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2 September 2020

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Review of Thermal Fuel Information Disclosure—Consultation Paper

Genesis Energy welcomes the approach the Authority is taking to improving information disclosure in the wholesale market. As New Zealand's largest thermal generator, Genesis will be the most operationally affected party by the changes proposed in the consultation paper. We do not consider there are currently material issues with disclosure, and we support the Authority's approach of addressing the mechanics rather than the substance of the current regime. The proposals, with some adjustments, represent an improvement to the status quo.

In principle, Genesis supports the proposed requirements for participants to report on their disclosure activity. We consider that the Authority's proposal is a useful start, but we have suggestions for how the regime could be more workable for participants while still achieving the Authority's objectives at lower cost.

If the guidelines are to be updated, Genesis would appreciate being closely involved to ensure that any specific examples included are workable, and that the guidelines take appropriate exclusions into account.

We consider that the proposals to publish a reference website and develop a centralised location for disclosure information are complementary, and should be developed together. Genesis strongly supports improving access to and usefulness of existing information. The most sensible approach would be to develop a bespoke centralised platform to host disclosure information.

If you have any questions in relation to this submission please contact me at matt.ritchie@genesisenergy.co.nz, or by phone 027 204 3864.

Yours faithfully

Matt Ritchie
Senior Advisor, Regulatory Affairs and Government Relations

Question	Comment
Q1. Do you agree with the Authority's problem definition: "The key outcome for an effective wholesale market is confidence in efficient prices, and currently there is a widespread view that prices are not as efficient as they could be because some useful thermal fuel information is absent from the market?"	The key outcome for an effective wholesale market is efficient prices. Genesis is confident that the wholesale market is effective, and we believe that there is good reason for all participants to share this confidence. There are a range of indicators that demonstrate the market is effective, including the very high level of reliability New Zealanders enjoy, retail prices falling in real terms to some of the lowest levels in the OECD, and hundreds of megawatts of new renewable capacity being commissioned. There appears to be a view among some participants that some useful thermal fuel information is absent from the market. The extent to which this view is widespread is unclear to Genesis. Regardless, we consider that this view is mistaken. The material issue concerning information disclosure is asymmetry. Genesis considers that asymmetry is not a material issue in the New Zealand market. Genesis agrees with the view the Authority expressed in its decision on the September 2018 UTS claim, that "[p]rices reach efficient levels in markets through a process of arbitrage. This necessarily involves different parties with different information using the market as a mechanism to discover the efficient price—the price that embodies all available information", and, "[i]n a workably competitive market, information asymmetry exists, but does not persist". [1]. Throughout the consultation paper the Authority refers to gaps in information and various problems or perceived problems. Genesis considers it would be useful if the Authority would clarify what information disclosure areas represent problems, and which merely represent perceived problems, so any solutions can be appropriately targeted. Genesis considers that the onus is on those participants who argue that there are problems with the current regime to clearly demonstrate the extent to which these problems exist and the severity of their impact.
Q2. Do you agree that there are concerns with both what thermal fuel information is disclosed and the ability to access, interpret and use thermal fuel information that is disclosed?	Genesis agrees that some parties hold concerns around the thermal information that is disclosed, but we consider that these concerns are unfounded and/or based on a lack of understanding of the market for thermal fuels and the dynamics of thermal generation. Genesis agrees some parties have difficulty accessing, interpreting, and using thermal fuel information. Genesis supports initiatives to make this information easier to access. However, it is the responsibility of

[1] 8 November UTS decision, at 9.68

	participants who elect to take risk in this market to educate themselves on the interpretation and use of the information that is available. The costs of doing so should fall to the participants who benefit. The Authority notes that there is already an inconsistency in information that is disclosed by energy market participants, due to the different ownership structures that apply to different participants. In particular, participants who are privately owned or owned through private equity structures are currently not subject to the same requirements as those parties who are wholly or partially listed on public exchanges. Genesis considers there is merit in bringing greater consistency to the operational information that is disclosed across the market, and urges the Authority to consider this issue in the next phase of its review of the disclosure regime.
Q3. Do you agree that thermal fuel information disclosure is the most pressing wholesale information disclosure issue?	Genesis agrees that this is the most important issue for some participants. However, in our view a lack of transparency concerning the ASX trading activity of non-market making participants is a more pressing concern given the material changes that are being pursued in that space. As set out in response to Q2, there is a wealth of operational information available on Genesis and other listed participants that is not disclosed by privately-held businesses, and the impact of this is worthy of consideration.
Q4. Of the other information disclosure issues listed in Appendix E, which are the priority issues? Are there any issues missing from this list?	As above, information on whether and to what extent non-market making participants are active in trading on the ASX would be instructive in relation to the health or otherwise of that market. Genesis agrees that some participants are not aware how much information is freely available already, and a purpose-built information portal would be a sensible and low-cost way of addressing this issue. We also support the Authority continuing the good work it has already been doing in assisting participants to interpret and act on information that is available. Genesis does not consider it appropriate to include an insider trading prohibition in the Code. This behaviour is already expressly prohibited by a range of separate pieces of primary legislation and regulation covering the New Zealand and Australian jurisdictions. Genesis is concerned that if such a provision existed in the Code it would be used as a tool for raising grievances and casting the market in a poor light, as we have witnessed in relation to the spring 2018 UTS claim, for example. Genesis is increasingly concerned the Code breach process is being used as a lobbying tool by some participants and we urge the Authority to be mindful of the potential for new Code provisions to give rise to further frivolous or vexatious claims.

Q5. Do you agree with the Authority's stocktake of current thermal fuel information disclosure? Has the Authority missed any information in the stocktake or misrepresented disclosure?	The Authority's stocktake of fuel disclosure information appropriately captures the range of information that exists and the channels/timing for disclosure. Importantly, we consider the level of information currently available in relation to coal supply for electricity generation to be appropriate. Genesis is confident we meet our disclosure obligations, including in relation to the coal stockpile at Huntly. Where that resource has run low in the past, and we have reasonably expected this to have a material impact on pricing, we have informed the market and continued to do so until the stockpile was returned to within its normal operational range given prevailing demand conditions. We have been clear in the past that this approach would apply in future. We also already supply the System Operator with information about our coal stockpile to be modelled in the hydro risk curves. Genesis would strongly oppose a requirement to disclose the timing of coal imports and deliveries, as indicated by inclusion of "coal imports and deliveries" as an "information item" in the Authority's stocktake[2]. This is principally due to the safety and reputational considerations associated with the coal supply chain. Genesis regularly meets with protest and disruption in relation to thermal fuels, and we would be very reluctant to provide visibility over the likely arrival of shipments. Our primary concern in this respect does not relate to the market, but to the safety of people and property. In our view it is the availability of fuel, not its origin, that is the key determinant of whether any material price impact is likely and accordingly any disclosure obligation should stop there.
Q6. Are you aware of disclosure information where one of the exclusions in clause 13.2A(2) has been relied on to not make the disclosure information publicly available? If so, what exclusion(s) were relied on?	13.2A(2)(g) applies in a wide range of scenarios where information comes to light that *may* have an impact on future availability. However, the potential for interruptions in parts of the gas supply chain does not automatically mean that there is likely to be less (or more) gas available for generation at a given time. The dynamics of the market are such that this information is often of limited use and disclosing it would give participants a false impression, giving rise to the risk of decisions being taken based on false information which leaves the disclosing party vulnerable to an inadvertent breach of 13.2(1). It has been argued that information of this nature could be disclosed with the caveat that it is uncertain. In Genesis' view this is unnecessary and counterproductive. Disclosures of this nature would not improve

[2] Consultation paper, Table 1, p20

	participants' knowledge of prevailing market conditions relative to a status quo in which a degree of uncertainty is accepted as inherent. Genesis agrees with the Authority's summary in the consultation paper [**emphasis** added]: *"…it is important to recognise some thermal fuel information is simply 'unknowable' – such as whether a gas field will suffer an unexpected production outage or **whether users will have access to gas on a particular day**. Disclosure arrangements therefore need to focus on information that is knowable or can be estimated with reasonable confidence."*[3] As an example, we often know of gas field outages up to 12 months in advance, but due to a myriad of reasons including vessel availability, the timing to manufacture parts, and overseas expertise requirements, the timing of outages is so uncertain we often do nothing to mitigate the outages until much closer to the time. Also, short term gas purchasing is much more liquid than long term so our ability to mitigate greatly increases closer to the time of the event being mitigated. We would add to this that even when a participant has *access* to gas on a particular day, that does not necessarily mean that this gas will be used for generation, given the competing economic uses for that fuel such as demand from industrial users, for example. Natural gas is quite distinct from water available for electricity generation in this respect.
Q7. Do you agree with the factors leading to non-disclosure of thermal fuel information? Are these factors leading to inefficient prices in the wholesale market?	In Genesis' experience, factor (a) – disclosure obligations don't apply – covers almost all circumstances under which we would withhold information that could later have a material impact on price, due to exclusions applying. Some participants – particularly those who do not face continuous disclosure obligations due to being publicly listed – do appear reluctant to disclose material information from time to time.
Q8. Do you agree with the barriers to accessing and interpreting thermal fuel information? Are these barriers leading	Genesis agrees that the barriers the Authority has highlighted can make it more difficult for some participants to access and interpret existing thermal information. It is unclear the extent to which these barriers are leading to inefficient prices; Genesis has no reason to believe that this is the case. We are comfortable we

[3] Consultation paper, at 3.10

to inefficient prices in the wholesale market?	have access to and can interpret the information necessary for us to make decisions (acknowledging the inherent uncertainty).
Q9. Do you agree the proposed Code amendment captures the appropriate players in the market?	All wholesale market participants should also face the reporting obligations, if they are not covered by virtue of being associated with a generation business. Genesis does not accept that the Authority's proposals will give a sufficiently full picture of the issues. At the least, retailers/traders should be required to make the proposed annual disclosure.
Q10. What requirements in the proposed Code amendment will assist participants to be freely able to disclose the information requested?	Genesis submits that participants will be assisted to freely disclose the information requested if: - the Authority receives ***all*** information that is not in the public domain in confidence and only uses it for its intended purpose; - no individual participant can be identified by another participant or any member of the public by the publication of the information contained in the reports; and - the Authority is not provided with a power to share the information with other regulators. If the Authority wishes to encourage free disclosure of the information requested, then it should change the Code amendments so they better align with the objectives of elevating the importance of disclosure requirements and ensuring that participants have incentives to carefully consider at all times whether they have disclosure information – rather than having too much focus on compliance and enforcement, as is currently the case. Separate and established enforcement mechanisms exist under the Electricity Act 2010 ("**Act**") and Regulations, meaning there is little need for the current proposals to have a potentially penal focus. Genesis fully supports measures to increase respect for disclosure obligations and increase market confidence that they are being complied with – which will be achieved through open reporting to the Authority without the threat of enforcement action following such reporting.
Q11. Are there any unusual situations (whether arising out of contract, law or otherwise) that the Authority needs to consider in amending the current disclosure regime?	See response to Q6 above.

