

UTS PRELIMINARY DECISION – April 2024

Communications approach

Overview

The Authority has been investigating whether confidence in, or the integrity of, the wholesale market is or may be threatened following the High Court decision which resulted in prices on 9 August 2021 being determined on the basis of offers in conjunction with demand management. Two participants (Haast Energy Trading and Electric Kiwi) appealed the Authority's decisions not to uphold a pricing error claim and not to find that an undesirable trading situation (UTS) had occurred during trading periods 37-42 on 9 August 2021.

The High Court, in a decision dated 16 February 2024, upheld the pricing error appeal by the participants. It decided scarcity prices were incorrectly applied to four trading periods (39-42) on 9 August 2021.

The Authority directed the clearing manager to finalise prices for trading periods 37-42 on 29 February 2024 and has been working with the clearing manager and the system operator on how best to effect settlement.

Prices on 9 August being determined by offers in conjunction with demand management by the system operator prompted the investigation into a possible UTS.

Following the investigation the Authority reached a preliminary decision that a UTS occurred as a result of prices for trading periods 38 and 39 on 9 August 2021 being artificially depressed by in excess of \$10M following notices to reduce demand by the system operator.

We believe that having prices artificially depressed in circumstances where participants would expect higher prices to apply is a situation which threatens, or may threaten, confidence in, or the integrity of, the wholesale market.

Our preliminary view is that if prices are artificially depressed, incentives for the operation of, and investment in, last resort generation may be undermined. This in turn can undermine security of supply and is not in the long term interests of consumers.

The Board is to consider the preliminary decision paper on 30 April.

Communications support

The Minister for Energy will be provided with a briefing on 1 May outlining the decision. The Minister's Office approved a shorter than normal "no surprises" briefing period, one week, at a meeting on 3 April.

A news item, detailing the consultation dates and duration (but not the preliminary decision, will be published on 1 May along with an email to affected participants – (note that the response to Haast on 27 March advised we would provide timeframes for submissions as soon as decided.)

On May 8, the Authority will issue a media release to publicise the Board's decision. The media release will be distributed to industry media and posted on the Authority's website.

The Authority's spokesperson will be General Manager Legal, Monitoring and Compliance Airihi Mahuika.

The respective parties to the High Court proceedings will also be emailed to alert them to the Board's decision and the commencement of consultation.

Key messages and Q&As are being developed to support publicising the decision.

A new webpage will be developed to reflect the decisions made and create a clear distinction between the UTS investigation of 9 August 2021 and this UTS investigation following 16 February 2024.

Risks and issues

When the Authority communicated the decision to investigate a possible UTS in respect of 16 February 2024 both Haast (co-appellant) and Nova Energy (interested party) were quoted in this article - [New 9 August UTS investigation a risk to confidence – Haast | Energy News](#)

Haast CE Phil Anderson said the UTS investigation was "hard to fathom", he questioned decision-making at the Authority. Mr Anderson questioned the Authority returning to an event that happened almost three years ago, and which could decrease, rather than increase, confidence in the regulator and the market. He said it's hard to see how confidence in the market is threatened. He also said large generators did not see it as a big deal judging by the lack of comment in half-year results.

Nova said there remained uncertainty about how future events will be priced, which it hoped would be clarified before another peak demand period.

There was commentary on the article that touched on a number of topics namely:

- waste of time and money looking at issues that are three years old and relating to a pricing mechanism that is no longer being used
- Authority trying to bypass Court judgment via a UTS

- Authority only ones interested – rest of industry “checked out” and focused on more important issues
- Authority intransigence

Haast subsequently [wrote](#) to the Authority on 18 March 2024 seeking [answers](#) to a number of questions about the opening of the UTS.

The Authority [responded](#) on 27 March 2024.

Our communications, including media release, key messages and backpocket Questions and Answers, will address the issues raised. They will also stress that this is a preliminary decision and we are seeking participants’ views which will be considered prior to any final decision being made.

