure of those grounds would enable another participant or member of the public to reasonably identify the disclosure information; and
- (c) impose an obligation on the Authority to keep certain disclosure information confidential; and
- (d) impose limits on the Authority's use of information received under the new reporting obligations including for the purposes of publication and for purposes set out in the Act; and
- (e) provides the Authority with the power to require a review by an independent person of whether a major participant has complied with the new reporting obligations.

Date of notification in the *Gazette*: