

19 April 2022



# Preliminary decision on claim of an undesirable trading situation on 9 August 2021 – Supplementary consultation paper

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Claim submitted 12 August 2021  
Consultation paper

Submissions close: **5pm 3 May 2022**

Published 19 April 2022



## Executive summary

We have appreciated the response and engagement from participants to the preliminary decision paper published in December 2021 (PDP) on the undesirable trading situation (UTS) alleged to have arisen as a result of the peak demand event on 9 August 2021. The peak demand event occurred in response to one of the coldest nights of the year and resulted in approximately 34,000 customers experiencing an electricity cut without warning.

The Electricity Authority's (Authority) review of the circumstances alleged to be a UTS is ongoing, and a final decision has not yet been made. As part of this process, we raise in this supplementary consultation paper (SCP) a particular issue on which we consider further submissions from interested parties would be beneficial before a final decision is made.

In particular:

- An issue has arisen in the course of the compliance investigation into alleged breaches by the system operator relating to 9 August 2021 concerning the island shortage situation (ISS) notice issued by the system operator. Both the system operator and the Authority consider that the ISS notice was not issued in accordance with the Code, although that is ultimately a matter for the Rulings Panel in the context of the compliance investigation.
- The ISS notice may be relevant to the UTS investigation because the ISS notice is a precondition for scarcity pricing.
- In light of the above we would like to seek parties' views as to whether scarcity pricing should apply to trading periods 39 – 42 on 9 August.

We know all parties would appreciate a decision as soon as possible to avoid any ongoing uncertainty in the wholesale market, particularly as prices have not yet been finalised in respect of trading periods 37 - 42. However, the Authority considers further consultation is appropriate to allow all parties an opportunity to submit on the issue of whether scarcity pricing should have applied on 9 August before a final decision is reached.

At this stage, we intend to make a final decision in June 2022, once we have had the opportunity to review submissions made as part of this consultation.

It is also important to note that there are a number of reviews taking place in response to the 9 August peak demand event including reviews run by the Ministry of Business, Innovation and Employment, the Authority, and Transpower. The Authority is running or has run a number of work streams into different aspects of the 9 August peak demand event including:

- A review under section 16 of the Electricity Industry Act 2010 (Act) in two phases. Phase 1 of the review, which was published in September 2021, focused on assuring New Zealand consumers immediately that any systemic and process issues that led to the electricity cuts on 9 August were urgently corrected. It related specifically to the tools and processes used by Transpower, as the system operator. The focus of the Authority's Phase 2 review is broader than the system operator's response to the event and will consider many roles, including that of the system operator, lines companies, generators, and retailers; and
- Several investigations into alleged breaches of the Electricity Industry Participation Code 2010 (Code). These allegations relate to the system operator's and generators' actions in relation to the 9 August peak demand event.

Decisions in respect of alleged breaches of the Code are being made separately to any decision on the alleged UTS. A finding in relation to the UTS investigation is based in the context of, and legal framework for, considering a UTS. There are different considerations and legal tests to be applied in considering alleged breaches of the Code.

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# 1 What you need to know to make a submission

## What this consultation paper is about

- 1.1 The purpose of this SCP is to engage in supplementary consultation and give interested parties an opportunity to comment on a specific issue that has arisen in the course of a compliance investigation into alleged breaches by the system operator. The further issue to be consulted upon is whether parties agree that scarcity pricing should apply to trading periods 39 – 42 on 9 August 2021 in light of the fact that both the Authority and the system operator consider that the ISS notice was not issued in accordance with the Code. We will consider all submissions received by the deadline before making our final decision.
- 1.2 The Code does not require the Authority to consult in these circumstances, and the Authority will not always seek additional views as part of its decision-making process. On this discrete issue the Authority considers that additional engagement with interested parties may assist its consideration.
- 1.3 We wish to receive further submissions on the following issue:  
Whether scarcity pricing should apply to trading periods 39 – 42 on 9 August 2021.

## How to make a submission

- 1.4 Our preference is to receive submissions in electronic format (Microsoft Word) in the format shown in Appendix A. Submissions in electronic form should be emailed to [UTS.2021@ea.govt.nz](mailto:UTS.2021@ea.govt.nz) with “Preliminary decision on 9 August 2021 claim of an undesirable trading situation— Supplementary consultation” in the subject line.
- 1.5 If you cannot send your submission electronically, post one hard copy to either of the addresses below, or fax it to 04 460 8879.

