Guidelines for participants on wholesale market information disclosure obligations

Guidelines

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Disclaimer

The Electricity Authority (Authority) provides these guidelines to improve participants' understanding of, and compliance with, their obligations under the wholesale market information disclosure provisions of the Electricity Industry Participation Code 2010 (Code).

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The publishing of these guidelines does not place any obligation on the Authority to follow any interpretation contained in it when carrying out any of its functions under the Electricity Industry Act 2010 (Act).

The Code places many obligations on participants and should be referred to in full. Some of those obligations are dealt with in these guidelines but many obligations may be specific to the circumstances and the type of activity a participant undertakes. The Authority's preference is to complement the Code obligations in this area with these guidelines. However, the Authority may consider reviewing this approach and including the content of these guidelines in the Code through future amendments dependent upon participant disclosure practises.

The information in these guidelines does not replace the requirement for participants to know and comply with their obligations under the Code. These guidelines reflect the Authority's view. It should also be noted that these guidelines are not exhaustive, and may be updated or changed from time to time. They reflect the Authority's current interpretation of the existing Code at the time of publication. Although these guidelines are not mandatory, they may be drawn upon as an interpretative source in assessing a breach allegation, and the onus is on the participant to show how any different interpretation complies with the Code. The Authority suggests if you are in doubt that you do consult the Code, ask the Authority and / or seek your own advice. ~~The information in these guidelines is not intended to be definitive and should not be used instead of legal advice.~~ If there is any inconsistency between these guidelines and the Code, the Code takes precedence.

Contents

1 Introduction

1.1 The Electricity Authority (Authority) oversees the day-to-day operation of the wholesale electricity market in accordance with the Electricity Industry Participation Code 2010 (Code). It manages contracts with market operation service providers that operate the wholesale market, and also has governance and compliance responsibilities, including market development, performance monitoring, and breach investigation.

1.2 Clause 13.2A of the Code imposes disclosure obligations on participants in relation to wholesale market information (WMI disclosure obligations). In New Zealand, the wholesale electricity market comprises the spot market, the hedge market (including financial transmission rights (FTRs)), and the ancillary services market.[1]

2 An effective disclosure regime is important

2.1 The Authority considers that an effective information disclosure regime is a fundamental feature of a well-functioning electricity market. This section describes the Authority's expectations for an effective disclosure regime to provide context for participants in considering their disclosure obligations, and making disclosure decisions.

2.2 Enhanced information disclosure regulation is generally viewed as a tool for reducing inefficient information asymmetry between informed and uninformed market participants.[2] Information asymmetry in a market can lead to transfers of wealth from uninformed to informed market participants when they trade with each other, potentially leading to inefficient market outcomes.

2.3 Effective information disclosure regulation can also reduce information costs, assist existing and potential market participants in making informed decisions, and enhance confidence in the integrity of the market by removing opportunities for insider trading and the creation of a false market.

2.4 In this context, the Authority considers that an effective disclosure regime should:

(a) build confidence in the electricity market

(b) promote efficient monitoring and information provision

(c) reduce inefficient information asymmetry between informed and uninformed market participants and interested parties.

2.5 The WMI disclosure obligations in clause 13.2A of the Code, which these guidelines focus on, are the core of the wholesale market disclosure regime. Other elements of the regime include:

(a) specific provisions in the Code requiring publication of market information such as spot prices

(b) the publication of bids/offers and other information through the Wholesale Information and Trading System (WITS)[3]

(c) the hedge disclosure and spot price risk disclosure obligations in the Code

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1 Clause 1.1(1) of the Code.

2 Information asymmetry describes a situation where one party has more, or better, information than one or more other parties.

3 www.electricityinfo.co.nz.

(d) the Authority's monitoring and compliance arrangements.

2.6 The Authority also encourages and facilitates voluntary information disclosure.

3 Purpose of these guidelines

3.1 The purpose of these guidelines is to:

(a) set out the Authority's expectations in relation to participants' compliance with their WMI disclosure obligations in the Code

(b) provide guidance to participants bound by the WMI disclosure obligations in order to assist them in making disclosure decisions

(c) provide guidance to interested parties about what information is likely to be available under the WMI disclosure obligations.

4 Overview of the WMI disclosure obligations

4.1 In the Code, the WMI disclosure obligations provide a mechanism to ensure that the stakeholders in the New Zealand wholesale electricity market (interested parties) are informed of relevant information at all times. The WMI disclosure obligations are designed to reduce information asymmetry in the wholesale electricity market so that an interested party:

(a) is not materially disadvantaged against another

(b) can make informed decisions.

4.2 The WMI disclosure regime was designed to establish a "continuous disclosure" obligation for information relevant to the wholesale market. The regime is modelled on comparable provisions for companies listed and traded on the New Zealand Stock Exchange (NZX), but modified for the electricity market context.

4.3 The key elements of the WMI disclosure obligations set out in clause 13.2A of the Code are summarised in Table 1. The remainder of these guidelines expands on each of the key elements by setting out the Code provisions and discussing the Authority's expectations.

4.4 A flowchart is also included in Figure 1 to assist in determining whether information needs to be disclosed under clause 13.2A of the Code.

Table 1: Overview of the WMI disclosure obligations

Who do the WMI disclosure obligations apply to?	The WMI disclosure obligations apply to all participants, as defined in Part 1 of the Code, and in section 5 of the Electricity Industry Act 2010 (Act). Each participant must make disclosure information readily available to the public, free of charge.
What is disclosure information?	"Disclosure information", in relation to a participant, means information that: (a) is about the participant; and (b) is held by the participant; and (c) the participant expects, or ought reasonably to expect, if made available to the public, will have a material impact on prices in the wholesale market.
What exclusions apply?	A participant is not required to make the information readily available to the public, if: (a) the disclosure information is excluded Code information (as defined in Part 1 of the Code); or (b) a reasonable person would not expect the disclosure information to be made readily available; or (c) the participant is bound by a legal obligation to keep the disclosure information confidential; or (d) making the disclosure information readily available to the public will be a breach of law; or (e) the disclosure information is already readily available to the public; or (f) the disclosure information concerns an incomplete proposal or negotiation; or (g) the disclosure information comprises matters of supposition or is insufficiently definite to warrant being made publicly available; or (h) the participant claims legal professional privilege or privilege against self-incrimination in respect of the disclosure information; or (i) the disclosure information is a trade secret. A participant must not enter into a confidentiality agreement with another person for the purpose of avoiding the WMI disclosure obligations.
Who has to demonstrate that an exclusion applies?	If required to do so by the Authority, a participant who relies on an exclusion must demonstrate that the disclosure information continues to be the subject of an exclusion.

When should the information be made readily available to the public?	The participant must make disclosure information readily available to the public: (a) as soon as practicable after becoming aware of the information; or (b) if one of the exclusions applies, as soon as practicable after the information ceases to fall within one of those exclusions, provided it is still disclosure information. If information ceases to be disclosure information, a participant is no longer required to keep making the information readily available to the public.
What does readily available to the public mean?	Readily available to the public means the information is available to the public, free of charge, in a readily accessible place, and in a usable form.

Other disclosure obligations ~~in the Code~~ are relevant

4.5 While clause 13.2A is the focus of these guidelines, clause 13.2 is also very relevant to WMI disclosure. Clause 13.2 relates to misleading, deceptive, and incorrect information disclosed under Part 13 of the Code.

4.6 Under clause 13.2(1), a participant must not disclose to any person any information under Part 13 that is misleading or deceptive (or is likely to mislead or deceive) when taken in the context of Part 13 activities. Clause 13.2(2) provides that if a participant discovers that information it has previously disclosed to a person under Part 13 was misleading, deceptive, or incorrect, the participant must immediately:

(a) disclose further information so that the person is not misled or deceived by the information; or

(b) disclose corrected information to the person.