Q12. Please provide any feedback on the approach proposed to privilege given the powers (and protections) that exist under sections 46 – 48 of the Electricity Industry Act and the limitations proposed on the use and publication of the information.	Genesis agrees with the Authority's proposed use of information that is subject to privilege against self-incrimination. Section 48(1) of the Act expressly protects an industry participant's right to claim legal professional privilege when the Authority is exercising its monitoring, investigation and enforcement powers. The Code should not be inconsistent with the Act. Genesis submits the proposals must be amended to remove any requirement for a participant to disclose legally privileged information. Genesis considers that the Code amendments in 13.2F(5) and 13.2G(2) that would require major participants to provide information to the Authority that is subject to legal professional privilege would undermine the purpose of having the privilege in the first place (effectively rendering it pointless). Moreover, the Authority's proposed use of legally privileged information for monitoring and enforcing compliance with the Code, as proposed under clause 13.2G(2), is an unacceptable use of information that is protected by legal professional privilege.
Q13. Please provide any feedback on the limitations proposed in relation to the use of the information requested.	Genesis agrees that there should be clear and firm prohibitions on the public disclosure of information contained in disclosure reports that a participant has withheld for reasons covered by 13.2A(2)(a) to 13.2A(2)(i). However, we have a number of concerns about the Authority's publication and use of information proposed in clauses 13.2F and 13.2G and have suggested amendments to these clauses in the appendix to this submission. It would be a concern if the proposed reporting regime resulted in information that was properly not disclosed (due to exclusions applying) being published to the market (even inadvertently, as above). This would undermine the disclosure regime to the extent that exclusions would be rendered meaningless, or at least significantly diminished in their effectiveness in ensuring information is accurate and disclosure does not jeopardise participants' trading positions. Genesis submits that the publication and use of information should be subject to an overriding obligation to keep all information that is not in the public domain confidential. As mentioned above, this is the best way to encourage full disclosure. This approach is adopted in other jurisdictions, such as in the Australian wholesale electricity market in which all information is taken to have been given to the Australian Energy Regulator in

	confidence when it is exercising its monitoring and reporting functions (whether or not an express claim of confidentiality is made when the information is given[4]. There is also a risk that the Authority will be inundated with Official Information Act requests each time it receives disclosure reports. Although not an absolute protection, having an express obligation for the Authority to receive commercially sensitive information in complete confidence will provide confidence to participants that their information will not be freely released under the Official Information Act. The Authority should therefore ensure the Code contains safeguards to preserve the confidentiality of information and to provide the appropriate protection against unwarranted disclosure – and those safeguards should not be limited to situations where the information is subject to existing confidentiality obligations between the participant and third parties. In that context, the exception for publication of confidential information currently proposed in clauses 13.2F(3) and 13.2F(4) is too narrowly defined. Genesis also considers that it is important that the Code makes it clear that any information published by the Authority under clause 13.2F(1) should not be able to identify any individual participant. Any information published should only be done so in an aggregated and/or anonymised format. We appreciate that this may have been the Authority's intention behind clause 13.2F(1), however, participants would be far more comfortable providing the information required if our suggested amendments below were incorporated to make this sufficiently clear. Genesis does not agree with the Authority's use of information proposed in clause 13.2G(1)(c). This is particularly concerning because, as currently drafted, the Authority would be permitted to share confidential information with other regulatory agencies (by virtue of clause 13.2F(3)). The Authority must exercise its monitoring, investigation and enforcement powers only for the purposes set out in section 45 of the Act (as per section 46). Genesis submits that the Authority cannot use its power to amend the Code to give itself powers that it does not expressly have under the Act. That is, in the absence of an express provision, the Act does not permit the Authority to compulsorily acquire information from participants for the purpose of providing it to other regulatory agencies. By way of contrast, sections 99B to 99P of the Commerce Act 1986

[4] 18D(2) National Electricity (South Australia) Act 1996

	expressly gives the Commerce Commission such powers to assist overseas regulators (noting that specific conditions and restrictions are attached to that information sharing). Moreover, including a power to share information with other regulators does not appear to contribute to any of the Authority's stated objectives for the proposed Code amendments.
Q14. Please provide any comments on the proposed audit power.	Genesis understands and accepts the logic of providing for an audit power, to ensure the Regulator and market can be confident that reporting is accurate and complete. Ensuring the Authority bears the costs where an audit establishes that a participant is compliant is a reasonable constraint on the exercises being ordered unnecessarily or too liberally. Genesis considers that the wording in clauses 13.2H to 13.2J should be modified to make it clear that an auditor can only form an opinion as to whether a participant has complied with its obligations under the Code. An auditor's assessment of compliance cannot on its own 'establish' a breach of the Code; that would suggest the Authority has delegated its enforcement function and circumvents due process. Whether or not a breach has in fact occurred must be established by following the process prescribed in the Electricity Industry (Enforcement) Regulations 2010 (ie appointing an investigator and, if substantiated, resolving the breach either through settlement or a decision by the Rulings Panel). Provided the scope of the auditor's powers in clauses 13.2H to 13.2J is clarified by the use of the additional wording suggested below, Genesis has no further issues with the proposed auditor power.
Q15. Do you agree with proposal 1: a Code change to require quarterly reporting of disclosure activities, provision of an annual directors' declaration and an annual report on policies? Please explain why or why not.	In principle, Genesis agrees that prescribed disclosure reporting will benefit participants and the Authority in their understanding of how the WMID obligations are being interpreted and adhered to. Genesis supports pursuing this approach in favour of prescriptive Code changes amending disclosure *requirements*, and we commend the Authority for resisting calls for risky and unnecessary interventions. It is worth noting that the proposed reporting regime introduces an obligation that would render the disclosure regime under the Code more onerous than regimes in other markets which are much larger and more sophisticated, such as the NZX securities market. It would be welcome if the proposals increased understanding and, in time, confidence amongst those participants who currently perceive problems with the regime.

