

Code amendments for the system operator and alignment of market operations service providers with the Authority's statutory objective

Summary of submissions Information paper

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1 This paper summarises submitters' views on the consultation paper

- 1.1 On 8 December 2015, the Authority published the consultation paper *Proposed Code amendments relating to the system operator and alignment with the statutory objective* (consultation paper).¹
- 1.2 The consultation paper proposed:
- (a) amendments to Parts 1, 3, 7, 8 and 13 of the Electricity Industry Participation Code 2010 (Code) that relate to the system operator, including:
 - (i) placing a general obligation on the system operator to act as a reasonable and prudent operator (RPO requirement)
 - (ii) updating the principal performance obligations to make them more transparent
 - (iii) establishing reporting obligations in relation to frequency fluctuations (which are fluctuations in electricity frequency, which means that frequency deviates outside of the normal frequency band which is between 49.8 Hertz and 50.2 Hertz (inclusive), established for each of the North and South Islands)
 - (iv) updating and aligning the performance review requirements for the system operator
 - (v) reallocating responsibilities and functions relating to the process for determining the causer of under-frequency events
 - (vi) requiring the system operator to provide dispatch instructions, once issued, to the Authority
 - (vii) improving daily reporting requirements that the Authority considers unnecessary or inefficient.
 - (b) a Code amendment that would require each market operation service provider (MOSP), in performing its role, to assist the Authority to give effect to its statutory objective under section 15 of the Electricity Industry Act 2010 (Act) (statutory objective alignment requirement).
- 1.3 The Authority's statutory objective is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.
- 1.4 The proposed amendments need to fit with section 8(3) of the Act, which states that the Code must:
- (a) specify the functions of the system operator
 - (b) specify how the system operator's functions are to be performed
 - (c) set requirements relating to transparency and performance.

¹ A copy of the consultation paper can be found on the Authority's website at: <http://www.ea.govt.nz/development/work-programme/wholesale/system-operator-and-market-services-review/consultations/#c15673>.

- 1.5 In the consultation paper, the Authority stated its view that the proposed Code amendments would promote the statutory objective and would better give effect to section 8(3) of the Act.
- 1.6 This paper summarises the views that submitters expressed on the consultation paper and is limited to the matters submitters have raised. The consultation paper itself sets out each of the amendments that submitters have responded to, in more detail.²

2 Six parties made submissions on the consultation paper

- 2.1 The Authority received a submission from each of the following parties:
- (a) Contact Energy Limited (Contact)
 - (b) Genesis Energy Limited (Genesis)
 - (c) Major Electricity Users' Group (MEUG)
 - (d) Meridian Energy Limited (Meridian)
 - (e) Mighty River Power Limited (MRP)
 - (f) Transpower New Zealand Limited (Transpower).
- 2.2 This summary does not contain the full text of the submissions. However, the Authority has published all submissions in full on its website.³

3 The submissions had three common themes

- 3.1 The common themes in the submissions on the consultation paper were:
- (a) the proposed amendments relating to the system operator will better give effect to the requirements of section 8(3) of the Act
 - (b) the RPO requirement should apply to all of the system operator's Code obligations
 - (c) the proposed statutory objective alignment requirement will promote the statutory objective. However, the wording of the proposed requirement was unclear, and it was not clear how the Authority would assess and enforce compliance with this proposed requirement.

² Supra footnote 1.

³ Submissions on the consultation paper are available at: <http://www.ea.govt.nz/development/work-programme/wholesale/system-operator-and-market-services-review/consultations/#c15673>.

4 Key comments raised in submissions

Proposed Code amendments relating to the system operator better give effect to the requirements of section 8(3) of the Act (question 1)

- 4.1 Most submitters considered that the proposed amendments relating to the system operator would better give effect to section 8(3) of the Act.
- 4.2 However, Transpower (provider of the system operator service) noted that because the consultation paper did not include a 'status quo' assessment of how effectively the Code currently provides for section 8(3) of the Act, it was difficult to conclude that the proposed amendments would give better effect to section 8(3) of the Act.
- 4.3 That aside, Transpower expressed support for the proposed amendments' objective of delivering a system operator service that promotes reliable supply, competition and efficient operation.

There were no improvements suggested to the proposed amendments relating to giving effect to the requirements of section 8(3) of the Act (question 2)

- 4.4 No submitter suggested improvements to the proposed amendments aimed at better giving effect to the requirements of section 8(3) of the Act.
- 4.5 However, some parties did propose drafting changes to the proposed amendments that were intended to better give effect to section 8(3) of the Act. The drafting proposals are summarised in the next section.

