3 May 2022

Submissions
Electricity Authority

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

9 August UTS – Supplementary Consultation Paper

Meridian appreciates the opportunity to provide feedback to the Authority on the supplementary consultation regarding the 9 August 2021 undesirable trading situation (UTS) investigation.

The key issue for the Authority to consider remains 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 indicated in its preliminary decision that the relevant events do not get over the first hurdle i.e. it was the Authority's view, after several months of deliberation, that at no stage did the events of 9 August 2021 threaten confidence in, or the integrity of, the wholesale market.

The supplementary consultation paper does not provide any additional analysis of whether the events of 9 August 2021 threatened confidence in the wholesale market. The paper notes possible errors made by the system operator – specifically, that the island shortage situation (ISS) notice was possibly not issued in accordance with the Code. There is no definitive finding to that effect however, and there cannot be at this stage, as Code breaches and what is and is not necessary to comply with the Code are ultimately matters for the

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Rulings Panel to decide. In this case that decision will presumably be made in the context of the compliance investigation related to 9 August 2021. For its part, Meridian's review of the relevant Code provisions and of the actions taken and notices issued on the night of 9 August 2021 suggests that it is far from clear that the ISS notice was not issued in accordance with the Code.

In any event, it is not clear from the Authority's Supplementary Consultation Paper how the potential Code breach might be relevant to the UTS investigation and UTS tests in the Code. In particular, it is not clear how this potential Code breach could convert a situation previously considered by the Authority to not threaten confidence in, or the integrity of, the wholesale market, into one that could. Previously, the Authority has kept the assessment of whether a UTS occurred (which is intended to be an assessment made relatively quickly) separate from any compliance investigation (which might take much longer). Now the Authority appears to be drawing on matters emerging from its compliance investigation in order to inform its UTS decisions – this appears to be a significant change in practice from the Authority. Meridian queries whether it is a change in practice contemplated by the Code, which puts UTS matters and Code compliance matters on different timelines with the Authority required to correct a UTS and restore the normal operation of the wholesale market 'as soon as possible' under clause 5.5 of the Code.

For some of the comments in the Supplementary Consultation Paper it also seems the Authority risks inviting comment on and thereby consulting on a potential UTS remedy without first determining whether a UTS occurred. The Code contemplates that consultation on UTS remedies will only take place once the Authority has made a positive finding that a UTS occurred – see clause 5.4 of the Code.

These matters are discussed further below, and it would be helpful if the Authority's final UTS decision elaborated on these matters.

It is unclear whether the system operator breached the Code

While a Code breach finding is a decision for the Rulings Panel – it is not clear to Meridian that the system operator's actions did breach clauses 5(1A) or 6 of Technical Code B, Schedule 8.3 of the Code.

The system operator had a discretion to do either or both (the language in 6(1) says the system operator can do "1 or more") of the following:

- request connected asset owners reduce demand under clause 6(1)(b); and/or
- require electrical disconnection of demand under clause 6(1)(d).

Doing either or both at the same time was open to the system operator. However, it seems that with hindsight the Authority and the system operator believe it should have been made clearer in the Grid Emergency Notices (GEN) issued on 9 August which path of action the system operator was taking and specifically whether the system operator was relying on clause 6(1)(b) or 6(1)(d) or, presumably, both. The GEN notices contain some language that could arguably have been interpreted as a request alongside language which could only reasonably have been interpreted as an instruction. Take the 19:09 GEN notice[1] as an example:

- The system operator included the chapeau "Participants are requested to" – which suggested a request was being made.
- However, in the same notice the system operator also said:
    - "This is a New Zealand wide emergency. There is Insufficient Generation offers to meet demand and provide for N-1 security for a contingent event."
    - "All network companies to control load to the limits provided below."
    - "Participants are required to limit load off-take to no greater than the level allocated for the duration of the above time" and
    - "If participants are unable or unwilling to comply fully with the instruction they must advise the Grid Asset Controller immediately."
    - "If at any time actual load is less than the allocation, and is expected to remain so, then that party must advise the Grid Asset Controller to allow re-allocation to other parties."

These statements make clear the gravity of the situation and are most naturally read as requirements for the electrical disconnection of load. Read as a whole and in light of the circumstances at the time, Meridian queries whether any participant could realistically and reasonably have treated the GEN notices issued by Transpower on the night of 9 August 2021 simply as requests which they ultimately had the option to comply with or not.

The Supplementary Consultation Paper also confirms that in respect of the earlier GEN notice "The system operator originally considered the 18:47 GEN notice it issued on 9

1 https://www.transpower.co.nz/sites/default/files/interfaces/gen/GEN%20Insufficient%20Generation%20offers%20National%204027589876.pdf

August 2021 to have been an instruction to electrically disconnect demand under clause 6(1)(d)."[2]

Meridian queries whether, under the Code, and as the Authority asserts in paragraph 3.7 of the Supplementary Consultation Paper, the issuing of island wide instructions to electrically disconnect demand really is a "precondition" to the issuing of an ISS notice. The Authority does not explain in the supplementary consultation paper why it takes this view and there is no clear language in the Code that says this. Under clause 5(1A) of Technical Code B, Schedule 8.3, it says simply that the Authority must issue a notice in writing to all participants as soon as practicable after it has issued, amended or revoked a (potentially earlier and verbally given) island wide instruction to electrically disconnect demand. This is arguably just a requirement to, at some point, put such notices in writing to all participants. It does not seem necessary to read it as a requirement (or precondition) that ISS notices may only be issued after the system operator has first "issued, amended or revoked" island wide instructions to electrically disconnect demand. If so, then while the system operator must issue a written ISS notice in such situations, it is arguable that it may issue a written ISS notice in others. Certainly that seems to be the reading preferred in the Authority's Preliminary Decision Paper in which the Authority treats the entire subject matter of the Supplementary Consultation Paper as of limited significance or relevance to whether a UTS occurred, saying at footnote 9 that: "The Authority considered that the system operator could have been clearer in its notices as to which emergency powers it was exercising, given the significance of scarcity pricing that resulted."