4.7 In addition to clauses 13.2 and 13.2A, there are other information disclosure obligations in the Code which may be relevant. These include provisions about:

(a) the availability of Code information (see Part 2 of the Code)

(b) hedge disclosure (see subpart 5 of Part 13 of the Code)

(c) spot price risk disclosure (see subpart 5A of Part 13 of the Code)

(d) the co-ordination of outages that affect common quality (see Technical Code D of Schedule 8.3 of the Code)[4]

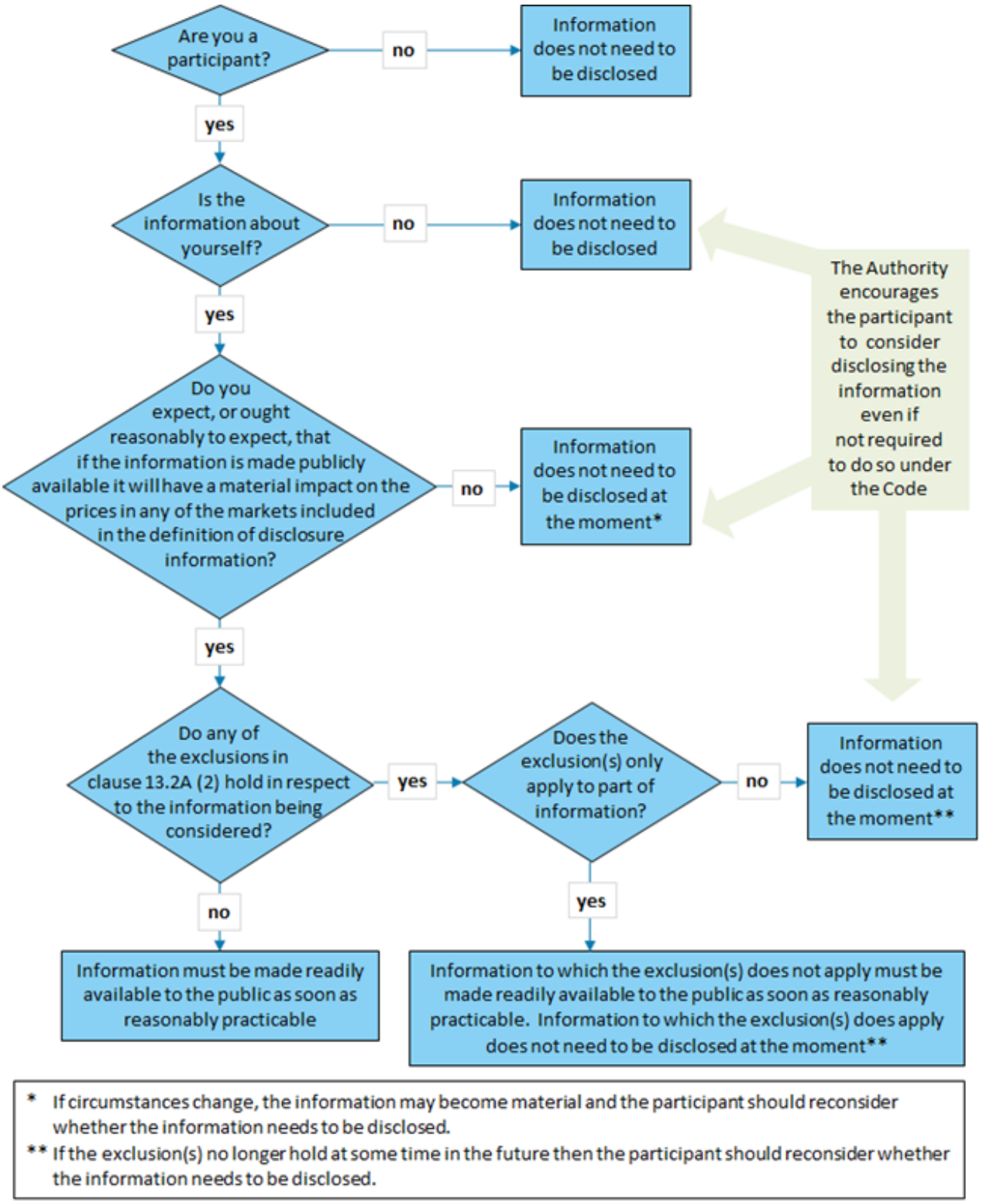
(e) outage protocol (see Part 12 of the Code).

4.8 Listed companies face disclosure obligations as part of a listing on a stock exchange. These rules vary by stock exchange, but typically include both continuous and periodic disclosure requirements.[5]

[4] The Planned Outage Co-ordination Process (POCP), a voluntary arrangement established by the system operator and various participants to assist with outage information disclosure, is relevant to these obligations.

[5] The New Zealand stock exchange's (NZX) disclosure requirements are set out in Section 3 of the NZX Listing Rules – refer: https://www.nzx.com/regulation/nzx-rules-guidance/main-board-debt-market-rules

Figure 1: Determining whether information needs to be disclosed under clause 13.2A



5 Who do the WMI disclosure obligations apply to?

The WMI disclosure obligations apply to all participants, a term defined in Part 1 of the Code:

> ***participant*** *has the meaning given to it in section 5 of the Act*

The relevant sections of the Act are as follows:

> *5* ***industry participant****, or* ***participant****, means a person, or a person belonging to a class of persons, identified in section 7 as being a participant in the electricity industry*
>
> *7 Industry participants*
>
> *(1) The following are industry participants for the purposes of this Act:*
>
> *(a) a generator:*
> *(b) Transpower:*
> *(c) a distributor:*
> *(d) a retailer:*
> *(e) any other person who owns lines:*
> *(f) a person who consumes electricity that is conveyed to the person directly from the national grid:*
> *(g) a person, other than a generator, who generates electricity that is fed into a network:*
> *(h) a person who buys electricity from the clearing manager:*
> *(i) any industry service provider identified in subsection (2).*
>
> *(2) The following industry service providers are industry participants:*
>
> *(a) a market operation service provider:*
> *(b) a metering equipment provider:*
> *(c) a metering equipment owner:*
> *(d) an ancillary service agent:*
> *(e) a person that operates an approved test house:*
> *(f) a load aggregator:*
> *(g) a trader in electricity:*
> *(h) any other industry service provider identified in regulations made under section 109.*
>
> *(3) The Authority is not an industry participant, except to the extent that it performs functions as an industry service provider*

Some key terms used in section 7 of the Act are defined in the Act as follows:

generation *means the generation of electricity that is fed into the national grid or a network; and* ***generator*** *means a business engaged in generation*

distribution *means the conveyance of electricity on lines other than lines that are part of the national grid; and* ***distributor*** *means a business engaged in distribution*

retailing *means the sale of electricity to a consumer other than for the purpose of resale; and* ***retailer*** *means a business engaged in retailing*

ancillary service agent *means a person who, pursuant to an agreement with the system operator, provides frequency keeping, instantaneous reserve, voltage support, over frequency reserve, black start, or any other ancillary service specified in the Code, and as defined in the Code*

trader in electricity *means a person who trades in electricity or electricity derivatives, and includes—*

(a) a person who buys or sells contracts under which the payment obligations may change according to the changes in the price at which electricity is bought or sold in any market in New Zealand; and

(b) any related clearing house or exchange

load aggregator *means a person who contracts with 1 or more consumers so that the person is able to deal with the electricity otherwise required by those consumers in any way, including putting in place agreements under which those consumers voluntarily change their consumption level, so that the person is able to offer the combined increase or reduction in the interruptible load of all those consumers as collective demand, either in the wholesale electricity market or under any other bilateral agreement or contract*

market operation service provider *means the system operator and any person appointed by the Authority under the Code to perform any of the following market operation service provider roles:*

(a) the registry manager:
(b) the reconciliation manager:
(c) the pricing manager:
(d) the clearing manager:
(e) the market administrator:
(f) the wholesale information trading system provider:
(g) any other role identified in regulations as a market operation service provider role

Under the Electricity Industry (Participants and Roles) Regulations 2012, the FTR Manager and the Extended Reserve Manager are also “market operation service providers”.

Authority's views

5.1 We consider that the definition for "participant" is straightforward and that all participants must consider what steps they need to take to comply with their WMI disclosure obligations.[6]

5.2 In practice, the Authority acknowledges that not all classes of participants will hold disclosure information (that is, information that is subject to the WMI disclosure obligation) in the normal course of their business. For instance, metering equipment owners and operators of approved test houses are unlikely to hold information about themselves that would have a material impact on prices in the wholesale electricity market.

5.3 At the other end of the spectrum, some classes of participant, such as generators, retailers, and Transpower, are likely to have a number of WMI disclosure obligations due to the nature of their businesses and wholesale market activities.

5.4 Parties need to determine whether they are participants, particularly those who undertake activities at the periphery of the wholesale electricity market. For instance, a party based in New Zealand that buys or sells New Zealand electricity futures on the Australian Securities Exchange (ASX) is captured by section 7(2)(g) of the Act as a participant that trades in electricity or electricity derivatives, and is thereby bound by the WMI disclosure obligations.

