

October 2020: UTS; review of high standards of trading conduct; compliance investigations; and a market review

The Electricity Authority ensures the Electricity Industry Act 2010 (the Act), regulations made under the Act and the Electricity Industry Participation Code (the Code) are accurately and consistently applied.

We work with participants and industry bodies to improve awareness of obligations and improve practice, and support understanding of the electricity market and how it benefits consumers.

While participants are obliged to report breaches, we also investigate issues and trends to identify breaches and their causes. Our compliance function helps improve the industry more generally, as lessons learned support our education of participants and help us to identify and resolve ongoing or systemic issues.

The Authority has four distinct pieces of work underway in relation to reviewing, monitoring and enforcing the rules on trading conduct behaviour in the spot market. These are distinct pieces of work which collectively contribute to trust and confidence in the market and thriving competition.

This summary confirms the purpose of each piece of work and gives an update on progress.

Undesirable Trading Situation

An undesirable trading situation (UTS) in the electricity market is a situation which threatens, or may threaten confidence in, or the integrity of, the wholesale market that cannot be resolved under the Code.

In December 2019 the Authority received a claim of an undesirable trading situation. The claimants also alleged breaches of the high standards of trading conduct.

A claim of a UTS is significant and this claim was no different – it is detailed and requires careful analysis and consideration. The Authority released a preliminary decision on the claim in June 2020. The Authority's preliminary decision found there was an undesirable trading situation between 3 December and 18 December 2019.

We have received and considered detailed submissions and cross submissions in response to our preliminary decision. The submissions cover a wide range of perspectives and reinforce the complexity of the claim, and the analysis required.

The Authority is preparing a supplementary paper for a short consultation in November. The consultation will seek further input on discrete matters in light of the submissions and cross submissions. The Authority will make a final decision after consideration of submissions on the supplementary consultation. At this stage, the Authority intends to make a final decision before the end of the year.

The Code sets out the actions we may take to correct an undesirable trading situation. If a UTS is found, we will consult on the preferred actions to correct.

Timeframe: The Authority Board intends to consider a final decision in December 2020

The 2019 UTS claim is being considered independently of the compliance investigations into alleged breaches for the same period. The test for a UTS is separate from the compliance process.

Review of the high standards of trading conduct

Part 13 of the Code focuses on trading arrangements. Under this part are trading conduct provisions – known as the high standards of trading conduct (HSOTC). These provisions (rules) are intended to encourage wholesale electricity market participants to carry out appropriate trading behaviour.

The current trading conduct rules are under review.

In November 2017, the Authority Board commissioned the Market Development Advisory Group (the MDAG) to consider whether the trading conduct provisions are adequate to promote the Authority's statutory objective.

The MDAG will make their recommendations to the Authority Board in December 2020. They have consulted with industry and engaged external legal expertise to test their proposal. The proposed amended provisions are intended to provide clarity in the interpretation and enforcement of the trading conduct provisions.

This review is a separate process from the assessment of the UTS claim and the compliance investigations.

Details of the HSOTC review are published on the Authority's website.

Timeframe: The Authority Board intends to consider any Code changes by the middle of 2021

The trading conduct rules, along with the UTS provisions are key mechanisms to promote confidence in the wholesale market. While they are both key mechanisms, they are distinct from one another. A breach of the HSOTC provisions does not imply or require a UTS and a UTS does not require or imply a breach of the HSOTC provisions.

Compliance investigations

The Authority's compliance team receive and assess breach allegations against the Code.

When a claim is alleged, the team initiate a fact-finding stage. Based on the information gathered, a report on the alleged breach is presented to the Compliance Committee. The Committee then decides what action to take - decide to take no further action; or issue a warning letter; or appoint an investigator to investigate the alleged breach. If an investigator is appointed, a notice of investigation is published on the Authority's website. The investigator then attempts to settle the matter informally between the parties and prepares a report and recommendation for the Compliance Committee. The Compliance Committee then decides to approve or reject a settlement or recommends to the Authority's Board to lay a formal complaint with the Rulings Panel.

The Authority's compliance team are currently investigating three cases under the current HSOTC provisions. These cases are about alleged breaches of the HSOTC by Meridian, Contact and Genesis. The allegations against Contact and Meridian were made as part of the UTS claim. All three cases were initiated after the HSOTC review was underway.

*The Authority's **Compliance Committee** makes decisions on alleged breaches of the Act, regulations and the Code. The Committee determines appropriate enforcement responses, approves settlements and makes recommendation to the Authority Board about laying complaints with the Rulings Panel and initiating prosecutions. The **Rulings Panel** deals with complaints about breaches of the Code, appeals against certain decisions and resolves certain disputes relating to the Code.*

Timeframe: The compliance investigations are ongoing.

Market review: 2019/20 wholesale market prices review

An enquiry, review or investigation looks at the circumstances giving rise to an out of the ordinary event, including the actions of participants. It may result in suggestions for Code amendments, market facilitation measures, or in a finding that no further action is needed.

The Authority initiates the review and usually publishes a report of its findings.

We actively monitor the market. At the time of the UTS claim, we had already opened a review into wholesale market prices in 2019/20. The focus of this review is on possible behaviour that may have caused prices to deviate from levels consistent with workable competition.

This review is distinct from the claim of the undesirable trading situation.

Timeframe: The Authority will progress this review in 2021