	However, the proposed requirement for quarterly director or executive certified reporting appears unnecessarily onerous for reporting parties. At least, Genesis is not persuaded that such regular reporting is necessary to achieve the Authority's stated objectives. Indeed, it is unclear why quarterly reporting has been selected for verification of compliance with ongoing disclosure obligations, while an annual timeframe has been deemed sufficient for the directors' declaration and report on policies. Quarterly reporting would appear to be out of step with the current (and appropriate) 'principles-based' approach to continuous disclosure. Genesis considers that a single annual report/declaration covering all of the information the Authority proposes to collect would be more appropriate and more manageable for both disclosing parties and the Authority. Genesis does not consider a single quarterly report provides sufficient insights into compliance for the Authority to draw useful conclusions, and we therefore query whether such an approach is appropriate. Furthermore, Genesis queries whether director certification is necessary, or whether this is too onerous a requirement for the annual reports. Directors do not have an operational role, and would therefore be required to take significant time to acquaint themselves with the many and various factors influencing wholesale market continuous disclosure requirements before they could confidently certify the reports. In our view, executive sign-off provides an entirely appropriate level of accountability for this measure and would be far more practical. Annual reporting would achieve the same desired effects as quarterly yet at a significantly lower compliance cost. Specifically, it would still: • elevate the respect and perceived importance of the disclosure obligations, as participants would still be obliged to review the disclosure information over the period and provide certified reports; and • contain the exact same information as would four successive quarterly reports, therefore supporting the Authority's monitoring and compliance objectives and have the same net effect on transparency and confidence in the market (supporting monitoring of Code compliance by other participants).

Q16. Do you agree with proposal 2: to update the Guidelines regarding thermal fuel disclosure? Please explain why or why not.	Genesis does not consider updating the guidelines will have a material impact on compliance, and is indifferent to this proposal from that perspective. Genesis currently meets all obligations under the Code, which is simple to interpret. However, there is a risk that providing specific examples of situations in which disclosure obligations would apply may create an unrealistic or mistaken impression among participants that information will always be disclosed under all circumstances. Such a view would not take into account the numerous potential scenarios in which disclosure would rightly not occur due to exclusions applying. Whilst it is true that guidelines are not compulsory directions, Genesis considers it inevitable some participants will interpret them as requirements. Given recent experience this can reasonably be expected to give rise to perceptions and allegations of breaches. There is no reason to expect these allegations to have any more merit or be any more likely to succeed than all those that have failed to date, and thus merely saddle cost and reputational risk on participants for no market benefit. If updated guidelines are to be furnished with detailed examples Genesis would value the opportunity to work closely with the Authority on their formulation, and to avoid creating unreasonable expectations as above. It would also be valuable for the guidelines to set out scenarios in which 13.2A(2)(a) to 13.2A(2)(i) may apply and potential disclosure information is therefore rightly withheld.
Q17. Do you agree with proposal 3: to raise awareness and utilisation of existing disclosures through a disclosure reference webpage? Please explain why or why not	Genesis supports this proposal. This appears to be a relatively low (additional) cost and common-sense way to assist participants in interpreting the prevailing thermal fuel supply conditions, along with other material information (such as hydro lake levels, and expected inflows). Participants can from there infer the likely impact on the generation mix and make decisions accordingly. The reference page should be an adjunct of the bespoke disclosure platform that Genesis contends should host disclosure information including gas production outage schedules and plant availability, material generation outage information, and potentially additional resources modelling forecast weather conditions and expected market impacts.
Q18. Do you agree with proposal 4: that thermal fuel information disclosures	Genesis agrees that thermal fuel information disclosures should be made to a central location. The Authority has suggested several potential locations for this information. Genesis understands that consideration has

under clause 13.2A should be made to a central location? Please explain why or why not.	been given to requiring this information to be disclosed through the planned outage coordination protocol ("**POCP"**) website. Genesis considers that would be a mistake, and agrees with the conclusions of the technical advisory group that has been considering changes to POCP that that system should be 'clean' and restricted to disclosure of plant and transmission outages for the purposes of coordinating maintenance to ensure security of supply. Genesis considers that the most appropriate way of hosting disclosure information would be via a bespoke website or page. Genesis is indifferent to where this is located, but arguments could be made for the Authority or Transpower/System Operator to host this platform. An EMI dashboard may be suitable. Using a bespoke platform would ensure that the construction of the platform is suitable for hosting and conveying the information it intends to, and that the method of disclosure would be uniform in line with the intended output. Establishing the platform to suit one purpose (hosting disclosure information) would also enable problems to be easily identified and fixes made in future if the platform is not operating as it should. Genesis accepts that this is unlikely to be the least-cost approach for providing a centralised disclosure location. However, we consider that it is imperative that the platform is fit for purpose and building the platform with its intended purpose in mind is sensible. Genesis considers that while it is imperative that employing the right solution is prioritised over minimising costs, any costs should be distributed fairly. The additional costs likely to arise as a result of the Authority's latest proposals are almost exclusively borne by those parties who are required to disclose, and no costs fall to those parties who will benefit most from this information. Genesis accepts that the Code states information with a material impact on price should be made publicly available free of charge, and we agree with this principle. However, if the new regime is going to disproportionately place significant costs on some parties to the benefit of others, this issue should be addressed.
Q19. Do you agree that the current Code clearly spells out the disclosure obligations to market participants? If not, why not?	Yes. Genesis' experience is that industry participants tend to complain that disclosure requirements have not been met after they have suffered loss in the market. Genesis strongly believes that it is incumbent on all industry participants to appropriately manage their risk, rather than seek to blame other participants after the event of loss. As noted by the Authority, none of the recent allegations of breach of the Code have been successful – in many cases the reason was that the relevant information was publicly available.

