Electricity Industry Participation (Undesirable Trading Situation) Code Amendment 2013

Pursuant to section 38 of the Electricity Industry Act 2010, I make the following amendments to the Electricity Industry Participation Code 2010.

At Wellington on the 12th day of June 2013

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Chairperson
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Certified in order for signature:

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13 June 2013

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13 June 2013

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Amendment

1 Title

This is the Electricity Industry Participation (Undesirable Trading Situation) Code Amendment 2013.

2 Commencement

This amendment comes into force on 18 July 2013.

3 Code amended

This amendment amends the Electricity Industry Participation Code 2010.

4 Clause 1.1 amended (Interpretation)

(1) In clause 1.1(1), replace the definition of "**undesirable trading situation**" with:

"**undesirable trading situation** means any situation—

"(a) that threatens, or may threaten, confidence in, or the integrity of, the **wholesale market**; and

"(b) that, in the reasonable opinion of the **Authority**, cannot satisfactorily be resolved by any other mechanism available under this Code".

(2) In clause 1.1(1), replace the definition of "**wholesale market**" with:

"**wholesale market** means—

"(a) the spot market for **electricity**, including the processes for setting—

"(i) **real time prices**:

"(ii) **forecast prices** and **forecast reserve prices**:

"(iii) **provisional prices** and **provisional reserve prices**:

"(iv) **interim prices** and **interim reserve prices**:

"(v) **final prices** and **final reserve prices**:

"(b) markets for **ancillary services**:

"(c) the hedge market for **electricity**, including the market for **FTRs**".

5 Clause 5.1 amended (Occurrence of undesirable trading situation)

In clause 5.1, insert:

"(2) The following are examples of what the **Authority** may consider to constitute an **undesirable trading situation**:

"(a) manipulative or attempted manipulative trading activity:

"(b) conduct in relation to trading that is misleading or deceptive, or is likely to mislead or deceive:

"(c) unwarranted speculation or an undesirable practice:

"(d) material breach of any law:

"(e) a situation that threatens orderly trading or proper settlement:

"(f) any exceptional or unforeseen circumstance that is contrary to the public interest.

"(3) To avoid doubt,—

"(a) the list of examples in subclause (2) is not an exhaustive list, and does not prevent the **Authority** from finding that an **undesirable trading situation** is developing or has developed in other circumstances; and

"(b) an example listed in subclause (2) does not constitute an **undesirable trading situation** unless the example comes within the definition of that term in Part 1.".

6 New clause 5.1A inserted (Time limit for investigating undesirable trading situation)

After clause 5.1, insert:

"**5.1A Time limit for investigating undesirable trading situation**

Despite clause 5.1(1), the **Authority** must not commence an investigation if 10 **business days** or more have passed since the situation, which the **Authority** suspects or anticipates may be an **undesirable trading situation**, occurred.".

7 Clause 5.2 amended (Actions Authority may take to correct undesirable trading situation)

(1) Replace clause 5.2(1) with:

"(1) If the **Authority** finds that an **undesirable trading situation** is developing or has developed, it may take any action that—

"(a) the **Authority** considers is necessary to correct the **undesirable trading situation**; and

"(b) relates to an aspect of the **electricity** industry that the **Authority** could regulate in this Code under section 32 of the **Act**.".

(2) Replace clause 5.2(2) with:

"(2) The actions that the **Authority** may take under subclause (1) include any 1 or more of the following:

"(a) directing that an activity be suspended, limited, or stopped, either generally or for a specified period:

"(b) directing that completion of trades be deferred for a specified period:

"(c) directing that any trades be closed out or settled at a specified price:

"(d) directing a **participant** to take any actions that will, in the **Authority's** opinion, correct or assist in overcoming the **undesirable trading situation**.

"(2A) A direction given to a **participant** under subclause (2)(d)—

"(a) may be inconsistent with this Code; but

"(b) must not be inconsistent with the **Act**, or any other law.".

(3) In clause 5.2(4), replace "Neither a **participant** nor the **Authority** is" with "A **participant** is not".

(4) After clause 5.2(4), insert:

"(5) A **participant** does not breach this Code if it acts in accordance with a direction given under subclause (2)(d).".

8 Clause 9.14 amended (Supply shortage declaration)

(1) In clause 9.14(2)(a), replace "**wholesale market**" with "spot market for **electricity**".

(2) After clause 9.14(2), insert:

"(2A) For the purposes of subclause (2), the spot market for **electricity** includes the processes for setting—

"(a) **real time prices**:

"(b) **forecast prices** and **forecast reserve prices**:

"(c) **provisional prices** and **provisional reserve prices**:

"(d) **interim prices** and **interim reserve prices**:

"(e) **final prices** and **final reserve prices**.".

9 Clause 13.255 amended (Authority may direct FTR manager to suspend allocation of FTRs)

(1) In clause 13.255, replace "contingency or event" with "situation".

(2) Replace clause 13.255(a) with:

"(a) threatens, or may threaten, confidence in, or the integrity of, the allocation or settlement of **FTRs**; and".

(3) In clause 13.255(b), delete "that,".

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 comes into force on 18 July 2013.

The amendment updates and clarifies the processes in relation to undesirable trading situations, including introducing a 10 business day time limit for the Authority to commence investigating whether an undesirable trading situation has occurred.

Date of notification in the *Gazette*: 20 June 2013