5.5 The Authority notes that all generators are participants, and must comply with the WMI disclosure obligations. This includes embedded generators and small distributed generation. In practice, a small generator is unlikely to hold information about itself that would have a material impact on prices in the wholesale market.

5.6 The WMI disclosure obligations also apply to the Authority to the extent that it performs any functions as an industry service provider.

5.7 The WMI disclosure obligations do not apply to parties that are not industry participants.

5.8 The Authority reminds non stock exchange listed participants that while they do not face NZX listing rule disclosure obligations, they do face obligations under the Code and must comply.

[6] The Authority maintains a list of participants available from here: http://www.ea.govt.nz/operations/industry-participants/participant-register/. Note that a participant's obligations under the Code are not affected just because the participant ceases to be registered as a current participant (section 30 of the Act).

6 What is disclosure information?

The definition of disclosure information is set out in the Code as follows:

> ***disclosure information****, in relation to a* ***participant,*** *means information that—*
>
> *(a) is about the* ***participant****; and*
>
> *(b) is held by the* ***participant****; and*
>
> *(c) the* ***participant*** *expects, or ought reasonably to expect, if made available to the public, will have a material impact on the prices in the* ***wholesale market****.*

Authority's views

6.1 This section of the guidelines focuses on what information is likely, or unlikely, to be considered disclosure information for the purposes of the WMI disclosure obligation. This section explores each key aspect of the Code obligation, using examples where appropriate to illustrate the Authority's views and expectations.

Information about the participant

6.2 It is important to note that the WMI disclosure obligations in clause 13.2A are limited to disclosure information that the participant holds about itself, for instance about its business, its assets, its financial position, and its contracts.

6.3 Information a participant holds about its wholly owned subsidiaries is not information the participant holds about itself – with the exception of Transpower New Zealand Limited – because wholly owned subsidiaries are separate legal entities to the participant. In any of these cases, subsidiaries should consider if they need to make disclosure in their own right. Information a participant holds about joint ventures and special purpose vehicles that have been incorporated as companies will not fall within the definition of "disclosure information" for the same reason. However, information about joint ventures and special purpose vehicles that have been undertaken purely by agreement (that is, without being incorporated as a company) would fall within the definition for "disclosure information".

6.4 The Authority would be concerned if participants structured their affairs to avoid disclosure, such as by ensuring that a subsidiary or holding company holds information rather than the participant. The Authority is not sure that any such structuring of affairs would be successful but, if the Authority forms the view that the intention of the disclosure regime is being frustrated in that way, an amendment to the Code may be considered to extend the obligations to cover information about (or held by) subsidiary and holding companies of participants.

6.5 The definition of disclosure information is not aimed at capturing the collective information such as total electricity demand in the market, final spot prices, or system constraints. It is aimed at capturing a participant's own contribution to the collective position. For instance:

(a) a material change in a directly connected end-user's own electricity demand (for example, a major expansion in production capabilities) might be captured by the WMI disclosure obligations

(b) a participant (for example, a distributor) may act on behalf of a large consumer in the wholesale market who is not a participant. If that participant is informed by the large consumer that there will be a material change in its electricity demand, clause 13.2A may require the participant to disclose the material change in electricity demand. However, depending on the circumstances, the participant may not necessarily be obliged to disclose who the large consumer is.

6.6 In some circumstances the WMI disclosure obligations may relate to information about the participant and another party (who may or may not also be a participant). For instance, a participant that is a counterparty to a new contract may have WMI disclosure obligations in relation to aspects of that contract. This will occur if the impact of the contract on the participant would meet the definition of "disclosure information". The participant would likely be required to disclose the impact on its business, and may also need to disclose further details (subject to any permitted exclusions discussed later in these guidelines).

"Material impact on prices" test

6.7 The WMI disclosure obligations are drafted in a deliberately non-prescriptive manner. The obligations use "material impact on prices" in the relevant markets (discussed later) as the test, and require the holder of information to decide if the test is met.

6.8 The Authority acknowledges that to apply this test, the participant must:

(a) consider the facts and circumstances of the particular situation

(b) exercise its judgement.

6.9 The Authority believes that the holder of the information is in the best position to know the relevant facts and circumstances, and to exercise that judgement in the first instance. The exclusion provisions (discussed later) and the Authority's compliance regime (more generally) provide checks and balances on information holders that exercise their judgement and make disclosure decisions.

6.10 The Authority's focus is on information that is likely to have a material impact on prices in the relevant markets. The term "material impact" is not defined, nor are materiality metrics included in the Code or in these guidelines. Participants will need to exercise judgement whether information needs to be disclosed in the context of each particular circumstance. The Authority encourages participants to take a cautious approach when determining whether information will have a material impact on prices, and to err on the side of disclosing the information.

6.11 In the normal course of trading, information that has a material impact is most likely to be information that has a sustained effect across multiple trading periods. It is important to note that the facts and circumstances of a particular case could mean that having an effect over just a single trading period is sufficient to meet the test.

6.12 The locational scope of the impact may also be relevant to determining materiality. A relatively small matter could have a material impact on localised prices in certain circumstances, particularly if there are constraints (for example, transmission, generation, fuel delivery). The Authority considers that this would meet the test of "material impact on prices" even though the impact may be relatively localised.

6.13 The Authority notes that information which at one point had a non-material impact could have a material impact through a change in circumstances. The Authority encourages

participants to consider how sensitive the materiality might be to changing circumstances when making a disclosure decision.

6.14 The information could be quantitative and/or qualitative in nature. It may be generated regularly (for example, monthly financials or annual reports) or on an ad hoc basis (for example, an announcement on commissioning of new generation).

6.15 Factors that holders of information may find it useful to consider when applying the "material impact on prices" test include the following:

(a) would a reasonable person expect that the information would, if it were generally available to the market, have a material effect on the day-to-day decision-making of interested parties (see the following sections for discussion of "interested parties" and "day-to-day decision-making")?[7]

(b) would the impact be significant enough to extend over several days, weeks, or months?

(c) would the participant expect another participant to disclose such information in similar circumstances?

(d) has a participant disclosed similar information in similar circumstances previously?

(e) would a reasonable person expect that the information could materially alter the primary energy balance (that is, supply margin)?[8]

(f) even if the extent of the impact is small on a national basis, might the impact be material in a localised area?

(g) even if the extent of the impact is uncertain in current circumstances, is there a reasonable chance that the impact could become "material" if circumstances change in the near future?

(h) for outages, could a small change in the volume available (such as a few megawatts) have a material effect on prices?

6.16 It is important to note that the above factors are intended only to provide guidance on the type of issues that a holder of information may find it useful to consider and are not exhaustive. They do not constitute requirements or mandatory considerations in themselves and should not be deemed to exclude the consideration of factors not listed.

Interested parties

6.17 As noted in paragraph 6.15(a) above, the Authority considers the interested parties these WMI disclosure obligations are targeted at benefiting, are those parties with a key interest in the wholesale market including, for instance:

(a) existing and potential participants

(b) medium to large electricity users and other consumers who are directly and materially affected by prices in the relevant markets

(c) owners of electricity generating fuels (or holders of fuel contracts)

(d) providers of market services such as trading or demand aggregation

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7 The material impact test is based on what a reasonable person would expect to happen upon the release of the information.

8 A supply margin is the balance between supply and demand.

(e) current and potential investors in wholesale electricity market assets and services

(f) market commentators and analysts

(g) regulatory bodies such as the Authority, the Gas Industry Company, and the Commerce Commission

(h) Government agencies and officials.

6.18 Each participant should consider whom the interested parties might be when considering whether the "material impact on prices" test is met, and therefore whether information the participant holds needs to be disclosed.

Day-to-day decision-making of interested parties

6.19 As noted in paragraph 6.15(a) above, holders of information may find it useful to consider whether the information in question would have a material effect on the day-to-day decision-making of interested parties. The Authority considers that this could include, for instance, an interested party deciding to:

(a) alter bidding or offering strategies for energy or ancillary services

(b) alter hedge positions

(c) negotiate a fuel contract or exercise an option in an existing contract

(d) enter a new retailing area (or exit an existing area)

(e) alter aspects of the grid configuration, ratings, protection settings etc

(f) invest in new assets or expand existing assets (generation, transmission etc)

(g) mothball, decommission, or sell existing assets

(h) shutdown part of a major production facility for an extended period of time

(i) schedule (or reschedule) major maintenance.

