



1 May 2013

Electricity Authority
Level 7
ASB Bank Tower
2 Hunter St
Wellington

By email: submissions@ea.govt.nz

Review of the Undesirable Trading Situation provisions in the Code

Thank you for the opportunity to comment on the 'Review of the Undesirable Trading Situation provisions in the Code' consultation paper. Powershop has had the benefit of seeing the Meridian submission on this consultation paper and endorses it, subject to a different approach in one or two areas which are outlined in Appendix 1.

Powershop would like to emphasise its agreement with Meridian's submission that the decision of the High Court on the UTS provisions is of significant value and that this should not be lost. Powershop considers that the benefit of the Authority's proposed amendments to the definition of subclause (a) of the UTS provisions, while helpful and arguably better than the current UTS definition, are outweighed by losing the benefit of that decision. Essentially, the next time a UTS is upheld by the Authority, it is highly likely that the UTS provisions would be challenged in the High Court again, at large cost to the industry. In our view, this inefficiency and the uncertainty associated with it does not fit with the Authority's statutory objectives of the efficient operation of, the electricity industry for the long-term benefit of consumers.

The Powershop submission is included in Appendix 1. Powershop has only included answers to questions where it differs from Meridian. Powershop should therefore be taken as agreeing with, and supporting, the response from Meridian on the questions not answered.

If you have any queries regarding this submission please contact me.

Yours sincerely,



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Appendix 1: Powershop responses to consultation questions

	Question	Powershop Response
1.	<p>Do you agree with the proposal that the current definition of “wholesale market” should be clarified as including the spot market for electricity, the ancillary services markets and the hedge market, and that clause 9.14(2)(a) of the Code should be amended accordingly?</p> <p>If you agree/disagree, please explain why, including why in your view the proposal is consistent/ inconsistent with achieving the Authority’s statutory objective in section 15 of the Act.</p>	<p>Powershop notes that the Authority has proposed that the definition of wholesale market be clarified as setting prices on the spot market, the market for ancillary services and the hedge market. Powershop agrees with Meridian’s concerns around including the hedge market without clarification with respect to regulatory jurisdiction over the hedge market risks regulatory uncertainty and confusion. However Powershop also considers that the definition of the wholesale market may be too restrictive as it does not reference the settling of prices set by the spot market or reconciliation (which is arguably separate from the spot market). If for instance there was a large scale metering data loss, as an example already envisaged by the Authority, then unless it included Transpower’s GXP data there could be a situation where the spot market can still set prices but not necessarily settle or reconcile data, which could be a UTS if it undermined the wholesale market. Powershop recommends the definition of wholesale market in Part 1 of the Code is amended as follows:</p> <p><i>wholesale market means the wholesale market for electricity —</i></p> <p><i><u>(a) the spot market for electricity, including the process for setting, reconciling and settling¹ —</u></i></p> <p><i><u>(i) real time prices:</u></i></p> <p><i><u>(ii) forecast prices and forecast reserve prices:</u></i></p> <p><i><u>(iii) provisional prices and provisional reserve prices:</u></i></p> <p><i><u>(iv) interim prices and interim reserve prices:</u></i></p> <p><i><u>(v) final prices and final reserve prices:</u></i></p> <p><i><u>(b) markets for ancillary services:</u></i></p> <p><i><u>(c) the market for FTRs²</u></i></p>

¹ Words bolded to show additions- it is not suggested these would be bolded in the actual definition itself.