### Postal address

Submissions  
Electricity Authority  
PO Box 10041  
Wellington 6143

### Physical address

Submissions  
Electricity Authority  
Level 7, Harbour Tower  
2 Hunter Street  
Wellington

- 1.6 Please note the Authority wants to publish all submissions it receives. If you consider that we should not publish any part of your submission, please  
Indicate which part should not be published  
Explain why you consider we should not publish that part  
Provide a version of your submission that we can publish (if we agree not to publish your full submission).
- 1.7 If you indicate there is part of your submission that should not be published, we will discuss with you before deciding whether to publish that part of your submission.
- 1.8 However, please note that all submissions we receive, including any parts that we do not publish, can be requested under the Official Information Act 1982. This means we would be required to release material that we did not publish unless good reason existed under the

Official Information Act to withhold it. We would normally consult with you before releasing any material that you said should not be published.

## When to make a submission

- 1.9 Please deliver your submissions by **5pm on 3 May 2022**.
- 1.10 We will acknowledge receipt of all submissions electronically. Please contact the Authority [info@ea.govt.nz](mailto:info@ea.govt.nz) or 04 460 8860 if you don't receive electronic acknowledgement of your submission within two business days.

## 2 Introduction

- 2.1 Details of the UTS claim and our preliminary views on the claim are set out in the PDP. The Authority's preliminary view, as set out in the PDP, is that the actions of the system operator affected the wholesale market because regulated scarcity pricing was invoked, which set prices for the wholesale market for trading periods 39 to 42 on 9 August. The Authority's preliminary finding was that no UTS has occurred because there was no situation which threatened or may have threatened confidence in, or integrity of, the wholesale market.
- 2.2 Our focus in this SCP is the application of scarcity pricing in light of a potential issue with the validity of the ISS notice issued by the system operator.

