

CLAIM OF UNDESIRABLE TRADING SITUATION (UTS)

Notification Date: 12 December 2019

CONTACT DETAILS

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WHEN CLAIMED UTS OCCURRED

Date: 10 November 2019 - ongoing as at the date of this Claim.

Time: _____

In addition to completing and emailing this form, **please also notify the Authority by telephone at 04 474 2260.**

BASIS OF CLAIM

Why is this event an “undesirable trading situation”?

Please specify why a UTS is claimed – refer to the definition of a UTS set out below:

**Clause 1.1(1) of the Electricity Industry Participation Code 2010 (Code)
- Meaning of undesirable trading situation**

undesirable trading situation means any situation—

- (a) that threatens, or may threaten, confidence in, or the integrity of, the **wholesale market**; and
- (b) that, in the reasonable opinion of the **Authority**, cannot satisfactorily be resolved by any other mechanism available under this Code (but for the purposes of this paragraph a proceeding for a breach of clause 13.5A is not to be regarded as another mechanism for satisfactory resolution of a situation).

Describe why in your view the claimed UTS is a situation that threatens, or may threaten, confidence in, or the integrity of, the wholesale market.

Refer to the letter “Reporting of Contact and Meridian’s breaches of the High Standard of Trading Conduct requirements and Undesirable Trading Situation”, dated 12 December 2019. We support the claims made in the letter.

AND describe why in your view the claimed UTS could not be satisfactorily resolved by any other mechanism available under the Code.

Refer to the letter “Reporting of Contact and Meridian’s breaches of the High Standard of Trading Conduct requirements and Undesirable Trading Situation”, dated 12 December 2019. We support the points made in the letter.

Briefly, we consider that the trading conduct also breaches the High Standard of Trading Conduct (HSOTC) provisions in section 13.5A of the Code. The nature and scale of the HSOTC breach – specifically the manipulative trading activity and quantum of the wealth transfers – also qualifies as an undesirable trading situation (UTS) under Part 5 of the Code that should be addressed urgently using the UTS mechanism. Our simulations show Meridian’s generation business has extracted excess revenue of \$38m in the period since 10 November and Contact’s by \$23m. We consider that the scale of monopoly pricing goes well beyond a breach of the HSOTC provisions and amounts to a UTS.

We note that the definition of a UTS specifies that

“undesirable trading situation means any situation— (a) that threatens, or may threaten, confidence in, or the integrity of, the wholesale market; and (b) that, in the reasonable opinion of the Authority, cannot satisfactorily be resolved by any other mechanism available under this Code (but for the purposes of this paragraph a proceeding for a breach of clause 13.5A is not to be regarded as another mechanism for satisfactory resolution of a situation).”

This means that a breach of the HSOTC Code provisions can also be a breach of the UTS provisions.

SOLUTION SOUGHT BY APPLICANT

Clause 5.2 of the Code

Describe how in your view the claimed UTS could be resolved by the Authority, bearing in mind that clause 5.2 of the Code enables the Authority to take one or more of the following actions, should it find that a UTS does exist (please refer to the full text of clause 5.2 of the Code on the following page for more information):

- directing that an activity be suspended, limited or stopped, either generally or for a specified period:
- directing that completion of trades be deferred for a specified period:
- directing that any trades be closed out or settled at a specified price:
- directing a participant to take any actions that will, in the Authority's opinion, correct or assist in overcoming the UTS.

Refer to the letter “Reporting of Contact and Meridian’s breaches of the High Standard of Trading Conduct requirements and Undesirable Trading Situation”, dated 12 December 2019. We support the solution proposed in the letter.

Briefly, we are seeking that wholesale electricity prices are reset on the basis of a \$5 offer price (representing a near zero water value and small O&M variable cost) for both Meridian (Manapouri) and Contact (Roxburgh and Clyde) while those catchments are spilling water. We would support a sanction that not only required Contact and Meridian to pay back the excess spot prices, but also included a penalty element to send a strong message to generators that they should not use market power or engage in this type of conduct.

Please send the completed form to uts@ea.govt.nz

Clause 5.2 of the Code - Actions Authority may take to correct undesirable trading situation

- (1) If the **Authority** finds that an **undesirable trading situation** is developing or has developed, it may take any action that—
 - (a) the **Authority** considers is necessary to correct the **undesirable trading situation**; and
 - (b) relates to an aspect of the **electricity** industry that the **Authority** could regulate in this Code under section 32 of the **Act**.
- (2) The actions that the **Authority** may take under subclause (1) include any 1 or more of the following:
 - (a) directing that an activity be suspended, limited or stopped, either generally or for a specified period:
 - (b) directing that completion of trades be deferred for a specified period:
 - (c) directing that any trades be closed out or settled at a specified price:
 - (d) directing a **participant** to take any actions that will, in the **Authority's** opinion, correct or assist in overcoming the **undesirable trading situation**.
- (2A) A direction given to a **participant** under subclause (2)(d)—
 - (a) may be inconsistent with this Code; but
 - (b) must not be inconsistent with the **Act**, or any other law.
- (3) The **participant** must comply promptly with a direction given to it in writing.
- (4) A **participant** is not liable to any other **participant** in relation to the taking of an action, or an omission, that is reasonably necessary for compliance with an **Authority** direction under this clause.
- (5) A **participant** does not breach this Code if it acts in accordance with a direction given under subclause (2)(d).