How might a potential Code breach be relevant to the UTS test in the Code?

It is not clear from the Supplementary Consultation Paper whether the Authority and system operator's view that there was possible non-compliance with the Code during the events of 9 August has changed the Authority's preliminary view that no UTS occurred.

Has the Authority changed its mind about whether the system operator's actions affected confidence in the market?

In reaching its preliminary view that no UTS occurred the Authority made findings as to the appropriateness or otherwise of the behaviour of market participants. The Authority found that on 9 August 2021:

[2] Paragraph 3.6 of the Supplementary Consultation Paper.

> "While, in retrospect improvements could have been made, the Authority considers the system operator's decisions were reasonable and justified in the circumstances. Therefore, the Authority considers the system operator's conduct did not affect confidence in, or the integrity of, the wholesale market."

There is no indication in the Supplementary Consultation Paper that the Authority has changed its view on this point. If it has, then it should clearly say so in order that participants can have the opportunity to comment. If it has not, and the above preliminary finding is undisturbed, it is hard to see how the matters discussed in the Supplementary Consultation Paper could change the Authority's preliminary decision that the events of 9 August 2021 do not amount to a UTS.

The Authority has not said how the system operator's actions inform the decision it must make under the UTS provisions of the Code

In addition, by focusing on a potential Code breach the Authority could be perceived to be focusing on the system operator's individual blameworthiness (which will be tested by the Rulings Panel) instead of assessing whether, regardless of any blameworthiness or Code breach, confidence in the market was threatened. It is Meridian's understanding based on the Authority's previous comments that this is not appropriate in UTS decisions. To the extent the Authority intends, based on this possible Code breach, to reach a different decision to the one in its Preliminary Decision Paper then Meridian suggests that, at the least, its final decision paper will need to articulate how and why the discovery of this possible Code breach transforms a situation previously assessed by the Authority as not to threaten confidence in the wholesale market, into one that does.

In this case it is arguable that the system operator's actions were part of the normal operation of the market as it acted as it was empowered to under the Code (even if it could have been made clearer at the time which of its powers it was exercising).

If there is no UTS ultimately found it is still open for the Authority to hold the system operator to account through the compliance process while improving settings and processes for the future through its Code making function. The Authority could for example amend the Code to:

- require the system operator to clearly state in GEN notices which power it is exercising; or
- require Transpower to do more than just "have regard to" the priority in clause 6(1) of Technical Code B – i.e. to ensure Transpower first tries to manage an emergency with requests, so scarcity pricing is avoided when possible.

Any Code change would have to consider whether better consumer outcomes might be expected in the long term. Relevant considerations would include:

- whether requirements would unduly limit the system operator's discretion in emergency situations; and
- whether always using discretionary load control in preference over instructions to disconnect load would decrease incentives to maintain or increase the quantity of discretionary load control on a network[3] and decrease incentives to invest in peak generation.[4]

The Code making process is the best way to make such assessments rather than a UTS investigation.

Decreasing incentives for investment in load control and peak generation would not be conducive to the transition to a renewable electricity system. The MDAG project on price discovery in a 100 percent renewable electricity market could be a good home for consideration of security settings for events of this kind. In an ideal world load shedding in an event of this kind would occur in a structured and tiered approach based on types of electrical load and their willingness to pay to be shed later rather than sooner. Scarcity prices in the wholesale market would similarly increase in a tiered fashion. In the absence of this type of structured response, issues like 9 August may continue to arise where the system operator seeks to shed load voluntarily to avoid the political consequences of high market prices but the parties able to voluntarily respond diminish as there are reduced incentives to invest in that capability.

[3] Because customers on a network would bear the burden of reduced quality of service while the benefits from the increased security of supply are national (i.e. it is a free rider problem).
[4] Because always favouring discretionary load management to balance the market would limit the likelihood and extent of wholesale price increases in emergency situations.

Is the Authority consulting on a potential UTS remedy before deciding whether a UTS occurred?

Rather than continuing to ask whether the situation on 9 August (including the details regarding the ISS notice) threatened confidence in the market, the Authority asks the question of whether scarcity pricing should apply to trading periods 39 – 42 on 9 August 2021. This is the sole consultation question in the Supplementary Consultation Paper. The application or otherwise of scarcity pricing, or of some other level of pricing, is one possible remedy if there is found to be a UTS. However, Part 5 of the Code requires that the Authority first determines whether a UTS occurred and that if a decision is made finding a UTS, the Authority then consults separately on any potential UTS remedy. No finding on whether a UTS occurred has yet been made. Meridian therefore queries whether it is appropriate for the Authority to ask the question it has in the Supplementary Consultation Paper at this stage of its process.

Please contact me if you have any queries regarding this submission.

Nāku noa, nā

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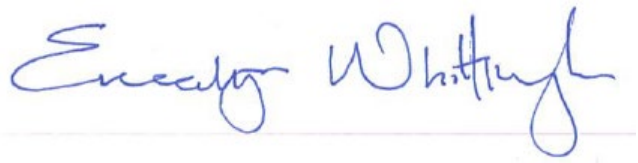

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