Summary of submissions received on Code Review Programme 2017

Blue: Authority has inserted this text *Italics: Verbatim from submission*

Reference	Submitter(s)	Submission	Authority response
2016-01: Clarifying the use of the term 'rules'	Trustpower (page 3)	**Agreed with the Authority's problem definition** **Agreed with the Authority's proposed solution, provided the original meaning of the word 'rules' within the relevant clauses is preserved** **Had comments on proposed Code drafting** *Trustpower's preference for the amendment to clause 6.3(2)(d) is for the phrase 'policies, rules, or conditions under' to be replaced by 'policies, procedures, or conditions under', as replacement with 'circumstances in' limits the requirements of the clause. Similarly, our preference for clause 10.2(1)(a)(ii) is for 'rules' to be replaced by 'principles', to maintain consistency with other bodies of New Zealand legislation.* *We believe the remainder of replacements adequately preserve the original meaning of the clauses.* **Agreed with the objectives of the proposed amendment** **Agreed the benefits of the proposed amendment outweigh its costs** **Agreed the proposed amendment is preferable to the status quo, provided the original meanings of the amended clauses are retained**	For the proposed amendment to clause 6.3(2)(d), the Authority prefers 'circumstances in' to 'policies, procedures, or conditions under', because 'circumstances in' is simpler and better reflects the intent of clause 6.3(2)(d)—that a distributor lists publicly the circumstances or contexts in which it may, or will, curtail or interrupt distributed generation on its network. In terms of the proposed amendment to clause 10.2(1)(a)(ii), the Authority agrees that replacing 'rules' with 'principles' (rather than 'requirements') is more consistent with other legislation, and has adopted this suggestion accordingly.
2016-02: Removing Part 6 and Part 9 exceptions	Trustpower (pages 4 and 5)	**Did not agree with the Authority's problem definition** *The Code came into effect in 2010 and only now, some six years later, has the Authority decided to broaden the reporting requirements of market operations services providers. More concerning is the timing of the amendment and the areas, specifically Part 6. It would seem the Authority is trying to get as much information as possible presented to them to assist them in removal of Part 6 of the Code. For all intents and purposes, it would appear an 'information grab'.* **Did not agree with the Authority's proposed solution**	The proposed amendment is not intended to facilitate the removal of Part 6. Rather, the amendment's main benefit is better facilitating market operation service providers' (MOSPs) accountability for their performance under Parts 6 and 9. Compared with the status quo, the Authority expects the proposed amendment to provide

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		As the Authority has stated, they "could continue with the status quo arrangements". **Had comments on proposed Code drafting** *Trustpower believes no change is required.* **Did not agree with the objectives of the proposed amendment** *There is sufficient disclosure in place currently; this minor change will increase reporting requirements on market operations service providers, which will like see a cost increase to participants with no net benefit other than the Authority receiving more data.* **Did not agree the benefits of the proposed amendment outweigh its costs** *As no CBA has been presented, Trustpower cannot carry out an analysis as to whether the benefits of the proposed amendment outweigh the costs. Trustpower questions the need for amending this minor component of reporting.* **Did not agree the proposed amendment is preferable to other options** *As the Authority clearly states the status quo is good enough.*	greater certainty that MOSPs perform any Code obligations under Parts 6 and 9 of the Code to the same level as they do under other parts of the Code. It is not practicable to quantify this benefit, and so the Authority did a qualitative cost-benefit analysis for the purposes of consultation. The costs that affected MOSPs (being the system operator and the registry) will face under the amendment are either zero or negligible. The Authority therefore remains of the view that the benefits of the proposed amendment outweigh the costs.
2016-03: Simplifying the requirements for certification and declaration	Contact (page 1)	*Contact is concerned about the proposal to require certification from director/s that certain matters are true. It is unclear what the rationale is for requiring director, rather than executive-level, certification. Requiring certification at a director-level reduces efficiency and can be unduly onerous in a large organisation. In either case, an individual must turn their mind to their own accountability for making sure that the information is accurate. Contact suggests executive-level certification is sufficient.*	The Authority considers it appropriate to require certification from at least one director under clauses 9.29(2) and 13.236F. This is primarily because the matters to be certified are sufficiently important to promoting the Authority's objective. Requiring at least one director to certify under these provisions also lowers the risk of inconsistency between what management and the Board know about a participant's electricity risk management decisions. The Authority believes that requiring director certification under the amended clause 9.29(2) is not onerous. The certification

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			requirement under this clause is meant to be very infrequent. No such certification has been required since the clause was inserted in the Code in 2011. The Authority agrees that the matter to be certified under clause 13.230(2) is not as important to promoting the Authority's objective as the matters under clauses 9.29(2) and 13.236F. We have therefore amended clause 13.230(2) to require certification from either 1 director, or the CEO (or equivalent), or the CFO (or equivalent).
2016-03: Simplifying the requirements for certification and declaration	Meridian (pages 2 and 3)	**Agreed with the Authority's problem definition** **Generally agreed with the Authority's proposed solution** *In general yes but we disagree with it in one respect. The Authority proposes to align clauses 9.29, 13.230, and 13.236F by requiring in all cases that the relevant certification is signed by at least 1 director. Currently under clauses 9.29 and 13.230 retailers and participants have the option of supplying the required declaration signed by 2 directors, or the CEO or the CFO. Meridian strongly prefers that retailers and participants retain the option to supply the certification now required by having it signed just by the CEO or CFO. We also request that this optionality is extended to clause 13.236F and that all 3 clauses are thus aligned.* *It is not always convenient for Board members of large listed companies to meet out of cycle to sign documents and for this reason the standard practice is for documents to be executed under power of attorney typically held by members of the company's executive. We do not consider there is any lessening of the significance or importance of the relevant documents by allowing them to be signed by the CEO or CFO. Indeed that is the current practice under 9.29 and 13.230. All it does is reduce the administrative burden on participants which, in our submission, is more consistent with the Authority's statutory objective.*	See first two paragraphs of the Authority's response to the submission immediately above.

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		Had comments on proposed Code drafting *See answer to [whether Meridian agreed with the Authority's proposed solution].* **Agreed with the objectives of the proposed amendment** **Agreed the benefits of the proposed amendment outweigh its costs** *Yes provided that the option of signature by the CEO or CFO is retained.* **Agreed the proposed amendment is preferable to other options** *See answer to [whether Meridian agreed with the Authority's proposed solution].*	
2016-03: Simplifying the requirements for certification and declaration	Trustpower (page 6)	**Agreed with the Authority's problem definition** **Agreed with the Authority's proposed solution** **Had comments on proposed Code drafting** *The proposed changes make sense and will improve clarity and consistency for certifications that participants need to make.* **Agreed with the objectives of the proposed amendment** **Agreed the benefits of the proposed amendment outweigh its costs** **Agreed the proposed amendment is preferable to other options**	Noted. Having considered submissions on this proposal, the Authority agrees that the matter to be certified under clause 13.230(2) is not as important to promoting the Authority's objective as the matters under clauses 9.29(2) and 13.236F. We have therefore amended clause 13.230(2) to require certification from either 1 director, or the CEO (or equivalent), or the CFO (or equivalent). The changes to clauses 9.29(2) and 13.236F are as proposed.
2016-04: Removing the definition of 'assumed value of co-efficient'	Trustpower (page 6)	**Agreed with the Authority's problem definition** **Agreed with the Authority's proposed solution** **Did not have comments on proposed Code drafting** **Agreed with the objectives of the proposed amendment**	Noted.

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		Agreed the benefits of the proposed amendment outweigh its costs **Agreed the proposed amendment is preferable to other options**	
2016-05: Removing reference to the Authority acting reasonably	Contact (page 1)	*Contact is concerned, however, about the proposal to remove the requirement for the Authority to act reasonably. We appreciate the Authority will continue to operate under an implicit obligation to act reasonably as a matter of administrative law, yet we strongly encourage retention of these provisions to keep the Authority's obligations to act reasonably explicit. Removal of these obligations, as a matter of interpretation, may create uncertainty as to the scope of the Authority's statutory powers. As the industry enters a significant period of reform, we consider the timing of this proposed Code change as a potentially unnecessary source of anxiety. In this regard we also support Genesis Energy's submission on the Code review.*	Having considered submissions, the Authority has decided not to proceed with this proposed Code amendment. The Authority is under a duty to act reasonably as a matter of administrative law, regardless of the presence or absence of statutory provisions that expressly require the Authority to act reasonably. However, the Authority acknowledges that retaining Code provisions that expressly require the Authority to act reasonably may establish, in some instances, a more demanding duty than would otherwise apply, and give participants greater comfort and certainty as to the scope of the Authority's statutory powers.
2016-05: Removing reference to the Authority acting reasonably	Counties Power (pages 1 and 2)	*Counties Power is concerned that the Authority is seeking to reduce requirements for it to act reasonably given that it is an independent Crown entity and electricity regulator, with a mandate that does not consider issues of equity, fairness and the environment. The risk associated with its mandate and issues of equity were in evidence with the Authority's transmission pricing methodology (TPM) proposals, where the Authority admits that it is seeking changes to the Code, which will affect line charges for large areas of New Zealand, without consideration of equity on the general public and businesses.* *The only reason that the Authority has presented for the amendments is that as a Crown entity the Authority is required to act in accordance with administrative law principles that include a requirement to act reasonably. However, the Code is designed to be read by a wide*	See the Authority's response immediately above to Contact's submission on this proposal.

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		range of people within the industry, and the general public, so the requirements to act reasonably needs to be included in the Code for the understanding of the reader. This requirement for regulations to be easily understood is reflected in the Regulatory Standards Bill that states that "the law should be clear and accessible". Therefore, the requirement to act reasonably should be made clear to the reader of the Code without the need to refer to administrative law principles. *In conclusion, given that the Authority is making regulatory changes independent of the Minister of Energy and MBIE, then the proposed Code changes in removing references to the Authority acting reasonably can only erode consumer and industry confidence in the lack of controls around the Authority and transparency into its performance.*	
2016-05: Removing reference to the Authority acting reasonably	Counties Power Consumer Trust (pages 1 and 2)	*Such a removal of [references to the Authority acting reasonably], in the Trustees' collective view, would effectively reduce the EA's requirement for reasonable treatment at all times and in all circumstances across all and between all New Zealand electricity consumers. This could only have a detrimental effect and do nothing to enhance the goodwill between the Authority and consumers. Further, Trustees consider that due to the EA's unusual power to amend the Code under which it operates (unlike other Crown entities which must go through the Minister in charge), the New Zealand consumers need as much protection as is possible as opposed to less.* *Furthermore, the Trustees believe that the EA's Transmission Pricing Methodology proposals have highlighted flaws in the current regulatory and legislative framework that governs the EA through requiring the EA to introduce changes to the Code with no consideration to fairness. To now compound this problem with the requirement to act reasonably cannot be justified or in the best interest of electricity consumers.* *Added to the Trustees' concerns is the lack of governance that has been displayed by the Minister of Energy and the Ministry of Business, Innovation and Employment (MBIE) to ensure electricity regulations set under the Code like the TPM are more than just the EA seeking efficiency improvements. Issues like equity, fairness and reasonableness is at the*	See the Authority's response above to Contact's submission on this proposal.

