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Submissions
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TRUSTPOWER SUBMISSION: PROPOSED ACTIONS TO CORRECT UNDESIRABLE TRADING SITUATION 2019

1. Introduction and overview

- 1.1.1 Trustpower Limited (**Trustpower**) welcomes the opportunity to provide a submission to the Electricity Authority (**Authority**) on its *Proposed Actions to Correct Undesirable Trading Situation 2019* consultation paper (**the Consultation Paper**).
- 1.1.2 Trustpower acknowledges the challenges for the Authority in identifying a perfect solution to correct the Undesirable Trading Situation (**UTS**) which occurred in December 2019.
- 1.1.3 Whilst we are broadly supportive of the proposed remedy, we are concerned about the implications of decoupling final spot and hedge market outcomes as it will potentially have implications for the overall integrity of the hedge market. We however recognise the jurisdictional challenges for the Authority in this space and suggest a possible way forward below.
- 1.1.4 Our other primary concerns with respect to the matters discussed in the Consultation Paper relate to the:
 - a) Duration of this proceeding and the process followed to date;
 - b) Code provisions which provide separate jurisdictions and parallel processes on the same facts.
- 1.1.5 With respect to the estimates of the price effect of the proposed action, which do not take into account the overall positions of industry participants, we note that these suggest Trustpower would profit \$2m from the proposed correction to spot prices. In fact, we expect a small loss from the proposed price reset. The hedge positions of market participants can result in outcomes that are substantially different from the estimates. However, our final result is within the range of reasonable wholesale market outcomes given the circumstances.
- 1.1.6 Finally, we note that the submissions from the settlement and reconciliation managers will be important in terms of understanding the practicality of the proposed remedy. We look forward to considering their advice.

2. Duration and nature of proceeding to date:

2.1.1 The timeline of events for this matter is:

- a) Receipt of claim on 12th December 2019¹
- b) Investigation and fact finding by the Authority from 12th December to 30th June 2020
- c) Consultation on a draft decision (including cross-submissions) from 30th June to 16th September² 2020
- d) Preliminary decision on claim of an undesirable trading situation: Supplementary consultation 6 November 2020 to 20 November 2020
- e) Publication of final decision on 22 December 2020³
- f) Development of a preferred remedy by the Authority from 22 December to 11 March 2021
- g) Consultation on proposed remedy released 11 March 2021⁴
- h) Publication of final decision on remedy planned to be August 2021⁵
- i) Implementation of remedy including calculation of new prices for some but not all wholesale market transactions. (To be determined)

2.1.1 The process from receipt of the claim until the release of the options to correct the UTS has taken the Authority 16 months. It is expected to take at least another 3 months before the final decision on the remedy is made. This is, by any measure, a substantial period of time during which there is substantive uncertainty about final wholesale prices.

2.1.2 Further, for much of this process, market participants have had little transparency as to the status of the investigation and likely outcome.

2.1.3 Trustpower acknowledges the scope and significance of this UTS and the importance of the Authority making decisions of this magnitude based on robust evidence. However, we think that the use of a process more akin to a policy development process for an enforcement action of this type should be reviewed.

2.1.4 We suspect that a speedier identification of the facts would occur if parties were able to make submissions on the core issues at a hearing rather than via sequential email responses to investigator's questions.

2.1.5 We are also concerned about the effects of the public release of the Authority's draft decision on some of the affected industry participants. Trustpower notes the editors of the Energy News had to remind its readers of the website's commenting policy on the article following the preliminary decision.

2.1.6 We also noticed there was a change of tone between the draft decision and the final decision where the UTS was attributed to a "confluence of factors" and it was said that "no one was to blame".

2.1.7 While we understand that the Authority took care to advise interested stakeholders about the status of its draft decision, we think that it should have refrained from comments until the conclusion of the final process.

