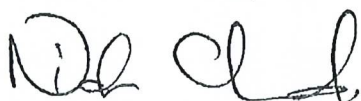


Electricity Industry Participation Code Amendment  
(Internal Transfer Prices and Segmented Profitability Reporting) 2021

Under section 38 of the Electricity Industry Act 2010, and having complied with section 39 of that Act, I make the following amendment to the Electricity Industry Participation Code 2010.

At Wellington on the 12 day of October 2021



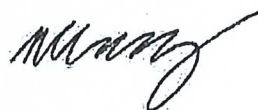
Dr Nicola Crauford  
Chair  
Electricity Authority

Certified in order for signature:



Alexandra Parker  
Senior Legal Counsel  
Electricity Authority

7 October 2021



Nick Crang  
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7 October 2021

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**Amendment**

- 1 Title**  
This is the Electricity Industry Participation Code Amendment (Internal Transfer Prices and Segmented Profitability Reporting) 2021.
- 2 Commencement**  
This amendment comes into force on 30 November 2021.
- 3 Code amended**  
This amendment amends the Electricity Industry Participation Code 2010.
- 4 Clause 1.1 amended (Interpretation)**  
In clause 1.1(1), insert in their appropriate alphabetical order:  
“financial year means, except in Schedule 12.4, the financial year adopted by a participant from time to time, being a 12 month period as a participant determines

**“generator retailer means a trader who is both a generator and a retailer and in any month of the financial year of the generator retailer:**

- (a) has sold to the **clearing manager** an amount of **electricity** at least equivalent to 5% of the total amount of **electricity** sold in any of those months by all **generators** who are **traders** to the **clearing manager**, as measured in **MWh**; and
- (b) was recorded in the **registry** in any of those months as being responsible for at least 5% of the total number of **ICPs** registered in the **registry** with an **ICP** status of “Active”,—

and, for the purposes of this definition, the terms “**trader**”, “**generator**” and “**retailer**” include any related company, as defined in section 2 of the Companies Act 1993, of a **participant** provided that the related company is a **participant**

**“retail gross margin report means a report provided by a retailer under clause 13.259**

**“ITP information means information on internal transfer pricing as described in clause 13.256**

**“mass market customers means all those customers of a generator retailer or retailer who the generator retailer or retailer classifies as mass market or who are commonly understood to be mass market customers in accordance with standard industry practice**

**“retail ITP means the notional price or prices per MWh for electricity set between either the generating arm or the trading arm of a generator retailer, on the one hand, and the retailing arm of the generator retailer, on the other hand, in respect of electricity generated by the generator retailer that is sold by the generator retailer to mass market customers and that is used for internal accounting, management, or other purposes”**

## **5 New subheadings and clauses 13.256 to 13.266 inserted**

After clause 13.255, insert:

### *Provision of internal transfer pricing information by generator retailers*

#### **“13.256 Generator retailers must provide ITP information to the Authority**

- “(1) Each **generator retailer** must provide the **ITP information** in relation to the **generator retailer** to the **Authority** in the form and by the means specified by the **Authority** no later than 90 days after the end of the **financial year** of the **generator retailer**.
- “(2) The **ITP information** must consist of the following information in relation to the **generator retailer’s financial year**:
  - “(a) the average load weighted **retail ITP**, calculated by dividing the total notional cost of **electricity** under the **retail ITP** arrangements of the **generator retailer** by the total amount of **electricity** in **MWh** sold by the **generator retailer** to **mass market customers**;
  - “(b) information on how the **generator retailer** determined the **retail ITP**, at a sufficient level of detail to enable a reasonable person, being a person who has a reasonably sophisticated understanding of the operation of the **electricity** industry and the **wholesale market**, to determine how the **generator retailer** determined the **retail ITP**.
- “(3) The information provided by a **generator retailer** under subclause (2)(b) must include the following:
  - “(a) a breakdown of the key components or factors which make up the **retail ITP** expressed as an amount in dollars and cents per **MWh** that each key component or factor comprises of the average load weighted **retail ITP** required by subclause (2)(a), and which must include (if relevant) the following components or factors:
    - “(i) prices in **ASX NZ electricity futures**;
    - “(ii) the distribution of the total electrical load across locations, including the adjustment, calculated on an average load weighted basis in



MWh, that the **retailer** generator used to determine the **retail ITP** for the electricity sold to **mass market customers** beyond a node specified in an **ASX NZ electricity future**:

- “(iii) administrative fees, including management fees, notionally charged by the **generator retailer** to the **generator retailer’s** retail arm:
- “(iv) the level of discretionary judgement the **generator retailer** exercised to amend or otherwise modify the draft **retail ITP** before it was finalised:
- “(v) all other key components or factors the **generator retailer** relied on to determine the **retail ITP**, and any other material information used by the **generator retailer** to determine the **retail ITP** that is not publicly available:
- “(b) any residual components or factors that make up the **retail ITP**, but which are not components or factors required by paragraph (a), expressed as one combined amount in dollars and cents per MWh:
- “(c) an explanation of the methodology the **generator retailer** used to determine or to assist in determining the **retail ITP**, and which must include (if relevant) the following:
  - “(i) the assumed process used by the **generator retailer** to build the hedge book of **ASX NZ electricity futures**, including the following:
    - “(A) the proportion of **ASX NZ electricity futures** the **generator retailer** assumed would be purchased and the assumed timing of those assumed purchases:
    - “(B) the relative weighting of **ASX NZ electricity futures** relating to Benmore as compared to those relating to Otahuhu:
    - “(C) the types of **ASX NZ electricity futures** the **generator retailer** assumed to be purchased and the maturities purchased:
    - “(D) the basis on which the **ASX NZ electricity futures** are priced:
  - “(ii) the approach the **generator retailer** took to adjust for:
    - “(A) differences in the within day electrical load and cost profile underlying the **ASX NZ electricity futures** and the **generator retailer’s mass market customers** load profile:
    - “(B) distribution of electrical load across locations, including the relative use of **FTRs** or historical price differences to price for load by location:
  - “(iii) the approach or methodology used to determine the electrical load profile, including the following:
    - “(A) whether actual or assumed load profiles are relied upon:
    - “(B) the degree of granularity of load with respect to location, seasonality and intra-day:
    - “(C) the percentage of load by regional geographical location:
  - “(iv) the basis for and determination of fees, including management or associated fees, the **generator retailer** notionally charged its retail arm:
  - “(v) the basis for and rationale behind any discretion the **generator retailer** exercised:
  - “(vi) any other details the **generator retailer** considers material to explain the methodology the **generator retailer** used to determine or assist in determining the **retail ITP**:

- “(d) the key non-price parameters the **generator retailer** used to determine the **retail ITP** including whether or not the **retail ITP** is:
    - “(i) for fixed or variable volume of **electricity**; or
    - “(ii) for a fixed or variable price of **electricity**;
  - “(e) the purposes for which the **retail ITP** is used by the **generator retailer**, including whether the **retail ITP** is used as part of setting the price of **electricity** sold to **mass market customers** by the **generator retailer**;
  - “(f) if relevant, and if not disclosed under paragraph (e), any matters relating to the **generator retailer** which the **retail ITP** directly or indirectly affects.
- “(4) Where a **generator retailer** and one or more other **generator retailers** are related companies, as defined in section 2 of the Companies Act 1993, and are required by subclause (1) to provide **ITP information** to the **Authority**, the obligation in subclause (1) is met by one of those **generator retailers** providing the **ITP information** relating to all the **generator retailers** on a consolidated basis for the **generator retailers** to the **Authority**.
- “(5) If a **generator retailer** provides **ITP information** on behalf of other **generator retailers** under subclause (4), the **generator retailer** providing the **ITP information** must identify the other **generator retailers** as part of the **ITP information** provided.”

#### “13.257 Disclosure of change of methodology

- “(1) This clause applies if—
- “(a) a **generator retailer** changes the methodology used to determine the **retail ITP** for a **financial year** (“the current **financial year**”) from the methodology used in a previous **financial year** for which the **generator retailer** provided **ITP information** under clause 13.256, other than where that change relates solely to the distribution of the customer load base or the input prices (**ASX NZ electricity futures** prices and locational prices as provided for in clause 13.256(3)(a)(i) and (ii)); and
  - “(b) that change in methodology has the effect of modifying the **retail ITP** by an amount in excess of 5% from the **retail ITP** contained in the most recent **ITP information** the **generator retailer** provided under clause 13.256.
- “(2) Where this clause applies, the **generator retailer** must also provide the following information to the **Authority** in the form and by the means specified by the **Authority**:
- “(a) details of the impact on the average load weighted **retail ITP** disclosed under clause 13.256 for any of the previous three **financial years** if the new methodology had been used to determine the **generator retailer’s retail ITP** for those previous **financial years**;
  - “(b) details of the impact on the average load weighted **retail ITP** for the current **financial year** if the methodology used in any of those previous **financial years** was used to determine the **generator retailer’s retail ITP** for the current **financial year**.
- “(3) The **generator retailer** must provide the information required by subclause (2) to the **Authority** at the same time as providing the **ITP information** required under clause 13.256 for the current **financial year**.
- “(4) Where a **generator retailer** and one or more other **generator retailers** are related companies, as defined in section 2 of the Companies Act 1993, and are required by subclause (2) to provide information to the **Authority**, the obligations in subclause (2) are met by one of those **generator retailers** providing the information relating to all the **generator retailers** on a consolidated basis for all the **generator retailers** to the **Authority**.