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		heart of good government policy and therefore the Trustees do not support any such amendment as proposed in the EA's consultation paper 2016.	
2016-05: Removing reference to the Authority acting reasonably	ENA (pages 1 and 2)	*Members have read the stated reasons for the Authority wanting to remove all references to the requirement for it to act reasonably but they have serious concerns as to whether the Authority's approach is reasonable in this regard.* *While we acknowledge that the Authority is a Crown Entity, members disagree that the Authority can remove the reference purely by virtue of it being a Crown Entity. Further, while we do not think its reasons for doing so are well founded, we are seriously concerned that the Authority would even consider this proposal.* *The requirement for the Authority to act reasonably in relation to its powers and duties under the Code was included when the Code was drafted, presumably for good reasons. At that time the reasonableness principle existed in administrative law, but nevertheless, those drafting the Code saw fit to include references to the Authority acting in a reasonable manner throughout the Code (36 instances by our reckoning).* *When considering what has changed since the time the Code was drafted that would warrant removal of the requirement of a reasonable approach by the Authority, we are struggling to find circumstances to support this change.* *Members are therefore opposed to this Code change because:* *a) Without the reasonableness standard, any challenge would be left to administrative law, which would hold the decision to a different standard than one with express reference to reasonableness in regulation;* *b) It changes the status quo; the change will introduce significant uncertainty for industry participants and is not in the long-term benefits of consumers who will wear the effects of ambiguous decision-making;*	See the Authority's response above to Contact's submission on this proposal.

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		c) *ENA members find it strange that the Authority considers it does not require rules to act reasonably while other crown entities do – such as the Commerce Commission.* *We recommend the Authority not progress this proposal. It is neither "technical" nor "non-controversial" and should not have been included in the omnibus consultation paper seeking to make such amendments.* **Did not agree with the Authority's problem definition** *No, ENA members do not agree with the Authority's view that there is a problem associated with having it act in a reasonable manner. The Authority should be required to act reasonably and having this requirement directly related to specific Code rules is important for a regulator to be seen as credible.* **Did not agree with the Authority's proposed solution** *No, members do not agree with the solution. The requirement to act reasonably should be left within the Code.* **Did not have any comments on proposed Code drafting** *We do not agree with the changes proposed in the draft Code amendment. Please refer to Appendix B [of our submission] for our comments on the Authority's proposed Code amendment.* **Did not agree with the objectives of the proposed amendment** *Members do not consider this change to be technical and non-controversial as claimed by the Authority – there is likely to be widespread opposition to this proposal. There needs to be a balance between the various objectives.*	
2016-05: Removing reference to the Authority acting reasonably	Energy Trusts of New Zealand Inc. (pages 1 and 2)	*Assurance that Authority must act reasonably because it is a Crown entity not consistent* *We do not accept the Authority's assurance that [reasonableness] requirements are redundant because, as a Crown entity, it will necessarily be reasonable and behave reasonably. Current legislation specifically requires a number of Crown entities and related*	See the Authority's response above to Contact's submission on this proposal.

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		agencies to be reasonable or to act reasonably. For example: *a) A parallel can be drawn with the 1987 Court of Appeal clarification that the Treaty of Waitangi put in place a partnership, and the partners have a duty to act reasonably and in good faith. 1 (The Treaty is an agreement rather than a piece of legislation, not unlike the relationship the Code establishes between the Authority and Participants.) The fact that the Court needed to make this clarification, applying to the Crown, indicates that there was no implicit guarantee that principles of good faith would otherwise be adhered to.* *b) Under the guidelines for 'Surrender of property and searches' established under the Education Act, schools must comply with "Principle 3: … schools must act reasonably, in good faith…".* *c) Section 82A of the Local Government Act 2002 requires that local authorities, in exercising their quasi-regulatory powers through setting by-laws, must provide "(b) an analysis of the reasonably practicable options…"* *The view that Crown entities may require specific requirements to be reasonable/act reasonably remains current Parliamentary thinking. Thus, the Local Government Act 2002 Amendment Bill (No 2) as reported back in July 2016, specifically provides for the Local Government Commission and local authorities, and even the Minister, to adhere to principles of reasonableness. A few excerpts from the Local Government & Environment Committee's report (and mirrored in the Bill itself):* *A local authority intending to develop a reorganisation plan under this clause must ensure that written notice of that intention is given to the Commission as 30 soon as is **reasonably practicable**.* *(2) The Commission must approve the reorganisation plan to which the local authority-led reorganisation application relates unless— (a) the reorganisation plan is not accompanied by the documentation required by clause 22B; or (b) the Commission considers, **on reasonable grounds**, that— 15 (i) the provisions in clause 11 and subpart 1 of this Part were not complied with in developing the plan, as required by clause 22A(2); or …* *(2) Despite subclause (1)(e), this subpart does not apply to a transfer of responsibilities, duties, and powers described in that subclause if the Commission is satisfied, **on reasonable grounds**, that the transfer—…*	

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		*New section 25(2) provides that the Minister must recommend an Order in Council to implement a reorganisation plan unless the Minister is satisfied, **on reasonable grounds**, that the process to develop the plan was not in accordance with the Act.* *<u>Electricity Authority's unusual role</u>* *As a body with quasi-regulatory authority through the Code amendment process, the EA has unusual powers, contrasting with most Crown agencies that can only achieve regulatory changes through recommendations to their Ministers. Accordingly, electricity consumers deserve the protection that specific requirements for the EA to be reasonable and to act reasonably provide.* *<u>Further erosion of consumer-focussed requirements</u>* *ETNZ considers that the replacement of the Electricity Commission's principle objective by the Authority's statutory objective reduced the protections that consumers might reasonably expect:* *The Commission's principle objective (s 172N) was to ensure that electricity is generated, conveyed, and supplied to all classes of consumers in an efficient, fair, reliable and environmentally sustainable manner.* *This change in primary regulatory focus was a concern for us, as:* *a) scope was created for the Authority to promote the long-term benefit of some consumers without promoting benefits to all classes of consumers (for example, a net consumer benefit might be sought through a Code change that disadvantaged, say, domestic consumers);* *b) The word "fair" was omitted, reinforcing our first concern; and* *c) The wording "environmentally sustainable manner" was lost.* *Retaining the various provisions in the Code that require the Authority to act reasonably takes on additional importance because of the additional exposures created by the shift away from the Commission's principle objective. In our view, the proposal to remove those provisions would further erode the consumer focus of the regulatory regime.* *Conversely, the proposal to remove the formal requirements for the EA to act reasonably carries an implication that the Authority may consider it necessary to act unreasonably from time-to-time, in the interests of pursuing its statutory objective. The explanation provided that this proposal is simply removing redundant wording overlooks the reality that ETNZ, along*	

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		with many consumers, may well take comfort from those formal requirements and will be discomforted by their removal.	
2016-05: Removing reference to the Authority acting reasonably	Genesis (pages 1–3)	*While Genesis Energy accepts that the Code requires continual refinement to ensure it delivers an ongoing appropriate and workable framework we are very concerned that the current proposal entitled "2016 05 Removing references to the Authority acting reasonably" fails to meet the requirements under s 39(3) of the Electricity Industry Act 2010 ("the EIA"). Below, we address each of the amendments raised in this proposal.* *<u>Provisions that require the Authority to act reasonably</u>* *The Authority proposes to remove requirements in the Code for the Authority to act reasonably because, in the Authority's view, these express requirements to act reasonably are a redundancy. The proposal states that the Authority is required to act in accordance with administrative law principles and those principles already include a requirement to act reasonably.* *Genesis Energy does not agree. The explicit incorporation of the words 'reasonable' or 'reasonably' in an instrument such as the Code is not a redundancy. These words impose a higher standard of conduct on the Authority than the usual administrative law principles relating to Wednesbury unreasonableness. The usual Wednesbury standard is merely a negative duty not to be unreasonable with the focus being on ensuring that the public body acts within the scope of the relevant empowering clause. By contrast, the explicit use of the term 'reasonable' or 'reasonably' in the Code "increases the depth of review by removing Wednesbury unreasonableness and replacing it with a positive duty to be reasonable".*[1]	See the Authority's response above to Contact's submission on this proposal.

[1] G D S Taylor and R M Taylor Judicial Review: A New Zealand Perspective (3rd ed, LexisNexis, Wellington, 2014) at [3.05].

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		The New Zealand Court of Appeal has recently explained this point in the context of s 10(2) of the Canterbury Earthquake Recovery Act 2011, which contained an explicit use of the term 'reasonably'.[2] *The Court stated:*[3] *We … accept that the decision should not be reviewed on the basis of Wednesbury unreasonableness or irrationality because the requirement to consider 'reasonably' imports a higher standard. Indeed it was not argued that the decision was so unreasonable that no reasonable person could not have made it. The Court must be satisfied that the Minister's consideration of necessity was reasonable. This will involve the Court being satisfied that the Minister did in fact consider that the exercise of the particular power was necessary to achieve a particular purpose or purposes of the Act at the time the power was exercised, taking into account the nature of the particular decision, its consequences and any alternative powers that may have been available. In making this assessment, the Court will give such weight as it thinks appropriate to the Minister's expertise and opinion, while recognising that Parliament has enacted s 10(2) as a constraint on the exercise by the Minister of his powers under the Act.* *Genesis Energy does not consider that the Authority should remove the 'reasonable' references in the Code. If the Authority seeks to do so, Genesis Energy submits that the Authority should direct itself properly about the legal effect of the changes, prepare a regulatory statement in accordance with its obligations under s 39(1)(b) and (2) of the EIA and consult again given that the changes would not in fact be technical and non-controversial.* *<u>Provisions that require the Authority to publish information within a reasonable period of time</u>* *The comments above apply equally to the Authority's proposal to remove references*	

[2] *Canterbury Regional Council v Independent Fisheries Limited* [2012] NZCA 601; [2013] 2 NZLR 57.

[3] Ibid, at [22].

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		requiring the Authority to publish information within a reasonable period of time. *<u>Provisions that require the Authority to make 'reasonable endeavours'</u>* *The only occurrence where Genesis Energy would support the removal of 'reasonable endeavours' is in the clause 4 of Schedule 13.7. Genesis Energy agrees with the deletion of the words "use reasonable endeavours" in this clause and the justification put forward by the Authority in the proposal. Deletion of the words will place a requirement on the Authority to make the relevant determination referenced in the clause. Genesis Energy agrees that the Authority should simply have the obligation to make the determination, rather than a weaker obligation only to make reasonable endeavours to make the determination.*	
2016-05: Removing reference to the Authority acting reasonably	Mercury (pages 1 and 2)	*Mercury is concerned at the Authority's proposed amendment to remove reference in the Code to the Authority acting "reasonably".* *Mercury agrees that there is a requirement on the Authority to act reasonably under general administrative law principles which allow a party to apply for the judicial review of a public body's decision in accordance with the Wednesbury test.* *However, Mercury is of the opinion that the references to reasonableness in the current Code go further than this on the following basis:* *SPECIFIC OBLIGATIONS OF THE AUTHORITY* *Mercury submits that where the Code expressly requires a particular action or decision of the Authority to be "reasonable", the use of that statutory language requires an objective determination of whether the act or decision of the Authority in fact meets that objective standard. In that situation, a Court reviewing the act or decision may be entitled to substitute its own judgement as to the reasonableness of that act or decision, rather than exercising the conventional deference to the view of the public actor required by Wednesbury.* *For example, where the Code requires the Authority to make reasonable endeavours, or to*	See the Authority's response above to Contact's submission on this proposal.