Communications timeline

Date	Event/action	Person responsible
30 April	Board meeting to consider preliminary decision	
1 May	Briefing to Minister for Energy on PDP	Sara draft Sean/Tessa send
1 May	News item detailing consultation dates and duration (but not PD) followed with email to affected participants –	Sean
8 May	Publication of PDP, opening of consultation, media release	Sean with Lousie P
8 May	Emails with links media release sent to parties involved in legal case	Comms/legal
8 May	Webpage published – UTS 16 February 2024	Comms
9 May	Market Brief item linking to media release	Comms

Collateral

Draft News item (1 May)

Advance notice of consultation on preliminary UTS decision

The Electricity Authority Te Mana Hiko would like to give advance notice to participants that we will commence consultation on our preliminary decision relating to an investigation into a

potential undesirable trading situation that arose following the High Court decision which resulted in prices on 9 August 2021 being determined on the basis of offers in conjunction with demand management.

The preliminary decision paper will be published on our website on 8 May 2024. Feedback on the preliminary decision is welcomed and the closing date for submissions will be 5 June 2024.

[ends]

Webpage

A new page for the possible 16 February 2024 UTS will be published on 8 May.

The new page will be separate to the 9 August 2021 UTS page, assisting with ensuring there is a clear distinction between the two and the 16 February 2024 UTS relates to the resetting of prices – not the original UTS investigation.

The address for the new page will be:

<https://www.ea.govt.nz/industry/wholesale/uts/uts-16-february-2024/>

The new possible UTS will also be included on the main UTS page under claims and decisions.

Draft new webpage content

(for <https://www.ea.govt.nz/industry/wholesale/uts/uts-16-february-2024/>)

UTS 16 February 2024

We carried out an investigation into a possible undesirable trading situation that arose following a High Court decision dated 16 February 2024.

The High Court decided scarcity prices were incorrectly applied to four trading periods on 9 August 2021. As a result some prices for 9 August were calculated on the basis of offers and demand management by the system operator in circumstances where participants may expect higher prices to apply. This prompted the investigation into a possible UTS.

Following the investigation we have reached a preliminary decision that a UTS occurred and are now seeking feedback on this

Our preliminary decision (subhead)

After investigating the possible UTS we reached the preliminary decision that a UTS has developed as a result of prices for trading periods 38 and 39 on 9 August 2021 being artificially depressed by demand management.

We believe that having prices determined for these trading periods by offers and demand management is a situation which threatens, or may threaten, confidence in, or the integrity of, the wholesale market.

Our preliminary view is that if prices are artificially depressed, incentives for the operation of, and investment in, last resort generation may be undermined. This in turn can undermine security of supply and is not in the long-term interests of consumers.

Consultation

We invite feedback on the following preliminary decision paper which sets out our investigation and findings. The closing date for submissions is 5 June 2024. Submissions can be sent to uts.2024@ea.govt.nz

[Link to PDP – UTS preliminary decision paper – 16 February 2024]

Main webpage:

<https://www.ea.govt.nz/industry/wholesale/uts/>

Existing:

Claims and decisions

You can keep up to date with our completed and ongoing UTS claims here.

DATE	CLAIM	DECISION
9 August 2021	Haast Energy Trading and Electric Kiwi UTS claim for 9 August 2021.	Learn more
10 November 2019	Haast Energy Trading, Ecotricity, Electric Kiwi, Flick Electric, Oji Fibre, Pulse Energy Alliance and Vocus claimed a UTS began on 10 November 2019 and continued at 12 December 2019.	Learn more
15 September 2018	Electric Kiwi, Flick Energy, Pulse Energy, Switch Utilities (Vocus) and Vector UTS claimed a UTS began on 15 September 2018 and continued at 8 November 2018.	Learn more

Update to include

Date	Claim	Decision
16 February 2024	Possible UTS following 16 February High Court decision	Learn more (link to https://www.ea.govt.nz/industry/wholesale/uts/uts-16-february-2024/)

(The following communications collateral is in development)

- Key messages
- Q&As – including responses to cover off themes covered in the “Risks and issues” section above
- Draft media release

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