	It is clearly important to have a continuous disclosure regime that provides confidence to the market, but it is important to recognise that there will always be market risk that must be managed by industry participants. We therefore commend the Authority's balanced approach to this review. As a general point, Genesis understands that market participants desire complete transparency and absolute certainty concerning the various circumstances that can have an impact on prices. This is understandable. However, Genesis considers that it is important that the expectation of this outcome is not created or exacerbated by any changes to the disclosure regime. As set out in response to Q1 and elsewhere above, Genesis considers it is important for the distinction between real and perceived problems to be clearly drawn.
Q20. Do you have any comments on the validity of the exclusions in clause 13.2A(2)? Do you consider there are benefits of removing the confidentiality exclusion in clause 13.2A(2)(c)?	Genesis considers the current exclusions are appropriate and ensure the disclosure regime is workable for parties with information to disclose, while ensuring participants can gain an appropriately detailed view of likely prices. Regarding the confidentiality exclusion, we think it is unhelpful to compare the Code's disclosure obligations to NZX disclosure obligations, especially in relation to thermal fuel supply. Suppliers of gas typically require confidentiality obligations to facilitate the efficient operation of the gas market, and so that they can manage their own disclosure requirements. The interaction between gas and electricity markets is complex, and the Authority should be very cautious about any potential erosion of confidentiality for the perceived benefit of the electricity market, without understanding the potential detriments for the gas market and its participants. The only grounds for concern would be if there was evidence that confidentiality clauses were being used to circumvent disclosure requirements. However there is no suggestion that this is occurs in practice, and it is prohibited by clause 13.2A(6) of the Code in any event.
Q21. Do you believe the currently available penalties and remedies are sufficient?	Yes. It is unclear why the disclosure provisions should be treated differently to any other part of the Code in terms of penalties and remedies.
Q22. Do you agree with the objectives of the proposed amendment? If not, why not?	The Authority states the objectives of the proposed Code amendment are to *improve confidence in and efficiency of prices by narrowing the real and perceived information gap that currently exists in relation to*

	thermal fuels information[5]. Genesis is not persuaded that there is a real information gap at present. At least, it is not clear that there is a real gap that is greater than what is inevitable in any market. In other words, perfect transparency is not possible or necessarily even desirable. Narrowing any gap that does exist is unlikely to be possible without exposing the market to additional uncertainty (as set out in response to Q6) or complicating agreements entered into in good faith by parties who should rightly be able expect that their commercial positions and strategies remain confidential. That said, Genesis believes the Authority's stated objectives are sound in terms of improving confidence in the efficiency of prices, and improving confidence that there is an appropriate amount of information available to participants to inform commercial decision-making and risk management. Genesis considers achieving these objectives will be challenging, however, as we believe participants who have raised the most objection about the current disclosure regime have an impossible or unrealistic/impractical expectation around the level of transparency and certainty that can be achieved.
Q23. Do you agree the benefits of the proposed amendment outweigh its costs?	Yes, although Genesis maintains that those benefits would be achieved through less frequent reporting intervals (see our response to question 15). Further, there are commercial and reputation costs that Genesis considers would be minimised if our suggested wording of the amendments below is adopted.
Q24. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.	Yes, provided the amendments to the Code incorporate our suggested drafting appended to this submission. In summary, Genesis appreciates the Authority's approach to this issue, insofar as it seeks to ensure the existing regime better delivers on its objectives rather than adding new disclosure requirements. A principles-based approach to information disclosure remains appropriate. Genesis does not accept there is a genuine and material problem with the current level of disclosure, accepting that the level of information in the market will never be perfect and forward-looking information is inherently uncertain. However, Genesis agrees there is merit in the Authority's proposals, particularly around providing central repositories for disclosure information.

[5] Consultation paper, at 5.2

	Genesis considers there may be merit in regular reporting on disclosures, to provide participants and the regulator with comfort that obligations are being met and (in the regulator's case) that the current exclusions are reasonable and necessary. We query whether quarterly reporting is necessary and suggest the benefits do not justify the costs relative to an annual reporting regime. We are indifferent to revising the existing guidelines, providing any new guidelines do not create unreasonable and impractical expectations among participants.
Q25. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?	Yes, although Genesis maintains that the objectives set out in section 32(1) of the Act would be best served by incorporating the suggested amendments below.
Q26. Do you have any comments on the drafting of the proposed amendment?	Genesis considers the reporting requirement should apply to all parties who may reasonably be expected to hold disclosure information over the course of a typical year, and suggest the Code should refer to **wholesale market participant** rather than **major participant**. With the exception of changing the reporting frequency from quarterly to annually, Genesis has no further comments on proposed clauses 13.2C, 13.2D, 13.2E and 13.2K. Genesis has provided suggested amendments to the following proposed clauses, the reasons for which we have detailed above: • 13.2F Publication of information in quarterly disclosure reports by the Authority; • 13.2G Use of information in quarterly disclosure reports by the Authority; • 13.2H Authority may require independent audit of disclosure requirements or certification; • 13.2I Carrying out audit; and • 13.2J Payment of auditor's costs. In addition, Genesis has further comments on the wording of clause 13.2B. Our suggested amendments to the wording of this clause are also provided below. *Clause 13.2B(a): The objective standard included for when participants determine whether information is disclosure information should be removed*