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		do an act within a reasonable time, a Court on review should be entitled to make its own determination of whether that requirement was in fact met. In contrast to Wednesbury unreasonableness, a Court may make its own assessment rather than deferring to whether the Authority's decision was reasonable, in the Authority's view. *It follows that in Mercury's view the more specific reasonableness requirements currently imposed by the Code are not redundant and may permit (and be intended to permit) a greater intensity of review of the substance of the Authority's conduct in those specific respects. For that reason, they modify the general administrative law position and should remain as part of the Code.* *In summary, Mercury's view is that:* *1. express provision in the Code requiring the Authority to publish information within a reasonable time should not be removed; and* *2. express provision in the Code requiring the Authority to use reasonable endeavours should not be removed.* *Mercury is therefore of the opinion that it is inappropriate for the Authority to remove all references to reasonableness and reduce all obligations to a Wednesbury standard of scrutiny and therefore the proposed amendment should not proceed as presently drafted.*	
2016-05: Removing reference to the Authority acting reasonably	Meridian (page 4)	**Agreed with the Authority's problem definition** **Partly agreed with the Authority's proposed solution** *Yes in respect of the provisions requiring the Authority to act reasonably and to make 'reasonable endeavours'. However we disagree with the apparently legal view expressed in the paper that an obligation to do something within a reasonable period of time is the same as an obligation to do something without unreasonable delay. For this reason we disagree that references to the Authority having to do something within 'a reasonable period of time' can be deleted without changing the meaning of the Code.*	See the Authority's response above to Contact's submission on this proposal.

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		Had a comment on proposed Code drafting *See answer to [whether Meridian agreed with the Authority's proposed solution].* **Agreed with the objectives of the proposed amendment** *Yes* **Agreed the benefits of the proposed amendment outweigh its costs** *Yes* **Agreed the proposed amendment is preferable to other options** *See answer to [whether Meridian agreed with the Authority's proposed solution].*	
2016-05: Removing reference to the Authority acting reasonably	Pioneer (page 1)	*Pioneer does not support this proposal. In Pioneer's view there should be no change to the Code to remove requirements to 'act reasonably', publish information within a 'reasonable period of time' or make 'reasonable endeavours'. Further, we do not view this as a non-technical or non-controversial Code change.* *These requirements are placed on a number of other industry participants in the Code. It does not appear that the Authority has considered the relevance of these provisions for all market participants. We query whether the proposed changes alter the balance of requirements on the Authority relative to other industry participants.*	See the Authority's response above to Contact's submission on this proposal.
2016-05: Removing reference to the Authority acting reasonably	Powerco (pages 1–4)	**Did not agree with the Authority's problem definition** *Powerco considers that the Authority has failed to provide a clear problem definition or any meaningful objective for this change. In our opinion this change would create unwelcome uncertainty and therefore work against the Authority's statutory objective of promoting the efficient operation of the electricity industry. The Authority has failed to identify a problem that its proposal is intended to resolve. In the absence of a problem this proposed Code amendment can be considered unwarranted as it cannot be shown to improve the application of the Code nor the Authority's ability to meet its statutory objective.* *Powerco does not consider that the current references to the Authority acting reasonably are*	See the Authority's response above to Contact's submission on this proposal.

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		causing problems with the Code. In fact, our view is that these references enhance the Code by removing confusion. The Authority's logic for its proposal is that it is under an administrative law obligation to act reasonably and therefore all references to reasonableness in the Code are redundant and can be removed. We consider this is a cursory justification for change. *The fact that the Authority has an obligation under general administrative law does not mean that it is inappropriate to spell out specific obligations in legislation or subordinate legislation, Parliament often does exactly this. For example consider Part 4 of the Commerce Act; the Commerce Commission is clearly under an administrative law obligation to consult before exercising a statutory power of decision that affects individual interests, but Part 4 nonetheless expressly requires consultation in a number of sections. The inclusion of the obligation in legislation is certainly not cosmetic (as the Authority's proposal indicates) and serves a distinct purpose.* *Given that administrative law obligations are contextual and flexible, the inclusion in legislation of a specific requirement removes uncertainty about whether or not a given obligation or standard applies. In the present case, despite asserting that the Authority is required by administrative law to act "reasonably", it must be acknowledged that reasonableness is a highly contested concept in administrative law and the particular circumstances in which the reasonableness standard applies, and what it means, is open to interpretation. For this reason legislating for reasonableness improves the legislation as it removes any doubt that that is the standard that should apply. The administrative law concept of unreasonableness is a sliding scale. At its lowest level, it is taken to mean something like "irrational". There is arguably a gap between a negatively-framed administrative law obligation to avoid irrationality and a positively-framed legislative obligation to be reasonable.* *In consideration of this gap, we suggest that the retention of the word reasonable in the Code imparts a higher standard than might apply under administrative law. The Authority's proposal would remove this higher standard and would also create uncertainty as to the obligation or standard that applies.*	

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		Furthermore, the word "reasonable" also appears in a variety of different contexts in the Code, and in each context it imparts a quite specific and nuanced meaning (e.g. "reasonable opinion", "within a reasonable period of time"). The inclusion of the word in its particular context creates a more specific and concrete obligation than would be the case were we to rely on the general concept of reasonableness in administrative law. **Did not agree with the Authority's proposed solution** *We do not consider that the Authority has established that there is a problem therefore we cannot agree with the proposed solution.* **Had comments on proposed Code drafting** *We believe that any concerns that the Authority has regarding the references to the Authority acting reasonably in the Code can be managed in a more appropriate manner, compared to the proposal the Authority has suggested.* *In many instances, the word "reasonable" is likely used because it was difficult (or thought unnecessary) to come up with a more concrete proposal (just the same way "reasonable" is sometimes used as a compromise in contract drafting when the parties cannot agree on a more specific formulation). In those instances, rather than just remove the word reasonable, a better approach would be to clarify the obligation in a concrete way. For example:* *a) "within a reasonable period of time" – specify the number of working days within which the obligation must be met;'* *b) "reasonable endeavours" – specify the specific steps and/or criteria that the Authority must meet in carrying out this function;* *c) "reasonable satisfaction" – specify the criteria to which the Authority must have regard when forming its view;* *d) "reasonably require" – specify the limits of what the Authority may require of industry participants in satisfaction of this obligation.* *Removing all references to reasonableness also implies some change in interpretation that the Authority should consider. We note that the Courts are reluctant to conclude that*	

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		legislative language means nothing and are also reluctant to conclude that a change to legislative language has no effect; consequently there is the possibility that a Court may view the proposed change as significant. **Did not agree with the objectives of the proposed amendment** *We believe there is an absence of any meaningful objective.* **Did not agree the benefits of the proposed amendment outweigh its costs** *NA* **Did not agree the proposed amendment is preferable to the other options** *Disagree. Our recommendation would be for the Authority to undertake an exercise (like that described in our response to question three) which clarifies the obligation in a concrete way. This approach will provide certainty and enhance the Authority's ability to meet its statutory objective of efficient operation of the electricity industry for the long term benefit of consumers.*	
2016-05: Removing reference to the Authority acting reasonably	Transpower (pages 2–4)	**Did not agree with the Authority's problem definition** *We consider the Authority has not articulated any problem to resolve.* **Did not agree with the Authority's proposed solution** *<u>Oppose removal of Authority obligations to act reasonably</u>* *The Authority has proposed, under the technical and non-controversial route, to remove various obligations on it to act reasonably. We do not understand how the proposal could have been classified as technical and non-controversial (TNC) nor what 'problem' the amendment (removal of the obligation) is intended to address. The change proposal could even lead to the view that the Authority considers the reasonableness obligation on it to be undesirable.* *The main rationale for removing "reasonable" seems to be that participants can judicially review the Authority for acting unreasonably and therefore references in the Code to the Authority acting reasonably are redundant. We do not agree.* *For successful judicial review on the grounds of unreasonableness the applicant typically has*	See the Authority's response above to Contact's submission on this proposal.

Reference	Submitter(s)	Submission	Authority response
		to show that the reviewed decision is manifestly irrational, perverse or absurd. That high threshold does not apply to a reasonableness standard in the Code. Also, not every Authority obligation that is currently required to be done reasonably under the Code is necessarily amenable to judicial review. *The proposal is also inconsistent with the Authority's recent decision on the 'reasonableness' standard applying to the system operator. In that context we had argued the reasonableness requirements in the ancillary services procurement plan were not necessary given the protection of the 'Reasonable and Prudent Operator' (RPO) obligation already in the Code. In the same sense as the Authority's proposal, decisions by the system operator could also be called under judicial review on the grounds of reasonableness. However, the Authority rejected the idea.* *The outcome of the proposal is to reduce the avenues for scrutiny of the reasonableness of some of the EA's decisions, for example through an appeal on questions of law. We consider this loss will inhibit, rather than promote, efficient operation of the electricity industry.*	
2016-05: Removing reference to the Authority acting reasonably	Trustpower (pages 7, 8 and Appendix B)	**Did not agree with the Authority's problem definition** *The Authority's problem definition only refers to the "inefficiencies" said to be associated with the imposition of the reasonableness standards on the Authority, but does not reference "reasonable/reasonably/reasonableness" in the Code in relation to the activities of other persons bound by the Code such as service providers or market participants.* *We believe that the case for these Code changes is not particularly persuasive. It is difficult to see how these changes are needed to promote the efficient operation of the industry as claimed by the Authority. Please refer to Appendix B [of our submission] for our fulsome comments.* **Did not agree with the Authority's proposed solution** *No. The express removal of the various references to reasonableness is likely to alter both how reasonableness is assessed and also whether a court will be prepared to intervene and make an assessment that a review remedy should be available in relation to a decision or action of the Authority. These changes are demonstrably not in the interests of market participants and consumers. Please refer to Appendix B [of our submission] for our fulsome comments.*	See the Authority's response above to Contact's submission on this proposal.

