19 June 2024

Submissions
Electricity Authority

By email: uts.2024@ea.govt.nz

Preliminary decision on whether an undesirable trading situation (UTS) occurred following 16 February 2024

Meridian appreciates the opportunity to provide feedback on the Authority's preliminary UTS decision considering whether final prices determined by offers, which were depressed by demand management on 9 August 2021, could threaten confidence in, or the integrity of, the wholesale market following the High Court decision on 16 February 2024.

This submission is structured as follows:

- Meridian agrees in principle that scarcity prices are an appropriate response to the demand shedding that occurred on 9 August 2021.
- However, the passage of time and implementation of real time pricing have likely already restored the normal operation of the market.
- While the Authority seeks the right outcome in principle, in practice it may be too late, and a UTS finding and corrective actions may extend uncertainty and result in abnormal market outcomes.
- Finally, we note that the version of the facts around 9 August 2021 that was agreed between the Authority and Transpower for the purposes of the Rulings Panel hearing is not uncontroversial. Despite this, it seems to have been accepted by, and directly informed, the High Court and to that extent has led directly to the issues with which the Authority is now wrestling.

Meridian Energy Limited

Level 2, 55 Lady Elizabeth Lane
PO Box 10-840
Wellington 6143
New Zealand

Phone +64-4 381 1200
Fax +64-4 381 1272
www.meridianenergy.co.nz

Scarcity prices are an appropriate response to the demand shedding that occurred on 9 August 2021

Meridian agrees in principle that accurate price signals are necessary for an efficient spot market and efficient investment decisions, including for last resort generation and demand response arrangements. We also agree that in the absence of scarcity pricing, some of the prices on 9 August 2021 were artificially depressed as a result of the system operator's notices to reduce demand. The market expects high prices during times of scarcity and if that is not the case, signals to invest in and commit peaking and last resort generation and demand response will be muted, undermining security of supply in the long term and harming consumers.

While Meridian agrees with the outcome the Authority seems to be seeking, we query whether a UTS decision and actions to correct are necessary and would benefit consumers.

The passage of time and implementation of real time pricing have likely already restored the normal operation of the market

Meridian is not convinced that a finding of a UTS is necessarily required to restore confidence in the wholesale market. Certainly, the situation that occurred on 9 August 2021 no longer threatens confidence in, or the integrity of, the wholesale market since it is not possible for the situation to be repeated now that real-time pricing has been implemented.

At paragraph 11.3 of the consultation paper the Authority states that the "preliminary decision is that in the present context the benefits of ensuring that prices in the wholesale market create the appropriate incentives outweigh the risk of any uncertainty arising from final prices being reset." It is not clear what benefits are referred to here. In Meridian's opinion, there are not likely any benefits because the Code has since changed and the wholesale market now functions to ensure the appropriate incentives cannot be set aside due to a pricing error claim.

A UTS finding and corrective actions may result in abnormal outcomes and further participant uncertainty

While the Authority seeks the right outcome in principle, in practice it may be too late to restore the normal operation of the market in respect of 9 August 2021. If a UTS was found,

any pricing actions to correct it would not restore normal outcomes as most derivatives will have already settled and re-settlement will no longer be possible. Any price reset would therefore create pricing outcomes that could not have been expected or foreseen by any participants, with spot settlement and settlement of financial contracts for the same periods being inconsistent. This abnormal outcome that is likely from any corrective actions, plus the passage of time to settle 9 August 2021 pricing, may itself undermine confidence in the market.

The UTS provisions should be used rarely and in situations where the Authority can restore the normal operation of the wholesale market "as soon as possible" under clause 5.5 of the Code. Consistently with this clause 5.1A of the Code states that "*…the Authority must not commence an investigation if more than 10 business days have passed since the situation, which the Authority suspects or anticipates may be an undesirable trading situation, occurred…*". Considering UTS matters over periods of two years or more, may itself threaten confidence in the market to the extent it creates prolonged wholesale price uncertainty. The Authority has already considered the events of 9 August 2021 and decided that there was no UTS. All that has changed is the High Court's decision that scarcity prices were applied in error. If the Authority disagrees with the High Court, the appropriate response may have been to appeal the decision rather than use the UTS powers in the Code to negate the impact of the decision and re-open an investigation into a period that occurred far more than 10 business days ago, well beyond the period within which the Authority is able to commence a UTS investigation under clause 5.1A of the Code.

Regardless of how the Authority decides to proceed, Meridian's opinion is that this matter should be brought to a conclusion as soon as possible to finally provide participants with certainty.

The "facts" agreed by the Authority are debatable and have led to the High Court decision and current circumstances

While it is something of an aside, Meridian considers it worthwhile reiterating points made in its submission on the Authority's Supplementary Consultation Paper on the 9 August 2021 UTS claim. 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 Island Shortfall Situation Notice (ISS Notice) was issued in breach of the Code.

Rulings Panel Decision C-2022-002 set out a number of facts agreed by the Authority and Transpower, including that Transpower admitted it had breached clause 7.1A(1) of the Code (the "reasonable and prudent" operator standard) in respect of issuing the ISS Notice, because it had only issued a national *request* to reduce load rather than an island-wide *instruction* to disconnect demand, and the ISS Notice was therefore not required to be issued.

Similarly, the consultation paper states that "The Authority and the system operator agree that the ISS notice was issued in error. The system operator did not require the electrical disconnection of demand on 9 August 2021; instead it requested that distributors reduce demand." At paragraph 7.20 the consultation paper states that "the ISS notice was deemed in breach of the Code based on the wording contained in the 18:47 GEN notice, which "requested" demand reduction by 1% rather than "requiring" demand reduction." In Meridian's opinion, this agreement that the system operator only ever "requested" demand reduction is debatable and seems inconsistent both with what the system operator clearly intended on the day in following through with the ISS notice and with how the industry responded to that notice.

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:

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

- "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.

It is therefore not clear to Meridian why the Authority was convinced of the agreed "fact" in Rulings Panel Decision C-2022-002 regarding the ISS notice being issued in breach of the Code. That agreed "fact" was heavily relied upon by the High Court and was a key piece of the chain of logic laid out by Cull J in finding that a pricing error had occurred.[2]

While it may be an unintended oversight, the Authority's consultation paper at the end of paragraph 7.12 seems to acknowledge there was "instructed load shedding" on 9 August 2021. Paragraph 10.24 of the consultation paper also states that:

> "No participants questioned the application of scarcity pricing based on the system operator's communications following 9 August. It was not until the Authority raised questions about the ISS notice that the system operator's underlying notices were scrutinised, ultimately leading to the pricing error identified by the High Court. This could indicate that the market expected scarcity pricing to apply given the circumstances of 9 August."

In Meridian's opinion, this market expectation of scarcity prices confirms that the market interpreted the notices as including instructions to reduce load and that this was an option

[2] *Haast Energy Trading Limited and Kiwi Electric Limited v Electricity Authority* [2024] NZHC 195, paragraph 85.

open to the system operator and confirmed by the issue of the ISS notice. That was within the system operator's powers under the Code and a reasonable interpretation of the facts.

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

Nāku noa, nā

Sam Fleming
Manager Regulatory and Government Relations