6.20 This list of day-to-day decisions is intended only to provide guidance for participants when considering the materiality of the decision being made and is not exhaustive.

Relevant markets

6.21 The scope of the "material impact on prices" test is confined to the wholesale market.

The term "wholesale market" is defined in the Code as follows:

> ***wholesale market*** *means—*
>
> *(a) the spot market for* ***electricity****, including the process for setting—*
>
> *(i)* ***real time prices****:*
>
> *(ii)* ***forecast prices*** *and* ***forecast reserve prices****:*
>
> *(iii)* ***provisional prices*** *and* ***provisional reserve prices****:*
>
> *(iv)* ***interim prices*** *and* ***interim reserve prices****:*
>
> *(v)* ***final prices*** *and* ***final reserve prices****:*
>
> *(b) the markets for* ***ancillary services****:*
>
> *(c) the hedge market for* ***electricity****, including the market for* ***FTRs***

6.22 The Authority makes the following comments in relation to each of the relevant markets that are included in the definition of wholesale market:

(a) *The spot market for electricity* – this means the spot market that operates under Part 13 of the Code, and the processes by which the various prices listed in paragraph (a) of the definition are set.

(b) *The market for ancillary services* – this means the market for instantaneous reserves, frequency-keeping, voltage support, over-frequency reserve, and black start. These markets operate in the short, medium, and longer term, and are governed by the procurement arrangements in Part 8 of the Code, relevant provisions in Part 13 of the Code, the Procurement Plan (incorporated by reference in the Code) and the ancillary service contracts agreed between the system operator and ancillary service agents.

(c) *The market for financial hedge contracts for electricity (including FTRs)* – this includes electricity hedges or futures negotiated bilaterally, traded on exchanges such as ASX or traded over-the-counter (OTC). The market for financial hedge contracts is part of the wholesale market more broadly, that is the medium to long term interaction of electricity supply and wholesale demand. Accordingly, it encompasses parties such as generators, Transpower, distributors and major users making decisions on, for instance, (dis)investment, major maintenance, fuel contracting and electricity retailing.

Level of detail to disclose

6.23 Once a participant has established that it holds disclosure information and that no exclusion applies (refer section 7 below), the participant then needs to determine how much detail should be disclosed. The Authority considers that the participant, in making this determination, could have regard to the following factors:

(a) the nature of the disclosure information

(b) the relevant market(s) to which it relates

(c) how much detail an interested party would require in order to form a reasonable understanding of the scope and nature of the "material impact on prices"

(d) the scale and nature of the types of day-to-day decision-making that the disclosure information is likely to materially affect

(e) how much detail the participant would expect another participant to disclose in similar circumstances

(f) how much detail other participants have disclosed in similar circumstances in the past.

6.24 This list of factors is not exhaustive and should not be deemed to exclude the consideration of factors not listed.

6.25 The information should be in a usable form, which may differ for different types of information. For instance, quantitative information (data) should be in a form that can be readily imported into common analytical tools such as spreadsheets.

Some examples of disclosure information

6.26 The Authority has developed several examples to further assist participants consider their WMI disclosure obligations under clause 13.2A. The Authority stresses, however, that the obligation to decide if information is disclosure information remains with participants. Furthermore, disclosure decisions need to be made on a case-by-case basis after considering the facts and circumstances of the particular situation, and exercising judgement. Accordingly, the examples here are indicative, and should not be regarded as outlining a definitive position.

6.27 Under normal circumstances, the Authority considers that the following could reasonably be expected to have a material impact on prices in the relevant markets and therefore be disclosure information. The list is not exhaustive. Note also that the applicability of exclusions (discussed later in these guidelines) has not been considered in compiling this list.

(a) *Major investment and dis-investment decisions* – examples include a decision to build major new generation or transmission assets, mothball or decommission major existing assets, or undertake major upgrade or refurbishment of existing assets. A large electricity user scaling its production facilities up or down in a manner that would materially impact electricity demand would also be an example.

(b) *A significant change in fuel supply situation* – examples include buying (or selling) a significant quantity of coal, entering (or exiting) a significant gas contract, or a significant change in fuel storage/stockpile/transport capabilities. Whether the change is significant or not might depend on a number of factors such as the size of the change, the scale and location of the relevant generation, extent to which the change affects aggregate total thermal fuel contracted for generation, and market conditions at the time (for example, wet/dry, other fuel supply issues). See more information below.

(c) *A significant change in generation capability or mode of operation* – examples include a planned or unplanned outage of generation plant that would result in a significant reduction in generation capability, generation plant returning to service significantly earlier or later than previously notified ~~anticipated~~, a re-rating of asset capability, moving generating assets from baseload to peaking or into “long-term storage” for recall under certain conditions, or a change in resource consent conditions that would have a material impact on generation capability. The significance of the change will depend on factors such as the type, size and location of the generation, size and duration of the outage in question, transmission constraints and market conditions at the time.

(d) *A significant change in ancillary service capability* – examples include a decision to invest in ancillary service capability, or withdrawal of interruptible load from the reserves market to use for peak management.

(e) *A significant change in transmission capability* – examples include a planned or unplanned outage of transmission assets that would result in a significant reduction in transmission capability, transmission assets returning to service significantly earlier or later than anticipated, or a material change in asset ratings. The significance of the change will depend on factors such as the capacity and location of the transmission assets, size and duration of the outage in question and market conditions at the time.

(f) *A significant change in electricity contracting position* – examples include entering into, or terminating, a hedge contract, or group of hedge contracts ~~deriving from a single trading decision~~, that is/are of sufficient magnitude to materially alter spot, ancillary service or hedge market incentives and prices. Useful information to provide includes:

(i) for a contract for difference (CfD), an option, a fixed-price variable-volume (FPVV) or fixed-price fixed-volume (FPFV) contract:

1. start and end dates, size, strike price and reference price location

(ii) for an option to call a CfD (swaption):

1. start and end dates for the option to call a CfD
2. size, strike price and reference price location of a CfD
3. trigger conditions to both begin and end the term of a CfD
4. minimum and maximum lengths of time that a CfD may remain in place
5. number of times a CfD may be called during the term of the arrangement
6. whether the arrangement links to the operation of particular plant while a CfD is active.

Examples of disclosure information relating to thermal fuel

6.28 The following list of examples is provided specifically to assist electricity market participants with thermal fuel interests understand and apply their disclosure obligations.

(a) Example 1 – A generator's coal stockpile is running low meaning its availability to generate electricity may be restricted in the near future.

(i) This information may be material, depending on the individual circumstances.

(ii) In deciding what to publish, participants may find it useful to consider the following list of factors (current and future): overall supply and demand balance in electricity markets, likelihood of the coal-fired generator being dispatched, availability of other fuels, demand, size and location of generator.

(iii) Useful information to provide could include one or more of the following: coal stockpile levels; or when generation is likely to be constrained, by how much, and expected date of return to normal operations; or estimated number of remaining running days.

(iv) Previously a coal generator has provided more frequent updates about the size of their coal stockpile when market conditions and the level of the stockpile meant there could be an impact on wholesale market prices. The Authority's expectations are that this is consistent with clause 13.2A requirements and that this type of disclosure behaviour should continue.

(v) In light of the requirement to provide information *as soon as reasonably practicable*, historical quarterly disclosures may not be sufficient to comply with clause 13.2A.

(b) Example 2 – A major gas generator has difficulties in sourcing fuel due to a planned gas production outage in the near future. The gas production outage has been disclosed by the producer but there is no public information on which gas users will be affected.

(i) This information may be material, depending on the individual circumstances.

(ii) In deciding what to publish, participants may find it useful to consider the following list of factors (current and future): overall supply and demand balance in electricity and gas markets, likelihood of the generator being required, availability of other fuels, size and location of generator, impact on or response of other gas users, ability to get replacement fuel.

(iii) Useful information to provide could include one or more of the following: when generation is likely to be constrained, by how much, and expected date of return to normal operations.

(iv) If there is still some uncertainty around the information participants could indicate what aspect is uncertain, and when an update will be provided (see also paragraphs 7.3 – 7.4 regarding the use of an exclusion to partially withhold information).

(v) Where a thermal generator is impacted by an upstream fuel production or transport outage, the Authority considers electricity industry participants should disclose the impact on their operations, if the upstream outage is likely to have a material impact on prices. The Authority considers disclosure from upstream gas producers of a gas production outage without any insight into the effect on thermal generation is not necessarily sufficient for participants to understand the overall impact of that outage on the electricity sector.