Several submitters suggested drafting improvements to the proposed amendments relating to the system operator (question 3)

- 4.6 As summarised below, several submitters made comments on, and suggested drafting improvements in relation to, the proposed amendments relating to the system operator.

Proposed amendment to clause 3.1 to extend the application of clauses 3.11 (Disclosure to the Authority) and 3.12 (Performance standards to be agreed) to the system operator

- 4.7 Transpower submitted that if clause 3.11 applied to the system operator, then the exceptions to clause 3.11 should be extended to exclude information provided to the system operator under clause 7.3 and Schedule 8.3 of the Code.
- 4.8 Meridian submitted that clause 3.11 should have a further exception that the system operator should not be required to provide the Authority with information the system operator has received under confidentiality agreements with participants. Contact did not propose any drafting improvements, but instead queried whether (if clause 3.11 applied to the system operator) an existing confidentiality agreement would override clause 3.11.

Proposed new clause 7.1A – Reasonable and prudent operator standard

- 4.9 Proposed new clause 7.1A(2) provides that the system operator would not breach a principal performance obligation if the system operator complied with the RPO requirement under proposed new clause 7.1A(1). Because the RPO requirement would apply to the system operator's entire role, the consultation paper also proposed removing the words "act as a **reasonable and prudent system operator** to" from clause 8.5. On this basis, Transpower suggested that proposed new clause 7.1A(2) should also provide that the system operator does not breach clause 8.5 if it complies with the RPO obligation.
- 4.10 Transpower further suggested that the proposed new clause 7.1A(1) should use the phrase "obligations under the Code", rather than the word "role". Transpower considered this would clarify that clause 7.1A applied only to the system operator's obligations under the Code and not matters that are part of its role under the system operator service provider agreement (SOSPA).
- 4.11 Transpower also considered that the RPO requirement should remain a definition under Part 1 of the Code. Transpower submitted that transforming the RPO requirement from a definition to an active obligation (proposed new clause 7.1A(1)) would require consequential changes to the policy statement, ancillary services procurement plan and SOSPA, among other things, which would create unnecessary cost to them.
- 4.12 Genesis submitted that clause 7.1A(2) should be revised because it appeared to reduce the system operator's accountability to meet its principal performance obligations.
- 4.13 MEUG submitted that the proposed drafting change to clause 7.1A(2) amending reference from international "best" practice to international "good" practice should not proceed. MEUG submitted that "best practice" is accepted industry terminology and that if the Authority sets the standard to "good practice" there will be an explicit lowering of the standard, which implies that meeting requirements on average is good enough. MEUG expected the system operator to diligently monitor and plan to implement best practice from around the world where appropriate. In MEUG's view, only requiring "good practice" would reduce the incentive on the system operator to look for opportunities to achieve best practice.
- 4.14 Meridian, on the other hand, considered that international good practice was a reasonable standard for the system operator to meet.

Proposed new clause 7.2A – System operator to maintain frequency

- 4.15 Transpower proposed several amendments to the proposed new clause 7.2A. Transpower considered its proposed amendments would better express the context and process by which the system operator complies with the principal performance obligation to maintain and restore frequency.

Proposed new clause 7.2B – System operator to restore frequency if momentary fluctuation occurs

- 4.16 Transpower considered that removing the word "momentary" from the references to "momentary fluctuation" would clarify the requirement in the proposed new clauses 7.2B and 7.2E. Transpower also suggested that the requirement for the system operator to

restore frequency to the normal band as soon as reasonably practicable following a momentary fluctuation, should be subject to the contingent event and extended contingent event allowances in clause 7.2A. Transpower considered this would be consistent with the obligation in clause 7.2A(2).

Proposed new clause 7.2D – System operator to identify and resolve problems

- 4.17 Transpower also recommended drafting improvements to the proposed new clause 7.2D regarding problems arising from non-compliance with a standard in clauses 4.7, 4.8, or 4.9 of the Connection Code, at any point of connection to the grid. Transpower's proposed drafting improvements would explicitly provide that the system operator must only take reasonable steps to identify and resolve such a problem if such a problem exists, and the system operator knows the cause of the problem.

Proposed amendments to clause 7.11 – Review of the performance of the system operator

- 4.18 Transpower submitted that the proposed amendment to clause 7.11(2) to require the system operator's self-review to include an assessment of its financial performance was not appropriate and should be deleted. Transpower viewed financial performance as something better assessed under the SOSPA. Transpower also considered that requiring the system operator to assess its engagement with "participants and consumers" would incorrectly imply that the system operator directly engages with consumers who are not participants. Genesis made a similar submission regarding the proposal that the system operator assess its engagement with participants and consumers. Genesis and Transpower recommended the proposal to extend the system operator's engagement to include "engagement with consumers" be deleted.