	As currently drafted, clause 13.2B suggests that it is objectively ascertainable whether any given information is disclosure information. This does not reflect the reality that whether any piece of information is disclosure information requires a subjective assessment by the disclosing participant. The Authority's guidelines on wholesale market information disclosure obligations makes it clear that the participant must consider the facts and circumstances of the particular situation and exercise its judgement (paragraphs 6.7 to 6.16 of the guidelines). Information will only constitute disclosure information when it would be likely to have a material impact on prices. Whether or not information has this effect depends on a range of factors including market conditions and price sensitivity at the relevant time. The complexity and dynamic nature of the markets in question, particularly so in the gas market, invariably requires participants to make a conscious assessment as to whether the materiality requirement is met. Genesis is only realistically able to report on, and have certified by its directors, whether it believed that it held disclosure information at the time – and not whether in fact it held disclosure information (as currently drafted). *Clauses 13.2B(2)(f) and 13.2B(2)(g): Major participants should not be required to report on whether or not they have breached the Code* Participants should not be required to provide a view on whether or not they have breached the Code. Whether or not a breach had occurred can only be established in accordance with the prescribed process in the Enforcement Regulations. Determining whether or not a breach is in fact established should only be ascertained by following due process set out in the Enforcement Regulations. In any event, participants should be self-reporting any instances of non-compliance with the Code when they become aware. Genesis sees no value in retaining the requirements in clauses 13.2B(2)(f) and 13.2B(2)(g) and suggests removing them entirely.

APPENDIX: SUGGESTED AMENDMENTS TO DRAFTING OF PROPOSED CODE AMENDMENT

13.2B Submission of annual disclosure reports by ~~major~~ participants

1. Each ~~**major**~~ **wholesale market participant** must submit **annual disclosure reports** to the **Authority**.
2. Each **annual disclosure report** must contain the following information relating to the ~~**major**~~ **wholesale market participant's** activities in each year beginning ~~1 January,~~ 1 April~~, 1 July and 1 October~~:
   - (a) whether or not it believed that it held ~~or was aware of~~ any **disclosure information** to which clause 13.2A(1) applies during the year:
   - (b) subject to subclause (4), the means by which it made any such **disclosure information** readily available to the public during the year:
   - (c) if during the year it decided not to make any such **disclosure information** readily available to the public:
     - (i) the number of times it decided to do so; and
     - (ii) the **disclosure information**; and
     - (iii) the date on which it decided to not make the **disclosure information** readily available to the public; and
     - (iv) the grounds it relied on under clause 13.2A(2) to not make the **disclosure information** readily available to the public; and
     - (v) if it subsequently decided to make the **disclosure information** readily available to the public during the year in accordance with clause 13.2A(3), as the ground in clause 13.2A(2) no longer applies, the date on which it decided to make the **disclosure information** readily available to the public:
   - (d) if it decided during a previous year not to make any such **disclosure information** readily available to the public, and continues to not make that information readily available to the public in the year to which the **annual disclosure report** relates ("the current year"):
     - (i) the **disclosure information**; and
     - (ii) the grounds it is relying on under clause 13.2A(2) to not make the **disclosure information** readily available to the public in the current year:
   - (e) if it decided during a previous year not to make any such **disclosure information** readily available to the public but subsequently decided, upon the ground in clause 13.2A(2) no longer applying, to make that **disclosure information** readily available to the public in the current year in accordance with clause 13.2A(3);
     - (i) the **disclosure information**; and
     - (ii) the date it made the **disclosure information** readily available to the public; and
     - (iii) the previous year or years it decided to not make the **disclosure information** readily available to the public:
   - (f) ~~whether or not it complied with clause 13.2A during the quarter:~~
   - (g) ~~if the **major participant** did not comply with clause 13.2A at any time during the quarter, the details of that non-compliance.~~
3. For the purposes of each **annual disclosure report**, each ~~**major**~~ **wholesale market participant** must treat any information that it believes came within the definition of **disclosure information** to which clause 13.2A(1) applies at any time during the year as **disclosure information**, even if it believes it ceased to be **disclosure information** during the year.

4. Each ~~**major**~~ **wholesale market participant** must provide sufficient information to the **Authority** under subclauses (2)(c)(ii), 2(d)(i) and 2(e)(i) to enable the **Authority** to find the **disclosure information** made readily available to the public during the year, including any website addresses.

5. The requirement to provide information under subclause (1):
   (a) overrides any legal obligation to keep the **disclosure information** confidential but shall not be deemed a breach of any such obligation; and
   (b) does not put the ~~**major**~~ **wholesale market participant** in breach of any law; and
   (c) does not extend to information that is subject to legal professional privilege.

13.2C Timing and form of annual disclosure reports under clause 13.2B

1. Each ~~**major**~~ **wholesale market participant** must submit the **annual disclosure report** required by clause 13.2B to the **Authority**—
   (a) by ~~the end of the quarter following~~ the expiry of the year to which the **annual report** relates; and
   (b) in the form specified by the **Authority**.