(vi) Participants are reminded there is no longer an exclusion for commercial disadvantage.[9] This means it would not be appropriate for participants to withhold information to protect their position in negotiating for and/or securing replacement fuel supplies.

(c) Example 3 – Diesel fuelled generator participants may face an obligation to disclose if constraints to diesel availability may have a material impact on electricity prices.

6.29 Under normal circumstances, the Authority considers that the following are unlikely to have a material impact on prices in the relevant markets and are therefore unlikely to be disclosure information. The list is not exhaustive:

(a) minor adjustments in contracting position

(b) minor adjustments in fuel supply position

(c) minor maintenance decisions

(d) minor changes in outage scheduling

[9] Replaced with a 'reasonable person' exclusion in 2018, refer: https://www.ea.govt.nz/development/work-programme/risk-management/wholesale-market-information-disclosure/development/decision-paper-on-wholesale-market-information-disclosure-regime/#c17098

(e) minor investment in generation, transmission or ancillary services capability

(f) ~~minor fuel supply adjustments~~.

7 What exclusions apply?

The exclusions are set out in clause 13.2A(2) and 13.2A(6) of the Code as follows:

*(2) Despite subclause (1), a **participant** is not required to make **disclosure information** readily available to the public, if—*

*(a) the **disclosure information** is **excluded Code information**; or*

*(ba) a reasonable person would not expect the **disclosure information** to be made readily available*

*(c) the **participant** is bound by a legal obligation to keep the **disclosure information** confidential; or*

(d) doing so will be a breach of law; or

*(e) the **disclosure information** is already readily available to the public; or*

*(f) the **disclosure information** concerns an incomplete proposal or negotiation; or*

*(g) the **disclosure information** comprises matters of supposition or is insufficiently definite to warrant being made readily available to the public; or*

*(h) the **participant** claims legal professional privilege or privilege against self-incrimination in respect of the **disclosure information**; or*

*(i) the **disclosure information** is a trade secret.*

*(6) A **participant** must not enter into a confidentiality agreement with another person for the purpose of avoiding making **disclosure information** readily available to the public under this clause.*

The Code defines 'excluded Code information' in clause 1.1 of the Code as follows:

***excluded Code information** means information—*

*(a) that relates to **bids**, **offers**, **reserve offers**, or any **asset capability statement**; or*

*(b) that is provided to the **Authority**, any investigator, or the **Rulings Panel** and that is required to be kept confidential under this Code or the **Act**; or*

*(c) in relation to which the **Rulings Panel** has prohibited publication or communication.*

Authority's views

7.1 Once a participant has identified that information it holds is disclosure information, the participant may choose not to make the information readily available to the public if one of the exclusions in clause 13.2A(2) applies.

7.2 The onus of demonstrating that an exclusion applies (refer to section 8) rests with the holder of the information.

7.3 Consideration of whether an exclusion applies should be done on a case-by-case basis and will depend on the nature of the information and the specific circumstances. If any of the exclusions apply to only some of the disclosure information, a participant must still publish the disclosure information that does not fall within the exclusions. For example, a participant may publish disclosure information without disclosing information that has been communicated to the participant under an obligation of confidence.

7.4 In cases where a participant chooses to withhold certain parts of disclosure information on the basis that one of the exclusions apply, the participant should consider stating that the information that it has disclosed has been partially withheld. This will alert interested parties to the fact that they may not have a complete picture of the relevant information, and avoid confusion or the potential for the information released to be seen as misleading.

7.5 This section of the guidelines discusses each of the information disclosure exclusions listed in clause 13.2A of the Code. Some are self-evident and/or well-documented in law and little discussion is required.

7.6 It is important to note that the Code does not prevent a participant publishing the disclosure information, even if an exclusion applies. The Authority encourages participants to consider whether they could publish disclosure information despite the exclusions applying. In considering this, a participant may like to take into account whether:

(a) the participant would expect another participant to withhold such information in similar circumstances

(b) a participant has withheld similar information in similar circumstances previously.

Excluded Code information

7.7 A participant is not required to make publicly available disclosure information which is excluded Code information. "Excluded Code information" is defined in clause 1.1 of the Code (see previous page).

A reasonable person would not expect disclosure

7.8 A participant is not required to make disclosure information publicly available if a reasonable person would not expect that information to be publicly disclosed.

7.9 The Authority considers that a ‘reasonable person’ in this context:

(a) is not ‘the person on the street’

(b) is a sophisticated market participant familiar with the purpose and scope of the continuous disclosure regime, the market and regulatory framework within which it operated, and publicly known circumstances[10] (refer the section on ‘interested parties’ earlier in these guidelines, starting at paragraph 6.17).

7.10 This ‘reasonable person’ exclusion requires an objective assessment of the circumstances relating to the information concerned to determine whether a reasonable person would not expect the information to be disclosed. Participants will need to

[10] This draws on the High Court’s interpretation in *Auckland International Airport Ltd v Air New Zealand Ltd* (2006) 3 NZCCLR 382.

exercise judgement as to whether the requirements of this exclusion are met on a case-by-case basis.

7.11 Participants may find it useful to consider the following non-exhaustive list of factors for guidance:

(a) whether disclosure by the participant would unreasonably prejudice that participant's position and activities in the wholesale market or in their commercial operations more generally, taking into account the purpose and scope of the disclosure provisions. The Authority notes that this does not mean that participants can simply choose to withhold unfavourable news, and suggests participants apply the following steps for determining if disclosure would result in unreasonable prejudice:

(i) does the information relate to the participant's commercial position?

(ii) what would be the prejudice to that commercial position if the information were disclosed?

(iii) how likely would it be for the disclosure to cause that predicted prejudice?

(iv) why is the predicted prejudice unreasonable, taking into account the purpose and scope of the disclosure provisions?

(v) why does the likelihood of the predicted prejudice mean the information must be withheld, taking into account the purpose and scope of the disclosure provisions?

(b) whether the participant would not expect another participant to disclose such information in similar circumstances

(c) whether a participant has disclosed similar information in similar circumstances previously.

7.12 A participant's contract 'book' could be considered to meet the definition of 'disclosure information'.[11] However, a participant's contract book is highly commercially sensitive and disclosure would be likely to unreasonably prejudice that participant's position or activities in the wholesale market. The Authority considers it is unlikely a reasonable person would expect continuous disclosure of the entire book. However, individual contracts and trading decisions whose results are reflected in the book, and which have a material impact on market prices may not come under the reasonable person exclusion.

7.13 The Authority also considers that it is unlikely a reasonable person would expect a participant to disclose a model developed by itself (for example, its hydro modelling).

Legal obligation to keep information confidential

7.14 A participant is not required to make any disclosure information publicly available if there is a legal obligation to keep the disclosure information confidential.

7.15 To establish that a participant has a legal obligation to keep information confidential, there must generally be an understanding between the provider of the information and the recipient that the information is communicated in confidence. For example, an obligation of confidence will not exist simply because a participant unilaterally imposes

[11] A 'book' is the total of all forward positions held by a trader or company.

an obligation of confidence on itself. Similarly, a simple declaration that information is confidential is insufficient to establish that such an obligation exists.

7.16 The understanding that information is communicated between parties in confidence may be express (for example, a signed confidentiality agreement) or implied from the circumstances of the particular case.

7.17 The fact that information is disclosed to third parties for limited purposes does not necessarily waive confidentiality in respect of others. However, confidentiality can be destroyed if there has been sufficient prior publication. This is a question of degree in the circumstances of each case, and therefore each case must be considered on its own merits.

7.18 It is important to note that a participant would be in breach of the Code if it entered into a confidentiality agreement with another person for the purpose of avoiding the publication of disclosure information under clause 13.2A. A participant is entitled to enter into a confidentiality agreement with another party, as long as the purpose of the confidentiality agreement is not to avoid publication of disclosure information that the participant would have been required to publish, but for the confidentiality agreement.[12]

Breach of law

7.19 A participant is not required to make disclosure information publicly available if making the disclosure information publicly available will be a breach of law.