Reference	Submitter(s)	Submission	Authority response
		Had comments on proposed Code drafting *We do not agree with the changes proposed in the draft Code amendment. Please refer to Appendix B [of our submission] for our comments on the Authority's proposed Code amendment.* **Did not agree with the objectives of the proposed amendment** *Please refer to Appendix B [of our submission] for our comments on the Authority's proposed Code amendment.* **Did not agree the benefits of the proposed amendment outweigh its costs** *We do not consider that the removal of the reasonableness code changes will result in the equivalent standard of reasonableness being applied under administrative law as is currently provided for in the Code. We think the removal of these provisions is more likely to lower the standard of reasonableness which applies to the discharge of the Authority's obligations under the Code, and therefore disagree.* *Please refer to Appendix B [of our submission] for our fulsome comments.* **Did not agree the proposed amendment is preferable to the other options** *Trustpower's preference is for the status quo.*	
2016-05: Removing reference to the Authority acting reasonably	Vector (pages 1 and 2)	*Vector agrees the majority of proposals are "technical and non-controversial". However, we do not believe proposal "2016-05 Removing reference to the Authority acting reasonably" is technical, or non-controversial. Rather, we believe the proposal will change the standard of review applied to the exercise of the Authority's obligation or judgment.* *Vector does not support the Authority's proposal to remove reference to the Authority acting reasonably. While we agree that as a Crown Entity the Authority must act in accordance with the principles of administrative law, removing "reasonableness" references in the Code may materially alter the standard to which the Authority must discharge an obligation or precondition to act. This is because without an express obligation to act reasonably the courts will apply the Wednesbury standard to the Authority's decision-making. A decision will only be Wednesbury unreasonable if it is so unreasonable that no reasonable person acting reasonably could have made it. This is a narrower test than merely showing that the decision was unreasonable.*	See the Authority's response above to Contact's submission on this proposal.

Reference	Submitter(s)	Submission	Authority response
		Vector is not persuaded by this proposal and is concerned that the removal of the requirement to act reasonably will result in unintended consequences, such as lowering the standard to which the discharge of the Authority's obligations under the Code are measured. This is because the provisions in the Code that qualify obligations on, or the exercise of powers by, the Authority by the term "reasonable" or "reasonably" cannot easily be typified as being of the same standard. In particular, we consider there may be a critical distinction between the Authority exercising its power stemming from an obligation to do something, and the Authority forming an opinion as a precondition to exercise a power or making a decision. *For example, clause 5 of Schedule 13.4 illustrates this distinction where the "Authority may require the provision of additional information" (which could only be tested by the Wednesbury standard). However, the clause goes on to say "and, if the Authority's requirements are reasonable, the applicant must provide that information to the Authority". This acknowledges that a more robust standard of review was considered appropriate. Deleting this express requirement of reasonableness changes the standard of review and prerequisite of the Authority.* *The recent Judgment of Dobson J in NZX Limited v Ralec Commodities Pty. Limited and ors. [2016] NZHC 2742 (Judgment 15 November 2016) appears to support this view. In that case, the question of "reasonable opinion" was raised. Judge Dobson found that reasonableness required, "something more than the administrative law threshold", and was to be "objectively gauged" (paragraph 325). By analogy, this case suggests that a public entity entrusted with public powers cannot exercise them for its own benefit and must be held to an objective standard.* *Vector recommends the Authority refrain from progressing this Code change proposal. The current reasonableness requirements provides a clear and objective standard. If removed, any action to challenge the Authority's decision or action would be in judicial review, which would apply a different standard.* *Other Crown Entities are required to act reasonably under their governing legislation. We do not consider the Authority should be any different or held to a lesser standard than its peers. For example, below are some examples of legislation requiring Crown Entities to act reasonably:*	

Reference	Submitter(s)	Submission	Authority response
		a) *Commerce Act 1986: requires the Commerce Commission to act reasonably with respect to the opportunity for persons to give their views (clause 52J, 52V), reasonable exercise of information-gathering (clause 53ZA), power to search (clause 98A)* b) *Accident Compensation Act 2001: requires the Accident Compensation Corporation to impose reasonable requirements (clause 52), make every decision on reasonable grounds (clause 54), reasonably estimate levies (clause 173), reasonable ground for deciding dependency status (clause 75).*	
2016-06: Correcting the requirement to enter removal date in the registry	Trustpower (pages 9 and 10)	**Did not agree with the Authority's problem definition** **Did not agree with the Authority's proposed solution** **Had comments on proposed Code drafting** *The Authority's proposed code drafting has overlooked the benefits that the market is currently receiving from the existing arrangement.* *In providing the removal date the MEP is also then required to provide a complete record of removed asset information. This can help confirm to the participants of that installation what the certified installed assets were – even for fully certified metering installation this process can identify discrepancies in removed assets.* *Additionally, MEP's are often providing the optional 'event reading' for the removed assets (meters and data storage devices). With this practice, the Traders are able to use the structured registry files to complete a full meter change. If MEP's are not obligated to provide removed assets to the registry – which will be the case if they no longer are required to provide the removal date – then this will introduce inefficiencies for some Traders and MEP's.*	The Authority considers the proposed Code amendment would not necessarily remove the benefits Trustpower refers to in its submission. Should an MEP not provide the removal date, the registry would still contain a complete record of information about a removed meter or data storage device, which the trader could view. Under the proposal, traders that rely on MEPs providing removed assets to the registry as part of an 'event' notice can still require their MEPs to do so by contract. The Authority understands that most traders do not require this information. Hence, the Authority considers the contracting approach

Reference	Submitter(s)	Submission	Authority response
		We would encourage the Authority to keep the current arrangement, where all removed and installed assets are provided in the meter file as part of asset changes on site, and to consider making the event reading a compulsory field on removed assets (Meters and Data Storage Devices). **Agreed with the objectives of the proposed amendment** *Yes, we agree with the objective of simplifying processes, however in this instance for Trustpower and potentially other Traders and MEP's, the process for removing and replacing assets will become more complicated as systems will need to be redeveloped to accommodate receiving asset removal information from a new source.* **Did not agree the benefits of the proposed amendment outweigh its costs** *This change would not align the code with the industry practice because there is existing industry practice that makes use of the removal dates and removed asset records and this capability would require significant investment to replace.* *The industry still has a large number of legacy assets installed, but which are being displaced. Traders will continue to require removal details from the legacy asset with this information gathered from the field by the MEP installing new equipment.* *The most efficient way for that removal information to make its way back to the trader is often via the standardised registry file formats.*	would better facilitate the efficient operation of the electricity industry than would amending the Code to require all MEPs to provide this information. It is outside the scope of the proposed Code amendment to consider a proposal to make an event reading compulsory when a meter or data storage device is removed. However, the Authority notes this as a potential issue for further consideration outside this Code amendment process. No other industry participant has raised Trustpower's concern. The Authority considers that there are alternative solutions to that proposed by Trustpower. Each of these alternatives would be a lower cost solution for the overall electricity industry than requiring all MEPs to comply with the Code obligation the Authority proposed to remove. The alternatives are for Trustpower to: a) contract with its MEPs for them to provide Trustpower with asset removal information; or b) amend its system so that when a metering component ceases to exist in the registry, Trustpower's system

Reference	Submitter(s)	Submission	Authority response
		Did not agree the proposed amendment is preferable to other options *We believe it would be more beneficial to the industry if the requirement was for the removal reading to be made mandatory for removed assets (Meters and Data Storage devices) and for that information to flow via the registry to participants of the ICP.*	puts an end date against the component. It is outside the scope of the proposed Code amendment to consider a proposal to make an event reading compulsory when a meter or data storage device is removed. The Authority considered such a proposal during the development of the new Part 10. The Authority decided not to adopt the proposal, after considering industry feedback. However, the Authority notes this as a potential issue for further consideration outside this Code amendment process.
2016-07: Reassigning market administration functions	Trustpower (pages 11 and 12)	**Agreed with the Authority's problem definition** **Agreed with the Authority's proposed solution** *However, it should be made clear which market administration Code obligations the Authority has determined as most appropriate for the regulator, if these are functions the Authority does not currently perform.* **Had comments on proposed Code drafting** *Within the drafting schedule of Appendix C, the defined term 'annual consumption list' does not have its publisher specified as the Reconciliation Manager (as per the amendment of 'market administrator' in clause 13.188).*	The Code amendment proposal in the consultation paper set out the market administration Code obligations that the Authority proposed to reassign to itself. The Authority currently performs all of these functions, in accordance with section 16(2)(a) of the Electricity Industry Act 2010 (Act). Agreed. The Authority will specify 'reconciliation manager' as the publisher in

Reference	Submitter(s)	Submission	Authority response
			the definition of 'annual consumption list'.
		We propose that the additional defined term 'WITS manager' within Part 1 should include the phrase 'who is for the time being appointed', both to maintain consistency with other defined terms that refer to market operation service providers, and as NZX is contracted as WITS manager for the period defined in the WITS Manager Market Operation Service Provider Agreement dated 30 October 2015 (i.e. not open-ended).	The Authority agrees with this suggestion and has adopted it accordingly.
		Clause 10.51(6)(f) has not been properly amended to replace 'market administrator' with 'Authority'.	Replacing 'market administrator' with 'Authority' would be incorrect in this instance. This is because clause 10.51(6)(f) is a transitional provision. It preserves the effect of variations to the requirements of the former Codes of Practice 10.2 to 10.4 inclusive, where such variations were approved by the market administrator under the former Code of Practice 10.5.
		We also seek confirmation that under the proposed amendment of clause 13.188(3), the Reconciliation Manager is, or will be made aware of the responsibility to publish the annual consumption list, as, at present, it is published by the Authority on its Electricity Market Information (EMI) website.	The Authority confirms that the reconciliation manager is aware of the proposed change to clause 13.188(3). The Authority liaised with the reconciliation manager when preparing the Code amendment proposal.
		Trustpower agrees with the remainder of the replacements proposed in the drafting schedule. We do however note that Part 17 (Transitional provisions) does not form a part of the drafting schedule in Appendix C and suggest that it also be amended for completeness.	The Authority has not amended Part 17 in line with this proposal (2016-07: Reassigning market administration functions) because the relevant clauses in Part 17 are spent provisions.

Reference	Submitter(s)	Submission	Authority response
		Agreed with the objectives of the proposed amendment **Agreed the benefits of the proposed amendment outweigh its costs** *While the Reconciliation Manager does have an additional responsibility as noted in our response to Question 3, as it currently provides the list to the Authority, publishing the annual consumption list is not expected to be onerous. The administrative cost reduction to the Authority, and the clarity that the amendment provides, outweighs the potential costs of the proposed amendment.* **Agreed the proposed amendment is preferable to other options** *It would be more efficient for market operation service providers to undertake certain market administrator obligations; as noted by the Authority, tendering of the remainder of responsibilities would result in costs that outweigh the benefits of doing so.*	Noted. Noted.
2016-07: Reassigning market administrator functions	Meridian (page 7)	**Agreed with the Authority's problem definition** **Agreed with the Authority's proposed solution** **Had a comment on proposed Code drafting** *There is a typo in the drafting at page 85 of the Authority's paper in that the proposed definition of 'annual consumption list' omits the words 'reconciliation manager'.* **Agreed with the objectives of the proposed amendment** **Agreed the benefits of the proposed amendment outweigh its costs** **Agreed the proposed amendment is preferable to other options**	Agreed. The Authority will specify 'reconciliation manager' as the publisher in the definition of 'annual consumption list'.
2016-08: Relocating transition provisions	Trustpower (page 13)	**Agreed with the Authority's problem definition** **Agreed with the Authority's proposed solution** **Did not have comments on proposed Code drafting** **Agreed with the objectives of the proposed amendment**	Noted.