Proposed amendments to Part 8 (Common quality)

- 4.19 Transpower submitted several drafting changes to the proposed amendments to Part 8 that it considers would further clarify the amendments, principally those proposed in relation to the Code's under-frequency event causer process. In particular, Transpower proposed that the system operator and the Authority should be able to agree a longer period than the standard 40-business day timeframe for the causer investigation. Transpower considered a longer period would better accommodate any investigation complications that may arise.
- 4.20 Meridian considered that the Authority is the most appropriate body to determine the causer of an under-frequency event. Meridian submitted that clause 8.61 should be further amended to allow the Authority to determine that the system operator is a causer of an under-frequency event in its own right; should an under-frequency causer investigation show this to be the case. Meridian listed several examples of how it considered the system operator could cause under-frequency events.

Proposed amendment to clause 13.76(5) – Dispatch instructions to be logged

- 4.21 Meridian supported the proposed amendment to clause 13.76 to require the system operator to provide a copy of all dispatch instructions to the Authority. Meridian submitted there would be additional value in making dispatch instructions publicly available to improve the transparency of the wholesale market.

Proposed amendments to clause 13.102 – Reporting obligations of system operator

- 4.22 Contact and Genesis submitted that the proposal to revoke clauses 13.102(3) and (4), would reduce access to information that enables transparency and accountability regarding the system operator.
- 4.23 Contact considered that access to such information assists the settlement process for a breach of the Code.

All submitters considered that the proposed statutory objective alignment requirement would promote the statutory objective but that the proposed requirement should be clarified (question 4)

- 4.24 All submitters considered that the requirement under proposed new clause 3.2A(1), that each MOSP perform its role in a way that assists the Authority to give effect to its statutory objective, promoted the statutory objective. Meridian stated that the MOSPs “play an important role in the functioning of the market. It is critical that these roles are well aligned with the Authority’s overarching statutory objective.”
- 4.25 Meridian submitted that proposed new clause 3.2A(1) could be strengthened in the manner outlined below at paragraph 4.39.
- 4.26 MRP suggested that proposed new clause 3.2A be simplified in the manner outlined below at paragraph 4.40.
- 4.27 Transpower said: “Transpower is committed to delivering an efficient system operator service that promotes reliable supply, competition and efficient operation and we support the direction of the changes proposed.” Transpower proposed an alternative provision to the proposed new clause 3.2A. In Transpower’s view, its alternative draft Code provision would better promote the efficiency limb of the statutory objective by:
 - (a) reducing the risk of any unnecessary costs arising from speculative allegations that the system operator had breached the statutory objective alignment requirement
 - (b) identifying how each MOSP would progressively increase its alignment with the statutory objective.

Submitters had varying views on proposed new clauses 3.2A(2) and 3.2A(3) and how well these clauses would promote the statutory objective (question 5)

- 4.28 Genesis submitted that the wording “progressively increase the extent [of alignment]” in proposed new clause 3.2A(2) was unclear as it did not set an expectation of how and when the system operator would achieve alignment. Genesis recommended that the system operator and the Authority should agree steps and measures towards alignment on a case-by-case basis.
- 4.29 MEUG expressed a similar view and said that the proposed new clause 3.2A(2) “gives the system operator an open ended time allowance to align operations with the Authority’s statutory objective”. MEUG expected that the Authority and the system operator had discussed timetables for implementation and completion of alignment.

However, to increase certainty for stakeholders and system operator accountability, MEUG considered that the date for complete alignment should be specified in the Code.