Already readily available to the public

7.20 The Authority's view is that the words "readily available to the public" in this context mean that the information must be able to be accessed easily, without delay, and without conditions. For example, if a participant placed information on a website that the public must subscribe to in order to access the information, the Authority would not consider that the information had been made readily available to the public.[13]

7.21 The Authority would not expect the holder of the information to disclose the information if it could demonstrate that the same (or substantially similar) information was already readily available to the public, free of charge. However, in the example of a thermal generator being impacted by an upstream gas production outage, disclosure of that outage by the upstream gas producer is unlikely to be considered by the Authority as already available to the public, as the impact on the electricity market is not necessarily obvious (see 6.28(b)).

7.22 For instance, information in the publicly accessible part of the WITS information system, by virtue of participants undertaking normal day to day spot market trading, is readily available to the public free of charge and the relevant participants need not separately disclose that information. Similarly, the Electricity Market Information (EMI) website is the Authority's avenue for publishing data, market performance metrics, and analytical tools to facilitate effective decision-making within the New Zealand electricity industry.[14] EMI is readily available to the public free of charge. Information published in EMI need not be separately disclosed by participants.

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12 Clause 13.2A(6).

13 Another example would be if members of the public were otherwise required to provide information about themselves before being given access to the information.

14 http://www.emi.ea.govt.nz/.

7.23 However, information submitted to the NZX or ASX by listed companies as part of their continuous disclosure obligations under the listing rules may not, in the Authority's view, satisfy the requirement to make information readily available to the public. Although the platforms operated by those exchanges are not closed to the public, they are specifically designed to accommodate the supply of information to issuers, and may not be easily accessible or understandable by other parties. In particular, they are not platforms focused on the disclosure of information affecting the electricity markets.

An incomplete proposal or negotiation

7.24 A participant is not required to make disclosure information publicly available if the disclosure information concerns an incomplete proposal or negotiation.

7.25 A negotiation is considered to be complete at the point a contract (which may be conditional) is signed. The Authority is unlikely to regard a signed conditional contract as being incomplete. A participant will need to review the obligations in any arrangement they enter into and assess how binding eg, in a signed heads of agreement where certain terms are binding.

Matters of supposition or insufficiently definite

7.26 A participant does not have to disclose matters of supposition or disclosure information which is insufficiently definite to warrant being made readily available to the public.

7.27 For example, a participant does not have to publicly disclose that there is a possibility of an outage of one of its generators. However, once a decision has been made that a planned outage is required for maintenance, then it may be difficult for the participant to argue that this exclusion applies.[15]

Legal professional privilege or privilege against self-incrimination

7.28 A participant is not required to make disclosure information publicly available if legal professional privilege or privilege against self-incrimination applies to the disclosure information.

Legal professional privilege

7.29 Legal professional privilege is designed to protect confidential legal communications. There are two types of legal professional privilege:

(a) solicitor/client privilege extends to all communications between a legal advisor (acting in that capacity) and the client for the purposes of seeking or giving legal advice or assistance, irrespective of legal proceedings

(b) litigation privilege extends to communications with the client or third parties, if those communications are for the main purpose of enabling a legal adviser to advise a client on the conduct of litigation (whether current or anticipated).

7.30 A document is not subject to legal professional privilege merely because it is signed by a legal advisor or includes a claim to being privileged. Consideration must always be given to the content and substance of the information and the purpose for which it was provided.

[15] Provided the information is disclosure information.

Privilege against self-incrimination

7.31 Privilege against self-incrimination can be claimed by a person when there is a risk that criminal charges are likely to be laid against him or her as a result of any information he or she gives. Privilege against self-incrimination extends to information supplied by a person representing a corporation that is incriminating for the corporation, although not incriminating for the person himself or herself.

Waiver

7.32 Privilege is held by the client. Accordingly, even if information is subject to privilege, it is always open to the client to decide to waive the privilege and publish the information.

Trade secret

7.33 A participant is not required to make disclosure information that is a trade secret publicly available. Some factors that could be considered when determining whether the disclosure information amounts to a trade secret are:

(a) the extent to which the information is known outside of the participant's business

(b) the extent to which it is known by employees and others involved in the participant's business

(c) the extent of measures taken by the participant to guard the secrecy of the information

(d) the value of the information to the participant's contemporaries

(e) the amount of effort or money extended by the participant in developing the information

(f) the ease or difficulty with which the information could be properly acquired or duplicated by others.

7.34 This list of factors is intended as guidance only and is not exhaustive.

8 Who has to demonstrate that an exclusion applies?

The relevant Code requirements in clause 13.2A are:

*(5) A **participant** that does not make information readily available to the public under this clause must, if required to do so by the Authority,—*

*(a) satisfy the **Authority** that subclause (2) [exclusions] applies to the **disclosure information,** if the **participant** relies on subclause (2); or*

*(b) satisfy the **Authority** that the information is not **disclosure information**.*

Authority's views

8.1 Placing the onus of demonstrating an exclusion applies on the holder of the disclosure information who is relying on an exclusion applying is a key aspect of the design the Authority has adopted, and is consistent with giving the holder the duty of deciding if the definition of disclosure information is met. This is reinforced by the Authority's right under clause 13.2A(5) to require a participant to demonstrate to the Authority's satisfaction that an exclusion applies. This 'please explain' provision is specifically designed to facilitate compliance with the WMI disclosure obligations. The Authority also has powers to gather information and enforce the Code more generally.

8.2 The Authority can seek information from participants if it receives an allegation that a participant has breached the provision in the Code. If a breach is alleged, the Authority will process the alleged breach under its *Enforcement Policy 2017*.

8.3 If a participant relies on an exclusion when an exclusion does not apply, the participant could be found to have breached the Code from the time it should have published the disclosure information in the first place. In this case, the participant would be required to publish the disclosure information, and refusing to do so may mean that the participant would be continuing to breach the Code.

9 When and for how long should the information be made readily available to the public?

The relevant Code requirements in clause 13.2A are:

> *(1) Each **participant** must make **disclosure information** in relation to the **participant** readily available to the public, free of charge, as soon as reasonably practicable after the **participant** becomes aware of the information.*
>
> *(3) A **participant** that relies on subclause (2) [exclusions] must, as soon as reasonably practicable, make the **disclosure information** readily available to the public, free of charge, if subclause (2) ceases to apply to the **disclosure information**.*
>
> *(4) If information ceases to be **disclosure information**, a **participant** is no longer required to make the information readily available to the public.*

Authority's views

9.1 In essence, a participant must disclose disclosure information as soon as it becomes aware of it, subject to reasonable practicalities which might include verification, approval, and communications, etc.

What does "becomes aware of" mean?

9.2 The Authority considers that a participant is in the best position to determine when they "become aware of" disclosure information. In general terms, a participant needs to disclose disclosure information as soon as practicable after anyone in the organisation becomes aware of the disclosure information.

9.3 Therefore, participants need to ensure they have appropriate systems and procedures in place to ensure that:

(a) any information that may be disclosure information is promptly identified

(b) information is promptly passed on to whoever in the organisation has authority to:

(i) determine whether disclosure is required

(ii) make disclosure information readily available to the public.

9.4 A participant should consider identifying a person or role in their organisation who is responsible for coordinating and leading the process of identifying and disclosing disclosure information. This person could consider who in their organisation is likely to frequently become aware of disclosure information and make sure these people are aware of their obligations to pass on any information that may be disclosure information.

Business hours or 24/7 disclosure

9.5 The relevant markets operate on a 24/7 basis. Furthermore, there is increasing interaction with offshore markets, particularly ASX, whose business hours differ to those in New Zealand. Disclosure information may therefore be relevant across a 24/7 timeframe, rather than just during normal business hours.

9.6 The Code requires that disclosure information be made readily available to the public as soon as reasonably practicable.

9.7 A participant may become aware of disclosure information outside of normal business hours. The Authority acknowledges that in some circumstances and/or for some participants, it may not be “reasonably practicable” to disclose information outside of normal business hours. In particular, this may be the case for smaller or less well-resourced participants who may not operate on a 24/7 basis and/or who may contract out aspects of their operations such as website maintenance.

How long must disclosure information remain readily available?

9.8 The participant must ensure that, once disclosure information has been published, the information continues to be readily available to the public, free of charge for as long as it meets the definition of "disclosure information".

9.9 The Authority is mindful that historic disclosure information may still be of great interest even if, strictly speaking, it no longer meets the definition of "disclosure information". Furthermore, a potential new entrant may not be aware of historic disclosure information. The Authority encourages participants to leave information available to the public even after the participant is no longer required to do so.