- “(5) If a **participant** provides information on behalf of other **generator retailers** under subclause (4), the **generator retailer** providing the information must identify the other **generator retailers** as part of the information provided.

**“13.258 Publication of ITP information by the Authority**

The **Authority** may publish any **ITP information** or information submitted to it under clause 13.257, as the **Authority** sees fit.

*Provision of retail gross margin reports by retailers*

**“13.259 Provision of retail gross margin report by retailers**

- “(1) Each **retailer** must provide a **retail gross margin report** to the **Authority** no later than 90 days after the end of the **retailer’s financial year**.
- “(2) Subclause (1) does not apply to any **retailer** who was recorded in the **registry** in any of the preceding 12 months as being responsible for less than 1% of the total number of **ICPs** registered in the **registry** with an **ICP** status of “Active”.
- “(3) The **retail gross margin report** must consist of the following information relating to the sale of **electricity** to **mass market customers** for the **financial year** by the **retailer**:
- “(a) the total amount of **electricity** sold by the **retailer** to **mass market customers** expressed as **MWhs**;
  - “(b) revenue derived from the sale of **electricity** to **mass market customers** expressed as an amount of dollars per **MWh**;
  - “(c) cost of **electricity** sold by the **retailer** to **mass market customers**, including the cost of **electricity** derived from **retail ITP**, expressed as an amount of dollars per **MWh**;
  - “(d) cost of **metering** services associated with the sale of **electricity** to **mass market customers** expressed as an amount per **MWh**;
  - “(e) cost of **distribution** services associated with the sale of **electricity** to **mass market customers** expressed as an amount per **MWh**;
  - “(f) cost of **transmission** services, being those services provided by **Transpower** under a **transmission agreement**, paid by the **retailer** associated with the supply of **electricity** to **mass market customers** by the **retailer** expressed as an amount per **MWh**;
  - “(g) cost of **levies** associated with the supply of **electricity** to **mass market customers** by the **retailer** expressed as an amount per **MWh**.
- “(4) A **retail gross margin report** must be prepared in accordance with generally accepted accounting practices and in the form specified by the **Authority**.
- “(5) Where a **retailer** and one or more other **retailers** are related companies, as defined in section 2 of the Companies Act 1993, and are required by subclause (1) to provide a **retail gross margin report** to the **Authority**—
- “(a) the obligation in subclause (1) is met by one of those **retailers** providing the **retail gross margin report** relating to all the **retailers** on a consolidated basis for all the **retailers** to the **Authority**; and
  - “(b) in any such case, the **retailer** providing the information must identify the other **retailers**, as part of the information provided.

**“13.260 Publication of information contained in retail gross margin reports by the Authority**

The **Authority** may publish the information received in a **retail gross margin report**, except that information contained in a **retail gross margin report** submitted

by a **retailer** with less than 5% of total market share by **ICP** with a status of “Active” must be anonymised so as not to identify that **retailer**.

*Authority may require review of ITP information and retail gross margin reports*

**“13.261 Authority may require review of ITP information and retail gross margin reports by independent person**

The **Authority** may, in its discretion, require a review by an independent person of whether—

- “(a) a **generator retailer** may not have complied with one or both of clauses 13.256 or 13.257; and
- “(b) a **retailer** may not have complied with clause 13.259.

**“13.262 Nomination of independent person to undertake review**

- “(1) If the **Authority** requires a review under clause 13.261—
  - “(a) the **Authority** must require the **generator retailer** or **retailer** to nominate an appropriate independent person to undertake the review; and
  - “(b) the **generator retailer** or **retailer** must provide that nomination within a reasonable timeframe.
- “(2) The **Authority** may direct the **generator retailer** or **retailer** to appoint the person nominated under subclause (1) or to nominate another person for approval.
- “(3) If the **generator retailer** or **retailer** fails to nominate an appropriate person under subclause (1) within 5 **business days**, the **Authority** may direct the **generator retailer** or **retailer** to appoint a person of the **Authority**’s choice.
- “(4) The **generator retailer** or **retailer** must appoint a person to undertake the review in accordance with a direction made under subclause (2) or subclause (3).

**“13.263 Factors relevant to a direction under clause 13.262**

- “(1) In making the direction required by clause 13.262(2) or clause 13.262(3), the **Authority** may have regard to any factors it considers relevant in the circumstances, including the following:
  - “(a) the degree of independence between the **generator retailer** or **retailer** and the person nominated under clause 13.262(1); and
  - “(b) the expected quality of the review; and
  - “(c) the expected costs of the review.
- “(2) For the purposes of subclause (1)(a), the **Authority** may have regard to the special definition of independent under clause 1.4 but it is not bound by that definition.