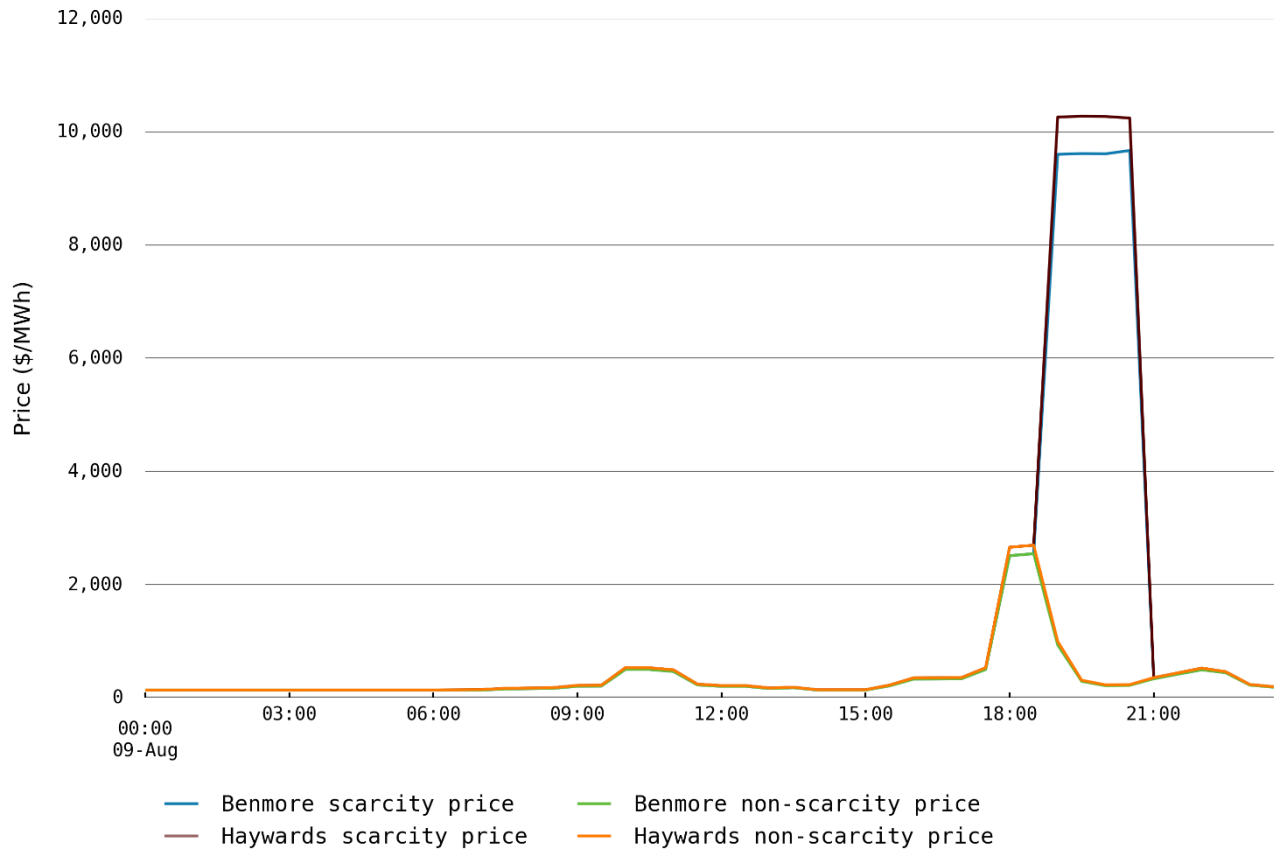
## 3 The ISS notice

- 3.1 In a short-term capacity shortage, the system operator may invoke the grid emergency provisions of the Code set out at clause 6 of Technical Code B, Schedule 8.3 of the Code. The list of actions that the system operator may take includes:
  - (a) Request connected asset owners reduce demand under clause 6(1)(b)
  - (b) Require electrical disconnection of demand under clause 6(1)(d).
- 3.2 Following the issuing of grid emergency notices (GEN) on 9 August 2021, the system operator issued an ISS notice under clause 5(1A) of Technical Code B, Schedule 8.3 of the Code. The system operator issued this notice at 23:54, after the grid emergency had ended. The ISS notice stated:

*"[t]his notice is issued in accordance with Technical Code B – Emergencies, Schedule 8.3 Part 8, clause 5(1A). This Island Shortage Situation (ISS) notice has been issued by the System Operator to inform the Pricing Manager and Market Participants that an island wide instruction to disconnect demand has been issued, amended or revoked. Refer to the related GEN notice for details of the instruction. The ISS notice serves as an indication to the market that the Pricing Manager may invoke Scarcity Pricing subject to meeting additional market criteria."*
- 3.3 Clause 5(1A) of Technical Code B, Schedule 8.3 provides:

*The **system operator** must issue a notice in writing to all **participants** whenever, or as soon as practicable after, under clause 6, the **system operator** has issued, amended or revoked an **island** wide instruction to **electrically disconnect demand**.*

- 3.4 Once an ISS notice is issued, the pricing manager must determine whether scarcity pricing applies using prescribed criteria within the Code. If those criteria are met, the pricing manager must give notice of a scarcity pricing situation. In this instance the pricing manager determined that the criteria were met and gave notice of a scarcity pricing situation for four trading periods on 9 August 2021.
- 3.5 The impact of scarcity pricing applying across those four trading periods is approximately \$130 million. We calculated this by doing a simulation using vectorised Scheduling, Pricing and Dispatch (vSPD) without scarcity pricing and compared the system cost with the interim prices that include scarcity pricing<sup>1</sup>. The graph below shows the Benmore and Haywards price with and without scarcity pricing applying.



- 3.6 The system operator originally considered the 18:47 GEN notice it issued on 9 August 2021 to have been an instruction to electrically disconnect demand under clause 6(1)(d). In the course of the compliance investigation into alleged breaches, the system operator subsequently advised that it considered all GEN notices to have been requests to reduce demand under cl 6(1)(b). The system operator’s view, therefore, is that the ISS notice was issued in error as it had not issued island wide instructions to electrically disconnect demand as required by clause 5(1A).
- 3.7 The Authority also considers that the ISS notice was not issued in accordance with the Code because the precondition (island wide instructions to electrically disconnect) was not met.

<sup>1</sup> <https://www.emi.ea.govt.nz/Wholesale/Tools/vSPD>

3.8 To meet the test for a UTS, there needs to be a situation which threatens, or may threaten, confidence in, or the integrity of, the wholesale market. As such a potential Code breach by a participant does not, by itself, constitute a UTS. Rather, we need to consider all the circumstances, and our approach in light of the legal framework for the UTS, is to consider whether the application of scarcity pricing in these circumstances amounts to a situation which threatens, or may threaten, confidence in, or integrity of, the wholesale market. In assessing this aspect of the UTS, the Authority will consider the underlying supply and demand conditions on 9 August 2021, and the policy intent and rationale behind scarcity pricing.

Q1 – Do you agree that it is appropriate for scarcity pricing to apply to trading periods 39 – 42 on 9 August 2021, notwithstanding that the ISS notice may not have been issued in accordance with the Code?



## Appendix A Format for submissions

Submitter	
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Question	Comment
<p>Q1. Do you agree that it is appropriate for scarcity pricing to apply to trading periods 39 – 42 on 9 August 2021, notwithstanding that the ISS notice may not have been issued in accordance with the Code?</p> <p>In your response to this question please provide the reasons for your answer, and any other comments you wish to make as to the ISS notice and its consequences.</p>	