Information that is no longer the subject of an exclusion provision

9.10 In the case of disclosure information that had been subject to an exclusion provision, the participant must disclose the information as soon as the exclusion ceases to apply, provided the information is still disclosure information (that is, it is still captured by the definition of disclosure information).

9.11 This provision also applies when a participant fails to demonstrate to the Authority that an exclusion applies.

10 How should the information be made readily available to the public?

Clause 13.2A(1) of the Code requires that disclosure information is made:

"readily available to the public, free of charge".

Authority's views

10.1 The Code does not specify how the information is to be made publicly available, thereby giving the holders of the information flexibility to adopt an approach that suits their circumstances and the nature of the information to be disclosed.

10.2 The Authority has set out guidance for participants to consider when determining their approach to disclosure.

Readily available to the public, free of charge

10.3 The Act includes a general definition of "publicly available", and the Authority has drawn on this definition in these guidelines:

***publicly available**, in relation to making a document or information available, means that—*

(a) the document or information is available for inspection, free of charge, on an Internet site that is publicly accessible at all reasonable times (except to the extent that doing so would infringe copyright in the material or be inconsistent with any enactment or rule of law); and

(b) a copy of the document or information is available for inspection at all reasonable times, free of charge, at the head office of the person required to make it publicly available or, if the person is a Minister, at the head office of the relevant Ministry; and

(c) copies of the document may be purchased by any person at a reasonable price.

10.4 The Authority considers that the following conditions must be satisfied for disclosure information to meet the requirements of being "readily available to the public, free of charge":

(a) If the information is disclosed on a website, then the website needs to be readily accessible to the public. A website is not readily accessible if a person must first meet registration requirements and be approved as a user of the website. If the website administrator is able to deny access then this would not constitute "readily available to the public".

(b) The location of the information needs to be relatively easy for interested parties to find. If the information is disclosed on a website, then an interested party should be able to locate the information using a straightforward internet search with suitable search engine (for example, Google) and appropriate keywords. Ideally, interested parties should also be able to subscribe to receive notifications whenever changes are posted to the website. Disclosing the information in a relatively obscure or non-

intuitive location would not meet the Authority's expectations for "readily available to the public".[16]

(c) The information should be in a usable form. For quantitative information (data), the Authority encourages disclosing in a form that can be readily imported into common analytical tools such as spreadsheets.

(d) The term "free of charge" means no specific cost is imposed on an interested party accessing the information. It is assumed that interested parties have internet access and can receive email notifications as part of their normal business activities. If the website required a subscription payment or imposes an access charge then this would not constitute "free of charge".

(e) The Authority does not consider it reasonable to require a participant to disclose information in a physical format (for example, printed copy or on DVD/CD) free of charge, if it is already making the information publicly available free of charge on a website. Should an interested party request a physical copy, it would be reasonable for the participant to be able to impose a small charge to recover the costs involved.

(f) The Authority recognises that although the wording in clause 13.2A requires the disclosure information to be made available to the public at large, the parties interested in this type of information are likely to be parties with knowledge of the electricity industry, and therefore participants may word the disclosure information accordingly.

Preference for standardised disclosure practices

10.5 The Authority's preference is for participants to establish standardised disclosure practices (for example, format, location, timing), particularly where several participants are disclosing similar information. The facilitated disclosure arrangements that some generators have adopted for publishing information on snowpack is an example of this. The Authority is happy to assist participants establish standardised disclosure practices where practicable.[17]

10.6 In the following example format, participants can partially meet the clause 13.2A obligations by regularly disclosing the estimated firm and non-firm fuel they have available to meet generation capacity. This could reduce the need for participants to continually assess their fuel availability for materiality and simplify compliance.

10.7 The intention is to have monthly disclosure which align with information that is already gathered for the purposes of internal management reporting. This would not necessarily relieve participants of the obligation to publish other ad hoc information that may meet the threshold of disclosure information. It would provide data to assist participants and interested parties to assess thermal generation risks.

10.8 The disclosure format could provide indications of firm and non-firm fuel supply and be published regularly (eg, monthly), with an out-of-cycle update only required if there is substantial unexpected event.

(a) Firm: >90% confidence in having access to that quantity of fuel

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16 The Authority would consider publishing the location of such information (for example, web address) on its own website if participants request this. To date no such request has been received.

17 Disclosure of thermal fuel information is an example that has been suggested by some parties.

(b) Non firm: <90% confidence in having access to that quantity of fuel.

	Fuel Storage Volumes					Contracted Volumes				
Period	**Coal**	**Gas**	**Hydro**			**Coal**		**Gas**		**Hydro**
			P20	**P50**	**P80**	**Firm**	**Non firm**	**Firm**	**Non firm**	
Current month	10 GWh	40 GWh	20 GWh	25 GWh	30 GWh	20 GWh	10 GWh	20 GWh	10 GWh	N/A
Month +1	10 GWh	40 GWh	20 GWh	25 GWh	30 GWh	25 GWh	10 GWh	25 GWh	10 GWh	N/A
Quarter +1	40 GWh	50 GWh	80 GWh	90 GWh	100 GWh	30 GWh	25 GWh	30 GWh	25 GWh	N/A
Quarter +2	40 GWh	50 GWh	80 GWh	90 GWh	100 GWh	30 GWh	25 GWh	30 GWh	25 GWh	N/A
Year +1	123 GWh	47 GWh	230 GWh	300 GWh	415 GWh	123 GWh	100 GWh	123 GWh	100 GWh	N/A
Year +2	N/A	N/A	N/A	N/A	N/A	123 GWh	100 GWh	123 GWh	100 GWh	N/A

10.9 More generally, participants are likely to undertake significant analysis and monitoring of their projected fuel and generation positions for internal risk management purposes. This analysis could provide the basis for external disclosure in some summarised format. If some form of regular standardised format is used for external disclosure purposes, there should be sufficient information to explain the nature of the disclosed data.

Use of POCP platform for disclosure of outage information

10.10 In addition to the WMI disclosure requirements under clause 13.2A, the Code includes asset outage disclosure obligations under Technical Code D in Schedule 8.3 of the Code:

(a) Asset owners must notify planned asset outages to the system operator if the outages may impact on the system operator's ability to meet its principal performance obligations.[18]

(b) Asset owners must notify the system operator up to 12 months ahead of planned outages, and update the system operator of any changes as they become aware of them.

(c) The system operator must regularly publish an asset outage programme containing all the notified planned outage information.

10.11 In support of the Technical Code D outage obligations, the Planned Outage Co-ordination Process (POCP) is a set of processes and business rules relating to outage notification, outage co-ordination and the outage database. POCP was jointly developed by the system operator and other electricity industry participants through a series of industry workshops in 2003. It has been reviewed and developed since that time.[19] The system operator operates the POCP platform, including the outage database, for planned outage notification, publication and co-ordination.

10.12 It is important to note that, although the outage notification obligations under Technical Code D are mandatory, the POCP provisions and asset owners' use of the POCP platform for outage notification are both voluntary. The Authority and the system operator strongly encourage asset owners to use the POCP platform to meet their Technical

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18 For Part 8, asset owners are generators, distributors, grid owners and directly connected consumers.

19 In particular, POCP was reviewed as part of the introduction of clause 13.2A in 2013 to enable participants to meet their clause 13.2A WMI disclosure obligations simultaneously with their outage disclosure obligations and again in 2019/20. Refer: https://www.transpower.co.nz/system-operator/stakeholder-interaction/planned-outage-coordination-process

~~The POCP business rules as at July 2015 are available from the system operator's website here https://www.transpower.co.nz/sites/default/files/bulk-upload/documents/POCP%20Business%20Rules%20as%20at%2010%20July%202013.pdf.~~

Code D planned outage notification obligations, as it provides a timely, efficient and standardised process for planned outage co-ordinating and publication.

10.13 The Authority acknowledges that participants might wish to utilise the POCP platform for disclosure of outage information that is also captured by the clause 13.2A WMI disclosure obligations. However, participants and other interested parties need to be aware of important differences between the two sets of disclosure obligations and the implications of different approaches to disclosure.

There are differences in what information needs to be disclosed

10.14 Firstly, the test for requiring disclosure of outage information is different under each set of disclosure obligations:

(a) under clause 13.2A the test is "…have a material impact on prices in the wholesale markets"

(b) under Technical Code D the test is "…may impact on the system operator's ability to plan to comply, and to comply, with the principal performance obligations".