- 4.30 Meridian submitted that the proposed new clauses 3.2A(2) and (3) were unnecessary. Meridian also expressed the view that clause 3.2A(2) was ambiguous and could signal to the system operator that it did not need to implement clause 3.2A(1) as quickly as it could. Meridian considered that clause 3.2A(2) treated the system operator differently relative to the other MOSPs in “better aligning [the system operator’s] role with the statutory objective.”
- 4.31 Meridian submitted that if the Authority proceeded with proposed new clause 3.2A(2), the clause should clarify the timing for system operator alignment, for example “[the system operator must] fully implement clause 3.2A(1) within 12 months of the Code amendment coming into effect”.
- 4.32 Meridian considered that proposed new clause 3.2A(3) could discourage the system operator from adapting its policies and procedures for real time operations to better align them with the Authority’s statutory objective. Meridian considered this would be undesirable “as real time decisions have the potential to have a significant bearing on achievement of the [Authority]’s statutory objective (e.g. short notice outages leading to high market prices for consumers).”
- 4.33 In Meridian’s view, any assessment of system operator compliance with clause 3.2A(1) would take account of the circumstances of the situation, including the pressures of real-time decision making, so clause 3.2A(3) is unnecessary.
- 4.34 Meridian suggested that there is likely to be a wide range of views on how the system operator and other MOSPs might best assist the Authority to achieve its statutory objective. Meridian suggested that it would therefore be beneficial for the Authority to consider facilitating an industry discussion on this, possibly in the form of a workshop or forum, which involved the Authority, the system operator, and other participants.
- 4.35 Transpower agreed with the intent of clause 3.2A(2) but preferred its alternative draft Code provision for the reasons outlined above at paragraph 4.27. Transpower considered that clause 3.2A(3) appropriately excluded real-time operations from the statutory objective alignment requirement.

Most submitters commented on, and proposed drafting improvements to, the proposed new clause 3.2A (question 6)

- 4.36 Contact suggested that rather than using the word “assists”, proposed new clause 3.2A(2) should state that the system operator must progressively increase the extent to which it “aligns with” the Authority to give effect to the Authority’s statutory objective.
- 4.37 Genesis recommended changing proposed new clause 3.2A(1) to provide:
“Each market operation service provider must perform its role with regard to the Authority’s statutory objective.”
- 4.38 Genesis submitted that it was not clear why the Authority preferred the wording “assist the Authority to give effect to the statutory objective” for proposed new clause 3.2A(1) over PA Consulting Group’s recommendation to the Authority that MOSPs should “have regard to” the Authority’s statutory objective.

- 4.39 Meridian recommended inserting the word “best” into clause 3.2A(1) to require a MOSP to “perform its role in a way that ‘best’ assists the Authority to give effect to the Authority’s statutory objective.” In Meridian’s view, this would ensure that complying with this clause required more than providing only minor assistance to the Authority in giving effect to its statutory objective.
- 4.40 MRP submitted that clause 3.2A could be simplified and improved by reducing the clause to the following requirement:
- “Each market operation service provider must perform its role in a way, so far as is reasonably practicable, that supports the Authority’s statutory objective.”*
- 4.41 MEUG proposed drafting improvements as outlined above from paragraph 4.29.
- 4.42 Transpower’s alternative draft Code provision to proposed new clause 3.2A (described above at paragraph 4.27):
- (a) would require each MOSP agreement to include a statutory objective alignment requirement
 - (b) would provide that if a MOSP complies with the statutory objective alignment requirement in its MOSP agreement (which outlines how a MOSP would assist the Authority in giving effect to the statutory objective), the MOSP complies with the equivalent requirement under the Code
 - (c) would provide that the statutory objective alignment requirement does not permit a MOSP to breach the Act, any regulations made under the Act, or the Code.
- 4.43 If the Authority chose not to proceed with Transpower’s alternative Code provision, Transpower proposed as an alternative, the following drafting changes to the proposed new clause 3.2A:
- (a) subclause (1) (and clause 7.1A) should use the phrase “obligations under this Code” rather than the word “role”⁴
 - (b) subclause (2) should apply to all MOSPs because in Transpower’s view all MOSPs would require time to comply with the obligation specified at clause 3.2A(1)
 - (c) subclause (4) should also provide that clause 3.2A did not allow a MOSP to breach the Act or regulations made under the Act.

Submitters agreed wholly or in part with the objectives of the proposed amendments relating to the system operator (question 7)

- 4.44 With the qualifications outlined above in the summary of responses to questions 3 to 6 of the consultation paper, all submitters agreed with the objectives of the proposed amendments relating to the system operator.

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The reasoning, as discussed in relation to clause 7.1A(1) at paragraph 4.10 above, would be to ensure that the Code obligation to assist the Authority was clearly limited to the performance of its Code obligations.

Most submitters agreed with the cost-benefit analysis of the proposed amendments relating to the system operator (question 8)

- 4.45 Genesis expressed disappointment at the Authority's lack of attempt to quantify the costs and benefits of the proposed amendments. Genesis considered that:
- (a) at paragraph 1.2.45 of the consultation paper's regulatory statement, the Authority had not quantified the actual costs or savings that would arise from making the proposed amendments to clause 13.102
 - (b) at paragraph 1.2.47 of the regulatory statement, the Authority had wrongly assumed information obtainable under clause 13.102 is not of value to participants. In Genesis' view, the benefits of the proposed amendments to clause 13.102 did not outweigh the costs.
- 4.46 All other submitters considered that the proposed amendments relating to the system operator would bring positive net benefits.