Reference	Submitter(s)	Submission	Authority response
		Agreed the benefits of the proposed amendment outweigh its costs **Agreed the proposed amendment is preferable to other options**	
2016-09: Changing how Transpower makes grid information available	City Financial Investment Company (New Zealand) Limited (pages 1 and 2)	*The changes as proposed do not constitute a small change to clarify and simplify language and processes but would, inadvertently, undermine a fundamental element of the New Zealand market design.* *<u>Part 12 provides certainty as to how the grid is made available to the market</u>* *The purpose of subpart 6 (Interconnection asset services) of Part 12, as stated in clause 12.105, includes:* - *creating incentives on Transpower, through enforceable service measures, to provide interconnection assets at the capacity ratings required by transmission customers and other grid users* - *ensuring that Transpower provides information on the capacity of interconnection assets, and their reliability and availability* - *specifying the circumstances in which Transpower may permanently or temporarily remove interconnection assets from service or reconfigure the grid.* *The provisions of subpart 6 of Part 12, in combination with other aspects of the Code, provide certainty for market participants in terms of the capacity of the grid that is made available to the market and protects all participants from unilateral changes by Transpower which would alter flows of wealth between participants. These provisions provide participants with the confidence to invest in physical and financial positions and thereby constitute a fundamental element of the New Zealand wholesale electricity market.* *<u>The key provisions</u>* *Key provisions in achieving this certainty for market participants include 12.110, 12.111 and 12.118.* *Clause 12.110(1) incorporates into the Code, in accordance with section 32 of the Act, the interconnection asset capacity and grid configuration which has been given effect by the Authority.* *Clause 12.111(1) requires Transpower to make this interconnection asset capacity and grid configuration "available for use by the system operator for the conveyance of electricity … at*	The Authority is still considering points made in submissions on this proposal and related matters.

Reference	Submitter(s)	Submission	Authority response
		least at the service levels specified in the interconnection asset capacity and grid configuration" *Clause 12.118(1)(i) provides for Transpower to propose amendments to the interconnection asset capacity and grid configuration. The Authority may consult with any person it considers is likely to be materially affected by the proposed amendments to the grid, and determine whether to incorporate into the Code by reference the updated interconnection asset capacity and grid configuration. Transpower must then comply with the updated interconnection asset capacity and grid configuration (clause 12.118(3).* *<u>Proposed rule change would relieve Transpower of requirement to comply with capacity measures</u>* *My concern is that the proposed new clause 12.107(1A) would undermine the effect and intent of clauses 12.111 and 12.118(3). The new proposed clause 12.107(1A) will:* *"… require Transpower to publish monthly updates on the grid configuration and to indicate any changes as at the end of the previous month."*[4] *Under this new clause Transpower could never be in breach of the 12.118(3) as long as any unilateral changes it makes are published in its monthly update. This effectively reduces 12.118(3) to mandating Transpower to publish monthly updates rather than its far more important current purpose as a foundation for the market. The proposed clause 12.107(1A) will allow Transpower to arbitrarily reduce the service levels in the asset capacity and grid configuration.* *Transpower, as grid owner, is regulated under the Commerce Commission for revenue requirement and investment approval, and under the Electricity Authority for how it prices its services and how it makes those services available in the wholesale market. As noted above, the current requirement for Transpower to meet asset capacity and grid configuration service levels and not alter those service levels without approval from the Authority provides confidence for participants to invest in assets relying on those services. It seems very peculiar for the Authority, when it is considering moving to an Area of Benefit charge, to effectively remove the current obligations on Transpower to provide the service levels which*	

[4] Page 51 – Consultation Paper – Code Review Programme 2016.

Reference	Submitter(s)	Submission	Authority response
		deliver the benefits being priced. *<u>Objective of reducing administration costs can be achieved without relieving fundamental obligations on Transpower</u>* *City Financial is not opposed to making the requirements under current clauses 12.110 to 12.118 more dynamic and clearer, but this must be done without reducing the integrity of the intent of these clauses.* *The new clause 12.107(1A) could potentially work if it included a requirement that Transpower may not reduce service levels below the previous asset capability and grid configuration unless to recognise a commissioned project approved under a Grid Investment Test, or the change has been approved by the Authority after consultation with the market.*	
2016-09: Changing how Transpower makes grid information available	Transpower (pages 4 and 5)	**Agreed with the Authority's problem definition** **Agreed with the Authority's proposed solution** *Yes, noting that Transpower identified the issue and proposed the efficiency improvements.* **Had comments on proposed Code drafting** *a) "Publish" in clause 12.107(1) should be bolded. Same for "published" in clause 12.118(2).* *b) Clause 12.107(1A) should refer to changes since the last set of information was published because it might not always be published at the end of a month.* *c) 12.107 (1). Please remove 'other than connection assets'. The grid configuration diagrams we produce show all grid assets. We do not want to be at risk of non-compliance for showing more than the interconnection assets.* *d) 12.107 (4). We suggest replacing the words 'both summer and winter' with the term seasonal because we also rate our circuit branches for shoulder periods (between winter and summer).* *e) 12.107 (4) (b) (i) A and B. Replace post-contingency with for both summer and winter periods. This is because transformers are not offered with post-contingency ratings.* *f) In 12.128 (2) the reference clause 12.151(3) is redundant because the exclusion is covered in clause 12.151(2).* **Agreed with the objectives of the proposed amendment**	The Authority is still considering points made in submissions on this proposal and related matters.

Reference	Submitter(s)	Submission	Authority response
		Agreed the benefits of the proposed amendment outweigh its costs **Agreed the proposed amendment is preferable to other options**	
2016-09: Changing how Transpower makes grid information available	Trustpower (page 14)	**Agreed with the Authority's problem definition** **Did not agree with the Authority's proposed solution** *Transpower could provide a live database of the grid configuration and asset rating etc., in an industry standard format rather than a format of their choosing. If the Authority felt the need to consult on the grid configuration, a snap shot could be taken as reference for consultation.* **Had comments on proposed Code drafting** *Trustpower seeks clarification regarding how the Authority's objective of "efficient operation of the electricity industry" would be enhanced by this amendment.* **Partly agreed with the objectives of the proposed amendment** *We agree in terms of improving information flow and timeliness of information, however, we do not agree with selected methodology.* **Reserved judgment on whether the benefits of the proposed amendment outweigh its costs** *Trustpower would want to see more information on cost break down before assessing whether the benefits of the proposal outweigh the costs, as the differences in costs between the proposal and status quo appear inconsistent in the absence of supporting information.* **Agreed the proposed amendment is preferable to other options** *Improved and more efficient information flow is essential and anything that can be done to improve the situation would be a positive move and is welcomed. However, we are unsure that what the Authority has proposed delivers on either count.*	The Authority is still considering points made in submissions on this proposal and related matters.
2016-10: Simplifying references to time	Meridian (page 6)	**Agreed with the Authority's problem definition** **Agreed with the Authority's proposed solution** *We suggest the Authority should consider whether consequential changes are also required to documents referenced in the Code to make them consistent with the proposed solution – for example EIEPs, procedures for provision of consumption data, registry and reconciliation manager functional specifications.*	The Authority agrees with this suggestion. The Authority will review these and other relevant documents to identify any changes

Reference	Submitter(s)	Submission	Authority response
		Did not have comments on proposed Code drafting **Agreed with the objectives of the proposed amendment** **Agreed the benefits of the proposed amendment outweigh its costs** **Agreed the proposed amendment is preferable to other options**	required as a result of the Code amendment.
2016-10: Simplifying references to time	Transpower (pages 5 and 6)	**Agreed with the Authority's problem definition** **Did not agree with the Authority's proposed solution** **Had comments on proposed Code drafting** a) *The "except within 20 business days…" wording in clause 3.14(1) and other places is grammatically incorrect. Also, that concept is not applied over into all clauses where "working day" has been replaced with "business day".* b) *For historic reasons there is a different definition of "business day" for the purposes of Part 6. We query whether that can now be removed.*	a) The Authority has not applied the wording proposed for clauses 3.14 and 7.2E to all other clauses containing "working day" because there is no difference in meaning between "working day" and "business day" in the other clauses. The Authority considers that the proposed wording for clause 3.14 could be clearer than it is, and has revised the wording accordingly. b) The Authority considers it appropriate to remove the different definition of "business day" for Part 6. Adding one (1) business day to each instance of "business day" in Part 6 would give parties governed by Part 6 the same timeframes that exist under the current definition of "business day". This is

Reference	Submitter(s)	Submission	Authority response
			because the Holidays Act 2003 includes in its definition of public holiday the day of the anniversary of a province or the day locally observed as that day. Provincial holidays are not included in the definition of "business day" that applies outside of Part 6.
		c) *Replacing "qualifying date" with "last day of a public conservation period" has moved the relevant date forward by one day. Is that intentional?*	c) Yes, this was intentional. As outlined in the consultation paper, the Authority considers the definition of 'qualifying date' to not be as intuitive or clear as it could be. Using "last day of a public conservation period" will be less confusing for participants.
		d) *In clause 12.76 specifying that the years are years ending 31 December is imbuing the 10 year forecast with an unrealistic degree of precision given how far out it is. It would be more appropriate to leave "years" unqualified in this clause, as it is in clause 12.20(e).*	d) The Authority agrees with this suggestion and has adopted it accordingly.
		e) *Clause 9.21(1)(ii) Suggest "12 months immediately preceding the **start/end** of the public conservation period"*	e) The Authority agrees with this suggestion and has adopted it accordingly. The intent of this clause is to look at the qualifying customer's consumption over the 12 month period immediately before the start of the public conservation period.
		f) *Clause 13.119 We do not agree with the amendment that removes the defined term preceding year day. The change does not create clarity but confusion. In our view, the concept that an auction is for the next trading day and that the data needed is for the equivalent day from the previous year has been lost. We suggest either retain the*	f) The Authority has revised the proposed amendment to simplify its wording and better capture the intended effect of this

Reference	Submitter(s)	Submission	Authority response
		existing working or redraft the proposed change to improve clarity. *It needs to convey the following:* *13.119 Historic load data* *a) Each grid owner is required to provide the CM with historic total load data for a trading day that is to be auctioned* *b) The historic total load data is for the day preceding the trading day by 364 days* *c) Except for conditions (2) and (3) where there are holidays* *d) The grid owner is required to provide the data by 11:00 hours 3 days before the start of the trading day.* **Agreed with the objectives of the proposed amendment** **Reserved judgment as to whether the benefits of the proposed amendment outweigh its costs** **Did not agree the proposed amendment is preferable to other options** *No, we consider the status quo may be more clear in the instances explained above.*	provision.
2016-10: Simplifying references to time	Trustpower (page 15)	**Agreed with the Authority's problem definition** **Agreed with the Authority's proposed solution** **Did not have comments on proposed Code drafting** **Agreed with the objectives of the proposed amendment** **Agreed the benefits of the proposed amendment outweigh its costs** **Agreed the proposed amendment is preferable to other options**	Noted.
2016-11: Rationalising references to 'registry' and	Meridian (page 7)	**Agreed with the Authority's problem definition** **Agreed with the Authority's proposed solution** *We suggest the Authority should consider whether consequential changes are also required*	The Authority agrees with this suggestion,