¹ <https://www.ea.govt.nz/assets/dms-assets/26/26144Letter-to-Authority-12-December-2019-Haast.pdf>

² <https://www.ea.govt.nz/assets/dms-assets/27/27018Preliminary-decision-paper-10-November-2019-UTS-claim.pdf>

³ <https://www.ea.govt.nz/assets/dms-assets/27/UTS-Final-Decision-Paper-22-December-2020.pdf>

⁴ <https://www.ea.govt.nz/assets/dms-assets/28/Consultation-paper-Proposed-Actions-to-Correct-Undesirable-Trading-Situation-2019.pdf>

⁵ <https://www.ea.govt.nz/assets/dms-assets/28/UTS-actions-to-correct-technical-briefing-presentation-slides-18-March.pdf>

- 2.1.8 This would be more straight-forward for the Authority if a hearing process was adopted rather than a draft decision and submissions process

3. Problematic extension of UTS to hedge markets

- 3.1.1 In 2013 the Authority extended the definition of a UTS in the Code to include hedge markets. In our submission on this Code change we said that:

“there may be other parties involved in a UTS that are not subject to the Authority’s jurisdiction. This could include, for example, contract counterparties who are not covered by the Code or even other market institutions such as the ASX. The Consultation Paper does not explain how this issue would be managed across the sector.”

- 3.1.2 We are still not sure how the Authority plans to manage this extended scope for a UTS when it does not have jurisdiction over all relevant parties. We note in the Consultation Paper the Authority has said:

“the outlook for futures and options would be determined by the ASX in conjunction with its own regulatory authorities, eg the Australian Securities and Investments Commission. The Authority cannot override the obligations that the ASX has in relation to its own regulatory and legislative framework. The ASX have indicated that, given the time that has elapsed, their preference would be to not re-settle their market.”

- 3.1.3 We note that the decoupled settlement of the wholesale prices and hedges could enhance perceptions of risk associated with operating in the electricity market. Particularly for non-integrated firms that are more reliant on the hedge market to manage risk⁶.
- 3.1.4 Trustpower believes that resettling the hedge market contracts would best preserve the overall integrity of the hedge market. However, we recognise this jurisdictional challenge in this circumstance.
- 3.1.5 We strongly encourage the Authority to consider how to ensure that this issue is addressed going forward, we suggest the Authority should issue guidelines as to when and how it might open hedge contracts or alternatively reconsider the option of introducing default contract terms which require resettling should prices be reset in designated circumstances⁷. We note that introducing an ex-ante solution of requiring default contract terms would provide certainty to participants regarding the outcomes of a UTS and not undermine the ASX.

4. Risks associated with current role allocations in the Code

- 4.1.1 When the UTS was first introduced the decision-making authority was given to the rule maker because the decision had to be made before final prices were published⁸. This decision was made because it was considered that the rule maker would be better positioned to respond in the necessary timeframe. Now that there is no specific timeframe for determining a UTS, the justification for giving these powers to the rule maker no longer applies.

⁶ The risk is likely to be biased against those selling into the wholesale market as most UTS claims (and all successfully claims) have been based on prices being too high.

⁷ Note we suggested this option in our submission to the Authority in 2013. <https://www.ea.govt.nz/assets/dms-assets/14/14975TrustPower.pdf>

⁸ <https://www.ea.govt.nz/assets/dms-assets/8/8413decision-uts-24apr04.pdf>

- 4.1.2 This raises a question as to whether it is appropriate to have contemporaneous compliance proceedings (UTS and HSOTC breach) on the same facts with different investigators and decision makers following different time frames but all working for or funded by the same organisation.
- 4.1.3 We appreciate the Authority has expertise in this area but believe this would be best utilised in an investigator-prosecutor role with decision-making made by a truly independent Rulings Panel. We acknowledge this is a broader consideration than this current consultation.
- 4.1.4 For any questions relating to the material in this submission, please contact me on 021 816 830

Regards,

A handwritten signature in black ink, appearing to read "C. Schubauer".

Craig Schubauer
Wholesale Market Manager