All submitters agreed with the evaluation of alternative means of achieving the objective of the proposed amendments relating to the system operator (question 9)

- 4.47 All submitters considered there were no alternative means to achieve the objectives of the proposed amendments relating to the system operator.

All submitters agreed with the objective of the proposed statutory objective alignment requirement (question 10)

- 4.48 All submitters agreed with the objective of the proposed statutory objective alignment requirement. Although Transpower agreed with the policy intent of this proposed amendment, it submitted that its proposed alternative Code provision and drafting changes for clause 3.2A would better provide for the objective.

Most submitters agreed with the evaluation of the cost and benefits of the proposed statutory objective alignment requirement (question 11)

- 4.49 Four of the submitters agreed with the Authority's evaluation of the cost and benefits of the proposed statutory objective alignment requirement. Genesis made no comment on this, and Transpower submitted that it partially agreed with the cost-benefit analysis relating to the statutory objective alignment requirement.
- 4.50 Transpower agreed with the Authority's assessment that the administrative costs of the proposed statutory objective alignment requirement were negligible, but noted that the requirement would potentially increase compliance costs resulting from alleged breaches of clause 3.2A. Transpower submitted that its proposed alternative Code provision and drafting changes for this proposed new clause would mitigate the risk of such increased costs.

Most submitters agreed with the evaluation of alternative means of achieving the objective of the proposed statutory objective alignment

requirement (question 12)

- 4.51 Transpower submitted that its proposed alternative Code provision and drafting changes for this clause would better achieve the policy objective of the proposed statutory objective alignment requirement. Genesis partially agreed with the Authority's evaluation of alternative means, but noted that the evaluation did not cover why the objective of the proposed statutory objective alignment requirement could not be met through individual agreement with MOSPs.

All submitters agreed with the assessment of the proposed amendments against section 32(1) of the Act (question 13)

- 4.52 All submitters agreed with the assessment of the proposed amendments against section 32(1) of the Act.

Most submitters agreed that the proposed amendments comply with the Code amendment principles (question 14)

- 4.53 Genesis partially agreed that the proposed amendments comply with the Code amendment principles. Genesis considered that the cost and benefits of the proposed amendment to clause 13.102 had not been adequately assessed.
- 4.54 All other submitters considered that the proposed amendments comply with the Code amendment principles.

Appendix A Consultation questions

No.	Question
Q1.	Do you agree that the proposed Code amendments relating to the system operator would better give effect to the requirements of section 8(3) of the Act? If not, please explain why not.
Q2.	What improvements, if any, should the Authority make to the proposed Code amendments relating to the system operator to better give effect to the requirements of section 8(3) of the Act?
Q3.	Do you have any comments or suggested drafting improvements regarding the proposed Code amendments relating to the system operator? Please provide comments and suggested drafting improvements with reference to the clauses set out in Appendix A.
Q4.	What improvements, if any, should the Authority make to the proposed statutory objective alignment requirement to better promote the statutory objective?
Q5.	Do you agree that the proposed new clause 3.2A(2) and (3) that would apply to the system operator alongside the statutory objective alignment requirement, promotes the statutory objective? If not, please explain why not.
Q6.	Do you have any comments or suggested drafting improvements regarding the proposed new clause 3.2A? Please provide comments and suggested drafting improvements with reference to specific provisions of the proposed new clause 3.2A set out in Appendix A.
Q7.	Do you agree with the objectives of the proposed Code amendments that relate to the system operator? If not, please explain why not.
Q8.	Do you agree with the Authority's evaluation of the costs and benefits of the proposed Code amendments that relate to the system operator? If not, please explain why not.
Q9.	Do you agree with the Authority's evaluation of alternative means of achieving the objectives of the proposed Code amendments that relate to the system operator? If not, please explain why not.
Q10.	Do you agree with the objective of the proposed statutory objective alignment requirement? If not, please explain why not.
Q11.	Do you agree with the Authority's evaluation of the costs and benefits of the proposed statutory objective alignment requirement? If not, please explain why not.

Q12.	Do you agree with the Authority's evaluation of alternative means of achieving the objectives of the proposed Code amendments that relate to the system operator? If not, please explain why not.
Q13.	Do you agree with the Authority's assessment of the proposed Code amendments against section 32(1) of the Act? If not, please explain why not.
Q14.	Do you agree that the Authority's proposed Code amendments comply with the Code amendment principles? If not, please explain why not.