2. Each ~~**major**~~ **wholesale market participant** must ensure that each **annual disclosure report** is ~~either—~~ certified in accordance with clauses 13.2E(1) to 13.2E(3).
   (a) ~~signed and dated by a director, or the chief executive officer, or the chief financial officer, or a person holding a position equivalent to one of those positions, of the **major participant**; or~~
   (b) ~~otherwise marked in a way specified by the **Authority** or linked in a way specified by the **Authority** to evidence such a person's approval of the annual **report**.~~

13.2D Annual report on policies, procedures and provision

1. Each ~~**major**~~ **wholesale market participant** must report annually to the **Authority** on whether or not the ~~**major**~~ **wholesale market participant** has a written policy, procedure and/or process for identifying and determining whether—
   (a) any information held by the ~~**major**~~ **wholesale market participant** is **disclosure information** to which clause 13.2A(1) applies; and
   (b) there are grounds under clause 13.2A(2) for not making that information readily available to the public.

2. Each ~~**major**~~ **wholesale market participant** must report under subclause (1) to the Authority—
   (a) no later than 1 April in each year; and
   (b) in the form specified by the **Authority** (including that the **Authority** may require the report to be provided with the certification required by clause 13.2E).

3. Each ~~**major**~~ **wholesale market participant** must ensure that each report provided under subclause (1) is either—

(a) signed and dated by a director, or the chief executive officer, or the chief financial officer, or a person holding a position equivalent to one of those positions, of the ~~**major**~~ **wholesale market participant**; or

(b) otherwise marked in a way specified by the **Authority** or linked in a way specified by the **Authority** to evidence such a person's approval of the **annual report**.

4. The first report under this clause is due by 1 April 2022.

13.2E Annual certification of annual reports under clause 13.2B

1. Each ~~**major**~~ **wholesale market participant** must certify to the **Authority** for each year from 1 April to 31 March ~~or part thereof~~ that the board of the ~~**major**~~ **wholesale market participant**—

(a) has considered the **annual disclosure report** provided by the **major participant** under clause 13.2B for the previous year; and

(b) considers, on reasonable grounds and to the best of the board's belief, that the **annual disclosure report** is complete and is a true and correct record of the matters stated in the **annual disclosure report.**

2. Each ~~**major**~~ **wholesale market participant** must submit the certification required by subclause (1) to the Authority—

(a) no later than 1 April of the year following the ~~calendar~~ year to which the certification relates; and

(b) in the form specified by the **Authority** (including that the **Authority** may require the certification to be provided with the report required by clause 13.2D).

3. Each ~~**major**~~ **wholesale market participant** must ensure that each certification is either—

(a) signed and dated by a director of the ~~**major**~~ **wholesale market participant** and either—

(i) another director of the ~~**major**~~ **wholesale market participant**; or

(ii) the ~~**major**~~ **wholesale market participant's** chief executive officer, or person holding an equivalent position; or

(iii) the ~~**major**~~ **wholesale market participant's** chief financial officer, or person holding an equivalent position; or

(b) otherwise marked in a way specified by the **Authority** or linked in a way specified by the **Authority** to evidence such a person's approval to the **certification**.

4. The first certification under this clause is due by 1 April 2022.~~, in respect of the period from the commencement of this clause to 31 December 2021.~~

13.2F Publication of information in annual disclosure reports by the Authority

1. Subject to subclause 2, the Authority must keep confidential all information in an annual disclosure report, unless it is already available to the public.

2. The **Authority** may only publish any information submitted to it in an **annual disclosure report**, information in a report made under clause 13.2D and information in the certification made by a ~~**major**~~ **wholesale market participant**

under clause 13.2E, if ~~provided~~ any such publication does not involve the publication of—

(a) any information that would enable any person to identify the participant that provided the information: or

(b) any **disclosure information** that the ~~**major**~~ **wholesale market participant** did not make readily available to the public by reason of clauses 13.2A(ba) to 13.2A(d), or 13.2A(f) to 12.2A(i); or

(c) information from which the nature of any **disclosure information** that the ~~**major**~~ **wholesale market participant** did not make readily available to the public by reason of clauses 13.2A(ba) to 13.2A(d), or 13.2A(f) to 12.2A(i), can reasonably be identified by another **participant** or member of the public; or

(d) the grounds relied on under clauses 13.2A(ba) to 13.2A(d), or 13.2A(f) to 12.2A(i), by the ~~**major**~~ **wholesale market participant** to not make **disclosure information** readily available to the public, where the disclosure of those grounds would enable another **participant** or a member of the public to reasonably identify the **disclosure information**.

3. The limitations in subclause (2)(a) to (2)(c) do not apply if the **grounds** under clauses 13.2A(ba) to 13.2A(d), or 13.2A(f) to 12.2A(i), no longer apply to the **disclosure information**.

4. ~~If a **major participant** identifies to the **Authority** that the **major participant** is bound by a legal obligation to keep confidential any **disclosure information** provided to the **Authority** in a **quarterly disclosure report** or that disclosure of the **disclosure information** by the **participant** would be a breach of law, the **Authority** is required to keep that **disclosure information** confidential, except that this sub-clause does not prevent the use of the **disclosure information** for the purposes of clauses 13.2G(1)(b) to 13.2G(1)(d).~~

5. ~~The Authority is not required to keep **disclosure information** to which sub-clause (3) applies confidential if it does not consider on reasonable grounds that the **participant** is bound by a legal obligation to keep the **disclosure information** confidential or that disclosure of the **disclosure information** by the **major participant** would be a breach of law.~~

6. The provision by a ~~**major**~~ **wholesale market participant** to the **Authority** of **disclosure information** in an **annual disclosure report** that is subject to ~~legal professional privilege or~~ privilege against self-incrimination held by the **participant** does not amount to waiver of the privilege in the **disclosure information**.