10.15 Depending on the nature of a planned outage, and the circumstances at the time, a planned outage may meet the test for disclosure under one set of obligations but not the other. Furthermore, circumstances change over time, and a planned outage that did not meet one or other test at one point in time may do so at a later point in time. Participants must be mindful of both sets of obligations and of the different tests. The Authority encourages participants to take a cautious approach, erring on the side of greater disclosure.

10.16 Secondly, participants meet their clause 13.2A obligations by making disclosure information about themselves readily available to the public. However, asset owners meet their Technical Code D obligations by *notifying the system operator* of a planned outage, and the obligation to *publish* the outage programme containing all notified planned outage information rests with the system operator.[20]

10.17 Asset owners using the POCP platform notify the system operator by logging into the POCP platform and entering the planned outage information directly. The information is then visible, and thus publicly available, without further action by either the asset owner or the system operator. If the outage information is also disclosure information under clause 13.2A, then the asset owner will simultaneously meet both sets of disclosure obligations provided the asset owner:

(a) enters the outage information into the POCP platform as soon as reasonably practicable after becoming aware of it

(b) updates the outage information in the POCP platform as soon as reasonably practicable after becoming aware of the need to update it.

10.18 However, although the outage notification obligations under Technical Code D are mandatory, use of the POCP platform to meet these mandatory obligations is voluntary. Some asset owners may choose not to use it, opting instead to notify the system operator directly. Until published by the system operator (which may not be immediately), that asset owner's outage information is not publicly available and would therefore not meet the clause 13.2A requirements for disclosure information.

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[20] Clauses 2 and 6 respectively of Technical Code D in Schedule 8.3 of the Code.

~~10.19 Although Technical Code D only requires the system operator to 'regularly publish' an outage programme containing all notified planned outages, the POCP provisions (as at July 2015) tighten this to 'as soon as practical'. This is very similar to the clause 13.2A requirement of 'as soon as reasonably practicable'.~~

Disclosure of security of supply information to the system operator

10.20 Within Schedule 8.3 of Part 8 of the Code, the system operator can request any additional information from participants for the purposes of planning to comply or complying with its principal performance obligations (relating to system reliability or security of supply) (clause (2)(1)(c) of Technical Code A). For example this information may include a thermal fuel supply issue that may limit generation from an asset's stated capacity or as stated on POCP. The Authority reminds participants of the importance of complying with requests of this nature. Where possible participants should be proactively providing information of this nature to the system operator rather than waiting for a request.

Use of the Hedge Disclosure System for disclosure of contract information

10.21 In addition to the wholesale market information disclosure requirements under clause 13.2A, the Code includes specific hedge disclosure obligations in subpart 5 of Part 13. The Authority operates the Hedge Disclosure System as the platform participants must use for disclosure of this information.

10.22 The Authority acknowledges that participants might wish to utilise the Hedge Disclosure System to meet their clause 13.2A obligations relating to disclosure of risk management contract information. However, participants and other interested parties need to be aware of important differences between the two sets of disclosure obligations.

There are differences in what information needs to be disclosed

10.23 Under subpart 5 of Part 13, participants are required to submit certain risk management contract details into the Hedge Disclosure System. The information to be submitted varies for different types and durations of risk management contract, but generally relates to the date, term, quantity, price and location.

10.24 It is important to note that the counterparties to each contract are not identified when the submitted information is published in the Hedge Disclosure System; that is, the contract counterparties are anonymous. This is sufficient for the hedge disclosure obligations where the purpose is to enable parties to formulate their own estimated forward price curves for electricity based on historical information, and to facilitate the ready comparison of electricity prices and other key terms of risk management contracts.

10.25 However, if a participant enters into a risk management contract, and the act of doing so meets the 'material impact on prices' test under the WMI disclosure obligations (and no exclusion applies), then the participant is obliged to disclose information about that contract under clause 13.2A. Importantly, the Authority considers that the provisions of clause 13.2A mean that this disclosure cannot be anonymous, and that the participant would need to include in the information it publicly disclosed that it is a party to the contract. In such circumstances, disclosure through the Hedge Disclosure System would not fully meet the requirements of clause 13.2A because the contract counterparty is not published. Currently, there is no provision in the Hedge Disclosure System for the participant to publicly identify themselves as a contract counterparty.

10.26 Conversely, to meet the requirements of clause 13.2A, the participant may not need to disclose as much detail as Subpart 5 requires. In particular, it is likely that a participant could argue that disclosure of the contract price would meet the test of the ‘reasonable person’ exclusion and therefore need not be disclosed.

There are differences in the required timing for disclosure

10.27 The timing of disclosure is also a factor to be considered. Under the hedge disclosure requirements, the contract details must be submitted no later than 5pm, five business days after the trade date for a CfD or options contract, and 10 business days after the trade date for all other risk management contracts.

10.28 However, for contract information that must be disclosed under clause 13.2A, the Code requires that the participant must disclose that information as soon as reasonably practicable after becoming aware of it. Disclosure up to 5–10 days after entering into the contract would not meet this timing requirement.

Appendix A Brief overview of the wholesale market and some key terms

A.1 Retailers and a small number of customers, typically large industrial users, buy electricity directly from the spot market. These parties will typically also enter into financial contracts, often called hedges, which smooth out some or all of the volatility in spot prices. Jointly, the spot and hedge markets are the major components of the wholesale electricity market, which also includes the ancillary services markets and the market for financial transmission rights (FTRs).

A.2 Generators that are bigger than 10 MW or are grid connected compete in the spot market for the right to generate electricity to satisfy demand, subject to transmission capacity. They do this by submitting offers through the wholesale information and trading system (WITS). Each offer covers a future half-hour period (a trading period) and is an offer to generate a specified quantity at that time in return for a nominated price. Similarly, purchasers submit bids to purchase a quantity of electricity.

A.3 The system operator (Transpower) uses a scheduling, pricing and dispatch system to rank bids and offers in order of price and selects the lowest cost combination of resources to satisfy demand while accounting for factors such as ancillary services, losses and constraints. Changing demand and supply over the course of a day results in price differences each half-hour trading period. Prices also vary by location, reflecting the costs of getting electricity from source (generators) to destination (consumers).

A.4 As pricing manager, NZX is responsible for calculating and publishing the spot prices at which electricity market transactions are settled. Final (spot) prices are derived using the same model the system operator uses to dispatch generation. The pricing manager calculates approximately 12,000 final prices every day, which are published to market participants through WITS. These final prices are provided to the clearing manager to use in the clearing and settlement processes. The clearing manager also calculates and invoices ancillary services and FTR settlement.

A.5 In order to manage the risk of price movements in the spot market, generators and purchasers can enter into hedge contracts to insulate them from variations in the spot price of electricity. This improves their ability to manage tight supply situations and assists retail competition. Traditionally, the hedge market in New Zealand has operated through over-the-counter (OTC) contracts, where buyers negotiate directly with sellers to agree on a price. As an alternative to OTC contracts, buyers and sellers of electricity are able to contract on the futures market operated by the ASX. FTRs are a type of hedge contract that can protect wholesale market participants from half-hourly variations in spot-market prices at one location versus another. A simple FTR market is now in operation.

A.6 There are five ancillary services: frequency keeping, instantaneous reserves, over-frequency reserve, voltage support and black start. Frequency keeping and instantaneous reserve operate on market-based procurement, with offers of quantity and price used to select the respective providers in each half-hour trading period. The other three ancillary services are procured bilaterally by the system operator.

Glossary of abbreviations and terms

Act	Electricity Industry Act 2010
ASX	Australian Securities Exchange
Authority	Electricity Authority
Board	Electricity Authority Board
CfD	Contract for difference
Code	Electricity Industry Participation Code 2010
Disclosure information	As this term is defined in part 1 of the Code
Disclosure obligations	Wholesale market information (WMI) disclosure obligations under clauses 13.2 and 13.2A of the Code
EMI	The Authority's Electricity Market Information website
FPFV	Fixed-price fixed-volume
FPVV	Fixed-price variable-volume
FTRs	Financial Transmission Rights
Hedge Disclosure System	The website used to log both ASX and OTC transactions undertaken by market participants
NZX	New Zealand Stock Exchange
OTC	Over-the-Counter
POCP	Planned Outage Co-ordination Process
Relevant markets	The markets described in the definition of "wholesale market" in Part 1 of the Code
System Operator	Transpower in its capacity as system operator as defined under the Act
WITS	Wholesale Information and Trading System, operated by NZX as a service provider
WMI	Wholesale market information