



3 May 2022

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Submissions
Electricity Authority
Level 7, ASB Bank Tower, 2 Hunter Street
WELLINGTON 6143

By email: uts.2021@ea.govt.nz

Re: Supplementary consultation on the alleged 9 August 2021 UTS

1. We refer to the Electricity Authority's (**Authority**) supplementary consultation paper concerning claims of an undesirable trading situation (**UTS**) under the Electricity Industry Participation Code (**Code**) occurring on 9 August 2021.
2. The Authority notes that:
 - (a) The issue of an island shortage situation (**ISS**) notice by Transpower (as System Operator) triggers the consideration of whether the scarcity pricing regime under the Code applies.
 - (b) An ISS can only be issued under the Code if the System Operator has "issued, amended or revoked an island wide instruction to electronically disconnect demand."¹
3. The Authority and the System Operator both agree that the ISS notice issued on 9 August 2021 was issued in error. The Authority considers the ISS notice was not issued in accordance with the Code because the condition precedent for its issue (the direction to electronically disconnect demand) was not satisfied.
4. The Authority has asked whether it is appropriate for scarcity pricing to apply to trading periods 39 – 42 on 9 August 2021, notwithstanding the erroneous ISS notice. If the scarcity pricing regime applies, the Authority assesses the cost impact to the industry to be \$130m higher than if it did not apply.
5. In our view:
 - (a) If the trigger for consideration of whether the scarcity pricing regime should apply has not been met, then it follows that the regime should not apply. Given that the condition precedent to an ISS notice was not satisfied, the ISS notice strikes us as invalid and void from the start.
 - (b) To the extent that there is ambiguity in either the Code provisions or the policy intent, we suggest that the material published by the Authority in the scarcity pricing regime consultations in 2011 – 2013, and the Authority's 2017 Scarcity Pricing Code Amendments Decision Paper are relevant.² These show that scarcity pricing was intended to apply in narrow and exceptional circumstances, and only where notice to disconnect demand had been given. This is also clearly set out in the flowchart explaining the process which accompanied the decision paper, and which was provided in response to concerns from some participants about the complexity of the regime.³
 - (c) It is difficult therefore to see how an invalid ISS notice can be ignored. It is even more challenging to see why an invalid ISS notice should be ignored in the context of rising living and other costs. If let stand, this would result in a \$130 million higher cost impact on the industry, some or all of which may ultimately be borne by consumers.

Please contact me if the Authority would like to discuss our feedback further.

Yours sincerely

Warwick Williams
Senior Regulatory Counsel and Group Insurance Manager

¹ Clause 5(1A) of Technical Code B, Schedule 8.3 to the Code.

² See: <https://www.ea.govt.nz/development/work-programme/operational-efficiencies/review-of-scarcity-pricing/development/decision-paper-summary-flowchart/>

³ See: <https://www.ea.govt.nz/assets/dms-assets/21/21729scarcity-pricing-flowchart.pdf>