Reference	Submitter(s)	Submission	Authority response
'registry manager'		*to documents referenced in the Code to make them consistent with the proposed solution – for example EIEPs, procedures for provision of consumption data, registry and reconciliation manager functional specifications.* **Did not have comments on proposed Code drafting** **Agreed with the objectives of the proposed amendment** **Agreed the benefits of the proposed amendment outweigh its costs** **Agreed the proposed amendment is preferable to other options**	and will review these and other relevant documents to identify any changes required as a result of the Code amendment.
2016-11: Rationalising references to 'registry' and 'registry manager'	Trustpower (page 16)	**Agreed with the Authority's problem definition** **Agreed with the Authority's proposed solution** **Had comments on proposed Code drafting** *Trustpower agrees with the Authority's proposed Code drafting. We propose also that clause 10.4(2) is amended from 'published by the registry' to 'published in the registry', to maintain consistency with the remainder of drafting.* *We also note that Part 17 (Transitional provisions) does not form a part of the drafting schedule in Appendix C and suggest that it also be amended for completeness.* **Agreed with the objectives of the proposed amendment** **Agreed the benefits of the proposed amendment outweigh its costs** **Agreed the proposed amendment is preferable to other options**	The Authority has amended the wording of clause 10.4(2) for consistency with the wording of clause 11.32, which sets a similar requirement in Part 11 of the Code. The Authority has not amended Part 17 in line with this proposal (2016-11: Rationalising references to 'registry' and 'registry manager') because the relevant clauses in Part 17 are spent provisions.

Reference	Submitter(s)	Submission	Authority response
2016-12: Simplifying terms about electricity supply	Meridian (page 8)	**Agreed with the Authority's problem definition** **Agreed with the Authority's proposed solution** *We suggest the Authority should consider whether consequential changes are also required to documents referenced in the Code to make them consistent with the proposed solution – for example EIEPs, procedures for provision of consumption data, registry and reconciliation manager functional specifications.* *We also note that the status reason codes used in the registry database include a number of codes that contain the term de-energised which has been removed as a defined term under the proposed changes and replaced with the term electrically disconnected. The Code change proposed for Schedule 6.2 15(1)(c) indicates an existing registry status code will change to from Inactive – De-energised Ready for Decommissioning to Inactive – Electrically Disconnected Ready for Decommissioning. Question whether the Authority has considered this change to the registry status reason codes and any operational impact this may have for traders.* *The undefined term "activation" appears in clause 13 and 14 of schedule 11.1 – question whether this term could also be replaced with the defined term electrically connected?* **Did not have comments on proposed Code drafting** **Agreed with the objectives of the proposed amendment** **Agreed the benefits of the proposed amendment outweigh its costs** **Agreed the proposed amendment is preferable to other options**	The Authority agrees with this suggestion, and will review these and other relevant documents to identify any changes required as a result of the Code amendment. The Authority agrees traders will incur a cost to update the reason code for an installation control point with a status of 'inactive'. The same change will need to be made to the registry. The Authority considers this change would be a minor cost, which would be outweighed by the benefits of this Code amendment. The Authority agrees with this suggestion and has adopted it accordingly.
2016-12: Simplifying terms about electricity supply	Powerco (pages 5–7)	**Agreed with the Authority's problem definition** **Generally agreed with the Authority's proposed solution** *We generally support the proposed changes and believe that the changes will improve the understanding and operation of the Code. However we have identified a few suggested drafting changes that will provide clarity and meet the needs of all participants to the Code.*	Noted.

Reference	Submitter(s)	Submission	Authority response
		These changes are provided in our response to question three. **Had comments on proposed Code drafting** *Powerco has the following comments on the Authority's proposed code drafting, specifically with respect to the definitions of:* *• Decommissioning;* *• Electrically connect, connecting and connected; and* *• Disestablished, electrically isolated and interconnect.* ***Defining Decommissioned*** 1. *On page 150 of the consultation document, the definition of **decommissioning**, part (a) refers to the permanent removal of metering assets as a decommission. Part (b)(ii) refers to changing the allocation of electrical loads between points of connection making the point of connection obsolete, as a decommission. In both situations the Installation Control Point has not necessarily been removed from the network. While the events described may make the need for the ICP Identifier obsolete for other participants, it is still required for the distributor until the point of connection is removed. We suggest that those parts of the Code should be preceded by the words 'where the sole means of electrically disconnecting the individual installation is via a function of a smart meter.'* 2. *The above point also applies on page 210 of the document, part 20(2)(b) states that decommissioning occurs when there is a change in the allocation of electrical loads between ICPs with the effect of making the ICP obsolete. We suggest that this part of the Code should also be preceded by the words 'where the sole means of electrically disconnecting an individual installation is via a function of a smart meter".*	The decommissioning of a metering installation does not mean an ICP is being decommissioned, or even that an ICP is ready for decommissioning. In both of the situations described by Powerco, the ICP is inactive and should be recorded in the registry as having the status of "inactive". If the ICP is inactive and ready for decommissioning, it must have a status reason code of "De-energised – ready for decommissioning". An ICP only has the status in the registry of "decommissioned" when the distributor decommissions the ICP. The Authority notes that, although a registry status of "inactive" means an ICP is electrically disconnected, for safety reasons a service line should always be treated as electrically connected until such time as the ICP is physically removed from the network, at which time the ICP is decommissioned.

Reference	Submitter(s)	Submission	Authority response
		Defining electrically connect, connecting and connected 3. *Currently **electrically connecting** has a definition under Part 1. It is proposed (refer page 151 of the consultation document) that this current definition will be replaced with 'electrically connect' as shown in the screenshot below.* ~~**electrically connecting** means **connecting**, or permitting the **connection** of, a new **point of connection** to a **network,** for the purposes of an activity regulated under Parts 11 or 15, and **electrically connect** and **electrically connected** have corresponding meanings~~ **electrically connect** means to operate a device so that **electricity** is able to flow, including through a **point of connection**, and **electrically connected**, **electrically connecting**, **electrical connection**, and similar phrases have corresponding meanings 4. *We anticipate that the proposed change to the definition of '**electrically connect**' could create uncertainty in determining a "ready status".* 5. *The proposed changes in definition will still have separate meanings in relation to Active and Ready, because 'electrically connected' will determine Active and 'connected' will determine Ready. Participants will need to make sure that all their staff is aware of the changes to avoid confusion in the early stages. An example of this confusion is page 210 of the consultation document as discussed in point 6 below.* 6. *On page 210 of the document, part 14(1)(a) the term 'connecting' is used. This term used should be 'electrically connecting' instead of 'connecting'. The Ready status indicates the distributor is ready to hand over control of the ICP to the trader. This cannot occur until the process of the connection has been completed and the installation is ready and able to be electrically connected.*	The Authority will publish guidelines on electrically connecting and disconnecting points of connection. The Authority agrees that a point of connection with the status of "active" *will be electrically connected*. However, a point of connection that is "ready" *may be connected* or it *may not be connected*. Please refer to clause 14 of Schedule 11.1, and the Authority's response to the next submission point. The status of "ready" means a distributor has populated the distributor fields for an ICP identifier in the registry with all required information, and a trader can assign the ICP to itself, regardless of the state of connection of the installation. It is possible for an ICP identifier in the registry to have all of its

Reference	Submitter(s)	Submission	Authority response
			distributor information populated, but for the ICP to not be connected. It is equally possible for the ICP identifier to have all of its distributor information populated, and for the ICP to be connected, awaiting the trader to authorise the electrical connection of the ICP. It is therefore correct to use "connecting" in clause 14(1)(a) of Schedule 11.1.
		7. *On page 151-152 of the document, the definition of embedded network uses the term '**electrically connected**'. This suggests that an embedded network only exists as long as its ICPs are in an Active status. The definition should use the term 'connected' so that it still applies if the connections are in Ready or Inactive Registry states.*	The Authority agrees with this suggestion and has adopted it accordingly.
		8. *On page 198 of the document, part 10.28(7) should still use the term '**electrically connected**'. It has been changed to 'connected', but that means it contradicts part 10.28(4) and duplicates the intent of part 10.31. A network operator should be able to connect a new point of connection to its network provided a trader has accepted the consumer, but they must not electrically connect it without instruction from the trader or MEP.*	Under the existing Code, clause 10.28(7) qualifies clause 10.28(4), rather than contradicting it. However, the Authority agrees that clause 10.31(b) duplicates clause 10.28(7)(a). In fact, the restriction in clause 10.31 extends to all categories of metering installation, rather than to categories 1 and above per clause 10.28(7).
		Disestablished, electrically isolated and interconnect 9. *On page 66 of the document, the second to last bullet point (provided below for convenience) lists three terms that it says will be replaced by new terms; however we have noticed that there are four new terms instead of three. We would find it useful if the Authority can provide further details on the new proposed term 'electrical conductors'. In particular, what does the new proposed term 'electrical conductors' relate to in the existing terms?* *to replace references to 'disestablished', 'electrically isolated' and 'interconnect' in the Code with, respectively, 'decommissioned', 'electrical conductors', 'electrical*	To clarify the Code and remove any duplication between clauses 10.28, 10.29, 10.30 and 10.31, the Authority has moved the obligations in clause 10.28 to: a) existing clauses 10.29, 10.30 and

Reference	Submitter(s)	Submission	Authority response
		separation' and 'connect.' **Agreed with the objectives of the proposed amendment** **Agreed the benefits of the proposed amendment outweigh its costs** **Did not agree the proposed amendment is preferable to other options** *Our preferred options are detailed in our [comments on the proposed Code drafting] and aim to improve operational efficiency through more clarity of definition and intent.*	10.31 b) new clauses 10.29A, 10.30A and 10.31A. The words "electrical conductors" replace the words "electrical connections" in the proposed revision to clause 15(3) of Schedule 6.2 of the Code. Noted. See the Authority's responses to Powerco's comments.
2016-12: Simplifying terms about electricity supply	Trustpower (page 17)	**Agreed with the Authority's problem definition** **Predominantly agreed with the Authority's proposed solution** *The only area of clarification we would seek is in regards to the proposal to replace references to 'electrically isolated' with 'electrical conductors'. We presume the actual drafting that will come about will reference the 'removal of electrical conductors' as being equivalent to 'electrical isolation'.* **Had comments on proposed Code drafting** *The only area of clarification we would seek is in regards to the proposal to replace references to 'electrically isolated' with 'electrical conductors'. We presume the actual drafting that will come about will reference the 'removal of electrical conductors' as being equivalent to 'electrical isolation'.* **Agreed with the objectives of the proposed amendment**	The proposed Code amendment: a) replaces the words "electrically isolated" with "appropriate electrical separation" – refer to clause 38(2)(a) of Schedule 10.7 of the Code b) replaces the words "electrical connections" with "electrical conductors", in clause 15(3) of Schedule 6.2 of the Code.