	Question	Powershop Response	
2.	<p>Do you agree with the proposed changes to Part 1 of the Code to clarify the definition of a UTS?</p> <p>If you agree/disagree, please explain why, including why in your view the proposal is consistent/inconsistent with achieving the Authority’s statutory objective in section 15 of the Act.</p>	<p>Powershop would like to emphasise its agreement with Meridian’s submission that the decision of the High Court on the UTS provisions is of significant value and that this should not be lost. Powershop considers that the benefit of the Authority’s proposed amendments to the definition of subclause (a) of the UTS provisions, while helpful and arguably better than the current UTS definition, is outweighed by losing the benefit of that decision. Essentially, the next time a UTS is upheld by the Authority, it is likely that the UTS provisions would be challenged in the High Court again, at large cost to the industry. In our view, this inefficiency and the uncertainty associated with it does not fit with the Authority’s statutory objectives of the efficient operation of, the electricity industry for the long-term benefit of consumers.</p> <p>Powershop’s preference is for the existing wording of subclause (a) of the UTS definition to be retained for this reason. However if the Authority decides to proceed with its amendments Powershop recommends:</p> <ul style="list-style-type: none"> • as argued by Meridian, and for the reasons set out in their submission, the appropriate threshold is “likely to” rather than “may” threaten. • that at least the word “or trading on” be retained after the proposed new words “confidence in, or the integrity of” and before the words “wholesale market” so as to retain some of the benefits of the High Court decision as follows: <i>(a) that threatens, or may is likely to threaten, confidence in, or the integrity of, or trading on the wholesale market and.</i> 	
5.	<p>Do you agree with the proposal that there should be a restriction on the Authority initiating a UTS investigation for situations earlier than a defined time limit in the past?</p> <p>If you agree/disagree, please explain</p>	<p>Powershop does not agree with this proposal. As the Authority has noted in the paper, any situation which meets the test of being a UTS is extremely unlikely to go unnoticed for any extended period. This self-evidently means that the more time that expires, the less likely it is that a UTS could be claimed, which therefore makes a time limit unnecessary.</p> <p>It is possible that say, a buried data or reconciliation issue does not come to light for some period of time after it has occurred, and may only be discovered after the 24 month period to</p>	

² Removal of the reference to the hedge market in accordance with Meridian Energy’s submission.

	Question	Powershop Response
	<p>why, including why in your view the proposal is consistent/inconsistent with achieving the Authority’s statutory objective in section 15 of the Act.</p>	<p>submit revisions to reconciliation information. Not allowing remedies to participants for what amounts to an undesirable trading situation does not fit with the Authority’s statutory objective to the efficient operation of, the electricity industry for the long-term benefit of consumers. Powershop considers that maintaining the integrity of the market outweighs any concerns over finality of market outcomes, particularly given the relative (un)likelihood of a UTS being found to have taken place some significant time after it occurred.</p> <p>However if the Authority persists with its proposal to restrict the time limit to claim an undesirable trading situation, Powershop urges the Authority to consider the resources of smaller retailers in setting a realistic timeframe. Powershop’s view is that ten business days is far too short. Smaller retailers such as Powershop do not have trading teams monitoring prices constantly, and although it is likely we would be alerted to any undesirable trading situation by our parent company, some smaller independent retailers would not have this luxury. Absent being alerted by our parent company, Powershop may not be aware of any events, situations or contingencies until after the relevant Clearing Manager’s invoice is received. Even after becoming aware, Powershop staff would need to investigate and this would take some time. Powershop’s suggestion is that an appropriate time limit, if the Authority persists with one, would be until the settlement date after the relevant invoice has been issued (i.e., the 20th calendar day of the month following the billing period in respect of which the invoice was issued).</p> <p>Powershop is aware of Meridian’s proposal that a 10 business day time limit subject to the addition of a “reasonable discoverability” exemption would be appropriate. For the reasons set out above, Powershop would agree with a “reasonable discoverability” exemption in association with the settlement date after the relevant invoice has been issued, not the 10 business days.</p>
6.	<p>Do you agree with the proposal that the time limit should be no more than 10 business days, and apply between</p>	<p>No. See our response to question 5 above.</p>

	Question	Powershop Response	
	<p>the commencement of the alleged UTS and the date the Authority initiates an investigation?</p> <p>If you agree/disagree, please explain why, including why in your view the proposal is consistent/ inconsistent with achieving the Authority's statutory objective in section 15 of the Act.</p>		