



3 February 2022

Submissions  
Electricity Authority

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### **Preliminary decision on whether an undesirable trading situation occurred on 9 August 2021**

Meridian appreciates the opportunity to provide feedback to the Authority on its preliminary decision on whether an undesirable trading situation (UTS) occurred on 9 August 2021.

As the Authority's preliminary decision makes clear, the key issue for the Authority to consider is whether the events of 9 August 2021 amounted, in terms of the Code, to a "situation that threatens, or may threaten, confidence in, or the integrity, of the wholesale market." If they did amount to such a situation the Authority would then need to go on to consider whether that situation could nevertheless be satisfactorily resolved by another mechanism in the Code (aside from the trading conduct provisions). Only if it could not, would a UTS have occurred. The Authority decides in its preliminary decision that the relevant events do not get over the first hurdle i.e. it is the Authority's view that at no stage did the events of 9 August 2021 threaten confidence in the wholesale market.

Meridian does not dispute the Authority's preliminary decision and does not have a view on whether a UTS occurred on 9 August 2021. Ultimately what is and is not a UTS is a matter for the Authority to decide. This is consistent with the Authority's broad remedial discretion with respect to UTS matters to take steps necessary to restore the normal operation of the market, including to direct activities be suspended, limited or stopped, to direct that completion of trades be deferred, to direct that trades be closed out or settled at a specified price or to direct participants to take actions that will, in the Authority's opinion, correct or assist in overcoming a UTS. Our submissions are confined to areas where we believe it may be helpful for the Authority, in its final decision, to expand on some of its reasoning in

its preliminary decision, particularly in clarifying why a UTS did not occur in this case. We believe this would be useful for market participants in understanding the Authority's approach to the UTS provisions. At the same time, we recognise that it is not possible for the Authority to provide a comprehensive guide to the future exercise of its UTS jurisdiction. As the Authority itself says in its preliminary decision (rightly, in our view):

*The Authority needs to consider the particular facts of each situation and apply indicators that are relevant and material. These may differ from case to case.*

Matters on which it may be helpful for the Authority to comment further in its final decision:

- For a layperson, and strictly in terms of how a layperson would understand the relevant words, it may seem there is an arguable case for suggesting that the events of 9 August 2021 threatened confidence in the wholesale market. Thirty four thousand people had their power disconnected on the coldest night of the year, unnecessarily according to subsequent reports, as a result of a number of factors including errors by the System Operator and decisions by generators not to offer generation plant into the market. It seems the Authority is not applying a layperson's understanding of the relevant words.
- The events of 9 August 2021 also resulted in very strong and well-publicised adverse comment on the market from a number of sources and led to the initiation of no fewer than 7 reviews or investigations by the Authority, Transpower and MBIE for a variety of reasons. These included getting to the bottom of what happened, preventing a repeat and determining if breaches of the Code had taken place or other actions under the Code were appropriate. One of the reasons for the reviews, presumably, was to help restore any loss of confidence in the market or sector more generally that may have occurred as a result of the events of 9 August 2021. Clearly those initiating the review or investigations themselves had a diminished level of confidence or perceived a potential loss of confidence in others. It would be helpful for the Authority to comment on this.
- In reaching its view that no UTS occurred the Authority makes findings as to the appropriateness or otherwise of the behaviour of market participants. The Authority finds (and Meridian does not dispute) that on 9 August 2021:
  - o The System Operator generally made decisions that were reasonable and justified;

- The decision by Genesis not to offer HLY 4 was open to it in the circumstances; and
- Contact could not make TCC available during the relevant trading periods.

In doing so the Authority seems to be focusing on individual market participants' blameworthiness rather than assessing whether, regardless of whether anyone was at fault, industry or market processes and / or industry or market outcomes were not as might have been expected or normally observed (e.g. the unnecessary disconnection of 34,000 customers) as it has in previous UTS cases.

- In making the assessment that Genesis's decision not to offer HLY 4 was one that was open to it in the circumstances it is not clear what standard is being applied by the Authority or what test it is using to determine what is and is not open to a particular generator. If the Authority is simply saying that Genesis did not breach the Code then it should make that clear (and presumably discontinue the extant trading conduct investigation against Genesis). If some other test is being applied to determine conduct that is, and is not open, it would be helpful for the Authority to say what that test is. It may be that the Authority is simply saying that Genesis acted reasonably or as the Authority would have expected Genesis to act. If so, it would be helpful for the Authority to confirm this and explain how this links directly to the test for whether a UTS has occurred. Also, if Genesis did act reasonably or as expected then it is hard to see how the trading conduct allegations against Genesis can be sustained.
- To the extent the System Operator made mistakes (e.g. the 19.09 notice with faulty demand allocations which resulted in the unnecessary disconnection of 34,000 customers) the Authority takes the view that they are not relevant to determining whether a UTS occurred as they did not affect the wholesale market. The Authority seems to take the view that once the System Operator issued a formal notice of an island scarcity situation and therefore invoked scarcity pricing, so long as that decision was made correctly by the System Operator, it does not matter for UTS purposes how many people have their electricity disconnected as a result and whether the level of disconnection was proportionate to the level of actual scarcity (it could be 3 consumers, it could be 34,000 or it could be 3 million). This is a strong position for the Authority to take and seems to discount for UTS purposes any non-price impacts on consumers and any assessment of how many consumers are actually impacted. It would be useful if the Authority could comment.

- The Authority's preliminary decision says both that the MBIE review of 9 August is currently taking place (page ii) and that MBIE's investigation has been carried out (page iv). Meridian understands the MBIE review was completed and published on 25 November 2021 (MBIE Investigation into electricity supply interruptions of 9 August 2021 led by Pete Hodgson and Erik Westergaard) a few weeks prior to the Authority's publication of its preliminary decision on 16 December 2021. The MBIE review made 18 recommendations and included a number of findings. The Minister of Energy issued a press release saying she had written to the Chairs of Transpower and the Electricity Authority asking them to consider the MBIE review. Despite this the UTS preliminary decision does not reference any of the MBIE review findings. It is not clear why. It would be helpful if the Authority could explain this in its final decision or alternatively include comment on the MBIE review if it believes that to be appropriate. Particular points, findings or comment from the MBIE review that might be usefully addressed or commented on by the Authority include:
  - If, as the MBIE review found, the events of 9 August 2021 could have been addressed by the System Operator requesting hot water cylinders be switched off only rather than consumers disconnected, should scarcity pricing have been invoked? It seems the Authority's view is that if the System Operator issues a request for load to be disconnected, even if this will only result in hot water cylinders being disconnected, then the Code requires that scarcity pricing is invoked. If so, should the Code be amended? Would it deliver better outcomes for consumers, for example, if there were different levels of scarcity prices applicable in this situation that could that have kept prices to say \$5,000/MWh rather than the \$10,000/MWh observed on that evening?
  - The finding that *"forced disconnection of household electricity was entirely avoidable. ...that the demand side had enough discretionary load to maintain the system, but that the system operator had inadequate visibility or up to date awareness of that resource. Turning off any householder's electricity, apart from their hot water cylinder, simply need not have happened. Ensuring that the system operator has accurate real time awareness of the size of each electricity distribution businesses' discretionary load is a central recommendation."*


- The finding that “*no household need have suffered a power cut even if the system operator had not deployed the demand allocation notice. We find that that there was no need to issue that notice, and that the system operator did so in order to further honour the equity rule embedded in the electricity code. We find that rule to be ill-conceived and in need of prompt revision.*”
- The 18 recommendations of the MBIE review as set out in Appendix G to that document.

Please contact either of us if you have any queries regarding this submission.

Yours sincerely



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