13.2G Use of information in annual disclosure reports by the Authority

1. Subject to clause 13.2F(1), the **Authority** may only use the **disclosure information** set out in a **annual disclosure report**:

   (a) as provided in clause 13.2F(2); or

   (b) for the purposes set out in section 16(1)(b), (c), (d), (f), and (g) of the Act~~; or~~

   ~~to provide to any other regulatory agency for a purpose related to that agency.~~

2. For the avoidance of doubt, nothing in in this Part limits any claim for legal professional privilege, as protected by section 48 of the Act. ~~The **Authority** may not use any information subject to legal professional privilege for the purposes in sub-paragraphs (b) and (c) above other than for the purpose of monitoring and enforcing compliance with clause 13.2A.~~

3. The **Authority** must comply with section 48(2) and 48(3) of the Act in respect of information that is subject to privilege against self-incrimination.

13.2H Authority may require independent audit of disclosure requirements or certification

1. The **Authority** may, in its discretion, require an audit to assess ~~of~~ whether a ~~**major**~~ **wholesale market participant** has complied with any or all of clauses 13.2B to 13.2E.
2. If the **Authority** requires an **audit** under subclause (1), the **Authority** must require the ~~**major**~~ **wholesale market participant** to nominate an appropriate **auditor**.
3. The ~~**major**~~ **wholesale market participant** must provide that nomination within a reasonable timeframe.
4. The **Authority** may direct the ~~**major**~~ **wholesale market participant** to appoint the **auditor** nominated by the **major participant** or to nominate another auditor for approval.
5. If the ~~**major**~~ **wholesale market participant** fails to nominate an appropriate **auditor** within 5 **business days**, the **Authority** may direct the ~~**major**~~ **wholesale market participant** to appoint an **auditor** of the **Authority's** choice.
6. The ~~**major**~~ **wholesale market participant** must appoint an **auditor** in accordance with a direction made under subsection (4) or subsection (5).

13.2I Carrying out audit

1. A ~~**major**~~ **wholesale market participant** subject to an **audit** under clause 13.2H must, on request from the **auditor**, provide the **auditor** with such information as the **auditor** reasonably requires in order to carry out the **audit**.
2. The ~~**major**~~ **wholesale market participant** must provide the information no later than 10 **business days** after receiving a request from the **auditor** for the information.
3. The ~~**major**~~ **wholesale market participant** must ensure that the **auditor**:
   (a) produces an audit report on whether the auditor considers that the major participant has complied with clauses 13.2B to 13.2E (as specified by the Authority) under clause 13.2H(1); and
   (b) submits the audit report to the Authority (within the timeframe specified by the Authority).
4. Before the audit report is submitted to the Authority, any alleged failure of the ~~**major**~~ **wholesale market participant** to comply with clauses 13.2B to 13.2E must be referred back to the ~~**major**~~ **wholesale market participant** for comment.
5. The comments of the ~~**major**~~ **wholesale market participant** must be included in the **audit** report.
6. The ~~**major**~~ **wholesale market participant** may require that the **auditor** does not provide the **Authority** with a copy of any information that the ~~**major**~~ **wholesale market wholesale market participant** has provided to the **auditor** in accordance with subclause (2).

13.2J Payment of auditor's costs

1. If an **auditor** reaches a view~~establishes~~, ~~to~~ which the **Authority** is satisfied is reasonable, ~~satisfaction,~~ that the ~~**major**~~ **wholesale market participant** has not complied with clauses 13.2B to 13.2E (whether or not the **Authority** appoints an investigator to investigate the alleged breach), the ~~**major**~~ **wholesale market participant** must pay the **auditor's** costs.

2. Despite subclause (1), if an **auditor** reaches a view~~establishes~~, ~~to~~ which the **Authority** is satisfied is reasonable~~ satisfaction~~, that any alleged non-compliance of the ~~**major**~~ **wholesale market participant** is minor, the **Authority** may, in its discretion, determine the proportion of the **auditor's** costs that the ~~**major**~~ **wholesale market participant** must pay, and the ~~**major**~~ **wholesale market participant** must pay those costs.
3. If an **auditor** reaches a view~~establishes~~**,** ~~to~~ which the **Authority** is satisfied is reasonable ~~satisfaction~~, that the ~~**major**~~ **wholesale market participant** has complied with clauses 13.2B to 13.2E, the **Authority** must pay the **auditor's** costs.

13.3K Requirement to provide complete and accurate information

1. In addition to the requirements of clause 13.2, the ~~**major**~~ **wholesale market participant** must take all practicable steps to ensure that the information that the ~~**major**~~ **wholesale market participant** is required to provide to any person under clauses 13.2B to 13.2E is complete and correct.
2. If a ~~**major**~~ **wholesale market participant** becomes aware that any information the ~~**major**~~ **wholesale market participant** provided under clauses 13.2B to 13.2E does not comply with subclause (1) or clause 13.2, even if the ~~**major**~~ **wholesale market participant** has taken all practicable steps to ensure that the information complies, the ~~**major**~~ **wholesale market participant** must, as soon as practicable, provide such further information as is necessary to ensure that the information provided complies with clauses 13.2B to 13.2E and clause 13.2.