Reference	Submitter(s)	Submission	Authority response
		Partly agreed the benefits of the proposed amendment outweigh its costs *We think the benefits will be minor – not significant as claimed by the authority's benefit statement.* *We agree with the opinion that this will provide safety related benefits – consistency of interpretation and understanding of terms relating to connection, disconnection, isolation etc. across our industry are important.* **Agreed the proposed amendment is preferable to other options**	The Authority considers the safety-related benefits of the proposed amendment mean it has a significant benefit. This is on the basis that personal safety is valued highly.
2016-13: Amending the definition of 'information system'	Trustpower (pages 18 and 19)	**Agreed with the Authority's problem definition** *Trustpower agrees that the Information Systems Document (ISD) available on the Authority's website can be administratively burdensome to keep up to date, but also that it should be made clear (by way of a 'live' Approved Systems Document (ASD), for example) the means through which consistent information is delivered to participants.* *We do however note the importance of the consultation process on the ISD, in allowing participants the opportunity to signal their preferences for receiving and providing information, and expect that this would continue in some form for changes made on the ISD and/or ASD.* **Agreed with the Authority's proposed solution**	Noted. The Authority agrees with this suggestion and will consult before it changes an approved system (listed in the Approved Systems Document (ASD)) for making information available under Part 13, unless the Authority is satisfied on reasonable grounds that— (a) the nature of the amendment is technical and non-controversial; or (b) there is widespread support for the amendment among the people likely to be affected by it; or (c) there has been adequate prior consultation (for instance, by or through

Reference	Submitter(s)	Submission	Authority response
			an advisory group) so that all relevant views have been considered. After consulting on a proposed change, the Authority will consider submitters' views before deciding whether to proceed with the proposed change. The Authority will then announce its decision and publish an updated version of the ASD on its website that includes the changes the Authority decides to make.
		Had comments on proposed Code drafting *In our comments, we have assumed that the defined term 'WITS manager' used in the Appendix C drafting schedule for amendment 2016-07 will be the same for this amendment.*	This assumption is correct.
		We propose that the amendment of 'information system' within Schedule 8.3, Technical Code C, clause 5(2) should read 'An asset owner shall request...', rather than 'An asset owner may request…', given that the proposed amendment results in no specified primary means of transmitting information.	The proposed amendment to clause 5(1) of Technical Code C of Schedule 8.3 proposes that each asset owner's control room must give information to the system operator in writing. We have amended the wording of subclause (2) to clarify that it only applies to an alternative means of providing the information to the system operator.
		We propose that clause 13.227(a) is amended from 'submits a verification notice to the information system' to 'submits a verification notice to the WITS manager'. Further, we believe that the proposed amendment to clause 13.229(1) should read 'from the WITS manager in accordance with clause 13.228(1)'. *We also note that Part 17 (Transitional provisions) does not form a part of the drafting schedule in Appendix C and suggest that it also be amended for completeness.*	The Authority agrees with these suggestions and has adopted them accordingly. The Authority has not amended Part 17 in line with this proposal (2016-13: Amending the definition of 'information system')

Reference	Submitter(s)	Submission	Authority response
		Agreed with the objectives of the proposed amendment **Agreed the benefits of the proposed amendment outweigh its costs** **Agreed the proposed amendment is preferable to other options** *The alternative Interface Control Document (ICD) would likely be more administratively burdensome to keep up to date.* *Trustpower would support the introduction of a more 'live', up to date, ASD.*	because the relevant clauses in Part 17 are spent provisions. Noted.
2016-13/14: Amending the definitions of 'information system' and 'publish'	Transpower (pages 6 and 7)	**Agreed with the Authority's problem definition** **Did not agree with the Authority's proposed solution** *For clauses 13.136 – 13.138 we consider there is a risk that 'approved systems' may be changed without transparency. We suggest a consultation process should be specified for any potential system change.*	The Authority agrees with this suggestion and will consult before it changes an approved system (listed in the Approved Systems Document (ASD)) for making information available under Part 13, unless it is satisfied on reasonable grounds that— (a) the nature of the amendment is technical and non-controversial; or (b) there is widespread support for the amendment among the people likely to be affected by it; or (c) there has been adequate prior consultation (for instance, by or through an advisory group) so that all relevant views have been considered. After consulting on a proposed change, the Authority will consider submitters' views

Reference	Submitter(s)	Submission	Authority response
		Also the "or by written notice" reference implies that a party can send any type of document to grid owner and we must accept it. The information needs to be in a file format suitable for our systems. *In addition, we have the following comments to many of the clauses.* *<u>Possible business process issues</u>* a) *Part 1 definition of approved system: Will there be a register of approved systems maintained by the Authority?* b) *Schedule 8.3 T.C. B 7(2) : We suggest the means of communication not be specified. It may be important for the system operator to receive this communication more rapidly than 'in writing' would suggest.*	before deciding whether to proceed with the proposed change. The Authority will then announce its decision and publish an updated version of the ASD on its website that includes the changes the Authority decides to make. As set out in the consultation paper, the Authority's intention is to minimise the number of changes to the systems specified in the information system definition document (ISD) for conveying information under Part 13. It is therefore likely that the approved system for clauses 13.136 to 13.138A will be the same system as that currently specified in the ISD. However, the Authority will consult on any proposed changes, unless one of the grounds for not consulting listed immediately above applies. On the other comments: a) The Authority proposed in the consultation paper that the approved systems be set out in the ASD. b) The Authority agrees with this suggestion, and will retain "advise" in this provision.

Reference	Submitter(s)	Submission	Authority response
		c) *9.15(1) : We question whether the inclusion of 'written' is necessary or desirable in these circumstances.*	c) The Authority notes that 'a written direction' includes a direction given by email. Given the requirements for such directions under clause 9.15(1) and 9.15(2), and the fact that under clause 9.15(4) the system operator must publish such directions after giving them, the Authority considers that requiring that directions under clause 9.15 be given in writing is appropriate.
		d) *13.35(2): we query whether specifying written confirmation is appropriate.*	d) The Authority agrees that requiring confirmation "in writing" is unnecessary in the context of clause 13.35(2), and will revise the proposed amendment accordingly.
		e) *13.135A(5)(a) note that the notice of a scarcity pricing situation is given via SMTP to market participants (not on WITS alone).*	e) The only system the ISD specifies for making information available under clause 13.135A(5)(a) is WITS. However, the Authority has revised the proposal to require that written notice of a scarcity pricing situation be given to persons that request notification, as well as on WITS.
		f) *13.61(1) and 13.65(1) This notification is done via WITS and presented in a table of data, not written notice.*	f) The Authority agrees and will replace "given written notice" with "give notice on WITS" in clauses 13.61(1) and 13.65(1).

Reference	Submitter(s)	Submission	Authority response
		g) Schedule 13.3 13(1) This is done via WITS, not written notification. *<u>Drafting</u>* *h) 9.15(3) Revoked by implication from 9.15 (1). Consider it is redundant.* *i) 9.28(a) Unsure of value of words 'keep published' perhaps the term needs an end date; otherwise 'publish' is sufficient* *j) 13.55(1) 'Publish and make available' – make available seems redundant?*	g) The Authority agrees and will replace "given written notice" with "give notice on WITS" in clause 13(1) of Schedule 13.3. h) This is set out in the Authority's proposal. i) The wording "keep published" is necessary to retain (in a simplified form) the requirement in each of the relevant clauses that the information be made available at all times. j) The ISD currently requires the information under clause 13.55 to be made available on WITS and WITS free-to-air (www.electricityinfo.co.nz). The wording in the proposed amendment ("**publish** and make available on **WITS**") sought to retain this requirement, particularly given that WITS is not publicly accessible, and the intention of clause 13.55 is to make the relevant information widely available. However, rather than treating WITS free-to-air as the WITS manager's website, the Authority has decided to make WITS free-to-air an 'approved system'. The Authority will therefore amend clause 13.55 and the other clauses that use

Reference	Submitter(s)	Submission	Authority response
			WITS free-to-air accordingly, which will require participants to refer to the ASD. The Authority will also ensure the information in the relevant clauses remains accessible to the public (as is currently required) by requiring that the information be made available using a publicly accessible approved system.
2016-14: Amending the definition of 'publish'	Transpower (page 7)	**Agreed with the Authority's problem definition** **Did not agree with the Authority's proposed solution** *We do not support the amendments to 13.143 and we have query about clause 13.141.* **Had comments on proposed Code drafting** **13.143 Grid owners to <u>give written notice of</u> ~~notify~~ SCADA situation** (1) If a **grid owner** gives any **input information** in accordance with clause 13.141 to the **pricing manager**, the **grid owner** must— (a) <u>give written</u> **~~publish~~** notice to <u>affected participants</u> that it has given the **pricing manager input information**; and *a) We would be unable to comply with 13.143(a) as we will not know the affected participants. The only party we currently inform and want to inform is the pricing manager. The drafting suggests we have to 'push' the information to a range of unknown parties. We consider all instances of where there are insertions "affected participants" should be examined for this undesirable impact.*	Noted. See the Authority's response to the query immediately below. a) The Authority agrees and has reconsidered its proposal. In particular, the Authority has reviewed the recipients specified in the Draft Electricity Governance Rules 2003 of September 2003 (Draft EGRs) for each of the relevant provisions, before the ISD was adopted—which occurred when the first version of the Electricity Governance Rules 2003 came into effect. In most

Reference	Submitter(s)	Submission	Authority response
			instances, the Authority considers that interest in the information made available under the equivalent provisions in Part 13 is likely to go beyond the parties originally specified in the Draft EGRs. However, the Authority agrees that it is not feasible to require the relevant MOSPs to identify the interested parties. The Authority has therefore decided to amend the relevant Part 13 provisions to: i) in each instance, require the relevant MOSP to make the information available to parties that request the information ii) in certain instances, specify parties (other MOSPs) to whom the relevant MOSP must make the information available, regardless of the requirement in i) iii) allow the relevant MOSP to determine how it will make the information available. The revised proposal will reduce the administrative burden on MOSPs, but ensure that parties that request the information will receive it.
		b) Clause 13.141 there are obligations on the pricing manager to make information	b) The Authority agrees with this point and

Reference	Submitter(s)	Submission	Authority response
		available on the WITS manager's website. We consider this is not feasible if the pricing manager and WITS manager are not the same.	has decided to make the WITS manager's website, WITS free-to-air, an 'approved system'. The Authority will amend each of the clauses that use WITS free-to-air accordingly, which will require participants to refer to the ASD. In the event the Authority shifted the role of pricing manager to a different person than the person carrying out the role of WITS manager, the Authority would change the approved system in the ASD for each of these clauses. The Authority will also ensure the information in the relevant clauses remains accessible to the public at no cost (as is currently required), by requiring that the information be made available at no cost using a publicly accessible approved system (i.e. WITS free-to-air).
2016-15: Simplifying the meaning of 'notify'	Trustpower (page 21)	**Agreed with the Authority's problem definition** **Agreed with the Authority's proposed solution** **Had comments on proposed Code drafting** *We note that Part 17 (Transitional provisions) does not form a part of the drafting schedule in Appendix C and suggest that it also be amended for completeness. We are otherwise happy with the proposed Code drafting.* **Agreed with the objectives of the proposed amendment**	The Authority has not amended Part 17 in line with this proposal (2016-11: Rationalising references to 'registry' and 'registry manager') because the relevant clauses in