**“13.264 Carrying out of review by independent person**

- “(1) A **generator retailer** or **retailer** subject to a review under clause 13.261 must, on request from the person undertaking the review, provide that person with such information as the person reasonably requires in order to carry out the review.
- “(2) The **generator retailer** or **retailer** must provide the information no later than 10 **business days** after receiving a request from the person for the information.
- “(3) The **generator retailer** or **retailer** must ensure that the person undertaking the review—
  - “(a) produces a report on whether, in the opinion of that person, the **generator retailer** or **retailer** may not have complied with clauses 13.256, 13.257 or 13.259 (as specified by the **Authority** under clause 13.261); and



- “(b) submits the report to the **Authority** within the timeframe specified by the **Authority**.
- “(4) The report produced under subclause (3)(a) must include any other information that the **Authority** may reasonably require.
- “(5) Before the report is submitted to the **Authority**, any identified failure of the **generator retailer** or **retailer** to comply with clauses 13.256, 13.257 or 13.259 must be referred back to the **generator retailer** or **retailer** for comment.
- “(6) The comments of the **generator retailer** or **retailer** must be included in the report.

**“13.265 Payment of review costs**

- “(1) If a report received under clause 13.264(3)(a) establishes, to the **Authority’s** reasonable satisfaction, that the **generator retailer** or **retailer** may not have complied with clauses 13.256, 13.257 or 13.259 (whether or not the **Authority** appoints an investigator to investigate the alleged breach), the **generator retailer** or **retailer** must pay the costs of the person who undertook the review.
- “(2) Despite subclause (1), if a report establishes, to the **Authority’s** reasonable satisfaction that any non-compliance of the **generator retailer** or **retailer** is minor or there is any other reason in the **Authority’s** view that means the **generator retailer** or **retailer** should not pay the costs of the person who undertook the review, the **Authority** may, in its discretion, determine the proportion of the person’s costs that the **generator retailer** or **retailer** must pay, and the **generator retailer** or **retailer** must pay those costs.
- “(3) If a report establishes to the **Authority’s** reasonable satisfaction that the **generator retailer** or **retailer** has complied with clauses 13.256, 13.257 and 13.259 (if relevant), the **Authority** must pay the person’s costs.

**“13.266 Requirement to provide complete and accurate information**

- “(1) In addition to the requirements of clause 13.2, the **generator retailer** or **retailer** must take all practicable steps to ensure that the information that the **generator retailer** or **retailer** is required to provide to any person under clauses 13.256, 13.257 or 13.259 is complete and correct.
- “(2) If a **generator retailer** or **retailer** becomes aware that any information the **generator retailer** or **retailer** provided under clauses 13.256, 13.257 or 13.259 does not comply with subclause (1) or clause 13.2, even if the **generator retailer** or **retailer** has taken all practicable steps to ensure that the information complies, the **generator retailer** or **retailer** must, as soon as practicable, provide such further information as is necessary to ensure that the information provided complies with clauses 13.256, 13.257, 13.259 or clause 13.2 (as relevant).”

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Explanatory Note

*This note is not part of the amendment, but is intended to indicate its general effect.*

This amendment to the Electricity Industry Participation Code 2010 ("Code") comes into force on 30 November 2021.

This amendment inserts new clauses 13.256 to 13.266 into Part 13 and new definitions into Part 1 of the Code. The purpose of the amendment is to increase trust and confidence in the wholesale and retail markets by:

- (a) increasing transparency on how large vertically integrated generator-retailers price electricity for their own retail arms; and

- (b) increasing transparency on retail revenues and gross margins amongst retailers who were recorded in the registry in any of the preceding 12 months as being responsible for 1% or more of the total number of ICPs with a status of “Active”.

The new clauses:

- (a) impose reporting obligations on large generator retailers to disclose annually information relating to their internal transfer pricing and supporting information, and to disclose further information in particular circumstances if the generator retailer changes the methodology used to determine internal transfer pricing during a year;
- (b) impose reporting obligations on retailers who were recorded in the registry in any of the preceding 12 months as being responsible for 1% or more of the total number of ICPs with a status of “Active” to submit annual retail gross margin reports relating to the sale of electricity to mass market customers by the retailer;
- (c) permit the Authority to publish the information it receives as a result of the new reporting obligations; and
- (d) provide the Authority with the power to require a review by an independent person of whether a generator retailer or a retailer subject to the new reporting obligations has complied with those obligations.

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Date of notification in the *Gazette*: 26 October 2021