Reference	Submitter(s)	Submission	Authority response
		Agreed the benefits of the proposed amendment outweigh its costs **Agreed the proposed amendment is preferable to other options**	Part 17 are spent provisions.
General	Contact (cover letter)	*Contact is supportive of measures to simplify the language, processes, and understanding of the Electricity Industry Participation Code 2010 (Code). The Code review proposes a range of sensible changes to the Code, of which Contact is generally supportive.*	Noted.
General	Counties Power (cover letter)	*Counties Power observes that the Authority through the proposed TPM is effectively changing government policy around the allocation of infrastructure of costs independent of the Minister of Energy and the Ministry of Business, Innovation and Employment (MBIE). The lack of MBIE policy advice on the TPM, we believe, may indicate a lack of oversight of the Authority by MBIE, which has the wider mandate to 'Grow New Zealand for All' and sets government electricity policy for the Minister of Energy, and separately through policy advice to the Minister of Commerce and Consumer Affairs is entrusted to ensure that the interests of consumers are protected. This is despite the MoU between the Authority and MBIE dated September 2014 which states that MBIE's role covers "regulatory activity relating to fairness/equity issues".* *Consequently, Counties Power believes there are currently only light touch controls governing the Authority's performance, so Counties Power would not support any changes that would in any way further weaken the Authority's requirements to act reasonably or publish information in a reasonable time period. This problem is compounded by the Electricity Industry Act specifying a limited statutory objective for the Authority. This type of problem was identified by The New Zealand Productivity Commission where they state in a review of regulatory practices "The Commission has found that regulators often have to work with legislation that is outdated or not fit for purpose".*	The Act created the Authority as an independent Crown Entity and sets out its objective, functions and powers, including the function of making and administering the Code according to the Act. The Authority considers that the Code amendments proposed in the consultation paper were consistent with its objective, functions and powers As noted above, having considered submissions, the Authority has decided not to proceed with the proposal to remove explicit wording in the Code requiring the Authority to act reasonably. The Authority is under a duty to act reasonably as a matter of administrative law, regardless of the presence or absence of statutory provisions that expressly require the Authority to act reasonably. However, the Authority acknowledges that retaining Code provisions

Reference	Submitter(s)	Submission	Authority response
			that expressly require the Authority to act reasonably may give participants greater comfort and certainty as to the scope of the Authority's statutory powers.
General	Genesis (cover letter)	*We are aware that the Code Review Programme contains changes proposed by the Authority as well as industry participants. In order to ensure the best feedback regarding proposed changes, we are of the view that it would be beneficial, when preparing the Code Review Programme, if the Authority noted the party who had proposed each change. This adds context to the change and, accordingly, the Authority is likely to receive more informed submissions to its Consultation.*	The Authority disagrees with this suggestion, and does not consider that listing in a consultation paper the party that originally proposed the relevant Code amendment being consulted on would add helpful context or elicit more informed submissions. In consulting on a Code amendment proposal, the Authority seeks submissions on the merits of the proposal, and specifically, whether the proposal is consistent with the Authority's statutory objective, and is necessary or desirable to promote any or all of the following: a) competition in the electricity industry b) the reliable supply of electricity to consumers c) the efficient operation of the electricity industry d) the performance by the Authority of its functions e) any other matter specifically referred to in

Reference	Submitter(s)	Submission	Authority response
			this Act as a matter for inclusion in the Code. Identifying the party that originally proposed a Code amendment has no relevance to the matters listed above, and is unlikely to assist in eliciting submissions that address these matters.
General	Mercury (cover letter)	*Mercury is of the view that regular reviews of the code are valuable to clarify obligations where ambiguity could occur and agrees with most of the amendments proposed by the Authority and in our view would support the Authority's statutory objective to promote "competition in, reliable supply by, and the efficient operation of, the New Zealand electricity industry for the long-term benefit of consumers.*	Noted.
General	Mercury (cover letter)	*Mercury would also suggest there remains an opportunity to address of some issues with Part 13 of the Electricity Code. We propose two changes to Part 13 which in our view changes would support the Authority's statutory objective to promote "competition in, reliable supply by, and the efficient operation of, the New Zealand electricity industry for the long-term benefit of consumers ("the Authority's objective")."* *<u>Part 13 clause 225(1)(a)</u>* *The current wording of this clause allows industry participants up to 5 business days to disclose any Contracts for Difference (CFDs) and Options to the market. In our view, this timeframe is too long. We believe that CFDs and Options should be disclosed within one business day to increase transparency, thereby ensuring more efficient operation of the market. CFDs and Options have the potential to impact significantly on spot market dynamics and give informational advantages to the parties who are contracting. By reducing the timeframe for disclosure, other market participants can make better decisions about*	These suggestions are outside the scope of this consultation, but could be the possible subject of a future review of reporting requirements for risk management contracts. The Authority has listed the two proposals on its register of Code amendment proposals and will assess them in the future.

Reference	Submitter(s)	Submission	Authority response
		managing energy market risks and potentially, lower the end cost to the consumer. This Code change would therefore support the Authority's objective. *<u>Part 13 clause 219(1)</u>* *We have seen an increasing number of short-term Options going through the market. We are therefore concerned that what are really CFDs may be being disguised as Options to avoid the more sophisticated disclosure regime.* *Currently, the only information that must be submitted to the information system for Options are:* *(a) the trade date;* *(b) the effective date;* *(c) the end date; and* *(d) the quantity.* *In our view this disclosure is too light and we do not see why there should be different disclosure requirements for CFDs and Options. In our view, more disclosure, particularly the strike price and location of the contract, would enable all market participants to make more informed decisions. It would allow traders to better manage risk. Having the same disclosure requirements for CFDs and Options would ensure more efficient operation of the industry in line with the Authority's objective.*	
General	Powerco (cover letter)	*Powerco supports the Authority's review of the Electricity Industry Participation Code (the Code), and its efforts towards making continued improvements to the Code. We generally support the Authority's proposed changes and believe that the changes will improve the understanding and operation of the Code.*	Noted.

Reference	Submitter(s)	Submission	Authority response
General	Transpower (cover letter)	<u>*Transparency of the source of the change proposal*</u> *The consultation paper does not identify Transpower as the source for the change to 12.118, nor any party for any of the others. Transparency of the source of a proposal would highlight how the Authority decides there are 'problems' with the Code and whether these problems have also been viewed in the same way by Code practitioners. In other words, what is the evidence for the problems identified.* *We note from the concurrent consultation on Authority appropriations that operational efficiency is a new strategic area and we welcome that position. This strategic attention should create opportunities for complying parties, such as Transpower, to identify and propose efficiency measures and for the Authority to be receptive of these proposals.*	The Authority does not consider that identifying the party that originally proposed the relevant Code amendment being consulted on would add context or elicit more informed submissions. See the Authority's response above to a similar point Genesis made in the cover letter for its submission. Noted.
General	Transpower (cover letter)	<u>*Establish criteria for 'technical and non-controversial'*</u> *For this omnibus analysis we consider it would be helpful to have summary information about the change route that each proposal is to advance under. It was not clear how the Authority had decided a change was technical and non-controversial (TNC) or that it needed a regulatory statement.* *From our examination of the TNC proposals (number five excepted) we have been able to derive some basis, for example, for error correction, for consistent terminology, and for clarification and simplicity etc. This basis could be the starting point for Authority and industry development of change criteria. The development could be modelled on the approach taken by the Commerce Commission when it consulted with industry on a framework for making changes to the input methodologies (the rules for the Commerce Act Part 4 regulation).* *When we proposed the amendment to 12.118 we did so under the technical and non-controversial route and explained our reasoning in the proposal for this approach. The Authority instead has considered it via regulatory statement and although we accept that, it is*	Section 39(3) of the Act sets out three separate grounds on which the Authority may make a Code amendment without preparing a regulatory statement and consulting on the regulatory statement and proposed amendment. The Authority must be satisfied on reasonable grounds that: a) the nature of the amendment is technical and non-controversial; or b) there is widespread support for the amendment among the people likely to be affected by it; or c) there has been adequate prior

Reference	Submitter(s)	Submission	Authority response
		not clear why the Authority did not agree with our classification. We consider the consulted transparent criteria will assist industry participants and the Authority to objectively and efficiently propose changes to the Code under the technical and non-controversial route.	consultation (for instance, by or through an advisory group) so that all relevant views have been considered. For each Code amendment the Authority proposes to make under section 39(3) of the Act, the Authority identified in the consultation paper which of the three grounds it relied on. For several of these proposals, the Authority noted that it was satisfied that the nature of the proposed amendment was technical and non-controversial under section 39(3)(a) of the Act, because the proposed amendment would have no impact on current practice, and would not change any participant's obligations. Rather, the proposed amendment would improve the clarity of the Code. In the Authority's view, Parliament has set the grounds under section 39(3) of the Act, and consulting on how the Authority should interpret and apply these grounds would not be analogous to the Commerce Commission consulting with industry on a framework for making changes to the input methodologies.
General	Trustpower (cover letter)	*Trustpower recognises the Authority's intention to provide industry participants with clarity around their Code obligations and improve the overall operation of the electricity industry.*	Noted. The Authority considers that the proposed amendments in the consultation

Reference	Submitter(s)	Submission	Authority response
		However, we are concerned that several of the proposed Code amendments may have a more significant impact on the operation of the industry than considered by the Authority. They are therefore due further consultation, independent of the omnibus approach.	paper were consistent with section 32(1) of the Act, and that the process has been consistent with section 39 of the Act. The Authority has considered the points raised in submissions and has subsequently made its decisions on the proposed amendments. Consistent with several of the points raised in submissions, these decisions include refining several of the proposed amendments, and deciding not to proceed with one of the proposed amendments (2016-05: Removing reference to the Authority acting reasonably).
General	Trustpower (cover letter)	*Trustpower supports the Authority's initiatives to improve Code compliance by improving the readability of the Code, and expects that the improved clarity and consistency of the Code will be able to deliver efficiency in several respects. However, in a number of proposed Code amendments, we are concerned that the changes may result in a loss of the original meaning of the amended clause(s), and suggest that this is carefully examined within any further Code drafting.*	Noted.
General	Trustpower (cover letter)	*We question in particular whether certain of the proposed amendments, such as removing requirements for the Authority to act reasonably, are in the best interest of the end consumer, as per Section 15 of the Electricity Industry Act 2010 (the Act).*	Noted. See the Authority's response above to to Trustpower's submission on the impact of several of the proposed amendments.